No. 25-5809

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2024

ANTHONY LEE VAN DURMEN

Petitioner,

-vs-

BRYAN MORRISON,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR REHEARING

Submitted by:

Anthony Lee Van Durmen, #189744
Petitioner In Propria Persona
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036

12/15/25

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PETITION FOR REHEARING

Petitioner, Anthony Lee Van Durmen, in his proper person, hereby petitions this Honorable Court for rehearing pursuant to Rule 44.1-2, of the Supreme Court, to address an issue of significant importance to the American Jurisprudence which has never been adjudicated by this Court leaving the State Courts and the Courts below in a state of flux without proper guidance from this Court. Consistent with Rule 44.1, this petition for rehearing is

timely submitted. Petitioner states in support as follows:

1. Petitioner asserts that this Court has yet to decide whether or not a (20) year delay on deciding an appeal of right, where not fault of the Defendant is at issue, violates the constitutional right to equal protection of the law of the United States or any state in the territory of the United States. Thus, the ground for granting rehearing is not frivolous, nor delays the Court in its business of addressing constitutional claims in other cases, or cause any burden to Respondent. Pursuant to Rule 44.(2) this petition is authorized.

2. This Court has specifically ruled that an appeal in a criminal case, following conviction, is by right. Accord, *Evitts v Lucey*, 469 US 387; 105 S Ct 830 (1985), In *Evitts,* this Court made clear that:

> "Appellate counsel's failure to comply with appellate court rule resulting in dismissal of appeal constituted ineffective assistance of counsel warranting the issuance of a conditional writ ordering petitioner's release unless his appeal was reinstated or he was retried." cf 469 US, at 391.

3. Petitioner Van Durmen's appeal of right took over (20) years to be adjudicated on the claims he presented. The inordinate delay in the state court's appellate process in this case was decided under the case law authority governing the right to a fast and speedy trial, which was not the issue before the courts below. See (Pet. for Writ of Cert., p 8, ¶ 2).

4. The Sixth Circuit, as well as the State Courts of Michigan, relied on a case which did not involve an appeal of right, but rather, the right to a speedy trial for their individual denial of the claim on the merits. cf. *State v Smith,* 94 F 3d 204, 208 (6th. Cir. 1996) - (Addressing the speedy trial delay).

5. This Court in reviewing the Petition for Writ of Certiorari, although presented by a prisoner in pro. per., failed to address the inordinate delay of over (20) years for the appeal of right to be adjudicated, and denied relief without even hinting to the constitutional violation of the right to appeal or the Constitutional Amendment to which it protects.

6. Consequently, the decision of this Court entered on November 24, 2025, is contrary to the Court's ruling announced in *Matthews v Eldridge*, 424 US 319, 334 (1976), and under the equal protection clause of the Fourteenth Amendment of the US Constitution, the ground asserted should be considered under the rehearing banner allowed by S. Ct. Rule 44(1)-(2).

7. The Court should, as a matter or constitutional law, review the rehearing claim due to its "exceptional importance", i.e., the claim has never been adjudicated by this Court leaving all state and federal courts below at a 'disastrous posture' without any guidance from this Court on a specific constitutional claim - the right to a timely appeal of right, and whether an excessive of (20) year inordinate delay is prejudicial and disturb the equal protection clause of the Fourteenth Amendment. The ground for this petition for rehearing is:

> A CRIMINAL CONVICTION IN THE STATE COURTS WHICH TOOK OVER (20) YEARS FOR AN APPEAL BY RIGHT TO ADJUDICATE THE CLAIMS ON APPEAL VIOLATED THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT REQUIRING RELIEF.

ARGUMENT

Reason for Granting Rehearing

The equal protection clause prohibits a state from affording one person

... the ... benefit of a ruling ... while denying it to another. *Myers v Ylst*, 897 F 2d 417, 421 (9th. Cir. 1990). This Court recognized in *Bush v Gore*, 531 US 98, 103; 121 S Ct 525; 148 L Ed 2d 388 (2000), that inconsistent application of state law can give rise to an equal protection claim. 531 US at 103.

Applying this logic to the instant case, the State of Michigan normally decides a criminal defendant's appeal of right within one year of filing the appeal of right, while it took over (20) years for Petitioner Van Durmen's appeal to finalize. Although there was no guidance from this Court on this specific constitutional claim, the long delay was prejudicial *ipso facto.*

This is an issue of significant importance, and of first impression inquiry to the American Jurisprudence which is premised on the Fourteenth Amendment right to an appeal by right of a criminal conviction, and because there is no general or specific guidance from this US Supreme Court on the subject matter regarding the long inordinate delay of over (20) years, or the prejudicial impact of that delay, this Court should grant rehearing and address the claim under S. Ct. Rule 44.2.

In order to maintain uniformity in the state and federal courts below, the US Supreme Court should set forth specific guidance as to each constitutional claim those courts have violated due to the lack of Supreme Court guidance. In this case, the claim spans over (20) years for an appeal of right to be adjudicated due to no fault of the prisoner, and was ultimately denied relief because there exists no ruling from this Court on the subject matter, leaving the courts below to adjudicate the claim under the banner of the right to a speedy trial under this Court's ruling in *Barker v Wingo,* 407 US 514 (1972), which is distinguishable from the inquiry of the delay in the right to appeal.

Applying the Doctrine of Novelty

Petitioner Van Durmen asserts that because this Court has yet to determine the amount of time necessary for an appeal of right to create prejudice against the accused, the doctrine of novelty announced in *Reed v Ross,* 468 US 1; 104 S Ct 2901 (1984), should be applied here, where this Court outlined (3) significant factors on the novelty doctrine. In *Reed v Ross,* this Court opined:

> "First, a Supreme Court decision may explicitly overturn one of its precedents. Secondly, a Supreme Court decision may overturn a long standing and widespread practice to which the Court has not spoken, but which a near-unanimous body of lower court authority has expressly approved, *Reed,* 468 US at 17-18. Third, a Supreme Court decision may disapprove of a practice the Court arguably had sanctioned in prior cases. ... Where a constitutional claim is so novel that its legal basis is not reasonably available to counsel, a defendant has cause for his failure to present the claim in accordance with applicable state procedural rules. 468 US, at 17. id.
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This Court affirmed the grant of habeas corpus relief in Reed because the State of the law at the time of *Ross'* appeal of his murder conviction in North Carolina, did not offer a reasonable basis upon which to challenge the faulty jury instruction on the burden of proof during his murder trial.

Petitioner asserts that the same "analogy" should be applied to his rehearing petition because under the doctrine of novelty, where there are no rulings from this Court addressing an excessive (20) year delay for an appeal of right in any state of federal courts, the lower courts are left with no guidance and their reliance on *Barker v Wingo,* supra, to address the delay in the appeal of right is the only remedy fashionable.

Additionally, there is no guidance from this Court on how to proceed when faced with such a claim on the subject matter which is more likely than not - why all lower courts apply *Barker v Wingo,* regarding the right to speedy trial - not an appeal of right.

This Court, in deciding *Garza v Idaho,* 586 US 232; 139 S Ct 738; 203 L Ed 2d 77 (2019), said:

> "Those whose right to appeal has been frustrated should be treated exactly like any other appellant; they should not be given an additional hurdle to clear just because their rights were violated at some earlier stage in the proceeding. cf. *Rodriquez v United States,* 395 US at 330; 89 S Ct 1715; 2 L Ed 2d 340. We accordingly decline to place a pleading barrier between a defendant and an opportunity to appeal that he never should have lost." 586 US at 245.

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Given the fact that this Court has ruled that the right to appeal a criminal conviction is a constitutional right, *Dowd v United States,* 340 US 206; 71 S Ct 262; 95 L Ed 215 (1951), there should be no question as to a (20) plus year delay in exercising this constitutional right to appeal, violates the equal protection clause of the Fourteenth Amendment and creates significant prejudice to the accused.

This Court should, as a matter of fundamental fairness grant rehearing and decide the claim asserted in the Petition for Writ of Certiorari as to the inordinate (20) plus year delay in the appeal of right by the Michigan courts.

Petitioner asserts that although the denial of his Petition for Writ of Certiorari was not a decision on the merits of his case, *Barber v Tennessee,* 513 US 118; 130 L ED 2d 1129; 115 S Ct 1177 (1995), a decision on the (20)

plus years delay in this case ought to warrant some form of relief. Accord, *Knight v Florida*, 528 US 990; 120 S Ct 459 (1999), although a 'death penalty' case where the delay was 19.4 years, *Justice Breyer* would have granted the petition for writ of certiorari on the decades long delay in rendering the initial appeal of right.

In the instant case, the interest of justice warrants this Court's granting rehearing and deciding the claim presented here. *Rodriquez v United States,* 395 US 327 (1969).

SUMMARY AND CONCLUSION

For all the reasons outlined above, Petitioner Van Durmen respectfully ask this Court to grant him rehearing, revisit his original Certiorari Petition, and issue a ruling on the inordinate delay of over (20) years to obtain his appeal of right following his state court jury tried conviction. Petitioner urges this Court to apply the ruling from *Ward v Wolfenbarger*, 340 F. Supp 2d 773, 775-777 (E.D. Mich. 2004), where the US District Court issued an unconditional writ where the petitioner was denied his right to appeal and (33) years had lapsed since his (1971) convictions. Rehearing is warranted here. S. Ct. Rule 44.1, and 44.2.

Submitted by,

Dated: December 15, 2025

Anthony L. Van Durmen
MDOC ID 189744, Pro. Per.
Lakeland Corr. Facility
141 First Street
Coldwater, Michigan 49036

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CERTIFICATION OF PETITIONER

Petitioner, Anthony Lee Van Durmen, hereby certify under the penalty of perjury consistent with Title 28 USC § 1746, that my motion for rehearing/reconsideration is submitted in good faith and not for any form of delay, and is restricted to the ground presented under Rule 44.2 addressing the inordinate 20 year delay of an appeal by rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, of which this Court has never previously addressed. The Petition has (7) pages of text and 1826 words.

Submitted by,

December 15, 2025

/s/ Anthony Lee Van Durmen

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PROOF OF SERVICE

I, Anthony Lee Van Durmen, declare that on this date, December 15, 2025, as required by Supreme Court Rule 44.1, that I served the enclosed Petition for Rehearing on the Attorney General for the State of Michigan, Ms. Dana Nessel, by depositing same in an envelope containing the above documents in the hands of prison officials at the Lakeland Correctional Facility, in Coldwater (Branch County), Michigan to be mailed by US Postal Service to:

Ms. Dana Nessel, Attorney General
G. Mennen William Building, 7th. Floor
525 West Ottawa Street
Post Office Box 30212
Lansing, Michigan 48909

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: Dec. 15, 2025

/s/ Anthony L. Van Durmen