ORIGINAL

No. 21-7273

FILED
DEC 09 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Terron Dizzley — PETITIONER
(Your Name)

vs.

Warden Kenneth Nelson — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Terron Dizzley
(Your Name)

4460 Broad River Road
(Address)

Columbia, SC 29210
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

Did The United Court of Appeals for The Fourth Circuit Decide an Important Federal Question in A Way That Conflicts with The Relevant Decisions of This Supreme Court Of The United States. That Writ of Mandamus Is Not the Appropriate Remedy to Raise Issues of Double Jeopardy, False Imprisonment, And Lack of Trial Court Jurisdiction to Impose Sentence?

Did The United Court of Appeals for The Fourth Circuit Decide an Important Federal Question in A Way That Conflicts with The Relevant Decisions with Other U. S. Courts of Appeals. That Writ of Mandamus Is Not the Appropriate Remedy to Raise Issues of Double Jeopardy, False Imprisonment, And Lack of Trial Court Jurisdiction to Impose Sentence?

Did The United Court of Appeals for The Fourth Circuit Decide an Important Federal Question in A Way That Conflicts with The Relevant Decisions with This Supreme Court Of The United States That Petitioner's Exparte Motion For Immediate Release In Support Of His Writ Of Mandamus Is Not The Appropriate Remedy To Raise Issues Of Double Jeopardy, False Imprisonment, And Lack Of Trial Court Jurisdiction To Impose Sentence?

LIST OF PARTIES

[x] 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:

RELATED CASES

In re Terron Gerhard Dizzley No. 21-1278, 850 Fed. Appx. 853

Table of Contents

TABLE OF AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

[ ] reported at 850 Fed. Appx. 853; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

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[ ] is unpublished.

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

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

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

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

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was June 28, 2021.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 8, 2021, and a copy of the order denying rehearing appears at Appendix B.

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

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

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

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

U.S. Constitutional Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitutional Amendment 8

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

U.S. Constitutional Amendment 13

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

Section 2. Congress shall have power to enforce this article by appropriate legislation. U.S. Constitutional Amendment 14

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

indicate the character of the reasons the Court considers:

Rule 10. Considerations Governing Review on Writ of Certiorari...

- (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or 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;
- (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
- (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

28 U.S.C. §2254

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

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

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

28 U.S.C §1651

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

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

STATEMENT OF CASE

The record shows that the Petitioner provided the U. S. District Court and the U. S. Court of Appeals for the Fourth Circuit with proof that for over six years, the lower courts deprived him of his direct appeal, PCR, and discovery, mostly importantly, his 2012 first trial transcript, upon countless of requests through Pro Se motions, paid attorneys, court appointed attorneys, and private investigators.

In December of 2019, Petitioner was finally able to obtain his first trial transcript through the third hired Private Investigator, Bennie L. Webb.

Petitioner's first trial transcript of 2012 revealed that he was "acquitted" of the charges of murder in Georgetown, South Carolina Court of General Sessions trial by jury, by the Honorable Judge Michael Baxley. Judge Baxley's ruling was based on "insufficient" evidence to convict which established Petitioner's innocence and lack of criminal culpability that the Prosecution, "They are unable to meet the burden of proof to the extent that they can bring back unanimous verdict." See: Transcript of 2012 trial. Ruling of the Honorable Judge Michael Baxley., Pages 314, Lines 4 – 18 through Pages 315, Lines 1 – 8. "First of all, I don't want you to think in any way that your exercise as jurors have been a failure on your part because you could not reach a verdict. That's not a failure on your part. That really the strength of our system because we bring diverse citizens from different backgrounds from the same community to hear a set of facts and make a decision to whether or not in criminal court a person is guilty or innocent.

Now what you've told us is that you can't' reach a unanimous decision, and I would say to you that that's not a failure on your part. That's actually a strong message to the prosecution that they are unable to meet the "burden of proof" to the extent that they can bring back a unanimous verdict." See: Evans v. Michigan, 568 U. S. 313 (2013). "Here we know that trial court acquittal Evans, not because it incanted the word, "acquit" (which it did not) but because it acted on its view that the Prosecution had failed to prove its case." Burks v. United States, 437 U.S. 1 (1978), The Supreme Court ruled, "The Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceedings." Hudson v. Louisiana, 450 U. S. 40 (1981). "Double Jeopardy principles precluded re-trial where petitioner moved for a new trial on the grounds that evidence was legally insufficient to support the verdict and trial judge granted motion on grounds that State failed to prove its case as a matter of law."

According to clearly established United States Supreme Court Law, Judge Baxley's ruling was an "acquittal". See also Pages 315, L 1 - 8.

"I don't want to you believe in any way, zero way, that somehow you are responsible for that, because you are not. You're given a set of facts that were the best that a state could adduce from what happened and what they were able to determine, they put that up to you and you brought back a decision that you simply could not agree upon it. There is a message in that and so you've accomplished your purpose.

According to the U. S . Supreme Court, not only was Judge Baxley's ruling an "acquittal", but such a ruling:

1.. Barred retrial under the Fifth Amendment Double Jeopardy Clause. See: Smalis v. Pennsylvania, 476 U. S. 140 (1986), "The Supreme Court, Justice White, held that trial judge's ruling on defendants' demurrer holding that Commonwealth's evidence was insufficient to establish factual guilt was an acquittal under double jeopardy clause and barred Commonwealth's appeal." Smith v. Massachusetts, 534 U. S. 462 (2005), Smith v. Massachusetts, 543 U.S. 462 (2005), "The U.S Supreme Court, Justice Scalia, held that: (1) State trial judge's initial ruling on defendant's motion for finding of not guilty on firearm charge, in which judge evaluated commonwealth's evidence and decided that it was not legally sufficient to sustain conviction on firearm charge qualified as "judgement of acquittal" for double jeopardy purposes; and (2) once state trial judge had entered midtrial judgement of acquittal on firearm count, with no reservation of right to reconsider this ruling or indication that the ruling was not final, and once trial had proceeded to introduction of evidence by defendant, double jeopardy clause barred trial judge from reconsidering that acquittal after defendant and his codefendant had rested. Reversed and Remanded.; U. S. v. Martin Linen Supply Co., 430 U. S. 564 (1977); Sanabria v. U. S. 437 U. S. 54 (1978)' Fong Foo v. U. S., 369 U. S. 141 (1962); Ashe v Swenson, 397 U.S. 436 (1970).

2.. Terminated the jurisdiction of Petitioner's case and may not be appealed. Exparte Lange, 85 U. S. 163 (1873); U. S. v. Scott, 437 U. S. 82 (1978), "A judgment of a acquittal, whether based on jury verdict of not guilty or on a ruling by the court that the evidence is insufficient to convict may not be appealed and terminates the prosecution when a second trial would be necessitated by reversal."; U. S. v. Wilson, 420 U. S. 332, 95 S. Ct. 1013 (1975), "Constitutional protection against government appeals attaches only where there is a danger of subjecting the defendant to a second trial for the same offence. Provision of the Criminal Appeals at of 1907

that government could not have a writ of error in any case where there had been a verdict in favor of the defendant was to assure that the statute would not conflict with the principles of the double jeopardy clause."

3.. A second trial judgment, and sentence poses no authority for the South Carolina Department of Corrections to hold Petitioner in prison for the same offense and he "must" be discharged. Exparte Lange, 85 U. S. 163 (1873). "A second judgment of the same verdict is, under such circumstances, void for want of power, and it affords no authority to hold the party a prisoner, and he must be discharged".

Double Jeopardy

"Manifest Necessity or Ends of Public Justice"

Petitioner contends that the Honorable Judge Baxley's ruling of "acquittal" resulted from an improvidently granted mistrial /hung jury. After only two (2) hours and 50 minutes of deliberations, portions of that time were consumed by a lunch break, and several questions from the jury and the time for answering these questions accounted for approximately an hour, which left only (1) one hour and (50) minutes for deliberations. Judge Baxley, with no considerations to any alternatives, without polling the jury, declared a mistrial/hung jury.

According to clearly established federal law the Honorable Judge Baxley's decision to declare a mistrial was not dictated by a "manifest necessity" or "ends of public justice," which violated Petitioner's Fifth Amendment right to have his trial completed by a particular tribunal. Because jeopardy attached when the jury was sworn in, Petitioner's second trial was barred by double jeopardy. See: Transcript of 2012, trial pages 305, L21- P. 316. See: " U.S. v. Jorn, 400 U.S. 470 (1971). "In finding a lack of manifest necessity, the plurality stressed that the trial judge

gave absolutely "no consideration" to the alternative of trial continuance, and "indeed, acted so abruptly discharging the jury" that the parties were given no opportunity to suggest the alternative of continuance or to object in advance to the discharge of the jury. The plurality concluded that where trial judge simply "made no effort to exercise sound discretion to assure that there was a manifest necessity for the sua sponte declaration of a mistrial, "a" re-prosecution would violate the double jeopardy provision of the Fifth Amendment"; Arizona v. Washington, 434 U. S. 497 (1978) "Because jeopardy attaches before the judgment becomes final, the constitutional protection also embraces the defendant's "valued right" to have his trial completed by a particular tribunal. The Reasons why this "valued right" merits constitutional protection are worthy of repetition. Even if the first trial is not completed, a second prosecution may be grossly unfair. It increases the financial and emotional burden on the accused, prolong the period in which he is stigmatized by an unresolved accusation of wrongdoing, and may even enhance the risk that an innocent defendant may be convicted. The danger of such unfairness to the defendant exists whenever a trial is aborted before it is completed. Consequently, as a general rule, the prosecution is entitled to one and, only one, opportunity to require an accused to stand trial."; Crist v Bretz, 437 U. S. 28 (1978); Benton v. Maryland, 395 U.S. 784 (1969); Wade v. Hunter, 336 U.S. 684 (1949); Downum v. U.S., 372 U.S.734 (1963); Illinois v. Somerville, 410 U.S. 458 (1973).

After only two hours and 50 minutes, Judge Baxley with no consideration to any alternative, without polling the jury, declared a mistrial and from the trial record the only "sufficient justification" was that after evaluating the state's evidence, that it was not a failure on behalf of the jury. "That's actually a strong message to the prosecution that they are unable to meet the burden of proof to the extent that they can bring back a unanimous verdict." Evans v.

Michigan, 568 U.S. 313 (2013). "An acquittal for double jeopardy purposes includes a ruling by the court that the evidence is insufficient to convict, a factual finding that necessarily establishes the criminal culpability, and other rulings which relates to the ultimate question of guilt or innocence. Labels do not control the analysis of whether a decision dismissing a criminal case bars retrial under double jeopardy clause, rather the substance of the court decision does. The U.S. Supreme Court, Justice Sotomayor, held that midtrial directed verdict and dismissal, based on trial court's erroneous requirement of an extra element for the charge offence, was "acquittal" for double jeopardy purposes. Most relevant here, an "acquittal encompasses any ruling that the prosecution's proof is insufficient to establish criminal liability for an offence." U. S. v. Martin Linen Supply Co., 430 U.S. 564 (1977), "The U.S. Supreme Court, Mr. Justice Brennan held that double jeopardy clause barred appeal by U.S. from judgments of acquittal entered under Rule 29 (c) following discharge of jury which had been unable to agree on verdict in criminal contempt trial. Affirmed. Although statute authorizes an appeal by the U.S. in criminal case from a district court "dismissal" rather than "acquittal" the form of the ruling is not dispositive of appealability in a statutory sense. Rather, we must determine whether the ruling of the judge, whatever it's label, represents a resolution, correct or not, of some or all the factual elements of the offense charged." Lee v. U.S., 432 U.S 23 (1977). "Question as to whether double jeopardy clause prohibits retrial after the case has been terminated, after jeopardy has attached, without a finding on the merits does not depend upon whether the court labels its action a dismissal or declaration of "Mistrial" but rather whether the order contemplates an end to all prosecution of the defendant for the offense charged.". "Sanabria v. U.S, 437 U.S. 54 (1978). Fong Foo v. U.S., 369 U.S 141 (1962) "A judge's entry of an acquittal because he viewed the government's initial witnesses as inherently incredible constituted a bar to further proceeding even though the judge went beyond

the relevant federal rules provision by directing the acquittal before the prosecution had completed its case – in chief."

According to clearly established United States Supreme Court Law, The Honorable Judge Baxley's decision to declare a mistrial was not dictated by a "manifest necessity" or ends of "public justice", which violated petitioner's Fifth Amendment Right to have his trial completed by a particular tribunal.

False Imprisonment

Petitioner contends that according to United States Supreme Court Law, the moment that The Honorable Judge Baxley made his ruling that the State failed to meet its burden of proof to the extent that they could bring back a unanimous verdict, and then discharged his jury, the jurisdiction terminated upon his case, and his case was no longer a legal matter.

According to United States Supreme Court Law, the moment that the Georgetown County Solicitor's Office made a conscious decision to try Petitioner again for the same offense and sentenced him to imprisonment without jurisdiction, Petitioner's case became a criminal matter on behalf of The Georgetown County Solicitor's Office for false imprisonment, and anyone who participated in Petitioner's unlawful incarceration became trespassers of the law. " Dynes v. Hoover, 61 U. S. 65, (1857), "Where the Court has no jurisdiction or disregards rules of procedure for its exercise, all parties to illegal trials and imprisonment are trespassers on party aggrieved thereby, and he may recover in proper suit in civil courts." Exparte Lange, 85 U. S. 163 (1873). "The Court initiated what has been described as a long process of expansion of the concept of the lack of jurisdiction. Lange contended that he had been twice sentence for the same offence, in violating the Fifth Amendment's Double Jeopardy Clause, when he had been re-sentenced to a term of imprisonment after having paid the fine originally imposed. Carefully

disclaiming the use of habeas as a writ of error, the Supreme Court ordered Lange released from imprisonment because the lower Court's jurisdiction terminated upon the satisfaction of the original sentence. A second judgment of the same verdict is, under such circumstances, void for want of power, and it affords no authority to hold the party a prisoner and must be discharged."

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

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

Petitioner contends that once he received his first trial transcript of 2012 which proves that he was acquitted of the crimes of which he was falsely imprisoned. Petitioner immediately filed a petition for a writ of habeas on January 7, 2020, requesting his immediate release pursuant to Double Jeopardy, False Imprisonment, Lack Trial Court Jurisdiction to Impose Sentence.

Although, it is clearly established that The United States Supreme Court laws have determined that when a person is confined illegally, in contrary of the Constitution or

fundamental law, habeas corpus is the proper remedy regardless of exhaustion of state remedies, even though imposed pursuant to conviction by a court of competent jurisdiction. Preiser v. Rodriguez, 411 U. S. 475 (1973), "Essence of "Habeas Corpus" is attacked by person in custody upon legality of that custody, and traditional function of the writ is to secure immediate relief from illegal custody. Requiring exhaustion before allowing state prisoners access to federal courts to attack validity of fact or length of their confinement means that prisoner's state remedy must be adequate and available. The original view of habeas corpus attack upon detention under a judicial order " was" a limited one. The relevant inquiry " was" confined to determining simply whether or not the committing court had possessed jurisdiction. Eg., Exparte Kearney, 7 Wheat. 38 (1822); Exparte Watkins, 3 Pet. 193 (1830). But, over the years, the writ of habeas evolved as a remedy available to effect discharge from any confinement contrary to the Constitution or fundamental law, even though imposed pursuant to conviction by a court of competent jurisdiction. See: Exparte Lange, 18 Wall. 163 (1874); Exparte Siebold, 100 U. S. 371 (1880); Exparte Wilson, 114 U. S. 417 (1885); Moore v. Dempsey, 261 U. S. 86 (1923); Johnson v.. Zerbst, 304 U. S. 458 (1938); and Waley v. Johnston, 316 U. S. 101 (1942). See also. Fay v. Noia, Supra, at 405 – 409 of 372 U. S., 83 S. Ct. at 830 – 832 and cited at 409 n. 17, 83 S. Ct. at 832. Exparte Royall, 117 U. S. 241 (1886)."

Although according to United Supreme Court Law, The District Court has jurisdiction to hear Petitioner's habeas corpus for immediate release from his unlawful, unconstitutional incarceration, The District Court issued a Report of Recommendation on January 13, 2020, which was erroneous and contrary to United States Supreme Law that it did not have jurisdiction over Petitioner's case because he allegedly did not exhaust state remedies and dismissed Petitioner's habeas without prejudice and without ruling on the merits of his case. Petitioner filed

Objections on January 27, 2020, and The District waited an entire year and on February 2, 2021, issued an adopted Report of Recommendations from the 2020 Magistrate without responding to Petitioner's Objections, which did not comply with Fed. R. Civ. P. 52 (a), and refused to allow Petitioner to file a 59 (e). The District Court's ruling was erroneous and contrary to United States Supreme Court Law. Braden v 30th Judicial Circuit Court of Kentucky, 410 U. S. 484 (1973). "Exhaustion of State Remedies Doctrine in a judicially crafted instrument ~~with~~ which reflects a careful balance between interests of federalism and need to preserve writ of habeas corpus as a swift and imperative remedy in cases of illegal restraint or confinement and doctrine cannot be used to shatter attempt at litigation of constitutional claims without regard to purposes that underly doctrine and that called it into existence. Under habeas corpus statute, so long as custodian can be reached by service of process, court can issue a writ within its jurisdiction requiring that prisoners be brought before court for hearing on his claim, or requiring that he be released outright from custody, even if prisoner himself is confined outside court's territorial jurisdiction." See: Bell v. Hood, 327 U. S. 678 (1946), "Action against FBI officers for damages for illegal arrest, false imprisonment, and unlawful searches and seizures of property belonging to plaintiffs. A judgement dismissing the complaint for lack of jurisdiction was affirmed by the Circuit Court of Appeals, and plaintiff brings certiorari. Reversed. It is estimated practice for the Supreme Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution and to restrain individual state officers from doing what the Fourteenth Amendment forbids the state to do. Where federally protected rights have been invaded, courts will be alert to adjust their remedies so as to grant the necessary relief, and federal courts may use "any" available remedy to make good the wrong done." Preiser, Supra, 411 U.S. 475, (1973). Canter v American and Ocean Insp. Cos. of New York, 27 U.S. 554

(1829), "When the record shows that an appeal was regularly taken, the case must be heard on its merits, and motion to dismiss the case for want of jurisdiction in the court below cannot be entertained in the appellate court." Will v Calvert Fire Insp. Co., 437 U.S. 655 (1978), "Where district court persistently and without reason refuses to adjudicate a case properly before it, the Court of Appeals may issue a writ of mandamus in order that it may exercise its appellate jurisdiction."

Petitioner contends that The District Court's ruling under such circumstances, amounted to a "usurpation of judicial power" and a clear abuse of discretion.

REASONS FOR GRANTING THE WRIT OF CERTIORAI

1.. THE UNITED COURT OF APPEALS FOR THE FOUTH CIRCUIT DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE RELEVANT DECISIONS OF THIS SUPRUME COURT OF THE UNITED STATES. THAT WRIT OF MANDAMUS IS NOT THE APPROPRIATE REMEDY TO RAISE ISSUES OF DOUBLE JEOPARDY, FALSE IMPRISONMENT, AND LACK OF TRIAL COURT JURISDICTION TO IMPOSE SENTENCE

It is clearly established by the Supreme Court of the United States that The Writ of Mandamus is the appropriate remedy to raise novel issues pursuant to a Petitioner's guarantee against double jeopardy and to decide questions concerning judgments of acquittals for purposes of double jeopardy. Fong Foo v. United States, 369 U. S. 141, (1962); Will v United States, 389 U. S. 90 (1969); "We need not decide under what circumstances, if any, such a use of mandamus would be appropriate. It is enough to know that we approach the decision in this case with an awareness of the constitutional precepts that a man is entitled to a speedy trial and that he may not be placed twice in jeopardy for the same offense." See also. U. S. v. Smith, 331 U. S. 469 (1947).

Petitioner contends that it is also clearly established by the Supreme Court of the United States that writ of mandamus is appropriate when court or officer to whom the court is directed abuse his discretion and acted without jurisdiction. Virginia, Commonwealth of Virginia v. Rives, 100 U. S. 313 (1879), "Mandamus does not lie to control judicial discretion, except when that discretion has been abused; but it may be used as remedy where the case is outside that discretion, and outside the jurisdiction of the court or officer to which or to whom the writ is directed." Commonwealth of Virginia v. Paul, 148 U. S. 107 (1893); Kentucky v. Powers, 201 U. S. 1 (1906); Exparte Bradley, 74 U.S. 364 (1868), "Where an attorney is disbarred by an inferior court for cause of which it had not jurisdiction, writ of mandamus will lie from this court for his restoration. Mandamus is applicable only in supervision of proceedings in inferior courts in cases where there is a legal right without any existing legal remedies."

Petitioner contends that the record shows that he filed the writ of mandamus to The United States Court of Appeals for the Fourth Circuit for his immediate release pursuant to Double Jeopardy, False Imprisonment, Lack Trial to Impose Sentence, before any final judgments were made in The District Court pursuant to his habeas corpus which raised the same issues.

Petitioner contends that it is clearly established by The Supreme Court of the United States that The U.S. Court of Appeals has the authority to issue mandamus and aid of its jurisdiction pursuant to non-final orders of a District Court which amounts to a "usurpation of Judicial Power". See: Schlagenhauf v Holder, 379 U.S. 104 (1964) "The traditional use of mandamus in aid of appellate jurisdiction both at common law and in federal courts has been to confine an inferior to a lawful exercise of it prescribed jurisdiction. The writ of mandamus is appropriately issued when there is a usurpation of judicial power or a clear abuse of discretion.";

Roche v. Evaporated Milk Ass'n, 319 U.S. 21 (1943); LaBuy v. Howes Leather Co., 352 U.S. 249 (1957); Cheney v. U.S. Dist. Court for Dist. of Columbia, 542 U.S. 367 (2004).

REASONS FOR GRANTING THE WRIT OF CERTIORAI

1I. THE UNITED COURT OF APPEALS FOR THE FOUTH CIRCUIT DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE RELEVANT DECISIONS WITH OTHER U. S. COURTS OF APPEALS. THAT WRIT OF MANDAMUS IS NOT THE APPROPRIATE REMEDY TO RAISE ISSUES OF DOUBLE JEOPARDY, FALSE IMPRISONMENT, AND LACK OF TRIAL COURT JURISDICTION TO IMPOSE SENTENCE

It is clearly established by other United States Courts of Appeals that The Writ of Mandamus is the appropriate remedy to raise novel issues pursuant to a Petitioner's guarantee against double jeopardy and to decide questions concerning judgments of acquittals for purposes of double jeopardy. See: Samson v. United States, 832 F. 3d 37 (2016 1st Cir.). "Courts of Appeals had and would exercise an advisory mandamus jurisdiction over defendant's appeal from District Court's non-statutory aggravating factors prosecution intended to re-present in second penalty-phase preceding, under Federal Death Penalty Act, for two count of carjacking resulting in death, following vacatur of originally imposed death penalty for juror misconduct; appeal raised novel double-jeopardy challenge, which was issue of high public importance, immediate review would pragmatically avoid risk of third penalty trial, and defendant could lose protection under double jeopardy clause if forced to defendant particular allegations again." See also: U. S. v Vinyard, 539 F. 3d 589 (2008 2nd Cir.); U. S. v. Dooling, 406 F. 2d 192 (1969 2nd Cir.). "The right against double jeopardy must not be undermined by casual resort to mandamus, but circumstances can arise which present a compelling need for issuance of mandamus to

further important countervailing interests. To prevent gross disruption in administration of criminal justice, courts of appeals would issue mandamus pursuant to its supervisory power over district courts." U. S. v. Weinstein, 452 F. 2d 704 (1971 2nd Cir.). "Issuance of Writ of Mandamus to vacate an order dismissing an indictment after having entered in judgment of a conviction would not subject defendant to retrial in violation of his right to be protected against double jeopardy." In Re U.S. 614 F. 3d 661 (2010 7th Cir.).

The United States Court of Appeals for the Fourth Circuit also recognizes that it reviews De Novo questions concerning the double jeopardy clause. United States v. Bank, 955 F. 3d 287 (2020 4th Cir.).

It is clearly established by other United States Courts of Appeals that The Writ of Mandamus is the appropriate remedy to raise novel issues pursuant to a Petitioner's guarantee against double jeopardy and to decide questions concerning judgments of acquittals for purposes of double jeopardy. Therefore, The United States Court of Appeals for the Fourth Circuit decided an important question of federal law that conflicts with other United States Courts of Appeals and The Supreme Court of the United States.

Petitioner contends that the U.S. Court of Appeals abused it discretion which amounted to a usurpation of judicial power, by denying him equal protection of laws, by failing to rule on the merits of his writ of mandamus. Whereas the record shows that, the same day of September 8, 2021, when the Honorable Judge King of the United States Fourth Circuit Court of Appeals, denied Petitioner's Writ of Mandamus for Emergency Petition for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court Jurisdiction to Impose Sentence without ruling on the merits of Petitioner's case. On that same day, Circuit Judge King issued an opinion in U. S. v. Johnson, 13 F. 4th 348 (2021, 4th Cir.), ruling on the merits of Johnson's case which

raised the same exact questions of law pursuant to double jeopardy that Petitioner raised, and cites the same exact U.S. Supreme Court law, Evans v. Michigan, 568 U. S. 313 (2013), that Petitioner cited in support of his double jeopardy issue. The Honorable Judge King's ruling in Johnson supports Petitioner's double and false imprisonment issue.

In U. S. v. Johnson, 13 F. 4th 348 (2021, 4th Cir.), Circuit Judge, King, decided that " The vacatur of Johnson's § 924 (c) conviction pursuant to his guilty plea constituted a procedural dismissal, and not an acquitted. That is because the vacatur was unrelated to Johnson's factual innocence." Therefore, Judge King recognized that Johnson misapplied Evans v. Michigan, 568 U. S. 313(2013). Recognizing that, "As Evans explained, the Court's "Cases have been defined an acquittal to encompass any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense." Id. at 318, 133 S. Ct. 1069. "Thus, an acquittal includes a ruling by the Court that the evidence is insufficient to convict. A factual finding that necessarily establishes the criminal defendant's lack of culpability, and other ruling which relates to the ultimate question of guilt or innocence." "Procedural dismissals include rulings on questions that are unrelated to factual guilt or innocence, but which serves other purposes, including a legal judgment that a defendant, although criminally culpable, may not be punished because of some problem like an error with the indictment."

Petitioner contends that clearly, The Honorable Judge Baxley's ruling in his first trial of 2012, was not a procedural ruling on questions unrelated to factual guilt or innocence, nor an error of law. The Honorable Judge Baxley's ruling established that the prosecution proof was insufficient to establish Petitioner's criminal liability of the offense of which he was charged. Thus, according to Evans, and The Honorable Judge King's interpretation of Evans, The

Petitioner contends that it is clearly established by The Supreme Court of the United States that appellate courts have authority and will in favor of liberty grant the writ to review a case when a prisoner shows that he is held without any lawful authority, by an order from an inferior court of The United States which had no jurisdiction to make.

Petitioner contends that these are the exact circumstances of his case. Petitioner has demonstrated that according to United States Supreme Court laws, he was acquitted of the charges of which he was falsely imprisoned in his first trial of 2012. Therefore, the jurisdiction of his case terminated, and the sentence imposed on him pursuant to his second trial of 2014 for the same offense was without jurisdiction, resulting in Petitioner's false imprisonment for over seven years and counting.

Therefore, The United States Court of Appeals for the Fourth Circuit's decision denying his Exparte Motion for Immediate Release without granting his Motion for an Expedited Hearing and Answer on the Merits was contrary to The United States Supreme Laws, denied Petitioner procedural due process which amounted a "usurpation of Judicial Power" and a clear abuse of discretion. Board of Regents of State Colleges v Roth, 408 U. S. 564 (1972). "Requirements of procedural due process apply only to deprivation of interests encompassed by ~~Fourth~~ Fourteenth Amendment's protection of liberty and property, and when protected interests are indicated, the right to some kind of prior hearing is paramount."; Goldberg v. Kelly, 397 U.S. 254 (1970); Fuentes v Sheven, 407 U.S. 67 (1972).

Petitioner contends that he has satisfied the requirements for issuance of writ of mandamus. Whereas false imprisonment is an issue so drastic and extraordinary that raise issues so urgently demanding release that the judicial system cannot rely upon the ordinarily adequate avenue of correction following such unlawful conviction. Immediate review is deemed

necessary a harm that goes beyond the ordinarily acceptable hardship of a possibly needless or flawed trial.

Because the jurisdiction of Petitioner's case terminated upon his acquittal in his 2012 trial, he has no other adequate means to obtain release. Exparte Bradley, Supra, 74 U. S. 364 (1868); Mallard v U.S. Dist. Court for Southern District of Iowa, 490 U. S. 296 (1989).

Petitioner has proven that his right to the writ is clear and indisputable. Whereas Petitioner's false imprisonment violates his Fourth, Fifth, Eight, Thirteenth, and Fourteenth Amendment Rights and that the lower courts has abused its discretion which amounts to a "usurpation of judicial power" by refusing to adjudicate Petitioner's case. See: Will v Calvert, Supra, 437 U. S. 655 (1978); Cheney v U.S. Dist. Court for District of Columbia, 542 U. S. 367 (2004).

CONCLUSION

For these reasons, a Writ of Certiorari should be issued to review the judgment and opinion of The Fourth Circuit Court of Appeals, and Petitioner should be immediately released from his false imprisonment.

Respectfully submitted,

Date: December 3, 2021

Terron Dizzley, 359480

4460 Broad River Road

Columbia, South 29210