

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari by the Court of Appeals
Appeal from Lee County
Honorable Ralph Ferrell Coltrane, Jr., Circuit Court Judge

S.C. SUPREME COURT

Opinion No. 2024-UP-190 (S.C. Ct. App. Filed May 29, 2024)
Appellate Case No. 2019-000969
Lower Court Case No. 18-GS-31-0120

THE STATE,

RESPONDENT,

v.

KEVIN E. HERRIOTT,

PETITIONER.

PETITIONER FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Petitioner Kevin E. Herrick, is appearing pro se, certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on August 12, 2024.

QUESTIONS PRESENTED

- I. Did the Court of Appeals err in holding that petitioner had failed to preserve indictment issues for appellate review?
- II. Did the Court of Appeals abuse its discretion when failing to consider petitioner claims of ineffective assistance of counsel?
- III. Did the Court of Appeals err in holding that petitioner was not deprived of due process at his trial and no constitutional right of the petitioner had been abridged?
- IV. Did the Court of Appeals abuse its discretion when denying petitioner the right or duty to obtain discovery and case files?

STATEMENT OF THE CASE

On June 4, 2019, Petitioner Keith E. Herriott was convicted of one count of attempted armed robbery and inmate possession of a weapon by guilty verdict of 12 jurors. On June 7, 2019, Petitioner appealed conviction and sentence raising constitutional grounds of the Circuit Court lacked subject matter jurisdiction, ineffective assistance of two (2) former attorneys of record, Brady Violations, the Magistrate Court lacked personal jurisdiction, compulsory process violation, and whether evidence presented were triable issues before the trial Court. The Petitioner challenges conviction and sentence is unconstitutional and the trial court rendered judgment is void.

This case action involves discovery errors that affected the Petitioner's rights, duties, and responsibilities. The Petitioner was denied a full appellate review and suffered substantial prejudice so serious that reversal of judgment is warranted.

On May 29, 2024, without the benefit of oral argument, a panel of the Court of Appeals consisting of Judges Geathers, Hewitt, and Vinson, J.J., concurred and affirmed petitioner's conviction pursuant to Rule 220(b), SEACL. On August 12, 2024, the Court of Appeals denied Petitioner's petition for rehearing. The Petitioner invokes this Court to act by judicial inquiry, to compel the lower Court to administer justice.

I. STANDARD OF REVIEW

The South Carolina Supreme Court reviews allegations of grand jury abuse under both abuse-of-discretion and clear-error standards. See 133 A.L.R. 934; see also *In re Grand Jury 2021 Subpoenas*, 87 F.4th 229 (4th Cir. 2023), any allegation by defendant of grand jury abuse could be effectively reviewed on direct appeal. *State v. McMillan*, 189 S.C. 444, 15 E.2d 626.

An abuse of discretion exists when the district court applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact. The Court abuses its discretion when its ruling is based on an erroneous view of the law or clearly erroneous assessment of the evidence. See *State v. Herrera*, 425 S.C. 558, 823 S.E.2d 923.

The clear-error standard "requires a reviewing court to ask whether on the entire evidence, it is left with the definite and firm conviction that a mistake has been committed." *United States v. Spar*, 789 F.3d 320, 325 (4th Cir. 2015) (Simplified). The Court finds clear error where the factual determinations are not supported by substantial evidence.

I. DID THE COURT OF APPEALS ERR IN HOLDING THAT PETITIONER HAD FAILED TO PRESERVE INDICTMENT ISSUES FOR APPELLATE REVIEW?

The Petitioner Kevin E. Herndoff seeks issuance of Writ of Certiorari, an extraordinary writ by the Court authorized by South Carolina Constitution Article V, Section 35. The Petitioner ask the writ to be issued because not only the writ of certiorari will be aid of the Court's appellate jurisdiction, but that exceptional circumstances does exist that warrant the exercise of the Court's discretionary powers.

According to Appendix C, the Court will discover that the Petitioner preserved his constitutional right for appellate review compelling this Honorable Court to enforce existing laws of present and past for the correction of errors at law under such regulations as the General Assembly prescribed.

The legislative power of the State of South Carolina shall be vested in two (2) distinct branches of government, the one to be styled the "Senate" and the other "House of Representatives" and both together form the "General Assembly" of the State. See S.C. CONST. Art. III, §1 & §1A.

The General Assembly has enacted a mode of procedure that prescribed no person shall be deprived of liberty or property and shall have in all such instances the right to judicial review. See S.C. CONST. Art. I, Section § 22. This mode of procedure is established by S.C. CONST. Art. I, Section § 11 and prescribed in S.C. Code Ann. § 17-19-10, that states in relevant part: "No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury."

On July 17, 2018, the Petitioner Kevin E. Herrick as a pro se litigant was criminally processed and served two (2) arrest warrants for his arrest on charges of Attempted armed, or allegedly armed, robbery, 2018A3110100195, and Carrying or concealing weapon by inmate, 2018A3110100195 who appeared before Magistrate Judge Shirley C. Davidson.

It is well settled that jurisdiction of the offense charged is a fundamental and indispensable prerequisite to a valid prosecution. The determination as to whether the trial court has jurisdiction over a criminal proceeding is not one of guilt or innocence, requiring a proof beyond a reasonable doubt, but whether the trial court has the power to act. See 21 Am. Jur. 2d Criminal Law § 422.

The Petitioner directs the Court's attention to the fact that the Magistrate Court had summoned the Petitioner to answer to two (2) invalidated arrest warrants of an mandatory court appearance a preliminary hearing proceeding. The Petitioner avers that in order for the Court to properly gained personal jurisdiction over the Petitioner, who was at that time represented by former counsel of record, Counsel E. Thompson Kinney, the arrest warrants were to be sufficient and validated for service. The Petitioner's attorney, however, waived the service of process of the arrest warrants without the Petitioner's consent.

Howbeit, the arrest warrants was not served in the manner required by law. Therefore, personal jurisdiction was not gained since proper service is a prerequisite to the Court exercising personal jurisdiction over the defendant. See 1 S.C. Litigation Forms And Analysis § 10:13 SC ADC 12-608.8.

The Appellant/or Petitioner demonstrates to the lower Court that the Magistrate Court was without personal jurisdiction to proceed over the case to start with. The Petitioner, who is the defendant, would have been entitled to a procedure that was not available, had not the decision of Counsel of record affected the outcome of this particular proceeding by not preserving Petitioner rights. See 19 S.C. Just

Constitutional Law § 19.

The Petitioner was entitled to the Circuit Court conducting an appellate review concerning these matters heard by the Magistrate, and Counsel Kinney did not protect the Petitioner's rights and interests on appeal; nor did Counsel Kinney inform the Petitioner of the right to appeal to the Circuit Court. Counsel Kinney had made a decision overreaching by surrogate when never making an appointment to meet with Petitioner before the Magistrate Court's proceeding that determined to bind the case over to general sessions nor consulted with Petitioner during the proceeding at the time when counsel waived Petitioner's right to challenge personal jurisdiction within the Circuit Court. On February 19, 2019, the Petitioner motioned the Circuit Court to have Counsel Kinney withdraw from case action.

Meanwhile, the Petitioner had several other motions pending before the Circuit Court at the time the Circuit Court acquired jurisdiction. The Petitioner was not represented by counsel at this time when filing pro se motions. The Petitioner filed motion to quash the indictment(s) and demanded a hearing.

The Petitioner informs the Court that former counsel

of record E. Thompson Kinney produce limited discovery to Petitioner. Within the limited discovery produce to Petitioner, the Petitioner was served notice of presentment of single multi-count indictment(s) on or before August 6, 2018. The Petitioner clarify that on or before August 6, 2018, the Petitioner received one (1) charging document that was a single multi-count indictment. The Petitioner avers that when examining the charging document, the Petitioner held the single multi-count indictment defective, bad, faulty, and invalid on its face.

Jurisdictions are commonly described as "indictment jurisdictions" if they grant to the accused a right not to be held to answer a felony charge unless that charge has been issued by a grand jury through an indictment, or the alternative of a presentment where the jurisdiction retains the presentment process. 4 Criminal Procedure § 15.1 (d) (4th ed.)

Currently, the State of South Carolina are an indictment jurisdiction. However, indictment jurisdictions often stop at that defect in characterizing an indictment related error as "jurisdictional" in nature. They distinguish between the lack of an indictment and an indictment that was filed but was subject to challenge on such grounds as a lack of grand jury authority. 4 Crim. Proc. § 15.1 (d) (4th ed.).

In December of 2018, the Petitioner invoked his constitutional right when the Petitioner moved before the Circuit Court on a motion to quash indictments challenging the single multi-count charging instrument because the indictment were defective. Upon further observation, the Petitioner examined the grand jury allegedly convened date in the Court of General Sessions at Lee County Third Judicial Circuit. On the face of the single multi-count indictment the Petitioner was served notice of presentment on August 6, 2018, read "At a Court of General Sessions, convened on August 30, 2018, the Grand Jurors of Lee County present upon their oath: one count of assault and battery of an high aggravated nature, one count of attempted armed robbery, and one count of a inmate carrying a conceal weapon."

The Petitioner, did in fact, compared and contrast the Lee County Judicial Circuit Court Schedule, South Carolina Code Annotation Statute § 14-5-640(2) and the grand jury convene date to which indicated the dates of the Court Schedule and Statute § 14-5-640(2) contradicts the grand jury convene date August 30, 2018, whereas the Petitioner concluded that the trial court lacked subject-matter jurisdiction.

Subject matter jurisdiction involves the nature of the cause of action and the relief sought and can only be conferred on a court by legislative or constitutional acts. There are two (2) requirements for subject matter jurisdiction as it relates to criminal defendants: (1) the competency of the court to hear the case, and the (2) provision of formal notice to the defendant of the crimes charged in compliance with the Sixth Amendment of the U.S. Constitution. 21 Am. Jur. 2d Criminal Law §422.

The charging document, whether it be an indictment or an information, is the jurisdictional instrument that gives the court authority to convict a defendant of the crimes charged in a complaint or of lesser included crimes; conversely, if a crime is not specifically stated in the information or is not a lesser included offense of the crime charged, the court lacks jurisdiction to convict a defendant of the crime regardless of the evidence presented. 21 Am. Jur. 2d Criminal Law §422.

On August 1, 2018, Attorney E. Thompson Kinney for Petitioner moved before the Court of General Sessions, Third Judicial Circuit requesting a true copy of the indictment herein, with all the markings upon it as may have been made by the action of a Grand Jury.

On August 6, 2018, Attorney Finney furnished Petitioner with a true copy of the indictment and was a draft signed by the Circuit Solicitor of the Third Judicial Circuit, Ernest A. Finney, III. In December of 2018, the Petitioner moved before the Third Judicial Circuit, general sessions court motion to quash indictment. On June 4, 2019, the Honorable Ralph Ferrell Colbran, Jr., Circuit Court Judge, exercise the trial court discretion, permitting Petitioner to proceed and put forth facts as it relates to the subject matter of the motion to quash indictment, before the petit jurors were sworn.

ARGUMENT

The Petitioner argument to the trial court were, the State failed to initiate the prosecution by grand jury process and it is considered a jurisdictional defect when such process is not afforded a criminal defendant. See 1 Wharton's Criminal Procedure § 413 (14th ed.). The Petitioner was not formally served an indictment before the petit jury was sworn, nor was Petitioner presented with an indictment on the grand jury true bill indictment before the trial judge sentenced and convicted the Petitioner. For the single multi-count one(1) page charging document was a draft and the lower court error holding the Petitioner was arrested, charged, and indicted. Trial Trans. Page 8/ Lines 4 thru 5; Page 17 Ln 21 thru Page 18 Ln 4

Although some courts hold that the sufficiency of an information or indictment is a concept distinct from that of subject-matter jurisdiction, and that defects in an information affect only the legal sufficiency of the information, not the trial court's jurisdiction to try that class of case, other courts hold that if the instrument is not legally sufficient, the court has no authority at all to proceed with the arraignment. However, a fundamental defect in a charging instrument always deprives the trial court of jurisdiction. 21 Am. Jur. 2d Criminal Law §422.

After the trial, the Lee County Third Judicial Circuit Clerk of Court met Petitioner in the halls within the Courthouse and gave Petitioner a copy of the September 1, 2018, rubber stamp true bill indictment outside of the courtroom, and absence of the Court reporter. However, in South Carolina the grand jury clause in the State Constitution Article I § Section 11, refers specifically to a grand jury presentment as an alternative to an indictment. Nonetheless, a statute or court rule provides that prosecution shall be initiated by indictment, with no reference made to a presentment. S.C. Code Ann. § 17-19-10; see also Rule 3(c) of the South Carolina Rules of Criminal Procedure.

However, thus far an indictment to be valid, not only does the State of South Carolina requires the indictment to be approved by the grand jury, but the prosecutor also had to signify approval by his or her signature. Nevertheless, this procedure still requires that the validation of such charging instruments must meet the standards of other laws ratified by the general assembly, safeguarded under the Fourteenth Amendment, U.S. Const.

On direct appeal, the Petitioner prays that the State attempted to cover up the date of the grand jury convene date of August 30, 2018, changing the date to September 1, 2018. The Petitioner prays on the record on appeal that the Solicitor's duty under Rule 3(c), S.C.R.CrimP, has an obligation to indict, dismiss, or make some other alternative disposition in writing of a warrant within ninety (90) days after receiving it from the Clerk of Court.

In Accordance to S.C. Code Ann. § 15-5-640(2), The Court of general sessions for Lee County shall be held at Bishopville on the first Monday in February, on the second Monday in June and the first Tuesday after the first Monday in September, each for one week. The first Tuesday after the first Monday in September, 2018 fell on the 4th day and for one week ended on the 10th day. See Annual Calendar of 2018.

The Petitioner aver that it is not unusual, however for a misconduct challenge to be considered by the higher appellate court only after the defendant has gone to trial and has been convicted. Ordinarily, the defense must raise the objection before trial or risk its forfeiture, but the defense will be excused in making a late objection where it could not reasonably discover the misconduct at an earlier point. See 4 Criminal Procedure § 15.6 (f) (4th ed.).

The Petitioner submits to this Court that when the Petitioner raised original objection to challenge the Court lacked subject matter jurisdiction at the pre-trial stages the Petitioner could not reasonably discover the misconduct of the State by abuse of process as it relates to the fact of altering the dates of the indictment the Clerk provided Petitioner and the blank indictment the prosecution furnished the defense where no bill was handed down.

Pursuant to 2023 S.C. H.B. 3925, Section 2., that reads Section 1-7-940 of the S.C. Code is amended to read: (4) provide Blank indictments for the circuit solicitor is restricted by the General Assembly legislation.

The Petitioner was not notified of an extension to extend time by the prosecution to indict Petitioner nor the Petitioner waived presentment of indictment. The Petitioner relied upon the Third (3rd) Judicial Circuit General Sessions Court Schedule to which reflected there was no court/judicial proceedings, hearings, convening of grand jurors or grand jury, nor common pleas were conducted for the month of August, 2018.

The Court of Appeals is in receipt of three (3) charging indictments submitted by Petitioner on the record on appeal such as: (1) a single multicount indictment draft with the Solicitor's Signature, (2) a blank indictment alleging three offenses, and (3) a rubber stamp true bill indictment.

On August 6, 2018, the Petitioner was furnished a copy of the single multi-count indictment draft dated August 30, 2018, that was signed by the Third Judicial Circuit Solicitor. On November 12, 2020, the Petitioner was furnished with former counsel of record E. Thompson Kinney in complete case file discovering the blank indictment was not approved by the grand jury. On June 4, 2019, the Clerk of Court provided Petitioner a rubber stamp true bill invalid indictment. For this particular indictment the Clerk gave Petitioner shown that the foreperson of the grand jury signed on August 30, 2018, that the grand jury convene

on the September Term, September 1, 2018. This instrument is held bad, faulty, and fraud was acted upon by the prosecution to abuse the criminal process.

The Petitioner directs this Court's attention to when a lower court does not have jurisdiction over the case before it, an appellate court also lacks jurisdiction to review the merits of the claim. When reviewing a case where the circuit court lacked subject matter jurisdiction, the appellate court retains jurisdiction, not on the merits, but for the purpose of correcting the error in jurisdiction.

An appellate court has the power to determine whether it lacks jurisdiction over an appeal because the lower court lacked jurisdiction to enter the order, to vacate a void order and, if necessary, to remand the cause with appropriate directions. If the record on appeal discloses that the lower court was without jurisdiction, the court of appeals will notice the defect, although the parties make no connection concerning it. See 4 Am. Jur. 2d Appellate Review § 25.

The Petitioner asserts that the deficiencies of the indictment made the trial so egregiously unfair as to amount to a deprivation of the Petitioner's right to due process of law and liberty. The Petitioner request prohibition as remedy in case of defective indictment. Accord 102 A.L.R. 298; 22 R.C.L. 19. In favor of Petitioner against the State.

II. STANDARD OF REVIEW

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction has two components: (1) the defendant must show that counsel's performance was deficient, and (2) then must show that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674; modified by *Lockhart v. Fretwell*, 506 U.S. 364, 369, 113 S.Ct. 838, 122 L.Ed. 2d 180. See also *Goin v. State*, 397 S.C. 568, 726 S.E. 2d 1.

The United States Supreme Court held that defendant could raise ineffective-assistance-of-counsel claim in collateral proceeding, even though defendant could have, but did not raise claim on direct appeal. *Joseph Massaro v. United States*, 538 U.S. 509, 123 S.Ct. 1690, 155 L.Ed. 2d 714. Claims of ineffective assistance of counsel must be raised in a motion for post conviction relief, rather than on direct appeal, unless the appellate record conclusively demonstrates ineffective assistance. *U.S. v. Reid*, 436 Fed. Appx. 141.

A petitioner may present only those issues that were presented to the highest South Carolina court through direct appeal, regardless of whether the court actually reached the merits of the claim. *Blanding v. Warden of McCormick Correctional Inst.*, 2014 WL 3909656; *State v. McKennedy*, 348 S.C. 270, 559 S.E. 2d 850, 854 (S.C. 2002).

II. DID THE COURT OF APPEALS ABUSE ITS DISCRETION
WHEN FAILING TO CONSIDER PETITIONER
CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL?

The Petitioner Kevin E. Herndoff appearing pro se ask this Court to issue Writ of Certiorari because the writ will be aid of the Court's appellate jurisdiction due to exceptional circumstances does exist that warrant the exercise of the Court's discretionary powers and compelling reasons where the national importance of having the Supreme Court decide the questions involved.

The Petitioner aver that when a defendant challenges a conviction, the Court questions whether there is a reasonable probability that absent the errors, the fact finder would have had a reasonable doubt respecting guilt. In making this determination, a court hearing an ineffective assistance of counsel claim must consider the totality of the evidence before the judge or jury. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2352, 80 L.Ed.2d 674.

On Appellate Review, the Petitioner presented claims of two (2) former court appointed counsels of record Timothy L. Griffith and E. Thompson Kinney were ineffective during the representation of Petitioner that the appellate record conclusively demonstrates.

The underlying facts of the former counsels of record conduct, inaction, and omissions were presented to the Court of Appeals SHOWING that Counsels Timothy L. Griffith and E. Thompson Kinney made errors so serious, counsels was not functioning as the "Counsel" guaranteed the Petitioner by the Sixth (6th) Amendment U.S. Const.

Former Counsel E. Thompson Kinney was the first appointed counsel of record who represented Petitioner in the pre-trial stages. Counsel Kinney had over reached by surrogate by waiving Petitioner's right to challenge the invalid arrest warrants nor preserving the Petitioner's right to take appeal to the Circuit Court. At the preliminary hearing, Petitioner appeared before the Magistrate Court where the Magistrate questioned the defense as to whether the defense wanted to waive the arrest warrants, prior to binding the case over to general sessions. Counsel Kinney replied to the Magistrate for the defense without consulting with Petitioner that he wishes to waive arrest warrants certified for service in the County or Municipality of the Magistrate's Jurisdiction giving personal jurisdiction over Petitioner.

Counsel Kinney, then, failed to advise Petitioner of the right to take appeal nor filed an appeal on behalf of Petitioner to preserve the Petitioner's rights and interests on appeal.

On January 7, 2019, Counsel Kinney misled and lied to both the tribunal and presided judge concerning the reasons of an fueled contention whereas counsel deliberately and willful have evaded knowledge of facts about the course of action Petitioner wanted; a jury trial and testimonial of Petitioner. Counsel Kinney expressed his thoughts of not wanting to get involved and be the 'middle man' in representing the Petitioner while neglecting his duty to investigate and as a result of Counsel Kinney's conduct and inaction the Petitioner suffered prejudice.

The Petitioner avers that although Counsel Kinney was withdrawn at the Blair Hearing from the case, the errors that occurred during counsel's representation functioning as counsel were never remedied by the trial court to which played a critical role that remained unresolved creating an fundamental miscarriage of justice affecting the Petitioner to suffer undue prejudice.

Once Counsel Kinney was withdrawn from the case, the Court relieved Counsel Kinney and appointed Counsel Griffith who were present at the Blair Hearing. When Counsel Griffith had taken over the case, he too, failed to investigate the set of facts surrounding the case. Counsel Griffith looked to re but the evidence against Petitioner as what were presented by the State through the limited discovery pursuant to Rule 5, SEC Grand, while ignoring Petitioner's innocent claims.

The Petitioner submitted before the Court of Appeals that by Counsel's failure to investigate, they would have learned of a witness who later came forward where Petitioner later proffered on affidavit of a corroborating witness Mr. Terrell Crawley, an SCDC Inmate who was housed at Lee Corrections with Petitioner within the same F3 Dormitory and housing unit. SCDC Inmate Crawley confirmed by affidavit that Petitioner was in imminent danger and a plot to murder and assault Petitioner were real. Petitioner was in physical danger after the occurrence of the 2018 Deadly Riot at Lee Corrections and when Petitioner learned on May 10, 2018, that he would be murdered fled the unit. This very unit was the initial starting point where the riot spread to other dormitories.

The Petitioner had a valid security safety concern that was mishandled by SCDC officials and mismanaged by SCDC Staff Administrators within the SCDC Agency. The Petitioner's mail was being screened by gang affiliated inmates within the BLOOD Organization, Crip Organization, and Gangster Disciples to stop and interfere with the criminal process. These acts placed Petitioner under duress causing Petitioner to depart from his living quarters in such a way that SCDC officials namely Lieutenant Beathen and Sgt. Coxson attempted to downplay and filed falsified charges against Petitioner only to place and house Petitioner around known enemies within the Restrictive Housing Units.

Had Counsel Timothy Griffith investigated he would have found:

- 1) the prosecution did not disclose the knife as evidence to the defense
- 2) the prosecution did not have the knife in evidence
- 3) SCDC Police Services (DORS) Investigators botched the investigation by not preserving the knife as evidence
- 4) the prosecution failed to establish the knife was authentic and no chain of custody was performed to preserve the knife

Trial Counsel Timothy L. Griffith failed to establish these facts above aforementioned by failing to investigate. In Counsel Griffith's deficient performance, he did not consult with SLED Agency to verify or discover the knife was not authentic as depicted in the video surveillance camera footage in Pettit's former housing living quarters. Counsel Griffith inaction show the Court, he did not conduct his own independent investigation.

The record as a whole before the appellate court demonstrates the absence of counsel Griffith's objections to the trial court during trial and the pre-trial stages show counsel's decisions were made by being incompetent. Counsel Griffith decisions were not based on trial strategy nor tactics a reasonable attorney would make because it is clear Counsel Griffith did not preserve Pettit's interests in the case on appeal. It is also clear that Counsel Griffith did not inform Pettit of what issues

to take up on appeal, as well as failing to inform Petitioner to seek a Rule 29 motion for a new trial. Counsel Griffith disregarded Petitioner's rights and interests in failing to choose to turn over case files, evidence, and discovery impeding Petitioner's right to challenge the constitutionality of conviction and sentence.

In Accordance to *U.S. v. Chapman*, 593 F.3d 865, the Court held that, "decisions that may be made without the defendant's consent primarily involve trial strategy and tactics," such as:

- 1) What evidence should be introduced?
- 2) What stipulations should be made?
- 3) What objections should be raised?
- 4) What pre-trial motions should be filed?

However, the Petitioner asserts that certain decisions regarding the exercise or waiver basic trial rights are of such moment that they cannot be made for the defendant by a surrogate. Accord *Florida v. Nixon*, 543 U.S. 125, 187, 125 S.Ct. 551, 160 L.Ed. 2d 525 (2004).

The only decisions that have been identified by the Supreme Court as belonging exclusively to the defendant are "whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal. *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 338, 77 L.Ed. 2d 987. See also Rule 407 Professional Rules of Conduct Rules 1.0(c), 1.0(g), 1.2(a), 1.4(a)(1).

The Petitioner submits to this Court that the benchmark of the right to counsel is the "fairness of the adversary proceeding". Nonetheless, when a counsel's conduct and performance is deficient, that counsel will deprive the defendant of substantive or procedural rights to which the law entitles defendant making the proceedings unreliable and unfair. *Lockhart v. Fretwell*, 113 S.Ct. 838, *Supra*.

ARGUMENT

The Court of Appeals should have held the Petitioner was denied ineffective assistance of trial counsel rather than merely misconstruing Petitioner's constitutional claim of ineffective assistance of counsel for denial of directed verdict. Petitioner's trial counsel *Trudy L. Griffith* incompetency failed to meet the burden of preserving Petitioner's right to an directed verdict due to not explaining to the trial court specific grounds for the Court to grant relief Petitioner's defense desired

The Court of Appeals considered one action of Trial Counsel deficient performance when reversing the denial of a directed verdict claim of Petitioner while overlooking the underlying constitutional claim of ineffective assistance of counsel. For counsel Griffith made a contemporaneous objection redirecting the trial court to Petitioner's pro-se motion of directed verdict without raising any specific grounds as to why the Court should consider and grant motion.

It is well settled that two (2) pre-trial outlays commonly create error preservation issues: (A) motions in limine, and (B) orders denying a particular mode of trial; see 15 S.C. Jur. Appeal and Error § 28.

Former Counsel Griffith failed to motion in limine to the trial court seeking a pre-trial ruling on the knife a prejudicial matter nor did counsel raised any contemporaneous objections to the line of questions to the effect of inferences surrounding the identification and use of the knife by both witnesses testaments from the State and Defense to preserve for appeal. The lack of investigation played another critical role to move before the trial court and motions in limine concerning the video surveillance because the camera footage was doctored, several video angles were absent where video cameras was positioned and recording in detail movements of both Petitioner

and SEDE Officers on May 10, 2018, would have changed the outcome in the proceeding.

The Petitioner asserts that trial counsel investigated the set of facts, drawn logical inferences from the evidence, conducted their own independent investigations, objected to questionable inferences that were prejudicial such that the probative value of the surveillance as it relates to the identification and use of the knife very much had not outweighed the prejudice, and moved to strike the witnesses relevant portions of testimony referencing the identification and use of the knife, the result of the proceeding or outcome of the proceeding would have been different. The trial guilty verdict as it stands cannot be relied upon because these errors made the trial unreliable and unfair. The Petitioner is entitled for this Court to reverse or modify and remand case back to the lower court with correction of the trial court errors.

An abuse of discretion exists when the lower court applies the wrong legal standard, misapplies the correct legal standard or applies and relies on clearly erroneous findings of fact. The Court abuses its discretion when its ruling is based on an erroneous view of the law or clearly erroneous assessment of the evidence. See *State v. Herrera*, 425 S.C. 538, 825 S.E.2d 923.

The Court of Appeals decision to refuse to not take issue of Petitioner's ineffective assistance of counsel claim is an abuse of discretion because

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it has applied the wrong legal standard in failing to reach the merits of this case pertaining to Petitioner's ineffective assistance claims. Accord *Massaro*, *Supra*.

The Court of Appeals holds its position to not reach the merits when Petitioner does not have to pursue an ineffective assistance claim with a Post Conviction Relief (PCR) proceeding due to its an adverse procedure and outside of the standard of review process. *O'Sullivan V. Boerckel*, 526 U.S. 838, 119 S.Ct. 1228, 144 L.Ed. 2d 1; *Prate v. Makemedy*, 348 S.C. 270, 559 S.E. 2d 850.

The Petitioner avers that the appellate record conclusively demonstrates ineffective assistance of counsel within this case and the Petitioner requests the Supreme Court to enforce existing laws to compel the lower court to act within the parameter of the Court's orders. For this very reason compels the Court to decide the question involved. The lower court's decision to not reach the merits, took the opinion of the respondent for the State ~~to~~ not consider Petitioner's ineffective assistance of counsel claim who then advised Petitioner to pursue a PCR hearing where Petitioner claim would be heard and reviewed. Initial Brief of Respondent Page 12.

The Petitioner submits that the Petitioner does not rely on unsound logic just because a procedure exist does not mean it is currently

available to exhaust State remedies regardless of whether the appellate court actually reached the merits of the claim. *Blanding v. Warden of McCormick Correctional Inst.*, 2014 WL 3809256.

The Petitioner asserts that the direct appeal pursued by Petitioner is his constitutional right and does not have to pursue a course of action in another proceeding to get the same relief the SC Court of Appeals could have administered. The Petitioner seek this writ to exhaust State remedies giving the court one full round to hear his petition and correct the errors that occurred in this process within the criminal justice system.

The Petitioner gave the SC Court of Appeals to correct the errors and apply the law to each claim raise and presented by the Petitioner. The Petitioner ask this Court to correct the errors the lower courts have made, overlooked, misapprehended and apply the law to Petitioner's substantial constitutional claims granting the Petitioner the relief, he is so entitled to. The Petitioner ask the Court to engage in a meaningful review to get to the truth and State So The Law.

III. STANDARD OF REVIEW

The Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L. Ed. 2d 215. To establish a Brady violation, Petitioner must prove by a preponderance that (1) the prosecution suppressed evidence, (2) the evidence was favorable to him, and (3) the evidence was material. See *U.S. v. Garcia*, 793 F.3d 1194.

To establish a due process violation where the State fails to preserve evidence, a defendant must demonstrate (1) that the State destroyed the evidence in bad faith, or (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means. *California v. Trombetta*, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed. 2d 413 (1984); *State v. Hutton*, 58 S.E. 622, 595 S.E. 2d 926.

The U.S. Supreme Court recognized in *U.S. v. Bagley*, 473 U.S. 667, 105 S.Ct. 3325, 87 L.Ed. 2d 481, holding that "the fundamental interest in a fair trial combine to give the criminal defendant the right to receive from the prosecutor and the prosecutor the affirmative duty to turn over to the defendant all information known to the government that might reasonably be considered favorable."

III. THE COURT OF APPEALS SHOULD HAVE HELD
THE STATE SUPPRESSED EXCULPATORY EVIDENCE
CAUSING THE TRIAL COURT JURY'S VERDICT
TO BE UNRELIABLE

ARGUMENT

The Petitioner Kevin E. Merritt asserts that both the prosecutor and police are responsible for suppression and submits that there is two (2) issues at play: (1) the prosecutor obtained a conviction by intentional suppression of evidence, and (2) the police destroyed evidence and concealed the material from the Court.

The Petitioner avers that 'Brady' and 'Barbee' differs by the set of circumstances with suppression of evidence involved that is favorable to the accused after a request for its production. In Brady, a prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice. Brady v. Maryland, 83 S.Ct. 1194. In Barbee, the prosecutor action is not the result of guilt; but ~~does~~ not dispute 'the agents of the prosecution' known as police suppression. Barbee v. Warden, Md. Penitentiary, 337 F. 2d 842.

In this case, it is a classic case of suppression of evidence where the trial judge inadvertently ruled the evidence in question was not exculpatory and therefore the State need not disclose it. The Petitioner asserts that the trial judge reached this conclusion without the benefit of inspecting the contested material merely relying upon the inadmissible evidence of the video surveillance camera footage submitted by the prosecution.

The Petitioner calls into question the video surveillance camera footage as prejudicial and altered where the SCDC Police did not produce the original under Rule 002, SCRC. The State orchestrated and created the defense from knowing about the inadmissible evidence the Petitioner sought. According to Black's Law Dictionary, Eighth Edition defines defense as a defendant's method and strategy in opposing the prosecution. The Petitioner shows the Court that on June 11, 2018, Agent Horne spoke with Lee County Assistant Solicitor John Gentry about the case. Mr. Gentry advised to charge Petitioner Herriott with Attempted Armed Robbery for attempting to take Sgt. Lucky's chemical munitions while armed with the shank. On June 14, 2018, Agent Horne obtained arrest warrants on Herriott from the Lee County Magistrate's Office for Attempted Armed Robbery and Inmate in Possession of a Weapon.

The lower court held on May 29, 2024, that the trial court did not err in finding the State did not suppress exculpatory evidence because Petitioner failed to identify any evidence that would have been favorable to him that was withheld.

On the contrary, the Petitioner petition for rehearing to the Court of Appeals proving that the Court of Appeals overlooked the totality of the evidence before the trial judge or jury without considering or having attention to whether the result of the trial was fundamentally unfair or unreliable, as a result, the lower court is objectively unreasonable.

The Petitioner standing is that Petitioner's trial counsel Timothy L. Griffith were assigned and appointed to the case to represent the Petitioner without Petitioner's approval. The Petitioner was forced to have counsel after expressing to the Court that he desired to proceed pro se. After appointment of Counsel Griffith, Counsel did not turn over any discovery to Petitioner. The Petitioner received an limited discovery under the former representation of counsel E. Thompson Kinney. Because of Petitioner due diligence, on November 12, 2020, Petitioner discovered post-trial that former court appointed attorneys and the prosecutors share responsibility for not providing favorable information that is 'material' that would have exculpate Petitioner.

The Petitioner asserts that Counsel Kinney's request for "Brady" on August 01, 2018, moved the Court for orders compelling the Solicitor John L. Gentry of Lee County general sessions trial court to comply with this request, and objected in advance to the introduction of the identity of any evidence or substance without the testimony of the qualified analyst who personally tested the evidence or substance and the testimony of all individuals who were involved in the chain of custody of the evidence or substance.

On June 4, 2019, the Petitioner's Counsel Timothy L. Griffith addressed the trial court circling around the motion for "Brady" filed August 01, 2018. The Petitioner reached this conclusion because it is unclear in the transcript of Trial, pre-trial hearing, where Counsel Griffith put forth to the trial court that a motion for Brady had been filed. Trial Transcript Page 16 Ln 14 thru Ln 16. For the Petitioner did not received any discovery from Counsel Griffith nor legal documents from Counsel Griffith at this filing or at any time during the representation of Counsel Griffith.

On June 4, 2019, the prosecutor informed the trial judge that there was no exculpatory evidence and it is out there, the solicitor's office do not know about it. Trial Transcript Page 15 Ln 16 thru Ln 20. The Petitioner, nevertheless, avers that the prosecution conceal the knowledge of the destruction of the knife to the Court and defense.

In Accordance to *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963), the Supreme Court established a requirement of disclosure as a fundamental element of a fair trial by holding that a defendant was denied due process if he was not given access to favorable evidence that is material either to guilt or punishment. See also *U.S. v. Bagley*, 473 U.S. 667, 105 S.Ct. 8325, 87 L.Ed. 2d 481, holding that "the fundamental interest in a fair trial combine to give the criminal defendant the right to receive from the prosecutor and the prosecutor the affirmative duty to turn over to the defendant all information known to the government that might reasonably be considered favorable to the defendant's case. This formulation of this right and imposition of this duty are 'the essence of due process of law.'"¹⁰ Accord 14th Amend. U.S. Const.

The Petitioner could not have identified any whatsoever evidence missing at the time Petitioner was questioned by the trial court on June 4, 2019, because the State nor the Counsel for the defense furnished a list of evidence that were to be proffered in chief of trial to Petitioner. Trial Transcript Page 16 Ln 11 thru Ln 16. On November 12, 2020, the Petitioner received former Counsel incomplete case file which had more legal documents in the case file from Counsel Kinney than the initial discovery disclosure.

On or after November 12, 2020, the Petitioner discovered that the State's prosecution did not include the knife/shank in evidence and after discovered evidence show the Petitioner's Counsel of record had a comprised list of evidence furnished by the State.

The Petitioner avers that any reasonable counsel would have provide the Petitioner a copy of the comprised list for the defense to protect the clients interests and rights on appeal and harness within the trial court. However, the Petitioner's defense suffered prejudice because the Petitioner was not given access to exculpatory evidence that would have exculpate him and as a result of the non-disclosure both the comprised list and prosecution's non-disclosure of information of the destruction of evidence denied Petitioner due process of law. The Petitioner directs the Courts attention to the fact that Petitioner was summoned to the Circuit Court in general sessions to give an answer for alleged offenses described as crimes to confront his accusers on the State's theory of armed robbery and assault.

In *Barbee*, decided a year after *Brady*, the Fourth Circuit Court of Appeals held that "the police are also part of the prosecutor," and thus, they too violate the Constitution if and when they suppress exculpatory evidence. *Barbee v. Warden, Md. Penitentiary*, 331 F.2d at 846. See also, *Owens v. Baltimore City State's Attorney's Office*

767 F.2d 378, and *Boone v. Pa Derick*, 547 F.2d 447 (9th Cir. 1976), Fourth Circuit Court of Appeals overturned a defendant's criminal conviction on the ground that police had suppressed exculpatory information bearing on the veracity of a witness's testimony.

The Petitioner submits to the Court that during or before his trial the prosecutor failed to disclose exculpatory evidence in advance of trial and after trial. The non-disclosure contributed to the conviction after the trial court allowed inadmissible evidence before the jury that was extremely serious and prejudicial that reversal of the jury verdict is warranted. The jurors considered questionable inferences of Petitioner being armed with a knife and a check while attempting to take the Officer's race card out of the officer's person. Absent the trial court having the knife surrendered to the Court by the prosecutor's destruction, the prejudice far outweighs the probative value.

The Prosecution submitted into evidence at trial inadmissible and incompetent video surveillance on a doc of Petitioner being armed with a weapon for identification purposes without the prosecution preserving the knife in bad faith. Because the knife was destroyed the

Petitioner could not at the time of trial and cannot obtain other evidence of comparable value by other means. Although several witnesses testified that Petitioner was armed with a knife, the knife possessed an exculpatory value apparent before the evidence was destroyed and without concrete proof the weapon portrayed on the video disc was authenticated, pursuant to Rule 1002, SCRE requires this Court to enforce the law to dismiss the evidence.

The Jury considered the questionable inferences of Petitioner being armed, and the State witnesses were untruthful about Sgt. Edward Lucky being injured from Petitioner attacking the officer. The knife contributed to Petitioner being convicted without the knife being authenticated as real, original, and concrete.

The Petitioner aver that had the evidence been disclosed to the Petitioner's defense the result of the proceeding would have been different because the Petitioner could have objected by motion to strike to preserve issue questioning the prejudicial matters of the video camera footage having the trial court issue a limited or restricted curative instruction to throw out any references related to the knife or shank. The Petitioner would have been entitled to analyze the questionable identification of weapons to prepare for his defense whether by examining chain of custody documents that was not disclose to the defense, photos that were

taken nor proffered to the trial court, and not turned over to the defense. The Petitioner is entitled to relief because the Petitioner is innocent where the trial court judgment is unreliable and unfair.

The Petitioner submits that the Court of Appeals decision involves an unreasonable application of clearly established Federal law. The lower court identified the correct governing legal principle from Supreme Court's decision but was objectively unreasonable that had unreasonably applied suppression of exculpatory evidence to the set of facts of Petitioner's case.

It is clearly shown that the Petitioner addresses to the Court and the record is clear that two (2) issues were presented both dealing with the legal application of suppression of evidence principle and destruction of evidence. The information was material to guilt or punishment and favorable to the defense. The destruction of the knife was destroyed in bad faith. The State Solicitor met with the SEDC Police Service, investigator exchanging information and obtaining a copy of the video disc. From this conversation to the description of charges in detail it is impossible for the Solicitor to have no knowledge of the destruction of the weapon. The Petitioner ask for a remedy to be provided when the Court grant this Writ.

IV. STANDARD OF REVIEW

Sixth Amendment's requirement that an accused have the right to assistance of counsel was made obligatory on States by Fourteenth Amendment. Accord U.S.C.A. Const. Amends. 6, 14; *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 2d 493.

Constitutional requirements of substantial equality and fair process can only be attained where counsel acts in role of active advocate in behalf of client, as opposed to that of amicus curiae. *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 2d 493.

Appointed Counsel's role as advocate requires that he support his client's appeal to the best of his ability. *id.*, 386 U.S. 738, 87 S.Ct. 1396. As well, Rule 602(c), S.C.A.C.R., stipulates that "trial counsel whether retained, appointed, or Public Defender, shall continue representation of an accused until final judgment, including any proceeding on direct appeal." *State v. Devore*, 416 S.C. 115, 784 S.E. 2d 690

The South Carolina Supreme Court review extends only to corrections of errors of law. *State v. Baccus*, 367 S.C. 41, 40, 625 S.E. 2d 216, 220 (2006).

IV. DID THE COURT OF APPEALS ABUSE ITS DISCRETION WHEN DENYING PETITIONER THE RIGHT OR DUTY TO OBTAIN DISCOVERY AND CASE FILES?

The Petitioner avers that the Court of appeals abused its discretion when denying Petitioner the right and duties to obtain newly discovered evidence, after discovered evidence pertaining to the principles of 'Brady' and case files that are in the possession of former court appointed attorneys or public defenders and prosecution.

The Petitioner was convicted and sentenced at a trial of his peers of 12 jurors and former Counsel Timothy L. Griffith did not advise Petitioner to pursue a post-trial proceeding within the circuit court to challenge sentence reconsideration where it is incumbent upon trial counsel to preserve issues for appellate review. 15 S.C. Jur. Appeal and Error § 21, Rule 29, SCR Crim P., Post-Trial Motions.

Counsel Griffith moved before the trial court asking the Court for a directed verdict that the State failed to meet their case. See Trial Transcript page 85 Ln 9 thru Ln 13. After the jury was discharged Counsel Griffith asked for directed verdict, a verdict notwithstanding. See Trial Transcript page 94 Ln 6 thru Ln 10. Although a motion for judgment notwithstanding the verdict (j.n.o.v.) is not necessary to preserve issues based on the sufficiency of the evidence, motion for

j. n. o. v. are not available in criminal cases, *State v. Miller*, 287 S.C. 280, 337 S.E. 2d 883 (1985). A *jurimors* motion allows the trial judge to reconsider his ruling on the directed verdict motion, but is limited to the grounds argued for directed verdict.

Counsel Griffith failed to hold the trial court to the test for the sufficiency of circumstantial evidence that is well established in the South Carolina Supreme Court precedent. The inquiry is "whether the evidence constitutes positive proof of facts and circumstances which reasonably tends to prove guilt or from guilt which may be fairly and logically deduced, to the exclusion of any other reasonable hypothesis." *id.* 287 S.C. 280, 337 S.E. 2d 883 (1985).

The Petitioner's standing is Counsel had an understanding of the trial court errors and failed to preserve Petitioner's right to appeal nor took steps to the extent reasonably practicable to protect Petitioner's interest such as giving reasonable notice to the Petitioner upon advising Petitioner with legal advice of the nature of the appeal, advising Petitioner of the courses of action open to the Petitioner, surrendering papers and property to which the Petitioner is entitled. See Rule 457, S.C.A.C., Rules of Prof. Conduct, Rule 1.16 (d).

In Accordance to *Taylor vs Illinois*, 484 U.S. 400, 108 S.Ct. 646, 98 L. Ed. 2d 798, 56 USLW 4118, The Supreme Court held that, the need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence.

The Petitioner demonstrates to this Court that he is *Apparatus Pro Se* when counsel Griffith withdraws from representation after the filing of notice of appeal to the Court of Appeals. The indigent Commissioner of Defense Lawyers Office was assigned to take up appeal for Petitioner and Counsel Griffith's termination did not prevent Counsel Griffith to continue representation of Petitioner until the final judgment or during any proceedings or direct appeal. Pursuant to Rule 602 (c), SCACR.

Although Rule 264(a), SCACR, permits court appointed attorneys in the trial court shall be deemed the attorneys in the appellate Court until withdrawal is approved and notice is given as

provided in this Rule, Rule 602(c)(3), SCACR, negates the very fact that attorneys to wait for withdrawal is approve and notice is given. However, counsel Griffith was made obligatory to continue in representation whether it for the sole purpose to surrender Petitioner's case files that belong to the Petitioner in Counsel's possession or inform Petitioner of the nature of the appeal. *State v. Devore* 416 S.E. 115, 284 S.E. 2d 620.

The Petitioner, nevertheless, requested his case files within six(6) years after termination of the representation of Counsel Timothy L. Griffith, and Former Counsel E. Thompson Kinney. The Petitioner did not waive nor abandoned the files. See Rule 407, SCACR, Rules of Prof. Conduct, Rule 1.15(i)(1). The Petitioner aver that once Petitioner made the request to obtain case files Counsel Kinney turned over an incomplete case file lacking several proceeding pre-trial transcripts and prose motions Petitioner filed. Counsel Griffith informed Petitioner that Counsel Griffith is refusing to turn over case files at the direct appeal stage and instructed Petitioner his files would be available at Post Conviction Relief Hearing at the time of request and a pre payment to obtain files would be acquired. The Petitioner submits that a PCR Hearing is a discretionary appeal, a separate civil action, but a denial of a constitutional

obligatory duty of counsels to not surrender Petitioner's property without a hearing or due process of law; [See U.S.C.A. Const. Amendments 6, 14;] (Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L. Ed. 2d 493,) (holding Sixth Amendment's requirement that accused have right to assistance of counsel was made obligatory on States by Fourteenth Amendment of the United States Constitution) has occurred injuring the Petitioner.

The Petitioner's standing that he suffered unfair prejudice by the deficient performance of counsels and misconduct by the prosecution. The Petitioner avers that because of the prosecution and counsels conduct and performance the Petitioner could not fully develop facts of substantial constitutional claims where Petitioner had to submit a partial record to the Court of Appeals. The Petitioner moved before the Court of Appeals to compel both former appointed attorneys of record, Counsel Griffith and Counsel Kinney, to turn over Petitioner's case file in order to prove the existence of Petitioner's argument being presented to the trial court by proffering Petitioner's motions that invoked a hearing to determine whether Petitioner's constitutional rights have been violated and supplement the record on appeal to proffer proof that Petitioner made specific objections to the trial court.

The Petitioner submits to this Court that the Court of Appeals abused its discretion when failing to issue an Court order to enforce a process that is regularly followed and procedures that exist to safeguard Petitioner's rights in obtaining the

entitlement of his case files. The United States Supreme Court has elected a Standard that upheld constitutional requirements establishing Petitioner to receive substantial equality and fair process to which should apply to these set of facts before this Court concerning the merits found in this case.

According to Rule 602(c)(3), the Public Defender or appointed counsel shall assist in representing the accused in any manner necessary to properly perfect the appeal. The Petitioner was denied a process due to him when the Court of Appeals denied Petitioner's motion to compel in which ultimately completed an fundamental miscarriage of justice. The Court knew Petitioner bears the primary responsibilities for preparing the Record on Appeal and absent any proof relevant to his claims, the Court assumes no error has been committed and Petitioner constitutional rights have ~~not~~ been abridged. However, the Petitioner show that he could not enhanced issues on appeal, fully develop facts, and properly demonstrate to the Appellate Court the lower court errors warrants reversal in judgment. See 15 D.C. Jur. Appeal and Error §61; 15 D.C. Jur. Appeal and Error §62; and 5 A.M. Jur. 2d Appellate Review §484.

ARGUMENT

The Petitioner did timely object to the Court of Appeals erroneous ruling when denying Petitioner the right to obtain discovery and case files that belong

to the Petitioner. The Court of Appeals failed to consider that the Petitioner was appearing pro se at the same time the Court relieve appellate counsel, and former trial counsel terminations when denying Petitioner to obtain case files. The Petitioner aver that the Court are to impose a solicitude to pro se litigants and afford a pro se litigant a procedure to obtain discovery and files during the process and course of Appellate Review. The solicitude guarantees the appellate review to pro se litigants appearing before the Court fairness having a fair bite of the procedural process.

In this particular instances when the Court denied the Petitioner's motion to compel former attorneys of record to furnish, provide a copy of, and surrender case files in its entirety and completeness, fairness of process was defeated. The Petitioner, a pro se litigant, reminds the Court to consider that a pro se litigant must rely on the judge, panel of judges, or justices in its entirety to protect Petitioner's interests. For that reason, it is the solemn duty of a judge before whom the Petitioner appears without counsel to make a thorough inquiry and take all steps necessary to ensure the fullest protection of Petitioner's constitutional rights preservation. *Van Moltke v. Gillies*, 332 U.S. 208, 69 S.Ct. 576, 92 L.Ed. 309.

The Petitioner aver that a pro se litigant who appears before or in front of a judge in the appellate process, post judgment, pretrial stages, trial, post-trial, has the same responsibilities an professional has to which are (1) make an independent examination of the facts, circumstances, pleadings and laws involved (2) prepare a defense (3) collect and or gather evidence (4) present non frivolous claims to obtain the desirable relief. These duties requires the Court to not discharge as though it were a mere procedure formality safeguarding the Pro se litigant rights and interest to obtain from the prosecution and former attorneys of record, legal documents, discovery, evidence, affidavits, forensic analysis testing, and etc.

The duty for an pro se litigant to act as counsel in his case encompasses the right of due process to prevent Petitioner from arbitrary conduct by the government of deprivation of life, liberty, and property. *Farrette v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed. 2d 562; *Goodson v. Am. Bankers, Ins. Co.*, 295 S.C. 400, 423, 368 S.E. 2d 687, 689. The Petitioner contends that it is the accused, not counsel, who must be 'informed of the nature and cause of the accusations', who must be 'informed of the nature and cause of the accusations', who must be 'confronted with the witnesses against him', and who must be accorded 'compulsory process for obtaining witnesses in his favor'.

The right of self representation, to make one's own defense personally is thus necessarily implied but accepted now by the Courts. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails. *Ibid.*, *Faretta*, *Supra*.

When the trial court thrust counsel Griffith upon the accused, counsel stripped Petitioner of the right to make a defense and concealed relevant notices of being informed of the nature and cause of the accusations. These acts led to the breakdown in the adversarial testing of the prosecution's case hindering Petitioner to make informed decisions as it relates to trial strategy and tactics (factics) because it allocated counsel the power to make binding decisions of trial strategy in many areas the Petitioner has established and identified without any consent to such courses of action the trial counsel pursued.

WHEREFORE UPON, the above Legal Premise the Petitioner respectfully ask the Supreme Court to exercise sound discretion justifying the granting of this writ.

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

1st K. E. Herrick
Kevin E. Herrick

August 29, 2024
Date