SUPREME COURT OF THE UNITED STATES

20-5693

ORIGINAL

IN RE:

Terron Gerhard Dizzley

ON PETITION FOR WRIT OF MANDAMUS

Case No.:_____

PETITION FOR WRIT OF MANDAMUS

Terron Garhard Dizzley

IN PRO SE

359480

Broad River Correctional Facility

4460 Broad River Rd.

Columbia, South Carolina - 29210

QUESTION PRESENTED

1. Whether the judges ruling that the jury's failure to reach a unanimus decision was not a failure on the jury's part, (" That's actually a strong message to the prosecution that they are unable to meet the burden of proof to the extent that they can bring back a unanimus verdict."); was acquittal and the constitutional prohibition of double jeopardy bars retrial.

2. Whether the judges decision to declare a mistrial hung jury after only two (2) hours and fifty (50) minutes of deliberation, an hour of that time consumed by questions from the jury and a break, without polling the jury dictated by a "manifest necessity" or "ends of justice," and violated petitioner Fifth Amendment Rights to have his trial completed by a particular tribunal.

3. Whether trial court in Petitioner's second trial lack jurisdiction to impose sentence.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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:

Michael Stephan (Warden)
Bryan Sterling, SCDC Commissioner/Director
Alan Wilson, Attorney General For State of South Carolina
Henry D. McMaster, Governor For The State of South Carolina

RELATED CASES

State V. Terron Dizzley, (First Trial), 2009-GS-00-778

Georgetown South Carolina, fifteenth Judicial circuit court of general sessions. Judgement entered August 30, 2012.

State V. Terron Dizzley, (Second Trial), 2009-GS-00-778.

Georgetown South Carolina, Fifteenth Judicial circuit court of general sessions. Judgment Entered April 3, 2014.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

STATUTES AND RULES PAGE NUMBER

OTHER

APPENDIX - B. Opinion below, For cases from federal/ state courts

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts**:

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

[ ] reported at See Other ; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

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

[ ] reported at See Other ; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

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

[ ] reported at See Other ; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at See Other ; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

OPINION BELOW

For cases from state courts:

There are no opinions published, Due to Petitioner's Appellate Counsel and the South Carolina Court of Appeals violation of Petitioner's Sixth Amendment Right to counsel and Fourteenth Amendment Rights to a direct appeal.

On July 9th 2015, Petitioner's Appellate Counsel sent a letter to the South Carolina Court of Appeals to withdraw petitioner's direct appeal without obtaining any of petitioner's legal material without fully investigating petitioner's case and without filing an Anders Brief.

On July 16, 2015. The South Carolina Court of appeals granted appellate counsel's request without conducting their own evaluation of the appeal to determine if counsel's evaluation of the appeal was sound. Violating Petitioner's Six Amendment Right to counsel and Fourteenth Amendment Right to a direct appeal. See Penson V. Ohio, 488 U.S. 75 (1988).

This is the reason why there are no opinions published below; Petitioner has been fighting for over six years to have his direct appeal as of right reinstated.

For cases from federal courts:

There are no opinion piblished.

Petitioner filed a writ of habeas corpus, 28 U.S.C. 2254 on January 7, 2020., raising this issue and others. The United States District Court, filed petitioner's application on January 13th 2020. Terron Dizzley V. Warden Stephan, C/A No. 8:20-CV-00126-SAL.

On January 27,2020, Petitioner filed objections to Magistrate Report and Recomendations. To no avail.

On January 21 2020, Petitioner Amended petition pursuant to his double jeopardy issue.

Om March 25, 2020, Petitioner Amended petition with a motion for immediately release or an evidentiary hearing pursuant to his double jeopardy issue.

On April 13, Petitioner filed a re-newed motion for immediate release.

On April 28, 2020, Petitioner filed a motion to show lack of jurisdiction and fraud upon the court.

On May 4, 2020, petitioner filed a motion to amend his motion to show lack of jurisdiction and fraud upon the court.

On May 4 and 22, 2020, Petitioner filed letters requesting to know why none of his motions were being responded to by the courts.

On June 18, 2020, Petitioner filed a Re-newed motion for immediate release double jeopardy and motion for issurance of show cause order.

On June 23, 2020, Petitioner filed an amended motion to his motion for issuance of show cause order.

The Federal Diistrict Court of South Carolina, refuses to respond to Petitioner's 28 U.S.C. 2254 Writ of Habeas Corpus application. therefore, there are no opinion in the federal courts.

Petitioner, contends that throughout the (6) years of appealing his conviction he has never had a full Rule - 5 discovery or case file including a full transcript of his first trial transcript containing Judge Baxley's ruling.

Petitioner has requested this information countless amounts of times through paid counsel, appointed counsel, and through countless amount of pro se request to no avail. Recently, Petitioner's mother acquired the missing portions of his transcripts containing Judge Baxley's ruling and petitioner was able to confirm that he was acquitted of the charges he was falsely incarcerated for and that his second trial was barred by double jeopardy.

Petitioner contends that after discovery this information is when he filed his 28 U.S.C. 2254 Writ of Habeas Corpus application.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was See Appendix - B.

[ ] 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

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

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

[X] For cases from **state courts:**

The date on which the highest state court decided my case was 2012. A copy of that decision appears at Appendix A.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case.

U.S. Const. Amend. 5

Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb.

U.S. Const. Amend. 8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. Amend. 13

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exit within the United States, or any place subject to their jurisdiction.

U.S. Const. Amend 14

All person born or naturalized in the United States, and subject to the jurisdiction therefore, are citizens of the United States, and of the State wherein they reside. No States 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 the law, nor deny any person the equal protection of the laws.

28 U.S.C. 2254

(a) The Supreme Court, a justice thereof, a circuit judge, or a district court shall entertain an application for a Writ of Habeas Corpus in behalf of a person in custody pursuant to the judgment of a state court only on the grounds that he is in custody in violation of the constitution or laws or treaties of the United States.

(b)(1), (B) (ii) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted unless it appears that-circumstances exist that render such process inneffective to protect the rights of the applicant.

(3),(d)(1)(2) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim--(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

28 U.S.C. 1651

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usage and principal of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

Statement of the Case

Petitioner was "acquitted of the charge of murder in which he is falsely imprisoned for in 2012 by the Honorable Judge Michael Baxley in Georgetown South Carolina, Court of General Sessions. Judge Baxley's ruling was based on " insufficient evidence "to convict which established the Petitioner's innocence and lack of criminal culpability that the prosecution "failed to meet their burden of proof." See Trial of 2012. Tr. P. 314, L 4-18, specifically L13-18. " Now what you've told us is that you can't reach a unaimus decision and I would say to you to that's not a failure on your part. That's actually a strong message to the prosecution that they are unable to meet the burden of proof to the extent that they can bring back a unanimus verdict."

Petitioner contends that according to clearly established Federal laws supported by the U.S. Supreme Court Judge Baxley's ruling was an "acquittal" and retrial was barred by the double jeopardy clause of the Fifth Amendment of the United States Constitution.

Petitioner contends that Judge Baxley's ruling was non-appealable, therefore there is no legal justification

for his second trial of 2014, there is no legal justification for petitioners false imprisonment, and the trial court lacked jurisdiction to impose sentence. U.S. V. Scott, 437 U.S. 82 (1978). " A judgment of acquittal, whether based on a jury verdict of not guilty or on a ruling by the court that the evidence is insufficient to convict may not be appealed and terminates the prosecution when a second trial would be necessitated by a reversal. " U.S. V. Wilson, 420 U.S. 332, 95 S.Ct. 1013 (1975), " Constitutional protection against government appeals attaches only where there is a danger of subjecting the defendant to a second trial for the same offense. Provision of the criminal appeals Act of 1907 that government could not have a Writ of error in any case where there had been a verdict in favor of the defendant was to ensure that the statute would not conflict with the principals of the double jeopardy clause." U.S. V. Martin Linen Supply Co., 430 U.S. 564 (1977); Smalis V. Pennsylvania, 476 U.S. 140 (1986). See also Memorandums of Law attached and copy of the Honorable Judge Baxley's ruling.

Although Petitioner's acquittal barred retrial. The Georgetown County Solicitor's Office illegally tried petitioner for a second time in 2014. These illegal, unconstitutional actions of South Carolina has been practiced for years until 2012. State V. Langford, " declaring solicitor

control of the criminal docket unconstitutional." Despite this ruling South Carolina continues to practice these unconstitutional actions.

As a result, Petitioner has been held " hostage" and is still being held " hostage " for over (6) years and counting in violation of his Fifth, Fourteenth, and Eighth Amendment Rights to be free from " Cruel and Unusual Punishment, 400 S.C. 421 (2012).

Jurisdiction

Exparte U.S. 242 U.S. 27 (1916), Mandamus is proper remedy where federal district court has exceeded its power by suspending sentence to imprisonment indefinitely during good behavior. Expart Lange, 85 U.S. 163 (1873), it was ruled, after an examination of authorities, that when a prisoner shows that he is held under a judgment of a federal court given without authority of law, this court, by writ of habeas corpus and certiorari, will look into the record so far as to ascertain whether that is the fact, and, if it is found to be so, will discharge him. Mr. Justice Miller said, in delivering the opinion; Exparte Siebold, 100 U.S. 371 (1879), The court held that a prisoner could properly

raise on habeas corpus the claim that the statue under which he was convicted violated the federal constitution. If the prisoner was correct in his claim, the court noted, then " the foundation of the whole proceeding " would be affected.

Since "an unconstitutional law is void and is as no law." a "conviction obtained under it is not merely erroneous, but is illegal and void." The trial court's authority to try the petitioners "arose solely upon these laws," so if the " laws were unconstitutional and void, "the trial court acquired no jurisdiction of the causes." Exparte Virginia, 100 U.S. 339 (1879), Held that while a Writ of habeas corpus can not generally be made to subserve the purposes of a writ of error, yet when a prisoner is held without any lawful authority, and by an order which an inferior court of the United States had no jurisdiction to make, this court will, in favor of liberty, grant the writ not to review the whole case, but to examine the authority of the court below to act at all. "See also Exparte Hamilton, 3 Dall. 17, this court awarded a Writ of Habeas Corpus, to review a commitment under a warrant of a district Judge. In Exparte Burford, 3 Cranch 448, such a writ was awarded to review a commitment by the circuit court of the District of Columbia, not to

review a decision of an inferior court upon a habeas corpus issued by it. So in Exparte Jackson, 96 U.S. 727, in which the question of our power to issue the writ was raised, and the petition only averred that the circuit court had exceeded its jurisdiction this court considerd the merits of the case, without regard to the fact that there had been no habeas corpus in the court below." Fong Foo V. U.S., 369 U.S. 141(1962). Mandamus case. The Supreme Court granted certiorari to consider a question of importance in administration of of justice in federal court, namely the power of the district court to direct acquittals during presentation of goverment's case.

Petitioner contends that pursuant to these cases this court is empowered to grant his petition in such a case as presented. Petitioner contends that the State of South Carolina has acted in willful blindness, and intentionally held him " hostage " for over six years depriving petitioner of his liberty, property, and equal protection of the laws.

Although Petitioner was born in the United States thus a citizen of the United States. According to South Carolina the Fifth Amendment of the United States Constitution's double jeopardy clause does not apply to petitioner."Nor

shall any person be subject for the same offense to be twice put in jeopardy of life or limb." According to South Carolina the Fourteenth Amendment of the United States Constitution does not apply to Petitioner. " all person 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 the equal protection of the laws."

According to South Carolina, petitioner must be subjected to " False Imprisonment," Slavery" with no legal justification or jurisdiction to impose his unlawful sentence in violation of petitioner's Eighth Amendment Rights, to be free from " Cruel and Unusual Punishment, and Thirteenth Amendmend Right. " Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Double Jeopardy

Petitioner contends that the Honorable Judge Baxley's ruling of " acquittal " resulted from an improvidently granted mistrial hung jury after only two (2) hours and fifty minutes of deliberations, potions of that time was consumed by a lunch break and several question from the jury and time for answering these questions and that time accounted for approximately an hour, which left only (1) hour and (50) minutes for debliberations.

According to clearly established federal law. The Honorable Judge Baxley's decision to declare a mistrial was not dictated by a " manifest necessity " or " ends of public justice," Which violated petitioner's Fifth amendment right to have his trial completed by a particular tribunal. Because jeopardy attached when the jury was sworn in. Petitioner contends that his second trial was barred by double jeopardy. See: Transcript of 2012. trial pages 305, L 21-pages 316.

In State V. Prince, 279 S.C. 30 (1983), " The Supreme Court held that where jury had been deliberating only from approximately 4:30 in the afternoon until about ten o"clock

at night, a portion of that time consumed by evening meals mistrial was ordered over defendant's objections after jury request testimony of two witnesses to be read and court reporter indicated that testimony would take approximately two hours and ten minutes was not dictated by manifest necessity or ends of public justice, and therefore retrial of defendant was barred by double jeopardy. Reversed. Citing Benton V. maryland, 395 U.S. 784; Wade V. Hunter, 336 U.S. 684; Downum V. U.S, 372 U.S. 734; Illinois V. Somerville, 410 U.S. 458; State V. Bilton, 153 S.E. 269; State V. Raven-Craft, 71 S.E. 2d 798; State V. Rowlands, 343 S.C. 454 (2000).

U.S. V. Razmilovic, 507 F. 3d 130 (2007), " this case at hand calls on us to review such a ruling to determine whether it was an abuse of discretion for a trial court to decide that a single note indicating deadlock created, " " manifest necessity" to declare a mistrial. On the record before us, we conclude that it was. We therefore hold that retrial of defendants - appellants Michael DeGennaro Frank Borghese would violate double jeopardy clause of the Fifth Amendment. We also must decide whether Borghese consented to the mistrial but then almost immediately changed his position. We find that Borghese did not deliberately

forego his right to have his guilt determined by his original tribunal. The Court of Appeals Katzmann, Circuit Judge held that (1) there was no manifest necessity to declare mistrial and (2). defendant did not move for or consent to mistrial. Reversed and Remanded. united States V. Gordy, 526 F. 2d 631, 636-37 (5th Cir. 1976)(finding that record was insufficient to determine that "no verdict could be reached," despite statement by foreman that jury was "hung," because no dialogue " was developed with jurors individually" and it could not be said with certainty that further deliberations " would have proved futile"). U.S. V. Jorn, 400 U.S. 470 (1971). In finding a lack of manifest necessity, the plurality stressed that the trial judge gave absolutely " no consideration " to the alterative of a trial continuance, and " indeed, acted so abruptly in discharging the jury " that the parties were given no opportunity to suggest the alternative of a continuance or to object in advance to the discharge of the jury. The plurality concluded that where, trial judge simply " made no effort to exercise sound dis-cretion to assure that there was a manifest necessity for the sua sponte declaration of a mistrial," "a" reprosecution would violate the double jeopardy provision of the Fifth Amendment. After only one hour and fifty minutes, Judge Baxley with no consideration to any alternative

without polling the jury declared a mistrial and from the trial record the only "sufficient justification" was that, after evaluating the states evidence, that it was not a failure on behalf of the jury. " That's actually a strong message to the prosecution that they are unable to meet the burden of proof to the extent that they can bring back a unanimus verdict." Evans V. Michigan, 568 U.S. 313 (2013), An acquittal for double jeopardy purposes includes a ruling by the court that the evidence is insufficient to convict, a factual finding that necessarily establishes the criminal culpability, and other rulings which relates to the ultimate question of guilty or innocence. Labels do not control the analysis of whether a decision dismissing a criminal case bars retrial under double jeopardy clause, rather the substance of the court decision does. The U.S. Supreme Court, Justice Sotomayor, held that midtrial directed verdict and and dismissal, based on trial court's erroneous requirement of an extra element for the charged offense, was "acquittal" for double jeopardy purposes. Most relevent here, an " acquittal encompasses any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense." U.S. V. Martin Linen Supply Co, 430 U.S. 564

(1977), The U.S. Supreme Court, Mr. Justice Brennan held that double jeopardy clause barred appeal by U,S. from judgments of acquittal entered under rule 29(c) following discharge of jury which had been unable to agree on verdict in criminal contempt trial. Affirmed. Although statute authorizes an appeal by the U.S. in criminal case from a district court " dismissal " rather than "acquittal" the form of the ruling is not dispositive of appealability in a statutory sense. Rather, we must determine whether the ruling of the judge, whatever it's label, actually represent a resolution, correct or not, of some or all of the factual elements of the offense charged." Lee V. U.S., 432 U.S. 23 (1977). " Question as to whether double jeopardy clause prohibits retrial after the case has been terminated, after jeopardy has attached, without a finding on the merits does not depends upon whether the court labels it's action a dismissal or declaration of " Mistrial " but rather whether the order contemplates and ends to all prosecution of the defendant for the offense charged." Smith V. massachusetts, 543 U.S. 462 (2005), " The U.S. Supreme Court, Justice Scalia, held that: (1). State trial judge's initial ruling on defendant's motion for finding of not guilty on firearm charge, in which judge evaluated common wealth's evidence and decided

that it was not legally sufficient to sustain conviction on firearm charge qualified as " judgment of acquittal" for double jeopardy purposes; and (2) Once state trial judge had entered midtrial judgment of acquittal on fire arm count, with no reservation of right to reconsider this ruling or indication that the ruling was not final, and once trial had proceeded to introduction of evidence by defendant, Double Jeopardy Clause barred trial judge from reconsidering that acquittal after defendant and his code-fendant had rested. Reversed and Remanded. Sanabria V. U.S., 437 U.S. 54 (1978). Fong Foo V. U.S., 369 U.S. 141 (1962 a judge's entry of an acquittal because he viewed the government's initial witnesses as inherently incredible constituted a bar to further proceeding even though the judge went beyond the relevant federal rules provision by directing the acqittal before the prosecution had completed its case - in chief.

U,S. V. Thompson, 690 F. 3d. 977, 996, (8th Cir. 2012), " double jeopardy bar because judge's initial acquittal at close of defendant's case was determination that government had not met burden of proof." U.S. V. Ogles, 440 F.3d 1095, 1104 (9th Cir. 2006), " double jeopardy bar to government's appeals of bench acquittal because government's evidence

insufficient to sustain conviction." U.S. V. Lynch, 162 F.3d 732, 735 (2d Cir. 1998), "double jeopardy bar to goverment appeal of bench acquittal because government failed to prove facts sufficient to establish element of charge," Piaskowski V. Bett, 256 F. 3d 687, 694-95 (7th Cir. 2001). " double jeopardy bar to retrial because court's holding that evidence insufficient acted as " functional equivalent of an acquittal.

U.S. V. Hunt, 212 F. 3d 539, 543-44 (10th Cir. 2000 " double jeopardy bar to government appeal of bench acquittal because government failed to prove facts sufficient to establish elements of charge."

In 1873, in Exparte Lange, 85 U.S. 163 (1873), the court initiated what has been described as a " long process of expansion of the concept of a lack of jurisdiction. " Lange contended that he had been twice sentenced for same offense, in violation of the Fifth Amendment's double jeopardy clause, when he had been re-sentenced to a term of imprisonment after having paid the fine originally imposed. Carefully disclaiming the use of habeas as a writ of error, the Supreme Court ordered, Lange release from imprisonment because the lower Court's jurisdiction terminated upon the satisfaction of the original sentence.

False Imprisonment

Whirl V. Kern, 407 F. 2d 781 (1968), On November 4, 1962 the indictments pending against whirl were dismissed by a nolle prosequi on the grounds that the evidence against whirl was " insufficient to obtain and sustain a conviction." Despite the dismissal. Whirl languished in jail for almost nine months after all charges against him were dismissed, and was not restored to his freedom until July 25, 1963.

The central issue in this case is one of privilege, not of fact. The tort of false imprisonment is an intentional tort. It is committed when a man intentionally deprives another of his liberty without the other's consent and without adequate legal justification. Failure to know of a court proceeding terminating all charges against one held in custody is not, as a matter of law, adequate legal justification for an unauthorized restraint. Where the law otherwise, Whirls' nine months could easily be nine years, and those nine years, ninety--nine years, and still as a matter of law no redress would follow.

The law does not hold the value of a man's freedom in such low regard."

Kilbourn V. Thompson, 103 U.S. 168 (1880), " A resolution of the House of Representative finding a citizen guilty of contempt and warrant of its speaker for his commitment to prison were not conclusive in an action for false imprisonment and no justification to the person making the arrest where the pleading showed that the House was without any authority in the matter.

Director General of Railroad V. Kastenbaum, 263 U.S. 25 (1923), Wallace V. Kato, 549 U.S. 384 (2007). Beckwith V. Bean, 98 U.S. 266 (1878). In action against army officers for assault and battery and false imprisonment, defendant's were not entitled to dismissal on grounds that their act were done under the authority of orders of the United States during the Civil War, where there were many disputed facts in the case disconnected from any question of authority from such orders, sine proof of oppressive of corrupt abuse of authority would authorize verdict for plaintiff.

See: Transcript of 2012 Trial Pages - 305, Line - 21, Pages 316. Honorable Judge Baxley's ruling. After charge by Honorable Judge Baxley on August 29, 2012.The jury began deliberating August 30, 2012, at 9:30 am. See Tr.P. 305, Line-21 - Page - 306, Line - 1 - 8.

During deliberations a note from the jury was received at 10:03 am. Reply from the court was sent back to the jury at 10:21 am. Another note from the jury was received at 11:12 am., and the the judge gave an Allen charge. See: Tr. P. 308, Line - 6, through Page - 313, Lines - 1 - 8., Another note was received from the jury at 12:20 pm., As a result of this last note indicating that the jury was unable to reach a decision.

The Honorable Judge Baxley, after only two hours and fifty minutes, with out polling the jury or considering any other alternatives declare a mistrial, an hour of that time consumed by question from the jury and a lunch break. See: Tr. P. 313, Line - 15 through Page - 315, Lines - 1 - 10.

Petitioner contends that on several occasions the Honorable Judge Baxley, stated clearly on several occasions that his decision to declare a mistrial had nothing to do with a failure on the part of the jury to reach a verdict.

The Honorable Judge stated clearly on several occasions that his decision to declare a mistrial was based on " insufficient of evidence " to convict which established the Petitioner's innocence and lack of criminal culpability that

the prosecution " are unable to meet the burden of proof to the extent that they can bring back a unanimous verdict." See Tr. P. 313, Lines - 24 through Page - 315, Lines - 1 - 10.

Reason Why The Writ Should Be Issue

The United States Supreme Court has held when a prisoner is held without any lawful authority, and by order which an inferior court of the United States had no jurisdiction to make this court will, in favor of liberty, grant the writ not to review the whole case, but to examine the authority of the court below to act at all. Exparte Virgina, 100 U.S. 339 (1879)., and if it is found to be so, will discharge him. Exparte Lange, 85 U.S. 163 (1873), Exparte Yerger, 75 U.S. 85 (1868).

Petitioner has supported this writ evidence of the

Honorable Judge Baxley's ruling from his trial of 2012, and clearly established federal law supported by the United States Supreme Court that he was " acquitted " of the charges he is falsely imprisoned for.

Petitioner avers that these facts as to the law shows that his second trial was illegal, unconstitutional, and trial court lacked jurisdiction to impose sentence.

Petitioner avers that the facts as the law shows that he is being held "Hostage" in the South Carolina Department of Corrections without any legal justification or jurisdictional authority.

Petitioner avers that these facts as to the law raise interest so urgently demanding immediate relief that the judicial system cannot rely upon the ordinary avenue of correction.

Immediate review is deemed necessary to prevent any further harm to petitioner or days spent falsely incarcerated pursuant to Petitioner's Eighth Amendment Rights to be free from Cruel and Unusual Punishment and to be free from subjection to slavery pursuant to this imprisonment in violation of the Thirteenth Amendment.

In rare instances involving lengthy delays, Appellate

Court should enforce Rule 8 (c)'s Speedy - Trial policy by means of Mandamus under the all Writ Act, 28 U.S.C. 1651

Because habeas corpus helps assure that the determination of a prisoner's guilt was " full and fair " delays in processing petition that are not justified by a need for adequate investigation or preparation interfere with the policy underlining the Constitutional guarantee of a speedy trial.

Petitioner is an American citizen of the United States, and a citizen of South Carolina. The State of South Carolina abridged, and deprived him of life, liberty property, and equal protection of laws without any legal justification or jurisdictional authority.

Petitioner contends that pursuant to this request for " Writ of Mandamus " he has shown that his right to issuance of the Writ is " Clear and Indisputable."

Wherefore now, above premises considered, the Petitioner respectfully moves this Honorable Court to issue a Writ of Mandamus directing the State of South Carolina to immediately release petitioner from the South Carolina Department of Corrections pursuant to Double Jeopardy, False Imprisonment, and lack of jurisdiction of trial court to impose sentence pursuant to State V. Terron Dizzley, 2009-GS-00778.

C O N C L U S I O N

It is respectfully submitted that Writ of Mandamus is proper remedy, and Petitioner prays that the relief sought herein be granted.

Date: August 27, 2020.

Terron Gerhard Dizzley # 359480
B.R.C.I Marion Unit # 169
4460 Broad river Rd.
Columbia, South Carolina-29210