

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JAN 22 2019

FRANKLIN M. ROBINSON

appellant/petitioner

vs-

STATE OF SOUTH CAROLINA
CHESTERFIELD COUNTY COURT,

respondent.

S.C. SUPREME COURT

CASE NUMBER: 2018-002227

NOTICE OF APPEAL PURSUANT TO RULES 243 (b)

Petitioner Franklin M. Robinson files this notice of appeal under South Carolina Court Rule 243 (b) to have the Court acknowledge the fact his two prior State of South Carolina convictions for Assault and Battery (ABHAN) committed in 2005 and Assault and Battery (ABHAN) in 2006 were being used as predicate felonies for career offender purposes because at that time they were recognized as a "crime of violence". at his sentencing in the United States District Court For The District of South Carolina to enhanced his sentence to 360 months to Life Term. Per United States Supreme Court decision Gideon v. Wainwright, 372 US 335, 9 LED 2d 799, 88 S Ct 792 (1963) these two uncounseled State felony convictions constitutes to be a deprivation of petitioner's guaranteed right under the Sixth Amendment to the assistance of counsel at his felony trial. These two prior State of South Carolina convictions were tried in 2005 and 2006 by guilty plea. (See Original Writ of Error and other Court exhibits).**

No direct appeal or post-conviction collateral attack was ever filed into the State of South Carolina Chesterfield County Court until after petitioner became aware that the uncounseled felony Abhan convictions were used to designate petitioner as a career offender and boost his sentence to 360 months to Life in a criminal proceeding held in federal court. See United States v. Robinson, 489 Fed App'x 676 (4th Cir. 2012).

JURISDICTION

WRIT OF ERROR CORAM NOBIS PURSUANT TO THE " ALL WRITS ACT UNDER 28 USC § 1651

A Court may issue a writ of error coram nobis pursuant to the All Writs Act 28 USC § 1651, to vacate a conviction when there is a fundamental error resulting in conviction, and no other means of relief is available. In Re McDonald, 88 F.Fed App'x 648,649 (4th Cir 2004)(unpublished)(citing United States v. Morgan, 346 US 502,509-11 74 S Ct 247, 98 LED 248 (1954)). The writ of error coram nobis is properly viewed as a belated extension of the original proceeding during which the error allegedly transpired. United States v. Denedo 556 US 904, 129 S Ct 2213,2221, 173 LED 2d 1235 (2009). More importantly, a writ of error coram nobis is available only when the applicant is not incarcerated. United States v. Johnson, 237 F.3d 751, 755 (6th Cir 2001). Petitioner is currently being held at [USP] Terre Haute Federal Prison Complex located at Terre Haute, IN 47808. serving a 360 month sentence for a drug conviction.

COLLATERAL CONSEQUENCES

As to the first requirement, petitioner Robinson contends that the following collateral consequences stem from his two prior State of South Carolina Abhan felony criminal convictions because they were used to (1) designate petitioner as a career offender, which was the basis for imposing a 360 months sentence. In other words petitioner's felony status had changed. The Fourth Circuit Courts have repeatedly reaffirmed the presumption that collateral consequences flow from any criminal conviction. United States v. Mandel, 862 F.2d 1067,1075 (4th Cir 1978) (noting that the petitioner "faces the remainder of their lives branded as criminals.) Indeed, under the approach a petitioner may be entitled to an award of coram nobis, even if that petitioner;s cannot identify a present harm which results from a criminal conviction. In the instant case the alleged collateral consequences arose from the two erroneous uncounseled State felony Abhan convictions, for which he still suffers additional punishment even though he's no longer in custody of the State of South Carolina because he has completed serving time for those criminal offenses.

TIMELINESS UNDER THE ONE RECOGNIZED EXCEPTION !!!!

GIDEON v. WAINWRIGHT 372 US:

Uder the Supremacy Clause of the Constitution If a State collateral proceeding is open to a claim controlled by federal law the State Court has a duty to grant the relief that federal law requires. See Montgomery v. Louisiana, 577 US __, 136 S Ct __, 193 LED2d 599 (2018) (citing Yates v. United States, 484 US 218, 108 S Ct 534, 98 LED 2d 596).

Where state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement. States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge.

Here in the instant matter, petitioner has timely again and again placed the lower courts on notice to the fact that two of his State of South Carolina felony convictions were obtained minus representation of defense counsel. As a result, petitioner's right guaranteed to him under the due process clause from the Fifth Amendment to the Constitution for the United States of America were violated. The Supreme Court in Lackawanna County District Attorney v. Coss, 532 US 394, 121 S Ct 1562, 149 LED 2d 608 (2001) recognized only one exception when challenging a prior expired uncounseled felony conviction in violation of the Sixth Amendment. Gideon v. Wainwright, 372 US 335, 9LED 2d 799 (1963). (A substantive retroactive ruling).

There is no "grandfather's clause" that permits States to enforce punishment the Constitution forbids." Montgomery v. Louisiana, 577 US 193 LED 2d 599 (2018). Under the recent United States Supreme Court ruling in Class v. United States, petitioner has been granted the right to challenge the constitutionality of those two State of South Carolina convictions. 200 LED 2d 37 (2016).

Wherefore, according to the law, facts and argument presented petitioner Franklin Robinson's in his appeal, his writ of error coram nobis should be deemed timely filed and the relief requested granted.

PROOF OF SERVICE OF NOTICE OF APPEAL

TO THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTERFIELD COUNTY
COURT OF COMMON PLEAS

CASE NUMBER: 2018-002227

LOWER COURT CASE NUMBER: 2018CP1300316

FRANKLIN M. ROBINSON)
petitioner/appeallant)

JOHNNY ELLIS JAMES JR., ESQUIRE)
STATE OF SOUTH CAROLINA)
CHESTERFIELD COUNTY)
respondent.)

I certify that I have seved the Notice of Appeal on Johnny
Ellis James Jr.

by depositing a copy of it in the hands of mailroom staff here at
[USP] Terre Haute Federal Prison Complex, located at Terre Haute,
IN 47808 via US Mail, first class, postage pre-paid on this ~~10/14/18~~ 14/19
day of January, 2019.

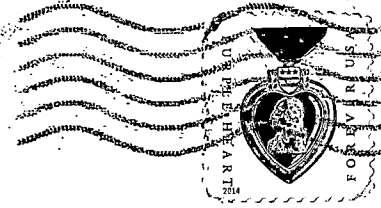
Respectfully,

Franklin M. Robinson

Franklin M. Ralston @1986-171
United States Penitentiary - Terre Haute
P.O. Box 33
Terre Haute, IN 47808

INDIANAPOLIS IN 462

15 JAN 2009 PM 1 L

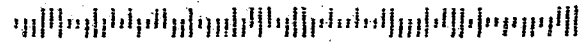


**INMATE
IDENTIFICATION
CONFIRMED**

↔21986-171↔

The Supreme Court Of Sc
PO BOX 11330
Clerk OF Court
Columbia, SC 29211
United States

29211-133030



FEDERAL CORRECTIONAL COMPLEX
4700 BUREAU ROAD SOUTH
TERRE HAUTE, IN 47802

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