

19-5046

No. USCA4 No. 18-7437

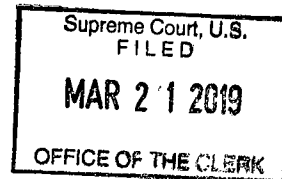
U.S. Fourth Circuit

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Writ of Certiorari



Armistead, James — PETITIONER
(Your Name)

vs.

Superintendent Millis — 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

James Gregory Armistead
(Your Name)

Scotland Correctional Institution
(Address)

22385 McGirts Bridge Road Lauringburg N.C. 28353
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

WHETHER CIRCUIT COURT JUDGE ERROR WHEN DENIED PETITIONER APPEAL, FOR WRIT OF HABEAS CORPUS FOR VIOLATION OF CONSTITUTIONAL RIGHT OF INEFFECTIVE ASSISTANCE OF COUNSEL AND MALICIOUS PROSECUTION, WHEN PETITIONER FULFILLED OBLIGATION OF CONTRACT.

WHETHER CIRCUIT COURT JUDGES ERROR WHEN PETITIONER WAS DENIED A CERTIFICATE OF APPEALABILITY, FOR CLEAR VIOLATION OF HIS CONSTITUTIONAL RIGHTS, WHERE PETITIONER PRESENT LEGALABLE DOCUMENTS TO PROVE INEFFECTIVE ASSISTANCE OF COUNSEL, AND VINDICTIVE PROSECUTION BY LEADING DISTRICT ATTORNEY

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:

JAMES GREGORY ARMISTEAD

SUPERINTENDENT, MR. MILLIS

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APPENDIX B	<u>united states Court of Appeals For The Fourth Circuit</u> <u>No. 18-7437, Dismissed by unpublished per curiam opinion.</u>
APPENDIX C	<u>STATE TRIAL COURT, found petitioner guilty on 5/1/12.</u>
APPENDIX D	<u>opinion filed August 6, 2013, the Court of Appeals (Judge</u> <u>Dillon With Judges Calabria and Ervin Concurring) affirm.</u>
APPENDIX E	<u>Petitioner discretionary review denied No. COA12-1315.</u>
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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Strickland, 466 U.S. at 691-92</u>	
<u>Fisher V. Gibson, 282 F.3d 1283, 1309 (10th Cir. 2002).</u>	
<u>Dugas V. Coplan, 428 F.3d 317, 332 (1st Cir. 2005)</u>	
<u>Morales V. Mitchell, 507 F.3d 916, 936 (10th Cir. 2007).</u>	
<u>Lambright V. Schriro, 485 F.3d 512, 525-30 (9th Cir.) amended by 490 F.3d 1103 (9th Cir. 2007).</u>	
<u>U.S. V. Stokes, 124 F.3d 39, 45 (1st Cir. 1997)</u>	
<u>U.S. V. Campbell, 410 F.3d 456, 461 (8th Cir. 2005).</u>	
<u>Neal V. Cain, 141 F.3d 207, 214 (5th Cir. 1998).</u>	
<u>U.S. V. Najjar, 300 F.3d 466, 480 (4th Cir. 2002).</u>	
<u>U.S. V. Gary, 291 F.3d 30, 35 (D.C. Cir. 2002).</u>	

STATUTES AND RULES

6th Amendment right to Counsel is right to effective assistance of Counsel. The right to effective assistance applies to both retained and appointed Counsel. See Cuyler V. Sullivan, 466 U.S. 335, 344-45 (1980). The Sixth Amendment guarantees the rights to effective assistance of Counsel in Criminal prosecutions.

Mark V. United States, 430 U.S. 188, 191-92, 195, 97 S.Ct. 990, 51 L.Ed. 2d 260 (1977);
Bowie V. City of Columbia, 378 U.S. 374, 353-54, 84 S.Ct. 1697, 12 L.Ed. 2d 894 (1964) ("Indeed, an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an ex post facto law, or law impairing the obligation of contracts, such as Art. I, § 10. of the Constitution forbids.

OTHER

It is clear the wisdom of an JobLink state program decision to enter into an Contract agreement with Petitioner should be of no concern to state prosecutors. Defendant, Mr. Seth Edwards, was not free to expand the scope of a criminal statute to cover the scope of a criminal statute or Petitioner otherwise innocent conduct, such a retroactive expansion would violate due process right. See Mark V. United States, 430 U.S. 188, 191-92, 95, 97 S.Ct. 990, 51 L.Ed. 2d 260 (1977)

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 A 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 E to the petition and is

☐ reported at North Carolina Supreme; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the North Carolina Court of Appeals court appears at Appendix D 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 April 2, 2009.

[] 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: April 24, 2019, and a copy of the order denying rehearing appears at Appendix B.

[] 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 August 2013.
A copy of that decision appears at Appendix D.

[] 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.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner alleged that his conviction of 14-100 N.C. state Stat: of obtaining property by false pretense Violates his Constitutional rights to the United States fifth and fourteenth Amendment, Petitioner entered into an Workforce Investment Act (WIA), which is federal legislation (Tp. 11). The eligibility criteria for all of these programs are set forth in the federal guidelines. (Tp. 12)

Petitioner sign the Contract Agreement on 8/3/09., Which there was no provision for any refund or return for anything that was obtain by the fulfillment of the WIA agreement, "to weaken [the contract], or lessen its value, or make it worse in any respect or in any degree.... Any law which changes the intention and legal effect of the original parties, giving to one a greater and to the other a less interest or benefit in the contract, impairs its obligation." 115 A. 484, 486. "The extent of the change is immaterial. Any deviation from its terms by hastening or postponing the time of performance which it prescribes, or imposing conditions not included in the contract, or dispensing with the performance of those that are included... impairs the obligation of a contract." Id. Impairment is also said to exist where the right to enforce a contract is eliminated or substantially lessened. See 185 A. 401. State statutes which do so are prohibited by Art. I, sec. 10 of the United States Constitution.

The sixth Amendment guarantees the right to effective assistance of counsel in criminal prosecutions, In deciding whether counsel's performance was ineffective, a court must consider the totality of the circumstances. Strickland, 406 U.S. at 690 (Court must "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance"); see, e.g., Dugas v. Coplan, 428 F. 3d 317, 332 (1st Cir. 2005) (counsel's failure to investigate possible defense was ineffective assistance).

The Due Process clause prohibits a prosecutor from using criminal charges in an attempt to penalize a defendant's valid exercise of constitutional or statutory rights, U.S. v. Stokes, 124 F. 3d 39, 45 (1st Cir. 1997) ("It is hornbook law that a federal court may dismiss an indictment if the accused produces evidence of actual prosecutorial vindictiveness sufficient to establish a due process violation, or even if he demonstrates a likelihood of vindictiveness sufficient to justify a presumption see, e.g., U.S. v. Wilson, 262 F. 3d 305, 314 (4th Cir. 2001).

STATEMENT OF THE CASE

Petitioner was indicted on 10 May 2010 for two counts of obtaining property by false pretenses and status of being a habitual felon. Defendant (Petitioner), was tried by a jury at 30 April 2012, Criminal Session of Beaufort County Superior Court. The jury found Petitioner guilty of all charges and the status of being a habitual felon. The Court sentence Petitioner as a habitual felon to 108 months minimum and 139 months maximum imprisonment. Petitioner gave oral notice of appeal in open court on 1 May 2012 (Tp 16).

The Mid-East Commission administers the Job Link Program in Beaufort County. The Job Link Program uses federal funds under the Workforce Investment Act to assist unemployed individuals in training for and securing employment. The program is referred to as the "WIA" program. It operates through three programs: the Adult Program, for those with low incomes, the Dislocated Worker Program for those laid off from employment, and a Youth Program (Tp 10-12).

On 3 August 2009, Petitioner enrolled in the WIA Adult Program. Petitioner was required to sign a contract to participate in the Program. (Tpp 13-17). The contract does not have any provision about the return or refund of tuition, fees, books, and supplies provided to the participant. Petitioner testified that his experience with financial assistance program that paid for books and supplies, such as Pell grants, was that any items Petitioner obtained could be returned for a refund if they were not needed. Semester was over, Petitioner had completed the classes for which he needed calculator and tools. (Tpp 102-103, 117-118). A complaint was made to the Washington, North Carolina Police Department. Detective Ron Black was assigned to investigate. He spoke with Ms. Bowen who told him what happened. (Tp 82-83). Detective Black contacted Petitioner by phone. He explained that he was investigating Petitioner purchase and return of the calculator and tools for cash. Petitioner told him, "I return the tools back to the store, got the money so I could pay my light bill." He (Petitioner) went on to say "there was nowhere saying that I can't do that." (Tp 84-85). There are my Tools.

REASONS FOR GRANTING THE PETITION

Review of trail transcript, and other important legal relevant documents such as an (Workforce Investment Act) Agreement, which Petitioner entered into on 3 August 2009, which had no provision for an refund or return for anything obtain by the fulfillment of the agreement (Rpp36-37), clearly indicate that once Petitioner obtain items by the fulfillment of agreement, he became the lawful owner of items

AGREEMENT: a manifestation of mutual assent between two or more legally competent person which ordinarily lead to a Contract. In common usage, it is a broader term than Contract, bargain, or promise, since it includes executed sales, gifts, and other transfer of property, as well as promise without legal obligation.

See Woodruff v. New State Ice Co., 197 F. 2d 36 (1952). Where services performed by one person are knowingly and voluntarily accepted by another the law will presume that such service were given and received in expectation of being paid therefor, and will imply a promise to pay the reasonable worth; but where a party voluntarily does an act or render a service, and there is no intention at that time he should charge therefor, or understanding, (express or implied, that the other party should pay), he will not be permitted to recover, for the law does not convert an intended gratuity into a legal obligation. 15 O.S. 1951 §§ 131-133 (OKL. St. Ann.).

There was no provision for an Refund or Return for any books, tuitions, supplies, or fees that was obtain by petitioner, by the fulfillment of an legally binding Workforce Investment Act. agreement, There no provision implemented by the local state Job Link agency for an refund or return for items that was obtain by the fulfillment of the WIA. agreement by the petitioner, It is clear and Plain that Fourth Cir. Court of Appeals.

entered a decision in conflict with the decision of another United State Court of appeals on the same matter, see. *Goldyn V. Hayes*, 444 F.3d 1062, 1070 (9th Cir. 2006), Petitioner state appointed trial lawyer was clearly ineffective, Appointed should had argued ownership by fulfillment of agreement, and other relevant important document that show and prove ownership, appointed attorney should had file pretrial motions, see. *Sonnier V. Quarterman*, 476 F.3d 349, 357-58 (5th Cir. 2007), *Lambright V. Schrio*, 485 F.3d 512, 525-30 (9th Cir.), *Plumlee V. Del Papa*, 465 F.3d 910, 922 (9th Cir. 2006).

Leading District Attorney surely had to have known, and been aware of Petitioner entering into an legally binding WIA. agreement that had no provision for returns or refund, and state do link, had nothing implemented for return or refund, *U.S. V. Jackson*, 327 F.3d 273, 294 (4th Cir. 2003), *U.S. V. Meyer*, 810 F.2d 1242, 1245-46 (D.C. Cir. 1988). Leading District Attorney Allow Petitioner to be try and Convicted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James H. Armistead

Date: 6/5/19.