

IN THE UNITED STATES SUPREME COURT

NO: 22-6376

MARCUS A JOSEPH 147764) PETITION FOR REHEARING
PETITIONER)
v)
STATE OF SOUTH CAROLINA)

GROUND'S FOR RELIEF:

THE PETITIONER AN INMATE IN SOUTH CAROLINA DEPT OF CORRECTIONS UPON NOTICE AN ORDER MOVED BEFORE THE SOUTH CAROLINA SUPREME COURT FOR AN ORDER GRANTING HIM LEAVE TO FILE A WRIT OF HABEAS CORPUS OR A POST-CONVICTION RELIEF

PETITIONER PROVIDED THE COURT WITH MATERIAL EVIDENCE IN SUPPORT OF EACH AND SUPPORTING AFFIDAVITS RAISING A GENUINE ISSUE OF MATERIAL FACT TO SUPPORT HIS CLAIMS

THE SOUTH CAROLINA SUPREME CT WITHOUT REQUIRING THE RESPONDENTS TO ANSWER OR OTHERWISE READ DENIED PETITIONER'S REQUEST FOR LEAVE TO FILE, WITHOUT MAKING ANY FINDINGS OF FACT OR CONCLUSION OF LAW. AND IN SHORT DENIED AND DEPRIVED ME OF THE RIGHT OF ADEQUATE AND MEANINGFUL ACCESS TO COURT. AND UNCONSTITUTIONALLY SUSPEND THE WRIT OF HABEAS-CORPUS IN VIOLATION OF USCA 1 AND 14 SC CONST ART 1 § 18

Grounds For Relief

THE RESPONDENT WITH A TOTAL DISREGARD FOR THE TRUTH OBTAIN AN ARREST WARRANT FROM A NON JUDICIAL OFFICER BASED UPON FALSE STATEMENT OF MATERIAL FACT THAT I ADMITTED TO HIM TURBANCIA. BASED UPON THIS FALSE STATEMENT THE SOLICITOR OBTAIN AN INDICTMENT AGAINST ME AND TWO CO-DEFENDANTS. BUT THE INDICTMENT WAS LATER "NOLLE PROS" AND I WAS TRIED ON THE BASIS OF SUCH WITHOUT THE SOLICITOR OFFICE DISCLOSES THE FACT THAT THERE WAS NO "FULL WRITTEN STATEMENT" AND WITHOUT ME BEING REINDICTED.

QUESTION PRESENTED:

CAN THE PETITIONER BE CONVICTED BY THE KNOWING USE OF FRAUD AND PERJURED TESTIMONY?

QUESTION PRESENTED:

CAN THE PETITIONER BE CONVICTED ON THE BASIS OF A "NOLLE PROS" INDICTMENT WITHOUT BEING REINDICTED?

QUESTION PRESENTED:

CAN THE SOUTH CAROLINA SUPREME CT ARBITRARILY SUSPEND THE WRIT OF HABEAS-CORPUS WITHOUT ANY FINDINGS THAT PETITIONER ABUSE SUCH?

CAN THE WRIT OF HABEAS-CORPUS BE SUSPENDED WITHOUT A CERTIFICATE UNDER OATH AS REQUIRED BY 17-17-200?

WAS THE WRIT OF HABEAS-CORPUS UNCONSTITUTIONALLY SUSPENDED BY THE SOUTH CAROLINA SUPREME COURT?

WAS PETITIONER ENTITLED TO THE WRIT OF HABEAS-CORPUS WHERE THE WARRANT EVIDENCE THAT HE WAS CHARGED WITH THE "OLD MANDATORY DEATH PENALTY STATUTE 16-51. 16-3-10 1966 CODE.

"A WRIT OF HABEAS CORPUS IS APPROPRIATE SO LONG AS THE PETITIONER ITSELF SUPPORTS THE REQUESTED RELIEF"

PENNINGTON V STATED 312 SC 436, 441 SC 2d 315 (1994). THE TEST IS WHETHER THERE HAS BEEN A VIOLATION, WHICH IN THE SETTING, CONSTITUTES A DENIAL OF FUNDAMENTAL FAIRNESS SHOCKING TO THE UNIVERSAL SENSE OF JUSTICE" Id 468, 397 SC 2d

PROSECUTORIAL MISCONDUCT

HERE THE AFFIANT KNOWINGLY AND WITH A DELIBERATE
INDIFFERENCE TO THE RIGHTS OF PETITIONER BY THE USE
OF FRAUD AND PERJURED TESTIMONY OBTAIN NOT ONLY THE
WARRANT BUT THE INDICTMENT ALSO AND THE SOLICITOR
WHO KNOW OR REASONABLY SHOULD HAVE KNOWN OF THE TRUING
DID NOT CORRECT SUCH BUT USED THE WARRANT AFFIDAVIT AS
PROBABLE CAUSE IN SUPPORT OF THE INDICTMENT.

FIRST IT IS ESTABLISHED THAT A CONVICTION OBTAIN
THROUGH USE OF FALSE EVIDENCE KNOWN TO BE SUCH BY
REPRESENTATIVES OF THE STATE MUST FALL UNDER THE
FOURTEENTH AMENDMENT. MUONEY V HALAHAN 294 US 103,
55 S Ct 340, 79 L Ed 791 CITING MURPHY V ILLINOIS.

THE PRINCIPLE THAT A STATE MAY NOT KNOWINGLY USE
FALSE EVIDENCE, INCLUDING FALSE TESTIMONY TO OBTAIN
A TAINTED CONVICTION, IMPLICIT IN ANY CONCEPT OF
LIBERTY, DOES NOT CEASE TO APPLY MERELY BECAUSE
THE FALSE TESTIMONY GOES ONLY TO THE CREDIBILITY
OF THE WITNESS THE JURYS ESTIMATE OF THE TRUTHFUL
NESS AND RELIABILITY OF A GIVEN WITNESS MAY WELL
BE DETERMINATIVE OF GUILT OR INNOCENCE AND IT IS
UPON SUCH SUBTLE FACTORS AS THE POSSIBLE INTEREST
OF THE WITNESS IN TESTIFYING FALSELY THAT A DEFENDANTS
LIFE OF LIBERTY MAY DEPEND.

THE PETITIONER REQUEST THIS COURT MAKE ITS OWN
INDEPENDANT EXAMINATION OF THE RECORD WHERE FEDERAL
CONSTITUTIONAL DEPRIVATIONS ARE ALLEGED AND IS CLEAR

RESTING AS IT DOES ON OUR SOLEMN RESPONSIBILITY FOR
MAINTAINING THE CONSTITUTION INVOLATE MARTIN HUNTER
LESSEE, 1 WHEAT 304 4 LED 97 COOPER V AARON 358 US 1, 78
SC7 1401, 3 LED 2d 5 THIS PRINCIPLE WAS WELL STATED
IN NIEMOTKO V STATE OF MARYLAND 340 US 268, 271, 71 SC7
325, 327, 95 LED 267

"IN CASES IN WHICH THERE IS A DENIAL OF RIGHTS
UNDER FEDERAL LAW, THIS COURT IS NOT BOUND BY THE
CONCLUSIONS OF THE LOWER COURTS. BUT WILL EXAMINE
THE EVIDENTIARY BASIS ON WHICH THOSE CONCLUSIONS ARE
FOUNDED.

THE RESPONDENTS HAD NOT DENIED THE CLAIMS MADE
BY PETITIONER OR EVEN ADDRESSED SUCH AND WAIVED
BRINGING THESE ISSUES.

THE PETITIONER CAN ONLY GET SOME JUSTICE BY
THE DIRECTION OF THIS COURT DIRECTIN THE RESPOND
ENTS TO ANSWER TO PETITIONERS CLAIM AS TO WHETHER
OR NOT HE GAVE H.M. TURBERVILLE AND SLED "A FULL
WRITTEN STATEMENT" AS ATTESTED IN THE AFFIDAVIT
SECTION OF THE WARRANT
IN Giglio⁴ THIS COURT HELD THAT DELIBERATE
DECEPTION OF A COURT AND JURORS BY PRESENTATION OF
KNOWN FALSE EVIDENCE IS INCOMPATIBLE WITH FUNDAMEN
TARY DEMANDS OF JUSTICE. GILGION US 405 US 150
92 SC7 263 3 LED 2d 104

IN GIBSON V STATE THE SOUTH CAROLINA SUPREME CT HELD THAT APPLICANT FOR POST-CONVICTION RELIEF COULD CHALLENGE THE VOLUNTARY NATURE OF HIS GUILTY PLEA. BY ASSAULT PROSECUTION VIOLATED BRADY V MARYLAND BY FAILING TO DISCLOSE EXCULPATORY MATERIAL IN ITS POSSESSION

THESE MATERIAL FALL INTO THIS CATEGORY (1) CASE THAT INCLUDE NONDISCLOSED EVIDENCE OF PERJURED TESTIMONY ABOUT WHICH THE PROSECUTOR KNEW OR SHOULD HAVE KNOWN. HERE LIKE IN THE PETITIONER CASE THE PROSECUTION SUPPRESSED THE EVIDENCE THAT THERE WAS NO FULL WRITTEN STATEMENT BY FAILING TO REVEAL IT HAD PROSECUTOR REVEALED SUCH INFORMATION, PETITIONER WOULD HAVE CHOSEN TO STAND TRIAL INSTEAD OF PLEADING GUILTY.

"Nolle Pross of Indictment"

A NOLLE PROSSON IS AN ENTRY BY THE PROSECUTOR INDICATING THAT HE HAS DECIDED NOT TO PROSECUTE A CASE.

THE TRIAL JUDGE IS REQUIRED TO DISMISS THE CHARGES IF A SOLICITOR ENTERS A NOLLE PROSSON, WHICH EXTINGUISHED THE CHARGES AND FAILED TO REINDICT THE DEFENDANT UPON THOSE CHARGES CITING MACKEY V STATE 357 SC 666 595 SE 2d 241. IN RE BROWN 294 SC 235, 363 SE 2d 688 STATE V GASKINS 263 SC 343, 210 SE 2d 590

GROUND'S FOR RELIEF:

THE PETITIONER WAS CONVICTED AND SENTENCED ON THE BASIS OF A "NON-EXISTENT" OFFENSE WHICH THE COURT WAS WITHOUT SUBJECT MATTER JURISDICTION. THE RECORD WARRANT WOULD REFLECT THAT PETITIONER WAS CHARGED WITH VIOLATING 16-3-10 -OF 1976 CODE OF LAWS. HOWEVER NO SUCH OFFENSE EXISTED AT THE TIME PETITIONER WAS CHARGED WITH THIS ALLEGED OFFENSE. PETITIONER SUBMITTED DOCUMENTATION FROM THE SOUTH CAROLINA DEPT OF ARCHIVES AND HISTORY TO THIS FACT. I ALSO SUBMITTED THE OFFICIAL OPINION #4388 TO SUPPORT THIS CLAIM.

THE MANDATORY DEATH PENALTY STATUTE WAS STRUCK DOWN IN 1976 IN THE CASE OF STAYEN RUMSEY THEREFORE THIS OFFENSE NEVER EXISTED..

QUESTION PRESENTED

CAN A DEFENDANT BE CONVICTED OF A NON-EXISTENT OFFENSE?

DOES A COURT LACK SUBJECT MATTER JURISDICTION DUE TO A NON EXISTENT OFFENSE?

NON-EXISTENT OFFENSE & LACK OF

SUBJECT MATTER JURISDICTION

UNDER SOUTH CAROLINA LAW A CIRCUIT COURT LACKS SUBJECT MATTER JURISDICTION TO ACCEPT A GUILTY TO NON-EXISTENT OFFENSE. WHITNER V STATE 492 S.C. 777. PENAL STATUTES ARE CONSTRUED STRICTLY AGAINST STATE AND IN FAVOR OF DEFENDANT. STATE V CUTLER 274 S.C. 376, 264 S.E.2d 420 (1980). STATE V RUMSEY 267 S.C. 286, 226 S.E.2d 894. "THE SOUTH CAROLINA SUPREME CT HELD. IN 1976) BASE ON THE HOLDING IN WOODSON 428 U.S. 280 96 S.Ct. 2978, 49 L.Ed.2d 944 19 C.R.L. 3294 (1976) NOTE (1) (2) THAT THE SOUTH CAROLINA MANDATORY DEATH PENALTY STATUTE UNCONSTITUTIONAL STATING 'OUR STATE DOES NOT PERMIT THE EXERCISE OF CONTROLLED DISCRETION IN IMPOSING THE DEATH PENALTY REQUIRED BY RECENT DECISIONS, BUT MANDATES A DEATH SENTENCE UPON FINDING OF MURDER COMMITTED IN THE CIRCUMSTANCES SPECIFIED IN SECTION 16-52, 'IT TOO IS CONSTITUTIONALLY DEFECTIVE' IN MONTGOMERY V LOUISIANA 577 U.S. 190 THIS COURT HELD THAT 'WHEN A STATE ENFORCES A PRESCRIPTION OR PENALTY BARRED BY THE FEDERAL CONSTITUTION, THE RESULTING CONVICTION OR SENTENCE IS BY DEFINITION UNLAWFUL' EVEN THE USE OF IMPECCABLE FACTFINDING PROCEDURES CANNOT LEGITIMATE A GUILTY VERDICT WHERE THE CONDUCT BEING PENALIZED IS CONSTITUTIONALLY IMMUNE FROM PUNISHMENT"

GROUND'S FOR RELIEF:

THE PETITIONER WAS CONVICTED ON THE BASIS OF AN EX-POST FACTO VIOLATION BECAUSE THE STATUTE THAT WAS USED TO ARREST, INDICT AND CONVICT PETITIONER WAS STRUCK DOWN SINCE 1976 BY THE SOUTH CAROLINA SUPREME CT IN STATE V RUMSEY CONVICTION COULD NOT BEEN HAD UNDER IT BECAUSE IT WAS DECLARED NULL AND VOID NO SAVINGS CLAUSE WAS ADDED TO IT USCA 199, 10. SC CONST 21 § 4.

ARGUMENT

A CRIMINAL DEFENDANT MAY NOT BE CONVICTED UNDER A PENAL STATUTE WHEN THE STATUTE DOES NOT HAVE A SAVINGS CLAUSE STATE V RIDER 320, 533, 466 SE 2d 367 (1996)

COURT DOES NOT HAVE JURISDICTION IN PROSECUTION OF DEFENDANT WHEN STATUTE MAKING THE ALLEGED OFFENSE A CRIME HAS BEEN REPEALED 22 CJS CRIMINAL LAW § 29 (1989)

SEE ALSO TAYLOR V MURPHY 293 SC 316, 818 19, 360 SE 2d 314, 316 (1987) GENERAL RULE OF REPEAL STATUTE WITHOUT A SAVINGS CLAUSE ENDS PROSECUTION UNDER IT AND PUNISHMENT.

GROUND'S FOR RELIEF!

LACK OF SUBJECT MATTER JURISDICTION

THE COURT DATED JUNE 7TH 1988 LACKED SUBJECT MATTER JURISDICTION TO INDICT CONVICT AND SENTENCE PETITIONER BECAUSE THE STATES CONSTITUTION AND STATUTORY POWERS WAS NOT PROPERLY INVOKED TO INVEST THE CIRCUIT COURT WITH JURISDICTION TO ACT.

PETITIONER WAS ORIGINALLY ARRESTED ON THE BASIS OF A NON-JUDICIAL WARRANT ISSUED BY A MAGISTRATE WHO DOES NOT POSSESS JURISDICTION IN SUCH CASES. AND AT THE TIME AN ARREST WARRANT AND INDICTMENT WERE DOCUMENTS THAT CONFERRED SUBJECT MATTER JURISDICTION UPON THE COURT

NEITHER THE WARRANT OR INDICTMENT WAS FILED AS A PETITIONER

THE INDICTMENT DOES NOT REFLECT THAT SUCH WAS THE WORK PRODUCT OF A GRAND JURY. DOES NOT REFLECT THE DATE THE GRAND JURY TOOK ACTION ON THE INDICTMENT WHICH GOES TO THE FAIRNESS AND INTEGRITY OF THE PROCEEDINGS.

IT IS FILING THAT INVOKES THE JURISDICTION OF ANY COURT AS A PREREQUISITE TO ITS JURISDICTION JURISDICTION HAD TO BE "ORIGINAL AND EXCLUSIVE" SOUTH CAROLINA CONST ART 5 § 11 "PROVIDES THAT THE CIRCUIT COURT SHALL BE A GENERAL TRIAL COURT WITH

ORIGINAL JURISDICTION IN CIVIL AND CRIMINAL CASES
EXCEPT THOSE CASES IN WHICH EXCLUSIVE JURISDICTION
SHALL BE GIVEN TO INFERIOR COURTS AND SHALL HAVE
SUCH APPELLATE JURISDICTION AS PROVIDED BY LAW

ORIGINAL JURISDICTION IN THE CASE WAS LACKING
BECAUSE THE PROSECUTION WAS INITIATED BY A
MAGISTRATES WARRANT AND A SOUTH CAROLINA MAGISTRATE
DO NOT POSSESS JURISDICTION IN CASES OF MURDER
THEREFORE THE COURTS STATUTORY WARRANT PROCEDURE
WAS NOT PROPERLY INVOKED

BOTH US CONSTITUTION AND SC CONSTITUTION AND
STATUTES REQUIRE THAT THERE BE A JUDICIAL
DETERMINATION OF PROBABLE CAUSE TO AN EXTENDED
RESTRAIN ON AN INDIVIDUAL LIBERTY WHICH MUST BE
HAD IN 48 HRS FOLLOWING ARREST WITHOUT A VALID
WARRANT

THERE IS A TOTAL LACK OF THE WARRANT REQUIREMENT
OF INAPPROPRIATE IN THIS CASE THEREFORE THE
COURT LACKED SUBJECT MATTER JURISDICTION TO
ADJUDICATE THE CASE AND NOTWITHSTANDING THE
FACT THAT THE LAW THAT PETITIONER WAS
CHARGED UNDER WAS UNCONSTITUTIONAL, NULL & VOID
AND A REJECTION OF PETITIONERS CLAIMS WAS
CONTRARY TO AND UNREASONABLE

A Conviction Under An Unconstitutional Law is Not Merely Erroneous, But is Illegal And Void And Cannot Be A Legal Cause Of Imprisonment Montgomery Id.

FURTHERMORE A SEPERATION OF POWERS VIOLATION TOOK PLACE WHERE PROSECUTION WAS INITIATED BY THE EXECUTIVE BRANCH OF STATE GOVERNMENT THUS DEPRIVING THE COURT OF "EXCLUSIVE JURISDICTION" IN THE MATTER SEE EG STATUTE STATUTE 17-19-40 RENDERING THE GRANDJURY THAT WAS SUMMONED ON THE BASIS OF SUCH NULL AND VOID INDICTMENT INVALID. SEE CS STATE V FUNDERBURY 259 SC 256 191 SE 2d 520 IN FUNDERBURY THE COURT HELD THAT THE JURISDICTION OF THE GRANDJURY IS "CO-EXTENSIVE" WITH THE CRIMINAL JURISDICTION OF THE COURT FOR WHICH IT IS EMPANELLED AND FOR WHICH IT IS TO MAKE INQUIRY. RAINEY V HAILEY 404 SC 320, 745 SE 2d 81.

THE STATE IS APPLYING USV COTTON AND STATE V GENTRY RETROACTIVELY IN VIOLATION OF TEACHER V LANE WHICH HOLDS THAT THE NEW RULES GENTRY SHOULD NOT BE APPLIED RETROACTIVELY TO CASES THAT WERE FINAL WHEN THE NEW RULE WAS ANNOUNCED.

THE COURT WENT ON TO HOLD THAT "WHETHER A DECISION ANNOUNCING A NEW RULE SHOULD BE

GIVEN RETROACTIVE APPLICATION WHEN IT IS ANNOUNCED
IN TEACHE V LANE THE COURT ADOPTED JUSTICE
HARLAN'S VIEW OF RETROACTIVITY HOLDING NEW
CONSTITUTIONAL RULES OF CRIMINAL PROCEDURE WILL
NOT BE APPLICABLE TO THOSE CASES WHICH BECAME
FINAL BEFORE THE NEW RULES WERE ANNOUNCED.
THE PETITIONER'S CASE BECAME FINAL BEFORE
GENTRY OR COTTON WAS ANNOUNCED THEREFORE HE
SHOULD BE ALLOWED TO PURSUE HIS LACK OF SUBJECT
MATTER CLAIMS UNDER THE OLD LAW.
HAVING MADE THIS PETITION PETITIONER
REQUESTS THAT CERTIORARI BE GRANTED WITHIN THE
INTEREST OF JUSTICE.

Respectfully Submitted
Marissa Joseph 147164
Prose Petitioner