

Russell v Borders

***Writ
Of
Habeas Corpus***

Ground 2

Petitioners Right To a Speedy Trial

1 **GROUND 2.**

THE PROCEEDINGS VIOLATED

2 **PETITIONER'S RIGHT TO SPEEDY TRIAL.**

3 Petitioner alleges the prosecution, the court and even his
4 own appointed defense counsel were complicit in violating Peti-
5 tioner's federal constitutional Fifth Amendment right to a
6 speedy trial. Defense counsel was fully aware Petitioner had
7 not, did not and adamantly refused to waive his right to a
8 speedy trial. (RT 194:2-10) Petitioner was booked into the
9 Sacramento County Jail on 9-20-2012 and denied reasonable bail
10 and remained in custody. He appeared at several pre-trial
11 hearings where agreeing on a trial date was a substantive matter
12 at issue and the issue of reasonable bail or release Petitioner
13 on his own recognizance were argued and motions repeatedly
14 denied. Each time the matter of a trial was revisited, the date
15 was pushed further back. The prosecution contended they were
16 still investigating and gathering evidence. Defense counsel
17 contended they had insufficient time to review the materials
18 tendered by the prosecution.

19 At one point in these pre-trial hearings Petitioner was
20 gran- ted an opportunity to address the court directly in an
21 effort to enforce his right to a speedy trial, reminding the
22 Court Peti- tioner had not and would not waive his right to a
23 speedy trial. (RT 197:2-10) The court tacitly responded 'that's
24 alright, the Court did it for you!' (RT 199:20-25)

25 Petitioner contends violating his right to a speedy trial
26 provided the prosecution the opportunity to overwhelm the
27 defense with materials of dubious relevance and with great
28 likelihood in many cases were simply duplication of documents
(Ronald Russell, Habeas Corpus Petition, Ground Two, page 20.)

1 previously tendered. Petitioner further contends his appointed
2 counsel was incapable of reviewing all the materials provided
3 by the prosecution to determine their relevance and relative
4 importance because of the sheer volume and counsel's lack of
5 general background in real estate matters, private investor
6 funds and the content, purposes and restrictions of Private
7 Placement Memorandums which are securities instruments. (RT
8 1508:1-10)

9 If granted an evidentiary hearing Petitioner will demonstrate
10 the practical effect of violating Petitioner's right to a
11 speedy trial fundamentally prejudiced against receiving a fair
12 trial. The prosecution assembled over 6,000 pages of evidence
13 and tendered thousands of pages of "newly discovered" evidence
14 to counsel shortly prior to each pre-trial conference. (RT
15 194:23-28) Defense requested additional time to review the
16 materials counsel had just received. The court would push back
17 the trial date. With each continuance came hundreds of pages
18 of new evidence. At the subsequent pre-trial conference the
19 cycle would be repeated until the matter finally went to trial
20 on 1-27-2014, being a total of 493 days after Petitioner was
21 taken into custody. As a related issue, the prosecution was
22 clearly aware Petitioner would be unable to post reasonable
23 bail: Petitioner had stated under oath he had no financial
24 resources. To keep him in custody, the prosecution had added
25 the additional requirement that Petitioner prove the source of
26 any funds used to post bail and continued time and again to
27 oppose every reason for and any form of release while
28 Petitioner awaited trial setting up the scenario where the

1 prosecution's investigation, theoretically at least could
2 continue for the rest of Petitioner's lifetime but the Peti-
3 tioner would remain in the county jail.

4 Thus, at an evidentiary hearing, Petitioner will demonstrate
5 denying him his fundamental right to a speedy trial severely
6 prejudiced Petitioner's ability to defend against the charges.
7 Had the Petitioner been readily available to review with his
8 public defender the thousands of pages of evidence heaped on
9 counsel before each continuance; the results of the proceeding
10 would likely have been different. Each continuance continued to
11 deny Petitioner his right to a speedy trial. Petitioner will
12 argue his conviction resulted from an error of Constitutional
13 dimension which was not and cannot be shown to be harmless
14 beyond a reasonable doubt.

15 **APPLICABLE CASE LAW:**

16 Klopper v. North Carolina, 386 U.S. 213 (1967) The State
17 unreasonably delayed in bringing the Petitioner to trial.
18 The "fundamental right serves to ... limit the possibility
19 that a long delay will impair the ability of the accused to
20 present a defense. Violating Petitioner's right to a speedy
21 trial is said to violate petitioner's Fifth Amendment right
22 to due process and petitioner's Sixth Amendment rights thru
23 due process of the Fourteenth Amendment.

24
25 Chapman v. California, 386 U.S. 18 (1967) The U.S. Supreme
26 Court held petitioner's conviction resulted from an error of
27 Constitutional dimension which was not shown to be harmless
28 beyond a reasonable doubt violating petitioner's Fifth Amendment

r (Ronald Russell, Habeas Corpus Petition, Ground Two, page 22.)

1 right to due process.

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(Ronald Russell, Habeas Corpus Petition, Ground Two, page 23.)