

No. 25-6687

IN THE SUPREME COURT OF THE UNITED STATES

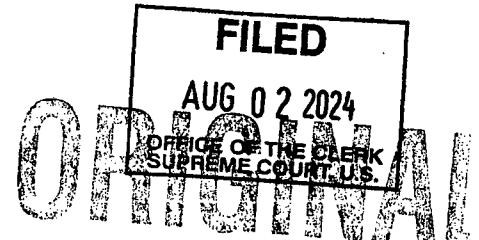
Herbert McDowell, Jr.

Petitioner,

Vs.

State of South Carolina

Respondent.



On Petition for a Writ of Certiorari to the
Supreme Court of South Carolina

PETITION FOR WRIT OF CERTIORARI

Herbert McDowell, Jr., #145167

Evans Correctional Institution

610 Highway 9

Bennettsville, SC 29512

I. Questions Presented

Did the Supreme Court of South Carolina Justifiably Disregard this Court's Holding in Johnson v. Avery by Refusing to Allow Certified Paralegal Patrick L. Booker to Act as Next Friend to Prisoner Herbert McDowell in Preparing Legal Documents for Habeas Corpus Proceeding?

Does the laws of South Carolina Supreme Court Regarding Unauthorized Practice of Law Conflict With or Undermine First Amendment Right of a Citizen to Receive Information and Ideas?

Does the Obligation of Contracts Clause And/ or the Freedom of Association Clause Protect the Right of Patrick L. Booker to Assist His Best Friend with His Habeas Corpus Proceeding?

Did the Supreme Court of South Carolina Deny and Deprive Petitioner McDowell of Equal Protection of Law in Denying the "Amended Petition for Habeas Corpus" for Failing to Show Entitlement to Habeas Relief, Considering That Court Had Already Previously Struck and Dismissed the Amended Petition for Habeas Corpus It Was Filed by Paralegal Patrick L. Booker?

Did the South Carolina Supreme Court by Ruling on the "Amended Petition for Habeas Corpus", Which It Had Already Previously Dismissed and Struck from the Record **As Filed by a Non-Attorney**, Deny and Deprive Petitioner McDowell of the Very Protection It Purports to Provide By Its Regulation of the Practice of Law in South Carolina?

Did the South Carolina Supreme Court, by Finding Petitioner McDowell Failed to Show Entitlement to Habeas Relief, Correctly Conclude That It Is Not Ineffective Assistance of Counsel, Resulting in a Denial of Fundamental Fairness Shocking to the Universal Sense of Justice When and Where

**Counsel to Fail or Refuse to Make a Closing Argument For
Reasonable Doubt On Behalf Criminal Defendant?**

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IV. Petition for Writ of Certiorari

Herbert McDowell, Jr., respectfully petition this Court for a writ of certiorari to review the judgments of the Supreme Court of South Carolina.

V. Opinion Below

The decision by the Supreme Court of South Carolina denying the amended petition for a writ of habeas corpus and the amended petition for declaratory judgment is unreported and unpublished as McDowell v. State, Appellate Case No. 2022-001236-ORDER (August 25,2023). That Order is attached at Appendix (“App”) at 1a. The Supreme Court denied

Mr. McDowell's rehearing petition by Order dated May 9, 2024. That Order is attached at Appendix ("App") at 1b.

The decision by the Supreme Court of South Carolina denying Mr. Booker's request to act as "*next of friend*" to South Carolina prisoner, Mr. Herbert McDowell, Jr., including Mr. Booker's request for a declaration that such an act is not an unauthorized practice of law, is unreported and unpublished as McDowell v. State, Appellate Case No. 2022-001236-ORDER (September 23, 2022). The Supreme Court denied Mr. Booker's request on September 23, 2022. That Order is attached at Appendix ("App") at 2a.

VI. Jurisdiction

Mr. McDowell's petition for a writ of habeas corpus was denied by the Supreme Court of South Carolina on August 25, 2023. Mr. McDowell's timely filed petition for rehearing was denied by the Supreme Court of South Carolina on May 9, 2024. Mr. McDowell invokes this Court's jurisdiction under 28 U.S.C., section 1257, and under Rule 12.4, having timely filed this petition for a writ of certiorari within ninety (90) days of the South Carolina Supreme Court's denial of the timely petition for rehearing.

VII. Constitutional Provisions Involved

United States Constitution, Amendment VI:

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

United States Constitution, Amendment XIV, Section One:

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.

VIII. Statement of the Case

Herbert McDowell was indicted for Murder and Assault and Battery with the Intent to Kill at the April 1988 term of the Florence County Grand Jury. He was represented by Ernest Hinnant, Esquire, and Charles M. Luther, Esquire. He was tried on October 28, 1988, before the Honorable Sidney T. Floyd and a jury. Mr. McDowell was found guilty as

charged and was sentenced to Life imprisonment for Murder and to Twenty (20) years, concurrently, for Assault and Battery with the Intent to Kill.

Mr. McDowell appealed his conviction, and it was affirmed by the state supreme court pursuant to RULE 23 of the Rules of Practice. State v. McDowell, Memorandum Opinion 90-MO-287 (filed November 20, 1990).

Prior to the presentation of arguments in Mr. McDowell's behalf, a brief overview of the case will be presented as it relates to Mr. McDowell's claim of Ineffective assistance of counsel. Mr. McDowell was tried in the beating death of infant Q. W. and assault of infant S. W. The incident was alleged to have occurred on August 23, 1987. The state's theory was that the beatings occurred during a brief period of time when the children's mother, Wanda Williams, left the home on the day in question. Mr. McDowell lived in the home with the children and their mother, Wanda Williams testified that she left the home around 12:30 P.M. to go shopping and was gone only around twenty minutes. When she returned, Mr. McDowell had cut the boys' hair. When she looked at Q. W. it looked like he was having a seizure.

Dr. Cauthen, an emergency room physician, testified that Q. W. was admitted at 1:53 P.M. He was pronounced dead at 3:01 P.M. Dr. Marshall, a pediatric surgeon, treated S. W. on August 23 and August 24. He stated that the internal injuries to S. W. were caused by blunt abdominal and chest trauma. He was not certain how many blows but felt it was more than one. X-rays showed older injuries to the ribs. Dr. Marshall testified that the amount of injuries S. W. showed could be masked for 24 to 48 hours before becoming lethal. Dr. Sexton testified about the autopsy performed on Quan on August 24. Dr. Sexton noted multiple injuries, some of which were old. As to the cause of death, he cited total trauma, internal bleeding, primarily to the abdomen region. These injuries were multiple. In addition, old injuries signified prior trauma of a similar nature.

While the evidence did establish that the victims had been subjected to physical trauma, there was very little, if any, evidence linking Mr. McDowell as the perpetrator. The victims' mother never testified that Mr. McDowell committed the acts. Medical testimony did not establish that the trauma occurred during the brief twenty-minute time period during which Mr. McDowell was cutting the children's hair. Mr. McDowell's

defense was that it was the mother and not Mr. McDowell that had traumatized the infants. The defense even presented testimony from a recalled state's witness that the mother had beaten the infants with a doubled over electric cord. He testified that he had to hide the cord to keep the mother from beating the infants.

Mr. McDowell testified also at the trial that the mother had beaten the children on a continual basis. She hit another child, Marcus, with a broomstick, and she had a violent temper.

Prior to trial, defense counsel has requested disclosure under *Brady* and Criminal Practice Rule 5. The solicitor responded that he had "nothing whatsoever that is exculpatory...." Defense counsel renewed this motion at the close of the state's case and specifically asked if any agency had evidence that someone else had beaten the children. The Department of Social Services for Florence County had records regarding the long history of Wanda Williams' abuse of children, and DSS employees were present at the Mr. McDowell's trial with various records and documents regarding said child abuse, PURSUANT TO A VALID SUBPOENA.

Although these vitally important records were present in the courtroom, at the prosecution's table, pursuant to a subpoena issued by defense counsel, the State objected to the records being reviewed by the defense on the bizarre ground that defense counsel should have sought production of the DSS records by way of Court Order instead of Subpoena. The trial judge agreed, ruling on the record that he would have allowed their review by defense counsel had defense counsel requested the Court for an Order for the records, rather than issuing a subpoena. The trial judge decided to review the DSS records in camera, in order to determine whether the records contained any exculpatory evidence. After having determined that the DSS records did not contain anything exculpatory, the trial judge ordered that the DSS records be impounded by the clerk of court and preserved for any appellate review.

The defense counsel thereafter refused or otherwise failed to make a closing summation of the evidence to the jury on Mr. McDowell's behalf. Only one side was thus presented to the jury during the closing of the case. Having heard only one side of the case, the jury returned with a verdict of guilty within a short period of deliberation. Mr. McDowell was

sentenced to die in prison: he has served more than thirty-eight (38) years of his sentence of Life Imprisonment.

On September 6, 2022, Patrick L. Booker (“Mr. Booker”) earned and was awarded his paralegal degree, after having graduated *with distinction* from Blackstone Career Institute, thereby becoming a certified Paralegal/Legal Assistant.

On the date of his certification as a Paralegal/Legal Assistant, Mr. Booker personally traveled to the Supreme Court of South Carolina whereupon he filed a twelve-page document styled as a “Petition for Declaratory Judgment—Petition for Habeas Corpus” in which Mr. Booker earnestly sought that court’s permission to assist his best friend, South Carolina prisoner Mr. Herbert McDowell, Jr. (“Mr. McDowell”), in preparing a petition (for Habeas Corpus) for presentation to that court.

Particularly, Mr. Booker, proceeding *pro se*, invoked the South Carolina Supreme Court’s original jurisdiction to declare a matter of law on the question of whether it would be an unauthorized practice of law for Mr. Booker to act as *next friend* to Mr. McDowell in preparing a petition (for a Writ of Habeas Corpus) for presentation to that court, regarding Mr.

McDowell's meritorious claim of a fundamental constitutional violation by his trial counsel resulting in a clear and convincing structural error invalidating the criminal conviction obtained in Mr. McDowell's death penalty trial.

In support of his petition filed in the state supreme court, Mr. Booker, by and through his afore-mentioned twelve-page document, proffered the merits of Mr. McDowell's state habeas corpus claim to the South Carolina Supreme Court by infusing his own petition (for declaratory judgment) with McDowell's petition (for habeas corpus) which, ingeniously, placed that court in a position of being *unable to not* take cognizance of the absolute merit of Mr. McDowell's claim of a fundamental constitutional violation, as that court considered Mr. Booker's petition.

The authority relied upon by Mr. Booker to support his request to act as *next friend* to Mr. McDowell in the preparation of his state habeas petition emanates from this Court's judicial dicta in *Johnson v. Avery* wherein MR. JUSTICE DOUGLAS, concurring in judgment, opined that "Laymen—in and out of prison—should be allowed to act as 'next friend' to any person in the preparation of any paper or document or claim, so long as he does not hold himself out as practicing law or as being a

member of the Bar. The cooperation and help of laymen, as well as lawyers, is necessary if the right of 'reasonable access to the courts' is to be available to the indigents among us."

In order to bolster the impact of their respective legal positions to the state supreme court, Mr. Booker incorporated in the twelve-page document a SanDisk memory card ("SD card") containing audio/visual oral argument of both petitioners in support of their legal positions which included their oral agreement/contract/power of attorney for Mr. Booker to assist Mr. McDowell with the preparation of any paper or document or claim regarding Mr. McDowell's state habeas corpus petition and proceeding(s).

On September 14, 2022, in order to correct typographical errors, Mr. Booker prepared and filed with the state supreme court a virtually identical Amended Petition for Habeas Corpus on Mr. McDowell's behalf.

On September 23, 2022, speaking for the Supreme Court of South Carolina, the chief justice issued an Order denying Mr. Booker's request to assist Mr. McDowell with his petition for habeas corpus based on four (4) reasons, without any elaboration or mention of this Court's above-

quoted dicta in *Johnson v. Avery*, despite Mr. Booker's reliance on that dictum. Particularly, the chief justice found: (1) There is no current need for a next of friend for Mr. McDowell; (2) Mr. Booker have a criminal record; (3) Mr. Booker has a history of meritless filings with that court; and (4) Mr. Booker is not admitted to practice law in South Carolina. Therefore, wrote the chief justice, "even though Mr. Booker may have a paralegal degree, he may not prepare or make filings on behalf of Mr. McDowell."

The chief justice thereafter denied all relief requested by Mr. Booker, struck and dismissed the amended petition for habeas corpus filed by Mr. Booker since it was filed by a non-attorney. He further directed the clerk of that court not to accept any further filings from Mr. Booker in that habeas corpus proceeding.

Lastly, the chief justice permitted further filings in the habeas proceeding by Mr. McDowell, provided that any filings made are by Mr. McDowell as a self-represented person or by an attorney licensed to practice in the state of South Carolina.

Because of his poverty Mr. McDowell was unable to secure the professional services of a licensed attorney, and, because of the current state of the law in South Carolina, the courts and judges in South Carolina were prohibited by law from appointing a South Carolina licensed attorney to help Mr. McDowell with filing a *pro se* amended petition for writ of habeas corpus in the original jurisdiction Supreme Court of South Carolina.

Mr. McDowell's *pro se* petition for a writ of habeas corpus, filed by Mr. Booker and without the professional assistance of an attorney licensed to practice law in South Carolina, alleged that Mr. McDowell's current confinement is unlawful due to violations of his fundamental rights under Sixth and Fourteenth Amendments to the United States Constitution. Particularly, Mr. McDowell claimed and argued:

Ineffective Assistance of Counsel: McDowell argued that his trial counsel provided ineffective assistance, a violation of the Sixth Amendment. Specifically, his counsel failed to make a closing argument during the guilt phase of the trial, which is considered a critical stage in the legal proceedings. The failure to present a closing argument, especially in a case based entirely on circumstantial evidence, deprived

McDowell of a fundamental right to have his defense fully and fairly presented to the jury.

□ **Brady Violation and DSS Records:** McDowell contended that there was a violation of *Brady v. Maryland*, which requires the prosecution to disclose exculpatory evidence. The defense had subpoenaed records from the Department of Social Services (DSS) that reportedly documented a history of abuse by the children's mother, Wanda Williams. The prosecution argued that the records should have been obtained by court order rather than subpoena, and the judge upheld this objection, denying the defense access to potentially exculpatory evidence. The trial judge reviewed the records *in camera* and determined they contained no exculpatory information, but the defense was not allowed to independently verify this.

□ **Suppression of Evidence:** The petition highlighted a serious issue regarding the suppression of DSS records, which were later found in another evidence box, potentially indicating mishandling or intentional suppression. McDowell argued that the suppression of these records prevented him from fully presenting his defense and challenging the credibility of prosecution witnesses.

It should be noted that Mr. McDowell's *pro se* petition for a writ of habeas corpus cited, and relied upon, as the standard for granting habeas corpus, this Court's language in *Fay v. Noia*.

On December 16, 2022, the State responded to Mr. McDowell's habeas petition via a letter in which the State asked the supreme court to accept in lieu of a formal response; the State did not object to the supreme court's exercise of its original jurisdiction, and the State did not deny any of Mr. McDowell's claims and arguments made in his *pro se* habeas petition to the supreme court. Rather than respond to the merits of the constitutional claims made by Mr. McDowell, the State's response reminded the supreme court of its prior Order requiring Mr. McDowell to first seek and gain permission from the supreme court of South Carolina prior to filing any collateral action *in the circuit court*¹ challenging his convictions.

On August 25, 2023, the Supreme Court of South Carolina, in an unreported and unpublished opinion, denied the amended habeas corpus petition finding simply that Mr. McDowell "failed to show he is entitled

¹ Because the underlying habeas corpus petition was filed in the South Carolina supreme court—and not a *circuit court*—the State's "letter response" to the habeas petition was a non-response to the habeas petition.

to habeas relief," citing its previous holdings in *Simpson v. State* (holding a petitioner seeking a writ of habeas corpus must allege a constitutional violation that constitutes a denial of fundamental fairness shocking to the universal sense of justice) and *Gibson v. State* (holding habeas corpus is available only when the petitioner alleges sufficient facts to show why other remedies are unavailable or inadequate).

Mr. McDowell timely filed a petition for rehearing, asking the supreme court to identify a written opinion that would provide a legitimate basis for future review.

On May 9, 2024, the supreme court denied Mr. McDowell's petition for rehearing.

This petition for a writ of certiorari follows.

XV. REASONS FOR GRANTING THE WRIT

In Order to Protect the Right of Reasonable Access to the Court for All Prisoners, and to Ensure That the Government Is *Always* Accountable To The Judiciary for Every Prisoner's Imprisonment, this Court Should Clarify That Paralegals—In and Out—of Prison May Act as Next Friend to Any Prisoner in the Preparation of Any Paper or Document or Claim, So Long as He Does Not Hold Himself Out as Practicing Law or

As Being a Member of the Bar.

In Fay v. Noia, 372 U. S. 391 (1963), this Court held that “the basic principle of the Great Writ of habeas corpus is that, in a civilized society, government must always be accountable to the judiciary for a man’s imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release.” *Id.*

Six years later, in Johnson v. Avery, 393 U.S. 483 (1969), this Court reaffirmed the significance of the writ of habeas corpus stating “[t]his Court has constantly emphasized the fundamental importance of the writ of habeas corpus in our constitutional scheme, and the Congress has demonstrated its solicitude for the vigor of the Great Writ. The Court has steadfastly insisted that ‘there is no higher duty than to maintain it unimpaired.’” *Id.*

The Johnson Court further explained that “[s]ince the basic purpose of the writ is to enable those unlawfully incarcerated to obtain their freedom, it is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed.”

Id.

The word “fundamental” appears in each of the three preceding paragraphs discussing this Court’s stance on protecting the civil liberties of incarcerated Americans. The term “fundamental”, according to Black’s Law Dictionary, 2nd Ed, is defined as: “[f]oundational; bottom-line component; vital point; without this item, nothing constructive can be built; a core or key aspect of something bigger.” *Id.*

Despite this Court’s recognition of how “fundamentally important” the writ of habeas corpus is in our constitutional scheme, and notwithstanding Congress’ prior demonstration of “its solicitude for the vigor of the Great Writ”, in 1996 the 104th Congress enacted legislation (“Anti-Terrorism and Effective Death Penalty Act”) that eviscerated the once unencumbered, availability of: (1) incarcerated persons (state and federal prisoners alike) to seek federal habeas relief ; and (2) federal judiciary’s ability afford habeas relief. Consequently, there are thousands upon thousands of constitutionally infirm criminal convictions/sentences entered into the records of trial courts with thousands upon thousands of incarcerated men and women alike languishing in American prisons in violation of due process of law, after Congress and the federal judiciary inexplicably abandoned this Court’s “perpetual-governmental

accountability/fundamental requirements of law" standard found in *Fay v. Noia, supra* ("The basic principal of the Great Writ of habeas corpus is that, in a civilized society, government must *always* be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the **fundamental requirements of law**, the individual is entitled to his immediate release.") (emphasis not in original).

Patrick Lee Booker served more than eighteen (18) years of incarceration in the South Carolina prison system during which he discovered an interest in law and litigation. Having been subjected to many injustices at the hands of his custodians, Mr. Booker began to read and study caselaw, court rules and procedures whereby he acquired a healthy respect for the law, as his interpretation skill set began to set him apart from other prisoners who professed to understand jurisprudence. Law became a natural talent for him. Mr. Booker dedicated nearly every hour of every day in the prison law library. Mr. Booker instituted several proceedings in various courts to test the legality of his confinement as well as to challenge the conditions of his confinement. In doing so, Mr. Booker began to advocate both administratively and quasi-judicially on behalf of his prison peers who he found, after careful and considerate

deliberation of their issues, to have been victims of systematic injustices (guard brutality, arbitrary prison discipline, medical neglect, etc.) inured by corrupt prison personnel and at times even by indifferent or inattentive judicial personnel.

Mr. Booker's proper courtroom decorum and legal savvy during his many court appearances soon began to earn him accolades from both the Bench and Bar in South Carolina, with well-respected circuit court judges memorializing in written opinions that "Mr. Booker appears to be a very intelligent individual. He studies law extensively and is very good at presenting his positions in court." —South Carolina circuit judge Hon. William P. Keesley, and that "Mr. Booker manifests intelligence. He has a good brain and amazing penmanship." —South Carolina circuit judge Hon. Diane S. Goodstein, while South Carolina attorney Matthew D. Cavender, Esquire wrote Mr. Booker stating "You have a promising future, Mr. Booker. I hope you are able to reach your full potential." While he was obviously not successful every time, Mr. Booker at times obtained both monetary and non-monetary settlements regarding many of the injustices he endured while incarcerated. See, e.g., Booker v. Miles, C/A No. 2:15-cv-01189-MGL-MGB (D.S.C. Jul. 13, 2016); Booker v. S.C. Dep't

of Corr., 855 F.3d 533 (4th Cir. 2017). See also, State of South Carolina v. Patrick Lee Booker, Appellate Case No. 2022-000641 (“nacho average criminal appeal” perfected *pro se pending*).

The afore-quoted statements are not set forth as bragging points but rather Mr. Booker hopes that they serve to lend credence to his declaration of having been endowed with a keen ability to properly understand, analyze, interpret and apply law in relation to fact(s). Indeed Mr. Booker graduated *with distinction* from Blackstone’s Career Institute’s Paralegal/Legal Assistant correspondence program.

In 2010 while the two were incarcerated at Lieber Correctional Institution, Mr. Booker met and befriended Mr. Herbert McDowell, Jr., who declared his actual innocence to Mr. Booker and explained to Mr. Booker the details of the criminal proceedings brought against him. After learning the facts of Mr. McDowell’s case including the legal posture of the same, Mr. Booker vowed to one day help secure his release from his unlawful confinement.

On September 6, 2022, upon graduating and being awarded his certification as a Paralegal, Mr. Booker drove from his hometown of Greenwood, South Carolina, to Columbia, South Carolina, in order to

personally hand-deliver, to the clerk of South Carolina Supreme Court, a twelve-page document titled “Petition for Declaratory Judgment—Petition for Writ of Habeas Corpus” wherein Mr. Booker assisted Mr. McDowell (via preparation of his habeas petition) gain access to that court, pursuant to *Johnson v. Avery*, 393 U.S. 483 (1969) (Mr. JUSTICE DOUGLAS, concurring in judgment, stating: “Laymen—in and out of prison—should be allowed to act as “next friend” to any person in the preparation of any paper or document or claim, so long as he does not hold himself out as practicing law or as being a member of the Bar.”). Mr. Booker currently works as a paralegal for the Honorable Shannon Frison, a retired justice of the Massachusetts Superior Court, who returned to the private sector to practice law by being a voice in the courtroom for those in need of civil, criminal, or military justice.

The South Carolina Supreme Court Unjustifiably Disregarded This Court’s Opinion In *Johnson v. Avery*, By Refusing to Recognize the Right of Legal Assistant Patrick L. Booker to Provide Legal Assistance to Prisoners.

Over fifty years ago this Court recognized that, in the absence of some provisions by the State for a reasonable alternative to assist illiterate or poorly educated inmates in preparing petitions for post-conviction relief,

the State may not validly enforce a regulation which absolutely bar inmates from furnishing such assistance to other prisoners. See, Johnson v. Avery, 393 U.S. 483 (1969).

Herbert W. McDowell, Jr., is currently a prisoner in South Carolina who has served more than thirty-eight years of incarceration on his sentence of Life Imprisonment. His eyesight has become poor, his handwriting has become poor, his education is poor, he is unable to focus at length, and he has very limited access to the prison law library.

Patrick L. Booker, a former South Carolina prisoner, after attaining 915 Clock Hours in Blackstone Career Institute's 31 Lesson Legal Assistant/Paralegal Certificate Program, earned his certification as a Paralegal/Legal Assistant. And he is currently a paralegal for the Honorable Shannon Frison, Esquire. He wishes to provide legal assistance to Herbert McDowell, Jr., a current prisoner. Particularly, Mr. Booker asked to be able to assist Mr. McDowell, only in the "*preparation*" of any paper or document or claim, in connection with Mr. McDowell's underlying petition for writ of habeas corpus.

The chief justice of South Carolina Supreme Court denied Mr. Booker's request to act as next friend to Mr. McDowell, without regard to this Court's opinion in *Johnson v. Avery*, and the chief justice based his reasons upon considerations that were irrelevant to the inquiry mandated by *Johnson v. Avery*, *supra*: That Mr. McDowell can make a filing (i.e., that he can send mail to the court) does not answer the question of whether Mr. McDowell needs assistance in "preparing" his filing; That Mr. Booker has a criminal record is irrelevant to a question of whether Mr. McDowell need assistance in "preparing" paperwork (indeed the *Johnson* court approved of men with criminal records to assist other men with criminal records); That Mr. Booker have *not always* persuaded judicial tribunals to agree with his legal positions² does not necessarily undermine his ability to effectively assist Mr. McDowell in the preparation of any document, paper or claim.

²² On April 7, 2010, the Supreme Court of South Carolina, *without affording Mr. Booker any notice or opportunity to be heard*, issued an ORDER which enjoined Mr. Booker from filing further challenges to his guilty plea unless he first obtained that court's permission. Relying on South Carolina law, Mr. Booker ignored said ORDER and continued to seek relief twice more. *See Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 561 S.E.2d 659 (2002) ("Generally, a person against whom a judgment or order taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property."). Ever since Mr. Booker relied upon the law and ignored that absolutely null and void ORDER, he have not been favored by any of the justices of that court.

The State of South Carolina, through its three branches of government, have effectively isolated its own citizens (to include its prisoners) from receiving any legal assistance from anyone other than a licensed attorney, thus creating a legal “monopoly for attorneys”. Prior to 2002 the South Carolina Legislature allowed South Carolina citizens to provide legal assistance to one another, provided they first obtained leave of court. See, State v. McLaren, 349 S.C. 488 (S.C. Ct. App. 2002) (citing S.C. code of Laws, Section 40-50-80 “This chapter shall not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires, or ***the cause of another, with leave of the court first had and obtained***: provided, that he neither has accepted nor will accept or take any fee, gratuity or reward on account of such prosecution or defense or for any other matter relating to the cause.”). After McLaren was decided, the South Carolina lawmakers eliminated the language which permitted citizens to provide legal assistance to one another. Now, any non-attorney citizen who provides any legal assistance to one another is guilty of a felony under South Carolina law.

In 2003 the South Carolina Legislature then enacted statutory law prohibiting the judicial branch from appointing an attorney to represent

a person in a civil action unless the authority to do so is authorized by the legislative branch. See, S.C. Code of Laws, Section 14-1-235 (“A judge, court, or court official shall not appoint an attorney to represent a party in a civil action unless the authority to make the appointment is provided specifically by statute.”). Based on that statute, even the chief justice of the supreme court of South Carolina was prohibited from appointing an attorney to represent Mr. McDowell in the underlying state habeas proceeding. That law took effect without the signature of the Governor, as the governor likely understood the law to be constitutionally infirm as violating the separation of powers doctrine.

The South Carolina Department of Corrections promulgated and implemented policy GA-01.03, “Inmate Access to The Courts”, section 4.3 which prohibits inmates from assisting other inmates with legal matters.

**This Court Has Held That Citizens Have a First Amendment Right
To Receive Information and Ideas Which Is Violated by The States'
Regulation Absolutely Prohibiting Citizens from Providing Legal
Assistance to Other Citizens, Even Illiterate or Poorly Educated Citizens.**

In *Kleindienst v. Mandel*, 408 U.S. 753 (1952) this Court held: “*It is now well established that the Constitution protects the right to receive*

information and ideas. This freedom [of speech and press] ... necessarily protects the right to receive.”

Mr. McDowell understands that Mr. Booker is knowledgeable of matters involving both criminal and civil law, that Mr. Booker has proven himself to be both *sui generis* and *rara·avis*. Accordingly, Mr. McDowell understandably wishes to utilize Mr. Booker’s skill set in seeking legal assistance. Mr. Booker hereby argues that the First Amendment’s right to receive information and ideas necessarily includes a citizen’s right to receive information and ideas from a certified Paralegal/Legal Assistant.

The Obligation of Contracts Clause And/or the Freedom of Association Clause Protects the Right of Legal Assistant Patrick L. Booker to Assist His Best Friend Prepare Papers or Documents or Claims.

Mr. McDowell asked Mr. Booker to assist him with the preparation of papers, documents, and claims, and Mr. Booker agreed to do so. This private agreement by two parties constitutes a contract. The only way the State may lawfully impair Mr. Booker’s obligation to perform his duties under said contract is for the public welfare. See, Indiana ex rel. Anderson v. Brand, 302 U.S. 95 (1938) (“Our decisions recognize that every contract is made subject to the implied condition that its fulfillment may be

frustrated by a proper exercise of the police power but we have repeatedly said that, in order to have this effect, the exercise of power must be for an end which is in fact public and the means adopted must be reasonably adapted to that end...").

Although the South Carolina Supreme Court claims that it prohibits laypersons from rendering legal assistance in order to "*protect the public from the potentially severe economic and emotional consequences which may flow from the erroneous preparation of legal documents or the inaccurate legal advice given by persons untrained in the law*" (see, e.g., State ex rel. Daniel v. Wells, 191 S.C. 468, 5 S.E.2d 181, 186 (1939) and Linder v. Ins. Claims Consultants, Inc., 348 S.C. 477, 486, 560 S.E.2d 612, 617 (2002)), Mr. Booker counters that proposition with a legal maxim which eviscerates the basis for the state court's regulation of the practice of law: "He who consents cannot receive an injury. Consent makes the law. A contract is a law between the parties, which can acquire force only by consent. Consent makes the law: the terms of a contract, lawful in its purpose, constitute the law as between the parties. To him consenting, no injury is done. One who wills a thing to be or to be done cannot complain of that thing as injury. He who contracts, knows, or ought to know, the

quality of the person with whom he contracts, otherwise he is not excusable. And, finally, advice, unless fraudulent, does not create an obligation.”

The State of South Carolina, by and through its supreme court, has not only impaired the obligation of Mr. Booker's contract with Mr. McDowell but that State has also created a monopoly for lawyers by absolutely prohibiting (through criminalization) laypersons from being able to render voluntary legal aid to their peers. That is fundamentally wrong!

Argument for Granting Certiorari

The U.S. Supreme Court should grant certiorari in this case to address the critical issue of ensuring reasonable access to the court for all prisoners, including those who seek to prepare legal documents or claims with the assistance of non-attorneys. This case presents an opportunity to clarify and uphold the fundamental principles articulated in pivotal Supreme Court decisions such as *Fay v. Noia* and *Johnson v. Avery*. The present circumstances highlight an urgent need to reaffirm these principles in the face of legislative and judicial developments that have eroded access to habeas corpus relief.

The Importance of Access to Habeas Corpus Relief

The Supreme Court has consistently emphasized the fundamental nature of habeas corpus as a cornerstone of American constitutional law. In *Fay v. Noia*, 372 U.S. 391 (1963), the Court established that the Great Writ of habeas corpus is indispensable for ensuring that government remains accountable to the judiciary for a person's imprisonment. The principle is that if an imprisonment fails to conform to the fundamental requirements of law, the individual is entitled to immediate release.

Similarly, in *Johnson v. Avery*, 393 U.S. 483 (1969), the Court underscored the fundamental importance of habeas corpus in our constitutional framework, stating that "there is no higher duty than to maintain it unimpaired." The Court recognized that the writ's primary purpose is to enable those unlawfully incarcerated to challenge their confinement, which necessitates unfettered access to the courts.

Impact of the Anti-Terrorism and Effective Death Penalty Act (AEDPA)

In 1996, the 104th Congress enacted the Anti-Terrorism and Effective Death Penalty Act (AEDPA), which significantly restricted the ability of prisoners to seek *federal* habeas relief. AEDPA's restrictive measures

have led to a situation where numerous constitutionally flawed criminal convictions and sentences remain unchallenged, leaving many prisoners languishing in prison in violation of due process.

The erosion of habeas corpus access under AEDPA contradicts the fundamental principles established in *Fay* and *Johnson*. The Court's earlier rulings emphasized a standard of perpetual governmental accountability for a man's imprisonment, which AEDPA undermines by imposing stringent procedural barriers that obstruct the review of potentially wrongful convictions.

The Role of Legal Assistants

This case exemplifies the challenges faced by both prisoners and ex-prisoners seeking to assert their legal rights. Mr. Booker, through extensive study and practice, has demonstrated a profound understanding of the law and a commitment to advocating for himself and his ex-fellow prisoners. His experience underscores the significant role that non-attorneys can play in assisting prisoners with legal challenges, particularly in light of the constraints imposed by AEDPA.

Mr. Booker's dedication to legal advocacy led him to assist Herbert McDowell, Jr. in preparing a petition for a writ of habeas corpus. Despite Mr. Booker's demonstrated legal acumen and the recognition he received from judges and attorneys, current barriers to prison-based legal assistance inhibit prisoners' ability to access the courts effectively.

The case involves Mr. Booker acting as a "next friend" to Mr. McDowell in accordance with the guidance from *Johnson v. Avery*. The Court's ruling in *Johnson* allows laypersons, both in and out of prison, to assist prisoners in preparing legal documents, provided they do not misrepresent themselves as licensed attorneys. This principle is crucial in ensuring that prisoners, especially those who lack formal legal training, have access to necessary legal support.

The Need for Supreme Court Review

The Supreme Court's review is warranted to address several critical issues:

- 1. Clarification of Legal Assistance Roles:** The Court needs to clarify the scope and limits of non-attorney assistance to prisoners, particularly in the context of habeas corpus petitions. Clear

guidelines will ensure consistent application of the *Johnson* principles and help prevent unjust limitations on prisoners' access to the courts.

2. Restoring Habeas Corpus Access: The Court should address how legislative and procedural changes, such as those introduced by AEDPA, impact prisoners' access to habeas corpus relief. A ruling in favor of broadening access to habeas petitions would realign current practices with the fundamental principles established in *Fay* and *Johnson*.

3. Protecting Fundamental Rights: By granting certiorari, the Court will reinforce the fundamental right of prisoners to challenge unlawful imprisonment and ensure that government accountability is upheld. This review will reaffirm the judiciary's role in safeguarding constitutional protections against arbitrary or unjust imprisonment.

Granting certiorari in this case will enable the Supreme Court to reaffirm the principles of *Fay v. Noia* and *Johnson v. Avery*, address the impact of AEDPA on habeas corpus access, and clarify the role of legal

assistants both in—and outside of—the prison context. This review is essential to uphold the fundamental rights of prisoners and ensure that the principles of justice and governmental accountability are preserved. The Court’s intervention will provide critical guidance and restore essential protections for those seeking redress from wrongful imprisonment.

The Supreme Court of South Carolina’s decision to deny and dismiss Herbert McDowell, Jr.’s “Amended Petition for Habeas Corpus” presents significant questions of constitutional law and judicial procedure. Specifically, this case raises concerns about whether McDowell was deprived of equal protection under the law due to the dismissal of his petition, particularly given that the petition was filed by Patrick L. Booker, a paralegal, rather than a licensed attorney. This argument contends that the Supreme Court should grant certiorari to address these critical issues.

Herbert McDowell, Jr., an incarcerated individual, sought habeas corpus relief through an “Amended Petition for Habeas Corpus” prepared with the assistance of Patrick L. Booker, a certified paralegal. The South Carolina Supreme Court dismissed McDowell’s petition on the grounds

that it failed to demonstrate entitlement to relief. However, it is crucial to examine whether the procedural handling of this petition was tainted by a denial of equal protection under the law.

The fundamental principle of equal protection under the law ensures that similarly situated individuals are treated equally by the judiciary. In *Johnson v. Avery*, 393 U.S. 483 (1969), the Supreme Court affirmed that prisoners must have access to legal resources to challenge their confinement. The Court recognized that laypersons, including those in and out-of-prison, should be allowed to act as “next friends” to assist in preparing legal documents for those seeking relief, so long as they do not purport to practice law or misrepresent themselves as licensed attorneys.

In this case, McDowell’s “Amended Petition for Habeas Corpus” was dismissed not based on the substantive merits of the claims but rather due to procedural issues related to the representation by a paralegal. The Supreme Court of South Carolina’s dismissal of McDowell’s petition for failing to show entitlement to relief, given that it was prepared with the assistance of a certified paralegal, raises serious equal protection concerns. This dismissal appears to discriminate against McDowell’s

access to legal remedies simply because his petition was not filed by a licensed attorney, rather than evaluating the merits of the petition itself.

The procedural barriers imposed by the South Carolina Supreme Court in this case, focusing on the status of the petitioner's legal assistant rather than the substance of the claims, undermine the principles established in *Johnson v. Avery*. These barriers effectively restrict prisoners' access to justice by imposing arbitrary limitations on who can assist them in preparing legal documents. Such restrictions conflict with the fundamental right of prisoners to seek redress for potentially unlawful confinement.

The dismissal of McDowell's petition on procedural grounds highlights a broader issue of inequitable access to legal recourse for prisoners. When courts dismiss petitions based on the representation of the petitioner or their legal assistant rather than addressing the substantive legal issues, they deny individuals the opportunity to challenge their confinement effectively. This practice undermines the core principles of justice and accountability articulated in *Fay v. Noia*, 372 U.S. 391 (1963), which emphasizes the necessity of ensuring that government remains accountable to the judiciary for lawful imprisonment.

Precedent and the Need for Supreme Court Intervention

A. Clarification of Legal Standards

The Supreme Court's intervention is necessary to clarify the legal standards governing the representation of prisoners in habeas corpus proceedings. Specifically, the Court should address whether procedural dismissals based on the involvement of paralegals or other non-attorneys violate the equal protection principles and the rights of prisoners to access justice.

B. Restoring Access to Habeas Corpus

The Court's review is essential to restore proper access to habeas corpus relief for incarcerated individuals. By granting certiorari, the Supreme Court can reaffirm the principles established in *Johnson v. Avery* and ensure that procedural barriers do not unjustly obstruct prisoners from challenging their confinement.

Ineffective Assistance of Counsel

Petitioner McDowell was denied effective assistance of counsel in violation of the Sixth Amendment. The complete failure of defense counsel to present a closing argument in a death penalty case,

particularly one resting on circumstantial evidence, deprived Petitioner of a fundamental aspect of the defense. The U.S. Supreme Court in Herring v. New York, 422 U.S. 853 (1975), held that the right to have counsel make a closing argument is a fundamental element of the adversarial process. The lack of a closing argument denied Petitioner the opportunity to present his defense fully, potentially influencing the jury's decision.

Brady Violation

The withholding of DSS records, which documented a history of abuse by Wanda Williams, constituted a violation of Petitioner's due process rights under Brady v. Maryland, 373 U.S. 83 (1963). The trial court's ruling that the DSS records were not exculpatory was made without adequate review and deprived Petitioner of the opportunity to present critical evidence that could have supported his defense. The failure to disclose these records compromised the fairness of the trial and undermined the integrity of the verdict.

Reservation of Rights

Petitioner reserves the right to supplement this petition with additional evidence, including the DSS records that were later discovered, as these records are crucial to the proper adjudication of this case. The ongoing failure to allow review of these records continues to violate Petitioner's rights, as articulated in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987).

CONCLUSION

The Supreme Court should grant certiorari to address the critical issues in this case, including whether the South Carolina Supreme Court's dismissal of Herbert McDowell, Jr.'s petition constituted a denial of equal protection under the law. The case presents an opportunity for the Court to reaffirm the principles of access to justice for prisoners and clarify the role of legal assistants in habeas corpus proceedings. Ensuring that prisoners have meaningful access to the courts, irrespective of procedural technicalities, is vital for upholding constitutional rights and maintaining the integrity of the judicial system.

For the foregoing reasons, Petitioner respectfully requests that this Honorable Court grant the writ of certiorari, vacate Petitioner

McDowell's conviction, and order his immediate release or remand for a new trial.

Respectfully submitted

A handwritten signature in black ink, appearing to read "H.W. McDowell, Jr.", is written over a horizontal line.

Herbert W. McDowell, Jr., #145167

Evans Correctional Institution

610 Highway 9

Bennettsville, SC 29512