No. ______________________

IN THE

SUPREME COURT OF THE UNITED STATES

Arthur Lawton Clark — PETITIONER
(Your Name)

vs.

Johnson St. P. Warden
Atty. Gen. State of Ga. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Arthur Lawton Clark #1240317
(Your Name)

Autry St. Prison K-1, 120 B
P.O. Box 648
(Address)

Pelham, Ga. 31779-0648
(City, State, Zip Code)

229•294•2940
(Phone Number)

Questions

1.

As petitioner has shown, not only his indictment, but his guilty plea are both evidence of obvious, missing, essential elements contained in the statute or offense from which they are derived. These missing elements are a 14 Amendment constitutional violation of the due process clause, showing insufficiency, and the lower district Federal courts have avoided recognizing a comparison of said indictment or plea to the felony statute. Cases from the U.S. Supreme Court, other Appeals Courts and the state Supreme Court have all held that these elements of an indictment are necessary for it to be sufficient constitutionally. (VIII 4,5; no. 21, 22, 23)

Why do the fed. District Courts and the 11th Cir. Court of Appeals apparently agree that I have only stated that petitioner's indictment is simply "flawed," and deny that petitioner's claim of a void indictment has any merit at all? (See Doc. no. 5, 10-7-16, p. 5+6) p. App., no. C-1, VII

* [Table of Authorities] VIII *

Cases: (Jones v. U.S.) p. 1, no. 1 (Smith v. Hardrick) p. 4, no. 21
(U.S. v. Landham) p. 1, no. 2 (McCain v. Smith) p. 4, no. 22
(Lizana v. St.) p. 1, no. 3 (U.S. v. Berrios-Centeno) p. 5, no. 23
(Riley v. Garrett) p. 1, no. 4

By discounting the lack of elements in petitioner's indictment as only making it "flawed," the 11th Cir. Courts have also avoided petitioner's claim that his trial counsel was furnishing ineffective assistance when he urged petitioner to plead guilty after delivering a threat from the District Attorney, T. Vaughn. U.S. Supreme Court cases, 11th Cir., and State Supreme Court cases all hold that ineffective assistance from counsel causing defendant's conviction on a void indictment constitute the "cause and prejudice" necessary to create an exception to a procedural bar.

Why do the courts in the 11th Cir. discount petitioner's claim of an obviously void indictment and ineffective assistance of counsel, and grant a motion to dismiss his habeas corpus, when his trial counsel urged his guilty plea and also delivered a prosecutorial threat, since these constitutional violations should serve as an exception to a procedural bar of "untimely" filing?

Cases: (McClesky v. Zant) p. 1, no. 5
(Dretke v. Haley) p. 4, no. 17
(Reagan v. Norris) p. 1, no. 6
(Henderson v. Hames) p. 2, no. 7

Petitioner cites several U.S. Court of Appeals cases which hold that an appellate attorney's failure to consult with one he represents or to file a petition for petitioner timely, constitutes ineffective assistance. In response to petitioner's claim of ineffective assistance from failure to act by his appellate attorney, the 11th Cir. District courts have stated that counsel's failure to consult or file, even after partial payment and promising results, and not filing a federal appeal, was probably only a "garden variety" of "excusable neglect" such as "simple mis-calculation" (see "Order", 11-13-17) Case 3:16-CV-068, p. 4, lines 7-12, (p. App. B, VII). This shows conflict in case law.

Why would the District courts grant, and the 11th Cir. Court of Appeals approve of it, the Attorney General's "Motion to Dismiss" for untimely filing, if facts and law show that the appellate attorney's failure to consult with petitioner or file timely was actually ineffective assistance, which excepts such a procedural bar to habeas review? Petitioner avers that this is not "erroneous factual finding", but actually an abuse of the power of discretion.

Cases: (U.S. v. Chavez) p. 2 no. 8
(Restrepo v. Kelly) p. 2 no. 9
(Clayton v. Jones) p. 2 no. 10
(Corral v. U.S.) p. 2 no. 11

Petitioner has shown untimely filings of habeas corpus petitions by his appellate attorney even after promises by said attorney to file timely and also a partial payment six weeks in advance of the filing deadline for his state habeas petition. The District Court stated in it's "Order", that petitioner's appellate counsel's untimely filing was probably only a "garden variety" of "excusable neglect" due to "simple miscalcolation." See "Order" 11-13-17 (case no. CV 3:16-068) p. 4, lines 6-16.

The Court also stated that said appellate counsel had represented petitioner "diligently" from 6-2014, until 8-2017, after two late filings and failure to consult, and that petitioner had summarily "fired" said counsel. At that time, petitioner had paid his appellate counsel #24,500.00, and was broke...

Did the District Court purposefully avoid petitioner's claim of ineffective assistance, when it granted the Attorney General's "Motion to Dismiss" based on untimely filings by said attorney, by stating also in the same order, that petitioner's appellate attorney had represented petitioner with "diligence"? (See "Order" above, p. 4)

Cases: (Clayton v. Jones) p. 2, no. 10; (Corral v. U.S.) p. 2, no. 11
(U.S. v. Chavez) p. 2, no. 8; (Hannon v Maschner) p. 3, no. 12
(Speight v. U.S.) p. 3, no. 13 (thompson v. U.S.) p. 3, no 14

Petitioner has shown that his indictment was void for lack of elements, and his trial counsel did not object, urged him to plead guilty, and delivered a prosecutorial threat as well. Also shown are case law cites in conflict with holdings in U.S. Supreme Court, Cir. Court of Appeals, and even other 11th Cir. cases which hold that ineffective assistance of counsel plus a void indictment work an exception to a procedural bar—such as untimely filing—by causing an equitable tolling of a statutory deadline.

Since petitioner had no trial, "new evidence" did not exist, and the state habeas and Supreme Courts* failed to produce or require a finding of facts and law, ignoring a statutory requirement to do so.

Why do the federal District courts in the 11th Cir. deny petitioner's claim of "equitable tolling," to except a procedural bar of untimely filing, by using the "actual innocence" argument and requiring a finding of "new evidence", when the same cited case of (Murray v. Carrier) provides for an exception to a procedural bar by alternate means?

Murray v. Carrier (see p. 8, no. 27) also held that the procedural default rule will be excused by a "fundamental miscarriage of justice" which would occur if petitioner's claim is not heard, and

5. (continued)

also addresses the "avoidance principle" for using ineffective assistance to except a procedural bar as opposed to arguing the questions involved with "actual innocence," which in that ruling, required a finding of "new evidence", etc.... (Also see Bretke v. Haley,) p. 4, no. 17.

Cases: (McClesky v. Zant) p. 1, no. 5
(U.S. v. Pettiford) p. 3, no. 15
(Franklin v. Hightower) p. 3, no. 16
(Spitsyn v. Moore) p. 8, no. 26
(Murray v. Carrier) p. 8, no. 27
(Bryant v. Warden) p. 8, no. 28

6.

To grant the Attorney General's "Motion to Dismiss," the District Court's ruling in petitioner's case, stated that he had filed his state habeas corpus petition "untimely," and also was not "in custody" at the time of his federal filing, because of the "interpretation" by the Attorney General that petitioner was not then "in custody" from a state sentence being attacked at that time.

Code sections 28 U.S.C. § 2241 and 2254 require that the "in custody" be from a "judgment from a state court," or either being "required to testify, or awaiting (cont'd) trial," and said statutes only require that the "in custody" be from a "violation of the Constitution, or laws of the U.S." (See VIII, p. 6, no. 3, 4(a))

Since petitioner was "in custody" by statutory requirements, even after his 2 year sentence for said Felony based on the void indictment, because of a state court "judgment" allowing a Felony predication to use a void indictment and subsequent conviction, petitioner was also "in custody" while being charged with a predicated felony and then "awaiting trial."

As petitioner claims being "in custody" for purposes of Federal habeas review by reading cited statutes, why does the District court's ruling, and the 11th Cir. Court of Appeals' approval, conflict with several other U.S. Cir. Court of Appeals cases holding that "in custody" can be from a prisoner released on parole, one who is out on bond, or even when one is "in custody" from the "failure to apply Federal rights correctly or at all." (see Sanchez V. Roden), p. 4, no. 20

Cases: (Calhoun v. Attorney Gen. of Col.) p. 4, no. 18
(Nettles v. Grounds) p. 4, no. 19
(Sanchez V. Roden) p. 4, no. 20

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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constitutional claim with ineffective assistance of counsel in state courts.

7. Henderson V. Hames (287 Ga. 534) the Court said that counsel's failure to challenge the void indictment, as is seen in petitioner's claim was "deficient" performance showing "cause" to a defaulted constitutional claim, and making him a convicted felon was "prejudice." Q.2

8. U.S. v. Chavez (211 Fed. Appx. 391) 5th Cir 2008. the Court held that "failure to file requested notice of appeal is "per se" ineffective assistance of counsel, even without the showing that the appeal would have merit." Q.4

9. Restrepo V. Kelly (178 F3d 634, 640-42) 2nd Cir. 1999. the Court held that petitioner's federal habeas review was not precluded, because his attorney's failure to file an appeal constituted "cause" and "per se prejudice", coming from the ineffective assistance of counsel. Q.3

10. Clayton v. Jones (700 F3d 435, 443-45) the Court addressed the case where "defendant was denied the right to appeal because of the "ineffectiveness of counsel." Q.3,4

11. Corral v. U.S. (498 F3d 470, 475) 7th Cir. 2007. the Court held that "trial counsel was ineffective for failing to file an appeal after being requested Q.3,4

to do so."

12. Hannon v. Maschner (981 F2d 1142, 1144-45) 10 th Cir. 1992. the Court held that "trial counsel was ineffective when his actions caused petitioner to lose his ability to appeal." Q. 4

13. Speight v. U.S. (427 Fed. Appx. 731, 734) 2011. the Court held that "trial counsel was ineffective when he failed to consult with defendant about an appeal." (11 th Cir.) Q. 4

14. Thompson v. U. S. (504 F 3d 1203) 11 th Cir. 2007, the Court held that the "attorney's failure to adequately consult with defendant regarding an appeal was ineffective assistance of counsel." Q. 4

15. U. S. v. Pettiford (612 F3d 270, 280) 4th Cir. 2010. The Court stated that habeas relief should be awarded where the judgment was rendered "without jurisdiction." the unlawful sentence and innocence of the underlying conviction would mean that an "actual innocence" claim would prevail. Q. 5

16. Franklin v. Hightower (215 F3d 1196, 1199) 2000. the Court said that when a "jurisdictional issue" is actually shown, it renders an indictment void. the "claim of 'actual innocence' by the petitioner would prevail," if the constitutional violation claimed caused a "void indictment." Q. 5

17. Dretke v. Haley (124 S. Ct. 1841) 2000. The Supreme Court held that ineffective assistance of counsel shows "cause and prejudice" meeting requirements to make an exception to the barring of federal habeas review. It also stated that a showing of actual innocence was not necessary to except a procedural bar. Q. 2, 5

18. Calhoun V. Atty. Gen. of Col. (745 F3d 1070) 2014, 10th Cir. The Court held that even a State prisoner released on parole or personal recognizance satisfies the "in custody" requirement for seeking federal habeas review, or for relief. Q. 7

19. Nettles v. Grounds (788 F3d 992) 9th Cir. 2014. The Court held the same as "Calhoun V. Atty. Gen.," and even included a petitioner on bond or out on bail. Q. 7

20. Sanchez V. Roden (753 F3d 279) 1st Cir. The Court held that "habeas review exists to rescue those 'in custody' from the failure to apply federal rights correctly or at all." Q. 7

21. Smith V. Hardrick (266 Ga. 54) The Court held that the indictment was void for lack of "essential elements" and that the guilty plea was not to the offense as charged, and that he was still not guilty of the crime. Q. 1 XII, p. 7, 8, 9 par. 4, 8

22. Mc Cain V. Smith (221 Ga. 353) The Court held that a plea of guilty does not prevent defendant from asserting that the "facts alleged in the accusation do not Q. 1 XII, p. 7, 8, 9 par. 4, 8

constitute a crime."

23. U.S. v. Berrios - Centeno (250 F3d 294) 5th Cir. 2001. The Court held that a plea of guilty does not prevent defendant from showing that a lack of "material elements" in an "offense" is a substantive defect, and is not waived by a plea. It held that the Court had no "jurisdiction" because of the 14th Amendment, due process, constitutional violation. Q. 1; XII p. 7, 8, 9 par. 4, 8

24. Wood v. Ryan (693 F3d 1104) 9th Cir. 2012. The Court held that a Court of Appeals on a federal habeas review had to consider "de novo", prosecutorial misconduct not addressed..." Q. 5

Statutes page no.

1. O.C.G.A. § 16-12-4(b) "A person commits the offense of cruelty to animals when he or she causes death or unjustifiable physical pain or suffering to any animal by an act, an omission, or willful neglect. Any person convicted of a violation of this subsection shall be guilty of a misdemeanor..." (2012) XII, 2

2. O.C.G.A. § 16-12-4(c) With respect to the felony version, the code section provides: "A person commits the offense of aggravated cruelty to animals when he or she knowingly and maliciously causes death or XII, 1

physical harm to an animal by rendering a part of such animal's body useless or by seriously disfiguring such animal." (2012)

3. 28 U.S.C. § 2241 (Power to Grant Writ)
(c) "the writ of habeas corpus shall not extend to a Q.6,7
prisoner unless":
(3) "He is in custody in violation of the Constitution or laws or treaties of the United States; or...
(5) It is necessary to bring him into court to testify or for trial."

4. 28 U.S.C. § 2254 (State custody; remedies in Federal Courts) Q.6,7
(a) "The Supreme Court, a Justice thereof, a circuit Judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the U. States."
(e)(2) "If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that:
(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for

constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

(F) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of the factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to ~~[illegible]~~ an appropriate State official...

(Case) and Reference to Statute

25\. A. Hughes v. Sikes (273 Ga. 804, 805) 2001. The Ga. St. Supreme Court held that the state habeas court's order was remanded, after vacating, with directions to make a new order with "Findings of fact and law." p. 19

B. O.C.G.A. § 9-14-49 Requires a finding of facts and law when a state habeas court denies a writ of a petitioner. Petitioner will obtain a copy of said st. statute if possible. XII 5

Cases (continued)

26. Spitsyn v. Moore (345 F.3d 796, 798) 9th Cir. 2003 p. 5
Professional Misconduct may amount to egregious behavior and create an extraordinary circumstance that warrants equitable tolling.

27. Murray v. Carrier (477 U.S. 478) 106 S.Ct. 2639, 91 L.Ed. 2d 397 (1986) the procedural default rule will also be excused when doing otherwise would "result in a fundamental miscarriage of justice." Fundamental fairness of the conviction is the issue. A showing of "cause and prejudice" to excuse a procedural default does cause the "avoidance" of the argument for actual innocence, also constituting an exception to procedural bar.

28. Bryant v. Warden (738 F.3d 1253, 1261) 11th Cir. 2013 p. 5
this case held same as (Spitsyn v. Moore) see no. 26

Statutes (cont'd.)

5. 28 U.S.C. § 2253 (c)(2) "A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right." p. 21

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 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 United States district 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.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits 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 Butts Co. Superior court appears at Appendix D 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 April 19, 2018.

[ ] 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).

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

The date on which the highest state court decided my case was __________. A copy of that decision appears at Appendix ____.

[ ] 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).

Constitutional And Statutory Provisions

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

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 the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment XIV

Section 1. "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 laws."

Statement of the Case

Petitioner has shown a constitutional violation of a void indictment which was accompanied by a prosecutorial threat. District Attorney Vaughn was quoted as saying that he "did not like" Petitioner, and that if he did not plead guilty he would prosecute and give him a five year sentence. A District Atty. does not need the unbridled power of discretion to indict a citizen with a void indictment because he does "not like" him or her, when the felony charge does not even contain essential elements.

No citizen should be victimized by a said constitutional violation and even to suffer ineffective assistance from a payed attorney as well. This constitutes two constitutional violations.

Petitioner's appellate attorney, who was even payed some in advance, and promised to file his State habeas petition timely, did not do so. The same payed attorney also did not consult with petitioner or file his federal habeas petition effectively. This is another addition to constitutional violations against Petitioner which no Federal Court has yet to even give any merit to. No United States citizen deserves the State and Federal Courts' wrongful use of their powers of discretion to deny the existence of proven constitutional violations.

Statement of The Case —

1.

Petitioner was charged with a misdemeanor warrant of animal cruelty for shooting a dog, June 13, 2012. During the two month incarceration without a bond, Petitioner paid his trial counsel, ex-D.A., and ex-U.S. Attorney #5,000.00 to represent him. After his release, petitioner asked his attorney about the misdemeanor charge, and asked him would it be prosecuted soon? Petitioner's attorney stated that the charge might "very well" end up being a felony indictment. Petitioner was, he believes, being "prepared" for the felony indictment.

2.

After the grand jury indictment, Sept. 24, 2012, Dodge Co. Case No. 12R-6938, the misdemeanor warrant of "animal cruelty" evolved into a Felony indictment of "Aggravated Animal Cruelty." When petitioner asked his attorney, James L. Wiggins, about the change from a misdemeanor warrant to a felony indictment, attorney Wiggins said that the District Attorney — Mr. Wiggins' ex-Asst. D.A., Timothy Vaughn, "did not like me" and that if I did not plead guilty, that he would prosecute me and give me a five year sentence. (See VIII p. 5, no 24)

XII p. 6

3.

the misdemeanor statute, O.C.G.A. § 16-12-4(b) see (VIII, p. 5), stated that "a person commits the offense of cruelty to animals when he or she causes death or unjustifiable physical pain or suffering to any animal <u>by an act, an omission, or willful neglect</u>. Any person convicted of a violation of this subsection shall be guilty of a misdemeanor. The felony version "aggravated animal cruelty", O.C.G.A. § 16-12-4(c), see (VIII, p. 5), states, "a person commits the offense of aggravated animal cruelty when he or she knowingly and maliciously causes death or physical harm to an animal <u>by rendering a part of such animal's body useless or by seriously disfiguring such animal</u>." (emphasis added)

4.

The first constitutional violation petitioner shows is the "underlying claim" of a void indictment, because of the lack of essential elements as should be contained, to constitute the offense or statute. The indictment of petitioner only charged that the "defendant herein did knowingly and maliciously cause death to a dog belonging to John Woodard, an animal, <u>by shooting him, contrary to the laws of said state</u>, the good order, peace, and dignity thereof." (emp. added) Two elements contained in said felony statute, "by rendering a part of such animal's body useless or by seriously disfiguring such animal," are not contained in the said felony indictment of petitioner. (emp. added) See (VIII 4,5; no. 21, 22, 23)

5.

On June 17, 2013, attorney Wiggins caused the next constitutional violation against petitioner with ineffective assistance of counsel, when he not only did not object to the void indictment, but urged petitioner to plead guilty, and also delivered to petitioner a threat stating that if he did not plead guilty, that he would be prosecuted and given a maximum felony sentence, of five years.

6.

Petitioner was later charged with a misdemeanor, and his probation revoked on May 15, 2014, although petitioner was never prosecuted. Afterwards, during the first week in June, while incarcerated at Coastal St. P. for three months, petitioner payed his new, appellate attorney, T. Jarriel, a portion (1/3) of his total fee for representing petitioner in a habeas corpus, in advance. This payment was made June 6, 2014, with an agreement that said attorney would file petitioner's habeas corpus timely - by a 12 month statutory deadline of July 17, 2014. Said appellate attorney did not file petitioner's State habeas corpus until August 4, 2014.

7.

this failure to consult with or file petitioner's writ timely, after a partial payment and promise to do so, was the third constitutional violation against petitioner, which was later used by the Atty. Gen. as a count in his "Motion to Dismiss" in federal Dist. court. Said constitutional violation was caused by appellate counsel's untimely filing of petitioner's writ.

8.

the guilty plea which petitioner was coerced into giving, also shows the lack of essential elements as cited in the Felony statute cited previously. Petitioner pled guilty to only "causing the death of a dog of John W., an animal, by shooting" him (the animal) "do you wish to plead guilty?" This plea is also missing two essential elements needed for it to contain; as are in the statute, which renders it constitutionally insufficient, therefore, the plea is not to the offense as charged. (VIII p. 4,5; no. 21,22,23)

9.

When petitioner's State habeas hearing in Butts Co., Ga., was denied 11-16-2015, there was no finding of facts and law as required by statute, O.C.G.A. § 9-14-49 (VIII, p.7, no.25), nor a mention of filing untimely or procedural bars later used by the Atty. Gen. as one of two counts in his motion to dismiss petitioner's claims.

10.

After petitioner was released on parole from his revoked sentence for "aggravated animal cruelty", it was Sept. 4, 2014, or shortly after his appellate counsel's untimely filing of his State habeas petition, Aug. 4, 2014. On May 12, 2015, petitioner was a victim of an unprovoked aggravated assault and battery, and subsequently used deadly force in self defense. His remaining period of parole was revoked. Petitioner still had not been given a hearing on the State habeas corpus petition. In addition to being charged with murder – the predicate felony of possession of a firearm by a convicted felon (aggravated animal cruelty conviction) was used in the charge of felony murder.

11.

The Court revoked the petitioner's parole June 23, 2015. After his incarceration at Jackson D.C.P., both petitioner's attorneys attended his State habeas hearing at Butts Co., Ga., which was denied 11-16-2015. While at Coastal St. P. in Savannah, Ga., petitioner's appellate attorney filed an application for review to the Ga. St. Supreme Court, 12-14-2015, which was denied later without petitioner being notified by his appellate attorney, thomas Jarrel. This denial came 4-4-2016, after petitioner had made several inquiries into the status of his "application" for which petitioner had paid $5,000.00 to said appellate attorney for filing.

12.

Petitioner was not made aware of this denial of his "application" until around May 1, after his sister's visit to his other attorney - M. Warnock from Dublin, Ga. By then, petitioner had paid his appellate attorney $12,500.00 in legal fees and had not even been informed that his Supreme Court "application" had been denied.

13.

Petitioner's two year State sentence from the plea to aggravated animal cruelty had expired May 15, 2016. At that time, petitioner was not aware of the statutory requirements of 28 U.S.C. § 2241 and 2254, of being "in custody," and the Attorney General's "interpretation" of them which he would use to argue for a denial of Federal jurisdiction for review of petitioner's habeas appeal.

14.

Petitioner's appellate attorney then caused the 4th constitutional violation against him by not filing his Federal habeas appeal as petitioner had asked him to do, nor consulting with petitioner. Said appellate attorney did not file petitioner's federal appeal by the end of his expired State sentence of May 15, 2016. An attack by the Attorney General as a count in his "motion to dismiss" was based on the ineffective assistance of petitioner's attorney's failure to file his federal habeas appeal. By then, petitioner had payed his appellate counsel $12,500.00 to represent him in both his State and Federal appeals, which he had failed to file either on time (timely).

15.

After the filing of petitioner's federal habeas appeal, finally, 7-22, 2016, he was and had been incarcerated at the Dodge Co. L.E.C. since May 15, 2016. Now petitioner was charged with felony murder, and awaiting trial on said charge which had been predicated on his conviction of aggravated cruelty to animals, and possession of a firearm by a convicted felon. Petitioner was still in custody and also awaiting trial.

In his "Motion" to dismiss, the Attorney General used the untimely filing of petitioner's State habeas as one count, and the the supposedly late, or untimely filing of his federal habeas petition as another count. Said "Motion" claimed that the federal court had no jurisdiction to hear the appeal, and also that there was a procedural bar to prevent the hearing of the petition. The "Motion" claims that petitioner was not "in custody" at the time of his federal habeas filing.

16.

Petitioner shows that the 4th constitutional violation of his claim is from the inaction of his appellate attorney to file his Federal habeas, or to consult with him. The Attorney General used these facts to claim that there was no jurisdiction for Federal review, and to argue that said untimely filing of the State habeas was a procedural bar to federal relief. Petitioner shows that ineffective assistance of counsel plus a conviction on a void indictment produces an equitable tolling of the 12 month statute of limitations, creating an exception to the alleged procedural bar of Federal courts to hear petitioner's claims.

17.

Petitioner claims that the statutes of 28 U.S.C. § 2241 and 2254 (VIII, 6, no. 3,4) show that the facts in petitioner's habeas appeal do provide for his being "in custody" at the time of said filing, as a result of the judgment of a State Court predicating a felony on a void indictment and conviction. Petitioner was still incarcerated from the State judgment and also awaiting trial. Petitioner's factual situation complies with the statutory requirement that he be "in custody" pursuant to the judgment of a State Court only on the grounds that he was "in custody in violation of the Constitution or laws... of the United States." Please see the cite above. (VIII 6, no. 4(a))

18.

On 11-13-2017, the Federal District Court granted the Attorney General's motion to dismiss petitioner's Federal habeas petition by adopting the Magistrate Court's "Report and Recommendation" of 9-1-2017. See (VII App. C-1). The U.S. District Court also denied petitioner a Certificate of Appealability and instructed him to appeal to the 11th Circuit Court of Appeals for said "Certificate." Petitioner filed his motion requesting a C.O.A. 11-27-2017, then to the 11th Circuit Court of Appeals, and it became file no. 17-15227.

19.

On February 14, 2018, after being transferred from Johnson St. P. to Autry St. P, petitioner filed a motion for an extension of time to answer the Court's response, since a delay in legal mail of about ten days is usual. The 11th Cir. Court denied this motion as being "moot", including said denial with the order denying petitioner's request for the granting of a C.O.A. Said order and denial was mailed 3-14-2018, but by the time petitioner received said mail, it was 3-24-2018. this was the Court's use of it's discretion to deny petitioner an extension of time, thereby cutting petitioner's time to respond to the Court's denial of his "request" for a C.O.A. in half - from 21 to 11 days.

20.

Petitioner handed his "motion to reconsider," in response to said Court's denial of his C.O.A., to prison authorities to be placed in the U.S. mail on 3-30-2018, or six days after receiving the denial of his "request" for a C.O.A. from the 11th Cir. Court and a statement that his plea for more time to answer the Court's coming order was "moot."

21.

On April 19, 2018, the Court of Appeals for the 11th Circuit mailed Petitioner a denial of his "Motion For Reconsideration", stating only that no new evidence or arguments of merit to warrant "relief" had been offered. In its discretion, the Court did not address Petitioner's underlying claim of a void indictment for lack of essential elements, making it void ab initio, or the lower Courts' avoidance of a comparison of said indictment to the statute, or offense.

22.

the 11th Circuit Court did not address Petitioner's claims of ineffective assistance of counsel, nor his certified statement of a prosecutorial threat which was delivered by his trial counsel. the 11th Circuit Court has dismissed Petitioner's claims as if they are possibly non-existent and have ignored them without recognition.

Petitioner now takes his one in a hundred chance that his federal habeas claim will be reviewed by the only higher Court in the United States.

Reasons For Granting The Petition

Petitioner attempts to avoid being redundant or repetitive, so he is trying not to review the issues contained in his "Questions." Petitioner has shown that he has not only experienced a constitutional violation of a void indictment for a lack of essential elements, and the cause of ineffective assistance of two attorneys, each of them payed, but also a prosecutorial threat to plead guilty to avoid Felony prosecution for the facts, an indictment, and a plea, which all constituted a misdemeanor.

1.

Petitioner's questions no. 1, 2, 4, 5 and 6 show conflicts with decisions of U.S. Supreme Court cases and Cir. Court of Appeals cases having the same or relevant issues of constitutional law. Questions 3 and 7 show conflicts in decisions by other Cir. Courts of Appeals with the District Court's decision on the same issues of law, and the 11th Cir. Court of Appeals' choice to agree with the decisions made by the Magistrate and District Courts.

2.

The "Order" from the state habeas court in Butts Co. Ga, (see App., no. D) 10-26-2015 (Civ. Action No. 2015-HC-15), denied petitioner's habeas corpus, but in ignoring the statute O.C.G.A. § 9-14-49, did not deliver a finding of fact and law as required after a "denial." In his testimony at said hearing, petitioner's trial counsel testified that he did not compare petitioner's indictment to the relevant statute, or offense. (VIII 7, no. 25, B)

3.

The federal statute 28 U.S.C. § 2254(d), (1) and (2), (see p. —, no. —) states that "An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim —

(1) resulted in a decision that was contrary to, or involved in an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in State court proceedings."

Petitioner avers that there was such an unreasonable determination of the facts as shown, and that it was in conflict with established Federal law. The "Order" (see p. App; no. D)

4.

The Attorney General stated that he did not file a copy of said State habeas corpus transcript because it was not "germane" to his claim of a procedural bar to habeas review against Petitioner, because the same State habeas petition was filed "untimely" by petitioner. In reality, it was filed late by his appellate attorney who had been payed a part of his fee in advance, and had promised a timely filing of said petition. This was ineffective assistance.

Petitioner has shown that both a void indictment and "ineffective assistance" together would except such a procedural bar as was imposed on Petitioner. There is not a copy of said transcript in his records, and Petitioner may not be able to obtain one. (Order, 11-16-2015, see Appendix D). Butts Co. Georgia, Civil Action File no. 2015-HC-15.

5.

Petitioner is sure that the Attorney General did not want the Court to hear trial counsel, J. Wiggins, admit that he did not compare said void indictment to the relevant statute, or see that the State court failed to have a finding of facts and law as is required by statute and Ga. State case law. (See O.C.G.A. § 9-14-49, on VIII, p.7; no.25).

6.

In support of petitioner's claim, the Federal statute (28 U.S.C. §2254 (e)(2), see p. VIII, no. 6) states that "If the applicant has failed to develop the factual basis of a claim in State court proceedings, the Court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(e)(2)(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense."

(F) "If the applicant challenges the sufficiency of the evidence adduced in such State court proceedings, to support the State's determination of a factual issue," then he shall, if able, produce that pertinent part of the record, or the Federal Court shall direct the State to produce said record..." (see p. VIII, no. 7)

7.

Petitioner claims that he has shown the constitutional violations of a void indictment, the Court's avoidance of a comparison of said indictment to the relevant statute, several instances of ineffective assistance, a prosecutorial threat, and feels that his petition should be granted.

Conclusion

Petitioner has cited Federal and State cases all holding that constitutional violations of the due process clauses of the V and XIV Amendments to the U.S. Constitution have occurred. The case cites address the lack of sufficiency in evidence contained in indictments. Petitioner has made a "substantial showing" that his indictment is more than simply "flawed." Petitioner has shown denials of constitutional rights in both the absence of essential elements in his indictment and the ineffective assistance of counsel which he payed well for. These facts qualify his claims as being with "merit" as required by 28 U.S.C. §2253 (c)(2), see (VIII, no8; 5) which claim has been denied by the 11th Circuit Court of Appeals. Petitioner also states, under penalty of perjury, that his guilty plea to "aggravated animal cruelty" was given under the duress of a prosecutorial threat. (I,6; VIII 5+6, no,24)

The issues petitioner presents are, or should be, basic constitutional guarantees for all citizens of the United States. Since there is only a 1 in a hundred chance of review by the U.S. Supreme Court, this leaves a wide avenue of "discretion" for the U.S. Courts, both District and Circuit Courts of Appeal, to travel down.

Since the Federal District Court has used its "discretion" to describe petitioner's appellate attorney's late filing of said State and Federal habeas petitions as probably "excusable neglect" based on "simple miscalculation", petitioner fears that the Supreme Court may consider that these opinions are merely an "erroneous factual finding" or a "misapplication of a properly stated rule of law." These reasons have been given by the Court for denying review on appeal. This would be a failure to recognize the lower Federal Court's abuse of their power of "discretion".

Tragically, this is an unpleasantly truthful situation, but realistically it may be the order of the day. This power of discretion is used by Federal Courts to impose their will as versus the recognition of constitutional claims with "merit." Checks and balances on this power of discretion are almost non-existent, since only one in every 100 cases are reviewed by the Supreme Court.

Petitioner has, from reading and experience, come to realize that the 11th Circuit Courts in Georgia may be influenced by an old, inescapable heritage of proximity to Savannah, Georgia, founded in 1722 by Gen. Oglethorpe as a british "penal" colony....

The petition for a writ of certiorari should be granted.

Respectfully submitted this 22 day of May, 2018.

Arthur Lawton Clark