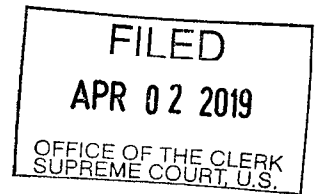


ORIGINAL

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

IN THE UNITED STATES SUPREME COURT

Stetory Calhoun - PETITIONER



VS.

Warden Christopher Gordy - RESPONDENTS

ON PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C SECTION  
2241

Alabama Supreme Court

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

Stetory Calhoun #269307

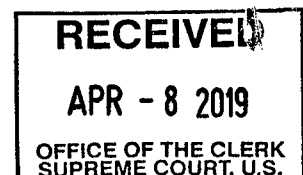
YOUR NAME

Donaldson Correctional FAC.  
100 Warrior Lane

ADDRESS

Bessemer, AL 35023

(CITY, STATE, ZIP CODE)



QUESTION(S) PRESENTED

I. WHETHER ACT NO. 92-601, AS ENROLLED, AND APPROVED BY THE GOVERNOR OF THE STATE OF ALABAMA, (CODIFIED AS SUBSECTIONS (15), (16), (17), AND (18), OF SECTION 13A-5-40(a), OF CODE OF ALA. 1975) IS UNCONSTITUTIONAL ON IT'S FACE BECAUSE IT OMITTS THE SUBJECT OF LEGISLATION AS WAS PASSED BY THE ALABAMA LEGISLATURE, WHICH SUBJECT OF LEGISLATION WAS TO AMEND THE ALABAMA DEATH PENALTY STATUTE TO ADD GANG RELATED MURDERS, DRIVE BY SHOOTINGS THAT WERE MURDER, AND MURDER INTENDED TO INCITE PUBLIC TERROR OR ALARM, TO THE LIST OF CAPITAL OFFENSES.

LIST OF PARTIES

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

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GOVERNOR OF THE STATE OF ALABAMA

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus to review the judgment below.

☒ 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

☒ is unpublished

The opinion of the Alabama Criminal Appeals court appears at Appendix "B" to the petition and is

☒ is unpublished

JURISDICTION

☒ FOR CASES FROM STATE COURTS:

THE DECISION ON WHICH THE HIGHEST STATE COURT DECIDED MY CASE  
WAS N/A. A COPY OF THAT DECISION APPEARS AT  
APPENDIX "A".

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C SECTIONS 1257,  
2241, 1651.

**"REASON FOR NOT MAKING APPLICATION IN THE UNITED STATES  
DISTRICT COURT FOR THE 11TH DISTRICT OF THE STATE OF ALABAMA**

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The petitioner states that no other remedy is available based on the fact that the A.E.D.P.A has established a statute of limitations period of one year from an individuals conviction or finality of judgment in which a petitioner can present a post-conviction application in the federal district court challenging his conviction which one year limitation has expired in this case.

The petitioner has exhausted all available remedies in the state court. See appendix "A-H"

The petitioner states that exceptional circumstances exist warranting the exercise of this Court's discretionary powers based on the fact that the petitioner can prove that there exist a material variance between the enrolled Act No. 92-601 (codified as subsection(s) (15), (16), (17), and (18), of section 13A-5-40(a), Code of Ala. 1975) and Act No. 92-601 as passed by the Alabama Legislature, rendering the entire Act void.

There is no other court that can provide adequate relief to the petitioner under the authority of 28 U.S.C. section 2241.



In Banos v. Cockrell, 2003 U.S. Dist. Lexis 7166 (U.S. Dist. 5th Cir. 2003), the United States district Court held in pertinent part that:

" Neither 28 U.S.C.S. § 2244(b)(3)(A) nor (E) prohibits a petitioner from filing an original writ of habeas corpus directly with the United States Supreme Court. Section 2244(b)(3)'s "gatekeeping" system for second petitions does not apply to its consideration of habeas petitions because it applies to applications "filed in the district court" not to habeas petitions filed directly with the Supreme Court. A plaintiff thus needs no approval from any court of appeals before filing an original writ with the Supreme Court for consideration under Sup. Ct. R. 20.4(a)."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE 1, SECTION 5, CLAUSE 3, UNITED STATES CONSTITUTION.

AMENDMENT, 5, UNITED STATES CONSTITUTION.

AMENDMENT 6, UNITED STATES CONSTITUTION.

AMENDMENT 14, UNITED STATES CONSTITUTION.

ARTICLE, 1 SECTION 6, ALABAMA CONSTITUTION OF 1901

ARTICLE 1, SECTION 7, ALABAMA CONSTITUTION OF 1901

ARTICLE, IV, SECTION 45, ALABAMA CONSTITUTION OF 1901

ARTICLE IV, SECTION 61, ALABAMA CONSTITUTION OF 1901

## STATEMENT OF THE CASE

1. On the 7th day of February, 2018, the petitioner filed a Rule 32, Ala.R.Crim.P. petition in the circuit court of Jefferson County, Alabama, raising the following claim for relief:

" Act No. 92-601, as enrolled, (codified as subsections (15), (16), (17), and (18), of section 13A-5-40(a), Code of Ala. 1975) is unconstitutional on it's face because it omits the subject of it's legislation as was passed by the Alabama Legislature in the 1992 regular session of 1992, which subject of legislation was to make punishable as capital murder gang related murders, resulting in Act No. 92-601, as enrolled, failing to charge capital offenses. Therefore the trial court lacked subject matter jurisdiction to try and convict the petitioner under subsection (17), of section 13A-5-40(a), Code of Ala. 1975 because that subsection omits the Alabama Legislature's subject of legislation as passed by the Alabama legislature."

2. On the 7th day of March, 2018, the circuit court of Jefferson County, Alabama, without receiving evidence ore tenus, issued an order dismissing the Rule 32, Ala.R.Crim.P. petition. See Appendix "C"

3. On the 29th day of March, 2018, the petitioner filed a motion to vacate the judgment. See Appendix "D"

4. On the 16th day of April, 2018, the petitioner filed his notice of appeal to the Alabama Court of Criminal Appeals. See Appendix "E"

5. On the 4th day of October, 2018, the Alabama Court of Criminal Appeals released it's memorandum opinion. See Appendix "F"

6. On the 18<sup>th</sup> day of October, 2018, the petitioner filed an application for rehearing. See Appendix "G"

6. On the 9th day of November, 2018, the Alabama Court of Criminal Appeals overruled the application for rehearing. See Appendix "H"

7. On the 20<sup>th</sup> day of November, 2018, the petitioner filed a petition for writ of certiorari in the Alabama Supreme Court. See Appendix "I"

8. On the N/A day of N/A 2019, the Alabama Supreme Court denied the certiorari petition. See Appendix "A".

**REASON FOR GRANTING THE WRIT OF HABEAS CORPUS**

The petitioner argues that he is being held in custody in direct violation of the United States Constitution or laws thereof because he has been unlawfully convicted under the enrolled Act No. 92-601, that was approved by the Governor of the State of Alabama, (codified as subsections (15), (16), (17), and (18), of Section 13A-5-40(a), Code of Ala. 1975).

The petitioner contends that Act No. 92-601, as enrolled and approved by the Governor of the State of Alabama varies materially from Act No. 92-601 as passed by the Alabama Legislature because the enrolled Act No. 92-601 omits the Alabama legislature's subject of legislation which subject was to amend the Alabama death penalty statute to add gang related murders to the list of capital offenses, resulting in subsections (15), (16), (17), and (18), of section 13A-5-40(a), Code of Ala. 1975 to likewise omit the gang related subject in their language. Resulting in district attorneys across the state of Alabama charging numerous individuals with capital murder under the provisions of either of the above forementioned subsections without charging them with committing a gang related murder.

CONCLUSION

THE PETITION FOR WRIT OF HABEAS CORPUS SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED,

Stacy Calhoun

DATE: 3-21-2019