

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Georgetown County

Honorable Judge Benjamin Culbertson, Circuit Court Judge

Terron Gerhard Dizzley
Gwendolyn B. Frasier
Laquesha Felder

Appellants.

v.

Warden Langdon

Respondent,

APPELLATE CASE NO. 22-000671

PETITION FOR HABEAS CORPUS IN AID OF APPELLANT JURISDICTION

Terron Dizzley, 359480, Pro Se
Allendale Correctional Facility
1057 Revolutionary Trail
Fairfax, SC 29827

Gwendolyn B. Frasier, Pro Se
7996 Pennyroyal Road
Georgetown, South Carolina 29440

LaQuesha Felder, Pro Se
1440 Baxter Street
Orangeburg, South Carolina 29115

TABLE OF CONTENTS

Table of Contentsi

Questions Presentedii

Table of Authoritiesiii – v

Jurisdictional Statement 1 – 2

Statement of Facts 3 – 7

Summary of Arguments

 A. The S. C. Court of Appeals has the power to issue writs of habeas corpus in aide of appellate jurisdiction to order an emergency expedited hearing in the interest of life and liberty, for such purpose agreeable to the usages and principles of law. 8 - 13

 B. The S. C. Court of Appeals has the power to issue writs of habeas corpus in aide of appellate jurisdiction to order that Petitioner be brought before the Court to argue his appeal in a case involving his life or liberty, for such purpose agreeable to the usages and principles of law. 10 - 13

 C. The S. C. Court of Appeals has the power to issue writs of habeas corpus in aide of appellate jurisdiction to safeguard individual freedom against arbitrary and lawless state action. 13 - 19

Prayer for Relief 19 - 21

QUESTIONS PRESENTED

Whether The S. C. Court of Appeals have the power to issue writs of habeas corpus in aide of appellate jurisdiction to order an emergency expedited hearing in the interest of life and liberty, for such purpose agreeable to the usages and principles of law?

Whether The S. C. Court of Appeals have the power to issue writs of habeas corpus in aide of appellate jurisdiction to order that Petitioner be brought before the Court to argue his appeal in a case involving his life or liberty, for such purpose agreeable to the usages and principles of law.?

Whether The S. C. Court of Appeals has the power to issue writs of habeas corpus in aide of appellate jurisdiction to safeguard individual freedom against arbitrary and lawless state action?

TABLE OF AUTHORITIES

CASES	PAGE
<u>Arizona v. Rumsey</u> , 467 U.S. 203 (1984).....	18
<u>Bell v. Hood</u> , 327 U. S. 678 (1947),.....	8, 11
<u>Berger v. United States</u> , 295 U.S. 78, 88 (1935)	16
<u>Board of Directors v. Rotary Club</u> , 481 U.S. 537, 545 (1987).....	14
<u>Brown v. Allen</u> , 344 U. S. 443 (1953)	5, 9
<u>Bullington v. Missouri</u> , 451 U.S. 403 (1981)	18
<u>Burks v. United States</u> , 437 U. S. 1 (1978);	5
<u>Curnow by and through Curnow v. Ridge Crest Police</u> , 952 F. 2d 321 (1991).....	14
<u>Deskovic v. Peetskil</u> , 894 F. Supp. 2d 443 (2012).....	14
<u>Disabato v. South Carolina Ass'n of Schools v. Adm'rs</u> , 404 S.C. 433 (2013).....	14
<u>Elrod v. Burns</u> , 427 U. S. 347, 373 (1976).....	6, 10
<u>Fong Foo v. United States</u> , 369 U.S. 141 (1962).....	
<u>Exparte Lange</u> 85 U.S. 163 (1873).....	1, 2, 5, 6
<u>Exparte Williams</u> , 11 Rich. 452 (1858)	13, 14
<u>Exparte Wilson</u> , 114 U. S. 417, (1985)	4
<u>Fong Foo v. United States</u> , 369 U.S. 141 (1962).....	18
<u>Frank v. Delaware</u> , 438 U. S. 154 (1978)	4
<u>Gibson v. State</u> , 329 S, C_37 (1998),	3
<u>Gilliam v. Foster, supra</u> , 63 F. 3d 287 (1995)	1, 8, 10

<u>Giordenello v. U. S.</u> , 357 U. S. 480 (1958).....	3, 4
<u>Harris v. Nelson</u> , 394 U. S. 286 (1969)	6, 9, 11, 13, 17, 19
<u>In re Kottmam</u> , 2 Hill. 363 (1834).....	14
<u>Key v. Currie</u> , 305 S. C. 115 (1991)	5, 9
<u>King v. South Carolina</u> , 2011 WL 13229007	3
<u>Lee v. City of Los Angeles</u> , 250 F. 3d 668 (2000).....	14
<u>Levine v. Spartanburg Regional Services Dist., Inc.</u> , 367 S.C. 458 (2005)	10
<u>Livingston v. Murdaugh, supra</u> , 183 F. 3d 300 (1999).	1, 8, 10
<u>McGarr v. City of Peetskil</u> , 975 F. Supp. 2d 377 (2013)	14
<u>Moore v. Moore</u> , 376 S. C. 467 (2008);.....	6, 10
<u>Morrissey v. Brewer</u> , 408 U. S. 471 (1972).	6, 10
<u>Patel v. Searles</u> , 305 F. 130 (2002).....	14
<u>Price v. Johnson</u> , 334 U. S. 266 (1948), 1010.....	1, 7, 8, 11, 12,
<u>Roberts v. Jaysees</u> , 468 U.S. 609 (1984).....	14
<u>Rueda Vidal v. Department Homeland Security</u> , 536 F. Supp. 3d 604 (2021).....	14
<u>Santosky v. Kramer</u> , 455 U.S. 745 (1982).....	14
<u>Smallis v. Pennsylvania</u> , 476 U. S. 140 (1986).....	5, 18
<u>Smith v. Massachusetts</u> , 543 U.S. 462 (2005)	18
<u>State v. Clifford</u> , 335 S. C. 129 (1999)	5
<u>State v. Dunbar</u> , 361 S. C. 240 (2004).	4
<u>State v. Funderburk</u> , 259 S. C. 256 (1992)	4, 7
<u>State v. Gregorie</u> , 339 S. C. (2000)	5

<u>State v. Guthrie</u> , 358 S.C. 102 (2002).....	6
<u>State v. Jones</u> , S. C. 228 (1998)	4
<u>State v. Inman</u> , 395 S.C. 539 (2011),.....	15
<u>State v. McKnight</u> , 291 S. C. 110 (1987)	4
<u>State v. Rearick</u> , 417 S.C. 391 (2016)	1
<u>State v. Roberts</u> , 364 S. C. 583 (2005).....	13
<u>State v. Smith</u> , 301 SC 371 (1990).....	4
<u>Townsend v. Sain</u> , 372 U.S. 293 (1963).....	9
<u>U. S. v. Scott</u> , 437 U. S. 82 (1978).....	5
<u>U.S. v. Wilson</u> , 420 U.S. 332 (1975).....	18
<u>State v. Williams</u> , 326 S.C. 130 (1997)	15
<u>United States v. Martin Linen Supply Co.</u> , 430 U. S. 564 (1977).....	5
<u>Winter v. Natural Res. Del. Council, Inc.</u> , 555 U. S. 7, 20 (2008)	6, 10
<u>Will v. U.S.</u> , 389 U.S. 90 (1967).....	18
 <u>Statutes and Regulations</u>	
SCACR, Rule 218.....	2
28 U. S. C. A. 1651,	1, 2, 13
Section 17-27-100.....	3
The All Writs Statue, SCRSCP 65	7
All Writs Acts; SCRCP,	7
Rule 65; SC ST æ 17-17-10	7
Rule 29 (b) SCRCim. P	11

Rule 60 (b)	11
SC ST § 14 – 8 – 200	2, 7
SC ST § 40 – 5 – 80	2
SC ST § 20-4-50	6
SC ST § 40-5-80.....	2, 13
SC ST § 14-8-200.....	2
Section 17-27-10.....	2
28 U. S. C. § 1651, 10	7
The All Writs Statute, SCRSCP 65, 10	7
SC ST § 17-17-10, 1010.....	7
SC ST § 14-8-200 1010.....	7
s 272 of the Judicial Code	12
28 U. S. C. s 394.....	12

JURISDICTIONAL STATEMENT

The jurisdiction of this petition is invoked by SC ST   17-17-10; SCACR, Rule 218; SCRCR, Rule 65; and 28 U. S. C. A. 1651, All Writs Acts. See: State v. Rearick, 417 S.C. 391 (2016), "A defendant may still challenge the denial of a motion to dismiss on double jeopardy grounds via (1) a petition for federal habeas corpus relief, or (2) a petition for this Court to issue an extraordinary writ; citing Livingston v. Murdaugh, 183 F. 3d 300, 301 (4th Cir. 1999); Gilliam v. Foster, 63 F.3d 287, 291 (4th Cir. 1995).

Exparte Lange, 85 U.S. 163 (1873) " Where probable ground is shown that the party is in custody under or by color of authority of the United States, and is imprisoned without just cause, and, therefore, has a right to be delivered, " the writ of habeas corpus then becomes a writ of right which may not be denied, as it ought to be granted to every man who is unlawfully committed or detained in prison or otherwise restrained of his liberty. A second judgment of the same verdict is, under such circumstances, void for want of power and it affords no authority to hold the party a prisoner, and he must be discharged."

Price v. Johnson, 334 U. S. 266 (1948), "Where under the Judicial Code provision of Circuit Courts of Appeals shall have power to issue all writs not specifically provided for by statute which may be necessary for the exercise of jurisdiction and agreeable to the usages and principles of law, a Circuit Court of Appeals may in the exercise of a sound discretion command that a prisoner be brought before it so that he may argue is own appeal in a case involving his life or liberty."

SC ST § 40-5-80; Citizen may prosecute or defend own cause.

“ This chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires.”

SC ST § 14-8-200; Court of Appeals, Jurisdiction of Court; limitation, states in part:

“ This Jurisdiction is appellate only, and court shall apply the same scope of review that The Supreme Court would apply in similar case. The Court has the same authority to issue writs of supersede, grant stays, and grant petitions for bail as The Supreme Court would have in a similar case, the court, to the extent The Supreme Court may by rule provide for it to do so, has the jurisdiction to entertain petitions for writ of certiorari in post-conviction matters pursuant to Section 17-27-100.”

STATEMENT OF FACTS

Petitioners contend that their October 28, 2021 "Motion for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction Impose Sentence" should have been liberally construed as a habeas corpus because it challenges the legality of Petitioner, Terron Dizzley's incarceration, which would have created a better correspondence between the substance of their motion's claims and its underlying legal basis. See: King v. South Carolina, 2011 WL 13229007.

Petitioner Terron Dizzley is being held illegally incarcerated by The South Carolina Department of Corrections for going on nine years and counting pursuant to an unlawful conviction and sentence that the Georgetown County Court of General Sessions had no legal nor jurisdictional authority to make. See: Gibson v. State, 329 S. C. 37 (1998), "Purpose of habeas corpus is to test legality of prisoner's present detention."

The Appellate Brief in which this writ of habeas corpus is filed, is in aid of appellate jurisdiction, and proves the following:

On December 11, 2008, Investigator Melvin Garrett of the Georgetown, South Carolina Police Department applied for an arrest warrant for Petitioner, Terron Gerhard Dizzley, for murder without probable cause and prepared an affidavit in the arrest warrant that does not provide any information at all that would enable a magistrate judge to determine probable cause. Thus, according to the Fourth Amendment of The United States Constitution and The S.C. Constitution, Article I, § 10, Petitioner's arrest warrant is constitutionally deficient. After hiring a Private Investigator, Bennie L. Webb, it was also found that Investigator Garrett made "false declarations" to the magistrate to obtain Petitioner's arrest warrant. According to clearly

established state and federal law, Petitioner's arrest warrant is null and void which resulted in false imprisonment/kidnapping. See: State v. Smith, 301 S.C. 371 (1990); State v. McKnight, 291 S. C. 110 (1987); State v. Jones, S.C. 228 (1998); Giordenello v. U. S., 357 U.S. 480 (1958); Frank v. Delaware, 438 U.S. 154 (1978).

(2) According to the laws of South Carolina, the magistrate, at Petitioner's preliminary hearing had no legal nor jurisdictional authority to bound Petitioner's case over to criminal court pursuant to an unlawful arrest, pursuant to an invalid arrest warrant without probable cause.

(Note: Petitioner, Terron Dizzley was literally being held kidnapped at the preliminary hearing because the Georgetown County Sheriff's Department had no legal nor jurisdictional authority to restrain Terron and have him brought to a preliminary hearing pursuant to an invalid arrest warrant). However, this is exactly what happened. According to the laws of South Carolina, because the jurisdiction of the grand jury is coextensive with the of jurisdiction of the criminal court, the magistrate's order to bound Petitioner's case over to criminal court under such circumstances is null and void. Therefore, the criminal court lacked jurisdiction to indict Petitioner and, therefore, Petitioner's indictment is null and void and The Georgetown County Solicitor's Office nor the trial court had no jurisdiction to try Petitioner for murder. State v. Funderburk, 259 S.C. 256 (1992); State v. Dunbar, 361 S.C. 240 (2004). According to United States Supreme Court law, a conviction and sentence under such circumstances exceeds the jurisdiction of the court and holds no authority to hold Petitioner imprisoned under such sentence. See: Exparte Wilson, 114 U.S. 417, (1985).

(3) Despite this, not only was Petitioner tried for murder in 2012, without jurisdiction, Petitioner was acquitted of this charge where the trial judge stopped jury deliberations and

discharged the jury on the grounds that the prosecution had failed to meet their "burden of proof" to convict Petitioner. According to South Carolina Supreme law and United States Supreme Court law, the trial judge's ruling was based on "insufficient evidence" to convict and: (1) was an "acquittal"; (2) terminated any alleged jurisdiction of Petitioner's case and may not be appealed; and (3) double jeopardy barred retrial. See: State v. Gregorie, 339 S.C. 2 (2000); State v. Clifford, 335 S.C. 129 (1999); Burks v. United States, 437 U. S. 1 (1978); United States v. Martin Linen Supply Co., 430 U. S. 564 (1977); U. S. v Scott, 437 U. S. 82 (1978); Smallis v. Pennsylvania, 476 U. S. 140 (1986).

(4) Despite this, Petitioner was unlawfully tried again in 2014 for the same offense and was unlawfully convicted and sentenced without jurisdiction and has been illegally incarcerated for going on nine years and counting. According to United States Supreme Court law, in Exparte Lange, 85 U. S. 163 (1873), a sentence imposed in violation of Fifth Amendment the Double Jeopardy Clause is "void for want of power" and affords the South Department of Corrections no legal nor jurisdiction to hold Petitioner in prison which is false imprisonment/kidnapping and he must be discharged.

(5) On October 28, 2021, Petitioners Terron Dizzley, Gwendolyn B. Frasier, Terron's mother, and LaQuesha Felder, Terron's wife, filed "Proposed and Exparte Emergency Motions for Immediate Release of Terron Dizzley Pursuant to Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence. On April 12, 2022, the Honorable Judge Culbertson denied Petitioners emergency petition on April 25, 2022. Petitioners then filed an "Emergency Motion for Alteration, Modification, Amend, Reconsideration, and Recession of Order." When Judge Culbertson refused to respond to Petitioners of "Motion for

Reconsideration," Petitioners filed a timely appeal to the South Carolina Court of Appeals and also filed the same "Motion for Immediate Release" in the South Carolina Court of Appeals exercising their rights to challenge subject matter jurisdiction even for the first time on appeal. The South Carolina Court of Appeals dismiss Petitioners appeal as untimely. Petitioners then filed a "Motion to Reinstate" their appeal and the South Carolina Court of Appeals granted Petitioners motion on the grounds that their "Motion for Reconsideration" tolled the time for filing an appeal and remanded Petitioners case back to the circuit court for a ruling on Petitioners "Motion for Reconsideration," and ordered that petition's motion filed in the South Carolina Court of Appeals be held in abeyance pursuant to a request from the Attorney General. Petitioners then filed a "Motion For Update And Request For Conditional Order," where they objected to the granting of the state's request to hold the "Emergency Petition For Immediate Release" in abeyance filed in the S.C. Court of Appeals until Petitioner's case is resolved in the circuit court on the grounds that according to clearly established state and federal law a request for stay pursuant to a motion where a defendant raises issues of deprivation of life, or liberty must not be granted because defendant would suffer irreparable harm by such delay. Petitioners also objected to the S.C. Court of Appeals order remanding their case back to the circuit court, where the law is clear that subject matter jurisdiction may be raised at anytime, even for the first time on appeal, even sua sponte by the court, and that under such circumstances the appellate court should take notice. See: State v. Guthrie, 358 S.C. 102 (2002), "The lack of subject matter jurisdiction, can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court. Furthermore, lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken

notice of by this Court. State v. Funderburk, 259 S.C. 256 (1972), "It is elementary that lack of jurisdiction of the court or subject matter can be raised at any time, including for the first time on appeal in this Court. Accordingly, it is immaterial that the defendant failed to appeal from the earlier ruling of Judge Baker or the intermediate ruling of Judge Weatherford, even if it be assumed that he had the right to."

Therefore, as stated in *Funderburk*, a ruling from the circuit court was "immaterial" pursuant to Petitioners right to challenge subject matter jurisdiction in the Appellate Court, and the S.C. Court of Appeals should have taken notice of Petitioners "Emergency Motion for Immediate Release..." Petitioners also addressed to the S.C. Court of Appeals that if they did not adjudicate their case, they would suffer irreparable harm by having their case remanded back to the circuit court who has refused to respond to the case and has been depriving Terron from accessing the courts for almost nine years, which is a felony crime of "obstruction of justice." Despite this the S.C. Court of Appeals did not respond to Petitioners "Motion To Update And Request For Conditional Order." As a result, Petitioners case was remanded back to the circuit court where they were forced to hire an attorney because the Clerk of Court, of Georgetown County, Alma Y. White, again refused to schedule a hearing for Petitioners case despite the S.C. Court of Appeals order.

SUMMARY OF ARGUMENTS

(A) The S.C. Court of Appeals has the power to issue writs of habeas corpus in aid of appellate jurisdiction to order an emergency expedited hearing in the interest of life and liberty, for such purpose agreeable to the usages and principles of law.

Petitioner Terron Dizzley contends that he was gravely aggrieved and suffered, and, is still suffering irreparable harm by being held kidnapped/ falsely imprisoned pursuant to a sentence imposed on him without jurisdiction in violation of the Fifth Amendment Double Jeopardy Clause and also in violation of Petitioner's Fourth Amendment rights, and, Fifth, and Fourteenth Amendment rights to due process pursuant to the S.C. Court of Appeals granting the Attorney General's request for stay, not adjudicating Petitioner's "Motion For Immediate Release" filed in the Appellate Court's respective jurisdiction, and remanding his case back to the circuit court. Therefore, according to clearly established state and federal law, under such circumstances habeas corpus is the appropriate remedy to aid in the appellate court's jurisdiction to protect Petitioner's rights under the Fifth Amendment Double Jeopardy Clause. Gilliam v. Foster, 63 F. 3d 287 (4th Cir. 1995), "Balance of harm with respect to state's request for stay pending appeal of order granting writ of habeas corpus precluding State from proceeding with retrial tipped decidedly in favor of petitioner, even though State claimed irreparable harm from delay in completing the trial, which had already started, as petitioners' loss of right not to be placed twice in jeopardy would be irreparable and, in view of likelihood of petitioners' success, as indicated by district Court's grant of the writ, stay would be denied." Livingston v. Murdaugh, 183 F. 3d 300 (4th Cir. 1999), "state-court defendant, whose prior conviction for felony driving under the influence had been reversed on appeal, 488 S. E. 313,

sought federal habeas corpus relief, contending that his retrial on reckless homicide charge violated double jeopardy. The district court found that Livingston had exhausted his state remedies. See 28 U.S.C.A s 2254 (1)(A). We are mindful of the deference that is owed to the state court's adjudication of Livingston's claim. Given the circumstances in this case, however, we have no choice but to respect the constitutional protection a defendant enjoys against being "twice put in jeopardy" for the same offense."

Key v. Currie, 305 S.C. 115 (1991), "this Court will exercise its original jurisdiction where there is an extraordinary reason such as a question of significant public interest or an emergency." See: SC ST ¶ 14-8-200. Townsend v. Sain, 372 U.S. 293 (1963), Brown v. Allen, 344 U.S. 443 (1953), establish the power and duty of The Appellate Courts to hold evidentiary hearings to inquire into facts with respect to constitutional issues raised in habeas corpus proceedings. In addition to their procedural powers derived from state and federal statutes and the decisions of the Court, the court possesses the inherent power to fashion their rules and procedures "to promote the orderly and expeditious administration of justice". Harris v. Nelson, 394 U.S. 286 (1969), "Purpose of writ of habeas corpus is to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Petitioner in habeas corpus proceedings are entitled to careful and plenary processing of their claims including full opportunity for presentation of relevant facts."

REASONS WHY HABEAS CORPUS AND PRELIMINARY INJUNCTION FOR EMERGENCY EXPEDITED

HEARING FOR ORAL ARGUMENT SHOULD BE GRANTED

Petitioner contends that he has already suffered irreparable harm by the State of South Carolina who has illegally deprived Petitioner of his liberty for almost nine years and counting

which violates Petitioner's Fifth, Eighth, Thirteenth and Fourteenth Amendment rights of the United States Constitution.

It is clearly established by the South Carolina Supreme Court and the United States Supreme Court that the ordinary appeal process is an inadequate remedy for an unlawful deprivation of life or liberty, including a ruling that would violate a defendant's double jeopardy rights. See: Gilliam v. Foster, supra, 63 F. 3d 287 (1995); Livingston v. Murdaugh, supra, 183 F. 3d 300 (1999). Therefore, Petitioner contends that, if an emergency hearing is not granted, Petitioner will suffer further irreparable harm by being held illegally incarcerated without any jurisdictional authority. See: Moore v. Moore, 376 S.C. 467 (2008); See: SC ST ¶ 20-4-50, Morrissey v. Brewer, 408 U.S. 471 (1972).

Petitioner contends that it is clearly established by the South Carolina Supreme Court, and the United States Supreme Court that the deprivation of constitutional rights unquestionably constitutes irreparable injury. See: Levine v. Spartanburg Regional Services Dist., Inc., 367 S.C. 458 (2005); Winter v. Natural Res. Del. Council, Inc., 555 U.S. 7, 20 (2008); Elrod v. Burns, 427 U.S. 347, 373 (1976).

For the foregoing reasons, this Honorable Court, in the interest of life, liberty and justice should grant this petition for an emergency expedited hearing on oral arguments in aid of appellate court's jurisdiction.

(B) S.C. Court of Appeals has the power to issue writs of habeas corpus in aid of appellate jurisdiction to order that Petitioners be brought before the Court to argue their appeal in a case involving life or liberty, for such purpose agreeable to the usages and principles of law.

The S.C. Court of Appeals possesses the power under 28 U. S. C. § 1651, The All Writs Statute, CRCP 65, SC ST § 17-17-10, and SC ST § 14-8-200 to issue all writs, the same as the S.C. Supreme Court necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and the principles of law.

Petitioner requests that this Honorable Court issues an order for his immediate release or issues an order that he be allowed to be brought to an oral arguments hearing to argue his own cause pursuant to the appellate court's power to grant writs, and the power to administer them with initiative and "flexibility" in extraordinary circumstances not specifically provided by statute, which may be essential to ensure that miscarriages of justice within its reach are surfaced and corrected, for the safeguarding of Petitioner's freedom against arbitrary and lawless state action. See: Price v. Johnson, *supra*, 334 U.S. 266 (1948); Harris v. Nelson, 394 U.S. 286 (1969), "All Writs Act serves as legislatively approved source of procedural instruments designed to achieve rational ends of law and may be relied on by courts in issuing orders appropriate to assist them in conducting factual inquiries. Writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. Writ of habeas corpus must be administered with initiative and "flexibility" essential to ensure that miscarriages of justice within its reach are surfaced and corrected."

The order requested to have Petitioner brought before the S.C. Court of Appeals to argue his appeal where he alleges that he is illegally imprisoned meets the requirement of this provision and is requested in aid of the Court's existing jurisdiction. See: Price v. Johnson, 334 U.S. 266 (1948). See also: Bell v Hood, 327 U.S. 678 (1947), "Where federally protected rights

have been evaded, courts will be alert to adjust their remedies as to grant the necessary relief, and may use "any" available remedy to make good the wrong done."

**REASONS WHY PETITION FOR HABEAS CORPUS FOR ISSUANCE OF ORDER THAT
PETITIONERS BE BROUGHT BEFORE THE COURT FOR ORAL ARGUMENTS TO ARGUE THEIR
OWN CASE IN THE INTEREST OF LIFE AND LIBERTY SHOULD BE GRANTED**

As a result of being deprived of access to the courts for going on nine years and counting resulted in the intentional false misrepresentation of the procedural history and law of Petitioner's case. Therefore, Petitioner believes that only he alone can adequately present his case on appeal. Otherwise, the court will lose the benefit of listening to his contentions, hearing only the argument of the government's counsel, and the intentional false misrepresentations of the procedural history and law of Petitioner's case, which would unduly prejudice Petitioner by such one-sided debate. See: Price v. Johnson, 334 U.S. 266 (1948), "Where the production of a prisoner before a Circuit Court of Appeals to argue his own appeal in a case in which he alleges that he is illegally imprisoned is essential to the proper disposition of the case, the issuance of an order commanding the production of the prisoner before the court for such purpose is "agreeable to the usages and principles of law" within The Judicial Code authorizing the issuance of writs necessary for the exercise of jurisdiction and agreeable to the usages and principles of law. 28 U. S. C. A. § 1651. Where prisoner believes that he alone can adequately present his case on appeal in habeas corpus proceedings, an order that prisoner be produced before the court so that he may argue the appeal may be reasonably necessary in the interest of justice. Otherwise, the court loses the benefit of listening to his contentions, hearing only the arguments of

government's counsel. Conceivably, the prisoner's case might be unduly prejudiced by such a one-sided debate. That the argument orally advanced by the prisoner may in fact be less than enlightening to the court does not detract from the fairness or the justness of giving him the opportunity appear and argue. Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the consideration underlying our penal system. Among those so limited is the otherwise unqualified right given by s 272 of the Judicial Code, 28 U. S. C. s 394, 28 U. S. C. A. s 394, to parties in "all Courts of the United States" to plead and manage their own causes personally." See: SC ST ¶ 40-5-80; State v. Roberts, 364 S.C. 583 (2005), "an Appellate Court may, in its discretion, allow an appellate to proceed pro se."

(C) The S. C. Court of Appeals has the power to issue writs of habeas corpus in aid of appellate jurisdiction to safeguard individual freedom against arbitrary and lawless state action.

FIRST AND FOURTEENTH AMENDMENT RIGHTS TO FAMILIAL ASSOCIATION

Petitioners Gwendolyn B. Frasier and LaQuesha Felder

This Honorable Court has the power to issue writs of habeas corpus in aid of appellate jurisdiction to safeguard individual freedom against arbitrary and lawless state action. See: Harris v. Nelson, supra, 394 U.S. 286 (1969).

Petitioners, Gwendolyn B. Frasier, Petitioner, Terron Dizzley's mother, and LaQuesha Felder, Terron Dizzley's wife, contends that according to clearly established South Carolina law, and federal law, as determined by the United States Supreme Court, they have the right to exercise their First and Fourteenth right to familial association with Terron Dizzley,

without government interference, who is being illegally restrained of his liberty by the State of South Carolina. See: Disabato v. South Carolina Ass'n of Schools v. Adm'rs, 404 S.C. 433 (2013)," The freedom of association implicit in the First Amendment is a fundamental right, and thus, like the freedom of speech, the First Amendment protection against the abridgement of the freedom of association applies to the state though the Fourteenth Amendment." Lee v. City of Los Angeles, 250 F. 3d 668 (2000); Santosky v. Kramer, 455 U.S. 745 (1982); Board of Directors v. Rotary Club, 481 U.S. 537, 545 (1987); Roberts v. Jaysees, 468 U.S. 609 (1984); 952 F. 2d 321 (1991); Curnow by and through Curnow v. Ridge Crest Police, 952 F. 2d 321 (1991); Rueda Vidal v. Department Homeland Security, 536 F. Supp. 3d 604 (2021); Deskovic v. Peetskil, 894 F. Supp. 2d 443 (2012); McGarr v. City of Peetskil, 975 F. Supp. 2d 377 (2013); Patel v. Searles, 305 F. 130 (2002).

Petitioners contends that according to clearly established South Carolina law, they have the right to exercise these rights through habeas corpus, and due process requires a judicial determination of their rights. See: Exparte Williams, 11 Rich. 452 (1858), "Due process of law requires judicial determination of rights of parents and children under writ of habeas corpus, or by proper proceedings and equity, where a father seeks by habeas corpus to obtain possession of his infant son, the discretion of the Court in discharging the infant from illegal restraint, is not limited to protecting him in returning, but it may, "even where the infant is of age of choice, or that he be delivered to the father." In re Kottmam, 2 Hill. 363 (1834), "In general the object of the habeas corpus is to set at large those who are illegally restrained in their liberty, whether they be infants or of full age." See: Appellate Brief.

PROSECUTORIAL MISCONDUCT

Petitioners contend that the transcript of the November 17, 2022, hearing proves that the Attorney General initiated false accusations against Petitioners, Gwendolyn B. Frasier and LaQuesha Felder by stating that they were "individuals practicing law without a license" and also told the judge not to file anymore documents from them. The record also shows that Judge Culbertson issued an order pursuant to these false allegations that Petitioners were "individuals practicing law without a license," without any findings of facts or conclusions of law on the merits of Appellants Exparte Motion that supported such ruling. The record also proves that when Gwendolyn B. Frasier tried to explain to the court that this was not the case, that she was not attempting to practice law without a license, Judge Culbertson refused to allow her to speak. See: November 17, 2022, hearing transcript P. 14, L 12- P. 15, L 1-20.

According to clearly established South Carolina Supreme Court law, the Attorney General's accusations were false and resulted in prosecutorial misconduct and intimidating Petitioners to prevent them from testifying and to prevent them from exercising their First and Fourteenth Amendment rights to familial association with Terron Dizzley, of which they have a right to without government interference pursuant to Terron's false imprisonment for going on nine years and counting. Petitioners contend that the same exact thing happened in State v. Inman, 395 S.C. 539 (2011), and the South Carolina Supreme Court ruled that such conduct amounted to intimidation and threatening witness and was prosecutorial misconduct; "manner in which State conducted *void dire* of defense expert concerning her licensure status and whether she was subject to civil and criminal penalties for practicing social work without a license unequivocally constituted witness intimidation. A prosecutor may not "lob baseless threats or charges at a potential defense witness in effort to prevent the witness from testifying." State v.

Williams, 326 S.C. 130 (1997), "State's improper intimidation a potential defense witness resulting in witness refusal to be interviewed by defense counsel was not harmless error.

Governmental intimidation of witness can be deemed harmless error where witness nonetheless testifies, but fact that witness does not testify does not automatically result in reversal, and, in order to obtain relief, defendant instead must demonstrate both substantial interference and prejudice."

Petitioners contend that the record of the November 17, 2022, hearing proves substantial interference with their right to "free and unhampered" choice to prosecute their case. Petitioners contends that, clearly, they were prejudice by such deprivation of their rights to due process.

State v. Williams, 326 S.C. 130 (1997), "Improper intimidation of a witness may violate a defendants due process right to present his defense witness freely if the intimidation amounts to 'substantial government interference with the defense witness free and unhampered choice to testify." See: Berger v. United States, 295 U.S. 78, 88 (1935), " A prosecutor may prosecute with earnestness and vigor—indeed, he should so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

Petitioners also contends that the Honorable Judge Culbertson's actions of issuing such an order also amounted to intimidating and threatening Appellants Gwendolyn B. Frasier and LaQuesha Felder to prevent them from prosecuting their case and pursuing an appeal. Therefore, the Honorable Judge Culbertson's conduct amounted to an abuse of discretion and a "usurpation of judicial power." See also: **SC ST s 40-5-80 Citizens may prosecute or defend own cause;** which states in pertinent part: "This chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires."

Petitioners Gwendolyn B. Frasier and LaQuesha Felder contends that the S.C. Court of Appeals has the power to issue writs of habeas corpus in aid of Appellant jurisdiction to safeguard their individual freedom against arbitrary and lawless state action in exercising their First and Fourteenth Amendment rights to familial association. See: Harris v. Nelson, supra, 394 U.S. 286 (1969). Appellants respectfully request that this Honorable Court enforces this power and issues and order of protection against any further prosecutorial misconduct against them from the Attorney General's Office pursuant to this appeal.

Petitioner, Terron Dizzley, contends that although he has made prima facie showing upon cause that he is illegally incarcerated for going on nine years and counting without any legal nor jurisdictional authority. And Petitioners Gwendolyn B. Frasier and LaQuesha Felder has also made prima facie showing upon cause that Terron's illegal incarceration violates their First and Fourteenth Amendment right to familial association with Terron. However, Petitioners have never had a "fair and meaningful evidentiary hearing "as justice requires. Petitioners contend that the only way to safeguard their rights in the interest of justice is to simply follow the law and conduct an emergency hearing and allow Petitioners to argue their cause as required by the law under such circumstances when a person raises issues and shows probable grounds that he is illegally incarcerated.

Petitioner, Terron Dizzley

Petitioner contends that at the November 17, 2022, hearing pursuant to his "Emergency Exparte and Proposed Motions For Immediate Release, Double Jeopardy, False Imprisonment, Lack Of Trial Court Jurisdiction To Impose Sentence." Attorney Yarborough addressed to the court that according to the United States Supreme Court, it is forbidden to allow the Attorney

General to argue against a ruling such as the Honorable Judge Baxley in Petitioner's first trial of 2012, in favor of Petitioner that the prosecution failed to meet their "burden of proof" to convict him, because it would further place him jeopardy. Despite clearly established United States Supreme Court law, the Honorable Judge Culbertson still allowed the Attorney General to argue against what is clearly established by the United States Supreme Court a "court decreed acquittal." Petitioner contends that this was an error of law, which subjected Petitioner to be placed in jeopardy multiple times.

Petitioner contends that it is clearly established by the United States Supreme Court that a defendant cannot be subjected to post-acquittal fact-finding proceedings compared to a trial going to guilt or innocence, which allows the prosecution to re-examine a "court decreed acquittal, "or persuade a second trier of fact of defendant's guilt after having failed with the first, or subject defendant to any type of proceedings devoted to resolution of factual issues going to elements of offense charged. This is exactly what happened. See: Arizona v. Rumsey, 467 U.S. 203 (1984), Bullington v. Missouri, 451 U.S. 403 (1981); Fong Foo v. United States, 369 U.S. 141 (1962); Will v. U.S., 389 U.S. 90 (1967). See also Smith v. Massachusetts, 543 U.S. 462 (2005), "Subjecting defendant to post-acquittal fact-finding proceedings going to guilt or innocence violates the Double Jeopardy Clause. Double Jeopardy Clause prohibits re-examination of court the decreed acquittal with the same extent that it prohibits re-examination of acquittal by jury verdict." Smalis v. Pennsylvania, 476 U.S. 140 (1986), " Double Jeopardy Clause bars post-acquittal appeal by prosecution not only when it might result in a second trial but also if reversal would translate into further proceedings of some sort, devoted to resolution of factual issues going to elements of offense charged." U.S. v. Wilson, 420 U.S. 332 (1975), .

“ Therefore, this court must not consider any of the Attorney General's arguments made at the November 17, 2022 hearing pursuant to this appeal and must not allow the Attorney General to submit arguments against such a ruling in Petitioner's favor that the prosecution failed to meet their "burden of proof" to convict Petitioner, nor should this court allow the Attorney General to participate in any oral arguments in this appeal pursuant to Petitioner's double jeopardy issues.

According to clearly established United States Supreme Court law, there can only be one decision maker when reviewing a ruling to determine whether the trial court ruling was a judgment of acquittal or when reviewing any issue for double jeopardy purposes without placing the defendant twice in jeopardy. And that the decision maker is the judge. Petitioner contends that he has already suffered irreparable harm when the Honorable Judge Culbertson allowed the Attorney General to argue at the November 17, 2022, hearing against the court-decreed acquittal by the Honorable Judge Baxley pursuant to Appellant's first trial of 2012.

However, this Honorable Court has the power to issue writs of habeas corpus in aid of the appellate court's Jurisdiction to safeguard Petitioner, Terron Dizzley's, individual freedom against arbitrary and lawless state action from being placed in jeopardy multiple times by not allowing the Attorney to argue against a court-decreed acquittal. Petitioners are respectfully requesting that this Honorable Court enforces this power to protect their rights during this appeal. See: Harris v. Nelson, supra, 394 U.S. 286 (1969).

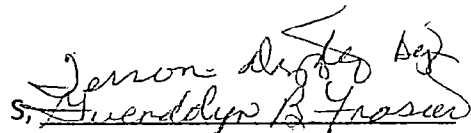
PRAYER FOR RELIEF

Petitioners respectfully pray that his Honorable Court: 1. Issues an order in aid of Appellate Court's jurisdiction to immediately release Petitioner, Terron Gerhard Dizzley or; 2. Issue an order for an emergency expedited hearing allowing Petitioners, Terron Dizzley and also Petitioners Gwendolyn B. Frasier and Laquesha Felder to appear in court to argue

their cause; 3. Issues an order to safeguard Gwendolyn B. Frasier's and Laquesha Felder's individual freedoms against arbitrary and lawless state actions pursuant to any further prosecutorial misconduct against them from the Attorney General's Office in exercising their First and Fourteenth Amendment right to familial association pursuant to this appeal;

(4) To safeguard Petitioner, Terron Dizzley' individual freedom against arbitrary and lawless state action from being placed in jeopardy multiple times by not allowing The Attorney General to argue against a court decreed acquittal or any issues of double jeopardy raised in this appeal.

Sworn to before me


Terron Dizzley, 359480, PRO SE
Allendale Correctional Facility
1057 Revolutionary Trail
Fairfax, SC 29827

This 27th day of March, 2023

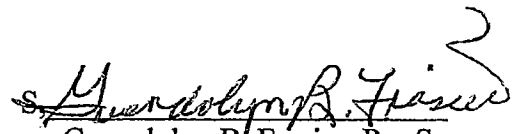


My Commission Expires: 10-14-25

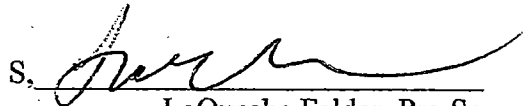
DE'WAYNE WASHINGTON
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 10-14-2025

their cause; 3. Issues an order to safeguard Gwendolyn B. Frasier's and Laquesha Felder's individual freedoms against arbitrary and lawless state actions pursuant to any further prosecutorial misconduct against them from the Attorney General's Office in exercising their First and Fourteenth Amendment right to familial association pursuant to this appeal;

(4) To safeguard Petitioner, Terron Dizzley' individual freedom against arbitrary and lawless state action from being placed in jeopardy multiple times by not allowing The Attorney General to argue against a court decreed acquittal or any issues of double jeopardy raised in this appeal.



Gwendolyn B. Frasier, Pro Se
7996 Pennyroyal Road
Georgetown, South Carolina 29440

S. 

Laquesha Felder, Pro Se
1440 Baxter Street
Orangeburg, South Carolina 29115

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
MAY 02 2023
SC Court of Appeals

Appeal from Georgetown County

Honorable Judge Benjamin Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

v

Terron Gerhard Dizzley
Gwendolyn B. Frasier
Laquesha Felder

Appellants.

APPELLATE CASE NO. 22-000671

CERTIFICATE OF SERVICE

I, Terron Dizzley, Gwendolyn B. Frasier and LaQuesha Felder hereby certify on this 28 day of March, 2023, filed a Petition for Habeas Corpus in Aid of Appellate Jurisdiction in the above matter by placing in U. S. mail, postage prepaid, sent to the address below:

Clerk of Court of Appeals, Jenny A. Kitchings
South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

s. Terron Dizzley
Terron Dizzley, Pro Se
Allendale Correctional Facility
1057 Revolutionary Trail
Fairfax, SC 29827

Attorney General Allen Wilson
Attorney General Office,
P. O. Box 11549,
Columbia, SC 29211

s. LaQuesha Felder
LaQuesha Felder, Pro Se
1440 Baxter Street
Orangeburg, South Carolina 29115

Chief Judge, James Edward Lockemy
P.O. Box 750
Dillon, South Carolina 29536

s. Gwendolyn B. Frasier
Gwendolyn B. Frasier, Pro Se
7996 Pennyroyal Road
Georgetown, South Carolina 29440

Warden William Langdon
Allendale Correctional Facility
1057 Revolutionary Trail
Fairfax, SC 29827

Warden Bryan Sterling
SCDC
P. O. Box 21787
Columbia, SC 29221

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
MAY 02 2023
SC Court of Appeals

Appeal from Georgetown County

Honorable Judge Benjamin Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

v

Terron Gerhard Dizzley
Gwendolyn B. Frasier
Laquesha Felder

Appellants.

APPELLATE CASE NO. 22-000671

NOTICE

Dear Honorable Clerk Jenny Abbott Kitchings;

Enclosed, please find an original and two copies of a Petition for Habeas Corpus in Aid of Appellate Jurisdiction. Stamped filed. Please send copy back to me.

Date: March 28, 2023

With kind regards,

Clerk of Court Jenny Abbott Kitchings
South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

s. Terron Dizzley
Terron Dizzley, 359480, Pro Se
Allendale Correctional Facility
1057 Revolutionary Trail
Fairfax, SC 29827

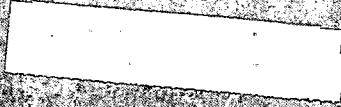
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Gwendolyn B. Frasier
7996 Pennyroyal Road
Georgetown, SC 29440

427

Chief Judge James E. Lockemy
P. O. Box 750
Dillon, SC 29536

