20-5024

IN THE

UNITED STATES SUPREME COURT

ORIGINAL

NO.

CALVIN EARL BROWN, PRO SE

PETITIONER,

V.

JENNIFER KNOX, CLERK OF SUPERIOR,

COURT OF WAKE COUNTY,

PETITIONEE.

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CALVIN EARL BROWN, PRO SE

31 CHERRY LANE

CHOCOWINITY, NC 27817

PHONE : 252-946-0083

EMAIL: calbrown51@gmail.com

Question(s) Presented

Whether it is unconstitutional that this pro se litigant (Petitioner) is denied the ability to be able to challenge the explicit correctness of a state official, Clerk of Superior Court of Wake County, Jennifer Knox, in her individual capacity, and under the color of her authority, which she denied him the North Carolina State Court System's appellate process. Whether the clerk, the government, recklessly, intentionally (on purpose) wantonly, or with malice interfered with bias the Petitioner's due process of law, and equal protection of law rights.

Whether the lower courts (US District and the US Court of Appeals) erred by not allowing the complaint process to follow through, essentially, not serving the respondents in this case; wherefore, was the decision below the standard of review in error as well as, unconstitutional.

Whether the aforementioned violation of the due process of law and equal protection of law, regulated by the Fifth and/or Fourteenth Amendment of the United States/North Carolina Constitution, limits the power of the federal and state government to violate, where it explicitly prohibits states from violating an individual's rights of the due process of law and equal protection of law.

Whether axiomatic issues such as Superior Court transcripts, evaluation Office of Administrative Hearings (OAH) evidential statement in No 19 (Final Order) in lui, NC Dept. Of Revenue and the Superior Court of Wake County, which records entries of the Motion for Reconsideration and the Notice of Appeal, and whether (entries Dec. 19, 2017 and Oct. 18, 2018) can be admitted as evidence.

Whether NC Gen. Stat. Sec. 105-241.23 (a) and NC Gen. Stat. Sec. 105-237 is ambiguous or constitutional, whether there is a jurisdiction matter in the General Jurisdiction of the Superior Court, and whether Guthrie and Stanback conflict

Whether it is required, under Procedural Due Process No. 10, the US Court of Appeals prepare written findings of fact and reasons for its decision.

LIST OF PARTIES

CALVIN EARL BROWN, PRO SE (PETITIONER)

JENNIFER KNOX, CLERK OF THE SUPERIOR COURT OF WAKE COUNTY (PETITIONEE)

(NORTH CAROLINA DEPT OF REVENUE) (PETITIONEE)

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Prudential Ins. Co. V. Powell, 217 N.C. 495, 499, 8 S.E.2d 619,621 (1940)... (See App)

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PUBLICATIONS

2 Harper & James, The Law of Torts, supra at 1645-46 (1956) p.22

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Calvin E. Brown, pro se, asks the Court to take a judicial notice of the fact that he is without counsel, is not schooled in the law and legal procedures, and is not licensed to practice law. The petitioner declares, his pleadings must be read and construed liberally. [See Haines v. Kerner, 401 US at 520 (1980)]. Further Brown believes that this court has a responsibility and legal duty to protect all his constitutional and statutory rights. See United States v. Lee, 106 US 196, 220 (1882).

Petitioner respectfully prays for a Writ of Certiorari issue to review the judgements below

Brown, on the behalf of himself, hereby petitions for a Writ of Certiorari to review the judgements of the United States District Court, for the Eastern District of North Carolina. As well, petitions for review the Superior Court of Wake County, where there might be an element of unconstitutionality in two revenue section laws [NCGS Sec.105-241.23(a) and NCGS Sec. 105-237]. A conflict exists between the Guthrie and Stanback Courts, and a matter of jurisdiction in the Superior Court. There was no fair opportunity to support my complaint or good faith determinations in either the United State District Court (EDNC) or the United State Court of Appeals for the Fourth Cir., which both courts made errors in dismissing the complaint.

OPINION BELOW

The opinion of the United States District Court for the Eastern District of North Carolina is listed as, Brown v. Jennifer Knox, Clerk of the Superior Court of Wake County (Brown 2, second filing); non-published, where the first filing is Brown v. The Superior Court of Wake County (Brown 1).

The opinion of the United States Court of Appeals, for the Fourth Circuit is listed as Brown v. Jennifer Knox, second filing; non-published. The first filings, Brown v. The Superior Court of Wake County.

STATEMENT OF JURISDICTION

The petition for review en banc was denied in the Fourth Circuit

The judgement (Case No. 19-2011) of the United States Court of Appeals for the Fourth Circuit was entered December 19, 2019, **but no factual reasoning was clearly pointed out.** A timely petition for rehearing was filed on December 22, 2019. The **petition for rehearing was denied and was mandated January 30, 2020 (See 14th Amend. Procedural Due Process, No. 10).**

FEDERAL RULES OF CIVIL PROCEDURE INVOLVED

FRCP, Rule 58

Rule 58 FEDERAL RULES OF CIVIL PROCEDURE 78 (As amended Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 30, 2007, eff. Dec. 1, 2007.) Rule 58. Entering Judgment (a) SEPARATE DOCUMENT. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:

Rule 79 Records Kept by the Clerk (See Appendix)

FEDERAL RULES OF EVIDENCE INVOLVED

Rule 201 (B)

Rule 201. Judicial Notice of Adjudicative Facts

Primary tabs

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

NORTH CAROLINA RULES OF CIVIL PROCEDURES INVOLVED

NC Rules of Civ. P, Rule 12(b) 12 (b)(4) 12(b)(5)

Rule 12(b) provides seven bases for a motion to dismiss a complaint or claim: (1) Lack of jurisdiction over the subject matter (2) Lack of jurisdiction over the person (3) Improper venue

division (4) Insufficiency of process (5) Insufficiency of service of process (6) Failure to state a claim upon which relief can be granted (7) Failure to join a necessary party. Subsections (1)-(5) and (7) are jurisdictional or process-related. Subsection (6) — perhaps the basis judges see most often — is based on the substance of the allegations. Each basis is often stated as an affirmative defense in a responsive pleading rather than made by separate motion). Specific timing requirements apply to several of these motions. Certain Rule 12 motions are waived if not made within the specified time. Rule 12(b) (g) Must be made prior to (or within) responsive pleading May be made before trial or at trial (any time before verdict) May be made anytime by parties or court (no waiver) (2) Lack of jurisdiction over the person (3) Improper venue or division (4) Insufficiency of process (5) Insufficiency of service of process (6) Failure to state a claim upon which relief can be granted (7) Failure to join a necessary party (1) Lack of jurisdiction over the subject matter) There is also a consolidation requirement for subsections (b)(2) through (b)(5). Each of the bases "then available" to a party must be stated with the other bases in that party's motion, Rule 12(g); Evangelistic Outreach Center v. General Steel Corp., 181 N.C. App. 723, 725 (2007) The judge may hear any Rule 12(b) motion prior to trial or at trial Rule 12(d).

CONSTITUTIONAL PROVISIONS INVOLVED

FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION provides:

No State shall make or enforce any law which shall abridge the privileges and 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. Jan 1, 1984.

FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

THE DUE PROCESS OF LAW OF THE FOURTEENTH AMENDMENT provides:

States that no person shall be "deprived of life, liberty, or property without **due process** of law." Usually, "**due process**" refers to fair procedures.

Substantive Due Process provides:

In United States constitutional law, substantive due process is a principle allowing courts to protect certain fundamental rights from government interference, even if procedural protections are present or the rights are not specifically mentioned elsewhere in the US Constitution.

Procedural Due Process provides:

Procedural due process refers to the constitutional requirements that when the federal government acts in such a way that denies a citizen of a life, liberty, or property interest, the person must be given notice, the opportunity to be heard, ...

Procedural Due Process (cont.)

1. An unbiased tribunal.
2. Notice of the proposed action and the grounds asserted for it.
3. Opportunity to present reasons why the proposed action should not be taken.
4. The right to present evidence, including the right to call witnesses.
5. The right to know opposing evidence.
6. The right to cross-examine adverse witnesses.
7. A decision based exclusively on the evidence presented.
8. Opportunity to be represented by counsel.
9. Requirement that the tribunal prepare a record of the evidence presented
10. **Requirement that the tribunal prepare written findings of fact and reasons for its decision.**

THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION provides:

Requires the United States government to practice **equal protection**. ... **Equal protection** forces a state to govern impartially—not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.

FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION provides:

Section 1.

All persons 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 to any person within its jurisdiction the equal protection of the laws.

EQUAL PROTECTION OF LAW CLAUSE provides:

(APPLIED FROM THE FOURTEENTH AMEND.)

NORTH CAROLINA GENERAL STATUES, SUBCH. IX, ART. 27, SEC 1-277 provides:

Appeal from superior or district court judge. (a) An appeal may be taken from every judicial order or determination of a judge of a superior or district court, upon or involving a matter of law or legal inference, whether made in or out of session, which affects a substantial right claimed in any action or proceeding; or which in effect determines the action and prevents a judgment from which an appeal might be taken; or discontinues the action or grants or refuses a new trial. (b) Any interested party shall have the right of immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant or such party may preserve his exception for determination upon any subsequent appeal in the cause. (1818, c. 962)

NORTH CAROLINA GENERAL STATUES CH. 14. ART. 31, SEC. 14-230 provides:

Willfully failing to discharge duties.

If any clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense. (1901, c. 270)

NORTH CAROLINA GEN. STAT. SEC 105-241.17 provides:

105-241.17. Civil action challenging the statute as unconstitutional.

A taxpayer who claims that a tax statute is unconstitutional may bring a civil action in the Superior Court of Wake County to determine the taxpayer's liability under that statute if all the conditions in this section are met. In filing an action under this section, a taxpayer must follow the procedures for a mandatory business case set forth in **NCGS 7A-45(b) through (f).** The conditions for filing a civil action are:

(1) The taxpayer exhausted the prehearing remedy by receiving a final determination after a review and a conference.

(2) The taxpayer commenced a contested case at the Office of Administrative Hearings.

(3) The Office of Administrative Hearings dismissed the contested case petition for lack of jurisdiction because the sole issue is the constitutionality of a statute and not the application of a statute.

(4) The taxpayer has paid the amount of tax, penalties, and interest the final determination states is due.

(5) The civil action is filed within two years of the dismissal. (2007-491, s. 1.)

NORTH CAROLINA GEN, STAT. ART.31 SEC. 143-291 provides:

143-291. Industrial Commission constituted a court to hear and determine claims; damages; liability insurance in lieu of obligation under Article.

(a) The North Carolina Industrial Commission is hereby constituted a court for purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority that was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages that the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of damages as provided in subsection (a1) of this section, but in no event shall the amount of damages awarded exceed the amounts authorized in G.S. 143-299.2 cumulatively to all claimants on account of injury and damage to any one person arising out of a single occurrence. Community colleges and technical colleges shall be deemed State agencies for purposes of this Article. The fact that a claim may be brought under more than one Article under this Chapter shall not increase the foregoing maximum liability of the State.

(a1) The unit of State government that employed the employee at the time the cause of action arose shall pay the first one hundred fifty thousand dollars ($150,000) of liability, and the balance of any payment owed shall be paid in accordance with G.S. 143-299.4.

(b) If a State agency, otherwise authorized to purchase insurance, purchases a policy of commercial liability insurance providing coverage in an amount at least equal to the limits of the State Tort Claims Act, such insurance coverage shall be in lieu of the State's obligation for payment under this Article.

(c) The North Carolina High School Athletic Association, Inc., is a State agency for purposes of this Article, and its liability in tort shall be only under this Article. This subsection does not extend to any independent contractor of the Association. The Association shall be obligated for payments under this Article, through the purchase of commercial insurance or otherwise, in lieu of any responsibility of the State or The University of North Carolina for this payment. The Association shall be similarly obligated to reimburse or have reimbursed the Department of Justice for any expenses in defending any claim against the Association under this Article.

UNITED STATES CODES INVOLVED

42 U.S. Code § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated, or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be a statute of the District of Columbia.

28 USC 1331, A Fed. Question

In United States law, **federal question jurisdiction** is the subject-matter jurisdiction of United States federal courts to hear a civil case because the plaintiff has alleged a violation of the United States Constitution, federal law, or a treaty to which the United States is a party.

THE UNITED STATE SUPREME COURT, RULE 10(a) provides:

A United States Court of Appeals (4th Cir.) has entered a decision in conflict with the decision of the same United States Court of Appeals (4th Cir./ **ambiguousness**) on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

PUBLICATIONS

2 Harper & James, The Law of Torts, supra at 1645-46 (1956) p.22

STATEMENT OF THE CASE

The petitioner, Calvin Earl Brown, a citizen of Beaufort County, in the state of North Carolina, and under the United States of America brings forth an issue. This issue has risen out of an issue of the Office of Administrative Hearings (OAH) 17 REV 03355, where the petitioner charged that the respondents, NC Dept of Revenue (NCDOR) violated misrepresentation, negligence, and procedural due process of law. The petitioner there argued, this was due to inconsistent and deceptive behaviors of the respondents of the NCDOR, while conducting a collection for tax payments the petitioner owed for 2015. There is further evidence in the exploration of deceptive behavior such as, Exhibits /Items (1) a Notice of Garnishment (2) IRS Assessment (3) Respondent's Refund Check (4) letter from petitioner arguing deceptive tactic (5) copy of a time stamped Form R-1033 installment agreement. The time stamped installment agreement halted any further diversionary tactics of the respondent and produced the refund. Statement No. 19, of the OAH Final Order (Finding of Facts, pg. 4) indicates an OAH's investigation implicating the Dept of Revenue of the charges. However, the OAH dismissed the case, for the due process claim related to the Tort Claim Act, rather than an actual contested tax claim. Due to the OAH recommendations, the case took route as a state issue in the Superior Court of Wake County, 17 CVS 9850, where the petitioner charged his state issue was erroneously dismissed. During the trial closing, the judge asked whether I needed to speak, when I re-iterated my concerns for my due process of law rights. The judge returned, "you'll call the clerk's office on Friday (December 8, 2017) to determine", although the installment agreement NCGS Sec. 105-237; might **unconstitutionally** conflict with NCGS. Sec. 105-241.23

(a) [including all jeop. tax assess.]; even though the clerk's office, off record, indicates the court ended December 5, 2017. Attempts to have the case reconsidered were not answered, and the resulting Notice of Appeal did not receive movement from the Clerk of Superior Court. The petitioner charges, not responding to the responsibilities and duties of the office would be grossly negligent, and elements that are willful and wanton. To say the same, the petitioner in open court on December 5, 2017, asked the presiding judge for his due process of law rights, verified by the last page, final paragraph of the court's transcript. The petitioner then proceeded to the United States District Court and charged, AS A CAUSE OF ACTION, the Clerk of Wake County Superior Court, Jennifer Knox, in her individual capacity and under the color of her authority, failed to properly process the Notice of Appeal. Now, this course leads through the district and appellate courts procedures to date. In the United States District Court, it was adjudged that the case was dismissed because the petitionee qualified for derivative immunity, and the reason was because the petitionee was following the instructions of the court by not adhering to the North Carolina General Statues regulating the appellate process. The petitioner rebutted, the clerk's function was ministerial in nature which gives the clerk no-choice. So now, the same can be said about the question presented in the Superior Court of Wake County, when the petitioner questioned the abrogation of immunity. That is, the NCDOR is a ministerial agency which is not qualified for absolute immunity, nor quasi immunity should the issue involve a matter of constitutionality whereas, the Superior Court gave no account of the law. Nor did the Superior Court follow the guidelines of No. 10 of Procedural Due Process law. The United States Court of Appeals affirmed. The United States District Court has two judgments

where the petitioner is referenced as[Brown 1](4:18-cv-199-FL [2/04/19] and [Brown 2] 4:19-cv-108-FL [08/26/19]) and the appellate court has two (19-1500[07/18/19] and 19-2011[12/2019]) thereabout this single issue.

REASONS FOR GRANTING THE PETITION

THE UNITED STATE SUPREME COURT, RULE 10(a) a United States Court of Appeals (4th Cir.) has entered a decision in conflict with the decision of the same United States Court of Appeals (4th Cir.) on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

The petitioner challenges the Order of the U.S. Court of Appeals which the court find no error in the opinion below where the opinion below does conflict a prior 4th circuit opinion. **Noted the court did not give adherence to the 14th Amend. Due Process Procedure, No.10.**

SUMMARY OF ARGUMENT

1. Whether the U. S District Court erred (Brown 2) in adopting the U S Magistrate's M & R, where it contains a misconception of other Fourth Circuit ruling.

A. Whether the district court misconceptualized in the standard of review, the difference between a judicial act and the eligibility for derivative immunity, and whether the district court is proper defending the Clerk of Superior Court of Wake County

1. Whether the Clerk of Superior Court vehemently interfered/abandoned (on purpose) with petitioner's rights by denying him access to court's appellate system, creating the violation of due process, equal protection of law, and Fourteenth Amendment of the United States/North Carolina Constitutions.
2. Whether the District Court fails with bias under the Doctrine of Constitutional Fairness and the First, Fifth and Fourteenth Amendments.

A. Whether the Conley Standard required a no dismissal.

ARGUMENT

THE PETITIONER ASKS THE HIGHEST COURT WHETHER A JUDICIAL NOTICE WOULD ALLOW THE COURT THE POWER TO LOOK AT REFERENCES TO BETTER UNDERSTAND THE CONCERN FOR WHICH THE CONSTITUTION MAY EMPOWER AND ASSIST HIM INTO HIS CASE AGAINST WHAT MAY TRULY BE A WAR AGAINST HIS STATUTORY AND CONSTITUTIONAL PRIVILEGES AS A UNITED STATES CITIZEN.

THE PETITIONER ASKS THE COURT TO TAKE A JUDICIAL NOTICE UNDER FEDERAL RULE OF EVIDENCE 201(B) WHICH REQUIRES "FREE ACCESS TO JUDICIAL TRIBUNAL BY A NATURAL INDIVIDUAL WITH A CONSTITUTIONAL RIGHT TO PETITION THE COURT SET BY "PRECEDENCE" PURSUANT HAFER V. MELO, 502 U.S. 21, OFFICIALS AND JUDGES ARE DEEMED TO KNOW THE LAW AND SWORN TO UPHOLD THE LAW; OFFICIALS AND JUDGES CANNOT CLAIM TO ACT IN WILLFUL DEPRIVATION OF LAW, THEY CERTAINLY CANNOT PLEAD IGNORANCE OF THE LAW, EVEN THE CITIZEN CANNOT PLEAD IGNORANCE OF THE LAW, THE COURTS HAVE RULED THERE IS NO SUCH THING AS IGNORANCE OF THE LAW PURSUANT, **COOPER V. AARON**, 358 U.S. 1, 78 S. CT 1401 (1958) "NO STATE LEGISLATOR OR EXECUTIVE OR JUDICIAL OFFICER CAN WAR AGAINST THE CONSTITUTION WITHOUT VIOLATING HIS UNDERTAKINGS TO SUPPORT IT. ANY DENIAL OF DUE PROCESS MUST BE TESTED BY THE "TOTALITY OF THE FACTS" BECAUSE LACK OF DUE PROCESS MAY "CONSTITUTE A DENIAL OF FUNDAMENTAL FAIRNESS, SHOCKING TO THE UNIVERSAL SENSE OF JUSTICE. (SEE APPENDIX: MCCRAY V. MARYLAND AND STUMP V. SPARKMAN). MCCRAY COURT ESTABLISHES THAT CLERICAL AGENCIES AND OFFICERS ARE NOT AFFORDED WITH ABSOLUTE IMMUNITY AND STUMP COURT ESTABLISHES THAT ONLY THE JUDICIAL COMMUNITY IS PROTECTED WITH DERIVATIVE IMMUNITY.

THE PETITIONER ASKS THE COURT TO CONSIDER WHETHER THE ITEM IN APPENDIX WITH HEADING 17 CVS 9850 SUPERIOR COURT OF WAKE COUNTY AND THE LISTED CITATIONS SHOW (1) ANY AMBIGUITY OR CONTRARINESS JUXTAPOSING GUTHRIE V. NC PORT AUTHORITY AND STANBACK V. STANBACK. THE PETITIONER CHALLENGES, IN GUTHRIE THE NC INDUSTRIAL COMMISSION HOLD EXCLUSIVE JURISDICTION OVER THE TORT CLAIM ACT BUT WHETHER STANBACK SAYS DIFFERENTLY. (2) PURSUANT, HALE V. HENKLE, 201 U.S. 43, A CITIZEN (PRO SE) HAS THE CONSTITUTIONAL RIGHT TO STAND UP FOR HIMSELF/HERSELF AND REQUIRE ALL FORMS OF DOCUMENTATION (3) IN THE SUPERIOR COURT EXISTS A SELF-AUTHORED DECISION OF THE DEFENDANT/ REP., THE ASSIST. ATTY. GEN., HOWEVER IT MAY BE UNCONSTITUTIONAL. PETITIONER DECLARES ALL CONDITIONS ARE MET IN NCGS SEC. 7A-45(B) THROUGH (F) AND ASKS WHETHER EVIDENCE OBTAINED COULD INFLUENCE THE HIGH COURT.

The Petitioner comes to the United States Supreme Court with A FEDERAL QUESTION, 28 USC 1331 for which he invokes questions and challenge issues that originated in the OAH

and developed into a matter for the Superior Court of Wake County, Court of General Jurisdiction. The Superior Court is authoritative to hear all cases, regardless of the specification. The argument presents the question whether the filing of the case 17 CVS 9850 was proper before the court, which, this argument supersedes the contested argument of the North Carolina Office of Attorney General, who disputes that filing in the Superior Court was not proper. Accordingly, the Assistant Attorney General stipulates, it would be more properly filed with NC Industrial Commission. This argument doesn't give account to the NC Gen. Stat., Sec. 105-241.17(3); the constitutionality of the statue. Therein, the petitioner challenged, he was denied due process of law, where the defendant violated the Tort Claim Act applicable to NCGS Sec. 105-241.17(3). Additionally, adverse matters generally take a normal course through the NC Court of Appeals, but in this issue the petitioner was purposely denied the access to the appellate process. The petitioner proclaims, the act committed by the Clerk was truly intentional, willful, or wanton, as well, to this date the clerk has not responded to the Notice of Appeal. Within this question, a matter exists which will question whether the doctrine of mootness should apply, as far as, the OAH and the Superior Court of Wake County proceedings are concerned. Nevertheless, the petitioner will present this reference to the highest court. That is, the petitioner had presented evidence to the OAH (1) showing an installment agreement (Exhibit/Item 1) had been established on January 26, 2017 and time stamped via computer, after receiving a Notice of Garnishment, dated January 5, 2017. The notice stated, action would be taken if the debt had not been resolved in 30 days. It is inscribed within the Notice that it was sent

to the employer, Evans Seafood Transport Inc., which the appellant complained of reputational damage; wherein, appellant questions whether the exigency factor rose to where the need existed to offset the appellant's refunds. (2) the evidence the petitioner presented showing the garnishment by IRS in less than 30 days, even though the installment agreement had been established (3) a letter from the respondent (Exhibit/Item 4) returning the garnished amount by April 15, 2017; establishing the truth in the petitioner's point of view (4) defendant's Notice of Collection (June 2017) instituting a charge with interest for a bill already paid (Exhibit/Item 10) with (Exhibit /Item 11) a NC State Employees Credit Union draft receipt showing the proposed bill paid (5) the respondent's defense in Superior Court was, the Secretary of Revenue had the right to act at any time after the Notice had been merely mailed (See court transcript) (6) the OAH verifies and implicates the respondent in No. 19, of its Final Order which petitioner presented distortion and harassment evidence while contacting the respondent via telephone in March 2017. The petitioner brings to the attention of the highest court, and challenges that this is where the matter of constitutional privileges were initially denied. Though arguments in the Superior Court consisted of the petitioner questioning the court whether abrogation of immunity is most concerned. Indeed, the NCDOR is a ministerial agency for which absolute immunity is barred, and quasi immunity is limited where the NCDOR should had been aware of what consequences of the denial of constitutional privileges of the petitioner would be. The petitioner brings to the attention of the highest court, that the ORDER of December 5, 2017, was self-authored

by the defendant (The Assistant Attorney General). The argument is whether the convenience of a self-authored order is unconstitutional, for it violates the Equal Protection of Law Clause, under the circumstance. Further, the petitioner argues the question of liberal construction in the Superior Court of Wake County, for which it seems that none existed. [See Garrett v. Elko, 120 F. 3d 261, 1997 WL 457667th Cir. (Aug. 12, 1997) wherein, it was noted that when determining whether a pro se plaintiff's claim should withstand a motion to dismiss, the district court should be allowed to, but not required, to look beyond the face of the complaint to allegations made in any additional materials filed by the plaintiff. [See DeSole v. United States of America, 947 F. 2d 1169 (4th Cir. 1993)] in reviewing a motion to dismiss, the court should view the allegations of the complaint in the light most favorable to the plaintiff. Mylan Labs v. Matkari, 7 F. 3d 1130 (4th Cir. 1993) cert. denied, 510 U.S. 1197 (1994) a motion to dismiss should be granted only where the plaintiff can prove no sets of facts which would entitle him to relief. All three of these authorities shows that the court implicates the defendant in this action. So, the state forum should not be any different, and the appellant proclaims his authority in every forum.

Did the United States District Court err in the adoption of the U S Magistrate's M & R, when it recommended for the complaint to be dismissed because the clerk, Jennifer Knox, has derivative immunity?

The appellant alleges, there exists within this case a variety of inconsistencies which violates his equal protection of law rights, under the Fourteenth Amendment of the

United States Constitution. The appellant herein sets out to establish why he should prevail on appeal. The appellant in this case asserts, this issue is a matter from record and the docket speaks for itself or is axiomatic. The U. S Magistrate's M & R [Aug. 8, 2019] is catering to an errant prior U S District Court Order [Apr. 4, 2019]. The appellant challenges, the M & R fails to authoritatively recognize the absolute correctness of derivative immunity, and it fails to apply the correctness to the errant "obedience to a court order". The central issue being, the M & R failed to recognize the named individual criteria of Section 1983. The district court overlooks the named individual difference, in comparison, to the 4th Circuit's Bivens which was noted in the Objection to the Magistrate's M & R.

The appellant here challenges the district court findings and legal contentions of law [Sept. 11, 2019] which he states there are inconsistencies in the points of view, as to whether the higher court in McCray v. Maryland 456 F2d. 1, 4 (1972) Myer v. Stoney, No. 1:18-cv-00772 LMB-MSN (E.D. Va. June 21, 2018) where it was held that the negligent failure of a clerk of court, in not filing the necessary papers to allow plaintiff access to post-conviction relief, was actionable. Feb 29, 1972. This questions within a "standard of review" the court has opined on the correctness applied to whether Jennifer Knox's role in the decision of Dec. 5, 2017, according the U S Magistrate in the M & R of Aug. 8, 2019, was entitled to derivative immunity.

The appellant argues, the clerk would not be privy to derivative or quasi- immunity unless her role was discretionary. According to the 4th circuit, the general rules for the clerk's functions are to ministerial functions [no-choice]. Clerical responsibilities are not afforded the immunity defense especially where the clerk impedes on constitutional guaranteed privileges.

To the effect that the clerk should had known or was expected to have known that this violation would deprive the appellant of a statutory or constitutional privilege, is an inconsistent fact.

In the event persistent controversy over the determination protocol prevails, that Jennifer Knox's role in the decision (Dec. 5, 2017) might had been adjudicative, the appellant argues the history of association comparing the on record of the 4th Circuit to the answers received from the Eastern District of North Carolina in this case. All the 4th Circuit Court's opinions have indicated the difference between judicial immunity for the discretionary functions of officials to the non-discretionary functions, namely, the ministerial functions. Since the 1956 Stump Court to the 2018 Myer Court, all the 4th Circuit decisions are consistent with each other. Contrarily, since Dec 5, 2017, issues regarding abrogation of immunity [(District Rulings: Dec. 5, 2017) Superior Court, Dept of Rev is ministerial]. [District Court as applied to the clerk only: starting with Apr. 4, 2019, Apr. 25, 2019, Aug. 8, 2019, Aug. 26, 2019 and Sep. 11, 2019] are inconsistent with 4th Circuit; [particularly the district court error on Order, Apr. 4, 2019 p. 2, paragraph no. 2] the district court cited the McCray Court erroneously, but all of this is moot because there is

a need for a Section 1983 claim to name an individual. The appellant asserts, in the M & R, Aug. 8, 2019, the U.S. Magistrate basically critiques erroneously the district court's error of Apr. 4, 2019 [citing the McCray Court]. The appellant argues, the district court on Apr. 4, 2019, stipulates that the clerk is exempt under judicial immunity when her performance was obedient to an order. The argument is the court never directed the clerk, and the example the appellant gave was in his Sept. 9, 2019, filing, in Brown 2; wherefore, the decision given by the district court on Aug. 26, 2019 [the district court directed the clerk to close the case]. In Brown 2, in respect to filing papers, according to the high court, 4th Cir. (1972) the clerk has no discretion that merits insulation by a grant of absolute immunity; the act is mandatory. Her duty, although associated with the court system, is not quasi-judicial (meaning entailing a discretion like that exercised by a judge). Clerical duties are generally classified as ministerial pursuant (McCray Court, 2 Harper & James, The Law of Torts, 1644 (1956) and the act of filing papers with the court is as ministerial and inflexibly mandatory [a no-choice scenario] as any of clerk's responsibilities. Immunities which have been read into Section 1983, derive from those existing at common law pursuant, Pierson v. Ray, 386 U.S. supra at 554-555, 87 S.Ct. 1213, 18 L.Ed.2d 288. A state officer is generally not immune under common law for failure to perform a required ministerial act, 2 Harper & James, supra at 1645-46. For example, register of deeds have been held liable in common law tort action for negligently failing to properly index a mortgage. Thus, there is no basis for sheltering the clerk from liability under Section 1983 for failure to perform a required ministerial act such as properly filing papers. The conclusion is

supported by cases such as Washington v. Official Court Stenographer, 251 F. Supp 945 (E.D. Pa (1966) and Whirl v. Kern, 407 F. 2d 781 (5th Cir.) cert den. 396 U.S. 901, 90 Ct. 210, 24 L. Ed. 2d 177 (1969) (denying state ministerial officers' absolute immunity under Sec. 1983). The appellant concludes, the court cannot deviate from such binding precedents, nor does it explain explicitly and specifically how the clerk was discretionary (obedient to an order in enumeration).

The appellant asserts, the district court, if measured, opinion is held in favor of judicial immunity, which was applied to the Superior Court Judge, and this is the support given by the M & R that preceded as a whole. What's defeating in this scenario is, the 4th Circuit is the "standard of review" explaining the difference between discretionary and ministerial functions. The inconsistencies the district court cites, "the appellant complaints are repetitive" [Sep. 11, 2019] even though the complaints argue the definitive position of the 4th Circuit; hence, the district court is inconsistent forthwith [See Myer v. Stoney) held that quasi-immunity does not extend to clerk's performance].

Summarily, the appellant's case is that the district court erred because of the Apr. 4, 2019 decision [although moot] and it based the appellant's allegation against Jennifer Knox, the clerk of court, a state agent on that decision. The court deduced for reason(s) (1) the clerk is derivatively immuned (2) clerk was following direction of the court (3) clerk was being obedient to an order. The appellant filed a "new or actual claim" on July 29, 2019, and the US Magistrate recommended on Aug. 8, 2019, for the case to be dismissed. This is because the issue was

already presented to the 4th circuit and affirmed on July 18, 2019, and because of derivative immunity, this case should be dismissed as frivolous. Seemingly, your honor, in all these occurrences is suggesting the issue faced by pro se litigant's attempts to re-litigate the issue is without the assistance of a seasoned lawyer and already has been approved by the 4th circuit. In saying this, the magistrate judge seemingly forces the issue. The difference in the two situations, the first case in Brown 1, the appellant alleges, the 4th circuit affirmed because Section 1983 requires (but it was absent) that the complaint needs to name an individual in violation of deprivation of human rights [requiring that Jennifer Knox's name was present in the caption, and she should had known this violation would deprive the appellant of a human right]. The M & R, Aug. 8, 2019, did not include the analysis that the Sec. 1983 requires a named individual. The appellant filed the objection on Aug. 21, 2019, and the district court adopted the M & R on Aug. 26, 2019. The appellant filed a Motion for Reconsideration on Sept. 9, 2019, and the district court filed a dismissal with rejection on Sept. 11, 2019. The M & R specifically states that a named individual is of the current record. The appellant contests, the name was not present in the April 4, 2019 order. The appellant then filed an appeal alleging the district court erred, because of his enumerations no. (1) the district court is inconsistent with the 4th Cir. McCray (1972) Myer (2018) and Stump Courts (1956) and a named individual criteria is at center (2) there is no documentation of any written or oral directions issued by the court, and FRCP 58, requires documentation into the court records where the record is self-actualized by the court (3) there can be no obedience to an order unless it's a discretionary

function, which no documentation exists to those accords; the McCray and Myer Courts stipulates the clerk has no quasi immunity, her duty is ministerial [no-choice] associated with the court system. The appellant complains with all this good reasoning, the court still sides with the U S Magistrate, in an expression," your honor was cogent with the deliberation". The appellant brings to the attention of the court, a named individual criterion was necessary. Consequently, the background case of the Dept of Rev is an agency for which is a ministerial administration for the State. Too, it is reminded the district court needs to explain by letter of law, how the clerk was discretionary. The appellant challenges, although this background matter could only be institutionalized in this Brown 2 issue as an aggravating factor, for he requests that consideration. The NCDOR authoritatively should had known a violation, as such in their field, would deprive both statutory and constitutional rights of this appellant. The appellant challenges, if only one inconsistency prevails, the appellant would have a good case for the equal protection of law violation. The appellant, in his Objection to the M & R, in the attempt to meet the "standard of review" for the Conley Court, argued the criterion of the Wood, Butz, and Stump Courts, which instituted four enumerated facts to reach a cause of action. These three courts argued the immunity issue [when does the court abrogate immunity]. As aforementioned, only judicial or discretionary activities gain the grant of absolute immunity. If the appellee should had known or is expected to have known the act would violate a constitutional or statutory privilege, it would disqualify supplemental immunity. Added, the district court overlooked the appellant as for due diligence [a comprehensive appraisal] rather, chose to adopt the Magistrate Judge's M & R. Since there are

several inconsistencies, how does the highest court deem this circumstance? The ministerial functions are not absolutely immuned. All these issues are brought forth in the district court, but the court erroneously did not allow the appellant the construction of coordination. The Conley Standard requires no dismissal. According to the 4th circuit, there should be no further shielding; therefore, the court can no longer be hermetically sealing the courtrooms doors. The defense must now answer the charge; wherefore, the appellant asserts, he is being deprived of that answer. The appellant compellingly challenges the errors and inconsistencies of the district court, and if McCray was interpreted properly under "sufficiency of allegations" the appellant was barred from access to the court [constitutional deprivation of a human right]. The record/docket is axiomatic and serves as bonafide proof. In the foregoing argument, the appellant asserts, Jennifer Knox, in her individual capacity as Clerk of Superior Court of Wake County, denied him of statutory and constitutional privileges to file a Notice of Appeal to the NC Court of Appeals pursuant, NC Gen. Stat. Subch. IX, Art. 27, Sec 1-277 and NCGS Ch. 14, Art 31, Sec. 14-230, Fourteenth Amendment Due Process of Law (Substantive and Procedural) Equal Protection of Law; 42 USC Section 1983, Deprivation of Constitutional Rights. The appellant alleges, his correctness is being refuted by an errant statement of the district court with "obedience to an order" and the U S Magistrate's follow up to the support of an earlier order with the supporting derivative immunity theory. This is a misconception of law which is symbolic of thrashing a pro se litigant while depriving him of a constitutional privilege.

The appellant, here, brings to the attention to the highest court and questions whether this matter conflicts with the high court's explicitness of the "Rule of Law." The argument persists, the district court's analogy of" obedience to an order," does not meet the criterion of the McCray and Stump Courts, which directly conflicts a rule of law authored by the Fourth Circuit. There is no opposing law which might project some type of ambiguity. Second, the M & R in Brown 2 comes and complements the earlier ruling of the district court creating a compound error. Thirdly, the district court complements the U.S. Magistrate's M & R, which destroys the appellant conceptualization of the court's explicitness of the "Rule of Law".

Considering the district court's ruling, did the four factors pursuant [Stump v. Sparkman 435 U.S. 349 (1978) in determining under the court's "standard of review" whether an act could be declared as "a judicial act", play any role in deciding whether Jennifer Knox is obedient to an order, or is eligible for derivative immunity?

The appellant, herein, challenges the district court's findings and contentions of law, that obedient to the order is the district court's actual position [Apr. 4, 2019, Order] (1) Jennifer Knox was charged with the duties and responsibilities pursuant [NC Gen. Stat. Subch. IX Art. 27, Sec 1-277 and NCGS Ch. 14, Art 31, Sec 14-230] that is, because most of the time the actual ministerial functions are performed by her deputies, who performs the court's duties and responsibilities. For a judicial act to be performed, the clerk must come under the four factors which are enumerated under the Stump Court. Jennifer Knox's disposition comes under none of the four factors, whereas, the clerk is not considered in this case as part of the judicial community. The appellant challenges whether the district court's position in this

circumstance is adequate. He persists, any implementation of the rule which requires documentation in the court record system, for which there is no documentation to prove any other, showing this to be true; the court docket is self-actualized. Therefore, unless the clerk was linked by discretion or was directly ordered either orally [see transcript] or written in the decision of Dec. 5, 2017, it is alleged that it is improper to maintain that the clerk was other than ministerial in nature. We cannot conclude under" standard of review" the clerk was obedient to the order, which was the district court original intent in the decision on Apr. 4, 2019. The docket does not show discretionary activity, nor does the transcript show directing, and the order does not include written directions (2) for the clerk to have derivative immunity, which was the M & R of Aug. 8, 2019 the clerk must have performed a discretionary function, which she did not. Neither the district court in a prior decision, nor the M & R is consistent with the 4th circuit. The appellant asserts, the derivative immunity would be reduced, in this case, to quasi immunity, but the clerk is ineligible for the quasi-immunity due to the fact her certification requires that she should have known or is expected to have known this violation would deprive the appellant's statutory and constitutional right to established laws. Again, the court docket is prevalent in this circumstance, and it indicates no record of discretionary activity for the clerk. Additionally, the appellant brings to the attention of the court that he did not raise the matter concerning the authentication of the court transcript, where it does not indicate any oral directions of the court for the clerk not to acknowledge the appellant's Notice of Appeal. Even though, according to Bell Atlantic v. Twombly, there is enough material in the "short and plain" statement for the court to reasonably draw a legal inference from the face that a violation occurred for which relief could be granted (See OAH Final Order Statement No. 19). Otherwise, there is no written instructions from the court instructing the clerk to abandon the appellant's Notice. This all is nevertheless moot, but still, it violates Equal Protection of Law.

Did the district court err on the question of whether the Clerk of the Superior of Wake County interfered (on purpose) with his rights by denying him access to the court system, and effectively ignoring his Notice of Appeal?

The appellant, herein challenges the district court's findings and contentions of law, wherein the Clerk of Superior Court of Wake County, Jennifer Knox, a state actor, (1) under the color of her authority denied him of his privilege to file a Notice of Appeal to the NC Court of Appeals. (2) by denying the appellant the appeal process, the clerk deprived him of a statutory right, constitutional privilege, and the Equal Protection of Law pursuant, NC Gen. Stat. Subch. IX Art. 27, Sec 1-277 and NCGS Ch. 14, Art 31, Sec 14-230, Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed.2d 652 (1972) argued a pro se petitioner's right to argue where a deprivation of human rights is existing. In Boddie v. Connecticut, 401 U.S. 371, 376, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) (access to courts protected by due process clause). In Chambers v. Baltimore & Ohio"Railroad Co.,207 U.S. 142, 28 S. Ct. 34, 52 L. Ed. 143 (1907) (access to courts is a privilege of American citizenship protected by the Fourteenth Amendment). In Ginsburg v. Stern, 125 F.Supp. 596, 601 (W.D.Pa.1954) (clerk's failure to file papers would be a "patent" violation of constitutional rights) (dictum). Cf. In California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972) (access to courts is "part of the right to petition protected by the First Amendment") 42 USC Section 1983, Deprivation of a Constitutional Right, Equal Protection of Law, under The Fourteenth Amend. Liken to Bivens v. Six Unknown Named Federal Narcotic Agents 403 US 388 (1971) which deprived Bivens of his constitutional human rights, hence was a good reason for a cause of action. Comparatively, appellant in Brown 1 did

not name the clerk, Jennifer Knox. Here the appellant proclaims, he is entitled to correct his known error on that behalf; wherefore, he names an individual in a Brown 2 cause of action, for which relief could be granted.

Does the Conley Standard place an opinion upon the court, of the Stump Court's four factors of the roles which qualifies a judicial act, which institutionalize within the Conley Standard pursuant, [NC Gen. Stat. Subch. IX Art. 27, Sec 1-277 and NCGS Ch. 14, Art 31, Sec 14-230]?

The appellant argues, those Stump Court factors are included within the theory which suggests a recognizable element that the argument against immunity, in general, and obedience to a court order carries a grade of plausibility. The appellant argues, the district court is inconsistent in opinion of the McCray and Stump Courts. According to the 4th Cir., the McCray Court institutes, the clerk is generally ministerial in nature, and the Stump Court institutes the immunity is limited to the judicial community only. Stump, in fact, eliminates the clerk as judicial, and declares the clerk ministerial. There are no other documented factors qualifying discretional activity. Therefore, the appellant argues the existing controversy in the Order, Aug. 26, 2019, the district court wrote, **"upon de novo review of the M & R to the appellant's objections, the court ADOPTS analysis of the Magistrate Judge, which thoroughly and cogently addresses issues raised by the appellant in his objections".** The appellant challenges, as aforementioned, as he explained the 4th Circuit's opinion relating to derivative immunity. The Magistrate Judge was inconsistent with the 4th Circuit, and the district court praised his position. Then, the court directed the clerk to close the case.

Additionally, the Order of Aug. 26, 2019, the appellant challenges the court's purpose of the usage of 28 USC Sec 1915 (e) (2) (B). This section is referring to (e) (2) that the court may dismiss a pauper's claim at any time, if the court determines that__ (B) the appellant's action or appeal (I) is frivolous or malicious, where the appellant argues the only reason his claim is frivolous is that he isn't permitted the establishment that Jennifer Knox, as clerk, is not immuned as aforementioned. Additionally, in the issues above, the appellant well argues a cause of action. The appellant argues, the 4th Circuit's opinion in Stump's four factor qualifying a judicial act, and McCray Court establishing the clerk's function is ministerial should defeat being frivolous. However, the appellant asserts, he needs the high court's attention to whether comes now a grandiose misconception of what is considered the judicial community. Clerical functions are not absolutely immuned. In fact, because the clerk should had known or at least is expected to have known that a violation would deprive the appellant's statutory and constitutional rights, and this would as well disqualify the quasi- immunity for the clerk of court. This is commonly known in the McCray ruling. In **(ii)** fails to state a claim for which relief may be granted. The appellant argues, Section 1983, deprivation of constitutional right might be self-actualized i.e. names an individual therefore it defeats the district court's position as for his cause of action, plus self- actualizes the equal protection of law clause **(iii)** seeks monetary relief against a defendant who is immuned from such relief. Again, defendant is not immuned under Section 1983. The appellant raises the issue that abandonment/interference, and neglect (done purposely) is tall standing, because none of the facts presented by the

Magistrate Judge extends beyond the 4th Circuit's opinion. The position the Magistrate Judge seems most positive on, is that the 4th Circuit has indicated in the **July 2019, Judgement** to be partial with the district court. The District Court nor the Magistrate Judge ruled that the appellant's "new or actual" case was not proper in the court beginning July 29, 2019, thus, petitioner maintains on the grounds that the court can be no more than to admonish the appellant on any further filings on this same subject. The appellant argues whether it is reasonable to maintain the 1972, 4th circuit opinion. The appellant maintains, this filing in Brown 2, is brought because the district court is inconsistent with the 4th Circuit, and the associated citations. The appellant challenges the partiality to the defense "i e" the unduly and excessively problematic favoritism, and prays that the court, in the "objective" interest of justice, adheres to the appellant's Equal Protection of Law Clause in the Fourteenth Amendment of the United States Constitution. The appellant contests, he is failed by the errant district court on "obedience to the order" ruling but regards the obedience to the order should not stand, unless there are discretionary ties, which there is not. Next, the appellant is victim to the U S Magistrate M & R's errant derivative immunity ruling. The clerk is limited to ministerial functions, unless there are discretionary ties, which there is not. Thirdly, the district court overlooks in the Motion for Reconsideration, and erroneously praises the errant M & R. The appellant argues, equal protection of law, illegal procedure, and the forcing of the issue is a drastic misconception of the rule of law.

How does the court conceptualize constitutional fairness as it may apply to the neglect, abandonment, and the resulting governmental interference which purposely deprives the

appellant?

The appellant brings before the court a challenging question relating to the equal protection of law, due process of law, and bias for which is addressed in the U S Constitution for the governing of the American Justice System. The district court has overlooked the concept of "ordered liberty" and the appellant now comes addressing for due recognition authorized by the Fourteenth Amendment. The absolute truth within the concept of fundamental fairness as it engages with the constitutional doctrine of deprivation of human rights, is infinitely a large question of law in the American Justice System. The court may apply the laws of due process which concerns procedural and substantive. In the United States Constitutional Law, substantive due process is a principle allowing courts to protect certain fundamental rights from government interference, even if procedural protections are present or the rights are not specifically mentioned elsewhere in the US Constitution. Here, the appellant asserts [FRCP, Rule 58] regulating documentation, and its absenteeism thereabout. Documentation [the docket] shows that the clerk did not properly and adequately process the appellant's Notice of Appeal to the accords of The NC General Statues. Therefore, this violates the concept of "ordered liberty" authorized by the Fourteenth Amendment, which is the court's implicit rule (Argued in Appellant's Objection to M & R). That is, generally substantive due process is from a "deeply rooted Nation's history and traditions". A challenging question that remains is, in considering the court's implicit rule and "ordered liberty" which the district court overlooked [FRCP, R. 58, McCray, Stump, Conley, Haines Courts, and Sec. 1983] what depth of assessment would the court place on the deprivation of the historical appeal process when it was done

on purpose. And, how would the doctrine of reasonable doubt effect this circumstance?

The appellant complains, fairness is not applied when the district court denies the appellant his cause of action, and its doubling. Plainly, the wrong is done when the defendant is not served with complaint and summons, as the court instructed the appellant to submit. The wrong is done when the 1st Amend. (Bill of Rights) is violated, whereas, the government is prohibited from interfering with citizens petitioning for a governmental redress of grievances which applies to this clerk in Brown 2. As well, the 5th Amend. procedural due process clause is violated, when the clerk denies the appellant rights to NC Gen. Stat. Subch. IX Art. 27, Sec 1-277 and NCGS Ch. 14, Art 31, Sec 14-230; 5th and 14th Amend. Due Process Clause, Equal Protection of Law " A Rule of Law" Price v. Barry, 53 F 3d. 366 (Price v. Barry argued in Sep. 9, 2019 filing, p. 3) petitioner questioned rights to argue based upon his liberty rights. The appellant challenges, the protection of the fundamental right to be free of governmental interference that it is not observed in Brown 2's situation. This question of "rule of law" goes all the way through the error which the district court has overlooked (rule of law) depriving the appellant. In Bowers v. Hardwick. 478 US 186, 189 (1986) an individual brings a Due Process claim against a state claiming interference with a fundamental right, it is the state's responsibility to demonstrate the compelling nature of its interest and the necessity of the chosen means. In other words, the state, and not the plaintiff, carries the burden of proof when the "**strict scrutiny standard**" is applied. **Then, the court of appeals must give adherence to the 14th Amend. Due Process Procedure, No.10.** The court needs to explain explicitly it's opinion on how the clerk was discretionary on Dec. 5, 2017.

CONCLUSION

The appellant concludes this argument that he firmly petitions the highest court for this Writ of Certiorari by bringing to the attention of the court existing constitutional unfairness for which he questions; namely whether The United States District Court for the Eastern District of North Carolina and the US Magistrate has presented an errant twist. The appellant argues, surely there should be a reasonable doubt in whether this issue has been legally dismissed under the Conley Standard. Because at least one **factor** from The Stump Court prevails, stating what's considered judicial community, which should allow him the protection under the Due Process and the Equal Protection of Law Clauses. The appellant argued vehemently to the correctness applied by the Court of Appeals in McCray to what is accepted as ministerial in nature, and prays to the highest court adherence, as a matter of policy. As well, the appellant has argued the purposely interference of a fundamental right to be free to petition the government for redress of a grievance. Also, has asked for supervision on three separate issues that may be a question of unconstitutionality in the Superior Court of Wake County (1) NCGS Sections 105-241.23(a) and 105-237 (2) the difference between Guthrie and Stanback Courts (3) a matter of jurisdiction in the Superior Court. Then, one standing issue which the court of appeals might have violated the procedural due process, requirement no 10. Finally, does a pro se pauper have the constitutional right to stand up for himself/herself (See Gideon v. Wainwright).

INDEX

APPENDIX

The Office of Administration Hearings (17 Rev 03355) filed July 28, 201

A court should dismiss an action for want of subject matter jurisdiction only "if the material jurisdiction facts are not in disputed and the moving party is entitled to prevail as a matter of law". Evans v, B. F. Perkins Co. 166 f. 3d 642, 6447 (4th Cir. 1999) (quoting Richmond Fredericksburg & Potomac R. Co. V. U. S., 945 F. 2d 765, 768 (4th Cir. 1991). In a ruling on motion to dismiss for lack of jurisdiction, the court may consider materials beyond the bare pleadings. Evans 166 F., 3d at 647. When a court reviews the sufficiency of a complaint. Before the reception of any evidence, its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims, Scheuer v. Rhodes, 416 U. S. Ct. 1683 (1974) S. 232, 94 When a ruling on a motion to dismiss, the court must determine "whether, as a matter of law, the allegations of the complaint... are sufficient to state a claim upon which relief may be granted" Harris v. NCNB, 85 NC. App 669, 355 S.E. 2d 838 (1987). In Hyde v. Abbot Lab., Inc. 123 NC App. 572 473 S.E. 2d 680 (1996). The court must construe the complaint liberally (Branch Banking & Trust Co. V. Lighthouse Fin. Corp., 2005 NCNB 3 (N. C. Super. Ct. July 13, 2005) and in the light most favorable to the pleader (the Petitioner). (See Scheuer) When the allegations in the complaint give sufficient notice of the wrong complained of, an incorrect choice of legal theory should not result in dismissal of the claim if the allegations are sufficient to state a claim under legal theory. Stanback v., Stanback, 297 N.C. 181, 254 S. E. 2d 611 (1979).

Superior Court of Justice, Superior Court Division 17 CVS 9850, filed Dec. 5, 2017

As a matter of law the action of the Plaintiff is barred by Sovereign Immunity, that this Court does not have subject matter jurisdiction, and that the Plaintiff's complaint, as amended, fails to state a claim for which relief can be granted pursuant, N.C. R. Civ. P. 12(b)(1) and 12(b)(6). The doctrine of Sovereign Immunity is well-established. The United States Supreme Court has recognized that states are not ordinarily subject to suits by their citizens. Hans v. Louisiana, 134, U. S. 1, 21, 10 S. Ct. 504, 509, 33L. Ed. 842. 849 (1890). The North Carolina Supreme Court similarly recognized Sovereign Immunity, observing, "It is axiomatic that the sovereign cannot be sued in its own courts or in any other without its consent and permission.

The State may be sued in tort only as authorized in the" Guthrie v. NC Port Authority, 307 N.C. at 535, 299 S.E.2d at 618, 625 (1983). The State Tort Claim Act, N.C. Gen. Stat. Sec. 143-291, et seq., provides that jurisdiction over tort claims against the state and its agencies is exclusively with the North Carolina Industrial Commission. See Green V. Kearney, 203 NC App. 260, 271-272, 690 SS. E. 2d 755, 764 (2010) (internal citations omitted). Where the action is barred by

sovereign immunity, this Court lacks subject matter and personal jurisdiction. See Battle Ridge Cos. V. NC Dept of Transp., 161 NC App 156, 157 587 SE 2d 426, 427 (2003) rev denied 258 NC 233, 594 S.E.2d 191 (2004)(recognizing that the Court of Appeal has dismissed actions under both NC R Civ. P. 12(b)(1) and 12A(b)(2) where there has been no waiver of "sovereign immunity).

NORTH CAROLINA GEN. STAT. ART. 31 SEC. 143-291

Industrial Commission constituted a court to hear and determine claims; damages; liability insurance in lieu of obligation under Article.

(a) The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority that was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages that the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of damages as provided in subsection (a1) of this section, but in no event shall the amount of damages awarded exceed the amounts authorized in G.S. 143-299.2 cumulatively to all claimants on account of injury and damage to any one person arising out of a single occurrence. Community colleges and technical colleges shall be deemed State agencies for purposes of this Article. The fact that a claim may be brought under more than one Article under this Chapter shall not increase the foregoing maximum liability of the State.

(a) The unit of State government that employed the employee at the time the cause of action arose shall pay the first one hundred fifty thousand dollars ($150,000) of liability, and the balance of any payment owed shall be paid in accordance with G.S. 143-299.4.

(b) If a State agency, otherwise authorized to purchase insurance, purchases a policy of commercial liability insurance providing coverage in an amount at least equal to the limits of the State Tort Claims Act, such insurance coverage shall be in lieu of the State's obligation for payment under this Article.

(c) The North Carolina High School Athletic Association, Inc., is a State agency for purposes of this Article, and its liability in tort shall be only under this Article. This s does not extend to any independent contractor of the Association. The Association shall be obligated for payments under this Article, through the purchase of commercial insurance or otherwise, in lieu of any responsibility of the State or The University of North Carolina for this payment. The Association shall be similarly obligated to reimburse or have reimbursed the Department of Justice for any expenses in defending any claim against the Association under this Article.

(d) Liability in tort of the State Health Plan for Teachers and State Employees for noncertifications as defined under G.S. 58-50-61 shall be only under this Article

NORTH CAROLINA GEN. STAT., SUBCH. IX, SEC. 1-277

1-277. Appeal from superior or district court judge. (a) An appeal may be taken from every judicial order or determination of a judge of a superior or district court, upon or involving a matter of law or legal inference, whether made in or out of session, which affects a substantial right claimed in any action or proceeding; or which in effect determines the action, and prevents a judgment from which an appeal might be taken; or discontinues the action, or grants or refuses a new trial. (b) Any interested party shall have the right of immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant or such party may preserve his exception for determination upon any subsequent appeal in the cause.

NORTH CAROLINA GEN. STAT. CH. 14, ART. 31, SEC. 14-230

14-230. Willfully failing to discharge duties.

(a) If any clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense.

(b) No magistrate recusing in accordance with G.S. 51-5.5 may be charged under this section for recusal to perform marriages in accordance with Chapter 51 of the General Statutes.

Records Kept by the Clerk

Primary tabs

(a) CIVIL DOCKET.

(1) *In General.* The clerk must keep a record known as the "civil docket" in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States. The clerk must enter each civil action in the docket. Actions must be assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made.

(2) *Items to be Entered.* The following items must be marked with the file number and entered chronologically in the docket:

(A) papers filed with the clerk.

(B) process issued, and proofs of service or other returns showing execution; and

(C) appearances, orders, verdicts, and judgments.

(3) *Contents of Entries; Jury Trial Demanded.* Each entry must briefly show the nature of the paper filed or writ issued, the substance of each proof of service or other return, and the substance and date of entry of each order and judgment. When a jury trial has been properly demanded or ordered, the clerk must enter the word "jury" in the docket.

(b) CIVIL JUDGMENTS AND ORDERS. The clerk must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept. The clerk must keep these in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

(c) INDEXES; CALENDARS. Under the court's direction, the clerk must:

(1) keep indexes of the docket and of the judgments and orders described in Rule 79(b);

(2) prepare calendars of all actions ready for trial, distinguishing jury trials from nonjury trials.

(d) OTHER RECORDS. The clerk must keep any other records required by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

NORTH CAROLINA GEN. STAT. SEC. 105-237

Sec. 105-237. Waiver; installment payments. (a) Waiver. – The Secretary may, upon making a record of the reasons therefor, do the following: (1) Reduce or waive any penalties provided for in this Subchapter. (2) Reduce or waive any interest provided for in this Subchapter on taxes imposed prior to or during a period for which a taxpayer has declared bankruptcy under Chapter 7 or Chapter 13 of Title 11 of the United States Code. (b) Installment Payments. – After a proposed assessment of a tax becomes final, the Secretary may enter into an agreement with the taxpayer for payment of the tax in installments if the Secretary determines that the agreement will facilitate collection of the tax. The agreement may include a waiver of penalties but may not include a waiver of liability for tax or interest due. The Secretary may modify or terminate the agreement if one or more of the following findings is made: (1) Information provided by the taxpayer in support of the agreement was inaccurate or incomplete. (2) Collection of tax to which the agreement applies is in jeopardy. (3) The taxpayer's financial condition has changed. (4) The taxpayer has failed to pay an installment when due or to pay another tax when due. (5) The taxpayer has failed to provide information requested by the Secretary. The Secretary must give a taxpayer who has entered into an installment agreement at least 30 days' written notice before modifying or terminating the agreement on the grounds that the taxpayer's financial condition has changed unless the taxpayer failed to disclose or concealed assets or income when the agreement was made or the taxpayer has acquired assets since the agreement was made that can satisfy all or part of the tax liability. A notice must specify the basis for the Secretary's finding of a change in the taxpayer's financial condition.

NORTH CAROLINA GEN. STAT. SEC. 105-241.23

Sec. 105-241.23. Jeopardy assessment and collection.

(a) Action. - The Secretary may at any time within the statute of limitations immediately assess and collect any tax the Secretary finds is due from a taxpayer if the Secretary determines that collection of the tax is in jeopardy and immediate assessment and collection are necessary in order to protect the interest of the State. In making a jeopardy collection, the Secretary may use any of the collection remedies in G.S. 105-242 and is not required to wait any period before using these remedies. Within 30 days after initiating a jeopardy collection, the Secretary must give the taxpayer the notice of proposed assessment required by G.S. 105-241.9.

(b) Review by Department. - Within five days after initiating a jeopardy collection that is not the result of a criminal investigation or of a liability for a tax imposed under Article 2D of this Chapter, the Secretary must provide the taxpayer with a written statement of the information upon which the Secretary relied in initiating the jeopardy collection. Within 30 days after receipt of this written statement or, if no statement is received, within 30 days after the statement was due, the taxpayer may request the Secretary to review the action taken.

After receipt of this request, the Secretary must determine whether initiating the jeopardy collection was reasonable under all the circumstances and whether the amount

assessed and collected was reasonable under all the circumstances. The Secretary must give the taxpayer written notice of this determination within 30 days after the

(c) Judicial Review. - Within 90 days after the earlier of the date a taxpayer received or should have received a determination of the Secretary concerning a jeopardy collection under subsection (b) of this section, the taxpayer may bring a civil action seeking review of the jeopardy collection. The taxpayer may bring the action in the Superior Court of Wake County or in the county in North Carolina in which the taxpayer resides. Within 20 days after the action is filed, the court must determine whether the initiation of the jeopardy collection was reasonable under the circumstances. If the court determines that an action of the Secretary was unreasonable or inappropriate, the court may order the Secretary to take any action the court finds appropriate. If the taxpayer shows reasonable grounds why the 20-day limit on the court should be extended, the court may grant an extension of not more than 40 additional days. (2007-491, s. 1.)

Gideon v. Wainwright, 372 U.S. 335 (1963), is a landmark case in United States Supreme Court history. In it, the Supreme Court unanimously ruled that states are required under the Sixth Amendment of the U.S. Constitution to provide an attorney to defendants in criminal cases who are unable to afford their own attorneys. The case extended the right to counsel, which had been found under the Fifth and Sixth Amendments to impose requirements on the federal government, by imposing those requirements upon the states as well.

April 24, 2020

DATE

Calvin Earl Brown

PETITIONER