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Chavez v. District Court for 17th Judicial Dist.

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FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO

APR 20 1982

SUPREME COURT
STATE OF COLORADO

David W. Bazila

MAX HENRY CHAVEZ,

82SA204

Petitioner,

vs.

DISTRICT COURT for the 17th
Judicial District, Honorable
DOROTHY BINDER, one of the Judges
Thereof,

Respondents.

) PETITION FOR WRIT
) IN THE NATURE OF
) PROHIBITION PURSUANT
) TO ARTICLE VI §3
) OF THE COLORADO
) CONSTITUTION AND
) RULE 21 OF THE
) COLORADO APPELLATE
) RULES

COMES NOW the petitioner, by and through his
attorneys GRAHAM & GRAHAM, and respectfully moves this
Honorable Court for a Writ in the nature of prohibition,
alleging as follows:

1. The District Court, Honorable Dorothy
Binder presiding, has granted the petition of the
District Attorney of Adams County for Leave to File a
Direct Information, brought pursuant to Rule 7 (c) of
the Rules of Criminal Procedure, after the charges
against petitioner were dismissed by the County Court
without the holding of a preliminary hearing.*

2. No appeal was taken by the District Attorney
from the order of the County Court dismissing the
charges. Instead, the District Attorney sought leave
to file a Rule 7(c) direct information, basing such
request on the allegation that "A preliminary hearing

*Pursuant to Rule 5(a)(4)(I), the so-called 30 day
rule, on Counsel's motion.

was held in the County Court of Adams County, pursuant to Rule 5(c), Colo. R. Crim. P. and the above-named accused person was discharged. See attached Exhibit A)." (Petition For Leave To File Direct Information, attached hereto as Exhibit 1).

3. In fact, no Rule 5 preliminary hearing was held at all, the Court having dismissed without holding such hearing because the District Attorney had not issued subpoenas for the hearing and was unable to proceed. (Affidavit of Bruce A. Levin, sworn to March 17, 1982, part of Exhibit 1).

4. The preliminary hearing had been set, for the third time, on March 2, 1982. At the previous date for the hearing, February 5, 1982, the prosecution was granted a continuance because they had failed to produce the defendant petitioner, then incarcerated in the Canon City penitentiary. Prior thereto, a preliminary hearing had been scheduled for December 4, 1981, and continued on a waiver of the 30-day rule. Petitioner was arrested on October 29, 1981, and first brought before the Adams County Court on November 2, 1981.

5. While charges dismissed by the County Court following a preliminary hearing may be brought on a direct information in the District Court, pursuant to

Rule 5 (a)(4)(V), there is no rule permitting the filing of a direct information in the District Court when charges are dismissed without the holding of a preliminary hearing.

6. Thus, the District Court is proceeding in excess of its jurisdiction by granting the prosecution's petition for filing a direct information.

7. Further, the action of the District Court was in abuse of its discretion in granting leave to file a direct information in the circumstances herein, thereby permitting the prosecution to circumvent the constitutional and statutory requirements for a speedy trial.

8. There is no plain, speedy or adequate remedy for said improper action of the district court other than the instant petition; the damage and prejudice to petitioner cannot be cured by an appeal. Therefore, the original jurisdiction of this Court should be exercised to grant petitioner relief, pursuant to C.A.R. 21 and Article VI §3 of the Colorado Constitution.

WHEREFORE, petitioner prays the Court for a Writ in the nature of prohibition, requiring the District Court to deny leave to the Adams County District Attorney to file a direct information in the

matter of Max Henry Chavez, and for such further relief
as seems just.

DATED: Denver, Colorado
April 19, 1982

Respectfully submitted,
GRAHAM and GRAHAM

by: 

David Graham
Attorney for Petitioner
3115 Tejon Steet
Denver, Colorado 80211
458-8594
Atty. Reg. No. 11287

Parties To District Court Action

Max Henry Chavez
Colorado State Penitentiary at Canon City
Canon City, Colorado

Paul Q. Beacom, District Attorney
450 S. 4th Avenue
Brighton, Colorado 80601

IN THE DISTRICT COURT IN AND FOR THE COUNTY OF ADAMS

STATE OF COLORADO

THE PEOPLE OF THE STATE OF COLORADO)

vs.)

Criminal Action

MAX HENRY CHAVEZ)

No. 81F 1384

A/K/A MAXWELL HENRY CHAVEZ)

PETITION
FOR LEAVE TO FILE
DIRECT INFORMATION

Defendant(s).)

PAUL Q. BEACOM, District Attorney in and for the Seventeenth Judicial District, County of Adams, State of Colorado, hereby requests leave of court to file a direct information in the District Court against the above named defendant(s), and in support of this request shows unto the Court:

No complaint was filed against the accused person(s) in the county court pursuant to Rule 5, Colo. R. Crim. P.

XXX A preliminary hearing was held in the County Court of Adams County, pursuant to Rule 5 (c), Colo. R. Crim. P., and the above-named accused person(s) was discharged. (See attached Exhibit A)

The complaint upon which a preliminary hearing was held in the county court, and the other records in the case have not been delivered to the clerk of the proper trial court.

The District Attorney requests that a warrant issue, and recommends that bail be set in the sum of \$ _____.

PAUL Q. BEACOM, District Attorney

By *Prue A. Leem*
Deputy

O R D E R

IT IS HEREBY ORDERED (1) that leave is granted the District Attorney to file a direct information against the defendant(s) above named; (2) that a warrant issue for the arrest of the above named defendant(s); and that

Bail is hereby set in the sum of \$ _____.

Done this _____ day of _____, A.D. 19 _____.

BY THE COURT:

Judge

DISTRICT COURT, COUNTY OF ADAMS, STATE OF COLORADO

Criminal Action No.

AFFIDAVIT, EXHIBIT A

THE PEOPLE OF THE STATE
OF COLORADO,

Plaintiff

vs.

MAX HENRY CHAVEZ
A/K/A MAXWELL HENRY CHAVEZ

Defendant.

A Preliminary Hearing was set in this matter for March 12, 1982, at 1:30 p.m., in Division IV of the Adams County Court. Due to a clerical error the People did not issue subpoenas for this hearing and were thus unable to proceed. The defendant's Motion to Dismiss was granted by Judge Ensor.

Respectfully submitted,

Bruce A. Levin

Bruce A. Levin #10245
Deputy District Attorney

SUBSCRIBED AND SWORN to before me this 17th day of March, A.D., 1982.

Leola Peterson
Notary Public

My Commission Expires April 28, 1984

450 S. 4th Ave.
Brighton, Colorado 80601
659-7720