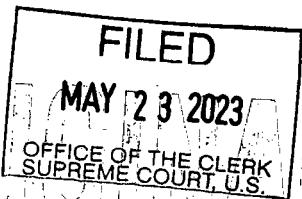


23-5313

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

Leonardo Roque Jr. — PETITIONER
(Your Name)

vs.

Erik A. Hooks — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals For The Fourth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Leonardo Roqué Jr.
(Your Name)

2465 U.S. 70 West
(Address)

Smithfield, North Carolina 27577
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- A. Did the Fourth Circuit Court of Appeals commit Error when That court Denied Petitioner's Certificate of Appealability on Grounds that Dispositive Procedural Ruling is Debatable And that the Petition Had to State a Debatable Claim of the Denial of a Constitutional Right.
- B. Did the United States District Court, Western District, Commit Error When That Court Granted Respondent Motion To Dismiss, Denied Petitioner's 2254 Petition as Untimely And Barred By The Statute of Limitation, And Concluding that Petitioner Failed to Establish That He is Entitled To Equitable Tolling.

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

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- APPENDIX C : Petition For Rehearing And Rehearing en banc, Order of Denial on
5/15/2023
- APPENDIX D MEMORANDUM OF LAW IN SUPPORT OF FIRST AMENDED PETITION FOR
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TABLE OF AUTHORITIES CITED

CASES

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<u>Holland v. Florida, 560 U.S. 631, 645-46 (2010) (quoting Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 95-96)</u>	
<u>Munaf v. Geren, 553 U.S. 674, 693 (2008)</u>	
<u>Baggett v. Bullitt, 377 U.S. 360, 375 (1964)</u>	
<u>Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 38, 248 (1944)</u>	
<u>Rouse v. Lee, 339 F.3d 238, 246 (4th Cir., 2003)</u>	
<u>Baldayaque v. United States, 338 F.3d 145, 152-53 (2nd Cir., 2003)</u>	
<u>United States v. Martin, 408 F.3d 1089 (8th Cir., 2005)</u>	
<u>Spitsyn v. Moore, 543 F.3d 769 (9th Cir., 2003)</u>	
<u>Coleman v. Thompson, 501 U.S. 722, 753 (1991)</u>	
<u>McQuiggin v. Perkins, 133 S. Ct. 1924, 1935 (2013)</u>	

STATUTES AND RULES

28 U.S.C. 2254(b)(1)(A)

[N.C.G.S.] 14-27.2(a), 14-27.2(a)(1), 14-27.7, 14-27.2 (Recodified N.C.G.S. 14-27.21)
 14-27.2(a)(1) (Recodified N.C.G.S. 14-27.24), 14-27.2A (Recodified N.C.G.S. 14-27.23)

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at No. 22-6054; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

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

reported at No. 3:18-cv-000459-MR; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

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

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

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

The opinion of the _____ court appears at Appendix _____ to the petition and is

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

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MARCH 14, 2023.

- 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: MAY 15, 2023, and a copy of the order denying rehearing appears at Appendix C.
- An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

- A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
- An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

A. UNITED STATES CONSTITUTION, AMENDMENT FOURTEENTH

SECTION 1. ALL PERSON BORN OR NATURALIZED IN THE UNITED STATES AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE.
NO STATE SHALL MAKE OR ENFORCE ANY LAWS 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 PROTECTIONS OF THE LAW.

STATEMENT OF THE CASE

1. PETITIONER Leonardo Roque Jr., PRO SE, IS INCARCERATED WITHIN THE NORTH CAROLINA DEPARTMENT OF ADULT CORRECTIONAL, WHO PLEADED GUILTY TO THE CHARGE OF FIRST DEGREE RAPE ON FEBRUARY 23, 2015 BEFORE THE HONORABLE JUDGE JULIA GULET, MECKLENBURY COUNTY SUPERIOR COURT, RECEIVING A SENTENCE OF 144 MONTHS MINIMUM TO 233 MONTHS MAXIMUM.
2. AFTER BEING INDICTED BY A GRAND JURY IN MECKLENBURY COUNTY ON ONE COUNT OF STATUTORY RAPE OF A CHILD BY AN ADULT UNDER NORTH CAROLINA GENERAL STATUTE 14-27.2A (RECODIFIED N.C.G.S. 14-27.23). PETITIONER ALLEGES HE WAS FALSELY TOLD BY HIS TRIAL ATTORNEY WHO REPRESENTED HIM AT THAT TIME, THAT THE POLICE HAD OBTAINED VIDEO OR PHOTOGRAPHIC EVIDENCE OF THE ALLEGED RAPE AND THAT RAPE KIT WAS NOT DONE ON THE VICTIM AND THE STATE WAS NOT GOING TO TAKE A RAPE KIT OF THE VICTIM. HOWEVER NO PHOTOGRAPHIC EVIDENCE HAD BEEN FOUND. HOWEVER, ON JUNE 6, 2014 A RAPE KIT WAS DONE AND THERE WAS NO CONNECTION FOUND WHATSOEVER TO PETITIONER. THE PETITIONER DID NOT LEARN ABOUT THIS FAVORABLE EVIDENCE UNTIL SOME TIME AROUND 2017 WHEN HE RECEIVED SOME OF HIS CRIMINAL DOCUMENTS FROM THE COURT. (SEE RAPE KIT FINAL REPORT, MARKED AS "EXHIBIT E"). PETITIONER'S ATTORNEY SHOULD HAVE KNOWN OF ANY RAPE KIT TESTING THAT WAS DONE. AFTER BEING TRICKED BY HIS ATTORNEY INTO BELIEVING THAT THE ALLEGED EVIDENCE OF GUILT EXISTED, PETITIONER WAS INFLUENCED INTO BELIEVING THAT THE STATES CASE AGAINST PETITIONER WAS SIGNIFICANTLY STRONGER THAN IT ACTUALLY WAS.
3. AS A RESULT OF BEING TRICKED BY MISLEADING STATEMENTS BY TRIAL ATTORNEY, PETITIONER AGREED TO A PLEA DEAL WHICH STATED ON THE SECOND PAGE OF THE PLEA AGREEMENT THAT PETITIONER WAS PLEADING GUILTY TO FIRST DEGREE FORCIBLE RAPE UNDER N.C.G.S. 14-27.2 (RECODIFIED N.C.G.S. 14-27.21), WHILE THE PLEA AGREEMENT ALSO IS STATING ON THE FOLLOWING PAGE THAT PETITIONER WAS PLEADING GUILTY TO FIRST DEGREE RAPE UNDER N.C.G.S. 14-27.2(a)(1) (RECODIFIED N.G.S. 14-24). PETITIONER WAS THEN SENTENCED FOR EITHER FIRST DEGREE RAPE, OR STATUTORY RAPE OF A CHILD BY AN ADULT, WHICH HAS NOT BEEN DETERMINED. (CONTINUED ON ATTACHED PAGE 1).

" ATTACHED PAGE 1 " "

PETITIONER'S JUDGMENT AND COMMITMENT PAPERWORK LIST THE OFFENSE AS FIRST DEGREE RAPE, BUT CITES N.C.G.S. 14-27.2A - THE STATUTE FOR STATUTORY RAPE OF A CHILD BY AN ADULT. PETITIONER WAS SENTENCED TO 144 TO 233 MONTHS IMPRISONMENT AND WAS REQUIRED TO REMAIN ON THE SEX OFFENDER FOR LIFE. PETITIONER DID NOT APPEAL HIS PLEA CONVICTION BECAUSE COUNSEL TOLD PETITIONER THAT BECAUSE PETITIONER HAD PLEADED GUILTY, PETITIONER COULD NOT APPEAL AT ALL.

FOLLOWING THE ACCEPTANCE OF THE PLEA AGREEMENT BY PETITIONER, THE TRIAL ATTORNEY FURTHER GAVE PETITIONER ERRONEOUS ADVISE, STATING THAT PETITIONER COULD NOT APPEAL EVEN ON THE GROUND OF INEFFECTIVE ASSISTANCE OF COUNSEL.

UPON REALIZING AND DISCOVERING THE EXTENT OF HIS TRIAL ATTORNEY'S MISCONDUCT, PETITIONER SPENT TIME RESEARCHING HIS LEGAL RIGHTS AND REQUESTING THE CRIMINAL DOCUMENTS RELATING TO HIS CASE FROM THE COURT SYSTEM. PETITIONER LATER FILED HIS FIRST PRASE MOTION FOR APPROPRIATE RELIEF (HEREAFTER MAR MOTION) IN THE NORTH CAROLINA SUPERIOR COURT HOUSE ON 8 FEBRUARY 2018 ALLEGING INEFFECTIVE ASSISTANCE OF COUNSEL. THIS MOTION WAS DENIED ON 17 MAY 2018. PETITIONER FILED A PETITION FOR WRIT OF CERTIORARI (THE FIRST PETITION) WITH THE NORTH CAROLINA COURT OF APPEAL ON 18 JUNE 2018, REQUESTING REVIEW OF THE DENIAL OF THE FIRST MAR MOTION. THE FIRST CERTIORARI PETITION WAS [REDACTED] (DENIED) 25 JUNE 2018.

PETITIONER FILED A SECOND PETITION FOR WRIT OF CERTIORARI ON 23 JULY 2018, AGAIN REQUESTING REVIEW OF THE DENIAL OF THE FIRST MAR MOTION, WHICH WAS DENIED 27 JULY 2018. PETITIONER THEN FILED A PETITION FOR WRIT OF HABEAS (CONTINUED ON ATTACHED PAGE 2)

"ATTACHED PAGE 2"

CORPUS ON 21 AUGUST 2018, WHICH AT THAT TIME INCLUDED ONLY PETITIONER'S INEFFECTIVE ASSISTANCE CLAIM.

ON 30 JULY 2019, PETITIONER FILED A SECOND MAR MOTION (THE SECOND MOTION), CLAIMING BOTH VIOLATION OF BRADY V. MARYLAND (A BRADY VIOLATION) AS WELL AS BREACH OF PLEA. THIS MAR MOTION WAS DENIED 20 AUGUST 2019. PETITIONER FILED A PETITION FOR A WRIT OF CERTIORARI (THE THIRD PETITION) WITH THE NORTH CAROLINA COURT OF APPEALS ON 24 SEPTEMBER 2019 REQUESTING REVIEW OF THE DENIAL OF THE SECOND MAR MOTION WHICH WAS DENIED 26 SEPTEMBER 2019.

ON NOVEMBER 5, 2019, PETITIONER FILED AN AMENDMENT TO HIS PETITION FOR WRIT OF HABEAS CORPUS TO INCLUDE HIS BRADY CLAIM VIOLATION AND BREACH OF PLEA CLAIM VIOLATION. ON 28 MAY 2020 ATTORNEY DON VAUGHAN ENTERED HIS APPEARANCE ON BEHALF OF PETITIONER AND FILED A MEMORANDUM OF SUPPORT ON 15 JULY 2020. RESPONDENT FILED ITS MOTION TO DISMISS.

ON 21 AUGUST 2018, PETITIONER FILED HIS HABEAS PETITION IN THE DISTRICT COURT. THAT PETITION WAS DENIED ON 2019-2021. PETITIONER THEN GAVE NOTICE OF APPEAL. THE APPEAL WAS DENIED ON 2019-2022. AROUND APRIL 12, 2023 PETITIONER SUBMITTED A PETITION FOR REHEARING AND REHEARING EN BANC TO THE COURT OF APPEALS FOR THE FOURTH CIRCUIT. THAT PETITION WAS DENIED ON MAY 15, 2023.

REASONS FOR GRANTING THE PETITION

Petitioner Request that this Court issue it's Writ of Certiorari to Review the following issues outlined below:

Equitable Tolling

Petitioner is under the understanding that he is eligible for equitable tolling by virtue of his trial attorney's egregious misconduct and Petitioner's attempts to pursue his claims. As outlined in Petitioner's Brief In opposition to Respondent's motion to Dismiss (Page 5, Paragraph 2, Page 6 and Page 7, Paragraph 1 and 2) marked as ("Exhibit A"), Petitioner was prevented from filing his Habeas Petition in the Proper time due to the egregious ineffectiveness and misconduct of his trial Counsel. (Petitioner incorporate By Reference the argument in Exhibit A, entitled Equitable Tolling, in support of his argument here that he is [REDACTED] eligible for Equitable Tolling). In addition, the Court of Appeals was in Error when that court denied Petitioner Certificate of Appealability, Ruleing that Petitioner must demonstrate both that the dispositive Procedural Ruleing is debatable and that the Petition states a debatable claim of the denial of a Constitutional Right.

The disPositive Procedural Ruling here 28 U.S.C. 2244 (d)(1), is debatable because Petitioner trial Counsel Failed to explain to Petitioner that he could Appeal his Plea Conviction, that Petitioner had only 1 year from the date of Conviction to file a habeas Petition, that Petitioner's Case was never investigated, nor the true Evidence revealed that there was no Rape Kit evidence tying Petitioner to the Crime of Rape, nor did trial Counsel Produce evidence that Petitioner was actually innocence of the charge of Rape. ① Continued On Attached Page 1"

Footnote:

① Petitioner raised in his second motion for Appropriate Ruling that there was a Breach of the Plea Agreement on the Part of the state in that his Plea Agreement/Contract does not make clear what charge Petitioner was Convicted of and what Punishment he did Received. In support of this Statement Petitioner incorporate By Reference the argument in "Exhibit D," on Page 6 beginning with Ground 3: Breach of Plea in support of the argument here which supports Petitioner's claim that he is innocence of the Rape Charge (See also Exhibit A, Page 9-11.)

The Sixth Amendment to the United States Constitution affords criminal defendants "the right" to "assistance of Council." U.S. Const. Amend. VI. The United States Supreme Court has held that "assistance" which is ineffective in preserving fairness.... does not meet the Constitutional mandate. (See Mickens v. Taylor, 535 U.S. 162, 166 (2002). Counsel's Performance fell below an objective standard of Reasonableness when counsel Failed to Provide the necessary assistance. Petitioner has argued that as a result of Council's ineffectiveness, he suffered Prejudice. To determine Prejudice in the Context of a guilty Plea, a Petitioner must show that there is a reasonable Probability that, but for Council's errors, he would not have Pleaded guilty and would have insisted on going to trial. (See Royal v. Taylor, 188 F.3d 239, 248 (4th cir. 1999) (citing Still v. Lockhart, 474 U.S. 52, 59 (1985))

As a result of Council ineffectiveness as demonstrated, the controlling Procedural Ruling is debatable and the Petition stated as much. Erikson v. Pardus, 551 U.S. 89, 94 (2007), requires that Pro-Se Pleadings be interpreted "liberally" so as to do justice. Petitioner's second motion for Appropriate Relief clearly states on its first Page that Petitioner believes there was a breach of Plea and explained what he was trying to say about the charges he was convicted of. It is also clear that the Petition stated a Constitutional Violation.

In addition, Petitioner raised the claim of a Brady v. Maryland violation and alleged that Council through the State withheld favorable information to Petitioner's defense in addition to incorrectly advising Petitioner that he could not appeal nor attack his Plea agreement deal. In support of these statements Petitioner incorporate By Reference the argument in Exhibit A, Page 5, 6 and 7, in support of his argument here along with

Continued On Attached Page 2

the incorporation of Exhibit D argument on Page 5, entitled Ground 2: Brady Violation.

Therefore a Certificate of Appealability should have been granted.

Further more, the District Court Errored when that Court denied Petitioner's Habeas Petition as untimely and granted Respondent's motion To Dismiss, For the same Reasons that the Court of Appeals was in error.

This Court should grant Certiorari to review the decisions of the Court of Appeals and the District Court because both Courts are in violation of Erikson v. Pardus, 551 U.S. 89, 94 (2007) in that Pro Se Pleading, are not being interpreted liberally, but the Petitioner's Pleading is being treated like Petitioner is a trained Attorney. This is a compelling reason that exist for this Court to exercise its discretionary jurisdiction and not only bring the Pro Se Pleading issue back in accord with this court's Law but also on a national level.

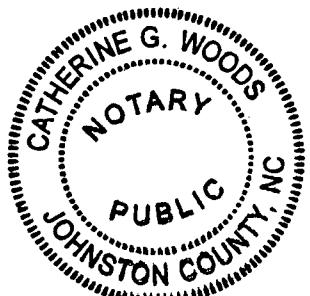
CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Leonardo Aguirre

Date: July 20, 2023



Park C. Woods
Exp. 07-10-2027