

No. 22-7173

Supreme Court, U.S.

FILED

MAR 27 2023

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

MARTY TARELL GASTON — PETITIONER  
(Your Name)

VS.

STATE OF NORTH CAROLINA — 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

MARTY TARELL GASTON #014275  
(Your Name)

P.O. BOX 506 MAURY CORRECTIONAL INST.  
(Address)

MAURY N. C. 28554-0000  
(City, State, Zip Code)

(Phone Number)

ORIGINAL

**QUESTION(S) PRESENTED**

1. Did the North Carolina State Superior Court deny this Petitioner actual justice in the face of established State laws allowing the filing of a second Motion For Appropriate Relief (MAR), demonstrating violations of Petitioner's Constitutional Rights to a fair and impartial trial?
2. Can the protections afforded and guaranteed by Petitioner's United States Constitutional Rights to the effective assistance of counsel be omitted and disregarded by the lower State Court in essence to state laws that should be voided for vagueness?

## LIST OF PARTIES

[V] 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

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### 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 D to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[V] is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[V] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[V] is unpublished.

The opinion of the Superior Court of Mecklenburg County appears at Appendix A to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[V] is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 27, 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: \_\_\_\_\_, 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 January 7 2021. A copy of that decision appears at Appendix B \_\_\_\_\_.

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**

**United States Fifth Amendment's Constitutional guarantee to  
"nor be deprived of life, liberty, or property without due  
process of law."**

**United States Sixth Amendment's Constitutional guarantee to  
"and to have the effective assistance of counsel for his  
defense."**

**North Carolina General Statute 15A-1419 (see Appendix F)**

## STATEMENT OF THE CASE

Petitioner Marty Tarell Gaston presents before this United States Supreme Court a case involving numerous violations of both his rights as a citizen under the Constitution of North Carolina and the United States Constitution's guarantee to a fair and impartial trial (5th) and to the effective assistance of counsel (6th) (See Appendix E).

At issue here for this Supreme Court to review are multiple errors committed by Petitioner's trial counsel throughout this Petitioner's various court proceedings and thereafter; further errors committed by Petitioner's appellate counsel during Petitioner's direct appeal.

Petitioner sought post conviction relief against trial counsel in the 1st MAR (Motion For Appropriate Relief), in which Petitioner raised ineffective assistance of counsel claims against trial counsel only. In which was denied by the State courts and thereafter upon review by federal courts, was also denied

Petitioner sought further post conviction review of his case filing a second MAR citing violations of his 5th Amendment Constitutional Rights to a fair and impartial trial and 6th Amendment Right to the effective assistance of counsel. Thus such was filed against appellate counsel for failing to adequately address and present key and vital violations of Petitioner's rights during trial counsel's representation.

In which the laws of the State of North Carolina allows for such discretionary review during a defendant's direct appeal, the filing of an ineffective assistance of counsel claims. The State Superior Court denied any relief based on Petitioner's filing of a Second MAR, which under North Carolina General Statute, N.C.G.S. 15A-1419(b) (See Appendix F)., which is allowed under certain conditions.

Petitioner's appellate counsel was well within said State laws to file an ineffective assistance of counsel claim against Petitioner's trial counsel by way of a MAR but failed to do so.

Furthermore Appellate counsel did not confer with or even visit Petitioner prior to the filing of Petitioner's appeal brief. Never being aprised by Petitioner of the actions and conduct of trial counsel's actions during the state court proceedings.

Under N.C.G.S.15A-1418(a) "When a case is in the appellate division for review, a motion for appropriate relief based upon grounds set out in G.S. 15A-1415 must be made in the appellate division". Under G.S. 1415(b)(3) "The conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina." Under the above referenced rule of law it allows for review of issues associated with Petitioner's trial counsel deficient performance and therefore appellate counsel should have filed such a claim of ineffective assistance of counsel on direct appeal.

## REASONS FOR GRANTING THE PETITION

Under the Supreme Court standards set out in *Strickland v. Washington*, 466 U.S. 668, 80 L.Ed. 2d 674 (1984), two factor test, "a defendant must show that (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defense". in order to prevail an ineffective assistance of counsel claim. *State v. Phillips*, 365 N.C. 103, 118 711 S.E. 2d 122, 135 (2011)

The North Carolina Court of Appeals, Supreme Court and United States Supreme Court has held the to show ineffective assistance of appellate counsel, defendant must meet the same standards of proving ineffective assistance of trial counsel." *State v. Simpson*, 176 N.C. App. 719, 722 627 S.E. 2d 271, 275.

Petitioner's appellate counsel's failure to adequately interview Petitioner prior to the filing of his direct appeal, denied Petitioner a meaningful opportunity to address the issues associated with the representation of his trial counsel and the many errors associated with said representation of trial counsel administering deficient performance.

For the omissions of appellate counsel in raising a credible claim of ineffective assistance of counsel claim against trial counsel, Petitioner sought redress of such through the only means available being a second MAR. For this reason Petitioner prays that a writ of certiorari will issue and that his case will be remanded back to the State Court.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marty Jarrell Gaston

Date: 3/27/23