

20-5014  
No. 16 CRS 58002

16CRS58003

IN THE  
SUPREME COURT OF THE UNITED STATES

Darwin Peralta — PETITIONER  
(Your Name)

vs.

North Carolina — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

North Carolina Court of appeals

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

PETITION FOR WRIT OF CERTIORARI

Darwin Peralta #1557854

(Your Name)

75 Legend road

(Address)

Lumberton NC 28359

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. Wheather the trial Court Violated Mr. Peralta Statutory and Constitutional rights to a fundamentally fair trial by Erroneously Admitting Dr. Beth Herold's Sexual Abuse findings because she based Her findings Solely on DSR's "Very Clear and Concise" Statements to Scott Snider.

II. Wheather the Trial Court Erred and violated Mr. Peralta's rights to present a complete Defense when it Prohibited Him from Introducing Doris Murillo's and Marlen Aguilera's Testimony that Nancy Rodriguez spoke about sex in front of the children, Including DSR, So Often They Had to ask her to stop talking about sex in front of the Children.

III. Wheather the trial Court committed Plain error for not Issuing Limiting Instructions Informing the Jury It Could Only Consider Dr. Beth Herold's Profile testimony and DSR's Out-of-Court statements to Scott Snider. For Corroborative Purposes and not as Substantive evidence of Mr. Peralta's Guilt

IV. During Mr. Peralta's Appeal The State Violate Appellate Rule 28 (G) By filing MAAs that included additional Arguments not raised in their opening brief

## **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:

## **RELATED CASES**

Sharp v. Gallor, 132 N.C. App. 213, 510 S.E. 2d 702 (1999)

State v. Bush, 164 N.C. App. 252, 595 S.E. 2d 715 (2004)

State v. Couser, 163 N.C. App. 727, 594 S.E. 2d 420 (2004)

State v. Delsanto, 172 N.C. App. 42, 615 S.E. 2d 870 (2005)

State v. Ewell, 168 N.C. App. 98, 606 S.E. 2d 914 (2005)

State v. Hardy, 242, N.C. App. 146, 744 S.E. 2d 410 (2015)

State v. Kelly, 118, N.C. App. 589, 456 S.E. 2d 861 (1995)

State v. Ryan, 223 N.C. App. 325, 734, S.E. 2d 598 (2012)

State v. Sabbaghrabaiotti, 2016 N.C. App. Lexis 725 (July 19, 2016)

## TABLE OF AUTHORITIES CITED

### CASES

		PAGE NUMBER	2
Ake v. Oklahoma, 470 U.S. 68 (1985)	Chambers v. Mississippi, 476 U.S. 284 (1973)		
Crane v. Kentucky, 476 U.S. 683 (1986)	State v. Bates, 140 N.C. App 743, 583 S.E. 2d 597 (2000)		
State v. Bell, 87 N.C. App. 626, 362, S.E. 2d 288 (1987)	State v. Braswell, 312 N.C. 558, 521 S.E. 2d 241 (1988)		
State v. Collins, 335 N.C. 729, 440, S.E. 2d 559 (1991)	State v. Eason, 328 N.C. 409, 402 S.E. 2d 809 (1991)		
State v. Fair, 354 N.C. 121, 857 S.E. 2d 500 (2001)	State v. Grant, 178 N.C. App. 565, 632 S.E. 2d 258 (2006)		
State v. Hall, 330 N.C. 808, 412 S.E. 2d 883 (1992)	State v. Heath, 316 N.C. 337, 341 S.E. 2d 565 (1986)		
State v. Helms, 322 N.C. 315, 367, S.E. 2d 644 (1988)	State v. Hennis, 323 N.C. 279, 372 S.E. 2d 523 (1988)		
State v. Hester, 330 N.C. 547, 411 S.E. 2d 610 (1992)	State v. Hill, 347 N.C. 275, 493 S.E. 2d 264 (1997)		
State v. Hinnant, 351 N.C. 277, 523 S.E. 2d 663 (2000)	State v. Jenkins, 83 N.C. App. 616, 371 S.E. 2d 299 (1987)		
State v. Kennedy, 320 N.C. 20, 357 S.E. 2d 359 (1987)	State v. Lawrence, 365 N.C. 506, 723 S.E. 2d 326 (2012)		
State v. Maxwell, 96 N.C. App. 19, 384 S.E. 2d 553 (1989)	State v. McFadden, 292 N.C. 609, 279 S.E. 2d 742 (1977)		
State v. McElrath, 322 N.C. 1, 566 S.E. 2d 442 (1988)	State v. McGrady, 386 N.C. 880, 787 S.E. 2d 1 (2016)		
State v. Ortiz-Zape, 367 N.C. 1, 742 S.E. 2d 156 (2013)	State v. Parker, 111 N.C. App. 359, 432 S.E. 2d 705 (1993)		
State v. Ryan, 223 N.C. App. 733, 734 S.E. 2d 598 (2012)	State v. Trent, 320 N.C. 610, 359 S.E. 2d 463 (1987)		
State v. Wilkerson, 295 N.C. 539, 241 S.E. 2d 985 (1978)	Washington v. Texas, 388 U.S. 14, 19 (1967)		
	Strickland v. Washington, 466 U.S. 668 (1984)		
	United States v. Bagley, 473 U.S. 667 (1985)		

### STATUTES AND RULES

N.C. Gen. Stat. 8C-1, Rule 401 - NC. Gen. Stat. 8C-1, Rule 402 - NC. Gen. Stat. 8C-1, Rule 403
NC. Gen. Stat. 8C-1, Rule 607 - NC. Gen. Stat. 8C-1, Rule 702 - NC. Gen. Stat. 8C-1, Rule 705
NC. Gen. Stat. 8C-1, Rule 803 (4) - NC. Gen. Stat. 7A-27 (B) - N.C. Gen. Stat. 15A-1443 (A) -
NC. Gen. Stat. 15A-1443 (B) - NC. Gen. Stat. 15A-1444 (A) Appellee Rule 28 (g)

### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at No. COA18-374 1 April 2020; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the North Carolina Court of Appeals court appears at Appendix B to the petition and is

reported at No. COA18-374 5 November 2019; 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 \_\_\_\_\_.

[ ] 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 1 April 2020. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Vouching - 6<sup>th</sup> Amendment violation and Multiple Rule of evidence violations

### STATEMENT OF THE CASE

This Case was tried at the 27 September 2017 Criminal Session of the Durham County Superior Court before the honorable H. Hight upon two bills of indictment. The First Indictment, 16 CRS 58002, Charged Darwin J. Peralta with one (1) Count of First degree ~~rape~~ Statutory Rape of a child by Adult offender (N.C. Gen. Stat. 14-27.23) and three Counts of Statutory Sexual offence (N.C. Gen. Stat. 14-27.28) The Second Indictment, 16 CRS 58003, Charged Mr. Peralta with three (3) counts of Indecent liberties with a child (N.C. Gen. Stat. 14-202.1) Mr. Peralta pled not guilty, rejected the States plea offer and proceeded to trial. On 4 October 2017 in case number 16 CRS 58002, the jury convicted Mr. Peralta of one (1) count of first degree Statutory Rape with a child by an Adult (N.C. Gen. Stat. 14-27.23) and three Counts (3) of Statutory Sexual offence (N.C. Gen. Stat. 14-27.28) In Case number 16 CRS 58003, the Jury convicted Mr. Peralta of three (3) counts of Indecent liberties with a child (N.C. Gen. Stat. 14-202.1) For each of the four (4) Counts in 16 CRS 58002, Judge Hight sentenced Mr. Peralta to a term of 300 to 420 months in prison and ran the sentences consecutively for a sub-aggregate sentence of 900 to 1680 months or 75 to 140 years in prison for each of the 3 counts in 16 CRS 58003 Judge Hight sentenced Mr. Peralta to 16 to 29 months in prison and ran the sentence consecutively for a sub-aggregate sentence of 48 to 87 months or 4 to 7.25 years in prison Judge Hight then ran the 16 CRS 58002 sentences consecutively with the 16 CRS 58003 sentences leading to a total aggregate sentence of 948 to 1,767 months or 79 to 147.25 years in prison Mr. Peralta appealed

#### REASONS FOR GRANTING THE PETITION

Reasons for Granting is as follows all the evidence of the Case points to innocence on Mr. Peralta's behalf from no physical findings to most of the testimony and as far as my appeal goes I was cheated out of one due to a violation of rule 28 (G) that should have never been ~~allowed~~ and unfairly effected the outcome of my Appeal  
Allowed

**CONCLUSION**

Where Fore based on the foregoing Facts and authorities, Mr. Peralta respectfully requests the court should grant

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darwin J. Peralta

Date: June, 22 2020