No. 19-5041 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Matthew Jamison — PETITIONER
(Your Name)

vs.

Levern Cohen "etal" — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for The Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Matthew Jamison
(Your Name)

404 N. Broad Street
(Address)

Clinton, South Carolina 29325
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

Did S.C. Supreme Court decide on an important federal question in ways conflicting with decision of other state?

Did S.C. Supreme Court and U.S. Court of appeals decided important question of federal law that has not been but should be settled by this court?

Did S.C. Supreme Court offend the concept of even handed justice reasoned by the United States Supreme Court by promulgating the admittedly new rule applying to petitioner case?

Did S.C. Supreme Court violate Equal Protection on any evidence standard of review utilized by S.C. Court of Appeals and the dissent?

Did S.C. Supreme Court violate petitioner due process, procedural due process by unreasonably deny, equity, fairness, impartiality, and even hand dealing?

Did S.C. Supreme Court majority knowing violate petitioner equal protection when dissent noted they were applying a rule different from Talley v. State (2007)?

Did S.C. Supreme Court majority violated equal protection by applying new rule to petitioner in noted relief won't be granted unless he can demonstrate interest of justice but not giving him a chance to only the ones after him having that opportunity?

Did S.C. Supreme Court by granting bond under old rule, being same court applying new rule retroactively violating vested rights?

Is because of the prescription and prejudice applying a retroactive rule counseling max out to change from 2017 with two year probation to 2023 off probation 2025 violate 8th and 14th amendment?

Did S.C. Supreme Court impair obligation of contract by granting bond under traditional rule when new rule did not exist violating U.S. Constitution as well S.C. Ex post Facto Law?

Did S.C. Supreme Court error when applying new rule retroactively on collateral review when there past transaction and consideration with petitioner became vested?

Did S.C. Supreme Court violate their own as well a U.S. ex post facto law?

Should S.C. Supreme Court have addressed retroactive at time of the decision when dissent state since this a new rule where we to adopt it and be applied prospectively? (Talley v. State) (2007)

Did S.C. Supreme Court change the detention to the detention itself since they granted bond and applied new law changing the proceeding collateral when they are to be fair and equal under constitution when that decision is why he's back in custody?

Did S.C. Supreme Court rejection of Spann test adoption of Jamison test violates federal law?

Did the S.C. Supreme Court new rule determination abuse their discretion process?

Is petitioner being back in custody valid since S.C. Supreme Court the same court that granted bond then apply new rule?

Did S.C. Supreme Court abuse their discretion, cautioning petitioner no point will be considered which is not set forth in issue on appeal disposed state appeal then adopting new rule?

Is Petitioner back in custody because of a violation of his constitution upon past event?

Because of the fundamental miscarriage of justice can this court address the voluntariness of plea and all the constitutional error?

Is applying this new rule to petitioner constitutionally forbidden since it present legal consequences upon past event granted by S.C. Supreme Court?

Did the U.S. Court of Appeals error noting state prisoner has no federal constitutional right to post conviction proceedings?

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:

Bryan P. Stirling
Melody Brown
Susannah Cole
Donald Zelenka
Alan Wilson

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Other

Even handed justice
Vested right
Equity
Fairness
Impartiality
Manifest Injustice
Consitutional Safeguard

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 _____; 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 _____ 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 C to the petition and is

[ ] reported at Opinion No. 27454; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ 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 December 3, 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: _____, 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 October 22. 2014
A copy of that decision appears at Appendix C.

[✓] A timely petition for rehearing was thereafter denied on the following date: 2014, November 4, 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

5, 6, 8, and 14 Amendment

Retroactively

Equal Protection

Due and Procedural process

Obligation of contract

Vested Right

Ex post Facto Law

Fundamental Miscarriage of justice exception

Constitutional fact doctrine

Constitutional Safeguard

Statement of the Case

Petitioner will like to point out he is not a lawyer and pray that he will not be held to the standard of a lawyer. The facts he point out is from the records. This case present an uncomplicated major issue of fundamental fairness resulting in decision that was contrary to, or involved an unreasonable determination of the fact in light of evidence in state court proceedings. Highly unethical and contrary to state higher duty of probity and truthfulness in any criminal proceeding. The US court of Appeals vacate the district court's off argument by Mr. Dolin of Baltimore law school which did not reference much of the actual procedural history of Jamison V. State granting of new trial on after-discovered evidence found by PCR court in 2008, or court that adopted a new test in 2014 over the traditional test criteria the bond, and new trial was granted under.

This case present issues of importance beyond particular facts to resolve legal question. S.C Supreme Court applied a new standard retroactively acknowledged by dissent, Petitioner from start of federal proceeding have been saying the rejection of span test and adoption of Jamison test by SC Supreme Court violates federal laws, and have been asking for relief given by PCR Court a new trial point out his plea is not valid because of ineffective assistance of counsel and the newly discovered evidence that line up with the record making it fundamental unfair not to have a new trial. An because of the state provided misleading speculation, the Petitioner is asking the court to evaluate the basic fairness of the imposition of present legal consequences upon past events brought on by the SC Supreme Court majority. The same court that grant bond and adopted new rule applying it retroactively which he cannot exercise control produce a form of Due Process Review.

On October 18, 2000, Mr. Jamison was indicted by a Grand Jury for Richland County, South Carolina for the crime of murder with malice aforethought, in violation of S.C Code 16-3-10, 20. J.A. 39-40. The indictment made Mr. Jamison eligible for the death penalty. *See id.;* S.C. Code 16-3-20. On advice of counsel, in order to avoid the death penalty, and despite protestations that he was acting in self-defense, *see* J.A. 170, S.J. A. 53-54, on August 28, 2001, Mr. Jamison pleaded guilty to a lesser included offense of voluntary manslaughter. J.A. 38. Mr. Jamison was sentenced to an imprisonment term of 20 years that was to run from the date of his arrest, *viz.,* June 11, 2000. *Id.*

On November 28, 2006, the Petitioner filed an application for post-conviction relief in The Richland Country Court of Common Pleas, which the State opposed. *See* J.A. 23. In his petition, Mr. Jamison argued that newly discovered evidence, specifically testimony of a previously unavailable witness, corroborated what Mr. Jamison had been claiming all along----- that the killing was committed as a result of self defense..

The PCR court granted relief, and vacated Mr. Jamison's plea. *Jamison v. State* No,. 2006—CP—40—7054 (Richland Co. Ct., S.C., Oct. 14, 2008) *("Jamison I")*, J.A. 23-37. On April 23, 2009, the State appealed the PCR court's order,[3] assigning six pints of error, three of which argued that the petition was untimely, the fourth of which argued that the witness's testimony did not show sufficient provocation to permit a claim of self defense, and the last two of which argued that, on the facts of the case, self defense was not a cognizable argument. J.A. 42-68. The State did not present any arguments as to what standard must be met in order to vacat4e a guilty plea. *Id.*

The South Carolina Court of Appeals granted the State's petition for certiorari as to the three assignments of error regarding the timeliness of Mr. Jamison's petition and the assignment of

error regarding the sufficiency of the provocation. J.A. 90-91. The Court denied the State's petition in all other respects. *Id.* In addition to the points of error raised in the State's petition, the Court directed the parties to brief and argue the question of whether Mr. Jamison's "guilty plea constitute (sic) a waiver of the defense of self-defense at trial." *Id.* Again, the issue of the proper standard to set aside a guilty plea was not before the Court, nor was the issue discussed in the parties' briefs. *See* J.A. 92-119 (State's brief in the Court of Appeals): J.A. 120-153 (Mr. Jamison's brief in the Court of Appeals); On July 18, 2012, in a one paragraph non-precedential opinion, the Court of Appeals affirmed the PCR court's grant of relief to Mr. Jamison. J.A. 156 -157, *Jamison v. State*, 2012 WL 10862447 (S.C. Ct. App., July 18, 2012) ("*Jamison II*") The Court thereafter denied the State's petition for rehearing on August 22, 2012. J.A. 163.

The State then filed a certiorari petition with the South Carolina Supreme Court, which that Court granted on March 20, 2013. J.A. 164. In its submission to the South Carolina Supreme Court, the State raised only two issues: 1) that Mr. Jamison's petition was untimely, and 2) that a guilty plea may never be set aside by newly discovered evidence because, by its nature, a guilty plea constitutes "waiver of defenses." J.A. 165-87. Once again, the State did not raise any argument with respect to what standard must be utilized to set aside a guilty plea if such vacaturs are permissible. *Id.* Mr. Jamison's filed a response brief which addressed both of State's arguments but which, for obvious reasons, did not discuss the proper standard for the vacatur of guilty pleas. *Cf.* S.C. App R. 208(b)(1)(B) (requiring the Appellant to provide "(a) statement of each of the issues presented for review," and further cautioning that "no point will be considered which is not set forth in the statement of the issues on appeal.").

The South Carolina Supreme Court filed its opinion on October 22, 2014. J.A. 213-28. First it unanimously held that Mr. Jamison's appeal was timely. *Jamison v. State.* 765 S.E.2d 123, 127-28 (S.C. 2014) ("*Jamison III*"), J.A. 220-21. Next, also unanimously, the Court concluded that South Carolina law does in fact permit guilty pleas to be set aside when new evidence is presented. *Id.*at 128-29, J.A. 221-23. These two holdings disposed of the entirety of the State's

appeal. Nonetheless, the Court proceeded to address two additional issues which were not argued by either party. The Court, with two Justices dissenting, *held for the first time* that the standard for setting aside a guilty plea is higher than one for setting aside a guilty verdict, and that the newly discovered evidence must be of such a weight and quality that "relief is appropriate only where... under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated." *Id* at 130, J.A. 224. Finally, the Court again with two Justices in dissent, held that Mr. Jamison had failed to meet this heightened standard. *Id.*, J.A. 224 ("We find the interests of justice do not require that Respondent's guilty plea and sentence be vacated and conclude the PCR judge erred in granting relief.").

Justice Plecoines, joined by Justice Beatty, dissented on both of the last two holdings. The dissent argued that the standard for granting new trials following guilty pleas and jury verdicts ought to be the same and ought to remain governed by the test announced in prior cases. *Id.* At 131 (Pleicones, J., dissenting), J.A. 226. Additionally, the dissent argued that even if the majority were correct to apply a new rule, it should be applied prospectively only. *Id.* Finally, and most importantly for the present appeal, the dissent argued that "the 'interest of justice' standard requires a factual determination and is one which should be made by the PCR judge. Therefore, (The Court should) remand the PCR judge to determine whether" the standard has been met *Id.*, J.A. 226.

On November 4, 2014, Mr. Jamison submitted a timely petition for rehearing, J.A. 229-37, which the Court, two Justices dissenting, denied on December 4, 2014.[4] J.A. 238.

Having lost in the State courts, on July 22, 2015, Mr. Jamison timely filed federal petition for the *writ of habeas corpus* in the United States District Court for the District of South Carolina on the grounds 1) that he was a victim of ineffective assistance of counsel in violation of his federal rights under the Sixth Amendment. 2) that South Carolina Supreme Court's change in the standards for granting a new trial after a guilty plea deprived him of his federal rights under the

Due Process Clause of the Fourteenth Amendment, and 3) that South Carolina Supreme Court's refusal to allow him to submit any evidence or argument in order to show compliance with the newly announced standard deprived him of his federal rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. J.A. 10-13;278.

The matter was referred to a Magistrate Judge for a Report and Recommendation . D.E. 18. On April 18, 2016, the Magistrate Judge recommended that the State's motion for summary judgment be franked and Mr. Jamison's petition for *habeas* relief be denied *in toto.* D.E. 29, J.A. 239-58. On June 6, 2016, Mr. Jamison filed his objections to the Magistrate's Report. D.E. 34 . On September 28, 2016, the District Judge delivered her judgement, granting Mr. Jamison's petition with respect to his second and third claim for relief (focusing on the retroactive application of the new test for vacating guilty pleas). *Jamison IV,* 211 F. Supp. 3d at 767-68, J.A. 282-84 and denying it with respect to the ineffective assistance of counsel claim. *Id.* At 769, J. A. 287-82. The District Court ordered the State of South Carolina to afford Mr. Jamison an opportunity to argue, in front of a PCR judge, that he has met the "interest of justice" standard for a vacatur of his guilty plea. *Id.* At 769-70, J.A. 284.

STATEMENT OF FACTS

A. Circumstances Leading to Mr. Jamison's Arrest and Guilty Plea

The facts of this case are somewhat convoluted, though largely undisputed. On June 11, 2000, Mr. Jamison shot and killed Alton Jarod Dreher. J.A. 263;S.J.A. 7, 12, 14, 17. At the plea hearing, the Richland County solicitor recounted. Three weeks before this shooting... the Defendant (Mr. Jamison) was at his house with his daughter and a girlfriend or the mother of the daughter. A number of individuals whose nicknames are "Jigg", "Little Thee", "Fax", "Butter",

they went to the Defendant's house. They beat him up; they pistol whipped him; they shot at him. About two or three days after that accident, those same individuals... smacked the Defendant's sister. Warrants were obtained for those individuals for what they had done to the

Defendant's sister.

The importance of that is that then we jump forward to June the 11th, the date of this incident. The victim, was at a party at the Armory that night. It was a Saturday night. Also at the party were those individuals... "Jig", "Butter", "Little Thee."

The victim (Alton Dreher) really didn't even know these individuals but for the fact that one of them is his cousin. It's our understanding, he just went up to them to talk to them briefly and then he was going off with his girlfriend. (He) wasn't really even hanging out with them, but unfortunately the one time he went to talk with them was when Mr. Jamison, the defendant, saw those individuals, pulled out a gun, a .38, and began firing into the crowd at those individuals. One of the bullets struck Alton (Dreher) right on the right side. It went through a number of his organs and he died right there at the scene. J.A. 263;S.J.A.20-21 (original orthography preserved). Mr. Jamison never denied shooting Alton Dreher; however, he always maintained that the reason
he discharged his firearm was because "Jig", "Butter", and "Little Thee" were approaching him and he was afraid for his life.

Unfortunately, at the time of his plea no witnesses came forward to corroborate Mr. Jamison's story. S.J.A. 21, 40-41. Indeed, as the prosecutor acknowledged, no witnesses cooperated with the investigation in any way whatsoever. *See* S.J.A. 21 ("One of the other tragic parts of this case was that nobody even came forward. Of the hundreds of people at that party, not one was willing to give the police a statement that night as to they saw and heard. Even when we were preparing this case, when investigator(s)... were out there trying to find other witnesses, these people: "Jig" and "Thee", these people that could have been witnesses----"Butter", who is a relative of the victim's they weren't even willing to come forward and help the State out in this case. Mr. Jamison's trial counsel also testified as to the inability to have any witnesses come forward to corroborate Mr. Jamison's version of events. S.J.A. 41-42 ("I talked to lots of

witnesses, went to the scene, had a private investigator. We went out several times trying to get any one person to say that "Jig had a gun. We couldn't do that.") Neither the State nor the defense were successful at securing witness cooperation investigating and adjudicating this matter.

B. The PCR Proceedings

On March 28, 2006, Theotis Bellamy executed an affidavit where he swore under the penalty of perjury that, on June 11, 200, he "was with Jamie Jackson (a.k.a. "Jigg"), Antonio Boulware (a.k.a. "Butta"), Terrence Curry (a.k.a. "Studda Bug"), (redacted), and several others' who in turn "were not cool with Jamison (and) stared at him with a look like they were going to get him that night." S.J.A. 45; *see also* S.J.A. 63-67 (testimony of Theotis Bellamy at the PCR hearing). Bellamy's affidavit and PCR hearing testimony confirmed that Mr. Jamison had, much like he testified to at his own plea hearing, *see* S.J.A> 26, good reason to be afraid for his life. Specifically, Bellamy testified that Jackson ("Jigg") appeared to have a gun and the other guys usually have guns also. I saw them approach Jamison who was minding his own business as usual. I moved back to where my sister, cousin, and their friends were and watched what was going on. Jackson ("JIgg") looked as if he was reaching for his gun or something while approaching Matthew (Jamison) with some other fellas, so Matthew (Jamison) did what he had to do to keep from being killed that night. If he had not defended himself, some harm would have come to him that night because those fellas looked serious that night. S.J.A. 45 (original orthography preserved); *see also* S. J.A. 63-67. Finally Bellamy explained why it took him six years to come forward with this evidence. According to Bellamy, " Jigg was making threats telling (his brother that if (he) told what had happened, something was going to happen to his (brother) so (he) got scared and wouldn't talk to anybody." *Id.* However, it appears that by 2006, Jigg was in federal custody, S,J.A. 61, allowing Bellamy to "feel safe and comfortable writing (his recollection of events) down on paper." S.J.A. 45; *see also* S,J.A.62.

Armed with his affidavit, Mr. Jamison filed PCR petition in the Circuit Court of Richland County South Carolina. *See* S.C. Code 17-27-80 (requiring that a PCR "application be heard in, and before any judge of, court of competent jurisdiction in the county in which the conviction took place."). After holding a hearing in which Mr. Jamison and Mr. Bellamy both testified, *see* S.J.A. 46-89, the Circuit Court applying the standard announced in *State v. Spann,* 513 S.E.2d 98(S.C. 1999) concluded that Mr. Jamison is entitled to a vacatur of his plea and new trial. J.A. 23-37. Under *Spann,* PCR petitioner is entitled to a new trial if he shows the after-discovered evidence: 1) is such that it would probably change the result if a new trial were granted; 2) has been discovered since the trial; 3) could not in the exercise of due diligence been discovered prior to trial; 4) is material; and 5) is not merely cumulative or Impeaching. J.A. 30 (quoting *Spann*, 513 S.E. 2d at 99). Following an affirmance of the order by South Carolina Court of Appeals, the State petitioned the South Carolina Supreme Court for a *writ of certiorari*, S. J.A. 90-98, which was granted. J.A. 164.

C. South Carolina Supreme Court's Decision

The South Carolina Supreme Court granted the State's petition for *writ of certiorari* on two issues. First the Court agreed to consider the argument that the Bellamy affidavit is not "newly discovered evidence" within the meaning of S.C. Code 17-27-45 ©, and therefore Mr. Jamison's petition was time barred, *see* S.J.A. 92 (questions presented in State's petition for *certiorari*); J.A. 175-79 (State's merits brief on the first question presented). Second, the Court agreed to consider the argument that under the South Carolina law, a guilty plea constitutes a waiver of all defenses, including a claim of self defense, precluding relief even were Bellamy's affidavit "newly discovered evidence" and Mr. Jamison's PCR application timely. S.J.A. 92; J.A. 180-85 (State's merits brief on the second question presented).

Under the rules governing PCR appellate procedures in South Carolina courts, the Supreme Court has the power to grant *certiorari* "on any question presented," and if the Court does so grant the petition, it is required to "specify the question or questions to be considered, and (direct) the parties (to) prepare briefs addressing the question(s)." S.C. App. R.

243(j). Parties' briefs in these matters "shall, to the extent possible, comply with the requirements of Rule 208(b)," *id.*, which in turn requires the petitioner brief to include "(a) statement of each of the issues presented for review," and cautions that "ordinarily, no point will be considered which is not set forth in the statement of issues on appeal." *Id.* 208(b)(1)(B).

The South Carolina Supreme Court decision resolved both issues presented to it against the State. First, it held that "as a procedural matter, (the Bellamy affidavit) was properly raised in Respondent's ... PCR application." *Jamison III*, 765 S.E2d at 128, J.A. 221. Next, the Court concluded that "by its plain language, the PCR Act affords "any person" the ability to seek post conviction relief on basis of newly discovered evidence---not just individuals convicted and sentenced following trial." *Id* at 129, J.A. 222. The Court explicitly "rejected the State's claim that the waiver of trial and admission of guilt encompassed in a guilty plea necessarily preclude post-conviction relief in all cases." *Id.* (emphasis in original).

Under the rules governing *certiorari* review of PCR actions, *see ante,* the Court having resolved all issues presented for review, would ordinarily stop. Instead, the Court, proceeded to hold that the test cited in *State v. Spann, ante* and its progeny, *see, e.g., McCoy v. State*, 737 S.E.2d 623, 625 n.1 (S.C. 2013), "is not the proper test for analyzing whether a PCR applicant is entitled to relief on the basis of newly discovered evidence following a guilty plea." *Jamison III,* 765 S.E.2d at 129, J.A. 223. Instead, though neither party had an opportunity to be heard on the issue, the Court announced a new test which limited PCR relief following a guilty to only to those cases where " the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated." *Id.* At 130, J.A. 224.Having announced this new standard, even though the State did not ask for it, and Mr. Jamison had no opportunity to ague against it, the Court summarily held that "the interests of justice do not require that (Mr. Jamison's) guilty plea and sentence be vacated and conclude(d) the PCR judge erred in granting relief." *Id.* The Court's holding stemmed in part from its conclusion that the Bellamy affidavit

"pertains not to a theory of self-defense but to one of transferred self-defense, (which has) not been recognized in South Carolina, and (which Mr. Jamison) does not ask the Court to recognize now," *Id.* At 130-31, J.A.22.

D. The Federal Habeas Petition

Having exhausted his State remedies, Mr. Jamison turned to the Federal Courts. *See* 28 U.S.C. 2254. He timely filed his federal *habeas* petition in the U.S. District Court for the District of South Carolina courts denied him an opportunity to be heard in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment. J.A. 6-14. The Appellee conceded that Mr. Jamison has met the jurisdictional requirements. *See* D.E. 19. In the same submission, the Appellee moved for summary judgment, arguing essentially that errors in state post conviction proceedings (to the extent there were any) do not in and of themselves provide grounds for federal *habeas* relief. *See id.*

The District Court denied, in relevant part, the State's motion for summary judgement, and granted Mr. Jamison's *habeas* petition; however, the Court limited the relief to the new hearing before the PCR court so as to provide Mr. Jamison with an opportunity to present his arguments to a State court of competent jurisdiction. *Jamison IV,* 211 F. Supp. 3d at 770, J.A.284. The State now appeals this limited relief.

As noted South Carolina Supreme Court granted bond after notice of appeal by The State from The Circuit Court granting application for post-conviction, which are unusual and more shocking on murder but everything The State argued the courts disagreed with putting an end to the matter bonds was granted under. Petitioner could understand if another court had granted bond or the issue that was before them when bond was set would had prevail are the reason he have to return to prison leaving behind the life he built the 5 years 10 months he was out. He had custody of his oldest son, he had 2 more children while out 5 in all, he owned his own business, got married in just put the down payment on his family home. What's even more unfair, is before he was given bond his max out date was 2017 because of 85% he would have to do 2 years' probation done by 2019, now his max out date is 2023 done with sentence 2025 making the whole granting and new rule unusual. To make matters worse, petitioner was on probation for 5 years for a concurrent sentence, and was on a curfew from 10:00 pm to 6:00 am condition added to his bond. Under 24-13-40 Hayes V. State probation time was void because that sentence was max out 2004 he did not get out until 2009. Petitioner have tried to resolve all this by writing Attorney General to be told there nothing they can do and Good Luck! Petitioner feels he never was free because anything that happen around him was guilty until proven innocent is what he had to do in every situation he was in while he was out on bond that happen while he was at work every time. The fact be there but because of this case I had to prove in court what is already known by the facts I have nothing to do with it.

Petitioner will point out why The S.C. Supreme Court decision was based on unreasonable determination of fact in light of evidence in State Court proceeding. This was petitioner second PCR and was directed by S.C. Supreme Court to address only these questions presented by the granted petition. He argued ineffective assistance of counsel regarding advice to plea on 1st and 2nd PCR. Plea counsel told PCR Court, he advised petitioner claim of self-defense could not be established. He say too risky to attempt. Counsel say weeks before the trial got a call about a 20 year concurrent went to see petitioner August 24 back preparing 26 trial was to start 27. Petitioner point out he had 3 witness to testify to. Counsel set up meeting in back room of court house he also tried to substitute counsel for not having the officer who was in the room and Ms. Teresa Johns who could have told about her plea deal and when she came to see me the day before pleas. Counsel the bottom line from plea hearing until 1st PCR you can tell plea counsel lying and there was a lot going on but back to this issue hand, majority opinion states: the narrow issue before the court is whether and to what extent an otherwise valid guilty plea may be vacated in PCR on the basis of newly discovered evidence, that issue was created by them not the issue before the courts. They rejected all The State claim then retroactively applied new rule without directly finding that question of law existed or that the lower court committed an error of law by applying the rule in place at the time of the PCR hearing or setting of bond abandon the standard of review and their recent holding McCoy V. State also Jordan V. State and Miller V. State. Consequently inferred The S.C. Supreme Court majority found that the lower courts also them The S.C. Supreme Court in granting bond committed an error of law thus justifying the de

novo review due to the lower courts failure to apply the new rule first pronounced in majority opinion that was not in existence at the time the case was before the lower court or before them S.C. Supreme Courts when granted bond.

Petitioner is to go to quote The S.C. Supreme finding and show how it's based on an unreasonable determination of the facts in light of evidence presented in The State Court proceeding. It appear the court does not question the evidence was newly discovered or fail to meet the first prong of new rule stating Bellamy's testimony could not be discovered prior to pleading guilty.

However, find the interests of justice do not require petitioner plea and sentence be vacated and conclude the PCR judge erred in granting relief. Petitioner submit the lower court repeated made finding regarding fundamental fairness that appear to be directly in line with The S.C. Supreme majority undefined "interest of justice" requirement. Specifically the lower court held that relief must be granted as the issue is one of fundamental fairness dictates a new trial when shocking to universal sense of justice. S.C. Supreme Court majority relied upon precedent In People V. Schneider that also states the lower courts fundamental fairness finding is directly in line for guilty plea cases balance between finality and fundamental fairness which interest of justice refers to the cause of fairness. Interest of justice akin to fundamental fairness. S.C. Supreme Court did not find the lower court erred in finding that the newly discovered evidence presented an issue of fundamental fairness that required a new trial. Therefore, the lower court who was in proper position to examine the credibility of the witnesses and evaluate the testimony and evidence made finding that satisfied S.C. Supreme Court majority new test without having to be clairvoyant. Petitioner will some up the plea colloquy with the victim has been mischaracterized by the state who admit to having no witnesses but continue to give statement on what happened that night, this need not address issue of transferred intent since the record shows victim as not innocent third party was a member of the group when thy approached petitioner that night. In the round lead gunshot residence found on back of hand not from in the middle of the summer should go to the jury. As for petitioner PCR testimony mention nothing about strength of the state evidence this whole plea was on advice of counseled which record prove was from discuss with the state in not on his own investigation. Counsel wrote him April 2, 2001 with what state say about victim gun powder residue but he said Kim Black from sled talked about round of lead gunshot residue on the back of palm which would have meant that the 15 year old victim who was shot had some gunshot residue hit the back of his palm not he was reaching for a gun but that he may have been using that as a deflection when somebody grabbed him a put him in line of fire was his PCR testimony, b7ut when I got my sled report from sled, Ms. Black documented every conversation related to this case none from counsel she talk to the state 3 times about it but not say what counsel said she had no way to test need clothes all three came from the state. To rap up manifest injustice The S.C. Supreme Court abuse their discretion on. The petitioner is attaching the memorandum from PCR Judge Keesley demonstrating the interest of justice requirement for order of record that plea be vacated as asked in S.C. Supreme Court majority

opinion for the first time ever. In as stated in the people V. Schneider case The S.C. Supreme Court majority relied upon defendants should be allowed to withdraw properly entered guilty pleas only in order to avoid manifest injustice.

Petitioner understand its S.C. laws but they are still to be fair and consistent with the requirements of Equal Protection Clause. The State like to say Federal Court is not a Super Court but seem to miss the point that this is The U.S. were fair, fundamental principle, liberty, justice is for all it make up or constitution. The conduct of legal proceeding according to established rule in principle for the protection and enforcement of right. It's flexible and call for such procedural protection different stand for similar situation may be seen as text book description of arbitrary conduct when S.C. Supreme Court applied new rule no visible input in the process by petitioner on interest in the proceeding using that very denial to preclude from vindicating his right. All person born in The United States and subject to the jurisdiction are citizen. No state shall make or shall abridge the privileges or immunities of citizen of U.S. nor shall any state deprive any person of life liberty nor equal protection of the law everyone during the time of my case argue under old rule everyone after will argue under new rule petitioner don't get that chance. The PCR Court gave me a new trial to have compulsory process for obtaining witness.

S.C. Supreme Court gave me liberty all under the traditionally rule in light of evident then came up with new rule and took it all back resulting me and going pass the set max out date I had. All under new rule. Because I am a U.S. citizen I have equality protection an all court proceeding I'm entitled to all privileges and immunities of S.C. all doctrine of precedent.

Petitioner submit the adopt of the new rule abolish his grant of a new trial and setting of the rule his bonds was set under. If petitioner would not have prevail under the argument or rules that was consider when bond was set or another court had set the bond in S.C. Supreme Court had nothing to do with setting it would not be retroactive. Action that take away or impair vested right acquired under existing laws, or creates a new obligation, imposes a new duty or attaches a new disability, in respect to transactions or consideration already past violating the legal relation resulting from the mind set and act of the bond consisting of right and duties accompanied by certain power, privileges the sum of these legal relations is call obligation, to apply new law by S.C. Supreme Court is constitutionally forbidden they cannot be fickle or arbitrary with their dealing. Existing causes shall be settled upon existing facts. Any subsequent change to reduce recovery violates constitutional safeguard. It would be a construction utterly subversive of all the object of the provision the bond was set off of. Once a cause of action under a particular rule of law accrues to a person by virtue of any injury to his right that person's interest in the cause of action and the law which is the basis for legal action becomes vested. Because of the disjunctive or the constitutional principle does not require a showing of vested right. Because the phrase is disjunctive a new obligation, a new duty or a new disability an analysis need go no further then one of these. S.C. Supreme Court in Talley V. State said in general, the question of whether a

decision announcing a new rule should be given prospective or retroactive effect should be addressed at time of the decision. A case announces a new rule when it breaks new ground or imposes a new obligation. To put it differently, a case announces a new rule if the result was not dictated by precedent exist at the time the defendant conviction became final. Knowingly violated my equal protection.

REASON FOR GRANTING PETITION

This petition should be granted because if not state would thank they don't have be fair with their dealing, they can make new rule at a drop of a dime without giving a chance meet it. Make decision that will effect a person liberty because state prisoner don't have constitutional right on PCR proceeding. S.C. Court have made important federal law decision that should settled by this court.

Because of the completed vest right by the S.C. Supreme Court petitioner punishment is greater, cruel and unusual.

Be of new rule under constitutional fact doctrine give Federal Courts the right to rule on the fact of this case looking at the present legal consequences upon past event.

U.S. Supreme Court say the Court and law are to be even handed the Evidentiary Hearing was held on June 27, 2008 to avoid the obvious disparate treatment of only applying to petitioner in the interest of even handed justice he urges the court to address the threshold matter of retroactivity and find new rule must only be applied prospectively as said by S.C. Supreme dissent.

Because of the fundamental miscarriage of justice exception allow this court to address constitutional error that although ordinarily unreviewable review because state court procedural default rendered the proceeding basically unfair in a legal dispute, no law or government procedure should be and petitioner plea is not valid he plead on advice of counsel that self-defense could not be established to risky counsel admitted at PCR. Fundamental Fairness mandates a new trial to establish his 6th amendment right as was granted.

The U.S. Constitution is set for petitioner to have Due Process Clause and equal protection clause in every proceeding in the U.S. the 14th Amendment provision requiring the states to give similarly situated person or class similar treatment under the law.

Petitioner challenge the validity which he's being held in custody he was granted bond by same court that apply new rule the result of that determination abuse their discretion process and his rights. It end up actual deprivation of his liberty.

The dissent noted to majority that they were apply a rule different from recent cases.

S.C. Supreme Court Law require statement of issues presented for review and caution that no point will be considered which is not set forth on appeal unanimously disposed the state appeal and reason bond was granted then adopt new rule without giving chance to demonstrate he can meet new rule and abandoning their own any evidence standard of review.

S.C. Supreme Court new rule has been applied retroactively because of their past transaction and consideration became vested which implicates the fundamental fairness and accuracy of the proceeding rejecting the Spann test adopting the Jamison test. Violating their own as well as U.S. ex post facto law.

S.C. Supreme Court had chance to address the important federal question of retroactive when dissent noted it should be applied prospectively then noting last result of another state court.

Since S.C. Supreme Court is the court that granted bond and applied new law they change the proceeding collateral to detention to the detention itself.

U.S. Appeal Court say state prisoner has no federal constitutional right to post conviction proceeding constitutional rights is for all proceedings.

Conclusion

The petition for a writ of certiorari should be granted.

Request for Attorney

To help petitioner litigate and research the issue. I have done the best I can I'm asking the Court to please have someone to help everthing stated about case is the truth.

Respectfully Submitted,

Matthew Jamison

6-28-19