

No. 20-5186
89CR318633

22354, 22377

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

John Edward Butler — PETITIONER
(Your Name)

VS.

THE STATE OF NORTH CAROLINA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of North Carolina
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

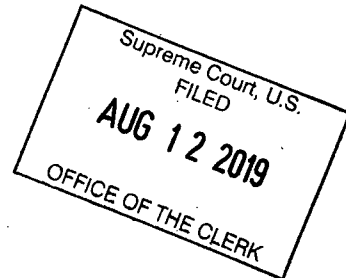
PETITION FOR WRIT OF CERTIORARI

John Edward Butler
(Your Name)

Randolph Corr. Center Box 4128
(Address)

Randolph, Asheboro, N.C. 27204
(City, State, Zip Code)

NONE
(Phone Number)



QUESTION(S) PRESENTED

I. Was it a violation of Defendant U.S. Constitution rights Fourth, Fifth and Fourteenth Amendments as well as both contain Due Process Clauses, Prohibiting the deprivation of life, liberty or property, without Due Process of law right: Search and seized and without a searched warrant, for the Police officers to used excessive force and take the Defendant wallet and personal property and searched it, with my consent and a searched warrant, and then arrest the Defendant without a searched warrant, and without reading Miranda warning and the officers excessive interrogated the Defendant. Then the officers and Tampa Florida Police Department, destroyed the Defendant wallet and personal property, that was his alibi, that he was in Tampa Florida when that crime happen in Lumberton, N.C. The Defendant was not at scene?

II. Was it a violation of defendant's sixth Amendment right of the U.S. Constitution to ineffective assistance of counsel for counsel failure to seek DNA evidence and testing to exonerate his client?

III. Was it a violation of defendant's Fourteenth Amendment right of the U.S. Constitution Due Process for the State to destroyed DNA Evidence that if tested, and defendant's DNA tested, would have exonerated defendant?

IV. Was it a violation of defendant's sixth Amendment right of the U.S. Constitution to ineffective assistance of counsel, for counsel failure to interview and subpoena witnesses,

CONTINUE

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:

JOHN EDWARD BUTLER

ERIC HOOK, SECRETARY OF NORTH CAROLINA
DEPARTMENT OF PUBLIC SAFETY

JOSH STEIN, ATTORNEY GENERAL

~~U.S. CONGRESS MAN~~

~~ATTN: G.K. Butler Field~~

U.S. Supreme Court

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Bentley v. Wolf</i> , 907 F.2d 1293 (2d Cir. 1993).	Page 210, 211
<i>Blackledge v. Allison</i> , 431 U.S. 63 (1977).	1272, 1273
<i>Delaware v. Prouse</i> (1979) 440 U.S. 648, 59 L.Ed. 660, 1979 U.S.LEXIS 80, 99 S.Ct. 1391.	
<i>Dent v. West Virginia</i> , 129 U.S. 114, 32 L.Ed. 95, Ct. 231 (1889)	
<i>Duncan v. Louisiana</i> , 391 U.S. 145 (1968).	
<i>Hayes v. Florida</i> (1985) 470 U.S. 811, 84 L.Ed. 2d 705, 1985 U.S.LEXIS 10554, 1643	
<i>Hewitt v. Helm</i> 459 U.S. 460 (1983)	
<i>Hill v. Lockhart</i> , 474 U.S. 52 (1985).	
<i>In re Winship</i> , 397 U.S. 358 (1970)	

STATUTES AND RULES

Here, too, state courts may take a different approach. See, e.g., *Watson v. Whyte*, 162 W. Va. 26, 245, S.E. 2d 916 (W. Va. 1978) (treating the supreme courts black and white characterization of the liberty status of convicted criminals, holding that a person's constitution rights follow him into prison). A statute rule or regulation creates a liberty or property interest (or entitlement). A statute, rule or regulation creates a liberty or property interest or entitlement. *Vitek v. Jones*, 445 U.S. 480, 91-94 1005, Ct. 1254 (1980), *Washington v. Harper*, 494 U.S. 210, 221-22, 110, Ct. 1028 (1990) *Procunier v. Martinez* 416 U.S. 396, 417-19 945 Ct. 1800 (1974). Depending on the way the way the statute or regulation is phrased, in plain English, this means: When a statute or regulation says that under certain specified circumstances, officials must do something or refrain from doing it, the court, courts will examine the statute or regulation as a whole. For example, a statute parole statute provided that "eligible prisoner shall be released on parole." *Hewitt v. Helms*, 459 U.S. 460, 472, 1035, Ct. 864 (1983), *NCCORD, Kentucky Dept. of Corrections*

OTHER

Unless one of the four reasons was found to exist a protectable entitlement *Greenholtz*, 442 U.S. at 11-12. Another parole statute was analyzed in the same way by the supreme court in *Board of Prisoners v. Allen*, 482 U.S. 369, 107 S.Ct. 2415 (1987). The supreme court held that the statute created a liberty interest in obtaining parole.

CONTINUE

TABLE OF AUTHORITIES CITED

Kaupp v. Texas (2003) 538 U.S. 626, 155 LEd 2d 814, 2003 USLEXIS 3670.

Ky 110 v. United States, (2001) 533 U.S. 27, 150 LEd 2d 94, 2001 USLEXIS 4487, 1215 Ct, 2038.

Mallory v. Hogan, 378 U.S. 2 (1964).

Morrissey v. Brewer, 408 U.S. 471, 481, (1972).

New York v. Harris (1990) 495 U.S. 14, 109 LEd 2d 13, 1990 USLEXIS 2037, 110 S Ct 1640.

North Carolina v. Alford 400 U.S. 25 (1970);

Pointer v. Texas, 380 U.S. 400 (1965)

Riverside v. McLaughlin (1991) 500 U.S. 44, 114 LEd 2d 49, 1991 USLEXIS 2528, 111 S Ct 1661.

Sandin v. Conner, 515 U.S. 472 (1995)

Savino v. Murray, 82 F. 3d 593, 599 (4th Cir)

Tollett v. Henderson, 258 (1973).

Strickland, 466 U.S. at 694 (emphasis added)

Strickland v. Washington, 466 U.S. 668 (1984).

Washington v. Harper, 494 U.S. 210 (1990).

Ward v. McC. Donnell, 418 U.S. 539 (1974)

CONTINUE

STATUTES AND RULES

V. Thompson, 490 U.S. at 462; Board of pardons v. Allen, 482 U.S. 369, 374-80, 107 S. Ct. 2415 (1987); Hewitt v. Helms 459 U.S. at 471 see also Board of Pardons v. Allen, 482 U.S. at 378 statutes with "shall" subject to have the same effect as statutes, Greenholtz v. inmates of the Nebraska Penit and Correctional Complex 442 U.S. 1, 99 S. Ct. 2100 (1979, Citing Nebraska v. Stat. § 83, 114 (1) (1976). or, as the court put it in that case, the statutes created an expectancy of release.

Other

release. Courts will examine the statute or regulation as a whole to determine whether the inmate or could reasonable expect to enforce the regulations against the official. Pursuant to N.C. Gen. Stat. § 17-33 (27 N.C. Const. art. 1 § 21 and 27, Act of 2013 § 16, C. 11. (a) (2013) and Florida v. Graham (2010) IN 1977 and at all times relevant to this

STATUTES AND RULES

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U.S. CONST. AMENDS. V & XIV. The Fifth Amendment's Due Process Clause applies to state and local officials. See *Fundiller v. City of Cooper City*, 777 F.2d 1436, 1440 (11th Cir. 1985). Substantive due process also sometimes refers to the protections of the First, Fourth, Sixth and Eighth Amendments. That is because these Amendments initially applied only to the federal government. They now apply to the states because they are considered to be incorporated "into the Fourteenth Amendment's Due Process clause, which does apply to the states. See *Duncan v. Louisiana*, 391 U.S. 145, 147-48, 885 (1968) (see *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861 (1979), see also *Ch. 1800* (1974)), see also *Ch. 111*, § C.1 and the right to be free of forced 3916, 419, 942 (1960) (1974), see also *Ch. 111*, § C.1 and the right to be free of forced the right of access to the courts see *Proctor v. Martinez*, 416 U.S. Washington v. Harper, 494 U.S. 210, 221-22, 110 S.Ct. 1028 (1990) *Whitely v. Albers*, 475 U.S. 312, 326-27, 106 S.Ct. 1078 (1986); see also *Graham v. Connor*, 490 U.S. 386, 395, 109 S.Ct. 1865 (1989) Fourth Amendment rather than Due Process class governs claims of excessive force during arrest pursuant to N.C. GEN. STAT. § 17-33(2) N.C. CONST. art. 18 21 and 27, *In State v. Stabbs*, 754 S.E. 2d 174, 181 (N.C. APP. 2014), *State v. Witherson*, 753, S.E. 2d 829, 831 (N.C. APP. (N.C. APP. 2014))

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 No. 18-6162, 5:15-cv-03023-BO; 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 5:15-CV-3021-BO; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

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

☒ reported at (P14-558 P15-886 P18-27); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the NO. COAP18-27-1 court appears at Appendix D to the petition and is

☒ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 28, 2018.

☒ 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: NONE, and a copy of the order denying rehearing appears at Appendix NONE.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including NONE (date) on NONE (date) in Application No. A NONE.

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 20th May 2019. A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: NONE, and a copy of the order denying rehearing appears at Appendix NONE.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including NONE (date) on NONE (date) in Application No. A NONE.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Strickland v. Washington, 466 U.S. 668 (1984); *Savino v. Murray*, 82 F.2d 593, 599 (4th Cir.) 518 U.S. 1036 (1990); *Strickland*, 466 U.S. at 694 (emphasis added).
Hill v. Lockhart, 474 U.S. 52 (1985); *Duncan v. Louisiana*, 391 U.S. 145 (1968);
Binter v. Texas, 380 U.S. 400 (1965); *Washington v. Texas*, 388 U.S. 14 (1967); *Molloy v. Hogan*, 378 U.S. 7 (1964); *In re Winship*, 397 U.S. 358 (1970); *Tollett v. Henderson*, 411 U.S. 258 (1977); *Blockledge v. Allison*, 431 U.S. 63 (1977); *North Carolina v. Alford*, 400 U.S. 25 (1970); See generally 22 C.J. Criminal Criminal Law §521; *Debt v. West Virginia*, 129 U.S. 114, 123 (1889); *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *Washington v. Harper*, 494 U.S. 210 (1990); *Kramer v. Union Free School District*, 395 U.S. 621, 627 (1969); *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969); *Shebert v. Denver*, 374 U.S. 398, 406 (1963); *Grissold v. Connecticut*, 381 U.S. at 485; *Aptheker v. Secretary State*, 378 U.S. 500, 508 (1964); *Cantwell v. Connecticut*, 310 U.S. 290, 307-308 (1940); [410 U.S. 113, 156] *Eisenstadt v. Baird*, 405 U.S. at 400, 403-404 (White, J. concurring in result); *Wolff v. McDonnell*, 418 U.S. 539 (1974); *Burt v. Carlson*, 752 F.Supp. 346 (C.D. Cal. 1990); *Henthorn v. Swinson*, 955 F.2d 352 (5th Cir. 1992). Under 42 U.S.C. §1983, violated the Fourteenth Amendment's Due Process Clause. *Hewitt v. Helms*, 459 U.S. 460 (1983); *Sandin v. Conner*, 575 U.S. 472 (1995); *O'Leary v. Estate of Shabazz*, 482 U.S. 342 (1987); and *Turner v. Safley*, 482 U.S. 78, 89 (1987); *Thornburgh v. Abbott*, 490 U.S. 401 (1989); *Procunier v. Martinez*, 416 U.S. 396 (1974); *Riverside v. McLaughlin* (1991) 500 U.S. 44, 114 L.Ed.2d 49, 1991 U.S. 390 (1991) and *Turner v. Safley*, 482 U.S. 78 (1987); *Ill. Pell v. Procunier*, 417 U.S. 819 (1974); *Riverside v. McLaughlin* (1991)

CONTINUE

Constitutional And Statutory Provisions Involved

1991 U.S. LEXIS 2528, 111 S.Ct. 1661. *New York v. Harris* (1990) 495 U.S. 14, 109 L.Ed.2d 13, 1990 U.S. LEXIS 2037, 110 S.Ct. 16410. *Hayes v. Florida* (1985) 470 U.S. 811, 84 L.Ed.2d 765, 1985 U.S. LEXIS 105 S.Ct. 1643. *Kaupp v. Texas* (2003) 538 U.S. 626, 155 L.Ed.2d 814, 2003 U.S. LEXIS 3670. *Catalley v. Cochran*, 369 U.S. 506, 516, 82 S.Ct. 884, 890, 8 L.Ed.2d 76 (1962). *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1332, 1342, Ed. 2d 424 (1977). *State v. Rankin*, 300 N.C. 713, 295 S.E. 2d 411 (1982). *State v. Wells*, 78 N.C. App. 769, 338 S.E. 2d 573 (1986). General Statute 12A-103a requires that a verbal in record of such proceedings be maintained and preserved. See, G.S. 1A-300 (a)(8), (9) and (11). These statutes plainly establish a legislative policy in favor of allowing review of the record to ensure compliance with the various statutory and constitutional mandates. *State v. Dickens*, 299 N.C. 716, 261 S.E. 2d 183 (1980), the Supreme Court overruled the trial court's denial of defendant's motion, *State v. Wells*, 78 N.C. App. *State v. Holden*, 106 N.C. App. 244, 248, 416 S.E. 2d 415 (418 (1992), *State v. Bush*, 307 N.C. 152, 166-67, 297 S.E. 2d 563, 572-73 (1982). *Blackledge v. Perry*, 417 U.S. 21, 30 (1974), *Reynolds*, 298 N.C. at 395, 295 S.E. 2d at 652 discussing *State v. Dixon*, 139 N.C. App. 332-38 (2000), *State v. Linemann*, 135 N.C. App. 734, 738 (1999) quoting *State v. Cannon*, 244 N.C. 399, 403 (1956), *State v. Davis*, 123 N.C. App. 240, 242 (1996). *Davis*, 123 N.C. App. at 337.

STATEMENT OF THE CASE

Strickland v. Washington, 466 U.S. 668 (1984) Savino v. Murray, 82 F.593, 599 (th Cir. 7518 U.S. 1036 (1990), Strickland, 466 U.S. at 694 (emphasis added) Hill v. Lockhart, 474 U.S. 52 (1985), Duncan v. Louisiana, 391 U.S. 145 (1968), Pointer v. Texas, 380 U.S. 400 (1965), Washington v. Texas, 388 U.S. 14 (1967) Malloy v. Hogan, 378 U.S. 2 (1964), In re Winship, 397 U.S. 358 (1970), Tolle v. Henderson, 411 U.S. 258 (1973), Blackledge v. Allison

It Was it a violation of defendant's sixth Amendment right of the U.S. Constitution to ineffective Assistance of Counsel for counsel's failure to seek DNA evidence and testing to exonerate his client) defendant. Deficient performance means that your attorney's representation must have fallen below an objective standard of reasonableness. Competency is measured against what an objectively reasonable attorney would have done under the circumstance existing at the time of representation. Did or was all DNA evidence ordered destroyed, on July 31, 1996, by Superior Court Judge Honorable Joe Freeman Britt and on July 30, 1998, by Superior Court Judge Dexter Brooks, June 4, 1998, all evidence has been turned over to the Robeson County Sheriff's Department to be destroyed, Physical Evidence dated August 1, 1996, and July 30, 1998. Luther Johnson Britt, DA of Lumberton, NC, of destruction of DNA and Physical Evidence in the case of State v. John Edward Butler, defendant file Number 89CRS 18633, 89354, 89377 This the 24th day of June, '90

It was a violation of defendant's fourteenth Amendment Right

CONTINUE

- ① No probable cause for arrest, said I was a new face
- ② I was at a convenience store, I never created an atmosphere of doubt as to why I was there. I never did anything unlawful there at all.
- ③ I was detained or arrested, without my miranda rights being read to me.
- ④ I had my personal property destroyed as a result of this arrest, my wallet, I.D., social security card, and other property.
- ⑤ The judge had ordered all my property to be returned to me. Never received any of my property back.
- ⑥ I was found to have a fugitive murder warrant issued against me by the state of N.C.
- ⑦ In N.C. probable cause court, there were four witnesses that stated, under oath said that I did not commit this crime.
- ⑧ These four witnesses stated they were at the scene, of the crime and that they never saw me at the crime scene.
- ⑨ The DA arrested two of the witnesses and locked them up. He told the witnesses to testify against me or else they would do time for the warrants he (the DA) took out against them corroborated
- ⑩ I told my lawyers to file for fingerprint evidence and that I would willingly submit a DNA swab. He would not accommodate me and my wishes to do so!
- ⑪ The evidence against me in the court was not conclusive

CONTINUE

STATEMENT OF THE CASE

of the U.S. Constitution to Due Process for the State to destroy DNA Evidence that if tested, and defendant's DNA tested, have exonerated defendant. It was a violation of defendant Fourteenth Amendment Right of the U.S. Constitution to Due Process, for defendant to locate and preserve Evidence and proposed, ordered dated January 3, 2014 and filed September 22, 2014 and defendant's motion for Preservation of Evidence and Post-conviction DNA Testing dated January 3, 2014 and filed September 22, 2014, defendant's Application for Writ of Mandamus - order of the North Carolina Court of Appeals dated September 4, 2015. This court finds, that all evidence in this matter has been destroyed, see documents Cite ms:1-10 attached.

Due process is intended to secure citizens against any arbitrary deprivation by the government of rights relating to life, liberty or property.

The defendant was not allowed to have DNA Testing, which hampered his right to properly prepare his defense. The right of due process lies in the Fifth and Fourteenth Amendments of the Constitution.

The Fourteenth Amendment states: 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 where in they reside. No state shall make or enforce any law which shall

CONTINUE

STATEMENT OF THE CASE

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, or deny to any person within its jurisdiction the equal protection of the law.

The Due Process Clause of the Fourteenth Amendment applies to state officials.

The Fifth and Fourteenth Amendments both contain to Due Process Clauses prohibiting the deprivation of life, liberty or property without Due Process of law. In general, the Fifth Amendment Clause is applied to federal officials, while the Fourth Amendment Clause applies to state government officials. There is a long and there are a two pronged test for viewing Due Process.

REASONS FOR GRANTING THE PETITION

and could not prove beyond a shadow of doubt that I committed this crime.

② My lawyer was negligent and negligent in representing me against these charges.

A. He did not represent me to the fullest

B. He did not get fingerprint analysis of me, or DNA evidence done for me.

C. The witnesses were put under duress duress and threatened by the DA to testify against me with untruths

D. All of the evidence was tainted and circumstantial against me.

E. He never once asked for a dismissal due to aggravating factors created by the prosecution.

that would have provided alibi evidence, that would have prevented the defendant, did not commit crime?
Was it a violation of the U.S. Constitution of defendant sixth Amendment right to confront with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense?

V. Was it a violation of defendant's eighth Amendment right of the U.S. Constitution Due Process for state to destroyed DNA from crime scene

Evidence that if tested, and defendant's DNA tested, would exonerate defendant?

VI. Was it a violation of the defendant U.S. Constitution right Sixth Amendment, to ineffective assistance of counsel, the fifth and Fourteenth, Amendments both contain Due Process clause, for the defendant two state lawyers and the D.A., let and honorable judge, let a Fayetteville Fayetteville, the Fayetteville, N.C. Pawn shop, fire arm, dealer and dealer, bring a large duffle bag, of multiple kind of weapons, into the court room and the D.A. had the pawn shop owner and the sheriff's office, displayed and show off all the live weapons, to the jurors, DA said a weapon or weapons, used to committed the crime in the duffle bag.

VII. Was it a violation of the defendant, U.S. Constitution rights, to the fifth Amendment and Fourteenth, Amendment, both contain Due Process clause and Fourth Amendment, to warrant, indictment or a grand jury. The warrant for arrest was in the name, AKA Andrey Butler, Now, my name is John Edward Butler, state what must be in the body of the warrant and caption?

VIII. Was it a violation of the defendant U.S. Constitution rights to the sixth Amendment, to ineffective assistance of counsel, fifth and ^{fourteenth} Amendment, to both Due Process clause, to the honorable judge did not instruct the jurors, the elements of second degree murder, nor on voluntary manslaughter, nor on involuntary

tory mass slaughter, the judge did not give instructions to the jurors, but on first degree murder, nor did he give instructions to the jurors, if the ^{state} stated did not have sufficient evidence, then the jurors had to free the defendant?

IX. Was it a violation of the defendant U.S. Constitutional rights, to the fifth and Fourteenth Amendments to both Due Process Clauses, the state had no motive or why that crime happened or occurred? Also, was it a violation, for the state to threaten defendant, to take their Plea bargain, but defendant had a jury trial?

X. Was it a violation of the defendant U.S. Constitution rights, to the Sixth Amendment, Fourteenth Amendment Due Process, ineffective assistance of counsel. The defendant requested a speedy trial, but defendant was denied, the right to a speedy and public trial, by an impartial jury, of the state and district where in the crime shall have been committed?

XI. Was it a violation of the defendant U.S. Constitutional right to sixth Amendment, Fifth Amendment, Fourteenth Amendment, Due Process, The defendant requested to his counsel, to let him put on or present evidence, in his own defense, but was denied?

XII. Was it a violation of the defendant U.S. Constitutional rights, Sixth Amendment, Fourteenth Amendment, Due Process Clauses, state lawyers to let the victim next door neighbor, boss from job, and friend serve on the jury panel?

CONCLUSION

The petition for a writ of certiorari ^{is} should be granted.

Respectfully submitted,

John Edward Butler

Date: OCTOBER 14, 2019