

19-8024  
No. \_\_\_\_\_

ORIGINAL

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

Julio Hunsberger — PETITIONER  
(Your Name)

vs.

Randy Duran, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Fourth Cir.  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Julio Hunsberger # 959417  
(Your Name)

Smith State Prison  
(Address)

Glennville, GA 30427-0726  
(City, State, Zip Code)

N/A  
(Phone Number)

QUESTION(S) PRESENTED

1.)

Are state prisoners entitled to monetary compensation under Heck v. Humphrey, 512 U.S. 477 (1994), following the reversal of their criminal convictions where there is no retrial and all charges have been dismissed?

## 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:

Marvin English, Roger Lowe, Rick Hubbard,  
Alton Eargle, Ervin Maye, Frank Young,  
Donald Myers, Alan Wilson, Donald Zelenka,  
and John McIntosh, Melody Jane Brown.

## RELATED CASES

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	6
CONCLUSION.....	8

## INDEX TO APPENDICES

APPENDIX A - *Decision of the U.S. Court of Appeals*

APPENDIX B - *Opinion of the U.S. District Court*

APPENDIX C - *Report and Recommendation*

APPENDIX D

APPENDIX E

APPENDIX F

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

<u>Heck v. Humphrey</u> , 512 U.S. 477 (1994).....	6, 7
<u>State v. Hunsberger</u> , 794 S.E.2d 368 (2016)....	4, 6

### STATUTES AND RULES

28 U.S.C. § 1254(1).....	2
42 U.S.C. § 1983.....	4, 7

### 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☒ is unpublished.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 \_\_\_\_\_ 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 \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

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

☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 22, 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: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ 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 \_\_\_\_\_.

☐ 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

U.S. Constitutional Amend. 6 - "In all criminal prosecutions, the accused shall enjoy the right to a speedy... trial."

U.S. Constitutional Amend. 14 - "Nor shall any State deprive any person of life, liberty, or property, without due process of law."



## STATEMENT OF THE CASE

In January 2012, the petitioner was tried and convicted for the felony crime of murder in an Edgefield County, South Carolina, trial court and sentenced to life imprisonment. However, on the 12<sup>th</sup> day of October, 2016, the Supreme Court of South Carolina reversed the petitioner's murder conviction and sentence. See, State v. Hunsberger, 794 S.E. 2d 368, 377 (S.C. 2016) (reversed based upon court's judicial determination that the petitioner's 6<sup>th</sup> Amendment right to a speedy trial had been violated by the extraordinary delay in calling Petitioner's case for trial). The State of South Carolina then sought certiorari review in the United States Supreme Court. The United States Supreme Court denied such review to the State of South Carolina on June 26, 2017, rendering the October 12<sup>th</sup>, 2016, decision of the Supreme Court of South Carolina as the final judgment in this matter. Thereafter, on the 2<sup>nd</sup> day of July 2018, the petitioner filed a 42 U.S.C. 1983 civil rights action for monetary damages against the respondents for the denial of his 6<sup>th</sup> Amendment right to a speedy trial. Shortly thereafter, the respondents filed a Motion for Judgment on the Pleadings and also a Motion for Summary Judgment. Petitioner filed a timely response in opposition to both motions; yet, on February 22, 2019, the U.S. Magistrate Judge issued a Report and Recommendation recommending that both of the respondents' motions be granted. The petitioner filed timely written Objections to the United States Magistrate Judge's Report and Recommendation. Notwithstanding, on July 23, 2019, the U.S. District Court adopted the Report and Recommendation of the United States Magistrate Judge; thereby, granting the respondents' Motion for Judgment on the Pleadings and, also, their Motion for Summary Judgment. Petitioner filed a timely Notice of Appeal in order appeal the U.S. District Court's decision to the Fourth Circuit U.S. Court of Appeals. However, on November 22, 2019, the Fourth Circuit U.S. Court of Appeals did

affirm the decision of the U.S. District Court, granting the respondents' motion for summary judgment and, also, granting the respondents' motion for judgment on the pleadings. This petition for writ of certiorari follows.

## REASONS FOR GRANTING THE PETITION

The United States Court of Appeals for the Fourth Circuit has decided the petitioner's 42 U.S.C. 1983 lawsuit for monetary damages against the respondents in a way which directly contradicts the controlling decision passed down by the Supreme Court of the United States in the seminal case of Heck v. Humphrey, 512 U.S. 477 (1994). Moreover, the extreme national importance of having the Supreme Court of the United States resolve and fully establish this question is of utmost judicial function.

On September 3, 2001, one Samuel Sturup (the victim) was murdered in Edgefield County, South Carolina. Upon the joint and conclusory criminal investigations of respondents Duran, English, and Lowe of the Edgefield County Sheriff's Office, the petitioner was arrested for said murder in 2002, and held without bond. Thereafter, the petitioner, through counsel, promptly filed a motion for speedy trial, which motion was denied and, also, a second speedy trial motion which, also, was denied by the trial court. Both of those speedy trial motions were argued against and opposed by respondents Ervin Maye and Frank Young, assistant solicitors. Petitioner's murder case was not called for trial until the 3<sup>rd</sup> day of January, 2012, at which trial the respondents Duran, English, and Lowe of the Edgefield County Sheriff's Office all took the stand for the State and gave incriminating testimony and evidence against Petitioner. The petitioner was found guilty of the murder by a jury of his peers.

Petitioner, through counsel, appealed the conviction and asserted as error that his conviction should be reversed because he was denied his 6<sup>th</sup> Amend Right to a speedy trial. Respondents Hubbard and Eargle both argued against and opposed the claim of error raised in Petitioner's appeal. Nonetheless, the South Carolina Supreme Court, on October 12, 2016, agreed with the plaintiff and reversed Plaintiff's murder conviction on the basis that the plaintiff's 6<sup>th</sup> Amendment right to a speedy trial was violated. See, State v. Hunsberger, 794 S.E. 2d 368, 377 (S.C. 2016). Thereafter, the respondents Alan Wilson, John McIntosh, Donald Zelenka, Melody Jane Brown, and Donald Meyers all challenges to the validity of the South Carolina Supreme Court's reversal of Petitioner's murder conviction on the speedy trial violation issue through their filing of post-appeal proceedings, including a writ of certiorari to the United States Supreme Court. Nonetheless, said Court, on June 26, 2017, denied the respondents' petition

for writ of certiorari, rendering the decision of the South Carolina Supreme Court a final judgment in this matter.

Accordingly, the petitioner followed the exact procedure enunciated in Heck v. Humphrey, 512 U.S. 477 (1994), and filed a 42 U.S.C. 1983 lawsuit against the respondents, asking for monetary damages to compensate the petitioner for the mental anguish and all of the time he served on the now vacated Edgefield County, South Carolina murder conviction. Both the U.S. District Court and the U.S. Court of Appeals for the Fourth Circuit have said that Petitioner possesses no legal basis upon which to sue the blameworthy respondents for monetary damages, despite the fact that Petitioner's murder conviction was reversed and all charges have been dismissed.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Julio Hunsberger

Date: January 31, 2020