

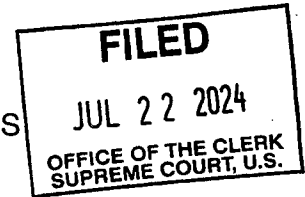
No. _____

ORIGINAL

24-5428

IN THE

SUPREME COURT OF THE UNITED STATES



Kevin E. Herrlott

(Your Name)

— PETITIONER

vs.

The State of South Carolina

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

South Carolina Supreme Court

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

PETITION FOR WRIT OF CERTIORARI

Kevin E. Herrlott

(Your Name)

McCormick Corr. Inst., 386 Redemption Way

(Address)

McCormick, SC 29899

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- I. WHAT PROCEDURE IS DUE AN PROSE LITIGANT DURING AN APPELLATE PROCEEDING WHEN SEEKING DISCOVERY AND CASE FILES POST-TRIAL?
- II. WHAT RULES THE PROSE LITIGANT HAS IN PLACE THAT PRESCRIBE THE STEPS FOR HAVING A RIGHT OR DUTY TO DISCOVERY JUDICIALLY ENFORCED?

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:

*Mark Farthing, Esq., Alan M. Wilson, Esq., and
Ernest Adolphus Finney, III, Esq.*

RELATED CASES

The State v. Kevin Herrloff or Kevin Herrloff, Charles B. Herr

2019-000969

No. 21-7511

USA PD-No. 21-6089

No. 21A203

2024-000429

6:20-cv-3336-DEW-KFM

2024-000326

2024 WL 2748582 (Opinion Published)

TABLE OF AUTHORITIES CITED

CASES

Barbee v. Warden, Maryland Penitentiary, 331 F.2d 842, P. 20

Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215, P. 10/15

Douglas v. People of State of Cal., 392 U.S. 383, 83 S.Ct. 814, 9 L.Ed. 2d 811, P. 13

Farralle v. California, 422 U.S. 306, 95 S.Ct. 2525, 45 L.Ed. 2d 562, P. 9/14

Goodson v. Am. Bankers Ins. Co., 295 S.C. 400, 403, 368 S.E. 2d 684, 689, P. 26

In the Matter of Haddock, 283 S.C. 116, 321 S.E. 2d 601, P. 13

Kort v. U.S. Dist. Court for Northern Dist. of California, 426 U.S. 394, 96 S.Ct. 2119, 48 L.Ed. 2d 425, P. 17

Martinez v. Court of Appeal of California, Fourth Appellate Dist., 528 U.S. 152, 120 S.Ct. 684, 145 L.Ed. 2d 592, P. 9

Reche v. Evaporated Milk Assn., 319 U.S. 21, 26, 63 S.Ct. 938, 941, 87 L.Ed. 1185, P. 17

Spawack v. Klein, 395 U.S. 511, 82 S.Ct. 625, 12 L.Ed. 504, P. 13

U.S. v. Augurs, 422 U.S. 97, 97, 108, 96 S.Ct. 2399, P. 21

U.S. v. Begley, 423 U.S. 627, 105 S.Ct. 3325, 82 L.Ed. 2d 481, P. 24

United States v. Echols, 691 F. App'x 64, 65, P. 12

U.S. ex rel. Rahman v. Oncology Associates, P.C., 198 F.3d 502, P. 18

U.S. v. Roane, 398 F.3d, 382, 403, P. 12

Von Moltke v. Gillies, 332 U.S. 708, 63 S.Ct. 316, 92 L.Ed. 309, P. 26

Tracy v. Freshwater, 623 F.2d 90, P. 14

NOT ROOM
NOT WIT

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3-4
STATEMENT OF THE CASE	5-6
REASONS FOR GRANTING THE WRIT	7-29
CONCLUSION.....	30

INDEX TO APPENDICES

APPENDIX A	<i>Order dated May 21, 2024; Order dated April 30, 2024</i>
APPENDIX B	<i>Correspondence for Discovery and Case Files</i>
APPENDIX C	<i>Transfer Case Action</i>
APPENDIX D	<i>Notice of Appeal Sentence and Conviction</i>
APPENDIX E	
APPENDIX F	

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 A 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 South Carolina Court of Appeals court appears at Appendix A to the petition and is

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

JURISDICTION

2/5

The date on which the highest state court decided my case was May 21, 2024, Writ of Mandamus.

A timely petition for rehearing was thereafter denied on the following date: JULY 17, 2024. Petitioner filed a Writ of Mandamus and the copy denying writ is attached.

The jurisdiction of this Court is invoked under 28 USC § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION ARTICLE VII

Articles in addition to, and Amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States pursuant to the Fifth Article of the Original Constitution.

Amendment VI [1791]

Sixth Amend. U.S. Const., In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

Amendment XIV [1868]

Fourteenth Amend. U.S. Const., Section 1. All persons 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 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.

28 U.S.C. § 1257(a) State Courts; certiorari

(a) Final judgment or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specifically set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. §1651 (a) Writs

In relevant part:

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. §1654 Appearance Personally or by Counsel

In relevant part:

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

South Carolina Code Annotation Statute §40-5-20

In relevant part:

Supreme Court empowered to promulgate rules and regulations concerning practice of law (a) defining and regulating the practice of law.

South Carolina Code Annotation Statute §40-5-80

In relevant part:

Citizens may prosecute or defend own cause (This Chapter may not be construed so as to prevent any non-lawyer a citizen from prosecuting or defending his own cause, if he so desires.)

STATEMENT OF THE CASE

The Petitioner Kevin E. Herrick in prose, was convicted and sentence to serve six (6) years consecutively to sentence and convictions by guilty plea in 2012 where Petitioner is now currently serving in the South Carolina Department of Corrections an term of 18 years.

On June 4, 2019, Petitioner was convicted of attempted armed robbery and inmate possession of a weapon by guilty verdict of 12 jurors. On June 7, 2019, Petitioner appealed conviction and sentenced raising constitutional grounds of the trial court lacked subject-matter jurisdiction, ineffective assistance of two (2) former attorneys of record, Brady violations, the Magistrate Court lacked personal jurisdiction, compulsory process violation, and whether evidence presented were triable issues before the trial court. Therefore, challenging that Petitioner's conviction and sentence is unconstitutional and void.

This case involves discovery errors that the Petitioner sought relief, on direct appeal, and was denied his right to obtain discovery and his case files. The Petitioner objected to the South Carolina

Court of Appeals Order and filed an extraordinary writ of mandamus to the South Carolina Supreme Court to enforce the rules governing Petitioner to receive his case files and discovery. The South Carolina Supreme Court denied Petitioner this right and duty while permitting the South Carolina Court of Appeals to continue withholding Petitioner's entitlement to his case files from former Court appointed attorneys of record.

The errors complained of that Petitioner raised before the State Courts show that the evidence, information, material, discovery, and Petitioner's case files that he seeks would undermine confidence in the verdict invoking this Court to act by Judicial Inquiry because the reasons provided will be principally determinative¹ of the case.

¹ determinative correct spelling.

REASONS FOR GRANTING THE PETITION

Petitioner Kevin E. Herriott seeks an extraordinary Writ of Certiorari to get the relief desired due to being stifled of ~~entitlement~~ of rights and duties. The Petitioner or respectfully ask this Court to engage in an judicial inquiry that will enjoined the lower courts from continuing to deprive Petitioner of interests safeguarded under the United States Constitutional and Statutory provisions involved.

On March 7, 2024, Petitioner submitted an writ of mandamus to the South Carolina Supreme Court to investigate, declare, and enforce Petitioner's rights as they stand on present or past facts and under laws already exist.

On March 11, 2024, the Petitioner wrote Chief Justice of the S.C. Supreme Court an letter correspondence asking the Chief Justice to accept such correspondence in lieu of a formal document to which the Court interpreted as another Writ of Mandamus.

Before the S.C. Supreme Court was two (2) Writ of Mandamus addressing the errors in discovery where the Petitioner requested the issuance of the writ to protect against errors in discovery. Ultimately, the Petitioner concluded that the S.C. Supreme Court interpreted the Writ

as a tool to seek an appeal to an interlocutory order denying Petitioner's motion to compel. See Appendix B.

On May 21, 2024, the S.C. Supreme Court denied issuance of the Writ and ordered the writs of mandamus to be dismissed. On May 29, 2024, Petitioner filed notice of appeal and motion to reconsider pursuant to Rule 59(e) SCRPC to the S.C. Supreme Court, in which the Court construed the prose filings as a writ of certiorari. The S.C. Supreme Court denied Petitioner's two(2) writs of mandamus. On June 7, 2024, the S.C. Supreme Court stricken the petition for writ of certiorari.

However, the Petitioner's submittance of notice of appeal to the S.C. Supreme Court were putting the S.C. Supreme Court on notice of Petitioner invoking his right to petition the United States Supreme Court to review for compelling reasons.

On June 11, 2024, Petitioner filed petition for certification of appeal and notice to appeal to the United States Supreme Court to review State Court highest court judgment only for errors of Federal law that will be aid of the Court's appellate jurisdiction.

At the outset, during the course of pretrial, trial, post-trial, and direct appeal stages the Petitioner had desired to proceed

On June 11, 2019, the direct appeal was filed and docketed with the S.C. Court of Appeals where Petitioner learned for the first time that former attorney Timothy L. Griffith filed notice of appeal on behalf of Petitioner on June 5, 2019. The Petitioner learned of this case being docketed after being informed by the Court that Petitioner could not file, but the attorney of record had to.

Mr. Griffith failed to take steps to the extent reasonably practicable to protect Petitioner's interests such as giving reasonable notice by informing Petitioner of filing the appeal, making certain the Petitioner is made fully aware of the right to appeal, the nature of the appeal and surrendering papers and property that consists of discovery, evidence, or information according to the principles of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963); and case files to which the Petitioner is entitled to obtain and retrieve from Petitioner's counsel. See Rule 402, South Carolina Appellate Court Rules, Rules of Professional Conduct Rule 1.6(d)(1) & (3).

On September 23, 2019, Petitioner motion to the S.C. Court of Appeals to proceed pro se. On October 8, 2019, Petitioner learned that Laura Caudy was appointed appellate counsel and the Division of Appellate Division Defense had undertaken representation of Appellant, requesting the trial transcript from the Court reporter on June 5, 2019.

On March 6, 2024, the Petitioner moved before the S.C. Court of Appeals asking the Court to hold case in abeyance until the S.C. Supreme Court consider Petitioner's writ of Mandamus. On April 30, 2024, while the Writ was pending before the S.C. Supreme Court, the S.C. Court of Appeals denied Petitioner's motion to compel sua sponte and granted to hold case action in abeyance due to the Petitioner's writ of mandamus was pending in the S.C. Supreme Court.

In Accordance to *Kerr v. U.S. Dist. Court For Northern Dist. of California*, 426 U.S. 394, 96 S.Ct. 2119, 48 L. Ed. 2d 725, the remedy of mandamus is a drastic one, to be invoked only in extraordinary situations. This Court (U.S. Supreme Court) have observed the writ in holding "the writ of mandamus has been traditionally been used in the federal courts only 'to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.'" quoting *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26, 63 S.Ct. 938, 941, 87 L. Ed. 1185 (1943).

In addition, the Court held "to establish the conditions necessary for issuance of a writ of mandamus, the party seeking the writ must demonstrate that:

- (1) he has a clear and indisputable right to the relief sought;
- (2) the responding party has a clear duty to do the specific act requested;
- (3) the act requested is an official act or duty;
- (4) there are no other adequate means to attain the relief he desires; and
- (5) the issuance of the writ will effect right and justice in the circumstances.

Accord U.S. ex rel. Rahman v. Oncology Associates, P.C.
198 F.3d 502.

The Petitioner show the Court that the S.C. Supreme Court err when denying the Petitioner's Writ of Mandamus and objectively unreasonable striking the Writ from the record. See S.C. Statute

§14-3-330 Appellate Jurisdiction in law cases, in relevant part:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases and shall review upon appeal

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

When the Petitioner's writ was pending before the S.C. Supreme Court, there was no order adjudication upon discovery, case files, and the State's evidence when the writ was submitted for review. Nevertheless, the motion to compel has nothing to do with the Writ of Mandamus to the extent of an substitution as an appeal and should not be construed as an appeal.

The Petitioner avers it is improper for the Court to have stricken the Writ and exhibit sua sponte without a motion by a(n) party when the Writ was not a pleading presenting an insufficient defense or any redundant immaterial, impertinent, or scandalous matter. The Petitioner did not make speculative, conclusory, or unsubstantiated assertions, nor relied on inadmissible hearsay, or provided false or contradictory testimony. Although the Court can disregard such statements and evidence it was a drastic measure and abuse of discretion.

It is a clear and indisputable ~~fact~~ fact that the Petitioner has a right to the relief sought based upon the presented facts the writ of mandamus addresses ~~in detail~~ and below: (1) Petitioner requested for impeachment and exculpatory evidence that was suppressed at his trial to be made available to be included on the record of appeal

under newly discovered evidence doctrine. The Petitioner had no knowledge of the suppression of the knife during nor before his trial and the prosecutor failed to disclose exculpatory evidence in advance of trial and after trial. The non-disclosure permitted the court to allow inadmissible evidence before the jury that was prejudicial more than the probative value. The jury considered the questionable inferences of Petitioner being armed with a knife without curative instructions because the State prosecution did not disclose the knife or evidence to the defense preventing Petitioner to analyze the questionable identification of a weapon to prepare for his defense. The SCDC Police Services (DAPS) destroyed the knife and did not disclose the information that is material to either guilt or punishment. The State cannot decide for the Court what is admissible or for the defense what is useful. *Barbee v. Warden, Maryland Penitentiary*, 331 F.2d 842. (2) The Petitioner's attorneys failed to produce and turn over their complete entire and full case files or failing to produce any files, papers, and property that belong to the Petitioner post trial and direct appeal stages. Had the Petitioner ~~got~~ his case files prior to the filing and order to submit his initial brief on direct appeal, the Petitioner's facts would have been fully developed.

The Respondent failed to disclose the 2018 and 2021 grand jury minutes in transcript format, not the deliberations and vote, that was timely requested where Petitioner challenged the lower court lacked subject-matter jurisdiction, and sought impeachment evidence of witnesses from the State where one is alleged to have appeared before the grand jury to challenge whether this witness story of events changed, different, or impeachable. The Petitioner requested for the general session court calendar schedules for the months of August and September of 2018, pretrial Blair hearing transcript, preliminary hearing transcript, and inter alia.

The Petitioner avers that the omissions deprived him of a fair trial violating his constitutional rights safeguarded by the U.S. Fourteenth Amendment requiring the verdict to be set aside and there was breaches of the prosecutor's and court appointed attorney's constitutional duty to disclose when the omissions is of sufficient significance to result in the denial of the Petitioner's right to a fair trial and direct appeal. *U.S. v. Agurs*, 427 U.S. 97, at 108, 96 S.Ct., at 2399, "If the evidence is so clearly supportive of a claim of innocence that it gives the prosecution notice of a duty to produce, that duty should equally arise even if no request is made. Whether a non disclosure deprived the defendant of his right to due process

must apply in advance of trial and after trial."

The Petitioner remains his innocence and holds true to his not guilty pleadings. The Petitioner avers he is being hunted by gang affiliate inmates to cause personal bodily injury and constantly taken actions to murder Petitioner by food poison. On May 10, 2018, the Petitioner was under duress and acted in self preservation when he fled his living quarters on May 10, 2018, the criminal allegations formulated against Petitioner.

The Petitioner submits before the Court that he observed the majority of the events of the April 15, 2018, deadly riot at Lee Correctional Institution whether by video images captured on contraband cell phones, having personal knowledge, questioning victims, and photos. The Petitioner offered incriminating testimony before several law enforcement agencies against active gang members who participated in the riot later testifying at a grand jury appearance held the week of the 18 of March, 2021.

In between time of April 15, 2018 to May 10, 2018, the Petitioner was corresponding with SCDE officials to engage in a petition to reduce Petitioner's sentence for aiding a correctional officer providing substantial assistance to safety in exchange for information.

The contents of the petition alleged and implemented several active known gang members of committing criminal acts ranging from assaults to murders. The Petitioner's former cell mate warned the gang members in Petitioner's former housing unit creating imminent danger where Petitioner's safety and well-being is at risk.

The Petitioner conduct and Officers' testimonial is not preserved for review in this Court, but the Petitioner firmly denies any wrong doing. The Petitioner requested 'material' to show the lower court that not only the Respondent is seeking a malicious prosecution when in possession of evidence while not disclosing material facts to the Court that Petitioner is innocent of all charges, but also, that an abuse of process has occurred before Petitioner's trial. - The Petitioner was summoned to give an answer ~~for~~ a court of general sessions under an invalid indictment that was required as a condition precedent to the trial of a crime.

The Respondent know Petitioner is innocent when having knowledge, creditable evidence, and facts that Petitioner did not attempt to disarm the Officer nor having any intent to commit a crime. When the Officers that are witnesses for the State appeared to Petitioner's cell door from a distress call of Petitioner's mother, the officers had

limited information except for Lieutenant Bethea and Sergeant Coorum. The two officers are seasoned officers; they know how to detect when an inmate is in imminent danger in a high alert unit such as Petitioner was housed. From this incident arose false reports against Petitioner to have Petitioner housed around known enemies to retaliate against him and ultimately have Petitioner murdered. The Petitioner was transferred at least seven times in the course of two years before a district judge questioned defendants in case action 6:19-cv-00730-DCW-KFM, why Petitioner is not in protective custody.

The Petitioner demonstrates to this Court that the Writ of Mandamus compelled the appellate court, State highest Court, the S.C. Supreme Court to exercise its authority to a lawful exercise of its prescribed jurisdiction affording Petitioner access to discovery and case files which is Petitioner's reasonable duty to obtain discovery and subject the prosecution's case to a meaningful adversarial testing, by either enhancing his claims on appeal presenting fully developed facts or both presenting newly discovered evidence on the record on appeal.

The act requested is an official act or duty owed to the Petitioner that the Court recognized in *U.S. v. Begley*, 473 U.S. 667,

LEGAL MAIL
MAIL ROOM

APPENDIX A