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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Jasper County
Honorable Carmen T. Mullen, Circuit Court Judge

Opinion No. 2026-UP-432 (S.C. Ct. App. Filed September, 2, 2026)

Lower Court Case No. 2017-GS-27-00582

THE STATE,

RESPONDENT,

V.

BENJAMIN WALTER DUBOIS III,

PETITIONER

APPELLATE CASE NO. 2023-001307

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on October 15, 2026.

QUESTION PRESENTED

Did the Court of Appeals misapply the factors provided by Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), in finding the almost six-year delay between arrest and trial did not violate Petitioner's state and federal constitutional right to a speedy trial?

STATEMENT OF THE CASE

In May of 2018, the Jasper County Grand Jury indicted Petitioner, Benjamin Walter Dubois, III, for murder, indictment #2017-GS-27-00582. (R. p. 1185-1186). On October 31, 2019, Petitioner appeared before the Honorable Ferrell Cothran, Jr. for a pre-trial hearing. (R. pp. 1-8). Carolyn Carmody represented Petitioner. Patrick Hall represented the State. On July 13, 2023, Petitioner appeared before the Honorable Robert Bonds for another pre-trial hearing. (R. pp. 9-137). Carolyn Carmody represented Petitioner. Reed Evans represented the State. On July 31, 2023, Petitioner proceeded to jury trial before the Honorable Carmen T. Mullen. Carolyn Carmody again represented Petitioner and Reed Evans again represented the State. The jury found Petitioner guilty of murder and pursuant to S.C. Code §17-25-45 Judge Mullen sentenced Petitioner to life without parole. (R. p. 1168). A timely notice of intent to appeal was served on August 14, 2023, and the direct appeal perfected. On September 2, 2026, the South Carolina Court of Appeals affirmed the murder conviction finding the trial court did not abuse its discretion in refusing to find that Petitioner's constitutional right to a speedy trial was violated. State v. Dubois, Op. No. 2026-UP-432 (S.C. Ct. App. filed September 2, 2026). A timely petition for rehearing was filed and then denied on October 15, 2026. This petition for writ of certiorari follows.

STANDARD OF REVIEW

The remedy for a speedy trial violation is dismissal of the charges. Langford, 400 S.C. at 442, 735 S.E.2d at 482 (internal citation omitted). The trial court's ruling on a motion for speedy trial is reviewed under an abuse of discretion standard. Id. at 442, 735 S.E.2d at 482 (internal citation omitted). An abuse of discretion occurs when the court's decision is based on an error of law or upon factual findings that are without evidentiary support. Id. at 442, 735 S.E.2d at 482 (internal citation omitted). State v. Hunsberger, 418 S.C. 335, 342, 794 S.E.2d 368, 371–72 (2016).

REASON WHY CERTIOARI SHOULD BE GRANTED

This Court should grant the petition for writ of certiorari to clarify the correct application of the Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), factors in the speedy trial analysis.

ARGUMENT

The Court of Appeals misapplied the factors provided by Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), in finding the almost six-year delay between arrest and trial did not violate Petitioner's state and federal constitutional right to a speedy trial.

In the early morning hours of June 22, 2017, Jerry Holmes was found stabbed to death in his cell at Ridgeland Correctional Institution. (R. p. 13, line 3 – p. 14, lines 1-10). At the time of the death both Petitioner and Holmes were serving sentences in the Ridgeland Correctional Institution. Tyreece Griffin, the corrections officer who was in charge of the wing when Holmes was stabbed, was charged with misconduct in office and obstruction of justice for being absent without just cause and providing false information during the course of the investigation of the death of Holmes. (R. pp. 22-27; R. pp. 797-802). A video showed the officer walking out of the prison during his shift, leaving the wing unsupervised for several hours. (R. p. 51, line 8 – p. 52, lines 1-6). As the prosecutor characterized it, "And, essentially, left the unit as the sole guard and left the prison to run itself." (R. p. 14, lines 1-3).

At the time of Holmes' death at least ten of the individual cell doors on the wing were not locked. (R. p. 13, line 20 – p. 14, lines 1-3; p. 30, lines 11-22; R. p. 844, lines 1-23). On the night of the death numerous inmates were seen out of their cells. (R. p. 31, lines 1-8). One of the agents from the South Carolina Law Enforcement Division [SLED] who assisted with the investigation of the case was asked why weapons found in the common bathroom on the wing of the prison were not collected. (R. p. 393, lines 1-7). The agent answered, "There were so many weapons recovered in this case, it was hard to determine – we didn't deem that they were applicable. None of them had any suspected blood staining, and they were just found in the shower." (R. p. 393, lines 8-12).

Petitioner was arrested and charged with murder on August 15, 2017. (R. p. 119, lines 17-23). Two other inmates were also charged in connection to the death. (R. p. 48, line 22 – p. 49, 50, lines 1-4). Petitioner's trial took place almost six years later on July 31, 2023. Petitioner's federal and state constitutional speedy trial rights were violated requiring dismissal of the indictment.

On September 13, 2017, Petitioner filed a letter with the Jasper County Clerk of Court asking for a public defender, requesting Rule 5 and Brady material, and noting, "I want to file for a fast and speedy trial. Because of this pending charge I now have to remain in security detention (Isolation) until this is resolved." (R. p. 1189). Petitioner was indicted on May 31, 2018.

On September 13, 2019, Petitioner filed another letter with the Jasper County Clerk of Court. (R. p. 1191). In the letter Petitioner wrote:

> I filed for a fast and speedy trial 2 years ago and haven't received a word about it! I've never met my public defender or received any correspondence back from him. I would like for you to file a motion to dismiss for me please. I sent him a letter to do it but got not no response. I would also like all Rule 5 and Brady material sent to me. I am way past sick and tired of being on lock up for a crime I did not commit and being denied proper legal counsel. There is really no excuse for never meeting my public defender in the whole 2 years he's been assigned my case. I have serious disabilities and feel like I'm being discriminated against because I have these disabilities and your waiting for my cancer/ seizures to kill me before I have a chance at court. Please get this dismissed for me. As far as I know there is nothing fast and speedy about waiting over 2 years for trial after properly filing for a fast and speedy trial. It's supposed to be within 6 months or it gets dismissed. Thank you for your help and time.

(R. p. 1191).

On October 31, 2019, over two years after arrest, a hearing was held before the Honorable Ferrell Cothran, Jr. During the hearing the assistant solicitor representing the State told the judge, "He [Petitioner] had sent a letter to the Clerk of Court, which I believe you have a

copy of that letter. In that letter he's talking about making a speedy trial demand, about how he has not met his public defender, about how he has not received his discovery." (R. p. 3, lines 8-13). The assistant solicitor was concerned about Petitioner filing *pro se* motions. (R. p. 3, lines 17-22). The public defender representing Petitioner at the hearing had only been with the Public Defender Office for a little over a month. (R. p. 4, lines 16-18). The clerk advised that the prior attorney appointed to represent Petitioner was Bob Hughes. The assistant solicitor told the judge, "Well, Madam Clerk is informing me that Mr. Hughes was his only prior attorney, which causes me some concern because Mr. Hughes hasn't done work in general sessions in quite some time. And we have had two other public defenders in place since that time that were doing Mr. Hughes' cases." (R. p. 5, line 23 – p. 6, lines 1-4).

The Petitioner told the judge, "I wrote him a million times, never got one letter back. Never got to meet him or nothing. I couldn't even walk when they charged me. I went through cancer surgery. I couldn't even walk to get my food from the cafeteria. I wanted to get this done because I'm supposed to go home in two years, and I want to get this done. I have wrote him a lot of letters." (R. p. 6, lines 5-12). Judge Cothran ordered the State to provide full discovery to counsel within 30 days and asked when the State planned to call the case for trial. (R. p. 6, lines 13-18). The assistant told the judge they planned to try the case in the first six months of 2020. Judge Cothran said, "Okay. If it hasn't been, then they can make a motion in front of whatever judge is here, you know, for a speedy trial, and they can go back under Judge Newman's cases and see what kind of relief they can get. Okay?" (R. p. 6, line 23 – p. 7, lines 1-2)[1].

[1] Presumably Judge Cothran's reference to "Judge Newman's cases" is a reference to State v. Hunsberger, 418 S.C. 335, 794 S.E.2d 368 (2016).

The case was not called for trial until October/November of 2022. At that time, however, defense counsel had to move for a continuance because she was sick. (R. p. 123, lines 9-18). The case was then scheduled for trial in December of 2022. The State, however, moved for a continuance to analyze phones that the State had been aware of since the beginning of the investigation. (R. p. 123, line 19 – p. 124, lines 1-11).

On December 1, 2022, Petitioner completed his sentence on the underlying charge and was transferred to the Jasper County Detention Center. (See Order Denying Defendant's Motion to Dismiss for Alleged Speedy trial Violation, R. p. 1201). It appears that the case had to be continued a third time because the detention center failed to provide prescription medications Petitioner needed, and was apparently given in the Department of Corrections, to maintain competency. (See Order Denying Defendant's Motion to Dismiss for Alleged Speedy trial Violation, R. p. 1201).

On May 16, 2023, Petitioner filed[2] a notice of motion to dismiss based on the speedy trial violation. (R. p. 1192, Notice of Motion to Dismiss- Speedy Trial; See Order Denying Defendant's Motion to Dismiss for Alleged Speedy trial Violation). On July 13, 2023, a hearing was held before the Honorable Robert Bonds on Petitioner's motion to dismiss based on the speedy trial violation. (R. pp. 9-137). Judge Bonds denied the motion to dismiss and asked the State to prepare an order. (R. p. 136, lines 12-15). The judge noted that the motion to dismiss was filed in May of 2023, and stated, "May of '23. And, of course, that is two months ago, a month ago. And so I do hear you that, basically – you know, I don't understand why this motion wasn't filed a year ago, or two years ago, or 18 months ago, and, now that does resonate with me. And I think you were making a reference to that, Mr. Evans." (R. p. 135, lines 2-8). The

[2] The notice is dated May 12, 2023, but appears to have been filed July 21, 2023.

judge also noted that most of the items listed as missing or destroyed in paragraph five of the notice relating to prejudice would have been missing or destroyed if the case had been tried in 2019. (R. p. 135, lines 9-24; R. p. 1193).

On July 21, 2023, Petitioner filed the memorandum in support of the motion to dismiss based on the speedy trial violation. (R. pp. 1194). The written order denying the motion was filed on July 27, 2023. The written order correctly found that the nearly six-year delay was sufficient to trigger the speedy trial analysis. (R. p. 1204). The order, however, failed to properly weigh the factors surrounding the almost six-year delay. The judge erred in failing to properly weigh the factors and dismiss based on the speedy trial violation.

The trial started on July 31, 2023. The State made the trial judge aware of Judge Bonds' ruling denying the motion to dismiss based on the speedy trial violation. (R. p. 143, line 13 – p. 144, lines 1-13). Petitioner renewed the motion to dismiss at the close of the State's case. (R. pp. 997 – 1003). The trial judge denied the motion. (R. p. 1012, line 15 – p. 1013, 1014, lines 1-21). The trial judge noted the lockdown, turnover in both the Solicitor's office and the Public Defender office and found that the three continuances were all necessary. (R. p. 1012, line 15 – p. 1013, lines 1-21). The judge stated, "So with that said I do not think, again, that the time of trial is contrary or unreasonable in this case, given all those things, which might even be called." (R. p. 1014, lines 18-21). The trial judge failed to acknowledge that the almost six-year delay was sufficient to trigger the speedy trial analysis. The trial judge failed to properly weigh the factors surrounding the almost six-year delay. The trial judge erred in refusing to dismiss based on the speedy trial violation.

In State v. Langford, 400 S.C. 421, 440, 735 S.E.2d 471, 481 (2012) the South Carolina Supreme Court wrote:

> The Sixth Amendment to the United States Constitution provides, in part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy ... trial." U.S. Const. amend. VI. Similarly, the South Carolina Constitution guarantees that "[a]ny person charged with an offense shall enjoy the right to a speedy ... trial." S.C. Const. art. I, § 14. The main goals of this right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused's defense. State v. Waites, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978).

Petitioner's constitutional rights to a speedy trial guaranteed by both the United States Constitution and the South Carolina Constitution were violated in the present case.

In State v. Hunsberger, 418 S.C. 335, 342–43, 794 S.E.2d 368, 372 (2016), the South Carolina Supreme Court wrote:

> An accused's speedy trial right begins when he is "indicted, arrested, or otherwise officially accused." Langford, 400 S.C. at 442, 735 S.E.2d at 482 (citing United States v. MacDonald, 456 U.S. 1, 6, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982)). To trigger a speedy trial analysis, the accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from "presumptively prejudicial" delay, since, by definition, he cannot complain that the government has denied him a "speedy" trial if it has, in fact, prosecuted his case with customary promptness. Doggett v. U.S., 505 U.S. 647, 652, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). Presumptively prejudicial delay exists when an accused is not prosecuted with ordinary promptness. See Doggett, 505 U.S. at 651–52, 112 S.Ct. 2686 (1992). Once the accused has met this initial burden, a court must look to four factors, among the totality of the circumstances, to decide whether the defendant's right to a speedy trial has been denied. Barker v. Wingo, 407 U.S. 514, 530–31, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); see also Langford, 400 S.C. at 441, 735 S.E.2d at 482. These factors are: (1) length of delay; (2) the reason for the delay; (3) the accused's assertion of his right to a speedy trial; and (4) whether the delay prejudiced the accused. Barker at 531–32, 92 S.Ct. 2182. A speedy trial claim must be "analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense." State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2008) (citing Barker, 407 U.S. at 530, 92 S.Ct. 2182).

The State agreed that the almost six-year delay triggered the speedy trial analysis stating, "Going through the Barker v. Wingo factors, I agree with Miss Carmody that the length of delay is sufficient to trigger the rest of the analysis." (R. p. 128, lines 13-16). The written order

correctly found that the nearly six-year delay was sufficient to trigger the speedy trial analysis. (R. p. 1204). Both judges, however, erred by failing to properly weigh the factors surrounding the almost six-year delay and dismiss the charge based on the speedy trial violation.

In Langford, 400 S.C. 421, 441-442, 735 S.E.2d 471, 482 (2012) the Court wrote:

> The Supreme Court has counseled further that none of these factors [Barker factors] is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." Barker, 407 U.S. at 533, 92 S.Ct. 2182. Instead, they are all related and must be considered along "with such other circumstances as may be relevant." Id. Thus, the Supreme Court created a balancing test which is a rejection of "inflexible approaches" and weighs "the conduct of both the prosecution and the defense." Id. at 529–30, 92 S.Ct. 2182. If a court concludes that this right has been violated, dismissal of the charges "is the only possible remedy." Id. at 522, 92 S.Ct. 2182.

As in Hunsberger, because the timeline is essential to determining that Petitioner's speedy trial rights were violated, important dates are outlined below:

- August 15, 2017 – arrest
- September 13, 2017 – letter to clerk of court
- May 31, 2018 – indictment
- September 13, 2019 – letter to clerk of court
- October 31, 2019 – hearing before Judge Cothran
- October 2022 – defense motion for continuance – defense counsel illness
- November 2022 – prosecution motion for continuance – evidence not analyzed
- December 2022 – Petitioner completed sentence on underlying charge
- January 2023 – continuance - failure to receive medications
- April 2023 – bond denied
- May 2023 – notice of motion to dismiss based on speedy trial violation
- July 13, 2023 – hearing on motion to dismiss

- July 31, 2023 - trial

The trial courts rulings on the motion to dismiss based on the speedy trial violation failed to adequately address the Barker v. Wingo factors. The Court of Appeals misapplied the Barker v. Wingo factors in finding the almost six-year delay between arrest and trial did not violate Petitioner's state and federal constitutional right to a speedy trial. Viewing the Barker v. Wingo factors in terms of the circumstances of this case and balancing the conduct of the prosecution and the defense, Petitioner's constitutional right to a speedy trial was violated.

1. Reasons for Delay

The first delay period of two years and two months between arrest on August 15, 2017, and Petitioner's first hearing on October 31, 2019, should be wholly weighed against the State. The written order by the trial court correctly finds that the nearly six-year delay was sufficient to trigger the speedy trial analysis. The written order, however, does not assign responsibility for the length of the delay. In Hunsberger, the South Carolina Supreme Court determined that the full ten-year delay between arrest and trial was not wholly attributable to the State. In the present case, for over two years, from the time of Appellant's arrest in August of 2017, until October 31, 2019, when a hearing was finally held before Judge Cothran, the State made no attempt to call this case for trial.

On September 13, 2017, Petitioner filed a letter with the Jasper County Clerk of Court asking for a public defender, requesting Rule 5 and Brady material, and noting, "I want to file for a fast and speedy trial. Because of this pending charge I now have to remain in security detention (Isolation) until this is resolved." (R. p. 1189). In a letter to Appellant from the Jasper County Clerk of Court dated September 18, 2017, a clerk stated that a copy of Appellant's letter was given to the Public Defender's Office and the Solicitor's Office. (R. p. 1190).

Petitioner was indicted on May 31, 2018. The time period when Petitioner was without representation after asking for a public defender should not be held against Petitioner and should be weighed against the State. See Vermont v. Brillon, 556 U.S. 81, 94, 129 S. Ct. 1283, 1292, 173 L. Ed. 2d 231 (2009)("The general rule attributing to the defendant delay caused by assigned counsel is not absolute. Delay resulting from a systemic "breakdown in the public defender system," 183 Vt., at 479 – 480, 955 A.2d, at 1111, could be charged to the State. Cf. Polk County, 454 U.S., at 324–325, 102 S.Ct. 445."). The whole first two-year delay should be weighed against the State.

The Court of Appeals initially found that only some of that time period should weigh against the State writing:

> We find at least some of this period of delay should weigh against the State, although less heavily than an intentional delay." (citation omitted). See Hunsberger, 418 S.C. at 346, 794 S.E.2d at 374 ("[N]egligence or overcrowded dockets weigh less heavily against the State, but are ultimately its responsibility ...."); Pittman, 373 S.C. at 549, 647 S.E.2d at 155 ("Where the reason for the delay is more neutral, the court should weigh it less heavily against the State [than any intentional delays to impede the defense]."). We also note that Dubois asserted he never spoke to or met with his first attorney, so despite his personal eagerness to resolve his case, it is unlikely that the defense would have been in a position to try the case during this timeframe. *See id.* at 551, 647 S.E.2d at 156 ("While the ultimate responsibility for timely completion of the trial rests with the State, the defense's contributions to the delay cannot be ignored.").

State v. Dubois, No. 2023-001307, 2026 WL 2593340, at *3 (S.C. Ct. App. Sept. 2, 2026) (App. p. 55). .

The next three-year time frame from the hearing before Judge Cothran on October 31, 2019, to when defense counsel moved for a continuance because she was sick in October of 2022, cannot be wholly attributable to the State because part of that time involved lockdown due to the COVID-19 pandemic. Some of this three-year time frame though, perhaps half - eighteen

months, must be attributed to the State. None of this time frame should be attributed to Appellant. The Court of Appeals found the three-year delay from October 31, 2019, until October 2022, was caused by the pandemic, a neutral reason that should not be weighed against the State. (App. p. 56). While part of this three-year period of delay was certainly caused by the pandemic, attributing the whole three years to the pandemic is not reasonable, especially when Petitioner had already waited two years for a trial prior to the pandemic.

The final delay period from October 2022, until the trial on July 31, 2023, was caused by a defense continuance in October 2022, because defense counsel was sick, a prosecution continuance in November 2022, because the prosecution failed to analyze evidence, and a continuance in January of 2023, because the jail failed to provide correct medications. The month-long delay from October 2022 to November 2022, due to defense counsel's illness, should not be attributed to either the State or Appellant. The eight-month delay from November 2022, until the time of trial on July 31, 2023, is wholly attributable to the State. The State is responsible for an over four-year delay in calling the case for trial - two years between arrest on August 15, 2017, until first hearing on October 31, 2019, some portion of the three year delay between October 31, 2019, and October of 2022, perhaps eighteen months, because not all of that delay was caused by the pandemic, and the final eight month delay between November 2022, and July 31, 2023. The four- year delay should be weighed heavily against the State.

The Court of Appeals, however, wrote, "In total, we find the original two-year period of delay from arrest until October 31, 2019, should be weighed against the State, although with the caveat, as discussed above, that the defense was not prepared to proceed with a trial during the entirety of that period." State v. Dubois, No. 2023-001307, 2026 WL 2593340, at *4 (S.C. Ct. App. Sept. 2, 2026). (App. p. 56). While the Court of Appeals correctly weighed the initial two-

year delay against the State, the caveat assuming that the defense was not prepared to proceed has no place in this analysis. As discussed above, the fact that Petitioner was denied representation during the first two-year delay should be weighed against the State. See Vermont v. Brillon, 556 U.S. 81, 94, 129 S. Ct. 1283, 1292, 173 L. Ed. 2d 231 (2009)("The general rule attributing to the defendant delay caused by assigned counsel is not absolute. Delay resulting from a systemic "breakdown in the public defender system," 183 Vt., at 479 – 480, 955 A.2d, at 1111, could be charged to the State. Cf. Polk County, 454 U.S., at 324–325, 102 S.Ct. 445.").

As to the second delay period of three years, the Court of Appeals misapprehended this time frame by not weighing some of the three-year delay from October 31, 2019, until October 2022, against the State when the whole three-year period should not be attributed to the pandemic. Additionally, the Court of Appeals misapprehended the final time frame by not weighing the eight-month delay period between November 2022, and the trial on July 31, 2023, against the State when continuances were needed because the State failed to analyze evidence and the jail failed to provide correct medications. The initial two-year delay, some portion of the three-year delay, and the final eight-month delay of the overall almost six-year delay in trying the case is wholly attributable to the State and that delay should be weighed against the State.

2. The Accused's Assertion of the Right to a Speedy Trial

As to the next Barker factor, the accused's assertion of the right to a speedy trial, Petitioner first asserted his right to a speedy trial in his letter to the clerk of court dated September 13, 2017. In the letter Petitioner wrote, "I want to file for a fast and speedy trial. Because of this pending charge I now have to remain in security detention (Isolation) until this is resolved." (R. p. 1189). It is unclear when counsel was appointed, but Petitioner was effectively without representation for two years despite his request for representation in his letter to the

Jasper County Clerk of Court filed September 13, 2017, and numerous attempts to contact the public defender. (R. p. 1189; R. p. 6, lines 5-12). In a subsequent letter to the clerk of court dated September 13, 2019, Petitioner wrote that he had filed a motion for a speedy trial two years earlier. He also wrote that had never met or heard back from his public defender. (R. p. 1191).

The judge failed to address the two *pro se* letters in the written order denying defendant's motion to dismiss. (R. p. 1201, Order Denying Defendant's Motion to Dismiss). The judge erred in refusing to consider the *pro se* assertion of the right to a speedy trial when Petitioner was effectively deprived representation. In the written order the judge referenced the hearing before Judge Cothran on October 31, 2019, where the State indicated the plan to try the case in the first six months of 2020. (R. p. 1205). The judge wrote:

> Of course, neither the State nor Judge Cothran were aware that we would enter a global pandemic in that time frame.
>
> The Court notes that since that time, even following a resumption of jury trials as the pandemic began to wane, the Defense has never filed a written motion for a speedy trial. The Defendant has made reference to his desire for one during several bond hearings, but the present motion to *dismiss* the case is the first filing on the subject.
>
> I find the Defendant has asserted his right, but that the State has never been subject to an order to try the case by a particular date. I also find that the Defendant and his counsel were satisfied with the previous trial dates in November of 2022, December of 2022, and January of 2023, prior to the continuances which were granted on each occasion.

(R. p. 1205). The judge correctly found that Petitioner asserted his right to a speedy trial. The judge erred in not weighing this factor in favor of Petitioner. Defense counsel did not need to file a written motion for a speedy trial when Petitioner had already requested a speedy trial. There is no requirement that a judge order the State to try the case by a particular date in order to prevail on a motion to dismiss based on a speedy trial violation. There is no requirement that a

defendant assert the right to a speedy trial, although the Petitioner in the present case asserted his right and then filed a motion to dismiss based on the violation of the speedy trial right.

In Barker the Court wrote:

> We reject, therefore, the rule that a defendant who fails to demand a speedy trial forever waives his right. This does not mean, however, that the defendant has no responsibility to assert his right. We think the better rule is that the defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of the right. Such a formulation avoids the rigidities of the demand-waiver rule and the resulting possible unfairness in its application. It allows the trial court to exercise a judicial discretion based on the circumstances, including due consideration of any applicable formal procedural rule. It would permit, for example, a court to attach a different weight to a situation in which the defendant knowingly fails to object from a situation in which his attorney acquiesces in long delay without adequately informing his client, or from a situation in which no counsel is appointed.It would also allow a court to weigh the frequency and force of the objections as opposed to attaching significant weight to a purely pro forma objection.

Barker v. Wingo, 407 U.S. 514, 528-529, 92 S.Ct. 2182, 2191 (1972).

Petitioner asserted his right to a speedy trial on September 13, 2017, following his arrest in August of 2017. (R. p. 1189). Two years later on September 13, 2019, Petitioner, having not received any response from the public defender, wrote to the clerk of court again and advised that he moved for a speedy trial two years ago. (R. p. 1191). The written order denying the motion to dismiss references the fact that Petitioner expressed his desire for a speedy trial during bond hearing. As the South Carolina Supreme Court in Hunsberger wrote, citing Barker, "The accused's assertion of the right, however, is entitled strong evidentiary weight in determining whether the accused is being deprived of the right. Barker, 407 U.S. at 531–32, 92 S.Ct. 2182." 418 S.C. at 349, 794 S.E.2d at 375. Petitioner asserted his right to a speedy trial and the assertion of the right weighs in favor of Petitioner.

In affirming the Court of Appeals wrote:

> However, despite defense counsel's assertions that she repeatedly asked the State about the status of this case amid multiple continuances, she did not file a formal motion to dismiss until almost three-and-a-half years later in May 2023, although she was unquestionably on notice of this issue from the time of her appointment. Additionally, Dubois's trial was held within two-and-a-half months after he filed his motion. See State v. Robinson, 335 S.C. 620, 626, 518 S.E.2d 269, 272 (Ct. App. 1999) ("Robinson maintains he first asserted his right to a speedy trial in 1994 by writing letters to the solicitor and Chief Administrative Judge indicating he was ready for trial. However, we conclude Robinson first asserted his right to a speedy trial in May 1995 when he filed the formal motion to dismiss. Robinson's trial began only ten months after his first motion was filed."); State v. Barnes, 431 S.C. 66, 88, 846 S.E.2d 389, 400 (2020), *aff'd as modified*, 436 S.C. 202, 871 S.E.2d 421 (2022) (indicating the fact that Barnes was tried approximately two months after he filed his motion to dismiss contributed to a finding that his rights were not violated). Thus, we find the defense's failure to diligently pursue a formal hearing on the speedy trial issue weighs against a finding that Dubois's rights were violated. *See, e.g.*, Waites, 270 S.C. at 108-09, 240 S.E.2d at 653 ("Apart from [Waites's] initial request for a preliminary hearing, there is no record of an actual demand by Waites for a speedy trial. We think it significant that Waites, represented by counsel, waited approximately twenty-eight months before claiming he had been denied his constitutional right to a speedy trial.").

State v. Dubois, No. 2023-001307, 2026 WL 2593340, at *4 (S.C. Ct. App. Sept. 2, 2026). (App. p. 57).

While the Court of Appeals acknowledged the September 13, 2017, *pro se* letter to the clerk, the Court of Appeals misapprehended its significance by not considering the letter an assertion of Petitioner's speedy trial right. Petitioner's letter stating he wanted to file for a fast and speedy trial is distinguished from the letter in Robinson that just indicated he was ready for trial. In State v. Waites, 270 S.C. 104, 109, 240 S.E.2d 651, 653 (1978), the Court wrote, "We do not believe respondent's request for a preliminary hearing substitutes as a demand for a speedy trial. As stated by the Illinois Court in People v. Wyatt, 47 Ill.App.3d 686, 8 Ill.Dec. 135, 137, 365 N.E.2d 373, 375 (1977): 'Merely indicating readiness to proceed with trial does not in itself constitute a formal demand for trial.' " Petitioner's letter was an assertion of his right to a

speedy trial, not an indication of readiness to proceed to trial as in Robinson and not a request for a preliminary hearing as in Waites.

The present case is clearly distinguished from Barnes where Barnes argued he first asserted his right to a speedy trial in his previous trial that was reversed. The Court disagreed and found Barnes first asserted his speedy trial rights for the retrial on August 14, 2017, and the retrial occurred approximately two months later. Petitioner asserted his right to a speedy trial in September of 2017, and was not tried until July of 2023.

3. Prejudice

The Court of Appeals addressed prejudice writing:

> Here, Dubois asserts he suffered "actual prejudice in the form of oppressive pre-trial incarceration ... as well as presumptive prejudice because of the almost six-year delay."[3] We acknowledge the United States Supreme Court's reminder in Smith v. Hooey "that delay in bringing [an incarcerated] person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is jailed without bail upon an untried charge." 393 U.S. 374, 378 (1969). We note, however, that although Dubois asserted in his pro se letters that he was being held in a more restrictive setting due to his arrest on this charge, he offered no other evidence of "oppressive pre-trial incarceration." Further, Dubois has not asserted that this circumstance made him unable to assist in preparing his defense; in fact, it is clear from the record that he was able to send letters and communicate with counsel throughout his incarceration. Moreover, as discussed above, we do not attribute the entirety of that delay to the State, and presumptive prejudice alone is insufficient. See Hunsberger, 418 S.C. at 351, 794 S.E.2d at 376 ("[P]resumptive prejudice cannot alone support a speedy trial claim ....").

State v. Dubois, No. 2023-001307, 2026 WL 2593340, at *5 (S.C. Ct. App. Sept. 2, 2026). (App. p. 58).

Petitioner remained in prison on an unrelated charge from the time of his arrest for the current charge on August 15, 2017, until he completed the sentence on the unrelated charge in December of 2022. As a result of the pending charge, Petitioner's conditions in prison on the unrelated charge worsened. In his letter filed with the clerk dated September 13, 2017, Petitioner

wrote, "Because of this pending charge I now have to remain in security detention (Isolation) until this is resolved." (R. p. 1189). In his letter filed with the clerk dated September 13, 2019, two years after the first letter and after not receiving any response from the public defender, Petitioner wrote, "I am way past sick and tired of being on lock up for a crime I did not commit and being denied proper legal counsel." (R. p. 1191). Petitioner suffered prejudice from the delay in the form of oppressive pre-trial incarceration that required lock down while serving the sentence on the unrelated charge.

The Court of Appeals misapprehended the prejudice showing by seeming to require that Petitioner show the oppressive pre-trial incarceration prevented him from assisting in his defense writing, "Further, Dubois has not asserted that this circumstance made him unable to assist in preparing his defense; in fact, it is clear from the record that he was able to send letters and communicate with counsel throughout his incarceration." State v. Dubois, No. 2023-001307, 2026 WL 2593340, at *5 (S.C. Ct. App. Sept. 2, 2026). Petitioner is not required to assert oppressive pre-trial incarceration prevented him from assisting his defense. In Smith v. Hooey, 393 U.S. 374, 378–79, 89 S. Ct. 575, 577, 21 L. Ed. 2d 607 (1969) (n. 7, 8 omitted), the United States Supreme Court discussed prejudice writing:

> At first blush it might appear that a man already in prison under a lawful sentence is hardly in a position to suffer from 'undue and oppressive incarceration prior to trial.' But the fact is that delay in bringing such a person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is jailed without bail upon an untried charge. First, the possibility that the defendant already in prison might receive a sentence at least partially concurrent with the one he is serving may be forever lost if trial of the pending charge is postponed. Secondly, under procedures now widely practiced, the duration of his present imprisonment may be increased, and the conditions under which he must serve his sentence greatly worsened, by the pendency of another criminal charge outstanding against him.

> And while it might be argued that a person already in prison would be less likely than others to be affected by 'anxiety and concern accompanying public accusation,' there is reason to believe that an outstanding untried charge (of which even a convict may, of course, be innocent) can have fully as depressive an effect upon a prisoner as upon a person who is at large.

Petitioner's letters demonstrated actual prejudice in the form of oppressive pre-trial incarceration as discussed in Smith v. Hooey.

Additionally, the Court of Appeals overlooked the fact that a defendant is not required to show prejudice affirmatively to win a speedy trial claim. Moore v. Arizona, 414 U.S. 25, 26 (1973); see also United States v. Ferreira, 665 F.3d 701, 706-707 (6th Cir. 2011); U.S. v. Molina-Solorio, 577 F.3d 300, 307-308 (5th Cir. 2009); United States v. Frith, 181 F.3d 92 (4th Cir. 1999); United States v. Clark, 83 F.3d 1350, 1353-1354 (11th Cir. 1996). In Doggett v. United States, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992), the Court granted relief while noting that Doggett "did indeed come up short" in making "any affirmative showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence." As a result, the Court explained "we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove, or for that matter, identify." In light of the difficult nature of proving prejudice, the Court held that the importance of presumptive prejudice increases with the length of delay. Doggett, 505 U.S. at 655-656. In the absence of proof of particularized prejudice, the state's negligence and a substantial delay will compel relief unless the presumption of prejudice is either "extenuated, as by the defendant's acquiescence, or persuasively rebutted" by the prosecution. Id. at 658. The presumption of prejudice in the present case was neither extenuated by Petitioner's acquiescence, nor persuasively rebutted by the prosecution. Prejudice should be presumed because of the excessive almost six-year delay.

In Barnes this Court wrote:

> "[A]n accused can assert actual prejudice or presumptive prejudice as the result of the State's violation of his right to a speedy trial." Hunsberger, 418 S.C. at 351, 794 S.E.2d at 376. "Actual prejudice occurs when the trial delay has weakened the accused's ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence." Id. "The United States Supreme Court also recognized that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or even identify." Id. "While presumptive prejudice cannot alone support a speedy trial claim, it is part of the mix of relevant facts, and its importance increases with the length of time." Id.

431 S.C. at 89, 846 S.E.2d at 401. Petitioner showed presumptive prejudice because of the almost six-year delay. Additionally, Petitioner showed actual prejudice in the form of oppressive pre-trial incarceration because of the State's violation of Petitioner's speedy trial rights.

Balancing the Barker factors, the initial two-year delay, some portion of the three-year delay, and the final eight-month delay of the overall almost six-year delay in trying the case is wholly attributable to the State and that delay should be weighed heavily against the State. The reasons for the delay must be weighed against the State. Petitioner's assertion of his right to a speedy trial weighs in Petitioner's favor. Petitioner showed actual and presumptive prejudice, weighing in Petitioner's favor. The weighing of the Barker factors shows that the State violated Petitioner's speedy trial rights. The violation requires dismissal of the charges.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.

Respectfully Submitted,



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Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of November, 2026.