

No. SC 88294

IN THE SUPREME COURT OF MISSOURI

STATE EX REL. ROBERT WOLFRUM & BEVY BEIMDIEK,

Relators,

V.

THE HONORABLE MELVYN W. WIESMAN,

Respondent.

**ORIGINAL PROCEEDING IN PROHIBITION
FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
TWENTY-FIRST JUDICIAL CIRCUIT, DIVISION 19
THE HONORABLE MELVYN W. WIESMAN, JUDGE**

RESPONDENT'S STATEMENT, BRIEF AND ARGUMENT

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TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
JURISDICTIONAL STATEMENT	3
STATEMENT OF FACTS	4
POINT RELIED ON	9
ARGUMENT: Claim that Relators are entitled to an Order prohibiting respondent from conducting a trial without providing them additional time to prepare	10
CONCLUSION.....	19
CERTIFICATE OF COMPLIANCE AND SERVICE	20

TABLE OF AUTHORITIES

Cases

<u>Bailey v. State</u> , 191 S.W.3d 52 (Mo.App. E.D. 2005), <i>cert. denied</i> , 127 S.Ct. 444 (2006).....	14
<u>Hampton v. State</u> , 10 S.W.3d 515 (Mo. banc 2000).....	11, 14
<u>Russell v. State</u> , 624 S.W.2d 179 (Mo.App. W.D. 1981).....	17
<u>Simpson v. State</u> , 90 S.W.3d 542 (Mo.App. E.D 2002).....	14
<u>State ex rel. Robinson v. Office of the Attorney General</u> , 87 S.W.3d 335 (Mo.App. W.D. 2002)	11
<u>State v. Franklin</u> , 969 S.W.2d 744 (Mo. banc 1998).....	14
<u>State v. Galvan</u> , 795 S.W.2d 119 (Mo.App. S.D. 1990).....	17
<u>State v. Gilmore</u> , 697 S.W.2d 172 (Mo. banc 1985), <i>cert. denied</i> , 476 U.S. 1178 (1986).....	14
<u>State v. Nunley</u> , 923 S.W.2d 911 (Mo. banc 1996), <i>cert. denied</i> , 519 U.S. 1094 (1997).....	14
<u>State v. Smith</u> , 686 S.W.2d 547 (Mo.App. S.D. 1985).....	17
<u>State v. Walker</u> , 795 S.W.2d 628, (Mo.App. E.D. 1990).....	16

Statutes

Section 217.460, RSMo.....	15, 16
Section 565.006, RSMo.....	14

Rules

Supreme Court Rule 84.23.....	3
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JURISDICTIONAL STATEMENT

This action is an original proceeding in prohibition. This Court has jurisdiction to hear such petitions for original writs pursuant to Supreme Court Rule 84.23. Relators previously filed a petition for a writ of prohibition or, in the alternative, for writ of mandamus, in the Missouri Court of Appeals, Eastern District. That petition was denied by the Court of Appeals on February 1, 2007.

STATEMENT OF FACTS

On September 6, 2006, a complaint was filed in St. Louis County Associate Circuit Court (Division 32), under Cause No. 06CR-4034, charging Stanley Johnson with one count of murder in the first degree and one count of forcible rape (Rel.App. A1-A2).¹ According to the complaint, Johnson allegedly killed Lela Warner on May 5, 1994, by strangling her with an electrical cord, and on that same date also had sexual intercourse with Lela Warner without her consent by means of forcible compulsion (Rel.App. A1). A probable cause statement attached to the complaint indicated that a palm print found by the back door of the victim's residence had been recently matched to Johnson, and that DNA analysis of seminal fluid recovered from the victim's vagina had also been matched to Johnson's DNA (Rel.App. A2). On September 25, 2006, Johnson filed a Request for Final Disposition of Indictment, Information or Complaints, pursuant to Section 217.450, RSMo, also known as the Uniform Mandatory Disposition of Detainers Law (hereinafter UMDDL). (Rel.App. A3.) On November 20, 2006, Johnson was indicted on both charges contained in the complaint (Rel.App. A4-A5).

On December 13, 2006, Johnson was arraigned in Division 7 of St. Louis County Circuit Court (Rel.App. A6). No counsel entered an appearance on Johnson's behalf (Rel.App. A6). Johnson's case was assigned to Division 2 of St. Louis County Circuit Court, and a scheduling conference date was set for January 4, 2007, at which Johnson

¹ The record on this original proceeding in prohibition consists of Relators' Appendix ("Rel.App.").

was directed to appear with counsel (Rel.App. A6). On December 18, 2006, Judge Maura B. McShane, sitting in Division 2, recused herself from the case (Rel.App. A8).² The case was reassigned on that same date to Division 3 of the St. Louis County Circuit Court, Judge Mark D. Seigel, and the following day Judge Seigel set a scheduling conference date of January 5, 2007 (Rel.App. A8).

On December 22, 2006, Relator Robert Wolfrum, an assistant public defender with the Capital Litigation Division, entered his appearance on behalf of Johnson, and filed a request for change of judge (Rel.App. A8, A11, A18). Judge Seigel granted that request, and on January 2, 2007, the case was assigned to Respondent, sitting in Division 19 of the St. Louis County Circuit Court; a new scheduling conference date was again set, this time for January 19, 2007 (Rel.App. A8).

On January 19, 2007, Relator Wolfrum filed an eight-page document captioned “Scheduling Memorandum in Connection With Entry,” outlining in great detail his personal and office-wide caseload, and requesting that Respondent refrain from setting a trial date in this case until Relator Wolfrum “can give a reasonably confident indication that counsel can be ready for trial on any date chosen.” (Rel.App. A11-A18.) “So that the record is absolutely clear,” Relator Wolfrum declared in this document not once but twice, “[Relator Wolfrum] announces to the court that he is currently unprepared to try

² Judge McShane was an assistant prosecuting attorney in St. Louis County from 1984 until her appointment to the bench in October 1994; thus, she was employed in that capacity at the time of the commission of the crimes with which Johnson is charged.

this case.” (Rel.App. A11, A18.)

Also on January 19, 2007, a discussion was held in open court involving Respondent, Relator Wolfrum, Johnson and Assistant Prosecuting Attorney Doug Sidel (Rel.App. A20-21, A23.) Respondent began this hearing by administering an oath to Johnson and then asking Johnson whether he wished to proceed with his request to dispose of the case within 180 days of his UMDDL filing; Johnson responded that he did (Rel.App. A21). Respondent noted to Johnson that if he wished to proceed under the UMDDL, his case would have to be tried by March 24, 2007 (Rel.App. A21). Respondent observed that if Johnson wished to have his case tried by that date, “that creates a major problem for your attorneys in terms of preparing your defense in representing you, do you understand that?” (Rel.App. A21.) Johnson told Respondent that he did, in fact, understand, but that he still wished to proceed under the time limitations of the UMDDL. (Rel.App. A21.) Respondent then announced that the case would be set for trial (Rel.App. A21.)

Relator Wolfrum then made a lengthy statement to Respondent, reiterating most if not all of the points made in his Scheduling Memorandum, and again urging Respondent not to set a trial date (Rel.App. A21-A23). Johnson strongly objected to Relator Wolfrum’s statement, and specifically asked Respondent “that [Relator Wolfrum’s] request for an extension to toll my hundred eighty day writ be denied because he don’t have the right. He has no right to ask for months and months for me to toll my hundred eighty day.” (Rel.App. A23.) The following exchange then took place:

THE COURT: You have heard what your attorney has indicated is the problem in

him preparing to represent you and defend you in this case?

THE DEFENDANT: Yes.

THE COURT: You're prepared to go to trial without him being prepared to go to trial in this case?

THE DEFENDANT: I sure am.

(Rel.App. A23.) Relator Wolfrum again requested that Respondent refrain from setting a trial date; Johnson again objected vociferously to Relator Wolfrum's request; and Respondent set a trial date of March 12, 2007 (Rel.App. A24-A25, A28.)

On January 29, 2007, Relator Wolfrum and Relator Bevy Beimdiek, another assistant public defender with the Capital Litigation Division (who would enter her appearance on behalf of Johnson the following day), along with Mr. Sidel, appeared in open court before Respondent (Rel.App. A26, A32). In response to a request by Relators to supplement and clarify his Order of January 19, Respondent issued written findings regarding Johnson's case (Rel.App. A26, A29-A31). Respondent's findings, though they acknowledged that Relators' request for additional time would be "reasonable" under the provisions of Section 217.460, RSMo, also noted that Johnson had "vehemently refused to consent to additional time for defense counsel to prepare this matter for trial."

(Rel.App. A30.) Respondent made a finding specifically denying Relators' request for additional time because Respondent had found no authority under Missouri law allowing Respondent to grant additional time under the UMDDL when a defendant refuses to consent to the additional time, even when the request is "reasonable" under the statute (Rel.App. A30). Therefore, Respondent's findings concluded, the case remained set for

trial on March 12, 2007 (Rel.App. A31.)

On January 31, 2007, Relators filed a Petition for Writ of Prohibition or, in the alternative, Writ of Mandamus, with the Missouri Court of Appeals, Eastern District. That petition was denied by the Court of Appeals on February 1, 2007 (Rel.App. A33-A35).

On or about February 5, 2007, Relators filed a Petition for Writ of Prohibition or, in the alternative, Writ of Mandamus, with this Court. This Court issued a preliminary writ of prohibition on February 16, 2007, ordering Respondent to take no further action with respect to Johnson's case, "except to grant Relators' request for additional time to prepare for trial, until the further order of this Court."

POINT RELIED ON

RELATORS ARE NOT ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM CONDUCTING A TRIAL IN THE UNDERLYING CASE WITHOUT FIRST GRANTING THEM TIME TO PREPARE FOR TRIAL, BECAUSE RESPONDENT PROPERLY DENIED RELATORS' REQUEST FOR ADDITIONAL TIME IN THAT RELATORS' CLIENT KNOWINGLY AND INTELLIGENTLY ASSERTED HIS RIGHTS UNDER THE UNIFORM MANDATORY DISPOSITION OF DETAINERS LAW, AND EXPLICITLY OBJECTED TO ANY EXTENSION OF TIME TO ALLOW RELATORS TO PREPARE FOR TRIAL.

State v. Walker, 795 S.W.2d 628 (Mo.App. E.D. 1990);

Hampton v. State, 10 S.W.3d 515 (Mo. banc 2000);

Simpson v. State, 90 S.W.3d 542 (Mo.App. E.D. 2002);

Section 217.460, RSMo.

ARGUMENT

RELATORS ARE NOT ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM CONDUCTING A TRIAL IN THE UNDERLYING CASE WITHOUT FIRST GRANTING THEM TIME TO PREPARE FOR TRIAL, BECAUSE RESPONDENT PROPERLY DENIED RELATORS' REQUEST FOR ADDITIONAL TIME IN THAT RELATORS' CLIENT KNOWINGLY AND INTELLIGENTLY ASSERTED HIS RIGHTS UNDER THE UNIFORM MANDATORY DISPOSITION OF DETAINERS LAW, AND EXPLICITLY OBJECTED TO ANY EXTENSION OF TIME TO ALLOW RELATORS TO PREPARE FOR TRIAL.

In this original proceeding in prohibition, Relators seek an order from this Court prohibiting respondent from conducting a trial in the underlying case without providing them additional time to prepare for trial, because such a trial will purportedly violate their client's right to effective counsel. However, because their client, Stanley Johnson, has expressly refused to waive his right to a speedy trial under the provisions of the UMDDL, and has even declined to waive this right when specifically informed that it could have a negative impact on his defense, Respondent properly denied Relators' request to grant additional time to prepare, and thus Relators' request for a writ of prohibition should be denied.

Relators, in their brief, concede that their client "objects to, and does not join in, this matter." (Rel.Brf. 18.) In addition, they note that Johnson, subsequent to this Court's preliminary writ of prohibition, has asked leave of Respondent to waive his right to

counsel and represent himself at trial (Rel.Brf. 22). The dispute before this Court, then, may accurately be summarized as follows: 1) Relators' client requested a speedy trial within 180 days; 2) Respondent granted that request; 3) Relators' client was in agreement with Respondent's action and vehemently objected to Relators' attempt to persuade Respondent otherwise; 4) Relators' client has objected to Relators' attempts to overturn Respondent's action, first before the Court of Appeals and now before this Court; and 5) Relators' client now no longer wishes to be represented by Relators.

In what must be termed a bit of an understatement, the Court of Appeals acknowledged "some question" as to whether counsel in Relators' position have standing to challenge a trial court's action under such circumstances (Rel.App. A33). While the Court of Appeals chose to address the merits of Relators' petition, the court expressly declined to resolve the issue of Relators' standing to bring such a petition (Rel.App. A33). This Court, however, should decline to review Relators' petition on the merits, especially because whatever limited standing Relators might have had before the Court of Appeals is further diminished by Johnson's stated intention to dismiss them and proceed without counsel. This Court has held that when a criminal defendant unambiguously declares that he does not wish an appeal to be taken on his behalf, "the public defender's office ha[s] no authority to bring [such an] appeal." Hampton v. State, 10 S.W.3d 515, 517 (Mo. banc 2000). *See also* State ex rel. Robinson v. Office of the Attorney General, 87 S.W.3d 335, 338-39 (Mo.App. W.D. 2002) (dismissing appeal brought by State Public Defender, not specific criminal defendant, because "[c]onstitutional rights are personal to the affected party, and third parties do not have standing to challenge their violation").

Relators attempt to convince this Court to address their petition on the merits by arguing that, because Respondent has not ruled on Johnson's request to proceed *pro se*, "the issue of counsels' time to prepare" might still arise. (Rel.Brf. 22.) The problem, however, with this argument is the same as the problem with Relators' argument as a whole. They insist on framing the argument in terms of Respondent merely refusing to allow them adequate time to prepare, when in fact Respondent has declined to allow them additional time to prepare because Johnson expressly stated he did not want Respondent to grant such time, and specifically declined to waive his rights under the UMDDL. Indeed, considering the lack of respect accorded by Relators to the wishes of their client below, it's small wonder that Relators have, twice now, brought actions in prohibition seeking to prevent Respondent from doing precisely what their client asked Respondent to do.³

³ It bears mentioning that Relators' actions in challenging Respondent's ruling, first before the Court of Appeals and now before this Court, have already had the effect of denying their client's rights under the UMDDL, as the 180-day time limit would have expired on March 24, 2007. The Court of Appeals made a similar observation; even though the 180 days had not yet expired at the time, the court noted that Relators were "requesting that [Johnson] be prohibited from exercising his rights" under the UMDDL (Rel.App. A35). In their brief before this Court (filed *after* the 180 days had expired), Relators dispute the Court of Appeals' suggestion that their actions have prohibited Johnson from exercising his UMDDL rights (Rel.Brf. 33). Considering that Relators have

Nowhere is this contempt for their own client's wishes more apparent than when Relators – some 15 pages into a 22-page argument – finally get around to addressing the colloquy between Respondent and their client on the very issue at hand: whether Johnson wished to proceed to trial within 180 days even if it meant that his attorneys were not sufficiently prepared. After grudgingly recounting three instances in which Johnson was informed that his attorneys might not be adequately prepared for trial if he insisted on his rights under the UMDDL, and two instances in which Johnson told Respondent, explicitly, that he still wished to exercise those rights, Relators complain that “the trial court found no waiver – explicit or implied – of any rights.” (Rel.Br. 36.) This argument proves too much. Respondent found no waiver of Johnson's right to a speedy trial under the UMDDL, because he had explicitly (and repeatedly) refused to do so. Respondent found no waiver of the right to counsel because, at that time, Johnson had not expressed any desire to proceed to trial without counsel. In clear, unambiguous terms, Johnson told the court that he wished to proceed to trial within 180 days, with counsel, whether or not counsel was prepared. The record of this case shows, overwhelmingly, that this was a knowing, intelligent and voluntary position taken by Johnson.

In fact, distilled to its essence, Relators' argument is that Johnson cannot knowingly and voluntarily proceed to trial with attorneys who are not prepared, that is,

indisputably prevented Johnson from receiving a trial within 180 days of his request, as was his right under the UMDDL, Respondent is at a loss to see what *other* rights there might be under the statute that still remain for Johnson to exercise.

that he cannot waive his right to effective counsel. This position is without support in law. Consider the various options available to Johnson, who is charged with murder in the first degree, a crime for which the State is seeking the ultimate punishment of death. Notwithstanding the gravity of the charge and the severity of the potential punishment, it is beyond dispute that Johnson may nevertheless completely waive his right to counsel, State v. Gilmore, 697 S.W.2d 172, 174-75 (Mo. banc 1985), *cert. denied*, 476 U.S. 1178 (1986); he may enter a plea of guilty, thus waiving his right to a trial by jury or judge, Bailey v. State, 191 S.W.3d 52, 54-55 (Mo.App. E.D. 2005), *cert. denied*, 127 S.Ct. 444 (2006); he may elect to have a bench trial on the issue of guilt and/or punishment, thus waiving his right to have a jury decide either or both issues, Section 565.006, RSMo; State v. Nunley, 923 S.W.2d 911, 923 (Mo. banc 1996), *cert. denied*, 519 U.S. 1094 (1997). Johnson may even waive altogether his right to seek postconviction relief, therefore waiving his right to seek relief for the ineffective assistance of counsel at his trial or his plea of guilty, Simpson v. State, 90 S.W.3d 542, 544 (Mo.App. E.D. 2002); *see also* Hampton v. State, *supra* at 517; and also may waive his right to an appeal, State v. Franklin, 969 S.W.2d 743, 744 (Mo. banc 1998). And, of course, Johnson could have waived his right under the UMDDL to have his case disposed of within 180 days, though he pointedly has refused to do so.

Provided he does so knowingly and intelligently, Johnson may waive all of these important rights, benefits and constitutional protections, but somehow, Relators argue, he may not knowingly and intelligently proceed to trial when his attorneys are unprepared. Johnson could reasonably conclude that having attorneys that are less than fully prepared

is preferable to having no representation at all, and yet, Relators argue, he may only choose the former but not the latter. It is illogical to suggest, as Relators do, that a defendant may waive his right to challenge his legal representation in a postconviction motion, no matter how ineffective his counsel might have been, but that he cannot decide before the fact that he wishes to proceed to trial no matter how ineffective his counsel may turn out to be.

Relators, having urged every court considering this dispute to disregard their client's clear and unambiguous insistence that his trial be set within the time limitations of the UMDDL, instead ask this Court to find an implied waiver of those time limitations whenever a prisoner makes a speedy trial request under the UMDDL and also requests counsel be appointed. This is a reading that the plain language of the statute will not bear. There are three specific exceptions, listed in the statute, to the 180-day time limit for bringing a defendant to trial: 1) an extension of time may be granted "for good cause shown in open court" with the defendant or counsel present; 2) the parties may stipulate a continuance beyond 180 days; or 3) "a continuance may be granted if notice is given to the attorney of record with an opportunity ... to be heard." Section 217.460, RSMo. All of these exceptions presume one thing: that a defendant must be afforded a specific opportunity to object, or assent in the case of a stipulation, to the extension of the 180-day time limit. *See State v. Walker*, 795 S.W.2d 628, 639-30 (Mo.App. E.D. 1990). "The reason for these requirements is obvious; the defendant is entitled to oppose the State's request." *Id.* at 630.

Undaunted, Relators claim that “nothing in the plain language” of this statute requires defendant’s consent to a request *by his counsel* to continue the case, and that Respondent improperly added that condition (Rel.Br. 24). Evidently, according to Relators, defendant is only permitted to object to an extension of time when the State requests it, not when his attorneys do. To hold that a defendant may implicitly waive his rights under the statute by the mere act of requesting counsel would be to read the notice requirements out of the statute, not to mention reading *into* the statute a provision that defense counsel, as opposed to the defendant himself, may request a continuance.⁴ Moreover, in a case such as this, when defendant has been afforded the opportunity to object to an extension of time and does, emphatically, express his objection to such an extension, there is no basis for any court to find that he nevertheless implicitly waived his rights under the statute.

For the same reason, Relators’ reliance, in arguing for an implicit waiver of the time limit, on those cases holding that various actions by a defendant (such as motions filed by the defense) can toll the 180-day time limit, is misplaced. In State v. Galvan, for example, defendant *himself* explicitly requested a continuance of the trial date because he feared his counsel was not ready for trial. State v. Galvan, 795 S.W.2d 113, 119 (Mo.App. S.D. 1990). In State v. Smith, the court noted that “any delay of a prisoner’s

⁴ The statute provides that the time limits may be extended by stipulation of “the parties.” Section 217.460, RSMo. Relators are not a party to the underlying litigation; they are the attorneys of record who *represent* a party.

trial which results from his affirmative action or agreement is not to be included in the period of limitation.” State v. Smith, 686 S.W.2d 543, 547 (Mo.App. S.D. 1985) (citing cases). *See also* Russell v. State, 624 S.W.2d 176, 179 (Mo.App. W.D. 1981) (holding no violation of UMDDL speedy trial rights when defense counsel requested continuance outside 180 days, defendant was present and lodged no objection). Even assuming *arguendo* that a request for counsel implicitly waives the requirements of the UMDDL when a defendant lodges no objection to the extension of time, those are not the facts of this case. This Court, presented with Johnson’s explicit refusal to waive his rights under the UMDDL, should not find that he has somehow implicitly waived them.

As this case makes clear, a defendant’s right to have effective, well-prepared counsel and his right to a speedy trial under the requirements of the UMDDL can easily come into conflict with one another. Both of those rights, however, belong to Johnson and not to his attorneys. This Court should hold that Relators lack standing to bring this action in prohibition, because Relators have brought this action over the objection of Johnson and at the expense of his personal rights under the UMDDL, and the challenged ruling by Respondent was made at Johnson’s request and with his explicit consent. If this Court chooses to review Relators’ petition on the merits, the petition should still be denied, in that the record clearly shows that Johnson wished to exercise his right to a speedy trial under the UMDDL even if that meant he would be proceeding to trial with the assistance of counsel who were less than adequately prepared. That decision was a knowing, voluntary and intelligent decision by Johnson, and Respondent did not err in complying

with that request. Accordingly, Relators' petition for a writ of prohibition should be denied.

CONCLUSION

In view of the foregoing, respondent submits that this Court's preliminary writ of prohibition should be dissolved and Relators' petition for writ of prohibition should be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains 4,007 words, excluding the cover and this certification, as determined by Microsoft Word software; and

2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses, using McAfee Anti-virus software, and is virus-free; and

3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed, postage prepaid, this 30th day of April, 2007, to:

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