

18-8078

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

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED  
FEB 06 2019  
OFFICE OF THE CLERK

ELBERT WALKER — PETITIONER  
(Your Name)

vs.

ARTIS SINGLETON — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ELEVENTH CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

ELBERT WALKER  
(Your Name)

P.O. Box 344  
(Address)

WRIGHTSVILLE, GEORGIA 31896  
(City, State, Zip Code)

N/A  
(Phone Number)

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QUESTION(S) PRESENTED

IN ARTUZ V. BENNETT, 531 U.S. 4, 8, 121 S. CT. 369, 148 L. ED. 2d 213 (2000), THIS HONORABLE COURT HELD THAT, 'APPLICATIONS WHICH VIOLATE A STATE'S PROCEDURAL BAR RULES' WILL NOT BE SUCCESSFUL, BUT THEY HAVE BEEN 'PROPERLY DELIVERED AND ACCEPTED' SO LONG AS THE FILING CONDITIONS HAVE BEEN MET... AND MEET THE TOLLING CONDITIONS UNDER § 2244(d)(2).

THE QUESTION PRESENTED IS:

~~• WHETHER THE~~

• IF PETITIONER 'PROPERLY FILED IN THE TRIAL COURTS A 'MOTION TO VACATE INDICTMENT' ACCORDING TO THE FILING STANDARDS SET OUT IN ARTUZ V BENNETT, AND PURSUANT TO GEORGIA LAW / STATUTE O.C.G.A. § 17-9-4, ALSO SEE RILEY V. GARRETT, 219 GA. 345, 133 S.E. 2d 367 (1963) AND GUTIERREZ V. STATE, 290 GA. 643 (2010), AND THE TRIAL COURT LATER DISMISSES SAID 'MOTION TO VACATE INDICTMENT ON THE PREMISE THAT PETITIONER USED AN 'IMPROPER VEHICLE,' CITING STATE V. CORHEN, 206 GA. APP. 495 496-97 (2010) AND LOWE V. STATE, 278 GA. 538, 539 (2003), — CAN THE COURTS BELOW 'CHANGE' THE NAME OF PETITIONERS 'MOTION TO VACATE INDICTMENT' TO A 'MOTION TO VACATE VOID JUDGEMENT' CITING HARPER V. STATE, 686 S.E. 2d 786, 787 (2009) AND DISMISS PETITIONERS § 2254 HABEAS CORPUS PETITION AS UNTIMELY ON THE PREMISE THAT SAID FICTITIOUS 'MOTION TO VACATE VOID JUDGEMENT' DOES NOT QUALIFY AS A STATUTORY APPLICATION UNDER § 2244(d)(2) BECAUSE GEORGIA LAW PROVIDES THAT A 'MOTION TO VACATE OR MODIFY A JUDGEMENT OF CONVICTION IS NOT AN APPROPRIATE REMEDY IN A CRIMINAL CASE AND THEREFORE DID NOT TOLL THE TIME REQUIRED UNDER § 2244(d)(2). THE COURTS BELOW DECISION TO CHANGE PETITIONERS MOTION TO VACATE INDICTMENT INTO MOTION TO VACATE VOID JUDGEMENT IS IN CONFLICT WITH THE DECISION IN OTHER COURT(S).

## 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:

JUSTICE LEIGH MARTIN MAY - UNITED STATES DISTRICT JUDGE

JUSTICE ROSENBAUM - UNITED STATES CIRCUIT JUDGE

JUSTICE CHARLES R. WILSON - UNITED STATES CIRCUIT JUDGE

JUSTICE RUSSELL G. VINEYARD - UNITED STATES MAGISTRATE JUDGE

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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 B 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 C 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 FULTON COUNTY SUPERIOR court appears at Appendix F 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 JULY 25, 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: SEPTEMBER 18 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 FEBRUARY (date) on 15 2019 (date) in Application No. 18 A 591.

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 \_\_\_\_\_.  
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[ ] 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 \_\_\_\_\_.  
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The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**5<sup>th</sup> & 14<sup>th</sup> AMENDMENT RIGHTS TO DUE PROCESS OF LAW AND  
EQUAL PROTECTION OF LAW.**

## STATEMENT OF THE CASE

ON OCTOBER 14, 2011, PETITIONER FILED WITH THE TRIAL COURT A MOTION TO VACATE VOID INDICTMENT CHALLENGING COUNT (8) OF A (10) COUNT INDICTMENT, (see PET. APP. E)

ON APRIL 5, 2012, THE TRIAL COURT DENIED PETITIONERS MOTION TO VACATE VOID INDICTMENT ON THE PREMISE THAT PETITIONER USED THE WRONG STATUTORY VEHICLE, (see PET. APP. F), CITING STATE V. CORHEN, 206 GA. APP. 495 496-97 (2010) AND LOWE V. STATE, 276 GA. 538, 539 (2003).

ON JUNE 2, 2017, THE COURTS BELOW CHANGED THE TITLE OF PETITIONERS MOTION TO VACATE VOID INDICTMENT TO A MOTION TO VACATE VOID JUDGEMENT CITING HARPER V. STATE, 686 S.E.2d 786, 787 (GA. 2009) AND DISMISSED PETITIONERS § 2254 HABEAS CORPUS PETITION CLAIMING THAT SAID FICTITIOUS MOTION TO VACATE VOID JUDGEMENT DID NOT QUALIFY AS STATUTORY APPLICATION UNDER 28 U.S.C. § 2244(d)(2) AND THEREFORE DID NOT HAVE A TOLLING EFFECT. RESULT, PETITIONERS § 2254 HABEAS CORPUS PETITION WAS DISMISSED AS UNTIMELY. (see PET. APP. C).

ON JUNE 22, 2017, PETITIONER, TIMELY FILED A MOTION TO CORRECT CLERICAL MISTAKE(S) AND TO VACATE DISTRICT COURTS ORDER DISMISSING ACTION AS TIME BARRED BECAUSE PETITIONER HAD REASON TO BELIEVE THAT THE MISLABELING OR CHANGING OF HIS MOTION TO VACATE VOID INDICTMENT TO A MOTION TO VACATE VOID JUDGEMENT WAS THE REASON OF HIS § 2254 PETITION BEING DISMISSED. (see PET. APP. G & H) (THIS MOTION WAS FILED PURSUANT TO F.R.C.P RULE 60(a) AND RULE 60(b)).

ON JULY 20, 2017, THE COURTS BELOW ISSUED A ORDER MISCONSTRUING PETITIONERS F.R.C.P RULE 60(a) AND 60(b) MOTION AS A RULE 59(e) MOTION FOR RECONSIDERATION WITHOUT ADDRESSING OR CORRECTING THE ERROR OF MISLABELING HIS MOTION TO VACATE VOID INDICTMENT. (see PET. APP. I)

ON JULY 31<sup>ST</sup> 2017, PETITIONER TIMELY FILED A OBJECTION TO COURTS BELOW ORDER OF JULY 20, 2017, SPECIFICALLY INFORMING THEM THAT HIS RULE 60(a) AND 60(b) MOTION WAS TO CORRECT CLERICAL ERROR AND TO VACATE ORDER OF JUNE 2 2017 DISMISSING HIS § 2254 PETITION AS TIME BARRED BECAUSE THE COURTS ERROUNEOUSLY MISLABELED HIS MOTION TO VACATE VOID INDICTMENT AS A MOTION TO VACATE VOID JUDGEMENT CITING HARPER V. STATE AS HARPER V. STATE DOES NOT APPLY. (PET. APP. J)

ON AUGUST 16<sup>TH</sup> 2017, COURTS BELOW STILL REFUSE TO CORRECT THIS GRAVE ERROR CLAIMING THAT PETITIONER DID NOT PRESENT A COMPELLING ARGUMENT TO REOPEN THE CASE. (see PET. APP. K).

ON FEBRUARY 14<sup>TH</sup> 2018, PETITIONER FILED A MOTION FOR JUDICIAL NOTICE AND DENOVO REVIEW TO COMPEL THE COURTS TO LOOK AT THE EVIDENCE IN THE RECORD THAT HE DID NOT FILE A MOTION TO VACATE JUDGEMENT BUT A MOTION TO VACATE INDICTMENT. (see PET. APP. L). THIS MOTION WAS NEVER ADDRESSED.

THE COURTS BELOW DECISION TO CHANGE THE NAME OF PETITIONERS MOTION AND APPLY A LAW THAT EVEN THE TRIAL COURTS DID NOT APPLY IS CONTRARY TO GRILLETTE V. WARDEN, WORN CORRECTIONAL CENTER 372 F.3d 765, 771-776 (5<sup>TH</sup> CIR. 2004) (AS STATE COURT NEVER TREATED PETITIONERS LATE APPEAL AS UNTIMELY, FEDERAL COURT SHOULD NOT DO SO EITHER AND THERE ARE NO EXCEPTIONAL CIRCUMSTANCES IN REGARDS TO THIS MATTER).

IN THIS INSTANT CASE, IF THE STATE COURT ANSWERED AND TREATED A MOTION TO VACATE VOID INDICTMENT AND APPLIED PROPER LAW THUS SHOULD THE FEDERAL COURT. SIMPLY PUT, THE COURTS BELOW SHOULD NEVER HAVE CHANGED PETITIONERS MOTION TO VACATE INDICTMENT TO A MOTION TO VACATE JUDGEMENT.

## REASONS FOR GRANTING THE PETITION

THIS PETITION SHOULD BE GRANTED BECAUSE A UNITED STATES COURT OF APPEALS HAS ENTERED A DECISION THAT CONFLICTS WITH THE DECISION OF ANOTHER UNITED STATES COURT OF APPEALS ON A SIMILAR MATTER. SEE GRILLETTE V. WARDEN, WINN CORRECTIONAL CENTER, 372 F.3d 765, 771-776 (5TH CIR 2004).

Also, THE COURTS BELOW HAS DECIDED AN IMPORT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH A DECISION BY A STATE COURT OF LAST RESORT BECAUSE THE STATE COURT ACKNOWLEDGE AND ANSWERED A MOTION TO VACATE VOID INDICTMENT AND DISMISSED SAID MOTION CITING STATE V. CORHEN, 206 GA. APP. 495, 496-97 (2009) AND DASHER V. STATE, 285 GA. 308, 310 (2009). THE CONFLICT AROSE OUT OF THE COURTS BELOW DECISION TO CHANGE THE NAME OF THE MOTION TO VACATE INDICTMENT TO A MOTION TO VACATE JUDGEMENT AND CITE HARPER V. STATE 686, S.ED 786-787 (GA. 2009) IN ORDER FOR IT (COURTS BELOW) TO ANSWER THE FEDERAL QUESTION OF PRESCRIBED IN AEDPA'S 1 YEAR STATUTE OF LIMITATIONS AND 28 U.S.C. § 2244(d)(2) STATUTORY APPLICATIONS PROVISIONS; WHICH IS, DID THIS MOTION TOLL THE TIME PERIOD?

WHEN THE COURTS BELOW CHANGED THE NAME OF SAID MOTION, IT PREVENTED PETITIONER FROM BEING ABLE TO SUCCESSFULLY PURSUE HIS § 2254 PETITION, AND THEREBY VIOLATED HIS 5TH AND 14TH AMENDMENT RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW GUARANTEED HIM BY THE UNITED STATES CONSTITUTION.

THE EVIDENCE IN QUESTION IS PETITIONERS 'MOTION TO VACATE VOID INDICTMENT' SEE (PET. APP. E) ALONG WITH TRIAL COURTS ORDER DISMISSING SAID MOTION (SEE PET. APP. F). THIS EVIDENCE IS SUFFICIENT ENOUGH TO CONVINCE ANY JURY OF REASON THAT PETITIONER DID NOT FILE WITH THE TRIAL COURTS A 'MOTION TO VACATE JUDGEMENT' AS THE COURTS BELOW PROCLAIM BUT A MOTION TO VACATE VOID INDICTMENT. WHEREFORE, PETITIONERS PETITION SHOULD BE GRANTED AND THE COURTS BELOW SHOULD ADDRESS HIS § 2254 PETITION UNDER THE CORRECT INFORMATION.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Elbert Walker

Date: February 6<sup>th</sup> 2019

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