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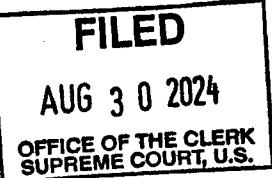
ORIGINAL

In The
Supreme Court of The United States

John Garvin - Petitioner,

v.

Warden, Levern Cohen - Respondent.



ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

BY:

John Garvin, Pro-se
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QUESTIONS PRESENTED

1. Whether a South Carolina Supreme Court's Order Declining to Entertain a Complaint for a Declaratory Judgment to Determine the Legality and Constitutionality of a County Grand Jury Proceedings, Has Allowed a Case of Actual Controversy to Continue to Exist and Cause Ongoing Irreparable Harm.
2. Whether a Federal District Court with Jurisdiction Over a Habeas Corpus Action Under 28 U.S.C. § 2254, May Abstain From Exercising that Court's Jurisdiction in Denying Petitioner's Motion for Declaratory Judgment Within the Habeas Action, and Then Subsequently Deny a Certificate of Appealability of that Decision is an Abuse of Discretion by the District Court.

PARTIES TO THE PROCEEDING

The parties to the proceeding are listed in the caption. The Petitioner is not a corporation.

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OPINIONS BELOW

The Fourth Circuit's Order denying a Certificate of Appealability (Pet. Appx. – A, pp. 2a – 4a) is unpublished but is available at 2024 WL 864307. The Order of the district court (Pet. Appx. – A, pp. 5a – 30a) is unpublished but is available at 2023 WL 5199675. The magistrate judge's report and recommendation (Pet. Appx. – B, pp. 36a – 69a) is unpublished but is available at 2023 WL 5753680. The Supreme Court of South Carolina issued an Order declining to entertain Petitioner's Complaint for Declaratory Judgment. (Pet. Appx. – A, pp. 31a – 32a). The Fourth Circuit's panel decision denying panel rehearing and rehearing en banc (Pet. Appx. – C, p. 79a) is unpublished.

BASIS FOR JURISDICTION

The Fourth Circuit issued an Order on February 29, 2024, (see Pet. Appx. – A, pp. 2a – 4a), denied panel rehearing and rehearing en banc on April 2, 2024. (See Pet. Appx. – C, p. 79a). On June 26, 2024, Chief Justice Roberts, Jr., extended the time to file this petition to August 30, 2024. See Case No. 23A1152. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1254(1), 1331, 2201 and Article III of the United States Constitution. See also *Calderon v. Ashmus*, 523 U.S. 740 (1998).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional and statutory provisions are set forth at Pet. Appx. – E, infra, pp. 656a – 661a.

INTRODUCTION

Existing now between the Petitioner, John Garvin and the Respondent is a controversy. That Asst. Solicitor, James E. Hunter for the State of South Carolina, did knowingly employed the use of unlawful procedures for the return and publication of Petitioner, John Garvin's true-billed indictments. Whereas, their was never any type of grand jury proceedings that occurred or even

took place, insomuch as, the alleged Spartanburg County Grand Jurors had before them no substantial or rationally persuasive evidence on which to base the indictments with a proper probable cause finding by a witness.

The indictments were returned solely as a result of a misleading and an improper manner in which no such evidence was ever presented to a grand jury to establish probable cause. A grand jury that was never selected, drawn, or summoned in accordance with S.C. Code Ann. §§ 14-7-1540 and 14-9-210. The indictments failed to put the Petitioner on notice of the nature and cause of the accusation as is required pursuant to S.C. Code Ann. § 17-19-20 and the Sixth Amendment of the United States Constitution. Whereas, the Spartanburg County Court of General Sessions was without jurisdiction, due to Asst. Solicitor, James E. Hunter's abuse of Petitioner's judicial process.

Petitioner, John Garvin, seeks a declaratory judgment from this Court seeking a declaration as to whether Asst. Solicitor, James E. Hunter and the Spartanburg County Grand Jurors satisfied the indictment requirement of South Carolina Code Ann. §§ 14-7-1520, 14-7-1530, 14-7-1540, 14-7-1550, 14-7-1920, 14-7-1930, 14-9-170, 14-9-210, 14-9-220, 17-19-10, 17-19-20, 17-23-160, and 22-5-320, that's sufficient to meet the threshold for true-billing an indictment under South Carolina statutory law.

STATEMENT OF THE CASE

A. Preliminary Hearing and Grand Jury Proceedings

Right after Petitioner was falsely arrested. On July 18, 2012, at a bail hearing, Petitioner was denied bail and had requested a preliminary hearing, (see Pet. Appx. - F, pp. 886a), that was scheduled for August 16, 2012. (See Pet. Appx. – F, pp. 1007a – 1008a) (rescheduled preliminary hearing notices). On August 16, 2012, the Petitioner's requested preliminary hearing was rescheduled to be heard on October 25, 2012, by Asst. Solicitor, James E. Hunter. On October 25,

2012, Asst. Solicitor, James E. Hunter, would move before the court to waive Petitioner's requested preliminary hearing for failure to appear. (See Pet. Appx. – G, p. 964a, Ln. 7 – 19¹).

On December 6, 2012, Asst. Solicitor, James E. Hunter and the Spartanburg County Grand Jurors indicted the Petitioner, charging him as a principal. (See Pet. Appx. – F, 881a – 884a), (Indictment No.(s): 2012-GS-42-5978 and 2012-GS-42-5979)). Whereas, probable cause was based on arrest warrant no.(s): N-158303 and N-158322. (See Pet. Appx. – G, p. 964a, Ln. 20 – 24), (also see Pet. Appx. – F, pp. 1009a – 1010a) (Arrest Warrants).

1. Actions Taken To Prove Invalid Grand Jury Proceedings

On July 8, 2015, the Petitioner filed a Motion to Inspect Grand Jury Documents in the Spartanburg County Court of General Sessions. (See Pet. Appx. – F, pp. 932a – 937a). Asst. Solicitor, James E. Hunter, would refuse to respond to that Motion and the Chief Administration Judge, J. Derham Cole, at the time would not place the Motion on the Court's docket to be heard before that Court. On October 28, 2015, the Petitioner applied for Post-Conviction Relief, to challenge the constitutionality of his erroneous conviction and to vindicate his rights that had actually been denied at trial, on several grounds. (See Pet. Appx. – F, pp. 948a – 956a).

On May 1, 2017, the Petitioner again would file his Motion, but this time in the Spartanburg County Court of Common Pleas, a Motion to Inspect Grand Jury Documents to Challenge Array of Grand Jury before the PCR Courts. (See Pet. Appx. – F, pp. 927a – 931a). On February 21, 2018, a hearing on that Motion would be heard before the Honorable Michael G. Nettles, Circuit Judge. The Petitioner would state in his affidavit in support of his Motion the reason for seeking said grand jury documents, whereas, he believed that a grand jury was not selected, drawn, or summoned. (See Pet. Appx. – F, p. 929a). Judge Nettles, would grant the Petitioner's Motion at that hearing and the Respondent would draft a proposed order that would deny in part and grant in

¹ Asst. Solicitor, James E. Hunter explaining to the court that Petitioner Garvin's preliminary hearing was waived.

part. (See Pet. Appx. – F, pp. 922a – 926a). Only allowing Petitioner access to the true-billed indictments that were produced on December 6, 2012, and not grant Petitioner access to the grand jury documents that he was seeking, pursuant to South Carolina law.

On May 29, 2018, Judge Nettles, would signed the Respondent's proposed order. On June 12, 2018, the Petitioner would file a Motion for Reconsideration to Alter/Amend Judgment, of that proposed order, on the grounds that the Respondent's proposed order, intentionally omits and distort the facts within the proposed order and that it overlooks the facts stated in his affidavits in support of his Motion. (See Pet. Appx. – F, pp. 891a – 921a); (also see Pet. Appx. – F, pp. 888a – 890a).

On February 25, 2019, Petitioner would file with the Spartanburg County Clerk of Court, a Motion for Summary Judgment to obtain a Declaratory Judgment – To Determine the Legality and Constitutionality of Grand Jurors Actions, (see Pet. Appx. – F, pp. 875a – 887a), that true-billed the two indictments on December 6, 2012, by Asst. Solicitor, James E. Hunter and the alleged Spartanburg County Grand Jurors on Indictment No.(s): 2012-GS-42-5978 and 2012-GS-42-5979. (See Pet. Appx. – F, pp. 881a – 884a). Thus, seeking a declaration from that Court, that the actions of Asst. Solicitor, James E. Hunter and the Spartanburg County Grand Jurors are invalid, illegal, and in deprivation of Petitioner's rights that are secured by the United States Constitution and South Carolina State Constitution. (See Pet. Appx. – F, p. 879a).

On July 9, 2020, an Order was issued denying the Petitioner's Motion for Summary Judgment to obtain a Declaratory Judgment – To Determine the Legality and Constitutionality of Grand Jurors Actions, in addition, to his entire PCR application being dismissed with prejudice. (See Pet. Appx. – F, pp. 843a – 870a). On August 6, 2020, the Petitioner would file a Motion for Reconsideration to Alter/Amend Judgment of the PCR Court's Order. (See Pet. Appx. – F, pp. 803a – 842a). On September 11, 2020, the PCR Court would deny that Motion without a hearing

being held on that Motion and would deny the Petitioner's PCR application with prejudice. (See Pet. Appx. – F, p. 802a).

2. The Complaint For A Declaratory Judgment Proceedings

On January 13, 2022, Petitioner would then file a Complaint for a Declaratory Judgment to Determine the Legality and Constitutionality of the (Spartanburg County) Grand Jury Proceedings in the Original Jurisdiction of the South Carolina Supreme Court. (See Pet. Appx. – F, pp. 725a – 801a). Whereas, the Respondent's, the State of South Carolina would fail to file a response to Petitioner's Complaint for a Declaratory Judgment. Insomuch as, Petitioner would then file a Motion for Entry of Default and Default Judgment on March 15, 2022, for the Respondent's failure to respond to his complaint. (See Pet. Appx. – F, pp. 663a – 724a). The South Carolina Supreme Court would issued an Order on May 18, 2022, declining to entertain the matter. (See Pet. Appx. – A, pp. 31a – 32a). Despite the fact that Petitioner presented the issue before the PCR Court in a Motion for Summary Judgment to Obtain a Declaratory Judgment to Determine the Legality and Constitutionality of the Grand Jury Actions. (See Pet. Appx. – F, pp. 875a - 887a).

REASONS FOR GRANTING WRIT

I.

The State of South Carolina Should Not Maintain A Conviction that Resulted From A Falsified Arrest Warrant, A Void Indictment And Criminal Acts that Continue to Exist And Cause Ongoing Irreparable Harm.

Asst. Solicitor, James E. Hunter, has abused the process of Spartanburg County Grand Jury process in the selection and/or non-selection of grand jurors, which, "strikes at the fundamental values of [South Carolina's] judicial system and our society as a whole," and is "especially pernicious in the administration of justice." *Rose v. Mitchell*, 443 U.S. 545, 555-56 (1979). This court should consider reviewing Petitioner's Ground Five issue that is within his amended petition for writ of habeas corpus to issue a declaratory judgment that determines the legality and constitutionality of Petitioner's Spartanburg County Grand Jury Proceedings with it's selection or

non-selection grand jury process. A process that maintains a conviction that resulted from a falsified arrest warrants, void indictments and criminal acts that were committed by Asst. Solicitor, James E. Hunter.

A. Invalid Proceedings, and A Void Indictment

In South Carolina, the Solicitor is charged with the responsibility of prosecuting criminal charges, including the procurement of the proper indictment from the grand jury. See S.C. Const. Art. V, § 24; S.C. Code Ann. §§ 1-7-320 (1986), 14-9-210 (1977). The matter presented for review is not a challenge to the Court's general grant of authority to hear and determine cases. That authority is rightfully granted by South Carolina's State Constitution, *State v. Gentry*, 363 S.C. 93 (2005), and will not be at issue here. Instead Petitioner contends that there has been an abuse of the Spartanburg County Grand Jury process, and that Asst. Solicitor, James E. Hunter's, failure to comply with South Carolina statutory laws that are jurisdictional in nature, specifying the manner and means for a lawful return of true-billed indictments.

“The jurisdiction of a court over the [person and the] subject matter of a proceeding is determined by the Constitution, the laws of the State, and is fundamental.” *Brown v. State*, 343 S.C. 342 (S.C., 2001)(overruled by *State v. Gentry*, 363 S.C. 93 (2005)). Subject matter jurisdiction may not be waived even with consent of the parties, and maybe raised at any time, *Brown, supra*. Whereas, “no indictment maybe true-billed by a grand jury when Circuit Court lacks jurisdiction, since grand jury’s jurisdiction is coextensive with criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry ...” *State v. McClure*, 277 S.C. 432 (1982) and *State v. Funderburk*, 259 S.C. 256 (1972); *State v. Wheeler*, 259 S.C. 571 (1972).

The primary question before this Court and that was presented before the South Carolina Supreme Court, (see Pet. Appx. – F, pp. 725a – 801a), and the Federal District Court of South Carolina in a complaint for Declaratory Judgment, (see Pet. Appx. – D, pp. 234a – 272a), is

whether S.C. Code Ann. §§ 14-9-210, 17-23-160, and 22-5-320 are jurisdictional in nature and whether when a defendant who demand in writing a request for a preliminary hearing, that the Magistrate Court's retain jurisdiction and the Court of General Sessions is deprived of jurisdiction until the requested preliminary hearing is held. Insomuch as, whether it requires that all criminal indictments must be issued through a grand jury impaneled, before the Court of General Sessions, and whether the State's noncompliance with mandatory pre-indictment and indictment procedures, and willful acts of perjury have rendered all judicial proceedings invalid and it's indictments null.

The statutory provisions at issue are contained in sections 14-9-210, 17-23-160, and 22-5-320. (See Pet. Appx. – E, infra. pp. 658a – 659a). The statutory terms as mentioned are clear, unambiguous, and require the County Solicitor to prepare and submit bills of indictment through the presiding judge of the Court of General Sessions to a grand jury impaneled under the authority of the Court of General Sessions. After a defendant that has demanded a requested preliminary hearing has been held. No exception.

So accordingly, section 14-9-210, requires strict compliance with its provisions, and mandates that the grand jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of a true-billed indictment can take place, but only after a defendant's requested demand for a preliminary hearing has been held. Also here, is South Carolina, Rule – 2, S.C.R.Crim.P; S.C. Code Ann. § 17-23-160 and S.C. Code Ann. § 22-5-320, which set forth the requirement concerning preliminary hearings and their impact on the jurisdiction of the Magistrate Courts and Courts of General Sessions to try defendants who have requested a preliminary hearing. Rule – 2, S.C.R.Crim.P, provides that “any defendant charged with a crime not trial by a magistrate shall be brought before a magistrate and shall be given notice of his right to a preliminary hearing solely to determine whether sufficient evidence exists to warrant the defendant's detention and trial.” See Rule – 2(a), SCRCrimP. The due process clause of the Fourteenth Amendment to the

United States Constitution and South Carolina Constitution Article I, §§ 3 and 22, protects Petitioner's right to due process and proper judicial review.

Now once the accused properly requests a preliminary hearing, (see Pet. Appx.- F, p. 886), the magistrate's court retains jurisdiction and the Court of General Sessions is deprived of jurisdiction until such hearing is held. No indictment may be true billed by the grand jury when the circuit court lacks jurisdiction, since the grand jury's jurisdiction is co-extensive with the criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry." *State v. McClure*, 277 S.C. 432 (1982); *State v. Funderburk*, 259 S.C. 256 (1972); *State v. Wheeler*, 259 S.C. 571 (1972). A hearing must therefore be held on such Petition as the lower court would have had no jurisdiction to try Petitioner until the preliminary [hearing] had been held. See *Blandshaw v. State*, 245 S.C. 385 (1965).

However, here, evidence will show that Asst. Solicitor, James E. Hunter, has violated Petitioner's Sixth Amendment right "to be informed of the nature and cause of the accusation," and his "Due Process" under the Fourteenth Amendment of the U.S. Constitution and his "right to judicial review," pursuant to S.C. Const. Art. I, §§ 3 and 22. There has been an abuse of process within the Spartanburg County Grand Jury proceeding concerning the Petitioner's indictments. Which will establish that a grand jury was not selected, drawn, or summoned in accordance with S.C. Code Ann. §§ 14-7-1540 or 14-9-210, that the general sessions court was without jurisdiction.

Asst. Solicitor, James E. Hunter, has unlawfully impaneled a Spartanburg County Grand Jury outside the jurisdiction of the Court of General Sessions, and then willfully printed and published false and misleading information in its indictment in order to keep secret its violations of statutory law. Thus, a controversy has come before this court.

In this case, on July 18, 2012, a Magistrate Judge notified Petitioner of his right to a preliminary hearing, pursuant to S.C. Code Ann. § 17-23-160. Whereas, Petitioner was furnished

a sample form providing him an opportunity to request a preliminary hearing by signing and returning this form to the advising magistrate judge then and there. (See Pet. Appx. – F, p. 886a). “When such a hearing has been so demanded the case shall not be transmitted to the Court of General Sessions or submitted to the grand jury until the preliminary hearing shall have been had, the Magistrate Courts [is] to retain jurisdiction and the Court of General Sessions [is] not to acquire jurisdiction until after such preliminary hearing.” See S.C. Code Ann. § 22-5-320.

Therefore, recognizing the jurisdictional requirements set forth in sections 14-9-210, 17-23-160, and 22-5-320, mandating the only process allowed for impaneling a lawful grand jury,² after a defendant has demanded a request for a preliminary hearing, and after consideration of the facts and evidence presented above it becomes apparent that Petitioner, John Garvin, was indicted outside the jurisdiction of the Court of General Sessions and by a mode of procedure that Asst. Solicitor, James E. Hunter, and the Spartanburg County Grand Jurors had no lawful authority to adopt.

When a legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way. Thus, since Spartanburg County Court of General Sessions utilized an unlawful mode of procedure not allowed under sections 14-9-210, 17-23-160 and 22-5-320, the Spartanburg County Grand Jury had lacked the requisite jurisdiction to complete return of its true-billed indictments.

Consequently, since Petitioner had requested for a preliminary hearing, in addition, to the fact that the State cannot provide Petitioner with any grand jury documents as requested to substantiate that a grand jury was selected, drawn, or even summoned in accordance with the mandatory provisions of S.C. Code Ann. §§ 14-9-210, 17-23-160 and 22-5-320. The State had NO

² “[A] ‘procedural’ law sets out a mode of procedure for a court to follow, or ‘prescribes a method of enforcing rights.’” See *Edwards v. State Law Enforcement Division*, 395 S.C. 571, 580 (2011) (quoting Black’s Law Dictionary 1083 (5th Ed. 1979)).

jurisdiction to issue a return of true-billed indictments except during a time when the Court of General Sessions is lawfully convened to oversee the grand jury process. In fact, South Carolina Supreme Court has already determined that NO indictment may be true billed by a grand jury when the court lacks jurisdiction. See *McClure*, 277 S.C. at 434. The grand jury must be impaneled under the jurisdiction of the Spartanburg County Court of General Sessions before lawful return of indictment can take place. See *State v. McClure, supra.*, *State v. Funderburk, supra.*, and *State v. Wheeler, supra.*

B. Criminal Violations

Asst. Solicitor, James E. Hunter has clearly violated 18 U.S.C. § 1001, and 34 U.S.C. § 12601(a), and conspiracy against right, 18 U.S.C. § 241, and deprivation of rights under color of law, 18 U.S.C. § 242, whereas, Asst. Solicitor, Hunter has engaged in a pattern or practice of conduct, by unlawfully processing indictments, outside the jurisdiction of the Spartanburg County's Court of General Sessions without a factual finding of probable cause to put Petitioner on notice.

1. Violation of Title 18 U.S.C. § 1001

Title 18 U.S.C. § 1001 provides:

“Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.”

Asst. Solicitor, James E. Hunter, has clearly violated section 1001. *Firstly*, because S.C. Code Ann. § 14-9-210, mandates that the County Solicitor shall prepare and process bills of indictment through the jurisdiction of the Court of General Sessions. Petitioner's two indictments were sealed with a true-bill stamp, signed by Asst. Solicitor, James E. Hunter, and contained false

information that Petitioner committed the crime of drug trafficking in heroin on July 7, 2012, and on July 17, 2012. (See Pet. Appx. – F, pp. 881a - 884a).

Second, it should be noted that a criminal indictment is a document required by the law of the State of South Carolina. In *Gentry, supra.*, the South Carolina Supreme Court determined that an indictment is a notice document required by the State Constitution and Statutes. See S.C. Constitution Art. I, § 11 and Art. V, § 22 [footnote omitted], S.C. Code Ann. § 17-19-10 (2003) (“No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury,” except in specified instances.). Petitioner’s true-bill indictments satisfies the provisions of section 1001, making or uses any false writing or document, is clearly what has happened in this case.

Third, and importantly, it must be emphasized for purposes of blame that Asst. Solicitor, James E. Hunter, holds full knowledge and understanding of the law within the State of South Carolina. It is a requirement of the high office of a prosecutor. The prosecutor occupies a quasi – judicial position, and must see that justice is done, that no conviction takes place except in strict conformity with the law. See e.g., *State v. Quattlebaum*, 338 S.C. 441 (S.C., 2000); *State v. Durden*, 264 S.C. 86 (1975); *State v. King*, 222 S.C. 108 (1952). Thus, Asst. Solicitor, James E. Hunter, is REQUIRED TO KNOW AND OBEY the mandates of S.C. Code Ann. §§ 14-9-210, 17-23-160, and 22-5-320, that lawfully impanel a grand jury after a defendant has made a timely request for a preliminary hearing, accordingly.

As presented above, instead of discharging his responsibilities in conformity with South Carolina State Law, Asst. Solicitor, James E. Hunter, broke his oath of office, he intentionally violated the provisions of S.C. Code Ann. §§ 14-9-210, 17-23-160, and 22-5-320, by unlawfully processing Petitioner, John Garvin’s indictments (see subsection-A. above), outside the jurisdiction of the Court of General Sessions, and then by willfully printing false and misleading

information in the indictment incorrectly stating that it had been returned with a factual finding of probable cause at a Spartanburg County Court of General Sessions (see subsection-A. above).

“Section 1001 expressly embraces false statements made “in any matter within the jurisdiction of any department or agency of the United States.” (Emphasis supplied). A criminal investigation surely falls within the meaning of “any matter,” and the [Spartanburg County Seventh Circuit Solicitor’s Office] equally [and] surely qualify as [a] “department[] or agenc[y] of the United States.” quoting *U.S. v. Rodgers*, 466 U.S. 475, 479 (1984).

Thus, Asst. Solicitor, James E. Hunter, has committed the offense of perjury and must be punished accordingly. Asst. Solicitor, James E. Hunter, is now subject to the governing authority of 18 U.S.C. § 1001, of making a false document and 18 U.S.C. §§ 241 and 242, conspiracy against rights and deprivation of rights under color of law. Not to mention, his violation of 34 U.S.C. § 12601(a).

2. Violation of Title 34 U.S.C. § 12601(a)

Title 34 U.S.C. § 12601(a) provides in pertinent part:

“It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of [] justice or the incarceration of [one’s person] that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.”

From the evidence shown above and in subsection-A., of this memorandum, Petitioner has determined that Asst. Solicitor, James E. Hunter, has engaged in a pattern or practice of misconduct by willfully printing false information within Petitioner’s true-billed indictments without a factual finding base on probable cause.

Here the facts and evidence will establish that Asst. Solicitor, James E. Hunter, also conspired with several other State Judicial personnel in order to impanel a grand jury outside the authority of the Spartanburg County’s Court of General Sessions, to complete a return of an illegal

true-billed indictments and to print and publish false indictment information without a proper finding of probable cause. Petitioner submits that sufficient evidence is presented here to establish an existence of a criminal conspiracy.

3. Preliminary Statement

For some time now it has been an open secret in South Carolina State's Judicial circle that NONE of it's true-billed indictments are being processed and returned in compliance with statutory law and that some unlawful process is being utilized. In fact, several prominent newspapers and attorneys, (see Pet. Appx. – G, pp. 1011 – 1018a³), in South Carolina have commented on the irregularities in South Carolina's County indictment process, and the impossibility of lawfully returning true-billed indictments at the excessive rates reported, given the known time constraints. (See Pet. Appx. – G, pp. 1011a – 1013a⁴ and 1014a – 1017a⁵). The grand jury proceedings were most likely held in a back office conference room with a Solicitor/Asst. Solicitor overseeing the process. Also present would have been a court administrative assistant, the Clerk of Court, and grand jury foreman.

In this case, the actual type of unlawful process utilized by Asst. Solicitor, James E. Hunter to complete a return of Petitioner, John Garvin's two true-billed indictments is of important and determinative of the criminal conspiracy issue presented here. However what is determinative is the fact that the grand jury proceedings were held outside the jurisdiction of the Court of General Sessions for an illegal return of a true-bill, and that Asst. Solicitor, James E. Hunter, committed an offense of perjury in order to keep secret the unlawful process. That overt act of perjury, along with the cooperation provided by other parties to make complete and secret the illegal process, is determinative of the criminal conspiracy issue.

³ <https://sclawyermyrtlebeach.com/2024/07/09/why-we-need-grand-jury-reform-in-sc/>

⁴ <https://www.google.com/amp/s/amp.greenvilleonline>

⁵ <https://www.heraldonline.com/news/local/article216878215.html>

4. Conspiracy Against Right and Deprivation of Rights Under Color of Law

Title 18 U.S.C. §§ 241 and 242 are federal criminal statutes making it illegal for a person acting under color of law to willfully deprive a person of their rights under the constitution or federal law. See *Cok v. Cosentino*, 876 F.2d 1,2 (1st Cir. 1989) (stating that “only a United States prosecutor can bring a complaint under 18 U.S.C. §§ 241 – 242”). The general language of § 242, referring to “the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States,” is matched by the breadth of its companion conspiracy statute, § 241, which speaks of conspiracies to prevent “the free exercise or enjoyment of any right or privilege secured to [any person] by the Constitution or laws of the United States.” See 18 U.S.C. § 241. Accordingly, an offense of conspiracy against Petitioner’s rights and the deprivation of Petitioner’s rights under color of law, has come before this Court for Judgment.

First, Judge, J. Derham Cole, a Circuit Court Judge of Spartanburg County Circuit Court was the Chief Administrative Judge, of Spartanburg County Circuit Court and who was seated on the bench at the times relevant to the indictments return date of December 6, 2012, would be the State Judicial Officer directly responsible for the scheduling and ordering a grand jury impaneled outside the bounds of the Court of General Sessions. (See Pet. Appx. – G, p. 1026a). This judge⁶ would have been in possession of knowledge concerning the mandatory provisions of S.C. Code §§ 14-9-210, 17-23-160, and 22-5-320, and still chose to impanel an unlawful grand jury and assist in printing and publishing the false information contained in Petitioner, John Garvin’s two indictments.

Second, the facts and evidence presented above, and in subsection-A., of this memorandum establish that Asst. Solicitor, James E. Hunter, violated his oath of office and committed perjury

⁶ Hon. J. Derham Cole, Circuit Judge, was the presiding judge for Petitioner’s July 19, and July 31, 2019, Post-Conviction Relief (PCR) hearing in *John Garvin v. State*, Case No. 2015-CP-42-04699, and also was the presiding Judge on Petitioner’s co-defendant, Jonathan R. Perez’s December 17, 2012, guilty plea hearing in *State v. Jonathan Perez*, Case No. 2012-GS-42-5947; 5948.

by willfully printing false information in Petitioner, John Garvin's two indictments. Thus, Asst. Solicitor, James E. Hunter, is a "central figure" in the criminal conspiracy. In addition, it should be noted that Solicitor, Barry J. Barnette, as Chief Prosecuting Officer for Spartanburg County at the time, directs and supervises the activities of his assistants under his authority. Whereas, it would be the Solicitor, Barry J. Barnette, who is ultimately responsible for the criminal acts committed by the Assistant Solicitor in any case. Moreover, the possibility exists that others of the Solicitor's assistants are involved in the same type of unlawful and illegal indictment activities. Therefore, the activities of the Solicitor's office should be investigated by the appropriate authorities.

Third, Dean Dill, the grand jury foreman who was the individual responsible for signing the true-bill stamp affixed to Petitioner, John Garvin's indictments, thus, completing and giving validity to the unlawful grand jury process. By signing the false and incorrect true-bill stamp indictments, Dean Dill, the grand jury foreman by his actions committed an offense of perjury, as well as assisted the other conspirators.

Fourth, M. Hope Blackley, the person who was Clerk of Court at the time, pursuant to S.C. Code Ann. §§ 14-7-1520 and 14-9-210 reported and presented Petitioner's indictments with its printed false information, to the presiding judge at the Court's next term. Moreover, the indictment containing the false information would have been filed in the Court's public records.

Fifth, the presiding judge at the Spartanburg County term of General Sessions Court allowed Petitioner's indictments, containing the false information to be reported and published (see Pet. Appx. – F, pp. 881a – 884a), within their court. The Judge allowed the illegal indictments to enter into the official court record unchallenged even though he would have known that NO County Grand juries were to be impaneled under the jurisdiction of the Court of General Sessions until after Petitioner, John Garvin, has his requested preliminary hearing. (See Pet. Appx. – F, pp.

886a). Also it should be noted that Rule – 501, SCACR, Code of Judicial Conduct, Cannon – 2(A), requires a judge in the State of South Carolina to comply with the law and promote public confidence in the integrity of the judiciary.

In this case, it has been shown that various parties performed different functions in order to carry out, and make complete, by an act of perjury, a County's indictment process done by unlawful means. Title 18 section 371 of United States Code of Law, provides in pertinent part that conspiracy is defined as, “[i]f two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act (return of true-bill indictments), [by unlawful means] (an illegal grand jury and acts of perjury) to effect the object of the conspiracy.” [insertions added]. also see 18 U.S.C. §§ 241, 242.

C. Contemporaneous Objections and Rights Violations

The record in this case has clearly established that Petitioner was indicted by way of a grand jury process that the Court of General Sessions had no lawful authority to adopt. Whereas, in order to keep secret the fact of the illegal grand jury, Asst. Solicitor, James E. Hunter, willfully printed false information in Petitioner, John Garvin's, two indictments (see subsection-A. and B.); (also see Pet. Appx. – F, pp. 884a – 886a), and then joined into a criminal conspiracy in violation of 18 U.S.C. § 371 with other State Judicial Officials to make effective a null indictment. (See subsection-A. and B.).

Here, Petitioner would show this Court that his failure to make timely objections to the illegal grand jury and void indictments were the direct result of Petitioner's trial counsel, Scott D. Robinson's deliberate failure to file a Motion to Quash the County's indictments as instructed on the grounds of (1.) Asst. Solicitor, James E. Hunter's act of perjury and (2.) the indictments were without any factual basis of a proper showing of probable cause by a witness to be put on proper

notice of the nature and cause of accusation. In addition, to the fact that the United States Constitutional Law requires the default to be imputed against the responsible party, the State of South Carolina.

1. Constitutional and Statutory Rights

“The primary purpose of an indictment is to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the Circuit Court to know what judgment to pronounce if the defendant is convicted.” See *Evans v. State*, 363 S.C. 495, 508 – 13 (S.C., 2005)(citing *Gentry*, 363 S.C. at 102 – 03)).

This required notice is a component of due process that is accorded to every criminal defendant. See U.S. Const. Amend. XIV; S.C. Const. Art. I, § 3. Additionally, a criminal defendant has a constitutional and statutory right to have the indictment issued by a legally constituted grand jury. See e.g., *State v. Means*, 367 S.C. 374 (2006); see *Evans v. State*, 363 S.C. 495 (2005); *State v. Williams*, 263 S.C. 290 (1974). Also see S.C. Const. Art. I, § 11 and Art. V, § 22; S.C. Code Ann. §§ 14-7-1520, 14-7-1540, 14-7-1550, and 14-9-210.

2. Contemporaneous Objections

In *Gentry*, relying on S.C. Code Ann. § 17-19-90, (“Every objection to an indictment for any defect apparent on the face therefore, shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards.”), the South Carolina Supreme Court held that the sufficiency of an indictment must be challenged before the jury is sworn.

Recognizing *Gentry*, the South Carolina Supreme Court in *Evans* held that, “... challenges to the legality and sufficiency of the process of a [County] Grand Jury also must be made before the jury renders a verdict in order to preserve the error for direct appellate review.” See S.C. Code Ann. § 14-7-1140 (Supp., 2003), “No irregularity in any writ of *venire fascias* or in drawing,

summoning, returning, or impaneling of jurors is sufficient to set aside the verdict, unless the party making the objection was injured by the irregularity or unless the objection is made before the returning of the verdict.” The *Evans* court overruling several cases, further determined that an indictment which is deemed to be a nullity because it was issued by an illegal grand jury no longer implicates subject matter jurisdiction.

Petitioner’s case however, takes the position that a challenge to either the illegal grand jury process or null indictment would be immaterial, because no valid waiver can be entered absolving the State of its criminal conduct, and a null indictment is of no legal effect and therefore non-binding. Under law, Petitioner’s null indictment (see subsection-A. and B.) is by its very nature, insufficient to support a conviction or sentence, and protects against double jeopardy. It is an axiomatic rule of law that an indictment deemed to be a nullity is “something that is legally void” and of “no legal effect” (citing Black’s Law Dictionary 8th Ed. 2004, Nullity and Void). See e.g., *Hardison v. Gledhill*, 72 Ga.App. 432 (Ga. Ct. App., 1945) (void, null, ineffectual, nugatory, having no legal force or binding effect, unable in law to support the purpose for which it was intended).

Needless to say, most certainly, a conviction and sentence based on the fruits of criminal acts cannot be allowed to stand under any circumstances. The facts and evidence in this case very clearly show that Asst. Solicitor, James E. Hunter, committed perjury and criminal conspiracy, (see subsection-A. and B.) in order to secure a conviction against Petitioner. Surely the *Evans* ruling does not stand for the proposition that because Asst. Solicitor, James E. Hunter, was not caught for his criminal acts in a timely manner, it is granted absolution.

For the reason stated above, Petitioner asserts that an objection to Spartanburg County’s illegal grand jury and null indictments would be pointless. However, for the sake of argument Petitioner would show this Court that:

In *Murray v. Carrier*, 477 U.S. 478 (1986) the United States Supreme Court held that the existence of cause for procedural default [for failure to comply with a State's contemporaneous – objection rule], must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's effort to comply with the State procedural rule. The Court stated, "without attempting an exhaustive catalog of such objective impediments to compliance with a procedural rule, we note that a showing that the factual or legal basis for a claim was not reasonably available to counsel." See *Reed v. Ross*, 468 U.S. 1, 16 (1984), or that "some interference by officials," *Brown v. Allen*, 344 U.S. 443, 486 (1953), made compliance impracticable, would constitute cause under this standard." *Carrier*, 477 U.S. at 488.

In this case, Asst. Solicitor, James E. Hunter, willfully printed false information in Petitioner's two County indictments (see subsection-A.), and then joined into a criminal conspiracy with other judicial official to keep secret the illegal grand jury process (see subsection-B.). Surely those acts by Asst. Solicitor, James E. Hunter, constitute an external factors sufficient to show cause for failure to make timely objections. Additionally, however, in *Evans*, citing *State v. Griffin*, 277 S.C. 193 (1981); *State v. Thompson*, 305 S.C. 496 (Ct. App., 1991), hold that the regularity of grand jury proceedings is presumed correct absent clear evidence to the contrary. Insomuch as, Petitioner was therefore, within his right to request and review the grand jury impaneling documents and supporting materials.

Asst. Solicitor, James E. Hunter, has utilized that presumption of correctness to assist in keeping his criminal acts secret and to make effective an unlawful taking of Petitioner's rights to make contemporaneous objections. Whereas, Asst. Solicitor, James E. Hunter, used it to his benefit. To the fact that no one would be checking into the County Grand Jury process and the fact that the County Grand Jury proceedings are not recorded by a court reporter. Therefore, in light of the United States Supreme Court's decision in *Murray v. Carrier*, *Supra.*, and taking into consideration Asst. Solicitor, James E. Hunter's criminal acts, the responsibility for Petitioner's failure to make timely objections to the illegal grand jury and null indictments, must be imputed to the Respondent ("State").

This Court should also take note of the fact that in *State v. Arthur*, 296 S.C. 495 (1988), the South Carolina Supreme Court held that a waiver of a constitutional and Statutory right requires a showing on the record that a defendant made the waiver knowingly and intelligently, citing *Patton v. United States*, 281 U.S. 27, 312 – 13 (1930), as the landmark case. That same standard should be applied here, because under no circumstances, can Asst. Solicitor, James E. Hunter, be allowed to use criminal means to effect a forfeiture of Petitioner's right to make objections.

Here, Petitioner has been convicted and sentenced pursuant to a null indictment and an illegal grand jury, made effective by criminal acts committed by Asst. Solicitor, James E. Hunter, in order to keep secret his unlawful procedures. Asst. Solicitor, James E. Hunter, has violated nearly every component of the due process notice requirement that's owed to the Petitioner, John Garvin.

Accordingly, and for the reasons shown above, this Court should remand this case back to the lower Court in order to allow Petitioner to enter belated objections to Asst. Solicitor, James E. Hunter's illegal grand jury and null indictment. See S.C. Code Ann. § 17-25-10.

D. S.C. Code Ann. § 17-25-10

Petitioner would show this Court, that as a result of the criminal violations committed by Asst. Solicitor, James E. Hunter, in this case, the lower trial court was divested of the requisite authority to impose the sentencing of the Petitioner, John Garvin.

S.C. Code Ann. § 17-25-10 provides that: "No person shall be punished for an offense unless duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person." A plain reading of S.C. Code Ann. § 17-25-10, requires that a criminal defendant cannot be sentenced for an offense until after the State has duly and legally convicted the individual. That did not happen in this case.

As established above in subsection-A., Asst. Solicitor, James E. Hunter, did knowingly violated the provisions of S.C. Code Ann. § 14-9-210 by, (1) unlawfully impaneling it's grand jury outside the jurisdiction of the Court of General Sessions, (2) utilizing an unlawful process for the return of true-bill indictments, and (3) causing false information to be printed and published in Petitioner's two indictments. Consequently, the grand jury was illegal and it's indictments null.

As established above in subsection-B., Asst. Solicitor, James E. Hunter, did knowingly committed an offense of perjury in violation of 18 U.S.C. § 1001, by willfully printing false and misleading information in Petitioner's two County indictments, without a proper finding of probable cause. Additionally, several judicial personnel joined into a criminal conspiracy, in violation of title 18 U.S.C. §§ 241, 242, and 34 U.S.C. § 12601(a), for purposes of completing a return and publications of Spartanburg County's illegal and void indictment.

As established above in subsection-C., Asst. Solicitor, James E. Hunter's, unlawful indictment process and subsequent criminal acts, has resulted in an illegal grand jury, a void indictment, a denial of Petitioner's rights to make objections to the two indictments, and violation of every component of the due process notice requirement owed to Petitioner by the State of South Carolina.

Accordingly, it would be hard to imagine a situation where the State of South Carolina has violated more of a criminal defendant's rights, than in the case found here. Indeed, it would take a novel rule of law, which would allow the State of South Carolina to maintain a conviction and sentence under the circumstances described above. To adopt such a rule of law here would be tantamount to an unrighteous, and perverted judgment.

Based on the above reasons, Petitioner has established that he was not duly and legally convicted, and therefore was sentenced in violation of S.C. Code Ann. § 17-25-10. Accordingly, the sentence in this case should be vacated.

E. Asst. Solicitor, James E. Hunter, Abused Spartanburg County's Judicial Process with His Criminal Acts That Resulted in An Illegal Grand Jury and A Void Indictment

Petitioner contends that the Spartanburg County Grand Jury procedures as followed fails to meet the standard of S.C. Const. Art. I, §§ 11, 14 & 22, and S.C. Const. Art. V, § 22. In addition, to the Sixth Amendment and the Fourteenth Amendment of the U.S. Constitution, in that the indictment brought was not an 'indictment of a grand jury' which had been 'found' by the requisite 12 jurors, as is required pursuant to S.C. Code Ann. § 14-7-1540. Insomuch as, the indictments failed to fully informed Petitioner of the nature and cause of the accusation for the crime of drug trafficking in heroin with a proper finding of probable cause provided by witness testimony, pursuant to S.C. Code Ann. § 14-7-1550, to be put on notice of the offense.

The grand jury returned indictments that would deprive Petitioner of the basic protection of which the guarantee of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him.

Here, Petitioner states, that he was tried on an indictment drawn by Asst. Solicitor, James E. Hunter, on the grand jury's instruction ('Presentment')⁷ that he be charged with drug trafficking in heroin, for the violation of S.C. Code Ann. § 44-53-370(e)(3). The indictment was found, not by the grand jury, but in fact by Asst. Solicitor, James E. Hunter, operating under the grand jury's bare instruction to indict for drug trafficking in heroin.

Even though the Grand Jury Foreman's signature appears on the indictment, this is nothing more then a presumption that the indictment reflects the will of the grand jury, and is judicial conjecture about the hypothetical acts of Spartanburg County Grand Jurors in its fullest rigor. Whereas, here, the State cannot produce any grand jury documents that a grand jury was selected,

⁷ The 'presentment' voted in this case does not satisfy the Constitutional requirement of a 'presentment or indictment of a grand jury,' lacking as it does the specificity of an adequate charging document.

drawn, or summons, in accordance with S.C. Code Ann. §§ 14-7-1540 and 14-9-210. And since a court reporter was not present to record the preceding, the Spartanburg County Grand Jury process is susceptible to abuse. “The Petitioner would state within his motion the reason for seeking said grand jury documents, whereas, he believed that a grand jury was not selected, drawn, or summons,” pursuant to S.C. Code Ann. § 14-7-1540. *Ibid.*

The Respondent’s Counsel (Valerie Garcia-Giovanoli, Asst. Att’y. General) would inform the Court during a PCR Motion hearing on February 21, 2018, that upon her investigation, she does not believe the documents applicant seeks (impanelment documents including the sex, age, race of grand jury members, minutes of grand jury proceedings, etc.) even exist.” (see Pet. Appx. – F, pp. 922a – 926a); (also see Pet. Appx. – G, pp. 969a, 970a, 971a, 972a, Ln. 19 – 25, 1 – 2, 11 – 12, 4 – 8) (February 21, 2018, Motion Hearing Transcript). *Ibid.*

In order to attack the Respondent’s presumption that a legally impaneled grand jury was drawn, Petitioner should have access to the grand jury documents and access to the grand jury minutes. If on the basis of those documents and minutes, Petitioner can show a reasonable probability that an abuse of process and a constitutional violation has occurred or that the conviction lacks subject matter jurisdiction. Whereas, the PCR Court should have granted Petitioner’s Motion for Summary Judgment to Obtain a Declaratory Judgment, and declaratory relief should have been entered declaring Petitioner’s indictment be null and void in violation of his constitutional rights.

1. Failure to Put Petitioner on Notice of the Nature and the Cause of Accusation

Petitioner contends that the indictments are unconstitutionally overbroad and vague as the indictments as alleged, for it recites the elements of the statutory offense charged and does not contain any significant factual allegations to enable him to prepare an adequate defense.

The guarantee given to an accused in a criminal prosecution, that he is “to be fully informed of the nature and the cause of the accusation.” S.C. Const. Art. I, § 14; also see *State v. Johnston*, 146 S.E.2d 657, 660 (S.C., 1929). The words, “to be fully informed of the nature and cause of the accusation,” as contained in [the Sixth Amendment of the U.S. Constitution, and South Carolina’s] Constitution, we’re as strong as the language contained in section 13 of Article 1 of South Constitution’s of 1868,⁸ where it was declared that one charged with [a] crime should not be held to answer “until the same is fully, fairly, plainly, substantially and formally described to him.” *Id.* “The indictment must contain the necessary elements of the offense and fully inform the accused of the nature of the accusation against him.” *Id.* An indictment is sufficient if it charges the crime substantially in the language of the common law or statute, or the crime is so plainly stated that the nature of the offense charged may be easily understood. See S.C. Code Ann. § 17-19-20 (1985).

Here in Petitioner’s case the offense charged is not easily understood, as Asst. Solicitor, James E. Hunter filed an indictment that charged the Petitioner as a principal with drug trafficking in heroin. The Spartanburg County Court of General Sessions convicted Petitioner guilty as an accomplice for drug trafficking in heroin, on May 23, 2013. Petitioner did not receive constitutionally adequate notice through trial testimony that he faced accomplice liability for drug trafficking in heroin. And did not learn that he could face accomplice liability for drug trafficking in heroin until the trial court announced it’s decision convicting him guilty under that theory. The judge’s jury charge of “the Hand of One, is the Hand of All” is a fatal variance “that deprives the Petitioner of a fair notice of the charge and creates a difference between the allegations in the indictment and the proof actually introduced at trial.” quoting Black’s Law Dictionary 1787 (Deluxe 10th Ed. 2014). “The indictments must contain the necessary elements of the offense and

⁸ South Carolina’s Constitution was amended and ratified by the 1971 Act No. 276 (1971 (57)315) revised and rewrote this article, substituting present §§ 1 to 23 for former §§ 1 to 29. The present provisions of this section are similar to former §§ 18 and 25 of Article I as it existed prior to the 1971 revision. For similar provisions in the Constitution of 1868, see Const. 1868, Art. I, §§ 11, 13.

fully inform the accused of the nature and cause of the accusation against him or her.” quoting *State v. Johnson*, 314 S.C. 161, 166 (1994).

Phrasing the indictment in the disjunctive does not provide Petitioner with notice of the nature and the cause of the accusation, since such phrasing leaves Petitioner uncertain as to which of the charged acts is being relied upon as the basis for the accusation against him. “The primary purpose of an indictment [is] to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense.” *Evans v. State*, 363 S.C. 495, 508 (2005). As in *State v. Johnston*, *supra*., with both the constitutional and statutory provisions as to indictments and being properly put on notice, the inquiry then is, did the indictment in this case charge the crime so substantially in the language of the statute prohibiting the same, or so plainly that the nature of the offense charge therein could be easily understood by a defendant to be put on notice of the nature and cause of the accusation; and did it meet the constitutional guarantee given to the defendant “to be fully informed of the nature and cause of the accusation.” *Id.* “It is axiomatic that an indictment must include more than the elements of the charged offense.” See *State v. Baker*, 411 S.C. 583, 592 (2015).

The indictments as alleged, also fails to name, to whom Petitioner has knowingly conspired with and/or to whom he has knowingly aided and abetted within the body of the indictments. This should not have been done. For the indictments fails to fully inform the Petitioner of the nature and the cause of the accusation, that concur to ascertain the facts and it’s nature. As South Carolina Constitution Article I, § 14 States that: “any person charged with an offense shall enjoy the right ... to be fully informed of the nature and cause of the accusation.”

Petitioner’s indictments, can not show an agreement by two or more person that committed an unlawful act, coupled with an intent to achieve the agreement’s objective, and action or conduct that furthers the agreement to establish a “conspiracy” or show that Petitioner knowingly assisted

or facilitated the commission of a crime, and/or to promote it's accomplishment to establish that he "aided and abetted" someone in the commission of a crime previous to the finding of the indictment by the grand jury. In this respect the Petitioner is at a considerable disadvantage. As he proceeded to trial and was require to defend himself on the drug trafficking in heroin as a principal, but was convicted under the state's common law jury charge of the "Hand of One, Hand of all" theory for accomplice liability for "conspiring" and/or "aiding and abetting" some undisclosed person. Therefore, which does not preserve to him his right, as declared by the South Carolina Constitution Article One section 14, and the Sixth Amendment of the U.S. Constitution, to be fully "informed" of the accusation against him.

2. Abuse of Process

In South Carolina's criminal justice system, "the [State] has broad discretion as to whom to prosecute," *Wayte v. United State*, 470 U.S. 598, 607 (1985). "[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision of whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." *Id.* (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 364 reh'g. denied, 435 U.S. 918 (1978)).

Here in this case, Asst. Solicitor, James E. Hunter, has abused the Judicial Process of the Petitioner with his official lawlessness in the enforcement of South Carolina Statute § 44-53-370(e)(3), by bringing forth an indictment without a proper finding of probable cause or any type of direct/testimony evidence to substantiate the true-billing of the indictments, that he brought against Petitioner Garvin on December 6, 2012, pursuant to S.C. Code Ann. §§ 14-7-1540 and 14-9-210.

Petitioner's complaint for a declaratory judgment turns on whether Asst. Solicitor James E. Hunter, and the Spartanburg County Grand Jurors abused the process of Spartanburg County

grand jury proceedings. Thus, violating Petitioner's constitutional rights to be put on notice and to have proper judicial review. See S.C. Const. Art. I, §§ 14, 22. Whereas, depriving Petitioner of a requested preliminary hearing. Accordingly, Petitioner seeks to have a declaratory judgment to determine the legalities and the constitutionality of Spartanburg County Grand Jury process.

The essential elements of abuse of process are (1.) an ulterior purpose, and (2.) a willful Act in the use of the process that is not proper in the regular conduct of the proceedings. *Pallares v. Seinar*, 407 S.C. 359, 370 (S.C., 2014)(citation omitted). The first element, an "ulterior purpose," exists if the process is used to secure an objective that is "not legitimate in the use of the process." *D.R. Horton, Inc. v. Wescott Land Co.*, 398 S.C. 528, 551 (Ct. App., 2012)(citations omitted). Petitioner contends that Asst. Solicitor, James E. Hunter, meets the first elements of abuse of process, because he has perverted Petitioner's requested preliminary hearing proceedings for the improper ulterior purpose of furthering the objective of his prosecution without having the burden to establish a reasonable probable cause finding to believe that a crime was committed for drug trafficking in heroin.

Asst. Solicitor, James E. Hunter, abused the grand jury process by not presenting evidence that would amount to a proper finding of probable cause. To whereas, he has "use[d] a [criminal] legal process ... against [Petitioner] primarily to accomplish a purpose for which it [was] not designed, is subject to liability for harm caused by the abuse of process." *Id.* at 75 (quoting Restatement (second) of Torts sec. 682 (1977)). Asst. Solicitor, James E. Hunter collateral objective was the "sole or paramount reason for acting." *Id.* at 75.

Now, as to the second, or "willful act" element, South Carolina Supreme Court has stated that "[s]ome definite act ... not authorized by the process or aimed at an object not legitimate and the use of the process is required." *Food Lion, Inc. v. United Food & Commercial Workers Int'l. Union*, 351 S.C. 65 (Ct. App. 2012) (citation omitted). Thus, the element comprises three

components: (1.) a “willful” or overt act (2.) “in the use of the process” (3.) That is improper because it is either (a.) Unauthorized or (b.) aim at an illegitimate collateral objective. *Id.*

Petitioner has indisputably alleged the first element of abuse of process, by stating that Asst. Solicitor, James E. Hunter, has deprived Petitioner of a requested preliminary hearing for the improper ulterior purpose of furthering the objective of his prosecution without having the burden to establish reasonable probable cause to believe that a crime was committed for drug trafficking in heroin.” *Ibid.*; See *Food Lion, Inc.*, 351 S.C. at 72. (citing *Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 136 (1997) (noting the improper purpose usually is “to obtain a collateral advantage [] not properly involved in the proceedings itself”)(quoting *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209 (1967)). As to the second element, Petitioner contends Asst. Solicitor, James E. Hunter committed the following “willful acts”:

- a. Did knowingly misrepresent to the courts that a grand jury was selected, drawn, and summons in accordance with S.C. Code Ann. §§ 14-7-1540 and 14-9-210 for collateral purposes ...
- b. Did knowingly employ the use of unlawful grand jury procedures for the return and publication of Petitioner, John Garvin’s true-billed indictments for collateral purposes ...
- c. Did knowingly presented no substantial or rationally persuasive evidence, pursuant to S.C. Code Ann. § 14-7-1550, on which to base the indictments for collateral purposes ...
- d. Did knowingly file indictments that was returned solely as a result of misleading and the improper manner in which no such evidence was ever presented to the Grand Jury for collateral purposes ...
- e. Did knowingly fail to bring forth an indictment that would put Petitioner on notice of the nature and cause of the accusation for the crime of drug trafficking in heroin that was charged for collateral purposes ...
- f. Did knowingly use the Grand Jury process that is not proper under the regular conduct of the proceedings to gain a collateral objective for collateral purposes ...
- g. Did knowingly conspired with other judicial officials to bring forth two true-billed indictments for collateral purposes ...

These “willful acts” were taken through which the process was misapplied and abused. Here, Petitioner has alleged that Asst. Solicitor, James E. Hunter has engaged in “willful acts” in the use of the process not proper under the regular conduct of the proceedings. Whereas, a collateral objective has been sought. That shows not only that the indictments were brought for an ulterior purpose, i.e., for collateral reasons, but that “willful acts” were taken through which the process was misapplied and abused. See *Huggins*, 249 S.C. at 214, 153 S.E.2d at 697 (“The abuse, the perversion, of the process ... is the foundation of the cause of action....”). *Kircher v. Greene*, 294 Ill. App.3d 672, 681-82, 691 N.E.2d 107, 116-17 (1998) (“The mere use of the legal process ... does not constitute abuse of process. ‘Some act must be alleged whereby there has been a misuse or perversion of the process of the Court.’”)(citations omitted).

3. Malicious Prosecution

A fraudulent investigation and an unlawful seizure by arrest, detention, prosecution, conviction and incarceration by Asst. Solicitor, James E. Hunter, acting alone and together and in concert, with others, violated the procedural and substantive rights guaranteed to Petitioner by the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution and to rights secured under the laws and Constitution of South Carolina Article One sections 3, 11, and 22.

Petitioner states that Asst. Solicitor, James E. Hunter, intentionally restrained and instigated the restraint of Petitioner against his will for 12 years and continues that restraint within the custody of South Carolina Department of Corrections at their Ridgeland Correctional Institution, without probable cause, reasonable suspicion, or lawful authority, and/or failed to intercede in the unlawful treatment of Petitioner as previously described and is malicious prosecution.

“[T]o maintain an action for malicious prosecution, a [movant] must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the

defendant; (3) termination of such proceedings in [the] [movant's] favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." See *Pallares v. Seinar*, 407 S.C. 359, 366, 756 S.E.2d 128, 131 (2014) (citing *Law v. S.C. Dep't. Corr.*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006)).

For the *First* and *Second* elements, the record would show that, On December 6, 2012, immediately after being charged with drug trafficking in heroin for the violation of S.C. Code Ann. § 44-53-370(e)(3) and denying Petitioner of a requested preliminary hearing. Asst. Solicitor, James E. Hunter, acting alone and together and in concert, with others, maliciously, and without reasonable grounds therefor, obtained a County Grand Jury Indictment No.: 2012-GS-42-5978. (See Pet. Appx. – F, pp. 881a – 882a). Thus, instigating the filing and prosecution of a State criminal action in the Spartanburg County Court of General Sessions.

Also on December 6, 2012, Asst. Solicitor, James E. Hunter, instituted another indictment action against Petitioner in the Spartanburg County Court of General Sessions, on Indictment No.: 2012-GS-42-5979, (see Pet. Appx. – F, pp. 883a – 884a), based on the same claim. Which resulted in the prosecution of Petitioner as described above, and/or failed to prevent the detention, prosecution and incarceration of Petitioner. Whereas, Petitioner was never served with notice of those two indictments.

For the *Third* element, Petitioner states that, On October 10, 2013, in Spartanburg County Court of General Sessions, *State v. John Garvin*, Case No.: 2012-GS-42-5978, Asst. Solicitor, James E. Hunter, dismissed⁹ Indictment No.: 2012-GS-42-5978. (See Pet. Appx. – F, pp. 881a – 882a), due to video evidence that proved Petitioner's innocence of the alleged crime. The South Carolina Supreme Court "held a prosecutor's dismissal of a charge is sufficient if the accused can

⁹ *McKinney v. Jack Eckerd Co.*, 304 S.C. 21, 22 (1991)(In *McKinney*, the narrow issue before this Court was whether a prosecutor's dismissal of a criminal charge – as opposed to a judicial dismissal – was sufficient to prove a criminal proceeding terminated in the [movant's] favor in order for the [movant] to maintain an action for malicious prosecution.)

demonstrate the charge was dismissed “for reasons which imply or are consistent with innocence.”” quoting *McKenny v. Jack Eckerd Co.*, 304 S.C. 21, 22 (1991).

For the *Fourth* element, the Petitioner states that, in instituting the two indictments, Asst. Solicitor, James E. Hunter, acted maliciously without probable cause, and with intent to injure Petitioner, in that (1) he has deprived Petitioner of his October 25, 2012, requested preliminary hearing proceedings for the improper ulterior purpose of furthering the objective of his prosecution without having the burden to establish reasonable grounds for a probable cause finding to believe that a crime was committed for drug trafficking in heroin. (2) he has taken a single investigation and turned it into two separate indictments for the same crime. (3) Did knowingly violate the provisions of S.C. Code Ann. § 14-9-210 by (a) unlawfully impaneling a grand jury outside the jurisdiction of the Court of General Sessions; (b) utilizing an unlawful process for the return of two fraudulent true-billed indictments; (c) knowingly committed an offense of perjury in violation of 18 U.S.C. § 1001, by willfully printing false and misleading information within Petitioner’s two County indictments without a proper finding of probable cause; and (d) did knowingly conspire with several judicial personnel in violation of 18 U.S.C. §§ 241, 242, and 371, for the purpose of completing a return and publication of Spartanburg County’s illegal and void indictment. Whereas, Petitioner was never served with notice of those two indictments.

Here, in this case, on December 6, 2012, with the use of two falsified arrest warrants and the denial of Petitioner’s requested preliminary hearing on October 25, 2012, Asst. Solicitor, James E. Hunter, maliciously accused Petitioner, without a proper finding of probable cause, for the crime of drug trafficking in heroin, pursuant to S.C. Code Ann. § 44-53-370(e)(3), that was presented before an alleged Grand Jury of Spartanburg County Court of General Sessions, and as a result the alleged grand jury returned two fraudulent indictments. (See Pet. Appx. – F, pp. 881a – 884a).

For the *Fifth* element of malicious prosecution is the institution of judicial proceedings without a proper finding of probable cause against the Petitioner. "South Carolina has long embraced the rule that a true-bill of indictment is *prima facie* evidence of probable cause in an action for malicious prosecution." quoting *Law*, 368 S.C. at 436. The record will show that Asst. Solicitor, James E. Hunter, on May 21, 2013, stated during Petitioner's trial that his indictments were not a direct indictment. But that he based probable cause for the indictments on the arrest warrants. (See Pet. Appx. – G, p. 964a, Ln. 22-24). Petitioner states that his indictments were not presented with a witness or evidence to establish a factual finding of probable cause as is required pursuant to S.C. Code Ann. § 14-7-1550. The facts here in this case do not support a finding that Asst. Solicitor, James E. Hunter, had probable cause to pursue criminal charges against the Petitioner, John Garvin.

For the *Sixth* element of Asst. Solicitor, James E. Hunter's malicious prosecution of the Petitioner that had a resulting injury or damage to him. The record will show that Petitioner has been convicted and sentenced to 25 years and fined \$200,00.00. (see Pet. Appx. – G, p. 1019a).

The record reveals that Asst. Solicitor, James E. Hunter, presented indictments before an alleged Spartanburg County Grand Jury based upon the Petitioner's arrest warrants to establish a finding of probable cause to true-bill the two indictments. The two arrest warrants affidavit's submitted to the courts by Spartanburg County Sheriff's Officer, Ken Hancock, deliberately fabricated the statement within the affidavit of arrest warrant numbers: N-158303 and N-158322, with reckless disregard for the truth. In addition, the weight of evidence was also fabricated in warrant number: N-158303 with reckless disregard for the truth within both arrest warrants that was presented to two different Magistrate Judges. (See Pet. Appx. – G, pp. 1020a – 1021a).

Officer Hancock's affidavits contained no information by which the Magistrate Judges could discern the importance for the arrest of Petitioner, John Garvin, or any type of investigation

that occurred to identify John Garvin as a suspect to be charged as a principal for drug trafficking in heroin. Officer Hancock's false statement identifying Petitioner Garvin as a principal for drug trafficking in heroin was materially false and was made in reckless disregard of the truth. The affidavit's did not provide sufficiently reliable information for the issuing Judges to reasonably infer that the investigating officer obtained his information through a reliable source. Officer Hancock's affidavits contain no information to connect Petitioner Garvin to the crime of drug trafficking in heroin other than the bold statement that "**WARRANT BASED ON POLICE INVESTIGATION.**" (see Pet. Appx.- G, pp. 1020a – 1021a).

Officer Hancock's arrest warrant affidavits do not directly or indirectly, provide any information by which a Judge could discern how or why Petitioner Garvin even became a suspect to arrest or be indicted for drug trafficking in heroin. Asst. Solicitor, James E. Hunter, abuse of process and malicious prosecution as described above were motivated by an evil motive and intent, and involved a reckless and callous indifference to Petitioner's State and Federally protected rights. The evidence before this court is sufficient to create a federal question before this Court for declaratory relief as to both the ulterior purpose element and all three aspects comprising the willful act element to show that an abuse of process and that a malicious prosecution has occurred, thus, entitling him to declaratory relief from this Court.

II.

THE DECISION OF THE FOURTH CIRCUIT COURT OF APPEALS MUST BE REVERSED, BECAUSE THE COURT ERRONEOUSLY APPLIED *SLACK v. McDANIEL*, SUPRA., TO CONTINUE THE DISTRICT COURT'S DENIAL OF PETITIONER'S HABEAS CORPUS ACTION SEEKING DECLARATORY RELIEF IN A CASE IN WHICH THERE HAS BEEN PRESENTED A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT THAT WAS MADE BEFORE THE DISTRICT COURT.

The Fourth Circuit denied Petitioner for a COA in a one page Order. (See Pet. Appx. – A, p. 3a)(Order denying a COA because Petitioner Garvin "has not made a 'substantial showing of

the denial of a constitutional right’’’ (quoting *Slack v. McDaniel*, 529 U.S. 473, 483 (2000) (quoting 28 U.S.C. § 2253(c)(2))). Petitioner, now petitions for review in this Court.

A habeas petitioner may not appeal the denial of his habeas petition unless the District Court or Court of Appeals ‘issues a certificate of appealability.’’ 28 U.S.C. § 2253(c)(1). See *Gonzalez v. Thaler*, 565 U.S. 134, 143, n.5 (2012). Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), a COA ‘may issue … only if the applicant has made a substantial showing of the denial of a constitutional right.’’ See 28 U.S.C. § 2253(c)(2). To make that showing, a habeas petitioner must demonstrate ‘that reasonable jurists could debate whether … the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.’’ *Slack*, 529 U.S. at 484 (internal quotation marks omitted). AEDPA does not ‘require petitioner[s] to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus.’’ *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003). Rather, ‘[a]t the COA stage, the only question is whether’ the ‘claim is reasonably debatable.’’ *Buck v. Davis*, 580 U.S. 100, 115-116 (2017).

In this case, the issue confronting the Fourth Circuit is whether reasonable jurists could debate that the Federal District Court’s disposition of Petitioner Garvin’s habeas petition was erroneous as he did actually ‘[make] a substantial showing of the denial of a constitutional right’’. That question, in turn, depends on whether reasonable jurists could argue that, did the Petitioner demonstrate an independent basis of federal jurisdiction and presented to the District Court an actual case or active controversy within his Ground Five issue that was plead within his Motion for a Declaratory Judgment, (see Pet. Appx. – D, pp. 234a – 272a), seeking a declaration to determine the legality and constitutionality of a County grand jury proceedings are cognizable for habeas review pursuant to 28 U.S.C. § 2201 and Article III of the United States Constitution.

A. The Judgment of the District Court Must Be Reversed, Because This is A Proper Case For The Grant of Declaratory Relief and Petitioner is A Proper Party for Such Relief.

“The District Court [has] authority to issue a declaratory judgment under 28 U.S.C. § 2201(a).” see *Calderon v. Ashmus*, 523 U.S. 740 (1998) (citation omitted). “[A] declaratory judgment [that Petitioner] need only demonstrate an independent basis of federal jurisdiction and an actual case or controversy. *Id.* The District Court has federal question jurisdiction under 28 U.S.C. § 1331 because [Petitioner’s] case challenge[s]” the legality and constitutionality of Spartanburg County’s Grand jury process. Thus, making the case-or-controversy requirement was satisfied, because Spartanburg County Asst. Solicitor, James E. Hunter abused the County’s grand jury process to produce two fraudulent true-billed indictments without a proper finding of probable cause by a witness, as is required pursuant to South Carolina’s statutory laws for issuing true-billed indictments. *Id.*

1. This is A Proper Case For The Grant of Declaratory Relief.

This is a “classic case for declaratory relief.” *Lake Carriers Association v. MacMullan*, 406 U.S. 498, 514 (1972) (quoting Justice Powell’s dissenting opinion). The district court’s Order does not even assert that Petitioner’s Ground Five issue lacks the “rudiments of an active controversy between the parties” as a basis for its decision. An active and lively controversy currently exists between Petitioner Garvin and the Respondents. Petitioner has been subjected to an actual application of South Carolina’s drug trafficking statute on two occasions, one on July 12, 2012, (see Pet. Appx. – G, pp. 1009a – 1010a), and the second on December 6, 2012, (see Pet. Appx. – F, pp. 881a – 884a), without a proper finding of probable cause. But instead, the District Court would issue an Order adopting the magistrate judge’s recommendation and DENIED Petitioner Garvin’s motion for declaratory relief, all while GRANTING the Respondent’s motion for

summary judgment, (see Pet. Appx. – A, pp. 5a – 30a), without discussing the facts or issues, but would simply just brush them aside.

The District Court’s reputation with the Petitioner is simply procedurally dismissing, ignoring, downplaying and finding numerous excuses to deprive Petitioner of vindicating his constitutional rights within the District Court of South Carolina.¹⁰ “The practical consequences that inure from the [District Court’s Order] also undercut substantially the negative inference upon which the [District Court Order] relies on. [This Court has] consistently warned that Courts should resist an interpretation of AEDPA that would produce trouble some results and create procedural anomalies.” quoting *Jones v. Hendrix*, 599 U.S. 465, 515 (2023) (citation and internal quotation marks omitted).

The District Court’s reasoning for denying Petitioner’s Ground Five issue and his motion for a declaratory judgment were incorrect. Petitioner’s Ground Five issue is cognizable pursuant to the declaratory judgment act, because an active and lively controversy currently exists between the Petitioner and the Respondents. Petitioner Garvin has been subjected to prosecutorial misconduct and a malicious prosecution that was initiated by Asst. Solicitor, James E. Hunter, who has abused Spartanburg County’s grand jury process by violating South Carolina’s statutory laws for instituting a grand jury pursuant to S.C. Code Ann. §§ 14-7-1520, 14-7-1530, 14-7-1540, 14-7-1550, 14-7-1920, 14-7-1930, 14-9-170, 14-9-210, 14-7-220, 17-19-10, 17-19-20, 17-23-160, and 22-5-320. This Court has stated in *Lake Carriers Association, supra.*, “that in and of itself [Petitioner’s] attack on the validity of the law [is] a live controversy, and not an attempt to obtain an advisory opinion.” 406 U.S. at 507, 92 S.Ct. 1749. Furthermore, the District Court’s Order granting the Respondent’s motion for summary judgment will continue to insist on the strict enforcement of Petitioner’s illegal conviction and sentence.

¹⁰ See (1) *Garvin v. Wright, et al.*, Case No. 2:13-cv-00442-DCN-BHH; (2) *Garvin v. Spartanburg County*, Case No. 7:13-cv-00454-DCN-BHH; and (3) *Garvin v. William*, Case No. 2:18-cv-00409-DCN-MGB.

A declaration of rights would be beneficial to the Petitioner. Whereas, a substantial federal question has been presented on the merits of a controversy as to the extent that the Petitioner must tolerate the State's violation of his Sixth Amendment right "to be informed of the nature and cause of the accusation" and his Fourteenth Amendment rights to due process, which in turn displays that Asst. Solicitor, James E. Hunter has also violated title 18 U.S.C. § 1001 and 34 U.S.C. § 12601(a). Withal that being said, there are no remedy available to Petitioner in the State of South Carolina to vindicate the violation of his constitutional rights.

2. Petitioner is A Proper Party for Declaratory Relief.

The requirements of Article III standing require, "First, the [Petitioner] must have suffered an 'injury in fact an invasion of a legally protect interest which is (a) concrete and particularized, and (b) 'actual or imminent, not "conjectural or hypothetical." Second, there must be a causal connection between the injury and the conduct complained of - the injury has to be 'fairly ... trace[able] to the challenged action of the [Respondent's], and not ... th[e] result [of] the independent action of some third party not before the Court.' Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 – 561 (1992) (footnote and citations omitted).

A party invoking the Court's authority has a sufficient stake to permit it to appeal when it has "suffered an injury in fact" that is caused by 'the conduct complained of and that 'will be redressed by a favorable decision.'" *Camreta v. Greene*, 563 U.S. 692, 701 (2011) (quoting *Lujan, supra.*, 504 U.S. at 560 – 61)). "Article III of the Constitution grants this Court authority to adjudicate legal disputes only in the context of cases or controversies. To enforce this limitation, [this Court has] demand[ed] that litigants demonstrate a personal stake in the suit. The party invoking the Court's authority has such a stake when three conditions are satisfied: The petitioner must show that he has suffered an injury in fact" that is caused by the conduct complained of and

that will be redressed by a favorable decision. [Insomuch as,] [t]he opposing party also must have an ongoing interest in the dispute, so that the case features that concrete adverseness which sharpens the presentation of issues. To ensure, a case remains fit for federal – court adjudication, the parties must have the necessary stake not only at the outset of litigation, but throughout its course.” See *Camreta*, 563 U.S. at 701 (citation and internal quotation marks omitted).

“One of the controlling elements in the definition of a case or controversy under Article III” is standing. The requisite elements of Article III standing are well established: “A [Petitioner] must allege personal injury fairly traceable to the [Respondent’s] allegedly unlawful conduct and likely to be redressed by the requested relief.” *Hein v. Freedom From Religion Foundation, Inc.*, 551 U.S. 587, 598 (2007). That element of an active controversy also brings into question, whether the Petitioner is a proper party. In the present case, the Petitioner represent his interests in this matter, and did suffered just such an injury. “[Petitioner] has been indicted, and was actually [] prosecuted[,] [convicted and sentenced] by [the State of South Carolina] for violation of it’s [drug trafficking statute] at the time [his habeas corpus petition] was filed. [Petitioner] thus[,] has an acute, live controversy with the State and it’s [Asst. Solicitor, James E. Hunter].” quoting and citing *Younger v. Harris*, 401 U.S. 37, 41 (1971).

Since the lower court did not reach the merits of Petitioner’s Ground Five issue for declaratory relief, it would be an appropriate disposition to remand for a finding of whether or not Asst. Solicitor, James E. Hunter, did knowingly employed the use of unlawful procedures that abuse the County grand jury process for the return and publication of Petitioner’s two true-billed indictments as to deprive him of his Fourteenth Amendment rights to due process.¹¹ Petitioner

¹¹ The District Court would not be adrift with respect to the appropriate standard to apply to reach its determination of whether or not declaratory relief is proper in the context of the mode of procedure for county grand jury proceedings of this prosecution action. This Court has already established a number of devices to prevent abuse of the lower Court’s equitable powers; for instance: abstention, case or controversy, imminence of prosecution or standing. What must be borne in mind is that the applicable principles are judicially created and, therefore, are completely subject to judicial

states that under *Younger, supra.*, he is an appropriate party with a “genuine controversy.” Asst. Solicitor, James E. Hunter’s misconduct has an adversely impact in a real and concrete way upon Petitioner Garvin’s Sixth and Fourteenth Amendment rights being violated. The continued enforcement of Petitioner’s illegal conviction and sentence that deprives him of his liberty, otherwise available to the public at large. Insomuch as, making Petitioner a “proper party” for declaratory relief.

B. *Slack v. McDaniel, Supra.*, is Inapplicable to this Case, Because Petitioner Has Made A Substantial Showing of The Denial of A Constitutional Right for Which Declaratory Relief May Be Granted.

Petitioner states that he has made a “substantial showing” under the standard set forth in *Slack v. McDaniel, Supra.*, that “reasonable jurists could debate whether … the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” 529 U.S. at 484, 120 S.Ct. 1595 (internal quotation marks omitted). The Fourth Circuit has erred by “failing to limit its examination [of Petitioner’s case] to a threshold inquiry[,] [whereas,] [t]he only issue before [that] court was the threshold jurisdictional question [of] whether to issue a COA. [Now,] [w]hen a court of appeals departs from the limited COA inquiry, without even [making a] full briefing or oral argument, and instead opines on the merits of an appeal, it is in essence deciding an appeal without jurisdiction.” quoting and citing *Johnson v. Vandergriff*, 143 S.Ct. 2551, 2553 – 54 (2023).

The Fourth Circuit has completely ignored Petitioner’s pleadings, (see Pet. Appx. – D, pp. 234a – 272a, 288a – 544a, 635a – 654a), that has made a substantial showing that there has been an abuse of Petitioner’s grand jury process, that has committed extrinsic fraud upon the court to produce two fraudulent true-billed indictments and did utilize a fraudulent statement during Petitioner’s trial, that was plead to the Fourth Circuit within his Emergency Motion for Stay

control. They may be expanded or restructured to meet the exigencies of each case so that a proper balance is maintained between federal and State interests.

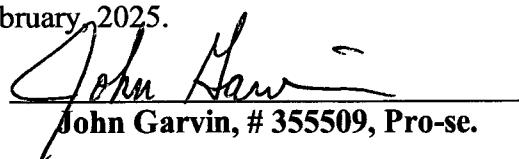
Pending Appeal, for Injunctive Relief pending Appeal and within his Motion to Remand Case back to the District Court. (See Pet. Appx. – C, pp. 80a - 85a, 86a – 109a, 110a - 114a). Those motions are merit determination matter and a COA ruling is not the occasion for a ruling on the merit of those Motions that Petitioner has plead before the Fourth Circuit. *Id.*

Now, contrary to the Fourth Circuit's view, *Slack v. McDaniel, Supra.*, is not applicable to this case. Because Petitioner has made a substantial showing of "extraordinary circumstances where the danger of irreparable loss is both great and immediate" and when bad faith has been enforced by the prosecution, that is cognizable for declaratory relief, pursuant to Article III of the United States Constitution. *Slack* is not concerned with the question of whether declaratory relief is appropriate against a prosecution's abuse of a County Grand Jury Process that lacks personal and subject matter jurisdiction, is a showing that reasonable jurists could debate or that the issues presented are adequate to deserve encouragement to proceed further.

CONCLUSION

The allegations within this Petition for Writ of Certiorari are susceptible to the inference that the primary purpose of Asst. Solicitor, James E. Hunter's indictments was to pervert the course of justice and violate Petitioner's constitutional rights to due process. This Court should grant Petitioner's petition for writ of certiorari to vacate and remand back to the Court of Appeals with instructions to remand back to the District Court to consider Petitioner Garvin's Ground Five issue for Declaratory Relief.¹²

RESPECTFULLY SUBMITTED this 12th day of February, 2025.



John Garvin, # 355509, Pro-se.

¹² In Petitioner's amended habeas petition, he raised grand jury lacks subject matter jurisdiction claim which related to the abuse of the Spartanburg County Grand Jury process. See Pet. Appx. – D, pp. 464a – 505a, 652a – 653a. This claim is not procedurally defaulted and has been fully exhausted. Because the South Carolina Supreme Court declined to entertain Petitioner's Complaint for Declaratory Judgment within that Court's Original Jurisdiction. However, the District Court has erroneously ruled that this issue is not cognizable.