

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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ON PETITION FOR WRIT OF CERTIORARI

S.C. SUPREME COURT

Appeal From Lee County
Honorable Ralph Ferrell Cochran, Jr., Circuit Court Judge
Appellate Case No. 2024-001428

The State,

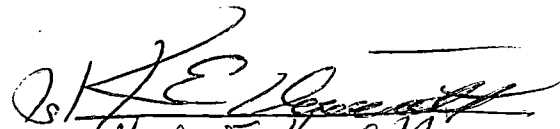
Respondent,

vs.

Kevin E. Herrbott,

Petitioner

REPLY TO RETURN TO PETITION FOR WRIT
OF CERTIORARI


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STATEMENT OF ISSUES ON APPEAL

- The State is asking this Honorable Supreme Court to not fulfill and execute its duties and obligations to the South Carolina Constitution and United States Constitution of America.

ARGUMENT

1. The State is asking this Honorable Supreme Court to not fulfill and execute its duties and obligation to the South Carolina Constitution and United States Constitution of America.

The Petitioner directs the Courts attention to the States return to petition for writ of certiorari, where the State is requesting to deny Petitioner's Petition to Writ of Certiorari and not to address Petitioner's remaining issues, because the State is convinced that the Petitioner believes the irrelevant is relevant. The State continues further to plead not to turn the system on its head and ~~intentionally~~ contemplate the wisdom of Petitioner who does not have the sense to be guided by experts.

The Petitioner avers that he is guided by an Expert, although the Petitioner has not been schooled in the law to the prosecution and State Standards, but the Petitioner is wellversed in the law. The Petitioner know the legal principles that helped shape our Country and Land and ask the Court to execute the enforcement of its pre-existing laws.

This Court is commissioned to ensure that the practice of law remains a high calling which serves clients and the public good. The legal system to which the State complains of do not want Petitioner to enjoy the rights of due process of law, but its not up to the lawyers to pronounce judgment whether an individual receives justice or strip away the entitlements

thereof.

The Petitioner brought before the Court that his sentence and conviction is unconstitutional challenging the lower court lacked subject-matter jurisdiction, the magistrate court lacked personal jurisdiction, ineffective assistance of counsel, denied compulsory process, Brady violations, and whether evidence presented were triable issues before the trial court.

From the impartial record as a whole, the State brings into focus that the Petitioner was fighting with his roommate or cellmate with a Shank. The correctional officers arrive with a nurse to remove Petitioner's cell mate out of cell, then Petitioner. The correctional officer Bettes observed Petitioner strike a Shank out of his cell and went to the JPT kitchen afterwards to retrieve more Shanks.

The Petitioner brought into focus calling into question of why were the Petitioner and cellmate was fighting; who alerted the authorities to come to Petitioner's cell with the nurse; prior to opening and unlocking Petitioner's cell; why the officers did not disburse or administer chemical munitions to enforce side rules and procedures; and was Petitioner in imminent danger? These questions makes colorable the issues of fact on which the evidence is undisputed and are very much relevant.

The Petitioner grounds did not change that was first presented to the trial court. The issues of fact were enhanced once newly discovered evidence and after-discovered evidence surfaced.

The State is attempting to confuse the Court on the grounds Petitioner asserts and raised to the trial court misunderstanding Petitioner's grounds for issues of fact and Petitioner's facts for Petitioner's grounds for relief.

According to Black's Law Dictionary, 8th Edition, a ground is the reason or point that a legal claim or argument relies on for validity, i.e. legally sufficient, briefly, or meritorious. A issue of fact is a point on which the evidence is undisputed, the outcome depending on the Court's interpretation of the law.

First, the State argues that the Court of Appeals appropriately found Petitioner's argument regarding indictments were not properly preserved for review. The Petitioner avers that his ground for the lower court lacked subject matter jurisdiction and the appellate court lacked personal jurisdiction did not change.

The Petitioner informed the Court that the only document identified as an indictment is the assault and battery which gravated notice was presented to him as an multi-count indictment, he received from the State's prosecutor and it was the only indictment notice that reference all three (3) charges.

The Petitioner correctly stands on the fact that he was not put on notice that he was indicted prior to the jury being sworn. The State contends that Petitioner was not denied due process of law because Petitioner has no right to hybrid representation when Petitioner was represented by trial counsel and Petitioner raised and argued the issues at the hearing, consequently, this Court should not consider arguments made by Petitioner that are not properly raised through counsel.

The Petitioner submitted to the Court of Appeals that during the time within the early stages prior to trial the Petitioner and former Counsel of Record E. Thompson Kinney was leading that were proleged and inter-ate in the early stages whereas Counsel Kinney acted as Petitioner-Counsel nor an advocate and was withdrawn. However, during the withdrawal, Petitioner submitted several pro se motions and rather the Court hear the matters, the Court appointed trial counsel Timothy L. Griffith forchy Counsel upon the Petitioner.

The Petitioner aver that the United States Constitution, Sixth Amendment, safeguards the Petitioner to be represented by counsel and assist in legal matters as an assistant to the Petitioner and his defense. *Strickland v. Washington*, 466 U.S. 668, 69 S.Ct. 2052, 80 L.Ed. 2d 674. The Petitioner also has the right to invoke his right to represent himself. See *Fareham v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L. Ed. 2d 662.

The Petitioner requested to proceed to trial as an *pro se* litigant when he is as capable as any lawyer of making an intelligent choice and to deny this right is to impair the worth of great Constitutional safeguards by treating them as empty verbalisms? *Forelle supra.*

The conflict arises when the Administration of the criminal law is hedged about as it is by the Constitutional safeguards for the protection of an accused when the Court failed to not allow Petitioner to proceed *pro se*, then uses the Court's discretion to allow Petitioner to expound on and explain why his motions to be granted created an issue rather than providing an adequate remedy by permitting Petitioner to proceed *pro se* at trial.

Although trial Counsel Griffith, did not participate other than to indicate he did not believe the defense had merit, that does not negate the fact petitioner did preserve relevant issues before the trial court. The Petitioner avers that the elements of issue preservation, to be preserved, an issue must be:

1. Raised to the trial court,
2. Raised by the appellant,
3. Raised in a timely manner,
4. Raised with specificity,
5. Ruled on by the trial court
6. If not ruled on, raised in a Rule 5(e) motion,
7. Raised in the Appellant's Statement of the issues on appeal in the initial brief,

8. Discussed in an argument of the appellant's brief, including citation to authority,
9. Supported by a substantive argument that is not conclusory, and
10. Included in a timely filed petition for rehearing to the Court of Appeals.

See Issue Preservation, 25-JAN S.C. LAW. 20. The Petitioner raised his grounds to the trial court, raised by the appellant who is the petitioner, raised in a timely manner, raised with specificity, ruled on by the trial court, issues not ruled on, the Petitioner's counsel Griffith did not advise Petitioner to take an appeal in a Rule 59(e) motion, raised in the Appellant's Statement of the Issues on Appeal in the Initial Brief, discussed in an argument of the appellant's multiple briefs including citation to authority, supported by a substantive argument that is not conclusory, and included in a timely filed petition for rehearing to the Court of Appeals.

Nonetheless, the State argues next, that the Court of Appeals, properly found the State presented sufficient evidence to survive a motion for directed verdict. The Petitioner does not shift his position showing the Court ineffective assistance of counsel. The State proffer to the trial court (a) inadmissible video surveillance and fabricated witness testimonials that were known to the prosecutor to be false. The Petitioner asserts that according to the State's witness testimonials there were three shirts confiscated and seized from the Petitioner and no shirt was submitted, logged, nor ~~disclosed~~ proper chain of custody.

The Petitioner was entitled to an directed verdict and effective assistance^{of} counsel. The underlying claim of being denied a directed verdict based upon Counsel's argument and performance is ineffective assistance of counsel where Counsel failed to investigate the facts surrounding the case and the evidence. Because of Counsel's actions and omissions the Petitioner suffered undue prejudice and unfair procedural proceedings.

Lastly, The Petitioner timely submitted timely written objections in a format prescribed by rules of court to the Court of Appeals Order denying Petitioner to compel Counsel of record to surrender Petitioner's case files and or work file. that are in the sole custody, possession and control of the Court's appointed attorneys. See attached.

On March 4, 2024, the Petitioner filed a motion to compel asking the Court of Appeals to issue an order requiring his former lawyers to surrender Petitioner's case and or work file. On April 30, 2024, the South Carolina Court of Appeals filed Order denying Petitioner's motion to compel. On May 8, 2024, the Petitioner submitted in the distribution's mail box designated area his written objections to the Order dated April 30, 2024, and ask the Court to apply the mandamus rule pursuant to *Hudson v. Lack*, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed. 2d 245.

CONCLUSION

For the reasons stated, the Court should reverse Judgment of the Court of Appeals.

Done This 25th Day, of October, 2024
Respectfully Submitted,
1st ~~F. E. Carroll~~
Kevin E. Herrick
Pro Se Litigant.

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Appellate Case No. 2024-001898

The State,

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Kevin E. Herrick,

Petitioner.

Proof of Service

I, Kevin E. Herrick, certify, that I have served the Reply to Return to Petitioner for Writ of Certiorari on Andrew D. Powell at the Office of the Attorney General, Post Office Box 11549, Columbia, SC 29211, by depositing a copy of it in the internal mailing system of McCormick Correctional Institution on October 24, 2024, and being processed for service by McCormick's Mailroom Staff.

I further certify that the Clerks of this Court required by Rule to be served, have been served, on October 24, 2024.

Kevin E. Herrick
Kevin E. Herrick