STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2022AP959-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

LUIS A. RAMIREZ,

Defendant-Appellant-Respondent.

RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

Although the court of appeals' decision in this matter has been ordered published, and although this Court has not recently addressed the substance of a speedy trial claim, this Court's review of this case is unwarranted. Contrary to the State's argument in the petition for review, the court of appeals decision creates no new law, but simply involved the application of the long-standing *Barker* test for analyzing claims of speedy trial violations to the specific facts and procedural history of this case.

Mr. Ramirez was charged with, and 46 months later, convicted by a jury of one count of battery by prisoner and one count of disorderly conduct, both with repeater and dangerous weapons enhancers, arising out of an incident at Columbia Correctional Institution where Mr. Ramirez was incarcerated. (1; 92.). During this time, Mr. Ramirez's trial was scheduled and rescheduled four times, three times at the request of the State. (32; 34; 37; 67.) Only one of the State's requests was for a reason even arguably "intrinsic to the case" – the others were due to scheduling and turn over in the prosecutor's office. (32; 34; 37; 67.) Each time the request for continuance was granted with no additional record made, and trial dates were scheduled approximately six months after the date being rescheduled, with no record as to why that amount of time was necessary.

Two years into the case, after the defense requested a continuance and the case was removed from the trial calendar completely, a six-month period took place in which only off-the-record hearings for which Mr. Ramirez

did not appear from prison took place. (*See* Pet.-App. at 81.) At this point, Mr. Ramirez wrote the court personally, stating: "I want a speedy trial. I've been asking for my counsel to put a motion for this for months." (59.) When the trial scheduled six months after his speedy trial demand was again rescheduled due to turnover in the prosecutor's office, (67), Mr. Ramirez filed a pro se motion to dismiss on speedy trial grounds, which was denied. (70:3-5; 110:11.)

Applying the four *Barker* factors, the court of appeals found that Mr. Ramirez's constitutional right to a speedy trial was violated:

> Although Ramirez has not demonstrated significant prejudice in fact from the delay, the total delay in this case was extreme—the longest of any published Wisconsin constitutional speedy trial case decided since Barker—and presumptively prejudicial. The vast majority of the delay was caused by government actors and is therefore attributable to the State. The State identifies neutral reasons for some of the delays, but it provides no explanation for other substantial portions of the delay, which may be taken as indicating a "cavalier disregard" for Ramirez's speedy trial rights. Ramirez twice asserted his right to a speedy trial and was not promptly brought to trial following his assertions. There is no evidence that Ramirez deliberately sought to delay the trial, and the circuit court's finding that Ramirez's actions during the pretrial proceedings were inconsistent with a desire for prompt resolution of the matter is clearly erroneous.

State v. Ramirez, 2024 WI App 28 (No. 2022AP959-CR), at ¶ 2.

None of the criteria for review specified in Wis. Stat. § 809.62(1r) are satisfied here; there are no special or important reasons for this Court's review. The court of appeals applied established law to the distinct factual circumstances of this case, and there exist no compelling reasons to alter any of that law. This Court should deny the State's petition for review.

ARGUMENT

I. Contrary to the State's argument in its petition for review, there is nothing novel, special, or unusual about the court of appeals' decision in this matter, and as such, this Court's criteria for review have not been met

In *Barker v. Wingo*, the United States Supreme Court first identified the criteria used to evaluate whether the right to a speedy trial has been violated, specifying the four factors which courts should assess in determining whether a particular defendant has been deprived of his right to a speedy trial: (1) length of delay, (2) the reasons for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant caused by the delay in bringing a speedy trial. 407 U.S. 514, 530-32 (1972). In doing so, the *Barker* court warned that the right to a speedy trial is not subject to bright-line determinations and must be considered based upon the totality of circumstances that exist in any specific case. *Id.* at 530-31. Further, the factors are not to be applied as independent criteria but considered together in the form

of a balancing test and not as independent criteria: "[w]e regard none of the four factors…as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." *Id.* at 533.

Here, court of appeals' decision adheres to established precedent applying the four *Barker* factors; as such, review would not develop, clarify, or harmonize the law. Instead, the issues raised by the State merely evince unhappiness with the results, after the State failed to sufficiently explain many of the delays in the case in circuit court and court of appeals proceedings. The court of appeals created no new law nor does the decision require clarification.

A. The court of appeals' decision adheres to established precedent weighing governmental delays against the State

In weighing the second *Barker* factor – the reasons for delay – the court of appeals addressed whether the delay was caused by government actors (including but not limited to the prosecution), and if so, how heavily the delay weighs against the state. *Ramirez*, ¶ 24. The court of appeals correctly placed the burden of advancing a reason for the delay on the State and weighed "its silence on the topic" heavily against the state. *Id.* "The State's inability to explain any of these circumstances weighs heavily against the State in determining this issue." *Borhegyi*, 22 Wis. 2d 506, 513, 588 N.W.2d 89 (Ct. App. 1998).

In *Borhegyi*, the court of appeals found that delays in rescheduling a trial that was rescheduled to accommodate a juvenile case with statutory time limits, and then another

rescheduling of the trial without explanation where again a new trial date was not scheduled promptly, "exceeds negligence and evinces a cavalier disregard of [the defendant's] speedy trial right." *Id.* Here, like in *Borhegyi*, Mr. Ramirez's trial was continued without explanation (though presumably due to conflicts on the prosecutor's schedule/courtroom availability), and the record contains no explanation for why new trial dates were not scheduled more promptly.

It should be noted that the State made no attempt at the circuit court level to explain the delays in the case. (161:2-3.) On appeal, the State labeled the institutional delays in this case as "valid" and/or "ordinary" delays and argued against weighing those delays at all. (Ct. App. Resp. at 12-18.) The court of appeals correctly applied extant precedent in holding that unexplained portions of delay in which no court activity occurred, which the State failed to explain, be weighed against the State. *Ramirez*, ¶¶ 41, 49, 54-55, 65-66.[1]

The problem in this case is not just that lengthy time periods passed between each adjourned and rescheduled trial date, but that no record was made as to why those lengthy time periods were necessary – neither at the time of rescheduling, or by the State in opposing Mr. Ramirez's

[1] Additionally, the State's arguments on this factor are focused are limited to the delays between arraignment and first scheduled trial and between the first adjourned trial date to the second scheduled trial. (Pet. at 15-18.) Yet Mr. Ramirez's trial did not occur until over two years after the second scheduled trial date, and much of that delay came after Mr. Ramirez had asserted his speedy trial demand.

speedy trial claims. The court of appeals did not create a new standard for the State's burden on this factor. Rather, it's holding correctly applies case law regarding how delays are attributed to and weighed against the State. *State v. Ziegenhagen*, 73 Wis. 2d 656, 668, 245 N.W. 2d 659 (1976) (delays not caused by factors intrinsic to the case must be charged fully to the State); *State v. Norwood*, 74 Wis. 2d 343, 354, 246 N.W.2d 801 (1976) ("If the delay can be attributed to the [S]tate, then the [S]tate must justify the delay…[or] that period must be considered in deciding the issue of lack of speedy trial"); *see also Barker v. Wingo*, 407 U.S. 514, 529, 531 (1972) (placing "the primary burden on the courts and the prosecutors to assure that cases are brought to trial").

B. The court of appeals' decision adheres to established precedent regarding the weight of a defendant's demand for a speedy trial

The notion that "a defendant who fails to demand a speedy trial forever waives his rights," has been rejected by the United States and Wisconsin Supreme Courts. *Barker*, 407 U.S. at 528; *Day v. State*, 61 Wis. 2d 236, 245-46, 212 N.W.2d 489 (1973). The question for the court in addressing this factor then is whether the defendant actually wanted the speedy trial or was instead "consciously seeking to avoid the day of reckoning," *Hadley*, 66 Wis. 2d 350, 361, 225 N.W.2d 461 (1975). In addressing this question, a defendant's assertion of his speedy trial right "is entitled to strong evidentiary weight." *Barker*, 407 U.S. at 531-32.

The State argues that the fact that Mr. Ramirez's speedy trial demands were made pro se, while he was represented by counsel, means those demands should not

be credited. The State's only support for this proposition is language from *Barker* distinguishing "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." *Barker*, 407 U.S. at 528-29. Nothing in this language supports the State's argument, and the court of appeals correctly found that Mr. Ramirez's pro se filings "unambiguously asserted his right to a speedy trial," and that the State failed to develop any argument that the circuit court's consideration of those filings was an erroneous exercise of discretion. *Ramirez*, ¶ 79.

Finally, the court of appeals correctly held that there was no support in the record for a finding that Mr. Ramirez's raising of other concerns regarding venue and discovery delayed his trial in any way to discredit his speedy trial demand. *Ramirez*, ¶¶ 81-82. While it's true that Mr. Ramirez discussed the issues of discovery and venue at the same hearing in which he moved to dismiss on speedy trial grounds, his trial date was still months away, he had a legitimate basis for believing discovery was still outstanding, and a motion to change venue was never actually filed. The reference to these issues during the hearing are not evidence that Mr. Ramirez did not actually want a speedy trial.

II. The court of appeals' decision does not conflict with precedent, nor is review warranted to clarify constitutional questions

Contrary to the State's argument, the court of appeals decision does not conflict with precedent; rather, the State

ignores factual distinctions in prior cases and the fact that the *Barker* factors are to be balanced based on the specific facts of the individual case. *Barker*, 407 U.S. at 530-31, 533.

The decision below does not conflict with *Borhegyi's* holding that the State acts with "cavalier disregard" when it provides no explanation for an adjournment and failure to promptly reschedule a trial. 222 Wis. 2d at 513. It's true that a speedy trial demand was made by the defendant prior to the adjournment. *Id.* That speedy trial demand plays into the balancing of the *Barker* factors in that case. It does not, however, limit the State's burden in cases where a speedy trial demand has not been made – to find otherwise would violate *Barker*'s admonition that "none of the four factors…[is] either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." 407 U.S. at 533.

The decision below does not conflict with *State v. Urdahl*, 2005 WI App 191, 286 Wis. 2d 476, 704 N.W.2d 324. In *Urdahl*, the preliminary hearing was delayed by fourteen days due to a material witness being on vacation; the court did not weigh the delay against the State. *Id.* ¶¶ 3, 27. In contrast to the current case, the record reflects the reason for the unavailable witness, the hearing was promptly rescheduled, and the rescheduled hearing was the preliminary hearing not the trial. As discussed above, in this case the court of appeals weighed these delays against the State because they were unexplained.

The decision below does not conflict with *Norwood*, for the obvious reasons that a decision recognizing a few days delay can be attributed to the ordinary demands of the

judicial system, 74 Wis. 2d at 354, cannot be stretched to support an argument that months of delay need not be explained.

Finally, the decision below does not conflict with *Barker.* In *Barker,* a delay of over five years was not found to violate the defendant's speedy trial rights where the record "strongly indicate[d]…that the defendant did not want a speedy trial." 407 U.S. at 536. The government sought to delay the defendant's trial until a co-defendant was convicted, the defendant spent most of the five years released on bail, and the defendant's delay in objecting to continuances suggested that he was gambling on his co-defendant being acquitted to the benefit of his own case. *Id.* at 517, 536. These circumstances are distinct from this case, where most of the delay was not intrinsic to the case, Mr. Ramirez was not released on bail, and there is no evidence in the record to suggest he would benefit from the delays as in *Barker*.

The decision below adhered to precent in applying the *Barker* factors to the specific facts of the case. Review is unnecessary and inappropriate in this case.

CONCLUSION

For the reasons presented herein, this Court should deny the State's petition for review.

Dated this 7th day of June, 2024.

Respectfully submitted,

Electronically signed by:

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in §§ 809.19(8)(b) and (bm) and 809.62(4). The length of this petition is 2,350 words.

Dated this 7th day of June, 2024.

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