

23-7742

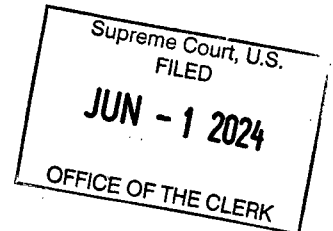
No. 23-6062

ORIGINAL

5:21-hc-02239-M

IN THE

SUPREME COURT OF THE UNITED STATES



CLIFTON WILLIAM BATTIS — PETITIONER
(Your Name)

VS.

STATE OF NORTH CAROLINA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

CLIFTON WILLIAM BATTIS
(Your Name)

NASH CORRECTIONAL INSTITUTION
(Address)

P.O. BOX 600 NASHVILLE, N.C. 27856
(City, State, Zip Code)

919 252-459-4455
(Phone Number)

QUESTION(S) PRESENTED

WAS THERE JURISDICTION TO ISSUE A CERTIFICATE OF APPEALABILITY UNDER 28 U.S.C. § 2253(C) AND TO ADJUDICATE PETITIONER'S APPEAL.

WHETHER THE APPLICATION FOR A WRIT OF HABEAS CORPUS WAS OUT OF TIME UNDER 28 U.S.C. § 2244(d)(1) DUE TO THE DATE ON WHICH THE JUDGEMENT BECAME FINAL BY THE CONCLUSION OF DIRECT REVIEW OR THE EXPIRATION OF THE TIME FOR SEEKING SUCH REVIEW."

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

U.S DISTRICT COURT P.O Box 25670
E.D OF N.C Raleigh, N.C 27611
NO. 5:21-hc-02239-M

U.S Supreme Court
RENICO V. LETT 5.3.2010
HARRINGTON V. RICHTER 1.19.2011

U.S COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, VA 23219

NO-23-6062

Court of Appeals of N.C
P.O Box 2779
Raleigh, N.C 27602

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Bock v. Davis (2017)	
Bowel v. Russell (2007)	Harrington v. Richter 1.19.2011
Gonzalez v. Thaler 2012	
Miller-Ell v. Cockrell (2003)	
Martin v. Duffy (2017)	
Slack v. McDaniel (2000)	Renico v. Lett 5.3.2010

STATUTES AND RULES

N/A

OTHER

N/A

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 _____ 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 United States district 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.

☒ 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 N.C. Court of Appeals C.O.A. 19-1100; 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 Feb 26, 2024.

☐ 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: March 12-14 2024, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was October 16 2021.
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

Coleman v. Thompson, 501 U.S. 722, 111 S. CT 2546, 115 L. ED. 2d 646 (1991)

Harrington v. Richter 1-19-2011

Renico v. Lett 5-3-2010

Fay v Noia

Towson v. Sain, 372 U.S. 293, 83 S. CT. 745, 9 L. Ed. 2d 770 (1963)

SHINN v. Ramirez, 596 U.S. 366, 142 S. CT. 1718, 212 L. Ed. 2d 713 (2022)

Keeney v. Tamayo-Reyes, 504 U.S. 1, 112 S. CT 1715, 118 L. Ed. 2d 318 (1992)

STATEMENT OF CASE

(Attachment)

3. At trial, PETITIONER Move for dismissal on the ground of indictment issues in Violation of Sixth and fourteenth Amendments guarantee of a 'speedy trial'. Petitioner further Contended that, because he had been given improper Notice of the Charges against him for Much of the trial, the Charging instruments in prosecution Substantially prejudiced his ability to litigate effectively or mount a defense Pro-se At trial. THE trial Court denied and ignored the Pro-se Motions to dismiss. THE charges of the Allegation was the Central issue at trial, and the lack of evidence turned Critically on Witness-Victim changing of the events Narrative that Alleged had occurred 2 years earlier.

PETITIONER WAS CONVICTED AND Sentence to 28-43 years Consecutively to imprisonment. His charge being defended differed from Jury finding him guilty of (Attemp STATUTORY Sexual offense w/c. by adult) Art. II on Indictment. Super seeded Indictment twice, filed a timely appeal to the N.C. Court of Appeals, raising his errors, but appellate Attorney never raised Indictment structural error, fatal variance, fatal defect, improper Notice via Indictment.

THE Court of Appeals Affirmed PETITIONER Conviction on Sept. 15, 2020. SEE CASE file COA 19-1100 STATE V. BATTIS, PETITIONER Appellate Counsel then brought a PETITION for Discretionary Review with the North Carolina Supreme Court. THE Appellate Counsel ignored petitioner request and Attempted to raised a frivolous claim, when PETITIONER then terminated Counsel and dismissed the PDR.

STATEMENT OF CASE
(Attachment)

4. ON MAR. 21. 2021, PETITIONER filed pro-se in Johnston County Superior Court a timely and proper petition for Motion for Appropriate Relief.

PETITIONER raised, his, Subject Matter Jurisdiction, improper Notice, his speedy trial Constitutional Claim, The Court denied these claims Applying the fast and Speedy trial federal precedent And the federal precedent for indictments under U.S Const. &

5. ON OCT 16. 2021, PETITIONER filed pro-se a petition for writ of cert. Under Rule 21 N.C. R of App P. in raising claims improper notice, fatal Variance FATAL defect, Fair Speedy Trial, Violation of North Carolina Court of Appeals where a Clerk ejection order NOT on the Merits was entered.

6. ON JAN. 3 2022 PETITIONER filed pro-se a petition for writ of Habeas Corpus. with our North Carolina Supreme Court raising claims Subject matter Jurisdiction, ON Jan. 6 '22 the Clerk of Supreme Court of North Carolina ejected the petition without deciding on the Merits of the Case.

7. ON Jan 6. 2022 petitioner filed pro-se in a petition for a writ of habeas corpus in the U.S District Court for the Eastern District of North Carolina, raising, as relevant here, his 5th Fifth 6th Sixth and 14th Fourteenth Amendment Speedy-trial Claim and Indictment Subject matter Jurisdiction improper notice and Post-Conviction issues.

STATEMENT OF CASE (ATTACHMENT)

THE time during which PETITIONER properly filed STATE habeas was
Pending 28 U.S.C. § 2244(d)(2). THE Federal habeas PETITION was timely filed
30 days after the STATE court of appeals issue it's first mandate
AND 27 days after the period for filing a Post-conviction motion. THE
filing, was 30 days in keeping with time to seek review by 28 U.S.C.
§ 2254 Applicable Rules

NO Magistrate Judge recommendation exist AND the Court never deemed AS
untimely. PETITIONER spent 14 months for the district Court ruling to be
entered AND PETITIONER timely objected.

THE district Courts order ignores the STATES narrative AND fails to specify
the Court of Appeals failure to rule on the merits AND deems the final
Court ruling from the STATES general Court of Justice Superior Court division.

7. PETITIONER filed a timely Notice of Appeal Jan. 26, 2023 that filing also requested
A Certificate of Appealability from the district Court. SEE Fed. Rules Governing Section
2254 Cases ("Habeas Rules") Fed. R. App. P. 4(a)(2) the district Court rejected that
request.

STATEMENT OF CASE (Attachment)

7. PETITIONER then filed a second request for a certificate of appealability in the Court, in accordance with rules only to be denied again.

PETITIONER then filed a request for a certificate of appealability in the Court of Appeals, in accordance with Fed R. App. P. 22(b)(1)(2). PETITIONER raised speedy trial claim, Post Conviction issues, one year timeliness, and Indictment Subject Matter Jurisdiction improper notice. in the brief of the fourth Circuit informal briefing order with Constitutional Claims for Certificate of appealability in proper Procedural form.

8. THE COURT OF APPEALS then ruled as follow Dismissed by Unpublished per curiam opinion. THE order is not appealable unless a Circuit Justice or judge issues a certificate of appealability. SEE 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue absent "a Substantial Showing of the denial of a Constitutional right." 28 U.S.C. § 2253(c)(2). When the district Court denies relief on the Merits, a prisoner satisfies this standard by demonstrating that reasonable Jurist could find the district Court's Assessment of the Constitutional Claims debatable or Wrong. SEE *Buck v. Davis*, 580 U.S. 100, 115-17 (2017) when the district Court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the

STATEMENT OF CASE

8. PETITION STATES A ~~debatable~~ CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT. GONZALEZ V. THALER, 565 U.S. 134, 140-41 (2012) (CITING SLACK V. MCDANIEL, 529 U.S. 473, 484 (2000)).

WE HAVE INDEPENDENTLY REVIEWED THE RECORD AND CONCLUDE THAT BETTS HAS NOT MADE THE REQUISITE SHOWING. PER MARTIN V. DUFFY, 858 F.3d 239, 246 (4th CIR 2017) ACCORDINGLY WE DENY CERTIFICATE OF APPEALABILITY AND DISMISS THE APPEAL...

REASONS FOR GRANTING THE PETITION

BECAUSE AEDPA WAS TIMELY THE DISTRICT COURT WAS IN EXCESS OF ITS JURISDICTION TO RULE ON THE MATTER BECAUSE THE POST-CONVICTION EXHAUSTION REQUIREMENT HAD BEEN KNOWN BY THE DISTRICT COURT AS A FILING ERROR EJECTION AND NOT RULED ON THE MERITS AND THE COURT WAS VAGUE WITH ITS FINDINGS OF FACTS AND CONCLUSION OF LAW IN DENYING PETITION AND ITS CERTIFICATE OF APPEALABILITY, THIS SURPRISING, NOVEL OR UNFORSEEN MANNER OF REVIEW, ALSO WITH NO M&R OF

THE DISTRICT COURT UNDER THE FAILURE TO EXHAUST WAS NOT BY PASSED BY THE PETITIONER YET THE SILENCE IN THE RECORD UNDER THE CAUSE AND PREJUDICE STANDARD AMOUNTS TO AN ABUSE OF THE WRIT WHEN QUESTIONS AS TO AEDPA TIMELINESS AND JURISDICTION EXISTS ONLY IN PERSONAL AND NOT SUBJECT MATTER THE DENIAL OF THE 2254 AND CERTIFICATE OF APPEALABILITY ARE RIPE FOR FIRST IMPRESSION OF PUBLIC INTEREST.

PUBLIC INTEREST EXCEPTION EXISTS UNDER THE CONVICTION IS VOID UNDER ARIZONA V. FULMINATE AND STATES ADOPTION OF STATE V. HUNT REGARDING INDICTMENT PROCESS OF OUR CONSTITUTION FIFTH AMENDMENT, THE JUDGEMENT IS VOID YET THE COURTS OF THE STATE LACK JURISDICTION AND JURISDICTION OF THE PERSON AND NOT SUBJECT MATTER THROUGHOUT THE PROCESS BECAUSE FUNDAMENTALLY UNFAIR ACT IN COURTS CREATING RECORDS WITHOUT AUTHORITY COLEMAN V. THOMPSON, 501 U.S. 722, 111 S. CT 2546, 115 L. ED. 2D 640 (1991) THUS STATE ISSUES OF COMITY AND JURISDICTION WHEN BYPASS BY STATE IS NOT GOVERNED UNDER INDEPENDANT AND ADEQUATE PROCEDURAL RULE, MEETING THE TECHNICAL REQUIREMENTS FOR EXHAUSTION BUT COA DECLINED LACKS JURISDICTION, BECAUSE STATE AND DISTRICT COURT APPLICATION IS MEANT TO EVADE FEDERAL REVIEW AND FAILS TO SERVE INTEREST OF COMITY OR FEDERALISM.

District Court did not have Jurisdiction for the denial of Certificate of Appealability, denial nor did the Court have the Jurisdiction to rule on the Merits when by lack of the exhaustion by state procedure for Post-Conviction did not reach the Merits but for Filing Error.

THE Fourth Circuit denial of Certificate of Appealability lacks Jurisdiction and the fundamentally UNFAIR Act Prejudiced under the (AEDPA) THE MATTER before the Court IS Ripe under the public interest of failure to Exhaust with only Personal Jurisdiction AND NOT Subject MATTER. PETITIONER should be granted a timely review of Habeas Corpus with District Court

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christopher William Bell

Date: June 1st 2024