

No. 19-5218

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
MAY 28 2019
OFFICE OF THE CLERK

Teon Jamell Williams — PETITIONER
(Your Name)

vs.

KENNETH E. LASSITER — RESPONDENT(S)
ERIK A. HOOKS
ON PETITION FOR A WRIT OF HABEAS CORPUS

Supreme Court of North Carolina
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF HABEAS CORPUS TO

Mr. Teon J. Williams
(Your Name)

4600 Swamp Fox Hwy
(Address)

Tabor City N.C. 28643
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- I. 1. Was Conviction Obtained By Use Of Evidence obtained By Unreasonable Search and Seizure?
- II. 2. Was Violation of United States Constitution Amendment XIV By Application of New Law or Novel Interpretation of Existing Law Ex Post Facto; Art. I sec. 8 (9,10)?
- III. 3. Ineffective Assistance of Counsel?
- IV. 4. Was Petitioner charged in A Disjunctive Unauthorized Short Form Indictment Contrary to The United States Constitution?
- V. 5. Did Petitioner show how the Writ will be in aid of the Court's appellate jurisdiction, what exceptional circumstances warrant the exercise of the Court's discretionary powers, and why adequate relief cannot be obtained in any other form or any other court? Rule 20.1

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	<u>2</u>
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE.....	4-9
REASONS FOR GRANTING THE WRIT	8-16
CONCLUSION.....	<u>8</u>

INDEX TO APPENDICES

APPENDIX A	North Carolina Court of Appeals - Docket sheet
A ¹	United States Court of Appeals - Opinion
APPENDIX B	Trial Court -
B ¹	United States District Court - Affirmation/order
APPENDIX C	Supreme Court of North Carolina - Docket sheet and Decision order
APPENDIX D	United States Rehearing En Banc - Order
APPENDIX E	
APPENDIX F	

* NOTE PLEASE TAKE NOTICE to the above documents were supplemented in place of orders with simply 'DOCKET SHEETS' for support. Petitioner apologizes for any inconvenience; orders have been made part of Record in the case. Therefore Petitioner is without extra copies of such. A² and B² are federal Court documents.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Felker v. Turpin 518 U.S. 651 (1996)	2-11
1789 Judiciary Act *RULES	2-11
Ex Parte Yerger, 75 U.S. (8 Wall) 85 (1869)	1-11
LUGAR v. Edmondson Oil Co., 457 U.S. 922, 928-932 (1982)	3-10
Home Telephone and Telegraph Co. v. Los Angeles, 227 U.S. 278 (1913)	3
Mulroy v. Hogan, 378 U.S. at 10 (1964)	8
Mapp v. Ohio, 367 U.S. 643 (1961)	8
Calder v. Bull, 3 U.S. (3 Dall) 396-398 (1798)	8
Eastern Enters. v. Appel, 524 U.S. 498, 562 (1998)	8
Benton v. Maryland, 395 U.S. 784 (1969)	9
Gideon v. Wainwright, 372 U.S. 335 (1963)	9, 12
In re Oliver, 23 U.S. 257 (1948)	10
Strickland v. Washington (1984)	12
Mempa v. Ray (1963)	12
STATUTES AND RULES	
28 U.S.C. § 2244 (d) (2)	
28 U.S.C. § 2254	
North Carolina Gen. Stat. 160A-288	8
90-89 (5)	8, 10
ARTICLE I. § 1601 8 and SECTION 9. and SECTION 10.	8
ARTICLE III.	2, 3
28 USC § 1651	1-11
28 USC § 1251	2
OTHER	
28 USC § 2403 (b) may apply.	8, 10
Corrected Petition	11-16
CASES	
Jones v. Barnes (1983)	13
Anders v. California (1967)	13
Poe v. Flores-Ortega (2000)	13
Evitts v. Lucy (1985); Wiley v. Coiner (1972); Nelson v. Peyton (1969); Galbusay v. Stephenson (1921)	14
Rodriguez v. United States (1969)	15
Johnson v. United States (2015)	16

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF ~~Habeas Corpus~~

Petitioner respectfully prays that a writ of ~~HABEAS~~ 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 A¹ 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 B¹ 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 _____ NIA; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the North Carolina Appeal of court appears at Appendix A to the petition and is

reported at _____ NIA; 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 10, 2019.

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: May 14, 2019, and a copy of the order denying rehearing appears at Appendix D.

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). 28 U.S.C. § 1254, Art. III
Title I of 1996 AEDPA, precludes Supreme Court review, by appeal or certiorari, of any decision by circuit court of appeals granting or denying authorization for state prisoner to file second or successive application for habeas corpus relief. In Felker v. Turpin, 518 U.S. 651 (1996), the Supreme Court unanimously upheld the constitutionality of this provision on the grounds that it did not foreclose all Supreme Court review; for example, the Court could hear successive habeas petition as part of its original jurisdiction.

For cases from **state courts**:

The date on which the highest state court decided my case was 5/15/2018.
A copy of that decision appears at Appendix C.

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

AMENDMENT IV 1791

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V 1791

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in Militia, when in actual service in time of War or Public danger: nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal ~~case~~ case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law: nor shall private property be taken for public use.

AMENDMENT VI 1791

In all criminal prosecution, 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 witness against him; to have compulsory process for obtaining witnesses in his favor and to have the assistance of Counsel for his defence.

AMENDMENT XIV 1868

SECTION 1. All person 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 any person within its jurisdiction the equal protection of the laws.

ARTICLE I.

SECTION 8 and 9 and 10 Respectively, say that neither the Federal or State government can enact an ex post facto law or a bill of attainder... The privilege of the Writ of Habeas shall not be suspended....

ARTICLE III.

SECTION 2. Respectively, say that the Supreme Court has original jurisdiction over cases in which the State is a party, and in all other cases is granted appellate jurisdiction to law and fact, subject to "such exceptions and such regulations as Congress shall make. *Felker v. Turpin*, 518 U.S. 651 (1996); 1789 Judiciary Act

STATEMENT OF THE CASE

1. Mr. Teon Williams was indicted on two counts of possession with intent to manufacture, sell, and deliver ("PWIMSD") a controlled substance, one count of maintaining a dwelling, and habitual felon status. On December 19, 2013 Williams' Motion to Suppress was heard. On January 21, 2014 his Motion was denied and dismissed. The case was tried at the January 8, 2014 criminal session of Iredell County Superior Court, the Honorable Julia Gullet presiding. The jury found Mr. Williams guilty as charged. For one count of PWIMSD a controlled substance, Mr. Williams was sentenced to 90-120 months imprisonment. For the second count of PWIMSD a controlled substance and maintaining a dwelling Mr. Williams was sentenced to a consolidated consecutive term of 90-120 months imprisonment. Mr. Williams gave notice of appeal on January 10, 2014.
2. North Carolina Court of Appeals #14-1161 State v. Williams, 774 S.E. 2d 880 vacated in part on July 21, 2015. The following grounds were raised: Variance; Lack of Subject-Matter Jurisdiction; Denial of Motion to Dismiss one of the two identical PWIMSD; Denial of Motion to Dismiss Maintaining a Dwelling.
3. Mr. Williams then proceeded pro-se and filed a Petition for Writ of Habeas Corpus on August 31, 2015 in the U.S. District Court Western District (5:15-cv-115-FDW) and raised the following ground: Did the trial court err in denying Motion to Suppress? The Court dismissed the case without prejudice as unexhausted on or about October 5, 2015.
4. Therefore, Williams filed a Petition for Writ of Certiorari in the North Carolina Court of Appeal #P15-863 on or about late October early November 2015 requesting review of his Motion to Suppress heard in Iredell County on December 19, 2013 because the claim was preserved for appellate review on the record by Williams. However, the Petition was denied on or about December 31, 2015.
5. Williams then filed a Petition for Discretionary Review of the N.C. Court of Appeal order in the Supreme Court of North Carolina #8P16 in or around January 2016. That Petition denied in or around March 2016.

6. Petitioner then proceeded back to the U.S. Western District, believed to have cured the State exhausted procedures successfully. He filed a Petition for Writ of Habeas Corpus (#5:16-cv-61-FDW) on April 8, 2016 on the grounds: Did the trial court, N.C. COA, and Supreme Court of N.C. err in denying the Petitions for review of his Motion to Suppress. Likewise, the Court denied and dismissed the Petition stating in its order that the unusual procedural route petitioner utilize was unclear to suffice the exhaust of State remedy.

7. Therefore, Williams appealed to the U.S. Court of Appeal for the 4th Cir. on January 31, 2017. The appeal was later dismissed on ~~February 13, 2017~~ on February 3, 2017 # 16-7623 (5:16-cv-61-FDW) denying Certificate of Appealability unpublished per curiam by Judge Wilkinson, Keenan, and Thacker. Williams also filed rehearing and en banc, it to also denied on March 13, 2017.

8. Following, a Petition for Certiorari was filed in the U.S. Supreme Court, No. 17-5030 in or around June 24, 2017 pursuant to the U.S. Court of Appeal order in # 16-7623 (5:16-cv-61-FDW) to which was also denied on October 2, 2017.

9. However, simultaneously with # 8 above Mr. Williams did file a Motion for Appropriate Relief on July 20, 2017 in Iredell County Superior Court # 13 crs 52432; 13 crs 52433; 13 crs 2530 on the grounds: Ex post Facto; Lack of Subject-Matter Jurisdiction, and over person; Denial of Due Process, Newly Discovered Evidence

Statute Unconstitutional on its Face (VAGUE) and as Applied (NO SCIENTER) and IAC. The motion resulted denied on August 10, 2017.

10. Mr. Williams appealed. He filed a Petition for Writ of Certiorari in the N.C. Court of Appeals (#P17-713) on September 29, 2017 on grounds; Statute Unconstitutional on its Face (VAGUE) and as Applied (NO SCIENTER); Denial of Due Process; IAC; Newly Discovered Evidence; Lack of Subject-Matter Jurisdiction ('IN PERSONAM'); and Ex post Facto. The result of the petition was denied on October 4, 2017.

11. Williams then filed a Petition for Writ of Certiorari in the Supreme Court of United States on November 27, 2017; however, it was mailed back by the Clerk Jacob Levitan stating that the issues had to be rendered by the highest court of the State in which a decision could be had.

12. Petitioner then filed Petition for Writ of Certiorari in the Supreme Court of N.C. (#8P16-2) on February 20, 2018 and was denied on May 15, 2018. Issues stated (#10).

13. Mr. Williams then filed a Petition for Writ Certiorari in the Supreme of the United States No. 18-5085 on ~~June~~ June 19, 2018. Likewise it to was denied on October 1, 2018.

14. Mr. Williams filed a Petition for Writ of Habeas Corpus on April 27, 2018 in the U.S. Western District Federal Court (5:18-cv-74-FDW) because he believed that he cured the unusual procedural route because he had not filed his MAR earlier in his pro-se proceedings. However, the U.S. District Court dismissed the matter for lack of jurisdiction of subject-matter on December 4, 2018.

15. Finally, Williams appealed. The United States Court of Appeals for the Fourth Cir. No. 18-7526 (5:18-cv-74-FDW) denied the appeal filed on December 20, 2018. Ruling was made on April 10, 2019, a petition for rehearing en banc also denied on May 14, 2019 by Judge Niemeyer, Harris, and Senior Judge Shedd.

16. During the course of this case Petitioner has been reindicted and convicted again for the same offence on 2-1-2016 in the indictment # 15 CRS 3580-15 CRS 3581 to serve a future sentence of 41-62 months.

REASONS FOR GRANTING THE PETITION

- I The conviction under review was obtain by use of evidence obtained by unreasonable search and seizure. Moreover, no jurisdiction was established over the defendant or his property at the time of the search and seizure on May 1, 2013 when Statesville Police conducted a search of 135 Oak Knoll Dr., a private residence outside of Statesville City limits, without a warrant or probable cause nor permission. Petitioner was arrested for trafficking in MDMA although Police found no evidence of MDMA. They later claim to have found a small quantity of bath salts. Petitioner's Motion to Suppress was timely and properly filed and was unreasonably denied January 22, 2014 12 days after he was convicted. This ~~Court~~ said that "the guarantees of the Prohibition of unreasonable searches and seizures of the Fourth Amendment and right to counsel guaranteed by the Sixth Amendment, are both to be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment. Malloy v. Hogan, 378 U.S. at 10 (1964); Mapp v. Ohio, 367 U.S. 643 (1961).
- II. Petitioner's conviction is in violation of the U.S. Constitution Amendment XIV and Article I, sec 38 and 39 by application of new law or novel interpretation of existing ex post facto; In indictment 13 CRS 52432 with PWIMSD a chemical compound Methylone and has a future sentence to serve for possession of 4-Methylethcathinone after being reindicted in 15 CRS 3580. Neither compound is listed as a controlled substance. See North Carolina Gen. Stat. § 90-89 (5); Art. I sec. 10 of the U.S. Const. The State courts treated both indictments as providing sufficient notice under N.C.G.S. § 90-89 (5) (j) of possession of one mixture containing methylone or 4-methylethcathinone is two (2) separate offenses and necessarily implied that at least one is a no-fault status offense. The defendant need not have any knowledge or reason to suspect the presence of either or both molecular structures. Petitioner had no warning of this radical departure from clearly established common law and the plain language of the statute and no opportunity to try to conform his behavior to the requirements of the N.C. Court of Appeals unpreceded decision. See Calder v. Bull, 3 U.S. (3 Dall) 386 - 390 (1798); Eastern Enter. v. Apfel, 524 U.S. 498, 502 (1998)

III. Petitioner received Ineffective Assistance of Counsel; Trial and Appellant.

Trial counsel Failed, Refused, and or Abandoned to oppose the purported constructive amendment to indictment 13 CBS 52432 principle charge that resulted to reversal on appeal. Trial failed to file a Motion for Bill of Particulars to protect Petitioner's right to be free from double jeopardy in violation of the Fifth Amendment U.S. Constitution; or otherwise oppose trial on the facially insufficient charge instrument.

Benton v. Maryland, 395 U.S. 784 (1969).

Appellant Counsel included Petitioner's Fourth Amendment claim in his proposed issues assignment of error, however; Failed, Refuse, and did Abandon the challenge in his brief. Therefore Petitioner's strongest, most obvious, most easiest presented and comprehended issue was deemed waived. Appellant Counsel should have known that well established law would have certainly mandated meaningful relief as to all counts not just one. Competent counsel would further have anticipated that a PYRRHIC VICTORY with the weaker obstruction of justice justified as a simple constructive amendment that would only resulted to reindictment of the offense.

Note: Both Counsel's failure to challenge the issues herein deprive Petitioner in this case of effective assistance.

Gideon v. Wainwright, 372 U.S. 335 (1963)

Trial Counsel: Samuel B. Winthrop 112 court st. po Box 964 Statesville, N.C. 28677

Appellant Counsel: Hannah Love 123 West Main St., Suite 500 Durham, N.C. 27701

IV. Petitioner was charged in a disjunctive unauthorized short form indictment contrary to the U.S. Constitution Sixth Amendment. The indictment for PWIMSD a sch. I controlled substance were fatally flawed because neither alleged a substance listed in the N.C. Controlled Substance Act and did not provide notice that either substance fell within N.C. Gen. Stat. § 90-89(5) (j) i; ii; iii. Moreover, the controlled substances were In Pari Materia when the trial court adjudged that both indictments simply fall within the catch-all language of North Carolina Gen. Stat. § 90-89 (5)(j). Therefore, when the principal conviction was overturned Petitioner should have been released. Furthermore, the trial court lack subject-matter jurisdiction to even authorize that the substances were included in the N.C. Controlled Substance Act when they were clearly not listed and therefore violated separation of powers between it and the legislature. In re Oliver, 33 U.S. 257 (1948).

V. It is incumbent that this Court through the United States Constitution exercise its power of leadership over the branches of government and its Citizens of the United States, that this beautiful country still has a foundation within Our Constitution through the Articles and Amendments that lower courts and officials of such are bound to obey.

The North Carolina imperialism Justice system has a hard on for blatantly and flagrantly violating its own laws but more importantly ignoring U.S. Citizens Constitutional and Human and Civil Rights for purposes of self gain such as career stats exercised through corrupt practices. This injustice vs. tax-payers expense and no opportunity for the Afro-Asiatic and the so-called black race has no home within the Constitution to be equal People of the United States when the Government fails to enforce the Constitution on both sides government and individual.

The United States District Court claim to have lack subject-matter jurisdiction to entertain the merits of this said Petition. See (App. B² Doc. Text #4)

Although, Petitioner appealed, the U.S. District Court Order denying Habeas review for lack of subject-matter jurisdiction, the Court of Appeals for the United States decline to issue a Certificate of Appealability based upon Petitioner's unawareness and not trained in law of the proper manner of appeals; distinctively challenging the merits of the appeal yet, assuming that the Notice of Appeal (App. B² Doc. Text #2) was reasonable and adequate notice of challenging the U.S. District Court Order. However, the Court of Appeals foreclosed its decision. (App. A²)

II. Corrected Petition (CP)

To the extent of North Carolina trial and appellate Kangaroo Court practices, Petitioner has been procedural bar to any other claims. (App. B)

This Court is empowered to grant the Writ of Habeas Corpus of an extraordinary writ authorized by 28 U.S.C. § 1651(a) because of the claim mentioned in the said Petition, to grant a transfer of jurisdiction or belated appeal and or Petition.

Petitioner was not aware of the proper manner of appeals, Discretionary review, etc... and received no advice of counsel on the matters. Petitioner relies upon N.C. Rules of Appellate Procedure including (21) and Federal Rules of Procedure to grant Writ of Certiorari and Habeas Corpus when times have lapsed for such to be filed, in order to restore Petitioner's Constitutional, Human, Civil, and Statutory Right.

I. Defendant's right to the effective assistance of counsel is violated when Counsel fails to advise him/her of any appellate right etc... (See Petition herein incorp.)

Gideon v. Wainwright established the basic right to counsel in 1963 as a part of a defendant's Sixth and Fourteenth Amendments Right. 372 U.S. 355 (1963). This Court clarified in Strickland v. Washington that; Gideon right to counsel standard is that of reasonable effective assistance 466 U.S. 668 687 (1984).

The indigent criminal defendant is then entitled to that reasonably effective assistance of appointed counsel "at every stage in the proceeding where the substantial rights of the criminal accused may be affected," this Court held in Mempa v. Ray in 1963, 389 U.S. 128, 134 (1963).

The defendant alone has the "ultimate authority" about whether to take an appeal in which Petitioner did so pursuant to his Motion to Suppress. (See. Petition pg. 8.1 and 9.111), according to Jones v. Barnes, decided in this Court in 1983. 463 U.S. 745, 751 (1983). The defendant's opinion cannot be ignored even if the attorney thinks the appeal would be futile, according to Anders v. California, decided by the Supreme Court in 1967. 386 U.S. 738 (1967).

Roe v. Flores-Ortega, a 2000 Supreme Court case, decline to make a brightline rule that counsel who failed to file notice of appeal without defendant's consent was per se ineffective, but instead made the analysis of counsel's effectiveness based on whether counsel consulted with client about his appellate rights. 528 U.S. 470, 476-79 (2000). The same rule apply to the petition at hand. (See. pg. 8.1 and 9.111). Thus the Roe decision did not narrow or abrogate the duty of counsel to advise clients of their right to appeal. Instead, Roe highlighted the fact that counsel has a "Constitutionally imposed duty to consult with the defendant" regarding his appeal "When.... a reasonable defendant would want to appeal or.... this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id at 480. The Roe Court considered that the fact the defendant pled not guilty and had a trial was highly relevant factor, reasonably demonstrating to counsel that the defendant was interested in appealing. Id

2. A belated appeal, extraordinary Petition is an appropriate remedy for a defendant whose right to further appeals in the lower courts was constitutionally denied due to ineffective assistance of counsel. (See Petition pg. 8-10); (4-7)

The Supreme Court in the 1985 case of Evitts v. Lucey held that the defendant's right to appeal is not waived when, due to the ineffective assistance of counsel, that appeal was not timely filed. 469 U.S. 387 (1985).

The Fourth Circuit Court of Appeals considered a similar situation over a decade earlier in the 1972 case of Wiley v. Coiner, 464 F.2d 525 (4th Cir. 1972)

The Wiley Petitioner "desired and sought an appeal," but his lawyers refused to file one because the defendant was indigent. *Id.* at 26. The defendant was not advised of his rights to have "the state provide counsel and the requisite transcript," and the Fourth Circuit Court of Appeals found that Writ of Certiorari to permit the defendant to have a belated appeal should have been granted. *Id.*

The Fourth Circuit Court of Appeals recognized in Nelson v. Peyton in 1969, the right effective assistance of counsel extends past the conclusion of trial "for at least as long as it is necessary for counsel to advise the client of his right to appeal, the manner and time in which to take an appeal and whether an appeal has any hope of success." 415 F.2d 1154, 1157 (4th Cir. 1969).

The United States District Court for the Middle District of North Carolina had the occasion to review a similar case as the Wiley in Galloway v. Stephenson in 1981, 510 F. Supp. 840 (MDNC 1981).

In granting the habeas petition, the Court noted that "it is incumbent on the state courts to take prophylactic action to prevent forfeiture of the appeal" when the petitioner's counsel jeopardizes the petitioner's rights to an appeal. No good reason exist to penalize petitioner for his counsel's failure." *Id.* at 843-44. Petitioner request the same treatment as the Petitioner's in Galloway and Willey were entitled to: a grant of Extraordinary Petition permitting him to file a belated appeal or Habeas Corpus.

3. The merits of the petitioner's appeal need not be alleged in a Petition for Writ of Certiorari.

A Petitioner whose right to an appeal has been frustrated does not have to specify the points he would be raising if his/her right to appeal were reinstated according to the United States Supreme Court's 1969 opinion in *Rodriguez v. United States*, 395 U.S. 327, 330 (1969). Instead, a petitioner must only make the showing contemplated by the North Carolina Rule of Appellate Procedure 21; that is provide the facts pertinent to request and provide the reasons the writ should issue.

4. As recently as June 26, 2015, the Supreme Court emphasized the failure to give a defendant adequate notice violates due process. "The fifth Amendment provides 'no person shall... be deprived of life, liberty, or property, without due process of law.' Our cases establish that the Government violates this guarantee by taking

away someone life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement."

Johnson v. United States, 576 U.S. ___, (2015) (Citing Kolender v. Lawson, 461 U.S. 352, (1983)) (Emphasis added) (See Petition pg. 8, 11 and 10.IV)

Petitioner contends that, by definition, if a defendant does not have "fair warning" of what charging and sentencing scheme he faces he has been deprived due process of law.

CONCLUSION

The petition for Writ of Habeas Corp should be granted.

Respectfully submitted,

M.T. Weller

Date: 5/28/2019

CP. 7/5/2019