

No.

22 - 7215

FILED

JAN 04 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

—
IN THE

SUPREME COURT OF THE UNITED STATES

—
ROBERT WILLIAM WAZNEY -- Petitioner

vs.

State of South Carolina -- Respondent

—
ON PETITION FOR WRIT OF CERTIORARI TO

SOUTH CAROLINA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

ROBERT WILLIAM WAZNEY
610 Highway 9 West
Bennettsville, SC. 29512
(843) 925-7486
Petitioner, Captive, Pro-se

QUESTION(S) PRESENTED

Subsequent Petitioner's conviction, while his case was under direct review, State High-Court held in an unrelated case--Stukes [1]--that the trial courts instructing the jury on State Statute Code § 16-3-657 was unconstitutional, and it's holding is effective in [Petitioner's] case[] on direct review.

Petitioner nor his State-assigned appellate-counsel objected to the new rule of law, however it's application being retroactive.

After four years of unsuccessful exhaustion of State Appellate remedies, in where town-clerk repeatedly fails to docket Petitioner's Application For Post-Conviction Relief (PCR) and State High-Court exercised discretion not to review the case [2], Petitioner now desires federal review of a constitutional claim seeking immediate Supreme Court review by certiorari:

DID THE RETRIAL COURT HAVE JURISDICTION TO CONVICT PETITIONER ?

[1] State v. Stukes, 416 SC 493, 787 SE2d 480 (2016).

[2] Moore v. Kirby, D.C.W.Va. 1995, 879 F.Supp. 592, 593, (Exhaustion is satisfied if the high court exercises discretion not to review the case).

LIST OF PARTIES

- [X] 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:

TABLE OF CONTENTS

CAPTION	i
QUESTION(S) PRESENTED	
DID THE RETRIAL COURT HAVE JURISDICTION TO CONVICT PETITIONER ?	ii
LIST OF PARTIES	iii
TABLE OF CONTENTS	iv
INDEX TO APPENDICES	vi
TABLE OF AUTHORITIES CITED	vii
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORIAL PROVISIONS INVOLVED	3
SYNOPSIS / INTRODUCTION	5
STATEMENT OF THE CASE	6
I. Relevant Facts	9
II. Jurisdictional Bar	10
III. Procedural Bar	12
--Case from State Court How Federal Question Was Raised and Passed Upon	14
ARGUMENT	15
I. Facts Showing That the Tribunal had No Jurisdiction	
A. Effect of determination of total unconstitutionality of legislation	
B. Criminal conviction and judgment under unconstitutional Act is void	18
C. Effect of Lack of Jurisdiction of Trial Court	20

11. Habeas Court Jurisdiction Reveiw Procedure	23
--Relevant Procedural History Concerning Retroactivity and Jurisdictional Bar	24
--Petition	27
--Proceedings Directly Related to the Case in This Court	29
CONCLUSION	32
VERIFICATION	34

INDEX TO APPENDICES

OPINIONS BELOW

S.C. Ct. App.	2015-000884	A1
S.C. Sup. Ct.	2017-002098	A3

OTHER OPINIONS

Sumter Comm. Pleas	7/28/22 PCR Supplement	Y
S.C. Sup. Ct.	6/21/18 PCR paper.	B1
S.C. Sup. Ct.	2018-001376 and 2018-001373	B2
U.S. Dist. Ct.	6:18-2610-HMH-KFM	B5
U.S. Dist. Ct.	6-18-2825-HMH-KFM	B8
S.C. Sup. Ct.	2018-001730	B13
S.C. Sup. Ct.	2020-001028	B15
U.S. Ct. App.	19-6084	B16
U.S. Ct. App.	19-6203	B19
Lee County Clerk	Paper returning process by publication.	B22
S.C. Sup. Ct.	PCR review request 4/19/22	B23
S.C. Sup. Ct.	2021-001472	B26

ORDER ON REHEARING

S.C. Sup. Ct.	2017-002098	B28
U.S. Ct. App.	19-6203	B30
S.C. Sup. Ct.	2018-001730	B31
S.C. Sup. Ct.	2020-001028 (5/17/20)	B33
S.C. Sup. Ct.	2020-001028 (8/20/20)	B34

JUDGMENT SOUGHT TO BE REVIEWED

S.C. Sup. Ct.	2022-001443	Z
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STATE COURT RECORD

S.C. Ct. App.	2015-000884 Anders Brief of Appellant	F
S.C. Ct. App.	2015-000884 Record On Appeal	C
S.C. Sup. Ct.	9/19/22 paper	X

OTHER MATERIALS

S.C. Sup. Ct.	2022-001443 Petition for Rehearing	K
S.C. sup. Ct.	2022-001443 Status Update	K
Case Roster		L
Sumter Fam. Ct.	2015-DR-43-0046 Asset Retraint	M

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
Andrews v. Swartz, 156 US 272, 39 L.Ed. 422, 15 Sup.Ct.Rep. 389 (1895)	23
Atkinson v. Southern Express Co., 94 SC 444, 78 SE 516 (1913)	22
Benton v. Maryland, 395 US 784, 23 L.Ed.2d 707, 89 S.Ct. 2056	25
B.R. v. F.C.S.B., 17 F.4th 485	20
Brown v. Davenport, 142 S.Ct. 1510, 212 L.Ed.2d 463, 22 Cal. Daily Op. Serv. 3863 (2022)	19,20
Brown v. White, 24 F.2d 392 (1928, C.C.A. 8th)	23
Bruner v. Superior Ct., 92 Cal 239, 28 P. 341 (1891)	25
Bergstrom v. Palmetto Health Alliance, 358 SC 388, 596 SE2d 42 (2004)	16,22
Burnham v. Superior Court of California, County of Marin, 495 US 604, 110 S.Ct. 2105, 109 L.Ed.2d 631, 58 USLW 4629	19
Board of Com'rs of Oxford, N.C. v. Union Bank of Richmond Va., 96 F. 293, 37 C.C.A. 493 (1889)	16
Cash v. Califano, 621 F2d 626 (4th Cir. 1980)	10
Commonwealth v. Huntley, 156 Mass 236, 30 NE 1127	27
Dyno v. Hillis, 274 A.D.2d, 712 NYS2d 183 (3d Dep't 2000)	22
Emery Worldwide Airlines, Inc. v. U.S., 47 Fed.Cl. 461, 2000 WL 1222171	12
Ex parte Daniels, 183 Cal 636, 192 P. 442, 21 ALR 1172	27
Ex parte Farnsworth, 71 Tex Crim Rep 342, 135 Sw 535	27
Ex parte Hollman, 79 SC 9, 60 SE 19, 21 L.R.A.N.S. 242, 14 Am. Ann. Cas. 1105 (1908)	17,19,22
Ex parte Kair, 28 Nev 127, 80 P. 463	27
Ex parte Kelly, 123 NJ Eq 489, 198 A 203	27

Ex parte Lange, 85 US 163, 18 Wall, 163, 21 L.Ed. 872 (1874)	19
Ex parte O'Leary, 65 Miss 80, 30 So 144	27
Ex parte Yarbrough, 110 US 651, 28 L.Ed 247, 4 S.Ct. 152 (1884)	19,23
Ex parte Siebold, 100 US 371, 25 L.Ed. 717 (1879)	4,10,17,18,19,22,23
Ex parte Watkins, 28 US 193, 3 PET. 193, 1830 WL 3901	20
Fraser v. Commonwealth, 16 Va.App. 775, 433 SE2d 37	10,19
Goto v. Lane, 265 US 393	21
Griffith v. Kentucky, 479 US 314, 107 S.Ct. 708 93 L.Ed.2d 649 (1987)	10,11
Hagen v. Hagen, 282 SW3d 899 (Tex. 2009)	25
Henderson v. Heyward, 109 Ga 373, 34 Se 590	27
In re Klor, 64 Cal. 2d 816, 51 Cal. Rptr. 903, 415 P.2d 791 (1966)	22
Jim & Maryann Plane Family Trust v. Skinner, 157 Idaho 927, 342 P.3d 639 (2015)	25
J & M Securities v. Mees, 519 SW3d 465 (Mo.Ct.App.E.D. 2017)	25
Kelley v. Meyers, 124 OR 322, 263 P. 90, 56 ALR 661	27
Knight v. Florida Department of Corrections, 936 F.3d 1322 (11th Cir. 2019)	23
Levi v. Northern Anderson County EMS, 762 SE2d 44 (SC Ct.App. 2014)	12
Limehouse v. Hulsey, 404 SC 93, 744 SE2d 566 (SC S.Ct. 2013)	20
McCullough v. McCullough, 242 SC 108, 130 SE2d 77 (1963)	12
Minnesota v. Barber, 136 US 313, 34 L.Ed 455, 10 S.Ct. 862	27
Moore v. Kirby, D.C.W.Va. 1995, 879 F.Supp. 592, 593	ii
Norton v. Shelby Cty., 118 US 425, 6 S.Ct. 1121, 30 L.Ed 178 (1886)	16
O'Haver v. Montgomery, 120 Tenn 448, 111 SW 449	27

Pine v. Commonwealth, 121 Va. 812, 93 SE 652 (1917)	21
Pounds v. Darling, 75 Fla 125, 77 So 666	27
Re Coy, 127 US 731, 32 L.Ed 274, 8 S.Ct. 1263 (1888)	19
Re Gregory 219 US 210, 55 L.Ed 184, 31 Sup.Ct.Rep. 143 (1911)	23
Re Moynihan, 332 Mo 1022, 62 SW 2d 410, 91 ALR 74	27
Re Nielsen, 131 US 176, 33 L.Ed 118, 9 S.Ct. 672 (1889)	19
Re Unger, 22 Okla 755, 98 P 999	27
Re Wright, 3 Wyo 478, 27 P. 565	27
Ross v. Richland County, 270 SC 100, 240 SE2d 649	19
Saunders v. Commonwealth, 62 Va.App. 793, 753 SE2d 602 (2014)	17,21
Servonitz v. State, 133 Wis 231, 113 NW 277	27
State ex rel Gaulke v. Turner, 37 ND 635, 164 NW 924	27
State ex rel. Luria v. Wagner, 69 Minn 206, 72 NW 67	27
State v. Knutsen, 158 Idaho 199, 345 P.3d 989 (2015)	22
State v. Pacheco, Op.No. 2016-UP-414, 2016 WL 5799734 (SC Ct.App. 2016)	15
State v. Stukes, 416 SC 493, 787 SE2d 480 (2016)	ii,6,8,9,10,11,12,13,16,24
State v. Wazney, 2017 WL 4817153	13
Steel Co. v. Citizens for a Better Environment, 523 US 83, 118 S.Ct. 1003 (1998)	20
Stone v. Powell, 428 US 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976)	19
Swicegood v. Thompson, 435 SC 63, 865 SE2d 775 (2021)	16
United States v. Baucum, 80 F3d 539 (D.C.Cir.1996)	10,12,17
United States v. Pridyeon, 153 US 48, 38 L.Ed. 631, 14 Sup.Ct.Rep. 746 (1894)	23
United States v. Johnson, 457 US 537, 102 S.Ct. 2579, 73 L.Ed.2d 202	11

U.S. v. Cotton, 535 US 625 (2002)	12
Wangsness v. McAlpine, 47 SD 472, 199 NW 478	27
Wells v. Sacks, 115 Ohio App. 219, 20 Ohio Op.2d 304, 184 NE2d 449 (10th Dist. Franklin County 1962)	22

Constitutional Provisions, Statutes, and Rules:

S.C. CONST, Art V, § 21	27
U.S. Const., Amend. 14	27
S.C. Code § 16-3-657 (2015)	5,6,8,9,10,11,12,15,16,21,23,26
28 USCA § 2254(d)	23

Miscellaneous:

167 A.L.R. 517 (1947)	19
16 Am. Jur. 2d Constitutional Law § 194	17,22
46 Am. Jur. 2d Judgments § 25	20
41 Am. Jur. 2d Indictments and informations § 20	21
39 Am. Jur. 2d Habeas Corpus § 30	22

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:

[X] None

[X] For cases from State Courts:

The subject of the instant proceeding concerns whether retrial-court had jurisdiction. The opinion of petitioner's conviction of highest State Court below did not entertain certiorari, where Court of Appeals has dismissed an appeal from conviction after conducting an Anders review, appears at APPENDIX A, and is unpublished. The Court of Appeals opinion, from which certiorari was requested, dismissing criminal appeal, is likewise set forth in APPENDIX A, and is unpublished.

Subsequent dismissal of Appeal, Application For Post-Conviction Relief (PCR) was pursued and State obstinately avoided ^{docketing} ~~docketing~~ of PCR, decisions overruling some of petitioner's complaints appear at APPENDIX B, and are unpublished.

The opinion of the Sumter County/ Common Pleas court overruling request for jurisdictional review appear at APPENDIX Y, and are unpublished.

The opinion of the highest State Court overruling jurisdictional review appears at APPENDIX Z, and is unpublished.

JURISDICTION

☐ For case from federal courts:

☒ None

☒ For cases from State Courts:

The date which the highest State Court decided my case was October 18, 2022. A copy of that decision appears at APPENDIX Z.

☒ A timely petition for rehearing was thereafter requested on 10/28/22 (APPENDIX K), court has not replied and status update was requested on 2/12/23 (APPENDIX K, p. K5), no reply.

☒ An extension of time to file the petition for a writ of certiorari was applied for on January 4, 2023, court did not reply. Status update for time enlargement sent February 23, 2023, no reply. If approved, 90 plus 60 days would be March 17, 2023.

☒ This petition is purely based on whether sentencing court had jurisdiction.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORIAL

PROVISIONS INVOLVED

South Carolina Constitution, Article V Section 21 provides:

"Judges shall not charge juries in respect to matters of fact, but shall declare the law.

United States Constitution, Amendment Fourteen provides in part:

"... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

S.C. Code § 16-3-657 (2015) provides:

[This is unavalable to SCDC inmates, Westlaw Institutional does not permit historical view of State or Federal Statutes] However, "Tesimony of the victim need not be cooboraated in prosecutions for criminal sexual conduct."

28 USCA § 2254(b) provides:

"An applicaion for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--

(1)resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

COMES NOW, Robert William Wazney, Petitioner, who after being duly sworn deposes and states:

I, Robert Wazney, Petitioner, moves this Court for Writ Of Certioari. Petitioner was convicted in 2015, and after appeal was taken, in 2016, the law used to convict Petitioner was declared unconstitutional. Then, in 2017, Petitioner's conviction became final. Petitioner claims his retrial Court did not have jurisdiction to convict him because:

"An unconstitutional law is Void, and is no law. An offence created by it is not a crime, a conviction under it is not merely erroneous, but is illegal and void, *377 and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. but personal liberty is of so great moment in the eye of the law that the judgment of an inferior court affecting it is not deemed so conclusive but that, as we have seen the question of the court's authority to try and imprison the party may be reviewed on habeas corpus by a superior court or judge having authority to award the writ. We are satisfied that the present is one of the cases in which this court is authorized to take such, jurisdiction. We think so because, if the laws are unconstitutional and void the Circuit Court acquired no jurisdiction of the causes. It's authority to indict and try the petitioner arose solely upon theses laws.

Ex parte Siebold, 100 US 371 at 376-77, 10 Otto 371, 25 L Ed. 717 (1879).

Petitioner further moves the Court that an order and rule be entered and issued directing his immediate release from his illegal imprisonment.

4

SYNOPSIS / INTRODUCTION

On retrial, Petitioner was convicted in the Circuit Court, City of Sumter, South Carolina, Matie Murphy, J., of criminal sexual conduct. Petitioner appealed. Subsequent to Petitioner's conviction, while his case was pending on direct review, State criminal statute Code § 16-3-657, used to instruct jury on Petitioner's retrial, was declared unconstitutional, depriving Petitioner's retrial Court jurisdiction to convict. the State Court of Appeals affirmed conviction. Certiorari¹ not entertained / APPENDIX A /. PCR not entertained. Appeals of Court failure to entertain PCR dismissed, rehearing denied / APPENDIX B /. Petitioner amended his PCR / APPENDIX Y /. Amended-PCR not entertained / APPENDIX Y, pp.i-1 /. Appeal of Amended-PCR to State Supreme Court not entertained / APPENDIX Z /.

Petitioner requests federal relief by certiorari.

STATEMENT OF THE CASE

Following a jury mistrial in the Circuit Court of the City of Sumter, South Carolina, conducted in March 2015, was a jury retrial had April 2015, Petitioner, Robert William Wazney, was convicted of criminal sexual conduct, Matie Murphy, J., in violation of relevant State statutory law(s). Petitioner appealed. Code § 16-3-657 is a rule for the conduct of criminal prosecutions and was used in Petitioner's retrial. May 4, 2016, in an unrelated case, a panel of South Carolina Supreme Court held Code § 16-3-657 unconstitutional. See State v. Stukes, 416 SC 493, 787 SE2d 480 (2016). Petitioner's State-provided appellate-counsel filed a no-merits 'Anders' brief on May 25, 2016. September 25, 2016 Petitioner filed a 'pro-se' brief on appeal, challenging the retrial court of inaccurate transcripts, Petitioner being removed from critical stage of retrial during evidentiary hearing, denial of compulsory process, denial of confrontation, denied access to courts, improper impeachment of alleged victim testimony, retrial counsel failure to fully inform Petitioner, actual innocence, and other things. Petitioner and his appellate-counsel failed to challenge the constitutionality of Code § 16-3-657, both before the retrial court and in Petitioner's appellate brief(s), also failing to argue on appeal that the State Court should apply the holding in Stukes to his case. The State Court of Appeals affirmed. Certiorari not entertained. PCR not entertained.

Petitioner timely filed a PCR, however, the town-clerk repeatedly fails to docket the PCR with the Court. In expectation of continued town-clerk misfeasance, Petitioner out of caution filed PCR with State Supreme Court to escape State-tactic to claim default by a late filing. State Supreme Court said "Application for Post-Conviction is [now] filed with the circuit court", it will not entertain the PCR, and instructed Petitioner to file indictment numbers with town-clerk as they were excluded from the PCR. Petitioner filed PCR Supplement--the indictment numbers--papers with town-clerk however there was never a reply. Petitioner then filed several appeals to State Supreme Court concerning the town-clerk misfeasance in where town-clerk was not filing Petitioners PCR papers with the Court, all Petitioner's appeals were dismissed, any rehearing denied. Petitioner continued on with federal Habeas Corpus, which was dismissed for failure to exhaust and instructing Petitioner to file his PCR with the town-clerk again. Over the course of four years of resubmitting PCR and complaining, to include a U.S. Supreme Court Writ of Certiorari being dismissed, Petitioner filed an 'Amended-PCR' with Sumter County town-clerk, which is the specific stage of the proceeding of first instance when the question of subject matter jurisdiction is raised, particularly stating:

"ROBERT WILLIAM WAZNEY was denied the right ...
guaranteed by the Sixth and Fourteenth Amendments
to the United States of America Constitution
... [where] [t]he Government applied a state statute,
which was found unconstitutional on its face, before
Applicants conviction was finalized ... [where]

Government Application of unconstitutional statute made accused Applicants conviction unfair ... [and] Court's instructing Jury on S.C. Code § 16-3-657 statute, was unconstitutional and is effective in this case pending on direct appeal."

/ APPENDIX Y, p.Y 18 /. Town-clerk treated Amended-PCR the same as PCR, it sent entire Amended-PCR back to Petitioner with a post-it note claiming it did not receive a PCR / APPX. Y, p.i /, notwithstanding a photocopy of the original PCR being in the envelope with, and as part of, Amended-PCR papers. Petitioner appealed to State Supreme Court with detailed Explanation / APPX. X /. This is where specifically the identical question of jurisdiction was raised in the State High Court (see same quotation above), / APPX X, p.X 65 /.

Applying well established principles concerning the retroactive application of new rules for criminal prosecutions to cases pending on direct review, the State decision in Stukes deprived Petitioner's retrial Court of jurisdiction to convict him under Code § 16-3-657. Because State decision in Stukes implicates the jurisdiction of the retrial court, for the reasons that follow, this Court should reverse Petitioner's conviction on jurisdictional grounds.

I. RELEVANT FACTS

In the course of Petitioner's April 2015 retrial, the Court instructed the jury on South Carolina Statute S.C. Code Ann. § 16-3-657 (2015). Code § 16-3-657 (2015) provides:

"Testimony of the victim need not be corroborated in prosecutions for criminal sexual conduct."

/ Appx. C , p.245, lines 1-3 /. This provision of law was bolstered throughout the retrial, Petitioner gave no testimony, neither Petitioner nor the State objected, and the jury convicted Petitioner as charged.

Subsequent to Petitioner's conviction, while his case was pending on direct review, a panel of South Carolina Supreme Court held that the provision of Code § 16-3-657 is unconstitutional, declaring:

"instructing the jury on this statute [providing that testimony of the victim need not be corroborated in prosecutions for criminal sexual conduct.] is an impermissible charge on the facts and therefore unconstitutional."

State v. Stukes, 416 SC 493, 787 SE2d 480 (2016).

II. JURISDICTIONAL BAR

"An unconstitutional law is void and is not law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment." Ex parte Siebold, 100 US 371, 376-77, 25 L.Ed. 717 (1879). See also Fraser v. Commonwealth, 16 Va.App. 775, 777, 433 SE2d 37, 38 (1993) ("A court lacks jurisdiction to enter a criminal judgment if the judgment is predicated upon an unconstitutional or otherwise invalid statute or ordinance."), United States v. Baucum, 80 F3d 539, 540-41 (D.C.Cir.1996) ("[O]nce a statute has been declared unconstitutional, the ... courts thereafter have no jurisdiction over alleged violations (since there is not valid 'law ...' to enforce)....").

Following Stukes, the courts of South Carolina clearly lack jurisdiction to convict an accused under the provisions of Code § 16-3-657 that Stukes held to be unconstitutional. The jurisdictional bar also extends to a conviction obtained prior to the date of the Stukes decision but one which is still pending on direct review.

"[A] new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a 'clear break' with the past." Griffith v. Kentucky, 479 U.S. 314, 328, 107 S.Ct. 708, 716, 93 L.Ed.2d 649 (1987). The concept that judicial decisions are to be applied retroactively "stems from the Blackstonian view, that judges do not make law, they find law. Judicial declaration of law is merely a statement of what the law has always been." Cash v. Califano, 621 F2d 626, 628 (4th Cir. 1980).

Principles of equity applicable to the treatment of defendants similarly situated compel the application of a new rule of law to cases still pending on direct review. See Griffith, 479 US at 323, 107 S.Ct. at 713 ("[T]he integrity of judicial review requires that we apply that rule to all similar cases pending on direct review."). "[T]he problem with not applying new rules to cases pending on direct review is 'the actual inequity that results when the Court chooses which of many similarly situated defendants should be the chance beneficiary' of a new rule." Id. (quoting United States v. Johnson, 457 US 537, 556 n. 16, 102 S.Ct. 2579, 2591 n. 16, 73 L.Ed.2d 202 (1982)). Additionally, Stukes recognizes retroactive application stating:

"[t]herefore, our ruling is effective in this case and those which are pending on direct review or are not yet final".

Stukes SC at 503, 787 SE2d at 485.

In light of these principles, the rule of Stukes, undoubtedly a "new rule" for prosecutions under Code § 16-3-657, should be applied retroactively to Petitioner's case. The provision of Code § 16-3-657 which South Carolina Supreme Court held unconstitutional as an impermissible charge on the facts in Stukes is precisely the provision on which the jury was instructed, and Petitioner was ultimately convicted. By virtue of the retroactive application of Stukes, it should be held that the retrial court lacked jurisdiction to convict Petitioner.

III. PROCEDURAL BAR

Petitioner failed to challenge the constitutionality of Code § 16-3-657, both before the retrial court and in his appellate brief, he also failed to argue on appeal that court should apply the holding in Stukes to his case.

It is well accepted that a question of subject matter jurisdiction can be raised by a party, or sua sponte, at any time. E.g. Emercy Worldwide Airlines, Inc. v. U.S., 47 Fed.Cl. 461, 2000 WL 1222171, McCullough v. McCullough, 242 SC 108, 130 SE2d 77 (1963). Likewise, it is well established that the contemporaneous objection rule may not be invoked to bar consideration of an appeal which attacks the jurisdiction of the circuit court. E.g., U.S. v. Cotton, 535 U.S. 625, 630 (2002), Levi v. Northern Anderson County EMS, 762 SE2d 44 (SC Ct.App. 2014). Because the dispositive issues here is one of jurisdiction, it should be held that its determination is not procedurally defaulted by Petitioner's failure to raise it.

Contrary to Petitioner's failure to challenge on appeal, Petitioner did raise the issue of jurisdiction under PCR which the State failed to entertain.

Petitioner does not ask this Court to rule on the constitutionality of Code § 16-3-657 for the first time on appeal, here, unlike in Baucum, the constitutional issue has been resolved. Stukes held the provision of Code § 16-3-657, under which Petitioner was convicted, unconstitutional. The issue here is purely jurisdictional.

This court should apply the jurisdictional implications of Stukes to Petitioner's case limited both by the procedural posture of Petitioner's case and by well established principles concerning retroactive application of new rules for criminal prosecutions. The retroactive application of Stukes to a case pending on direct review does not disturb well-settled principles of finality. Rather, This Court's decision should effectuate the balance between finality and fairness that the principles of retroactivity seek to establish.

While the provisions of the statute under which Petitioner was convicted were ~~presumptively valid at the time~~ of his retrial, they are conclusively unconstitutional now and were so before he filed his appellate brief(s), before his direct review dismissal State v. Wazney, 2107 WL 4817153, and before direct review was complete (S.C. Sup.Ct. case 2017-002098). This Court should find that the principles ~~applicable~~ to the jurisdiction of the retrial court and the retroactive application of new rules for criminal prosecutions as well as the imperative demands of fairness and equity demand that Petitioner's conviction be reversed and dismissed.

Case From State Court
How Federal Question Was Raised
and Passed Upon

The Federal question(s) here presented were specifically raised on July 22, 2022 by a written motion to Supplement Application For Post-Conviction Relief (Appendix Y pp. 1 & 19); and again on September 19, 2022 by a written motion of Notice Of Appeal with Explanation (Appendix X, pp. X1 & X67). Each said motions was overruled without opinion or other explanation (Appendix Y, Z). Petitioner's Federal claims were thus made at the earliest opportunity and were renewed at each stage of the proceedings below.

ARGUMENT

Petitioner contends his detention in the penitentiary, under the above sentence, is contrary to the laws of the United States.

I. --FACTS SHOWING THAT THE TRIBUNAL HAD NO JURISDICTION--

Late 2013 Petitioner is indicted under minor-victim testimony tracking the language of relevant criminal statutes. April 2015, Petitioner's retrial Court instructed the jury on South Carolina Code § 16-3-657 (2015):

"Testimony of the victim need not be corroborated in prosecution for criminal sexual conduct."

/ Appx. C , p. 245, lines 1-3 /. April 15, 2015 Petitioner is convicted, as indicted, solely on the testimony of the minor-victim under the provision of Code § 16-3-657 [Emphasis added], State's case resting exclusively on the testimony of the minor-victim and other witnesses who recounted the abuse as disclosed to them. See / App. C /, see, also, State v. Pacheco, Op. No. 2016-UP-414, 2016 WL 5799734 (SC.Ct.App. Filed Oct.5, 2016)(finding that charging the jury with Code § 16-3-657 was not harmless beyond a reasonable doubt in where State relied exclusively on minor-victim testimony.). Petitioner Appealed.

May 4, 2016, while Petitioner's case is on direct review, South Carolina Supreme Court declares:

"instructing the jury on [16-3-657] statute, [providing that testimony of the victim need not be corroborated in prosecution for criminal sexual conduct,] is an impermissible charge on the facts and therefore unconstitutional."

State v. Stukes, 416 SC 493, 787 SE2d 480 (2016).

A.

Effect of determination of total
unconstitutionality of legislation

United States Supreme Court has recognized, "[a]n unconstitutional Act is not a law, it confers no rights, it imposes no duties, it affords no protection, it creates no office, it is, in legal contemplation, as inoperative as though it had never been passed." Norton v. Shelby Cty., 118 US 425, 442, 6 S.Ct. 1121, 30 L.Ed. 178, 186 (1886), Board of Com'rs of Oxford, N.C. v. Union Bank of Richmond, Va., 96 F. 293, 37 C.C.A. 493 (1889), Swicegood v. Thompson, 435 SC 63, 865 SE2d 775 (2021), that is, it is void ab initio, Norton, supra., Bergstrom v. Palmetto Health Alliance, 358 SC 388, 596 SE2d 42 (2004)(When a statute is found unconstitutional, we have recognized the 'general rule that an adjudication of [the] unconstitutionality of a statute ordinarily reaches back to the date of the act itself....'(citation omitted)).

Once a statute is determined to be unconstitutional, it invalidates the law in its entirety, and no private citizen or division of the state may take any further action pursuant to its provisions. A statute is rendered completely inoperative if it is declared facially unconstitutional. A contract that rests on an unconstitutional statute creates no obligation to be impaired by subsequent litigation. No one is bound to obey an unconstitutional law, and no courts are bound to enforce it. A law contrary to the United States Constitution may not be enforced. See annotation, Effect of determination of total unconstitutionality of legislation, 16A Am. Jur. 2d Constitutional Law § 194.

Once a statute has been declared unconstitutional, courts thereafter have no jurisdiction over alleged violations Id., U.S. v. Baucum, 80 F.3d 539. Upon a statute being declared unconstitutional on its face, convictions based thereon are void Effect of ... unconstitutionality, supra., Saunders v. Commonwealth, 62 Va.App. 793, 753 SE2d 602 (2014), judgment aff'd 2015 WL 10945236 (Va. 2015), Ex parte Hollman, 79 SC 9, 60 SE 19, 21 L.R.A.N.S. 242, 14 Am. Ann. Cas. 1105 (1908) ("If the statute under which a conviction is had is null and void as in conflict with the Constitution, the court is without jurisdiction.") [emphasis added], see, also, Ex parte Siebold, 100 U.S. 375, 25 L.Ed. 717.

B.

Criminal conviction and judgment under
unconstitutional Act is void

United States Supreme Court in Siebold held:

"An unconstitutional law is void, and is no law. An offence created by it is not a crime, a conviction under it is not merely erroneous, but is illegal and void, *377 and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But personal liberty is of so great moment in the eye of the law that the judgment of an inferior court affecting it is not deemed so conclusive but that, as we have seen the question of the court's authority to try and imprison the party may be reviewed on habeas corpus by a superior court or judge having authority to award the writ. We are satisfied that the present is one of the cases in which this court is authorized to take such jurisdiction. We think so, because, if the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes. It's authority to indict and try the petitioner arose solely upon these laws." [Emphasis added].

Ex parte Siebold, 100 US 371, at 376-77, 10 Otto 371, 25 L.Ed 717 (1879).

The majority rule is that where a statute or ordinance making certain acts or omissions a crime is unconstitutional or invalid, a final judgment predicated upon the validity of such legislation is void, generally upon the theory that the court had no jurisdiction to enter

the judgment that it did. Ex parte Siebold, 100 US 371, 25 L.Ed 717, Ex parte Yarbrough, 110 US 651, 28 L.Ed 247, 4 S.Ct. 152 (1884), Re Coy, 127 US 731, 32 L.Ed 274, 8 S.Ct. 1263 (1888), Re Nielsen, 131 US 176, 33 L.Ed 118, 9 S.Ct. 672 (1889). Ex parte Hollman, supra., Fraser v. Commonwealth, 16 Va.App. 775, 777, 433 SE2d 37, 38 (1993)("A court lacks jurisdiction to enter a criminal judgment if the judgment is predicated upon an unconstitutional or otherwise invalid statute or ordinance.")). See, Annotation, Validity and Effect of Judgment based upon Erroneous View as to Constitutionality of Validity of a Statute or Ordinance Going to the Merits, 167 A.L.R. 517, 519-20 (1947).

United States Supreme Court in Brown v. Davenport

"... came to view the 'limited' class of void judgments to include '(i) detentions based on assertedly unconstitutional statutes' Stone v. Powell, 428 US 465, 476, and n.8, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976)(citing Ex parte Siebold, 100 US 371, 25 L.Ed. 717 (1880), Ex parte Lange, 85 US 163, 18 Wall, 163, 21 L.Ed. 872 (1874), Bator 465-474)."

Brown v. Davenport, 142 S.Ct. 1510, 212 L.Ed.2d 463, 22 Cal. Daily Op. Serv. 3863 (2022).

Judgment of a Court lacking jurisdiction is void. Burnham v. Superior Court of California, County of Marin, 495 US 604, 608, 110 S.Ct. 2105, 109 L.Ed.2d 631, 58 USLW 4629, Ross v. Richland County, 270 SC 100, 240 SE2d 649.

C.

Effect of Lack of Jurisdiction
of Trial Court

A judgment issued by a trial court without jurisdiction is a nullity. Without jurisdiction, there is no authority to give judgment and judgment so entered is without force or effect, it binds no one and is not entitled to any respect. A void judgment is in legal effect no judgment: no rights are acquired or divested by it, it neither binds nor bars any one, and all proceedings founded upon it are worthless. See 46 Am. Jur. 2d Judgments § 25. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Steel Co. v. Citizens for a Better Environment, 523 US 83, 118 S.Ct. 1003 (1998), B.R. v. F.C.S.B., 17 F.4th 485, Limehouse v. Hulsey, 404 SC 93, 744 SE2d 566 (SC S.Ct. 2013).

"In a case where a court acting beyond its jurisdiction has committed a party to prison, a habeas corpus is the proper remedy, and affords the means of trying the question ... [t]he writ does not issue of course, but the party must show that he is imprisoned by a court having no jurisdiction."

Ex parte Watkins, 28 US 193, 3 Pet. 193, 1830 WL 3901, see, also, Brown v. Davenport.

In the case at bar, the indictments are manifest of victim testimony and the State's intention by Jury instruction to invoke it's authority, and the Court, by giving the Jury instruction, decided that the business of the State, exclusive to those authoritative principals within the accusations within the indictments, is under authority of State Statute 16-3-657. The indictments under question were presented to and decided by the retrial Jury against the contention of the Petitioner. The record, therefore, shows affirmatively that the unconstitutionality of Statute 16-3-657 invalidates the indictments which are being directly drawn in question in where Retrial Court had no jurisdiction.

"A valid and sufficient accusatory instrument is a non-wiavable jurisdictional prerequisite to criminal prosecution. Thus, a valid indictment ... is essential to the court's jurisdiction in a criminal case. [citations omitted]" 41 Am. Jur. 2d Indictments and informations § 20. "The purpose of the indictment ... [is] to show that the parties construed and understood the accusation in a particular way and desired the court to do the same." Goto v. Lane, 265 US 393 at 403. "Every indictment is based upon the existence of a valid law annexing a penalty to the offence charge. If *821 that law is unconstituional, it is void. It is no law at all, and there is no penalty to inflict." Saunders v. Commonwealth, 62 Va.App. 793, 753 SE2d 602 (2014)(quting Pine v. Commonwealth, 121 Va. 812, 93 SE 652 (1917)(finding that where a criminal law is unconstitutional, the indictment for vilating it is void because there is no crime.)).

"An unconstitutional act is no law at all, and no court has a right to imprison a citizen who has violated no law, and such restraint, even if exercised by a court under the guise and form of law, is as subversive of the right of the citizen as if it were exercised by a person not clothed with authority, Siebold, *supra*. ... The same effect obtains where a trial court, in instructing the jury, gives an unconstitutional interpretation to the statute which was allegedly violated, and a conviction thereunder is void, In re Klor, 64 Cal. 2d 816, 51 Cal. Rptr. 903, 415 P.2d 791 (1966)."

Habeas Corpus on Grounds of Unconstitutional or Void Statute or Ordinance, 39 Am. Jur. 2d Habeas Corpus § 30. In Ex parte Hollman, 79 SC 9, 60 SE 19 (1908), the court held unconstitutional a statute that made it a crime for a sharecropper to breach a contract to perform work on a farm Id. at 11-12, 25-26, 60 SE at 20-21, 26. The Hollman court reasoned that because an unconstitutional statute is void and not law, no court has jurisdiction to convict under such a statute Id. at 11, 60 SE at 20. "[W]hen a statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; ... it constitutes a protection to no one who has acted under it." Bergstrom, *supra*. quoting Atkinson v. Southern Express Co., 94 SC 444, 453, 78 SE 516, 519 (1913). See, also, generally, Effect of Determination of Total Unconstitutionality of Legislation, 16A Am. Jur. 2d Constitutional Law § 194. "Void indictment[s] makes judgment of conviction void for lack jurisdiction of subject matter." Wells v. Sacks, 115 Ohio App. 219, 20 Ohio Op.2d 304, 184 NE2d 449 (10th Dist. Franklin County 1962); State v. Knutsen, 158 Idaho 199, 345 P.3d 989 (2015)(the trial court does not acquire subject matter jurisdiction over crimes charged in a void indictment), Dyno v. Hillis, 274 A.D.2d, 712 NYS2d 183 (3d Dep't 2000); see also, Siebold, *supra*.

II. --HABEAS COURT JURISDICTION

REVIEW PROCEDURE—

If the offence charged in an indictment is colorless or an impossible one under the law, there is no jurisdiction in a court to render judgment thereon. There is nothing upon which to base a judgment, and, if a prisoner is held in custody under sentence on such indictment, void on its face, he may be discharged from such custody upon writ of habeas corpus by another court having authority to entertain the writ. Ex parte Siebold, supra., Ex parte Yarbrough, supra., United States v Pridgeon, (1894) 153 US 48, 38 L.Ed. 631, 14 Sup.Ct.Rep. 746, Andrews v. Swartz, (1895) 156 US 272, 39 L.Ed. 422, 15 Sup.Ct.Rep. 389, Brown v. White, (1928, C.C.A. 8th) 24 F.2d 392. Upon an application for habeas corpus on ground as such, the court does not simply review the correctness of the conclusion of the trial court as to the violation of the statute by the petitioner, or the decision of the higher court as to the sufficiency of the information filed against him, the question is not one of guilt or innocence, but simply whether the court below has jurisdiction to try the issue. Re Gregory (1911) 219 US 210, 55 L.Ed 184, 31 Sup.Ct.Rep. 143.

In any federal habeas proceeding, where the petitioner seeks the benefit of a new rule of constitutional law, courts must first determine whether the rule actually qualifies as new, and then whether that rule applies retroactively to the case. 28 USCA § 2254(d). Knight v. Florida Department of Corrections 936 F.3d 1322 (11th Cir. 2019).

Relevant Procedural History Concerning
Retroactivity and Jurisdictional Bar

April 2015, Petitioner's trial de novo (retrial) based solely on circumstantial evidence consisting of alleged victim testimony, and retrial hinging on witness credibility, retrial Court instructed Jury on South Carolina Statute 16-3-657 (2015) stating:

"Testimony of the victim need not be corroborated in prosecutions for criminal sexual conduct"

(APPENDIX C, Retrial transcript p 245, lines 1-3).

April 15, 2015, Petitioner is convicted and sentenced (APPENDIX C, Retrial transcript pp. 257-58, lines 16 et seq; and APPENDIX E, 'Sentence Sheets') to 80 years imprisonment. APPX - C pp. 262-63, 266, 269,

April 24, 2015, Notice of Appeal of the retrial is filed with South Carolina Supreme Court (State High-Court) (APPENDIX E, 'Notice of Appeal'), <UNAVAILABLE>.

May 4, 2016, State High-Court held that trial courts instructing the jury on Statute 16-3-657 is unconstitutional, and its holding is effective in cases on direct review, State v. Stukes, 416 SC 493, 787 SE2d 480 (2016).

May 25, 2016, Petitioner's appellate counsel files 'Anders' Brief (APPENDIX F, 'Anders Brief of Appellant' (2015-000884)) or no-merits brief against Petitioner's retrial, appellate Counsel failed to raise the retrial's error of Court's charging the Jury with unconstitutional Statute 16-3-657 (2015).

July 26, 2017, Petitioner's appeal is dismissed by South Carolina Court of Appeals (APPENDIX A).

And though not required to ascertain retroactive application, Petitioner requested time to file Certiorari with S.C. Supreme Court who denied the time extension because they do not entertain petitions for writs of certiorari where the Court of Appeals has dismissed an~~g~~ appeal after conducting an Anders review (APPENDIX A, p.A 3 (2017-002098)) October 16, 2017. Rehearing denied January 24, 2018 (APPENDIX B, pp.B 28-B 29).

Thereafter, Petitioner diligently, over the course of greater than four years, attempted--and failed--to get his PCR docketed and heard (APPENDIX B, pp.B 2-et seq.). Midstream, Petitioner accused and provided proof to S.C. Supreme Court that the town-clerk is being misfeasant, S.C. Supreme Court very quickly dismissed that action (APPENDIX B, p.B 13), and is when Petitioner's subsequent papers were deemed 'frivolous' and the S.C. Supreme Court started refusing Petitioner's papers due to lack of filing fees even though Petitioner provided proof of indigency and other needed papers. This information is pertinent because particularly APPENDIX B at page B 23, Petitioner again requested PCR review which was refused due to filing fee, notwithstanding South Carolina does not require fees for criminal convictions according to their Rules of Court and Case Laws. This obstacle course has delayed and delayed PCR over and over again, and never being docketed with the Sumter County Court. Petitioner sued the town-clerk, unsuccessfully (APPENDIX B, pp.B 5-7, B 16-18, see also U.S.Sup.Ct 19A420/19-6563).

October 28, 2022, MOTION TO REINSTATE and PETITION FOR REHEARING filed with State High-Court (APPENDIX K, (2022-001443)). No reply.

February 12, 2023, Petitioner files 'Stautus Update' of 2022-001443 with State High-Court (APPENDIX K). No reply.

Whether a void judgment is void is a question of law. Jim & Maryann Plane Family Trust v. Skinner, 157 Idaho 927, 342 P.3d 639 (2015); J & M Securities v. Mees, 519 SW3d 465 (Mo.Ct.App.E.D. 2017), reh'g and/or transfer denied (Apr. 27, 2017) and transfer denied, (June 27, 2017) **and transfer denied**; Hagen v. Hagen 282 SW3d 899 (Tex. 2009).

Benton v. Maryland 395 US 784, 23 L.Ed.2d 707, 89 S.Ct. 2056 (also holding that the granting of a new trial on a charge of which an accused was convicted cannot be conditioned on his accepting reindictment and retrial on a charge of which he was acquitted under the void indictment).

And though not deciding the point, the court in Bruner v. Superior Ct. (1891) 92 Cal 239, 28 P 341, said: " Would petitioner have a plain, speedy, and adequate remedy in the ordinary course of law? If there be such remedy, it must be by appeal. But it would be a difficult proposition to maintain that a defendant in a criminal case, forced through all the stages of a trial for felony without any indictment against him, or, which is the same thing in effect upon a void indictment, would have a plain, speedy, and adequate remedy, because, after conviction and judgment, and perhaps after suffering the ignominy of imprisonment in the state prison, he could have the illegal proceeding reversed on appeal."

PETITION

Petitioner, ROBERT WILLIAM WAZNEY, alleges:

1. Petitioner, ROBERT WILLIAM WAZNEY, is being illegally confined and restrained of liberty at Evans Correctional Institution by South Carolina Department of Corrections.

2. This illegal confinement and restraint is by virtue of petitioner's having been arrested under the purported authority of warrants issued by Judge of the General Sessions Court of Sumter County, State of South Carolina, based on indictments returned by a grand jury impaneled by the judge of that court, **which was** filed on or about April 10, 2014; March 12, 2015; and in Cause Nos. 2014-GS-43-0317, 2015-GS 43-0333, and 2015-GS-43-0334, styled THE STATE vs. ROBERT WILLIAM WAZNEY. True and correct copies of the indictments and warrants *** are attached to this petition and made part of this pleading (Appendix C, pp. 260-269).

3. In said indictment and cause, petitioner is charged with having committed an act which would constitute a crime under Code Section 16-3-657.

4. Petitioner is not being held in confinement or under restraint by said South Carolina Department of Corrections to answer any charge of any character other than **the mentioned charges**.

*** Copies of Warrant(s) requested from town-clerk MARCH 7, 2023.

5. The mentioned statute is unconstitutional and void because it violates the provisions of Article V, Section 21, of the Constitution of South Carolina, and the provisions of the Fourteenth Amendment to the Constitution of the United States of America, in the following manner: Instructing the jury on statute [16-3-657], providing that testimony of the victim need not be corroborated in prosecutions for criminal sexual conduct, was an impermissible charge on **the facts and**, therefore unconstitutional; Retrial Court acquired no jurisdiction of the causes; and trials violated due process of law. Because of these facts, the confinement and restraint of petitioner under the statute are illegal and violative of petitioner's constitutional rights.

A court should determine in a habeas corpus proceeding the constitutionality of the statute under which the petitioner is held and, if it proves to be unconstitutional, discharge him. Minnesota v. Barber, 136 US 313, 34 L.Ed 455, 10 S.Ct 862; Ex parte Daniels, 183 Cal 636, 192 P 442, 21 ALR 1172; Pounds v. Darling, 75 Fla 125, 77 So 666, Henderson v. Heyward, 109 Ga 373 34 SE 590; Commonwealth v. Huntley, 156 Mass 236, 30 NE 1127, State ex rel. Luria v. Wagner 69 Minn 206, 72 NW 67, Ex parte O'Leary, 65 Miss 80, 3 So 144, Re Moynihan, 332 Mo 1022, 62 SW 2d 410, 91 ALR 74 Ex parte Kair, 28 Nev 127, 80 P 463, Ex parte Kelly, 123 NJ Eq 489, 198 A 203; State ex rel Gaulke v. Turner, 37 ND 635, 164 NW 924; Re Unger, 22 Okla 755, 98 P 999, Kelley v. Meyers, 124 OR 322, 263 P. 90, 56 ALR 661; Wangness v. McAlpine, 47 SD 472, 199 NW 478; O'Haver v. Montgomery, 120 Tenn 448, 111 SW 449; Ex parte Farnsworth, 71 Tex Crim Rep 342, 135 SW 535; Servonitz v. State, 133 Wis 231, 113 NW 277; Re Wright, 3 Wyo 478, 27 P 565. [EMPHASIS ADDED].

PROCEEDINGS DIRECTLY RELATED
TO THE CASE IN THIS COURT
(Arisen from the same trial court case as the case in this court)

<u>Court</u>	<u>Docket No:</u>	<u>Capt on</u>	<u>Date of Judgment</u>
S.C. Ct. App.	2015-000884	State v. Wazney	
S.C. Sup. Ct.	2017-002098	State v. Wazney	1/24/18
S.C. Sup. Ct.	2018-001373	Wazney v. State	8/28/18
S.C. Sup. Ct.	2018-001376	Wazney v. State	8/28/18
S.C. Sup. Ct.	2018-001730	Wazney v. State	3/28/19
U.S. Dist. Ct.	6:18-cv-02825	Wazney v. Warden	12/13/18
U.S. Ct. App	19-6203	Wazney v. Warden	7/24/19
U.S. Sup. Ct.	19-421/19-7597	Wazney v. Warden	
S.C. Sup. Ct.	2019-001424		
S.C. Sup. Ct.	2020-000789	Wazney v. State	Refused By court
S.C. Sup. Ct.	2020-001028	Wazney v. State	8/20/20
S.C. Sup. Ct.	2021-001472	Wazney v. State	8/11/22
S.C. Sup. Ct.	Refused by court (PCR Review)	Wazney v. State	4/19/22
Sumter Family Ct.	2014DR430038	Wazney v. Wazney	
Sumter Family Ct.	2015DR430046	Wazney v. Wazney	
Sumter Family Ct.	2022DR4301168	Wazney v. Wazney	
S.C. Ct. App.	2015-002193	Wazney v. Wazney	
	2016-000221	Wazney v. Wazney	
	2016-001674	Wazney v. Wazney	
	2016-001342	Wazney v. Wazney	
	2018-000081	Wazney v. Wazney	
	2018-000322	Wazney v. Wazney	
	2018-000918	Wazney v. Wazney	
	2018-000919	Wazney v. Wazney	
	2017-000916	Wazney v. Wazney	
S.C. Ct. App.	2017-001112		
	'Default'		
	'Taylor Asst'		
	2022-000657	Wazney v. Wazney	12/1/22
	2022-000755	Wazney v. Wazney	12/1/22
	2022-000808	Wazney v. Wazney	12/1/22
	2022-001438	Wazney v. Wazney	12/16/22
S.C. Sup. Ct.	2019-001666	Wazney v. Wazney	
	2018-002032	Wazney v. Wazney	
	2019-000056	Wazney v. Wazney	
	2017-001728	Wazney v. Wazney	
	2017-001776	Wazney v. Wazney	
	2019-000585	Wazney v. Wazney	4/22/19
	2023-000019	Wazney v. Wazney	Pending

	2023-000014	Wazney v. Wazney	Pending
	2023-000013	Wazney v. Wazney	Pending
	2023-000173	Wazney v. Wazney	Pending
U.S. Dist. Ct.	3:17-cv-2900	Wazney v. Wazney	3/9/18
	3 19cv-01256	Wazney v. Wazney	6/12/19
	3:17cv-02873	Wazney v. Wazney	3/9/18
	3:20cv-02399	Wazney v. Wazney	7/22/20
U.S. Ct. App.	20-7567	Wazney v. Wazney	7/1/21
	19-1737	Wazney v. Wazney	11/21/19
	18-6466	Wazney v. Wazney	8/28/18
	20-7714	Wazney v. Wazney	7/1/21
U.S. Sup. Ct.	18A715/18-9814	Wazney v. Wazney	10/7/19
Sumter Com. Pla.	2017CP43-569		
U.S. Dist. Ct.	6:15-cv-01116	Wazney v. SLRDC	
U.S. Ct. App	16-6812	Wazney v. SLRDC	9 14/16
Sumter Com. Pleas	2016CP430733	Chase v. Wazney	6/11/19
S.C. Ct. App.	2017-001490		
	2018-001505		
S.C. Sup. Ct.	2018-000148		
	2019-000304		
U.S. Dist. Ct.	3:18-cv00921-HMH	JP Morgan v. Wazney	
U.S. Ct. App.	18-6693	JP Morgan v. Wazney	8/28/18
U.S. Dist. Ct.	3:17-cv-03216	Wazney v. Chase	
U.S. Ct. App	18-1476	Wazney v. Chase	8/27/18
U.S. Sup. Ct.	18A716/18-9623	Wazney v. JP Morgan	10/7/19
U.S. Sup. Ct.	18A713/18-9624	Wazney v. JP organ	1/13/20
U.S. Sup. Ct.	19A270 19-6400	Wazney v. Chase	
U.S. Bkr. Ct.	17-90009-dd		
	18-06148-dd		
	19-80009-DD		
U.S. Dis .Ct. (Bkr)	3:19-cv-01012	Wazney v. Chobassole	2/25/20
U. . Ct. App.	19-1592	Wazney v. Chobassole	9/26/19
	20-1572	Wazney v. Chobassole	10/26/20
	20-1004	Wazney v. Chobassole	5/21/20
	20-1370	Wazney v Chobassole	3/26/21
U.S. Ct. App.	19-6084	Wazney v. Campbell	5/29/19
U.S. Dist. Ct.	6:18cv-02610	Wazney v Campbell	10/23/18
U.S. Sup. Ct	19A420/19-6563	Wazney v. Campbell	1/13/20

S.C. Ct. App.	2020-000910	Wazney v. SCDC	
	2020-000929	Wazney v. SCDC	12/22/20
	2020-000995	Wazney v. SCDC	
	2020-001555	Wazney v. SCDC	
	2020-001558	Wazney v. SCDC	
	2020-001559	Wazney v. SCDC	
	2020-001658	Wazney v. SCDC	
S.C. Ct. App.	2022-001640	Wazney v. SCDC	Pending
S.C. Sup. Ct.	2021-000087	Wazney v. SCDC	
	2021-000223	Wazney v. SCDC	
	2021-000229	Wazney v. SCDC	
	2021-002032	Wazney v. SCDC	
	2021-000307	Wazney v. SCDC	
U.S. Dist. Ct.	6:20cv-3366	Wazney v. Nelson et al.	4/1/22
U.S. Ct. App.	21-6125	Wazney v. Nelson, et al.	10/27/21
U.S. Ct. App.	22-6500	Wazney v. Nelson et al.	9/27/22
U.S. Ct. App.	18-6466	Wazney v. Wazney	8/28/18

See also, APPENDIX X pp. X2-X7 and Appendix L.

This list is Not exhaustive.

CONCLUSION

The present case is illustrative of persistent and serious perversion of the course of due administration of justice by the courts of South Carolina in connection with an important phase of the judicial business of those courts. The courts of South Carolina unjustifiably has turned the appellate process into an obstical course for the forced indigent appellant Robert Wazney in where the State Judicial Power siezed Wazney's assets (APPENDIX M), untainted and unrelated to the crime, forcing him indigent, then, when Wazney in pursuit of his PCR, files PCR with town-clerk, the clerk repeatedly fails To docket Wazney's PCR. Then after complaining for greater than four years, State Supreme Court wants tiling fees to appeal Wazney's criminal conviction and fails to see any extraordinary circumstance in where town-clerk is not docketing Wazney's PCR. (APPX. B, P. B 23). (APPX. B, P.P. B2, B13, ~~B15~~, B26, B31, B33),

This pattern is now being followed with jurisdictional appeal and Wazney does not want to spend four additional years in prison fighting to get a claim heard by a State Corut which has demonstrated it does not want to hear Wazney's complaints of illegal imprisonment. The Judicial Power of South Carolina is acting in a manner which is unjust, and unlawful, This Court alone can correct this situation and correction is urgently needed.

Release is appropriate in this case. It is consistent with this Court's practice where that decision merely reaffirms a doctrine and theory of decision which has already been reversed by this Court where conviction under unconstitutional law is void because trial Court did not have jurisdiction to convict. The decision is indefensible.

For the reasons which have been set forth, certiorari should be granted and order and rule be entered and issued directing Petitioner's immediate release from his illegal imprisonment.

State of South Carolina)
)
County of Marlboro)

VERIFICATION

ROBERT WILLIAM WAZNEY, the Petitioner above named, being duly sworn upon his oath, says as follows:

I have read the above Petition For Writ of Certiorari and know its contents, and the contents are true of my own knowledge, I do not have counsel at the time of filing this Petition, or access to funds for legal services. Given those limitations, I cannot provide further information regarding this legal claim in the allotted time with the exception of the specific issues included in this Petition at this time. I declare under penalty of perjury that the foregoing is true and correct.

March 15, 2023.

/s/

ROBERT WILLIAM WAZNEY
610 Highway 9 West
Bennettsville, SC 29512
Captive, Petitioner, Indigent, Pro se

SWORN to and subscribed before me this _____
day of March, 2023.

~~NO ACCESS~~

Notary Public (L.S.)
My Commission Expires: _____