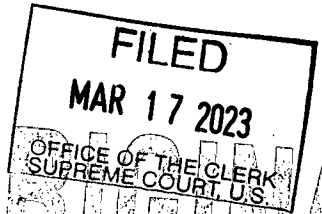


22-7105

No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

JIMMY ALLEN ROBERTS — PETITIONER
(Your Name)

VS.

EDDIE R. BUFFALO JR — 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

JIMMY ROBERTS # 0346706
(Your Name)

2568 MOORE ROUSE RD
(Address)

HOOKEERTON, NC 28538-7276
(City, State, Zip Code)

(Phone Number)

(1)

QUESTIONS PRESENTED:

(1)

ISSUE:

MR ROBERTS URGES THAT THE INSTANT CASE ILLUMINATES A CONTINUOUS FLOW OF MERITORIOUS, BUT IMPROVIDENTLY DRAFTED, AND UNTIMELY FILED HABEAS PETITIONS ARRIVING IN THE FOURTH CIRCUIT COURT OF APPEALS FROM THE NORTH CAROLINA (NC) FEDERAL COURTS. THIS FLOW OF PETITIONS REPRESENT NC'S TWENTY PLUS YEAR CONSTRUCTIVE CONTEMPT FOR THE CONSTITUTIONAL MANDATE ISSUED BY THIS COURT UPON NC PER SE IN BOUNDS V SMITH, 430 US 817, 821, 828, 97 SGT 1491 (1977) AND REITERATED IN LEWIS V CASEY, 518 US 343, 350, 116 SGT 2174 (1996). NC'S CONTEMPT FOR BOUNDS & LEWIS IS EVIDENCED BY, (1) THE COMPLETE REMOVAL OF LAW LIBRARIES AND OTHER SOURCES OF LEGAL KNOWLEDGE FROM ALL NC PRISONS, (2) BARRING THE NC SUPREME COURT LIBRARY'S SALE OF LEGAL RESOURCES TO NC PRISONERS, (3) DEFUNDING AND EFFECTIVELY DEACTIVATING NORTH CAROLINA PRISONERS' LEGAL SERVICES, WHICH NEVER PROVIDED ACCESS TO LEGAL RESOURCES, (4) STRICT ENFORCEMENT OF A THREE BAG LIMIT ON PRISONERS' PERSONAL PROPERTY, DESPITE THE ACTIVE CASE CLAUSE.

(2)

REQUEST FOR JUDICIAL NOTICE: MR ROBERTS

HUMBLY AND RESPECTFULLY REQUESTS THIS HONORABLE COURTS' JUDICIAL NOTICE OF THE FACT THAT THE UTTER AND COMPLETE DEPRIVATION OF NC PRISONERS' "FUNDAMENTAL CONSTITUTIONAL RIGHT" BOUNDS, 430 US AT 828 OF ACCESS TO THE COURTS AS DELINATED HEREINABOVE DISTINGUISHES NC PRISONERS FROM OTHER STATE PRISONERS WHOSE COMPLAINTS MERELY POINT TOWARD INADEQUACIES IN A PRISONS' AVAILABLE RESOURCES. END.

NOTWITHSTANDING THIS GLARING UNCONSTITUTIONAL DEPRIVATION OF NC PRISONERS' FUNDAMENTAL RIGHTS, THE NC FEDERAL COURTS HAVE ESTABLISHED A BRIGHT LINE RULE TO UNITARILY DENY EQUITABLE TOLLING TO NC PRISONERS TO WIT: "LACK OF ACCESS TO A LAW LIBRARY OR LACK OF LEGAL KNOWLEDGE DO NOT CONSTITUTE EXTRAORDINARY CIRCUMSTANCES" [HOLLAND V FLORIDA, 560 US 631, 644, 130 SCT 2549, 2562 (2010)] OUT OF HIS CONTROL THAT WOULD WARRANT EQUITABLE TOLLING". BUCHNOWSKI V WHITE, WL 171540, 3 (WDNC 2013), GARCIA NEGRETE V UNITED STATES, WL 2041342, 2 (WDNC 2020). SEE MEMORANDUM OF DECISION AND ORDER, DOC. 16, P.7.

THE FOURTH CIRCUIT HAS, BY VIRTUE OF ITS OWN

"STRICT APPLICATION", ROUSE V LEE, 335 F3d 238, 246 (NC, 4TH CIR 2013)
OF THE AEDPA'S ONE YEAR STATUTE OF LIMITATIONS ESTABLISHED ITS OWN
INDISCRIMINATE BRIGHT-LINE RULE FOR DENYING THIS EXCLUSIVE
CLASS OF CONSTITUTIONALLY DEPRIVED PRISONERS ACCESS TO THE
FLEXIBILITIES INHERENT IN EQUITABLE TOLLING

RULE OF LAW:

EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS
FOR AN OTHERWISE UNTIMELY 2254 PETITION MAY APPLY WHERE
THE PETITIONER DEMONSTRATES "(1) THAT HE HAS BEEN PURSUING
HIS RIGHTS DILIGENTLY, AND (2) THAT SOME EXTRAORDINARY
CIRCUMSTANCES STOOD IN HIS WAY" TO PREVENT TIMELY FILING."
DOC. 16, P. 6, CITING HOLLAND, 560 US AT 649, 130 SGT AT 2549.

"IN ORDER TO ESTABLISH A VIOLATION OF BOUNDS, AN
INMATE MUST SHOW THAT THE ALLEGED INADEQUACIES OF A PRISON'S
LIBRARY FACILITIES OR LEGAL ASSISTANCE PROGRAM CAUSED HIM
"ACTUAL INJURY"... SUCH AS THE INABILITY TO MEET A FILING
DEADLINE OR TO PRESENT A CLAIM". LEWIS, 518 US AT 348, 116 SGT
AT 2179.

LIST OF PARTIES :

ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE.

RELATED CASES:

ROBERTS V MCCOY, 19 CRS1161, NASH COUNTY, NC, HABEAS HEARING GRANTED-NO COUNSEL, DISMISSED OCTOBER 21, 2019, UNPUBLISHED.

ROBERTS V OWENS, No P19-760, NC COURT OF APPEALS, PET. FOR CERT. FILED FEB. 3, 2020, DENIED MARCH 6, 2020 UNPUBLISHED.

ROBERTS V OWENS, FILE NO. 130 P20, NC SUPREME COURT, PET. FOR DISC. REVIEW FILED MARCH 19, 2020, DENIED DEC. 22, 2020.

ROBERTS V HOOKS, US DIST. COURT FOR WD NC, NO. 1:21-CV-MR-00058-MR. FILED FEB. 25, 2021, DENIED JULY 25, 2022, UNPUBLISHED.

ROBERTS V HOOKS, No. 22-1868, US COURT OF APPEALS FOR THE FOURTH CIRCUIT, PETITION FOR CERTIFICATE OF APPEALABILITY FILED AUGUST 18, 2022, DENIED JANUARY 19, 2023 UNPUBLISHED.

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STRADER v GARRISON, 611 F2d 61 (4TH CIR 1979)	18
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF
CERTIORARI ISSUE TO REVIEW THE JUDGMENT BELOW.

OPINIONS BELOW:

FEDERAL COURTS:

THE OPINION OF THE US COURT OF APPEALS FOR THE FOURTH
CIRCUIT APPEARS AT APPENDIX A TO THE PETITION AND IS
UNPUBLISHED.

THE MEMORANDUM AND DECISION AND ORDER OF THE
US DISTRICT COURT FOR THE WESTERN DISTRICT OF NC APPEARS
AT APPENDIX B TO THE PETITION AND IS UNPUBLISHED.

NOTE: IN ADDITION TO WITHHOLDING ACCESS TO ALL LEGAL
KNOWLEDGE, THE STATE OF NC FURTHER SUBVERTS PRISONERS
LEGAL CLAIMS BY WITHHOLDING ACCESS TO A PHOTOCOPIER. HENCE,
THE STATE COURT ORDERS HAVE BEEN INCLUDED IN PREVIOUS
FILING AND ARE NOW UNAVAILABLE FOR INCLUSION IN THE
INSTANT PETITION, SEE APPENDIX C.

JURISDICTION:

THE DATE ON WHICH THE US COURT OF APPEALS FOR THE FOURTH CIRCUIT DECIDED MY CASE WAS JANUARY 19, 2023.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

THE FOLLOWING CONSTITUTIONAL AND STATUTORY PROVISIONS ARE INVOLVED IN THIS CASE:

28 USC 2244 (d) (1)

THE PETITION MUST BE FILED WITHIN ONE YEAR OF:

- (A) THE DATE ON WHICH THE JUDGMENT BECAME FINAL BY THE CONCLUSION OF DIRECT REVIEW OR THE EXPIRATION OF THE TIME FOR SEEKING SUCH REVIEW.
- (B) THE DATE ON WHICH THE IMPEDIMENT TO FILING AN APPLICATION CREATED BY THE STATE ACTION IN VIOLATION OF THE CONSTITUTION OR LAWS OF THE UNITED STATES IS REMOVED, IF THE APPLICANT WAS PREVENTED FROM FILING SUCH STATE ACTION.

US CONST. ART. I, SEC. 9, [2]

" THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS SHALL NOT BE SUSPENDED. "

US CONST. AMEND. V :

' NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME... WITHOUT DUE PROCESS OF LAW."

US CONST. AMEND. VI :

" IN ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL ENJOY THE RIGHT TO HAVE... THE ASSISTANCE OF COUNSEL."

US CONST. AMEND. XIV :

SEC. 1: " NO STATE SHALL... DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW; NOR... EQUAL PROTECTION OF THE LAWS"

INDEX TO APPENDICES :

A OPINION FROM FOURTH CIRCUIT.

B MEMORANDUM OF DECISION AND ORDER FROM WESTERN, DISTRICT OF NC

C LETTER FROM NASH COUNTY DENYING COPY OF ORDER.

CONCLUSION :

A PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED.

~~John H. R. A.~~ MARCH 10, 2023

(V)

STATEMENT OF THE CASE :

THE STATE BREACHED ITS GUILTY PLEA CONTRACT WITH MR ROBERTS BY DEPRIVING HIM OF EFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS, AND EQUAL PROTECTION OF THE LAW UNDER US CONST. AM. S 5, 6, 14, WHEN MR ROBERTS' COURT APPOINTED ATTORNEY LISA A. DUBS DELIBERATELY, AND WITH SPECIFIC INTENT TO DEFRAUD MR ROBERTS OF A JURY TRIAL, DID MISREPRESENT THE LAW IN RELATION TO THE FACTS OF HIS CASE TO HIM. THE GOAL OF THIS FRAUDULENT ACT WAS TO INDUCE MR ROBERTS TO ENTER A GUILTY PLEA CONTRACT WITH THE STATE WHICH WAS NOT THE PRODUCT OF HIS INFORMED CHOICE IN CONTRAVENTION OF THE FEDERAL RULES OF CRIMINAL PROCEDURE, RULE 11(C)(4), NC GENERAL STATUTE 15A-1021(b), & 15A-1022(b).

SUPPORTING FACTS :

MR ROBERTS WAS INDICTED ON TWO COUNTS OF FIRST DEGREE HOMICIDE IN THE SHOOTING DEATHS OF HIS WIFE OF NINE YEARS AND HER LOVER, WHO POLICE FOUND LYING TOGETHER IN A SEMI-NUDE POSITION INSIDE MR ROBERTS' HOME. WHEN MR ROBERTS INQUIRED OF MS DUBS ABOUT ASSERTING A HEAT OF PASSION DEFENSE AT TRIAL, MS DUBS RESPONDED: "IF WE WERE ANYWHERE BUT NORTH CAROLINA I COULD HELP YOU, BUT NOT IN NORTH CAROLINA."

LATER, WHEN MR ROBERTS PRESSED MS DUBS CONCERNING A

TRIAL STRATEGY, MS DUBS RETORTED: "IF YOU GO TO TRIAL YOU'RE GOING TO DEATH ROW" THUS FORECLOSING FURTHER DISCUSSIONS OF A TRIAL STRATEGY AT THAT TIME.

THESE STATEMENTS BY MS DUBS SUBSTANTIVELY MISREPRESENT THE SUNDRY DEFENSES EMBODIED IN NC GEN. STAT. 15A-2000(F), (2)(6) AND THE NC RULES OF EVIDENCE, RULES 401, 402 WHICH, WHEN WORKING TANDEMELY WITH THE MISPLACED CERTAINTY OF A DEATH SENTENCE, EFFECTIVELY OVERBORE MR ROBERTS' WILL TO PROCEED TO TRIAL. MOREOVER, THIS MISREPRESENTATION OF THE LAW IN RELATION TO THE FACTS OF HIS CASE DEFRAUDED MR ROBERTS OF HIS CONSTITUTIONAL RIGHT TO INTELLIGENTLY CONTEMPLATE THE COURSES OF ACTION OPEN TO HIM, THUS LEAVING A PLEA OF GUILTY THE ONLY VISIBLE END.

MS DUBS, BY VIRTUE OF HER LICENSURE BY THE NC STATE BAR IS AN OFFICER OF THE COURT, REPRESENTING NC'S LEGAL SYSTEM. SEE RULES OF PROFESSIONAL CONDUCT 0.1..

THEREFORE, THE STATE, BY AND THROUGH MS DUBS, BREACHED THE MANDATORY PROCEDURAL SAFEGUARDS DESIGNED TO INSURE THAT MR ROBERTS CONTRACTED WITH THE STATE TO ENTER A PLEA OF GUILTY ONLY UPON BEING FULLY INFORMED OF THE LAW AS IT APPLIES TO THE CIRCUMSTANCES OF HIS CASE. HENCE, ALLOWING MR ROBERTS TO RESCIND HIS GUILTY PLEA CONTRACT IS THE ONLY PREVAILING EQUITABLE REMEDY TO THE STATE'S BREACH. UNITED STATES V FISHER, 711 F3D 460, 465 (4TH CIR 2013), CITING BRADY V UNITED STATES, 397 US (15)

VIEWS CONCOMITANTLY WITH THE INDETERMINABLE SYNERGETIC

SIDE-EFFECTS OF A TOXIC COCKTAIL OF MIND-ALTERING PSYCHOTROPIC AND NARCOTIC MEDICATIONS PRESCRIBED BY HIS FAMILY PHYSICIAN AND/OR PSYCHIATRIST; WORKING TANDEMLY WITH THE EXTREME EMOTIONAL DISTRESS EMANATING FROM EMPLOYMENT ISSUES; IMPENDING FORECLOSURE OF HIS HOME; THE DISSOLUTION OF HIS MARRIAGE; DISCOVERY OF HIS WIFE'S INFIDELITY; IT IS UNQUESTIONABLE THAT AT THE TIME OF THE HOMICIDES MR ROBERTS WAS NOT ACTING IN A COOL STATE OF MIND. CONTRARIWISE, MR ROBERTS WAS ACTING UNDER THE INFLUENCE OF A SUDDENLY AROUSED VIOLENT PASSION; THAT HE DID NOT ACT WITH DELIBERATION; AND AS A RESULT OF HIS MENTAL DISORDER, HIS CAPACITY TO COGNIZANTLY CONFORM HIS BEHAVIOR TO THE REQUIREMENTS OF THE LAW WAS EFFECTIVELY OVERBORNE.

WHEN MR. ROBERTS PRESSED MS DUBS ABOUT PREPARING SUCH A DEFENSE, MS DUBS RETORTED: "YOU DON'T HAVE AN INSANITY DEFENSE, AND IF YOU GO TO TRIAL, YOU'RE GOING TO DEATH ROW." THUS, MS DUBS' RESPONSE FORECLOSED FURTHER DISCUSSIONS CONCERNING A TRIAL STRATEGY.

THIS RESPONSE WAS TRUE ENOUGH, WHEREAS GIVEN THE HIGH BAR OF THE MCNAUGHTON STANDARD AN INSANITY DEFENSE PER SE WAS UNTENABLE. HOWEVER, MS DUBS STRATEGICALLY WITHHELD INFORMATION REGARDING THE NOMENCLATURE OF OTHER STATE OF MIND DEFENSES OPEN TO MR ROBERTS UNDER NC GEN. STAT. 15A-2000, (F)(2)(b);

NC GEN. STAT. 8C-1, RULE 402, NC RULES OF EVIDENCE RULES 401, 402, STATE V BALDWIN, 330 NC 452, 457, 461, 412 SE 2d 35, 38, 40 (1992), (DURESS, VOLUNTARY INTOXICATION, AND DIMINISHED CAPACITY DEFENSES PRESENTED.

BY VIRTUE OF EMPLOYING THE MISPLACED CERTAINTY OF A DEATH SENTENCE TO CONCEAL HER AVERSION TO CONDUCTING A PRE-TRIAL PSYCHIATRIC INVESTIGATION INTO MR. ROBERTS' STATE OF MIND AT THE TIME OF THE HOMICIDES, MS DUBS CONSTRUCTED AND EXECUTED THE INDUCEMENT THAT LED MR. ROBERTS TO IMPROVIDENTLY AND UNWILLINGLY SURRENDER HIS RIGHTS TO A TRIAL. BY THIS SIMPLE PROCESS OF FORECLOSING ALL CONTEMPLATIONS OF A TRIAL STRATEGY, MS DUBS PROCEEDED TO IMPRESS UPON MR. ROBERTS THE NOTION THAT A PLEA OF GUILTY WAS THE SOLE REMEDY FOR ESCAPING THE INEVITABILITY OF STATE EXECUTION.

IT IS WELL ESTABLISHED LAW, THAT IN TERMS OF GUILTY PLEA CONTRACTS, WHEN A DEFENDANT IS GROSSLY MISINFORMED BY HIS LAWYER, AND RELIES ON THAT MISINFORMATION, HE IS THUS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO COUNSEL. WHEN THE ERRONEOUS ADVICE INDUCES THE PLEA, RECISSION IS THE IMPERATIVE REMEDY. US V FISHER, 711 F3D 460, 465-466, (4TH CIR 2013), CITING STRADER V GARRISON, 611 F2d 61, 65 (4TH CIR 1979), TOLLETT V HENDERSON, 411 US 258, 266-67, 93 SCT 1602 (1973).

FURTHER, THE STATE BREACHED ITS CONTRACT WITH MR ROBERTS BY DENYING HIM EFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS, AND EQUAL PROTECTION OF THE LAW UNDER US CONST. AM.S 5, 6, 14, WHEN HIS COURT APPOINTED ATTORNEY LISA A. DUBS FELONIOUSLY SUBORNED HIM TO GIVE PERJURED TESTIMONY TO JUDGE ROBERT BELL CONCERNING HIS INGESTION OF PSYCHOTROPIC AND NARCOTIC DRUGS PRIOR TO PLEA COLLOQUY. THE SPECIFIC INTENT OF MS DUBS' FELONIOUS ACT WAS TO DEFRAUD MR. ROBERTS OF HIS CONSTITUTIONAL RIGHT TO A DUE PROCESS COMPETENCY HEARING UNDER FED. R. CRIM. P. RULE 11 (C), (d), NC GEN. STAT. 15A-1002 (b).

SUPPORTING FACTS:

HAVING SUCCESSFULLY CONVINCED MR ROBERTS THAT ASSERTING A STATE OF MIND DEFENSE AT TRIAL WOULD RESULT IN A DEATH SENTENCE, MS DUBS NEXT BEGAN EXTOLLING THE IMPROVED QUALITY OF LIFE IN PRISON OVER THE HORRID LIVING CONDITIONS OF JAIL, AND THE LIKELIHOOD OF SENTENCING REFORM BENEFICIAL TO MR ROBERTS. THESE FACTORS, COMBINED WITH THE EMOTIONALLY NUMBING AFFECTS OF THE DRUGS ADMINISTERED TO HIM BY JAIL MEDICAL STAFF, WORKED CONJUNCTIVELY TO OVERBEAR MR ROBERTS' WILL TO FIGHT THE CHARGES AGAINST HIM THUS INDUCING HIM TO SURRENDER TO THE NOTION OF LIVING OUT THE REMAINDER OF HIS LIFE IN PRISON.

UPON MR ROBERTS' CONCESSION TO ENTER INTO A GUILTY PLEA CONTRACT WITH THE STATE TO THE CHARGES OF FIRST DEGREE HOMICIDE IN EXCHANGE FOR A SENTENCE OF LIFE WITHOUT POSSIBILITY OF PAROLE, MS DUBS NEXT APPROACHED MR ROBERTS WITH A BLANK GUILTY PLEA CONTRACT FORM. MS DUBS THEN BEGAN READING THE QUESTIONS ENUMERATED THEREUPON TO MR ROBERTS, AND ENTERING THE DESIRED RESPONSES AS SHE DEEMED APPROPRIATE. WHEN ARRIVING AT QUESTION 4(a), WHICH READS: "ARE YOU NOW UNDER THE INFLUENCE OF ALCOHOL, MEDICINES, PILLS, OR OTHER INTOXICANTS"? MS DUBS INFORMED MR ROBERTS THAT: "THIS QUESTION DOESN'T APPLY TO PRESCRIBED MEDICATIONS, BUT ONLY TO ILLICIT SUBSTANCES; SO I'M GOING TO ENTER 'NO' TO THIS QUESTION, AND WHEN THE JUDGE ASKS YOU THIS QUESTION, YOU ANSWER 'NO' AS WELL, AND SAY NOTHING ELSE."

ON APRIL 9, 2003 MR. ROBERTS, ACCOMPANIED BY MS DUBS APPEARED BEFORE JUDGE ROBERT BELL IN THE CRIMINAL SESSION OF THE SUPERIOR COURT OF BURKE COUNTY, WHEREUPON IN RESPONSE TO JUDGE BELL ASKING MR ROBERTS QUESTION 4(a), MR ROBERTS DID IN FACT RESPOND "NO" AS INSTRUCTED BY MS DUBS. THIS PERJURIOUS RESPONSE BY MR ROBERTS NOT ONLY CONSTITUTES PERJURY ON HIS BEHALF IN VIOLATION OF NC GS. 14-209, BUT INASMUCH TRIGGERS THE INCRIMINATION OF MS DUBS IN THE FELONIOUS ACT OF SUBORNATION OF PERJURY IN VIOLATION OF NC GEN. STAT. 14-210.

WITH MR ROBERTS BY DENYING HIM EFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS, AND EQUAL PROTECTION OF THE LAW UNDER US CONST. AM.S 5, 6, 14, WHEN JUDGE ROBERT BELL FAILED TO SUA SPONTE CONDUCT AN INQUIRY INTO MR ROBERTS' STATE OF MIND WHEN CONFRONTED WITH "SUBSTANTIAL EVIDENCE" OF HIS HISTORY OF MENTAL ILLNESS AND DRUG USE PRIOR TO PLEA COLLOQUY.

SUPPORTING FACTS:

AN EXAMINATION OF THE APRIL 9, 2003 TRANSCRIPT OF MR ROBERTS' GUILTY PLEA HEARING WILL REFLECT THE FACT THAT COMPLETION OF THE QUESTIONS ENUMERATED UPON THE GUILTY PLEA CONTRACT FORM, THAT MS DUBS INTERRUPTED THE PROCEEDING TO ALERT JUDGE BELL TO MR ROBERTS' MENTAL INSTABILITY, AND INGESTION OF MIND ALTERING DRUGS PRIOR TO PLEA COLLOQUY, BUT INTENTIONALLY OMITTING THE NARCOTIC DRUG XANAX. MS DUBS THEN BEGAN WEASEL WORDING THE SIGNIFICANCE OF THESE ISSUES SO AS NOT ONLY TO MITIGATE HER OWN CULPABILITY FOR SUBORNING MR ROBERTS TO GIVE PERJURED TESTIMONY, BUT ALSO TO MISLEAD JUDGE BELL TO OBVIATE THE NECESSITY OF CONDUCTING AN IN-COURT HEARING DESIGNED TO TEST MR. ROBERTS' RESPONSES TO QUESTIONS REQUIRING A MODERATE MEASURE OF MENTAL ALERTNESS, AND COGNITIVE

FUNCTIONING, REASONING ACTIVITY, NEUROLOGICAL MOTOR SKILL FUNCTIONING WHICH ARE ALL MEASURABLY DIMINISHED BY THIS CLASS OF DRUGS WHICH LISTS IMPAIRMENT OF THESE FACULTIES AS KNOWN SIDE-AFFECTS.

AT DE MINIMIS, JUDGE BELL WAS REQUIRED TO CONDUCT A MORE PROBING PERSONAL INQUIRY INTO MR ROBERTS' STATE OF MIND THAN THE MERE MONOSYLLABIC RESPONSES REQUIRED BY THE CONTRACT FORM.

HERE, THE QUESTION BEFORE THE COURT IS NOT ONE OF MR ROBERTS' COMPETENCY, BUT RATHER, WAS THE QUANTUM OF EVIDENCE BEFORE JUDGE BELL SUBSTANTIAL ENOUGH TO TRIGGER THE DUE PROCESS REQUIREMENT FOR FURTHER INQUIRY INTO MR ROBERTS' CAPACITY TO PROCEED, AND THE MEASURE OF HARM CAUSED BY ITS DENIAL AS MANDATED IN NC GEN. STAT. 15A-1002(b), AND DAMON SUPRA.

THEREFORE, ALLOWING MR ROBERTS TO RESCIND HIS GUILTY PLEA CONTRACT IS THE ONLY PREVAILING EQUITABLE REMEDY TO THIS CONSTITUTIONAL DEPRIVATION, PATE V ROBINSON, 383 US 395, 385, 86 SCT 836, 842 (1966).

FURTHER, MR. ROBERTS WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS, AND EQUAL PROTECTION OF THE LAW UNDER US CONST. AM.S 5, 6, 14, WHEN HIS COUNSEL, TIMOTHY J. ROOKS FAILED TO OBJECT TO THE STATE'S UNLAWFUL EFFORTS TO REMEDIATE ITS

FUNCTIONING, REASONING ACUITY, NEUROLOGICAL MOTOR SKILL FUNCTIONING WHICH ARE ALL MEASURABLY DIMINISHED BY THIS CLASS OF DRUGS WHICH LISTS IMPAIRMENT OF THESE FACULTIES AS KNOWN SIDE-AFFECTS.

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BREACH OF CONTRACT BY VIRTUE OF A NUNC PRO TUNC COMPETENCY
HEARING CONDUCTED 8½ YEARS EX POST FACTO.

SUPPORTING FACTS :

IN MARCH 2005 AN EVIDENTIARY HEARING WAS CONDUCTED
IN THE CRIMINAL SESSION OF THE SUPERIOR COURT OF BURKE COUNTY,
WHEREIN JUDGE BEVERLY BEAL FOUND THAT MR ROBERTS, PROCEEDING
PRO SE, AND UNREPRESENTED, PRIMA FACIE EVIDENCE SUBSTANTIAL
ENOUGH TO TRIGGER THE NECESSITY OF A PLENARY HEARING ON MS
DUBS' EFFECTIVENESS, AND MR ROBERTS' CAPACITY TO ENTER THE
GUILTY PLEA CONTRACT. IMPLICITLY, JUDGE BEAL COLLATERALLY
IMPOSED AN AFFIRMATIVE OBLIGATION UPON THE STATE TO CONDUCT
THE HEARING FORTHWITH, AND WITHOUT DELAY TO PRECLUDE THE
CLAIMS FROM BECOMING STALE. WHEREAS IT APPLIES TO COMPETENCY
HEARINGS : "POSTPONEMENT OF THE ADJUDICATION FOR YEARS...
LESSENS THE PROBABILITY THAT FINAL DISPOSITION OF THE CASE
WILL DO SUBSTANTIAL JUSTICE", PEYTON V ROWE, 391 US 54, 62
(1968). IN FACT, THE US SUPREME COURT HAS CONSISTENTLY HELD :
"GIVEN THE INHERENT DIFFICULTIES OF SUCH A NUNC PRO TUNC
DETERMINATION UNDER THE MOST FAVORABLE CIRCUMSTANCES, WE
CANNOT CONCLUDE THAT SUCH A PROCEDURE WOULD BE ADEQUATE HERE",
DROPE V MISSOURI, 420 US 162, 183 (1975), (HOLDING 4½ YEARS EX
POST FACTO UNCONSTITUTIONAL).

AUGUST 19-20, 2008 THIS MATTER CAME TO BE HEARD BEFORE JUDGE ROBERT JOHNSTON AS A NUNC PRO TUNC COMPETENCY HEARING WHO, AT THE CONCLUSION OF THE HEARING ASSURED MR ROBERTS THAT HE WOULD ENTER HIS ORDER LATER THAT SAME WEEK. HOWEVER, CONTRARY TO HIS ASSURANCE, JUDGE JOHNSTON NEGLECTED TO ENTER HIS RULING.

AFTER THREE YEARS, AND UPON MOUNTING PRESSURE FROM MR ROBERTS, SUCCESSOR COUNSEL TIMOTHY ROOKS ARRANGED FOR A SECOND HEARING THAT WAS HELD ON AUGUST 15, 2011 BEFORE JUDGE HUGH LEWIS. ON THE MORNING OF THE HEARING, MR ROOKS ESCORTED MR ROBERTS INTO A SIDEROOM OF THE COURTHOUSE WHEREIN MR ROBERTS BEGAN PRESSING MR ROOKS TO EXPLAIN THE REASON FOR THE EXCESSIVE, AND UNREASONABLE THREE-YEAR DELAY. AFTER A PERSONAL DISCLAIMER, MR ROOKS EXPLAINED THAT JUDGE JOHNSTON WAS FORCED TO RESIGN HIS COMMISSION DUE TO CHRONIC ALCOHOL TOXICITY AND INABILITY TO MAINTAIN SOBRIETY. THIS REVELATION EXPLAINED WHY, DURING MR ROBERTS' TIME ON THE WITNESS STAND, JUDGE JOHNSTON'S FACE APPEARED ABNORMALLY REDDENED AND VEINY, AND WHEN COMPARED TO MR ROBERTS' EXPERIENCES WITH OTHER JUDGES, SEEMED LETHARGIC AND SLOW TO INTERACT.

MR ROOKS THEN PROCEEDED TO IMPRESS UPON MR ROBERTS THE NOTION THAT DUE TO THE WEIGHT OF EVIDENCE IN HIS FAVOR,

THAT A SUCCESSFUL HEARING COULD BE CONDUCTED BEFORE A DIFFERENT JUDGE FROM A MERE SUMMARIZING OF THE JOHNSTON HEARINGS' TRANSCRIPT HELD THREE YEARS THERETOFORE. MR ROOKS REQUESTED MR ROBERTS' PERMISSION TO PROCEED WITH SUCH HEARING. AT NO TIME DURING THE COURSE OF THIS DISCUSSION DID MR ROOKS INFORM HIM THAT THE EIGHT AND ONE HALF YEARS THAT THE STATE HAD ALLOWED TO LAPSE FROM THE DATE OF THE BREACH UNTIL AUGUST 15, 2011 COULD HAVE ARGUABLY DIVESTED THE COURT OF SUBJECT MATTER JURISDICTION OF THE MATTER THUS CONSTITUTING GROUNDS FOR INVOLUNTARY DISMISSAL AND REMAND. NOR DID MR ROOKS OBJECT TO THE PROCEEDING, OR MOVE FOR DISMISSAL ON THE GROUNDS OF EQUITABLE ESTOPPEL UNDER PEYTON V ROWE, AND DROPE V MISSOURI SUPRA, FOR THE CIRCUMSTANCES OF THIS HEARING ARE DISPOSITIVE OF THOSE THE US SUPREME COURT DETERMINED TO ESTOP IN PATE V ROBINSON, 383 US 375, 387, 86 SCT 836, 843 (1966) AS UNCONSTITUTIONAL. CONSEQUENTLY, RELISSION OF THE PLEA IS THE ONLY PREVAILING EQUITABLE REMEDY.

FURTHER, MR ROBERTS WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS, AND EQUAL PROTECTION OF THE LAW UNDER US CONST. AM. 5, 6, 14 WHEN JUDGE QUENTIN SUMNER DENIED MR ROBERTS REQUEST FOR THE APPOINTMENT OF COUNSEL PRIOR TO CONDUCTING AN INITIAL-REVIEW COLLATERAL PROCEEDING UNDER CH. 17 OF THE NC GEN. STAT. 5,

SUPPORTING FACTS:

ON OCTOBER 21, 2019 PURSUANT TO A PETITION FOR A WRIT OF HABEAS CORPUS UNDER CHAPTER 17 OF THE GENERAL STATUTES OF NORTH CAROLINA, JUDGE QUENTIN SUMNER BROUGHT MR ROBERTS BEFORE THE SUPERIOR COURT OF NASH COUNTY FOR AN "INITIAL REVIEW COLLATERAL PROCEEDING ON THE FOREGOING ISSUES. NOT ONLY DID JUDGE SUMNER IGNORE REQUEST FOR THE APPOINTMENT OF COUNSEL AS INDICATED WITHIN THE LANGUAGE OF THE PETITION ITSELF, BUT UPON GIVEN THE OPPORTUNITY TO SPEAK MR ROBERTS MADE AN IN-COURT MOTION FOR APPOINTMENT OF COUNSEL, CITING N.C. GEN. STAT. 7A-451(a)(2) & 7A-498.3(a)(1)(2)(2a) ASSERTING HIS STATUTORY ENTITLEMENT TO REPRESENTATION. MR ROBERTS FURTHER PLACED JUDGE SUMNER ON NOTICE THAT HE HAD NOT BEEN PROVIDED AN OPPORTUNITY TO ACQUIRE THE RECORDS NECESSARY TO THE HEARING, INCLUDING A RETURN COPY OF THE PETITION ITSELF.

JUDGE SUMNER THEN SNEERED AT MR ROBERTS AND DISMISSED THE PETITION AS FRIVOLOUS.

APPLICATION:

DID THE DISTRICT COURT ERR IN FINDING THAT THE STATE-CREATED CONSTITUTIONAL DEPRIVATIONS SET FORTH HEREINABOVE DO NOT CONSTITUTE "EXTRAORDINARY CIRCUMSTANCES" UNDER HOLLAND?

DO THESE ARGUABLY "EXTRAORDINARY CIRCUMSTANCES" WHICH EFFECTIVELY FORCLOSES NC PRISONERS OPPORTUNITIES TO DISCOVER AND PRESENT THEIR CLAIMS TO MEET STATE AND FEDERAL FILING DEADLINES SATISFY LEWIS' "ACTUAL INJURY" STANDARD, THUS REQUIRING REMEDIATORY INTERVENTION BY THIS HONORABLE COURT? TO WIT:

"IN THE CONTEXT OF THE PRESENT CASE: IT IS FOR THE COURTS TO REMEDY PAST OR IMMINENT OFFICIAL INTERFERENCE WITH INDIVIDUAL INMATES PRESENTATION OF CLAIMS TO THE COURTS". LEWIS, 518 US AT 349, 116 SCT AT 2179.

(2)

ISSUE:

APRIL 9, 2003, MR ROBERTS ENTERED THE NOW IN QUESTION GUILTY PLEA CONTRACT WITH THE STATE. MR ROBERTS

(5)

WAS PROMPTLY TRANSFERRED TO NC CENTRAL PRISON THE NEXT DAY. IN THE FIRST MONTH OF HIS ARRIVAL AT C.P., MR ROBERTS COMPLETED THE ADMISSIONS PROCESS WHILE DETOXYFYING FROM THE TOXIC COCKTAIL OF PSYCHOTROPIC AND NARCOTIC MEDICATIONS ADMINISTERED TO HIM BY JAIL MEDICAL STAFF. MR ROBERTS SOON DISCOVERED THAT NC HAD, YEARS THERETOFORE REMOVED LAW LIBRARIES FROM ALL ITS PRISONS, AND THAT THE NC SUPREME COURT LIBRARY DID NOT EXTEND SERVICES TO NC PRISONERS, WHICH LEFT ONLY NC PRISONER LEGAL SERVICES, WHICH DID NOT PROVIDE LEGAL RESOURCES, BUT WOULD INVESTIGATE NC PRISONERS' CONVICTIONS FOR ERRORS. MR ROBERTS PROMPTLY COMPLETED AND SUBMITTED A NCPLS QUESTIONAIRE TO THE BEST OF HIS ABILITIES. NCPLS, FULLY AWARE OF THE AEDPA'S STATUTE OF LIMITATIONS, DELIBERATELY WITHHELD MR ROBERTS' QUESTIONAIRE FOR APPROXIMATELY SIX MONTHS BEFORE RETURNING IT WITH A SHORT LETTER REPRESENTING A DENIAL PREDICATED ON NOTHING BUT A PERFUNCTORY OVERVIEW OF MR ROBERTS' BASIC COURT RECORDS.

MR ROBERTS, WITH APPROXIMATELY ONE MONTH REMAINING BEFORE THE EXPIRATION OF THE AEDPA'S STATUTE OF LIMITATIONS, WAS TRANSFERRED TO MARION C.I..

BECAUSE ASSISTING INMATES WITH LEGAL ISSUES IS A 'PUNISHIBLE OFFENSE IN NC, PRISON "WRIT-WRITERS" MUST

NECESSARILY OPERATE IN SECRECY, NEVER REVEALING THEIR OPERATIONS TO NEWLY-ARRIVED, AND UNTESTED PRISONERS SUCH AS MR ROBERTS. AFTER SEVERAL MONTHS MR ROBERTS MET ONE SUCH "WRIT-WRITER", WHO, LIKE HIMSELF, HAD ONLY A GED DIPLOMA, HAD SUFFERED YEARS OF SUBSTANCE ABUSE, AND ALSO INDIGENT, HAD MANAGED TO ACCUMULATE BITS AND PIECES OF OUTDATED LEGAL RESOURCES.

WITH THIS NEGLIGIBLE ASSISTANCE, MR ROBERTS FILED HIS FIRST POST-CONVICTION ACTION IN OCTOBER 8, 2004, SEVEN MONTHS AFTER THE EXPIRATION OF THE AEDPA'S STATUTE OF LIMITATIONS. THIS ACTION WAS DISMISSED SEPTEMBER 9, 2011, SEVEN YEARS AFTER ITS FILING.

WITH MR ROBERTS' APPELLATE EFFORTS COMPLETED, PRISON OFFICIALS AT AVERY MITCHELL CORR. INST. FORCED MR ROBERTS TO DISPOSE OF ALL PERSONAL PROPERTY THAT WOULD NOT FIT INTO THREE, ONE CUBIC FOOT SHIPPING BAGS, WHICH INCLUDED IRREPLACEABLE TRANSCRIPTS, CASE LAW, ETC.

JUNE 12, 2012, MR ROBERTS PETITIONED THE NC COURT OF APPEALS FOR CERTIORARI, WHICH WAS DENIED THAT SAME DAY I.E., DEAD ON ARRIVAL.

APRIL 19, 2016, MR ROBERTS FILED A SUPPLEMENTAL MOTION FOR APPROPRIATE RELIEF WHICH WAS DISMISSED APRIL 26, 2016.

FEBRUARY 21, 2017, MR ROBERTS PETITIONED THE NC COURT OF APPEALS FOR CERTIORARI REVIEW OF THE SUPPLEMENTAL MAR WHICH WAS DISMISSED MARCH 1, 2017.

MAY 30, 2017, MR ROBERTS FILED A MOTION FOR RECONSIDERATION WHICH WAS DENIED JUNE 16, 2016.

MARCH 10, 2017, MR ROBERTS PETITIONED THE NC SUPREME COURT FOR DISCRETIONARY REVIEW, WHICH WAS DENIED JUNE 8, 2017.

AUGUST 24, 2017, MR ROBERTS FILED A STATE HABEAS PETITION IN BURKE COUNTY WHICH WAS DENIED SEPTEMBER 7, 2017.

JANUARY 2, 2018, MR ROBERTS FILED A STATE HABEAS PETITION IN THE NC COURT OF APPEALS WHICH WAS DENIED JAN. 5, 2018.

AUGUST 22, 2018, MR ROBERTS FILED A STATE HABEAS PETITION IN FRANKLIN COUNTY WHICH WAS DENIED AUG. 22, 2018, D.O.A.,

OCTOBER 21, 2019, PURSUANT TO A STATE HABEAS PETITION, MR ROBERTS APPEARED IN THE SUPERIOR COURT OF NASH COUNTY WHEREUPON JUDGE QUENTIN SUMNER DENIED MR ROBERTS' IN-COURT MOTION FOR APPOINTMENT OF COUNSEL IN VIOLATION OF NC GEN. STAT.S 7A-451. (a) (2) & 7A-498.3. (a), (1), (2), (2a), & NC DISTRICT AND SUPERIOR COURT RULES 25 (1).

RULE OF LAW:

"THE DILIGENCE REQUIRED IS REASONABLE DILIGENCE, NOT MAXIMUM FEASIBLE DILIGENCE." HOLLAND, 560 US AT 653, 130 SC AT 2565.

APPLICATION:

DOES THE DISTRICT COURTS' ORDER REPRESENT A PREMATURE DENIAL OF BOTH EQUITABLE TOLLING, AND A COA WITHOUT DULY CONSIDERING THE REASONABleness OF MR ROBERTS' DILIGENCE IN PROPORTION TO THE SEVERITY OF THE DEPRIVATIONS IMPOSED UPON HIM BY THE STATE?

ACKNOWLEDGING THE SEVERITY OF THE UNCONSTITUTIONAL DEPRIVATIONS IMPOSED UPON NC PRISONERS BY THE STATE, DO THE DISTRICT COURTS ABUSE THEIR DISCRETION BY ROUTINELY DENYING THEM EQUITABLE TOLLING SOLEY BECAUSE OF THEIR INABILITY TO CONJURE; OUT OF THIN AIR; WITHIN ONE YEAR; THE LEGAL ACUMEN NECESSARY FOR THEM TO COMPETE EFFECTIVELY WITH TRAINED PROFESSIONALS IN THE ARENA OF POST-CONVICTION JURISPRUDENCE? TO WIT: PURSUE THEIR RIGHTS WITH REASONABLE DILIGENCE, HOLLAND, SUPRA, SEE DOC. 16, P. 7.

(3)

ISSUE:

ON OCTOBER 21, 2019, MR ROBERTS APPEARED BEFORE JUDGE QUENTIN SUMNER IN THE SUPERIOR COURT OF NASH COUNTY PURSUANT TO A PRO SE HABEAS PETITION. UPON BEING ALLOWED TO SPEAK, MR ROBERTS PROMPTLY PLACED JUDGE SUMNER ON NOTICE THAT THE COURT WAS PROCEEDING AGAINST HIM IN CONTRAVENTION OF NC LAW, WHICH CLEARLY ENTITLED MR ROBERTS TO THE APPOINTMENT OF COUNSEL TO REPRESENT HIM ON HIS PETITION. JUDGE SUMNER THEN SNEERED AT MR ROBERTS AND DISMISSED HIS PETITION AS FRIVOLOUS.

RULE OF LAW:

NC REQUIRES A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL TO BE RAISED VIA MOTION FOR APPROPRIATE RELIEF, NOT DIRECT APPEAL. STATE V ALLEN, 262 NC 284, 821 SE 2D 860, 861 (2018).

UNDER 28 USC 2254, "WHERE, UNDER STATE LAW, CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL MUST BE RAISED IN AN INITIAL REVIEW COLLATERAL PROCEEDING, A PROCEDURAL

(10)

REASONS FOR GRANTING WRIT:

ACCESS TO THE COURTS:

IN TERMS OF EQUITABLE TOLLING, OF THE AEDPA'S ONE YEAR STATUTE OF LIMITATIONS, THE IMPACT OF STATE-CREATED IMPEDIMENTS AND/OR UNAVAILABILITY OF A HABEAS PETITIONER'S ACCESS TO A LAW LIBRARY AND/OR THE ADEQUACY OF THE PRISON'S ATTORNEY ASSISTANCE PROGRAM REMAINS AN UNSETTLED ISSUE OF MATERIAL FACT THAT DIVIDES THE FEDERAL COURTS OF APPEALS.

ROY V LAMPERT, 465 F.3d 964, 974 (9th Cir. 2006)

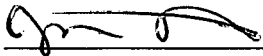
EXEMPLIFIES A LINE OF 9TH CIRCUIT DECISIONS WHEREIN THE MERE ABSENCE OF THE AEDPA FROM A PRISON'S LAW LIBRARY CONSTITUTES GROUNDS FOR EQUITABLE TOLLING OF THE ONE YEAR STATUTE OF LIMITATIONS. OTHER CIRCUITS HAVE TAKEN A SIMILAR STANCE ON THIS ISSUE E.G., EGERTON V COCKRELL, 334 F.3d 433, 439 (5th Cir. 2003), SIMMONS V US, 974 F.3d 791, 793-797 (6th Cir. 2020), SOCHA V BROUGHTON, 763 F.3d 684-688 (7th Cir. 2014), EARL V FABIAN, 556 F.3d 717, 723-725, 727-728 (8th Cir. 2009), GARCIA DOMINGUEZ V MAHAFFEY, 17 Fed. Appx. 827 (10th Cir. 2001), SANCHEZ V GAETZ, 988 F.Supp.2d 858 (ND Ill. 2013).

YET NONE OF THESE DECISIONS REACH THE OVERARCHING ISSUE THAT DISTINGUISHES NC PRISONERS FROM THOSE SHOWN

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: MARCH 10, 2023

HEREINAFTER, TO WIT; THE ABSOLUTE NONEXISTENCE OF ANY AND OR ALL SOURCES OF LEGAL KNOWLEDGE.

IN CONTRAST TO THE AFORESAID DECISIONS GRANTING EQUITABLE TOLLING TO DISADVANTAGED HABEAS PETITIONERS, THE FOURTH CIRCUIT STEADFASTLY SANCTIONS NC'S DECISIONS THAT "LACK OF ACCESS TO A LAW LIBRARY OR LEGAL KNOWLEDGE DO NOT CONSTITUTE EXTRAORDINARY CIRCUMSTANCES OUTSIDE HIS [MR ROBERTS'] CONTROL THAT WOULD WARRANT EQUITABLE TOLLING". UNITED STATES V SOSA, 354 F3D 507, 512 (4TH CIR. 2004), GARCIA NEGRETE V UNITED STATES, 2020 WL 2041342 *2 (WDNC, APRIL 28, 2020), BUCHNOWSKI V WHITE, 2013 WL 171540 *3 (WDNC, JANUARY 16, 2013), SEE DOC. 16, P. 7.

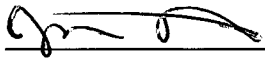
REGARDING THIS LINE OF NC AND FOURTH CIRCUIT DECISIONS, IT IS BUT A SHORT MENTAL STEP TO ARRIVE AT THE REALIZATION OF THE UTTER ABSURDITY OF THE COURTS' EXPECTING AN INDIGENT PRISONER, WITH LITTLE OR NO FORMAL EDUCATION, SHUT OFF FROM THE OUTSIDE WORLD, WITH NO ACCESS TO LEGAL KNOWLEDGE, TO CONJURE, OUT OF THIN AIR; WITHIN ONE YEAR; THE LEGAL ACUMEN SUFFICIENT TO COMPETE EFFECTIVELY WITH TRAINED PROFESSIONALS, POSSESSING UNLIMITED RESOURCES IN THE ARENA OF POST-CONVICTION JURISPRUDENCE. YET, SUCH ABSURDITY IS PRECISELY WHAT THIS LINE OF DECISIONS REPRESENTS.

AS IT PERTAINS TO EQUITABLE TOLLING, LEWIS V CASEY, 518 US 343, 353-56, 116 SCT 2174, 2182 (1996) RELYING ON

CONCLUSION

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BOUNDS V SMITH, 430 US 817, 821, 828, (NC, 1977) SPEAKS TO THIS ISSUE: "WHEN ANY INMATE... SHOWS THAT THE PRESENTATION OF SUCH A CLAIM IS CURRENTLY BEING PREVENTED, BECAUSE THE CAPABILITY OF FILING SUIT HAS NOT BEEN PROVIDED, HE DEMONSTRATES THAT THE STATE HAS FAILED TO FURNISH ADEQUATE LAW LIBRARIES OR ADEQUATE ASSISTANCE FROM PERSONS TRAINED IN THE LAW", BOUNDS, SUPRA. "CAPABILITY OF FILING" DENOTES: "THE TOOLS INMATES NEED IN ORDER TO ATTACK THEIR SENTENCES DIRECTLY OR COLLATERALLY." LEWIS, SUPRA.

MR ROBERTS HAS PLEADED TO THE NC FEDERAL DISTRICT COURT TO EXERCISE ITS BROAD DISCRETIONARY POWERS UNDER MCCOMBS V JACKSONVILLE PAPER CO., 336 US 187, 193-94, 69 SGT 497 (1949) TO ENFORCE BOUNDS AND LEWIS TO NO AVAIL, (SEE MOTION TO ENFORCE AND/OR CONTEMPT ORDER, DOC 3). MR ROBERTS APPEALED THE NC FED. DIST. COURT'S WILLFUL NEGLIGENCE TO ENFORCE THE BOUNDS AND LEWIS REQUIREMENTS TO NO AVAIL.

THESE FUTILE EFFORTS BY MR ROBERTS HAVE PROVEN TANTAMOUNT TO SEEKING SAFETY IN THE JAWS OF THE SHARK.

THEREFORE, IT IS INCUMBENT UPON THIS COURT TO EXERCISE ITS SUPERVISORY POWERS TO RESOLVE THIS DIVISIVE ISSUE AMONG THE CIRCUITS.

EQUITABLE TOLLING:

IN TERMS OF EQUITABLE TOLLING, IN HOLLAND V FLORIDA, 560 US 631, 650, 130 S Ct 2549, 2563 (2010), THIS COURT IMPOSED ITS ARTICULATION OF THE PRINCIPLES OF EQUITY UPON STATE AND FEDERAL PRISONERS, AND INASMUCH EXPRESSED ITS DISDAIN FOR STRICT APPLICATIONS OF THE AEDPA'S STATUTE OF LIMITATIONS: "[B]Y ITS VERY NATURE, [E]QUITY ESCHES MECHANICAL RULES AND DEPENDS ON FLEXIBILITY. AS A DISCRETIONARY DOCTRINE, THAT TURNS ON THE FACTS AND CIRCUMSTANCES OF A PARTICULAR CASE, EQUITABLE TOLLING DOES NOT LEND ITSELF TO BRIGHT LINE RULES." FISHER V JOHNSON, 174 F3d 710, 713 (5TH CIR 1999) CITATIONS OMITTED.

IN CONTRAST, THE FOURTH CIRCUIT, IN WHITESIDE V US, 775 F3d 180, 184 (4TH CIR 2014), RELYING ON ROUSE V LEE, 335 F3d 238, 246 (NC, 4TH CIR 2003) EXPRESSED ITS DEFIANCE OF HOLLAND'S FLEXIBILITY REQUIREMENT BY ESTABLISHING AN INDISCRIMINATE "STRICT APPLICATION" OF THE AEDPA'S STATUTE OF LIMITATIONS, TO WIT: "RARELY WILL CIRCUMSTANCES WARRANT EQUITABLE TOLLING". ROUSE, 339 F3d AT 246. THIS LANGUAGE FROM THE FOURTH CIRCUIT EFFECTIVELY EXCLUDES NC PRISONERS FROM EQUITY JURISDICTION.

THIS ABUSE OF DISCRETION BY THE FOURTH CIRCUIT, IN DEFIANCE OF HOLLAND EFFECTIVELY ESTABLISHES NC AS A "NO-GO-ZONE" FOR ENABLING PROSECUTORS AND COURT APPOINTED ATTORNEYS ACTING AS DOUBLE AGENTS TO CONTINUE ITS ABUSE OF

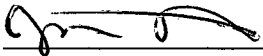
THE PLEA BARGAIN PROCESS WITHOUT FEAR OF EXPOSURE AS IS EVIDENCED BY THE INSTANT CASE.

WHEREFORE, THIS HONORABLE COURT BEARS A SELF-IMPOSED, AFFIRMATIVE OBLIGATION TO EXERCISE ITS SUPERVISORY POWERS TO REMEDIATE NC, AND THE FOURTH CIRCUIT COURT OF APPEALS DISAVOWMENT OF EQUITY AS IT APPLIES TO NC PRISONERS TO WIT:
"IN THE CONTEXT OF THE PRESENT CASE: IT IS FOR THE COURTS TO REMEDY PAST OR IMMINENT OFFICIAL INTERFERENCE WITH INDIVIDUAL INMATES' PRESENTATION OF THEIR CLAIMS TO THE COURTS." LEWIS, ID AT 518 US 348-349, 116 SC 2178-2179.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: MARCH 10, 2023