

22-5328

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

JUL 25 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Justin Michael Tyson — PETITIONER
(Your Name)

vs.

s/Berger, d. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Justin Michael Tyson
(Your Name)

124 New Hope Road
(Address)

Greenville, North Carolina, 27834
(City, State, Zip Code)

N/A
(Phone Number)

RECEIVED

AUG - 3 2022

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Was it error on the Supreme Court of North Carolina behalf's for s/Berger J. to DISMISS Petitioner's Motion entitled Relief from Judgment or Order when a prior judgment has been vacated based upon the same grounds and argument that Petitioner presented in his motion entitled Relief from Judgment or Order?
2. Is the indictment for File No. 18 CRS 55155 defective where it fails to allege each essential element of an offense charged in the indictment, and only complies with the language of N.C. Gen. Stat. § 15-144?
3. Is an indictment fatally defective on its face for the offense of attempted first degree murder, if a prior judgment has been vacated, rendering an indictment defective for that offense, and the earlier indictment uses identical language as the pending indictment?
4. Should the indictment for File No. 18 CRS 55155 be quashed and the order entered on the 4th of May 2022 reversed?
5. Should Petitioner be compensated for the time held under an unlawful restraint if an/the indictment is deemed to be defective?
6. Should Petitioner be compensated pursuant to N.C. Gen. Stat. § 148-84 for being imprisoned, vindicated in connection with the offenses alleged in his indictment, and being determined to be innocent of all charges alleged in the indictment if the indictment is deemed to be defective?
7. Is the use of a short-form indictment for attempted first-degree murder constitutional or appropriate when construing N.C. Gen. Stat. § 15-144 in conjunction with N.C. Gen. Stat. § 15-170?
8. Was the decision entered on the 4th of May 2022 by s/Berger J. patently arbitrary or unsupported by reason, and did the court abuse its discretion in entering the order? Should the court be reversed for its abuse of discretion?

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:
- S/Berger, J - For the Court
 - Grant E. Buckner - Clerk, Supreme Court of North Carolina
 - M.C. Hockney - Assistant Clerk, Supreme Court of North Carolina
 - Justin Michael Tyson - Pro Se Litigant, In Proffia Personna

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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 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 West Publishing / Lexis-Nexis - (By Email); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the North Carolina Supreme court appears at Appendix A + B to the petition and is

- ☒ reported at West Publishing - (By Email) / Lexis Nexis (By Email); 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 October 27th 2021 ~~May 4th 2022~~.
A copy of that decision appears at Appendix B .

☐ A timely petition for rehearing was thereafter denied on the following date: May 4th, 2022, and a copy of the order denying rehearing appears at Appendix 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

- ~~N.C. Gen. Stat. § 1A-1, 60(b)(5) providing "On motion and upon such terms as are just, the court may allow a party or his legal representative from a final judgment, order or proceeding for the following reasons: (5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." See N.C. Gen. Stat. § 1A-1, 60(b)(5).~~
- ~~N.C. Gen. Stat. § 15-144, which authorizes the use of the short form indictment to charge murder and manslaughter. See N.C. Gen. Stat. § 15-144.~~
- ~~N.C. Gen. Stat. § 15A-955(i) providing "The court on motion of the defendant may dismiss an indictment if it determines that: There is ground for a challenge to the array." See N.C. Gen. Stat. § 15A-955(i).~~
- ~~N.C. Gen. Stat. § 14B-81~~

• There was no constitutional or statutory provisions involved with the decisions of the Supreme Court of North Carolina given by s/Berger, d. on either October 27th, 2021 or May 4th, 2022.

STATEMENT OF THE CASE

On July 30th 2018 Petitioner was issued an order for arrest by Magistrate D.D. Worrall for the crime of Attempt Second Degree Murder.

On July 31st, 2018 the charge of Attempt second degree murder was amended and Petitioner was charged with Attempt First Degree Murder.

On October 5th, 2018 Petitioner was indicted and the indictment charged the crimes of Attempt First Degree Murder, and assault With A Deadly Weapon With Intent To Kill Inflicting Serious Injury. The face of the indictment for the offense of Attempt First Degree Murder states: The jurors for the State upon their oath present that on or about [July 31, 2018] and in the [County of Pitt], the defendant named above unlawfully, willfully and feloniously did of malice and aforethought attempt to kill and murder AJ Tyson Jr. The face of the indictment for the offense of Assault With A Deadly Weapon With Intent To Kill Inflicting Serious Injury states: The jurors for the State upon their oath present that on or about the 31st day of July, 2018, in the County named above the defendant named above unlawfully, willfully and feloniously did Assault AJ Tyson Jr with (A Knife) A Deadly Weapon with the intent to kill and did inflict serious injury upon him.

On December 6th, 2018 the Petitioner pleaded Not Guilty as his own counsel and Tyrell Clemens was removed from his case. A trial date was set for May 13th, 2019.

On April 4th, 2019 the court entered an order committing Petitioner to Central Regional Hospital - Butler Campus For Examination on Capacity To Proceed. On September 19th, 2019 Petitioner returned to Pitt County Detention Center after being deemed capable to proceed to trial as his own counsel by physicians at Cherry Hospital.

On November 6th, 2019 a court session was held on Petitioner's ability to proceed to trial. Dr. Josh Pagano testified that Petitioner displayed intelligence and was knowledgeable at the law.

On February 16th, 2021 the petitioner filed a Motion to Dismiss the Indictment with the Supreme Court of North Carolina and used identical language as that was used in State v. Watkins, 19 N.C. App. 518, 610 SE 2d 946 (N.C. App. 2005) to present this argument as to the defectiveness of the indictment.

On October 27th, 2021 the Supreme Court of North Carolina entered an order that was unsupported by reason of why the order was given, and that order Dismissed the Motion and stated nothing else.

On November 24th, 2021 the Petitioner filed a Motion for Relief from Judgment or Order stating that a judgment which the October 27th, 2021 was based upon had been vacated and that the court, the Supreme Court of North Carolina should relieve Petitioner from the order entered on October 27th, 2021.

On May 4th, 2022 an order was entered by s/Berger, J. For the Supreme Court that Dismissed the Motion for Relief from Judgment or Order.

Petitioner now petitions the Supreme Court for the United States for a Writ of Certiorari in order to address the numerous errors of law present in the orders entered in the Supreme Court of North Carolina by s/Berger, J. On October 27th, 2021 and May 4th, 2022. This petition is submitted within the 90 day time period and is deemed timely pursuant to Rule 13 of the United States Supreme Court. Petitioner is currently awaiting his second evaluation on his capacity to proceed to trial as his own counsel.

REASONS FOR GRANTING THE PETITION

Petitioner first brings to this court's attention that it has been settled that, "The North Carolina Courts and United States Supreme Court are the only courts that have jurisdiction over state court judgments. See 28 U.S.C. §1257; *Lance v. Dennis*, 846 U.S. 489, 463 (2006). It has also been long recognized that, "once an appellate court has ruled on a question, that decision becomes the law of the case and governs the question both in subsequent proceedings in a trial court and on subsequent appeal." *Southern Furniture Co. v. Dep't of Transp.*, 133 N.C. App. 409, 408, 56 S.E. 2d 383, 388 (1999); *N.C.N.B. v. Virginia Home Builders*, 307 N.C. 563, 299 S.E. 2d 629 (1983); *Wrenn v. Maria Parham Hosp., Inc.*, 135 N.C. App. 672, 522 S.E. 2d 171 (1989, cert. denied, 351 N.C. 372, 543 S.E. 2d 149 (1990)).

That being said, petitioner shows this court that the decision made by 3/Berger, J. of the Supreme Court of North Carolina is in conflict with the decision made at the North Carolina Court of Appeals in that the judgment in *State v. Watkins*, 169 N.C. App. 518, 610 S.E. 2d 746 (N.C. App. 2005) was vacated and the indictment was considered defective due to that indictment failing to allege that defendant acted with the specific intent to kill. In File No. 253P19-4 Petitioner raised the same argument and used identical language in his argument as used in the argument presented in *State v. Watkins*, 169 N.C. App. 518, 610 S.E. 2d 746 (N.C. App. 2005). The Supreme Court of North Carolina, nevertheless, dismissed the motion for Relief from Judgment or Order despite the vacated judgment in *Watkins*, 169 N.C. App. 518, 610 S.E. 2d 746 (N.C. App. 2005) and did not give any reasoning or supporting facts of why the motion for Relief from Judgment or Order was dismissed when

the motion used identical language that was used in a case where a judgment had been vacated based on the same argument as presented in File No. 253P19-4. This lack of reasoning and supporting facts of why Petitioner's motion was dismissed on the 4th of May 2022 amounts to the Supreme Court of North Carolina's abuse of discretion on behalf of 3/Berger, J. See *Home Interiors, Inc. v. Hoechst-Celanese Corp.*, 49 N.C. App. 322, 325, 393 S.E. 2d 118, 120 (1990), appeal dismissed, cert. denied, 327 N.C. 428, 396 S.E. 2d 611 (1990) (holding "A trial court may be reversed for abuse of discretion only if the trial court made a patently arbitrary decision, manifestly unsupported by reason." Because the order entered on May 4th, 2022 was unsupported by reason, the decision of 3/Berger, J. was patently arbitrary and the Supreme Court of North Carolina should be reversed as to its order entered on May 4th, 2022 for its abuse of discretion. This abuse of discretion is error on the Supreme Court of North Carolina and 3/Berger, J.'s behalf. The grossness of this patently arbitrary decision and 3/Berger, J.'s abuse of discretion is of paramount importance not only to the Petitioner but also to others that is similarly situated, because during the course of an extremely stressful situation such as an imprisonment, under a restraint due to an indictment that has been deemed as defective, would and does number strike the conscience of any prisoner or inmate that is not provided a reason of why their motion for Relief from Judgment or Order has been dismissed, especially when a judgment in a prior case has been vacated on the same grounds and arguments raised in the defendant's present motion concerning twofold identical issues.

It would cause a constitutional outrage if the United States Supreme Court does not decide upon the questions involved in this petition because the indictments in *Watkins*, 169 N.C. App. 518, 610 S.E. 2d 746 (N.C. App. 2005) and in File No. 18 CR3 55155/4953 253P19-4 are identical to each other, despite the victims name and weapon used. If the issue of the defective indictment is not decided upon during the course of the Supreme Court of North Carolina's abuse of discretion and the United States Supreme Court allows the North Carolina Supreme Court's patently arbitrary decision to remain in effect, then the due process of all United States Citizens would be at jeopardy during the course of a totally defective indictment due to failure to allege an essential element of the crime charged. This is because the United States Citizens would not have a fair legal remedy once a State Supreme Court has abused its discretion. A lack of decision by the United States Supreme Court as to a judgment/order made under an abuse of discretion where a prior judgment has been vacated based upon the same arguments and factual allegations would cause a constitutional uproar, being that, the United States Citizens would look at the United States Supreme Court as a flagrant, foul, non-justice serving judicial entity that would allow the due process of its citizens to be violated or with or without a decision that has been in history for a lengthy period and given by a well respected and knowledgeable judge. It is established that, "The due process clause encompasses a guarantee of fair procedure." *GEORGEY LUMBER CO., INC. v. Howard*, 566 S.E. 2d 827, 151 N.C. App. 1738 (N.C. App. 2002). If the United States Supreme Court does not decide upon the issues raised in this petition and allows the procedure of the courts to be unfair, the new top of the United States, in the citizens eyes would be "No Justice For All." This is because once the indictment in the *Watkins* case was considered totally defective, all indictments using the language used in the *Watkins* indictment are, and has to be, ruled upon as being totally defective. Especially when the current indictment is identical to the indictment that has been deemed as being totally defective and the arguments raised in the two cases are split images to one another.

It has been held by the courts that, "As a necessary element of attempted murder, the specific intent to kill must be alleged in the indictment. See *State v. Cobb*, 351 N.C. at 451, 527 S.E. 2d at 48 (2000)." "[T]he crime of attempted murder is logically possible only where specific intent to kill is a necessary element of the underlying offense." The North Carolina Court of Appeals has held that, "an indictment for attempted murder must allege the necessary element of specific intent to kill." *State v. Watkins*, 169 N.C. App. 518, 610 S.E. 2d 746 (N.C. App. 2005). See *Jones v. United States*, 526 U.S. 227, 232, 119 S.Ct. 1215, 1219, 140 L.Ed. 2d 311, 319 (1999) (holding that elements of the offense must be charged in the indictment). The N.C. Court of Appeals has stated that, "An indictment for attempted murder is not constitutional when it only complies with the language of N.C. Gen. Stat. §15-144, a section that remains unchanged when applied as plain language to indictments for murder and manslaughter. ... Defendants' indictment for attempted murder failed to allege that defendant acted with the specific intent to kill, and this omission was fatal." *State v. Watkins*, 169 N.C. App. 518, 610 S.E. 2d 746 (N.C. App. 2005). However, in *State v. Moore*, 620 S.E. 2d 736, 2005 N.C. App. 1738 (N.C. App. 2005) the court stated, "Our Supreme Court ... has recently held that an indictment for attempted first degree murder need only comply with the short-form indictment requirement." N.C. Gen. Stat. §15-144. In *State v. Jones*, 359 N.C. 832, 836, 616 S.E. 2d 446, 449 (2005), the Court stated: N.C.G.S. §15-144, when construed alongside N.C.G.S. §15-170, implicitly authorizes the state to utilize a short-form indictment to charge attempted first-degree murder. The petitioner, however, brings to this court's attention that both statutes goes beyond the plain language thereof when creating an indictment for attempt first degree murder, as N.C.G.S. §15-144 only deals with murder and manslaughter, and being that we are construing N.C.G.S. §15-144 alongside N.C.G.S. §15-170, and N.C.G.S. §15-170's plain language deals with a conviction of a lesser included offense of the greater crime charged in the indictment, the language of N.C.G.S. §15-170 is, and can only be, applied if, the indicted charge is First Degree Murder, and because the indicted charge in the instant case is Attempt First Degree Murder, N.C.G.S. §15-144 can not apply because that statute is only constitutional to murder and manslaughter indictments. See *Watkins*, 169 N.C. App. 518, 610 S.E. 2d 746 (N.C. App. 2005). Because there is no less degree of offense to the crime of Attempt First Degree Murder, and because both attempted/attempted first degree murder is not an offense to be charged, the plain language of N.C.G.S. §15-170, which deals with a conviction of a crime charged or less degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a less degree of the same crime, this statute can not be applied to an indictment charging an attempt of a greater offense. N.C.G.S. §15-170 when construed alongside N.C.G.S. §15-144, which allows the use of a short-form indictment to charge the crime of murder or manslaughter, and not attempted murder, amounts to both statutes disagreeing with each other. This is because N.C.G.S. §15-170 allows an indictment to support a conviction of attempted murder, and not a charge of attempted murder, and N.C.G.S. §15-144 only allows a short-form indictment to charge a crime of murder or manslaughter, not attempted murder. Therefore, at most N.C.G.S. §15-144 when construed alongside N.C.G.S. §15-170 allows the indictment to use the short-form indictment to charge the crime of murder only to support a conviction of attempted murder. This construction does not allow the court to actually charge the crime of attempted murder in the indictment using the short-form indictment. Therefore, even when construing N.C.G.S. §15-144 alongside N.C.G.S. §15-170, a short-form indictment for the crime of attempted first degree murder is not constitutional when, at best, only a conviction for an attempted murder would be appropriate, and that is in the case of and only if, the charge on the face of the indictment is first degree murder.

In *State v. Watkins*, 169 N.C. App. 518, 610 S.E. 2d 746 (N.C. App. 2005) the court stated, "An indictment for attempted murder is not constitutional when it only complies with the language of N.C. Gen. Stat. §15-144, a section that remains unchanged when applied as plain language to indictments for murder and manslaughter. In *State v. Jones*, 359 N.C. 832, 836, 616 S.E. 2d 446, 449 (2005) the court stated that "We agree with defendant that N.C.G.S. §15-170 does not, in and of itself authorize the use of the short-form indictment to allege attempted first-degree murder." Petitioner brings to this court's frame of mind that English skills are in fact a grave necessity and severe must have in any proceeding in the courts. That said, in the English language a double negative equals a wrong answer. Therefore, because a short-form indictment is not constitutional when it only complies with N.C.G.S. §15-144 and because N.C.G.S. §15-170 does not in and of itself authorize the use of a short-form indictment, there is no way that the two negative statutes, by themselves, in reference to an indictment for attempt first-degree murder can allow, or make a short-form indictment for attempted first-degree murder a constitutionally adequate indictment when construed alongside each other.

In the English language a negative plus a negative equals an incorrect answer and because English skills are immensely stem in the courts, it can be concluded that an short-form indictment for attempted first-degree murder is unconstitutional even when N.C.G.S. §15-144, a negative, is construed in conjunction with N.C.G.S. §15-170, another negative. Therefore petitioner's indictment for attempted first-degree must be deemed as defective and unconstitutional.

Petitioner now turns to whether or not he should be compensated pursuant to N.C. Gen. Stat. §148-84 for the time he was held under an unlawful restraint and for being imprisoned, vindicated in connection with the offenses alleged in his indictment, and being determined to be innocent of all charges alleged in the indictment. If petitioner's indictment is deemed by this court as defective and unconstitutional, Petitioner shows this court that if the indictment in File No. 18 CRS 55155 is deemed to be unconstitutional the he is and will be a claimant according to the legislature's use in context of the word in N.C.G.S. §148-83 and N.C.G.S. §148-84. The courts have held that "The legislature's use in context of the word 'claimant' in sections 148-83 and -84 further strengthens the states position. Particularly, the 'claimant' is described in section 148-84(a) as having been 'determined to be innocent', 'imprisoned', and 'vindicated in connection with the alleged offense for which he or she was imprisoned'." *Estate of Jacobs v. State*, 715 S.E. 2d 873 (N.C. App. 2015). If the indictment is determined to be defective the petitioner will be determined to be innocent, he has been imprisoned, and he will be vindicated in connection with the alleged offenses in the indictment for File No. 18 CRS 55155 of which he was imprisoned for. Because Petitioner will meet the criteria to be described as a claimant pursuant to N.C. Gen. Stat. §148-84(a) and because the petitioner has been imprisoned for 3 years and 9 months under an unlawful and defective indictment, will be determined to be innocent of the charges alleged in the indictment and will be vindicated in connection thereof, the petitioner is entitled to the compensation described in N.C.G.S. §148-84 for all years and the portion of all years he spent awaiting trial. Petitioner has been awaiting trial since December 6th, 2018.

If the indictment for File No. 18 CRS 55155 is determined to be defective due to the disagreement between N.C. Gen. Stat. §15-144 and N.C. Gen. Stat. §15-170 because of the inappropriate English as described above the indictment should be dismissed due to the applicable grounds consisting of a challenge to the array. See N.C. Gen. Stat. §15A-958 stating in part: "The court on motion of the defendant may dismiss an indictment if it determines that: (1) There is ground for a challenge to the array." N.C.G.S. §15A-958(i). The courts have held, "Appellate courts may consider challenges to facially invalid indictments at any time, even when not contested at trial." *State v. Braxton*, 352 N.C. 158, 173, 531 S.E. 2d 428, 437 (2000), [205 S.E. 2d 517] cert. denied, 531 U.S. 1130, 121 S. Ct. 849, 148 L. Ed. 2d 717 (2001) (citation omitted); See also *State v. Bartley*, 156 N.C. App. 499, 499, 571 S.E. 2d 311, 324 (2003) (holding, "Our Supreme Court has stated that an indictment is fatally defective when the indictment fails on the face of the record to charge an essential element of the offense). Because the indictment fails to charge on the face thereof the essential element of specific intent to kill it is considered fatally defective and should be dismissed. See *State v. Watkins* 169 N.C. App. 515, 610 S.E. 2d 174 (N.C. App. 2005). Due to the argument raised above concerning the construction of N.C.G.S. §15-144 alongside N.C.G.S. §15-170 the decision of the N.C. Supreme Court should be reversed as well as because the arbitrary decision that was unsupported by reason that was entered by S/Dwyer, J.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: July 25th, 2022