

No. 18-6964

**ORIGINAL**

Supreme Court, U.S.  
FILED

NOV 19 2018

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

HENRY L. WALLACE -----PETITIONER  
(Your Name)

VS.

UNITED STATES OF AMERICA -----RESPONDENT(S)

**ON PETITION FOR A WRIT OF "SUMMARY" CERTIORARI**

DISTRICT OF COLUMBIA (Superior Court)

(NAME OF COURT THAT LAST RULES ON MERITS OF YOUR CASE)

**PETITION FOR WRIT OF SUMMARY CERTIORARI**

HENRY L. WALLACE  
(Your Name)

P.O. Box 1033  
UNITED STATES PENITENTIARY Coleman #1  
(Address)

Coleman, Florida 33521  
(City, State, Zip Code)

N/A - Federal Prisoner  
(Phone Number)

**This case at bar is not a request for  
the full nine member panel of the  
Supreme Court to decide the issue.**

**The Supreme Court cases quoted  
have been granted Certiorari years  
ago, and are law of the land. I am  
requesting supervisory "Summary  
Certiorari". As the D.C. DISTRICT OF COLUMBIA  
appeals court is ignoring Supreme  
Court law.**

## QUESTION(S) PRESENTED

- 1) Whether a jurisdiction defective indictment can be procedurally or time bar adjudication after twenty years, if it violate these Supreme Court Full Certiorari case decisions of **United States v. Griffin** 82 L.Ed 764 (1938). **Insurance Of LR. Ltd** 456 U.S. at 702 **Philbrook v. Gladgett**, 421 U.S. 707 95 S.Ct 44 L.Ed 109 (1973) **McGrath v. Kristensen** 340 U.S. 162 (1950) **California v. La Rue**, 409 U.S. 109, 112 93 S.Ct 390 34 L.Ed 342 (1972) **Harris v. United States** 149 F.3d 1304 (11th Cir. 1998)?
- 2) Was the indictment issued by the Grand Jury [Jurisdictional Defective] in violation of Supreme Court case law contained in **Russell v. United States** 969 U.S. 749 (1962)? And was the indictment Count (1) constructively Amended, outside of congress voted into law murder statute, in violation of **Russell**?
- 3) Whether Petitioner had ineffective Assistance of Counsel in violation of **Strickland v. Washington**, when counsel assign failed to see the indictment jurisdictionally defective Count (1)?
- 4) Was the double jeopardy clause violated, when on the face of a District of Columbia indictment for murder, state of Maryland crimes of prior convictions and sentences were charged by indictment in count (1), and the trial jury convicted on count (1) state of Maryland crimes **Found guilty of again**, and sentence for, along with a D.C. murder count. Did this violate **North Carolina v. Pearce** 393 U.S. 711 (1969)?
- 5) Whether Petitioner was denied a fair trial, and prosecutorial misconduct occur, when Petitioner prior state of Maryland convictions and sentence was on face of the trial indictment in violation of **Parden v. Wainwright** 477 U.S. 168 (1986)?
- 6) Was **Berger v. United States**, violated by the prosecutor office misstatement of fact used to obtain conviction, when Count (1) statute for murder was "constructively Amended"?

QUESTION(S) PRESENTED

- 7) Whether **Yates v. Evatt** 500 U.S. 391 (1991) and **Francis v. Franklin**, 471 U.S. 307 (1985) Jury instruction fundamentally defective in defining element of crime, when the indictment count was illegally "constructively amended" violate these two Supreme Court decisions?
- 8) Whether **Russell v. United States** 369 U.S. 749, (1962) Supreme Court case law was violated unconstitutionally? When the state of Maryland prior crimes was listed on face of the trial indictment, which means the conviction was obtained on a factual basis different than charged in the D.C. Murder statute.
- 9) Was Supreme Court case law contained in **Townsend v. Sain** 372 U.S. 293 (1963) violated? When under District Of Columbia Code § 23-110 evidence hearing rules it should have been granted?
- 10) Whether Supreme Court case decision **Old Chief v. U.S.** 136 L.Ed 574 (1996) was violated in this case? When prior state of Maryland crimes, was on the face of a (D.C.) Indictment

## 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:

## TABLE OF CONTENTS

|  |   |
|--|---|
| OPINIONS BELOW.....                                    | 1 |
| JURISDICTION.....                                      | 2 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... | 3 |
| STATEMENT OF THE CASE .....                            | 4 |
| REASONS FOR GRANTING THE WRIT .....                    | 8 |
| CONCLUSION.....  | 9 |

## INDEX TO APPENDICES

|            |  |
|------------|--|
| APPENDIX A | District of Columbia (Court of Appeals) denial order for a § 23-110 Motion dated: Oct 30, 2018                               |
| APPENDIX B | Superior (District Court) of Columbia denial order for a § 23-110 motion "dated" March 27, 2018                              |
| APPENDIX C | Brief of Law for a D.C. § 23-110 motion (dated: Feb. 25, 2018)   |
| APPENDIX D | Motion for Agreement of Adjudicated Facts (Feb. 25, 2018)  |
| APPENDIX E | Motion/Rider Appeal brief to invoke the district of Columbia equivocal statutory codes/law that match the U.S. Federal codes |
| APPENDIX F | Government Motion for Summary Judgment (Superior Court) Sept. 12, 2018   |
| APPENDIX G | Appellant/Petitioner reply brief against the government motion for summary judgement (Sept. 27, 2018)                        |
| APPENDIX H | Brief of law on Appeal for a denial of district of Columbia (Superior Court) § 23-110 motion                                 |
| APPENDIX I | Public defender service (D.C.) letter (Oct. 31, 2018)  |

## TABLE OF AUTHORITIES CITED

| CASES   | PAGE NUMBER |
|---|-------------|
| Berger- U.S. 295 U.S. 78 (1935)   | 7           |
| California v. La Rue, 409 U.S. 109, 112 93 S.Ct 390 34 L.Ed 2d 342 (1972) | 4           |
| Darden v. Wainwright 477 U.S. 168 (1986)                                  | 7           |
| Francis v. Franklin 471 U.S. 307 (1985)                                   |             |
| United States v. Griffin 30 U.S. 226-229 58 S.Ct 601 821 L.Ed 149         | 4           |
| Harris v. United States, 149 F.3d 1304 (11th Cir. 1998)                   | 4           |
| Insurance of LR. LtD 456 U.S. 702   | 4           |
| McGrath v. Kristensen 340 U.S. 162 (1950)                                 | 4           |
| Philbrook v. Gladgett, 421 U.S. 707 95 S.Ct. 1893 44 L.Ed 109 (1973)      | 4           |
| Russell v. United States 969 U.S. 749 (1962)                              | 7           |
| Strickland v. Washington 466 U.S. 683 (1981)                              | 7           |
| Townsend v. Sain 372 U.S. 293 (1963)                                      |             |
| North Carolina v. Pearce 395 U.S. 711 (1969)                              | 7           |
| Russell v. U.S. 369 U.S. 749 (1963)                                       | 7           |
| Yates v. Evatt 500 U.S. 391 (1991)  | 7           |
| OLD CHIEF V. UNITED STATES 136 L. ED 574 (1996)                           | 6           |

## STATUTES AND RULES

|  |            |
|--|------------|
| D.C. Code 22-2404 and 22-2404.1 (Sentence Enhancement Statute) |            |
| D.C. Code 22-2104 (Murder) Formally 22-2404                    | Appendix C |
| D.C. Code 23-110 motion (review of conviction/sentence)        | Appendix C |
| D.C. Code 22-3201(F)   | Appendix G |
| D.C. Code 22-3202  | Appendix G |
| D.C. Code 22-2101 (Formerly) 22-2401                           | Appendix G |
| D.C. Code 22-2104 (Formerly) 22-2404                           | Appendix G |
| D.C. Code 22-2104.01   | Appendix G |

## OTHER

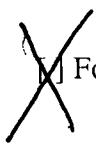
|  |            |
|--|------------|
| The final judgment rule 52 of the Fed.R.Civil.P. | Appendix G |
| Rule 201 Judicial notice of adjudicated facts    | Appendix C |
| Rules of evidence                                | Appendix G |
| Rule 403 Federal Rules of evidence (Prejudicial) |            |

IN THE  
SUPREME COURT OF THE UNITED STATES

**PETITION FOR A WRIT OF "SUMMARY 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**:

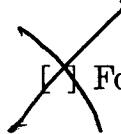
The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_ or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ 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 October 30, 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 INVOLVED**

5th and 14th Constitutional Amendment Rights (double jeopardy) (constructive Amendment of indictment statutoral charge for murder) (denial of a fair trial)  
Due process and equal protection of law violations. 6th Amendment Right to Effective Assistance of Counsel

D.C. Statutes 22-2404 and 22-2404.1  
(sentence Enhancement statutes)  
D.C. Statutes 22-2104 (murder) Formally 22-2404  
D.C. Statute 23-110 Motion for review of a sentence  
D.C. Statute 22-3201(F)  
D.C. Statute 22-3202  
D.C. Statute 22-2101 (Formerly 22-2401)  
D.C. Statute 22-2104 (Formerly 22-2204)  
D.C. Statute 22-2204.01

## **STATEMENT OF THE CASE**

The District of Columbia prosecutor office issued a jurisdictional defective indictment, and jurisdictional defects "cannot" be time or procedurally barred adjudication. Such defects .. I.E. "The Courts didn't have the statutorial or constitutional rights to do what it did, can never be legally forfeited. See... **United States v. Griffin**, 303 U.S. 226-229 58 S.Ct 601, 82 L.Ed 764 (1938) and **Harris v. United States**, 149 F.3d 1304) 11th Cir. 1998 **Insurance of LR., LtD**, 456 U.S. at 702 **Philbrook v. Gladgett**, 421 U.S. at 707 95 S.Ct. 1893 44 L.Ed 2d. 109 (1973). Jurisdiction can be raised at "any time, and addressed by Federal Court at any time on their own Motions. See: **M & Grath v. Kristensen**, 340 U.S. 162 (1950). Jurisdiction cannot be waived and cannot be conferred upon a Federal District Court by consent, inaction or stipulation. See: **California v. La Rue**, 409 U.S. 109, 112, 93 S.Ct 390 34 L.Ed 2d 342 (1972). The jurisdictional defects are multiple in this case at bar submitted issues. They are:

- 1) The trial indictment contains an illegal count (1). As shown in the issue below and is jurisdictionally defective, as no such law exist.
- 2) The indictment count (1) was illegally "constructively amended" by expansion of the D.C. Murder Code. "outside" congress written and voted into law Murder Statute
- 3) The trial jury rendered a jurisdictionally defective verdict for count (1). When no such statute language or charge exist. Count (1) is a non-law unconstitutional charge in violation of statutory law.

Petitioner states due to above, no! time or procedural bar can legally exist to bar adjudication and dismissal of a jurisdictional defective indictment.

What happen as shown and legally explained in the Appendix index Procedural History of the briefs filed, with proof of law in attached exhibits. Is This...

## STATEMENT OF THE CASE

The United States Prosecutor Office for the District of Columbia wrote a jurisdictionally defective indictment that constructively Amend the D.C. Murder Code. Reading the Appendix briefs (C-I) you will note. The Prosecutor took a sentence enhancement statute D.C. Code § 22-2404 and § 22-2404.1 "Language" and mixed it into a D.C. murder statute illegally. How? D.C. Code 22-2404 and 22-2404.1 are a sentence enhancement statute that is meant to be used "outside" of the grand jury, trial jury or the indictment. D.C. Code 22-2404.1 require the defendant and his lawyer be notified "outside" the indictment, Grand Jury or Trial Jury. That if a criminal defendant is convicted of murder that "**After trial**" at the sentence phase the prosecution will seek enhancement of the sentence D.C. Code 22-2404.1 (12) states "**At the time of the commission of the murder, the defendant had previously been convicted and sentenced, whether in a court of the District of Columbia, of the United States, or of any state for (A) murder!!** See Appendix i for D.C. Code 22-2404 and 22-2404.1 (F) Note 22-2404 and 22-2404.1(F) are separate, independent statutes of sentence enhancement, meant to be used legally "outside" the indictment, Grand Jury, or Trial Jury. Both statutes are "After" trial statutes for murder enhancement of a sentence, not meant legally to be on the face of a trial indictment. Congress voted D.C. Codes 22-2404 and 22-2404.1(12) into law, and clearly precisely stated, they are "not" indictable statutes, but sentence enhancement statutes only which means legally, the trial jury or Grand Jury are not meant to deal with [punishment/sentence] of a murder defendant. The trial jury do not legally involve itself with the sentence. That is for the court and prosecutor office "outside" the indictment, trial jury, or Grand Jury. By mixing 22-2404 - 22-2404.1(12) language and statutory explaination of what "aggravating circumstances" are for a sentence enhancement onto a face of a indictment for murder charge by expansion and created a new 100% illegally statute that is null and void legally to wrote or charge at count (1) is jurisdictionally defective, no such crime exist. Reading the Appendix (A-I) and all the attached Appendix exhibits you will note this Petitioner issues were ignored, circumvented, stonewall and completely unanswered. The law states on appeal, any issues "not"

## STATEMENT OF THE CASE

answered by the government are taken as true. None of this petitioners 23-110 motion issues were answered. The legal argument for dismissal of the non-law unconstitutional defective issued indictment is 100% contained in the Appendix exhibits of procedural history of the 23-110 filed motion. [read] all Appendix exhibits attached, for complete (case/issues) understanding, by putting on the face of the indictment this petitioner prior state of Maryland crimes and sentence for 1) murder 2) kidnapping 3) Robbery, at a District of Columbia murder trial 100% violated the below constitutional Amendments

1) Due process of law 5th and 14th Amendments (double jeopardy) (constructive Amendment of Indictment) (denial right to a fair trial).

2) 6th Amendment (ineffective Assistance of Counsel)

See **Old Chief v. United States**, 136 L.Ed 2d 574, 519 U.S. 117 S.Ct 644 (1996) ... "The name and nature of the prior offense raise the risk of a verdict tainted by improper considerations the purpose for the governments introduction of such evidence is solely to prove the element of prior conviction!" Abuse of discretion is the proper standard of review that is applicable in this case at bar to a Federal District Court rulings under the unfair - prejudice provision of rule 403 of the Federal Rules of Evidence... Where the District Court allowed the government to introduce a record of judgment identifying a prior offense. Petitioners state of Maryland crimes for murder, kidnapping, and armed robbery was on the face of a district of Columbia murder indictment. By purpose and design of the District of Columbia prosecutor office, whose purpose was to deny petitioner a fair trial. This 100% prejudice the trial jury to convict.

The below fully decided case law by Supreme Court Certiorari (years/decades) ago were violated by the District Of Columbia prosecutor Office decades ago.

## STATE OF THE CASE

- 1) The right to be secured from a defective indictment **Russell v. United States** 969 U.S. 749 (1962).
- 2) Effective Assistance of Counsel **Strickland v. Washington** 466 U.S. 688 (1984)
- 3) Double Jeopardy – **North Carolina v. Pearce** 395 U.S. 711 (1969)
- 4) Right for evidentiary hearing in a post conviction motion (D.C. 23-110) **Townsend v. Sain** 372 U.S. 293 (1963)
- 5) Outrageous Government misconduct (due process) and overbreath of statute **NAACP v. Alabama** 377 U.S. 288 (1964)
- 6) Conviction obtained on a factual basis different than as charged (due process) **Russell v. U.S.** 369 U.S. 749 (1962) (state of Maryland crimes)
- 7) Jury instruction fundamentally defective in defining element of crime (due process) (unfair trial) **Yates v. Evatt** see U.S. 391 (1991) **Francis v. Franklin** 471 U.S. 307 (1985)
- 8) Deny fair trial, prosecutorial misconduct **Darden v. Wainwright** 477 U.S. 168 (1986).
- 9) Prosecutors misstatements of fact used to obtain conviction **Berger v. U.S.** 295 U.S. 78 (1935).

Legally the combined statutorial law and constitutional Amendment Rights violated was massive in this case at bar. Requiring dismissal of the indictment with extreme prejudice to reindictment.

## **REASONS FOR GRANTING THE PETITION**

The issues presented are **National Issues** of extreme constitutional Amendment rights protections and adherance of statutorial law and constitutional rights message to the district of Columbia, prosecutor Office. Who violated many areas of law constitutionally and statutorily. The district of Columbia 100% totally ignored due process of law, equal protection of the law, denie a fair trial on purpose and by design. They purposely rewrote a statute and created new law out of "thin air" no one can rewrite a statute **except congress**. This was a constructive Amendment of D.C. Murder Statute, which is legally per se a reversal case. This Supreme must protect its law and give circuit supervision to the district of Columbia prosecutor office, to not break, ignore, change, bend, or circumvent law.

The district of Columbia illegally rewrote a statute "elements" and code as voted into law by congress for a murder count. They "constructively Amended" the Murder statute [by expansion] to include state of Maryland crimes as "a element" of a murder code. The trial jury convicted Petitioner "again" for state of Maryland crimes. Which by listing them on face of a D.C. Murder indictment 100% denied a fair trial and double jeopardy (convicted, sentence) twice for same crime.

### **CONCLUSION**

Remand the case to the District of Columbia, with instructions to dismiss the defective indictment with prejudice.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

→ HENRY L. WALLACE (PRO-SE)  
Date: Nov. 19<sup>th</sup>, 2018