No. 23-

23-5836

In The
Supreme Court Of The United States

Siddhanth Sharma

Petitioner

v.

Eddie Buffaloe (Secretary of NCDPS), Stephen Jacobs (Warden of Scotland CI)

Respondent

On Petition for a Writ of Certiorari
To the United States Court of Appeals for the 4th Circuit

Petition for Writ of Certiorari

Siddhanth Sharma
pro se
P.O. Box 937
Morrisville, NC, 27560
Telephone: 919-880-3394
E-Mail: Siddhanthsharma1996@yahoo.com

QUESTIONS PRESENTED

1.) To be issued a COA : Does the claim of Factual Innocence qualify as a debatable claim for the denial of a Constitutional Right as enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-485 (2000)?

2.) To be issued a COA : Does the claim of Factual Innocence qualify as a debatable claim regarding whether the lower courts properly applied a Procedural Bar, as enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-485 (2000); *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013)?

A.) Notwithstanding Factual Innocence : Was Petitioner required to object when state statute preserved his claims?

B.) Notwithstanding Factual Innocence : For the purposes of the District Court relying on the NCCOA opinion to apply a procedural default, Did the NCCOA definitively rule on Petitioner's *Sandstrom* claim?

C.) Notwithstanding Factual Innocence : For the purposes of the District Court relying on the NCCOA opinion to apply a procedural default, Was the last court Petitioner appealed to the NC Court of Appeals (NCCOA) or the NC Supreme Court?

D.) Notwithstanding Factual Innocence : Does the District Court's analysis that Plaintiff was legally innocent rather than Factually Innocent qualify as a debatable claim for issuance of a COA, when this basis was used as the justification for a procedural bar?

E.) Notwithstanding Factual Innocence : For the purposes of the District Court relying on a procedural bar - Was Petitioner required to prove to the District Court that he was not a felon, when Respondents had failed to produce evidence of that element during trial?

PARTIES TO THE PROCEEDING

Petitioner Siddhanth Sharma was the Plaintiff in the District Court and Appellant in the Court of Appeals. Eddie Buffaloe and Stephen Jacobs were the Defendants in the District Court and Appellees in the 4th Circuit.

STATEMENT OF RELATED PROCEEDINGS

United States Court of Appeals for the 4th Circuit:

Sharma v. Buffaloe; Jacobs, 23-6335 – Denied on 29 August 2023

Rehearing *En Banc* – Denied on 6th October 2023

RULE 29.6 STATEMENT

Appellant is an individual and does not own any corporate stock.

TABLE OF CONTENTS

APPENDIX C

U.S. CONSTITUTION

Federal Statute:

NC General Statute:

NC Rules of App Procedure:

Relevant Information:

CASE LAW[1]

[1] The Court will note that some case laws cited, which don't have a correlating page number, are not in the Petition. These cases were cited in the lower courts. Petitioner thought it best to provide the Court with these materials, if reference was needed.

[2] This case law will be found after *Wainwright v. Sykes*

Siddhanth Sharma v. Buffaloe; Jacobs	Petition for Writ of Certiorari Rule 14 28USC2101(e), 28USC1254

INTRO

Petitioner reverently requests this Court for a Writ of Certiorari to the 4th Circuit to grant a Certificate of Appealability (COA). **Petitioner is Factually Innocent.** "It is far worse to convict an innocent man than to let a guilty man go free." *In re Winship* 397 U.S. at 372.

"In the light of the historic purpose of habeas corpus and the interests implicated by successive petitions for federal habeas relief from a state conviction, we conclude that the "ends of justice" require federal courts to entertain such petitions only where the prisoner supplements his constitutional claim with a colorable showing of factual innocence." *Kuhlmann v. Wilson,* 477 U.S. 436, 454 (1986).

OPINIONS BELOW

The 4th Circuit denying Rehearing *En Banc* on 6th October 2023 [1A]. The 4th Circuit Affirming the District Court's denial on 29 August 2023 [2A-3A]. The District Court's Opinion denying Petitioner's Habeas Corpus on 30 March 2023 [4A-12A].

JURISDICTION

This Court retains jurisdiction pursuant to 28USC1254 28USC2253, 28USC2254, Rule 14 of this Court. The 4th Circuit denied Rehearing *En Banc* on 6th October

2023. *See* 23-6335 The 4th Circuit Affirmed the District Court's denial on 29th August 2023. See also *Hohn v. United States*, 524 U.S. 236 (1998).

CONSTITUTIONAL PROVISIONS, STATUTES, ETC. INVOLVED

The 5th, 6th, 14th Amendment to the United States Constitution [3C-4C].

STATEMENT OF THE CASE

- The prosecution failed to prove the 2nd Element of Firearm by Felon in Petitioner's trial. *See* NCGS 14-415.1(b) [24C]. If this Court were to review the State's case-in-chief [2B-397B] the record would be devoid of mentioning to the jury of the 2nd Element of Firearm by Felon.
- The Trial Court gave the jury a Mandatory Conclusive Evidentiary Presumption that the 2nd Element had been proven and forced the jury to accept it as true without further proof – when it in fact had not been proven at all. [398B-401B, 2B-397B].
- The last state court to rule on Petitioner's merits was the NC Supreme Court to which it gave a one-word denial [452B-453B], rather than a dismissal. See *Harris v. Reed*, 489 U.S. 255 (1989).
- The basis for filing a Habeas Corpus in the District Court was that Petitioner was Factually Innocent and that the Trial Court cannot use Mandatory Conclusive Evidentiary Presumptions in Jury Instructions regarding whether an element has been proven. *See* [480B-509B, 536B-581B].
- Respondents pivoted away from the NC Supreme Court ruling and argued that the NC Court of Appeals controlled [510B-535B] – thereby contradicting

this Court's ruling in *Harris v. Reed*, 489 U.S. 255 (1989). Respondents obviated away from Petitioner's claim of Factual Innocence and relied on procedural default – thereby contradicting multiple holdings of this Court in *Coleman v. Thompson*, 501 U.S. 722, 750, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991); *Murray v. Carrier*, 477 U.S. 478, 492 (1986); *McQuiggin v. Perkins*, 569 U.S. 383 (2013).

- The District Court ruled that Petitioner was *Legally* Innocent [11A], rather than Factually Innocent, yet provided no basis. The District Court accordingly denied a COA.
- Petitioner appealed to the 4th Circuit and the 4th Circuit affirmed the denial of a COA in a 2-sentence opinion [2A-3A].
- The 4th Circuit denied Rehearing *En Banc* on 6th October 2023 [1A].

REASONS FOR GRANTING WRIT OF CERTIORARI

1.) IS PETITIONER IS ENTITLED TO A CERTIFICATE OF APPEALABILITY?

Standard of Review:

To obtain a COA under § 2253(c), a habeas prisoner must make a substantial showing of the denial of a constitutional right, a demonstration that, under *Barefoot*, includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or

that the issues presented were "`adequate to deserve encouragement to proceed further.'" *Barefoot*, supra at 893, and n. 4 ("sum[ming] up" the "`substantial showing'" standard). *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). See *Barefoot v. Estelle*, 463 U.S. 880 (1983): "In requiring a 'question of some substance', or a 'substantial showing of the denial of [a] federal right,' obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are 'adequate to deserve encouragement to proceed further.'"

"In setting forth the preconditions for issuance of a COA under § 2253(c), Congress expressed no intention to allow trial court procedural error to bar vindication of substantial constitutional rights on appeal." *Slack*, 529 U.S. at 483.

"Accordingly, a court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief. The holding in *Slack* would mean very little if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges, that he or she would prevail. It is consistent with § 2253 that a COA will issue in some instances where there is no certainty of ultimate relief." *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003). "We do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has

been granted and the case has received full consideration, that petitioner will not prevail." *Miller-El v. Cockrell*, 537 U.S. at 338 (2003).

"We review de novo the district court's legal conclusions in granting [or denying] a petition for a writ of habeas corpus; we review its factual findings for clear error." *Slaughter v. Parker*, 450 F.3d 224, 232 (6th Cir. 2006).

A.) DOES THE CLAIM OF FACTUAL INNOCENCE QUALIFY AS A DEBATABLE CLAIM FOR THE ISSUANCE OF A COA?

Petitioner's sole basis for requesting a Certificate of Appealability was Petitioner's claim of Factual/Actual Innocence because Respondents have failed to prove an element to the jury, the fact-finder – and if this Court were to review the trial record [2B-397B] it would be devoid of Respondents failing to prove the 2nd element of Firearm by Felon [24C]. Petitioner has satisfied 28USC2254(e)(2)(B). There can be no more debatable claim, for the issuance of a COA, than whether or not Respondents have convicted an innocent man (Petitioner) by failing to prove an element of the crime to the jury. In fact, Petitioner's sole basis for Habeas Corpus in the District Court was the claim of Factual Innocence [480B-509B, 536B-581B], to which the District Court ruled that Petitioner was *Legally* Innocent [11A] rather than Factually Innocent. *See* Argument 2.B *infra.*

The 4th Circuit gives a 2-sentence affirmance of the District Court's denial of a COA [3A]. The 4th Circuit has said : "*We have independently reviewed the record and conclude that Sharma has not made the requisite showing.*" The ruling doesn't leave this Court with much to understand the 4th Circuit's rationale.

The 4th Circuit's ruling leaves too much vagueness and uncertainty as to what is being referred to. Subsequently this forces this Court to speculate what the 4th Circuit means. One could say the 4th Circuit indirectly ruled on the merits, to which would cause automatic reversal. One can say that it ruled on the Certificate of Appealability : the possibilities are endless - but what *can* be concluded is that no one can really know for sure what the 4th Circuit is referring to. Most denials of COA's usually have a reason as to *why* a COA cannot be issued. "A 'court of appeals should limit its examination [at the COA stage] to a threshold inquiry into the underlying merit of [the] claims,' and ask 'only if the District Court's decision was debatable.'" *Miller–El*, 537 U.S., at 327. "*Of course when a court of appeals properly applies the COA standard and determines that a prisoner's claim is not even debatable, that necessarily means the prisoner has failed to show that his claim is meritorious. But the converse is not true. That a prisoner has failed to make the ultimate showing that his claim is meritorious does not logically mean he failed to make a preliminary showing that his claim was debatable.*" *Buck v. Davis*, 137 S. Ct. 759, 774 (2017). The claim of Factual/Actual Innocence is the bedrock for any Habeas Corpus to proceed and even surmount Procedural Default – meaning that, at the very least, **the claim is debatable**.

What is noteworthy is Justice Kagan's dissent in *McGee v. McFadden*, 139 S. Ct. 2608, 2611 (2019). Justice Kagan makes a concern of COA denials being "Rubber Stamped" and if this Court were to review the ruling denying a COA in *McGee v. McFadden* by the 4th Circuit [39C-40C] : this Court would find that it is

identical to the denial Petitioner received in the case *sub judice*; what Petitioner is getting at is that it is impossible to understand the rationale of the 4th Circuit which is based on vagueness and ambiguities, to where it forces this Court to review the denial of a COA *de novo*. "*Unless judges take care to carry out the limited COA review with the requisite open mind, the process breaks down. A court of appeals might inappropriately decide the merits of an appeal, and in doing so overstep the bounds of its jurisdiction. See Buck , 580 U. S., at ——, 137; Miller-El , 537 U.S. at 336–337. A district court might fail to recognize that reasonable minds could differ. Or, worse, the large volume of COA requests, the small chance that any particular petition will lead to further review, and the press of competing priorities may turn the circumscribed COA standard of review into a rubber stamp, especially for pro se litigants.*" *McGee v. McFadden*, 139 S. Ct. 2608, 2611 (2019).

If the claim of Factual Innocence isn't even warrantable for discussion then what is?

One would expect that the 4th Circuit would at least explain why the Claim of Factual Innocence would not warrant a COA. "Actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar." *McQuiggin v. Perkins*, 569 U.S. 383 (2013). "It is beyond question, of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged . . . violate[s] due process." *Vachon v. New Hampshire*, 414 U.S. 478, 480 (1974). "*In the light of the historic purpose of habeas corpus and the interests implicated by successive petitions for federal habeas relief*

from a state conviction, we conclude that the "ends of justice" require federal courts to entertain such petitions only where the prisoner supplements his constitutional claim with a colorable showing of factual innocence." Kuhlmann v. Wilson, 477 U.S. 436, 454 (1986).

2.) DOES FACTUAL INNOCENCE QUALIFY AS A DEBATABLE CLAIMS AS TO WHETHER THE LOWER COURTS PROPERLY APPLIED A PROCEDURAL DEFAULTED?

Standard of Review:

"In setting forth the preconditions for issuance of a COA under § 2253(c), Congress expressed no intention to allow trial court procedural error to bar vindication of substantial constitutional rights on appeal." *Slack*, 529 U.S. at 483.

"*When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.*" *Slack*, 529 U.S. at 484-85.

"We hold that actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar." *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013).

"*('[W]e think that in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal*

habeas court may grant the writ even in the absence of a showing of cause for the procedural default.'). In other words, a credible showing of actual innocence may allow a prisoner to pursue his constitutional claims on the merits notwithstanding the existence of a procedural bar to relief." McQuiggin v. Perkins, 569 U.S. 383, 392 (2013).

"We have applied the miscarriage of justice exception to overcome various procedural defaults." *McQuiggin*, 569 U.S. at 393. "Most recently, in *House*, we reiterated that a prisoner's proof of actual innocence may provide a gateway for federal habeas review of a procedurally defaulted claim of constitutional error. 547 U.S., at 537-538." *Id.* at 393.

"[W]e have consistently held that the question of when and how defaults in compliance with state procedural rules can preclude our consideration of a federal question is itself a federal question." *Johnson v. Mississippi,* 486 U.S. 578, 587 (1988).

A.) THE CONSTITUTIONAL CLAIM

Argument:

The 4th Circuit's rationale cannot be determined for affirming the denial of a COA [1A-3A]. Petitioner believes this Court must look at the District Court's analysis for denying a COA [4A-12A].

Petitioner is Factually Innocent and the trial transcripts will prove this [2B-397B]. Factual/Actual Innocence is the "bedrock" of habeas corpus therefore making Petitioner's request for a COA a "debatable constitutional claim." *Slack*, 529 U.S. at

484. Petitioner's case is where the prosecution never proved all elements of a crime thereby violating Petitioner's 5th, 14th amendment right to have all elements proven beyond a reasonable doubt. "It is beyond question, of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged . . . violate[s] due process." *Vachon v. New Hampshire*, 414 U.S. 478 (1974). *See Thompson v. Louisville*, 362 U.S. 199 (1960); *in re Winship*, 397 U.S. 358, 364 (1970). In addition to Respondents failing to prove the 2nd Element of Firearm by Felon [24C] the Trial Court *forced* the jury to accept that the 2nd Element of Firearm by Felon had been proven, via a jury instruction [398B-401B], thus vitiating the fact-finding process that was reserved for the jury – thereby violating Petitioner's 6th, 14th amendment right to a jury trial. The Trial Court's action constituted a Mandatory Conclusive Evidentiary Presumption. "This bedrock, axiomatic and elementary [constitutional] principle, prohibits the State from using evidentiary presumptions in a jury charge that have the effect of relieving the State of its burden of persuasion beyond a reasonable doubt of every essential element of a crime." *Francis v. Franklin* 471 U.S at 313. "It is self-evident, we think, that the Fifth Amendment requirement of proof beyond a reasonable doubt and the Sixth Amendment requirement of a jury verdict are interrelated." *Sullivan* 508 U.S. 278.

Petitioner provided the District Court with 400 pages of trial transcripts [2B-397B] and the record is *devoid* of Respondents ever proving the 2nd Element of Firearm by Felon [24C]. Had this error not occurred *nobody* would have convicted Petitioner due to Respondents failing to prove the 2nd Element of Firearm by felon,

thereby satisfying 28USC2254(e)(2)(B). This error resulted in the conviction of an innocent person. Failure to hear this claim will constitute a "Miscarriage of Justice" enunciated in *Murray v. Carrier*, 477 U.S. 478, 492 (1986). Petitioner believes his claim of Actual Innocence satisfies *McQuiggin v. Perkins*, 569 U.S. 383 (2013).

Based on *Slack*, 529 U.S. at 483-84, can reasonable jurists debate whether this issue of Factual/Actual Innocence presents a Substantial Constitutional question before convicting an innocent man? Plaintiff believes the answer is yes.

B.) THE DISTRICT COURT'S RULING

Standard of Review:

"We hold that actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar." *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013).

"We have applied the miscarriage of justice exception to overcome various procedural defaults." *McQuiggin*, 569 U.S. at 393. "Most recently, in *House*, we reiterated that a prisoner's proof of actual innocence may provide a gateway for federal habeas review of a procedurally defaulted claim of constitutional error. 547 U.S., at 537-538." *Id.* at 393.

"Faced with a common problem, we adopt a common solution: a procedural default does not bar consideration of a federal claim on either direct or habeas review unless the last state court rendering a judgment in the case "`clearly and expressly'" states that its judgment rests on a state procedural bar. *Caldwell*, 472

U.S., at 327, quoting *Long*, 463 U.S., at 1041." *See Harris v. Reed*, 489 U.S. at 262-63.

"[W]e have consistently held that the question of when and how defaults in compliance with state procedural rules can preclude our consideration of a federal question is itself a federal question." *Johnson v. Mississippi,* 486 U.S. 578, 587 (1988).

"Applying the "plain statement" requirement in this case, [it is] conclude[d] that the [NC Supreme Court] did not "clearly and expressly" rely on waiver as a ground for rejecting any aspect of petitioner's [Sandstrom] claim. *Michigan* v. *Long*, 463 U.S., at 1041. Accordingly, this reference to state law would not have precluded our addressing petitioner's claim had it arisen on direct review. As is now established, it also does not preclude habeas review by the District Court." *Harris*, 489 U.S. at 266.

Argument:

Since the issue of Procedural Default is itself a federal question Petitioner's claim of Factual Innocence would therefore satisfy the 2nd Prong in *Slack*, 529 U.S. at 484-85 as the claim of Factual/Actual Innocence will surmount any claim of procedural default : thereby making the claim at least debatable among reasonable jurists. See *Johnson v. Mississippi,* 486 U.S. at 587.

Petitioner believes the 4th Circuit failed to provide a rational basis to affirm the denial of a COA – Petitioner believes it is appropriate to therefore review the

District Court's analysis. 1.) The District Court relied on Procedural Default that Petitioner had not objected. 2.) The District Court even agreed that the NCCOA never definitively ruled on Petitioner's *Sandstrom* claim but ruled that it ruled on the entire claim *in general.* 3.) The District Court determined that NCCOA was the last court to rule. 4.) The District Court further ruled that: "*However, even if the court* ***assumes*** *petitioner's assertion is true,* ***such circumstances illustrates legal,*** *but not factual,* ***innocence*** *as required. United States v. Pettiford, 612 F.3d 270, 282 (4th Cir. 2010)...* [5.)] *Petitioner fails to even assert that he did not have a prior felony conviction satisfying the requisite element in North Carolina's criminal statute for possession of a firearm by a felon.*" (emphasis added). [11A].

Petitioner believes the District Court was incorrect as to every analysis since Petitioner was Factually Innocent. Petitioner satisfies the "Miscarriage of Justice" and "Actual Innocence" provision enunciated in *Murray v. Carrier*, 477 U.S. 478, 492 (1986); *McQuiggin v. Perkins*, 569 U.S. 383 (2013) since Respondents failed to prove the 2nd Element of Firearm by Felon [24C] and the trial transcripts would show this. [2B-397B]. Petitioner satisfied 28USC2254(e)(1) and 28USC2254(e)(2)(B) in the event he did not satisfy (e)(1).

Based on this premise of Actual Innocence Petitioner would negate the District Court's analysis regarding 1.) That Petitioner was Procedurally Barred[1]

[1] Notwithstanding Factual Innocence, Petitioner even complied with all state procedural requirements as will be discussed in Argument 3.A Petitioner Was Not Required to Object *infra*.

[9A-10A] and 2.) Whether the NCCOA did rule on Petitioner's *Sandstrom* claim[2] [410B-411B]. *See* [10A] 3.) In regard to the District Court believing that the NCCOA was the last court to rule : the District Court is incorrect as the last state court to render an opinion was the NC Supreme Court [452B-453B, 412B-451B]. See *Caldwell*, 472 U.S., at 327; *Long*, 463 U.S., at 1041; *Harris v. Reed*, 489 U.S. at 262-63. 4.) As to the District Court's ruling that Petitioner was legally innocent, rather than Factually Innocent [11A], that is a substantial question for debate for the issuance of a COA. 5.) The District Court's analysis that Petitioner had to prove to the District Court that he was not a felon [11A], the very element that Respondents failed to produce at trial, would only be more of a debatable issue for the issuance of a COA as that would shift the burden, which is required for Respondents, to Petitioner for an element that was never proven.

Petitioner's claim of Factual Innocence is, at the very least, debatable as to whether or not the lower courts properly applied a procedural bar. It is for this reason why Petitioner believes he is entitled for the issuance of a COA.

[2] Notwithstanding Factual Innocence, there is ample evidence of NC State Statute, primarily NCGS 15A-1443 [29C], and Federal Case law showing that the NCCOA's decision was actually interwoven with Federal Law. This will be discussed in Argument 3.B The NCCOA Never Definitively Ruled on Petitioner's *Sandstrom* Claim *infra*.

3.) MORE IN-DEPTH ANALYSIS

A.) PETITIONER WAS NOT REQUIRED TO OBJECT

Notwithstanding Petitioner's claim of Factual Innocence, Petitioner was not required to object via NCGS 15A-1446(d)(13), (14) [31C] – this alone makes Petitioner's request for a COA debatable as to whether the lower courts properly applied a procedural bar. Also the NCCOA was not the last court to rule : it was the NC Supreme Court [452B-453B], thereby making the District Court's reliance on the NCCOA ruling to no avail – this will be discussed in Argument 3.C *infra.*

Petitioner even complied with all state procedural regulations. The District Court relying on NC App Rule 10(a) [33C-36C] is unsupported because it is not consistently or regularly applied. See *Johnson v. Mississippi*, 486 U.S. at 587; *Wainwright v. Sykes*, 433 U.S. 72, 108 n.9 (1977). NC Statute dictates Petitioner's preservation of claims for direct appeal, specifically NCGS 15A-1446(d)(13), (14) [29C-30C]. Therefore **no objection was required** because in a different claim in Petitioner's state appeal he challenged the failure to hold a charge conference and did **not** object, **yet the NC COA ruled on the merits** [411B]. NCGS 15A-1231 [27C-28C], rather than objection (NC App Rule 10(a)) [33C-36C], preserved the issue for Petitioner in his separate claim on State Appeal, which even refers to NCGS 15A-1446(d) : *just* like how NCGS 15A-1446(d)(13), (14) [31C] preserved Petitioner's jury instruction argument that he presented to the District Court and now presents to this Court. Thus, NC Statute can dictate preservation of issues for

Appellate Review – which would show that NC App Rule 10(a) is not regularly or consistently applied[3].

It would be inconsistent for the District Court to apply NC App Rule 10(a) to Petitioner while ignoring the fact that the same NC Court of Appeals ruled on the merits of a different claim on Petitioner's State Appeal when Petitioner **did not object to preserve that other claim** [411B][4]. Petitioner even made a thorough mentioning to the District Court of how Petitioner was not required to object [554B-556B]. *See also* [617B-619B]. Petitioner has raised the issue he raised in the District Court [480B-509B] on State Appeal [402B-409B], even followed all State Procedural grounds and thoroughly discussed how he preserved his issue on State appeal

[3] There is a plethora of issues in North Carolina that do not need objection to issues, such as 1.) Fatally Defective Indictments 2.) Wrong Jury Instructions Not Based On Evidence 3.) subsequent admission of evidence involving a specified line of questioning when there has been an improperly overruled objection to the admission of evidence involving that line of questioning 4.) Failure to Hold Charge Conference 5.) **NCGS 15A-1446(d)**. *See* State v. Duke, 360 N.C. 110, 123, 623 S.E.2d 11, 20 (2005): Whenever a defendant alleges a trial court made an improper statement by expressing an opinion on the evidence in violation of N.C.G.S. §§ 15A-1222 and 15A-1232, the error is preserved for review without objection due to the mandatory nature of these statutory prohibitions. (citing State v. Young, 324 N.C. 489, 494, 380 S.E.2d 94, 97 (1989)). When the "trial court acts contrary [to] statutory mandate and a defendant is prejudiced thereby, the right to appeal the court's action is preserved, *notwithstanding defendant's failure to object at trial.*" State v. Ashe, 314 N.C. 28, 331 S.E.2d 652 (1985). This is different than "plain error" review, and applies in both civil and criminal contexts.
Second, "where evidence is rendered incompetent by statute, it is the *duty of the trial judge to exclude it*, and his failure to do so is reversible error, whether objection is interposed and exception noted or not." Christensen v. Christensen, 101 N.C. App. 47, 54-55, 398 S.E.2d 634, 638 (1990).
Case law existed which required a trial judge to instruct on a lesser-included offense supported by the evidence even absent a specific request for such an instruction. State v. Brown, 300 N.C. 41, 265 S.E.2d 191 (1980). Assuming, without deciding, that simple assault was a lesser-included offense of armed robbery, this Court in Odom stated that the Brown rule was "altered" by the amendment to Rule 10(b)(2). A closer analysis of the interrelationship of these rules convinces us that Rule 10(b)(2), as amended, does not, in fact, "alter" the rule of Brown or the analogous rule of Todd, Spruill, Jones, Miller, and Poplin (where competent evidence is presented, the trial judge must give self-defense and "no duty to retreat" instruction even absent specific request).

[4] The claim Petitioner is referring to was the Trial Court's failure to hold a Charge Conference pursuant to NCGS 15A-1231.

[402B-409B, 536B-581B] – Petitioner satisfied 28USC2254(e)(1) and 28USC2254(e)(2)(B) in the event he did not satisfy (e)(1).

Assuming *arguendo* that Petitioner was required to object he satisfies the "Miscarriage of Justice" and "Actual Innocence" provision enunciated in *Murray v. Carrier*, 477 U.S. 478, 492 (1986); *McQuiggin v. Perkins*, 569 U.S. 383 (2013) since Respondents failed to prove the 2nd Element of Firearm by Felon [24C].

DISTRICT COURT'S APPLICATION

The District Court applied *Honeycutt v. Mahoney*, 698 F.2d 213 (4th Cir. 1983) relating to Procedural Default [9A-10A] in its order about objection requirements but that caselaw was only in relation to procedural rules as a *general* matter – and were not applicable to Petitioner's case. "However, 'the fact that a state procedural rule is adequate in general does not answer the question of whether the rule is adequate as applied in a particular case.' (citation omitted)." *Jones v. Sussex I State Prison*, 591 F.3d 707, 716 (4th Cir. 2010). But "in setting forth the preconditions for issuance of a COA under § 2253(c), Congress expressed no intention to allow trial court procedural error to bar vindication of substantial constitutional rights on appeal." *Slack* at 483. "It is the typical, not the rare, case in which constitutional claims turn upon the resolution of contested factual issues." *Townsend v. Sain*, 372 U.S. 293, 312 (1963).

Honeycutt does not apply as the petitioner in that case failed to raise the issue on direct appeal and was not factually innocent – here in the case *sub judice* : Petitioner did raise the issue on direct appeal and is Factually Innocent [402B-

409B]. In Petitioner's particular case the application of *Honeycutt* is not adequate because in Petitioner's particular case you do not need to object. *See* NCGS 15A-1446(d)(13), (14). The District Court also cited *Burket*, 208 F.3d at 184; *Smith*, 477 U.S. at 533; *Engle*, 456 U.S. at 131- 35 yet those cases do not deal with North Carolina law and are not applicable to Petitioner's case in particular. What is noteworthy is that in *Jones*, 591 F.3d at 715-17 the 4th Circuit ruled that Jones was not procedurally barred because the State couldn't apply the *Slayton* rule to Jones' case in particular – likewise the District Court's application of *Honeycut, Burket, Smith, Engle* in Petitioner's case *sub judice* is inapplicable due to the particular nature of Petitioner's claim.

The District Court also ruled that Petitioner had not satisfied Actual Cause and Prejudice. Petitioner did satisfy Cause and Actual Prejudice because Petitioner was not required to object, that is why NCGS 15A-1446(d)(13), (14) [31C] doesn't require objections.

B.) THE NCCOA NEVER DEFINITIVELY RULED ON PETITIONER'S *SANDSTROM* CLAIM

Notwithstanding Petitioner's claim of Factual Innocence, Petitioner believes the District Court's application that the NCCOA did rule on Petitioner's *Sandstrom* claim is questionable, due to NCGS 15A-1443 [29C] - and thus debatable for the issuance of a COA as to whether the lower courts properly relied on the NCCOA's opinion for justification to apply a procedural bar. Also the NCCOA was not the last court to render judgment as that was the NC Supreme Court, thereby making the

District Court's reliance on just the NCCOA [10A] to no avail – this will be discussed in Argument 3.C The NCCOA Was Not the Last Court Petitioner Appealed To *infra.*

The District Court ruled that:

*"While the North Carolina Court of Appeals did not explicitly address a Sandstrom error in its order, it addressed all petitioner's arguments regarding jury instructions in general. Sharma, 2020 WL 7350699, *7 (addressing petitioner's claims regarding jury instructions generally). Because petitioner's argument pursuant to Sandstrom is based on a jury instruction given by the trial court, the North Carolina Court of Appeals' decision necessarily also addressed the basis of petitioner's Sandstrom claim."* [10A].

Petitioner alleged in the District Court that the NCCOA never ruled on Petitioner's Sandstrom claim [487B, 493B]. The District Court agrees that the NCCOA never addressed the *Sandstrom* issue yet the District Court went on to hypothesize that the NCCOA ruled on the 2 claims *in general.* The District Court is incorrect to hypothesize a summary dismissal because NCGS 15A-1443(b) [29C] mandates that any assertion of a federal constitutional right violation is automatically prejudicial unless found harmless beyond a reasonable doubt – thereby requiring a ruling to the issue. When Petitioner filed his brief in direct appeal he separated his claim into two separate sections : one state-based and one federal-based [402B-409B]. The NCCOA made no ruling as to Petitioner's Federal Constitutional violation thereby contradicting the position of NCGS 15A-1443

[29C]. Petitioner citied to the District Court that NCGS 15A-1443 [29C] applied and that *Ake* v. *Oklahoma* 470 U.S. 68 (1985) controls. *See* [562B-563B].

Federal Courts are not allowed to speculate as to what may or may not have been a state court's intention – as this would support the prong in *Harris*, 489 U.S. at 262 that the last state Court must expressly and unequivocally rely on the procedural default. Therefore during direct appeal the NCCOA remained silent [410B-411B] thereby interweaving their decision with federal law. *See Long*, 463 U.S. at 1040-42. As long as Petitioner cites federal cases he is raising a constitutional question as stated in *Jones v. Sussex I State Prison*, 591 F.3d 707, 713-14 (4th Cir. 2010)

The NC COA couldn't have been unaware of Petitioner's Federal Claims. Pursuant to NCGS 15A-1443(b) any constitutional violation is prejudicial thereby requiring a ruling, yet the NC COA never definitively decided the issue. It cannot be said wholesomely that the procedural default was applied to Part II of the *Sandstrom* error since NCGS 15A-1443(b) [29C] is automatically prejudicial. The NCCOA intertwined its decision with Federal Law. This situation becomes *very* similar, if not identical, to what happened in *Ake* v. *Oklahoma* 470 U.S. 68 (1985) in *Ake*:

"Under Oklahoma law, and as the State conceded at oral argument, federal constitutional errors are 'fundamental.' Tr. of Oral Arg. 51-52; see Buchanan v. State, 523 P.2d 1134, 1137 (Okla.Cr. 1974) (violation of constitutional right constitutes fundamental error); see also Williams v. State, 658

P.2d 499 (Okla.Cr. 1983). Thus, the State has made application of the procedural bar depend on an antecedent ruling on federal law, that is, on the determination of whether federal constitutional error has been committed. Before applying the waiver doctrine to a constitutional question, the state court must rule, either explicitly or implicitly, on the merits of the constitutional question. As we have indicated in the past, when resolution of the state procedural law question depends on a federal constitutional ruling, the state-law prong of the court's holding is not independent of federal law, and our jurisdiction is not precluded." Ake, 470 U.S. *at* 74-75.

Pursuant to NCGS 15A-1443(b), constitutional issues are deemed prejudicial just like the holding in *Ake*, 470 U.S. *at* 74-75.

Assuming *arguendo* that the NC COA did apply a state procedural bar on Part II of Petitioner's *Sandstrom* claim [406B-409B], Respondents' and the District Court's reliance on *Honeycutt v. Mahoney*, 698 F.2d 213 (4th Cir. 1983) is inapposite to Petitioner's scenario due to *Honeycutt* never raising the issue on direct appeal or claiming actual innocence – Petitioner did raise the issue on direct appeal and was Factually Innocent; also in Petitioner's particular scenario objection was not needed. *See* NCGS 15A-1146(d)(13), (14) [31C]. "However, "the fact that a state procedural rule is adequate in general does not answer the question of whether the rule is adequate as applied in a particular case." *Reid v. True*, 349 F.3d 788, 805 (4th Cir. 2003)." *Jones*, 591 F.3d at 716.

In either event Petitioner's Factual Innocence or his reliance on NCGS 15A-1443 [29C] and *Ake* v. *Oklahoma* 470 U.S. 68 (1985) would make the District

Court's application for a procedural default [10A] questionable, for a debate for the issuance of a COA. Also the NCCOA was not the last court to render judgment as that was the NC Supreme Court, thereby making the District Court's reliance on just the NCCOA [10A] to no avail – this will be discussed in Argument 3.C The NCCOA Was Not the Last Court Petitioner Appealed To *infra*.

C.) THE NCCOA WAS NOT THE LAST COURT PETITIONER APPEALED TO

Notwithstanding Petitioner's claim of Factual Innocence the NCCOA wasn't even the last court to render judgment : it was the NC Supreme Court [452B-453B]. This would render the District Court's reliance that Petitioner was procedurally barred and that the NCCOA was the last court to rule [10A] to no avail – thereby making the issue debatable for the issuance of a COA. *See* Argument 3.A and 3.B *supra*.

The NCCOA wasn't even the last court to rule on Petitioner's claim – thereby making the District Court's reliance on the NCCOA's opinion in conflict with precedent[5]. Petitioner appealed the NCCOA ruling to the NC Supreme Court, to which he was denied on the merits, therefore making the NC Supreme Court the *last court* to render judgment [452B-453B]. See; *Harris v. Reed*, 489 U.S. 255, 262 (1989); *Michigan v. Long*, 463 U.S. 1032, 1042 (1983); *Coleman v. Thompson*, 111 S. Ct. 2546, 2557 (1991); *Ake* v. *Oklahoma* 470 U.S. 68 (1985). Petitioner even after being denied by the NC Supreme Court filed a State Habeas Corpus subsequently

[5] It is noteworthy that the District Court didn't even mention that Petitioner appealed the NCCOA ruling to the NC Supreme Court.

after. *See* [454B-471B, 472B-473B]. Petitioner believes the District Court, only relying on the NC COA judgment [9A-11A], used an incorrect application of facts/law.

Petitioner believes the District Court erred in the fact-finding process and subsequently erred in applying the appropriate standard of law.

DIFFERENCE BETWEEN DISMISSED AND DENIED

The NC Supreme Court [452B-453B] did *not* specifically rely on an independent/adequate state ground otherwise it would have said so. See; *Harris v. Reed*, 489 U.S. 255, 262 (1989); *Michigan v. Long*, 463 U.S. 1032, 1042 (1983); *Coleman v. Thompson*, 111 S. Ct. 2546, 2557 (1991); *Ake* v. *Oklahoma* 470 U.S. 68 (1985). When there is a presentment of constitutional issues the NC Supreme Court has a habit of denying the case without explanation thereby invoking confusion[6]. This "confusion" is to be resolved in favor of Petitioner under *Harris v. Reed*, 489 U.S. 255, 262 (1989); *Michigan v. Long*, 463 U.S. 1032, 1042 (1983).

To bolster Petitioner's claim that the NC Supreme court ruled on the merits this Court need not look further because when Petitioner appealed to the NC Supreme Court he was *denied* on the merits via one-word [452B-453B]; When Petitioner filed his State-Habeas Corpus he was *denied* with one-word [472B-473B]. There are no procedural barriers when one applies for a State Habeas Corpus in North Carolina. *See* NCGS 17-1 *et seq* [14C-23C]. Therefore the NC Supreme Court did **not** rely on a state bar and instead determined the merits.

---

[6] See https://scholarship.law.campbell.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1516&context=clr pg. 10-11.

"Applying the 'plain statement' requirement in this case, we conclude that the [NC Supreme Court] did not 'clearly and expressly' rely on waiver as a ground for rejecting" Petitioner's claim.... "this statement falls short of an explicit reliance on a state-law ground." *Harris* at 266. There is no doubt that Petitioner was denied on the merits in the NC Supreme Court because there are no procedural barriers when one applies for a State Habeas Corpus in North Carolina and both courts used the word : **Denied**. Thus, the NC Supreme Court during direct appeal and the NC COA during State Habeas share a common factor of using the word : Denied for Petitioner on the merits therefore making their judgment interwoven with federal law. *See Long*, 463 U.S. at 1040-42. If the NC Courts used the word *dismissed* then it can be inferred that it was relying on a state procedural rule : but that is not the case in Petitioner's scenario. "Accordingly, this reference to state law would not have precluded our addressing petitioner's claim had it arisen on direct review. As is now established, it also does not preclude habeas review by the District Court." *Harris*, 489 U.S. at 266.

Based on *Slack*, 529 U.S. at 483-84 can reasonable jurists debate whether the District Court was correct on relying on the NCCOA's opinion for the issuance of a procedural default, before convicting an innocent man? Petitioner believes the answer is: yes.

D.) WAS PETITIONER LEGALLY INNOCENT OR FACTUALLY INNOCENT?

The District Court used the premise that Petitioner was legally innocent, rather than Factually Innocent, to justify its imposition of a Procedural Bar. The District Court never went into details to explain the difference [11A]. The issue of whether Petitioner was legally innocent or Factually Innocent is a debatable claim, for the issuance of a COA, if the lower courts properly applied a Procedural Bar.

The District Court ruled:

"*However, even if the court* ***assumes*** *petitioner's assertion is true,* ***such circumstances illustrates legal,*** *but not factual,* ***innocence*** *as required. United States v. Pettiford, 612 F.3d 270, 282 (4th Cir. 2010).*" [11A].

There have been a plethora of cases to where habeas has been granted on the basis of Legal Innocence. See *Strickland v. Washington*, 466 U.S. 668 (1984); *Chapman v. California*, 386 U.S. 18 (1967); *Davis v. Washington*, 547 U.S. 813 (2006); *Francis v. Franklin* 471 U.S. 307 (1985); *Bush v. Stephenson* 669 F. Supp. 1322 (E.D.N.C. 1986); etc. In these cases the petitioners were guilty but some trial error rendered their conviction invalid.

Petitioner fails to see the District Court's reasoning that Petitioner is Legally Innocent rather than Factually Innocent – in both scenarios Habeas Corpus would be granted. To bolster Petitioner's stance Petitioner specifically relied upon *Bush* 669 F. Supp. 1322 (E.D.N.C. 1986) as the primary case relating to Petitioner's scenario in the event of Legal Innocence. In Petitioner's Habeas Corpus he used

Bush as the basis for issuance of the Great Writ but put the "spin" to which *Bush* did/could not : Petitioner was *Factually* Innocent.

The District Court then cites one case which is inapposite to Petitioner's scenario : *United States v. Pettiford,* 612 F.3d 270, 282 (4th Cir. 2010). *Pettiford* was a challenge to the *length* of a sentence thereby showing legal innocence – but that is not what Petitioner debates in his case *sub judice.* Petitioner challenges the *very basis* for being convicted due to Respondents failing to prove all elements beyond a reasonable doubt, and if this Court were to review the record of 400 pages of trial transcripts [2B-397B] this Court would agree the record is devoid of proving the 2nd element of Firearm by Felon [24C]. "It is beyond question, of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged . . . violate[s] due process." *Vachon v. New Hampshire,* 414 U.S. 478, 480 (1974). The District Court's conclusion of legal innocence [11A] is in doubt, or at the very least : debatable for the issuance of a COA.

Had the Trial Court not mandated to the jury, during the jury charge via a Mandatory Conclusive Evidentiary Presumption [398B-401B], that the 2nd Element of Firearm by Felon had been proven : *nobody* would have convicted Petitioner : thereby satisfying 28USC2254(e)(2)(B). "This bedrock, axiomatic and elementary [constitutional] principle, prohibits the State from using evidentiary presumptions in a jury charge that have the effect of relieving the State of its burden of persuasion beyond a reasonable doubt of every essential element of a crime." *Francis* 471 U.S at 313. "It is self-evident, we think, that the Fifth Amendment

requirement of proof beyond a reasonable doubt and the Sixth Amendment requirement of a jury verdict are interrelated." *Sullivan* 508 U.S. 278.

Based on *Slack*, 529 U.S. at 383-84, can reasonable jurists at least debate that Petitioner is Factually Innocent before convicting an innocent man? Petitioner believes the answer is: yes.

E.) THE BURDEN TO PROVE AN ELEMENT DOES NOT FALL ON PETITIONER

The District Court ruled: "*Petitioner fails to even assert that he did not have a prior felony conviction satisfying the requisite element in North Carolina's criminal statute for possession of a firearm by a felon.*" (emphasis added). [11A]. This ruling by the District Court only bolsters Petitioner's claim that he is entitled for a COA as this portion of the ruling is intertwined with the ruling that the District Court believed that Petitioner was legally innocent. *See* Argument 3.D *supra.*

The burden **does not** go to Petitioner to show that he is not a convicted felon. There is nothing in NCGS 14-415.1 that says that Petitioner must prove that he is not a felon. There are 2 elements NCGS 14-415.1 [24C]. and that is 1.) a defendant must be in possession of a firearm and 2.) he must be a felon – and both those elements are for the prosecution to prove. The jury is the fact-finder and if they have not been apprised of the 2nd element of Firearm by Felon, during Respondents' Case-In-Chief, then the jury is required to acquit. The District Court essentially says that: "Though Respondents failed to prove an element to the jury Petitioner is still required to prove to me (District Court) that he is not a convicted felon." The

District Court's rationale is essentially saying that Petitioner must now have a trial before a judge to disprove an element that was never proved to the jury. This rationale is inapposite to Habeas proceedings and to the function of the 5th, 6th, 14th Amendments. In the federal courts, "[a] simple plea of not guilty ... puts the prosecution to its proof as to all elements of the crime charged." *Estelle v. McGuire*, 502 U.S. 62, 70 (1991).

How can Petitioner disprove the 2nd Element of Firearm by Felon [24C] when Respondents never apprised the jury of the element? This would shift the burden of production and persuasion to Petitioner to prove an element that was reserved for Respondents, if Petitioner were to answer the District Court. The failure of Respondents to prove an element cannot be the burden for a Petitioner to further disprove – the District Court's rationale has been condemned in *Sandstrom* 442 U.S. 510 (1979); *Francis* 471 U.S. 307 (1985); *Yates* 500 U.S. 391 (1991); *Bush* 669 F. Supp. 1322 (E.D.N.C. 1986); *Sullivan* 508 U.S. 275 (1993), *Mullaney* 421 U.S. 684 (1975); *Morissette* 342 U.S. 246, 274-75 (1952), etc. There is nothing in NCGS 14-415.1 that says that Petitioner must prove that he is not a felon. There are 2 elements NCGS 14-415.1 [24C]. and that is 1.) a defendant must be in possession of a firearm and 2.) he must be a felon. Respondents failed to provide the jury with information as to the 2nd Element of Firearm by Felon [24C].

It is axiomatic that anyone going to trial is innocent until proven guilty: not the other way around. If this Court were to go through 400 pages of Trial Transcripts [2B-397B] and see that Respondents never proved the 2nd Element of

Firearm by Felon [24C] this Court would see that Petitioner is: **Actually Innocent**. Due to the absence of Respondents failing to prove the 2nd Element *no reasonable factfinder* would have found Petitioner guilty. *See* 28USC2254(e)(2)(B). "It is beyond question, of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged . . . violate[s] due process." *Vachon v. New Hampshire*, 414 U.S. 478, 480 (1974).

Based on *Slack*, 529 U.S. at 383-84 can reasonable jurists debate whether the District Court was correct in justifying its procedural default based upon requiring Petitioner to prove to the District Court that he didn't have a felony conviction, when the 2nd Element of Firearm by Felon (prior felony conviction) was never proven to the jury? Petitioner believes the answer is: yes.

RELIEF/CONCLUSION

WHEREFORE, Petitioner reverently requests this Court to grant Certiorari.

/Sign/ Siddhanth Sharma

Siddhanth Sharma *Pro Se*

/Date/ 10-16-23

Siddhanth Sharma

P.O. Box 937

Morrisville, NC, 27560

(919) 880-3394

E-Mail: Siddhanthsharma1996@yahoo.com

CERTIFICATE OF FILING/SERVICE/WORD COUNT AND PENALTY OF PERJURY

I declare under penalty of perjury that the forgoing is true, correct, and complete to the best of my knowledge.

Petitioner certifies, pursuant to Rule 33.2 that this Petition for Writ of Certiorari is in compliance with the word-count limit and is 7,673 words.

Petitioner certifies, pursuant to Rule 33.1, that this Petition for Writ of Certiorari is typed using 12-Point Century Schoolbook font and is Double-Spaced.

Petitioner also certifies, pursuant to Rule 29, that a copy has been sent to ALL PARTIES via mail/hand delivery/E-Mail as follows on 16th October 2023.

Robert Ennis
NC Department of Justice – Special Deputy Attorney General
P. O. Box 629
Raleigh, NC, 27602
Contact : 919-716-6578
Fax: 919-716-0001
E-Mail: rennis@ncdoj.gov

Josh Stein
Attorney General
P.O. Box 629
Raleigh, NC, 27602
919-716-6400
E-Mail:

Sign: [signature]

Date: 10-16-23