

No. 24-6590

**IN THE
SUPREME COURT OF THE UNITED STATES**

John Garvin – *Petitioner*,

v.

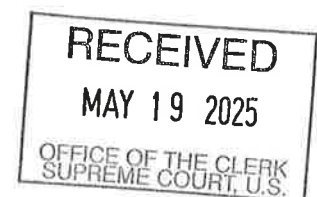
Levern Cohen, Warden – *Respondent*.

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

PETITION FOR REHEARING

BY:

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QUESTIONS PRESENTED

1. Whether the Fourth Circuit should not have presumed correct the lower court's factual finding, by doing so, it has departed from the limited COA inquiry, without making a full briefing or oral argument has decided Petitioner's appeal without Jurisdiction.
2. Whether without a Rehearing and GVR, would Petitioner be deprived of his right to have an Appellate Court consider the merits of his constitutional claims based on claim preclusion.

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PETITION FOR REHEARING

Petitioner, John Garvin, respectfully requests a rehearing of the Court's Order dated April 21, 2025, denying his petition for writ of certiorari that was seeking a declaratory judgment in this case. It is unusual for this Court to grant rehearing and grant certiorari, vacate the judgment below and remand (a "GVR Order") for other substantial grounds not previously presented. See e.g., *Jefferson v. Upton*, 560 U.S. 284, 130 S.Ct. 2217 (2010); *National Labor Relation Board v. Federal Motor Truck Company*, 325 U.S. 838, 65 S.Ct. 1412 (1945); see generally U.S. Sup. Ct. Rule – 44.2. Specifically, Petitioner Garvin request that this Court enter an Order granting a GVR, because of other substantial grounds not previously presented.

The Fourth Circuit should not have presumed correct the lower court's factual finding, it's determination was an obfuscated order that was rendered by that Court, that has overlooked the material facts and legal matter concerning Petitioner's petition for writ of certioraris' underlying constitutional claims. It does not take seriously enough the importance of the issue and has unreasonably applied the standard set forth in *Slack v. McDaniel*, *Supra.*, 529 U.S. 473, 484, 120 S.Ct. 1595 (2000) and *Miller-El v. Cockrell*, *Supra.*, 537 U.S. 322, 336 – 38, 123 S.Ct. 1029 (2003), to the facts of the Petitioner's claim. The decision was dubious at best, this Court should harbor serious doubts about the findings of facts and credibility determinations in the record without an evidentiary hearing on Petitioner's factual allegations of his underlying constitutional claim of his Ground Five issue that presents an actual, justiciable controversy under Article III of the U.S. Constitution. A "case or controversy" that is entitled to have a declaration of Petitioner's rights and further relief in the form of a stay or an injunction.

Accordingly, this Court should grant a rehearing, vacate the Order denying Petitioner's Petition for Writ of Certiorari, and enter a GVR Order. See *Jefferson*, 130 S.Ct. at 2229, so that a

fundamental, constitutional violation of due process or that a “case or controversy,” under Article III does not exist. That would be the appropriate disposition in this case. The need for clear guidance from the U.S. Supreme Court is hereby requested.

PROCEDURAL SUMMARY

Petitioner filed the present Petition for Writ of Certiorari after the Fourth Circuit dismissed all of Petitioner’s claims challenging the legality of his State criminal proceedings, based upon the Fourth Circuit’s conclusion “that Petitioner has not made the requisite showing that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right.” See *Garvin v. Cohen*, 2024 WL 864307 (4th Cir., S.C., Feb. 29, 2024). In dismissing Petitioner’s claims in its entirety, the Fourth Circuit failed to address the challenges to the legality and the constitutionality of Petitioner’s Grand Jury proceedings, that were in violation of his Fourth, Sixth, and Fourteenth Amendment rights to the U.S. Constitution. The Fourth Circuit also did not address or even take seriously enough the importance of Petitioner’s GROUND FIVE issue. There decision was based on a one sided story without an evidentiary hearing on the factual allegations of the underlying constitutional claims. *Id.*

Petitioner timely filed his petition for writ of certiorari in this Court. This Court would deny Petitioner’s petition on April 21, 2025. When Petitioner submitted the petition, it should have been granted, vacated, and remanded because this Court should not have presumed that the Fourth Circuit’s finding is correct under *Slack, Supra.*, and § 2254(d). Consequently, Petitioner’s constitutional claim should be subject to adjudication by this Court, because it presents an actual, justiciable controversy under Article III. This Court’s denial of Petitioner’s petition for writ of certiorari, deprives him of his right to have his GROUND FIVE issue fully adjudicated.

**I.
REASONS FOR GRANTING REHEARING**

THE FOURTH CIRCUIT SHOULD NOT HAVE PRESUMED CORRECT THE LOWER COURT'S FACTUAL FINDING, BY DOING SO, IT HAS DEPARTED FROM THE LIMITED COA INQUIRY, WITHOUT MAKING A FULL BRIEFING OR ORAL ARGUMENT, HAS DECIDED PETITIONER'S APPEAL WITHOUT JURISDICTION

This Court's "broad power to GVR" (*Lawrence v. Chater*, 516 U.S. 163, 166 (1996) (per curiam)) is derived from 28 U.S.C.A. § 2106, which authorizes this Court to "vacate any judgment," "remand the cause," and "require such further proceedings as maybe just under the circumstances."

In *Lawrence*, this Court suggested that, even if a GVR Order is "potentially appropriate," the Court might elect not to grant such relief if (i) an "intervening development, such as a confession of error is part of an unfair or manipulative litigation strategy," or (ii) "the delay and further cast entailed in a remand are not justified by the potential benefits of further consideration by the lower court." See 516 U.S. at 167 – 88. Neither of these considerations supports withholding a GVR Order in this case.

First, there is no issue of unfair or manipulative litigation strategy on Petitioner's part. On the contrary, throughout his long litigation, at every level, Petitioner has consistently and vigorously maintained that a constitutional violation has occurred. Petitioner has done everything he could to preserve his legal position on his issues. It would be manifestly inequitable to deny Petitioner the full benefit of this Court. Moreover, entry of a GVR would allow Petitioner's GROUND FIVE issue that involves the challenge to the legality and the constitutionality of his grand jury proceedings.

A rehearing of the denial of a petition for writ of certiorari is appropriate, when that has occurred here, there is "other substantial grounds not previously presented" that's relative to the

petition. See Sup. Ct. R. 44.2. Furthermore, this Court may modify any judgment brought before it, and vacate and remand that case to the Court below “as may be just under the circumstances.” See 28 U.S.C.A. § 2106 (2000). This particular remedy –to grant the petition, vacate the judgment below, and remand the case– is particularly appropriate when the Court below did not consider other substantial grounds not previously presented. Grounds “that had never previously been raised [in this Court], for a consideration of a new argument that might affect the judgment.” See *Jefferson v. Upton*, 560 U.S. 284, 130 S.Ct. 2217 (2010).

In *Jefferson*, this court granted a petition for rehearing based upon an issue that had never previously been raised. It summarily vacated the judgment of the court of appeals on an altogether different ground that was neither raised nor passed upon and that was not fairly included within the sole question presented. The petitioner in *Jefferson* was entitled to a GVR on the basis of an error that the Eleventh Circuit did not commit. It was granted on an issue that had never been raised and remanded for a more extensive consideration of a new argument that might affect the judgment. see *Jefferson*, 130 S.Ct. at 2229.

Likewise, in this case, this court should consider an issue that had never previously been raised, as was true in *Jefferson*. Petitioner should have the opportunity to have the Fourth Circuit’s presumption of correctness claim determined according to this court’s decision in *Lawrence* and *Jefferson*. This court’s denial of petitioner’s writ of certiorari, affirms the Fourth Circuit decision to decline jurisdiction. Petitioner should now have the opportunity to receive the appellate review that he was denied by the Fourth Circuit’s error. The denial of the petition for a Writ of Certiorari deprived Petitioner of that right and leaves the Fourth Circuit’s error intact.

Although “only the most extraordinary circumstances should justify [a rehearing],” 16B Charles Alan Wright et. al., *Federal Practice and Procedure* § 4004.6 (3rd ed. 2015), this court has

granted petitions for rehearing when, after issuing a watershed decision, the court vacated the judgment of the [appellate court] on the basis of an error .. , with respect to a statutory issue that had never previously been raised, and remands for more extensive consideration of a new argument that might affect the judgment. See, e.g., *Jefferson*, 130 S.Ct. at 2229. The GVR Order has become an integral part of this Court's practice, and this court has exercised GVR when "other substantial grounds not previously presented." See U.S. Sup. Ct. Rule – 44.2.

The interest of justice requires this Court to GVR for "other substantial grounds not previously presented." *Id.* Petitioner would like to present to this Court that the Fourth Circuit should not have presumed correct his State PCR Court's factual findings or the District Court of South Carolina's factual findings, whereas, the exceptions enumerated in 28 U.S.C. §§ 2254(d)(1) – (8) and 28 U.S.C. § 2254(b)(1)(B)(ii) apply in this case. Here, the questions arises in the context of U.S. Sup. Ct. Rule – 44.2. Specifically, would this question, be considered a proper showing of other substantial grounds not previously presented to this Court.

Here, Petitioner states that South Carolina's State Post-Conviction process is ineffective in providing any hope of substantive review of Petitioner Garvin's constitutional claims, thus, depriving him of a fair bite of the apple. Petitioner also asserts that his State post-conviction process is futile, because the State has refused to rule on the merits of the evidence that Petitioner has presented before the Spartanburg County Court of General Sessions, the Spartanburg County Court of Common Pleas, and to the South Carolina Supreme Court. Moreover, specifically, the South Carolina Supreme Court would procedurally bar Petitioner's claims arbitrarily to enforce it's default rule, despite Petitioner presenting a compelling showing of actual innocence before that Court to excuse the procedural default. During this process, Petitioner plead to the federal District

Court that his State post-conviction proceedings were inadequate to provide any substantive review of his constitutional claims, pursuant to 28 U.S.C. § 2254(b)(1)(B)(ii).

The futility is further illustrated by the habeas litigation of Petitioner's GROUND ONE issue of Actual Innocence and his GROUND FIVE issue of the Grand Jury Lacks Subject Matter Jurisdiction, to the District Court of South Carolina. The federal district court would recharacterize Petitioner's gateway claim of actual-innocence as a freestanding claim of actual-innocence and claim that Petitioner's GROUND FIVE issue was not a cognizable claim. Then the District Court would grant the Respondent's Motion for Summary Judgment despite the fact that the Respondent's did not meet the legal standard for the district court to be granting summary judgment in favor of the Respondent's. The District Court would acknowledge this fact within the footnotes of its Order, but instead would still grant the Respondent's Motion for Summary Judgment. (See Pet. Appx. – A, p. 8a n.4). The Petitioner would then file a Motion for Reconsideration of that Order, pursuant to Rule – 52(b) and Rule – 59(e), Fed.R.Civ.P. (See Pet. Appx. – D, pp. 147a – 184a). The District Court then would issue an Order stating that it “lacks jurisdiction over this matter, as petitioner [has] filed a Notice of Appeal to the Fourth Circuit,” thus, erroneously denying Petitioner's Motion in complete disregard of Appellate Court Rule – 4(a)(4)(A)(ii) & (iv) of the Federal Rules of Appellate Procedure. (See Pet. Appx. – B, pp. 34a – 35a). The Petitioner consequently would file a second Motion for Reconsideration of that Order and would also file a Motion for Relief from Judgment, pursuant to Rule – 60(b) and Rule – 60(d), Fed.R.Civ.P. (See Pet. Appx. – D, pp. 124a – 139a). The District again would issue an Order stating that it “lacked jurisdiction over this matter, as petitioner [has] filed a Notice of Appeal to the Fourth Circuit.” (see Pet. Appx. – B, pp. 34a – 35a). The District Court's would give an erroneous ruling, just so that it wouldn't have to rule on those two motions.

The futility would continue on down to the Fourth Circuit Court of Appeals. Inasmuch as, the Fourth Circuit would completely ignore Petitioner's pleadings, (see Pet. Appx. – A, pp. 3a – 4a), that has made a substantial showing that proved his innocence and that there has been an abuse of Petitioner's judicial process, due to extrinsic fraud being committed upon the courts by Asst. Solicitor, James E. Hunter. Now, contrary to Petitioner's pleadings, the Fourth Circuit would rule that it made an "independent[] review[] [of] the record and conclude[d] that [Petitioner] Garvin has not made the requisite showing. Accordingly, [it] den[ied] a certificate of appealability and dismiss the appeal." The Fourth Circuit would "dispense with oral argument [and concluded that] the facts and legal contentions are adequately presented in the materials before [the] Court and argument would not aid the decisional process." (see Pet. Appx. – A, pp. 3a – 4a). Also within that Order the Fourth Circuit would erroneously rule and recharacterize the District Court's rulings of lacked jurisdiction over this matter on Petitioner's Motions, to his Rule – 59(e) motion as Garvin failed to state grounds for relief and on his Rule – 60(b)(3) motion as being a successive § 2254 petition.

The Fourth Circuit's ruling is contrary to Petitioner's pleadings because he has demonstrated both that the dispositive procedural ruling is debatable and that his pleadings present and states a debatable claim of the denial of a constitutional right. See *Gonzalez v. Thaler*, 565 U.S. 134, 140 – 41 (2012) citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Whereas, Petitioner has pleaded and stated that Asst. Solicitor, James E. Hunter has committed extrinsic fraud upon the court to produce two fraudulent true-billed indictments and did knowingly utilize a fraudulent statement during Petitioner's trial to secure his conviction and sentence, that was plead before the Fourth Circuit within his Emergency Motion for Stay Pending Appeal, for Injunctive Relief pending Appeal, (see Pet. Appx. – C, pp. 80a – 85a), and within his Motion to Remand Case Back

to the District Court, (see Pet. Appx. – C, pp. 110a – 117a), and within his Motion to Recall Mandate. (See Pet. Appx. – C, pp. 72a – 77a). Those motions are merit determination matters 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. “[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).

Consequently, the equities strongly militate in favor of a rehearing and granting of a GVR Order. Therefore, under *Lawrence*, *Jefferson* and S.Ct. R. 44.2, Petitioner request for rehearing should be granted and the Fourth Circuit’s judgment vacated and remanded for consideration in light of this Court’s decision in *Jefferson*.

II.

WITHOUT A REHEARING AND GVR, PETITIONER WILL BE DEPRIVED OF HIS RIGHT TO HAVE AN APPELLATE COURT CONSIDER THE MERITS OF HIS CONSTITUTIONAL CLAIMS BASED ON CLAIM PRECLUSION

Petitioner is entitled to rehearing under the “other substantial grounds not previously presented” provision in S.Ct. R. 44.2. Without a rehearing and GVR order, Petitioner would arguably be forever barred from having his constitutional claims considered on appeal.

The Fourth Circuit’s refusal to accept jurisdiction over petitioner’s appeal, if upheld, would leave that final decision on the merits intact and preclude Petitioner from litigating his constitutional claims. See e.g., *Hughes v. United States*, 71 U.S. 232, 237 (1866) (a judgment is a bar to another suit if it is rendered in a proceeding between the same parties or their privies, [] the point of controversy is the same in both cases, and is determined on its merits).

Unless this court grants the petition for rehearing and issues a GVR, Petitioner will remain in limbo and his claims will fade into oblivion. “Whether a GVR order is ultimately appropriate

depends further on the equities of the case” *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 167-68, 116 S.Ct 604 (1996)(per curiam). Here, the equities of the case urge that petitioner receive a GVR order. A GVR order is the only remedy capable of reversing the Fourth Circuit’s erroneous determination without an evidentiary hearing over petitioner’s claims. As was true in *Lawrence*, this case presents a circumstance in which “the GVR order can improve the fairness and accuracy of judicial outcomes while at the same time serving as a cautious and differential alternative to summary reversal in cases whose precedential significance does not merit [] plenary review.” *Id.* at 168.

CONCLUSION

The Fourth Circuit’s dismissal of petitioner’s constitutional claims greatly affects the outcome of petitioner’s challenges to the constitutional violations that occurred during his state proceeding. This court’s denial of the petition for writ of certiorari leave petitioner without the opportunity to have his claims adjudicated. And will allow Spartanburg County Solicitor’s and Court to continue disseminating its metastasizing prosecution of defendant’s that are actually innocent and will continue to inflame mass incarceration in the State of South Carolina and across America. For the above reasons, Petitioner respectfully requests that this Court grant a rehearing and issue a GVR order remanding this case to the Fourth Circuit for overlooking the material facts and legal matter concerning the petitions underlying constitutional claims. Whereas, the decision was based on a one sided story without an evidentiary hearing. This court has the power, in light of other substantial grounds not previously presented and in the interest of justice, to grant this petition for rehearing.

RESPECTFULLY SUBMITTED this 14th day of May, 2025.


John Garvin, # 355509, Pro-se

CERTIFICATE OF A PARTY UNREPRESENTED BY COUNSEL

Petitioner as a party unrepresented by counsel, I hereby certify that this petition for rehearing is presented in good faith and not for delay and restricted to the grounds specified in U.S. Sup. Ct. Rule – 44.2.

Dated: May 14, 2025


John Garvin, # 355509, Pro-se

No. 24-6590

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v.

Levern Cohen, Warden – *Respondent*.

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

CERTIFICATE OF SERVICE

I, John Garvin, do swear or declare that on this date, May 14, 2025, as required by U.S. Supreme Court Rule – 29, I have served the enclosed **PETITION FOR WRIT OF CERTIORARI**, on the Court and on the party's Counsel (by SCDC Inter-Agency Mail) to the above proceeding to be served, by depositing an envelope containing the above documents by United States Postal Two-day Priority Mail properly addressed to each of them and with First Class Postage prepaid, for delivery within 3 calendar days.

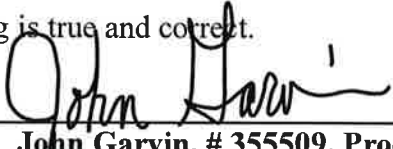
The names and address of those served are as followed:

To: Hon. Scott S. Harris, Clerk
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1 First Street, NE
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I declare under penalty of perjury that the foregoing is true and correct.

DATED: May 14, 2025


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