

26-5437

No.

ORIGINAL

IN THE UNITED STATES SUPREME COURT

JANUARY Term, 2026

FILED

JAN 21 2026

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

DANIEL MARTIN PIRKEL

PETITIONER,

v.

STATE OF MICHIGAN,

RESPONDENT.

\_\_\_\_\_  
Attorney for Respondent

Michigan Attorney General

\_\_\_\_\_  
DANIEL MARTIN PIRKEL

In Pro Per

\_\_\_\_\_  
On Petition For Writ of Certiorari to the  
Michigan Supreme Court

\_\_\_\_\_  
PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

Daniel Pirkel #677844  
Woodland Center Correctional Facility  
9036 E-M36  
Whitmore Lake, Mi 48489

### Questions Presented

1. Is a motion to withdraw the plea proceeding a critical stage in the proceedings, especially when this is where plea based appellants initially receive review of their claims?

2. Did an 18+ year delay of Petitioner's direct appeal violate his right to Due Process under the Fourteenth Amendment of the United States Constitution?

3. Should the Fifth Amendment's Right to a Grand Jury be incorporated through the Fourteenth Amendment's Due Process Clause and applied to the states?

#### Reference to Opinions Below

The opinion of the highest state court to review these claims appears at Exhibit 15 in the petition and is reported at People v. Pirkel, 2025 Mich LEXIS 1945. This is the decision for which Petitioner seeks Writ of Certiorari.

The opinion of the Michigan Court of Appeals is published at People v. Pirkel, 2025 Mich App LEXIS 1805

The last court to address the merits of Petitioner's claims occurred in the 45th Circuit Court's denial of Petitioner's 6.500 under File No. 07-014669-FC filed on 4-1-24 ||see Exhibit 1-7)

The opinion of the highest state court to review the merits of Petitioner's direct appeal was published at People v. Pirkel, 509 Mich 931 (2022)||

The state appellate court that reviewed the claims that Petitioner's appellate attorney raised during the revived direct review are published at People v. Pirkel, 2021 Mich App LEXIS 785

The opinion of the federal court that revived Petitioner's direct appeal is published at Pirkel v. Burton, 970 F3d 684 (2020)

#### Jurisdiction

Petitioner seeks review of Michigan's Supreme Court's October 24, 2025 order in People v. Pirkel, 2025 Mich LEXIS 1945. A copy of this dedcision appears at Exhibit 15. The Jurisdiction of this court is invoked under S.Ct. R. 13 and 28 USC 1257(a)||. This Writ of Certitiorari is timely filed pursuant to Supreme Court Rule 13||1||, as Petitioner filed it through the prison's legal mail system on January 21, 2026, which is exactly 89 days after the state court of last resort denied leave to appeal in People v. Pirkel, 2025 Mich LEXIS 1945. Further, Petitioner exhausted all of these issues in the Michigan Court of Appeals (denied in People v. Pirkel, 2025 Mich App LEXIS 1805) and the Trial Court (cf. Exhi||its 1-7).

### Constitutional and Statutory Provisions Involved

The Fifth Amendment to the United States constitution provides in relevant part: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury..."

The Fourteenth Amendment of the United States Constitution states: "No state shall make or enforce any law which shall Abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law..."

### Statement of the Case

Petitioner, a citizen of the United States, is currently imprisoned at the Carson City Correctional Facility (DRF) in Carson City, Michigan. Petitioner seeks writ of certiorari regarding People v. Pirkel, 2025 Mich LEXIS 1945. Petitioner is serving a 22-52 year sentence for assault with intent to murder (AWIM), among other charges, imposed by Judge Paul Stutesman of the St. Joseph County Court, after Petitioner pled nolo contendere in file no. 07-14669-FC. After numerous appellate proceedings beginning in 2008, the Sixth Circuit required Michigan to provide Petitioner a new direct appeal. cf. Burton, 970 F3d 684 (6th Cir. 2020).

The state appointed Attorney Zevalking to represent Petitioner in his revived appeal. While Zevalking filed the appeal, he procedurally defaulted the claims by failing to file a motion to withdraw the plea in the trial court, as required by MCR 6.310(D). Instead, Counsel asked the Michigan appellate courts to remand the case to the Trial Court so he could file such a motion. These motions were summarily denied along with the appeal. These actions rendered Petitioner's revived appeal constitutionally deficient. cf. People v. Pirkel, 2021 Mich App LEXIS 785 and People v. Pirkel, 509 Mich 931 (2022).

After the revived direct appeal was denied, Petitioner filed a Motion for Relief from Judgment pursuant to MCR 6.500 on 1-10-23. Here, Petitioner pointed out how the state undermined his direct appeal, how this unduly delayed his direct appeal (now going on 18 years), how the state failed to grant him a Grandjury, as well as how trial counsel undermined Petitioner's plea by failing to inform him about the elements and defenses to the primary charges.

On 4-1-24, the Trial Court denied this motion sua sponte, acting as the prosecutor's advocate. see Exhibits 1-7. Thereafter, Petitioner appealed this decision to the Michigan Court of Appeals and Michigan Supreme Court, who

summarily denied them in People v. Pirkel, 2025 Mich App LEXIS 1805 and People v. Pirkel, 2025 Mich LEXIS 1945. Petitioner is challenging People v. Pirkel, 2025 Mich LEXIS 1945 in this Writ of Certiorari, as it was given by the state court of last resort.

### Reasons for Granting Relief

The primary issue in Argument I is that Michigan and the federal courts have delayed Petitioner's direct appeal for 18+ years. Although the U.S. Supreme Court ruled that there may be "tailored relief under the due process clause..." for an appeal that has been inordinately delayed (*Betterman v. Montana*, 578 US 437 (2016)), most federal courts have ruled that the AEDPA prevents them from offering relief off the issue. *Durmen v. Morrison*, 2024 US App LEXIS 25076; *Plymail v. Mirandy*, 2018 US Dist LEXIS 223139.

These decisions are premised on the fact that the U.S. Supreme Court has not determined the appropriate standards for reviewing delayed appeal claims, and thus it's not "clearly established federal law." Justice Sotomayor would likely concur, as it remains an "open question" if delayed appellate proceedings will result in a due process violation. *Betterman* at 450. Further, Justices Thomas and Alito refused to rule on this issue until it was properly before the Court. *Id.* This is because *Betterman* did not raise this claim under the 14th Amendment due process clause. In contrast, Petitioner preserved and raised this issue here and in the state courts.

Thus, Petitioner's case offers the Court an opportunity to address a situation in which a prisoner's right to due process has been repeatedly undermined while on direct review of his conviction (refusing to appoint new appellate counsel in original appeal [as shown in *Pirkel v. Buron*], refusing to allow counsel to file motion to withdraw the plea in the trial court, etc.). Further, Petitioner can show that the 18+ year delay of his appeal actually prejudiced him, something many appellants can't do. e.g. *Durmen*, *supra*

Second, the *Betterman* Court granted certiorari to resolve a split between the federal circuits. However, a split remains. Citing *Betterman* at 447-48, the Third Circuit determined that convicted defendants have a due process right to speedy sentencing. *United States v. Small*, 2023 US App LEXIS 17117, pg. 7. In contrast, the Sixth Circuit's interpretation of *Betterman* indicates that the Sixth Amendment only protects a defendant until a jury returns a verdict. *Durmen v. Morrison*, 2024 US App LEXIS 25076 citing *Betterman* at 439, 441, 448. 449.

Third, before the AEDPA was created, most of the Federal Circuit Courts recognized that an inordinately delayed appeal implicates a due process violation. cf. *Simmons v. Beyer*, 44 F3d 1160, 1169 FN 6 (3rd Cir. 1995). It's inherently unfair for the government to attain invalid convictions, then hinder

the appeal from being adjudicated until after the defendant has served most if not all of the illegal sentence. However, the U.S. Supreme Court's failure to make this doctrine clearly established federal law forces federal courts to deny relief to habeas petitioners, who may otherwise be entitled to relief. Such a state of affairs should be resolved as soon as possible.

As for Petitioner's argument that Michigan violated his Fifth Amendment right to a grand jury, Justice Alito and the Chief Justice argued that "[i]f we took the same approach to the *Hurtado* question that the majority takes in this case, the holding in that case could be called into question." *Ramos v. Louisiana*, 590 US 83, 156-7 (2020). In other words, several Supreme Court justices recognize that modern Supreme Court precedent undermines *Hurtado v. California*, 110 US 516 (1884), the case which held that states do not need to assemble a grand jury to indict criminal defendants. Further, since *Hurtado*, the Supreme Court has determined that every other privilege granted by the bill of rights are incorporated, and apply to the states, through the due process clause of the Fourteenth Amendment. This is because they are considered essential to our "scheme of ordered liberty" (*McDonald v. City of Chicago*, 561 US 742 (2010)), as due process includes the rights so rooted in tradition as to be considered fundamental. *Snyder v. Massachusetts*, 291 US 97 (1934). Many Justices have held this right to be fundamental. e.g. Black, Douglas & Harlan in *Duncan v. Louisiana*, 391 US 145 (1968).

Since *McDonald* and *Ramos*, among other Supreme Court precedents undermine *Hurtado*, the Court should consider reviewing *Hurtado* to determine if it remains valid law.

*The foregoing is true & correct to the best of my  
knowledge and belief*

5-29-26

Daniel Pirkel  
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