No. 21-6591

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

DANIEL A. SPOTSVILLE — PETITIONER
(Your Name)

vs.

STATE OF GEORGIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

GEORGIA SUPREME COURT
(NAME OF COURT THAT LAST RULED ON [redacted] YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DANIEL A. SPOTSVILLE
(Your Name) GDC# 977050

JOHNSON STATE PRISON
(Address) POBOX 344
280 DONOVAN-HARRISON RD.
WRIGHTSVILLE, GA 31096
(City, State, Zip Code)

N/A
(Phone Number)

PWC/A20210812938SDAWS

QUESTION(S) PRESENTED

1) Question is, does the Affiant Spotsville have a Vested, binding Constitutional right to file "Motion In Arrest of Judgement as Void and Motion to Modify Void Sentence (Affidavit)" in State trial Court; where THE STATE OF GEORGIA (Respondent) has failed to, never provide a counsel on first direct appeal in this case?

2) Question is, the Affiant's proofs of claim raised in this case are valid, true, Constitutional issues; should it entitle Affiant to relief in State and Federal Courts where "Exceptional Circumstances" and "Constitutional Violations" and "Vital Flaws" exist in the STATE OF GEORGIA's (Respondent's) fact finding procedure, sentencing, and appellate process contrary to "STARE DECISIS"?

3) Question is, were the lower courts (State/Federal) decisions contrary to, based on an unreasonable determination of the facts, evidence pursuent to 28 USC § 2254(d)(1)(2); presented by the Affiant's affidavits (prima facie/tangible evidence); should relief now be warranted pursuent to "STARE DECISIS and LAW"?

4) Question is, were the Affiant's presentments to the lower courts (State/Federal) and now to the U.S. Supreme Court bears binding decision (STARE DECISIS) and cites constitutional violations in STATE OF GEORGIA's (Respondent's) case

against Affiant; should the lower court's decisions (orders) have followed, mirrored this Court's decisions as "Law of the Land"?

5) Question is, does Affiant, a former U.S. Army "Active Duty Servicemember" at time of arrest, trial, and appeal process possess vested, binding Constitutional protected rights pursuant to the 1st/5th/6th/8th/14th Amendments; should the Affiant be entitled to relief; modify/correct sentence or null/void sentence or reversal of conviction decreasing duration of THE STATE's (Respondent's) custody?

6) Question is, Affiant, as a former U.S. Army soldier at time of arrest through appeal, and custody; does Affiant have vested, binding "Constitutional Rights and Federal Law Rights" to have been in custody, tried, and sentenced under Uniform Code of Military Justice (UCMJ) jurisdiction, a jury of military peers, rather than STATE OF GEORGIA's (Respondent's) civilian State court, jury?

7) Question is, Affiant, as a Soldier on active duty at time of arrest through appeal and custody; did/does STATE OF GEORGIA (Respondent) or State Court have the authority to arbitrarily violate well established federal "jurisdiction" and "custody" and "Military Contract" rights resulting in a 40 year sentence contrary to undisputed facts and "Law of the land"; where no waiver of Affiant's

rights to UCMJ exist in records.

8) Question is, with merit of "Fundamental Miscarrage of Justice" presented by Alliant in this case; will the court now establish new precedent to succor the Alliant's and all active duty servicemembers' Constitutional protection of the UCMJ jurisdiction (venue), custody, if no valid waiver of right to military (UCMJ) jurisdiction exist on record?

9) Question is, should the Court now grant relief pursuent to well established Constitutional "Law of STARE DECISIS"; where jurisdiction and custody violation and a breach of military contract were excuted by STATE OF GEORGIA (Respondent) in State Court proceeding was cause leading to defective conditions in State Court proceeding ... trial through sentencing through appeal, and custody?

10) Question is, did the lower courts erred when they all failed to recognized and adopt 6th Amendment and "STARE DECISIS" rights to effective assistance of counsel on first direct appeal?

11) Question is, did the lower courts erred when they failed to recognized and adopt "6th/14th Amendments and STARE DECISIS" rights of appeal process with effective assistance of Counsel, must be free and unfettered?

12) Question is, did the lower courts erred when they failed to recognize and adopt "6th/14th Amendments and "STARE DECISIS" rights; where violations and prejudice will be presumed and there is a complete denial of Counsel during critical stage of the criminal proceeding ... Affiant's direct appeal?

13) Question is, did the lower courts erred when the failed to recognize and adopt "6th/14th Amendments and "STARE DECISIS" rights that mandate the appointment of counsel for indigent Affiant, whom is seeking first trier appellate review?

14) Question is, did the lower courts erred when they failed to recognized and failed to act upon pro se Affiant's "Motion in Arrest of Judgment as Void and Motion to Modify Void Sentence (Affidavit)" and "Rule 915" and "Appellant Brief" and "Motion for Out-of-Time Appeal"; were arbitrary and capricious denial of Affiant's 1st/14th Amendment Rights of Due Process and Equal Protection and Access to the Courts?

(5) Question is, did the State Court of Appeals (COA) erred when it failed to recognize and adopt 1st/14th Amendments by a precocious denial of the Affiants Appeal Brief prior to the 20 day deadline of docketing notice to file an appeal brief; was

arbitrary and capricious denial of Due Process and Equal Protection and Access to the Courts?

16) Question is, did the State Supreme Court of Georgia erred when it failed to recognize and adopt United States Supreme Court decisions (STARE DECISIS) on the 5th/6th/14th Amendments; warranting reversal of State Court decisions upon Affiant's presentments of valid violations of vested, binding Constitutional protected rights that have gone unrebutted by STATE OF GEORGIA (Respondent)?

17) Question is, where the STATE OF GEORGIA (Respondent) has remained silent, failing to rebut, render any response to disprove Affiant's proofs of Claim in presentments (such as writ of certiorari, Appellant's Brief...) pursuant to well established Law [OCGA§9-10-111/§9-11-7(a)/ STARE DECISIS]; does it conferm that Respondent is in Default and warrent relief sought by the Affiant?

18) Question is, did the lower courts all "Miss the Mark", failing to recognize and adopt U.S. Supreme Court precedents; to wit, clear and plain errors of denial/violation of Affiant's constitutional protected rights warrents relief?

19) Question is, on review, the Court does note predisposed plain errors of fundamental violations, of denial of constitutional rights, and STATE OF GEORGIA (Respondent)

has failed to rebut proofs of claim ? Should the Court now move to render Sentence null & void reversing State Court's decisions releasing Affiant from custody (debt to) STATE OF GEORGIA (Respondent) where jurisdiction issue has been presented?

20) Question is, does U.S. Constitution's "Bill of Rights" and U.S. Supreme Court's "STARE DECISIS" act upon, and mandate STATE OF GEORGIA (Respondent) and State Courts to comply with & comport "The Law of the Land" in all cases?

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ISSUES TO DECIDE ARE WHETHER:

a) Affiant can bring [military] jurisdiction issues before any Court at any time;

b) Affiant has binding and vested rights to UCMJ jurisdiction while still under military valid enlistment contract... discharged in September 2001... arrested in July 1997;

c) Affiant has presented valid constitutional violations, denial of 1st/5th/6th/8th/14th Amendment Rights;

d) Affiant had effective assistance of counsel during fact-finding process, sentencing phase, and on 1st direct appeal process, to wit, outcome of case would have been different;

e) Affiant was arrest with the wrongful use of excessive force, a factor of the harsh sentence (40 years) contrary to the facts/evidence presented at trial;

f) Affiant received effective assistence of Counsel on first direct appeal to have been provided full and fair adverserial process was rendered at trial through sentencing process, and appeal process;

g) Affiant, during fact-finding proceedings, sentencing, and 1st direct appeal process, were the lower courts' decisions arbitrarily and capriciously

based on an unreasonable determination of facts/evidence presented throughout case;

h) Affiant, has presented binding, valid Constitutional issues, to wit, lower courts failed to recognize and adopt "STARE DECISIS" warrenting relief to be granted;

i) Affiant, has in good faith and clean hands diligently presented valid proofs of claim, to wit, STATE OF GEORGIA (Respondent) has failed to rebut nor provide any timely response, as to why relief should not be granted;

" Is true, liberty, and justice for all or just the few...? "

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LIST OF PARTIES

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

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

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OTHER

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW/JURISDICTION

[X] Form cases from state court:

The opinion of the highest state court to review the merits appear at Appendix ...A... to the petition and is reported at ...S21C0864. The opinion of the ...GA Appeals... court appears at Appendix ...D... to the petition and is reported at ...A21A0947.

The date on which the highest stats court decided my case was 20 July 2021. A timely petition for rehearing was thereafter denied on the following date, 23 August 2021, and a copy of the order denying rehearing appears at Appendix ...C.

The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1257(a); [ALSO] U.S.S.C. Rule(s) 13.1

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

1st Amendment: ... the right of the people ... to petition the Government for a redress of grievance;

5th Amendment: No person shall ... be deprived of life, liberty, or property without due process of law;

6th Amendment: In all criminal prosecutions, the accused shall enjoy the right to ... public trial by an impartial jury... to be informed of the mature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense;

8th Amendment: ... nor cruel and unusual punishment inflected;

14th Amendment: 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 life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

28 USCA § 2254:

(b)(i)(A), the applicant has exhausted the remedies available in the courts of the State;

(B)(ii), circumstances exist that render such process ineffective to protect the rights of the applicant;

(d)(i), 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;

(e)(2)(B), the facts underlying the claim would be sufficient to establish by clear and convincing evidence

that but for Constitutional error, no reasonable fact-finder would have found the applicant guilty of the underlying offense.

28 USCA § 2241:

(a), Writ of Habeas Corpus may be granted by the Supreme Court, any justice thereof, the district courts and circuit judges within their respective jurisdictions;

(c) The writ of habeas corpus shall not extend to a person unless;

(1), He is in custody of by color of the authority of the United States or its committed for trial before court thereof; or

(2), He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment, or decree of a court or judge of the United States; or

(3), He is in custody in violation of the Constitution or Laws or Treaties of the United States; or

(4), He, being a citizen of a foreign State and domiciled therein is in custody for and act done or omitted under any alleged right, title, authority, privilege, protection or exemption claim under the commission, order or sanction of any foreign state, or under color thereof the validity of which depends upon the law of nations; or

(5), It is necessary to bring him to court to testify or for trial.

28 USCA § 1442(a): Member of Armed Forces Sued or Prosecuted:

(a), A civil or criminal prosecution in a court of a State of the United States against a member of the armed forces of the United States on account of an act done under color of his office or status or in respect to which he claims any right, title, or authority under a law of the United States respecting the armed forces, thereof, or under the law of war, may at any time before the trial of final hearing thereof be removed for trial into the district court of the United States for the district where it is pending in the manner prescribed by law and is shall thereupon be entered on docket of the district court, which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine the cause.

10 USCA § 802(a)(10); 825(c); 880; 930; 934; Uniform Code of Military Jurisdiction (UCMJ) Art. 2(a)10; USCA Const. Art. 1, Sec. 8, cl. 14:

[All State/ Declare] "... Jurisdiction extends to a service member who was a member of the armed services at time of the offense charged"; or "Military jurisdiction has always been based on the status of the accused, rather than on the nature of the offense," or "The accused is a person who can be regarded as falling within the terms "Land and Naval Forces", or "Military Status" is a necessary and sufficient condition for the exercise of "Court Martial" jurisdiction.

STATE OF GEORGIA's LAW

OCGA § 17-12-23:

(a) The circuit public defender shall provide representation in the following actions and proceedings;
(1) Any case prosecutor in a superior court under the laws of the STATE of Georgia ...;

(4) Any direct appeal of any of the proceedings enumerated in paragraph (1) through (3) of this section.

OCGA § 24-3-36: Effect of Acquiescence or Silence;

Acquiescence of silence when the circumstance require an answer, a denial or other conduct may amount to an admission.

OCGA § 9-10-111: Verified Petition Required Verified Plea or Answer;

In all cases where the plaintiff files a pleading with an affidavit attached to the effect that the facts stated in pleading are true to the best of his knowledge and belief, the defendant shall in like manner verify any answer.

OCGA § 9-11-7(a): Pleading; (a) There shall be a complaint and an answer.

OCGA § 9-11-55(a): Default; (a) When case in default;

If in any case an answer has not been filed within the time required buy this chapter case shall automatically become in default unless the time for filing the answer has been extended as provided by law.

STATEMENT OF THE CASE

Now Comes the Petitioner, the Affiant, Daniel A. Spottsville herein case, "Writ of Certiorari" pursuant to, 28 USCA § 1257(a) and US Supreme Court Rule 13.1, to wit, the State Supreme Court denied certiorari on the 20th of July 2021 (case #S21C0864).

The GA Court of Appeals on the 11th of February 2021 "precociously" dismissed Affiant's Appeal Brief which was docketed in the Court of Appeals (CoA) on the 28th of January 2021 (case #A21A0947). The CoA untimely dismissal is contrary to GA Appellate Rules #26 /#22 /#13 /#7 and 14th Amendment.

The trial court, Muscogee County Superior Court on the 17th of September 2020 without justifiable cause and contrary to well established precedent, in correctly denied erred not filing in original form Affiant's "Motion I Arrest of Judgment and Motion to Modify Void Sentence" s "Moot", (case #SU98 CR1445). Muscogee Co. clerk for Judge Ron Mullins did so arbitrarily removed and stated (alleged) Affiant's "motion to Modify Void Sentence (Affidavit)", (filed on the 3rd of June 2020), was filed without a "CERTIFICATION OF SERVICE" from attached. The clerk of court sent on the 17th of September 2020, a let to Affiant, declaring that the Honorable Judge Don Mullins will not act upon Affiant's motion because it was filed "exparte". Nor did Judge Mullins act upon Affiant's "Rule NISI" that was filed ... which should have been filed simultaneously on the 3rd of June 2020 with CERTIFICATION OF SERVICE" dated the "5th of May 2020" as page #35 of the pleading/motion.

NOTE: Clerk of court still refuses to provide Affiant with stamped as being filed documents/pleadings within the court; nor has clerk responded to Affiant's letter dated 22 Sept. 2020, to wit, Affiant did so provide the court with tangible proof, copies of documents to include page #35 Certification of Service for those documents/pleadings/motions. (4 documents total)

[Also, this prior history exist on this case from Muscogee Co. Superior Court. (#SU98CR1445)]

On the 9th of December 1998 the Affiant was convicted and sentenced to 40 years to serve 30 years in prison. The case was to run concurrent with related case in Martin Co. Superior Court case #SU98CR033, 24 years to serve 18 years in prison.

Affiant's counsel at trial did not file a notice of appeal, nor did trial counsel inform Affiant that a motion for mew trial existed on file. Thus the Affiant was "PRO SE" during his 1st appeal process, Affiant's first direct appeal was without the assistance of counsel. The GA Court of Appeals (case #A03A0007/ 4 Feb. 2003) was denied. The Habeas Corpus (#2003HC 50 NJ) was denied on 4 Feb.2004 and the GA Supreme Court denied the certiorari on the 15th Nov. 2004 (case #S04H1157). [case did go all the way to the USSC, #04-6208, the court dismissed writ of certiorari]. Because Affiant's case does have a valid jurisdiction issue ... Affiant filed a "Motion to Set Aside Judgment as Void" in the trial court which was denied on the 27th of July 2010 (#SU98CR1445). The Appeal Brief was denied on 17th Sep. 2010

In May of 2012 the Affiant filed a renewal action that the trial court denied it. The GA CoA (#A12A2009), dismissed the matter on the 28th of June 2012 and the GA Supreme Court, dismissed the matter on the 5th of Sep. 2012. The Affiant on the 19th of Sep. 2012 sent the trial court a "Motion to Modify Sentence" but the trial court (Judge J. D. Allen) alleged in his order of 21 Feb. 2013 that no such motion has been filed ... nor a "Motion of Default". The court denies the matter based on an "Affidavit of Negative Averment" that was filed in the court 15th of Feb. 2013. The GA CoA (#A13A0313) denied this matter on the 16th of April 2013, the GA Supreme Court followed with a denial (#S13C1332) on the 18th of November and the "Reconsideration" was denied on 21 January 2014.

"A Renewal of Motion to Modify Sentence and to Correct Void Sentence" was filed I the trial court by pro se Affiant on the 6th of April 2015 and again the trial court Judge Allen dismissed the matter on the 2nd of June 2015, followed by a denial by the GA Supreme Court on the 11th of January 2016 (#S16C00093) and the "Motion to Reconsider" was denied on the 22nd of February 2016. On the 8th of April 2016, Affiant files a "Petition for a Writ of Habeas Corpus under the US District Co Court Southern District (case #CV516-027). The USDC Southern District Transfers the case to the jurisdiction of the US District Court Middle District on the 16th of May 2016. {1}

Furthermore, the Middle District Court erred completely in its order (case #4:16CV0177) on the 1st of July 2016 when it alleges Affiant has filed a pro se petition for writ of habeas corpus pursuant to 28 USCA § 2254 challenging his 1998 conviction in both Muscogee County and Marion County, Georgia. But the STATE OF GEORGIA (RESPONDENT) never rebutted nor responded to the unquestionable, tangible fact/evidence that Spottsville did file a "§2241 Petition"; and Affiant's §2241 petition refer to his State Court motion to modify sentence and correct a void sentence filed in the trial court of Muscogee Co. only ... that does not challenge the state conviction. {2} Affiant does not attack his State conviction of Muscogee Co. or Marion Co. from 1998, but 'by Law' brings 'in fact' a 28 USCA § 2241, petition only to challenge the execution of his sentence, [COMPARE] Bishop, below; Stanley, below; Hernandez, below. [Although modify sentence may lead to release.]

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However, the US District Middle District on the 1st on July 2016 denied the §2241 petition as a §2254 second or successive application for a writ of habeas corpus. Stating Petitioner, the Affiant Spottsville did not make requisite showing, therefore denied a Certificate of Appealability. [SEE RECORD] On the 3rd of November 2016, the US Court of Appeals 11th Circuit (CoA 11th cir) in case #16-14926-F also erred in its ability to recognized the fact that Affiant filed a 2241 petition 'by law' and 'in fact'. The CoA 11th Cir. also denied as unnecessary ... motion for IPF status ... denied as frivolous; motion for appointment of counsel denied too. {3} On the 1st of August 2016, Affiant filed in the 11th Circuit, "Motion for permission to; appeal Informa Pauperis and Affidavit" with a brief and a "Certificate of Interested Persons form". [SEE RECORD]

{1} The tangible fact is Affiant, pro se did so send/file a valid §2241 petition in the Southern District not to challenge the validity of conviction but the execution of a (State) Sentence pursuant to 28 USCA § 2241, is properly filed. [SEE] Bishop vs Reno, 210 Fed 3rd 1295, 1304 n14 (11th cir. 2009); Stanley vs Utah Bd. of Pardons, 382 F 3rd 1208, 1213 (10th cir 2009); Hernandez vs Campbell, 204 F 3rd 816, 864 (9th cir 2000). Affiant's filing of a 2241 petition is undisputed proof of claim by STATE OF GEORGIA (RESPONDENT) and lower courts has not been resolved beyond a reasonable doubt and there is an unreasonable determination of the facts/evidence presented in the lower courts.

{2} US vs NY Tel. Co., 434 US 159 (1977), the Supreme Court considered a Federal Rule that defined properly ... "tangible object" ...; Affiant Spottsville's § 2241 petition is "tangible object" this Court cannot casually set aside in a challenge to the execution of a State sentence. [SEE RECORD]

{3} Queen vs Mines, 530 F 3rd 253, 255 (3rd cir 2008), the provisions of § 2241(b), refer specifically to claims presented in a second or successive habeas corpus petition filed persuent to 28 USCA§ 2254 and therefore does not apply to a petition filed pursuent to 2241. [SEE ALSO] Rarapind vs Reno, 225 F 3rd 1100,1111 (9th cir 2000); Valona vs US, 138 F 3rd 693, 694 (7th cir 1998).

On the 16th of January 2018, Affiant sent the CoA 11th Cir. an "Extraordinary Petition for Evidentiary Hearing" but the CoA 11th Cir. never provided Affiant with proof of filing or receipt or provide decision. [NOTE]Affiant sent the clerk of court four letters requesting status of the "Extraordinary ... Petition"; letter dated, 24 Mar. 2018; 10 Apr. 2018; 29 Apr. 2018; 19 May 2018.

On the 5th of May 2020, the Affiant sent to Muscogee Co. Courthouse a "Motion for Out-of- Time Appeal ... In Support of Motion In Arrest of Judgment and Motion to Modify Void Sentence (Affidavit)" as well as a "Rule NISI" with a "Certificate of Service" accompanied. However, the trial court never provided the Affiant with a stamped as being filed copy nor provide proof of receipt. Affiant sent clerk of court four letters dated; 25 May 2020; 17 June 2020; 23 Aug. 2020; 6 July 2020; and on the 22nd of Sep. 2020, Affiant sent copies of: "(1) Certificate of Service; (2) Rule NISI; (3) Motion for Out-of-Time Appeal ...;(4) Motion in Arrest of Judgment as Void ...". The clerk of court, on the 17th of Sep. 2020 sent Affiant a letter acknowledging receipt of Motion in Arrest of Judgment and Motion to Modify Void Sentence, stating it was filed on the 3rd of June 2020. But also stated Judge Mullins will not act upon the motion because it was filed exparte ... when proof of service was provided by Affiant. The trial court denied motion for out-of-time appeal and dismissed IFP as moot on the 17th of September 2020.

REASONS FOR GRANTING THE PETITION

In the best interest of justice, truth, and equity the Court must take into consideration that the

Affiant, Mr. Spottsville is a layman of law and has been incarcerated for 24 years. Of which, in this case, there does exist "extraordinary circumstances", to wit, STATE OF GEORGIA (RESPONDENT) has never provided any response to rebut or deny Affiant's valid proofs of claim; and where the State and Federal Courts all have failed to recognize and adopt the "LAW OF THE LAND", (Bill of Rights) as well as US Supreme Court's "STARE DECISIS" to have provide pro se litigant Spottsville a 'full, fair, and adequate process, hearing the valid constitutional violations of merit presented to the lower courts in his presentments/documents/motions/pleadings. Affiant has been diligent in his persuit by presenting his proofs of claim, that has gone undisputed by the RESPONDENT; valid prima facie and tangible evidence/facts with merit to warrant the courts to grant relief in favor of the Affiant. Even the fact that the Affiant has been pro se since his 1st direct appeal has been overlooked by the Stats and Federal Courts, to wit, Affiant does have vested, binding Constitutional and STARE DECISIS protected rights to the effective assistance of counsel on 1s direct appeal. Of which on court has addressed the fact STATE OF GEORGIA (RESPONDENT) and the State Courts have never addressed nor cared to provide response to and have remained completely silent to this fact. The record does not show or contain any proof that Affiant waived has right to appellate counsel.

Furthermore, no lower court, or the STATE OF GEORGIA (RESPONDENT) has addressed the fact that the Affiant was at time of arrest through trial, sentencing, and appeal process, as well as being in custody was an active duty service-member of the U.S. Army. Who was not discharged until September 2001. STATE OF GEORGIA (RESPONDENT) did not have valid jurisdiction to try, sentence, and keep custody of the Affiant, a U.S. Army Soldier.

There does so exist questions of STATE OF GEORGIA's (RESPONDENT's) credibility and reliability, of proof of guilt is ambiguous and fictitious and 40 years sentence is "EX-DELICTO".

ARGUMENTS/CITATIONS

Imperative it is for this Court to recognize that all the lower courts, both in State and Federal forums have clearly negated to establish that Affiant Spottsville is incarcerated contrary to "well established" laws and U.S. Supreme Court's "STARE DECISIS". There are "Special Circumstances" and "Prima Facie and Tangible" facts/evidence presented by the Affiant in which on lower courts have provided the Affiant with full and fair proceedings as the "Constitution" and "STARE DECISIS" does so require. Affiant has presented valid merit in the lower courts to warrant relief of his sentence of 40 years to serve 30 years. Especially where Affiant has diligently asserted in all the courts "PLAIN ERRORS" pursuent to the "Constitution and Law".

The State Court and the STATE OF GEORGIA (RESPONDENT) are well aware of OCGA §17-9-4; that provides ..."The judgment of a court having no jurisdiction of the 'Person of Subject Matter', or void for any other cause, is a mere nullity and may be so held in any court where it becomes material to the interest of the parties to consider it ." [SEE] Chester vs St, 284 GA 162 (2008), matter was addressed and the State Supreme Court says that a denial of such a sentence on the grounds that it is void is appealable as a matter of right. Like Chester's case, if reviewed "DE NOVO"; Spottsville's claim (proofs of claim) would mean that Affiant's sentence(s) were based on void conviction and thus were illegal. [COMPARE ALSO] Jones vs St, 282 GA 568 (2007); Collins vs St,277 GA 586 (2004); Gideon vs Wainwright, 372 US 335 (1963),... prisoner may challenge the

prior convection used ... there was a failure to appoint counsel in violation of Gideon; US vs Cronic, 466 US 648, 659-60 (1984), ..."the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." Cronic, also addresses, Court held that prejudice will be presumed "where assistance of counsel has been denied entirely or during a critical stage of the proceeding." ; Milliken vs Meyer, 311 US 457 (1940), void judgments are those rendered by a court which lacks jurisdiction, either of the subject matter of the parties(person); [COMPARE ALSO] Moore vs Dempsey, 261 US 86 (1923), Court reversed , holding that the federal court must determine the facts for itself because, if true, they entitled the petitioner to relief.

In this case mow before the Court, on the 17th of September 2020, the Superior Court of Muscogee County did so without justifiable cause and contrary to "well established precedent", incorrectly denied Affiant's "Motion for Out-of-Time Appeal ... in Support of Motion in Arrest of Judgment and Motion to Modify Void Sentence" as moot. (case #SU98CR1445) Muscogee Co. clerk, for Judge Ron Mullins did so arbitrarily remove and state/alleged, Affiant's "Motion in Arrest of Judgment as Void and Motion to Modify Void Sentence (Affidavit)", filed on the 3rd of June 2020 was without a "CERTIFICTIION OF SERVICE" form attached. The clerk of court's letter also declared, stated that the Honorable Judge Ron Mullins will not act upon void motion because it was filed "ex parta". Nor did Judge Mullins act upon Affiant's "Rule NISI" that was part of the original presentment/pleading/motion Affiant sent to be filed as one packet of documents/presentments to the Superior Court of Muscogee County ... which all should have been filed simultaneously on the 3rd of June 2020 with "CEERTIFICATION OF SERVICE" dated "the 5th of May 2020" as page #35 of the presentment/pleadings/motions/document.

[NOTE]: Clerk of court still refuses to provide Affiant with stamped as being filed copies of any part of the presentment /document; letter dated 22 September 2020, to wit, Affiant did so provide the court with tangible proof, copies of documents to include page #35, Certificate of Service for the presentment, pleadings, motions. (4 documents total)

Overall, in this matter, Affiant Spottaville incessantly asserted and maintain that he has had his "Constitutional Rights to Counsel on First Direct Appeal and Right to Effective Assistance of Counsel on Appeal" have been denied by the STATE OF GEORGIA (RESPONDENT); violated Constitutional protected rights. The trial court, GA Court of Appeals and GA Supreme Court, all have foiled to recognize and adopt U.S. Supreme Court's "STARE DECISIS"; and did so error denying Affiant's right to file and be heard when Affiant timely filed/sent to the lower courts his; "Motion in Arrest of Judgment and Motion to Modify Void Sentence" and Affiant's "Appellate Brief" and "Writ of Certiorari". All presentments were wrongfully dismissed /denied and the RESPONDENT (STATE OF GEORGIA) remained silent, failing to rebut Affiant's proofs of claim. [OCGA § US vs Prudden, 424 F 2nd 1021(1970)]

Affiant has cited the following U.S. Supreme Court cases plus others, lower courts refuse to and did not recognize nor adopt as "Law of the Land":

* 1) Gideon Vs Wainwright, 372 US 335 (1963);
* 2) Douglas Vs California, 372 US 353 (1963);
* 3) US Vs Cronic, 466 US 648 (1984);
* 4) Smith Vs Lucey, 469 US 387 (1985);
* 5) Strickland Vs Washington, 466 US 668 (1984);
* 6) Swenson Vs Bosler, 386 US 258 (1967);
* 7) Johnson Vs Avery, 393 US 483 (1969);
* 8) Armstrong Vs Manzo, 380 US 545 (1965);
* 9) Bounds Vs Smith, 430 US 817 (1977);
* 10) City of Cleburne Vs Cleburne Living Center, 473 US 432 (1985);
* 11) Michigan Vs Harvey, 494 US 344 (1990);
* 12) Lewis Vs Jeffers, 497 US 764 (1990);

* 13) Foucha Vs Louisiana, 504 US 71 (1992);
* 14) Michen Vs Taylor, 535 US 162 (2002);
* 15) Iowa Vs Tovar, 541 US 77 (2004);
* 16) N. Carolina Vs Pearce, 395 US 711 (2005);
* 17) Halbert Vs Michigan, 545 US 605 (2005);
* 18) Powell Vs Alabama, 287 US 45 (1932);
* 19) Kinsella Vs US ex. rel. Singleton, 361 US 234 (1960);
* 20) Stone Vs Powell, 428 US 465 (1976);
* 21) O'callphan Vs Parker, 395 US 258 (1969);
* 22) Solario Vs US, 483 US 435 (1987);
* 23) Teague Vs Lane, 489 US 288 (1989);
* 24) Jackson Vs Virginia, 443 US 307 (1979).

From the inception of this case(s) the Affiant as pro se Appellant to present day in the State and Federal Courts provide presentments to the lower courts related or similar facts/evidence cited in the following U.S. Supreme Court cases:

** a) Evitts Vs Lucey, 469 US 387, 393 (1985) and Halbert Vs Michigan, 545 US 605, 610 (2005);
(i) Constitutional right to the effective assistence of counsel for all direct appeals,
(ii) Due Process and Equal Protection Clauses required appointment of Counsel for indigent defendants.[4]

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4 The 6th Amendment guarantees in both State and Federal Prosecutions ... " the accuse shall enjoy the right ... to have the Assistance of Counsel for his defense. Record is absent as to an appointment of Counsel on Affiant's first direct appeal in State form; where Affiant was and is an indigent prisoner, to wit, STATE OF GEORGIA (Respondent), possessed full knowledge of indigence. Johnson Vs Zerbst, 304 US 458 (1938)

* * b) US Vs Cronic, 466 US 648, 658 (1984) and Gideon Vs Wainwright, 372 US 335, 344 (1963);
(i) right to effective assistance of counsel,
(ii) ability of the accused to recieve a fair trial.

* c) Iowa Vs Tovar, 541 US 77, 80-81 (2004);
(i) right to counsel extends to all critical stages for the criminal process. (to include through the first Appeal).

* d) Strickland Vs Washington, 466 US 668, 688, 694 (1984);
(i) ineffective assistance of counsel,
(ii) counsel's preformance fell below an objective standard of reasonableness
(iii) there is a reasonable probability, that but for counsel's unprofessional errors the result of the proceeding would have been different.

* e) Jackson Vs Virginia, 443 US 307 (1979) and
* Winship, 397 US 358 (1970);
(i) due process violation, State evidence of which no rational trier of fact could find guilt beyond a reasonable doubt. [5]

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[5] 5th/14th Amendments' Due Process Clause — a denial of due process is demosbrated if "the action complained of ... violates these fundamental
* conceptions of justice ..." US Vs Lovasco, 431 US 783, 790 (1977).
In this case, errors constitued fundamental defects which inherently resulted in a complete miscarriage of justice and exceptional circumstances exist.

f) Teague Vs Lane, 489 US 288, 310(1989);
(i) established a new standard for retroactivity analysis, (redressability),
(ii) analysis is applied in 3 steps,

g) Kinsella Vs US ex rel Singleton, 361 US 234, 240-41(1960) and Solorio Vs US, 483 US 435(1987) and Schelsinger Vs Councelman, 420 US 730(1975);
(i) test for jurisdiction, is one of status, namely whether the accused... is a person who can be regarded as falling within the term "land and naval forces"
(ii) jurisdiction of court-martial depends solely on the accused's status as a member of the armed forces,
(iii) held, that 'while an active duty serviceman is, such a status might be in military custody.[6]

h) Stone Vs Powell, 428 US 465, 480, 489, 494-95(1976);
(i) an opportunity for "full and fair litigation" of the claim at trial and on direct appeal,[7]
(ii) a fair opportunity to raise and have adjudicated the question,
(iii) the opportunity for "full and fair" con-

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6 O'Neal Vs Secy of the Navy, 76 F Supp 2d 641(WD PA 1979); Custody of a serviceman on active duty is deemed to be the serviceman's commanding officer, that is the person with in the military who has control over the serviceman. [NOTE THE FACT] Affiant's first four years of STATE OF GEORGIA's (Respondent's) custody, incarceration was as an active duty serviceman. [SEE RECORD / APPENDIX - G]

7 Affiant's 1st direct appeal in state criminal case (#A03A0007/4Feb. 2003) was without the effective assistance of counsel; Affiant was forced into pro se by the trial court judge and Respondent.

* i) Townsend Vs Sain, 372 US 293, 313 (1963); 6 Factors;
(i) held that when the facts of a State prisoner's claims are in dispute, a federal habeas court must hold a hearing if the prisoner did not receive a full and fair evidentiary hearing on his federal claims at some point in the state court proceedings,
(ii) holding that a prisoner was entitled to an evidentiary hearing only if he could "show cause for his failure to develop the facts in State-court proceedings actual prejudice resulting from that failure,
(iii) the petitioner's allegation, if true, would entitle him to relief,
(iv) the court also recognized, "Cause and Prejudice" where a fundamental miscarriage of justice has resulted from the failure to hold a federal evidentiary hearing. [8]

* j) Tennessee Vs Garner, 471 US 877 (1985);
(i) use of deadly force to prevent the escape of all felony suspects, whatever the circumstance, is Constitutionally unreasonable
(ii) where the suspect posses no immediate threat to the officers and no threat to others, deadly force does not justify its use to apprehend a suspect. [9]

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* 8 Keeny Vs Tamayo-Reyes, 504 US 1, 11 (1992).

9 Affiant on the 12th of July 1997 in Marion Co. Georgia was arrested by the use of deadly force when a deputy shot Affiant in the lower back and right leg as he ran into an open field away from the deputy with no weapon in Affiant's hands. [SEE ALSO] Bellows Vs Dainack, 555 F2d 1105, 1106 (CA 2 1977). (Marion Co. case #SU98CR033)

The Supreme Court should note that the trial court, the GA Court of Appeals, and the GA Supreme Court did so in their decisions/orders ... "Deviation from a legal rule is 'error' unless the rule has been waived." US Vs Olano, 507 US 725, 732-33 (1993). "A court's deviation from a legal rule constitutes 'error'," US Vs Wolfe, 245 F 3d 257, 261 (3d Cir 2001).

The Superior Court of Muscogee County has deviated from rule ... "well established" ... the right to appeal counsel on first direct appeal is "clear and Plain Error" in violation of the 6th Amendment right to counsel and the 14th Amendment right to due process and equal protection of the law. "The 6th Amendment right to counsel applies to all state and federal court's criminal prosecutions in which the defendant is accused of a felony." Johnson Vs Zerbst, supra; Gidion, supra. "The right to counsel extends to all critical stages of the criminal process and through the first direct appeal." Iowa Vs Tovar, supra; Michigan Vs Harvey, supra. "Due process requires effective assistance of counsel during first direct appeal as of right." Evert Vs Lucey, supra; Douglas Vs Calif, supra. "Due Process and equal protection clause requires the appointment of counsel for indigent defendants ... who were seeking first tier appellate review." Halbert Vs Michigan, supra.

On the record(s) there is no waiver of the right to appellant counsel nor is there

any record of an appeal counsel having been appointed to Affiant's Muscogee Co. case (#SR98 CR1445) to have rendered effective assistance of Counsel on first direct appeal. [SEE ALSO] US Vs Berger, 375 F3d 1223 (11th Cir 2004), defendants have 6th Amend. right to counsel on direct appeal; Michigan Vs Jackson, 475 US 625 (1986), State has burden of establishing valid waiver of defendant's 6th Amend. right to counsel.

Affiant also asserts that his trial counsel stated she would file an appeal but never did so. [SEE] Garcia Vs US, 278 F3d 134 (2d Cir 2002), defendant who was misled regarding right to appeal was entitled to vacature of sentence.

Affiant was totally unaware of Counsel not filing an appeal but failed to inform Affiant a motion for new trial was filed nor was it ever discussed with the trial Counselor. Whether counsel consulted with the Affiant about an appeal been discussed by the Court in Roe Vs Flores-Ortega 528 US 470, 473-84 (2000), a lawyer who disregards a defendant's specific instruction to file a notice of appeal acts in a manner that is professionally unreasonable ... Counsel's error leads to the forfeiture of a proceeding itself, prejudice is presumed. The defendant is entitled to a new appeal "without showing that his appeal would likely have had merit."

In Affiant's case... Affiant did express firmly that he wanted to file an appeal but counsel failed to do so. The failure prejudiced Affiant's rights to direct appeal with the assistence of counsel... is a, Strickland, supra, breach where defense Counsel was told by the Affiant he wish to have case reviewed by the GA. Court of Appeals. But Counsel failed to file an appeal notice and filed a motion for new trial never to discuss benefits of appeal verses the benefit of a motion for new trial.

The first time Affiant was aware of a motion for new trial had been filed in the trial Court was at the "Habeas Corpus" hearing at Reidsville Superior Court in March of 2002, (Case # 2001-HC-30). In which the district attorney informed the court that there was a pending motion for new trial to be resolved in the trial court. The habeas corpus court dismissed case back on the 4th of February 2004, (Case # 2003-HC-50-NJ, denied). Afterwards, the Affiant was forced to go it alone, prose on his ill-fated direct appeal; without the effective assistance of Counsel, (Case # A03A0007). [SEE/ REVIEW RECORD(S)] Habeas was denied, (1st direct appeal was denied (3 Feb. 2003), and motion for new trial was denied, (6 May 2002); clearly demonstrating that from the theory of law... rights of adequate and effective assistence of counsel at trial to appeal process has been completely devoid; is caused

prejudice warrenting relief. Affiant's does have undisputable circumstances that demonstrate prejudice caused by the STATE OF GEORGIA (Respondent) and State courts, to wit, a Counsel's Professional and effective assistance at the appeal process. There is a "reasonable probability that but for counsel's deficient failure to consult with Affiant about an appeal verses a motion for new trial, Affiant's sentence and/or conviction may have been very different... reduced or over-turned. [COMPARE] Roe VS Flores-Ortega, supra.

Affiant does present non-frivalous errors before this Court citing, "USSC STARE DECISIS" and "US Constitution's Amendments". The Court should review case "DE NOVO", but in this matter now before the court. It was clear error for the State Court of Appeals to arbitrarily and capriciously dismiss a direct appeal prematurely, denying Affiant statutory right to file his "Appellant Brief" in a timely manner. Court of Appeals did not provide Affiant with full and fair litigation procedure to present facts demonstrating trial court's error and failure to file documents/pleadings/presentments Affiant sent to the State CoA. The Court must recognize that Affiant did not receive full and fair litigation on any matter from any of the State lower courts from filing/ and decisions of the trial court, the State CoA, and the State Supreme Court. In fact,

without the aide of effective assistance of counsel on Affiant's first direct appeal (Case# A03A0007), this Court can not say with certainty that Affiant had a fair trial or an appeal process. Where there is a complete denial of effective and substantial aide, an effective representation of counsel.

* [COMPARE] Cronic, supra, at 659-60;
** Mack Vs St 296 Ga 239 (2014); Duncan Vs St WL 1214751 (GA App 2015); Stone Vs Powell, 428
* US 436 (1976); Cosio Vs US, 927 F 2d 1106, 1123, (DC 2007), full and fair litigation of claims at trial and on direct (appeal) review.
* Baker Vs Humphrey, 299 Ga 504 (2014), the right to access court ... to file papers;
* Potts Vs Ewen, 249 GA 396(2) (1932), right to access court in order to challenge unlawful conviction and seek redress for violations of constitution rights can not be unjustifiable
* denied or obstructed; Bounds, supra, access to courts. [ALSO SEE/ COMPARE]

* Overstreet Vs Warden, Atty General, State of GA, 811 F 3d 1282 (11th cir 2016), there was insufficient evidence to support his kidnapping conviction
* ... Strickland govern claim of ineffective assistance of appellate counsel; the court notes that ... "the fundamental purpose of an appellate lawyer representing a defendant in a direct criminal appeal is to identify and argue bases for reversal of a conviction.
* [SEE] Douglas Vs Calif, supra, at 338, (des-

citing the value of appellate counsel's examination into the record, research of the law, and marshalling of arguments on the defendant's behalf.)" This case was reversed and remanded.

This should make and recognize that in the state forum exist Banks Vs St, 332 GA App. 259 (2015), to wit, applies to Affiant's case; where there is a Constitutional right to counsel and exist insufficient record of waiver of right to counsel. The Court in Banks, supra, reversed concluding "the record is devoid of a knowing and intelligent waiver of Bank's right to counsel." [Citing] Barnes, 241 Ga App 112 (2003).

There is no valid record of Affiant ever seeking to waive his right to counsel on direct appeal. Affiant pro se on direct appeal lack the necessary legal skills to avoid prejudice and put forth arguments with legal merit. Affiant was denied the right to counsel at a "critical stage"... direct appeal ... there is per se prejudice and reversal is automatic. [COMPARE] Mickens Vs Taylor, 535 US 162, 166 (2002); [Citing] Cronic, supra, at 659-60, prejudice presumed where there "is complete denial of counsel";
[ALSO] Penson Vs Ohio, 488 US 75, 88 (1988), leaving the petitioner "completely without representation during the appeals court's actual decisional process." [ALSO COMPARE] Hook Vs St, 284 GA 531 (2008), Hook filed pro se motions to include one for out-of-time appeal ...

GA Supreme Court reversed and remanded trial Court to authorize an out-of-time appeal.

Because Affiant was forced to proceed without the effective assistance of counsel on 1st direct appeal and there does not exist substantial facts/evidence at trial, to wit, any attorney would have reasonably made effective, valid legal arguments that would most likely have lead to a different out come on the verdict or sentencing in Affiant's case. [COMPARE] * ** Carswell Vs St, 244 Ga 516 (2000); Kirkland Vs * St, 202 GA App 356 (1991); St Vs Walker, 327 Ga * App 304 (2014); Pointer Vs St, 299 Ga App 249 * * (2009); Floyd Vs St, 279 Ga App 21 (2006); Harris, * 261 GA 386 (1991); [ALSO] Strickland Vs Washington, supra; Smith Vs Francis, 253 GA 782 (1985).

* In Jackson Vs Virginia, 443 US 307 (1979), standard of review is whether the evidence was legally sufficient to support the jury's verdict.

There is no evidence that is supportive of placing the Affiant Spotswilk at the alleged scene of the felonies as charged in the [STATE OF GEORGIA's (Respondent's)] indictment, the prosecutor's charges, presented before the grand jury... thus the jury's finding of not guilty of Burglary as well as rape... warrants sentence void as well as void conviction. [COMPARE] * Wells Vs St, 151 Ga App 416 (1976). "Entery, an * element of the offense of Burglary can not be inferred."; Parker Vs St, 226 Ga App 462 (1997). "State' did not present sufficient evidence

to prove burglary, rape, and aggravated assault."

There is no tangible evidence, facts, to support STATE OF GEORGIA's (Respondent's) allegations of felonies of the prosecutor's charges to warrant maximum sentencing or the conviction of secondary offenses.

* [SEE/COMPARE] Gay, 279 GA 180 (2005); * insufficient evidence"; Davis Vs St, 289 GA App 526 (2008), was no other evidence to support the conviction e.g., no fruits of the burglary; * Noland Vs St, 277 GA 99 (2015) "It was neither alleged in the indictment nor proven at trial" ... "The evidence ... did not prove any of the methods in which ... may be committed ..." The Court reversed the conviction and vacates the sentence imposed for it; Redding, 296 GA 471 (2015). [ALSO]

* St Vs Jackson, 294 GA 9 (2013), the evidence has been legally insufficient for the jury to * Convict him. [CITING] Jackson Vs Virginia Supra.

* In Mill, 188 GA 616 (1939), the State Supreme Court says that the law effectively charges the trial court, "to let no verdic stand unless you conscience approves it, although there might be some slight evidence to support it."

In the Atlants case(s) the evidence was not "overwelming" and was "contrary to law and the principles of justice and equity" and was "decidely and strongly against the weight of the evidence." (OCGA § 5-5-20 / § 5-5-21) [COMPARE] * Gomellion Vs St, 296 GA 648 (2015); White,

* 293 GA 523(2013) & Walker, 292 GA 292 (2013); Maniel, 289 GA 383(2011).

Nevertheless, a sentence that is void for any reason is a mere nullity and may be vacated at anytime in any court. Where it becomes material to the interest of the parties to consider it. Accordingly, the denial of a motion to correct or vacate a void sentence is directly appealable. Court of Appeals looks at the substance of the motion rather than its nomenclature, a sentence is only void where the trial court imposes
* a punishment not allowed. [SEE] Ward Vs St,
* 22 GA App 63 2009; Jones Vs St, 278 GA App 669 ('2006);
** Brown Vs St, 214 Ga App 338 (1994); Crumbley Vs St,
** 261 GA 610 (1991); [ALSO] Milliken Vs Meyer, 311 US 457 (1940).

Null and Void sentence does exist in this case, as well as the judgment being void. Where the lower courts did not look at the substance of the Affiant's motions/pleadings/presentments; and where lower court, the trial court, has no personal or subjectmatter jurisdiction over the Affiant Spotsville, who was at the time of his arrest through his trial, and sentencing phase, and the filing of his pro se notice of appeal phase, and the whole appeal process... was an active-duty servicemember of the U.S Army. State courts and the STATE OF GEORGIA (Respondent) lack the jurisdiction to try a servicemember without a valid waiver. [SEE | COMPARE] * Wallace Vs St, 284 GA 429 (2008);

* Harris Vs Thunder, 170 F3d 552 (CA 10th 1948) military
* authorities have jurisdiction over person; Hart Vs
Laird, 406 US 341 (1993), Court recognized that a
person on active duty with the armed forces is
sufficient "in custody". Military jurisdiction
under military law depends on whether he
is a member of the land or naval forces;
* Kinsella Vs US ex rel Singleton, 361 US 234
* (1960); Solorio Vs US, 483 US 435 (1987); (10 USCA
§ 825(c) / § 880 / § 930 / § 934 ...) "Without
contradiction, the materials ... show that
military jurisdiction has always been based
on the "Status" of the accused, rather
* than the nature of the offense." Kinsella,
supra, at 240-41; US Vs Kebodeaux, 570 US 387,
(2013) UCMJ has authority ... to be tried by a
military tribunal rather than a state court;
* Lewis Vs Odh, 2015 US District LEXIS 174302,
Historically, that the military has the auth-
ority to try, convict, and punish its service-
members pursuant to UCMJ, regardless of
where an alleged crime occurred or its re-
lation to military service; [ALSO CITINGS]
* Faison Vs US, 2015 US Dist. LEXIS 30810; US Vs
* Williams, 2017 US Dist LEXIS 151198; US Vs
Jimenez, 895 F 3d 228 (2018) US App LEXIS
* 18673; Hurn Vs Fallis, 768 Fed App 332,
2019 US App LEXIS 10067.

In 22 Moore's Fed. Practice - Civil § 407.01
(Military status ... Solorio, Supra) Says:
"Service member, to be court-martial where
crime was committed while in his private

home not on military base." The USSC stated: "Civil courts are ill-equipt to review military matters ... matters of military concerns."

So here in the Alliant's case, the STATE OF GEORGIA (Respondent) and the Prosecutor, and the trial court did not have (lack) the authority to exert a valid personal or subject matter jurisdiction over the Alliant, Spotsville. Whom at the time of arrest, trial, sentencing, and appeal process was in fact an active duty servicemember of the US Army. STATE OF GEORGIA (Respondent) and Prosecutor did so wrongly try, convict, sentence and denid appeal contrary to OCGA § 17-9-4 / § 9-12-16, as well as contrary to USSC decisions. (STARE DECISIS)

For Alliant Spotsville was not officially released from the US Army, (an active duty servicemember), not until September of 2001 after being arrested in July of 1997. (SEE Court RECORDS — Military DD Form 214 AND (SEE) APPENDIX-G, Discharge Order # 261-2200] [ALSO COMPARE]

* * US Vs Wheeler, 27 CMR 981 (1959) [CITED]; Loving
* Vs US, 517 US 748 (1996); Clinton Vs Goldsmith,
* 526 US 529 (1999); Hamdon Vs Rumsfeld, 548
US 557 (2006): [ALSO]
* O'Neil Vs Secty. of the Navy, 76 F Supp 2d 6411, (ED La 1999) "Custody of a serviceman on active duty is deemed to be the serviceman's Commanding Officer, that is the person with in the military who has control over the serviceman."

Equally important (case # SU98CR1445), there is no logical or legal reason why the Superior Court of Muscogee Co. refuses to precipe, acknowledge the undeniable and unrebutted facts presented in Affiant's motions/pleadings/documents/Presentments filed in this matter. Especially the Presentment filed on 3 June 2020 that claims Affiant has had a denial of substantial "Constitutional Right" to the effective assistance of Counsel on 1st direct appeal to criminal case # SU98CR1445 (Ct # A03A-0007). [SEE RECORD] The Affiant was forced to proceed with his appeal pro se without the professional benefit of counsel's aid; because the trial court and the STATE OF GEORGIA (the Respondent) failed to assign appellate counsel to his appeal (case # A03A0007). [COMPARE RELEVENT GA CASES]

* Trauth Vs St, 295 GA 874 (2014); Robert Vs Caldwell, 230 GA 223 (1973); Ragan Vs Ragan, 221 GA 173 (1965); Amadeo Vs St, 259 GA 469 (1989); Clarke Vs Court, 247 GA 194 (1981); Smith Vs Francis, 253 GA 782 (1985). [COMPARE ALSO]
* Strickland Vs Washington, supra; Gidion, supra; Johnson Vs Zerbst, supra; Evans Vs Tovar, supra; Michigan Vs Harvey, supra; Evert Vs Lucey, supra; Douglas Vs Calif., supra; Halbert Vs Michigan, supra.

And in this criminal case, (# SU98CR1445), the Affiant has diligently asserted that the lower courts and STATE OF GEORGIA (Respondent) have refuse to and failed to appoint counsel on 1st direct appeal, contrary STATE and FEDERAL LAW.

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of "Burglary and Rape"; charges that are essential and necessary to proving secondary alleged offenses of an assault and molestation did in fact occurred as laid out in the Prosecutor's indictment alleged by the STATE OF GEORGIA (Respondent). Court egregiously handed down 20 year sentences in three alleged felonies that could have only occurred if Burglary and rape occurred for all charges were alleged by the prosecutor, the STATE OF GEORGIA (Respondent) as laid out in the indictment... all felonies at the same time, place. [COMPARE]

* US Vs Richardson, 313 F3d 121 (3d Cir 2002), A sentence enhancement cannot be based solely on an allegation in the charging document where the conviction for the charged offense or offenses could have been obtained without
* that allegation being proven; US Vs Velas-quez 304 Fed 3d 237 (3d Cir 2002). Generally, sen-tences imposed at the same time run con-currently unless a statute mandates or the
* court orders otherwise; Gibson Vs US, 271 F3d 247 (6th Cir 2001)(1) a different may not be exposed to a greater punishment than that authorized by the jury's guilty verdic; (2) the
* fundamental precept... in Apprendi's that it is patently unjust for a defen-dant to be sentenced for a crime of which he has not been convicted of.

* Apprendi Vs New Jersey, 530 US 466 (2000);
* [ALSO SEE] Ring Vs Arizona, 536 US 584 (2002), "aggravating circumstance" (at 592-93), in the

absence of this factual finding, the defendant could receive a maximum sentence ... (at 597) - The Court held that because the State's enumerated aggravated factors operated as "the functional equivalent of an element of a greater offense," the 6th Amendment required that the aggravating factors be found by a jury." [COMPARE ALSO] Blakely vs Washington, 542 US 296, at 305 (2004).

In the Affiant's case, not guilty verdict of burglary (and rape) alone, clearly demonstrate by factual evidence that Affiant has been incarcerate by the STATE OF GEORGIA (Respondent) without proof of entery to have no proof of a rape occuring at the same time and alleged scene of the felony of aggravated assault and childmolestation. There's no evidence, facts, nor proof of these felonies having occurred to wit, raises the issue of Affiant Spottsville's "actual innocense" and the 40 year to serve 30 years is "plain error" ... "cruel and unusual punishment. (8th Amend.) [COMPARE]

* US vs Bautista, 252 F 3d 141 (2d Cir 2001) absence of evidence in a criminal case is valid basis for reasonable doubt. (Also it is evident, equal protection was violated event Affiant was denied right to counsel on 1st direct appeal.)

b [COMPARE] Brown vs City of Oneonta, NY, 195 F 3d 111 (2d cir 1999) equal protection clause is essentially a direction that all persons similarly situated should be treated alike.

This Court must grant an Appeal without counsel extremely prejudice the Affiant's 5th/6th/8th/14th Amendment Rights and by the STATE OF GEORGIA (Respondent) and Court failing to, refusing to appoint appellate counsel clearly ensured pro se Affiant Spottsville would not be able to adequately present a well suitable case to overcome the STATE OF GEORGIA's (Respondent's) fictitious allegations and the Prosecutor's false charges laid out in the indictment. Also note that there is no place in the record(s) that exist Affiant ever waived right to appellate counsel. [SEE] Gidion Vs. Wainwright, Supra; Michigan Vs. Jackson, Supra at "State has the burden of establishing valid waiver of defendants' 6th Amend. rights to counsel." Denial of right to counsel is cause and prejudice and a serious flaw to wit, benefit of counsel on 1st appeal surely would have changed the outcome of Affiants sentence.

NOTE: On record, the trial judge clearly stated that sentence would run concurrent with related case # SN98CR033 of Harrison County GA. (24 years to serve 15 years), to wit, alleged a rape had occurred as factual basis for the felonies charged; yet judge (Muscogee Co.) sentence was for 40 years serve 30... what is concurrent about the sentences?

Sentence imposed by the trial court is void sentence and should be addressed by this

[COMPARE] OCGA§ 17-12-23(a)(1)(4); ** Davis Vs US, 512 US 450 (1994); Edwards Vs Arizona, * 451 US 477 (1981); Jordan Vs St, 259 GA 63 (1989); * Gissendaner Vs St, 269 GA 495 (1998).

Surely the Court can conclude that not for the 6th Amend. violation of right to effective assistance of counsel on Affiant Spottsville's 1st direct appeal; his sentence would have been successfully reduced to a much lesser sentence; the outcome of his appeal would have been different. Clearly there is called into question of fairness and equity of Affiant's appeal process. (14th Amendment).

Affiant Spottsville's sentence of 40 years to serve 30 was based on untrue facts - & the evidence does not support such a harsh sentence (8th Amend. violation) [SEE AND COMPARE] * US Vs Miller, 263 F3d 1 (2d Cir 2001) Due process requires that a convicted person not be sentenced on material untrue assumptions or mis information; ** Stone Vs Powell, supra; Jackson Vs Virginia, + supra; Winship, + supra.

In the Affiant's criminal case(s) there is no evidence placing the Affiant at the scene of the allege felonies that the STATE OF GEORGIA (Respondent) & the prosecutor's alleged stated events in the indictment as charged. Yet, Affiant was sentenced the maximum of 20 years for each felony contrary to well established law. Undisputed is the fact that the jury's decisions of not guilty to felonies

Court to comport the "Bill of Rights" and the 14th Amendment. Sentence should be modified, reduced where OCGA § 17-10-6.2 (et seq.) in its specific language (new law) is to be applied to Addiants case retroactive (redressability) as to comport the princles of justice, equality, and fairness of the Law. [SEE]

* Teague Vs Lane, 489 US 288 (1989) the new standard for retroactive analysis and the new rule principle does apply to state inmates.

As a new rule, § 17-10-6.2(b) does place certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to procribe, or prohibiting a certain category of punishment for a class of defendants, because of their offense or status. And as for the "Watershed" rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding, § 17-10-6.2(b) is applied to "any person" as Statute states does comport fundamental fairness. [COMPARE CASE]

* Coker Vs Ga, 433 US 584, 592 (1977) 8th Amendment does so prohibit punishment that is "grossely out of proportion to the severity of the crime." [ALSO SEE]

* Penry, 492 US ___ (1989) at 330, Teague exception also covers rules "prohibiting a certain category of punishment for a

class of defendants because of their status or offense; Gall Vs Parker, 231 F 3d 265, 323 (6th cir 2000) rule that resentencing required if jury was precluded from considering mitigation factors satisfied watershed rule exception.

OCGA § 17-10-6.2(b) does so meet both of Teague's exception, does prohibit a certain category of punishment for a class of defendants, [Sex Offenders] because of their status or offense. Applying as watershed rule(s), § 17-10-6.2(b) in criminal procedures does implicate a fundamental fairness and accuracy of criminal proceeding, for it: (1) does relate to the accuracy of the conviction and (2) it does alter our understanding of the bed-rock procedural elements essential to the fundament fairness of a proceeding.

In the Affiant's case, the trial court is in error in concluding Affiant's sentence was not illegal or void under OCGA § 16-6-4(b)(1) and § 17-10-6.2(b), as well as the 8th Amendment. [REVIEW RULE APPLIED]

Clark Vs St, (2014), 761 SE 2d 826 and St Vs Crosser, 328 GA App 198, (2014) and Hedden Vs St, 288 GA 871 (2011).

In St Vs Hammons, 323 GA App 813 (2014), "the interpretation of a statute is a question of law which is reviewed "DE NOVO" on appeal, we apply plain legal error standard of review."

Teague rule entitles the Affiant to relief sought, the matter is "redressability" of violations of a new rule and should be applied "retroactively" of such a rule. [SEE AND COMPARE] Danforth Vs Minnesota, 552 US 264, 271 n.5 (2008); Teague Vs Lane, 489 US 288 (1989); O'Dell, 521 US 151 (1994); Sawyer, 497 US 227 (1990).

This Court must review "DE NOVO" where Affiant seeks also Teague, supra issues. Yet the Court must also note and consider the STATE OF Georgia's (Respondent's) failure to provide any rebuttal or response to Affiant's proofs of claims presented to the trial court, GA Court of Appeal, and the GA Supreme Court. The very fact that Respondent (STATE OF GEORGIA) has remained completely silent, not rebutting any facts/evidence (proofs of claim) in any State court. (Also Federal Courts compare case# USDC-4:16-CV-00177-CDL-MSH / USCA 11th Cir - 16-14926F / USSC-18-6048) Courts all fail to recognize and adopt "law of the land and USSC's STARE DECISIS and have denied relief to Affiant. [SEE ALSO] OCGA § 24-3-36; US Vs Prudden, 424 F2d 1021 (1970), "Silence can only equate with fraud where there is a legal or moral duty to respond or where an inquiry left unanswered would be intentionally misleading." [ALSO SEE] OCGA § 9-10-111; OCGA § 9-11-7(a); OCGA § 9-11-55.

In this matter, the Respondent (STATE OF GEORGIA) cannot overcome "well establish" law on the US Constitution's protected right [COMPARE]

* James Vs Kentucky, 466 US 341 (1984), The Supreme Court held State Statutes did not take precedent
* over Constitutional law; Miranda Vs Arizona, 384 US 436 (1966), Where rights secured by the Constitution are involved, there can be no legislation which would abrogate them.

STATE OF GEORGIA (Respondent) has remained silent, failing to rebut proofs of Claim and is in default. But the lower courts also fail to comply with state law and federal law by denying relief to Affiant. For example; GA Court of Appeals prematurely dismissed Affiant's Appeal Brief arbitrarily and capriciously not allowing the Statute's full 20 days to submit his appellate brief. Which was sent out on the 15th of February 2021 (placed in the prison's indigent mail system). Court of Appeals gave Notice of Docketing Date of 28 January 2021, but denied/dismissed appeal on the 11th of February 2021. This is a Due Process, Equal Protection violation where the Affiant did not receive a full and fair proceeding by the GA Court of Appeals as law requires.

* [COMPARE] Addinson Vs St, 322 GA App 1 (2013) De Novo review of application of law to
* undisputed facts; Hall Vs Wheeling, 282 GA 86 (2007), Due Process violation and ineffective assistence, among other things; [ALSO]
* Chapman Vs US, 469 F2d 634 (5th cir 1972), Appeal from a district court's judgment of conviction in a criminal case is a matter of

right and abridgement of this right is incompatible with the most basic concept of due process.

The State, lower Courts have arbitrarily and capriciously acted contrary to "well established" law in allowing removal of Affiants pleading ... out-of-time appeal ... Iron his documents filed Collectively on the 3rd of July 2020 has only further interfered and prejudiced Affiant's pursuit of his Constitutional Rights vested in the 5th and 14th Amendments and "STARE Decesis" of the U.S. Supreme Court. This Court does possess the absolute authority to correct the lower court's seriously flawed denial of "Motion for out of Time Appeal". Where exist Constitutional and Statutory rights that explicitly allow Affiant in this case, an out-of-time appeal to be granted or reneral of Sendencing or conviction. [COMPARE]

* Brown Vs St 319 GaApp 543 (2013), Court says, "out-of-time appeal is the remedy for a frustrated right of appeal, when the appellant was denied his right of appeal through counsel's negligence or ignorence (or if the appellant was not adequately informed of his appeal right ... A defendant is also entitled to the effective of counsel for such a direct appeal... nothing in the record shows that the trial court ever respond to ... the appointment of counsel to pursue his appeal.

Plus in this matter now before this Court, the trial court is required to render a full and fair decision of all Affiant's Presentments!

pleadings/motions ... "Motion in Arrest of Judgment as Void and Motion to Modify Void Sentence (filed 3 June 2020); "Motion for Out-of-Time Appeal; "Rule Nisi"; and IFP Request as components of the same pleading that were in fact (undisputed by Respondent) accompanied with Affiant's "Certification of Service" [SEE RECORD] There exist documents (letters) sent to the Trial Court on the 22nd of September 2020, copy of Affiant's Certificatio of Service (page #35) dated 5th of May 2020.

Because the State Courts "dropped the ball" on providing counsel for 1st direct appeal (case # 2018 CR1445/Muscogee Co. GA.) an appropriate remedy is a conditional writ directing release unless ... State provides for commencement of an appellate proceeding as if no direct appeal. Where there is: (1) no knowing waiver; (2) court intentionally abandoned the right to counsel on direct appeal; (3) Court of Appeals failed to use ... the danger of self representation or knowing and intelligently waiving his rights to counsel on first appeal. [SEE/COMPARE] Wisconsin ex rel Tolliver v McLaughry, 72 FSupp 2d 960 (1999).

Furthermore, in the commanding authority of this Court and its plethora of "STARE DECISIS" cited herein, above along with other valid relevant citings; and whereby the Affiant has presented valid prima facie and tangible proofs of claim, to wit, STATE OF GEORGIA

(Respondent) has remained silent refusing to rebut Affiant's proofs of claim and those proofs of claim have gone overlooked, undisputed in the lower courts failing to recognize and adopt Constitution's Bill of Rights, 14th Amendment, and STARE DECISIS ... State and Federal courts. This Court should now intervene where jurisdictional issues are also unresolved by the lower courts for the Affiant does invoke federal jurisdiction, "Law of the land". Where Affiant has clear "Standing" and "Plain Errors" exist in lower courts proceeding that lead to a harsh sentence of 40 years to serve 30 years, that was not concurrent to Marion County's related case (#SU98CR033) [COMPARE]

* Whitmore Vs Arkansas, 495 US 145, 155 (1990);
* Summer Vs Mata, 449 US 539, 546-47 (1981);
* Rucker Vs Spain, 464 US 114, 120 (1983).

Affiant was an active duty Servicemember who was denied vested, binding constitutional protected right by the STATE OF GEORGIA (Respondent) and lower courts after being wrongfull arrested by the excessive use of deadly force in Marion County GA. in July of 1997.[9] This fact still remains undisputed by Respondent

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* [9] Tennessee Vs Garner, 471 US 877 (1985) "the use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is Constitutionally unreasonable, and where the suspect posses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. [SEE ALSO]
* Bellows Vs Dainack, 555 F2d 1105, 1106 (CA 2 1977).

(STATE OF GEORGIA) and not addressed by the lower courts. STATE OF GEORGIA — across this Nation — "Active-duty Service Members" ... are being denied their rights to military jurisdiction under UMCJ. Service members do not receive due process nor equal protection in the STATE's judicial forum, they do not receive a jury of their peers but civilians whom do not comprehend military way of life. Often extra charges are fabricate by the Respondent and DA to ensure a conviction. Whereby prosecution always seeks the maximum sentence & the court(s) allow it without cause. Service members, Veterans in Georgia receive harsher sentences for same or similar felony charges others receive. Vets cannot receive timely parole and end up incarcerated serving 95% of their sentence or may out where other prisoners (civilians) are released on parole for the same charges.

In the interests of justice to correct "vital flaws" of a serious miscarriage of justice, to wit, no state or federal court have addressed all the constitutional issues in this case, STATE OF GEORGIA (Respondent) & the trial court & prosecution did not have the authority to try, convict, sentence, & incarcerate Affiant Spottsville, whom in 1997 – 2001 was an active-duty service member stationed in the STATE OF GEORIA's (Respondent's) State. Respondent have remained silent, refusing to rebut Affiant's proofs of claim and does so seek relief he is entitled to and seeks precedent where there exist "extraordinary circumstances".

CONCLUSION

To emphasize, Alliant Spotsville, the petitioner has presented credible prima facie and tangible facts/evidence throughout this case; that has gone completely undisputed, challenged, by the STATE OF GEORGIA's (Respondent's) silence and lower courts have neglected to recognize and adopt "well established law" (Law of the Land) and this court's "STARE DECISIS" is "Plain Error", to wit, Constitution violations herein case warrent relief sought:

1) provide out-of-time appeal; or
2) modify void sentence; or
3) void judgment; or
4) release from custody.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 12 Aug 2021

SWORN AND SUBSCRIBED BEFORE ME THIS 12TH DAY OF AUGUST 2021.

MICCAL L. ROWLAND Notary Public (SEAL)

NOTARY PUBLIC

EXPIRED: February 18, 2022 BURKE COUNTY, GA

PWC/A20210812936SDANS