

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Robert Alan Gillie — PETITIONER
(Your Name)

VS.

Mark Carver et. al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Flamance County Superior Court, North Carolina
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert Alan Gillie
(Your Name)

444 County Home Rd.
(Address)

Blanch, N.C. 27212
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1.) Is used in an indictment, is the name of the defendant; the date of the offense; and the name of the county where the alleged offense was committed, material facts of an offense as opposed to essential elements of an offense that may be proved at trial?
- 2.) Was a plain error of a constitutional magnitude committed when the grand jury of Alamance County, North Carolina returned a true bill of indictment without finding the material facts of the offense to be true?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1.) Mark Carver, Superintendent of Caswell Correctional Center #4415,
444 County Spome Rd., Blanch, N.C. 27212.

2.) Erik A. Spooks, Secretary of N.C. Department of Public Safety,
Division of Adult Corrections, Prisons Section, 831 W. Morgan Street,
4260 Mail Service Center, Raleigh, N.C. 27699-4260.

3.) Josh Stein, Attorney General, N.C. Department of Justice,
P.O. Box 629, Raleigh, N.C. 27602

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

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☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

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☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

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

The opinion of the Flamance County Superior Court court appears at Appendix A to the petition and is

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

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

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

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 6/28/2017.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: 12/07/17, and a copy of the order denying rehearing appears at Appendix D.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment XIII:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

United States Constitution, Amendment XIV:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the

United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

North Carolina General Statute § 15A-924(a)(1):

"(a.) If criminal pleading must contain:
(1.) The name or other identification of the defendant..." (APPENDIX-E).

North Carolina General Statute § 15-144.1:

"(a.) In indictments for rape it is not necessary to allege every matter required to be proved on the trial; but in the body of the indictment, after naming the person accused, the date of the offense, the county in which the offense of rape was allegedly committed,..." (APPENDIX F).

North Carolina General Statute § 15-144.2:

same as above, except for naming of offense (APPENDIX F).

STATEMENT OF THE CASE

On March 24th, 1988; following his state appointed Attorneys' erroneous advice, Petitioner entered into a plea arrangement to which he pled guilty to the following first degree charges: rape, kidnapping, and sex offense, which were consolidated for judgement and Petitioner was sentenced to a term of natural life. Also, as part of the plea arrangement; Petitioner pled guilty to felony breaking and entering and was sentenced to a term of five years to be served consecutively to the natural life.

Petitioner was orchestrated into entering said plea arrangement by his state appointed attorney; Jeff Settle, because said attorney withheld knowledge of a negative rape kit result and two statements given by the alleged adult female victim approximately three weeks apart. In neither statement does the alleged victim claim to have been raped. In the three page order of denial issued by the Honorable G. Wayne Abernathy; Plamance County Senior Resident Superior Court Judge, clearly stated in the last sentence of paragraph #3: "Moreover, a negative rape kit finding and lack of physical evidence of sexual intercourse, do **NOT** establish the rape did not occur." (APPENDIX A).

Petitioners' convictions are based upon invalid indictments. Petitioner was never named in the body of the indictments. The State of North Carolina is using the caption of the indictments to supply the name of the defendant; the date of the offense; and the name of the county in which the alleged offense was committed without said facts being presented to the grand jury, which circumvents Petitioners' Fifth, Thirteenth, and Fourteenth Constitutional Amendments. The caption of an indictment is not a part of the grand jury's findings. The information contained in the caption never went before the grand jury. The indictments in the present case were fundamentally flawed when issued as true bills of indictments. Subject matter jurisdiction of the offenses was never properly conveyed by the grand jury to the Alamance County Superior Court. There is an insufficiency of the grand jury indictment process.

Petitioner alleges that a plain error of a constitutional magnitude has been committed. Petitioner has taken this plain error and broken it down into its essential parts:

A) Petitioner clearly asserts that the defendants' name; the date of the offense; and the name of the county where the alleged offenses happened, are material facts of an offense.

b.) Petitioner has inalienable state and federal constitutional rights to have all material facts of an offense be presented to; and found to be true by the grand jury, before subject matter jurisdiction of the offense can be conveyed by the grand jury to the superior court.

c.) The reason why the caption of an indictment cannot be used to enlarge, enhance, or otherwise support the body of the indictment is because the caption is not a part of the findings by the grand jury.

d.) Petitioners' name; the date of the offense; and the name of the county where the alleged offense was committed, was never part of the grand jury's findings. Without all material facts of an offense being found to be true by the grand jury, a plain error that is indisputable was committed.

Neither the North Carolina Court of Appeals or the North Carolina Supreme Court agreed to hear the present case or issue findings of fact on the issue and simply issued orders of denial.

In reference to the first question presented by the Petitioner; the defendants' name; the date of the offense; and the name of the county where the alleged offense happened, form a substantive part of the case presented by the pleading, and which cannot be stricken from the pleading without leaving it insufficient. The material facts of an issue of fact are such as are necessary to determine the issue. Material fact is one upon which the outcome of litigation depends. Amont v. Pacific Power & Light Co., 10 Wash. App. 785, 520 P. 2d 481, 484.

In reference to the second question presented; Petitioner asserts that the plain error in the present case affects substantial constitutional rights to due process of and equal protection of the laws and is so fundamental that it causes the grand jury to no longer be a grand jury, or an indictment to no longer be an indictment. United States v. McDonald, 61 F. 3d 248, 252 (4th Cir. 1995).

The grand jury determines if there is probable cause to believe that a crime has been committed and to protect citizens against unfounded prosecutions. "Fifth Amendment grand jury right serves a vital function... as a check on prosecutorial power... subject matter jurisdiction never forfeited or waived; defects require correction regardless of whether error raised in district court..." United States v. Cotton, 535 U.S. 625, 634 (2002).

REASONS FOR GRANTING THE PETITION

The State of North Carolina is circumventing constitutional safeguards, by failing to present material facts of an offense before the grand jury. The grand jury is simply following the district attorneys' instructions and returning true bills of indictments without ever finding the material facts of the alleged offense to be true. This is not an isolated incident, but a systemic corruption of a judicial process that pervades more than ninety of the one hundred counties of North Carolina.

This corrupt practice has become common place and violates Petitioners' Fifth Amendment protection to due process of the law; because the State has subverted the grand jury indictment process, essentially turning it into a "rubberstamp mill" to grant district attorneys' unmitigated power. Petitioners' Fourteenth Amendment was violated because Petitioner has been deprived of his liberty without due process of and equal protection of the laws when the Alamance County Superior Court proceeded without jurisdiction. Petitioners' Thirteenth Amendment protection was violated as well, when said superior court deprived Petitioner of his liberty by imprisonment. Petitioner has been illegally enslaved.

The North Carolina judicial system is fatally corrupted and refuses to address a plain error that affects a substantial

right. Even though the North Carolina legislature has created statutes detailing exactly what must be contained in the body of the indictment; the Court's refuse to address the jurisdictional challenge properly raised by Petitioner.

The State of North Carolina has committed fraud by failing to follow the letter of the law; failing to name the Petitioner as the person accused of committing a chargeable offense; failing to obtain a valid indictment and thereby denying the trial court subject matter jurisdiction of the offenses. There was an insufficiency of the grand jury indictment process which violates Petitioners' Fifth and Fourteenth Amendment protections of due process of and equal protection of the laws. The States' actions have called into question the integrity of and the respectability due to the courts. There are many other prisoners in North Carolina who have been illegally enslaved because of the grand jury indictment process violation.

The North Carolina legislature created a liberty interest with statutes that govern the offenses Petitioner has been convicted of. Specifically; North Carolina General Statute § 15A-924(a)(1) clearly states:

"(a) If criminal pleading must contain:

(1) The name or identification of the defendant..." (Appendix # E).

Petitioner asserts that subsection "(a)" contains mandatory wording: "...must contain;" which then alludes to subsection "(1)" which specifically states what must be supplied. The language is clear, unambiguous, and mandatory. The legislative intent of this statute is also clear and mandatory; the criminal pleading must contain the name or identification of the defendant. It caption is not a part of the criminal pleading.

For even more explicit legislative intent; Petitioner asserts that the statutes which govern the short-form indictments for rape and sex offense remove all doubt about what is to be included in the body of the indictment. North Carolina General Statutes §§ 15-144.1 and 15-144.2 clearly state:

"...but in the body of the indictment, after naming the person accused, the date of offense, the county in which the (rape/sex offense) was allegedly committed..."
(parenthesis combining offenses added) (Appendix #F).

The language used to create these statutes was not discretionary nor vague.

The North Carolina Supreme Court has addressed this very issue in the past. In State v. Finch, 218 N.C. 511, 11 S.E. 2d 547 (1940) clearly states:

"...Defendant argued that the indictment was defective because it failed to state his name... The court found that the failure to state defendant's name fatally compromised the indictment, and the defect was not cured by the fact that the envelope in which the indictment was placed bore defendant's name, that defendant's name was placed on the trial court docket, and that defendant was fully appraised of the pending charges. Moreover, the court found that the error was not waived by defendant's failure to raise the issue in the trial court, noting that a fundamental and fatal defect was reviewable de novo on appeal." The North Carolina Supreme Court reversed the judgement (Appendix # G).

Also, in State v. Bennett, 271 N.C. 423, 156 S.E. 2d 725 (1967) the North Carolina Supreme Court clearly stated:

"...The caption of an indictment, whether on the front or the back thereof, is not a part of it and the designation therein of the offense sought to be charged can neither enlarge nor diminish the offense charged in the body of the indictment..." (Appendix # H).

The statutes governing the charges Petitioner has been convicted of are clearly written, unambiguous, and mandatory. These statutes do not contain provisions within them allowing material facts of an offense to be incorporated by reference from the caption into the body of the indictment. The above cited cases were ruled upon by the North Carolina Supreme Court; thereby setting legal precedence for the lower courts to follow. The lower courts of North Carolina refuse to acknowledge the legal precedence clearly established; and the North Carolina Supreme Court has declined to address this issue.

The States' failure to name defendant within the body of the indictment is a fatal and incurable defect. State v. Simpson, 302 N.C. 613 (1981); State v. McCollom, 181 N.C. 584, 107 S.E. 309 (1921); State v. Phelps, 65 N.C. 450 (1871).

"An indictment to be good, must set forth with plainness and certainty all the essential facts constituting the offense; the charge must be explicit enough to support itself, for if all the facts alleged in the indictment may be true, and yet constitute no offense, the indictment is insufficient. 1 Chit. Pl. 233 and 235; 1 Bish., sec. 48" State v. Eason et al., 70 N.C. 88 (1874).

In essence; an indictment can only truly be valid if the body of the indictment is sufficient upon itself, meaning the body will remain sufficient with the caption removed. Petitioner now directs this Courts' attention to the following Appendices #I, #J, #K, and #L. These are the indictments used to convey subject matter jurisdiction of the offenses to the trial court. Appendices #II, #JJ, #KK, and #LL are the same indictments as above, with the captions removed. As the Court can plainly see; the body of the indictments are fatally defective and therefore, the Alamance County Superior Court never lawfully obtained subject matter jurisdiction of the offenses. Petitioner was never charged with committing a crime. The State has used the caption of the indictment to enlarge, enhance, or otherwise support the body of the indictment with material facts of an offense not found to be true by the grand jury.

Petitioner is a layman at law, self-taught with no access to law reference books or materials other than hand-me-downs; has been continuously denied legal assistance from the very agency the State contracted with to provide said legal assistance, for more than 29 years. Petitioner is denied access to a photo copier and is unable to provide copies of any legal documents, including this petition before the Court. Petitioner respectfully requests that this

Honorable Court to grant Petitioner leniency on any imperfections contained within this petition; both in form and content. In the event this Honorable Court grants this petition for writ of certiorari, Petitioner respectfully requests to be appointed legal counsel to assist him in further proceedings with this Court as required.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_____

Date: December 21ST, 2017