No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

TEON JAMELL WILLIAMS — PETITIONER
(Your Name)

vs.

BRAD PERRITT — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF NORTH CAROLINA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Teon Jamell Williams
(Your Name)

4600 Swamp Fox Hwy West
(Address)

Tabor City N.C. 28463
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. WAS THE PETITIONER'S RIGHT TO AFFECTIVE ASSISTANCE OF COUNSEL IN HIS FIRST DIRECT APPEAL OF RIGHT VIOLATED WHEN COUNSEL REFUSED TO BRIEF HIS FOURTH AMENDMENT ISSUE?

2. IS A WARRANTLESS SEARCH OF A PROBATIONER'S PREMISES IN VIOLATION OF STATE LAW STATUTES PER SE UNREASONABLE?

3. WHERE PETITIONER WAS CONVICTED AND SENTENCED FOR POSSESSION OF A CONTROLLED SUBSTANCE WAS HIS SUBSEQUENT CONVICTION OF THE SAME INCIDENT OF POSSESSION OF THE SAME SUBSTANCE PROHIBITED BY U.S. CONSTITUTION AMENDMENTS ~~XIV~~ V ?

4. WHERE PETITIONER WAS REINDICTED FOR POSSESSION OF A CONTROLLED SUBSTANCE FOR WHICH HE WAS SERVING A PRISON SENTENCE, AND HE PLED GUILTY BUT RESERVED HIS RIGHT TO APPEAL INTERLOCUTORY ORDERS. DID DISMISSAL OF HIS APPEAL ON GROUNDS OF COLLATERAL ESTOPPEL VIOLATE THE DUE PROCESS CLAUSE OF U.S. CONSTITUTION AMENDMENTS XIV ?

5. IF THE ANSWER TO QUESTION #4 ABOVE IS NO, WAS PETITIONER DENIED EFFECTIVE ASSISTANCE OF COUNSEL ?

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the Iredell County Superior court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[x] For cases from **state courts**:

The date on which the highest state court decided my case was MAY 9th 2018. MAY 15th 2018
A copy of that decision appears at Appendix A.
No further State procedure available*

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

* "Decision of the Court of Appeals.... are final and not subject to further review...." N.C.G.S. 15A-1422 (f)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

THE FIFTH AMENDMENT

The Sixth Amendment

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witness against him; to have compulsory process for obtaining witness in his favor, and to have the assistance of counsel for his defense.

II. Search Conditions In North Carolina

A. Warrantless searches as a regular condition of probation

Legislation passed in 2009 made warrantless searches by probation officers and by law enforcement officers in certain circumstances default conditions of supervised probation under G.S. 15A-1343(b). S.L. 2009-372. The conditions apply unless the presiding judge specifically exempts the defendant by striking them from the form. This is a change from prior law, under which a warrantless search condition applied only if added by the judge as a special condition under G.S. 15A-1343(b1), and which authorized only probation officer searches.

*Old law: **Special** warrantless search conditions (offenses committed before December 1, 2009)*

G.S. 15A-1343(b1)(7). Submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises while the probationer is present, **for purposes specified by the court and *reasonably* related** to his or her probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

*New law: **Regular** warrantless search conditions (offenses committed on or after December 1, 2009)*

G.S. 15A-1343(b)(13). Submit at reasonable times to warrantless searches by a probation officer of the probationer's **person** and of the probationer's vehicle and premises while the probationer is present, for **purposes *directly* related to the probation supervision**, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

G.S. 15A-1343(b)(14). Submit to warrantless searches by a **law enforcement officer** of the probationer's **person** and of the probationer's **vehicle**, upon a **reasonable suspicion** that the probationer is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court.

The Fourteenth Amendment

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

- **PLEASE NOTE:** There is more to the Fourteenth Amendment that we have not included.

STATEMENT OF THE CASE

Statesville Police wanted to search Petitioner's residence; however, lacked probable cause for a search warrant and the premises to be search were outside their territorial jurisdiction. Statesville Police contacted Petitioner's probation officer, who then assisted Statesville Police gain entry. Statesville Police then conducted an PROHIBITED warrantless search and found a bag of powder. Statesville Police Captain then contacted Iredell County Sheriff who then had jurisdiction to FRAUDULENTLY obtain a search and arrest warrant subequent to the search.

Mr. Williams was reportedly indicted for possession of a Schedule I mixture [1] with intent to manufacture sell and deliver. His Motions to Suppress were timely filed.

The State orgued that the fruit of the search were admissible because the targeted individual was on probation. The trial court admitted the Statesville Police acted unlawful but not that Petitioner should have any right to invoke or exercise any U.S or North Carolina Constitutional protection. All suppression motions were denied and Petitioner was was convicted. [2] Petitioner perfected and preserved the Fourth Amendment issues on all '3' three convictions of PWIMSD and instructed all Appellate Counsel to argue the issue. Appellate Counsel on the first and second conviction of PWIMSD did list the issue in his proposed issue but failed and neglected to include in his Appellate Brief.

NOTES

1. Petitioner was sentence for the same alleged act '3' three times. One conviction was overturned on appeal; while the other is still active; PWIMSD Methylone and Maintain dwell consiledated in the habitual status and one to be served in the future for poss. of 4- Methylethcathinone.

2. Petitioner was sentenced for PWIMSD Methylone and Possession of 4-Methylethcathinone when both variants of the same molecules in the same bag but the Grand Jury had reportly not indicted Petitioner on a TRUE BILL on the First conviction of PWIMSD 4-Methylethcathinone so that conviction was overturned and Petitioner was reindicted.

Petitioner attempted to file a Petition for Writ of Certiorari in this Court; however, the Clerk rejected it without explanation.

Petitioner was reindicted. Pursuant to plea agreement Petitioner pled guilty but reserved his right to appeal denial of his suppression motions. He was again sentenced to 41 to 62 months in the DPS after serving his second sentence from his first conviction that was overturned on appeal.

Petitioner appealed. The State successfully argued that he had no right to appeal because the issue had been fully adjudicated N.C. App. State v. Williams 796 S.E.2d 823 (2015). It is unclear why Petitioner is in N.C. DPS prison.[3] However, he is expected to begin his '3rd' third sentence 7/7/2021.

Petitioner has Petition challenging the Second sentence (13 CRS 2530; 13 CRS 52432-3 N.C. P16-21) are pending in the Supreme Court of North Carolina and U.S. District Court. The first sentence was overturned by the North Carolina Court of Appeals. 796 S.E. 2d 823. This Petition seeks review of his third sentence.

NOTES

3. DPS records indicate his first conviction and judgment was vacated See EXHIBIT 1. The State attorney general said Petitioner would be released See EXHIBIT 1 Petitioner has requested explanation. DPS has confirmed Petitioner is not being held pursuant to the vacated docket 13 CRS 2530 and 13 CRS 52432 but has not been released or allowed to start his future sentence pursuant to 15 CRS 3580-81 docket file.

REASONS FOR GRANTING THE PETITION

I. Appellate counsel's refusal to present Petitioner's Fourth Amendment claim to the North Carolina Court of Appeals or to file an Anders brief was unreasonable and unethical, and denied Petitioner's U.S. Constitutional right to effective assistance of counsel.

This case presents important questions of great importance to the bench and bar. At issue is the admissability of evidence obtained in a warrantless police search that was prohibited by State law governing probation[4] supervision. If Petitioner's claim had merit (WHICH IT UNQUESTIONABLY DID - SEE ISSUE 2 BELOW), the decision of the lower courts appears to be in conflict with Evitts v. Lurey, 469 U.S. 387, 83 L.Ed. 821 (1985) (right to effective assistance of counsel in first appeal of right).

Petitioner's court appointed Counsel refused to brief her client's Fourth Amendment issue despite Petitioner's clear instructions and urgent entreaties. She apparently regarded Mr. Williams' probationary status as the sole dispositive factor, although this Court has clearly said that a probationer's expectation of privacy is diminished (NOT EXTINGUISHED)!

Petitioner was forced to argue complex issues pro-se without access to a law library.

The Court should issue its writ in this case to clarify the nature and extent, if any, of a probationer's expectation of privacy. Petitioner here does not question a probation officer's duty to conduct a reasonable search incident to her supervisory. This case does present a unique opportunity for this Court to discuss the gray area of a police initiated search coverted operations for indepedent reasons. Must there be specific authorization? Must there be probable cause or reasonable suspicion? Can mandatory language in a State statute authorizing, regulating or prohibiting such a search create a protected liberty interest; denial of which has U.S. Constitutional implications?

II. Evidence obtained in an illegal search and seizure was admitted in violation of Mapp v. Ohio, 367 U.S. 643, 654-655 (1961).

This Court has approved of regulations causing probationers to have a diminished expectation of privacy. It is not always clear whether this loss of U.S. constitutional protection is a result of State legislation or inherent in the relationship of probationer and supervisor.

What effect do State laws have on U.S. Constitutional rights?

When a person is under post-conviction supervision, police frequently seek to justify a warrantless search as a special needs search or as being reasonable under the "totality of the circumstances." Absent a legitimate special need, if a reasonableness approach is taken, it is subject to substantial variation among the Circuits, without adequate guidance from this Court. Compare, e.g. U.S. v. Henry, 429 F.3d 603, 609, 614 (6th Cir. 2005) with U.S. v. Midgette, 478 F.3d 616, 624 (4th Cir. 2007)

NOTES.

4. Petitioner was on probation, so the word "probation" will be used throughout Petition for simplicity and clarity. Fourth Amendment cases concerning post-release supervision generally reach similar results whether its referred to as "probation" or "parole" by some other name.

A warrantless search of a probationer and his property is justified when conducted as a routine part of his supervision. Griffin v. Wisconsin, 483 U.S. 868, 872 (1987). Such a special needs search is proper in light of the probationer's diminished expectation of privacy. It does not require probable cause but must be related to probation conditions.

Searches have been upheld based upon a totality of the circumstances test and upon a more formal special needs basis. Some courts have required reasonable supicion. Compare e.g. U.S. v. Baker, 221 F.3d 438 444 (3rd Cir. 2000) (search of car unreasonable) with U.S. v. Midgette, 478 F.3d 616, 624 (4th Cir. 2007) (no individualized suspicion required).

A special needs search of a probationer is generally upheld as a reasonable condition of supervision when it was conducted by a probation officer pursuant to

a court decree.
a signed supervision agreement. or
a statutory regulation

Differences between circuits seem to occur when there is no statutory scheme or when sparse regulations, failed to provide effective guidance in a particular situation. Where there is an enabling statute, the broader it is the more likely courts are to suppress fruits of a search that is not specifically authorized.

Compare Griffin v. Wisconsin, 483 U.S., 868, 870, 872 (Search valid under probation regulation) with U.S. v. Howard, 447 F.3d 1257, 1268 (9th Cir. 2006) (Search not justified because not in compliance with supervised release agreement).

Although searches are reasonable when properly conducted pursuant to a reasonable judicial or legislative authorization and the law is unclear when a search is a foreseeable incident of supervision but not expressly authorized, Petitioner is aware of no published decision approving a search conducted in violation of State statutes and regulation and/or scheme.

The search in this case was not a valid special needs search.

The trial court's finding that "Officer Cashion decided to conduct a search of defendant's residence and requested the assistance of officers from the Statesville Police Department" (EXHIBIT C pg. 2 ¶ 9) is contrary to the record. EXHIBIT G pg. 3; TP. 10. At the suppression hearing, counsel explain to the court the search was initiated by Statesville Police for purposes of a criminal investigation persons of interest unrelated to the defendant's probation. EXHIBIT G p. 3 TP 10-11 This fact was confirmed by uncontroverted proof at trial by State's witness on direct examination. EXHIBIT H (Trial Transcript pg. 107); (TTp. 96)

NOTES

5. A new criminal investigation is not "related to a ongoing probation supervision." N.C. law formerly required a search to be reasonably related to probation conditions. In 2009 the statute was amended, it now requires a direct relationship. See. Appendix E (NCGS 15A-1343(b)(13) (superseded former (b1)(7)

Not only did the trial court make an unreasonable determination of facts the trial court failed refused and neglected to apply the controlling State law, N.C.G.S. § 15A - 1343 (b) (13) which authorizes a special needs search ~~directly~~ [6] related to the probation supervision but provides that

> the probationer may not be required to submit to any other search that would otherwise be unlawful.

The decision of the State courts is not supported by Griffin, which dealt with supervisory authority. In this case, Petitioner's status as a probationer was only fortuitous circumstance unrelated to Statesville Police officers' "Person of Interest Investigation" but used by them to gain a tactical advantage. The decision seems to be in conflict with decisions of this Court and the Fifth Cir. See e.g. Chandler v. Miller, 520 U.S. 305, 313-314, 318 (1997); Ferguson v. City of Charleston, 532 U.S. 67, 68, 85; City of Indianapolis v. Edmond, 53, U.S. 32, 41-42; Gates v. Texas Department of Protective & Regulatory, 537 F.3d 404, 424 (5th Cir. 2008).

NOTES

6. The probation officers' limited role in the search was not in accordance with State law (See n 5 above) and the police search was clearly unlawful. Conspicuously excluded from the authorization of § N.C.G.S. 15A 1343 (b) (14) are searches of a probationer's premises.

The search in this case was objectively unreasonable. Defendant pointed out numerous irregularities and violations of State law; however, State courts refused to discuss or apply the controlling law.

The trial court cited cases concerning technical violations of State law when police searches were otherwise reasonable; but does not appear to have used a reasonableness approach in its decision, so many of its findings and conclusions were not only wrong but totally irrelevant. The trial court clearly treated the search in this case as a special needs search, ignoring Chandler v. Miller, 520 U.S. 305, 313-314, 318 (1997) and other cases invalidating use of the special needs exception for detection of criminal conduct. The search in this case, according to the prosecutor and the prosecution witnesses, arose from a Statesville Police Investigator's hunch (there are also indications of possible racial motivation) and is readily distinguishable from cases in which probation officers contacted police for assistance.

Police knew the search was unwarranted; that's why Statesville Police hid in the bushes. Statesville Police believed the "evidence" they "obtained" would be vulnerable to a suppression motion, that's why (Statesville Police NOT Probation Officers)[7] called in the Sheriff after they "found" an unknown powder in a baggie.[8]

This case presents this Court with an unique opportunity to enforce the EQUAL PROTECTION CLAUSE and BILL OF RIGHTS without compromising the right of the PEOPLE to order their affairs through their State governments. The North Carolina legislature has reasonably and unambiguously limited the right of police to search probationers and their property without a warrant. If the State Courts are unwilling to enforce its laws to protect a BLACK MAN and his rights, most certainly a BLACK MAN's voice should be recognized or at least heard in this Court.

III. AMERICAN'S HIGHLY VALUE OUR RIGHT TO TRIAL BY JURY, BUT MOST CRIMINAL CASE(S) END IN PLEA BARGAINS. IN THIS CASE, PETITIONER WENT TO TRIAL, WAS CONVICTED, APPEALED AND WON BUT STILL HAD TO SERVE HIS SENTENCE. AS HE SEEKED FURTHER REVIEW, HE WAS 'REINDICTED' ACCORDING TO THE STATE, TRICKED IN TO PLEADING GUILTY, AND GIVEN ANOTHER SENTENCE TO COMMENCE AT THE EXPIRATION OF THE SENTENCE HE

NOTES

7. In fairness to the trial court, the erroneous finding that probation officers requested police assistance could have been caused in part by inconsistent statements of trial Counsel. Compare APPENDIX D pg. 4 ("PROBATION SOUGHT THE ASSISTANCE OF THE SHERIFF'S DEPARTMENT") with APPENDIX D pg. 3 ("STATESVILLE POLICE... WOULD CONTACT THE IREDELL COUNTY SHERIFF'S DEPARTMENT...") According to the hearing Transcript (See. eg. APPENDIX H (T.p.187) Mar. 15-21 and State's evidence at trial, it was in fact Statesville Captain Police who contacted the Sherriff's department and requested assistances. Defendant was thus denied effective assistance of counsel.

8. Anticipating Defendant's Fourth Amendment claim police stopped the search in a Panic. See App. H Tpg. 129

IS NOW SERVING. ALL THREE (3) SENTENCES (THE ONE THAT WAS SUPPOSEDLY VACATED), THE ONE HE IS SERVING, AND THE FURTHRE SENTENCE FROM WHICH HE HERE SEEKS RELIEF) AROSE FROM THE SAME ALLEGED OFFENSE. PETETIONER IS SUFFERING A CRUEL AND UNUSAL PUNISHMENT RESULTING FROM "DISCOVERY" OF ONE SMALL QUANITY OF BATH SALTS IN A WARRANTLESS SEARCH CONDUCTED IN VIOLATION OF STATE STATUTES WITHOUT PROBABLE CAUSE.

THIS CASE PRESENTS ISSUES OF GREAT IMPORTANCE TO CRIMINAL JURISPRUDENCE. MOST WERE DISCUSSED IN PETITONER'S PRIOR PETITION FOR REVIEW OF HIS FIRST CONVICTION [9] AND THE SENTENCE HE MIGHT BE SERVING [10] WHICH WAS SUBMITTED 27th DAY OF NOVEMBER 2017 BUT REJECTED BY THE CLERK; [11] AND IN PETITIONS PENDING IN THE U.S. DISTRICT COURT FOR WESTERN DISTRICT OF NORTH CAROLINA [12] AND THE NORTH CAROLINA SUPREME COURT. [13]

NOTES

9. 13 CRS 2530; 13 CRS 52432-33

10. SEE. 14-1101 NC. APP JULY 21, 2015 774 SE 2d 350 REVIEW DENIED 799 SE 2d 624

11. JAILOR LEVITAN SAID ISSUES MUST FIRST BE SUBMITTED TO U.S. COURT OF APPEALS OR BY THE HIGHEST STATE COURT TO WHICH PETITONER BELIEVE TO BE NORTH CAROLINA COURT OF APPEALS WHICH HAD BEEN DONE, AND ITS THEIR DELISION SOUGHT TO BE REVIEWED.

12. 5:18-CV-74-FDW

13. PETITONER'S APPLICATION TO THIS COURT WAS RETURNED AND PETITIONER SUBMITTED IT TO THE SUPREME COURT OF NORTH CAROLINA WHERE IT WAS DOCKETED FOR PENDING REVIEW AS P16-2

THE REINDICTMENT SUBSEQUENT CONVICTION AND SENTENCE TO BE SERVED IN THE FUTURE (IN THE EVENT OF THIS PETITION BEING DENIED) CLEARLY ILLUSTRATES WHY THE FIFTH AMENDMENT IN THE BILL OF RIGHTS WAS DESIGNED TO PROTECT AMERICANS AND OUR COURTS FROM DOUBLE JEOPARDY.

PETITIONER WAS COMPELLED TO PLEAD TO THREE OF THE SAME OFFENSES WITHIN TWO INDICTMENTS AND TO DEFEND AGAINST RELATED CHARGES. IN ADDITION TO THE UNDERLYING FOURTH AMENDMENT VIOLATION, WHICH THE STATE COURTS HAVE REFUSED TO DISCUSS, THIS CASE PRESENTS AN IMPORTANT ISSUE OF DUE PROCESS IN PLEA BARGAINING AND APPELLATE PROCEDURE.

THIS COURT AND THE CIRCUIT COURTS HAVE PUBLISHED MANY DECISIONS REGARDING WAIVERS OF DEFENDANTS RIGHTS TO APPEAL. SEE e.g. U.S. V. COHEN 459 F.3d 490, 497, 500 (4th Cir 2006). THEY ARE GENERALLY GOVERNED AS MUCH AS PRACTICABLE BY CONTRACT LAW PRINCIPLES. THERE IS LESS GUIDANCE IN THE OPPOSITE SCENARIO. **IN THIS CASE,** THE DEFENDANT RESERVED HIS RIGHT TO APPEAL THE DENIAL OF HIS **SECOND PRETRIAL MOTION** TO SUPPRESS EVIDENCE SEIZED IN A WARRANTLESS SEARCH.

IN "FEDERAL" PROCEDURE, SUCH PLEA IS A REFERENCE TO A CONDITIONAL PLEA AND IS GOVERNED BY FED. R. CRIM. PROC. 11 (A) (2). CONDITIONAL PLEAS REQUIRE THE CONSENT OF THE COURT AND THE PROSECUTOR.

ENTRY OF A CONDITIONAL PLEA AND RESERVATION OF THE RIGHT TO APPEAL DENIAL OF FOURTH AMENDMENT SUPPRESSION MOTION IS A COMMON PRACTICE. IF THE APPEAL IS SUCCESSFUL, THE DEFENDANT IS USUALLY ALLOWED TO WITHDRAW HIS PLEA.

A PLEA MUST BE KNOWING AND VOLUNTARY. PETITIONER'S PLEA WAS NOT KNOWING OR VOLUNTARY BECAUSE HE WAS ERRONEOUSLY ADVISED THAT HE COULD APPEAL DENIAL OF A SUPPRESSION MOTION, AND HIS CHALLENGE OF A WARRANTLESS AND STATUTORILY

PROHIBITED SEARCH AND SEIZURE HAD A VERY GOOD CHANCE OF SUCCESS. IT WOULD HAVE RESULTED IN RELIEF FROM ALL OF HIS CONVICTIONS AND SENTENCES.

"PLEA BARGINS ARE ESSENTIALLY CONTRACTS," PUCKETT V. U.S., 550 U.S. 129 137 (2009) THEY ARE TREATED LIKE CONTRACTS OF ADHESION BECAUSE DUE PROCESS REQUIRES THAT AN AGREEMENT BE INTERPRETED IN KEEPING WITH A DEFENDANT'S REASONABLE UNDERSTANDING, AND THAT ANY AMBIGUITY BE CONSTRUED AGAINST THE GOVERNMENT. SEE eg. U.S. V. JORDAN, 509 F.3d 191, 199-200 (4th CIR 2007).

A DEFENDANT ALLEGING BREACH IS ORDINARILY ENTITLED TO AN EVIDENTIARY HEARING. BLACKLEDGE V. ALLISON, 431 U.S. 63, 80-82 (1977). THE STATE COURTS SUMMARY DENIAL OF PETITIONER'S CLAIM VIOLATED NORTH CAROLINA GEN. STAT. § 15A-1420 (c) (7) AND LAW CLEARLY ESTABLISHED BY THIS COURT.

PETITIONER RESERVED HIS RIGHT TO APPEAL DENIAL OF HIS MOTION TO SUPPRESS EVIDENCE OBTAINED IN A WARRANTLESS SEARCH. A REASONABLE PRISONER WOULD HAVE UNDERSTOOD THAT HE HAD A RIGHT TO APPEAL AND THAT HIS MOTION WOULD BE REVIEWED ON ITS MERITS.

PETITIONER'S BELIEF WAS BASED UPON THE WORDS AND CONDUCT OF HIS ATTORNEY, THE PROSECUTOR AND THE COURT. IT WAS ALSO SUPPORTED BY COMMON LAW RULES OF OF CONSTRUCTION. GENERALLY, A COURT IS NOT INTERESTED IN THE RELATIVE VALUE OF THE CONSIDERATION OFFERED BY EITHER PARTY, OR EVEN THE EXISTANCE OR VALIDITY OF THE PROPERTY OR RIGHT TO BE EXCHANGE. HOWEVER, THE COURTS DISTINGUISH BETWEEN ERRORS OF FACT AND ERRORS OF LAW.

HERE, PART OF CONSIDERATION OFFERED BY THE STATE WAS THE DEFENDANT'S RIGHT TO BE HEARD BY THE NORTH CAROLINA COURT OF APPEALS ON THE MERITS OF HIS FOURTH AMENDMENT CLAIM. ACCORDING TO THE STATE COURTS THIS RIGHT NEVER LEGALLY EXIST OR WAS SUBJECT TO BEING DEFEATED BY THE STATE COURTS; THIS SO-CALLED ASSERTION OF COLLATERAL ESTOPPEL. DUE PROCESS PLAINLY REQUIRES A IMPLIED WAIVER OF THE STATE'S RIGHT TO USE SUCH A PLAY KNOWINGLY AND INTENTIONALLY DEFEAT THE FUNDAMENTAL PURPOSE OF THE AGREEMENT. THE WRITTEN MEMORANDUM OF THE PLEA AGREEMENT DID NOT EXPRESSLY SPECIFY APPEAL OF MERITS BUT THAT PLAINLY WAS THE INTENT OF THE PARTIES. THE DEFENDANT WOULD NEVER HAVE KNOWINGLY RESERVE THE RIGHT TO SIMPLY CONTEST THE FACT A SIMILAR MOTION HAD BEEN DENIED WHEN HIS CASE WAS TRIED THE FIRST TIME. BOTH PARTIES UNDERSTOOD THAT DEFENDANT WAS WAIVING IMPORTANT CONSTITUTIONAL RIGHTS FOR THEIR MUTUAL BENEFIT, ALLOWING THE CONSTITUTIONAL ISSUES TO BE EXPEDITED TO THE NORTH CAROLINA COURT OF APPEALS.

THE STATE'S SUBSEQUENT BACKHANDED MANEUVERING WAS DOUBLY REPREHENSIBLE IN LIGHT OF ITS RESPONSES TO THE DEFENDANT'S FIFTH AMENDMENT CLAIMS. THE 2014 AND 2016 CONVICTIONS WERE TREATED AS SEPARATE CRIMES, IGNORING A LARGE NUMBER OF CONTRARY PRECEDENTS. YET THE STATE LUMPED THEM TOGETHER TO DEFEAT DEFENDANT'S FOURTH AMENDMENT CLAIMS; THE QUESTIONABLE GROUNDS FOR THE STATE TO THUS HAVE ITS CAKE AND EAT IT, TOO, WAS CLEARLY NOT WHAT WAS INTENDED BY THE DEFENDANT.

PETITIONER WAS LED TO BELIEVE THAT HIS FOURTH AMENDMENT CLAIM WOULD BE REVIEWED ON THE MERITS BY THE NORTH CAROLINA COURT OF APPEALS IN THE SENSE THAT THIS CASE WAS TREATED AS THE SAME CASE IN THE TRIAL COURT BEING THE NORTH CAROLINA COURT OF APPEALS HAD NOT HAD OPPORTUNITY TO REVIEW THE MERITS. THE STATE HAD AN IMPLIED OBLIGATION OF GOOD FAITH. INTERPRETING AMBIGUITIES IN THE PLEA AGREEMENT IN THE DEFENDANT'S FAVOR, A REASONABLE JURIST WOULD FIND THAT THE STATE VIOLATED THE PLEA AGREEMENT BY DENYING THE DEFENDANT'S RIGHT TO APPEAL FOR REVIEW ON THE MERITS. THERE WAS TOTAL FAILURE OF CONSIDERATION NOT ATTRIBUTABLE TO THE PETITIONER.

THE STATE HAS MADE CLEAR ON THE FACE OF THE RECORD IN THE SUBSEQUENT RETRIAL FOR THE OFFENSE (S) COMMITTED MAY 1, 2013 ON A VALID BILL OF INDICTMENT THAT THE "COURT NEVER HAD JURISDICTION OF THE DEFENDANT," IN THE PRIOR TRIAL HELD JANUARY 8-10, 2014 AND PRETRIAL HEARING. (SEE EXHIBIT 1 TRIALTRANSCRIPT PG. 11 MARGIN 23-25). THEREFORE, PETITIONER IS CONSTITUTIONALLY ENTITLED TO RELIEF IN RESPECT TO JUDGMENT 13 CRS 2530; 13 CRS 52432-3 AND A VALID HEARING FOR HIS 4th AND 14th AMENDMENT CLAIM IN RESPECTS TO THE OFFENSE (S) COMMITTED MAY 1, 2013.

MOREOVERLY, THE GRAND JURY FOUND ONE TRUE BILL OF INDICTMENT 13 CRS 52432 SIMULTANEOUSLY FOR 2 COUNTS OF PWIMSD; THEREFORE, ESSENTIALLY THE INITAL OFFENSE ON THE FACE OF THE INDICTMENT WAS CONCLUDED BY THE HIGHER COURTS AS VOID, OTHERWISE DEFECTIVE AND NOT A TRUE BILL. THEREFORE, DUE PROCESS AUTOMATICALLY VOIDED THE REMAINING SECOND OFFENSE. FOUND WITHIN THE TRUE BILL OF INDICTMENT 13 CRS 52432. NOW HAD THE OFFENSE (S) HAD DIFFERENT TRUE BILL PETITIONER'S ARGUMENT WOULD BE MOOT!!!, (OR PERHAPS THE SELOND OFFENSE IN THE INDICTMENT WAS FOUND DEFECTIVE).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ML Tean Will

Date: _____