

No. 21-7884

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
MAY 10 2022
OFFICE OF THE CLERK
SUPREME COURT U.S.

ORIGINAL

Juan Carlos Rodriguez-Garcia — PETITIONER
(Your Name)

VS.

Eddie M. Buffalo, Jr. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The State Supreme Court of North Carolina
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Juan Carlos Rodriguez-Garcia
(Your Name)

1255 Prison Camp Road
(Address)

Whiteville, N.C. 28472.
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

1. Is it lawful for the State of North Carolina to hold the herein Petitioner under unconstitutional confinement under the Court's Unexplained refusal to uphold its authority under Statutes, orders, Provisions, and Opinions, and previously relevant United States Supreme Court decisions ruled as Constitutional Protected Provisions and requirements?

2. Is it Constitutionally lawful for the State of North Carolina to continue to hold Petitioner under Statutes, orders, Provisions, Opinions, and decisions that the State Supreme Court of North Carolina has previously ruled unconstitutional on their face?

3. Did the North Carolina State Court ascribe Jurisdiction to try, Convict, and Punish Petitioner without facially valid Criminal Pleadings under unlawful imprisonment in violation of Constitutional Due Process Protections?

LIST OF PARTIES

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

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

TO: Attorney General For State of North Carolina

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AND

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RELATED CASES

- Rodriguez-Garcia v. Buffalo, Jr., No. 50822, State Supreme Court of North Carolina. Judgment entered February 18th, 2022.
- Rodriguez-Garcia v. State, No. COAP15-982-1, N.C. Court of Appeals. Judgment entered 28th day of February 2022.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

- ☐ reported at _____; 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 "A" 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 N.C. Court of Appeals court appears at Appendix "B" to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Feb. 18th, 2022.
A copy of that decision appears at Appendix "A".

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

☐ 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 Constitution Prescribes there can be no trial, Conviction, or Punishment for a Crime without a formal and Sufficient accusation in a Criminal Pleading. And Jurisprudence Prescribes that facial validity is determined by evaluating only the allegations in the Criminal Pleading. Especially, the expressed Constitutional Provisions that the essential and explicitly KNOW NAME of the accused must be averred in the Charging Portion within the body of the Criminal Pleading. Failure to do so constitutes a fatal and incurable defect of substance, and the Court acquires no Subject-Matter Jurisdiction. If the Court assumes Jurisdiction, the trial and ensuing Conviction are nullity and Judgment must be Vacated.

Arbitrary Jurisprudence omission in Precedent is unconstitutional. Therefore, a Court may determine in a Habeas Corpus Proceeding the Constitutionality of the Statute and Precedents under which the Petitioner is held, and if Prove to be unconstitutional, discharge him, irrespective of the Stage of the Prosecution against him, irrespective of whether he has been Convicted, and irrespective of any other relief that may be available to him.

In North Carolina Prosecutions originating in Superior Court must be Upon Pleadings as Provided by North Carolina law under Statutes (N.C.G.S. Ann.) § 15A-642 (a), or if applicable under § 15A-644(b): See Strong's N.C. Index 4th, Indictments §1 (2013).

Proper Pleadings protect important Constitutional entitlements such as the Sixth Amendment right to fair notice of the Charge and Due Process Protections rights against double Jeopardy. See *Hamling v. United States*, 418 U.S. 87 (1974) (recognizing these Constitutional requirements); *Russell v. United States*, 369 U.S. 749 (1962) (to same effect); *Jones v. United States*, 526 U.S. 227, 243 n.6

(1999); Apprendi v. New Jersey, 530 U.S. 466 (2000) (Fourteenth Amendment Commands same rule in case involving state statute); accord Davis v. United States, 184 F.3d 366 (4th Cir. 1999); N.C. Constitution, Art. I, Sec. 23 (right to be informed of accusation).

Under the State of North Carolina law, certain pleadings defects strips the court of jurisdiction to enter judgment against the defendant. See State v. Wallace, 351 N.C. 481 (2000); State v. Lawrence, 352 N.C. 1 (2000); State v. Sturdivant, 304 N.C. 293 (1981). As provided, the North Carolina Supreme Court has upheld and interpreted state Constitution and statutes requirement on indictments since 1981 in taken notice ~ ex mero moto ~ that a "Fatal defect appear[ed] on the face of the indictment". State v. Simpson, 302 N.C. 613, 616, 276 S.E.2d 361, 363. The prescribed provisions of the Constitution must prevail, be observed, upheld, and enforced according to its true intent and meaning.

"The very purpose of the requirement that a man be indicted by grand jury is to limit his jeopardy to offenses charge by a group of his fellow citizens acting independently of either prosecuting attorney or judge". see Russell v. United States, 369 U.S. 749, 771 (1962), citing Stirone v. United States, 361 U.S. 212, 218 (1960).

Article I, Section 22 of the North Carolina Constitution provides: "Except in misdemeanor cases initiated in District Court Division, no person shall be put to answer any criminal charge but by indictment". This section has been interpreted to mean that a valid indictment is essential to the jurisdiction of the court in a criminal case to try defendant for a felony. See State v. Crabtree, 284 N.C. 541, 212 S.E. 2d 103 (1975) [2013 Strong's N.C. Index 4th, Indictment § 58].

An indictment must clearly and positively identify the person charged with the commission of the offense. see *State v. Hammonds*, 241 N.C. 226, 85 S.E.2d 133 (1954); *State v. Camel*, 230 N.C. 426, 53 S.E.2d 313 (1949); 2013 Strong's N.C. Index 4th, indictment §35. The name of the defendant, or a sufficient description if his name is unknown, must be alleged in the body of the indictment; and the omission of his name, or a sufficient description if his name is unknown, is a fatal and incurable defect. see *State v. McCollum*, 181 N.C. 584, 107 S.E. 309 (1921); *State v. Phelps*, 65 N.C. 450 (1871) (emphasis added).

North Carolina General Statute §15A-924(a)(1) provides: "(a) A Criminal Pleading must contain: (1) The name or other identification of the defendant but the name of the defendant need not be repeated in each count unless required for clarity". see also 2013 Strong's N.C. Index 4th, Indictment §35. "Since the defendant (petitioner) is neither named nor otherwise identified in the body of the bill of indictment, the defect is fatal and the trial court had no jurisdiction to place defendant (petitioner) on trial and to pronounce judgment upon the verdict, the judgment pronounced must, therefore, be arrested".

A North Carolina indictment is formed and divided into three (3) individual captions, or parts:

1. The introductory caption of the bill of indictment;
2. The body of the criminal accusatory crime allegations under oath;
3. The endorsement.

However, the "caption" of the bill of indictment is the introductory part only. Therefore, the "caption" of an indictment, front or back,

IS not Part of the indictment body. The North Carolina Supreme Court upheld this rule of law in State v. Bennett, 271 N.C. 423, 425, 156 S.E.2d 725, 726 (1967): "The caption of an indictment, whether on the front or the back thereof, is not a part of it and... Can neither enlarge nor diminish the offense charged in the body of the instrument". State v. Davis, 225 N.C. 117 L, 119 L, 33 S.E.2d 623 L, 624 L (1945); State v. Brickell, 8 N.C. 354 (1821) (emphasis added). See also 2013 Strong's N.C. Index 4th, Indictment §23; State v. Jones, 317 N.C. 487, 493 (N.C. S. Ct. 1986); State v. Billinger, 714 S.E.2d 201, 207 (N.C. App. 2011); and N.C. Gen. Stat. §15A-644 (Annotated).

While every indictment, properly, should have a caption, it is no part of the indictment, ..., as has been often held. State v. Wasden, Taylor (N.C.) 163, (596) [1817]; State v. Brickell, 1 Hawks 354 [1821]; ... State v. Sprinkle, 65 N.C. 463 [1871]; State v. Arnold, 107 N.C. 861, 864, 11 S.E. 990, 991 (1890).

The "caption" cannot be referred to for the purpose of making more certain any of the essential averments relating to the accusation. 42 Corpus Juris Secundum, Indictment §126 and FN 29 - U.S. v. Howard, 132 F. 325 (W.D. Tenn. 1904). A "caption" and commencement, while they constitute a part of the record of a criminal proceeding, they are not technically or substantially a part of indictments themselves. (See Archbold Criminal Pleading §26; 1 Chitty Criminal Law §226; 1 Bishop Criminal Procedure, 3d, §653, §661, §662.

The indictments in Petitioner's case fail to comply with essential constitutional requirements as stated by the United States

Supreme Court in *Jones v. United States*, 526 U.S. 227, 143 L. Ed. 2d 311 (1999). In *Jones*, the Supreme Court made clear that all "elements must be charged in the indictment, submitted to a jury and proven by the government beyond a reasonable doubt". *Id.* 526 U.S. at 232.

Therefore, failure to supply a missing essential element and locate the "know name" of petitioner's in the body of the accusatory pleadings and indictments, petitioner's facially invalid criminal pleading(s) fail to confer subject-matter jurisdiction upon the trial court under unconstitutional authority and fundamental right to due process violation of the United States Constitution, and North Carolina Constitution, Fourteenth Amendment.

STATEMENT OF THE CASE

On February 17th, 2022, Petitioner filed a State writ of Habeas Corpus (Ad Subjiciendum) Claiming the unconstitutionality of his imprisonment directly to the Supreme Court of the North Carolina State under the Provisions authorized by North Carolina General Statutes §17-3 and §7A-32, and State v. Pennell, 367 N.C. 466 (2014). Petitioner's State Writ of Habeas Corpus (Ad Subjiciendum) Concerned his "unconstitutional and illegal" imprisonment, and filed upon a ~ Pro Se ~ Filing Provisions under the U.S. Supreme Court's unanimously held "Pro Se" doctrine [Haines v. Kerner, 404 U.S. 519 (1972) (Per Curiam)].

The grounds in the Petitioner's Application for State writ of Habeas Corpus established Probable grounds to inform the Court of the necessity to inquire into the legality of his imprisonment by failure to Mention, state, and locate the explicitly know name of the accused (Petitioner) "Juan Carlos Rodriguez-Garcia" in the body of his Criminal Pleadings, caused from two (2) "facially invalid" (superseding) Informations, Originally from two (2) "facially invalid indictments" from Iredell County Court of the State of North Carolina, based upon this informations, Petitioner did not waiver his Constitutional rights to be informed formally and sufficiently by a Proper Criminal Pleading. (EXHIBIT(S) B1-B9)

Petitioner's imprisonment is by virtue of a Plea Pursuant to the Alford decision to two (2) Consecutive Sentences and contends that his Criminal Conviction and Subsequent imprisonment are based on facially invalid Criminal Pleading(s) that fail to confer Subject-Matter Jurisdiction upon the original trial court's, Wherefrom,

Deprived him of his fundamental right to Due Process Clause by failing to supply a missing essential requirement and element in the information. (EXHIBITS B3, B4, B5).

Petitioner's imprisonment is illegal and unconstitutional as explicitly demonstrated with more specificity on his writ, the Trial Court lacked Subject-Matter Jurisdiction to accept his Alford Plea and enter judgment against him from fatally defective informations that are "facially invalid" on the record proper.

The Courts have willfully, consciously and knowingly, with prior calculation and designed, refused to address the Petitioner's unconstitutional matter by denied order of the Court in conference on the 18th of February, 2022 (APPENDIX "A"), and certified to the North Carolina Court of Appeals (APPENDIX "B"). However, the Supreme Court of North Carolina failed to uphold its authority granted by the State Constitution to exercise its rarely used general supervisory authority when necessary to promote the expeditious administration of justices. See *State v. Stanley*, 288 N.C. 19, 26, 215 S.E.2d 589, 594 (1975) (citations omitted); *State v. Todd*, — S.E.2d — (N.C. S. Ct. NO. 18A14-2, 9 June 2017, at 4-5) (Beasley, Justice). By failing to provide any legal reasoning and finding of facts supported by conclusions of law.

As result, the N.C. State Supreme Court willfully, consciously, voluntarily, intelligently, with prior calculation and designed the Petitioner's case in violation of the Petitioner's substantial State and Federal Constitutional rights disregarding previously ruled as unconstitutional, and failed to uphold United States Court, and North Carolina Court established

Decisions , under Previously Similarly Situated
Circumstances . See State v. Simpson , 302 N.C. 613, 616 ,
276 S.E.2d 361, 363 (1981) ; State v. Phelps , 65 N.C.
450 (1871) ; State v. Bagnard , 24 N.C. App. 566, 567-68 , 211
S.E.2d 471, 472 (1975).

REASONS FOR GRANTING THE PETITION

The Petitioner's request should be GRANTED For the following reasons, to wit;

1. The Petitioner's request "state a claim upon which relief can be granted". See *State v. Simpson*, 302 N.C. 613, 616, 276 S.E.2d 361, 363 (1981); *State v. Phelps*, 65 N.C. 450 (1871); *State v. Bagnard*, 24 N.C. App. 566, 567-68, 211 S.E.2d 471, 472 (1975); *U.S. v. Iymas*, 781 F.3d 106, 114 (4th Cir. 2015).

2. Petitioner's request "is not frivolous." See *State v. White*, 827 S.E.2d 80, 82-83 (N.C. S. Ct. 2019) (BEASLEY, Chief Justice), "Facial validity is determined by evaluating only the allegations in the Criminal Pleading".

CLOSING SUMMATION

This Certiorari should be "GRANTED" to correct this Manifest Miscarriage of Justice. When its apparent on the face of the record that the Petitioner is being "HELD ILLEGALLY", based on the unconstitutional facial invalid indictments and informations. While it is not the function of an indictment to bind the hands of the State with technical rules of Pleading. *State v. Williams*, 368 N.C. 620, 623, 781 S.E.2d 268, 270-71 (2016) (quoting *Sturdivant*, 304 N.C. at 311, 283 S.E.2d at 731), the indictment

Must fulfill its Constitutional Purposes - [the name of the accused Person(s), if known, must be contained in the body (allegations) in the Criminal Pleading]. WHITE, 827 S.E.2d at 82. (Emphasis supplied from SIMPSON).

CONCLUSION

For all the reasons discussed herein, this Honorable Court should consider carefully the unconstitutionality in which petitioner is held, and the petition for a writ of certiorari should be granted.

Respectfully submitted,

Juan Carlos Rodriguez Garcia

Date: May 9th, 2022