

p. (7) of (91)

Case Number

In The

Supreme Court of The United States

John C. Carter _____ Petitioner

Glenn Johnson, Warden. et.al; pro forma:

Antoine G. Caldwell _____ Respondent(s)

Petition For A Writ Of Certiorari To United
States Supreme Court From The 11th Circuit

John Cary Carter P.O. Box 344

G.D.C. # 1108530

Wrightville, Georgia 31096

Johnson S.P. Telephone # 478-864-4100

Questions Presented For Review

Number One = Is the hiatus between the termination of a criminal jury trial and the beginning of an appeal a critical stage of criminal proceeding(s) in the State of Georgia and/or other nation state(s) such as the Fourth and Tenth Circuit's state(s) territories?

Number Two = Could a Federal Judiciary openly deny that the determination of whether the right to have Assistance of Counsel during the pre-appeal stage(s) of the trial proceeding(s); wherein, the right to have effective-Assistance of Counsel must be asserted or waived/banned under State law(s) is a Question lacking in substance/merit(s), which should not be mandated on the State(s), and applied to petitioner, John C. Carter's Forsyth County Superior Court Two Thousand and Nine Indictment No. 08-CR-0655, et al.?

Number Three = After discovering that the State's Attorney(s) filed a 26 page "Answer" to John C. Carter's petition is it fair to deny him an opportunity to see what this document is after notifying the District Court of the State's failure to mail him a copy (of said habeas corpus "Answer")?

list of parties As Made Known To Petitioner, John C. Carter, Supreme Court Rule 1-4.1. (b) 32.6 compliance

Alun, Abul - State's Witness;

Bagley, Jeffrey S. - State Criminal Trial Court Judge;

Caldwell, Antoine G. - Warden of Johnson State Prison (John C. Carter's current physical location)

Cox, Jeffrey L. - State Criminal Defense (Appointed) Attorney

Erickson, Mary - State Appellate / Criminal (Appointed) Attorney
(allegedly deceased according to 11th Circuit Respondent filing)

Fuller, J. Clay - active Northern District of Georgia U.S. Magistrate Judge;

Johnson, Glenn - Warden of Hancock State Prison (John C. Carter's place of incarceration in 2011 A.D.; initial filing year)

Malcolm, Clint C. - Counsel for Respondent;

O'Kelley, Hon. William C. - United States District Court Judge;

Pittman, Kevin - Deputy Sheriff - State's Witness

Scalia, Jennifer Lynn - Prosecutrix;

Story, Richard W. - actively assigned United States District Court Judge (dismissed Civil / Criminal Habeas Corpus # 2:16-cv-00223-RWS-JCF).

Respectfully Submitted

July 12th, 2018

John C. Carter

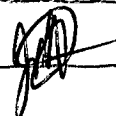


Table Of Contents

p.(10) of (91)

p. (4)-(6) Request/Affidavit to proceed I.F.P. - S.Ct.R. 12.2;

~~p.(7)-(9)~~ p. (25)-(21) Opinions, Relevant Material in Appendix after argument - S.Ct.R. 14.1(h)(i) - (not to be counted as page limit S.Ct.R. 33.1(d));

p. (7),(8) Cover page and Question(s) - S.Ct.R. 14.1(a);

p.(9) List of Parties S.Ct.R. 14.1(b);

p.(20)-(14) Table of Contents/ Authorities cited S.Ct.R. 14.1(g);

p. (12)-(15) Basis of Jurisdiction (verbatim text) S.Ct.R. 14.1(e)(i),(ii),(v),(f);

p. (16)-(21) Statement of Proceedings Below Setting Forth Facts S.Ct.R. 14.1(f);

p. (22)-(24) Supporting Arguments For Granting Writ;

p. (25) Appendix [A] - Relevant State Habeas Conclusion of law;

p. (26) Appendix [B] - Unrebutted Testimony showing Fraud thru p. (22);

p. (30)-(31) Appendix [C] Harmless Error analysis on constructive deprivation of counsel by U.S. District Court Judge, Richard W. Story;

p. (32)-(38) Appendix [D] Multi-purpose dismissal letter by 11th Cir. Ct.;

p. (39)-(57) Appendix [E] Petition for "en-banc" oral hearing 28 U.S.C. 3.46(c);

p. (58)-(60) Notice Appendix [F] Notice of denial to order relief;

p. (61)-(64) Appendix [G] Docket History of 2/1/2018 by U.S. Dist. Ct. showing state's attorneys filed a ~~copy~~ "answer" that petitioner never received a copy of and supporting motion to mail him a copy of said "answer", and Judge Story's denial to cause a copy of a (26) p. "Answer" secretly filed to be mailed to Indigent Pro-Se Petitioner, John C. Carter ---;

p. (65)-(67) Appendix [H] - Alleged Pro-Se Notice of Appeal / Relevant lack of Information concerning Appellate - Procedure(s), etc.;

p. (68)-(71) Appendix [I] - Appellate Attorney's ignorance of case/evidence/procedure(s), law(s);

p. (72)-(76) Pleadings establishing constructive deprivation of counsel; Appendix [J]

p. (77)-(86) - Appendix [K] Nine page Objection specifying law(s) being violated by

United States Magistrate Judge; J. Clay Fuller's dismissal of my Federal Habeas Corpus Petition;

p.(87)-(91) Amendments mailed to the U.S. Dist. Ct., and 11th circuit Ct. after U.S. District Judge Richard W. Story decided constructive-deprivation-of-counsel [during a critical stage] based upon (9) page Objection/ Failure to object F.R.C.P. 15(b)(2), [Appendix h].

Table Of Authorities

p.(15) O.C.G.A. § 9-11-60 (a); Kitchens v. Smith (1971); Edwards v. S.C. (1963); Johnson v. Zerbst (1938);

p.(20) Nelson v. Peyton (1969); Baker v. Kaiser (1991); Mayle v. Felix (2005); Baker v. Dretke (2003); Withrow v. Williams (1993);

p.(21) Walker v. Johnston (1941); U.S. v. Clarke (1874)

p.(22) Baker v. Kaiser, Nelson v. Peyton, *supra*, McAffee v. Thaler (2011)

p.(23) Powell v. Alabama (1932); Sims v. Balkcom (1964); Lewis v. Lamarque (2003); Roberts v. Corrothers (1998); Johnson v. Caldwell (1972); McAuliffe v. Rutledge (1973); Harris v. Nelson (1969); Day v. McDonough (2006)

p.(34) Borden Inc. v. Florida E.C.R. Co. (1985); Wallin v. Fuller (1973); U.S. v. Hogan (1993); U.S. v. Brester (2015); F.R.C.P. 15(b)(2); O.C.G.A. § 9-14-51; Williams v. Kaiser (1945); Williams v. Turpin (1996)

Statement of Jurisdiction

The jurisdiction of this Court is pursuant to Hohn v. United States, 118 S.Ct 1969, 141 L Ed 2d 242 (1998); 28 U.S.C. A 331251-1254; 2253(c)(1)(3); 2254 Art III of the United States Constitution - 1st, 4th, 5th, 6th, 8th 14th Amend(s) (same).

(*) Under the authority of Hohn v. U.S., supra a direct-appeal is now made to the 12th circuit court of appeal(s) "April 04, 2018" letter/denial, and "June 12, 2018" en-banc denial by "the court" (*)

Respectfully Submitted This 12th Day of July,
Two Thousand and Eighteen.
28 U.S.C. 31746 etc

John C. Carter



28 U.S.C.A. § 2241 Power to grant writ:

(2) Writs of Habeas Corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit Judge within their respective jurisdiction. The order of a circuit judge shall be entered in the district wherein the restraint complained of is had...

(3) He is in custody in violation of the laws or treaties of the United States.

28 U.S.C.A. § 1254 Court of Appeals; Certiorari; Certified Questions -

(1) by writ of cert. granted upon the petition of any party to any civil or criminal case, before or after rendition of a judgment or decree.

V. Criminal Action - Provisions concerning Due Process of law and just compensation clauses - 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 offence 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 to be deprived of life, liberty, or property without due process of law...

Amendment VI Rights of the accused - 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 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 Assistance of Counsel for his defence.

Amendment 14 Section 1 [Citizens of the United States] -

All persons born or naturalized in the United States and subject to 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 the 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.

28 U.S.C.A. § 2254 State Custody; remedies in Federal Courts -

(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 United States (b)(2). 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 unless it appears that— (A) the applicant has exhausted the remedies available in the courts of the State; or (B)(i) there is an absence of available State corrective process; or (ii) circumstances exist to render such process ineffective to protect the rights of the applicant.

Article III, Clause 1 [United States Constitution] Subjects of Jurisdiction - The judicial power shall extend to all cases, in law and equity, arising under the Constitution, the laws of the United

States, and Treaties made, or which shall be made, under their Authority; - to all cases affecting Ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; - to Controversies to which the United States shall be a party; - to controversies between two or more States; - between citizens of different States; - between citizens of the same State claiming Lands under Courts of different States; - and between a state, or the citizens thereof, and foreign states, citizens (or subjects)

O.C.G.A. § 9-11-60 Relief from judgments.

(a) Collateral attack. A judgment void on its face may be attacked in any court by any person.

(f) Procedure; time of relief. - A judgment void because of lack of jurisdiction of the person or subject matter may be attacked at any time.

Kitchens v. Smith, 401 U.S. 847, 28 L. Ed. 2d 519, 521-522, 91 S.Ct. 1089 (04/15/1971) Holds: Right to counsel 6th Amendment applicable through the 14th Amendment U.S. Const.; And Edwards v. S.C. 372 U.S. 229, 340-341, 83 S.Ct. 680 (1963) Holds "Bill of Rights, which are fundamental safeguards of liberty immune from ... state invasion by the Due Process Clause of the 14th Amendment ..."; conviction in violation of rights guaranteed by the 5th & 6th Amend(s) is a nullity ... necessary element of courts jurisdiction to proceed ... may be lost in the course of the proceeding(s) ... judgment of conviction by a court without jurisdiction is void ... examine the facts for himself when if true as alleged they make the trial absolutely void" (Quoting) Johnson v. Zerbst, 304 U.S. 458, 467-468, 82 L. Ed. 1461, 1462, 1467-1468 (1938).

Statement Of The Proceeding(s) Below

(1) Jeffrey L. Cox being appointed by the Indigent Defense Act Administrator Connie L. Brooker to represent John C. Carter re: Criminal indictment No. 08-CR-0655 in the Superior Court of Forsyth County, State of Georgia "until relieved by Order of the Court" on the 26th Day of September, Two Thousand and ~~Four~~ Eight - See Record Pages 0599, 0610, 0620 - Vol. V of VII Hancock County Superior Court - Case: 11 HC-11; U.S. District Court - Northern District of Georgia - 2:16-cv-00223-RWS - Doc. 29, Respondent's Exhibit 7(e), Petitioner's Objections - Doc. 35, 36;

(2) Statement(s), Oral Order(s) by Forsyth County Superior Court, Judge, Hon. - Jeffrey S. Bagley indicating that Jeffrey L. Cox's representation was finished after two jury trials had resulted in a split verdict, yet remarking "he has thirty days to appeal" - See Record pages 1070, 1073 State Habeas Cor. Vol. VII of VII Case: 11-HC-11; U.S. District Court - Northern District of Georgia - 2:16-cv-00223-RWS - Doc. 29, Respondent's Exhibit 7(g); Petitioner's Objections - Doc. 35, 36;

(3) On November 16th, 2008 a "Pro-Se Notice-of-Appeal" was filed in Forsyth County's Superior Court, State of Georgia; John C. Carter was still represented by Jeffrey L. Cox; Because there is not any Order signed by the trial Judge allowing Mr. Cox' withdrawal this act amounted to a fraud, or nullity under Georgia Law(s) & Federal Constitutional Right(s). Permitting this alleged "Pro-Se" Notice-of-Appeal to be filed contradicts it's plain-meaning, as it did not state that the United State(s) Constitution 6th Amendment was being —

~~apparent~~ abandoned, and/or waived. John C. Carter was appointed Mary Erickson on November Twenty-Third Day by Forsyth County Indigent Defense Administrator— See Record pages 0598 through 0602—

0734— Vol. II of VII— Hancock County S. Ct.— Case=11 HC-11; U.S. District Court— Northern District of Georgia— 2:16-cv-00223-RWS—

Doc. 29, Respondent's Exhibit 7(e), Petitioner's Objections— Doc. 35, 36;

(4) Undisputed evidence presented that John C. Carter was appointed

Jeffrey L. Cox due to his poverty, and inability to hire counsel, which was combined with uncontradicted allegation(s), and testimony during the State Habeas trial under the ground of Ineffective Assistance of Appellate Counsel/ "all critical stages" —;

evinced that the constructive-deprivation-of-counsel claim

during the hiatus-between-the-termination-of-trial and the

beginning of the appeal, which was not raised on direct-appeal

was not barred, and amounts to: Fraud... Record Pages (1), (4),

(74), (75), (76), (77); Respondent's Exhibit 2 (Petitioner's handwritten

habeas corpus p. (25) (26), as continued from p. (4), (5), (18), and Respondent's

Exhibit 7a— State File; U.S. District Court— Northern District of

Georgia— 2:16-cv-00223-RWS— Doc. 27;

(5) State Judge, Hugh V. Wingfield, III dismissed and denied my

claim, as being orally alleged even though the State admitted

receipt of handwritten-habeas-corpus-petition on the Twelfth Day

of October, Two-Thousand and Eleven. See Record Pages 2 of

Respondent's Exhibit 7a, and pages 15-16— Respondent's Exhibit

3—; U.S. Dist. Ct. File— 2:16-cv-00223-RWS— Doc. 27;

(6) The Supreme Court of Georgia declined to address these issues on March Seventh, Two Thousand and Sixteen— Case—

Number 51640287- Respondent's Ex. 4 Dist. Ct. File ... Doc. 27;

(7) On the 22nd day of 2016 John C. Carter mails his Federal Habeas Corpus petition alleging the claim, as best he could after explaining in ground Two, Three, Four on the court's printed forms that his legal documents were taken from him on the 16th day of June, 2016 at State of Georgia's = Smith State Prison; this information was mailed upon = Clerk, Middle District Court Of Georgia: 201 West Broad Avenue: Albany, GA 31701 because the petitioner, John C. Carter was being held in State of Georgia's = Valdosta State Prison [* A copy of this Federal Petition was served upon = Attorney General, State of Georgia: 40 Capitol Sq. S.W. Atlanta, Georgia 30334 - 1300, ~~inserted~~ and the Warden of Valdosta S.P. *]

(8) Sometime in March, or April of Two-Thousand and Seventeen the Northern District Court Of Georgia's Gainesville Division assumed jurisdiction to give the Warden/ State of Georgia thirty-five days to respond Doc. 20 U.S. Dist Ct File Number 02-16-cv-00223-BWS. [* In February of 2018 the Gainesville Division complied with a request to provide docket information revealing that a 26 page Answer was filed, which the Petitioner never received a copy of denying him an opportunity to file a Traverse for disputing whatever untruth(s) it may contain. *] The Federal Court in Gainesville has refused to provide John C. Carter a copy of the Answer on the ground that the case is closed.

(9) Magistrate Judge, J. Clay Fuller received the "Answer" and VII volumes of the State Habeas Corpus Trial Records; — Doc. 27, 28, 29; there is not any order entered allowing Mr. Cox's withdrawal from John C. Carter's defense — See Respondent's Exhibit

7e., Doc. 39 in the Appeal Index pages of 0598 through 0601 ...;

(10) On the Thirteenth Day of August, Two Thousand and Seventeen John C. Carter mails specific-objection(s) to Magistrate Judge, J. Clay Fuller's report, which contained blanket-denial(s); U.S. District Court Judge, Richard W. Story decides the stand-alone Deprivation-of-Counsel, which occurred ~~the~~ during the hiatus-between-the-termination-of-trial-and-beginning-of-the-appeal under a Harmless Error Standard - See pages (5) (6) of Doc. 37; also Doc. 35, 36, as to 34 in U.S. Dist. Ct. File 2:16-cv-00223-RWS-JCF;

(11) The warden/state gives implied consent to the determination of the stand-alone deprivation-of-counsel claim by failing to object - See 35, 36, and the determination of the issue in Doc. 37; nothing appears in the U.S. District Court File 2:16-cv-00223-RWS-JCF to the contrary...;

(12) John C. Carter appeals the dismissal of this issue under a harmless-error standard, and requests formal amendment in order to insure accuracy of the records, as to the deprivation-of-counsel issue decided on the Fourteenth Day of September, Two Thousand and Seventeen; 11th Circuit Court of Appeals acknowledges appeal - See Doc. - 39 thru 43; U.S. District Court File 2:16-cv-00223-RWS-JCF; U.S. Court of Appeals File 17-14475

(13) Richard W. Story, U.S. District Court denies request to treat issue as amended - Doc. 44 [*10/16/2017*];

(14) John C. Carter submits Motion-for-new-trial, the Court denies it; Mr. Carter submits appeal to the denial of

the amendment, and or new-trial; the U.S. District Court Frustrates the petitioner's ability to seek relief in the 11th Circuit court of appeals by denying his request to proceed in-forma pauperis to review these action(s)/order(s) - See U.S. Dist. Ct. Doc. 44 through 55, Case File 2:16-cv-00223-RWS;

(15) John C. Carter mails the Gainesville District Court the Amendment on the Sixteenth Day of October, 2017, and a copy of the same to the 11th circuit court of appeals to insure accuracy of the proceeding(s) - See U.S. Dist. Ct. File Doc. 45 - Case 2:16-cv-00223-RWS-JCF; U.S. Court of Appeals File 17-14475;

(16) Petitioner, John C. Carter files his second unopposed Motion To Amend The Pleadings To Conform Them To The Evidence, and Reopen Case; the Order denying relief without any legal support states that relief must be obtained in the 11th Circuit Court Of Appeals [or the United States Supreme Court.].

Reasons To Grant This Writ

The actions of the Eleventh Circuit in denying me a Certificate Of Appealability to determine whether the hiatus between the termination of trial and the beginning of an appeal "is a critical stage of a criminal proceeding should be reversed, set aside and/or otherwise disaffirmed.

This question has been decided by the Fourth circuit court in Nelson v. Peyton, 415 F. 3d ~~1154~~ 1154, 1157, 1159 (4th 1969); approved in the Tenth Circuit in Baker v. Kaiser, 929 F. 2d 1495, 1499 (10th 1991). In a departure from this Court's decision(s) in Mayle v. Felix, 545 U.S. 644, 650, 125 S.Ct. 2562, 162 L. Ed. 2d 582 (2005) (a) (b); Banks v. Dretke, 540 U.S. 668, 124 S.Ct. 1256 (2003) (c), and Withrow v. Williams, 507 U.S. 680, 113 S.Ct. 1745 (2.)

(1993) the Eleventh Circuit refused to treat the claim of constructive deprivation of counsel as amended after the State of Georgia's Attorney General failed to object to the assertion raised in John C. Carter's Objections, which were discussed and adjudged in a dismissal by Hon. Richard W. Story, U.S. District Judge on the Fourteenth Day of September, Two Thousand and Seventeen under a "Harmless Error" standard.

Unless Judge Story's opinion is a nullity itself because of the failure to ensure that the petitioner, John C. Carter received a fair Federal Habeas Corpus hearing; i.e., a copy of the "26 page Answer," which denied him an opportunity to file a Traverse *cf. Walker v. Johnston*, 312 U.S. 275, 85 L. Ed. 830, 61 S.Ct. 574 (1944); *U.S. v. Clarke*, 87 U.S. 92, 22 L. Ed. 320 (1874) (6.), it is certainly in direct contradiction of *Nelson, Baker, supra*.

After diligently reading the precedents of this State and Nation's decisions it would be unconscionable to refuse to address a Federal Habeas Petition governing the Sixth Amendment Right To Counsel under the circumstances.

The ramifications of not extending the right to counsel to protect criminal defendants during intricate, and easily identifiable pre-appeal stages of trials allows the prosecution to subvert the purpose and intent of the Sixth Amendment. Only after having been fully informed of all appellate rights should a criminal defendant be allowed to waive such rights, and this Court should speak.

Question One: Is the hiatus between the termination of a criminal jury trial and the beginning of an appeal a critical stage of criminal proceedings in the State of Georgia and/or other nation states such as the Fourth and Tenth Circuit's states/ territories?

The Court(s) in Baker v. Kaiser, 922 F.3d 1495, 1499 (10th cir. 1991); McAfee v. Thaler, 630 F.3d 383, 391-392 (5th cir. 2011); Nelson v. Peyton, 415 F.3d 1154, 1157-1159 (4th cir. 1969) would compel a different outcome to this case if this Court would speak on this issue?

Question Two: Could a Federal Judiciary openly deny that the determination of whether the right to have Assistance of Counsel during the pre-appeal stages of the trial proceedings wherein, the right to have effective-Assistance-Of-Counsel must be asserted or waived/ barred under State laws is a Question lacking in substance/merits, which should not be mandated on the State(s), and applied to petitioner, John C. Carter's Forsyth County Superior Court Two Thousand and Nine Indictment No. 08-CR-0655, et. al.?

Question Three: After discovering that the State's Attorney(s) filed a 26 page "Answer" to John C. Carter's petition is it fair to deny him an opportunity to see what this document is after notifying the District Court of the State's failure to mail him a copy?

During the 2009 A.D. court term in the Superior Court of Forsyth County, State of Georgia I, John C. Carter was tried in two jury trials, which resulted in a 20 year sentence; after being imprisoned for a decade and reading the laws it has become questionable what constitutional rights that an uneducated, poor,

legally ignorant person charged with a crime has to counsel³.

In Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L. 158 (1932) this Court held "[t]he right to counsel applies to every step against a criminal defendant"; In Sims v. Balkcom, 220 Ga. 5, Ct. 7, 13, 14 (3), 136 S.E. 2d 766, 770-771 (1964) the highest court in the State of Georgia which now opposes the right to counsel held "[t]he most critical period is between the time of sentence to appeal."

While being hailed before Hon. Hugh V. Wingfield, III in 2011 A.D. during Hancock County Superior Court term I, John C. Carter explained to the court the "uncontradicted allegation(s)" with the opposing party(s) own document(s) in support. Cf. Laws v. La Marque, 351 F.3d 919, 922 (9th 2003); Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th cir. 1998). — The State made no objection at the time of the claim as being "orally raised," which waived the issue under Johnson v. Caldwell, 229 S.Ct. Ga. 548, 192 S.E. 2d 900 (1972); cf. McAuliffe v. Rutledge, 231 S.Ct. Ga. 1, 200 S.E. 2d 101, 102 (1973); accord Harris v. Nelson, 394 U.S. 280 (1969); Day v. McDonough, 547 U.S. 198, 212 (2006); Mayler v. Felix, ~~545 U.S.~~ Supra.

After the U.S. Magistrate Judge, J. Clay Fuller attempted to dismiss this issue with the support of two state decisions cited with approval in Judge, Wingfield's Order in 2017 A.D. I filed a nine page objection clearly outlining this issue as one involving Article III of the U.S. constitution. The State did not object, which allows the amendment under Mayler v. Felix; Withrow v. Williams; Banko v. Dretke; supra, et al.

After having U.S. District Judge, Richard W. Story decide this issue, as being subject to harmless error review the Eleventh Circuit —

refused to discuss the issue or treat it as amended cf. Borden Inc. v. Florida E.C.R. Co., 772 F.2d 750, 757 (11th cir. 1985); citing, Wallin v. Fuller, 476 F.2d 1204, 1210 (5th cir. 1973); thereafter disregarding the decision(s) in U.S. v. Hogan, 986 F.2d 1364, 1369 (11th cir. 1993); accord U.S. v. Brester, 786 F.3d 1335, 1338-1339 (11th cir. 2015) stating "[t]his Court is bound by the earlier decisions until overruled en banc or by the Supreme Court". — The decision in Borden Inc. supra clearly states that when issues are tried by implicit consent, i.e., failure to object See F.R.C.P. 15(b)(2) they must be treated in all respects as if amended. — In a timely petition for an "oral hearing" En-Banc under 28 U.S.C. § 46 (c) to the Eleventh Circuit to hear it "from the horses mouth" why the application of law(s) noted would not be applied ... it was denied as not raising any new arguments or new evidence ...; an absurdity of law since both would be barred under the circuit court's limited jurisdiction ...; — Judge, "Kevin Newsom" / approval of a procedural bar under 2-14-51 O.C.G.A. is a legal absurdity under the legal reasoning of Williams v. Kaiser, 323 U.S. 471, 475-477, 65 S.Ct 363 (1945), which held that the State being able to defeat a right to counsel by denying the right would render it meaningless. Accordingly, the "right to counsel at the motion-for-new-trial" cf. Williams v. Turpin, 87 F.3d 1204, 1210 An.5 (11th cir. 1996) is also meaningless without a right to counsel "between the termination of trial and the beginning of the appeal; wherein, the decision whether or not to file the motion for new-trial must be made. To the extent that the secret filing of the 26 page answer has any merit, I should receive a copy".