

No. 18-7461

PETITION FOR A REHEARING OF A JUDGEMENT (No. 18-7461)

IN THE

SUPREME COURT OF THE UNITED STATES FILED

FEB 24 2019

BRANDON J. LEE - PETITIONER

OFFICE OF THE CLERK
SUPREME COURT, U.S.

VS.

GERALD M. BAKER, WAKE COUNTY DETENTION CENTER - RESPONDENT

ON PETITION FOR WRIT OF HABEAS CORPUS

SUPREME COURT OF THE UNITED STATES

(NAME OF THE LAST COURT THAT RULED ON MERITS OF YOUR CASE)

PETITION FOR A WRIT OF HABEAS CORPUS

BRANDON J. LEE

(YOUR NAME)

WAKE COUNTY DETENTION CENTER P.O. BOX 2479, RALEIGH, NC 27602

(ADDRESS)

N/A

PHONE NUMBER

RECEIVED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

LIST OF PARTIES

[] ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE

[X] 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 JUDGEMENT IS THE SUBJECT OF THIS MOTION IS AS FOLLOWS

NORTH CAROLINA ATTORNEY GENERAL

ATTN: JOSHUA STEIN, ATTORNEY GENERAL

P.O. BOX 629

RALEIGH, NC 27602

QUESTION PRESENTED

WILL THE SUPREME COURT INVOKE ITS JUDICIAL SUPERVISORY POWER IN ORDER TO PRESCRIBE STANDARDS OF PROSECUTORIAL CONDUCT BEFORE THE GRAND JURY IF AFFIRMATIVE PROOF SUGGESTS THAT THE STATES ARE ISSUING FRAUDULENT TRUE BILL OF INDICTMENTS?

(NOTE: I, THE PETITIONER BRANDON J. LEE, BLL, DO AUTHORIZE AMENDING THE QUESTION PRESENTED ON THE PETITION FOR A WRIT OF HABEAS CORPUS TO MORE PALATABLE, PERHAPS AN ALTERNATIVE CAN BE:

WILL THE SUPREME COURT INVOKE ITS JUDICIAL SUPERVISORY POWER AS A MEANS TO PRESCRIBE STANDARDS OF PROSECUTORIAL CONDUCT BEFORE THE GRAND JURY IN ORDER TO PROTECT THE FUNDAMENTAL FAIRNESS OF THE GRAND JURY PROCEEDINGS?

I, BRANDON J. LEE, DO GIVE THE SUPREME COURT OF THE UNITED STATES AND ALL PARTIES THEREIN ABSOLUTE DISCRETION AND AUTHORITY TO MODIFY, AMEND, CORRECT, OR CHANGE ANY DOCUMENTATION SUBMITTED BY MYSELF TO YOUR MOST HONORABLE COURT

NAME: BRANDON J. LEE SIGNATURE: BLL
DATE: 03-13-2019)

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APPENDIX A- SUPREME COURT OF NORTH CAROLINA ORDER
IN THE MATTER FOR A WRIT OF HABEAS
CORPUS FILE No. 356P17-2; DATED
DECEMBER 28, 2018.

TABLE OF AUTHORITIES CITED

<u>CASES</u>	<u>PAGE NUMBER</u>
1. <u>AUSTIN V. SWENSON, 522 F. 2d 168 (8TH Cir 1975)</u>	7
2. <u>BROWN V. ALLEN, 344 U.S. 443 (1953) (FRANKFURTER, J.)</u>	8
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8. <u>LEWIS V. BORG, 879 F. 2d 697 (9TH Cir 1989)</u>	7
9. <u>RICHARDSON V. TURNER, 716 F. 2d 1059 (4TH Cir 1983)</u>	6
10. <u>ROSE V. LUNDY, 455 U.S. 509, 102 S. Ct. 1198, 71 L. Ed. 2d 379 (1982)</u>	6
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13. <u>UNITED STATES V. WILLIAMS, 504 U.S. 36 (1992)</u>	4-5
14. <u>UNITED STATES V. WILLIAMS, 504 U.S. At 69 (STEVENS, J., DISSENTING OPINION)</u>	5
15. <u>WOOD V. CROUSE, 389 F. 2d 747 (10TH Cir 1968)</u>	7

STATUTES: N/A FOR THIS PETITION FOR A REHEARING OF A
JUDGEMENT (SEE No. 18-7461 FOR STATUTES IN THE
PETITION FOR A WRIT OF HABEAS CORPUS)

RULES: 28 U.S.C. § 1254(D) [PAGE 2]; 28 U.S.C. § 1257(A) [Pg 2]
(SEE No. 18-7461 FOR ADDITIONAL RULES IN THE
PETITION FOR A WRIT OF HABEAS CORPUS)

SUPREME COURT OF THE UNITED STATES

PETITION FOR A REHEARING ON A JUDGEMENT (No. 18-7461)
ON A PETITION FOR A WRIT OF HABEAS CORPUS

OPINIONS BELOW

☐ FOR CASES FROM FEDERAL COURTS

THE OPINION OF THE UNITED STATES COURT OF APPEALS
APPEARS AT APPENDIX _____ 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 A TO THE PETITION AND IS _____

☐ REPORTED AT _____; OR,
☐ HAS BEEN DESIGNATED FOR PUBLICATION BUT IT 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 _____.

☐ 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 DECEMBER 28, 2018. A COPY OF THAT DECISION APPEARS AT APPENDIX A.

☒ NO PETITION FOR REHEARING WAS TIMELY FILED IN MY CASE

☐ A TIMELY PETITION FOR REHEARING WAS THEREAFTER DENIED
ON THE FOLLOWING DATE: _____, AND A COPY OF THAT ORDER DENYING
REHEARING APPEARS AT APPENDIX _____.

☐ AN EXTENSION OF THE TIME TO FILE THE PETITION FOR A WRIT
OF HABEAS CORPUS 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. CONSTITUTION: (SEE NO. 18-7461 FOR THE CONSTITUTIONAL PROVISIONS INVOLVED IN THE PETITION FOR A WRIT OF HABEAS CORPUS)

STATUTORY PROVISIONS INVOLVED: (SEE APPENDIX G IN NO. 18-7461 FOR THE STATUTORY PROVISIONS INVOLVED IN THE PETITION FOR A WRIT OF HABEAS CORPUS)

STATEMENT OF THE CASE

NOW COMES THE PETITIONER, BRANDON J. LEE, AND PLEADS THIS MOST HIGH AND HONORABLE COURT TO GRANT THIS PETITION FOR A REHEARING OF A JUDGEMENT REGARDING THE PETITIONERS WRIT OF HABEAS CORPUS DENIED ON OR ABOUT FEBRUARY 19, 2019 No. 18-7461.

THE PRIMARY CONTENTIONS IN THE PETITION FOR A WRIT OF HABEAS CORPUS STAND IN SUPPORT OF JUSTICE STEVENS DISSENTING OPINION REGARDING THE 5-4 RULING HELD IN UNITED STATES V. WILLIAMS 504 U.S. 36 (1992). WHEREUPON, THE LATE JUSTICE BYRON R. WHITE JOINED THE LATE JUSTICE ANTONIN SCALIA'S OPINION OF THE COURT AND THEREAFTER WAS REPLACED ON THE BENCH UPON HIS RETIREMENT BY THE PRESIDING ASSOCIATE JUSTICE RUTH BADER GINSBURG THE FOLLOWING YEAR IN 1993.

UPON INFORMATION AND BELIEF THE MOST HONORABLE JUSTICE GINSBURG WAS NOT PRESENT TO REVIEW THE WRIT OF HABEAS CORPUS IN CONFERENCE ON OR ABOUT FEBRUARY 15, 2019 DUE TO RECOVERY FROM SURGERY. HOWEVER, JUSTICE GINSBURG IS CRITICALLY IMPORTANT AND PROVIDES A SUBSTANTIAL INTERVENING CIRCUMSTANCE TO OFFER SUPPORT IN GRANTING

THE PETITION FOR A WRIT OF HABEAS CORPUS. JUSTICE GINSBURG MAY VERY WELL HAVE JOINED JUSTICE JOHN PAUL STEVENS DISSENTING OPINION IN UNITED STATES V. WILLIAMS, 504 U.S. 36 (1992) JOINED BY THE LATE JUSTICE HARRY A. BLACKMUN, JUSTICE SANDRA DAY O'CONNOR, AND THE PRESIDING SENIOR ASSOCIATE JUSTICE CLARENCE THOMAS IN PARTS II AND III. THEREBY, ALTERING THE OPINION OF THE COURT.

THE PETITION FOR A WRIT OF HABEAS CORPUS PROVIDES YOUR MOST HIGH COURT A UNIQUE OPPORTUNITY TO REVISIT THE PRECEDENT WHICH STANDS AS A "SHARP BREAK WITH THE TRADITIONAL ROLE OF THE FEDERAL JUDICIARY" WHICH IS "INCONSISTENT WITH THE ADMINISTRATION OF JUSTICE IN THE FEDERAL COURTS." UNITED STATES V. WILLIAMS, 504 U.S. AT 69 (STEVENS, J., DISSENTING OPINION)

FURTHERMORE, THIS PETITION FOR THE REHEARING OF A JUDGEMENT PRESENTS SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED IN SUPPORT OF THE EXHAUSTION OF STATE REMEDIES REQUIREMENT AND ALTERNATIVELY WHY AN EXCEPTION TO EXHAUSTION IS APPLICABLE.

REASONS FOR GRANTING THE PETITION

SINCE 1886 YOUR MOST HIGH AND HONORABLE COURT HELD IN EX PARTE ROYALL⁴ THAT "IN SPECIAL CIRCUMSTANCES REQUIRING IMMEDIATE ACTION" A FEDERAL COURT MAY GRANT HABEAS RELIEF TO A STATE PRISONER WHO HAS NOT EXHAUSTED HIS STATE REMEDIES. WHEREFORE, THE IMPERATIVE PUBLIC IMPORTANCE OF THE CONTENTIONS IN THE PETITION FOR A WRIT OF HABEAS CORPUS PRESENTS CLEAR AND CONVINCING EVIDENCE OF "SPECIAL CIRCUMSTANCES REQUIRING IMMEDIATE ACTION" AND AN "EXTRA-ORDINARILY PRESSING NEED FOR IMMEDIATE FEDERAL EQUITABLE RELIEF." KUGLER V. HELFANT, 421 U.S. 117, 126 (1975)

FURTHERMORE, THE MOMENTOUS NATURE OF THE SUBJECT MATTER IS WHY ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM FROM ANY OTHER COURT AND HAS BEEN AN EXERCISE IN FUTILITY. SEE RICHARDSON V. TURNER, 716 F.2d 1059 (4TH CIR 1983) (NOTING THAT EXHAUSTION IS NOT REQUIRED IF BEING FORCED TO RESORT TO THE STATE COURTS WOULD RESULT IN A FUTILE ACT.)

HOWEVER, IN ROSE V. LUNDY (1982)¹⁰, YOUR SUPREME COURT HELD THAT THE EXHAUSTION REQUIREMENT REQUIRES A FEDERAL COURT TO DISMISS A WRIT OF

HABEAS CORPUS PETITION WITH ANY UNEXHAUSTED CLAIMS. UPON FURTHER REVIEW, THE PETITIONERS WRIT OF HABEAS CORPUS APPLICATION IS RATHER "MIXED" - THAT IS, CONTAINS BOTH EXHAUSTED AND UNEXHAUSTED CLAIMS FOR RELIEF. THAT MIXTURE CONTAINS UNANSWERED MOTIONS FOR DISMISSAL IN THE TRIAL COURT AND WRIT OF MANDAMUS PETITIONS IN STATE AND FEDERAL COURTS SEEKING VINDICATION OF FEDERAL CONSTITUTIONAL RIGHTS.

THE PETITIONER NOW PRESENTS IN THIS PETITION FOR A REHEARING OF A JUDGEMENT SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED WHICH NOW SATISFIES THE EXHAUSTION OF STATE REMEDIES DOCTRINE. THE FOLLOWING ARGUMENT AND SUPPORTING CASELAW SUPPORT THIS CLAIM. (SEE APPENDIX A, NO. 356 P17-2)

I. A SUMMARY DENIAL OF A HABEAS CORPUS PETITION BY A STATE SUPREME COURT CONSTITUTES A DECISION ON THE MERITS AND SATISFIES THE EXHAUSTION REQUIREMENT:

SWANGER v. ZIMMERMAN, 750 F.2d 291 (3RD Cir 1984)

THOMAS v. CUNNINGHAM, 313 F.2d 934 (4TH Cir 1963)

GRUNDLER v. NORTH CAROLINA, 283 F.2d 798 (4TH Cir 1960)

HAY v. BETO, 467 F.2d 1338 (5TH Cir 1972)

CRUMP v. SAIN, 264 F.2d 424 (7TH Cir 1959)

AUSTIN v. SWENSON, 522 F.2d 168 (8TH Cir 1975)

LEWIS v. BORG, 879 F.2d 697 (9TH Cir 1989)

WOOD v. CROUSE, 389 F.2d 747 (10TH Cir 1968)

CONCLUSION

ACCORDING TO THE PRETRIAL INSTITUTE, "LEGAL AND EVIDENCE-BASED PRETRIAL JUSTICE PRACTICES ARE NOT IN PLACE IN NORTH CAROLINA" AND THAT SIMILAR SYSTEMS HAVE BEEN RULED UNCONSTITUTIONAL IN VARIOUS FEDERAL COURTS. WHEREFORE, THE PETITIONERS WRIT OF HABEAS CORPUS UNEQUIVOCALLY DEMONSTRATES THE TRUTH IN THAT STATEMENT.

FURTHERMORE, THE PETITION SERVES AS A PRIME EXAMPLE OF WHY THE GREAT WRIT OF HABEAS CORPUS HAS A FUNDAMENTAL ROLE IN PROTECTING THE RIGHTS OF STATE CRIMINAL SUSPECTS SUBJECT TO CUSTODY AND IS ONE OF THE MANY REASONS WHY THE WRIT ITSELF IS "NATURALLY ENOUGH REGARDED AS ONE OF THE DECISIVELY DIFFERENTIATING FACTORS BETWEEN OUR DEMOCRACY AND TOTALITARIAN GOVERNMENTS" BROWN V. ALLEN 344 US. 443 (1953) (FRANKFURTER, J.)

THEREFORE, THE PETITIONER PRAYS THAT THIS PETITION FOR A REHEARING OF A JUDGEMENT IS GRANTED.

RESPECTFULLY SUBMITTED:

BY: BRANDON J. LEE

SIGNATURE: 

DATE: 03-13-2019