

No. _____

24-5698

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

FEB 12 2024

OFFICE OF THE CLERK

Tony Moore, Jr. #188313 — PETITIONER
(Your Name)

vs.

State of South Carolina — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The South Carolina Supreme Court

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

PETITION FOR WRIT OF CERTIORARI

Tony Moore, Jr., #188313

(Your Name)

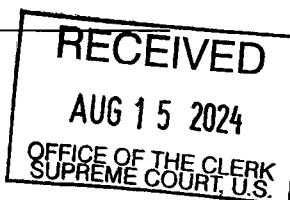
Kershaw Correctional Institution

(Address)

4848 Goldmine Hwy., Kershaw, S.C. 29067

(City, State, Zip Code)

(Phone Number)



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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. WHETHER PETITIONER'S CRITICAL DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT IS BEING CONTINUOUSLY DENIED/VIOLATED, AND HIS STATUTORY RIGHT ENTITLEMENT IS BEING SEVERELY OVERLOOKED, CAUSING WRONGFUL IMPRISONMENT?
2. WHETHER THE STATE COURT ERRED BY REFUSING TO HEAR PETITIONER'S LEGITIMATE JURISDICTIONAL CHALLENGE WHEN IT LIMITED PETITIONER'S FILINGS TO THAT COURT, AND THAT COURT ONLY?
3. WHETHER THE SOUTH CAROLINA SUPREME COURT IS IN ERROR FINDING IT RETAINS SUBJECT-MATTER-JURISDICTION AFTER NOTICING CLAIMS THE GRAND JURY PROCESS IN SOUTH CAROLINA, IS BUT A SHAM AND COVER, AND NOT PROPERLY CONSTITUTED UNDER ITS OWN CONSTITUTION, OR STATUTORY LAWS?

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

Post Courier August 18, 2020 (Rubber Stamped S.C. Indictment Process)

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STATUTES AND RULES

S.C. Code Ann §14-9-210

S.C. Code Ann. §14-5-820

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[] is unpublished.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.

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 Unpublished; or,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[x] is unpublished.

The opinion of the South Carolina Supreme Court court appears at Appendix "B" to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] 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 11/15/2023. A copy of that decision appears at Appendix "A".

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 7/6/2024 (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

South Carolina Constitution, Article I., Section 3 "Due Process"

South Carolina Constitution, Article I., Section 11, "Indictment Guarantees"

South Carolina Code of Laws, Section 14-9-210, "Preparation of Indictments"

South Carolina Code of Laws, Section 14-5-820. "Authorized Terms of General Sessions Court to secure Indictments".

STATEMENT OF THE CASE

See Attached sheets 1-10.

SUMMARY OF ARGUMENT(s)

In South Carolina, the process by which solicitors obtain has been and still remains to be questioned, as a hot topic for the courts of the State. The Greenville News, recently reported; "each time the Grand Jury meets in the 13th Judicial Circuit, it considers about 900 cases in a single day". Thus, questions were raised over the effectiveness of the South Carolina indictment process.

The grand jury system was set up as a check against prosecutorial vendettas and hasty indictments. But with the grand jury blazing through so many cases, some have raised questions about how effective the panel can be. Furman University political science professor Don Aiesi, called the grand jury a "rubber stamp" for the solicitor's office. "The system isn't working", he said. "It has not functioned effectively as any kind of buffer".

Here however, where Petitioner's claim align with the comprimizing effectiveness of South Carolina's grand jury proceeding. It differs in the realm of "whether certain cases were properly indicted at all, consistent with the clear unambiguous language of controlling South Carolina Statutes". Where such cases as Petitioner's, was allegedly indicted during a term of court, "that was not in session". Which remains to call into question, "if the solicitor boast of being able to indict 900 cases in a single day", why would there be a need to convene such a term of court, not authorized by statute?

In addition, South Carolina's Highest Court issued an Order on August 25, 2016 detailing; "Petitioner would not be allowed to file and petition in any of the lower courts challenging his 1995 conviction, unless he obtains permission from the High Court. And again, Petitioner was reminded on August 4, 20-

21, to gain such permission.

On or about September 21, 2023, Petitioner filed to the Highest South Carolina State Court, complaining of Due Process violations in the course of obtaining his criminal indictment (1995-GS-44-0035), that under the circumstances prescribed within statute, "the court was not conferred jurisdiction by way of the indictment process", rendering the subsequent conviction void for a lack thereof. Based on such an important jurisdictional question, rather than assure itself of jurisdiction, the Supreme Court refused to address the merits, and is why this Petitioner seeks writ of certiorari.

(ARGUMENT TO QUESTION ONE)

Within South Carolina's (Bill of Rights) Declaration of Rights. At Article I., Section §3., it reads in no uncertain terms;

"The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged; nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws". (1970 (56) 2684; 1971(57) 315).

In addition, Article I., Section 11, reads in no uncertain terms:

"No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed", (In relevant part).

Now turning to South Carolina's Legislative intent that is clearly outlined in the relevant statute for this case. At §14-9-210, it reads unambiguously the the following English Language:

"The county solicitor shall prepare and through the presiding judge of the court of general sessions, submit to the grand jury, while in attendance upon the court of general sessions; bills of indict-

ment in all cases pending in the county in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty when such cases have not been previously acted on by the grand jury. The grand jury shall act thereon and report its action to the presiding judge of the court of general sessions and said judge shall direct the clerk of court of general sessions to report the same to the presiding judge of the county court at its next ensuing term".

B. In accordance with South Carolina Statutory Law, §14-5-820, Union County, for which Petitioner's indictment and trial was allegedly had. Statutorily authorized the courts of general session be held; "at Union the Fourth Monday of February, the third Monday of May, the third Monday of September and the second Monday of December. This was and is the law in March 1995, when Petitioner's case went to trial".

In accordance with this jurisdictional claim in the course of depriving a citizen of the Constitutional guarantees for which he was entitled on March 23, 1995, dealing with Due Process. Article I., Section 3., combined "the United States Constitution as well as South Carolina's to secure these important rights". The Court, according to this statutory design "was not authorized to indict, try or sentence this Petitioner outside the terms of general sessions court, rendering the result "void".

To say the least, "subject-matter-jurisdiction can be raised at any time in any proceeding. And South Carolina Courts are refusing to address these important challenges". See Edwards v. State, 372 S.C. 493, 642 S.E.2d 738 (2007); State v. McBride, 416 S.C. 379, 786 S.E.2d 435 (2016). In Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)(Subject matter jurisdiction is fundamental to the court power to hear and adjudicate cases). Such is a question of law, not fact easily answered. Gant v. Selph, 423 S.C. 333, 814 S.E.2d 523 (2018)

"reimprisoning" a minority inmate, based on procedural irregularities. Yet, the "good for the gander is good for the goose, under the Equal Protection of Due Process, is inapplicable".

In State v. Price, 441 S.C. 423, 895 S.E.2d 633 (S.C. 2003), the following is recorded: "the Court of General Sessions, Richland County, L. Casey Manning, J., signed a sealed order reducing sentence from 35 years to 19 for substantial assistance to the State, and defendant was released from prison. The Supreme Court issues common-law writ of certiorari, and the Attorney General filed asking for extraordinary writ and declaration that the order releasing defendant was void.

The Court cited the below 5 certified holdings:

1. circuit court's hosting of private meetings in chambers to determine whether to reduce sentence violated State and Federal constitutional right of public access to criminal prosecution;
2. circuit court lacked authority to seal the order reducing the sentence;
3. solicitor's failure to notify victim's family of the proceeding to reduce sentence violated Victim's Bill of Rights Act;
4. violation of Victim's Rights and Victim's Right Act did not warrant vacating order; and
5. circuit court fundamentally failed to "follow the law in reducing sentence".

Like Petitioner here, "the State filed a extraordinary writ", same as Petitioner. Where the concerns within the 5 considerations above fail to come close to the concern Petitioner remains to question "that a alleged indictment was secured when on that date, general sessions court was not in sessions".

Under South Carolina's Constitution, Art. I., Section 11; "No person may be held to answer for any crime the jurisdiction over which is not within magis-

trate court, 'unless on a presentment or indictment of a grand jury of the county where the crime has been committed". (In relevant part) Seems to surplant subject-matter-jurisdiction, by the course of "the process entitlement", deemed "Due Process", as a fundamental buffer between the state and the Defendant. See State v. Smalls, 354 S.C. 343, 613 S.E.2d 754 (S.C. App. Ct. 2003)(formal indictment is condition precedent to valid waiver of presentment of charge to grand jury, which is prerequisite to valid guilty plea)

The above Smalls case explains "one cannot validly submit a guilty plea unless there is a valid waiver of the grant jury indictment for the charge, that such is a "prerequisite" to the guilty plea.

See also State v. Owens, 346 S.C. 637, 522 S.E.2d 745 (S.C. 2001), "State Constitution requires a person be indicted by the grand jury before standing trial for a crime. And in Smalls, the South Carolina Supreme Court stated; the Circuit Court does not have jurisdiction to hear guilty pleas unless there has been a valid indictment. Id. 354 S.C. 498.

F. With the above in mind, coupled with "how easily the State Court invoked its jurisdiction to hear the Attorney General's petition for extraordinary writ, on issues of less importance". When Petitioner brings before the Court, "a issue of the most grave importance, dealing with 'no valid indictment, whereas actual fraud, misrepresentation, and deception', in the process of alleging a indictment's validity exist in this case".

But, as the normal and usual circumstance in such case as Petitioner. Which mirror the history of Southern States. When correct issues are brought to the attention of the Court, which may form the bases for relief. The Court simply does not answer.

Article V., Section 5 of S.C. Constitution.

G. Article V, section 5 of the South Carolina Constitution and section 14-3-310 of the South Carolina Code provides, "The Supreme Court shall have the power to issue writs or orders of certiorari". Pursuant to this authority, we may use a common-law writ of certiorari to correct errors of law, particularly where a trial court exceeded its authority".. See City of Columbia v. S.C. Pub. Serv. Comm'n, 242 S.C. 528, 532, 131 S.E.2d 705, 707 (1963)("A writ of certiorari is used to keep an inferior tribunal within the scope of its powers")(citing Ex parte Schmidts, 24 S.C. 363, 364 (1886); State ex rel Martin v. Moore, 54 S.C. 556, 560, 32 S.E. 700, 701 (1899).

Thus, it is the history of South Carolina Supreme Court "to issue orders of certiorari and other common-law writs 'to correct errors of law'"'. Which brings about Petitioner's second question to this High Court.

2. WHETHER THE STATE COURT ERRED BY REFUSING TO HEAR PETITIONER'S LEGITIMATE JURISDICTIONAL CHALLENGES WHEN IT FORMALLY EXCLUDED ANY OTHER INFERIOR COURT FROM HEARING THESE MATTERS?

H. Here, on the one hand, the above Constitutional Articles coupled with the statutory authority in South Carolina dictates; "the extraordinary writ may be exercised by the Supreme Court of important issues". Moreover, "the South Carolina Supreme Court "restricted this Petitioner from filing his cause in any other inferior court of the State". And as a "slap in the face of that order", refuses to even answer the jurisdictional question presented, which should not have placed any undue burden upon the State to resolve. Such was asked and an-

swered in the Price case, whereas, this case presents no less extreme importance. For to say within it's Article I., Section 3., of the South Carolina Constitution, to embody the United States Constitution's Due Process and Equal Protection Rights. That; "nobody shall be denied the privileges and immunites, nor be denied life, liberty or property without DUE PROCESS OF LAW, nor denied the EQUAL PROTECTION thereof". Seems to be mere verbalisms which fail to take seriously the content of the meaning of words used. When Petitioner has made "a very valid claim "has 1995 case was never properly indicted".

These writs derrive from "THE GREAT WRIT" of habeas corpus, "the most celebrated writ in English Law", 3 William Blackstone, Commentaries at 129, that offers protection against "illegal restraint of confinement". See Fay v. Noia, 372 U.S. 391, 400 (1962). Habeas corpus relief is based on the principle "that in a civilized society, the government must always be accountable to the judiciary for a man's imprisonment"; "and if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release". Id. 402.

Realizing Petitioner's claim hinges on the "fundamental Constitutional Indictment prerequisite". If the proceedings complained about "cannot be shown to conform with the fundamental requirements of the law". Petitioner is entitled to "his immediate release", "no less than the State was entitled to reimprison Price, in that case". Or, "Equal Protection under the law, is being intentionally denied". How exactly, "can we have a trial or conviction and sentence, when no indictment according to the laws, ever existed"?

FINALLY AND IN CONCLUSION

I. Here, the question is also posited "whether the circuit courts retain subject matter jurisdiction, to hear and determine matters in a felony criminal case by way of a properly secured true billed, filed with the clerk of court, indictment"?

In State v. Bailey, 292 S.C. 422, 709 S.E.2d 671 (S.C. 2011), seems to express; "it is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment".

Thus, it seems quite clear "the authority to convict a criminal defendant for a offense must be charged in the indictment". And would be highly conflicting to say on the otherhand; "a valid indictment is not necessary". If that were so, it would make not difference whether the court convicted a defendant of a not so charged.

In Conclusion, Due Process and Equal Protection under the Laws of the United States, and of South Carolina, "compels resolution in this case". The South Carolina mandatorily required Petitioner to gain permission from it, before filing any substantive motion, petitions or writs. Petitioner complied.

The governing policies, procedures and law expressly mandate "issues concerning subject-matter-jurisdiction", whereas the denial of "DUE PROCESS", is what led to the deprivation of authority in this case. Can be raised at any time and a court "MUST ASSURE ITSELF OF JURISDICTION". The response (Failing to answer) in this case "is the harm being suffered by this Petitioner". And it is not

all improper, too difficult nor places an extreme burden on the State Courts to assure a man's imprisonment (even after some 30 years thereafter), conforms with fundamental requirements of the law.

For these reasons, Petitioner request relief by way of this Honorable United States Supreme Court, granting the "writ of certiorari", and remand this case back to the South Carolina Supreme Court, not to ignore, but to address the merits of the claims presented, and any further relief this Court deems just and proper.

Respectfully Submitted,

/s/ Tony Moore Jr.
Tony Moore Jr., #188313
Kershaw Correctional Inst.
4848 Goldmine Hwy.
Kershaw, S.C. 29067

cc: S.C. Attorney Gen.
S.C. Sup. Ct.
7/1/2024

REASONS FOR GRANTING THE PETITION

Here, certiorari should be granted in order to prevent the State of South Carolina from wrongly imprisoning especially minority citizens under the "rubber stamped" indictment process. Which fail to establish probable cause in the first instance, to carry criminal cases to a court of general sessions.

In this case in alignment with "Due Process", a criminal defendant is guaranteed the protections of a proper indictment process before he can be lawfully convicted and sent to prison. The Statutes of South Carolina, unambiguously defined and instructed "when and where such indictments could be secure". However, South Carolina has become "a State without Laws", of the State that does not abide by the laws as written.

On the date Petitioner's indictment was allegedly secured, "there was absolutely 'no court of General Sessions on that date'". The Statute governing such procedure gives no alternatives or other option. Except when a "special session is ordered", in which in this case, no special session was even alleged to have been ordered. The Courts of the State instead "fails to answer a straight-forward jurisdictional argument". Where; "it lacks subject-matter-jurisdiction to continue the imprisonment of this Petitioner".

Wherefore, this is the reason for grave importance in granting such a petition where a person's life and liberty hangs in the balance.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tony Moenck, #188313

Date: 7/8/2024

cc: Chad Wilson Burgess, Esquire
Sean Matthew Foerster, Esquire
The Honorable Renee Elvis
Cindy B. Hunt, Esquire
Kebra N. Simpson, Esquire
Saquisha Octavia Tobin, Esquire
Robert Michael Dudek, Esquire
William M. Blitch, Jr., Esquire
Jerome Garcia
Alan McCrory Wilson, Esquire
Zachary William Jones, Esquire
Demario Cunningham
Timothy Johnson, #346270
Tony Moore, Jr. #188313
Williamsburg County Probate Court
Anthony McKnight, Sr.
Devanna Thomas-Cardona
J. Benjamin Connell, Esquire
Kershaw County Court
Diana Jordan
Richland County Family Court
Lorraine Callison Moran, Esquire
Adam L. Whitsett, Esquire
Matthew A. Johnson
State Election Commission