

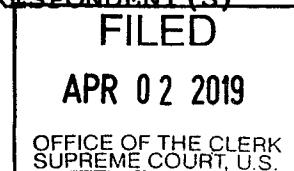
NO. 18-8886

IN THE SUPREME COURT OF THE UNITED STATES

JAMES RODGERS JR -PETITIONER

VS.

WARDEN, CHRISTOPHER GORDY -RESPONDENT(S)



ON PETITION FOR A WRIT OF HABEAS CORPUS TO:

THE ALABAMA SUPREME COURT

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

JAMES RODGERS JR  
A.I.S.# 209894 /K-35  
DONALDSON C.F.  
100 WARRIOR LN  
BESSEMER, AL 35023

QUESTION PRESENTED FOR REVIEW

WHETHER ACTR NO. 92-601, AS ENROLLED, IS FACIALLY UNCONSTITUTIONAL (CODIFIED AS SUBSECTIONS (15), (16), (17), AND (18), OF SECTION 13A-5-40(a), CODE OF ALABAMA, 1975) BECAUSE IT FAILS TO CONTAIN THE NECESSARY AGGRAVATING CIRCUMSTANCE WHICH IS THE GANG RELATION ELEMENT THAT IS REVEALED IN THE TRANSCRIBED JOURNALS OF BOTH THE ALABAMA SENATE AND THE ALABAMA HOUSE OF REPRESENTATIVES OF THE 1992 REGULAR SESSSION. RESULTING IN THE ENROLLED ACT NO. 92-601 ALWAYS OPERATING UNCONSTITUTIONALLY BECAUSE NO SET OF CIRCUMSTANCES EXIST UNDER WHICH THE ENROLLED ACT NO. 92-601 WOULD BE VALID, RESULTING IN THE TRIAL COURT HAVING NO SUBJECT MATTER JURISDICTION TO TRY OR CONVICT THE PETITIONER UNDER SECTION 13A-5-40(a)(17), OF CODE OF ALA. 1975 WHICH SUBSECTION WAS CODIFIED BY THE ENROLLED ACT NO. 92-601?

LIST OF PARTIES

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

## TABLE OF CONTENTS

PG.

OPINION BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4-5
REASON(S) FOR GRANTING THE WRIT.....	6
CONCLUSION.....	7

## INDEX TO APPENDIX

APPENDIX. "A" OPINION OF THE ALABAMA CRIMINAL APPEALS COURT	
APPENDIX. "B" STATE OF ALABAMA'S RESPONSE TO RULE 32, ALA.R.CRIM.P. PETITION	
APPENDIX. "C" CIRCUIT COURT OF DALLAS COUNTY, ALABAMA'S DISMISSAL OF RULE 32 PETITION	
APPENDIX. "D" PETITIONER'S MOTION TO VACATE THE JUDGMENT	
APPENDIX. "E" STATE OF ALABAMA'S RESPONSE TO MOTION TO VACATE JUDGMENT	
APPENDIX. "F" CIRCUIT COURT'S DENIAL OF MOTION TO VACATE JUDGMENT	
APPENDIX. "G" PETITIONER'S NOTICE OF APPEAL	
APPENDIX. "H" PETITIONER'S APPLICATION FOR REHEARING	
APPENDIX. "I" ALABAMA COURT OF CRIMINAL APPEAL'S DENIAL OF APPLICATION FOR REHEARING	
APPENDIX. "J" PETITIONER'S PETITION FOR WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT	
APPENDIX. "K" 1992 LEGISLATIVE JOURNAL OF THE ALABAMA SENATE CONTAINING	

ACT NO. 92.601 (INITIALLY SENATE BILL. 365)

APPENDIX. "L" 1992 LEGISLATIVE JOURNAL OF THE ALABAMA HOUSE OF  
REPRESENTATIVES CONTAINING SENATE BILL. 365

APPENDIX. "M" THE ENROLLED ACT NO. 92-601, APPROVED BY THE GOVERNOR OF  
THE STATE OF ALABAMA

APPENDIX. "N" HOUSE JOINT RESOLUTION 575/ ACT NO. 2006-642 (REVEALING THE  
ALABAMA LEGISLATURE'S INTENT IN PASSING ACT NO. 92-601)

ADDENDUM 1. Ex parte Detra Lyniece Catlin (In re: Detra Lyniece Catlin  
v. State of Alabama)

SUPREME COURT OF ALABAMA

72 So 3d 60672 So. 3d 606; 2011 Ala LEXIS 1512011 Ala. LEXIS 151  
1100671

May 13, 2011, Released

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 N/A to the petition and is

☐ is unpublished

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

☒ is unpublished

JURISDICTION

[ ] FOR CASES FROM STATE COURTS:

THE DECISION ON WHICH THE ALABAMA COURT OF CRIMINAL APPEALS  
DECIDED MY CASE WAS 10-12-2018. A COPY OF THAT  
DECISION APPEARS AT APPENDIX "A".

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

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 2nd day of April, 2018, the petitioner filed a Rule 32, Ala.R.Crim.P. petition in the circuit court of Dallas County, Alabama.

2. On the 10th day of April, 2018, the State of Alabama filed a response in opposition to the Rule 32 petition. See Appendix "B"

3. On the 24th day of April, 2018, the petitioner filed a response to the State's motion to dismiss.

4. On the 25th day of April, 2018, the circuit court of Dallas County, Alabama issued an order dismissing the Rule 32, Ala.R.Crim.P. Petition, without conducting an evidentiary hearing, ruling that the claim for relief was precluded from relief and that no material fact or law exists which would entitle the petiitoner to relief and that no purpose would be served by any further proceedings. See Appendix. "C"

5. On the 18th day of May, 2018, the petitioner filed a motion for an order vacating the judgment. See Appendix. "D"

6. On the 1st day of June, 2018, the petiitoner filed a notice of Appeal to the Alabama Court of Criminal Appeals. See Appendix. "E"

7. On the 12th day of October, 2018, the Alabama Court of Criminal Appeals released it's memorandum opinion, affirming the circuit court's dismissal of the Rule 32, Ala.R.Crim.P. petition.

See Appendix. "A"

8. On the 26th day of October, 2018, the petitioner filed an application for rehearing. See Appendix. "H"

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

10. On the 21st day of November, 2018, the petitioner filed a certiorari petition in the Alabama Supreme Court. See Appendix. "J"

11. In February, 2019 the Alabama Supreme Court denied the certiorari petition.

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

---

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-J**

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)."

## **REASONS FOR GRANTING THE PETITION**

I. THIS PETITION SHOULD BE GRANTED BECAUSE ACT NO. 92-601, AS A WHOLE, IS A VOID STATUTE BASED ON THE FACT THAT THERE EXISTS A MATERIAL VARIANCE BETWEEN THE ENROLLED ACT AND THE ACT THAT WAS PASSED BY THE ALABAMA LEGISLATURE.

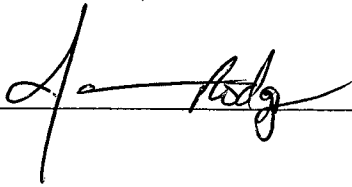
II. THIS PETITION SHOULD BE GRANTED BECAUSE ACT NO. 92-601 CONTAINS CONFLICTING SUBJECTS IN IT'S TITLE AS A WHOLE, RENDERING THE ENTIRE ACT VOID.

III. THIS PETITION SHOULD BE GRANTED BECAUSE THE ENROLLED ACT NO. 92-601 OMITS THE NECESSARY AGGRAVATING CIRCUMSTANCE WHICH, IS THE GANG RELATION, THAT ELEVATES THE MURDER TO A CAPITAL OFFENSE UNDER THE DEATH PENALTY STATUTE, AND WITHOUT THIS AGGRAVATING CIRCUMSTANCE THE ENROLLED ACT NO. 92-601 CANNOT BE ADDED TO ALABAMA'S DEATH PENALTY STATUTE.

CONCLUSION

The petition for a writ of habeas corpus should be granted.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to be "A. Adg", is written over a horizontal line.

DATED:

4-1-2019