

No.

9  
19-6459

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

Kenneth Kelly DuVall — PETITIONER  
(Your Name)

vs.

State of North Carolina — RESPONDENT(S)  
et. al.

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. 4th Cir

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

The Courts have yet to Rule on my merits

PETITION FOR WRIT OF CERTIORARI

Kenneth Kelly DuVall

(Your Name)

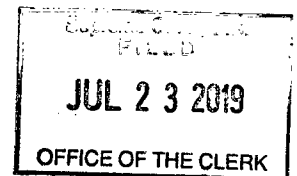
600 Amity Park Rd.

(Address)

Spruce Pine, N.C. 28777

(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)



**QUESTION(S) PRESENTED**

- 1. Did Judge Whitney's failure to rule on Petitioner's newly discovered evidence of Double Jeopardy issues deny Petitioner his 1<sup>st</sup> and 14<sup>th</sup> Amendment Rights to due process and access to the courts for judicial relief. In that the State twice punished Petitioner for the same offense? (And unlawfully time Barred Petitioner)
- 2. Was Judge Frank Whitney ruling lacking as to enforcements of due process, due to the fact that the State of North Carolina has chosen to adopt the Federal indictment procedure, should not also the 5<sup>th</sup> Amendments Rights be granted to a State and Federal citizen?
- 3. Did the Federal courts allow the State of North Carolina to Keep this Petitioner unlawfully imprison under an unconstitutional Statutes that being - §14-27.7A; §14-27.2(a)(1); §14-27.4(a)(1); Voilating his 4<sup>th</sup> and 14<sup>th</sup> Amendments Rights?

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## 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:

N.C. Attorney General, P.O. Box 629 Raleigh, N.C. 27602

Carlos Hernandez, Supt. of Avery/Mitchell Corr.  
In House mail.

## RELATED CASES

Ex parte Lange, 85 U.S. (18 Wall) 163, 168-69 (1874).

Ashe vs. Swenson, 397 U.S. 436, 443 (1970).

Lynn vs. West, (4th Cir.) NO. 96-1371 (1998).

Montana Dept. of Revenue vs. Kurth Ranch, S. Ct.  
NO. 93-144 (1994).

Gideon vs. Wainwright, (1963) 372 U.S. 335, 342 (1963).

Hawkins vs. Hannigan, 185 F.3d 1146, 1156 (10th Cir. 1999).

Cronic, 466 U.S. 648, 658 (1984).

U.S. vs. Nicholson, 475 F.3d 241, 249-50 (4th Cir. 2007).

State vs. Hicks, C.O.A. 14-57 (2015).

United States v. Cruikshank, 92 U.S. 542, 558, (1875).

United States v. Nance, 556 F.2d 699 (1976).

Bounds vs. Smith, 430 U.S. 817, 828 (1977).

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## INDEX TO APPENDICES

- APPENDIX A = A timely Petition for rehearing/Informal Brief and denied by 4<sup>th</sup> Cir. No. #19-6478(1:18-cv-00108) attached.
- APPENDIX B = Petition for Writ of Habeas In Federal district court, Asheville, N.C. Judge Whitney, No. #1:18-cv-00108, attached
- APPENDIX C = Petition for rehearing In N.C. Supreme Court No. # 372 P17.
- APPENDIX D = Petition for Writ of Certiorari In N.C. Court of Appeals, No. # P17-711
- APPENDIX E = Petition for M.A.R. In Burke County Superior Court, No. # 09-CRS-4208; 11-CRS-52877.
- APPENDIX F

## TABLE OF AUTHORITIES CITED

| CASES  | PAGE NUMBER                 |
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| <u>Ex Parte Lange (1874)</u>                     | <u>19</u>                   |
| <u>Haines vs. Kerner (1972)</u>                  | <u>Informal Brief pg. 8</u> |
| <u>Bounds v. Smith, (1977)</u>                   | <u>Brief pg. 6</u>          |
| <u>Lynn vs West, (4<sup>th</sup> Cir) (1998)</u> | <u>Brief pg. 7</u>          |
| <u>Gaddy vs. Linaham, No. 83-8660</u>            | <u>Brief pg. 7</u>          |
| <u>Henderson vs. Morgan (1976)</u>               | <u>Brief pg. 7</u>          |
| <u>State vs Hicks, (2015)</u>                    | <u>Brief pg. 5</u>          |

## STATUTES AND RULES

|   |                             |
|---|-----------------------------|
| <u>N.C. G. S 15A-641 under Art. 32</u>                        | <u>Informal Brief pg. 4</u> |
| <u>N.C. G. S <sup>(S)</sup> - 14-27.7A, and 14-27.4(a)(1)</u> | <u>Brief pg. 5</u>          |

## 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 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 B 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 \_\_\_\_\_; or,

☒ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the N.C. 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 June 25, 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: June 25, 2019, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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 \_\_\_\_\_.  
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: Dec. 20, 2017, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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

- North Carolina Constitution Art. 1, sec. 5, Allegiance to the United States - Every citizen of this state owes paramount allegiance to the constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.
- Art. 1, sec. 35, Recurrence to fundamental principles. A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessing of liberty.
- United States Constitution Art. 4, sec. 1, Petitioner has a constitutional Right to Judicial proceedings of every other State. Sec. 2, provides Petitioner with a constitutional Right to all privileges and immunities of citizens in the several States.
- These - Virginia Const. Art. 4, sec. 12; Maryland Const., Art. 3, §§ 29; Minn. Const., Art. 4, sec. 27; Tenn. Const. Art. 2, sec. 17; All state basically say - No Law shall embrace more than one subject, which shall be express in its title. Which is what N.C. has done In Statute 14-27.7 A. Also violates my 14 Amendment Sec. 1. Rights.
- United States Const. Art. 3, sec. 2, clause 1, which read in parts, the judicial power shall extend to all cases, in law --- and between a state, or the citizens thereof --- Citizens or subjects.
- United States Constitution Amendments 5<sup>th</sup> thru 14<sup>th</sup>



## Statement of the Case

This case arose on January 2011, when Burke County police arrested Petitioner on unsubstantiated charge of sexual misconduct involving a 13-14-15 year old female.

Petitioner under threat and force by police with fire arms made an oral false admission of guilt to which counsel for D.S.S. Jared Amos used to induce Petitioner to plead guilty at a civil hearing on September 2011, telling Petitioner that his plea would stop any further proceedings.

The state falsely used purported D.N.A. analysis never considering the Blood relation of the alleged victim and Petitioner to secure said civil conviction.

Counsel Jared Amos of D.S.S. Then filed criminal charges based upon this civil conviction. Had himself appointed as criminal defense counsel, forced defendant to sign a plea under duress and threats of a false life sentence and coerced Petitioner to sign adoption forms for counsels associates with the promise that this too would be the end of it, as in no criminal sentences.

This agreed by Superior Court Judge Richard Boner and D.A. Mr. Bellas. But contrary to these promise Judge Boner acknowledged that the Petitioner had made full restitution, added 24 to 30 years active prison sentence

in effect sentencing Petitioner to a death sentence. Counsel Amos denied Petitioners request to Appeal.

Petitioner filed M.A.R. in Sept. 2017 in Burke county Superior Court and filed a Writ of Certiorari in N.C. Court of Appeal February 2018 all denied. And filed Federal Habeas on newly discovered evidence claims, on 6/27/2018 denied 02/15/2019 by Judge Frank D. Whitney. Whereas review and dismissed by 4th Circuit. See: Mandates attached. Wherefore Petitioner Appeal to this Honorable Court.

## Reasons For Granting The Petition

Petitioner presented tolling issues to excuse the delay in filing his Habeas in Federal Court. Petitioner presented newly discovered evidence (i.e. convicted/punished twice for the same offense and conviction on unconstitutional statutes). The court accepted that Petitioner has made full restitution in civil matters and should have ended there, as in *ex parte Lange*, 1874. See: Civil order and criminal trial transcripts, Attach.

The unconstitutional Statutes, N.C.G.S. 14-27.7A and 14-27.4(a)(1), See: *State vs Hicks*, 2015 an unpublished opinion. Also See: Petitioners Habeas and 4<sup>th</sup> Circuits court Ruling/Informal Brief attached. In and with due diligence Petitioner sought release of his court files and records, no defendant can be expected to file a competent Appeal without copies of records to wit. Counsel Amos and the court did not began to release the records until ordered by N.C. State Bar (ACAP) order and dates-received January 12<sup>th</sup> and 16<sup>th</sup> of 2018.

It is a fact mere conclusionary allegations without documentation is automatically dismissed. I frankly do not see the problems or how the courts would not Rule on my claims. What is so devastating toward the State in my case the courts will not Rule upon my issues?

This case is of great public importance in that this N.C. State has since 1996 used unlawful means to incarcerate thousands of innocent citizens and even though some may have been guilty. Guilty of what is the question?

Herein I plead for collateral Review in the interest of Justice, and that Petitioner be allowed Habeas relief and be granted relief. This Petitioner should be granted because this is a review request of a clear attack and/or challenge to the State Courts jurisdiction.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kenneth Kelly Orrvall

Date: 10/19/2019