

18-7325

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

IN THE  
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.  
FILED

DEC 21 2018

OFFICE OF THE CLERK

John Joseph Zinkand — PETITIONER  
(Your Name)

vs.

Carlos Hernandez et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

No Court ever has addressed nor Ruled on the merits of My claims.  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

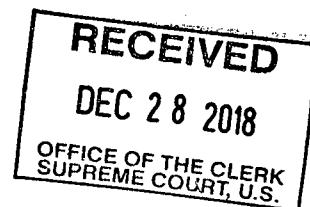
PETITION FOR WRIT OF CERTIORARI

John Joseph Zinkand  
(Your Name)

600 Amity Park Road  
(Address)

Spruce Pine, N.C. 28777  
(City, State, Zip Code)

NA  
(Phone Number)



QUESTION(S) PRESENTED

1. Did North Carolina State unlawfully imprison Petitioner upon an unconstitutional statute? That being N.C.G.S. § 14-27.7A, a statute that has been abolished, and replaced with two separate statutes, i. e., § 14-27.25 and § 14-27.30.
2. Did North Carolina's Courts- Supreme, Appellate, and Superior-Avery, Macon, Durham Counties, violate Petitioner's Due Process Rights to a "Legally applied for" Writ of Habeas Corpus by not addressing and/or Ruling on the Constitutional questions and/or issues?
3. Did Macon County N.C. Superior Court fail to acquire subject matter jurisdiction by proceeding upon fatally defective, incomplete, faulty indictment, under an unconstitutional statute?
4. Can N.C. State continue to keep Petitioner incarcerated with N.C.G.S. § 14-27.7A after it was replaced by an "implied repeal" with two (2) separate and newly created statutes?

## 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:

Carlos Hernandez Supt. of Avery Mitchell Correctional Institution, et al.,

Josh Stein Attorney General for N.C. State, et al.,

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APPENDIX B U.S. District Court Docket sheet showing dismissal of Certiorari and Habeas, and Judgement in Case sheet showing date. 3 pgs.

APPENDIX C N.C. Supreme Court order of denial for State Habeas, DeNovo Review, and Default Judgement dismissals. 2 pgs.

APPENDIX D N.C. COA denial of State Habeas. 1 pg., and N.C. COA denial of Motion for Injunctive Relief. pg 2.

APPENDIX E N.C. Superior Courts State Habeas denials - Avery, Durham Counties

APPENDIX F Complete copies of: Petitioner's State Habeas petition; Request for Injunctive Relief; Request for Default judgement; N.C. COA's denial of Injunctive Relief; and All Petitioner's Exhibits. - Total of 75 pgs.

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

See: Appendix F- State Habeas and related material.

### STATUTES AND RULES

Same as above.

### OTHER

Same as above.

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 No. 18-6168 (1:17-cv-00279-FDW); 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 (1:17-cv-00279-FDW); 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 C to the petition and is

reported at No. 314 P 08-2; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the N.C. Appellate Court court appears at Appendix D to the petition and is

reported at (07-980 P16-919); 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 23 January 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: 12 October 2018, and a copy of the order denying rehearing appears at Appendix A.

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 7 July 2017. A copy of that decision appears at Appendix C.

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

- U.S. Const. IV, V, VI, XIV, Amendments 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 14<sup>th</sup>.
- U.S. Const. Art. IV, sections 1 and 2 - "Full faith and credit shall be given in each state to public acts, records and judicial proceedings of every other state". Section 2 "The citizen of each state shall be entitled to all privileges and immunities of citizens in the several states".
- MD. Const. Art. III, sec. 29 - "every law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title".
- VA. Const. Art. IV, sec. 12 - "No law shall embrace more than one object, which shall be expressed in its title".
- Tenn. Const. Art. II, sec. 17 - "No Bill shall become law which embraces more than one subject, that subject to be expressed in its title".
- Minn. Const. Art. IV, sec. 27 - "No law shall embrace more than one subject, which shall be expressed in its title".
- U.S. Const. Amend. XIV, sec. 1 - "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 life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws".
- N.C. Const. Art. 1, sections 1, 5, 16, 18, 19, 21, 22, 23, 27, 35 - one through 35.
- Rule 7(c) of the Federal Rules of Criminal Procedure.
- N.C. G.S. (s): § 15-144.1, § 15-144.2, § 15A-644, § 15A-954 (a) (4), § 7A-245, § 7A-32, § 17-1 et seq., § 14-27.7A(a), § 14-202.1, § 14-177, N.C. App. Rule 7.3, also the Rules of Professional Conduct - Rule 3.8.

## STATEMENT OF THE CASE

This case arises under the due process clauses of the 1<sup>ST</sup> through 14<sup>TH</sup> Amendments, particularly under the Grand Jury clause and the Right to be tried upon valid indictments and unambiguous constitutional statutes, specifically N.C.G.S. § 14-27.7A(a), a statute with two (2) crimes in its title, that has been declared by N.C. Court of Appeals - in State v. Hicks, (2015), as at best confusing - and by House Bill 383's rewrite, recodification as unlawful - yet - this State refuses to abide by U.S. Supreme Court law in effect has seceded and abrogated the Constitutions. See: Petitioner's Exhibits.

This case arises from Macon County N.C., on 17 November 2006, whereas Petitioner was convicted after a jury trial where the State conceded (Post-Conviction) that there was absolutely NO PHYSICAL/CLINICAL EVIDENCE - which is unequivocally contrary to the trial allegations.

The trial court wrongfully allowed the prosecution to introduce all sorts of allegations of crimes not stated nor cited in any indictments - the trial judge Cornelius stated in jury charge that the indictments were materially vague and "simply allege" non-specific acts - This violates the Grand Jury clause of the 5<sup>TH</sup>, 6<sup>TH</sup>, and 14<sup>TH</sup> Amendments and shows proof of invalid as unconstitutional indictments and unlawful convictions. See: Petitioner's Exhibits.

This case is of Great Public importance in that the N.C. State has since 1996, used unlawful means to incarcerate an incalculable number of innocent citizens, even tho some may have been guilty... guilty of what is the question?

Herein I plead for Collateral Review - In The Interest of Justice - Thank you.

## REASONS FOR GRANTING THE PETITION

Because All inferior Courts have refused and/or denied Petitioner Due Process- The 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments guarantee certain Rights- I'm asking This Honorable Court to answer whether or not an incomplete, vague, unlawful indictment and/or unconstitutional statute has the authority to imprison any Citizen, and in this case specifically Me a Citizen of these United States.

I also ask that This Honorable Court Rule that My trial judge Preston Cornelius' statement stating that the State's indictment "simple allege" was a clear admittance of vague-unlawful instruments, and as such, unquestionable have NO jurisdictional authority.

Moreso, what the N.C. General Assembly has done through House Bill 383 (2015-181) is at law and fact - created a Legislative pardon by doing away with N.C.G.S. § 14-27.7A., replacing it with two (2) newly created statutes, i.e., § 14-27.25 and § 14-27.30 in an underhanded and truly deceitful attempt to hide the very fact that the single statute containing two (2) separate criminal acts within its title is and was - bad law - constitutionally unlawful.

For the reasons cited beforehand and what can only be dire necessity of Judicial Intervention - Respectfully I request Amicus Curiae counsels to edit and resubmit My claims or that a plain view grants a Judicial decision in My favor.

Thank you.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, by

John Joseph Zinklund

Date: 12-20-18