

No. _____

22-6290

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

DEC 01 2022

OFFICE OF THE CLERK

Bennie Mitchell

— PETITIONER

(Your Name)

vs.

Warden of Ridgeland C.I.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the 4th Cir.

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bennie Mitchell

(Your Name)

MacDougall Ct. 1516 Old Gillard Rd

(Address)

Ridgewille, SC 29472

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Whether the U.S. Court of Appeals for the 4th Cir erred in denying Petitioner a certificate of appealability when the Petitioner met the requisite showing

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:

RELATED CASES

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	<i>U. S Court of Appeals</i>
APPENDIX B	<i>U. S. Dist. Judge order</i>
APPENDIX C	<i>U. S. Dist. Mgt Judge ruling</i>
APPENDIX D	<i>U. S. Court of Appeals rehearing</i>
APPENDIX E	<i>ruling</i>
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Laffer v Cooper</i> 132 S Ct 1376	12
<i>Ward v Freeman</i> 46 F3d 1129	10; 11
<i>Barker v Wingo</i> 92 S Ct 2182	10

STATUTES AND RULES

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 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☒ is unpublished.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 United States district 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☒ is unpublished.

☐ 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Oct 18, 2022.

☐ 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: Nov 22, 2022, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

U.S. Const. 14th Amend.

STATEMENT OF THE CASE

I petition the U.S. Dist. court / Dist. of S.C.
for a writ of habeas corpus. Because of
the State P.C.R court inordinate delay.
Which the Dist. Judge adopted the Wgt.
Judge report & recommendation dismissing
my habeas corpus July 13, 22. Which I
appealed to the U.S. court of appeals for
the 4th Cir. July 20, 22. Which the 4th Cir
denied Oct 18, 22. Which I requested a
re hearing Oct 27, 22. Which the 4th
Cir. denied Nov 22, 2022. Which this
writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

I argue that the U.S. Court of Appeals for the 4th Cir erred in denying me a certificate of appealability when I met the requisite showing, that reasonable jurists could have found, that the district courts assessment of my constitutional claims debatable or wrong denied me a constitutional right.

When I showed per Barker v Wingo 92542102 and Ward v Freeman 46 F3d1129 ~~PRESUDICE~~ per "All" four factors from the State's inordinate delay. When this inordinate delay rendered ineffective my right to state court remedies. Where I was unable to prove my meritorious PCR issues. Because the court reporter destroyed the tape of my trial Transcript. Where my PCR issues did not show in my trial transcript. Because of this inord-

inate delay, the Dist. Court argued that the incomplete of the State court record weigh against excusing my failure to exhaust.

Thus, I should have been released if the Dist court could not excuse the exhaustion requirements. Where I showed PREJUDICED per Barker v Wingo 4 factors. Thus, clear circumstances existed that rendered, not only my PCR hearing unfair - ineffective any PCR appeal or another habeas petition. Where there will never be a fair adjudication on my meritorious claims. denial of my DUE process of the U.S. Const.

I further argue that my amended habeas corpus 3rd issue, should not have been deemed moot. Where my trial counsel caused me to reject the Sol.

15 year plea per *Latter v Cooper* 132 S.Ct. 1376
upon trial counsel woefully misplaced
prejudicial defenses/strategies)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bennie Withers

Date: Dec 1, 72