No. 20-7009

In The

Supreme Court of the United States

Mark Rudolph Arsenio Reed

Petitioner,

v

Robert Toole, Warden/Regional Director

Georgia Department of Corrections et,al.

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Mark Rudolph Arsenio Reed
GDC 1000664635
GEORGIA STATE PRISON
1st Avenue, South
Reidsville, GA 30453
In Pro Se

January 8, 2021

Question(s) Presented

Georgia state law O.C.G.A. 17-9-61 provides the following: (a) When a judgement has been rendered, either party may move in arrest thereof for any defect not amendable which appears on the face of the record or pleadings. (b) A motion in arrest of judgement *must* be made during the term at which judgement was obtained. The United States Constitution First Amendment reads in relevant part which guarantees the "right of the people... to petition the Government for a redress of grievances".

1.

The question is whether an indigent defendant whose representation by appointed trial counsel terminates at the end of sentencing, whom intends to exercise the right to file a motion in arrest, however does not have post conviction appellate counsel appointed by the court until well after the end of the term of court as judgement entered, does that defendant have standing to claim a deprivation of the First Amendment right to petition the court

1(a) Whether under the aforementioned circumstances does an indigent defendant have standing to claim a deprivation of effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution, for not being appointed appellate counsel at a critical stage pre-appeal; (b) and as the designated class, do indigent defendants have standing to claim violations of both Due Process of the Law and Equal Protection of the Law in accord with the

Fourteenth Amendment of the United States Constitution for not being appointed appellate counsel at the same term of court judgement was obtained, ultimately not making the 17-9-61 filing and hearing of the motion in arrest available to counsel nor defendant.

2.

Under Georgia state law, when a claim that an indictment is absolutely void is not properly asserted in the trial court, it can only be reviewed on appeal through a Habeas Corpus proceedings. A motion for new trial is not a proper proceeding for raising questions as to the legal sufficiency of an indictment, and provides nothing for review on appeal. *Taylor v. State*, 303 Ga. 583 (2018).

The question is whether the Eleventh Circuit has misinterpreted and misapplied the governing standard for assessment for a Certificate of Appealability as set forth in *Miller-El v. Cockrell*, 537 U.S. 322 (2003), by deferring to and adopting the district courts and lower state courts ruling and findings, all of which defer to the trial courts findings from a Motion For New Trial final order, a court to which the state law establishes has no subject matter jurisdiction over the claims submitted before the magistrate, district court and Eleventh Circuit.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all the parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

The petitioner Mark R.A. Reed is the petitioner listed in the action No. 20-10802 before the Eleventh Circuit. Robert Toole is Warden / Regional Director named as respondent to in action No. 20-10802. Megan Hill and Paula K. Smith were respondents on behalf of the state of Georgia in the habeas action No. 1:18-cv-03970-AT before the magistrate court in the United States District Court, Northern District of Georgia. They were not parties before the District Court nor the United States Court of Appeals.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Cases

FEDERAL CASES

STATE CASES

TABLE OF AUTHORITIES CONT...

CONSTITUTION

OFFICIAL CODES OF GEORGIA

FEDERAL CODES

In The

Supreme Court of the United States

Mark Rudolph Arsenio Reed, In Pro Se,
Petitioner,

v.

Robert Tools, Warden, Regional Director ., et al.,
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner Mark R.A. Reed respectfully petitions this Court issue a writ of certiorari to review the order of the United States Court of Appeals for the Eleventh Circuit denying a Certificate of Appealability ("COA") to review the denial of his petition for a writ of habeas corpus relief before the Northern Federal District Court of Georgia in his Georgia State criminal case.

OPINIONS BELOW

The Eleventh Circuit Court's decision denying Mr. Reed Certificate of Appealability is unreported, it is available at Reed v. Toole, No. 20-10802, September 3, 2020 (Appendix A (1)). The Northern District Court of Georgia issued an order denying reconsideration of the Magistrates recommendations, it is unreported, it is available at Reed v. Toole, No. 1:18-cv-03970-AT, February 21, 2020 (Appendix B 1,2). The Magistrates recommendations denying habeas corpus relief is

unreported, it is available at Reed v. Toole, No. 1:18-cv-3970-AT-CMS, December 17, 2019 (Appendix C). The Georgia Supreme court issued a one line denial of a Certificate of Probable Cause, it is unreported, it is available at *Reed v. Toole*, No. S17H1626, June 4, 2018 (Appendix D (1)). The state habeas court issued an order denying habeas corpus relief, it is unreported, it is available at *Reed v. Toole,* No.2014-HC-99-CR, April 13, 2017 (Appendix E). The Georgia Supreme Courts order denying direct appeal is reported at *Reed v. State*, S13A1583, March 28, 2014, it is available at (Appendix D (2). The state trial courts final order denying motion for new trial, February 26, 2013 is unreported, it is available at *State of Georgia v. Mark Reed*, No. 09-CR-4282-4, it is available at (Appendix F)

JURISDICTION

The date on which the United States Court of Appeals decided my case was September 3, 2020. A timely petition for reconsideration was denied by the United States Court of Appeals Eleventh Circuit on the following date: October 22, 2020, and a copy of the order denying reconsideration for COA appears at Appendix A (2). This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves a state criminal defendant's constitutional rights under the First, Sixth, and Fourteenth Amendments, and is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), codified in relevant part at 28 U.S.C. § 2254, 28 U.S.C. §2253

The First Amendment to the United States Constitution provides in pertinent part the following:

> 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, to petition the Government for a redress of grievances.

U.S. const.amend. I

The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted 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.

U.S. Const. Amend. VI

The Fourteenth Amendment to the United States Constitution provides:

> 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.

U.S. Const.Amend. XIV
28 U.S.C. § 2253 provides, in pertinent part:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

> (A)the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court

* * *
(2) A certificate of appealability may issue under paragraph (1)
only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C. §2254

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgement of 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 claims-
> (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....

STATEMENT OF THE CASE
FACTUAL AND PROCEDURAL HISTORY

The petitioner Mark Reed, attended trial in the DeKalb County Superior Court in Georgia on September 26, 2011 on a seven count indictment. After the jury was impaneled and sworn, the prosecution presented its theory of the case. During the opening statements prosecutor William Clark addressed the jury directly concerning the indictment. Mr. Clark told the jury the date in the grand jury indictment is not correct, and further admonished the jury not to be listening for anything concerning that date. In accordance with state law, this is not permissible. The indictment became void once the date was stricken from the indictment, the trial, the jury and the defense. The state did not present an explanation nor another date (App. G Doc. Pg. 63). Under state and federal law the court was obligated to direct the verdict. The court permitted the trial to continue. Mr. Reed was subsequently convicted on all seven counts in the indictment, ranging from felony murder, malice murder, theft by taking, theft by receiving, aggravated assault, possession of a fire arm within arms reach, and concealing death of another.

Mr. Reed was ordered to serve a life sentence, on October 11, 2011. At the end of sentencing Mr. Reed's conflict appointed counsel Karlyn Skall was dismissed from representation.

Mr. Reed awaited appointment of post conviction appellate counsel from October 11, 2011 sentencing, until the end of that term of court, the first Monday of November 2011. Mr. Reed was unable to reach the O.C.G.A. 17-9-61(a)-(b) *'Motion in Arrest'* filing deadline without counsel of record.

Mr. Reed is not able to petition the court, in Georgia, while being represented by counsel or while awaiting appointment. The court amplified the law concerning representation when Mr. Reed, without counsel, and while awaiting appointment of counsel. petitioned the court for a series of court records and the trial transcript. The court fashioned an "order" denying access to anything (public records nor case related) while being represented, citing *Voils v. State*, 266 Ga. App. 738, 742 (2004); *Pless v. State,* 255.Ga. App. 95,,96,(2002) (App. F-2).

Mr.Reed's appellate counsel was not appointed until Mrs. Teri Smith was appointed in August 2012 (App.

H-2). Mr. Reed and appellate counsel both were deprived of the availability of the opportunity to file a relevant and timely *Motion In Arrest* nine months prior when the term of court ended.

The first time that Mr. Reed had any other matter before the court concerning the same case was a motion for new trial hearing (case No. 09-CR-4282) scheduled for January 8, 2013. At this phase Mr. Reed elected to proceed In Pro Se.

At the scheduled hearing for January 8, 2013, Mr. Reed submitted to the court a motion in *Leave to file a Motion In Arrest* . The court received the motion, but denied it outright for being untimely. The court scheduled another hearing for February 12, 2013.

Want of Subject Matter Jurisdiction

At the February hearing Mr. Reed did submit the grounds of his *Motion In Arrest*, in a motion for new trial to the court[1] in reconsideration that it was not the

[1] Georgia law is settled that the motion for new trial is not the appropriate proceeding for grounds of void indictment; statute of limitations; variance; impermissible amendment to indictment, nor is it a substitute for grounds of a motion in arrest. *State v. Graves*, 322 Ga. App. 798 hn. (1)-(2) fn. (3)-(4)(2013) To those allegations, post conviction, the trial court has no subject matter jurisdiction, outside of a motion in arrest of judgement O.C.G.A. 17-9-61.

fault of the defendant nor appellate counsel that the motion in arrest was not timely filed, that the court may recognize the error and an exception may qualify the review of those grounds.

Upon the courts request Mr.Reed explained the nature of the grounds in the motion alleging that the state unlawfully amended the indictment, the state assistant district attorney Leonora Grant stipulated to orally amending the indictment and not producing a date for the indictment, (App. I Doc. Pg. 9-10) (for which the trial court acknowledge), and in addition, not proving it upon the trial. Mr. Reed accepted the stipulation and both sides continued in argument.

On February 26, 2013 the court generated an order denying the motion for new trial. In the order it addresses the grounds of (1) void indictment; (2) constructive amendment; (3) variance; (4) impermissible amendment to the indictment; (5) First, Sixth, and Fourteenth amendments constitutional violations for the trial court restricting access to filing and hearing of motion in arrest of judgement,.. This "order" is conducted by the courts unauthorized adjudication of those grounds. (App. F-1)

Mr. Reed filed a timely petition for State direct

appeal. Within the brief of appeal Mr. Reed made inclusive the same grounds of the motion for new trial.[2]

On March 28, 2014, the state appeals court generated its final order denying the direct appeal, addressing those grounds,... by the courts unauthorized adjudication of those grounds. (App. D-2) Mr. Reed elected not to pursue a writ of Cert. to this court on the same grounds, for it could have been easily proven by the respondents that the trial court and the appellate court were without jurisdiction to review the same grounds, and have that Cert. petition denied or excluded from consideration, making this petition successive on the same grounds, although challenged through the correct medium of law.

The State Habeas Court Has First Qualified Subject Matter Jurisdiction

Mr. Reed filed a timely petition for state habeas corpus relief. Mr. Reed filed an amended petition replacing the grounds in the petition with the

---

[2] Georgia law is settled on the provision that indictment related grounds not challenged by demurrer or motion in arrest of judgement cannot be enlarged as an enumeration of error at a motion for new trial, and thereby leave nothing to review on appeal. Parties to an action cannot confer jurisdiction upon a court that does not have jurisdiction. O.C.G.A. 15-1-2

following: 10

Impermissible amendment to the indictment by the state. (U.S. Const. Amend. V, XIV violations alleged) Not reviewed through the body of evidence.

Sixth amendment violation to notice, depriving petitioner of defense and right to fair trial (resulting from the amendment). Not reviewed through the body of evidence.

Constructive amendment.(U.S. Const. Amend. XIV alleged) Not reviewed through the body of evidence.

Court restricted access to file Motion in Arrest (first, sixth, and fourteenth amendment U.S. Const. Violations alleged) Not reviewed through the body of evidence.

Statute of Limitations (U.S. Const. Amend. XIV violations alleged) Not reviewed through the body of evidence.

Void indictment. (U.S. Const. Amend. XIV violations alleged) Not reviewed through the body of evidence.

Defective Verdict. (U.S. Const. Amend. XIV violations alleged) Not reviewed through the body of evidence.

Judgement and conviction void "Year-and-a-day-rule" (U.S. Const. Amend. XIV violations alleged). Not reviewed through the body of evidence.

Void and unconstitutional sentence. Failure to show in indictment crime occurred prior to return... (U.S. Const. Amend. XIV violations alleged) Not reviewed through the body of evidence.

Variance.(U.S. Const. Amend. XIV violations alleged) Not reviewed through the body of evidence.

Abuse of discretion. (U.S. Const. Amend. XIV violations alleged.

Explanation of the habeas courts jurisdiction, and the want of jurisdiction from the trial court to the appeals court.

The respondents presented nothing in writing to the court in opposition to the allegations submitted by Mr. Reed's amended petition. The law recognizes that the respondents have waived opposition in the lower state courts.

On April 13, 2017 the habeas court generated an order denying habeas relief. That court drew all of its fact finding and conclusions of law from deference to the appeals court and the trial court, also ruling res judicata while reaching the merits of the allegations. (App. E)

Mr. Reed filed a timely petition for Certificate of Probable Cause to the Georgia Supreme Court. The Georgia Supreme Court issued a one line denial for a Certificate of Probable Cause on June 4, 2018.

The Federal Courts Writ of Habeas Corpus

Mr. Reed filed a timely petition for writ of habeas corpus with the lower district court. That petition alleges the same grounds alleged in the state habeas and appellate court. (App. D-1)

Respondents filed the first formal response, in the magistrate court, the Answer to the federal habeas petition. In the answer, the respondents draw all of the fact finding and supporting legal synopsis from the state appeals court, state habeas court and the trial court.

The magistrate judge fashioned a recommendation that drew all of its conclusions from the motion for new trial hearing and final order, from the body of evidence, and the state appellate court. The court deferred to the lower state court rulings of law and findings of fact. The magistrate denied the writ and In Forma Pauperis December 17, 2019. (App. C)

Mr. Reed filed a timely opposition to the reports and recommendation and petition for Certificate of Appealability. The district court denied the petition for COA, and denied In Forma Pauperis adopting the recommendations of the magistrate and also deferring to the lower state courts orders and finding of facts, and also making conclusions from the body of evidence

of the state trial court, February 21, 2020. (App. B)

Mr. Reed did file a timely petition for Certificate of Appealability in the United States Court of Appeals. The petition answers the denials by the magistrate and district courts, with clarity. However, the petition also addresses the law against the rulings of the courts without subject matter jurisdiction.

The lower court denied the petition for Certificate of Appealability. The petition was denied September 3, 2020 (App. A-1) along the same grounds as the other courts, with a deference to the court rulings that are void of subject matter jurisdiction or that defer to the body of evidence from the trial, see (App. F-1 Denial from Motion for New Trial).

Mr. Reed did file a timely petition for reconsideration with the lower court. That petition was denied October, 22, 2020 as being moot.(App. A-2)

Reason For Granting The Petition

1.The Court Should Grant Certiorari To Resolve The Systematic Deprivation Of Constitutional Rights Of Indigent Defendant's To Exercise The First Amendment Right To Petition The Courts Free Of Unreasonable Restrictions; The Sixth Amendment Right to Be Appointed Effective Assistance Of Counsel During Critical Stage; The Fourteenth Amendment

Right To Due Process Of The Law; The Fourteenth Amendment Rights Of The Indigent Class Of Defendants To Enjoy Equal Protection Of The Law

"Because the fundamental importance of the assistance of counsel does not cease as the prosecutorial process moves from the trial to the appellate stage, the presumption of prejudice must extend as well to the denial of counsel on appeal, *Penson v. Ohio*, 488 U.S. 75, 88 (1988)."

A. Indigent Defendants Are The Deprived Class

A state defendant has a right to challenge issues of constitutional rights violations for subjects that do not require examination of the body of evidence pursuant to O.C.G.A. 17-9-61(a)-(b) *Motion In Arrest.*

However, state defendants just as federal defendants are divided into three distinct classes; those that exercise the right to self representation; those that are able to afford the labors of hired counsel; those that are at a financial disadvantage and counsel has to be appointed. All are to be afforded diverse protections in accord with the Sixth and Fourteenth amendment.

The class that is being burdened by the deprivation of constitutional rights systematically imposed by court process or the lack thereof, are "indigent defendants".

The court assumes the initial responsibility for arranging and providing appointed legal assistance for indigent defendants.

In Georgia alone there are a minimum of 43 offices for the Public Circuit Defender, aside from the Conflict counsel. The qualified offices are contracted to provide two circumstances of representation. First circumstance of representation, trial counsel conducts pre-trial hearings motion; arraignments; preliminary hearings; trial; and possibly sentencing ...the only post conviction proceeding. The second circumstances of representation is the motion for new trial; motion in arrest of judgement; and other post conviction hearings conducted before final judgement; and direct appeal, is

the responsibility of post conviction/appellate counsel. The trial counsel is dismissed from obligation of representation once judgement is pronounced. Unlike those that have been admonished of their right to legal assistance on record, and have waived that right[3]; or as those that are able to hire counsel which can labor throughout until the end of the appeal process. The indigent defendant is under the guide of the court and are subject to the provision and limits of the contracts between the court and the circuit defender's office.

Some appointed counsel file skeletal motions for new trial in the sentencing court or shortly thereafter, as a courtesy to secure the filing of that motion within the statutory 30 day deadline. Because the indigent

---

[3] *Faretta v. California*, 422 U.S. 806 (1975) Requires a waiver of right to counsel , on the record, in open court. The waiver must be knowing and intelligent.

defendant is not at liberty to file on his behalf[4], although not formally being represented after counsel is dismissed.

Just as with Mr. Reed, he was appointed conflict counsel Karlyn Skall, that remained in representation until sentencing. After judgement was pronounced, the court dismissed Mrs. Skall from all obligations in the case. Mrs. Skall elected to inform the court that she filed a skeletal motion for new trial.

At [t]hat moment the court was orally and clerically informed of Mr. Reed's intent to pursue post conviction relief. However, the law does not set any prerequisites to give additional notice to the court of the defendants intent prior to filing a motion in arrest, motion for new

---

[4] Appointment of counsel for an indigent is required at every stage of a criminal proceeding where substantial rights of a criminal accused may be affected, *Mempa v. Rhay*, 389 U.S. 128, 134 (1967). Once the right has matured, the law is now certain that it continues through the conclusion of appellate review. *Douglas* v. *California*, 372 U.S. 353 (1963); *Swenson* v. *Bosler*, 386 U.S. 285 (1967).

trial nor appeal[5]. 18

B. The Sixth And Fourteenth Amendments Guarantee The Effective Assistance Of Counsel Throughout Critical Stage

Although the sentencing court was made aware of the intent, like so many other indigent defendants similarly situated, in Mr. Reed's case he was sentenced on October 11, 2011, however, post conviction appellate counsel Gerard Kleinrock, on January 18, 2012, sent Mr. Reed notice of his being appointed as counsel for appeal. (App. H-1) However, Mr. Kleinrock works for the Public Defender's Office, whom represented the states witness in the same case. Mr. Reed wrote a letter to the court and explained the conflict of interest. Mrs. Teri Smith, was not appointed until August 23, 2012, both appointments well after the term of court as judgement rendered.(App. H-2)

---

[5] "In line with the fact that a general demurrer attacks the legality of an indictment, it is permissible to raise this ground after verdict by a motion in arrest of judgement even if there was no earlier objection. *State v. Eubanks*, 239 Ga. 483,at 485.

This manner of appointing counsel violates the U.S. Const. Amend. XIV and VI because it does not afford due process of the law by untimely appointing post conviction/ appellate counsel[6], nor does it provide equal protection to indigent defendants such as Mr. Reed, when the other two classes have no circumstances of being restricted by the same manner of court operations that does impede and restrict access to properly petitioning the courts[7].

The term of court complained of in Mr. Reed's case ended the first Monday of November 2011, as set forth by the Georgia legislature[8]. The law constitutes the

---

[6] "We, however, have previously held that " structural error exist where counsel is prevented from assisting the accused during a critical stage of the proceeding," United States v. Roy 761 F3d 1285

[8] O.C.G.A. 15-6-3(37) sets the schedule for the term of court for DeKalb County in Georgia (..first Monday in January to first Monday in March; first Monday in May to first Monday in July; first Monday in September to first Monday in November)

motion in arrest judgement as a critical stage[9].

At the close of the business day on the last day of the term court, which was the first Monday of November, 2011, in Mr. Reed's case, like so many other indigent defendants suffering similar circumstances, Mr. Reed is disadvantaged, as other indigent defendants have been and are being disadvantaged by a court procedure that deprives him of the effective assistance of counsel by suppressing the availability of filing a motion in arrest (O.C.G.A.17-9-61) through limiting the availability of appellate counsel. This is "Structural

[9] The courts have defined "critical stage" as proceedings between an individual and agents of the state (whether formal or informal, in court or out, see *U.S. V. Wade*, 388 U.S. 218at 226 (1967)) that amount to "trial-like confrontations, at which counsel would help the accused " in coping with legal problems or ...meeting his adversary, " *U.S. v. Ash,* 413 U.S. 300, 312-313 (1973); *Massiah* v. *U.S.*, 377 U.S. 201 (1964).

Error"[10] by which the law provides one outcome.

C. Structural Error Exist When Deprived Of Right To Counsel

Without counsel Mr. Reed is being directly denied his First Amendment right to petition the courts, ...not just the trial court, but the appellate court.

The issues that could have been presented for a motion in arrest hearing, with counsel, could have been perfected for appeal for state and federal review[11]. This practice of delayed appointment of counsel violates the First Amendment of the U.S. Constitution, the right to

---

[10] *Cronic* and *Strickland* make clear that where actual o constructive denial of assistance of counsel occurs a per se rule of prejudice applies, *Crutchfield v. Wainwright*, 803 F2d 1103, 1108 (11th Cir. (1986);(Where, however, a petitioner demonstrates that circumstances surrounding his representation give rise to a presumption of prejudice, he will prevail. (*Cronic*, 466 U.S.at 657 fn. 20).

[11] *Baker v. Kaiser* recognizes the right to counsel after trial an before direct appeal, and the right to have counsel perfect an appeal, citing *Evitts v. Lucey*, 469 U.S. 387 (1985); *Nelson v. Peyton*, 415 F2d 1154 (4th Cir. 1969) cert.denied, 397 U.S. 1007.

petition the court.[12] 22

Not only was Mr. Reed deprived of the right to petition the court, but is also deprived of the right to counsel to assist in preparing for and facing adjudication of those grounds for the motion in arrest, within the trial court or any other court. The deprivation hindered and restricted the right to perfect the record and produced a limited but important category of grounds for direct appeal.

For at the close of the term of court Mr. Reed's U.S. Const. Sixth Amendment right to counsel was violated

In accordance with 28 U.S.C. 2254(b)(e)(1) Mr. Reed has exceeded his burden of proof by clear and convincing evidence. The magistrate and district courts were both presented with all of the court generated

---

[12] As similarly situated in *Bound v. Smith,* 430 U.S. 817, 822...the abuse occurred pre-filing, and its denying defendants effective and meaningful access to the courts. The states actions foreclose indigent defendants from filing a motion to arrest judgement and rendered ineffective any state court remedy petitioner/defendants may have had.

documents (List of Appendices p. iv).

The magistrate judge wrote about this subject, and provided evidence that the circumstance did occur, but deferred to the findings of the appeals court (App. C R&R pg. 18) stating , "The Georgia Supreme Court explicitly rejected the access to the courts claim and implicitly rejected the Sixth Amendment and due process claim-" which reads:

> "Contrary to [Petitioner's] assertion, his right of access to he court was not improperly limited when the trial court denied his request to file an untimely motion in arrest of judgement. [Petitioner] has been afforded ample opportunity, both through counsel and pro se, to assert all of his enumerations of error in his motion for new trial and now on appeal."

This narration by the appellate court does not address the constitutional claims at all. The summation by the court doesn't address the complaint, it introduces something extraneous to the subject. Mr. Reed filing in a court some 15 months after the constitutional

violation is not relevant to the subject. The fact that the court ruled that Mr. Reed, as pro se, which didn't occur for 15 month after the violation, and his counsel whom was not appointed as counsel for 10 months after the deprivation complained of, had ample opportunity to assert the same enumerations in a motion for new trial and on appeal, is nothing less than peculiar[13] .

The law is defined that the Georgia supreme court, the court of appeals nor the trial court have subject matter jurisdiction to permit the filing and adjudication

---

[13] As ruled on by the Supreme Court two years after the ruling *Reed v. State*, 294 Ga. 877 (2014) that suggest that Mr. Reed, his counsel Teri Smith , some 15 months after the term of court, had ample opportunity to file in the trial court and the appellate court, the *Thompson* court states: "The court correctly dismissed the defendants motion in arrest of judgement, which were both filed in the trial court on July 12, 2016, as untimely because the defendants convictions were entered on May 10, 2016, during the trial courts May 2016 term, which ended on July 3, although one of the motions was post marked on July 1, that did not help the defendant as both motions were filed with the clerk of court after the May term had ended and were therefore untimely. *Thompson* v. *State*, 304 Ga. 146 (2018) at 149,150 Div.(4) This ruling from the same court is indicative of the fact that if a motion that expires in the possession of the court is considered untimely without exception. then 15 months after the term provides no exception .

of claims that serve as being reviewable in a motion to arrest judgement.

The court that presented that ruling does not have subject matter jurisdiction according to state statutes[14] and, that courts own binding precedents. Prior to the rulings in *Reed v. State,* 294 Ga. 877 (2014) , more than 100 years of Georgia law established that grounds for a motion in arrest cannot be presented in a motion for new trial, and thereby cannot be grounds for an enumeration of error on appeal.

Irrespective of Mr. Reed's filing of those grounds before the court , the trial court in a motion for new trial does not retain jurisdiction to adjudicate indictment related grounds outside of a demurrer or motion in arrest. The state court of appeals and Supreme court do not retain jurisdiction over issues not

---

[14] Writ of error O.C.G.A. 5-6-49 function is to correct errors of lav Which is the exclusive function of the appellate courts.

properly presented before the trial court. The same year that the trial court reviewed the indictment related grounds, the appellate court in *State v. Graves*, 322 Ga. App. 798 (2013) in reviewing the same subject ruled, .."the trial court lacked the authority to consider or grant a claim seeking to arrest judgement before the court in the motion for new trial." (hn. (1)-(2), fn.3-4). Mr. Reed further addresses this fact ...

> A motion for new trial is not the proper method to attack the sufficiency of an indictment and does not provide a basis for the court of appeals to review the indictment". *Boswell v. State*, 114 Ga. 40, 42 (1)(1901); *Thompson v. State,* 58 Ga. App. 452, 453 (1938); *McKay v. State*, 234 Ga. App. 556, 557(14)(1998)...

The magistrate court could not be considered to have conducted a valid investigation into the allegations in Mr. Reed's petition before that court, because it broadly construes the constitutional violations and irregularities in all the prior judicial findings. A writ of

habeas corpus should have issued out of that court.

The district court, following in concert with the magistrate court, has deferred to the state court findings at trial and appeal, adopting the R&R, basically calling on extraneous evidence to answer federal questions. A COA should have issued from that court, finding, a reasonable jurist would find the magistrate courts assessment debatable or wrong.

The lower court generated a similar but less lengthy report. All have deferred to the rulings of the state court. All have introduced extraneous evidence into the review. The narrations of courts without qualified subject matter jurisdiction cannot serve to fulfill the principle obligations of the federal review. A COA from that court should have issued, finding, a reasonable jurist would find the district courts assessment of the constitutional claims debatable or wrong. "Slack v.

McDaniel, 529 U.S.at 484(2000).

The law is unyielding in this regard, The rulings of a court in want of subject matter jurisdiction ..is a mere nullity, and any action taken to exercise and enforce its commands are void.

D. Certiorari Should Be Granted Because the United States Court of Appeals for the Eleventh Circuit Imposed an Improper and Unduly Burdensome COA Standard that Contravenes This Court's Precedents, Reflects Deep Arbitrariness, and Deepens a Circuit Split

The Eleventh Circuits interpretation of the COA standard continues to contravene this Courts guidance and furthers a circuit split regarding the application of the COA standard. This Court has previously corrected misapplications of the COA standard within the Eleventh Circuit on a case-by-case basis to maintain uniformity. This Court should grant certiorari to address this breakdown in the COA review process.

This Court has emphasized the importance of

maintaining uniformity in upholding the COA standard when granting certificates of appealability. In *McGee v. McFadden*, Justice Sotomayor acknowledged that "[u]nless judges take care to carry out the limited COA review with the requisite open mind, the process breaks down." 139 S. Ct. 2608, 2611 (Mem) (2019) (Sotomayor, J., dissenting from denial of certiorari) ("[A]ny given filing—though it may feel routine to the judge who plucks it from the top of a large stack—could be the petitioner's last best shot at relief from an unconstitutionally imposed sentence"). Justice Sotomayor also warned against using the COA standard as a "rubber stamp." *Id.* ("[T]he large volume of COA requests, the small chance that any particular petition will lead to further review, and the press of competing priorities may turn the circumscribed COA standard of review into a rubber stamp"). Justices of

this Court have also emphasized that the COA standard is meant only as a threshold inquiry for appellate review. *Jordan v. Fisher*, 135 S. Ct. 2647, 2652 (Mem) (2015) (Sotomayor, J., joined by Ginsburg and Kagan, JJ. dissenting from denial of certiorari) ("In cases where a habeas petitioner makes a threshold showing that his constitutional rights were violated, a COA should issue"). Since the Eleventh Circuit rejects the vast majority of COA applications, petitioners such as Mr. Reed are improperly prohibited from challenging violations of their constitutional rights.

The Eleventh Circuit "unduly restrict[ed] [the] pathway to appellate review" for Mr. Reed by denying his COA application and the reconsideration of that denial. Mr. Reed's case exemplifies the breakdown of the COA process within the Eleventh Circuit that this Court has previously remedied on a case-by-case basis

but should now address more systematically.

Reasonable Jurists Could Unquestionably Debate that Mr. Reed's case makes it clear that the Eleventh Circuit is imposing an unduly burdensome and improper standard beyond what is mandated by this Court, and therefore, certiorari is warranted.

The precedent of this Court is clear that a COA involves only a threshold analysis and preserves full appellate review of potentially meritorious claims. This threshold inquiry is satisfied so long as reasonable jurists could either disagree with the district courts decision or "conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 336. Under this standard, a claim can be debatable regardless of whether jurists would grant or deny the petition for habeas corpus once the case has received full

consideration. *Id.* at 338. The key is "the debatability of the underlying constitutional claim, not the resolution of that debate." *Id.* at 342; *see also id.* at 348 (Scalia, J., concurring) (recognizing that a COA is required when the district court's denial of relief is not "undebatable").

E. The Magistrates Recommendation Denying Habeas Relief Violates All Applicable Standards Of Review And Does Not Comport With AEDPA Standards

In denying Mr. Reed's petition, the Eleventh Circuit applied an incorrect standard of review, conducting a full evaluation of Reed's claim on the merits and making *de novo* extraneous factual findings, rather than determining whether reasonable jurists could debate whether he is entitled to relief.

The Courts precedents are clear: a COA involves only a threshold inquiry and preserves full appellate review

of potentially meritorious claims. A petitioner seeking a COA does not face a high burden. The petitioner "need only demonstrate 'a substantial showing of the denial of a constitutional right.'" *Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003).The Supreme Court has repeatedly vacated rulings by the Eleventh Federal Circuit Court of Appeals in which the Circuit Court denied a Certificate of Appealability (COA) to the appellant. In doing so, several specific and recurrent errors by the Circuit Court have been identified and discussed. Among the errors are the following: (1) inversion of the statutory order of operations by assessing merits as reason for the denial of the COA; (2) placing too heavy of a burden on the pro se litigant at the COA stage; (3) failing to consider all of the claims; (4) fully considering pro se litigants. Review of the denial of a COA by the Supreme Court is not

limited to the grounds expressly addressed by the court whose decision is under review.

It is well established that less stringent standards should be applied to pro se litigants by the reviewing courts. One who is not formally trained in law may well have identified the correct factual bases and the correct legal basis for a valid argument but may express himself in such a manner that the legally trained and formally educated eye may misperceive or overlook those valid conclusions.

The Magistrate Judge's Report and Recommendation at the District Court appeared to have been written with scant if any attention to the detailed brief filed by Mr. Reed, as a pro se petitioner. In fact it appeared to have been written directly from the respondents answer, to the point of actually adopting the findings

from two courts with no subject matter jurisdiction, without any independent investigation all of the jurisdictional irregularities pointed out by Mr. Reed.

The magistrates R&R is premised around determinations made by the lower state courts. Mr. Reed, in his petition and supporting brief, has pointed out error with the trial court, which only encompass error that occurred after the impaneling of the jury, and prior to the call of the first witness. The grounds in Mr. Reed's petition do not require examination of the body of evidence, because review does not enlist making a determination with support of the trial evidence. Yet the magistrates report is riddled with a rehash of the trial to answer the presented federal questions.

Mr. Reed has presented claims of error with the state

from two courts with no subject matter jurisdiction, without any independent investigation all of the jurisdictional irregularities pointed out by Mr. Reed.

The magistrates R&R is premised around determinations made by the lower state courts. Mr. Reed, in his petition and supporting brief, has pointed out error with the trial court, which only encompass error that occurred after the impaneling of the jury, and prior to the call of the first witness. The grounds in Mr. Reed's petition do not require examination of the body of evidence, because review does not enlist making a determination with support of the trial evidence. Yet the magistrates report is riddled with a rehash of the trial to answer the presented federal questions.

Mr. Reed has presented claims of error with the state

habeas court. The magistrate report defers to the findings of the state habeas court, which draws its conclusion from the trial court and the appellate court, also by adopting the findings of those courts.

In advance of any conclusion made from he magistrate court Mr. Reed pointed out that the state habeas court has not conformed to federal law and has adopted findings from courts with no subject matter jurisdiction. The magistrate adopted the same, and used that information to dismiss the petition for habeas relief. Not a feasible application of the correct standard of review.

F. An Examination Of The Lower State Courts Jurisdictions

Over 100 years of published cases on the subject, the trial court and the appeals court entered unauthorized rulings in Mr. Reed's case concerning the indictment.

This was decided by these courts outside of the correct forum by which to review the subject matter, and in contravention with all relevant state law.

> "If the indictments were void for any reason, the question would have been raised by demurrer before pleading the merits, or by motion in arrest of judgement after conviction, *Rucker* v. *State* 114 Ga. 13,14(1901)"
>
> No demurrers or motions in arrest of judgement were filed by appellants. The issue of the purported voidness of certain counts of the indictment was first raised in appellants motion for new trial. Under controlling Supreme Court authority, appellants motion for new trial cannot be considered to be viable procedural substitute for motion in arrest of judgement *Boswell* v. *State*, 114 Ga. 40 (1901) .
>
> We may consider only issues properly raised in lower courts, in this instance, the issue which these appellants argue was not properly raised in the trial court. A motion for new trial is not a proper vehicle for raising questions at to the legal sufficiency of an indictment. Accordingly, appellants enumerations of error predicated upon the purported voidness of counts of the indictment present nothing for review. *Abreu* v. *State*, 206 Ga. App. 361, 363(2)(192)

However, if this court were to lend credence to the state appeals court having authority to assume subject matter jurisdiction to make its ruling and findings, ..then the ruling in *Reed v. State,* supra, would amount to a substantive change in law, just for the court to be able to review those grounds, if it were at all valid.

However, 4 years after the ruling in *Reed* v. *State*, supra, the Georgia supreme court issued a ruling in *Taylor* v. *State*, which stands to negate the viability of the rulings and application of *Reed* v. *State*, and the authority of the magistrate court, district court and lower court in using those rulings for any legal purpose.

The court states the following:

> ...when a claim that an accusation or indictment is absolutely void is not properly asserted in the trial court, it can be reviewed on appeal only through a habeas corpus proceeding. Accordingly, this claim is not preserved for appeal and is not properly before the court for review... To the extent

> that the court of appeals has held otherwise, that case law is disapproved, see *Shelnut* v. *State*, 289 Ga. App 528, 530(2)(2008), (holding that although defendant made no challenge to the indictment until she filed her motion for new trial she has not waived her objection." *Taylor* v. *State*, 303 Ga. 583

If the rulings in *Reed* v. *State*, 294 Ga. 877(2014) have served to be authoritative and binding, then the rulings of the Taylor court would apply to repeal the effects and use of the *Reed* rulings. The *Taylor* court ruling would make a substantive change in law. The courts references to cases that predate the Reed rulings would serve to accomplish reviving the effects of the previous applications of the same law. Or, as Mr. Reed has always maintained prior to the ruling in *Taylor* v. *State*, that the trial court and Georgia Supreme Court of Appeals never had subject matter jurisdiction. No matter what route is taken to review the current standing and binding ruling of *Taylor* v. *State*, the law will aid at arriving at one determination, which

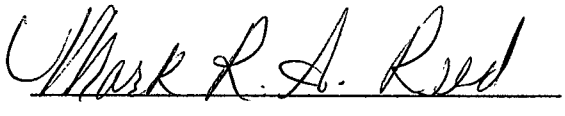
equates to the fact that the most pertinent portions of the ruling from each court, that relate directly to the grounds presented to the courts, cannot be used against Mr. Reed to deny his claims as not having merit, or as considered being moot.

The ruling of the *Taylor* case, stand alone, doesn't prove every aspect of Mr. Reed's case, but it does however, prove that the magistrate court, district court, and lower courts fact findings and evidentiary findings that embody those courts final reports, as they exist, are void before this court. The *Taylor* court ruling would serve to prove the magistrate; district; and Eleventh circuit have not considered the statutory provisions of 28 USC §2254(d)(1)-(2); (e)(2); (e)(2)(B); (e)(3); (e)(4); (e)(6); (e)(7), once having discovered that the state habeas courts complete final order defers to a court order with no subject matter jurisdiction.

CONCLUSION

For the foregoing reasons, Petitioner Mark R. A. Reed respectfully requests that the Court issue a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit. In the alternative, he requests that the Court grant certiorari, vacate the Eleventh Circuit's judgment, and remand with instructions for the Eleventh Circuit to issue a COA.

Respectfully submitted,



Mark R. A. Reed Petitioner In Pro She
Georgia State Prison GDC 1000664635
300 1st Avenue, South
Reidsville, Georgia 30453

Dated: January 8, 2021