ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT



Certiorari to Richland County

Alison Renee Lee, Circuit Court Judge

ROBERT ANTHONY JAMES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

# BRIEF OF PETITIONER

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## ISSUE PRESENTED

Whether trial counsel was ineffective for failing to argue that petitioner's indictments should be dismissed because the state violated his Sixth Amendment right to a speedy trial and petitioner was prejudiced by this deficiency because the indictments would have been dismissed had the issue been properly raised to the trial judge?

## STATEMENT

Petitioner was indicted for 2 counts of armed robbery, 2 counts of possession of a weapon during the commission of a violent crime, 2 counts of kidnapping, criminal sexual conduct, 1st degree, and assault with intent to kill by the Richland County grand jury. He was tried before the Honorable Costa M. Pleicones, and a jury, between September 20th- 24th, 1999. He was convicted and received a 40 year sentence.

He appealed his sentence and conviction and the South Carolina Court of Appeals affirmed on March 21, 2001. State v. James, Op. No. 2001-UP-082.

Petitioner then filed an application for post-conviction relief on August 8, 2001. An amended application was filed on June 7, 2005. An evidentiary hearing was held on January 14, 2005 before the Honorable Alison R. Lee. He was represented by Tara D. Shurling, Esquire. The order of dismissal was filed August 19, 2005.

Petitioner then filed a petition for writ of certiorari on February 27, 2008. The South Carolina Court of Appeals granted the petition on December 14, 2009. After oral argument on October 19, 2011, the Court of Appeals issued an unpublished opinion on October 17, 2011. Robert Anthony James v. State, No. 2011-UP-480. Petitioner then filed a petition for writ of certiorari, and this Court granted the petition.

This brief of petitioner timely follows.

## ARGUMENT

Trial counsel was ineffective for failing to argue that petitioner's indictments should be dismissed because the state violated his Sixth Amendment right to a speedy trial and petitioner was prejudiced by this deficiency because the indictments would have been dismissed had the issue been properly raised to the trial judge.

Petitioner, Robert James, spent 993 days in pre-trial detention, awaiting his trial on criminal sexual conduct, 1st degree, armed robbery, kidnapping, assault with intent to kill, and possession of a firearm during commission of a violent crime charges, alleged to have occurred on or about May 29, 1996. He was served with his first arrest warrant on December 30, 1996 and placed in jail. He informed his attorney in 1997 that he wanted his case speedily resolved. Later, he filed two *pro se* motions asking for a speedy trial. The court and his lawyer ignored his wishes, although his lawyer did file for a bond reduction motion in April 1999, over 820 days after his arrest. He was still unable to make bond and continued to sit in the detention center. On the day of his trial, his lawyer asked to dismiss the charges for the state's failure to grant him a speedy trial, although he conceded that he was unaware of any authority that would entitle his client to that relief. The judge denied the motion. Petitioner continued to trial, rejected a mid-trial plea offer of 15 years, was convicted and sentenced to 40 years in prison.

Trial counsel was ineffective for failing to argue to the trial court judge that petitioner's case should be dismissed because the state violated his rights to a speedy trial, as guaranteed by the Sixth Amendment and S.C. Constitution, article I, § 14. Instead, he argued that under S.C. Code §17-23-90 (1976), and a South Carolina Supreme Court order, it was unclear that a dismissal of the charges would even be an appropriate remedy for his client's complaint:

> MR. SHUPPER: Okay. If your Honor please. This was defendant's *pro se* motion which I was just recently given a copy of. I on behalf of Mr. James would just assert that the constitutional section reference gives the Chief Justice the authority to set the dockets. And I must admit that there is seemingly a great deal of confusion as to whether the speedy trial act, section 17-23-90, in fact gives a right to a dismissal. Although the language of the statute seems to say that, the Chief Justice directive and order dated March 5th of 1999 seems to conflict with that by clearly stating, "This order does not create or define a right of defendant to a speedy trial." I've tried to explain that to my client. . . . [1]
>
> But I would ask that the court, that this court take the matter under consideration and respectfully request that in a light most favorable to Mr. James take the order literally and dismiss the charge.

App. 33, l. 18—35, l. 17. *Cf.* Barker v. Wingo, 407 U.S. 514, 522 (1972) (Dismissal . . . "is the only possible remedy.")

S.C. Code Ann. §17-23-90 (1976) addresses the failure of the state to indict a defendant for an offense, and states:

> If any person committed for treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court the first week of the term to be brought to his trial shall not be indicted some time in the next term after such commitment, the judge of the circuit court shall, upon motion made in open court the last day of the term either by the prisoner or anyone in his behalf, set at liberty the prisoner upon bail, unless it appear to him, upon oath, made, that the witnesses for the State could not be produced at the same term. And if any person committed as aforesaid, upon his prayer or petition in open court the first week of the term to be brought to his trial, shall not be indicted and tried the second term after his commitment or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

The judge denied petitioner's speedy trial motion:

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[1] Counsel is referring to a South Carolina Supreme Court Order that states: Pursuant to Article V, §4 of the South Carolina Constitution, IT IS ORDERED that all criminal cases in the State of South Carolina shall be disposed of within 180 days from the date of the defendant's arrest. Provided, however, that the circuit court may continue a criminal case beyond 180 days by written order if the court determines that exceptional circumstances exist in the case. This order does not create or define a right of a defendant to a speedy trial." /s/ Ernest A. Finney, Jr., Chief Justice, dated March 5, 1999.

> THE COURT: Yeah. Well, you know, I'd be a lot more inclined had this been in front of a judge and the judge had ordered a trial date to—I'm not unsympathetic to you now, because this is a horrendous delay and it's really not terribly well explained. But I don't think that the situation in our state requires dismissal of the charges. So I'm not going to dismiss the charges based on the arguments that I've heard thus far.
>
> And particularly owing to the fact that I have heard no argument relating to prejudice to the defense in this case. So, in any event, the motions are denied. We'll proceed with the trial.

App. 44, ll. 14-25.

At the PCR hearing, counsel testified that he knew, from speaking with petitioner's prior counsel, that his client expressed a desire for a speedy trial. App. 1416, l. 24- 1417, l. 8. Still, it was not until April 1999 that he even filed a motion for a bond reduction on his client's behalf. Counsel testified at the hearing that he could not find any legal authority that would have required dismissal of petitioner's charges for failing to provide his client with a speedy trial. App. 1418, l. 24- 1419, l. 5.

The Order of Dismissal made the following findings regarding the issue:

> The record also reflects that the applicant filed a *pro se* motion for a speedy trial approximately four to six months before the trial. Counsel was not aware of the motion until after Applicant filed it. The record does not reflect that Applicant discussed the motion with his attorney before he filed it. Once filed, trial counsel argued the motion on behalf of his client articulating all the issues of concern to his client. There is no evidence of any concern about a speedy trial until Applicant filed the motion himself. There is no evidence that Applicant discussed any concerns about the timeliness of the trial with his attorney before filing the motion.

App. 1498.

To review, briefly. On the day that trial was scheduled to begin, petitioner's counsel made a motion before the judge to have his client's charges dismissed based on a South Carolina statute and a court administrative order. Counsel conceded that he did not believe his client's motion was meritorious, but argued it nevertheless on his client's behalf. The trial court judge, based on that

less-than-vigorous argument, and especially considering that counsel did not make any argument concerning prejudice, denied the motion. Counsel testified at the PCR hearing that he was unaware of any legal authority that would have provided his client with dismissal of the charges for the state's failure to provide him with a speedy trial. Then, in reviewing the allegation of ineffectiveness for failing to raise a federal speedy trial or state constitutional claim, the PCR judge found that counsel articulated "all the issues of concern" that petitioner had about his lengthy, and inexplicable, nearly 3 year pre-trial detention and denied relief.

Petitioner was denied his right to a speedy trial, and counsel should have made the argument to the trial court. If he had, it would have been granted because there is ample authority requiring the dismissal of charges for a violation of the right. Respectfully, trial counsel's performance fell well below the standard of reasonableness under professional norms, and petitioner was prejudiced by that deficiency. Strickland v. Washington, 466 U.S. 668 (1984); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The PCR judge's order is predicated upon an error of law, and should be reversed. Bryant v. State, 384 S.C. 525, 683 S.E.2d 280 (2009); Turner v. State, 384 S.C. 451, 682 S.E.2d 792 (2009).

In assessing petitioner's speedy trial claim, the following dates are relevant:

| **Date** | **Action** | **Citation** |
|---|---|---|
| May 29, 1996 | Crime date | Indictment |
| December 30, 1996 | Served with armed robbery arrest warrant | App. 32, ll. 23-24 |
| February 17, 1997 | Public defender appointed | App. 43, ll. 20-23 |
| September, 1997 | Trial counsel appointed | App. 43, ll. 20-24 |

| | | |
|---|---|---|
| April, 1998 | *Schmerber* hearing | App. 38, ll. 9-11 |
| July 13, 1998 | Case docketed for trial | App. 33, ll. 10-13 |
| Specific date unknown, 1998 | *Pro se* speedy trial motion filed | App. 35, ll. 9-13. |
| April 26, 1999 | *Pro se* speedy trial motion filed | App. 32, l. 25 |
| April, 1999 | Bond reduction motion. Discussion of trial in 30-60 days | App. 37, ll. 8-17 |
| August 11, 1999 | Indicted | Indictment |
| September 29, 1999 | Trial date | |
| From arrest to trial, **993 days**. | | |

In Doggett v. United States, 505 U.S. 647 (1992), the United States Supreme Court outlined the analytical framework for assessing speedy trial claims. There are four relevant inquires: (1) whether delay before trial was uncommonly long, (2) whether the government or defendant is more to blame for the delay, (3) whether, in due course, the defendant asserted his right to a speedy trial, and (4) whether the defendant suffered any prejudice as to the delay's result. Id. at 651. See Barker v. Wingo, 407 U.S. 514 (1972); State v. Evans, Op. No. 4641 (filed December 30, 2009); State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997). And see Vermont v. Brillon, 556 U.S. ___ , 129 S.Ct. 1283 (2009).

In order to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial "has crossed the threshold dividing ordinary from "presumptively prejudicial" delay." Id. at 652 (*quoting* Barker at 530-531). The Supreme Court notes in footnote 1 that, depending on the nature of the charges, lower courts have generally found post-accusation delay "presumptively prejudicial" as it approaches one year. Id. The South Carolina Supreme Court

found, in State v. Waites, 270 S.C. 104, 240 S.E.2d 651 (1978), a two-year and four-month delay sufficient to trigger further review. Under both federal and state standards, petitioner's 993 days suffices to trigger a review of his claim.

A review of the relevant facts relative to the second criterion compels the conclusion that the state is wholly responsible for the delay. The state initially served its warrant on petitioner on December 30, 1996. Forty-nine days later, petitioner was assigned a public defender. Through no fault of his own, his case was conflicted out of the public defenders office, and trial counsel was appointed on his case on some date in September, 1997. Seven months after trial counsel was appointed, and 16 months after he was arrested, the state scheduled a *Schmerber*[2] hearing to extract petitioner's DNA. The state did not show, nor did it argue, that this was a contested hearing, requiring, perhaps, a delay to respond to petitioner's objections. The state made no such showing in this case. Indeed, the hearing was necessary for the state's prosecution of its case, so any time that may have been involved with the hearing's scheduling is attributable to the state. The DNA analysis in this case excluded petitioner as being a source of the semen found in the victim.

The state then scheduled this case for trial since, in South Carolina, it controls the docket, and it was scheduled for trial for the week of July 13, 1998. App. 33, ll. 10-13. See S.C. Code Ann. §1-7-330 (1976):

> **Attendance at circuit courts; preparation and publication of docket.** The solicitors shall attend the courts of general sessions for their respective circuits. Preparations of the docket for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial. *Provided*, however, that no later than seven days prior to the beginning of each term of general sessions court, the solicitor in each circuit shall prepare and publish a docket setting forth the cases to be called for trial during the term. (emphasis in original).

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[2] Schmerber v. California, 384 U.S. 757 (1966).

As the case was not indicted-- and would not be for the next 17 months—the case was obviously not called for trial on that date. At some point in 1998, petitioner asserted his right to a speedy trial by filing a *pro se* motion. He made another request on April 26, 1999. A bond reduction motion was held at that time and the parties discussed trying the case within 30-60 days, suggesting the case could have been tried at the end of June, 1999. Again, this did not occur because the case was not indicted for another 2 months. The state finally indicted the case, and thus was able to try the case, on August 11th, 1999, 953 days after petitioner was served with an arrest warrant.

This entire delay in bringing petitioner to trial is attributable to the state because the state controls the docket in South Carolina, and because the petitioner did not take a single step to delay his case. Vermont v. Brillon, *supra*. *Cf.* State v. Waites, 270 S.C. 104, 240 S.E.2d 651 (1978) (finding that defendant contributed to the delay and did not assert his right to a speedy trial.) The state did not even bother to have petitioner's case indicted until nearly 2 and half years had elapsed from the time of his arrest. Knowing that the DNA test it conducted excluded petitioner as a source of the semen in the victim, it took no steps to quicken the resolution of his case. App. 949, 1.14-956, l. 22. These facts militate in favor of dismissing petitioner's charges for failing to grant him his right to a speedy trial:

> *Barker* made it clear that "different weights [are to be] assigned to different reasons" for delay. Although negligence is obviously to be weighed more lightly than a deliberate intent to harm the accused's defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun. And such is the nature of the prejudice presumed that the weight we assign to official negligence compounds over time as the presumption of evidentiary prejudice grows. Thus, our toleration of such negligence varies inversely with its protractedness . . . and its consequent threat to the fairness of the accused's trial. Condoning prolonged and unjustifiable delays in prosecution would both penalize many defendants for the state's fault and simply encourage the government to gamble with the interests of criminal suspects assigned to a low

> prosecutorial priority. The Government, indeed, can hardly complain too loudly, for persistent neglect in concluding a criminal prosecution indicates an uncommonly feeble interest in bringing an accused to justice; the more weight the Government attaches to securing a conviction, the harder it will try to get it.

Doggett at 657.

It is a relevant consideration for petitioner's speedy trial claim that the state sought DNA evidence from him in April 1998, which then *excluded him,* and then the state waited an additional 17 months to try his case. Perhaps fearing a possible acquittal, the state—since it controls the trial docket—then assigned his case a lower priority. There being no judicial oversight, the state was free to leave petitioner in the county jail until whenever it wanted to give him a trial. This fact weighs heavily in favor of granting petitioner's speedy trial claim. And see Chief Justice Toal Delivered State of Judiciary Address on February 25, 2009 at 15:15 (available at http://www.judicial.state.sc.us/whatsnew/displayWhatsNew.cfm?indexId=503 (*last visited* January 11, 2010) (acknowledging that some solicitors manage weaker cases by allowing defendants to sit in jail until they plead).

Petitioner asserted his right to a speedy trial. It is undisputed that counsel knew that petitioner wanted his case speedily resolved. The record shows that former counsel informed him of that fact:

> Q: Did you file a motion for a speedy trial in this case?
>
> A: My client had filed one *pro se* which I was not advised of until sometime after he had done it, and I—we had talked about it as I had—I had concerns about the time that he had been in jail without being called to trial, and the—what I found from the—in my investigation of the facts and circumstances related to these accusations were that the victims had—both had criminal histories, and a lot of the focus of the investigation was on the victim's background, was also I believe—talked to Mr. Roberson (petitioner's former counsel) and was told that at some point there had been a—there may have been a motion and I don't recall whether it was on a speedy trial or a bond reduction motion but that I recall that there was some discussion that should the case not come to trial soon that a bond reduction motion

> would be appropriate and that I'm not absolutely certain but I think that it was something to the effect that the judge said if the case isn't brought to trial in such and such a period, then we'll revisit the issue of reduction in bond.

App. 1416, l. 15- p. 1417, l. 8 (emphasis added).

Trial counsel knew, then, that at some point during February 17, 1997 to September, 1997 (the time during which Roberson was representing petitioner) that his client was attempting to have his case speedily resolved. Also, petitioner's brief in support of his post-conviction relief claim on this issue states that he told his attorney repeatedly that the wanted a speedy trial, but that his attorney told him he needed to continue to be patient. App. 1485, para. 2. At the PCR hearing, the state did not refute this claim. Additionally, petitioner filed two motions for a speedy trial. Then, counsel requested a hearing for a bond reduction motion based on the length of his incarceration. At that time, it was discussed that the case would be tried within 30-60 days. That did not occur. Petitioner employed every device at his disposal to assert his right. See Barker at 531 ("The more serious the deprivation, the more likely a defendant is to complain.") To the extent that counsel did not act on his client's wishes, that fact buttresses petitioner's ineffectiveness claim. And see Barker at 529 ("[T]he rule we announce today, which comports with constitutional principles, places the *primary burden* on the courts and the prosecutors to assure that cases are brought to trial.") (emphasis added). If this Court holds that it is not ineffectiveness on the part of counsel to have failed to bring petitioner's speedy trial claim in an appropriate manner, then an additional burden is being placed on defendants to assert the speedy trial right. If it is not sufficient for a defendant to have notified counsel of his desire, filed two *pro se* motions, and had a bond reduction hearing, in order to sufficiently invoke the right, then South Carolina is not providing sufficient procedures for defendants to protect the right, and is denying them meaningful access to the court system. Indeed,

in many other states, statutes provide the mechanism by which these claims can be raised.[3] South Carolina, by contrast, does not have such a statute, and thus criminal defendants are even more reliant on their attorneys to appropriately assert their rights in this respect.

Petitioner was prejudiced by the delay between his arrest and trial dates. As the United States Supreme Court has observed, unreasonable delay threatens to produce more than one sort of harm, including "oppressive pretrial incarceration," "anxiety and concern of the accused," and "the possibility that the [accused's] defense will be impaired" by the loss of memories and exculpatory evidence. Doggett at 2692 (*quoting* Barker at 532). Petitioner was significantly prejudiced because he was incarcerated for 993 days before he was brought to trial. And see United States v. Loud Hawk, 474 U.S. 302, 312 (1986) ("[T]he Speedy Trial Clause's *core concern* is impairment of liberty.") (emphasis added). And see Doggett (defendant granted relief even though he was released on bond and the Court found that Doggett "did indeed come up short" with respect to showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce

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[3] See Alaska Rule Crim. Pro. 45(d); Arkansas Rules of Criminal Procedure 27-30. Speedy trial; California Penal Code Ann. §1381. Imprisonment or commitment; time for trial of other offenses, dismissal.; Colorado Revised Statutes Annotated §18-1-405. Speedy trial; Connecticut General Statues Annotated §43-39. Speedy trial- time limitations; Georgia Code Annotated §17-7-170: Demand in noncapital cases; Idaho Code Annotated §19-3501. When action may be dismissed; 725 Illinois Compiled Statutes 5/103-5. Speedy trial; Indiana Revised Code §2941.401; Iowa Code Ann. Rule 2.33. Dismissal of prosecutions; right to speedy trial; Kansas Statutes Annotated 22-34-02. Discharge of persons not brought promptly to trial; Kentucky Penal Code §500.110. Trial of prisoners on untried indictment within 180 days after prisoner's request for final disposition; Louisiana Code of Criminal Procedure, Article 701. Right to speedy trial; Mississippi Code Ann. §99-17-1; Vernon's Annotated Missouri Statutes 545.780. Speedy trial, when—what constitutes—failure to comply not grounds for dismissal; exceptions. Montana Code Annotated §46-13-401. Dismissal at instance of court or prosecution; Nebraska Revised Statute §29-1207. Trial within six months; time; how computed; New York Criminal Procedure Law §30.30. Speedy trial; time limitations; Ohio Revised Code §2945.71(c), provides for trial within 270 days; Oregon Revised Statute §135-747. Dismissal for delay in bringing to trial; Utah Code §77-1-6. Rights of defendants; West Virginia Trial Court Rule 16.04. Time

specific items of evidence.) Petitioner's inexplicable three year pre-trial detention is ample prejudice under a speedy trial analysis, especially when taken in conjunction with other factors. It is not fatal to his claim that he cannot now-- three years after his arrest-- pinpoint precisely the manner in which his defense was compromised by the delay. "[W]e 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." Id. at 655 (emphasis added). Courts presume the prejudice to the accused "intensifies over time." Id. at 652.

Nevertheless, petitioner can show that he was prejudiced by the state's failure to call his case to trial. As petitioner outlines in his application for post-conviction relief, the victim changed her story significantly from the time of the events until the time of trial. Also, petitioner was prejudiced because his would-be alibi witness, Henretta Jordan, was no longer certain of the date or time she was with him. App. 1484- 1491.

It is also relevant, in considering petitioner's claim, that, although the charges are serious, the prosecution of this case was not complex. Indeed, the state, for the most part, called percipient witnesses and law enforcement witnesses. The state also called Dr. Smithson, a local doctor. App. 889, l. 21- 890, l. 2. It called a paralegal from the parent company of South Carolina Electric & Gas to testify to a utility bill. App. 887, l. 6- p.888, l. 15. This was not a difficult case to prosecute, in the sense that there were out of state witnesses or professional expert witnesses whose schedules needed to be taken into account. See Barker, 407 U.S. at 530- 531: "[T]he delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." The nature of this case then, militates in favor of granting petitioner's speedy trial claim.

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standards for criminal cases; Virginia Code Annotated §19.2-243: Limitation on prosecution of felony due to lapse of time after finding probable cause; misdemeanors; exceptions.

Additionally, the defense did not call any expert witnesses, did not request any competency evaluations, nor make any continuance motions. See State v. Pittman, 373 S.C. 527, S.E.2d 144 (2008). These facts militate in favor of granting petitioner relief.

The state did not extend plea offers until close to the time of trial. During the trial itself, the state offered petitioner 15 years. App. 1411, l. 8-1412, l. 16. This was not, then, a case where petitioner had led the state to believe he was going to plead, but then changed his mind. The state never had any reason to suppose this was anything other than a trial. Additionally, the offer, during trial, of 15 years, supports petitioner's claim that the state perceived this to be a weak case against him. These facts militate in favor of petitioner's grant of relief. Also, petitioner did not receive any benefit from the delay, a fact which, too, militates in favor of granting him relief. *Cf.* State v. Cooper, 386 S.C. 210, 687 S.E.2d 62 (Ct. App. 2001).

It is also relevant to the Court's analysis that the state was not prepared to try the case until August 11th, 1999—953 days after the arrest warrant was served-- when it finally had the case indicted. The state simply allowed petitioner to languish in the county jail for nearly 3 years before it even indicted his case. This fact is especially egregious in light of the fact that, in South Carolina, the state controls the docket system. Without judicial oversight to ensure that defendants are not left to do "solicitor time" in the county jail, it weighs heavily against the state that they attached no priority at all to petitioner's case until nearly three years after the first warrant was served. The solicitor's response, at trial, was essentially that this is just the way things operate in South Carolina:

> [Solicitor]: And this is the first time that either of the defense attorneys or any of the defense attorneys for these defendants have requested to enforce the speedy trial law in South Carolina. In that regard, I believe that neither side has shown any undue prejudice.
>
> My understanding, the only way I know it- I agree that it's difficult to interpret Chief Justice Finney's written order. We all know as all of us practicing

members of the bar that cases, that probably less than ten percent of our case load in Richland County or Greenville County or in Charleston County, your major counties; and if you look at court administration statistics, some of your smaller counties, are disposed of within 120 days.

So based on my interpretation of that, is that if a defense attorney makes a motion to enforce the procedural 180-day rule and that if a circuit court judge then sets the trial date, that is when this whole idea of a specific written order continuing the criminal case for exceptional circumstances kicks in. That's my only way I can interpret that since we all know as officers of the court that that 180-day rule is literally violated in 85 percent of the criminal cases in South Carolina, not this circuit.

So if they would attempt—and I don't know very many private bar or public defenders want their case to come to court within 180 days.

THE COURT: Well, these guys did though.

App. 40, l. 14- p. 41, l. 14. (emphasis added).

In other words, the solicitor argued that it is up to the defendant to insist that he have his day in court, and he has to invoke the power of a circuit court judge to do so. Not only is this in violation of South Carolina's statute regarding solicitor control of the docket, but the United States Supreme Court has expressly rejected the argument that it is the defendant's burden to bring himself to trial in both Doggett and Barker. These facts militate in favor of granting petitioner the relief that he requests.

Trial counsel was ineffective for failing to argue that petitioner's charges be dismissed for failing to grant him a speedy trial. Had counsel raised the correct arguments, he would have been granted relief because there is compelling legal authority to support dismissal of the charges. Counsel, instead, was completely unaware that his client was entitled to federal speedy trial protections. His performance was woefully inadequate and his performance prejudiced petitioner.

Strickland v. Washington, 466 U.S. 668 (1984). For this reason, petitioner is entitled to relief, and he respectfully asks this Court to reverse his convictions.

## CONCLUSION

For the preceding reason, petitioner respectfully asks this Court to reverse his convictions, and that these charges be dismissed with prejudice.

Respectfully submitted,

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR PETITIONER.

This 19th day of April, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Richland County

Alison Renee Lee, Circuit Court Judge

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ROBERT ANTHONY JAMES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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CERTIFICATE OF SERVICE

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I certify that a true copy of the brief of petitioner, in this case has been served on Brian Petrano, Esquire, this 19th day of April, 2012.

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 19th day
of April, 2012.

(L.S.)
Notary Public for South Carolina
My Commission Expires: May 16, 2021