

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

In re DANIEL A. SPOTTSVILLE — PETITIONER  
(Your Name)

VS.

STATE OF GEORGIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF HABEAS CORPUS  
UNDER 28 USC § 2241

US Court of Appeals for the 11<sup>th</sup> Circuit  
(NAME OF COURT THAT LAST RULED OF YOUR CASE)

AN EMERGENCY PETITION FOR AN EXTRAORDINARY WRIT  
OF HABEAS CORPUS (USC § 2241)

DANIEL A. SPOTTSVILLE

(Your Name) # # 977050

DODGE STATE PRISON  
Jenkins Correctional Center

(Address) 3404 East Farm Dr.  
2971 Old Bethel Rd.

Hillman, Ga. 30442

(City, State, Zip Code) Chester, Ga. 30132

(478) 982-6300

(Phone Number)

(478) 358-7200

(TRANSFERRED)  
NEW ADDRESS

EEPA/A201806029385DANS

## QUESTION(S) PRESENTED

- 1.) Question is, as a state prisoner does Alliant Spottsville have vested, binding Constitutional right to file a 28 USC § 2241 petition in the district court to challenge the execution of state sentence and did he not file a § 2241?
- 2.) Question is, if Alliant's issues are constitutional and true, would it entitle him to relief in state and federal courts, where "Exceptional Circumstances" and "vital flaws" exist in state fact finding procedures, sentencing, and appellate phases of this criminal case pursuant to § 2241?
- 3.) Question is, does Alliant (a former U.S. Army Service member) possess vested, binding rights pursuant to the 5<sup>th</sup> / 8<sup>th</sup> / 14<sup>th</sup> Amendments, that would entitle Alliant to modify, correct his sentence, at the duration of state custody?
- 4.) Question is, do the federal courts have duty to hold its own evidentiary hearing, when the state court did not decide on the factual issues presented in this case and is its failure a true fundamental miscarriage of justice?
- 5.) Question is, were the lower courts' decisions (state & federal) are based on an unreasonable determination of the facts presented, such as, Alliant's § 2241 habeas petition that was filed in the district court; should not the court order evidentiary hearing and/or modify sentence?

## QUESTIONS (CONTINUES)

- 6.) Question is, when Affiant presents to State and Federal Courts; U.S. Supreme Court's "STARE DECISIS" and cites Constitutional violations that do exist, should not the lower courts' decisions mirror those of the Supreme Court as "Law of the Land"?
- 7.) Question is, as a former U.S. Army Service member on active duty at time of arrest through sentencing phase, does Affiant have vested, binding Constitutional and Federal rights to be tried and sentenced by Uniform Code of Military Justice (UCMJ) jurisdiction, a jury of his military peers and not a civilian state court jury?
- 8.) Question is, as a "Soldier" at time of arrest does State Sheriff and deputy have authority to use deadly force to arrest unarmed suspect by shooting the Affiant in the lower back and right leg as he fled into an open field away from officers posing no immediate harm or threat to anyone?
- 9.) Question is, as a "Soldier" on active duty, did State court have the authority to violate established Federal "jurisdiction" and "custody" rights resulting in a 40 year sentence contrary to facts and law?
- 10) Question is, should the Court now grant relief pursuant to § 2241 where "jurisdiction" and "custody" violations, was original cause leading to clearly

## QUESTIONS (CONTINUES)

defective condition, manner, and location (venue) of the sentencing?

11.) Question is, because of "fundamental miscarriage of justice", will Court now establish new precedent to succor Affiant and all active-duty servicemembers' Constitutional protection to UCMJ jurisdiction (venue) and custody?

12.) Question is, in facts, Court finds predisposed fundamental errors; Should the Court now modify sentence or place Affiant on parole or render sentence as void?

### ISSUES TO DECIDE ARE WHETHER:

- Affiant has filed a valid 28 USC § 2241;
- Affiant as an active-duty Servicemember jurisdiction and custody does not belong to the state judicial systems;
- Affiant's fact finding proceeding, sentencing and appellate process was based on an unreasonable determination of the facts presented;
- Affiant had effective assistance of Counsel during fact finding process, sentencing phase, or on his 1st direct appeal;
- Affiant has been arrested with the use of excessive use of deadly force as a factor of his extremely harsh sentence.

## 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 G-9 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 G-4 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 \_\_\_\_\_ 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.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 3 Nov. 2016.

☒ 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. § 2241.

☐ 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 INVOLVED

28 USC § 2254

(b)(1)(A) the applicant has exhausted the remedies available in the courts of the State;

(B)(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(d)(1) resulted in a decision that was contrary to, or involved 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 the State court proceeding.

28 USC § 2241

(a) Writs of habeas corpus may be granted by the Supreme Court and any circuit judge within their respective jurisdictions.

(c)(3) He is in custody in violation of the Constitution or laws or treaties of the

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED  
(CONTINUES)

United States §

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a state court for a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

5<sup>th</sup> Amendment: ... nor be deprived of life, liberty, or property, without due process of law...

6<sup>th</sup> Amendment: In all criminal prosecutions, ... public trial, by an impartial jury ... and to have the assistance of counsel for his defense.

14<sup>th</sup> Amendment: All persons born or naturalized in the United States, ... No State shall make or enforce any law which shall abridge the

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED  
(CONTINUES)

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

Now come the petitioner, Daniel A. Spotsville, the Affiant herein above styled case, motion ... "An Emergency and Extraordinary Petition ..." pursuant to 28 USC § 2241, to wit, "Special Circumstances" warrant federal intervention of state criminal proceedings) and whereby the Affiant can show that a fundamental miscarriage of justice has resulted from the failure of the US District Court Middle District and the Court of Appeals 11<sup>th</sup> Circuit to entertain the claims or provide evidentiary hearing pursuant to 28 USCA § 2254 (d)(1).

Affiant Spotsville has been incarcerated, already serving 21 years of an unfortunate, improper, illegal sentence, a void sentence, contrary to law and facts, the principle of law, of justice, of equity. Affiant has not just lost his liberty but also property, and life with his children, grandkids and family that can never be given back. Affiant Spotsville prays that the Court will act promptly to rectify state court's "plain error" in sentencing, a 40 years to serve 30 years without evidence/facts to support such an extreme and severe sentence contrary to facts and law. Objectivity cannot come into play from the start of this case the Affiant was gun down, shot in the lower back and right leg by a deputy sheriff's shotgun, fleeing out of his truck into an open field was unjustified use of deadly force.

The Supreme Court held that when the facts of a state prisoner's claims (the Affiant) are in

- dispute, a federal habeas court must hold a hearing if the prisoner did not receive a full and fair evidentiary hearing on his federal claims at some point in the state court proceedings, Townsend v Sain, 372 US 293, 312 (1963); the Court, holding that a prisoner was entitled to an evidentiary hearing only if he could show cause for his failure to develop the facts in state court proceedings and actual prejudice resulting from that failure, Keeney v Tamayo-Leyes, 504 US 11 (1992).

A fundamental miscarriage of justice has occurred from the failure to hold a federal evidentiary hearing and this Court should decide whether the Affiant's allegations amount to a colorable claim(s) and if the allegations are true... the Affiant should be entitled to relief.

- \* Schiro v Landrigan, 530 US 465 (2007), a hearing could enable an applicant to prove the petition's factual allegations are true.

The Affiant has exercise diligence in this matter but as a pro se incarcerated prisoner, indigent and with limited access to the law library and postal service, in dealing with a prison mail room service. This Court should note that the Court of Appeals 11<sup>th</sup> Cir. has not responded to the Affiant's evidentiary hearing motion sent out on the 16<sup>th</sup> of January 2018. [SEE ATTACHMENTS 1-5] [Court's records will not show that Affiant sent some motions to the lower courts when he did so.]

## STATEMENT OF FACTS

On the 9<sup>th</sup> of December 1998 the Affiant was convicted and sentenced in Muscogee County Superior Court to 40 years to some 30 years. The case was to run concurrent with related case in Marion County (24 years to some 18 years, case # SU98CR 033) (Muscogee Co. # SU98CR 1445)

Affiant's counsel at trial did not file a notice of appeal, nor did trial counsel inform Affiant that a motion for new trial existed on file. Thus the Affiant was pro se during his appeal process, his first direct appeal without assistance of counsel. The Ga. Court of Appeals (case # A03A0007 / 4 Feb. 2003) was denied. The Habeas Corpus (# 2003 HC 50NS) was denied on 4 Feb. 2004 and the Ga. Supreme Court denied the certiorari on the (case # S04H 1157) [case did go all the way to USSC # 04-6208]

Affiant pro se, filed a "Motion to Set Aside Judgment as Void" in the trial court which was denied on 27 July 2010 (# SU98CR 1445). The appeal was denied on 17 Sep. 2010.

In May of 2012 the Affiant filed a renewal action that the trial court denied it. The Court of Appeals (# A12A209) Dismissed the matter on 28 June 2012 and the Supreme Court dismissed the matter on 5 Sep. 2012.

The Affiant on the 19<sup>th</sup> of Sep. 2012 sent to the trial court a "Motion to Modify Sentence" but the trial court (Judge J. Allen) alleges in his Order of 21 Feb. 2013 that no such motion has been filed.

now a "Motion of Default". The Court denies the matter based on an "Affidavit of Negative Answer" that was filed in the court. The Court of Appeals (#A130313) denied this matter on 16<sup>th</sup> of Apr. 2013; the Supreme Court followed with a denial (#S13C1332) on the 18<sup>th</sup> of Nov. 2013 and "Reconsideration" denied on 21 Jan. 2014.

"A Renewal of Motion to Modify Sentence and to Correct Void Sentence" was filed in the trial court by pro se Alliant on 6 Apr. 2015 and again the trial court judge Allen dismissed the matter, on the 2<sup>d</sup> of June 2015. The Ga. Court of Appeals (#A15A 2253) dismissed this matter on the 12<sup>th</sup> of Aug. 2015 followed by a denial by the Ga. Supreme Court on the 11<sup>th</sup> of Jan. 2016 (case #S16C0093) and a motion to reconsider was denied on 22 Feb. 2016.

On the 8<sup>th</sup> of April 2016 Alliant files a "Petition for a Writ of Habeas Corpus under 28 USC § 2241" in the "US DISTRICT COURT - SOUTHERN DISTRICT" (Case # CV 516-027). The Southern District transfers the case to the jurisdiction of the "US DISTRICT COURT - MIDDLE DISTRICT" on 16 May 2016.<sup>1</sup> However, this Court must

<sup>1</sup> The tangible fact is Alliant pro se did so file a valid § 2241 petition in the Southern District not to challenge the validity but the execution of a (State) sentence pursuant to 28 USC § 2241, is properly filed. [SEE]

\* Bishop Vs Penn, 210 Fed 3d 1295, 1304 n. 14 (11<sup>th</sup> Cir. 2000);  
\* Stanley Vs Utah Bd. of Pardons, 382 F3d 1208, 1213 (10<sup>th</sup> Cir 2009);  
\* Hernandez Vs Campbell, 204 F3d 816, 864 (9<sup>th</sup> Cir 2000).

Alliant's filing of a § 2241 petition is undisputed proof of claim by the lower courts that has not been resolved beyond a reasonable doubt, and there is an unreasonable determination of the facts presented in the state court proceedings. [SEE RECORDS]

review and give confirmation that Alliant did in fact file a § 2241 petition and not a § 2254 petition as the Southern District Court order so wrongfully alleges. Alliant did not file a § 2254 petition. Furthermore, the Middle District Court also, completely erred in its order (Case # 4:16-cv-0177-CD / 1 July 2016) when it alleges Alliant Spottsville has filed a pro se petition for writ of habeas corpus pursuant to 28 USC § 2254, challenging his 1998 convictions in both Muscogee County and Marion County, Georgia. [SEE ATTACHMENTS = EE]

Unquestionable is the "tangible fact" that Alliant Spottsville filed a "§ 2241 petition" and on page 3 items # 6 / # 7 and page 4 item # 8... all refer to a motion to modify sentence and correct a void sentence filed in the trial court of Muscogee County only... that does not challenge his convictions. <sup>2</sup> Alliant does not attack his state conviction of Muscogee Co. or Marion Co. from 1998, but "by law" brings "in fact" a 28 USC § 2241 petition only to challenge the execution of his sentence, not the validity of his conviction [Compare] Bishop v Reno (2000), supra; Straley v Utah Bd. of Par. (2009), supra; Hernandez v Campbell, (2000), supra. [Although modify sentence may lead to release.]

\* 2 US v NY Tel. Co. 434 US 159 (1977), the Supreme Court considered a Federal Bill that defined property... 'tangible objects'... Alliant Spottsville's § 2241 petition is 'tangible object' this court can not casually set aside in a challenge to the execution of a sentence, it is cognizable under § 2241. [SEE RECORD]

On the 5th of April 2016, the Affidavit did so file a 28 USC § 2241 petition in the District Court SD (US SD # CV 16-0277) that was transferred to the

Middle District (US MD # 416 CV 0077-CD-RSH) along with "Application to proceed in District Court without preparing on cost (short form)" and "Affidavit accompanying motion for permission to appear in forma pauperis".

Datto dated 28 May 2016. (See ATTACHMENTS = 33)  
The US District Court Middle District (US DC MD) on the 1st of July 2016 denied the petition as a second or successive habeas application for a writ of habeas corpus, 59254 petition; stating petitioner's affidavit did not make requisite showing therefore denied a Certificate of Appealability. (See RECORD/ATTACHMENTS = 33)

On the 9th of November 2016 the US Court of Appeals (CA 11th) in case # 16-14926-F also agreed in its ability to recognize that Affidavit filed on 3/24/16 by law and in fact" and so denied COA as unnecessary.

say; motion for IFP status denied because is "burdensome"; motion for appointment of counsel denied. 3 (See RECORD/ATTACHMENTS = 33)

On the 1st of August 2016, Affidavit filed in the 11th Circuit "Motion for Permission to Appeal in Form Pauperis and Affidavit" with a brief and a Certificate of Interested Persons form. (See RECORD/ATTACHMENTS = 33)

3 (Queen) 11th Cir. 590 F.3d 253, 255 (3d Cir. 2008) the provisions of 28 USC (b) refer specifically to claims presented in a second or successive habeas corpus petition filed pursuant to 28 USC § 2254 and therefore do not apply to a petition filed pursuant to 28 USC § 2241. [See also] *Bandrup v. Reno*, 225 F.3d 1100, 1111 (9th Cir. 2000); *Videna v. US*, 138 F.3d 693, 694 (7th Cir. 1998).

## REASONS FOR GRANTING THE PETITION

In the interest of justice, truth, and equity the Court must take into consideration that the Affiant, Mr. Spotsuille is a layman of law and incarcerated for the past 21 years. At which, in this case, there does so exist "extraordinary circumstances" to wit, State of Georgia, the lower courts have refuse to comply with the "Law of the Land". There exist from the beginning: Affiant's arrest with the use of excessive force; to an unreasonable determination of the facts in the state court proceedings; to having no attorney's effective assistance on 1<sup>st</sup> direct appeal. The Affiant also asserts that as a former US Army Servicemember at time of his arrest, that the State Court lack proper jurisdiction, venue of subject matter, or over person. And as for all the lower courts (State & Federal), not one provide pro se litigant Spotsuille a full, fair, and adequate hearing. It is undisputed that Affiant in this case has been deprived of his Constitutional protected rights. Affiant has diligently pursued his claims and has provide the lower courts with both prima facie and tangible evidence/facts to have warranted the lower courts to grant relief in favor of the Affiant. Affiant invokes the Court pursuant to, 28 USC § 2241 that not to hear and review all Affiant's proofs of claim would result in a fundamental miscarriage of justice, and there is credibility that State's reliability of proof of guilt is ambiguous and fictitious. Affiant's 40 years sentence is "EX-DELICTO".

# REASONS FOR GRANTING THE PETITION (ARGUMENTS / CITATIONS) (CONTINUES)

Imperative it is for this Court to recognize that the lower courts both in State and Federal forums have negated to afford the Affiant his right to be heard; especially as <sup>EG</sup> "clearly established" law consists of Supreme Court holdings in cases where the facts are at least closely related or similar to the case sub judice. This case does have "Special Circumstances."

From the inception of this case, Affiant in State and Federal forums has presented to the courts related or similar facts that can be found in the following US Supreme Court cases:

- xx 1) Switts Vs Lacey, 469 US 387, 393 (1985) and Halbert Vs Michigan, 545 US 605, 610 (2005);
- a) Constitutional right to the effective assistance of counsel for all direct appeals,
  - b) Due process and Equal Protection Clause required appointment of counsel for indigent defendants.<sup>4</sup>

- \*\* 2) US Vs Cronin, 466 US 648, 658 (1984) and Gideon Vs Wainwright, 372 US 335, 344 (1963);
- a) right to effective assistance of counsel,
  - b) ability of the accused to receive a fair trial,

- x 3) Tovar Vs Tovar, 541 US 77, 80-81 (2004);
- a) right to counsel extends to all critical stages

- 4 The 6<sup>th</sup> Amendment guarantees in both state and federal prosecutions... "the accused shall enjoy the right... to have the assistance of counsel for his defense." Record is absent as to an appointment of counsel on Affiant's first direct appeal in state, where Affiant was and is an indigent prisoner.

of the criminal process. (to include through the first appeal.)

\* 4) Strickland Vs Washington, 46 US 688, 688, 694 (1984);

- a) ineffective assistance of counsel,
- b) counsel's performance fell below an objective standard of reasonableness,
- c) there is a reasonable probability, that but for counsel's unprofessional errors, the result of the proceeding would have been different.

\* 5) Jackson Vs Virginia, 443 US 307 (1979) / Winship, 397 US 358 (1970);

- a) due process violation, state evidence of which no rational trier of fact could find guilt beyond a reasonable doubt. 5

\* 6) Teague Vs Lane, 489 US 288, 310 (1989);

- a) established a new standard for retroactivity analysis, (redressability);
- b) analysis is applied in 3 steps

\* 7) Kinsella Vs US ex rel Singleton, 361 US 234, 240-41 (1960).

\* and Solorio Vs US, 483 US 435 (1987) and Schlesinger Vs Councilman, 420 US 730 (1975);

- a) test for jurisdiction, is one of status, namely whether the accused... is a person who can be regarded as falling within the terms "land and naval forces";

5 14<sup>th</sup> Amendment's Due Process Clause — a denial of due

process is demonstrated if "the actions complained of... violates those fundamental conceptions of justice..." US Vs Lovasco 431 US 783, 790 (1977). In this case, errors constituted a fundamental defect which inherently resulted in a complete miscarriage of justice and exceptional circumstances exist. [Also] 5<sup>th</sup> Amendment.

(b) jurisdiction of court martial depends solely on the accused's status as a member of the armed forces;

c) held, that while an active duty serviceman is, such a status might be in military custody.

\* 8) Storey v Powell, 428 US 465, 494-95 n. 37 (1976), 480, 489;

a) an opportunity for "full and fair litigation" of the claim at trial and on direct review;

b) a fair opportunity to raise and have adjudicated the question,

c) the opportunity for "full and fair" consideration" of the claim.

\* 9) Townsend v Sain, 372 US 293, 313 (1963); 6 Factors;

a) held that when the facts of a state prisoner's claims are in dispute, a federal habeas court must hold a hearing if the prisoner did not receive a full and fair evidentiary hearing on his federal claims at some point in the state court proceedings,

(b) holding that a prisoner was entitled to an evidentiary hearing only if he could "show cause" for his failure to develop the facts in state court proceedings actual prejudice resulting from

\* 6 O'Neal v Secy. of the Navy, 76 F Supp 2d 641 (WP AD 1999), Custody of a serviceman on active duty is deemed to be the serviceman's commanding officer, that is the person with the military who has control over the serviceman. Affiant spent first four years of state incarceration as active duty serviceman. [SEE RECORDS]

\* 7 Affiant's 1st direct appeal in state criminal case (#A03A0007/4 Fed. 2003) was without the reflective assistance of counsel; Affiant was forced into prose by the trial court judge.

that failure.

- (c) the petitioner's allegation, if true, would entitle him to relief,
- (d) the court also recognized "Cause and prejudice" where a fundamental miscarriage of justice has resulted from the failure to hold a federal evidentiary hearing. <sup>8</sup>

Surely the Court can now conceive "Pro Hac Vice" that "STARE DECISIS" must give way to relief sought where Alliant Spottsill has clearly demonstrated in state and federal forums that he has suffered injury in fact. Alliant is invoking federal jurisdiction, to wit, Alliant has clear "Standing" and "established standing" for the federal Court(s) to intervene. State Court's sentence of 40 years to serve 30 years from Muscogee County to run concurrent with Marion County's sentence. \* Whitmore v. Arkansas, 495 US 145, 155 (1990). "The litigant must clearly and specifically set forth facts sufficient to satisfy these Art. III standing requirements." And "this Court" has cautioned lower courts that they are "powerless" to create their "own jurisdiction" by embellishing otherwise deficient allegations of standing.

Furthermore, Alliant has sent to the

8 Keeney v. Tamayo-Reyes, 504 US 1, 11 (1992)

11<sup>th</sup> Circuit an evidentiary hearing motion (16 January 2018). The Court of Appeals have never responded to the request for an evidentiary hearing. (SEE ATTACHMENTS 2-EE)

Affiant is not challenging his conviction but his sentencing to such a extreme punishment that is unsupported by facts. Relevant also is 28 USC § 2254 (d) which states in part: (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

In the State Court, appellate court, factual findings are also afforded deference, at least where the party is given an opportunity to be heard and the issues received plenty consideration before the appellate court made its finding. *Sumner vs Mata*,

449 US 539, 546-47 (1981), [also] *Rushen vs Spain*, 464 US 114, 120 (1983).

But in this matter, Affiant pro se did not have the effective assistance of counsel on his first direct appeal. As pro se on his first direct appeal he could not have the ability to reasonably determine or establish necessary facts to secure relief from such an unreasonable sentence that was not supported by facts presented in the state trial process.

An Evidentiary hearing is required if there is a dispute of material facts and Affiant can, has proven his facts are true, this would entitle him to relief where

he did not receive a full and fair state court proceeding. Alliant's Constitutional claims are valid and mandate this Court to assure that his federal rights involved are adequately protected. At the time of the Alliant's arrest, he was an active-duty-service member of the US Army who was gun-down by a deputy sheriff's ~~own~~ shotgun (shot in the back). No state or federal court has addressed all issues but it is a fact essential to cause of why Alliant still sits incarcerated in a state prison to a 40 to serve 30 years sentence. Alliant sought relief to such a harsh sentence in state courts, but no judge, state or federal courts, is willing to concede to violations of Constitutional Rights of an "Active-duty Service-member" who was arrested with the use of "deadly force".<sup>9</sup> This fact cannot be refuted but is becoming covered-up by the courts because Alliant's case will set a precedent that is warranted.<sup>66</sup> State courts should never have the authority to try, convict, sentence or incarcerate an Active-Duty Service-Member.<sup>99</sup>

Existing federal laws and statutes explains and limits the State(s) jurisdiction over federal government but in areas of active-duty-service-

- \* 9 Tennessee Vs Garner, 471 US 877 (1985) "the use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is Constitutionally unreasonable, and where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. [SEE ALSO]
- \* Bellows & Dainack, 555 F2d, 1105, 1106 (CA2 1977).

members in the State of Georgia and across this Nation. Active Duty Service Members are being denied their rights to military jurisdiction under Uniform Code of Military Justice (UCMJ). Service members do not receive due process or equal protection in a State courtroom, they do not face a jury of their peers but civilians with no understand of a military way of life. Often extra charges are fabricated to ensure a conviction where by prosecution always seeks the maximum sentence and the court allows it without cause. Service members, as well as Veterans in Georgia receive harsher sentences for same or similar felony charges. All service members (Vets) also can not receive paroles and end up incarcerated years after (civilians) other prisoner are released for same felony charges.

In the interests of justice so requires that an evidentiary hearing take place where "unusual (Special) Circumstances" exist and when there was a "vital flaw" in the State fact-finding proceeding or when State record is incomplete, (See) *Brown Vs Allen*, 344 US 443, 463, 506 (1953), the Court held questions of law and mixed questions of law and facts receive 'de novo' review. A review of Affiant's § 2241 petition (filed) and his Brief for Support (filed) and his Extraordinary... Evidentiary Hearing, (Sent out) that is not part of the record (as far as the Affiant is aware of, not filed). *Townsend, Supra*, at 319, also stated an evidentiary hearing is required in the absence of an adequate state court record. Further more, Affiant's case does so

~~persons~~ several of the Six Townsend Factors. [SEE ALSO]  
28 USCA § 2254, 28 USCA § 2241.

This petition before this Supreme Court of the United States is brought by Affiant in Good Faith and Clean Hands to correct a serious miscarriage of justice. Affiant who is alive today to tell his story/facts after being shot in the back by law officer (deputy sheriff) during an arrest (excessive use of force). State has violated Affiant's 5<sup>th</sup>/6<sup>th</sup>/14<sup>th</sup> Amendments.

Thus, the Supreme Court should review case where requisite showing of fundamental Constitutional Rights have been denied in State and Federal proceedings; actual prejudice is fact resulting in a fundamental miscarriage of justice that would clearly entitle Affiant Spinkville to relief sought, precedent is sought where there exist extraordinary circumstances, [§ 2241 RELIEF].

This <sup>14</sup> day of June, 2018,

I do swear, depose, say and claim that the above facts are true, correct and complete to the best of my belief and knowledge and not meant to mislead but to comfort truth, justice and equity.

Respectfully w/o prejudice,

PRO SE/AFFIANT/PETITIONER

SWORN AND SUBSCRIBED BEFORE ME

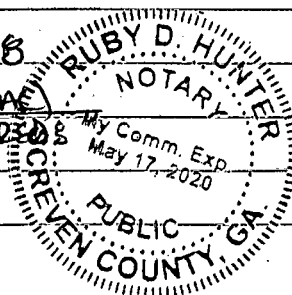
THIS 6 DAY OF May

Ruby D. Hunter  
NOTARY PUBLIC

2018

(SEAL)

EXPIRES



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EEPA/A 201806029385DAWS

"Indeed, no more than (affidavits) is necessary to make the  
prima facie case," US Vs HS 658 F2d 526, 536  
(7th Cir 1981); Cert. Denied, 50 US LW 2196, Sct, 22 March 1982.

### CONCLUSION

The petition for 28 USC § 2241 should be granted.

Respectfully submitted,

D. A. Spill

Date: 24 Aug. 2018