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NOV 20 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

LARRY JAMES TYLER

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDANT.

} C/A No. 2016-002364

} PETITIONER'S

} SUPPLEMENTAL

} BRIEF

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S.C. SUPREME COURT

STATEMENT OF THE CASE

This is a case where a gross miscarriage of justice occurred to find the petitioner guilty due to the petitioner's ignorance of the law.

Plain error can be applied to all the issues the petitioner has submitted in his brief because five years ago at trial he knew nothing about due process of law. The Public Defender did not defend him and the prosecutor did not act according to due process procedures.

1. The Sixth Amendment Speedy Trial Violation.

A. Attached with this brief, Exhibit 1 and 2.

These are letters the petitioner wrote to the courts trying to make them recognize the Speedy trial

Larry James Tyler
Darlington Detention Center
2349 Rogers Rd
Darlington, SC 29532

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violation. Ex. 1 is to his Public Defender Richard 201-12
Jones to put a motion for the Speedy Trial,
and the suppression of evidence obtained by the
police illegal search and seizure warrants.

He never replied to my letter.

So the petitioner wrote the federal court to see
if they would help me exact the speedy trial
in my behalf. I was in jail over 8 months and
no trial yet. Ten more months go by and still
no trial. So I wrote from jail, the Supreme
court judge in ^{DEC.} January 2012 to see if she could
get this court to send me to trial. 555 Ex. 3

I did not know how to go about getting
myself to trial so I tried everything. After
my letter to the judge, about 6 weeks later I
went to trial. After a year and a half from
the day of his arrest.

The Due Process Clause and federal statutes of
limitations protect defendants from intentional
and prejudicial prosecutive delay. The Fifth
Amendment provides in pertinent part that in
all criminal prosecutions, the accused shall
enjoy the right to a speedy and public trial.

U.S. Const. amend. V; FED. R. CRIM. P.
48(b) (authorizing courts to dismiss indictments

for government's unnecessary preindictment or post-indictment delay); 585, e.g., U.S. v. OLEKO, 422 F.2d 487, 495 (1st Cir. 1970) (noting that Rule 40(b) imposes stricter prosecutive speed standard than 6th Amendment); U.S. v. OSLUNA, 763 F.2d 897, 923 (8th Cir. 1985)

To determine whether a defendant has been deprived of the right to a speedy trial, courts consider the conduct of the defendant and the prosecution, focusing on the four factors articulated by the Supreme Court in *Baker v. Wingo*: (1) length of delay; (2) reason for delay; (3) whether, when, and how the defendant asserted the speedy trial right; and (4) whether the defendant was prejudiced by the delay.

(1) Courts generally hold that a delay in excess of one year is presumptively prejudicial.

The petitioner was arrested on 9-24-2011. Sent to trial on 2-25-2013. One year and ⁵/₈ months.

The length of delay is satisfied. *Overs v. CAN*, 698 F.3d 211, 218 (5th Cir. 2012) (various calculations of delay, all more than 1 year, presumptively prejudicial, triggering inquiry

into remaining Barker factors); *U.S. v. Woolfolk*, 399 F.3d 590, 597-98 (4th Cir. 2015) (8-month delay triggered Barker inquiry); *U.S. v. Koller*, 956 F.2d 1408, 1414 (7th Cir. 1992) (8 1/2 month delay triggered Barker inquiry)

(2) Reason For Delay

The court should place burden of explaining delay on government because the government has affirmative constitutional obligation to try the petitioner in a timely manner. *U.S. v. ZUMRAN*, 446 F.3d 1332, 1337 (11th Cir. 2006); *U.S. v. VELAZQUEZ*, 749 F.3d 161, 175 (3d Cir. 2014)

(placing burden of explaining delay on government.)

The petitioner's case was not complex, no conspiracy factor, no multiple defendants.

The state deliberately delayed the trial in order to hamper the defense. *Barker*, 407 U.S. at 531.

(3) Whether, when, and how the Defendant asserted the speedy trial right.

The three exhibits stand as evidence that the petitioner asserted the speedy trial right even when he did not know it was his public Defender's responsibility to do so.

The letter to his counsel requesting that

he put in a motion for a speedy trial right in
solid evidence of the petitioners assertion. 5 00 12

(4) Whether The Defendant Was Prejudiced by
the delay.

Prejudice is not a necessary prerequisite to the
finding of a deprivation of the right of speedy
trial. If violation is found with the first three
Barker factors against the government, then
there is no need to show actual prejudice.

U.S. V. TOWERMAN (11th Cir. 2006); Barker, 407

U.S. at 533;

FED. R. CRIM. P. 52(b)

("A plain error that affects substantial rights
may be considered even though it was not
brought to the court's attention")

Also, Rule 43(b) of the FED. R. CRIM. P. grants
trial courts the discretion to dismiss a case
for "unnecessary delay" after an accused
party's arrest. This is what I request my
counsel to do but he refused to make the
motion. (authorizing dismissal for any
"unnecessary delay" by government in presenting
charge to grand jury filing information, or
bringing defendant to trial);

U.S. V. MARION, 404 U.S. 307, 319 (1971) RULE 4B(6)
(clearly limited to post-arrest situations)

This is another area where the petitioner's counsel was ineffective in defending the petitioner and violated his Sixth Amendment that guarantees the right to effective assistance of counsel in criminal prosecutions.

Ineffective Assistance of Counsel

- The ~~same~~ petitioner now makes an overview in that many areas the counsel was ineffective.
1. at trial, counsel failed to impeach officer Eric Hodges while he was testifying as to why he went to the grand jury and told lies about the petitioner to get the indictments. *GRANT V. LOCKETT*, 709 F.3d 224, 238 (3d Cir. 2013) (counsel's failure to impeach prosecution's witnesses in light of the weakness of prosecution's case was ineffective assistance)
 2. counsel never moved for a mistrial due to the prosecutor lying up the petitioner's prior, and his improper closing statements ~~to~~ and opening statements to lead the jury to believe the way he

wanted the jury to believe.

7. 0512

3. Counsel failed to reveal the wrongful charges to the petitioner and the jury convicted him of having sexual relations with the two minors with the charge of Criminal Solicitation of a Minor, when it should have been a misdemeanor and titled obscene solicitations of a minor.

4. Defendant's trial counsel rendered ineffective assistance by failing to remedy the Double Jeopardy violation with respect to defendant's criminal solicitation of a minor and contributing to the delinquency of a minor conviction.

The offense of criminal solicitation of a minor, and that of contributing to the delinquency of a minor (under § 16 are one and the same. Both involve a communication or attempted communication; both involve a minor and both involve the intent of drawing the minor into a sexual encounter.

The Double Jeopardy Clause protects against a second prosecution for the same offense and multiple punishments for the same offense.

So the petitioner was given twice the amount of 8 or 12 times for the same offense.

Under Blockburger, double jeopardy also bars successive prosecutions for greater and lesser included offenses. *Morris v. Arkansas*, 204 F.3d 38, 49-50 (2d Cir. 2001) (double jeopardy bars subsequent prosecution for greater offense of felony weapons possession because of guilty plea on lesser-included offense of misdemeanor weapons possession).

5. Counsel failed to remedy the constructive amendment (which is considered to be substantive) occurred when the evidence presented at trial proved a crime different from any charged in the indictment. The word "INTENT" is not listed in indictment No. OAR 0939 AND OAR 0940 and no evidence was submitted at trial to prove the petitioner committed these crimes except what the prosecutor included in his closing arguments and during the trial that the petitioner had some "intent", and this is why the jury found him guilty. *U.S. v. WARD*, 747 F.3d 1184, 1192-93 (9th Cir. 2014) (constructive amendment when the court allowed the jury to convict defendant for

aggravated identity theft against victims not listed in indictment. 9 of 12

6. Counsel on appeal abandoned defendants' properly preserved motions for directed verdict on all counts due to insufficient evidence, and by refusing to submit defendants' argument on appeal as to the sufficiency of the evidence.

7. Trial Counsel failed to address the "Exclusionary Rule". Where a court improperly admitted evidence in violation of the exclusionary rule, the court's findings must be reversed unless the error was harmless beyond a reasonable doubt.

The initial warrant: m82028 included false statements by officer Eric Hodges that verifies the petitioner did violate the alleged crimes, when the victims said nothing to prove a crime by the petitioner was done. The seizure warrants obtained by the Sheriff and evidence should not have been submitted at trial. Counsel made no motion to suppress.

8. Counsel failed to motion for a dismissal of indictments before trial. Rule 12 of the

Fed. R. Civ. P. requires a defendant to bring a motion to dismiss defective indictment before trial begins. 12(b)(3)(B). However, challenges to the court's jurisdiction and claims that the indictment fails to state an offense may be brought at any time.

9. Counsel failed in the following areas:

1. To investigate exculpatory evidence through a Brady Rule
2. To investigate the police report, if he had, he would have known it was officer Eric Hodges who told the lie to the grand jury
3. Failed to interview prosecution witnesses
4. Failed to challenge veracity of the search warrant applications.
5. Failed to properly cross-examine state's witnesses
6. Failure to know the law
7. Failure to exercise professional judgment on behalf of the petitioner.
8. Failure to appreciate impact of prejudicial evidence
9. Failure to subject prosecution's case to meaningful adversarial testing.
10. Counsel argued an inappropriate defense
11. Failure to properly preserve errors

12. Deliberate "screw up" in order to create error

11 OF 12

13. Incompetent summation

14. Allowing the prosecutor to describe the defendant's prior.

15. Failure to object to "intent" shifting instruction

16. Allowing jury instruction adding offense not in indictment.

17. Allowing improper comments by the prosecutor

18. Allowing judge's failure to instruct on separate counts

19. Address a speedy trial

20. Failure to raise an indicated defense of lack of intent

21. Failure to object to a non-qualifying prior conviction at sentencing

22. Due to the cumulative effect of many errors by counsel, the multiplicity of errors that created a fundamental defect which inherently results in a complete miscarriage of justice, all because of the petitioner's ineffective assistance of counsel.

Conclusive

12 OF 12

For the foregoing reasons, the court should grant the brief in its entirety and dismiss all convictions.

DATE 11-14-17

WARRY S. TYLER

2349 ROBERTS RD.

DARLMINGTON, S.C. 29532

EX. 1

11-7-12

LARRY JAMES TYLER
2349 ROBERTS RD.
DARLINGTON, S.C.
29532

FOURTH CIRCUIT

PUBLIC DEFENDER, BOX 29, DILLON, S.C. 29536

TO: A.C. STEPHENS AND RICH JONES:

I AM LARRY JAMES TYLER. I AM MAKING
AN OFFICIAL REQUEST TO YOU TO SUBMIT AN IMMEDIATE
SUBMISSION IN THE GENERAL SESSION COURT, IN
DARLINGTON COUNTY COURT HOUSE BEFORE JUDGE WHO
IS CURRENTLY PRESIDING, FOR AN IMMEDIATE
RELEASE ON MY PART DUE TO UNTIMELY CONVICTION
AND REFUSAL TO GIVE A SPEEDY TRIAL.

SINCERELY,

This 8th day of *Mr. Larry J. Tyler*
November 2012.

Reena Janna my Commission expired 01-26-2019

THAT SHOULD BE, UNTIMELY PROBABLE CAUSE
HEARING, NOT (CONVICTION.) I WAS COERCED OF
THE LAW THEN.

(SHOULD BE
SUPPRESSION)

EX. 2

RECEIVED
USDC CLERK, FLORENCE, SC

LARRY TYLER B-130

2349 ROBBERS RD

2011 NOV 14 P 1:41

DARLINGTON, S.C. 29532

FEDERAL BLD.

C/O CLERK OF COURT

401 W. EVANS ST.

FLORENCE, S.C. 29501

TO: WHOM IT MAY CONCERN:

I AM LARRY JAMES TYLER,
A PRISONER, INDECENT, IN THE DARLINGTON COUNTY
DETENTION CENTER. I AM REQUESTING THIS MOTION
FOR A SPEEDY TRIAL BE SUBMITTED IN FEDERAL
COURT.

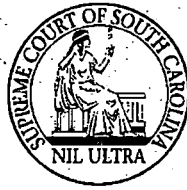
I AM DENIED ACCESS TO THE LAW BOOKS
AS WELL HEAR. HOW DO I GET A COMPLAINT
TO THE COURTS ON THIS?

Thank You,

This 10th day of November 2011
Resena James

my commission expired 01-26-2019

EX-3




The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

TO: Mr. Larry Tyler

FROM: Daniel E. Shearouse, Clerk 

DATE: December 6, 2012

This Court has received your recent correspondence.

This Court cannot provide legal advice or assistance. Therefore, we will not be able to provide legal advice and you should consult an attorney.

Since you are represented by counsel in this matter, no action will be taken on your pro se filing. Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010); Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

If you believe you have good cause to seek to have your current counsel relieved then you should file a motion in the lower court in which this matter is pending.

Since you are represented by counsel in this matter, we are forwarding a copy of your letter to counsel for any assistance he/she can give you.

Your remedy is in the lower court where this matter is pending.

CC: A.C. Stephens, Esquire (with enclosure)

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SC Court of Appeals

LARRY J. TYLER

2349 ROGERS RD.

DARLINGTON, S.C. 29532

CLERK OF COURT

SUPREME COURT OF S.C.

BOX 11330

COLUMBIA, S.C. 29211

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S.C. SUPREME COURT

Dear Clerk,

the first page goes with one of the two memorandums of law I have submitted previously. I just don't know which one. Most like my last one. I just found it and realize I've left it out. Please include it with the rest of the pages.

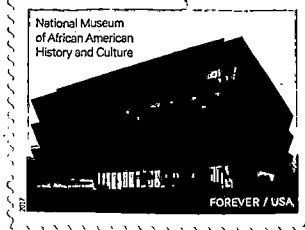
The next is my final supplemental Brief. I hope I've not too late.

Thank You Sincerely,

Mr. Larry Tyler

P.S. I would like a clock stamped copy.

L. TYLER
2349 ROOYERIS RD
DARLINGTON S.C. 29532



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SC Court of Appeals

SUPREME COURT OF S.C.

BOX 11330

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