

DONALD Scott Jones  
Petitioner

Lieber Correctional Inst.  
P.O. Box 205  
Ridgeville S.C. 29472

October 20, 2014

Daniel E. Shearouse  
(Clerk of Court)  
Brenda F. Shealy  
(Chief Deputy Clerk)  
Post Office Box 11330  
Columbia, South Carolina  
29211

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OCT 23 2014

S.C. SUPREME COURT

Re: Donald Scott Jones v. State  
Appellate Case No. 2014-000670

HONORABLE DANIEL E. Shearouse

Please find a copy of the prose of the Johnson petition that petitioner wrote out to submit to the Supreme Court in response to the petition Appellate Defender LARA M. Caudy sent to you, the Supreme Court. I thank you for the opportunity to submit these issues, statements, and Arguments.

Respectfully,  
Donald Scott Jones  
DONALD SCOTT JONES  
Petitioner

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

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Certiorari to Cherokee County

OCT 23 2014

J. Derham Cole, Circuit Court Judge

S.C. SUPREME COURT

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DONALD SCOTT JONES,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000670

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*pro se* RESPONSE

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DONALD SCOTT JONES

Petitioner

Lieber Correctional Institution

P.O. Box 205

Ridgevill, South Carolina 29472

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## I Issue Presented

Whether petitioner's due process AND Sixth Amendment right was violated when trial counsel failed to motion for a fast and speedy trial?

Whether the fact that the state took over (3) three years to give petitioner a trial violates Federal Rules of Criminal Procedure AND other Federal statutes that protect defendants from undue post accusation delay?

## I Statement

ON MAY 27, 2006 petitioner hit Jerry Emery in the head with a stick that belonged to Jerry Emery, for what petitioner thought was a defense of a female. Petitioner was arrested that evening for Assault and battery with high and aggravated nature and Armed Robbery. Petitioner was jailed and released on bond after or about (30) thirty days.

After (3) three years went by there was not a trial. No hearing occurred on the case. App. 268, 11. 2-25, 269, 11. 1-2 Petitioner was involved in another altercation (3) years later in May 2009, with petitioner's aunt that charged petitioner with Assault and battery with intent to kill and Criminal Sexual Conduct after an altercation that left both parties involved injured. This situation prejudiced both events and caused an improperly motivated prosecution, which led petitioner with a (20) twenty year sentence and (2) two natural life sentences.

The burden of explaining delay most commonly rests with the government. Courts generally hold that a delay in excess of (1) one year is presumptively prejudicial.

## I Argument

Petitioner's Sixth Amendment right was violated when trial counsel failed to motion for a fast and speedy trial. United States v. Marion, 404 U.S. 307, 313, 320 (1971) (right attaches "only when a criminal prosecution has begun AND extends only to those... who have been 'accused' in the course of that prosecution"; "it is either a formal indictment or information or else the actual restraints imposed by arrest... that engage the... protections of the speedy trial provision of the Sixth Amendment.") App. 281, 11. 5-25, App 282, 11. 1-25, App. 283, 11. 1-18

The Sixth Amendment provides a fundamental right to a speedy trial that serves to: (1) prevent undue and oppressive incarceration prior to trial; (2) minimize 'anxiety and concern accompanying public accusation'; (3) limit the possibility that a long delay will impair the ability of an accused to present a defense. App. 32, 11. 14-23, App. 33, 11. 1-25

Petitioner went to counsel and told counsel the entire version of events that happened at Jerry Emery's resident. App. 268, 11. 10-25, 269, 11. 1-2, 280, 11. 12-19. This error led to accumulated issues that mounted for an inadequate defense. Counsel failed to "pen down" statements of other witnesses, namely Tammy Byars whom forgot the whole ordeal. App. 131, 11. 13-25, 132, 11. 1-25, 133, 11. 1-25. Ms. Byars turned state, and I quote, "Because I don't remember it." This is not a fair and a justifiable trial, and I, petitioner, assert prejudice in that counsel, with all accumulative errors, was ineffective before and during trial in Sept. 2009, in all issues of this argument, with all respect to the Supreme Court.

## II Issue Presented

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to investigate the direct indictment of assault and battery with intent to kill that was enhanced from an indictment of assault and battery with high and aggravated nature, that was (I) two years and (II) eleven months old, to validate and find motive for enhancement, The facts of the case had not changed at all,

Trial Counsel failed to challenge or articulate any strategy to the defense as to the enhancement of the indictment from a misdemeanor to a most serious charge or indictment. Petitioner finds these issues to violate the due process rights of a defendant. Failure to investigate delay in indictment would prove Ineffective Assistance of counsel,

The fact that the charges were made of assault and battery with high and aggravated nature on May 27, 2006 and the enhancement of indictment was on August 27, 2009 made it well over (3) three years. Wouldn't this issue raise a flag in the eyes of a defender?

Whether SC Codes were violated and ignored?

## II Statement

On September 7, 2006 a Grand Jury indicted Petitioner with (2) two indictments. Armed robbery AND Assault AND battery with high AND aggravated NATURE. The Armed robbery was dropped because there was NO Armed robbery, but enhanced the ABHAN to ABWK without being the original solicitor whom made the first indictments. App. 34, 11. 8-25, App. 35.

Petitioner consulted PCR counsel to investigate the indictment of Assault AND battery with intent to kill AS well. Counsel of PCR failed to bring the issue up in the PCR proceeding, so petitioner took the stand AND WAS denied the right to present petitioner's own investigation that family member's had conducted. App. 303, 11. 5-25, App. 304, App 305, App. 306, 11. 1-5.

The findings in petitioner's own investigation by family members was profound AND disturbing to petitioner. Petitioner remains concerned about this issue, AND needs further professional help.

The trial counsel failed to strategize a defence of A fair NATURE. App. 274, 11. 1-25, 275, 277, 11. 1-6.

Petitioner found that SC Code Ann § 14-9-210 has been violated by Solicitor, AND petitioner asserts prejudice in this issue of prosecutorial misconduct AND ineffective ASSISTANCE of trial counsel AND PCR counsel.

Petitioner finds the Solicitor saying "Mr. Jones is the one that armed robbed," in trial, to the court, then in PCR, Solicitor states "He was in fact not involved in Armed Robbery" App. 51, 11. 24-25, App. 300, 11. 10-14. This sounds perjurious.

## II Argument

Petitioner's due process rights were violated by trial counsel's failure to investigate delay in indictment. see *State v. Brazell*, 325 S.C. 65, 72-73 480 S.E. 2d. 64, 68-69 (1997). citing *U.S. v. Lovasco* 431 U.S. 783 97 S.Ct. 2044 52 L. Ed. 2d. 752 (1977).

There is a reasonable probability that, but for counsel's unprofessional error's the result would have been different. *Cherry v. State*, 300 S.C. 115, 117-118, 386 S.E. 2d. 624, 625 (1989)

### Findings.

Petitioner wrote the South Carolina Court Administration inquiring to request a copy of the Grand Jury calendar, pertaining to the indictment of Assault and battery with intent to kill docket no. # 09-GS-11-0924, that was allegedly held in the court of General Sessions on Thursday, August 27, 2009. Director Rosalyn Frierson wrote me back informing petitioner that the Clerk of Court where my case was heard would give me the Grand Jury schedules for my indictment. Petitioner's brother was denied any information in regards to the indictment, by Judge J. MARK Hayes on May 13, 2013, but obtained information from Public Index and Terms of Circuit and Family Court for August 2009. The information seems to be contradictory between the two documents. The documents are in possession of petitioner.

No reasonable motive was ever brought to light concerning the enhancement. App. 32, 11. 14-25, App. 33, 11. 1-13. There are principles rooted in due process and the best belief that Justice is best served when a trial is fundamentally fair. see *Brecht v. Abrahamson*, 507 U.S. 619, 113 S.Ct. 1710, 1717, 123 L. Ed. 2d. 353, 367 (1993). Also *Miranda v. Arizona*, 384, U.S. 436, 86 S.Ct. 1602, 16 L. Ed. 2d. 694 (1966). App. 284, 11. 5-16. Petitioner asserts prejudice due to the failure to investigate, and ineffective assistance of counsel in all issues of this argument, Respectfully to the Supreme Court.

II Argument continue...

The facts of the case, or indictment of ABHAN had not changed, and motive never established. see U.S. v. Welborn, 849 F.2d 980, 984 (5th Cir. 1988). (government's failure to provide sufficient justification for dismissal entitles defendant to dismissal with prejudice only if prosecution provides insufficient justification for dismissal when reindicting defendant or if error prejudices defendant's ability to attack prosecutor's motives). Solicitor made contradicting statements between trial in 09 and PCR proceeding in Oct. 2013. App. 51, 11. 21-25. Solicitor Leskanic states on record, to court, that "Mr. Jones is the one that committed the named robbery"; App. 52, 11. 1-9 "so those facts are consistent." and at PCR, App. 300, 301, solicitor Leskanic states in Line 10 of 300, "Upon meeting with witnesses it became my belief that he was, in fact, not involved with the robbery". Upon this act of perjury, I assert prejudice in that solicitor Leskanic made false statements, gave false testimony, and gave false information to the courts of South Carolina, and that is held by SC Code Ann. § 16-9-10. A (1) It is unlawful for a person to wilfully give false, misleading or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this state.

Prosecutorial Misconduct is evident. Petitioner asserts prejudice to all issues in this argument.

A showing of good cause, courts may still grant relief; U.S. v. Williams, 89 F.3d. 165, 167 n.1 (4th Cir. 1996).

Further, there is a reasonable probability that, but for PCR Attorney's unprofessional errors, not being a criminal lawyer, that this matter or issue of Prosecutorial Misconduct could have been recorded and dealt with in the PCR proceeding. Cherry, 300 S.C. At 118, 386 S.E. 2d At 625 (internal citations omitted); See Strickland, 466 U.S. 668.

### III Issue Presented

Whether petitioner Sixth and Fourteenth Amendment rights were violated when trial counsel failed to prepare an adequate defense with a clear and proper strategy during the (3) three year delay and performing an ineffective assistance toward the case.

### III Argument

Petitioner's right for due process was violated when solicitor Kim Leskanic announced to court that solicitor wanted to limit the defense's ability to have a fair and justifiable trial. App. 31, 11.18-25, App. 32, 11.1-3.

Courts will dismiss indictments for government misconduct outside the indictment process on due process grounds only if such conduct is so outrageous that it violates "fundamental fairness" or is "shocking to the universal sense of justice."

U.S. v. Russell, 411 U.S. 423, 432 (1973).

This is clearly prosecutorial misconduct that trial counsel failed to state on record. Petitioner asserts prejudice on this issue.

From the start of the trial that solicitor enhanced a misdemeanor to a most serious indictment, solicitor was bias and unfair due to charges that were raised (4) four months prior to trial. Solicitor and trial counsel were friends with family court judge Usha Bridges that shares a relative with petitioner's aunt that brought charges of ABWIK and CSC in 2009. Counsel told me that the judge, Usha Bridges was against petitioner, and from that point petitioner was treated unfair. The whole trial was under conflicting interests from solicitor, trial counsel, and their close and personal friend Usha Bridges, family court judge. App. 296, 297, 298, 299, 300, 301

Petitioner argues that ineffective assistance of counsel due to conflict of interest. Had trial counsel motioned for prosecutorial misconduct, the results would have been different. see *Cherry v. State*, 300 S.C. 115 117-118 (1987) App. 33; Counsel sides with state. unprofessional act against petitioner. App. 34. Petitioner asserts prejudice due to the prosecutorial misconduct and ineffective assistance of counsel, and all issues of this argument.

Continue

### III Argument

No adequate defense was strategized by trial counsel. App. 274, 11. 2-20 "There really was no theory of defense." App. 275 Under the performance prong, there is a strong presumption that counsel's strategy and tactics fall within the wide range of reasonable professional assistance. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). App. 277 11.1-6 There is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. *Cherry v. State*, 300 S.C. 115, 117-118, 386 S.E. 2d. 624, 625 (1989) Petitioner asserts prejudice in that counsel was ineffective in assistance in the building of defense, after (3) three long years.

#### IV Issue Presented

Whether petitioner's due process was violated when trial counsel failed to test or have any concern of publicity of the case that arose during (3) three year delay of trial. We must remember that there were charges brought up against petitioner of Assault and Battery with intent to kill, and CSC by petitioner's vindictive aunt, 4 months before this trial. And this issue is brought up in PCR proceeding.

#### IV Argument

The Gaffney Ledger, the Spartanburg Herald, and the Local Spartanburg TV News had turned case of ABWIK and CSC into a "High Profile" case in Cherokee County only 4 months before this direct indictment of Assault and battery with intent to kill was enhanced from Assault and battery with High and Aggravated nature. App. 286, 11. 14-25, App. 287. Sheppard 384 U.S. at 363

Had trial counsel motioned for a change of venue, the results of the trial would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E. 2d. 624, 625 (1989)

Petitioner asserts prejudice in that ineffective assistance of counsel violated petitioner's due process right.

## V Issue Presented

Whether petitioner's due process right was violated when Judge Derham Cole presided in PCR hearing after that Judge Cole had sentenced petitioner to (2) two natural life sentences without parole in a proceeding that took place (1) one year after petitioner was sentenced to (20) twenty years, suspended to (12) twelve years and (5) five years probation.

## V Statement

Trial Court Judge, Derham Cole should have made Recusal in proceedings of the Common Pleas Court of Cherokee County, that was heard in Spartanburg County in October 4, 2013. It was and is apparent that judicial bias exists in Judge Cole's personal knowledge of the trial petitioner exercised petitioner's legal rights of a fair trial. App. 304, 11. 1-25, App. 305, 11. 1-25, App. 306, 11. 1-25, App. 307, 11. 1-12.

## V Argument

Petitioner's due process was violated under 28 U.S.C. § 144 (A judge shall disqualify himself in any proceeding if impartiality might reasonably be questioned).

PCR Court, Judge Derham Cole neglected petitioner his right to state issues that PCR counsel failed to Amend in petitioner's PCR Application. This error of Judge Derham Cole prejudiced petitioner in petitioner's ("one bite of the apple". Petitioner asserts prejudice in that negligence, and the fact Judge Derham Cole failed to recuse himself from PCR proceeding. I, the petitioner, assert prejudice in the fact that Judge Cole denied my issues that PCR counsel failed to Amend in my application for Post conviction relief. I also assert prejudice in that judge Derham Cole did not recuse or disqualify himself from PCR proceeding.

## VI Issue Presented

Whether petitioner's due process right was violated when Prosecutor Kim Leskanic used criminal charges in an attempt to penalize a defendant's valid exercise of constitutional or statutory rights?

Whether prosecutor Kim Leskanic used false testimony against defendant at trial by way of co-defendant turned states witness?

Whether the prosecution was improperly motivated by other charges?

Whether solicitor Kim Leskanic or any other officer of the court made any deals with witnesses for defense?

Whether solicitor Kim Leskanic was bias and prejudice against petitioner in that a Family Court Judge influenced solicitor's professional duties? This issue is crucial to this case. App. 32, 11. 14-25, 33, 11. 1-25.

## VI Statement

Petitioner used the right to trial to present the truth of why petitioner used AN AVASIVE MANUEVER to defend a female AND himself.

During the (3) three year delay, petitioner's witnesses had been bargained with, AND proff is attainable. The state turned witness, Tammy Byars was in attendance at petitioner's PCR proceeding, PCR counsel failed to call for her testimony.

The prosecution led petitioner to believe that solicitor Kim Leskanic was in conflict of interest considering solicitor's unfair tactics of prejudice AND bias thoughts toward petitioner in that she was friends of a friend of a plaintiff of another case that petitioner faced. Vindictive Prosecution was generated AND used to put a (40) forty year old man in prison for life without parole, while true killers get short sentences,

All vindictiveness of prosecution that petitioner will bring to light will also go to the misconduct of prosecution that trial counsel mentions in record, but never follows through with the motion. App. 285, 11.9-25. At this point, I assert prejudice in that counsel did not use his professional skill or resources to give me, the petitioner, AN ADAQUETE defense. Instead counsel is protecting himself from PCR lawyer. App. 40, 11.10-13

## VI Argument - I

Solicitor Kim Leskanic gave petitioner's counsel a (20) twenty year offer to dismiss a certain charge of armed robbery, AND petitioner to plead to the other charges. App. 278, 11.10-23. It was petitioner's duty to stand for fair justice, AND take the mercy of the court to pass a fair sentence, for defense of another.

Nevertheless, the vindictive prosecution ultimately pushed for a most serious conviction to brand petitioner for assault and battery with intent to kill, rather than what another, solicitor Gray, had indicted petitioner for, App. 33. The Due Process Clause prohibits a prosecutor from using criminal charges in an attempt to penalize a defendant's valid exercise of constitutional or statutory rights. see *Blackledge v. Perry*, 417 U.S. 21, 27-28, 94 "Held that the due process clause of the fourteenth Amendment was contravened when the state obtained indictment on felony charge of assault with a deadly weapon with intent to kill and inflict serious bodily injury, based on the same conduct which gave rise to misdemeanor charge of assault with a deadly weapon, after the inmate had been convicted before the state district court of the misdemeanor charge and had exercised his right to a trial de novo in the Superior Court; that one convicted of a misdemeanor in North Carolina is entitled to pursue his right to trial de novo without the apprehension that North Carolina will retaliate by substituting a felony charge for original misdemeanor and thus subject him potentially greater period of incarceration; and that the inmate's guilty plea to the felony charge did not bar him from raising in the federal habeas corpus proceeding his constitution claim where North Carolina ...

## VI Argument continued:

was precluded by the due process clause from even prosecuting inmate for the more serious charge in Superior Court." The prosecution was vindictive to petitioner's exercising petitioner's due process right of the Fourteenth Amendment. Petitioner asserts prejudice in this vindictive act, both to the Prosecution of the Solicitor Kim Leskanic, and to my trial counsel for failing to motion against this vindictive prosecution, and the Prosecutorial misconduct performed by the Solicitor Kim Leskanic. If there were no misconduct by the prosecution, the results of the trial would have been different.

## VI - Argument II

Prosecution was also vindictive for Solicitor Kim Leskanic allowing States witness, Tammy Byans to present false testimony that in this State of South Carolina's Codes refer to as perjury. App. 277, 11.16-25, 278, 11.1-9. This was Prosecutorial Misconduct with a vindictive motive. This issue was unfair and violates due process rights of petitioner, see Riddle v. Uzmint, 369 S.C. 39, 631 S.E. 2d. 70 (2006) (NO. 26153) According to Brady violation, I assert prejudice to petitioner personally by Solicitor Kim Leskanic and trial Counsel for not objecting false testimony, to be stricken from the record, App. 145, 11.12-19.

## VI - Argument III

All issues of Prosecutorial Misconduct, Vindictive Prosecution have been shown in the Appendix by petitioner. Petitioner asserts prejudice in that Solicitor Kim Leskanic and Trial Counsel Thomas Shealy are both experienced officers of the Court, and in that both Solicitor and Counsel have failed the judicial system in the trial of petitioner, in that petitioner was found guilty of Assault and Battery with intent to kill when in the facts of original indictment, the facts had not changed.

## VI Argument - IV

I, the petitioner, asserts prejudice in that the prosecution had indeed made plea bargains with (2) two co-defendants of petitioner before trial.

1) App. 41, 11. 2-25, 42, 11. 1-25, 43, 11. 1-21, 186, 11. 24-25.

These records on transcript proclaim why I, petitioner, assert prejudice, in that my witness was answering a plea bargain in solicitor's office the whole time petitioner's counsel was searching High and Low for him.

Tammy Byars, co-defendant of petitioner, was in fact incarcerated at the time of trial, and was in fact bargained with by prosecution, but in record denies this deal by prosecutor. Since then, an affidavit is available that witness, Tammy Byars, states a deal was made to testify for state in such a manner that incriminates petitioner, and petitioner asserts prejudice in this issue, in this argument.

## VI

## Argument - V

Trial Counsel asked petitioner before trial at a conference between the two, if petitioner knew a family Court Judge by the name of Usha Bridges. I, the petitioner stated "yes I do know Ms. Bridges, she knows Kay Spencer, she can help me prove to the Solicitor that Kay Spencer is lying AND has a mental disability. She can help me". Counsel stated that Ms. Bridges was on the side of Kay Spencer, not realizing the facts of the case between Spencer and petitioner just months before trial. Spencer charged petitioner with Assault and battery with intent to kill AND Criminal Sexual Assault after an altercation they had in the month of May 2009. Thomas Shealy, trial counsel will confirm.

This subject is about a friend of a friend coming to the aid to interfere the outcome and sentence of the accused. Counsel Thomas Shealy, Judge Bridges, solicitor Kim Leskanic ARE all friends, and this, I, the petitioner, assert prejudice by way of conflict of interests, in a three way party. The influence of court officers is overwhelming, and placed petitioner in 'Duress'. Petitioner was forced to take the stand to defend himself, the petitioner, with three court officers, one being petitioner's counsel being dangled by his, counsel's, close and personal friend Judge Usha Bridges. Petitioner asserts prejudice in the conflict of interests in all (3) three parties mentioned above in petitioner's argument.

## VII Issue Presented

Whether petitioner's Sixth Amendment right was violated when Post-conviction Relief Counsel was ineffective at the initial-review collateral proceedings held on February 20, 2014. Counsel Alexander Hray, Jr. denied petitioners issues that petition wanted to raise at proceeding of PCR. The documents I, the petitioner wrote and sent to Clerk of Court to be clock-stamped, and sent to Counsel are available for review?

Whether petitioner's rights were violated by PCR counsel failed to call key witness to testify her recanting of statements Ms. Byars made at trial, and to state the deal made by the prosecution at trial proceedings in Sept. 14, 2009. This issue will be argued with *MARTINEZ V. RYAN*. Inadequate assistance of counsel at initial-review collateral proceeding. U.S.C.A. Constitutional Amendment Six?

Petitioner argues that had all his, petitioner's, issues had been brought up in proceeding, the record would have been set for Supreme Court without petitioner having to be given a dead line of (45) forty-five days. Petitioner also asserts prejudice in this issue of ineffective assistance of PCR counsel.

Whether petitioner's rights were violated due to the denial of a 59(e), the petitioner requested so that the issues that were not raised, could be put on record? Counsel's denial is lettered March 10, 2014.

Whether PCR counsel was a criminal lawyer?

## Conclusion

Petitioner asks with full respect to the Supreme Court of South Carolina to dismiss the indictment of Assault and Battery with intent to kill and/or any relief the Supreme Court sees fit.

Respectfully submitted,

D. Scott Jones  
Donald Scott Jones  
Petitioner *D. Scott Jones*

This 15th day of October, 2014

DONALD SCOTT JONES, # 336980  
LIEBER CORRECTIONAL INSTITUTION  
P.O. BOX 205  
RIDGEBVILLE, SOUTH CAROLINA 29472

AMS

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SUPREME COURT OF SOUTH CAROLINA  
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