No. 19-5121

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RICKY DANIEL WAGONER — PETITIONER
(Your Name)

vs.

NORTH CAROLINA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE STATE OF NORTH CAROLINA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RICKY DANIEL WAGONER
(Your Name)

545 AMITY PARK ROAD
(Address)

SPRUCE PINE, NORTH CAROLINA 28777-6310
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I Does Due Process of Law under the Fourteenth Amendment Require that a Waiver of a State Constitutionally Protected Right to an Indictment, must be Perfected Knowingly and Voluntarily with Full Understanding and Awareness of the Direct Consequences and Impact of the Waiver?

If so, is any Lack of Full Understanding of the Direct Consequences a Jurisdictional matter?

Are North Carolina's G.S. 15A-642(c) and 15A-[illegible] Procedural Waiver Statutes, Absent In-Court Inquiry into the Direct Consequences Unconstitutionally Vague and Unsound since the "Valid Waiver of a Constitutional Right [is Being] Presumed from a Silent Record" Contrary to <u>Boykin</u> v <u>Alabama</u>, 395 U.S. 238, 243 (1969)? And Contrary to Rule 7(b) Federal Rules of Criminal Procedure?

II Does Due Process of Law and Fundamental Fairness under the Fourteenth Amendment Require that the "Factual Basis" of a Plea, upon which the Validity of the Imposition of Punishment Relies, <u>Be Factual</u> in Law and Actual Fact and Not some "Prosecutorial Fiction" merely to Satisfy the Elements of Some offense Agreed to under the Plea?

III Even under Strickland's Highly Deferential Standard(s), was Defense Counsel's Performance "Reasonable under Prevailing Professional Norms" By Counsel's <u>Absolute</u> <u>Refusal</u>, Despite Numerous Requests that He Do so to the Point of Creating an Irreconcilable impasse over the Tactical issue, to File a Pretrial Suppression motion Based upon an Egregiously Flagrant Violation

III, CONTINUED

OF *Miranda v Arizona*, 384 U.S. 436, 474 WHERE THERE IS/WAS A REASONABLE PROBABILITY OF SUCCESS, WHERE INSTEAD COUNSEL WENT TO EXTRAORDINARY LENGTHS TO COERCE A PLEA BASED SOLELY ON THAT SAME ILLEGALLY OBTAINED EVIDENCE, SOUGHT TO BE SUPPRESSED, AND FOR WHICH COUNSEL RECEIVED A FEE OF $10,000.00?

IV DOES IT VIOLATE DUE PROCESS AND EQUAL PROTECTION OF THE LAW UNDER THE FOURTEENTH AMENDMENT FOR A CLERK OR ASSISTANT CLERK OF COURT TO KNOWINGLY, ARBITRARILY AND DELIBERATELY DEPRIVE A DEFENDANT VERBATIM TRANSCRIPT(S) OF PROCEEDINGS, SIMPLY BY WITHHOLDING THE "CONTACT INFORMATION" OF A COURT REPORTER ABLE TO TRANSCRIBE THE VERBATIM RECORDS NECESSARY FOR AN ADEQUATE RESOLUTION OF A POST-CONVICTION, JURISDICTIONALLY SIGNIFICANT CLAIM?

IF SO, WAS IT A FUNDAMENTAL ERROR FOR THE N.C. COURT OF APPEALS IN FILE NUMBER P17-575 FOR A WRIT OF MANDAMUS TO COMPEL THE CLERK TO PERFORM A DUTY REQUIRED BY LAW, TO DENY A HEARING ON THAT WRIT? AND, LASTLY, FOR THE N.C. SUPREME COURT TO DENY A DISCRETIONARY REVIEW OF THAT OBVIOUS ERROR THUS PERPETUATING THE ARBITRARY DENIAL OF THE TRANSCRIPTED RECORD TO THE DEFENDANT'S PREJUDICE FOR A POST-CONVICTION REVIEW AND RESOLUTION OF A JURISDICTIONALLY SIGNIFICANT CLAIM?

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:

NOTE: THE N.C. SUPREME COURT IS NOT A PARTY

TABLE OF CONTENTS

INDEX TO APPENDICES

APPENDIX H: MOTION FOR APPROPRIATE RELIEF (68 PAGES)
APPENDIX I: AFFIDAVIT OF RICKY D. WAGONER #1 (9 PAGES)
APPENDIX J: AFFIDAVIT OF RICKY D. WAGONER #2 (5 PAGES)
APPENDIX K: WARRANT FOR ARREST 04 CR 50956 2/29/04
APPENDIX L: INDICTMENT 04 CRS 50956 4/12/04
APPENDIX M: ORDER - RULE 24 - BY METZLER A MORGAN 6/1/04
APPENDIX N: TRANSCRIPT OF PLEA - [AOC-CR-300] 11/4/04 (2 PAGES 2 SIDES)
APPENDIX O: INFORMATION [AOC-CR-123] 04 CRS 4702 11/4/04
APPENDIX P: JUDGMENT AND COMMITMENT - 04 CRS 50956
APPENDIX Q: JUDGMENT AND COMMITMENT - 04 CRS 4702
APPENDIX R: ORDER OF M.E. HELMS OF 4/20/2005
APPENDIX S: ARTICLE: THE CASE AGAINST PLEA BARGAINING - T. LYNCH (13 PAGES)
APPENDIX T: AFFIDAVIT - RODNEY WAGONER (2 PAGES)
APPENDIX U: AFFIDAVIT - KAYLA D. WAGONER HONEYCUTT
APPENDIX V: AFFIDAVIT - MAXINE WAGONER
APPENDIX W: AFFIDAVIT - EARL WAGONER
APPENDIX X: ARTICLE: PRISON LEGAL NEWS, VOL 28, NO. 5, MAY 2017, I& @ 56-57
"THE CASE OF THE DISAPPEARING CRIMINAL JURY TRIAL"
APPENDIX Y: DEFINITIONS: BLACK'S LAW DICTIONARY, 6TH ED. 1991.
APPENDIX Z: N.C.G.S. § 15A-211. ELECTRONIC RECORDING OF INTERROGATIONS.

APPENDIX: AA: PETITION FOR WRIT OF CERTIORARI TO N.C. COURT OF APPEALS (32 PAGES) WITH ATTACHMENTS (DENYING MAR)

APPENDIX BB: LETTER OF MARCH 8 TO ADMINISTRATIVE OFFICE OF THE COURTS

APPENDIX CC: LETTER OF MARCH 20, 2017 TO ADMINISTRATIVE OFFICE OF THE COURTS

APPENDIX DD: MARCH 30TH, 2017 RESPONSE FROM N.C.A.O.C.

APPENDIX EE: MAY 24TH, 2017 LETTER FROM CLERK OF COURT - WILKES CO.

APPENDIX FF: PETITION FOR DISCRETIONARY REVIEW, N.C. SUPREME COURT SEPTEMBER 7TH, 2017

APPENDIX GG: DENIAL OF DISCRETIONARY REVIEW 11/1/2017

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Alexander v Louisiana, 405 U.S. 625, 633 (1972)	10
Berger v United States, 295 U.S. 78, 88 (1935)	14
Blackledge v Perry, 417 U.S. 21, 28-29 (1974)	14
Blakely v Washington, 542 U.S. 296, 307 (2004)	15
Boykin v Alabama, 395 U.S. 238, 243 (1969)	11, 12
Brady v Maryland, 373 U.S. 83, 87 (1963)	15
Brady v United States, 397 U.S. 742, 750 (1970)	15
Brookhart v Janis, 384 U.S. 1, 7-8 (1966)	19

(cont vii)

STATUTES AND RULES	
Federal Rule Criminal Procedure - Rule 7(b)	
N.C. Gen. Stat. § 15A-642	5
N.C. Gen. Stat. § 15A-923	5-6
N.C. Gen. Stat § 15A-1022 (c)	
N.C. Gen. Stat § 15A-1022 (c)(4)	

OTHER

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 ______ 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.

[X] 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

[ ] reported at ______________________________; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the N.C. Court of Appeals P17-575 court appears at Appendix E to the petition and is

[ ] reported at ______________________________; or,
[X] 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 ____________________.

[ ] 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).

[x] For cases from **state courts**:

The date on which the highest state court decided my case was January 30th, 2019. A copy of that decision appears at Appendix A.

[ ] 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

UNITED STATES CONSTITUTION, AMENDMENT XIV, SECTION 1

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

NORTH CAROLINA CONSTITUTION; ARTICLE I, SECTION 22.

EXCEPT IN MISDEMEANOR CASES INITIATED IN THE DISTRICT COURT DIVISION, NO PERSON SHALL BE PUT TO ANSWER ANY CRIMINAL CHARGE BUT BY INDICTMENT, PRESENTMENT, OR IMPEACHMENT. BUT ANY PERSON, WHEN REPRESENTED BY COUNSEL, MAY, UNDER SUCH REGULATIONS AS THE GENERAL ASSEMBLY SHALL PRESCRIBE, WAIVE INDICTMENT IN NONCAPITAL CASES.

NORTH CAROLINA CONSTITUTION; ARTICLE I; SECTION 19

NO PERSON SHALL BE TAKEN, IMPRISONED, OR DISSEIZED OF HIS FREEHOLD, LIBERTIES, OR PRIVILEGES, OR OUTLAWED, OR EXILED, OR IN ANY MANNER DEPRIVED OF HIS LIFE, LIBERTY, OR PROPERTY, BUT BY THE LAW OF THE LAND. NO

PERSON SHALL BE DENIED THE EQUAL PROTECTION OF THE LAWS; NOR SHALL ANY PERSON BE SUBJECTED TO DISCRIMINATION BY THE STATE BECAUSE OF RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.

UNITED STATES CONSTITUTION, AMENDMENT VI.

IN ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

NORTH CAROLINA CONSTITUTION, ARTICLE I, SECTION 23.

IN ALL CRIMINAL PROSECUTIONS, EVERY PERSON CHARGED WITH A CRIME HAS THE RIGHT TO BE INFORMED OF THE ACCUSATION AND TO CONFRONT ACCUSERS AND WITNESSES WITH OTHER TESTIMONY, AND TO HAVE COUNSEL FOR DEFENSE, AND NOT BE COMPELLED TO GIVE SELF-INCRIMINATING EVIDENCE, OR TO PAY COSTS, JAIL FEES, OR NECESSARY WITNESS FEES OF THE DEFENSE, UNLESS FOUND GUILTY.

N.C.G.S. § 15A-642. PROSECUTIONS ORIGINATING IN SUPERIOR COURT TO BE UPON INDICTMENT OR INFORMATION; WAIVER OF INDICTMENT.

(a) PROSECUTIONS ORIGINATING IN THE SUPERIOR COURT MUST BE UPON PLEADINGS AS PROVIDED IN ARTICLE 49 OF THIS CHAPTER, PLEADINGS AND JOINDER.

(b) INDICTMENT MAY NOT BE WAIVED IN A CAPITAL CASE OR IN A CASE IN WHICH THE DEFENDANT IS NOT REPRESENTED BY COUNSEL.

(c) WAIVER OF INDICTMENT MUST BE IN WRITING AND SIGNED BY THE DEFENDANT AND HIS ATTORNEY. THE WAIVER MUST BE ATTACHED TO OR EXECUTED UPON THE BILL OF INFORMATION.

[HISTORY. 1907, C. 71; C.S., S. 4610; 1951, C. 726, SS. 1, 2; 1971, C. 377, S. 30.1; 1973, C. 1286, S. 1.]

N.C.G.S. § 15A-923. USE OF PLEADINGS IN FELONY CASES AND MISDEMEANOR CASES INITIATED IN THE SUPERIOR COURT DIVISION.

(a) PROSECUTION ON INFORMATION OR INDICTMENT. — THE PLEADING IN FELONY CASES AND MISDEMEANOR CASES INITIATED IN THE SUPERIOR COURT DIVISION MUST BE A BILL OF INDICTMENT, UNLESS THERE IS A WAIVER OF THE BILL OF INDICTMENT AS PROVIDED IN G.S. 15A-642. IF THERE IS A WAIVER, THE PLEADING MUST BE AN INFORMATION. A PRESENTMENT BY THE GRAND JURY MAY NOT SERVE AS THE PLEADING IN A CRIMINAL CASE.

(b) FORM OF INFORMATION OR INDICTMENT — AN INFORMATION AND A BILL OF INDICTMENT CHARGE THE CRIME OR CRIMES IN THE SAME MANNER. AN INFORMATION

HAS ENTERED UPON IT OR ATTACHED TO IT THE DEFENDANT'S WRITTEN WAIVER OF A BILL OF INDICTMENT. THE BILL OF INDICTMENT HAS ENTERED UPON IT THE FINDING OF THE GRAND JURY THAT IT IS A TRUE BILL.

(c) WAIVER OF INDICTMENT – THE DEFENDANT MAY WAIVE A BILL OF INDICTMENT AS PROVIDED IN G.S. 15A-642.

(d) AMENDMENT OF INFORMATION – AN INFORMATION MAY BE AMENDED ONLY WITH THE CONSENT OF THE DEFENDANT.

(e) NO AMENDMENT OF INDICTMENT – A BILL OF INDICTMENT MAY NOT BE AMENDED.

[HISTORY. 1973, c. 1286, s. 1.]

STATEMENT OF THE CASE

AS PRESENTED TO THE WILKES COUNTY SUPERIOR COURT IN THE MOTION FOR APPROPRIATE RELIEF FILED THERE UNDER N.C.G.S. § 15A-1419(a), THE DEFENDANT/PETITIONER WAS INDICTED FOR FIRST DEGREE MURDER ON APRIL 12, 2004.

THIS INDICTMENT WAS HANDED DOWN IN RELATION TO THE DEATH OF PETITIONER'S EX-WIFE DURING A CONSENTUAL SEXUAL TRYST ON JANUARY 30TH, 2004, AND WAS BASED UPON INFORMATION OBTAINED IN VIOLATION OF *Miranda v. Arizona*, 384 U.S. 436, 457-58 (1966); *Davis v. North Carolina*, 384 U.S. 737, 752 (1966), AND THEIR PROGENY.

FORMER FORSYTH COUNTY PROSECUTOR, DONALD K. TISDALE WAS APPOINTED BY THE N.C. INDIGENT DEFENSE OFFICE, TO BE DEFENSE COUNSEL OF RECORD, AND HE REFUSED TO MOVE TO SUPPRESS THE AFORESAID STATEMENT (S), DESPITE THE FACT THAT THE ATTORNEY SUMMONED FOR THE FEBRUARY 29TH, 2004 INTERROGATION WAS DENIED ACCESS TO HIS CLIENT [DEFENDANT'S AFFIDAVIT I; ATTACHMENT #2 OF THE M.A.R., I2 @ 1-3]

THE 04 CR[S] 4702 BILL OF INFORMATION "CAME INTO BEING" THE MORNING OF THE DAY OF THE PLEA PROCEEDINGS (11/04/2004) WHICH IS HOW THE TWO (2) CASES WERE THUS ADJUDICATED. [M.A.R. ATTACHMENT #8]. DEFENDANT RECEIVED SENTENCES OF 157 TO 198 IN 04 CRS 50959 AND A CONSECUTIVE 240 TO 297 MONTH SENTENCE IN 04 CR[S] 4702, TOTALLING 397 MONTHS TO 495 MONTHS AGGREGATED. THE PETITIONER HAS SERVED THE FIRST SENTENCE FOR MURDER AT THIS TIME.

ABSENT THE ASSISTANCE OF COUNSEL AS PURPORTEDLY PROVIDED BY N.C.G.S. § 7A-451(a)(3), THE PETITIONER FILED A M.A.R. ON MARCH 15TH, 2005, WHICH WAS DENIED BY JUDGE HELMS AMIDST FALSE FINDINGS OF FACT WHICH, IN TURN,

LED TO ERRONEOUS CONCLUSIONS OF LAW BASED SOLELY UPON THAT WHICH IS/WAS WRITTEN ON A DOCUMENT BY SOMEONE ELSE AND TAKEN AS "GOSPEL" BY THE HONORABLE MICHAEL E. HELMS ON APRIL 20, 2005 [MAR ATTACHMENT #10].

DEFENDANT/PETITIONER FILED A SUBSEQUENT M.A.R. INTO THE TRIAL COURT "ON OR ABOUT MAY 1ST, 2018. THAT FILING SPECIFICALLY ADDRESSED DONALD K. TISDALE'S INEFFECTIVE ASSISTANCE; THE TRIAL COURT'S SUBJECT MATTER JURISDICTION OVER 04 CR[S] 4702 BASED UPON THE "UNKNOWINGNESS," INVOLUNTARINESS AND LACK OF UNDERSTANDING OF THE DIRECT CONSEQUENCES OF THE WAIVER OF AN INDICTMENT, ALONG WITH NUMEROUS MISCARRIAGES OF JUSTICE APPLICABLE UNDER N.C.G.S. § 15A-1419(e). THAT M.A.R. WAS "SUMMARILY DENIED AND DISMISSED" BY THE HONORABLE MICHAEL D. DUNCAN ON MAY 26TH, 2018.

PETITIONER SOUGHT CERTIORARI, FILED WITH THE COURT OF APPEALS AS FILE NUMBER P17-575 ON OCTOBER 19TH, 2018. CERTIORARI WAS DENIED ON OCTOBER 23RD, 2018.

PETITIONER SOUGHT DISCRETIONARY REVIEW IN THE N.C. SUPREME COURT FILED AS 326 P17-2 ON NOVEMBER 8TH, 2018, UNDER N.C.G.S. § 7A-31(c). THAT PETITION WAS DENIED "IN CONFERENCE" JANUARY 30TH, 2019. (APPENDIX A).

THEREFORE, THE PURPOSE OF THIS PETITION IS TO SEEK AN APPELLATE COURT OF COMPETENT JURISDICTION AND AUTHORITY TO REVIEW THE PREVIOUS PROCEEDINGS in toto AND TO SAY ENOUGH!, BASED ON THE RECOGNITION OF FLAGRANT, CONSTITUTIONALLY SIGNIFICANT VIOLATIONS OF RIGHTS PERPETRATED BY "THE GOVERNMENT" AND THEN "COVERED-UP" BY THAT SAME GOVERNMENT TO ESTABLISH A modus operandi FOR MORE OF THE SAME.

NO REASONABLE JURIST REVIEWING A SCENARIO WHEREBY A PERSON SUBMITTING TO A FALSE CLAIM OF ARREST AUTHORITY BY LAW ENFORCEMENT PERSONNEL THAT DOES NOT EXIST IS NOT DEEMED TO BE "IN CUSTODY." LIKEWISE, ONCE INSIDE THE SHERIFF'S DEPARTMENT OFFICES THAT OFFICERS IMMEDIATELY BEGAN QUESTIONING HIM IS DEEMED TO BE "INTERROGATION." THAT THE DEFENDANT UNEQUIVOCALLY INVOKED HIS RIGHT TO COUNSEL, AND HAD AN ATTORNEY EN ROUTE, WAS THEN TAKEN TO AN INTERROGATION ROOM AND FURTHER INTERROGATED IS NOT DEEMED TO VIOLATE *MIRANDA* AND IT'S PROGENY. NO REASONABLE JURIST REVIEWING THIS SCENARIO, UPON LEARNING THAT WHEN COUNSEL ARRIVED AND SOUGHT ACCESS TO THE LOCKED OFFICES AND HIS CLIENT, AND WAS DENIED BOTH UNTIL SUCH TIME AS DETECTIVES HAD THEIR "VOLUNTARY STATEMENT" WOULD DETERMINE THAT A CONSTITUTIONAL VIOLATION HAD NOT OCCURRED.

WHAT WOULD NORMALLY BE A DEFENSE ATTORNEY'S DREAM COME TRUE, DONALD K. TISDALE IGNORED. HE FAILED TO CHALLENGE THE STATE'S CASE IN ANY MANNER. INSTEAD HE CONSPIRED TO DEPRIVE THE CLIENT OF HIS 6TH AMENDMENT RIGHT TO A TRIAL BY A COERCED PLEA, WHILE AT THE SAME TIME CONSPIRING TO STRIP THE CLIENT OF ANY APPELLATE REVIEW AS OF RIGHT.

NO RATIONAL JURIST REVIEWING THIS SCENARIO UNDER A TOTALITY OF THE CIRCUMSTANCES WOULD RENDER THE PROCEEDINGS, IF TRUE, ANYTHING BUT A MISCARRIAGE OF JUSTICE UNDER N.C.G.S. §15A-1419(e) WARRANTING FURTHER REVIEW.

REASONS FOR GRANTING THE PETITION

RESOLUTION OF THESE ISSUES THAT FOLLOW BY THIS COURT WILL TEND TO REDUCE DIRECT AND COLLATERAL POST-CONVICTION CHALLENGES IN THAT:

1) DUE PROCESS REQUIREMENTS MADE NECESSARY IN STATE PROCEEDINGS INVOLVING THE WAIVER OF INDICTMENT(S) THROUGH ADEQUATE MANDATORY INQUIRY WILL BE ESTABLISHED AND CLARIFIED, AND ANY COLLOQUIAL REQUIREMENT(S) RENDERED, EASILY INCORPORATED INTO THE PRE-TRIAL OR PLEA PROCEEDINGS AT MINIMAL COSTS;

2) THE RESOLUTION OF THE FUNDAMENTAL FAIRNESS DISPARITY BETWEEN THIS COURT'S HOLDINGS IN Mooney v Holohan, 294 U.S. 103, 112 (1935); Napue v Illinois, 360 U.S. 264, 269 (1959), et al, WHEREBY PROSECUTORS MAY NOT KNOWINGLY PRESENT FALSE EVIDENCE OR TESTIMONY AT A TRIAL, MAY DO SO WITH IMPUNITY IN PLEA PROCEEDINGS TO SATISFY THE ELEMENTS OF AN OFFENSE BEING PLEADED TO, TRUE OR NOT; AND

3) APPLY STRICKLAND'S STANDARDS TO ATTORNEY CREATED IRRECONCILABLE IMPASSE(S) TO COERCE THE ACCUSED TO ACCEPT A PLEA THAT IS UNWANTED, WHEN THE SUBJECT MATTER OF THE IMPASSE SHOULD DEFER TO THE WISHES OF THE ACCUSED, AS LONG AS THOSE WISHES ARE NOT ILLEGAL LIKE THOSE OF Nix v Whiteside, 475 U.S. 157, 166, 171 (1986).

I THE FIFTH AMENDMENT RIGHT TO INDICTMENT IS ONLY APPLICABLE TO FEDERAL PROSECUTIONS; Hurtado v California, 110 U.S. 516, 538 (1884); Alexander v Louisiana, 405 U.S. 625, 633 (1972); AS IS RULE 7(b) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE THAT GUARANTEE DUE PROCESS PROTECTIONS CONCERNING A WAIVER OF THAT RIGHT TO INDICTMENT. THAT IS UNFORTUNATE SINCE RULE 7(b) IS ILLUSTRATIVE AND QUITE INSTRUCTIONAL TO THIS CASE SITUATION.

NORTH CAROLINA, *inter alia*, HAS CREATED THE RIGHT TO AN INDICTMENT IN FELONY CASES; N.C. CONST. ARTICLE I, SECTION 22; AND STATUTORILY IN 1973 CREATED A PROCEDURAL MECHANISM TO WAIVE THAT CREATED RIGHT. N.C. GEN. STAT. §§ 15A-642(c) AND 15A-923. HOWEVER, UNLIKE RULE 7(b), THE AFORESAID NORTH CAROLINA STATUTES ACTUALLY "DEPRIVE [S] ANY PERSON [WHO WAIVES AN INDICTMENT] OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW." U.S. CONST. AM XIV.

THIS COURT HAS CONSISTENTLY HELD THAT, WAIVING A RIGHT "MUST BE 'VOLUNTARY' AND 'RELATED WAIVERS' MUST BE 'KNOWING [LY], INTELLIGENT [LY] [AND] WITH SUFFICIENT AWARENESS OF THE RELEVANT CIRCUMSTANCES AND LIKELY CONSEQUENCES" OF ANY SUCH WAIVER. United States v Ruiz, 536 U.S. 622, 629 (2002).

WHILE THERE IS NO CONSTITUTIONAL RIGHT TO A NEGOTIATED PLEA OR TO A PLEA BARGAIN; Weatherford v Bursey, 429 U.S. 545, 561 (1977); OVER 95% OF STATE CRIMINAL CONVICTIONS NATIONWIDE ARE NONETHELESS ADJUDICATED PURSUANT TO SUCH PLEAS. Lafler v Cooper, 566 U.S. 156, 165 (2013); Missouri v Frye, 566 U.S. ___, 132 S.Ct. 1399, 1407 (2013).

IN EACH OF THESE CASES A COLLOQUY ENSUED THAT THIS COURT HAS HELD TO BE CONSTITUTIONALLY MANDATORY WITH A MYRIAD OF QUESTIONS DESIGNED TO ESTABLISH A RECORD OF THE KNOWINGNESS, VOLUNTARINESS, AND THAT THE DIRECT [AND SOMETIMES COLLATERAL - PADILLA v KENTUCKY, 559 U.S. 356, 367 (2010)] CONSEQUENCES OF THE PLEA AND ITS ASSOCIATED WAIVERS ARE UNDERSTOOD BY THE ACCUSED TO SATISFY DUE PROCESS OF LAW. Boykin v Alabama, 395 U.S. 238, 243 (1969). THIS COURT HAS HELD THAT A "KNOWING AND VOLUNTARY WAIVER OF CONSTITUTIONAL RIGHTS CANNOT BE PRESUMED FROM A SILENT RECORD." Id. IN THIS REGARD, NORTH CAROLINA'S APPELLATE COURT(S), IN APPLYING SUBSECTION (c) OF 15A-642 HAVE HELD THAT

THE TENDERING OF A GUILTY PLEA BY THE DEFENDANT... COULD BE CONSIDERED SUFFICIENT WAIVER OF A DEFENDANT'S RIGHT TO A FORMAL INDICTMENT. <u>STATE v WILSON</u>, 128 N.C. APP. 688, 497 S.E.2D. 416 (1998).

WHILE BEING SUBSTANTIVELY SIMILAR TO FEDERAL RULE 7(B) IN BOTH SUBSTANCE AND PURPOSE, NORTH CAROLINA'S JURISPRUDENCE ON IDENTICAL SUBJECT MATTER UNDER N.C.G.S. §§ 15A-642(C) AND 923, PURPORTEDLY FOR THE SAME DUE PROCESS PURPOSES, DEVIATES FROM RULE 7(B) IN THAT THE STATE'S ADJUDICATION OF THE SAID WAIVER OF INDICTMENT <u>DOES NOT MERIT OR RATE EVEN ONE QUESTION IN INQUIRY</u> CONCERNING THE WAIVER OF **THAT** CONSTITUTIONALLY PROTECTED RIGHT (A WAIVER THAT OFTEN ALLOWS THE TRIAL COURT TO <u>ACQUIRE</u> THE SUBJECT MATTER JURISDICTION TO ADJUDICATE THE VERY CHARGE UPON WHICH AN INDICTMENT IS BEING WAIVED). TO REITERATE, THIS *modus operandi* VIOLATES THE CONSTITUTIONAL PROVISION THAT "NO STATE... SHALL... DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW." <u>U.S. CONST., AM XIV.</u> THE MERE SIGNATURE OF AN ACCUSED ALONG WITH THAT OF HIS "HORSE TRADING" ATTORNEY UPON AN INFORMATION, OR ATTACHED THERETO, WITHOUT ANY FURTHER INQUIRY (I.E. RULE 7(B)) IS <u>INHERENTLY UNCONSTITUTIONAL</u> UNDER THIS COURT'S JURISPRUDENCE AS APPLIED TO THE FOURTEENTH AMENDMENT GUARANTEE(S) OF DUAL SOVEREIGNTY, DUE PROCESS AND EQUAL PROTECTION, THAT ADVERSELY AFFECTS THE COURT'S SUBJECT MATTER JURISDICTION TO ADJUDICATE THE OFFENSE(S) UPON WHICH INDICTMENT(S) ARE SO WAIVED. IN NORTH CAROLINA AT LEAST, A VALID WAIVER OF A CONSTITUTIONALLY PROTECTED RIGHT IS <u>ROUTINELY</u> <u>PRESUMED</u> <u>FROM A SILENT RECORD</u> BECAUSE THE NORTH CAROLINA COURTS ESTABLISH NO RECORD REGARDING THIS SUBJECT MATTER, WHICH IN AND OF ITSELF IS CONSTITUTIONALLY SUSPECT UNDER <u>BOYKIN</u>, *supra*, AND THE MOST BASIC FACT THAT

THE NORTH CAROLINA GENERAL ASSEMBLIES HAVE NEVER FULFILLED THE CONSTITUTIONAL MANDATE OF ARTICLE I, SECTION 22 TO LEGISLATE THE "SUCH REGULATIONS (PLURAL) AS THE GENERAL ASSEMBLY <u>SHALL</u> <u>PRESCRIBE</u>, [TO] WAIVE INDICTMENTS IN NONCAPITAL CASES." (EMPHASIS ADDED)(PARENTHESES AND BRACKETS ADDED). NEITHER G.S. 15A-642(c) OR 15A-923 ARE ADEQUATE TO SATISFY THAT CONSTITUTIONAL DIRECTIVE. THIS COURT HAS THE OPPORTUNITY TO REMEDY THE AFORESAID CONSTITUTIONAL DEFICITS. FURTHERMORE, FINDINGS AND HOLDINGS BY THIS COURT CONCERNING COLLOQUIAL REQUIREMENTS IN THE BILL OF INFORMATION CONTEXT ARE EASILY INCORPORATED INTO THE PLEA COLLOQUY PROCEEDINGS THAT THEY MOST OFTEN ORIGINATE AT MINIMAL COST. THE SAME ISSUES IN REGARD TO A TRIAL UPON AN INFORMATION INSTEAD OF AN INDICTMENT ARE EASILY ADDRESSED IN THE PRE-JURY EMPANELLMENT PHASE OF THOSE PROCEEDINGS AT MINIMAL COST.

II DOES DUE PROCESS OF LAW AND FUNDAMENTAL FAIRNESS UNDER THE FOURTEENTH AMENDMENT REQUIRE THAT THE "FACTUAL BASIS" OF A PLEA, UPON WHICH THE VALIDITY OF THE IMPOSITION OF PUNISHMENT RELIES, <u>BE</u> <u>FACTUAL</u> IN LAW AND ACTUAL FACT AND NOT SOME "PROSECUTORIAL FICTION" MERELY TO SATISFY THE ELEMENTS OF SOME OFFENSE AGREED TO UNDER THE PLEA?

"THE UNITED STATES ATTORNEY IS THE REPRESENTATIVE NOT OF AN ORDINARY PARTY TO A CONTROVERSY, BUT OF A SOVEREIGN WHOSE OBLIGATION TO GOVERN IMPARTIALLY IS AS COMPELLING AS ITS OBLIGATION TO GOVERN AT ALL; AND WHOSE INTEREST, THEREFORE, IN A CRIMINAL PROSECUTION IS NOT THAT IT SHALL WIN A CASE, BUT THAT JUSTICE SHALL BE DONE." BERGER v U.S., 295 U.S. 78, 88 (1935).

"[A PROSECUTOR] IS IN A PECULIAR AND VERY DEFINITE SENSE THE SERVANT OF THE LAW, THE TWOFOLD AIM OF WHICH IS THAT GUILT SHALL NOT ESCAPE OR INNOCENCE SUFFER. HE MAY PROSECUTE WITH EARNESTNESS AND VIGOR - INDEED HE SHOULD DO SO. BUT, WHILE HE MAY STRIKE HARD BLOWS, HE IS NOT AT LIBERTY TO STRIKE FOUL ONES." ID @ 88.

THIS SOUND JURISPRUDENCE HAS BEEN UPHELD, EXPANDED UPON, AND EXPOUNDED UPON BY THIS COURT TO PRECLUDE PROSECUTION FOR VINDICTIVE REASONS; BLACKLEDGE v PERRY, 417 U.S. 21, 28-29 (1974); AND PROHIBITED PROSECUTORS FROM PRESENTING KNOWN FALSE TESTIMONY AT TRIAL AND MUST CORRECT SUCH KNOWN TO BE FALSE. MOONEY v HOLOHAN, 294 U.S. 103, 112 (1935); NAPUE v ILLINOIS, 360 U.S. 264, 269 (1959); GIGLIO v U.S., 405 U.S. 150, 152-55 (1972). FURTHER, PROSECUTORS MAY NOT MAKE MATERIAL MISSTATEMENTS OF LAW OR FACT.

THESE CASES WERE ADJUDICATED LIKE OVER 95% OF CRIMINAL CASES NATIONWIDE - PURSUANT TO A PLEA AGREEMENT THAT "EVERYONE INVOLVED" WANTED WITH THE

EXCEPTION OF THE ACCUSED WHO HAD PREVIOUSLY REJECTED 2 SUCH OFFERS AND WAS THE MOST AFFECTED BY IT.

THE [FEDERAL] CONSTITUTION REQUIRES THAT A DEFENDANT'S PLEA BE MADE VOLUNTARILY; BRADY v U.S., 397 U.S. 742, 750 (1970); CORBITT v NEW JERSEY, 439 U.S. 212, 218-19 (1978); KNOWINGLY AND INTELLIGENTLY. HENDERSON v MORGAN, 426 U.S. 637, 644-45 (1976); BOUSLEY v U.S., 523 U.S. 614, 618 (1998). IT HAS ALSO BEEN HELD BY THIS COURT THAT INEFFECTIVE ASSISTANCE OF COUNSEL MAY PREVENT AN ACCUSED FROM ENTERING A KNOWING AND VOLUNTARY PLEA. TOLLETT v HENDERSON, 411 U.S. 258, 266-67 (1973); HILL v LOCKHART, 474 U.S. 52, 56 (1985); LAFLER v COOPER, supra; MISSOURI v FRYE, supra. THE "ADJUDICATION" OF THE CASE(S) AT BAR HAVE REPUDIATED THIS COURT'S SOUND AND LOGICAL HOLDINGS AND JURISPRUDENCE OF BERGER, MOONEY, NAPUE, WINSHIP, 397 U.S. 358, 363 (1970) THROUGH SULLIVAN v LOUISIANA, 508 U.S. 275, 278 (1993), BRADY v U.S.; BRADY v MARYLAND, 373 U.S. 83, 87 (1963); HILL, PADILLA, LAFLER, FRYE AND STRICKLAND WITH IMPUNITY IN ONE FELL SWOOP. FURTHERMORE, THIS TRAVESTY OF JUSTICE MERELY FOR THE SAKE OF A CONVICTION, CONTRARY TO BERGER, APPEARS TO BE THE GENERAL RULE OF LAW IN NORTH CAROLINA AND NOT THE EXCEPTION TO IT.

ENTRY OF JUDGMENT PURSUANT TO A GUILTY OR nolo contendere PLEA; NORTH CAROLINA v ALFORD, 400 U.S. 25, 37-38 (1970); IS DEPENDENT UPON THE DETERMINATION OF A FACTUAL BASIS FOR THE ENTRY OF THE PLEA. FED. R. CRIM. P. 11(b)(3); N.C.G.S. § 15A-1022(c); STATE v WEATHERS, 339 N.C. 441, 453, 457 S.E.2d. 266, 272 (1994). THE FACTUAL BASIS REQUIREMENT PURPORTEDLY PROTECTS A DEFENDANT FROM PLEADING GUILTY WITHOUT REALIZING THAT HIS CONDUCT IS NOT WITHIN THE CHARGE; McCARTHY v U.S., 394 U.S. 459, 467 (1969); U.S. v CROSS, 57 F.3d. 588, 591 (7th Cir 1995); But in Actuality and Practical Application that Belief and Proposition is meritless Rhetoric, Relying for any Substance upon the integrity of the Prosecution, Court and Defense Counsel in order to be Effective and meaningfully applied. The Truth (if it Dare to be told) is that Government officials have Deliberately Engineered the Plea Bargaining "System" to assure that the Jury trial System Established by the Constitution is seldom used so as to Bypass the Institutional Safeguards incorporated in trials.

Properly submitted to each State Court echelon for Post-Conviction Review is the Petitioner's Due Process Position that, "[I]n order to Constitute a Sufficient Factual Basis... the 'Factual Basis' [Proffered] must, First and Formost, be True and [Absolutely] Factual, and not some 'Fictional Rendition' of "Something" tailored to establish the Essential Elements of an offense Charged [M.A.R. Id @ 27-28]. Here, the Supposedly Factual Basis for the Plea was Proffered Pursuant to N.C.G.S. § 15A-1022 (c)(4), Consisting of Sworn testimony of the Lead Detective Reading a Redacted version of the [Defendant's] Purportedly voluntary Statement that the Detective, not the Defendant, wrote. What was not Read, or Redacted, was the Exculpatory Portions that tended to Negate the Element of malice Required of both Charges, and totally Negated the "By force and against the will" Element alleged in the Bill of Information. Also omitted from the "Factual Basis" was the material, Exculpatory Evidence that the Purported "Sexual offense" was not such Because the Encounter was Consensual. [M.A.R. Id @ 37-41]. The Revelation

OF EITHER WOULD, UNDER THE IDEAL APPLICATION OF THE "FACTUAL BASIS" REQUIREMENT(S), NULLIFIED THE PLEA, THE EXISTENCE OF WHICH WAS <u>ABSOLUTELY</u> <u>ESSENTIAL</u> TO PRESERVE ANY SEMBLENCE OF "ADMISSIBILITY" TO THE ILLEGALLY OBTAINED STATEMENT UNDER <u>MIRANDA</u> v <u>ARIZONA</u>, 384 U.S. 436, 448-50, 467 (1966); <u>ILLINOIS</u> v <u>PERKINS</u>, 496 U.S. 292, 297 (1990), SINCE THE GUILTY PLEA WAIVES THE RIGHT TO CHALLENGE NONJURISDICTIONAL DEFECTS PRIOR TO THE PLEA; <u>M^cMANN</u> v <u>RICHARDSON</u>, 397 U.S. 759, 768-69, 771 (1970); THAT WHICH WOULD BE INADMISSIBLE AT A TRIAL. 384 U.S. @ 492; <u>DICKERSON</u> v <u>U.S.</u>, 530 U.S. 428, 444 (2000). THE TRUTH OF A CRIMINAL MATTER SHOULD NOT BE RELEGATED AND "RESTRICTED" ONLY TO A TRIAL SETTING, ESPECIALLY IF THAT TRUTH IS MATERIAL AND EXCULPATORY.

THE "ADJUDICATION" OF THE CASE(S) AT BAR CONSTITUTES AND REPRESENTS THE <u>EPITOME</u> AND ULTIMATE PRIMARY EXAMPLE OF "THE TAIL [OF THE DESIRED PUNISHMENT] WAGGING THE DOG [OF THE SUBSTANTIVE OFFENSE(S) CHARGED]. <u>BLAKELY</u> v <u>WASHINGTON</u>, 542 U.S. 296, 307 (2004) (QUOTING <u>M^cMILLAN</u> v <u>PENNSYLVANIA</u>, 477 U.S. 79, 91 (1986)). IRONICALLY, THE SENTENCE(S) IMPOSED FOR WHICH SUPERIOR COURT JUDGE MICHAEL E. HELMS LAUDED DEFENSE COUNSEL FOR KEEPING THE DEFENDANT <u>FROM</u> (DEATH OR LIFE IN PRISON WITHOUT PAROLE) THROUGH HIS EFFECTIVE ASSISTANCE, IS EXACTLY WHAT HE, THROUGH HIS NONFEASANCE, THE PROSECUTOR AND THE COURT ENGINEERED THE ACCUSED TO RECEIVE - THE EQUIVALENT OF A LIFE SENTENCE WITHOUT PAROLE.

III EVEN UNDER STRICKLAND'S HIGHLY DEFERENTIAL STANDARD(S), WAS DEFENSE COUNSEL'S PERFORMANCE "REASONABLE UNDER PREVAILING PROFESSIONAL NORMS" BY COUNSEL'S ABSOLUTE REFUSAL(S), DESPITE NUMEROUS REQUESTS THAT HE DO SO, TO THE POINT OF CREATING AN IRRECONCILABLE IMPASSE OVER THE TACTICAL ISSUE, TO FILE A PRETRIAL SUPPRESSION MOTION BASED UPON AN EGREGIOUSLY FLAGRANT VIOLATION OF MIRANDA v ARIZONA, 384 U.S. 436, 474 (1966) et al, WHERE THERE WAS A REASONABLE PROBABILITY OF SUCCESS, AND WHERE INSTEAD, COUNSEL WENT TO EXTRAORDINARY LENGTHS TO COERCE A PLEA BASED SOLELY ON THAT SAME ILLEGALLY OBTAINED EVIDENCE, SOUGHT TO BE SUPPRESSED, FOR WHICH COUNSEL WAS "REWARDED" A FEE OF $10,000.00?

THE SIXTH AMENDMENT RIGHT TO COUNSEL IS FIRMLY ROOTED IN JURISPRUDENCE, AS IS THE HOLDING OF GIDEON v WAINWRIGHT, 372 U.S. 335, 343 (1963); STATE v JAMES, 111 N.C. APP. 785, 789, 433 S.E.2d. 755, 757 (1993). NORTH CAROLINA'S CONSTITUTION CONFERS AN IDENTICAL RIGHT TO ACCUSED PERSONS. N.C. CONST., ART I, SEC 23. THE RIGHT TO COUNSEL GUARANTEES THE RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL. McMANN v RICHARDSON, 397 U.S. 759, 771 n 14 (1970); YARBOROUGH v GENTRY, 540 U.S. 1, 5 (2003)(PER CURIAM); STATE v LEWIS, 321 N.C. 42, 48, 361 S.E.2d. 728 (1987).

INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS ARE GOVERNED BY THE CAUSE AND PREJUDICE STANDARD(S) OF STRICKLAND v WASHINGTON, 466 U.S. 668, 692 (1984); U.S. v CRONIC, 466 U.S. 648, 659 (1984); STATE v BRASWELL, 312 N.C. 553, 324 S.E.2d. 241 (1985); WIGGINS v SMITH, 539 U.S. 510, 534 (2003). HILL v LOCKHART, 474

U.S. 52, 58 (1985) APPLIED THE STRICKLAND STANDARDS TO GUILTY PLEAS. "JUDICIAL SCRUTINY OF COUNSEL'S PERFORMANCE MUST BE HIGHLY DEFERENTIAL." 466 U.S. @ 689. "[A]TTORNEY'S ERRORS... ARE AS LIKELY TO BE UTTERLY HARMLESS IN A PARTICULAR CASE AS THEY ARE TO BE PREJUDICIAL." 466 U.S. @ 693. THIS BRINGS TO THE FOREFRONT THE DETERMINATION OF WHETHER, IN THE CASE sub judice, COUNSEL'S REPRESENTATION "FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS." 466 U.S. @ 688. "THE PROPER MEASURE... [OF WHICH] REMAINS SIMPLY REASONABLENESS UNDER PREVAILING PROFESSIONAL NORMS." ID @ 688. ULTIMATELY, THE QUESTION IS: WAS IT "REASONABLE UNDER PREVAILING PROFESSIONAL NORMS" FOR THIS DEFENSE COUNSEL, EVEN UNDER STRICKLAND'S HIGHLY DEFERENTIAL STANDARD, TO "ENTIRELY FAIL TO SUBJECT [ANY] ASPECT OF THE PROSECUTION'S CASE TO MEANINGFUL ADVERSARIAL TESTING" [AND THEREFORE RENDER] THE ADVERSARIAL PROCESS ITSELF... PRESUMPTIVELY UNRELIABLE? 466 U.S. @ 692; 466 U.S. @ 659; Florida v Nixon, 543 U.S. 175, 190-92 (2004); Bell v Cone, 535 U.S. 685, 697-98 (2002); Brookhart v Sanis, 384 U.S. 1, 7-8 (1966). IN THE INSTANT CASE, DESPITE NUMEROUS COMMANDS THAT HE DO SO BY THE DEFENDANT AND OTHER LAYPERSONS (WHO RECOGNIZED BOTH THE BASIS AND NEED FOR SUPPRESSION), DEFENSE COUNSEL FAILED TO THE POINT OF NONFEASANCE, TO PREPARE AND FILE A TIMELY MOTION TO SUPPRESS PURSUANT TO N.C.G.S. § 15A-974 (a)(1) AND/OR 975 (a) THE DEFENDANT'S PURPORTEDLY "VOLUNTARY" STATEMENT (ACCORDING TO THE DETECTIVES) TAKEN IN VIOLATION OF "THE ESCOBEDO RULE;" Escobedo v Illinois, 378 U.S. 478, 490-91 (1964) AND Miranda, 436 U.S. @ 467 (1966) AND THEIR PROGENY. THIS IS A MOTION THAT, IF TIMELY FILED, STOOD A REASONABLE PROBABILITY OF SUCCESS,

BASED UPON THE CORROBORATION BY AFFIDAVIT, DIRECT TESTIMONY, OR BOTH (WHICH DEFENSE COUNSEL NEVER SOUGHT TO OBTAIN) OF THE ATTORNEY SUMMONED TO BE PRESENT DURING ANY QUESTIONING, AND WHO WAS DENIED ACCESS TO HIS CLIENT; 466 U.S. @ 692; WHO WAS AT THAT TIME AND PLACE BOTH IN CUSTODY AND BEING SUBJECTED TO INTERROGATION. ILLINOIS v. PERKINS, 496 U.S. 292, 297 (1990). A REASONABLE PROBABILITY HAS BEEN DEFINED AS "A PROBABILITY SUFFICIENT TO UNDERMINE THE CONFIDENCE IN THE OUTCOME OF THE [TRIAL]/[PROCEEDING]. 466 U.S. @ 694; WIGGINS v. SMITH, 539 U.S. 510, 534 (2003). SINCE THE PROSECUTION'S ENTIRE CASE RELIED EXCLUSIVELY UPON THE AFORESAID "SUSPECT" STATEMENT COERCED ABSENT COUNSEL, DESPITE UNEQUIVOCALLY INVOKING HIS RIGHT TO COUNSEL, THE LEGAL AND ETHICAL RAMIFICATIONS OF DEFENSE COUNSEL'S **NONFEASANCE** IS EGREGIOUSLY CONSPICUOUS AND UNMISTAKABLE UNDER THE ESCOBEDO/MIRANDA RULINGS AND THEIR PROGENY. EVEN WHEN APPLYING STRICKLAND'S "HIGHLY DEFERENTIAL" DIRECTIVE, AND DISREGARDING ANY OF THE DISTORTING EFFECTS OF "HINDSIGHT," COUNSEL'S "ADVOCACY" **CANNOT** BE RATIONALLY OR REASONABLY DEEMED TO BE **ANYTHING** OTHER THAN SUBSTANDARD, DEFICIENT AND FAILING CONSTITUTIONAL MUSTER.

THIS COURT HAS IDENTIFIED NARROW CATEGORIES OF CIRCUMSTANCES IN WHICH PREJUDICE IS PRESUMED: RELEVANT HERE – THERE HAS BEEN AN "[A]CTUAL OR CONSTRUCTIVE DENIAL OF THE ASSISTANCE OF COUNSEL ALTOGETHER"; 466 U.S. @ 692; 535 U.S. @ 166; AT WHAT COULD BE REASONABLY INFERRED AS A CRITICAL STAGE OF THE PROCEEDINGS; AND WHEN COUNSEL "ENTIRELY FAILS TO SUBJECT THE PROSECUTION'S CASE TO MEANINGFUL ADVERSARIAL TESTING" AND

(3)

THE ADVERSARIAL PROCESS ITSELF BECOMES PRESUMPTIVELY UNRELIABLE. 466 U.S. @ 659; 543 U.S. @ 190-92; 535 U.S. @ 697-98. IN THESE SITUATIONS, PREJUDICE IS SO LIKELY TO OCCUR THAT A CASE-BY-CASE INQUIRY IS UNNECESSARY. 466 U.S. @ 687.

IN THE PRESENT CASE, WHAT WOULD ORDINARILY BE A DEFENSE ATTORNEY'S "DREAM COME TRUE," BECAME INSTEAD HIS CLIENT'S WORST NIGHTMARE - TWO PROSECUTORS THROUGH HIS OWN "ADVOCATE'S" OWN NONFEASANCE. OVER THE COURSE OF ALMOST 8 MONTHS, WHEN DIRECTED TO CHALLENGE THE PROSECUTION'S TAINTED EVIDENCE, COUNSEL'S REPEATED RESPONSE WAS, "I DON'T WANT TO GO THAT WAY." THEREFORE, INSTEAD OF CHALLENGING THE PROSECUTION'S TAINTED, ILL-GOTTEN EVIDENCE AS IS TO BE EXPECTED, COUNSEL'S REPEATED OTHER RESPONSE APPEARED TO BE MORE CONCERNED WITH HIS "TRACK RECORD" THAN HIS CLIENT'S RIGHTS AND PRIVILEGES. HE BOASTED THAT [AS A DEFENSE ATTORNEY] "[HE HAS] NEVER HAD A CLIENT ON DEATH ROW, OR EVEN ONE WITH A LIFE SENTENCE." RATIONALLY SPEAKING, IF TISDALE ROUTINELY DEFENDED CAPITAL CASES, AND HIS "BOAST" EVEN REMOTELY TRUE, EITHER ALL OF HIS CAPITAL CLIENTS WERE ACQUITTED AT TRIAL (WHICH IS HIGHLY UNLIKELY) OR, AS DEMONSTRATED BY HIS NONFEASANCE OVER 8 MONTHS TIME, IT IS OBVIOUS THAT HE IS AN HABITUAL "HORSE TRADER" [AS REFERRED TO IN LAFLER, 566 U.S. @ 165] AND NOT A COMPETENT TRIAL LAWYER. IT IS NOT TOO FAR OF A STRETCH OF THE IMAGINATION TO DEDUCE THAT UPON APPOINTMENT BY THE INDIGENT DEFENSE SERVICES, INC., HIS PRIMARY GOAL WAS TO COERCE A PLEA TO A REDUCED CHARGE, MOST LIKELY SECOND DEGREE MURDER - SOMETHING THE PROSECUTION WOULD BE MORE THAN WILLING TO DO - AND SOMETHING ROUTINELY DONE, AS HE DID AS DISTRICT ATTORNEY

IN FORSYTH COUNTY FOR QUITE SOME TIME. THERE WAS ONLY ONE PROBLEM; HIS CLIENT UNEQUIVOCALLY REJECTED TWO(2) PROPOSED PLEA OFFERS, AND INSISTED ON THE FILING OF THE AFORESAID SUPPRESSION MOTION AND A TRIAL. "I DON'T WANT TO GO THAT WAY." SO, THE WAY "HE WENT" WAS TO ARRANGE A MEETING WITH THE ENTIRE IMMEDIATE FAMILY AT HIS PARENT'S RESIDENCE (UNBEKNOWNST TO HIS CLIENT) AND "TERRORIZING", PARTICULARLY HIS MOTHER AND 2 DAUGHTERS, PERSUADED THEM TO CONVINCE THE DEFENDANT TO ACCEPT THE PLEA THAT TISDALE WANTED. UPON BEING ADMONISHED FOR THIS UNETHICAL TRANSGRESSION, BY HIS CLIENT, TISDALE RESPONDED, "WELL IT WORKED, DIDN'T IT?"

FIRMLY ROOTED IN JURISPRUDENCE IS THAT; THE DEFENDANT HAS THE ULTIMATE AUTHORITY TO MAKE CERTAIN FUNDAMENTAL DECISIONS ABOUT THE CASE SUCH AS WHAT PLEA TO ENTER, WHETHER TO WAIVE A JURY TRIAL, WHETHER TO TESTIFY IN HIS OWN BEHALF, WHETHER TO PRESENT EVIDENCE IN HIS OWN BEHALF, WHETHER TO TAKE AN APPEAL, AND, IN SOME INSTANCES, ELECT TO ACT AS HIS OWN ADVOCATE. Jones v Barnes, 463 U.S. 745 (1983). COUNSEL IS BOUND BY THESE DECISIONS. [M.A.R @ 8]. ORDINARILY, TACTICAL DECISIONS ARE THE PROVIDENCE OF THE LAWYER AFTER CONSULTATION WITH THE CLIENT. TO CONSTITUTE INEFFECTIVENESS, AN ATTORNEY'S ERROR [OR NONFEASANCE] MUST ARISE FROM NEGLECT OR IGNORANCE RATHER THAN FROM AN INFORMED PROFESSIONAL DELIBERATION. McQueen v Garrison, 619 F.Supp. 116 (E.D.N.C. 1985) Rev'd on other GRDS, 814 F.2d. 951 (1987). WHILE THIS COURT HAS STATED THAT IF A DISAGREEMENT BETWEEN ATTORNEY AND CLIENT SHOULD ARISE, THIS WILL GENERALLY NOT EQUATE TO INEFFECTIVE ASSISTANCE BECAUSE THE SIXTH AMENDMENT DOES NOT GUARANTEE A "MEANINGFUL ATTORNEY-CLIENT RELATIONSHIP." Morris v Slappy, 461 U.S. 1 (1983). THE STATE SUPREME COURT, ADDRESSING THIS ISSUE SINCE Morris v Slappy AND IN A

CAPITAL CASE RULED THAT "WHEN DEFENSE COUNSEL AND A FULLY-INFORMED DEFENDANT REACH AN ABSOLUTE IRRECONCILABLE IMPASSE ABOUT TACTICAL DECISIONS, THE CLIENT'S WISHES MUST CONTROL: THIS RULE IS IN ACCORD WITH THE PRINCIPAL - AGENT NATURE OF THE ATTORNEY - CLIENT RELATIONSHIP." <u>STATE</u> v <u>WHITE</u>, 349 N.C. 535, 508 S.E.2D. 253 (1998)(RELYING ON <u>STATE</u> v <u>ALL</u>, 329 N.C. 394, 407 S.E.2D. 183 (1991).

ASCERTAINING THE LEVEL OF PROFESSIONAL COMPETENCE REQUIRED BY THE SIXTH AMENDMENT IS ULTIMATELY A TASK FOR THE COURTS. <u>ROE</u> v <u>FLORES-ORTEGA</u>, 528 U.S. 470, 477 (2000). THIS COURT "[HAS] HELD THAT 'DEFENCE' MEANS DEFENSE AT TRIAL, NOT DEFENSE IN RELATION TO OTHER OBJECTIVES THAT MAY BE IMPORTANT TO THE ACCUSED." <u>ROTHGERY</u> v <u>GILLESPIE COUNTY</u>, 554 U.S. 191, 213 (2008)(QUOTING U.S. v ASH, 413 U.S. 300, 312-13 (1973). "DEFENSE" INCLUDED <u>ALL PHASES</u> WHERE A DEFENDANT WOULD BE DISADVANTAGED <u>WHEN PITTED ALONE</u> AGAINST THE TRAINED AGENTS OF THE STATE. <u>MORAN</u> v <u>BURBINE</u>, 475 U.S. 412, 430 (1986). THIS WOULD INCLUDE IN CUSTODY INTERROGATION BY DETECTIVES WHO DENIED THE ATTORNEY ACCESS TO HIS CLIENT UNTIL AN INCULPATORY STATEMENT WAS OBTAINED. THAT "EVIDENCE" WENT TOTALLY UNCHALLENGED AND FORMED THE BASIS OF THE PLEA, AND PRECLUDED POST-CONVICTION CHALLENGE(S) THERETO.

THIS IS NOT WHAT IS ENVISIONED BY STRICKLAND AND ITS PROGENY AS BEING EFFECTIVE DEFENSE ADVOCACY.

IV DOES IT VIOLATE DUE PROCESS AND EQUAL PROTECTION OF THE LAW UNDER THE FOURTEENTH AMENDMENT FOR A CLERK OR ASSISTANT CLERK OF COURT TO KNOWINGLY, ARBITRARILY AND DELIBERATELY DEPRIVE A DEFENDANT VERBATIM TRANSCRIPT(S) OF PROCEEDINGS, SIMPLY BY WITHHOLDING THE "CONTACT INFORMATION" OF A COURT REPORTER ABLE TO TRANSCRIBE THE VERBATIM RECORDS NECESSARY FOR AN ADEQUATE RESOLUTION OF A POST-CONVICTION, JURISDICTIONALLY SIGNIFICANT CLAIM?

IF SO, WAS IT A FUNDAMENTAL ERROR FOR THE N.C. COURT OF APPEALS IN FILE NUMBER P17-575 FOR A WRIT OF MANDAMUS TO COMPEL THE CLERK TO PERFORM A DUTY REQUIRED BY LAW, TO DENY A HEARING ON THAT WRIT? AND, LASTLY, FOR THE N.C. SUPREME COURT TO DENY A DISCRETIONARY REVIEW OF THAT OBVIOUS ERROR THUS PERPETUATING THE ARBITRARY DENIAL OF THE TRANSCRIBED RECORD TO THE DEFENDANT'S PREJUDICE FOR A POST-CONVICTION REVIEW AND RESOLUTION OF A JURISDICTIONALLY SIGNIFICANT CLAIM?

HEREBY INCORPORATING THE FOREGOING QUESTION ONE [I2 @ i] AND ITS ARGUMENT/SHOWING THERETO [I2 @ 10-13] BY REFERENCE HEREIN, AND IN ADDITION THERETO, IT IS SUBMITTED THAT: THIS COURT HAS HELD THAT IN ORDER FOR A "WAIVER" TO BE VALID, THERE MUST BE "AN INTENTIONAL RELINQUISHMENT OF A KNOWN RIGHT OR PRIVILEGE." <u>JOHNSON</u> v <u>ZERBST</u>, 304 U.S. 458, 464 (1938). THIS COURT HAS ALSO HELD THAT, "A KNOWING AND VOLUNTARY WAIVER OF CONSTITUTIONAL RIGHTS CANNOT BE PRESUMED FROM A SILENT RECORD." <u>BOYKIN</u> v <u>ALABAMA</u>, 395

238, 243 (1969); Carnley v Cochran, 369 U.S. 506, 516 (1962). Further, the Courts must "indulge every presumption against [a] waiver of fundamental constitutional rights." Brewer v Williams, 430 U.S. 387, 404 (1977).

Neither the Federal or State Constitution(s) contain an obligation to provide for appellate review or collateral challenge upon conviction. Smith v Robbins, 528 U.S. 259 (2000)(citing Ross v Moffitt, 417 U.S. 600, 606 (1974)). When a State elects to provide appellate review, whether upon a direct review or collateral challenge, the terms upon which it does so are subject to constitutional notice. Id.

Jurisprudence upon this subject matter generally concerns the preparation of stenographic transcript(s) for indigent defendant(s) at State expense. Here, the Due Process and Equal Protection jurisprudence is reversed. Here, the defendant raises collaterally substantial questions concerning the propriety of the purported waiver of fundamental rights; (in this instance a substantial issue that potentially affects the Court's subject matter jurisdiction to adjudicate at least one "charged" offense — that being a claim that cannot be waived or forfeited. See Wisconsin Dept. of Corr. v Schacht, 524 U.S. 381, 389 (1998); Miller v Roberts, 213 N.C. 126, 129, 193 S.E. 286, 288 (1937); State v Boone, 310 N.C. 284, 311 S.E.2d. 552 (1984); State v Morrow, 31 N.C. App. 592, 230 S.E.2d. 182 (1976)); it has been determined that verbatim stenographic transcripts of court records provides a better means for evaluating substantial claims and resolving issues of law and fact. The Legislature could not have intended that a verbatim record be maintained and preserved [N.C.G.S. § 7A-95(d)(for trials)

AND 15A-1026 (FOR PLEAS)] ONLY FOR IT TO REMAIN UNAVAILABLE FOR INSPECTION UPON A REASONABLE REQUEST OF A DEFENDANT OR HIS COUNSEL.

A VERBATIM STENOGRAPHIC TRANSCRIPT, IF ONE WERE MADE AVAILABLE, WOULD PROVE "BEYOND A REASONABLE DOUBT" THAT THE SUPERIOR COURT PURSUANT TO N.C.G.S. § 15A-1022(a)(1) THROUGH (7) CONDUCTED A THOROUGH "PLEA COLLOQUY." THAT VERY SAME VERBATIM STENOGRAPHIC TRANSCRIPT, IF ONE WERE MADE AND AVAILABLE, WOULD AGAIN PROVE "BEYOND A REASONABLE DOUBT" THAT THE SAME SUPERIOR COURT JUDGE **POSED NOT ONE QUESTION** REGARDING "AN INTENTIONAL RELINQUISHMENT OF A KNOWN RIGHT OR PRIVILEGE," 304 U.S. @ 464; TO AN INDICTMENT IN FILE NUMBER 04 CRS 4702. COMMON SENSE AND REASONING DEMAND RECOGNIZING THE PROPOSITION THAT IN ORDER TO PRODUCE A RECORD ON AN ISSUE, THERE MUST BE SOME INQUIRY AND DIALOGUE TO RECORD. THE NORTH CAROLINA APPELLATE COURTS HAVE HELD THAT A DEFENDANT'S SIGNATURE ON A FORM IS "NO SUBSTITUTE" FOR ACTUAL COMPLIANCE WITH NORMAL COURTROOM PROCEDURE(S). STATE v WELLS, 78 N.C. APP. 769, 338 S.E.2D. 573 (1986); STATE v DICKENS, 299 N.C. 76, 261 S.E.2D. 183 (1980). OBVIOUSLY, THE SUPERIOR COURT JUDGE DID WHAT COURTS EVERYWHERE HAVE HELD THAT UNDER DUE PROCESS IS "IMPERMISSIBLE" — IT **PRESUMED** SUBJECT MATTER JURISDICTION AND THEN FAILED TO ESTABLISH ANY RECORD ON THE WAIVER ISSUE; 369 U.S. @ 316; 395 U.S. @ 243; WHEN THE JUDGE MUST "INDULGE EVERY PRESUMPTION AGAINST [A] WAIVER OF FUNDAMENTAL CONSTITUTIONAL RIGHTS." 430 U.S. @ 404. IT THEREFORE, LOGICALLY FOLLOWS THAT IF THE PETITIONER/DEFENDANT'S "WAIVER", FOR ANY NUMBER OF REASONS, WAS "AN [UN] INTENTIONAL RELINQUISHMENT OF AN [UN] KNOWN RIGHT OR PRIVILEGE" TO A GRAND JURY INDICTMENT IN 04 CRS 4702,

THEN THE PRESUMED ACQUISITION OF SUBJECT MATTER JURISDICTION OVER THAT OFFENSE IS FATALLY FLAWED. "NORTH CAROLINA LAW HAS LONG PROVIDED THAT '[T]HERE CAN BE NO TRIAL, CONVICTION, OR PUNISHMENT FOR A CRIME WITHOUT A FORMAL AND SUFFICIENT ACCUSATION. IN THE ABSENCE OF AN ACCUSATION [THAT IS SUFFICIENT] THE COURT [ACQUIRES] NO JURISDICTION [WHATSOEVER] AND IF IT ASSUMES JURISDICTION [ANYWAY] A TRIAL AND CONVICTION ARE A NULLITY'." STATE v NEVILLE, 108 N.C. APP. 330, 332, 423 S.E.2d. 496, 497 (1992) (EMPHASIS ADDED). "WHEN THE RECORD (WHEN ONE IS ALLOWED TO BE PREPARED) SHOWS A LACK OF [SUBJECT MATTER] JURISDICTION [FOR WANT OF AN INQUIRY] IN THE LOWER COURT, THE APPROPRIATE ACTION ON THE PART OF THE APPELLATE COURT IS TO ARREST JUDGMENT OR VACATE ANY ORDER ENTERED WITHOUT AUTHORITY." STATE v FELMET, 302 N.C. 173, 176, 273 S.E.2d. 409, 413 (1980). IT HAS ALSO BEEN HELD THAT THE HARMLESS ERROR ANALYSIS IS GENERALLY NOT APPROPRIATE IN JURISDICTIONAL CASES. STATE v SCOTT, 150 N.C. APP. 442, 453-454, 564 S.E.2d. 285, 294 (2002).

VERBATIM STENOGRAPHIC TRANSCRIPTS SOUGHT TO BE PREPARED FOR AN INDIGENT DEFENDANT AT STATE EXPENSE REQUIRES THAT DEFENDANT TO MAKE, IN THE TRIAL COURT, A "PARTICULARIZED SHOWING" OF THE ISSUES SOUGHT TO BE RESOLVED, AND A SIMILAR "PARTICULARIZED SHOWING" OF WHAT THE TRANSCRIPT IS PURPORTED TO PROVE. THEN, IF THE TRIAL COURT JUDGE DETERMINES A "NEED" FOR THE REQUESTED TRANSCRIPT, THE COURT ISSUES AN ORDER FOR ITS PREPARATION. A DEFENDANT ELECTING TO ENGAGE A COURT REPORTER AT HIS EXPENSE HAS NO SUCH "BURDEN TO BEAR." THIS IN AND OF ITSELF CREATES AN EQUAL PROTECTION VIOLATION SCENARIO THAT HAS LONG SINCE ADDRESSED BY THIS COURT AND FIRMLY

ENTRENCHED IN ITS JURISPRUDENCE. BEGINNING WITH _GRIFFIN_ v _ILLINOIS_, 351 U.S. 12, 18 (1956) THIS COURT HAS EXAMINED APPELLATE (AND COLLATERAL) PROCEDURAL SCHEMES UNDER THE PRINCIPLE THAT JUSTICE MAY NOT BE CONDITIONED ON ABILITY TO PAY. _ROSS_ v _MOFFITT_, 417 U.S. 600, 605-609 (1974). IN THIS RESPECT, THE DUE PROCESS AND EQUAL PROTECTION JURISPRUDENCE OF TWO (2) SUPREME COURTS (FEDERAL AND STATE) IS REVERSED; THE SHOE IS ON THE OTHER FOOT. HERE, AN ASSISTANT CLERK OF COURT IS, IN EFFECT, DENYING THE DEFENDANT THE CORROBORATIVE PROOF THAT THE TRANSCRIPTS ARE SOUGHT TO PROVIDE BY DENYING THE _MEANS_ _TO_ _CONTACT A COURT REPORTER_ TO ENGAGE THOSE SERVICES TO TRANSCRIBE THAT WHICH IS SOUGHT. THIS ASSISTANT CLERK, WHILE PROVIDING THE _NAME_ (CHRISTIE AGNEW) OF THE ORIGINAL COURT REPORTER AT THE PROCEEDINGS IN QUESTION, WITHHELD INFORMATION THAT IS/WAS NECESSARY TO CONTACT HER "BECAUSE SHE NO LONGER WORKS AS A COURT REPORTER." THE CURRENT COURT REPORTER PURPORTEDLY "CANNOT TRANSCRIBE HER (CHRISTIE AGNEW'S) NOTES," AND THEREFORE THAT CONTACT INFORMATION IS UNAVAILABLE TO YOU. IT WAS SUGGESTED THAT CONTACTING DAVID SESTER, COURT REPORTER MANAGER, "CAN FIND SOMEONE TO PREPARE THIS TRANSCRIPT FOR YOU AT YOUR EXPENSE." THAT OFFICE REFERRED THE DEFENDANT BACK TO THE CLERK. THE DEFENDANT'S PARENTS MADE A SPECIAL TRIP TO THE CLERK'S OFFICE TO REQUEST THE CONTACT INFORMATION IN PERSON. THEY WERE GIVEN A PHOTOCOPY OF THE [AOC-CR-300] TRANSCRIPT OF PLEA FORM. THEY WERE ALSO ERRONEOUSLY INFORMED THAT A COURT ORDER WAS NECESSARY TO OBTAIN A VERBATIM TRANSCRIPT AND SENT ON THEIR WAY, WITHOUT CONTACT INFORMATION. HOW THEN CAN THE CLERK'S OFFICE PERSONNEL CLAIM THAT "[THEY] ARE NOT REFUSING TO GIVE OUT THE CONTACT

INFORMATION," AND CLAIM TO NOT BE DEPRIVING THE DEFENDANT OF VERBATIM TRANSCRIPTS WHEN ONE EQUATES TO THE OTHER?

IN RESPONSE TO THIS CATCH-22 DILEMMA, THE DEFENDANT FILED A PETITION FOR WRIT OF MANDAMUS IN THE COURT OF APPEALS SEEKING TO COMPEL THE CLERK TO DO WHAT HER DUTIES REQUIRE BY LAW [FILE NO. P17-575]. THAT MANDAMUS WAS DENIED SUMMARILY WITHOUT AN OPINION AFTER A "FACT REDACTED" RESPONSE FROM THE STATE CLAIMING THAT THE DEFENDANT WAS NOT ENTITLED TO THE INFORMATION SOUGHT THROUGH THIS EXTRAORDINARY WRIT.

OBVIOUSLY, THE COURT OF APPEALS ERRED, AND A DISCRETIONARY REVIEW FILED IN THE N.C. SUPREME COURT ON SEPTEMBER 7TH, 2017. (326 P17). THAT PETITION WAS DENIED IN CONFERENCE NOVEMBER 1ST, 2017.

THE AFORESAID HAS PERPETUATED THE DENIAL, IN VIOLATION OF DUE PROCESS AND EQUAL PROTECTION OF THE PROOF NECESSARY TO ESTABLISH A CONSTITUTIONALLY SIGNIFICANT CLAIM AGAINST THE STATE. WHILE THIS HONORABLE COURT HAS ENTRUSTED THE STATE COURTS WITH RESOLVING FEDERAL QUESTIONS OF LAW PRESENTED TO THE STATE COURTS, THE STATE COURT(S) REMAIN MUTE ON THOSE SUBJECTS. THEREFORE, IF A STATE COURT IS HELD TO BE FULLY CAPABLE AND ENTRUSTED TO RESOLVE FOURTEENTH AMENDMENT, et al, ISSUES, AND IT DOES NOT DO SO, IS THIS NOT ALSO A VIOLATION OF DUE PROCESS AND EQUAL PROTECTION?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ricky Wagoner

Date: 4-10-19