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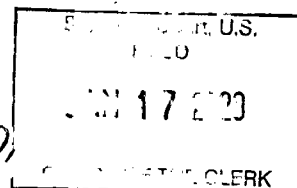
IN THE
SUPREME COURT OF THE UNITED STATES

Embery J. McBride,

PETITIONER,

v.

WALTER BEZZY, WARDEN,



RESPONDENT,

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

PLEASE SERVE:

Embery J. McBride

412236

ATTY STATE PRISON

P.O. Box 648

PELUHAM, GEORGIA

31779

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

SHOULD THIS COURT GRANT CERTIORARI TO RESOLVE THE CONFLICTS AMONG FEDERAL AND STATE COURTS ON THE FOLLOWING QUESTIONS:

- A). WHETHER OR NOT APPELLANT CAN BE TRIED, CONVICTED, AND SENTENCED WITHOUT A VALID SPECIAL PRESENTMENT, OR INDICTMENT?
- B). WHETHER OR NOT APPELLANT HAS A DUE PROCESS AND EQUAL PROTECTION RIGHT TO A VALID CHARGING INSTRUMENT, SUCH AS A PRESENTMENT OR INDICTMENT?
- C). WHETHER OR NOT A GRAND JURY CAN FIND A BILL OR ISSUE A PRESENTMENT IN GEORGIA WITHOUT THE SWORN TESTIMONY OF ANY WITNESS THAT WOULD WARRANT PROBABLE CAUSE?
- D). WHETHER OR NOT THE SPECIAL PRESENTMENT OR INDICTMENT MUST BE RETURNED IN OPEN COURT?
- E). WHETHER TRIAL COURT HAD SUBJECT-MATTER JURISDICTION TO ADJUDICATE PETITIONER'S 1982 CASE WITHOUT A VALID PRESENTMENT OR INDICTMENT?
- F). WHETHER PETITIONER'S MOTION IN ARREST OF JUDGMENT WAS A PROPER AND TIMELY PLEADING ACCORDING TO O.C.G.A. § 17-9-60 ET. SEQ?

QUESTION PRESENTED — CONTINUE

G). WHETHER PETITIONER "IN CUSTODY" PURSUANT TO 28 U.S.C. § 2254 (A), WHEN PETITIONER WAS CONVICTED IN 1982 WITH A FIVE YEAR SENTENCE THAT DID NOT EXPIRE UNTIL 1987?

H). WHETHER THE RESPONDENT'S KNOWINGLY, DELIBERATELY AND INTENTIONALLY COMMITTED "FRAUD UPON THE COURT," BY INTRODUCING A FRAUDULENT CHARGING INSTRUMENT?

I). WHETHER HURTADO V. CALIFORNIA ALLOWED THE PETITIONER TO BE DISCRIMINATED UNLIKE OTHER SIMILARLY SITUATED FELONS IN STATE COURTS WHEN GRAND JURY PROCEEDINGS ARE ADOPTED?

LIST OF PARTIES AND CORPORATE
DISCLOSURE STATEMENT

THE CAPTION OF THE CASE CONTAINS THE
NAMES OF ALL THE PARTIES. NO CORPORATIONS
ARE INVOLVED.

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PETITION FOR A WRIT OF HABEAS CORPUS

PETITIONER Embury J. McBride ("PETITIONER")
RESPECTFULLY PRAYS THAT A WRIT OF HABEAS CORPUS
ISSUE TO REVIEW THE JUDGMENT OF THE UNITED
STATES COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT, WHICH DENIED PETITIONER'S MOTION FOR A
CERTIFICATE OF APPEALABILITY TO REVIEW THE DENIAL
OF PETITIONER'S FEDERAL HABEAS CORPUS PETITION.
DESPITE THE FACT THAT GEORGIA STATE LAW HAS
CLEARLY ESTABLISHED LAW WELL OVER A CENTURY THAT
REQUIRES SUCH ACTION TO BE DONE TO PROTECT ITS
CITIZENS SUBSTANTIVE RIGHTS.

THE ISSUE(S) PRESENTED HEREIN IS ONE OF GREAT
IMPORTANCE TO THE PUBLIC, BECAUSE OF THE STATE
AND FEDERAL CONSTITUTIONAL RIGHTS THAT ARE BEING
VIOLATED.

PETITIONER SEEKS A TRUE AND FAIR RESOLUTION TO THE
CONFLICT BETWEEN STATE AND FEDERAL COURTS IN
DETERMINING WHETHER PETITIONER SUFFERED ANY
TYPE OF HARMFUL PREJUDICE AS A RESULT OF "FRAUD
UPON THE COURT," TO WHICH TRIAL COURT LACKED
SUBJECT-MATTER JURISDICTION TO ADJUDICATE?

OPINIONS BELOW

THE OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DENYING PETITIONER'S MOTION FOR RECONSIDERATION AND IS RE-COPIED IN THE APPENDIX HERETO, (APP. 01 INFRA.)

THE OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DENYING PETITIONER'S REQUEST ISSUANCE TO OBTAIN CERTIFICATE OF APPEALABILITY AND IS RE-COPIED IN THE APPENDIX HERETO, (APP. 02 INFRA.)

THE OPINION OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA, COLUMBUS DIVISION DENIAL AND IS RE-COPIED IN THE APPENDIX HERETO, (APP. 03 INFRA.)

THE OPINION OF THE GEORGIA SUPREME COURT DISMISSING PETITIONER'S PETITION FOR CERTIORARI IS RE-COPIED IN THE APPENDIX HERETO, (APP. 04 INFRA.)

THE OPINION OF THE COURT OF APPEALS OF THE STATE OF GEORGIA DENIAL OF APPELLANT'S APPLICATION FOR DISCRETIONARY APPEAL IS RE-COPIED IN APPENDIX HERETO, (APP. 05 INFRA.)

THE OPINION OF THE SUPERIOR COURT OF MUSCOGEE COUNTY DISMISSAL OF DEFENDANT'S MOTION IN ARREST OF JUDGMENT IS RE-COPIED IN APPENDIX HERETO, (APP. 06 INFRA.)

CONSTITUTIONAL PROVISIONS INVOLVED

THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES IN PERTINENT PART:

"NO PERSON SHALL ... BE HELD TO ANSWER FOR A CRIME, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY."

THE FOURTEENTH AMENDMENT PROVIDES IN PERTINENT PART: SECTION 1

"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."

JURISDICTION

THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT WAS ENTERED ON JUNE 20th 2019, AND THE MOTION FOR RECONSIDERATION WAS DENIED ON SEPTEMBER 10th 2019.

THE JURISDICTION OF THIS COURT TO REVIEW THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT IS INVOKED UNDER 28 U.S.C. § 1254.

STATEMENT OF THE CASE

PETITIONER Embery J. McBride (hereinafter "PETITIONER") WAS ALLEGEDLY INDICTED THROUGH THE METHOD OF A SPECIAL PRESENTMENT, BY A MUSCOGEE COUNTY, GEORGIA, GRAND JURY DURING THE AUGUST TERM 1982 FOR THE ALLEGED OFFENSE(S) OF RAPE AND AGGRAVATED ASSAULT (APP. 07 INFRA)

PETITIONER WAS FOUND GUILTY OF BOTH COUNTS BY A PETIT JURY ON OCTOBER 1ST 1982 PETITIONER WAS SENTENCED TO FIVE YEARS FOR RAPE AND FIVE YEARS FOR AGGRAVATED ASSAULT THAT WAS RAN CONCURRENTLY. (APP. 08 INFRA)

A MOTION FOR NEW TRIAL WAS TIMELY FILED AND WAS LATER DENIED, A TIMELY DIRECT APPEAL WAS FILED IN THE COURT OF APPEALS FOR THE STATE OF GEORGIA McBRIDE V. STATE, 170 GA. APP. 658; 318 S.E.2D 839 (1984) WHICH WAS AFFIRMED.

PETITIONER WAS RELEASED FROM PRISON AROUND JANUARY 13TH 1985 THROUGH A DISCHARGED METHOD AFTER SERVING TWO (2) AND ONE-HALF YEARS, BUT THIS SENTENCE EXPIRED NOT LATER THAN OCTOBER 1ST 1987 (APP. 06 INFRA)

ON NOVEMBER 4TH 1985 PETITIONER WAS ONCE AGAIN ARRESTED TEN (10) MONTHS LATER FOR A SIMILAR OFFENSE(S) OF RAPE AND AGGRAVATED SODOMY.

PETITIONER WAS CONDUCTING A DUE DILIGENCE EFFORT TO ASCERTAIN INFORMATION INTO THE 1986 CONVICTION OF RAPE AND AGGRAVATED SODOMY FROM THE GRAND JURY PERSPECTIVE ONLY TO DISCOVER A PATTERN OF ROUTINE PRACTICES OF VOID, ILLEGAL, UNCONSTITUTIONAL, FRAUDULENT, AND IN VALID ACTIVITY COMMITTED BY THE RESPONDENT (HEREINAFTER "THE STATE").

PETITIONER DISCOVERED THAT SIMILAR PRACTICES WAS USED TO ACQUIRE BOTH CHARGING INSTRUMENTS OF 1982 AND 1985. PETITIONER INITIALLY FILED A NOTICE OF INTENT TO FILE MOTION IN ARREST OF JUDGMENT. ON SEPTEMBER 13th 2016 PETITIONER FILED A MOTION IN ARREST OF JUDGMENT.

ON DECEMBER 6th 2016 PETITIONER FILED A MOTION TO CORRECT VOID, UNCONSTITUTIONAL, ILLEGAL JUDGMENT AND CONVICTION INCORPORATED WITH SUPREMACY CLAUSE.

ON JANUARY 10th 2017 PETITIONER FILED POST-CONVICTION CONSOLIDATED MOTIONS AND DEMANDS FOR DISCOVERY.

ON APRIL 24th 2017 APPELLANT FILED A "SPECIALLY COMMON LAW MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION.

ON JUNE 14th 2017 PETITIONER FILED A DEMAND FOR POST-CONVICTION SPEEDY EVIDENTIARY HEARING.

ON JUNE 20th 2017 PETITIONER FILED A TIMELY MOTION TO DISMISS WITHOUT PREJUDICE (APP. 027 INTRA)

ON JUNE 23rd 2017 PETITIONER FILED A MOTION TO CORRECT RECORD.

ON SEPTEMBER 21st 2017 PETITIONER IMMEDIATELY FILED A NOTICE OF MOTION IN ARREST OF JUDGMENT ONLY AFTER REALIZING THE INITIAL MISTAKE.

ON OCTOBER 5th 2017 PETITIONER FILED A SECOND MOTION IN ARREST OF JUDGMENT AFTER LOCATING THE FINAL DISPOSITION THAT WAS MISPLACED, MIXED UP WITH OTHER DOCUMENTS AFTER NUMEROUS OF STRIKE DOWNS ALTHOUGH, PETITIONER WAS VERBALLY SENTENCED IN SEPTEMBER 1982, BUT IT WAS NOT PUT INTO WRITING UNTIL OCTOBER 1st 1982. (APP. '08" INFRA)

ON DECEMBER 12th 2017 THE SUPERIOR COURT DISMISSED ALL MOTIONS WITH THE "EXCEPTION" OF PETITIONER'S MOTION TO DISMISS WITHOUT PREJUDICE (APP. '06" INFRA) WHICH WAS FILED APPROXIMATELY SIX (6) MONTHS PRIOR TO THIS ORDER, WHICH WAS INTENTIONALLY AND DELIBERATELY NOT MENTIONED IN ITS DECEMBER 12th 2017 ORDER.

ON JANUARY 23rd 2018 PETITIONER FILED A TIMELY NOTICE OF APPEAL TO THE GEORGIA COURT OF APPEALS. ON JANUARY 24th 2018 THE COURT OF APPEALS OF GEORGIA ISSUED AN ORDER DENYING PETITIONER'S APPLICATION FOR DISCRETIONARY APPEAL (APP. '05"). PETITIONER DID NOT PHYSICALLY RECEIVE THIS UNTIL AROUND JANUARY 30th 2018.

PETITIONER DID NOT HAVE ENOUGH TIME TO FILE A MOTION FOR RECONSIDERATION OR A TIMELY NOTICE OF INTENT TO FILE PETITION FOR CERTIORARI WHICH WAS DUE TEN (10) DAYS AFTER THE DATE OF ENTRY OF JUDGMENT.

ON AUGUST 2nd 2018 THE SUPREME COURT OF GEORGIA ISSUED AN ORDER DISMISSING PETITIONER'S PETITION FOR CERTIORARI AS UNTIMELY. (APP. '04" INFRA)

ON AUGUST 20th 2018 PETITIONER SUBMITTED FOR FILING A TIMELY NOTICE OF APPEAL IN THE SUPREME COURT OF GEORGIA, PETITIONER RECEIVED A FORM LETTER INFORMING PETITIONER THAT THE DOCUMENTS WAS REMITTIVE TO TRIAL COURT ON AUGUST 17th 2018 AND THE SUPREME COURT OF GEORGIA LACKED JURISDICTION.

ON AUGUST 31st 2018 PETITIONER FILED A PETITION FOR WRIT OF HABEAS CORPUS IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA, COLUMBUS DIVISION AND WAS ASSIGNED CASE NUMBER 4:18-cv-00180-COL-MSH
Embery J. McBride v. Walter Berry, Warden.

ON DECEMBER 4th 2018 THE MAGISTRATE JUDGE SUBMITTED ITS REPORT AND RECOMMENDATION IN PERTINENT PARTS: DISMISSED WITHOUT PREJUDICE; DENIED AS MOOT; AND THAT CERTIFICATE OF APPEALABILITY ("COA") BE DENIED. (APP. "010" INFRA)

ON JANUARY 18th 2019 PETITIONER FILED AN OBJECTION TO MAGISTRATE REPORT AND RECOMMENDATION.

ON FEBRUARY 15th 2019 AN ORDER WAS ISSUED ADOPTING THE REPORT AND RECOMMENDATION (APP. "03" INFRA) DENYING PETITIONER'S HABEAS CORPUS AS FUTILE AND MOOT.

ON MARCH 4th 2019 PETITIONER FILED A NOTICE OF APPEAL IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA, COLUMBUS DIVISION.

ON MARCH 12th 2019 PETITIONER SUBMITTED FOR FILING REQUESTING ISSUANCE TO OBTAIN CERTIFICATE OF APPEALABILITY IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.

ON JUNE 20th 2019 THE UNITED STATES COURT OF APPEALS DENIED PETITIONER'S REQUEST FOR COA. (APP. "02" INFERA)

ON JULY 5th 2019 PETITIONER SUBMITTED FOR FILING A "MOTION FOR RECONSIDERATION, VACATE, OR MODIFY THIS COURT'S ORDER".

ON SEPTEMBER 10th 2019 THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT ISSUED ITS ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION. (APP. "01" INFERA).

PETITIONER IS NOW SUBMITTING FOR FILING THIS PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT.

IT IS IMPERATIVE THAT THIS HONORABLE COURT GRASP THE FACT THAT PETITIONER IS PROCEEDING IN THIS MATTER IN PROPRIA PERSONA (IN ONE'S OWN PROPER PERSON) AND ANY PLEADINGS DRAFTED BY PETITIONER ARE TO BE HELD "TO LESS STRINGENT STANDARDS THAN FORMAL PLEADINGS DRAFTED BY LAWYERS," HAINES V. KERNER, 404 U.S. 519, 520 30 L.Ed. 2d 652, 92 S.Ct. 544 (1972); HUGHES V. ROWE, 449 U.S. 5, 10, 66 L.Ed. 2d 163, 101 S.Ct. 173 (1980); TANNENBAUM V. UNITED STATES, 148 F.3d. 1262, 1263 (11th CIR. 1998)

REASONS FOR GRANTING THE WRIT

THIS COURT HAS LONG HELD THAT ADHERING TO PRECEDENT "IS USUALLY THE WISE POLICY, BECAUSE IN MOST MATTERS IT IS MORE IMPORTANT THAT THE APPLICABLE RULE OF LAW BE SETTLED THAN IT BE SETTLED RIGHT." BURNET V. COLORADO OIL & GAS CO. 285 U.S. 393, 406, 76 L.Ed. 815, 52 S.Ct. 443 (1932)

NEVERTHELESS, WHEN GOVERNING DECISIONS ARE UNWORKABLE OR ARE BADLY REASONED, "THIS COURT HAS NEVER FELT CONSTRAINED TO FOLLOW PRECEDENT," SMITH V. ALLWRIGHT, 321 U.S. 649, 665, 82 L.Ed. 987, 64 S.Ct. 757 (1944)

PETITIONER ASSERTS THAT "STARE DECISIS" MUST BE IMPLEMENTED IN THIS CASE IN ORDER TO CORRECT THE MISCARriage OF JUSTICE THAT TRANSPIRED FROM THE ONSET.

THIS COURT HAS STATED THAT "STARE DECISIS" IS THE PREFERRED COURSE BECAUSE IT PROMOTES THE EVENHANDED, PREDICTABLE, AND CONSISTENT DEVELOPMENT OF LEGAL PRINCIPLES, FOSTERS RELIANCE ON JUDICIAL DECISIONS AND CONTRIBUTES TO THE ACTUAL AND PERCEIVED INTEGRITY OF THE JUDICIAL PROCESS," PAYNE V. TENNESSEE, 501 U.S. 808, 115 L.Ed. 2d 720, 111 S.Ct. 2597 (1991); KIMBLE V. MARVEL ENTMT, LLC, 576 U.S. —, 135 S.Ct. —, 192 L.Ed. 2d 463 (2015)

PETITIONER ASSERTS THE APPELLATE STATE COURT'S HAS NOT OVERRIDDEN ITS PRECEDENT IT JUST DO NOT ADHERE TO ITS OWN LAWS WITH ANY SPECIAL JUSTIFICATION ARIZONA V. RUMSEY, 467 U.S. 203, 12, 104 S.Ct. 2305, 81 L.Ed.2d 164 (1984)

PETITIONER ASSERTS THAT THIS COURT HAS THE POWER AND AUTHORITY TO ENFORCE GEORGIA STATE COURTS TO ADHERE TO ITS OWN PRECEDENT UNDER THE DOCTRINE OF "STARE DECENS," BUT IF THIS COURT DOES NOT ACT THEN THE INTEGRITY OF THE WHOLE JUDICIAL PROCESS WILL BE PUT INTO QUESTION.

THE ISSUES PUT FORTH ARE ISSUES OF CONCERN TO THE PUBLIC WILL TODAY'S COURT STAND BY YESTERDAY'S DECISION WHICH IS "A FOUNDATION STONE OF THE RULE OF LAW" OR WILL IT CONTINUE TO DISCRIMINATE AGAINST THE POOR PEOPLE OF COLOR BY ALLOWING GEORGIA STATE COURTS TO TRAMPLE ON PETITIONER'S CONSTITUTIONAL RIGHTS GOVERNED BY THE UNITED STATES CONSTITUTION AND GEORGIA CONSTITUTION §1976.

PETITIONER ASSERTS THAT ON MARCH 21ST 2018 AT 6:00 PM ON WSBTV CHANNEL TWO (2) NEWS THE ATTORNEY GENERAL OF THE STATE OF GEORGIA CHRISTOPHER M. CARL WAS BEING INTERVIEWED BY RICHARD BELCHER REGARDING THE OPEN RECORDS LAW.

BUT THE ATTORNEY GENERAL SAID SOMETHING THAT IS VERY, VERY IMPORTANT HE SAID, THAT "THE LAW MUST MEAN SOMETHING"

PETITIONER ASSERTS WHETHER ONE IS TALKING ABOUT THE OPEN RECORDS LAW OR SOME OTHER LAW IN THE STATE OF GEORGIA THE PRINCIPLE IS STILL THE SAME THAT "GEORGIA LAW MUST MEAN SOMETHING," NOT JUST IN WORD, BUT ACTION.

BUT IF THIS COURT DOES NOT MAKE THIS STATE ABIDE BY ITS OWN LAWS, THEN PETITIONER'S WRIT SEEKING JUSTICE WOULD TRULY BE FUTILE AND WASTING THIS COURT'S TIME AS WELL AS PETITIONER'S.

(A)

THIS COURT SHOULD GRANT CERTIORARI TO
RESOLVE THE CONFLICT OF WHETHER OR NOT
PETITIONERS CAN BE TRIED, CONVICTED, AND
SENTENCED WITHOUT A VALID SPECIAL
PRESENTMENT, OR INDICTMENT

THE FIFTH AMENDMENT'S PROMISES THAT "NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY." UNITED STATES CONSTITUTION AMENDMENT FIVE MEANS ANYTHING, IT MEANS THAT A CRIMINAL INDICTMENT MUST ACTUALLY ISSUE FROM A GRAND JURY, AND NOT SOME OTHER SOURCE.

THE FUNDAMENTAL CONCEPT UNDERLYING THE FIFTH AMENDMENT GUARANTEE IS THAT IN ORDER FOR AN INDICTMENT TO BE RECOGNIZED AS ACTUALLY ISSUING FROM A GRAND JURY, IT MUST BE THE PRODUCT OF AN INVESTIGATIVE DELIBERATION THAT IS INDEPENDENT OF BOTH THE PROSECUTING ATTORNEY AND THE COURT. UNITED STATES V. WILLIAMS, 504 U.S. 36, 49 112 S.Ct. 1795, 1743, 118 L.Ed. 2d 352 (1992) ("RECOGNIZING THE TRADITION OF INDEPENDENCE OF THE GRAND JURY, WE HAVE SAID THAT THE FIFTH AMENDMENT'S CONSTITUTIONAL GUARANTEE PRESUPPOSES AN INVESTIGATIVE BODY ACTING INDEPENDENTLY OF EITHER PROSECUTING ATTORNEY OR JUDGE") (EMPHASIS IN ORIGINAL) INTERNAL QUOTATION MARKS AND CITATIONS OMITTED); UNITED STATES V. DIONISIO, 410 U.S. 1, 18, 93 S.Ct. 764, 779, 35 L.Ed. 2d 67 (1973) ("FINDING THAT A GRAND JURY 'MUST BE FREE TO PURSUE ITS INVESTIGATIONS UNHINDERED BY EXTERNAL INFLUENCE'")

Wood v. Georgia, 370 U.S. 375, 390, 82 S.Ct. 1364, 1373
S.Ct. 2d 569 (1962) (recognizing "the necessity to
society of an independent and informed grand jury");
John Roe, Inc. v. United States (In re: Grand Jury
proceedings), 142 F.3d 1466, 1425 (11th Cir. 1998) (explaining
that although a grand jury relies on the judiciary when
it seeks subpoenas or contempt sanctions, it "performs its
investigative and deliberative functions independently").
Without a guarantee of independence, the indictment would
not be the genuine issue of a grand jury within the
meaning of the Constitution.

PETITIONER SEEKS THIS COURT'S ATTENTION TO RESOLVE THE
CONFLICT OF WHETHER OR NOT PETITIONER CAN BE TRIED,
CONVICTED, AND SENTENCED WITHOUT A VALID SPECIAL
PRESENTMENT, OR INDICTMENT?

According to Georgia Constitution §1976 Article 1, Section
1, Paragraph XI IT STATES IN PERTINENT PART: "EVERY
PERSON CHARGED WITH AN OFFENSE AGAINST THE LAW OF THIS
STATE SHALL HAVE THE PRIVILEGE AND BENEFIT OF COUNSEL; SHALL
BE FURNISHED, ON DEMAND, WITH A COPY OF THE ACCUSATION, AND
A LIST OF THE WITNESSES ON WHOSE TESTIMONY THE CHARGE
AGAINST HIM IS FOUNDED."

PETITIONER ASSERTS THAT IT IS PRESUMED THAT THE STATE
PROSECUTOR FOLLOWED A WELL RECOGNIZED PLAYBOOK WHEN
IT COMES TO SPECIAL PRESENTMENTS OR INDICTMENTS, BUT
ONE PARTICULAR COURT GAVE A PRIME EXAMPLE OF
WHAT THE STATE PROSECUTOR CAN AND WILL DO TO ENSURE
THAT A CHARGING INSTRUMENT IS FOUND.

IT IS CLEAR, FOR EXAMPLE, THAT IF A PROSECUTOR SIMPLY DREW UP AN "INDICTMENT" HAD A GRAND JURY FOREPERSON SIGN IT, AND THEN USED IT TO CHARGE THE PETITIONER WITH A CRIMINAL OFFENSE, WE WOULD DISMISS THE "INDICTMENT" OUT OF HAND AS VIOLATIVE OF THE FIFTH AMENDMENT.

THIS IS BECAUSE THE "INDICTMENT" WOULD IN NO SENSE BE THE PRODUCT OF A CONSTITUTIONALLY REQUIRED GRAND JURY PROCEEDING. SO, TOO, WOULD WE DISMISS AN INDICTMENT THAT WAS ISSUED BY A "KANGAROO GRAND JURY" - ONE WHOSE DELIBERATION WERE SO OVERBORN BY A PROSECUTOR OR JUDGE THAT THE INDICTMENT WAS, IN EFFECT, THE PROSECUTOR'S OR JUDGE'S HANDIWORK, AND NOT THE RESULT OF A CONSIDERED JUDGMENT BY AN INDEPENDENTLY FUNCTIONING GRAND JURY.

UNITED STATES V. MCKENZIE, 678 F.2d 629, 631 (5th CIR. 1982) ("HOLDING THAT AN INDICTMENT MAY BE DISMISSED" WHEN PROSECUTORIAL MISCONDUCT AMOUNTS TO OVERBEARING THE WILL OF THE GRAND JURY SO THAT THE INDICTMENT IS, IN EFFECT, THAT OF THE PROSECUTOR RATHER THAN THE GRAND JURY")

STANLEY V. UNITED STATES, 361 U.S. 212, 218, 80 S.Ct. 270, 273, 4 L.Ed.2d 252 (1960) ("THE VERY PURPOSE OF THE REQUIREMENT THAT A MAN BE INDICTED BY A GRAND JURY IS TO LIMIT HIS JEOPARDY TO OFFENSES CHARGED BY A GROUP OF HIS FELLOW CITIZENS ACTING INDEPENDENTLY OF EITHER PROSECUTING ATTORNEY OR JUDGE")

SUBSEQUENT SUPREME COURT CASES HAVE REAFFIRMED THE IMPORTANCE OF THE FIFTH AMENDMENT'S GRAND JURY CLAUSE, IMPLYING THAT COURTS HAVE THE AUTHORITY TO DISMISS AN INDICTMENT THAT IS THE PRODUCT OF A GRAND JURY PROCESS SO FLAWED THAT THE GRAND JURY'S INDEPENDENCE HAS BEEN IMPAIRED.

THE UNITED STATES SUPREME COURT HAS LONG STATED "ONCE THE STATE CHOOSES TO PROVIDE GRAND AND PETIT JURIES, WHETHER OR NOT CONSTITUTIONALLY REQUIRED TO DO SO, IT MUST HEW TO FEDERAL CONSTITUTIONAL CRITERIA" CARTER V. GREENE COUNTY, 396 U.S. 320, 24 L.Ed.2d 549, 90 S.Ct. 518 (1970); ALEXANDER V. LOUISIANA, 405 U.S. 625, 31 L.Ed.2d 536, 92 S.Ct. 1221 (1972).

WHILE EACH CASE MAY BE DIFFERENT, BUT ONCE THE STATE CHOOSES TO PROVIDE GRAND JURIES AS A MEANS TO FIND PROBABLE CAUSE TO ISSUE A PRESENTMENT OR INDICTMENT IT MUST CONFORM STRICTLY WITH FEDERAL CONSTITUTIONAL CRITERIA, WHETHER THIS CONFORMS TO THE SELECTION OF JURORS, INTERVIEWING WITNESSES, WHO MAY BE PRESENT DURING GRAND JURY PROCEEDING, OR RETURNING ITS FINDING INTO OPEN COURT INTER ALIA.

PETITIONER ASSERTS THAT THIS STATE HAS LONG DECIDED TO USE A GRAND JURY OR AT LEAST GIVING THE IMPRESSION THAT A GRAND JURY IS BEING USED TO FIND OUT WHETHER OR NOT PROBABLE CAUSE EXISTS. THIS IS THE VERY FOUNDATION OF A "SUBSTANTIVE NATURE" THAT WILL BE THE ULTIMATE DECIDING FACTOR WHETHER OR NOT PETITIONER WILL PROCEED ANY FURTHER. IF A "NO TRUE BILL" IS ISSUED, THEN EVERYTHING STOP, BUT IF A TRUE BILL IS FOUND THEN THE COURT WILL PROCEED ON. PETITIONER HAS TWO (2) MAIN POINTS: (1) THAT THERE WAS ABSOLUTELY NO WITNESS INTRODUCED BEFORE THE GRAND JURY SWORN OR OTHERWISE TO GIVE ANY TESTIMONY; (2) THAT THE CHARGING INSTRUMENT WAS NEVER RETURNED INTO OPEN COURT.

(B)

THIS COURT SHOULD GRANT CERTIORARI
TO RESOLVE THE CONFLICT ON WHETHER
OR NOT PETITIONER HAS A DUE PROCESS
AND EQUAL PROTECTION RIGHT TO A VALID
CHARGING INSTRUMENT, SUCH AS A
PRESUMPTION OR INDICTMENT

THE UNITED STATES CONSTITUTION OF THE FOURTEENTH
AMENDMENT SECTION 1 STATES IN PERTINENT PART:

"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
LAW."

GEORGIA CONSTITUTION § 1976 ARTICLE 1, SECTION 1,
PARAGRAPH 1 "NO PERSON SHALL BE DEPRIVED OF LIFE
LIBERTY, OR PROPERTY, EXCEPT BY DUE PROCESS OF LAW;

GEORGIA CONSTITUTION § 1976 ARTICLE 1, SECTION 11,
PARAGRAPH III "PROTECTION TO PERSON AND PROPERTY
IS THE PARAMOUNT DUTY OF GOVERNMENT, AND SHALL
BE IMPARTIAL AND COMPLETE."

GEORGIA CONSTITUTION § 1976 ARTICLE 1, SECTION 11,
PARAGRAPH IX "ALL CITIZENS OF THE UNITED STATES,
RESIDENT IN THIS STATE, ARE HEREBY DECLARED CITIZENS
OF THIS STATE, AND IT SHALL BE THE DUTY OF THE GENERAL
ASSEMBLY TO ENACT SUCH LAWS AS WILL PROTECT THEM IN
THE FULL ENJOYMENT OF THE RIGHTS, PRIVILEGES AND
IMMUNITIES DUE TO SUCH CITIZENSHIP."

OFFICIAL CODE OF GEORGIA ANNOTATED ("O.C.G.A.") 15-
6-6 OATH OF JUDGES STATES: (APP. 025" INFRA)

"A JUDGE SWEARS TO ADMINISTER JUSTICE WITHOUT RESPECT
TO PERSON AND DO EQUAL RIGHTS TO THE POOR AND THE
RICH AND THAT (THE JUDGE) WILL FAITHFULLY AND IMPARTIALLY
DISCHARGE."

PETITIONER ASSERTS THAT "UNDER THE CONSTITUTION OF THE
UNITED STATES AND OF THE STATE OF GEORGIA A CRIMINAL
DEFENDANT IS ENTITLED TO BE TRIED ACCORDING TO THE LAW
OF THE LAND." ALLEN V. STATE, 110 GA. APP. 56; 137 S.E.2D 711
(1964)

FUNDAMENTALLY, IT ASSURES THAT EVERY CITIZEN SHALL HAVE
THE BENEFIT AND PROTECTION OF THE GENERAL RULES THAT
GOVERN SOCIETY, THROUGH LAW IN ITS REGULAR COURSE OF
ADMINISTRATION THROUGH COURTS OF JUSTICE. THIS IS A
GOVERNMENT OF LAWS AND NOT OF MEN." ALLEN, SUPRA
THIS COURT HAS HELD THAT "IF A STATE CHOOSES TO PROCEED
BY GRAND JURY IT MUST PROCEED WITHIN THE CONSTRAINTS
IMPOSED BY THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH
AMENDMENT." CANTAREDA V. PARODIA, 430 U.S. 482, 51 L.ED.2D
498, 97 S.Ct. 1272 (1977)

PETITIONER ASSESTS THAT WHEN THE STATE OF GEORGIA DECIDED TO ADOPT THE GRAND JURY METHOD OF USING THE FOURTH BRANCH OR ARM OF THE GOVERNMENT CITIZENS THAT TAKES AN OATH AND FIND PROBABLE CAUSE EXIST FOR A TRUE BILL.

THE GRAND JURY HAS TWO PRINCIPAL FUNCTIONS. FIRST, IT BEARS THE WEIGHTY RESPONSIBILITY OF INVESTIGATING CRIME AND DETERMINING WHETHER THERE IS PROBABLE CAUSE TO BELIEVE THAT A CRIME HAS BEEN COMMITTED. UNITED STATES V. CALANDRA, 414 U.S. 338, 343, 38 L.Ed. 2d 561, 84 S.Ct. 613 (1974).

THE SECOND AND NO LESS IMPORTANT TASK OF THE GRAND JURY IS TO "SERVE THE INVALUABLE FUNCTION IN OUR SOCIETY OF STANDING BETWEEN THE ACCUSER AND THE ACCUSED, WHETHER THE LATTER BE AN INDIVIDUAL, MINORITY GROUP, OR OTHER, TO DETERMINE WHETHER A CHARGE IS FOUNDED UPON REASON OR DICTATED BY AN INTIMIDATING POWER OR BY MALICE AND PERSONAL ILL WILL." WOOD V. GEORGIA, 370 U.S. 375, 380, 8 L.Ed. 2d 569, 82 S.Ct. 1364 (1962)

TO FURTHER THE GRAND JURY'S INVESTIGATIVE FUNCTION, THE GRAND JURY TRADITIONALLY HAS BEEN GIVEN "WIDE LATITUDE" IN ITS INQUIRIES. CALANDRA, SUPRA

"A PROPERLY CONSTITUTED GRAND JURY IS A FUNDAMENTAL CONSTITUTIONAL RIGHT WHEN THE STATE PROCEEDS BY GRAND JURY INDICTMENT," FRANCIS V. HENDERSON, 425 U.S. 536, 48 L.Ed. 2d 149, 96 S.Ct. 1708 (1976) N.1

THE CONCEPT OF EQUAL PROTECTION AND DUE PROCESS, BOTH STEMMING FROM OUR AMERICAN IDEAL OF FAIRNESS, ARE NOT MUTUALLY EXCLUSIVE. THE "EQUAL PROTECTION OF THE LAWS IS A MORE EXPLICIT SAFEGUARD OF PROHIBITED UNFAIRNESS THAN "DUE PROCESS OF LAW," AND THEREFORE, WE DO NOT IMPLY THAT THE TWO ARE ALWAYS INTERCHANGEABLE PHASES.

BUT, AS THIS COURT HAS RECOGNIZED, DISCRIMINATION MAY BE SO UNWITTABLE AS TO BE VIOLATIVE OF DUE PROCESS.

BOLLING V. SHARPE, 347 U.S. 497, 98 L.Ed. 884, 74 S.Ct. 693 (1954)

PETITIONER ASSERTS THAT BOTH THE STATE AND FEDERAL CONSTITUTION THAT PROHIBITED UNFAIRNESS IN THE GRAND JURY PROCESS WHICH IS SUBSTANTIVE TO THE CRIMINAL JUSTICE SYSTEM VIOLATED PETITIONER'S EQUAL PROTECTION RIGHTS, BECAUSE PETITIONER HAD A RIGHT TO BE TREATED THE SAME AS OTHER "SIMILAR SITUATED" PERSONS THAT

WENT THROUGH THE GRAND JURY METHOD IN GEORGIA. THIS FORM OF DISCRIMINATION DID IN FACT VIOLATE PETITIONER'S

SUBSTANTIVE DUE PROCESS RIGHTS WHEN GEORGIA LAW'S SPECIFICALLY, UNEQUIVOCALLY STATES: "THE GRAND JURY CAN FIND NO BILL NOR MAKE ANY PRESENTMENT, EXCEPT UPON THE TESTIMONY OF WITNESSES SWORN IN A PARTICULAR CASE, WHERE THE PARTY IS CHARGED WITH A SPECIFIED OFFENSE" IN RE LESTER, 77 GA. 143 (1886) (APP. "O" INFRA) THE

GEORGIA SUPREME COURT WENT ON TO SAY: "IF THAT ACTION BECOMES MATERIAL IN AN INVESTIGATION BEFORE THE GRAND JURY IN ANY SPECIFIED CASE, IT SHOULD BE SHOWN BY A COPY THEREOF, DULY CERTIFIED BY THE CLERK UNDER THE SEAL OF THE COURT."

SECONDLY, PETITIONER ASSERTS THAT BOTH STATE AND FEDERAL CONSTITUTION THAT PROHIBITED UNFAIRNESS IN THE GRAND JURY PROCESS WHICH IS ALSO SUBSTANTIVE TO THE INTEGRITY OF THE JUDICIAL SYSTEM. PETITIONER'S EQUAL PROTECTION RIGHTS WERE VIOLATED, BECAUSE PETITIONER WAS NOT TREATED THE SAME AS SIMILAR SITUATED PERSONS WHEREAS THEIR CHARGING INSTRUMENT WAS RETURNED INTO OPEN COURT AS MANDATED BY GEORGIA LAW.

IT WAS HELD THAT TO CONSTITUTE A VALID INDICTMENT IT MUST HAVE BEEN PUBLICLY PRESENTED IN OPEN COURT. "IT IS A FUNDAMENTAL PART OF OUR JUDICIAL SYSTEM THAT THE GENERAL PUBLIC BE PERMITTED TO WITNESS COURT PROCEEDINGS SUFFICIENTLY TO GUARANTEE THAT THERE MAY NEVER BE PRACTICED IN THIS STATE SECRET OR STAR-CHAMBER COURT PROCEEDINGS."

ZUGAR V. STATE, 194 GA. 285; 21 S.E.2d 647 (1942)

PETITIONER ASSERTS THAT "A SELF-RESPECTING LAW-ABIDING CITIZEN WOULD CONSIDER HIMSELF IRREPARABLY DAMAGED IF AN INDICTMENT CHARGING HIM WITH CRIME REACHED THE COURT BY ILLEGAL MEANS AND REQUIRED HIM TO DEFEND AGAINST IT; AND THOUGH SUCH INJURY WOULD BE LARGELY CURED BY HIS SUCCESSFUL EFFORT TO QUASH SUCH INDICTMENT ON THE GROUND THAT IT WAS SO ILLEGALLY FILED AGAINST HIM, HE COULD NOT THEREBY COMPLETELY REPAIR THE INJURY SUFFERED, THE SCAR WOULD REMAIN; AND IT IS TO PREVENT THE POSSIBILITY OF SUCH AN INJURY THAT THIS RULE WAS DESIGNED AND MUST BE OBSERVED. IT IS NOT ENOUGH TO KNOW THAT IN THIS STATE THERE IS HARDLY A CHANCE THAT BOGUS INDICTMENTS

FOR PERSONAL SPITE WILL BE FILED IN OUR COURTS. THE PRESERVATION OF THE HONOR AND PURITY OF THE COURTS, THE CONFIDENCE AND RESPECT OF THE PUBLIC IN THOSE COURTS, AND THE GOOD NAME OF THE CITIZENS MUST NOT BE LEFT TO CHANCE, BUT SHOULD BE AND ARE BY THIS RULE GUARANTEED." (APP. "07" INFRA).

PETITIONER ASSERTS THAT ONCE A STATE ADOPTS THE GRAND JURY AS ITS ACCUSATORY BODY, IT MUST "HOLD TO FEDERAL CONSTITUTIONAL CRITERIA. THIS PUT FORTH PETITIONER'S SUBSTANTIAL DUE PROCESS RIGHTS OF RECEIVING "NOTICE" FROM A VALID CHARGING INSTRUMENT."

PETITIONER ASSERTS ONCE THE STATE TOOK AWAY THE GRAND JURY FUNCTIONS TO OPERATE INDEPENDENTLY TO HEAR OR INTERVIEW AT LEAST ONE SWORN WITNESS IN ORDER TO DETERMINE WHETHER PROBABLE CAUSE EXISTED THAT A CRIME TRANSPIRED, NOR DID THE GRAND JURY OR A SWORN BALIFF WAS PERMITTED TO RETURN THE ALLEGED CHARGING INSTRUMENT IN OPEN COURT AS REQUIRED BY LAW.

YET, THIS WHOLE SUBSTANTIVE DUE PROCESS OF AN ALLEGED GRAND JURY WAS A FACADE, BOGUS AND FRAUDULENT DEVICE. WITHOUT A GUARANTEE OF INDEPENDENCE, THE INDICTMENT WOULD NOT BE THE GENUINE ISSUE OF A GRAND JURY WITHIN THE MEANING OF THE CONSTITUTION.

THIS COURT HAS PREVIOUSLY HELD, "THE PROHIBITIONS OF THE FOURTEENTH AMENDMENT ARE ADDRESSED TO THE STATES. A STATE ACTS BY ITS LEGISLATIVE, ITS EXECUTIVE OR ITS JUDICIAL AUTHORITIES. IT CANNOT IN NO OTHER WAY. THE CONSTITUTIONAL PROVISION THEREFORE, MUST MEAN THAT NO AGENCY OF THE STATE, OR OF THE OFFICERS OR AGENTS BY WHOM ITS POWERS ARE EXERCISED, SHALL DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS. WHOEVER, BY VIRTUE OF PUBLIC POSITION UNDER A STATE GOVERNMENT, DEPRIVES ANOTHER OF PROPERTY, LIFE OR LIBERTY WITHOUT DUE PROCESS OF LAW, OR DENIES OR TAKES AWAY THE EQUAL PROTECTION OF THE LAWS, VIOLATES THE CONSTITUTIONAL INHIBITION: AND AS HE ACTS IN THE NAME AND FOR THE STATE, AND IS CLOTHED WITH THE STATE'S POWER, HIS ACT IS THAT OF THE STATE." EX PARTE COMMUNWEALTH OF VIRGINIA, 25 LED 676, 100 U.S. 339 (1880)

PETITIONER ASSERTS THAT BOTH EQUAL PROTECTION AND DUE PROCESS RIGHTS WERE VIOLATED WHEN THE STATE CHOSE TO ADJUDICATE THE GRAND JURY FOR A VALID INDICTMENT OR PRESENTMENT.

(C)

THIS COURT SHOULD GRANT CERTIORARI TO
RESOLVE THE CONFLICT OF WHETHER OR
NOT A GRAND JURY CAN FIND A BILL OR
ISSUE A PRESENTMENT IN GEORGIA WITH
OUT THE SWORN TESTIMONY OF ANY WITNESS
THAT WOULD WARRANT PROBABLE CAUSE

"THE FIFTH AMENDMENT REQUIRES THAT AN
INDICTMENT ISSUE FROM AN INDEPENDENT GRAND JURY.
WHERE A GRAND JURY PROCEEDING IS SO CORRUPTED BY THE
CONDUCT OF A PROSECUTOR OR JUDGE THAT IT "SUBSTANTIALLY
INFLUENCED THE GRAND JURY'S DECISION TO INDICT, OR IF
THERE IS GRAVE DOUBT THAT THE DECISION TO INDICT WAS
FREE FROM... SUBSTANTIAL INFLUENCE." BANK OF NOVA
SCOTIA V. UNITED STATES, 487 U.S. 250, 108 S. CT 2369, 101
L. ED. 2D 228 (1988) THE SUPREME COURT HELD THAT
EVEN THOUGH A DISTRICT COURT MUST FIND THAT AN ERROR
IN THE GRAND JURY PROCEEDINGS ACTUALLY PREJUDICED THE
DEFENDANT IN ORDER TO DISMISS THE INDICTMENT.
PETITIONER ASSERTS NEITHER THE STATE COURTS NOR THE
DISTRICT OR APPELLATE COURTS TRY TO FIND OUT WHETHER
OR NOT PETITIONER WAS IN FACT INJURED BY THE FACT
THAT NO SWORN WITNESS EVER TESTIFIED BEFORE THE
ALLEGED GRAND JURY FOR IT TO INDEPENDENTLY
ESTABLISH WHETHER OR NOT PROBABLE CAUSE EXISTED
TO ISSUE A TRUE BILL OF INDICTMENT OR PRESENTMENT,
AS MANDATED BY GEORGIA LAW.

EVEN FEDERAL RULES OF CRIMINAL PROCEDURE RULE 6 (d)
(1) GIVES THE INDICATION THAT A WITNESS IS PRESENT TO
BE QUESTIONED.

PETITIONER ASSERTS THE LAW IS THE LAW - IS THE LAW
-- IS THE LAW. WHEN AN IRREGULARITY IN CRIMINAL PROCEEDINGS
INVOLVING THE CONSTITUTIONAL RIGHTS OF A DEFENDANT IS SHOWN,
"IT IS PER SE INTIMIDATORY TO THE DEFENDANT." THIEL V. SOUTHERN
PACIFIC CO. 328 U.S. 212, 225, 66 S. Ct. 984, 90 LEd 1181 (1946)

(APP. "07" INFRA) IS A CERTIFIED COPY OF PETITIONER'S
PRESENTMENT THAT WAS USED AS A CHARGING INSTRUMENT
AGAINST PETITIONER TO WHICH PETITIONER WAS FORCED TO
ANSWER TO.

PETITIONER ASSERTS THAT PETITIONER CANNOT BE FORCED
OR MADE TO ANSWER TO AN INVALID PRESENTMENT THAT
WAS NOT FOUND BY THE REQUIRED EVIDENCE, THE SWORN
TESTIMONY OF A WITNESS, BUT THE ALLEGED GRAND JURY
WAS SUBSTANTIALLY INFLUENCED BY THE PROSECUTOR OR THE
COURT TO ISSUE A CHARGING INSTRUMENT WITHOUT
INDEPENDENTLY INVESTIGATING WHETHER OR NOT PROBABLE
CAUSE EXISTED.

BUT THIS WAS NOT THE CASE IN PETITIONER'S SITUATION,
BECAUSE IF THE COURT EXAMINE (APP. "07" INFRA) IT
WILL NOTICE THAT ON THE CERTIFIED PRESENTMENT THERE
IS A PRE-PRINTED LOCATION ON THE FORM TO PLACE THE
NAME(S) OF ANY WITNESSES THAT TESTIFIED BEFORE THE
GRAND JURY.

PETITIONER HAS ALSO PRESENTED (APP. 011, 012, INFRA)
IN AN EFFORT TO SHOW THIS COURT AND OTHER COURTS IN THE
STATE OF GEORGIA HAS FULLY COMPLIED WITH CLEARLY
ESTABLISHED LAW.

PETITIONER EQUAL PROTECTED AND DUE PROCESS RIGHTS
UNDER BOTH STATE AND FEDERAL CONSTITUTION WERE
VIOLATED.

SINCE 1854 IN ASHBURN V. STATE, 15 GA. 246; (1854) IT IS CLEARLY ESTABLISHED: "THAT THE WITNESSES UPON WHOSE EVIDENCE THE INDICTMENT WAS FOUND, HAD NOT BEEN LEGALLY SWORN." (APP. "013" INFRA) THE COURT HELD THAT THIS INDICTMENT SHOULD HAVE BEEN QUASHED.

IN SWINZER V. STATE, 7 GA. APP. 7, 10 (65 S.E. 1079) (1909) [AS A PREREQUISITE TO VALID TESTIMONY BEFORE A GRAND JURY, THERE MUST BE BEFORE THE GRAND JURY SOME PLEADING, EITHER IN THE FORM OF A BILL OF INDICTMENT OR A SPECIAL PRESENTMENT, CHARGING A NAMED PERSON WITH A SPECIFIED OFFENSE, AND UPON WHICH PARTICULAR CASE THE WITNESS MUST BE SWORN; AND THE ONLY OATH THAT CAN BE ADMINISTERED TO THE WITNESS IS THE ONE, OR AT LEAST SUBSTANTIALLY THE ONE, WHICH IS PRESCRIBED BY THE STATUTE.

IN STATE V. WILLIAMS, 181 GA. APP. 204; 351 S.E.2D 727 (1986) (APP. "014" INFRA) STATES IN PERTINENT PART: "THE GRAND JURY HAS NO RIGHT TO FIND ANY BILL OR TO MAKE ANY SPECIAL PRESENTMENT EXCEPT UPON THE TESTIMONY OF A WITNESS." PETITIONER ASSERTS SINCE THE INITIAL FILING OF THE MOTION TO ARREST JUDGMENT TO WHICH PETITIONER HAD FILED A MOTION TO DISMISS WITHOUT PREJUDICE ON JUNE 20, 2017 (APP. "027" INFRA) PRIOR TO THE TRIAL COURT ISSUING ITS DECEMBER 12TH 2017 ORDER FOR WHICH TRIAL COURT NEVER RULED ON TO THIS DAY, BUT IS TRYING TO DECEIVE THE COURT BY NOT MENTIONING THE MOTION TO DISMISS WITHOUT PREJUDICE OR THE MOTION TO ARREST JUDGMENT THAT WAS FILED ON OCTOBER 5TH 2017. IN HALE V. HENKEL 50 L.ED. 652, 201 U.S. 43 (1906) "THE GRAND JURY CAN FIND NO BILL NOR MAKE ANY PRESENTMENT EXCEPT UPON THE TESTIMONY OF WITNESSES, SWORN IN A PARTICULAR CASE, WHERE THE PARTY IS CHARGED WITH A SPECIFIED OFFENSE."

PETITIONER ASSERTS AT NO TIME THROUGHOUT THIS PROCESS did THE STATE FILE ANY PLEADINGS OBJECTING TO THESE FACTS, BUT THE JUDGES HAS BEEN PRACTICING LAW FROM THE BENCH.

PETITIONER ASSERTS THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF GEORGIA SUBMITTED ITS UNOFFICIAL VIEWS IN U87-201 1987 GA. AG LEXIS 28 (APP. "015" INFERA) ALTHOUGH, IN THE ATTORNEY GENERAL UNOFFICIAL OPINION THAT WHEN (THE STATE) A DISTRICT ATTORNEY CANNOT PROVIDE THE GRAND JURY EITHER THE NAME OF THE ACCUSED OR THE SPECIFIC OFFENSE TO BE CHARGED, THE GRAND JURY HAS NO AUTHORITY TO CONDUCT AN INVESTIGATION.

PETITIONER ASSERTS IF THE STATE REFUSES TO RELINQUISH THE NAME OF THE PETITIONER, THIS TAKES AWAY FROM THE REQUIRED DUTIES OF THE GRAND JURY.

YET, O.C.G.A. § 17-7-51 (FORMERLY G.C.A.S 27-703) STATES IN PERTINENT PART: "ALL SPECIAL PRESENTMENTS by the Grand Jury charging defendants with violations of the penal laws shall be treated as indictments."

PETITIONER ASSERTS THAT IN STATE V. DEMPSEY, 290 GA. 763, 727 S.E.2d 670 (2012) (APP. "016" INFERA) ONLY REAFFIRMS WHAT WAS SAID AND DECIDED OVER A HUNDRED YEARS AGO. APP. "017" INFERA) IS A GRAND JURY HANDBOOK ONLY IN PERTINENT PART THAT WAS COPYRIGHT IN 1994-2017 BY THE PROSECUTING ATTORNEY'S COUNCIL OF GEORGIA AND THE ONLY REASON THE ENTIRE HANDBOOK IS NOT GIVEN IS BECAUSE IT WAS ABOUT (47) FORTY-SEVEN PAGES. THIS COURT MAY GO TO WWW.PACGA.ORG TO SEE THE HANDBOOK IN ITS ENTIRETY.

PETITIONER ASSERTS THAT ON PAGE 28 OF PAC HANDBOOK IN THE THIRD PARAGRAPH IT STATES IN PERTINENT PART:

"IT IS IMPORTANT TO REMEMBER THAT AT LEAST ONE WITNESS MUST BE SWORN AND GIVE TESTIMONY AS TO EACH INDICTMENT OR SPECIAL PRESENTMENT IN ORDER FOR THE INDICTMENT OR SPECIAL PRESENTMENT TO BE VALID."

IN WILLIAMS V. STATE, 107 GA. APP. 794, 131 S.E.2D 567 (1963) "AN AFFIDAVIT ALONE APPARENTLY IS NOT SUFFICIENT TO AUTHORIZE THE GRAND JURY TO RETURN A TRUE BILL."

PETITIONER ASSERTS THAT BECAUSE THE (APP. "018" INFRA) DOES NOT INDICATE THE NAME OF ANY WITNESS ON THE PRE-PRINTED LOCATION.

IT IS SAFE TO PRESUME THAT NO SWORN WITNESS EVER TESTIFIED BEFORE THE GRAND JURY AS MANDATED AND REQUIRED BY LAW AND GEORGIA CONSTITUTION § 1976 ARTICLE 1, SECTION 1, PARAGRAPH XI (NOW GEORGIA CONSTITUTION § 1983) WHICH STATES IN PERTINENT PART: "A LIST OF THE WITNESSES ON WHOSE TESTIMONY SUCH A CHARGE IS FOUNDED."

IN BONDS V. STATE, 232 GA. 694, 208 S.E.2D 561 (1974) "THERE IS NO REQUIREMENT EITHER IN THE CONSTITUTION OR THE STATUTES THAT THOSE PERSON(S) WHOSE NAMES APPEAR ON THE ACCUSATION [OR INDICTMENT] AS WITNESSES MUST TESTIFY ON THE TRIAL OF THE ACCUSED." HARDER V. STATE, 131 GA. 771, 773 63 S.E. 339 (1909)

PETITIONER ASSERTS THAT PETITIONER SUFFERED ENORMOUS INJURY DUE TO THE FACT THAT NO SWORN WITNESS TESTIFIED BEFORE AN ALLEGED GRAND JURY THAT CONDUCTED AN INDEPENDENT INVESTIGATION THAT THERE WAS PROBABLE CAUSE THAT EXIST THAT PETITIONER COMMITTED THE ALLEGED CRIMES.

PETITIONER ASSERTS THAT THIS ILLEGAL, UNCONSTITUTIONAL, FRAUDULENT, VOID AND INVALID ACT WAS THE RESULTS OF THE STATE ROUTINE PRACTICE TO ENSURE A TRUE BILL OR PRESENTMENT IS FOUND WITHOUT ANY EVIDENCE IN THE FORM OF TESTIMONIAL.

PETITIONER WAS PREJUDICE BY THIS BECAUSE PETITIONER WAS MADE TO ANSWER TO A FRAUDULENT, INVALID, VOID, ILLEGAL AND UNCONSTITUTIONAL PRESENTMENT THAT VIOLATED PETITIONER'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS AS WELL AS THE SUPREMACY CLAUSE. THE ERROR THAT OCCURRED WAS PLAIN ERRORS THAT CAN ONLY BE CURED BY DISMISSING THE PRESENTMENT IN ITS ENTIRETY.

(D)

THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THE CONFLICT OF WHETHER OR NOT THE SPECIAL PRESENTMENT OR INDICTMENT MUST BE RETURNED IN OPEN COURT

FEDERAL RULES OF CRIMINAL PROCEDURE RULE 6(F) STATES IN PERTINENT PART:

"THE GRAND JURY OR ITS FOREPERSON OR DEPUTY FOREPERSON MUST RETURN THE INDICTMENT TO A MAGISTRATE JUDGE IN OPEN COURT."

IN GARDNER V. PEOPLE, 20 IL. 490 THE COURT, AFTER holding, "BEFORE A PARTY CAN BE TRIED ON AN INDICTMENT, IT MUST APPEAR FROM THE RECORD THAT IT WAS RETURNED INTO OPEN COURT," SAID, "THIS REQUIREMENT IS PROPER FOR THE PROTECTION OF THE CITIZEN AGAINST BEING FORCED TO DEFEND HIMSELF AGAINST CHARGES NEVER ACTED UPON OR PRESENTED BY A GRAND JURY."

PETITIONER ASSERTS IN LAMPSON V. STATE, 124 GA. 776, 53 S.E. 332 (1906) IT STATES: "AN INDICTMENT MUST BE RETURNED INTO OPEN COURT BY THE GRAND JURY AND IN THE PRESENCE OF ITS MEMBERS, IT FOLLOWS THAT THE CLERK MUST DO LIKEWISE." (APP. "019" INFER)

WHEN AN IRREGULARITY IN CRIMINAL PROCEEDINGS INVOLVING THE CONSTITUTIONAL RIGHTS OF A DEFENDANT IS SHOWN, IT IS PER SE INJURIOUS TO THE DEFENDANT THIEL, SUPRA; ZUGAR, SUPRA (APP. "020" INFER) ALLEN V. STATE, 110 GA. APP. 56, 137 S.E.2d 711 (1964)

PETITIONER IS NOW SUBMITTING (APP'S "011, 012, 021, 022, 023" INFER) IN AN EFFORT TO SHOW THE COURT THAT OTHER COURTS IN THE STATE OF GEORGIA ARE FOLLOWING THE REQUIREMENT OF GEORGIA LAW EVEN IN (APP'S "021, 022, 023" INFER) IT SHOWS THAT THE SUPERIOR COURT IS SHOWING THAT THE CHARGING INSTRUMENT WAS RETURNED INTO OPEN COURT, BUT AS THE COURT WILL OBSERVE IN PETITIONER'S (APP. "07" INFER) WHICH IS A CERTIFIED COPY DOES NOT GIVE ANY INDICATION OF BEING RETURNED INTO OPEN COURT AS MANDATED BY LAW.

PETITIONER ASSERTS THAT (APP. '018" INFR) THE PAC
HANDBOOK ON PAGES 29-30 STATES IN PERTINENT PART:

"IF A TRUE BILL IS FOUND, THE INDICTMENT
MUST BE RETURNED IN OPEN COURT, EITHER BY
THE ENTIRE GRAND JURY OR DELIVERED BY
THE GRAND JURY TO THE SWORN GRAND
JURY BALIFF TO BE RETURNED IN OPEN
COURT."

"IF AN INDICTMENT IS NOT RETURNED IN
OPEN COURT OR IF IT IS RETURNED BY
ANYONE OTHER THAN THE GRAND JURY
OR BALIFF, THE DEFENDANT CAN MOVE
TO HAVE THE INDICTMENT DISMISSED."

IN ZUGAR, SUPRA (APP. '020" INFR) STATES: "A RULE
MUST BE COMPLIED WITH IN EVERY CASE," THE RULE IS:
AN INDICTMENT MUST BE RETURNED INTO OPEN COURT."

IN RENIGAR V. U.S. 172 FED. 646 (97 C.C.A. 172, 26 L.R.A.
(N.S.) 683. 19 ANN. CAS 1117). STATES IN PERTINENT PART:

"IT WAS HELD THAT TO CONSTITUTE A VALID INDICTMENT
IT MUST HAVE BEEN PUBLICLY PRESENTED IN OPEN COURT."

PETITIONER ASSERTS THAT IF IT IS A FUNDAMENTAL PART OF
OUR JUDICIAL SYSTEM THAT THE GENERAL PUBLIC BE PERMITTED
TO WITNESS COURT PROCEEDINGS SUFFICIENTLY TO GUARANTEE
THAT THERE MAY NEVER BE PRACTICED IN THIS STATE SECRET
OR STAR-CHAMBER COURT PROCEEDINGS.

HOW CAN TRIAL COURT PROCEED TO TRY AND ADJUDICATE THIS CASE WHEN THERE WAS NO EVIDENCE THAT THE CHARGING INSTRUMENT WAS RETURNED INTO OPEN COURT?

"A SELF-RESPECTING LAW-ABIDING CITIZEN WOULD CONSIDER HIMSELF IRREPARABLY DAMAGED IF AN INDICTMENT CHARGING HIM WITH CRIME REACHED THE COURT BY ILLEGAL MEANS AND REQUIRED HIM TO DEFEND AGAINST IT? AND THOUGH SUCH INJURY WOULD BE LARGELY CURED BY HIS SUCCESSFUL EFFORT TO QUASH SUCH INDICTMENT ON THE GROUND THAT IT WAS SO ILLEGALLY FILED AGAINST HIM, HE COULD NOT THEREBY COMPLETELY REPAIR THE INJURY SUFFERED, THE SCAR WOULD REMAIN, AND IT IS TO PREVENT THE POSSIBILITY OF SUCH AN INJURY THAT THIS RULE WAS DESIGNED AND MUST BE OBSERVED. IT IS NOT ENOUGH TO KNOW THAT IN THIS STATE THERE IS HARDLY A CHANCE THAT BOGUS INDICTMENT FOR PERSONAL SPITE WILL BE FILED IN OUR COURTS. THE PRESERVATION OF THE HONOR AND PURITY OF THE COURTS, THE CONFIDENCE AND RESPECT OF THE PUBLIC IN THOSE COURTS, AND THE GOOD NAME OF THE CITIZENS MUST NOT BE LEFT TO CHANCE, BUT SHOULD BE AND ARE BY THIS RULE GUARANTEED." ZUGAR, SUPRA

PETITIONER ASSERTS IN (APP. "024" INFRA) STATE V. BROWN, 293 GA. 493; 748 S.E.2d 326 (2013) THE GEORGIA SUPREME COURT REAFFIRMED ITS HOLDING BY STATING: "FOR OVER A CENTURY THE RULE IN GEORGIA HAS BEEN THAT A GRAND JURY INDICTMENT MUST BE RETURNED 'INTO OPEN COURT'."

THE SUPREME COURT OF GEORGIA WENT ON TO SAY:
GEORGIA LAW... REGARDING THE PUBLIC ASPECT OF HEARINGS
IN CRIMINAL CASES IS MORE PROTECTIVE OF THE CONCEPT
OF OPEN COURTROOMS THAN FEDERAL LAW." BROWN, SUPRA,
R.W. PAGE CORP. V. LUMPKIN, 249 GA. 576 (3) 292 S.E. 2d 815
(1982).

PETITIONER ASSERTS THAT PETITIONER'S EQUAL PROTECTION
RIGHTS OF BEING TREATED DIFFERENTLY THAN SIMILAR
SITUATED PERSONS AND DUE PROCESS RIGHT WAS VIOLATED
BECAUSE PETITIONER WAS FORCED TO ANSWER TO AN
IN VALID, ILLEGAL, UNCONSTITUTIONAL, VOID AND FRAUDULENT
CHARGING INSTRUMENT, UNDER BOTH FEDERAL AND STATE
CONSTITUTION.

PETITIONER HAS SUFFERED PER SE INJURY... AT THE
HAND OF THE STATE.

(E)

THIS COURT SHOULD GRANT CERTIORARI TO
RESOLVE THE CONFLICT OF WHETHER TRIAL
COURT HAD SUBJECT-MATTER JURISDICTION
TO ADJUDICATE PETITIONER'S 1982 CASE
WITHOUT A VALID PRESENTMENT OR
INDICTMENT

"IT HAS LONG BEEN THE LAW IN THIS STATE, THAT,
IN GENERAL, A CRIME IS TO BE CONSIDERED AND PUNISHED
ACCORDING TO THE PROVISIONS OF THE LAW EXISTING AT
THE TIME OF ITS COMMISSION." PATTON V. STATE, 80 GA.
714, 716 (1), 6 S.E. 273 (1888); FLEMING V. STATE, 271 GA.
587, 593, 523 S.E. 2d 315 (1999); COLLYMORE V. STATE, 298
GA. 335; 785 S.E. 2d 7 (2016)

PETITIONER ASSERTS THAT PETITIONER WAS CONVICTED ON OCTOBER 1ST 1982. IN EX PARTE BAIN, 121 U.S. 1, 30 L.Ed. 849, 7 S.Ct. 781 (1887) THIS COURT HELD THAT, "A DEFECTIVE INDICTMENT DOES NOT DEPRIVE A FEDERAL COURT OF JURISDICTION."

PETITIONER WAS NOT CONVICTED IN FEDERAL COURT AND PETITIONER NEVER WAIVED OR FORFEIT THE RIGHT TO CHALLENGE TRIAL COURT JURISDICTION TO ADJUDICATE THE 1982 CONVICTION.

A JUDGMENT RENDERED BY A COURT WITHOUT JURISDICTION OF THE SUBJECT-MATTER IS ABSOLUTELY VOID. CODES 110-709; DAVIS V. PAGE, 217 GA. 751, 125 S.E.2d 60 (1962)

WITHOUT JURISDICTION THE COURT CANNOT PROCEED AT ALL IN ANY CAUSE. JURISDICTION IS POWER TO DECLARE THE LAW, AND WHEN IT CEASES TO EXIST, THE ONLY FUNCTION REMAINING TO THE COURT IS THAT OF ANNOUNCING THE FACT AND DISMISSING THE CAUSE." EX PARTE MCCANDLE, 7 WALL 506, 514, 19 L.Ed. 269 (1869)

PETITIONER ASSERTS THAT (APP. "026" INFERA) "NO BILL OF ATTAINDER OR EX POST FACTO LAW SHALL BE PASSED" ARTICLE 1, SECTION 9, CLAUSE 3 AND ARTICLE 1, SECTION 10, CLAUSE 1 OF THE UNITED STATES CONSTITUTION, AND GEORGIA CONSTITUTION § 1926 ARTICLE 1, SECTION 1, PARAGRAPH VII.

THIS COURT MUST RESOLVE THIS "CASE" AND "CONTRAVENIES" PURSUANT TO ARTICLE III, SECTION 11 AS TO WHETHER TRIAL COURT HAD SUBJECT-MATTER JURISDICTION IN STATE COURT TO ADJUDICATE PETITIONER 1982 CASE

WITHOUT A VALID PRESENTMENT OR INDICTMENT FOR WHICH NO SWORN WITNESS TESTIFIED BEFORE THE GRAND JURY, HALE, SUPRA; NOR WAS PETITIONER CHARGING INSTRUMENT RETURNED INTO OPEN COURT RENIGAN V. UNITED STATES, 176 F. 646 (1909).

PETITIONER HAS SUFFERED IRREPARABLE INJURY THAT THE COURTS HAS SAID, WAS PER SE INJURIOUS TO PETITIONER, EVEN THE HARMLESS ERROR RULE CANNOT CURE THIS INJURY. PETITIONER'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS WERE VIOLATED UNDER BOTH EQUAL PROTECTION AND DUE PROCESS.

(F)

THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THE CONFLICT OF WHETHER PETITIONER'S MOTION IN ARREST OF JUDGMENT WAS A PROPER AND TIMELY PLEADING ACCORDING TO O.C.G.A. § 17-9-60 RT. SE 9.

PETITIONER ASSERTS THAT THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE A MATTER CONFLICT PURSUANT TO ARTICLE III, SECTION II "CASES" AND "CONTROVERSY" BECAUSE GEORGIA STATE COURT'S ARE CONTINUING TO DISREGARD THEIR OWN LAWS AND APPLY THE WRONG STANDARD BY ADDING AND TAKING AWAY WORDS IN THE STATUTE WHICH IS CREATED BY THE LEGISLATIVE BRANCH.

PETITIONER ASSERTS THAT ON SEPTEMBER 13TH 2016 PETITIONER INITIALLY FILED THE (1ST) FIRST MOTION IN ARREST OF JUDGMENT AFTER FILING THE NOTICE OF INTENT.

PETITIONER FILED A PLETHORA OF PLEADINGS, BUT THROUGHOUT THIS TIME PETITIONER NEVER RECEIVED ANY TYPE OF RESPONSE PLEADING FROM THE STATE. PETITIONER FINALLY DISCOVERED THE LOST OR MISPLACED VERDICT SHEET (APP. "08" INFRA) WHICH DISPLAYED THAT ACTUAL DATE THE TRIAL COURT SIGNED THE ORDER. ON JUNE 20th, 2017 PETITIONER FILED A TIMELY MOTION TO DISMISS WITHOUT PREJUDICE (APP. "027" INFRA). THIS WAS APPROXIMATELY SIX (6) MONTHS PRIOR TO THE ORDER OF DECEMBER 12th, 2017 (APP. "00" INFRA).

PETITIONER ASSERTS THAT IT IS VIRTUALLY IMPOSSIBLE TO RECEIVE DUE PROCESS OF LAW AND EQUAL PROTECTION THAT IS GUARANTEED BY BOTH STATE AND FEDERAL CONSTITUTION, WHEN BOTH TRIAL AND APPELLATE COURTS ARE BLATANTLY MISINTERPRETING STATUTORY LAW OF O.C.G.A. § 17-9-61(b).

PETITIONER ASSERTS THAT ON SEPTEMBER 21st 2017 PETITIONER REFILED A NOTICE OF INTENT TO FILE A MOTION IN ARREST OF JUDGMENT, AND ON OCTOBER 5th, 2017 PETITIONER FILED A SECOND MOTION IN ARREST OF JUDGMENT.

PETITIONER ASSERTS THAT O.C.G.A. § 17-9-61(b) STATES:
"A MOTION IN ARREST OF JUDGMENT MUST BE MADE "DURING" THE TERM "AT" WHICH THE JUDGMENT WAS OBTAINED"

PETITIONER ASSERTS THAT THE STATE COURTS ARE RELYING HEAVILY ON CASE(S) SUCH AS SWANSON V. STATE, 309 GA. APP. 381; 708 S.E.2d 307 (2011); DASHER V. STATE, 285 GA. 308; 676 S.E.2d 181 (2009); HENDERSON V. STATE; 320 GA. APP. 553; 740 S.E.2d 280 (2013); MITCHELL V. STATE, 282 GA. 416 (3) 651 S.E.2d 49 (2007)

PETITIONER ASSERTS THE COURTS ARE ADDING THE WORD "WITHIN", "IN" AND "AT" WHEN THE STATUTORY LANGUAGE CLEARLY DOES NOT POSSESS SUCH LANGUAGE IN O.C.G.A. §17-9-61(6)

PETITIONER ASSERTS THE SAME APPELLATE COURT THEN TURNS AROUND IN BALLARD V. STATE, 815 S.E.2d 824 (2018), MCGEE V. STATE, 301 GA. 169, 170-171, 800 S.E.2d 324 (2017) NOW GIVING THE CORRECT INTERPRETATION OF O.C.G.A. §17-9-61(6)

PETITIONER ASSERTS THAT IN SOME OTHER CASE(S) THE APPELLATE COURT ARE MIXING THE WORDS IN WITHERSPOON V. STATE, 2018 GA. LEXIS 535 (2018), BY STATING IN PART "A MOTION IN ARREST OF JUDGMENT "BE" MADE "during" THE TERM "IN" WHICH THE JUDGMENT WAS OBTAINED.

PETITIONER ASSERTS IT HAS BEEN HELD THAT "A MOTION IN ARREST OF JUDGMENT MUST BE MADE during THE TERM AT WHICH THE JUDGMENT WAS OBTAINED." O.C.G.A. §17-9-61(6) (GCA § 110-702-703)

PETITIONER ASSERTS A MOTION IN ARREST OF JUDGMENT WILL LIE WHEN THERE IS A DEFECT ON THE FACE OF THE RECORD (APP. "07" INFERA) HALL V. STATE, 202 GA. 42, 46, 42 S.E.2d 130 (1947). IN CRIMINAL CASES, THE "FACE OF THE RECORD" IS COMPOSED OF THE (1) INDICTMENT; (2) PLEA; (3) VERDICT AND (4) JUDGMENT AND ONLY THESE FOUR ITEMS ARE TO BE CONSIDERED. McCLendon V. STATE, 81 GA. APP. 218, 219 (3) 58 S.E.2d 462 (1950)

PETITIONER ASSERTS IF THE DEFECT ATTACKED IS ONE WHICH WOULD SUPPORT A MOTION IN ARREST OF JUDGMENT, IT MAY BE FILED ANYTIME DURING TRIAL. IT HAS BEEN HELD THAT A GENERAL DEMURDER MAY BE FILED EVEN AFTER A TRIAL AND BEFORE A SECOND TRIAL WHERE A NEW TRIAL IS OBTAINED. BRAMBLETT V. STATE, 239 GA. 336, 338, 236 S.E.2d 580 (1977)

PETITIONER ASSERTS THAT THE MOTION IN ARREST OF JUDGMENT WAS PROPERLY AND TIMELY FILED ON OCTOBER 5th 2017 WHICH THE TRIAL COURT IS DELIBERATELY IGNORING ALONG WITH THE MOTION TO DISMISS FILED ON JUNE 20th 2017. (APP. "02" INFERA).

(G)

THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THE CONFLICT OF WHETHER PETITIONER "IN CUSTODY" PURSUANT TO 28 U.S.C. § 2254(A) WHEN PETITIONER WAS CONVICTED IN 1982 WITH A FIVE YEAR SENTENCE THAT DID NOT EXPIRE UNTIL 1987

PETITIONER ASSERTS 28 U.S.C. § 2254 (A) STATES: "THE SUPREME COURT, A JUSTICE THEREOF, A CIRCUIT JUDGE, OR A DISTRICT COURT SHALL ENTERTAIN AN APPLICATION FOR A WRIT OF HABEAS CORPUS IN BEHALF OF A PERSON IN CUSTODY PURSUANT TO THE JUDGMENT OF A STATE COURT ONLY ON THE GROUND THAT HE IS IN CUSTODY IN VIOLATION OF THE CONSTITUTION OR LAWS OR TREATIES OF THE UNITED STATES."

PETITIONER ASSERTS THAT THE DISTRICT AND APPELLATE COURT ABUSED ITS DISCRETION, BECAUSE THE ELEVENTH CIRCUIT STATED IN PERTINENT PART OF (APP. "01,03" INFRA). ("ONCE THE SENTENCE IMPOSED FOR A CONVICTION HAS COMPLETELY EXPIRED, THE COLLATERAL CONSEQUENCES OF A CONVICTION ARE NOT THEMSELVES SUFFICIENT TO RENDER AN INDIVIDUAL "IN CUSTODY FOR PURPOSES OF A HABEAS ATTACK UPON IT")

BUT IN HARPER V. EVANS, 941 F.2d 1538 (1991) THIS SAME COURT THE ELEVENTH CIRCUIT SAID: "DEFENDANT COULD CHALLENGE HIS EXPIRED PRIOR CONVICTION WHERE HE WAS CURRENTLY INCARCERATED AS A RESULT OF A CURRENT SENTENCE THAT WAS ENHANCED BY THE PRIOR EXPIRED CONVICTION."

PETITIONER'S CASE IS SIMILAR WHEREAS PETITIONER WAS CONVICTED, ILLEGALLY, UNCONSTITUTIONALLY IN 1982 FOR RAPE AND AGGRAVATED ASSAULT. BUT UNLIKE HARPER, SUPRA PETITIONER'S FIVE YEAR SENTENCE HAD NOT FULLY EXPIRED UNTIL 1987 (APP. "06" INFRA)

PETITIONER ASSERTS LIKE HARPER, SUPRA PETITIONER SUFFERED COLLATERAL CONSEQUENCES OF AN ENHANCED SENTENCE OF LIFE SENTENCE FOR PETITIONER'S CURRENT SENTENCE.

PETITIONER ASSERTS THE ELEVENTH CIRCUIT STATED IN BATTLE V. THOMAS, 929 F.2d 165 (11th Cir. 1991) "IN INTERPRETING MAVENG V. COOK, 490 U.S. 488, 109 S.Ct. 1923, 104 L.Ed.2d 540 (1989), HELD THAT A HABEAS PETITIONER MAY CHALLENGE A FULLY EXPIRED PRIOR CONVICTION IF HE IS CURRENTLY INCARCERATED AS A RESULT OF A CURRENT SENTENCE THAT WAS ENHANCED BY HIS PRIOR CONVICTION. FOX V. KELSO, 911 F.2d 563, 567-68 (11th Cir. 1990) OTHER CIRCUITS HAVE REACHED SIMILAR CONCLUSIONS.

IN DIAZ V. STATE OF FLORIDA, 683 F.3d 1261 (2012) "ALTHOUGH WE BROADLY CONSTRUCT THE PHRASE "IN CUSTODY," THAT REQUIREMENT HAS NOT BEEN EXTENDED TO COVER A SCENARIO WHERE A PETITIONER SUFFERS NO "PRESENT RESTRAINT" FROM THE CONVICTION BEING CHALLENGED."

PETITIONER IS SUFFERING "PRESENT RESTRAINTS" AS A RESULT OF A PRIOR CONVICTION WHICH DID NOT FULLY EXPIRE UNTIL 1987. PETITIONER IS STILL SUFFERING TODAY FROM THIS ILLEGAL, UNCONSTITUTIONAL, IN VALID, FRAUDULENT CONVICTION.

PETITIONER ASSERTS THAT THIS ABUSE OF DISCRETION BY THE LOWER COURTS IN (APP.'S "01, 02, 03" 06" INFRA) VIOLATED PETITIONER'S CONSTITUTIONAL RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF THE LAW IN CLAIMING THAT IT LACKED JURISDICTION TO ADDRESS THE MERIT OF PETITIONER'S CASE BECAUSE PETITIONER WAS NOT "IN CUSTODY" IN PART.

THIS COURT SHOULD GRANT CERTIORARI TO
RESOLVE THE CONFLICT WHETHER THE
RESPONDENT'S KNOWINGLY, DELIBERATELY AND
INTENTIONALLY COMMITTED "FRAUD UPON
THE COURT," BY INTRODUCING A
FRAUDULENT CHANGING INSTRUMENT

PETITIONER ASSERTS THAT BLACK LAW DICTIONARY 6th
ABBREVED EDITION (1891-1991) PAGE 455 DEFINES "FRAUD"
IN PERTINENT PART:

"AN INTENTIONAL PERVERSION OF TRUTH FOR THE PURPOSE
OF INTRODUCING ANOTHER IN RELIANCE UPON IT TO PART
WITH SOME VALUABLE THING BELONGING TO HIM OR TO
SURRENDER A LEGAL RIGHT."

"A FALSE REPRESENTATION OF A MATTER OF FACT,
WHETHER BY WORDS OR BY CONDUCT, BY FALSE OR
MISLEADING ALLEGATIONS, OR BY CONCEALMENT OF
THAT WHICH SHOULD HAVE BEEN DISCLOSED, WHICH
DECEIVES AND IS INTENDED TO DECEIVE ANOTHER
SO THAT HE SHALL ACT UPON IT TO HIS LEGAL
INJURY."

PETITIONER ASSERTS THAT THIS "FRAUD ON THE COURT" WOULD
NEVER HAVE BEEN DISCOVERED WITHOUT PETITIONER DUE
DILIGENCE.

O.C.G.A. § 9-3-96 STATES IN PART: "THE PERIOD OF
LIMITATION SHALL RUN ONLY FROM THE TIME OF THE
PLAINTIFF'S DISCOVERY OF THE FRAUD."

PETITIONER ASSERTS THAT THE LAW IN THE STATE OF GEORGIA WAS CLEARLY ESTABLISHED PRIOR TO PETITIONER'S ARREST, THAT AT LEAST ONE WITNESS MUST TESTIFY BEFORE THE GRAND JURY THAT IS SWORN, HALE, SUPRA; ASHBURN, SUPRA (APP).

THE STATE ALSO KNEW THAT THE PRESENTMENT OR INDICTMENT MUST BE RETURNED IN OPEN COURT TO BE VALID. RENIQAZ, SUPRA; SAMPSON, SUPRA (APP).

PETITIONER ASSERTS THAT THE STATE DISPLAYED SUCH HABIT OR ROUTINE PRACTICES PURSUANT TO FEDERAL RULES OF EVIDENCE 406 AND O.C.G.A. § 24-4-406 THAT ARE TOTALLY CONTRARY TO MANDATORY LAWS WHICH IS ALREADY ESTABLISHED. YET, THE STATE INTRODUCED A CHARGING INSTRUMENT THAT MAY BE THE MAKING OF THE STATES ON MISCONDUCT AND NOT THE RESULTS OF AN INDEPENDENT INVESTIGATION OF THE GRAND JURY TO ESTABLISH WHETHER PROBABLE CAUSE EXISTS THAT THE CRIME OF RAPE WAS COMMITTED.

JUSTICE ROBERTS MAY HAVE SAID IT BEST: "NO FRAUD IS MORE ODIOUS THAN AN ATTEMPT TO SUBVERT THE ADMINISTRATION OF JUSTICE". HAZEL - ATLAS GLASS CO. V. HARTFORD-EMPIRE CO. 88 L Ed. 1250, 322 U.S. 238 (1944).

THE STATE INDEED COMMITTED "FRAUD UPON THE COURT," DELIBERATELY, INTENTIONALLY AND KNOWINGLY WHEN IT INTRODUCED A FRAUDULENT CHARGING INSTRUMENT (APP "07" INFRA) KNOWING THAT IT WAS NOT THE RESULTS OF THE ALLEGED GRAND JURY. THIS WAS A TOTAL AND COMPLETE MISCARriage OF JUSTICE THAT WAS NOT BASED ON A FAIR AND IMPARTIAL GRAND JURY, BUT THE MAKING OF THE STATE WHICH WAS ILLEGAL, INVALID, VOID, UNCONSTITUTIONAL AND FRAUDULENT.

PETITIONER'S EQUAL PROTECTION AND DUE PROCESS RIGHTS OF BOTH STATE AND FEDERAL CONSTITUTION, WHEN THE STATE OF GEORGIA CHOSE TO ADOPT THE GRAND JURY METHOD WHICH REQUIRE IT TO HEW TO FEDERAL CONSTITUTIONAL REQUIREMENTS. HUNT V. TUCKER, 875 F.Supp. 1487 (1995)

(I)

THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THE CONFLICT WHETHER HURTADO V. CALIFORNIA ALLOWED THE PETITIONER TO BE DISCRIMINATED UNLIKE OTHER SIMILARLY SITUATED FELONS IN STATE COURT WHEN GRAND JURY PROCEEDINGS ARE ADOPTED

IN REED V. ROSS, 468 U.S. 1, 82 L.Ed.2d 1, 104 S.Ct. 2901 (1984) FN. 11 THIS COURT HELD IN HURTADO V. CALIFORNIA, 110 U.S. 516, 28 L.Ed. 232, 4 S.Ct. 111 (1884) "THAT INDICTMENT BY GRAND JURY IS NOT ESSENTIAL TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT. SURELY, WE SHOULD NOT ENCOURAGE CRIMINAL COUNSEL IN STATE COURT TO ARGUE THE CONTRARY IN EVERY POSSIBLE CASE, EVEN IF THERE WERE A POSSIBILITY THAT SOME DAY HURTADO MAY BE OVERVIEWED."

PETITIONER ASSERTS THAT ONCE THE STATE CHOOSES TO PROVIDE GRAND AND PETIT JURIES, WHETHER OR NOT CONSTITUTIONALLY REQUIRED TO DO SO, IT MUST HEW TO FEDERAL CONSTITUTIONAL CRITERIA." CANTER V. GREENE COUNTY, 396 U.S. 320, 24 L.Ed.2d 549, 90 S.Ct. 518 (1970)

PETITIONER ASSESS WHETHER ITS FOR JURY SELECTION, CALLING SWORN WITNESSES, RETURNING THE CHARGING INSTRUMENT THE PRINCIPAL METHOD IS THE SAME WHEREAS THE RESULTS WILL AMOUNT TO A SUBSTANTIVE VIOLATION OF PETITIONER'S RIGHTS OF EQUAL PROTECTION AND DUE PROCESS.

PETITIONER CANNOT BE MADE TO ANSWER TO AN INFAMOUS CRIME THAT IS SUBSTANTIALLY ON A VOID, ILLEGAL, FRAUDULENT, UNCONSTITUTIONALLY AND INVALID PROSECUTION.

JUDGE O'CONNOR TOOK ISSUE WITH THE FOCUS OF THE MAJORITY'S HARMLESS ERROR ANALYSIS IN UNITED STATES V. MECHANIK, 475 U.S. 66, 106 S.Ct. 938, 89 L.Ed. 2d 50 (1986) SHE ARGUED THAT THE HARMLESS ERROR ANALYSIS INQUIRY SHOULD NOT HINGE UPON WHAT TRANSPIRED AT TRIAL, BUT UPON WHETHER THE ERROR COMMITTED BEFORE THE GRAND JURY SUBSTANTIALLY INFLUENCED ITS DECISION TO INDICT. IF THE ERROR MAY BE SAID TO HAVE SUBSTANTIALLY INFLUENCED THE GRAND JURY. JUDGE O'CONNOR BELIEVE THAT THE INDICTMENT SHOULD BE DISMISSED NOTWITHSTANDING A GUILTY VERDICT AT TRIAL.

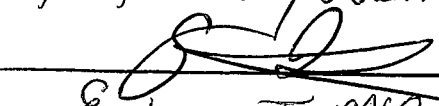
PETITIONER ASSESS THAT THIS "KANGAROO GRAND JURY" DID NOT INDEPENDENTLY HEAR ANY SWORN TESTIMONY FROM A TRUE WITNESS REGARDING A PARTICULAR PETITIONER FOR A PARTICULAR OFFENSE, NOR WAS THERE ANY TYPE OF INDEPENDENT INVESTIGATION BY THE ALLEGED GRAND JURY, BUT WAS SUBSTANTIALLY INFLUENCED BY THE STATE. THIS IS WHY THE CHARGING INSTRUMENT WAS NOT RETURNED IN TO OPEN COURT AS MANDATED BY GEORGIA LAW AND PETITIONER WAS HIGHLY PREJUDICE DUE TO THE MISCONDUCT OF THE STATE THAT WAS PER SE INJURIOUS TO PETITIONER BY PRESENTING A FRAUDULENT DOCUMENT THAT WAS CHARGED UP AND INVESTIGATED BY THE STATE RATHER THAN A TRUE GRAND JURY. THIS VIOLATED BOTH STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO EQUAL PROTECTION AND DUE PROCESS.

PETITIONER ASSERTS THAT THIS COURT HAS HELD THAT "TWO YEARS AFTER MECHANIK, SUPRA WAS DECIDED, THE COURT, IN BANK OF NOVA SCOTIA V. UNITED STATES, SUPRA ADOPTED JUSTICE O'CONNOR'S REASONING IN DETERMINING WHETHER AN INDICTMENT SHOULD BE DISMISSED FOR RULE (D) AND (E) 30 VIOLATIONS, THE COURT HELD THAT THE PROPER INQUIRY IS WHETHER THE ERROR BEFORE THE GRAND JURY "SUBSTANTIALLY INFLUENCED THE GRAND JURY'S DECISION TO INDICT" OR WHETHER THERE IS 'GRAVE DOUBT' THAT THE DECISION TO INDICT WAS FREE FROM THE SUBSTANTIAL INFLUENCE OF SUCH VIOLATIONS" UNITED STATES V. SIGMA INTERNATIONAL, INC., 244 F.3d.841 (2001)

CONCLUSION

WHEREFORE, PETITIONER PRAY THAT THIS COURT WILL GRANT THIS PETITIONER FOR WRIT OF CERTIORARI AFTER A FULL AND CAREFUL REVIEW AND CONSIDERATION TO RESOLVE THE MAJOR CONFLICTS THAT AROSE FROM THE STATE FRAUDLENT MISCONDUCT THAT VIOLATED PETITIONER'S CONSTITUTIONAL RIGHTS THAT CREATED A SUBSTANTIAL MISCARriage OF JUSTICE AGAINST PETITIONER, IT WOULD BE IN THE INTEREST OF THE PUBLIC AND THIS ADMINISTRATION OF JUSTICE TO ANSWER THE QUESTION PUT FORTH. PETITIONER PRAY THAT THIS HONORABLE COURT WILL ISSUE AN ORDER TO DISMISS THE PRESENTMENT IN ITS ENTIRETY AS WELL AS THE 1982 CONVICTION. THIS PETITIONER PRAY.

THIS 25th DAY OF FEBRUARY 2020

RESPECTFULLY SUBMITTED,

Embury J. McBride
(IN PRO-PER)