

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
J. Derham Cole, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2020 – 001418

John Garvin..... Petitioner,

v.

The State of South Carolina..... Respondent.

MOTION FOR LEAVE TO FILE AN ENLARGED BRIEF

To: Mr. William H. Ray, Asst. Att’y. General, Attorney for Respondent.

I, John Garvin, proceeding as Pro-se, would respectfully moves this court for leave to file an enlarged brief, pursuant to Rules – 208(b)(5) and 263, SCACR. This Motion is made because Petitioner has exceeded the twenty-five (25) page limit as required by Rule – 243(e)(3), SCACR. In support of this Motion, the Petitioner shows the following to the Court:

1. The highest grade Petitioner has completed is the eighth (8) grade and only has a G.E.D., with no legal education and is just a layman of law.
2. The questions involved are of questionable importance’s and are in great length.
3. The Petitioner has limited knowledge of the law.
4. Petitioner’s original Petition for Writ of Certiorari was two hundred-two (202) pages and was ordered to bring his brief to twenty-five (25) pages, pursuant to Rule – 243(e)(3), SCACR.

5. Petitioner as a pro-se litigate cannot get the two hundred-two (202) paged brief down to twenty-five page limit as Rule – 243(e)(3) requires.
6. Petitioner has brought his brief down to fifty-six (56) pages and states that Rule – 243(e)(3), twenty-five (25) page standard limit prejudices the Petitioner who is a pro-se litigate, and bares the burden of trying to present to this court the operative facts and the controlling legal principles of the four questions that are being presented in his brief for the violation of his constitutional rights during his State proceedings, cannot do it within the 25 page standard limit.
7. The questions address the constitutional errors that are apparent from the record.
8. The questions that are being presented in the Petition for Writ of Certiorari are numerous and complex, to whereas, the Petitioner needs to exceed the twenty-five (25) page limitation to be able to adequately address the questions that are being presented before the Supreme Court.
9. The questions are numerous since there are four questions being presented within Petitioner’s Petition for Writ of Certiorari.
10. The questions are:
 - I. Whether the PCR Court erred in failing to grant Petitioner, a new trial under circumstances where: (1) “there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction in the interest of justice,” that the PCR Court failed to rule on pursuant to S.C. Code Ann. §§ 17-27-20(A)(4); (2) the constitutional errors in Petitioner’s trial has deprived the jury of critical exculpatory evidence that would have established insufficient evidence of guilt and would have proved his innocence’s; and (3) the prosecutorial misconduct emanating from Petitioner’s State proceedings denied him the right to a fair trial, by committing extrinsic fraud upon the court when presenting a falsified inculpatory confession statement as evidence and failing to correct the false testimony given by State witnesses about the trustworthiness of the alleged confession statement, then vouching for the credibility of the State witnesses in his closing argument was in violation of *Napue v. Illinois*, 360 U.S. 264 (1959), *Giglio v. United States*, 405 U.S. 150 (1972) and *Donnelly v. Dechristoforo*, 416 U.S. 637

(1974).

- II. Whether the trial courts denial of Petitioner's Motion to Relieve Counsel and his objections to appointed counsel's representation of him during his trial, did place an actual conflict of interest upon Petitioner when he filed a complaint with the Office of Disciplinary Counsel and a complaint in the Federal District Court against his Court-Appointed Counsel and the prosecuting Assistance Solicitor prior to trial, did constitutionally prejudiced his right to effective assistant of counsel and to a fair trial as guaranteed to him under the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina State Constitution Article One, §§ 3 and 14, and pursuant to *Cuyler v. Sullivan*, 446 U.S. 335 (1980) and *United States v. Cronin*, 466 U.S. 648 (1984).
- III. Whether the evidence that was provided at Petitioner's trial, derived from an illegal arrest and the misrepresentation of facts that was provided by Spartanburg County Sheriff Officer Lt. Ken Hancock; ATF Special Agent, David Pait; and SLED Agent, Ashley Asbill; is police misconduct, that would not have come to light if not for the illegal actions of the above-mentioned law enforcement officers, whereas, the evidence that was presented at Petitioner's trial was obtained by the exploitation of that illegality.
- IV. Whether the trial court abused its discretion, and created a manifested constitutional error, in giving the Judge's jury charge, "The Hand of One, Is The Hand of All," to a Defendant, who was charged as a principal for drug trafficking in heroin, and did not receive adequate Sixth Amendment notice that he may be convicted guilty as an accomplice, had an identifiably negative impact on the trial to such a degree that the constitutional rights of Petitioner were compromised, pursuant to *Brecht v. Abrahamson*, 507 U.S. 619, 113 S.Ct. 1710 (1993).

11. The questions are complicated because:

- I. Question one deals with the PCR Court's failure to rule on exculpatory evidence of material facts that was presented before the PCR court that was not previously presented at trial and heard, to whereas, the constitutional errors in Petitioner's trial has deprived the jury of critical exculpatory evidence that would have established insufficient evidence of guilt and would have proved Petitioner's innocence's and that the prosecutorial misconduct that committed extrinsic fraud upon the court when presenting a falsified inculpatory confession statement as evidence and failing to correct the false testimony given by State witnesses about the trustworthiness of the alleged confession statement, then vouching for the credibility of the State witnesses in his closing argument was in violation of *Napue v. Illinois*, 360 U.S. 264 (1959), *Giglio v. United States*, 405 U.S. 150 (1972) and *Donnelly v. Dechristoforo*, 416 U.S. 637 (1974).
- II. Question two deals with the trial courts denial of Petitioner's Motion to Relieve Counsel and his objections to appointed counsel's representation of him during his

trial, did place an actual conflict of interest upon Petitioner that constructively denied him effective assistant of counsel, pursuant to *Cuyler v. Sullivan*, 446 U.S. 335 (1980) and *United States v. Cronin*, 466 U.S. 648 (1984).

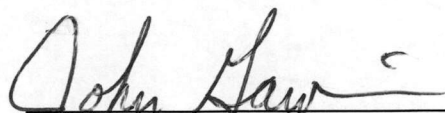
- III. Question three deals with the misconduct of the police officers who falsified the arrest warrants and fabricated an inculpatory confession statement.
- IV. Question four deals with the judges jury charge of the hand of one is the hand of all, that constructively amended and or impermissibly enlarged the indictments and failed to put the Petitioner on notice that he could be found guilty as an accomplice while being initially charged as a principal.

12. The Petitioner's believes that he can address the questions in an adequate manner if this court will allow the Petitioner to exceed the page limitation by thirty-two (32) pages.

13. Good cause exists for the granting of this Motion for leave to file enlarged brief to exceed the twenty-five (25) page limit to fifty-seven (57) pages, to adequately address the questions that are being presented in the Petition for Writ of Certiorari.

WHEREFORE, the Petitioner herein, as a result of the nature of the questions being presented and complexity of the questions involved in the Petition for Writ of Certiorari, prays for the granting of this Motion for Leave to File An Enlarged Brief.

DATED: November 4, 2021


John Garvin, # 355509, Pro-se.
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