

No. 21-5962

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES NEMON VANDROSS

PETITIONER

VS

THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE USCA FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CHARLES NEMON VANDROSS
SCDC # 316095, B2-b3
Kirkland Correctional Institution
4344 Broad River Rd
Columbia SC 29210

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10/15

QUESTIONS PRESENTED

- I. Certiorari should issue to resolve whether the USCA4 has denied and is denying Petitioner access to the courts, during indigent Petitioner's United States Supreme Court appeal timeframe, in part via denial of appointment of "new" counsel, where appointed counsel strongly encouraged Petitioner to appeal, but quit for personal reasons without notice to the court, and where Petitioner has expressed need for assistance of counsel to proceed. ¶
- II. Certiorari should issue to resolve whether the USCA4 has denied Petitioner access to the courts, via failure to service uncounseled Petitioner as a "legitimate client, customer, or party" seeking information from the court that was and is considered necessary in order to proceed, both, after a showing that the assistance needed would not likely be obtained through counsel of record, and, after showing counsel of record had quit. ¶
- III. Certiorari should issue to resolve whether the USCA4 has denied indigent Petitioner access to the courts, via failure to properly supervise the United States District Court, District of South Carolina, declining to investigate whether Petitioner's Motion to Stay at the summary judgment stage, asserting issues of material fact in dispute, was filed, and considered by the Magistrate and District Court judges, and if not, "why".

LIST OF PARTIES and RELATED CASES

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

State v Vandross, 2004-GS-24-1187, Court of General Sessions,
Eighth Judicial Circuit of S.C., Judgment: June 21, 2006 (Third Trial)

State v Vandross, Op. No. 2009-UP-192, S.C. Court of Appeals,
Judgment: May 5, 2009 (Direct Appeal)

Vandross v State, 2010-CP-24-0259, Court of Common Pleas, Eighth
Judicial Circuit of S.C., Judgment: March 11, 2014 (PCR Hearing)

Vandross v State, 2010-CP-24-0259, Court of General Sessions, Eighth
Judicial Circuit of S.C., Judgment: Never Reached (Motion to Relieve
Counsel Hearing - Continued to February 2014 Term But Never Docketed)

Vandross v State, Appellate Case No. 2014-000650, SC Supreme Court.
Judgment: October 8, 2015 (Petition for Remand, or in the Alternative,
Leave to File Successor PCR)

Vandross v State, Appellate Case No. 2014-000650, SC Supreme Court,
Judgment: July 24, 2017 (Petition for Writ of Certiorari)

Vandross v Stirling, CA No. 1:17-cv-2484-RMG-SVH, US District Court,
District of South Carolina, Judgment: July 20, 2018 (Petition for
Writ of Habeas Corpus)

Vandross v Stirling, Published Op. No. 18-6916, US Court of Appeals,
Fourth Circuit, Judgment: January 26, 2021.

Vandross v Stirling, Published Op. No. 18-6916, US Court of Appeals,
Fourth Circuit, Judgment: February 24, 2021 (Petition for Rehearing)

Vandross v Stirling, Published Op. No. 18-6916, US Court of Appeals,
Fourth Circuit, Judgment: May 26, 2021 (Motion for Appointment
of New Counsel on Appeal to the US Supreme Court, imbedded in
Response to Motion to Withdraw as Counsel, asserted to be moot).

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	9
CONCLUSION	10

INDEX OF APPENDICES

Appendix

- A: Decision of USCA4 Denying Appointment of New Counsel and Granting Counsel's Motion to Withdraw
- B: Decision of USCA4 Denying Writ of Habeas Corpus
- C: Decision of US District Court Magistrate and Judge
- D: Decision of USCA4 Denying Rehearing
- E: Letter of Appointed Counsel Quitting Representation Dated February 25, 2021.
- F: Motion of Petitioner Initiating Grievance Against Appointed Counsel Who Quit
- G: RE: Delivery of Casefile - Note Date
- H: Letter of Petitioner to USCA4 Dated April 9, 2021
- I: Errors in Published Opinion
- J: USCA4 Transmittal RE: Oral Argument Transcript
- K: USCA4 Transmittal RE: Petitioner's April 9, 2021 Letter to USCA4
- L: Motion to Withdraw as Counsel
- M: Certificate of Service Noting Date of Response to Motion to Withdraw as Counsel
- N: Date of Delivery of USSC Handbook / Rules and Guide For Indigent Petitioners
- O: Motion to Stay, and Letter of Petitioner to Appointed Counsel Dated April 17, 2018 Requesting Specific Performance of Experts - Both Submitted to the US District Court, District of S.C. on June 1, 2018 for filing and consideration, and Both Submitted With Petitioner's March 26, 2018 Letter to the Clerk of the USCA4 as Exhibits #1 and #2.
- P: Letter of Petitioner to Appointed Counsel Dated March 5, 2019 Requesting Specific Performance RE: Habeas, Submitted to USCA4 With March 26, 2019 Letter as Exhibit #3.
- Q: Letter of Petitioner to Clerk of the USCA4 Dated March 26, 2019 Requesting Investigation Into Whether Motion to Stay, With Exhibits, Were Filed and Considered by the US District Court, and if not, "Why?"

TABLE OF AUTHORITIES

Cases

Page Number

Dobbs v Zant, 506 US 357, 113 S.Ct 835	9	1
Sherman v Smith, 89 F3d 1134	9	
U.S. v Chronic, 466 US 648, 104 S.Ct 2039	9	
Wright v Van Patten, 552 US 120, 128 S.Ct 743	9	
Strickland v Washington, 466 US 668, 104 S.Ct 2052.	9	

Statutes and Rules

United States Supreme Court Rule 10(a) :

" (a) a United States court of appeals has entered a decision [that] ... has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power : "

Other

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR

[REDACTED]

[REDACTED]

WRIT OF CERTIORARI

Petitioner respectfully prays that the appropriate writ issue to review the judgments below:

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

Vandross v Stirling
Judgment: May 26, 2021

The opinion of the United States court of appeals appears at Appendix B to the petition and is published.

Vandross v Stirling
Judgment: January 26, 2021
Reported at: 986 F. 3d 442

JURISDICTION

The date on which the United States Court of appeals for the Fourth Circuit decided my case was January 26, 2021.

A timely petition for rehearing was denied by the United States Court of Appeals for the Fourth Circuit on February 24, 2021.

An extension, of the 90 day time to file a petition for writ of certiorari, has been afforded to all filers, due to the COVID-19 pandemic, extending the time to file by 60 days, from May 25, 2021 to and including July 23, 2021.

The jurisdiction of this court is invoked under 28 USC § 1254(1).

CONSTITUTIONAL and STATUTORY PROVISIONS

Citings

Not known due to limited access to law library computer in prison's Restricted Housing Unit.

Constitutional Rights

- To Access To The Courts 14th Amendment
- To A Full Defense
- To Participate In Own Defense
- To Counsel 6th Amendment

STATEMENT OF THE CASE

Petitioner asserts belief that the United States Court of Appeals for the Fourth Circuit is denying and has denied Petitioner access to the courts as Petitioner seeks to appeal to the United States Supreme Court, and prior to this appeal, as follows:

After Oral Argument

1. The United States Court of Appeals for the Fourth Circuit has not appointed new counsel after appointed counsel quit, though counsel recommended Petitioner appeal, four and one half months ago. (Appendix A).
 - The day after denial of Petitioner's attorneys' request for rehearing (Appendix D), though appointed counsel encouraged Petitioner to appeal to the United States Supreme Court (Appendix E), appointed counsel quit without notifying the court, abandoning Petitioner (Appendix E), on February 25, 2021.
 - After initiating grievance proceedings against counsel who'd quit (Appendix F), and after obtaining the initial deliveries of Petitioner's casefile circa March 26-30, 2021 (Appendix G), Petitioner wrote the Fourth Circuit Clerk's Office on April 9, 2021 with questions (Appendix H), also notifying the court that appointed counsel had quit, and among other questions, asking if new counsel could be appointed.
2. The Fourth Circuit Clerk's Office has not answered Petitioner's April 9, 2021 letter in three months, which letter referred in part to ① whether new counsel could be appointed, ② how to make corrections to the published opinion (Appendix I, referring to Appendix B), ③ whether there's a time limitation and how to file a successive habeas, and ④ whether a handbook for the fourth circuit Court of Appeals could be sent to me - there was no response, except to

tell me, after a month, that no Oral Argument transcript was available, but that I could listen to it online... though that is not possible, since I am a prisoner without access to online services (Appendix J).

3. The Fourth Circuit Clerk's Office kept counsel who'd quit informed of my actions, though notified that they had quit, sending my April 9, 2021 letter to counsel (Appendix K).

4. The Fourth Circuit gave counsel who'd quit the opportunity to withdraw by Motion (Appendix L), wherein counsel for the first time suggested appeal - represented by them - would be frivolous. This change of heart was embraced by the Fourth Circuit, though counsel had quit due to inconvenience and would be again inconvenienced if required to continue representation, and while Petitioner had initiated grievance proceedings against counsel (Appendix F), and while therefore a conflict of interest existed / exists.

5. The Fourth Circuit has not returned a requested clock-stamped copy of Petitioner's Response to counsel's after-the-fact Motion to Withdraw (Appendix K), which Petitioner asserts is moot and unreliably prejudicial, in over ten (10) weeks (Appendix M).

6. The Fourth Circuit did not notify Petitioner of the decision reference to the motion to withdraw and appointment of new counsel for a month (Appendix A)

7. Though Petitioner's sister requested a Fourth Circuit handbook be sent to Petitioner, it has not been sent in over ten (10) weeks, though she also requested of the United States Supreme Court its handbook, and it arrived postmarked 4-19-21, over ten (10) weeks ago (Appendix N).

8. The Fourth Circuit has never notified Petitioner of his appeal timeframe, nor of the 60 day extension due to COVID-19. Petitioner's knowledge of the court's

deadlines is owed to my sister's research.

9. The Fourth Circuit has barely acknowledged Petitioner therefore causing Petitioner to feel he is not considered by the court to be worthy of the court's attention while indigent and uncounseled, and causing Petitioner to wonder about the court's allegiances, alliances, and relationships, and whether the court's services are only ungrudgingly made available to the bar and bench.

Petitioner respectfully prays This Court will appoint new counsel to advise Petitioner regarding appealing to the US Supreme Court, and to help prepare this appeal if advisable, and Petitioner prays new counsel and Petitioner will be afforded a full new or extended 150-day appeal period, that which is now being afforded to like filers.

U.S. District Court to Oral Argument

1. The US District Court, District of S.C. (Columbia Division) did not return a requested clock-stamped copy of a Motion in Opposition to Summary Judgment and Motion for 30 Day Extension, etc, with Verified Affidavit, submitted June 1, 2018 at the summary judgment stage, with a copy of a letter to Petitioner's counsel, Attorney Elizabeth A. Franklin-Best of the firm Blume Franklin-Best & Young, requesting specific performance of the expert hired and signing (Appendix D) if necessary for Petitioner's Motion to be accepted by the US District Court Clerk, Robin L Blume.

2. The US District Court, District of S.C.'s (Aiken Division) Magistrate Shiva V. Hodges recommended summary dismissal "less than 30 days" after I submitted my Motion for a 30 day stay or continuance (Appendix C), a motion I saw as required to be granted, as issues of material fact were in dispute (Appendices D, P and Q, referring to Appendix C).

3. Neither the US District Court, District of S.C., the US Court of Appeals for the Fourth Circuit, nor my attorneys,

have confirmed that my motion was filed and considered by the US Magistrate and District Court Judge, and state interference by prison officials has hindered my own adequate review of my legal materials, and new research, and completion of briefs before court deadlines, including this motion.

4. After late-March 2021 delivery of casefile legal materials, prison officials removed those materials on April 6, 2021 despite my protesting, and have refused to return my casefile ever since, even after SCDC Headquarters staff reportedly directed Perry's Warden Charles Williams to return the materials to me.

5. Petitioner, in Restricted Housing, has also run out of ink with which to complete legal work, and the Deputy Warden in charge refuses to exchange empty pens for new ones. Warden Williams forbids prisoners from possessing more than one pen at a time. These gel-ink pens are good for only about 2-3 days of heavy writing. Access to the law library computer is also limited severely - I've averaged approximately one use every 3-4 weeks.

6. As this treatment threatened to foreclose my appeal opportunity, and as I've also suffered threats ~~to~~ and actual injury to my physical ~~condition~~ well-being, I've twice sought a TRO and/or Preliminary Injunction from the US District Court, District of S.C.. My case has, both times, been assigned to the Anderson / Greenwood Division and Magistrate Jacqueline D. Austin. Since I was arrested, detained, and tried three times in Greenwood SC, I've requested to have my pleadings heard in another division, but was denied.

7. I am waiting for the court to act now, while unexplainably being required to continue suffering irreparable harm, including the expiration of my 90 and then 150-day timeframes for filing my

USSC appeal, while I wait for the US District Court to act. Because of perceived bias against me, I have not considered asking The Fourth Circuit to address these US District Court concerns.

Without counsel, I do not have the ability to present my claims adequately to the court.

With the court's intervention, a new attorney with access to PACER, and a full appeal period with which to work, I and competent counsel can perfect my USSC appeal.

Charles N Vandross

REASONS FOR GRANTING THE PETITION

The presumed innocence of Petitioner has been removed via procedures by the state and trial counsel latent with structural defects not fully flushed out during the PCR and habeas collateral proceedings rendering the corrective process inadequate as a result of inadequate PCR counsel and habeas counsel as evidenced by Franklin-Best's and Grose's complete abandonment at a very critical stage and the arguments entailed in the record itself rendered fundamentally unfair. See *Dobbs v. Zarit*, 506 US 351, 113 S.Ct. 835 and *Sherman v. Smith*, 89 F.3d 1134. Counsel is a fundamental component of the criminal justice system. Lawyers in criminal cases are necessities, not luxuries. *US v. Chronic*, 466 US 648, 104 S.Ct. 2039.

Mere presence is not representation as envisioned by the Sixth Amendment. The right to counsel is the right to effective assistance of counsel. *Strickland v. Washington*, 466 US 668, 104 S.Ct. 2052.

Chronic specifically holds that automatic reversal is required where a defendant is denied counsel at a critical stage. Chronic errors are structural, requiring automatic reversal without any inquiry into the existence of actual prejudice. *Wright v. Van Patten*, 552 US 120, 128 S.Ct. 743.

Counsel who does not argue and defend the substance of what Defendant purports is not advocating for Defendant. Counsel didn't subject the prosecution's case to a meaningful adversarial process when they did not do the specific testing requested, which would have proved the state's claims to be wrong, Strickland.

REASONS FOR GRANTING THE PETITION

This petition should be granted because :

- Without the court's intervention, a miscarriage of justice will ensue, as my right to access to the courts will be denied.
- Petitioner, an indigent prisoner, needs assistance of counsel to file my USSC appeal and/or a new petition for writ of habeas corpus, and cannot pay for this counsel myself.
- Petitioner needs the assistance of the courts to obtain a TRO and/or Preliminary Injunction to be able to fully participate in my defense, but with or without that assistance, Petitioner needs competent counsel, who with access to pacer and zoom, can present my case to the court competently.
- State interference should not be allowed to foreclose Petitioner's access to the courts, which in this case, is access to the highest court in the land.
- Petitioner needs assistance of counsel to be enabled to fully make my case to the US Supreme Court.
- It is necessary that published opinions and all court records be accurate, especially so that :
 - the court record is the standard of accuracy
 - false claims of overwhelming evidence are not reinforced and/or amplified by the record
 - the social impact of widely read false accounts don't make more difficult wrongfully convicted prisoner's work of reversing conviction
- Court services should be equally available to indigent prisoners and pro se litigants as to the bar and bench.
- Bias and vindictiveness by the court's clerks and judges must not be permitted.
- Improper relationships between the court's clerks and attorneys, prejudicial to grievant clients, must not be tolerated
- The potential for and appearance of clerk-attorney alliances against grievant clients should be strongly condemned and thoroughly investigated, eradicating these conflicts of interest.

CONCLUSION

This petition for writ of certiorari, for the
aforementioned reasons, should be granted.

Respectfully submitted,

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at Columbia SC
5 October 2021