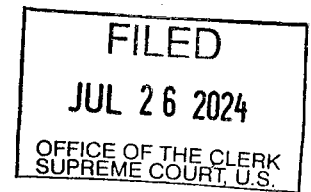


No. 24 - 5200



\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

VICTOR TAVARES — PETITIONER  
(Your Name)

vs.

STATE OF RHODE ISLAND — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE STATE OF RHODE ISLAND  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

VICTOR TAVARES  
(Your Name)

PO BOX 8273  
(Address)

CRANSTON RI 02920  
(City, State, Zip Code)

401 - 462 - 2611  
(Phone Number)

### QUESTION(S) PRESENTED

- 1.) Does the absence of a true-billed indictment in this capital case violate the Indictment Clause of the Fifth Amendment of the U.S. Constitution and R.I. Super. C.R. of Crim. P. Rule 6(f)?
- 2.) Should the case have been dismissed under the Doctrine of Collateral Estoppel?
- 3.) Can the R.I. Supreme Court abrogate a U.S. Supreme Court precedent?
- 4.) Does the absence of a true-bill on the indictment affect the trial court's subject-matter jurisdiction?

## 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

- State of Rhode Island v Victor Tavares, PT-2018-1289A, Providence County Superior Court.  
Judgment Entered Dec. 2, 2021
- State of Rhode Island v Victor Tavares, SU-2022-0152-CA, R.I. Supreme Court.  
Judgment Entered Apr. 22, 2024
- State of Rhode Island v Victor Tavares, PI-2006-0506B, Providence County Superior Court.  
Judgment Entered Aug. 17, 2018
- State of Rhode Island v Victor Tavares, SU-2019-0402-CA, R.I. Supreme Court.  
Cited as 251 A.3d 895 (RI 2021)

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## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Ashie v. Swenson, 397 U.S. 436

443

State of Rhode Island v. Wiggs, 635 A.2d 272

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Marbury v. Madison 5 U.S. 137

### STATUTES AND RULES

Article 6 Section 2 of the United States Constitution

Indictment Clause of the Fifth Amendment

Double Jeopardy Clause of the Fifth Amendment

Fourteenth Amendment

R.I. Super. C.R. of Crim. P. Rule 6(f)

U.S. Supreme Court Rule 10(c)

### 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 \_\_\_\_\_ 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 B 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 D 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 \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Apr. 22, 2024.  
A copy of that decision appears at Appendix 13.

☒ A timely petition for rehearing was thereafter denied on the following date: May 31, 2024, and a copy of the order denying rehearing appears at Appendix A.

☐ 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),  
US Supreme Court Rule 10(c)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Fifth and Fourteenth Amendments of the Constitution of the United States.
- Article One Section Seven of the Rhode Island State Constitution.
- Rhode Island Superior Court Rules of Criminal Procedure Rule 6(f).
- Rhode Island Superior Court Rules of Criminal Procedure Rule 12(b).
- Article Six Section Two of the United States Constitution

## STATEMENT OF THE CASE

On May 18, 2018 indictment PI-2018-1289A was filed against the Petitioner and a Co-Conspirator. Subsequently, the State filed a 32(f) notice to prosecute him as a violator of his probation under PI-2006-0506(B) for the allegations in the indictment. On August 17, 2018 the Petitioner was declared a violator and sentenced to the ACI. He then filed a motion to dismiss for lack of Subject-matter jurisdiction for the absence of a true-billed indictment and collateral estoppel heard and denied on July 16, 2019. He later went to trial in September of 2021 and was found guilty.

A timely notice of appeal was filed and the matter was then fully litigated before the State Supreme Court. His appeal was denied along with his motion for reargument. The Petitioner now prays that this Honorable Court vacate his conviction and order the indictment dismissed.

## REASONS FOR GRANTING THE PETITION

Throughout the length of the case, PI-2018-1289A, the true-bill to the indictment has been absent. A true-bill was never returned before a judge in open court pursuant to Rule 6(f) of the criminal procedures affecting the trial court's subject matter jurisdiction. The State Attorney and the State Supreme Court evaded this claim by referencing a "clerk's note" as a substitute for the document's existence, and not disputing the absence of a true-bill. Both Federal and State Law mandate an indictment be true-billed and returned in open court; especially for capital offenses. Neither of those events took place therefore this petition should be granted.

Collateral Estoppel simply means that once an issue has been litigated between two parties and there is a final valid judgment, that issue can not be litigated by the same parties in any future lawsuits.

Probation - revocation and criminal trial are lawsuits with different burdens of proof, but they are lawsuits nonetheless. The State of Rhode Island prosecuted a revocation of probation lawsuit for case # PI-2006-0506B for the allegations in PI-2018-1289A which the Petitioner was adjudicated a violator on August 17, 2018. Therefore a later conviction in PI-2018-1289A is a second judgment barred by collateral estoppel, and should be dismissed.

Furthermore, the state's highest court departed from the nation's highest Court ruling in *Ashe v Swenson*. The law does not permit the state court to disregard its ruling on the grounds of "joining other states". Therefore pursuant to *Ashe v Swenson* the conviction should be vacated and the case ordered dismissed.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Victor A. Jaworski

Date: June 30, 2024