

No. 23A1152

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**In The  
Supreme Court of the United States**

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John Garvin – *Petitioner,*

v.

Levern Cohen, Warden – *Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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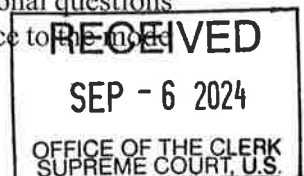
***APPLICATION TO FILE BRIEF IN  
EXCESS OF PAGE LIMITATION***

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Petitioner, John Garvin, proceeding as pro-se, respectfully request leave to file a fifty-seven (57) page brief on the merits. Pursuant to Rule – 33.2 of the United States Supreme Court Rules. This application is submitted at well within the 15 days of the due date of the brief set for August 30, 2024.

In support of this application, Petitioner states:

1. That he present a lengthy factual statement for this Court’s consideration. A detailed review of the proceedings in this case appears necessary for a clear understanding of the prosecutorial misconduct that has occurred during Petitioner’s State proceeding, the District Court’s reason for denying habeas and declaratory relief, the Fourth Circuit Court’s Order denying a COA, and the basis for the granting of a petition for writ of certiorari. Instead, to avoid unnecessary duplication and to present to this Court, succinctly, the facts and law underlying the petition, Petitioner request permission to file his brief on the merits of about fifty-seven (57) pages.
2. This request is made necessary because of the extraordinary important constitutional questions raised by Petitioner. The constitutional issue alone is of such profound importance to the United



of procedure and the structure of Spartanburg County Grand Jury process and cannot and should not be quickly discussed.

3. Petitioner feels that his position on these great matters must be presented as fully as possible. It is the opinion of Petitioner, that such a presentation demands at least seventeen (17) additional pages. Because there is no chance that Petitioner will still be able to work within the forty (40) page limit, so it now appears that, because the case is almost entirely a factual one, whereas, extensive to facts outside of the record, it will necessitate a single brief longer than the forty (40) page limit that is required by this Courts rules.
4. Grant of this motion will result in a conservation of judicial resources and will avoid unnecessary re-petition of the facts and arguments.

**WHEREFORE**, the undersigned Petitioner respectfully moves this Court to permit the filing of his brief in support of petition for writ of certiorari to be filed in the above captioned case, that such brief not to Exceed fifty-seven (57) pages in length.

**DATED: August 30, 2024**

**RESPECTFULLY SUBMITTED,**



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**John Garvin, # 355509, Pro-se.  
Ridgeland Correctional Institution  
P.O. Box # 2039  
Ridgeland, S.C. 29936**

No. 23A1152

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**PETITION FOR WRIT OF CERTIORARI**

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**BY:**  
**John Garvin, Pro-se**  
**Ridgeland Correctional Institution**  
**P.O. Box # 2039**  
**Ridgeland, S.C. 29936**

## QUESTIONS PRESENTED

1. Does a South Carolina Supreme Court's Decision Declining to Entertain a Complaint for a Declaratory Judgment to Determine the Legality and Constitutionality of a County Grand Jury Proceedings, Has Allowed a Case of Actual Controversy to Continue to Exist and Cause Ongoing Irreparable Harm.
2. Does a Federal District Court with Jurisdiction Over a Habeas Corpus Action Under 28 U.S.C. § 2254 May Abstain From Exercising that Court's Jurisdiction in Denying a Motion for Declaratory Judgment Within the Habeas Action, and Then Subsequently Deny a Certificate of Appealability of that Decision is an Abuse of Discretion by the District Court.

## **PETITION FOR WRIT OF CERTIORARI**

Petitioner, John Garvin, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

### **OPINIONS BELOW**

The Fourth Circuit's Order denying a Certificate of Appealability (Pet. Appx. - A, pp. 2a - 4a) is unpublished but is available at 2024 WL 864307. The Order of the district court (Pet. Appx. - A, pp. 5a - 30a) is unpublished but is available at 2023 WL 5199675. The magistrate judge's report and recommendation (Pet. Appx. - B, pp. 36a - 69a) is unpublished but is available at 2023 WL 5753680. The Supreme Court of South Carolina issued an Order declining to entertain Petitioner's Complaint for Declaratory Judgment. (Pet. Appx. - A, pp. 31a - 32a). The Fourth Circuit's panel decision denying panel rehearing and rehearing en banc (Pet. Appx. - C, p. 79a) is unpublished.

### **BASIS FOR JURISDICTION**

The Fourth Circuit issued its opinion on February 29, 2024, denied panel rehearing and rehearing en banc on April 2, 2024. On June 26, 2024, Chief Justice Roberts, Jr., extended the time to file this petition to August 30, 2024. Case No. 23A1152. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1254(1), 1331, 2201 and Article III of the United States Constitution. See also *Calderon v. Ashmus*, 523 U.S. 740 (1998).

### **RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS**

The relevant constitutional and statutory provisions are set forth at Pet. Appx. - E, infra, pp. 689a - 694a.

### **INTRODUCTION**

Existing now between the Petitioner, John Garvin and the Respondent is a controversy. That Asst. Solicitor, James E. Hunter for the State of South Carolina, did knowingly employed the

use of unlawful procedures for the return and publication of Petitioner John Garvin's true-billed indictments. Whereas, there was never any type of grand jury proceedings that occurred or even took place, inasmuch as, the alleged Spartanburg County Grand Jurors had before them no substantial or rationally persuasive evidence on which to base the indictments with a proper probable cause finding by a witness. The indictments were returned solely as a result of the misleading and an improper manner in which no such evidence was ever presented to a grand jury to establish probable cause. A grand jury that was never selected, drawn, or summoned in accordance with S.C. Code Ann. §§ 14-7-1540 and 14-9-210. The indictments failed to put the Petitioner on notice of the nature and cause of the accusation as is required pursuant to S.C. Code Ann. § 17-19-20 and the Sixth Amendment of the United States Constitution. Whereas, the Spartanburg County Court of General Sessions was without jurisdiction, due to Asst. Solicitor, James E. Hunter's abuse of Petitioner's judicial process.

Petitioner, John Garvin, seeks a declaratory judgment seeking a declaration as to whether Asst. Solicitor, James E. Hunter and the Spartanburg County Grand Jurors satisfied the indictment requirement of South Carolina Code Ann. §§ 14-7-1520, 14-7-1530, 14-7-1540, 14-7-1550, 14-7-1920, 14-7-1930, 14-9-170, 14-9-210, 14-9-220, 17-19-10, 17-19-20, 17-23-160, and 22-5-320, that's sufficient to meet the threshold for true-billing an indictment under South Carolina statutory law.

## **STATEMENT OF THE CASE**

### **A. Preliminary Hearing and Grand Jury Proceedings**

Right after Petitioner was falsely arrested. On July 18, 2012, at a bail hearing, Petitioner was denied bail and had requested a preliminary hearing, [see ECF # 58-2, pp. 1043 – 1045], that was scheduled for August 16, 2012. [See ECF # 58-4]. On August 16, 2012, that requested

preliminary hearing was rescheduled to be heard on October 25, 2012, by Asst. Solicitor, James E. Hunter. On October 25, 2012, Asst. Solicitor, James E. Hunter, would move before the court to waive Petitioner's requested preliminary hearing for failure to appear. [See ECF # 58-2, p. 18, Ln. 7 – 19].

On December 6, 2012, Asst. Solicitor, James E. Hunter and the Spartanburg County Grand Jurors indicted the Petitioner, charging him as a principal. [See ECF # 58-2, pp. 1051 – 1055], (Indictment No.(s): 2012-GS-42-5978 and 2012-GS-42-5979)). Whereas, probable cause was based on arrest warrant no.(s): N-158303 and N-158322. [See ECF # 58-2, p. 18, Ln. 20 – 24], [also see ECF # 58-2, pp. 1133 and 1136].

Petitioner's grand jury proceedings as followed failed to meet the standard of S.C. Const. Art. I, §§ 3, 11, 14, & 22, and S.C. Const. Art. V, § 22; in addition, to the Sixth and Fourteenth Amendment of the United States Constitution, inasmuch as, the indictments that were brought against the Petitioner was not an 'indictment of a grand jury' which had been 'found' by the requisite 12 jurors, pursuant to S.C. Code Ann. §§ 14-7-1520 and 14-7-1540. Assistant Solicitor, James E. Hunter, did not obtain the attendance of any witnesses testimony that was pursuant to S.C. Code Ann. § 14-7-1550, to establish any findings of probable cause. The State can not produce any documentation that a grand jury was selected, drawn, and summoned in accordance with S.C. Code Ann. §§ 14-7-1520, 14-7-1530, 14-7-1540, 14-7-1660, 14-7-1920, 14-7-1930, and 14-9-210.

On October 25, 2012, Asst. Solicitor, James E. Hunter, deprived Petitioner of a requested preliminary hearing proceedings, [see ECF # 58-2, pp. 1043 – 1045], for the improper ulterior purpose of furthering the objective of his prosecution without having the burden to establish reasonable probable cause to believe that a crime was committed for drug trafficking in heroin. On December 6, 2012, Asst. Solicitor, James E. Hunter, has utilized a criminal legal process, against

the Petitioner to primarily accomplish a purpose for which it is not designed. Asst. Solicitor, James E. Hunter, did knowingly employ the use of unlawful procedures for the return and publication of the Petitioner, John Garvin's two true-billed indictments. [See ECF # 58-2, pp. 1051 – 1055]. Whereas, the alleged Spartanburg County Grand Jurors had before them no substantial or rationally persuasive evidence on which to base the indictments, in addition, the indictments were returned solely as a result of the misleading and improper manner in which no such evidence was ever presented to the alleged grand jurors that was allegedly summoned on December 6, 2012, to establish a finding of probable cause.

Asst. Solicitor, James E. Hunter, has engaged in "willful acts" in the use of the process not proper under the regular conduct of the proceedings, whereas, a collateral objective has been sought. The indictments were brought for an ulterior purpose, i.e., for collateral reasons, and that "willful acts" were taken through which the process was misapplied and abused. The indictments that Asst. Solicitor, James E. Hunter, claims to have the alleged Grand Jurors true-billed, fails to fully inform the Petitioner of the nature and cause of the accusation for the crime of drug trafficking in heroin with a finding of probable cause to be put on notice of the offense. The nature of the offense charged is not easily understood for Petitioner to be put on actual notice of which act of what he is actually being charged with, pursuant to S.C. Code Ann. § 17-19-20.

The indictments were found, not by the alleged grand jury that was allegedly summoned on December 6, 2012, but was in fact founded by Asst. Solicitor, James E. Hunter, operating under the grand jury's bare instruction to indict for drug trafficking in heroin. The indictments are unconstitutionally overbroad and vague as the indictments, recites the elements of the statutory offense charged in the disjunctive and does not contain any significant factual allegations to enable Petitioner to prepare an adequate defense, pursuant to S.C. Code Ann. § 17-19-20.



The indictments fail to allege to whom the Petitioner has knowingly conspired with and/or to whom he has knowingly aided and abetted within the body of the indictments; in violation of S.C. Code Ann. § 17-19-20. The indictments, can not show an agreement by two or more persons that knowingly committed an unlawful act, coupled with an intent to achieve the agreement's objective, and action or conduct that further the agreement to establish a "conspiracy" or show that Petitioner knowingly "aided and abetted" someone in the commission of a crime previous to the finding of the indictments by the alleged grand jury, in violation of S.C. Code Ann. § 17-19-20.

The Respondent's (their attorney at the time, Valerie Garcia-Giovanoli, Asst. Att'y. General) has stated on record that they "doubt that these documents (grand jury impanelment documents) even exist." [See ECF # 58-2, p. 418, Ln. 19 – 21], [also see ECF # 58-2, p. 421, Ln. 4 – 8], [See ECF # 58-2, p. 435]. Shows that there is a reasonable probability that an abuse of process and a constitutional violation has occurred. The existence of an actual grand jury taking place on December 6, 2012, with a factual showing of probable cause by a witness that was presented to the alleged grand jury for the two drug trafficking indictments are in dispute, pursuant to S.C. Code Ann. §§ 14-7-1520, 14-7-1530, 14-7-1540, 14-7-1550, 14-7-1660, 14-7-1920, 14-7-1930, and 14-9-210 [See ECF # 58-2, pp. 1051 – 1055].

Asst. Solicitor, James E. Hunter, initiated the indictments against Petitioner with the intent of perverting and depriving him of a requested preliminary hearing, for the improper ulterior purpose of furthering the objective of his prosecution without having the burden to establish reasonable probable cause that a crime was committed for drug trafficking in heroin. Without these illegal provision conducted by Asst. Solicitor, James E. Hunter, and the Spartanburg County Grand Jurors, the Petitioner's indictments does not reflect a finding of probable cause by a witness that

was presented to the grand jury as testimony/direct evidence, pursuant to S.C. Code Ann. § 14-7-1550. As a result, the Petitioner's indictments must be deemed invalid in its entirety.

### **1. Actions Taken To Prove Invalid Grand Jury Proceedings**

On July 8, 2015, the Petitioner filed a Motion to Inspect Grand Jury Documents in the Spartanburg County Court of General Sessions, Asst. Solicitor, James E. Hunter, would refuse to respond to that Motion, [see ECF # 58-2, pp. 312 – 317], and the Chief Administration Judge, J. Derham Cole, would not place that Motion on the Court's docket to be heard before that Court. On October 28, 2015, the Petitioner applied for Post-Conviction Relief, to challenge the constitutionality of the erroneous conviction and to vindicate his rights that had actually been denied at trial, on several grounds. [See ECF # 58-2, pp. 365 – 375].

On May 1, 2017, the Petitioner would filed in the Spartanburg County Court of Common Pleas, a Motion to Inspect Grand Jury Documents to Challenge Array of Grand Jury. [See ECF # 58-2, pp. 386 – 390]. On February 21, 2018, a hearing on that Motion would be heard before the Honorable Michael G. Nettles, Circuit Judge. The Petitioner would state in his affidavit in support of his Motion to Inspect Grand Jury Documents to Challenge Array of Grand Jury, his reason for seeking said grand jury documents, whereas, he believed that a grand jury was not selected, drawn, or summoned. [See ECF # 58-2, p. 388].

The "Respondent (Valerie Garcia-Giovanoli, Asst. Att'y. General) would inform the Court that upon her investigation, she does not believe the documents Applicant seeks (grand jury impanelment documents including the sex, age, race of grand jury members, minutes of grand jury proceedings, etc.) even exist." [see ECF # 58-2, p. 435]; [also see ECF # 58-2, pp. 418, Ln. 19 – 21]; [also see ECF # 58-2, p. 421, Ln. 4 – 8]. Judge Nettles, would grant the Petitioner's Motion at that hearing and the Respondent would draft a proposed order that would deny in part and grant

in part. [See ECF # 58-2, pp. 434 – 438]. Only allowing Petitioner access to the indictments that was produced on December 6, 2012, and not grant Petitioner access to the grand jury documents that he was seeking, pursuant to South Carolina law.

On May 29, 2018, Judge Nettles, would signed the Respondent's proposed order. On June 12, 2018, the Petitioner would file a Motion for Reconsideration to Alter/Amend Judgment, of that proposed order, on the grounds that the Respondent's proposed order, intentionally omits and distort the facts within the proposed order and it overlooks the facts stated in his affidavits in support of his Motions. [See ECF # 58-2, pp. 439 – 442]; [also see ECF # 58-2, pp. 443 – 469] and [see ECF # 58-2, pp. 470 – 472].

On February 25, 2019, Petitioner would file with the Spartanburg County Clerk of Court, a Motion for Summary Judgment to obtain a Declaratory Judgment – To Determine the Legality and Constitutionality of Grand Jurors Actions, [see ECF # 58-2, pp. 473 – 487], that true-billed the two indictments on December 6, 2012, by Asst. Solicitor, James E. Hunter and the alleged Spartanburg County Grand Jurors on Indictment No.(s): 2012-GS-42-5978 and 2012-GS-42-5979. [See ECF # 58-2, pp. 1051 – 1055].

The indictments were executed pursuant to S.C. Code Ann. §§ 14-9-210, 14-9-220, 17-19-10, and 17-19-20, to accomplish the State of South Carolina's mode of procedure prescribed by the General Assembly in regards to returning indictments irrespective of the County where the crime has been committed with proper judicial review, pursuant to S.C. Const. Art. I, §§ 3, 11, 22. Thus, seeking a declaration from that Court, that the actions of Asst. Solicitor, James E. Hunter and the Spartanburg County Grand Jurors are invalid, illegal, and in deprivation of those rights secured by the United States Constitution and South Carolina State Constitution. [See ECF # 58-2, p. 479].

On July 9, 2020, an Order was issued denying the Petitioner's Motion for Summary Judgment to obtain a Declaratory Judgment – To Determine the Legality and Constitutionality of Grand Jurors Actions, in addition, to his entire PCR application being dismissed with prejudice. [See ECF # 58-2, pp. 869 – 896]. On August 6, 2020, the Petitioner would file a Motion for Reconsideration to Alter/Amend Judgment of the PCR Court's Order, pursuant to Rule – 52(b) & Rule – 59(e), SCRCF. [See ECF # 58-2, pp. 897 – 1106]. On September 11, 2020, the PCR Court would deny that Motion without a hearing being held on that Motion and would deny the Petitioner's PCR application with prejudice. [See ECF # 58-2, p. 1107]. On October 22, 2020, Petitioner would file with the South Carolina Supreme Court a Notice of Appeal. And now files with this Court his Amended Petition for Writ of Habeas Corpus. The allegation within this Amended Petition for Writ of Habeas Corpus are susceptible to the inference that the primary purpose of Asst. Solicitor, James E. Hunter's indictments was to pervert the course of justice and violate Petitioner's constitutional right to due process.

## **2. The Complaint For A Declaratory Judgment Proceedings**

The Petitioner did file a Complaint for a Declaratory Judgment to Determine the Legality and Constitutionality of the (Spartanburg County) Grand Jury Proceedings in the Original Jurisdiction of the South Carolina Supreme Court. [See ECF # 17-34]. Whereas, the Respondent's, the State of South Carolina would fail to file a response to Petitioner's Complaint for a Declaratory Judgment. Inasmuch as, Petitioner would file a Motion for Entry of Default and Default Judgment on March 15, 2022, for the Respondent's failure to respond to the complaint. [See ECF # 17-31 to 17-37]. The South Carolina Supreme Court would issued an Order on May 18, 2022, declining to entertain that matter, pursuant to Rule – 245, SCACR, and *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991). [See ECF # 17-38]. Despite the fact that Petitioner presented that issue before the PCR

Court in a Motion for Summary Judgment to Obtain a Declaratory Judgment to Determine the Legality and Constitutionality of the Grand Jury Actions. [See ECF # 17-39].

## **REASONS FOR GRANTING WRIT**

### **I.**

#### **The State of South Carolina Should Not Maintain A Conviction That Resulted From Falsified Arrest Warrants, A Void Indictment And Criminal Acts.**

Asst. Solicitor, James E. Hunter, has abused the process of the Spartanburg County Grand Jury process in the selection and/or non-selection of grand jurors, which, “strikes at the fundamental values of [South Carolina] judicial system and our society as a whole,” and is “especially pernicious in the administration of justice.” *Rose v. Mitchell*, 443 U.S. 545, 555-56, 99 S.Ct. 2993 (1979). This court should consider Petitioner’s amended petition for writ of habeas corpus to determine the legality and constitutionality of Spartanburg County Grand Jury Proceedings and it’s selection or non-selection jury process.

#### **A. Invalid Proceedings, and A Void Indictment**

In South Carolina, the Solicitor is charged with the responsibility of prosecuting criminal charges, including procurement of the proper indictment from the grand jury. See S.C. Const. Art. V, § 24; S.C. Code Ann. §§ 1-7-320 (1986), 14-9-210 (1977). The matter presented for review is not a challenge to the Court’s general grant of authority to hear and determine cases. That authority is rightfully granted by South Carolina’s State Constitution, *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005), and will not be at issue here. Instead Petitioner contends that Asst. Solicitor, James E. Hunter, failed to comply with statutory law jurisdictional in nature, specifying the manner and means for a lawful return of true-billed indictments.

“The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the State, and is fundamental.” *Brown v. State*, 344 S.C. 342, 540 S.E.2d

846 (S.C., 2001)(citing *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989)(emphasis added). Subject matter jurisdiction may not be waived even with consent of the parties, and maybe raised at any time, *Brown, supra*. Whereas, “no indictment maybe true-billed by a grand jury when Circuit Court lacks jurisdiction, since grand jury’s jurisdiction is coextensive with criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry ...” *State v. McClure*, 277 S.C. 432, 289 S.E.2d 158 (1982) and *State v. Funderburk*, 259 S.C. 256, 191 S.E.2d 520 (1972); *State v. Wheeler*, 259 S.C. 571, 193 S.E.2d 515 (1972).

The primary question before this Court is whether S.C. Code Ann. §§ 14-9-210, 17-23-160, and 22-5-320 are jurisdictional in nature and whether when a defendant who demand in writing a request for a preliminary hearing, that the Magistrate’s court retains jurisdiction and the Court of General Sessions is deprived of jurisdiction until the requested preliminary hearing is held. And whether it requires that all criminal indictments must be issued through a grand jury impaneled, before the Court of General Sessions, and whether the State’s noncompliance with mandatory pre-indictment and indictment procedures, and willful acts of perjury have rendered all judicial proceedings invalid and it’s indictments null.

The statutory provisions at issue are contained in sections 14-9-210, 17-23-160, and 22-5-320 and provide in pertinent part that:

S.C. Code Ann. § 14-9-210:

“The County Solicitor shall prepare and through the presiding judge of the Court of General Sessions submit to the grand jury while on attendance upon the Court of General Sessions, bills of indictments in all cases pending in the County Court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the grand jury. The grand jury shall act thereon, and shall report it’s action to the presiding judge of the Court of General Sessions and said judge shall direct the Clerk of Court of General Sessions to report the same to the presiding judge of the County at it’s next ensuing term...”

S.C. Code Ann. § 17-23-160:

“When any person charged with a crime who is entitled to a preliminary hearing on such charges appears in person or by counsel in a hearing to set bond, he shall be notified by a Magistrate orally and in writing of his right to such preliminary hearing. When a person is notified of his right to a preliminary hearing by signing and returning this form to the advising magistrate then and there or thereafter. Any person so notified who fails to timely request a preliminary hearing shall lose his right to such hearing.”

S.C. Code Ann. § 22-5-320:

“Any magistrate who issues a warrant charging a crime beyond his jurisdiction shall grant and hold a preliminary hearing of it upon the demand in writing of the defendant made within twenty days of the hearing to set bond for such charge; .... When such a hearing has been so demanded the case shall not be transmitted to the court of general sessions or submitted to the grand jury until the preliminary hearing shall have been had, the magistrate to retain jurisdiction and the Court of General Sessions not to acquire jurisdiction until after such preliminary hearing.”

The statutory terms above are clear, unambiguous, and require the County Solicitor to prepare and submit bills of indictment through the presiding judge of the Court of General Sessions to a grand jury impaneled under the authority of the Court of General Sessions. After a defendant that has demanded a requested preliminary hearing has been held. No exception.

It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the legislature. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *State v. Marting*, 293 S.C. 46, 358 S.E.2d 697 (1987). When a statutes terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. *Carolina Power & Light Co. v. City of Bennettsville*, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994). And words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statutes operation. *Bryant v. City of Charleston*, 295 S.C. 408, 368 S.E.2d 899 (1998). Moreover, penal statutes must be construed strictly against the State and in favor of defendant, *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991).



Accordingly, section 14-9-210, requires strict compliance with its provisions, and mandates that the grand jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of a true-billed indictment can take place, but only after a defendant's requested demand for a preliminary hearing has been held. Also here, is South Carolina, Rule – 2, S.C.R.Crim.P; S.C. Code Ann. § 17-23-160 and S.C. Code Ann. § 22-5-320, that set forth the requirement concerning preliminary hearings and their impact on the jurisdiction of the magistrate courts and Courts of General Sessions to try defendants who have requested a preliminary hearing. Rule – 2, S.C.R.Crim.P, provides that “any defendant charged with a crime not trial by a magistrate shall be brought before a magistrate and shall be given notice of his right to a preliminary hearing solely to determine whether sufficient evidence exists to warrant the defendant's detention and trial.” See Rule – 2(a), SCRCrimP. South Carolina's Constitution Article I, §§ 3 and 22, protects Petitioner's right to due process and proper judicial review.

Now once the accused properly requests a preliminary hearing, the magistrate's court retains jurisdiction and the Court of General Sessions is deprived of jurisdiction until such hearing is held. No indictment may be true billed by the grand jury when the circuit court lacks jurisdiction, since the grand jury's jurisdiction is co-extensive with the criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry.” *State v. McClure*, 277 S.C. 432, 289 S.E.2d 158 (1982); *State v. Funderburk*, 259 S.C. 256, 191 S.E.2d 520 (1972); *State v. Wheeler*, 259 S.C. 571, 193 S.E.2d 515 (1972). A hearing must therefore be held on such Petition as the lower court would have had no jurisdiction to try Petitioner until the preliminary [hearing] had been held. See *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965).

However, here, evidence will show that Asst. Solicitor, James E. Hunter, has violated Petitioner's “Due Process” under the Fifth and Fourteenth Amendment of the U.S. Constitution



and his “right to judicial review,” pursuant to S.C. Const. Art. I, §§ 3 and 22. That there has been an abuse of process within the Spartanburg County Grand Jury proceeding concerning the Petitioner’s indictments. Which will establish that a grand jury was not selected, drawn, or summoned in accordance with S.C. Code Ann. §§ 14-7-1540 or 14-9-210, that the general sessions court was without jurisdiction.

Asst. Solicitor, James E. Hunter, has unlawfully impaneled a Spartanburg County Grand Jury outside the jurisdiction of the Court of General Sessions, and then willfully printed and published false and misleading information in its indictment in order to deep secret it’s violations of statutory law. Thus, a controversy has come before the court.

In this case, on July 18, 2012, a Magistrate Judge notified Petitioner of his right to a preliminary hearing, pursuant to S.C. Code Ann. § 17-23-160. Whereas, Petitioner was furnished a sample form providing him an opportunity to request a preliminary hearing by signing and returning this form to the advising magistrate judge then and there. (See Pet. Ex. – 1: Appx. pp. 1032 – 1034). “When such a hearing has been so demanded the case shall not be transmitted to the Court of General Sessions or submitted to the grand jury until the preliminary hearing shall have been had, the Magistrate [is] to retain jurisdiction and the Court of General Sessions [is] not to acquire jurisdiction until after such preliminary hearing.” See S.C. Code Ann. § 22-5-320.

Therefore, recognizing the jurisdictional requirements set forth in sections 14-9-210, 17-23-160, and 22-5-320, mandating the only process allowed for impaneling a lawful grand jury,<sup>1</sup> after a defendant has demanded a request for a preliminary hearing, and often consideration of the facts and evidence presented above it becomes apparent that Petitioner, John Garvin, was indicted

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<sup>1</sup> “[A] `procedural’ law sets out a mode of procedure for a court to follow, or `prescribes a method of enforcing rights.’” See *Edwards v. State Law Enforcement Division*, 395 S.C. 571, 580, 720 S.E.2d 462, 466 (2011) (quoting Black’s Law Dictionary 1083 (1979)).

outside the jurisdiction of the Court of General Sessions and by a mode of procedure that Asst. Solicitor, James E. Hunter, and the Spartanburg County Grand Jurors had no lawful authority to adopt.

When a legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way. Thus, since the court utilized an unlawful mode of procedure not allowed under sections 14-9-210, 17-23-160 and 22-5-320, the Spartanburg County Grand Jury had lacked the requisite jurisdiction to complete return of its true-billed indictments.

As established above, S.C. Code Ann. §§ 14-9-210, 17-23-160 and 22-5-320, are clearly jurisdictional statutes, and sets forth mandatory procedures to be utilized by Asst. Solicitor, James E. Hunter, and the Spartanburg County Court of General Sessions for a lawful return of a true-billed indictment. A substantial body of South Carolina law holds that a failure to comply with statutory law jurisdictional in nature deprives the court of subject matter jurisdiction. *State v. Lee*, 350 S.C. 125, 564 S.E.2d 372 (S.C. App., 2002); *State v. Brown*, 351 S.C. 522, 570 S.E.2d 559 (Ct. App., 2002); *State v. Felder*, 313 S.C. 55, 437 S.E.2d 42 (S.C., 1993); *State v. Richurg*, 304 S.C. 162, 403 S.E.2d 315 (1991); *State v. Loftin*, 276 S.C. 48, 275 S.E.2d 575 (S.C., 1981); *Gray v. State*, 276 S.C. 634, 281 S.E.2d 226 (S.C., 1981); *State v. Brunson*, 274 S.C. 220, 262 S.E.2d 44 (1980); *State v. Castleman*, 219 S.C. 136, 64 S.E.2d 250 (1951), and many more.

But the Respondent's will argue that in *State v. Keenan, Supra.*, the South Carolina Supreme Court held that jurisdictional language of statute providing that any magistrate who issues a warrant charging a crime beyond his jurisdiction shall grant and hold a preliminary hearing, that is, that "when such a hearing has been so demanded the case shall not be transmitted to the Court of General Sessions or submitted to the grand jury until the preliminary hearing shall have been

had,” is unconstitutional, and therefore, although receipt of notice of right to preliminary hearing in manner prescribed by second statute is condition precedent to court of general sessions obtaining jurisdiction over the matter under first statute, so that notice is required of right to preliminary hearing before it can be knowingly waived, court of general sessions had jurisdiction to try defendant. See 278 S.C. 361, 296 S.E.2d 676 (1982).

Petitioner states that this ruling is misplaced and that the South Carolina Supreme Court erred in its ruling. Thus, intruding upon Petitioner’s right to proper judicial review and to challenge any type of a probable cause finding that violates his due process, pursuant to S.C. Const. Art. I, §§ 3 and 22, in addition, to the U.S. Const. Amend. VI and XIV. The Court erred in it’s ruling in *Keenan, supra.*, Petitioner here, sought to argue the invalidity of the courts ruling. Petitioner relies on S.C. Const. Art. I, §§ 3 and 22; in addition, to *Coleman v. Alabama*, 399 U.S. 1, 90 S.Ct. 1999 (1970) and *State v. Wheeler*, 259 S.C 571, 193 S.E.2d 515 (1972), and by extension, on the premise that the courts ruling is in contravention of *Coleman v. Alabama, Supra.*, and *State v. Wheeler, Supra.*, in addition, to the basic federalism principles that secures the freedom of individuals.

Consequently, since Petitioner had requested for a preliminary hearing, in addition, to the State not providing Petitioner with any grand jury documents as requested to substantiate that a grand jury was selected, drawn, or even summoned in accordance with the mandatory provisions of S.C. Code Ann. §§ 14-9-210, 17-23-160 and 22-5-320 the State has NO jurisdiction to issue return of true-billed indictment except during a time when the Court of General Sessions is lawfully convened to oversee the grand jury process. In fact, South Carolina Supreme Court has already determined that NO indictment may be true billed by a grand jury when the court lacks jurisdiction. The grand jury must be impaneled under the jurisdiction of the Spartanburg County

Court of General Sessions before lawful return of indictment can take place. See *State v. McClure, supra.*, *State v. Funderburk, supra.*, and *State v. Wheeler, supra.*

## **B. Court Rules, Order or Other Processes**

It should be noted that S.C. Code Ann. §§ 14-9-210, 17-23-160, and 22-5-320, is not a local Rule or Statute, but a general provision applicable to the Courts in every County in the State of South Carolina, and as shown, mandates that a grand jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of a true-billed indictment can take place. Thus, sections 14-9-210, 17-23-160, and 22-5-320, is clearly a jurisdictional statute, and sets forth the only process allowed for a lawful return of indictments.

No local Rule of court, administrative order, policy, or other procedure can take precedent over statutory law, which is always controlling. See S.C. Const. Art. V, §§ 1, 4, and *State v. Cottingham et al.*, 224 S.C. 181, 77 S.E.2d 897 (1953) (statutes override rules of court if in conflict); *State v. Duncan*, 274 SC 379, 264 S.E.2d 421 (S.C., 1980)(Circuit Court rule promulgated by individual judicial circuit was unconstitutional and void).

However, the issue of whether or not a local Rule, Order, Policy, or Procedure was utilized for process and return of Petitioner's two indictments is irrelevant, because by State law, it would still have to be in agreement with the provisions of S.C. Code Ann. §§ 14-9-210, 17-23-160, and 22-5-320 for it to be constitutional.

Article V, § 4 of South Carolina State Constitution provides in pertinent part:

“The Supreme Court shall make rules governing the administration of all courts of this State, subject to the statutory law the Supreme Court shall make rules governing the practice and procedures in all such court.” [Emphasis].

And, S.C. Code Ann. § 14-5-310, Rules of Court:

“The circuit courts may make and establish all necessary rules for the orderly conducting of business in said courts, provided such rules are not repugnant to

the laws of the State or the rules prescribed by the justices of the Supreme Court and circuit judges.” [Emphasis added]

Thus, under those requirements, NO rules can be made or established for process and return of indictments unless it comports with S.C. Code Ann. §§ 14-9-210, 17-23-160, and 22-5-320. Otherwise, it would be unconstitutional and null, being without binding legal effect.

Additionally, it should be noted that the Court of Common Pleas is vested with NO authority to take any action on matters pertaining to return of true-bill criminal indictments “The Court is made up of the Court of Common Pleas which hears civil actions and the Court of General Sessions which hears criminal cases ....” See *Dove v. Gold Kist Inc.*, 314 S.C. 235, 442 S.E.2d 598, 600 (S.C., 1994); see also S.C. Const. Art. V, §1.

Lastly, it should also be noted that a Circuit Court Judge retains NO authority on its own standing to conduct and oversee grand jury proceedings outside the bounds of a lawfully convened Court of General Sessions. Accordingly, and in this case, no court rules, orders, or other procedures can be invoked or cited by the Respondent’s to save it’s unlawful grand jury process, and resulting null indictments.

### **C. Criminal Violations**

Asst. Solicitor, James E. Hunter has clearly violated 18 U.S.C. § 1001, and 34 U.S.C. § 12601(a), and conspiracy against right, 18 U.S.C. § 241, and deprivation of rights under color of law, 18 U.S.C. § 242, has engaged in a pattern or practice of conduct, by unlawfully processing indictments, outside the jurisdiction of the Court of General Sessions without a factual finding of probable cause to put Petitioner on notice.

#### **1. Violation of Title 18 U.S.C. § 1001**

Title 18 U.S.C. § 1001 provides:

“Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by

trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.”

Asst. Solicitor, James E. Hunter, has clearly violated section 1001. *Firstly*, because S.C. Code Ann. § 14-9-210, mandates that the County Solicitor shall prepare and process bills of indictment through the jurisdiction of the Court of General Sessions. Petitioner’s indictments was sealed with a true-bill stamp, signed by Asst. Solicitor, James E. Hunter, and contained false information that Petitioner committed the crime of drug trafficking in heroin on July 7, 2012, and on July 17, 2012.

*Second*, it should be noted that a criminal indictment is a document required by the law of the State of South Carolina. In *Gentry, supra.*, the South Carolina Supreme Court determined that an indictment is a notice document required by the State Constitution and Statutes. See S.C. Constitution Art. I, § 11 and Art. V, § 22 [footnote omitted], S.C. Code Ann. § 17-19-10 (2003) (“No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury,” except in specified instances.). Petitioner’s true-bill indictments satisfies the provisions of section 1001, making or uses any false writing or document, is clearly what has happened in this case.

*Third*, and importantly, it must be emphasized for purposes of blame that Asst. Solicitor, James E. Hunter, holds full knowledge an understanding of the law within the State of South Carolina. It is a requirement of the high office of a prosecutor. The prosecutor occupies a quasi – judicial position, and must see that justice is done, that no conviction takes place except in strict conformity with the law. See e.g., *State v. Quattlebaum*, 338 S.C. 441, 527 S.E.2d 105 (S.C., 2000); *State v. Durden*, 264 S.C. 86, 212 S.E.2d 587 (1975); *State v. King*, 222 S.C. 108, 71 S.E.2d 793 (1952). Thus, Asst. Solicitor, James E. Hunter, is REQUIRED TO KNOW AND OBEY the

mandates of S.C. Code Ann. §§ 14-9-210, 17-23-160, and 22-5-320, that lawfully impanel a grand jury after a defendant has made a timely request for a preliminary hearing, accordingly.

As presented above, instead of discharging his responsibilities in conformity with State Law, Asst. Solicitor, James E. Hunter, broke his oath of office, he intentionally violated the provisions of S.C. Code Ann. §§ 14-9-210, 17-23-160, and 22-5-320, by unlawfully processing Petitioner, John Garvin's indictments (see subsection-a. above), outside the jurisdiction of the Court of General Sessions, and then by willfully printing false and misleading information in the indictment incorrectly stating that it had been returned with a factual finding of probable cause at a Spartanburg County Court of General Sessions (see subsection-a. above).

"Section 1001 expressly embraces false statements made "in any matter within the jurisdiction of any department or agency of the United States." (Emphasis supplied). A criminal investigation surely falls within the meaning of "any matter," and the [Spartanburg County Seventh Circuit Solicitor's Office] equally and surely qualify as "department[s] or agenc[ies] of the United States." quoting *U.S. v. Rodgers*, 466 U.S. 475, 479, 104 S.Ct. 1942, 1946 (1984).

Thus, Asst. Solicitor, James E. Hunter, has committed the offense of perjury and must be punished accordingly. Asst. Solicitor, James E. Hunter, is now subject to the governing authority of 18 U.S.C. § 1001, of making a false document and 18 U.S.C. §§ 241 and 242, conspiracy against rights and deprivation of rights under color of law.

## **2. Violation of Title 34 U.S.C. § 12601(a)**

34 U.S.C. § 12601(a) provides in pertinent part:

"It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of [ ] justice or the incarceration of [one's person] that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States."



From the evidence shown above and in subsection-a., of this memorandum, Petitioner has determined that Asst. Solicitor, James E. Hunter, has engaged in a pattern or practice of misconduct by willfully printing false information within Petitioner's true-billed indictments without a factual finding base on probable cause.

Here the facts and evidence will establish that the Asst. Solicitor, James E. Hunter, also conspired with several other State Judicial personnel in order to impanel a grand jury outside the authority of the Spartanburg County's Court of General Sessions, to complete a return of an illegal true-billed indictments and to print and publish false indictment information without a proper finding of probable cause. Petitioner submits that sufficient evidence is presented here to establish an existence of a criminal conspiracy.

A "conspiracy" is a combination or agreement between two or more persons for the purpose of accomplishing a criminal or unlawful objective, or achieving by criminal or unlawful means an objective that is neither criminal nor unlawful. See *State v. Buckman*, 347 S.C. 316, 555 S.E.2d 402 (S.C., 2001)(emphasis added). The gravamen of conspiracy is the agreement or mutual understanding. See *State v. Hammitt*, 341 S.C. 638, 535 S.E.2d 459 (S.C. App., 2000), rehearing denied, certiorari granted. "... If there is one overall agreement among the various parties to perform different functions in order to carry out the objective of the conspiracy, the agreement among all the parties constitutes a single conspiracy." *State v. Dasher*, 278 S.C. 454, 456, 298 S.E.2d 215, 217 (S.C., 1986) (citing 16 Am. Jur.2d Conspiracy § 11 (1979)). Conspiracy may be shown by circumstantial evidence including the parties consent. *State v. Oliver*, 275 S.C. 79, 267 S.E.2d 529 (1980) and under South Carolina Law does not require an overt act. See *State v. Ferguson et al.*, 221 S.C. 300, 70 S.E.2d 355 (1952) cert. denied, 344 U.S. 830, 73 S.Ct. 35 (1952).

### **3. Preliminary Statement**



For some time now it has been an open secret in South Carolina State's Judicial circle that NONE of it's true-billed indictments are being processed and returned in compliance with statutory law and that some unlawful process is being utilized. In fact, several prominent newspapers in South Carolina have commented on the irregularities in South Carolina's County indictment process, and the impossibility of lawfully returning true-billed indictments at the excessive rates reported, given the known time constraints. (See Pet. Ex. – 19<sup>2</sup> and 20<sup>3</sup>). The grand jury proceedings were most likely held in a back office conference room with a Solicitor/Asst. Solicitor overseeing the process. Also present would have been a court administrative assistant, the Clerk of Court, and grand jury foreman.

In this case, the actual type of unlawful process utilized by Asst. Solicitor, James E. Hunter's complete return of Petitioner, John Garvin's true-billed indictments is of important and determinative of the criminal conspiracy issue presented here. However what is determinative is the fact that the grand jury proceedings were held outside the jurisdiction of the Court of General Sessions for an illegal return of a true-bill, and that Asst. Solicitor, James E. Hunter, committed an offense of perjury in order to keep secret the unlawful process. That overt act of perjury, along with the cooperation provided by other parties to make complete and secret the illegal process, is determinative of the criminal conspiracy issue.

A criminal conspiracy is very clearly evident here, unless that is, Asst. Solicitor, James E. Hunter, submits that he forged Petitioner, John Garvin's indictments. Otherwise, and realizing that it would have to be impossible for Asst. Solicitor, James E. Hunter to fully complete the return of Petitioner, John Garvin's indictments on his own. A cooperation from the below listed judicial official would have been necessary.

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<sup>2</sup> <https://www.heraldonline.com/news/local/article216878215.html>

<sup>3</sup> <https://www.google.com/amp/s/amp.greenvilleonline>

Here, Petitioner has restricted the list of conspirators to individuals essential to the Spartanburg County indictment process. Full blame can be properly determined once the grand jury records are subpoenaed, and the necessary criminal investigation is complete. Additionally and importantly, it must be pointed out that all the below listed conspirators are State Judicial Officials, and as such, they are required by virtue of their high offices to possess full knowledge and understanding of the laws of South Carolina. In this case, a claim of ignorance to the law would be unacceptable.

#### **4. Conspiracy Against Right and Deprivation of Rights Under Color of Law**

Title 18 U.S.C. §§ 241 and 242 are federal criminal statutes making it illegal for a person acting under color of law to willfully deprive a person of their rights under the constitution or federal law. See *Cok v. Cosentino*, 876 F.2d 1, 2 (1<sup>st</sup> Cir. 1989) (“stating that only a United States prosecutor can bring a complaint under 18 U.S.C. §§ 241 – 242”). The general language of § 242, referring to “the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States,” is matched by the breadth of its companion conspiracy statute, § 241, which speaks of conspiracies to prevent “the free exercise or enjoyment of any right or privilege secured to [any person] by the Constitution or laws of the United States.” See 18 U.S.C. § 241. Accordingly, an offense of conspiracy against Petitioner’s rights and the deprivation of Petitioner’s rights under color of law, has come before this Court for Judgment.

First, Judge, J. Derham Cole, a Circuit Court Judge of Spartanburg County Circuit Court was the Chief Administrative Judge, of Spartanburg County Circuit Court and who was seated on the bench at the times relevant to the indictments return date of December 6, 2012, would be the State Judicial Officer directly responsible for the scheduling and ordering a grand jury impaneled

outside the bounds of the Court of General Sessions. (See Pet. Ex. – 21). This judge<sup>4</sup> would have been in possession of knowledge concerning the mandatory provisions of S.C. Code §§ 14-9-210, 17-23-160, and 22-5-320, and still chose to impanel an unlawful grand jury and assist in printing and publishing the false information contained in Petitioner, John Garvin’s two indictments.

It should be noted that Rule – 501, SCACR, Code of Judicial conduct, Cannon – 2(A), “[a] judge shall respect and comply with the law, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

Second, the facts and evidence presented above, and in subsection-a., of this memorandum establish that Asst. Solicitor, James E. Hunter, violated his oath of office and committed perjury by willfully printing false information in Petitioner, John Garvin’s two indictments. Thus, Asst. Solicitor, James E. Hunter, is a “central figure” in the criminal conspiracy. In addition, it should be noted that Solicitor, Barry Barnette, as Chief Prosecuting Officer for Spartanburg County at the time, directs and Supervises the activities of his assistants under his authority. Whereas, it would be the Solicitor, Barry J. Barnette, who is ultimately responsible for the criminal acts committed by the Assistant Solicitor in any case. Moreover, the possibility exists that others of the Solicitor’s assistants are involved in the same type of unlawful and illegal indictment activities. Therefore, the activities of the Solicitor’s office should be investigated by the appropriate authorities.

Third, Dean Dill, the grand jury foreman who was the individual responsible for signing the true-bill stamp affixed to Petitioner, John Garvin’s indictments, thus, completing and giving validity to the unlawful grand jury process. By signing the false and incorrect true-bill stamp

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<sup>4</sup> Hon. J. Derham Cole, Circuit Judge, was the presiding judge for Petitioner’s July 19, and July 31, 2019, Post-Conviction Relief (PCR) hearing in *John Garvin v. State*, Case No. 2015-CP-42-04699, and also was the presiding Judge on Petitioner’s co-defendant, Jonathan R. Perez’s December 17, 2012, guilty plea hearing in *State v. Jonathan Perez*, Case No. 2012-GS-42-5947; 5948.

indictments, Dean Dill, the grand jury foreman by his actions committed an offense of perjury, as well as assisted the other conspirators.

Fourth, M. Hope Blackley, the person who was Clerk of Court at the time, pursuant to S.C. Code Ann. §§ 14-7-1520 and 14-9-210 reported and presented Petitioner's indictments with its printed false information, to the presiding judge at the Court's next term. Moreover, the indictment containing the shown false information would have been filed in the Court's public records.

Fifth, the presiding judge at the Spartanburg County term of General Sessions Court allowed Petitioner's indictments, containing the false information to be reported and published (see Pet. Ex. – 1: Appx. pp. 1040 – 1041 & 1043 – 1044), within his court. The Judge allowed the illegal indictments to enter into the official court record unchallenged even though he would have known that NO County Grand juries was to be impaneled under the jurisdiction of the Court of General Sessions until after Petitioner, John Garvin, has his requested preliminary hearing. (See Pet. Ex. – 1: Appx. pp. 1032 – 1034). Also it should be noted that Rule – 501, SCACR, Code of Judicial Conduct, Cannon – 2(A), requires a judge in this State to comply with the law and promote public confidence in the integrity of the judiciary.

Again, unless Asst. Solicitor, James E. Hunter, is willing to admit to his wrong doing and was acting alone, and that he knowingly and completely forged Petitioner's indictments without a proper finding of probable cause provided by a witness with knowledge of the facts. The Petitioner has presented to this Court the existence of a criminal conspiracy that has hereby been established. Barring the existence of an outright forged indictments, it would have taken the combined effort of the above listed judicial officials all working in concert to establish scheduling to order and impanel the grand jury during a time when the Court of General Sessions did not have jurisdiction to do so until after Petitioner had his requested preliminary hearing (see Pet. Ex. – 1: Appx. pp.

1032 – 1034), was the Court of General Sessions to convene to meet and execute the return of true-bill, to report and publish, then file the illegal indictments into the courts records, under the direction of Asst. Solicitor, James E. Hunter.

It is axiomatic that conspiracy need not be proved by direct evidence of unlawful agreement. A conspiracy may be shown by circumstantial evidence including the party's consent; see *State v. Oliver, Supra*. And the substantive crime on crimes committed in furtherance of the conspiracy constitutes circumstantial evidence of the conspiracy, it's objective, and scope. See *State v. Condrey*, 349 S.C. 184, 192, 562 S.E.2d 320 (2002) (citing *State v. Amerson*, 311 S.C. 316, 428 S.E.2d 871 (1993)).

In this case, it has been shown that various parties performed different functions in order to carry out, and make complete, by an act of perjury, a County's indictment process done by unlawful means. Section 16-17-410 of South Carolina Code of Law, provides in pertinent part that "... conspiracy is defined as a combination between two or more persons for the purpose of accomplishing ... lawful objective (return of true-bill indictments), by unlawful means (illegal grand jury and acts of perjury)" [insertions added]. Also see 18 U.S.C. §§ 241, 242.

#### **D. Contemporaneous Objections and Rights Violations**

The record in this case has clearly established that Petitioner was indicted by way of a grand jury process that the Court of General Sessions had no lawful authority to adopt. And that in order to keep secret the fact of the illegal grand jury, Asst. Solicitor, James E. Hunter, willfully printed false information in Petitioner, John Garvin's, two indictments (see subsection-a. and c.), and then joined into a criminal conspiracy with other State Judicial Officials to make effective a Null indictment. (See subsection-a. and c.).

Here, Petitioner would show this Court that his failure to make timely objections to the illegal grand jury and void indictments were the direct result of Petitioner's trial counsel, Scott D. Robinson's deliberate failure to file a Motion to Quash the County's indictments on the grounds of (1.) Asst. Solicitor, James E. Hunter's act of perjury and criminal conspiracy and (2.) the indictments were without any factual basis of a proper showing of probable cause. In addition, that the United States Constitutional Law requires the default to be imputed against the responsible party, the State of South Carolina.

Section 17-1-10, of South Carolina Code of Law provides that, "A criminal action is prosecuted by the State as a party, against a person charged with a public offense, for the punishment thereof." Thus, all criminal violations of section 16-9-10, perjury, and section 16-17-410, conspiracy, must by necessity be imputed against both the individuals actually responsible and the State of South Carolina. Consequently, South Carolina is a party to criminal acts. The criminal acts of Asst. Solicitor, James E. Hunter, has resulted in the violation of Petitioner's Constitutional rights both State and Federal, in addition, to Petitioner's trial attorney constructively denying him effective assistance of counsel has caused Petitioner to fail to make the proper objections to the illegal grand jury and null indictments.

### **1. Constitutional and Statutory Rights**

In *Gentry*, the Court held that an indictment is a "notice document" required by South Carolina's State Constitution and Statutes. See S.C. Const. Art. I, § 11 and Art. V, § 22 (footnote omitted). See S.C. Code Ann. § 17-19-10 (2003) ("No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury" except in specified instances.). *Ibid.*

“The primary purpose of an indictment is to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the Circuit Court to know what judgment to pronounce if the defendant is convicted.” See *Evan v. State*, 363 S.C. 495, 508 – 13, 611 S.E.2d 510, 517 – 19 (S.C., 2005)(citing *Gentry*, 363 S.C. at 102 – 03, 610 S.E.2d at 500)).

Furthermore, a sufficient indictment prevents later retrials for the same offense in contravention of the constitutional prohibition against double jeopardy and prevents the prosecutor from usurping the power of the grand jury by ensuring a defendant is tried for the crime which he was indicted. See *State v. Tabor*, 262 S.C. 136, 139, 202 S.E.2d 852, 853 (1974); *State v. Guthrie*, 352 S.C. 103, 108, 572 S.E.2d 309, 312 (Ct. App., 2002) overruled on other grounds; *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *People v. Grega*, 72 N.Y.2d 489, 531 N.E.2d 279, 382 (1988); *State v. Lewis*, 36 S.W.3d 88, 97 (Tenn. Crim. App., 2000). This required notice is a component of due process that is accorded to every criminal defendant. See U.S. Const. Amend. V and XIV; S.C. Const. Art. I, § 3. Additionally, a criminal defendant has a constitutional and statutory right to have the indictment issued by a legally constituted grand jury. See e.g., *State v. Means*, 367 S.C. 374, 626 S.E.2d 348 (2006); see *Evans v. State*, 363 S.C. 495, 611 S.E.2d 510 (2005); *State v. Williams*, 263 S.C. 290, 210 S.E.2d 298 (1974). Also see S.C. Const. Art. I, § 11 and Art. V, § 22; S.C. Code Ann. §§ 14-7-1520, 14-7-1540, 14-7-1550, and 14-9-210.

## **2. Contemporaneous Objections**

In *Gentry*, relying on S.C. Code Ann. § 17-19-90, (“Every objection to an indictment for any defect apparent on the face therefore, shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards.”), the South Carolina Supreme Court held that the sufficiency of an indictment must be challenged before the jury is sworn.



Recognizing *Gentry*, the South Carolina Supreme Court in *Evans* held that, "... challenges to the legality and sufficiency of the process of a [County] Grand Jury also must be made before the jury renders a verdict in order to preserve the error for direct appellate review." See S.C. Code Ann. § 14-7-1140 (Supp., 2003), "No irregularity in any writ of *venire fascias* or in drawing, summoning, returning, or impaneling of jurors is sufficient to set aside the verdict, unless the party making the objection was injured by the irregularity or unless the objection is made before the returning of the verdict." The *Evans* court overruling several cases, further determined that an indictment which is deemed to be a nullity because it was issued by an illegal grand jury no longer implicates subject matter jurisdiction.

Petitioner's case however, takes the position that a challenge to either the illegal grand jury process or null indictment would be immaterial, because no valid waiver can be entered absolving the State of its criminal conduct, and a null indictment is of no legal effect and therefore non-binding. Under law, Petitioner's null indictment (see subsection-a. and c.) is by its very nature insufficient to support a conviction or sentence, and protects against double jeopardy. It is an axiomatic rule of law that an indictment deemed to be a nullity is "something that is legally void" and of "no legal effect" (citing *Blacks Law Dictionary* 8th Ed. 2004, Nullity and Void). See e.g., *Hardison v. Gledhill*, 72 Ga. App. 432, 33 S.E.2d 921, 924 (Ga. Ct. App., 1945) (void, null, ineffectual, nugatory, having no legal force or binding effect, unable in law to support the purpose for which it was intended).

And most certainly, a conviction and sentence based on the fruits of criminal acts cannot be allowed to stand under any circumstances. The facts and evidence in this case very clearly show that Asst. Solicitor, James E. Hunter, committed perjury and criminal conspiracy, (see subsection-a. and c.) in order to secure a conviction against Petitioner. Surely the *Evans* ruling does not stand



for the proposition that because Asst. Solicitor, James E. Hunter, was not caught for his criminal acts in a timely manner, it is granted absolution.

For the reason stated above, Petitioner asserts that an objection to Spartanburg County's illegal grand jury and null indictments would be pointless. However, for the sake of argument Petitioner would show this Court that:

In *Murray v. Carrier*, 477 U.S. 478, 106 S.Ct. 2639, 2645 (1986) the United States Supreme Court held that the existence of cause for procedural default [for failure to comply with a State's contemporaneous – objection rule], must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's effort to comply with the State procedural rule. The Court stated, "without attempting an exhaustive catalog of such objective impediments to compliance with a procedural rule, we note that a showing that the factual or legal basis for a claim was not reasonably available to counsel." See *Reed v. Ross*, 468 U.S. 1, 16, 104 S.Ct. 2901, 2910 (1984), or that "some interference by officials," *Brown v. Allen*, 344 U.S. 443, 486, 73 S.Ct. 397, 422 (1953), made compliance impracticable, would constitute cause under this standard." *Carrier*, 477 U.S. at 488.

In this case, Asst. Solicitor, James E. Hunter, willfully printed false information in Petitioner's two County indictments ( see subsection-a.), and then joined into a criminal conspiracy with other judicial official to keep secret the illegal grand jury process (see subsection-c.). Surely those acts by Asst. Solicitor, James E. Hunter, constitute an external factors sufficient to show cause for failure to make timely objections. Additionally, however, in *Evans*, citing *State v. Griffin*, 277 S.C. 193, 285 S.E.2d 634 (1981); *State v. Thompson*, 305 S.C. 496, 409 S.E.2d 420 (Ct. App., 1991), hold that the regularity of grand jury proceedings is presumed correct absent clear evidence to the contrary. And that Petitioner was therefore, within his right to request and review the grand jury impaneling documents and supporting materials.

Asst. Solicitor, James E. Hunter, has utilized that presumption of correctness to assist in keeping his criminal acts secret and to make effective an unlawful taking of Petitioner's rights to make contemporaneous objections. Insomuch as, Asst. Solicitor, James E. Hunter, used it to his

benefit, the fact that no one would be checking into the County Grand Jury process and the fact that the County Grand Jury proceedings are not recorded by a court reporter. Therefore, in light of the United States Supreme Court's decision in *Murray v. Carrier, Supra.*, and taking into consideration Asst. Solicitor, James E. Hunter's criminal acts, the responsibility for Petitioner's failure to make timely objections to the illegal grand jury and null indictments, must be imputed to the Respondent ("State").

This Court should also take note of the fact that in *State v. Arthur*, 296 S.C. 495, 374 S.E.2d 291 (1988), the Court held that a waiver of a constitutional and Statutory right requires a showing on the record that a defendant made the waiver knowingly and intelligently, citing *Patton v. United States*, 281 U.S. 276, 50 S.Ct. 253, (1930), as the landmark case. That same standard should be applied here, because under no circumstances, can Asst. Solicitor, James E. Hunter, be allowed to use criminal means to effect a forfeiture of Petitioner's right to make objections.

Here, Petitioner is convicted and sentenced pursuant to a null indictment and an illegal grand jury, made effective by criminal acts committed by Asst. Solicitor, James E. Hunter, in order to keep secret his unlawful procedures. A null indictment by its very nature does not protect Petitioner against double jeopardy and is insufficient to enable the court to pronounce a judgment. Also see S.C. Code Ann. § 17-25-10. Asst. Solicitor, James E. Hunter, has violated nearly every component of the due process notice requirement that's owed to the Petitioner, John Garvin.

Accordingly, and for the reasons shown above, this Court should remand this case back to the lower Court in order to allow Petitioner to enter belated objections to Asst. Solicitor, James E. Hunter's illegal grand jury and null indictment.

**E. S.C. Code Ann. § 17-25-10**

Petitioner would show this Court, that as a result of the criminal violations committed by Asst. Solicitor, James E. Hunter, in this case, the lower trial court was divested of the requisite authority to impose the sentencing of the Petitioner, John Garvin.

S.C. Code Ann. § 17-25-10 provides that: “No person shall be punished for an offense unless duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person.”

South Carolina Law holds that words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction. See *State v. Muldrow*, 348 S.C. 264, 559 S.E.2d 847 (2003). And statutory prescriptions couched in language such as “shall” and “must” are mandatory in application and effect. See e.g., *South Carolina Police Officers Ret. Sys. v. City of Spartanburg*, 301 S.C. 188, 191, 391 S.E.2d 239, 241 (1990); *Starnes v. South Carolina Dept. of Public Safety*, 342 S.C. 216, 221, 535 S.E.2d 655, 667 (Ct. App., 2000). A plain reading of S.C. Code Ann. § 17-25-10, requires that a criminal defendant cannot be sentenced for an offense until after the State has duly and legally convicted the individual. That did not happen in this case.

As established above in subsection-a., Asst. Solicitor, James E. Hunter, did knowingly violated the provisions of S.C. Code Ann. § 14-9-210 by, (1) unlawfully impaneling it’s grand jury outside the jurisdiction of the Court of General Sessions, (2) utilizing an unlawful process for the return of true-bill indictments, and (3) causing false information to be printed and published in Petitioner’s two indictments. Consequently, the grand jury was illegal and it’s indictments null.

As established above in subsection-c., Asst. Solicitor, James E. Hunter, knowingly committed an offense of perjury in violation of S.C. Code Ann. § 16-9-10, by willfully printing false and misleading information in Petitioner’s two County indictments, without a proper finding of probable cause. Additionally, several judicial personnel joined into a criminal conspiracy, in

violation of S.C. Code Ann. § 16-17-410, for purposes of completing a return and publications of Spartanburg County's illegal and void indictment.

As established above in subsection-d., Asst. Solicitor, James E. Hunter's, unlawful indictment process and subsequent criminal acts, resulted in an illegal grand jury, a void indictment, a denial of Petitioner's rights to make objections to the two indictments, and violation of every component of the due process notice requirement owed to Petitioner by this State.

Accordingly, it would be hard to imagine a situation where the State of South Carolina has violated more of a criminal defendant's rights, than in the case found here. Indeed, it would take a novel rule of law, which would allow the State to maintain a conviction and sentence under the circumstances described above. To adopt such a rule of law here would be tantamount to an unrighteous, and perverted judgment.

Based on the above reasons, Petitioner has established that he was not duly and legally convicted, and therefore was sentenced in violation of S.C. Code Ann. § 17-25-10. Accordingly, the sentence in this case should be vacated.

**F. Asst. Solicitor, James E. Hunter, Abused Spartanburg County's Judicial Process with His Criminal Acts That Resulted In An Illegal Grand Jury And A Void Indictment**

Petitioner contends that the Spartanburg County Grand Jury procedures as followed fails to meet the standard of S.C. Const. Art. I, §§ 11, 14 & 22, and S.C. Const. Art. V, § 22. In addition, to the Fifth Amendment and the Fourteenth Amendment of the U.S. Constitution, in that the indictment brought was not an 'indictment of a grand jury' which had been 'found' by the requisite 12 jurors, as is required pursuant to S.C. Code Ann. § 14-7-1540. Inasmuch as, the indictments failed to fully inform Petitioner of the nature and cause of the accusation for the crime of drug trafficking in heroin with a proper finding of probable cause provided by witnesses testimony, pursuant to S.C. Code Ann. § 14-7-1550, to be put on notice of the offense.

The grand jury returned indictments that would deprive Petitioner of the basic protection of which the guarantee of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him.<sup>5</sup>

The United States Supreme Court has shown that it takes seriously, and requires to be enforced rigorously, the Fifth Amendment's command that a defendant to a charge of an 'infamous crime' be tried only on an 'indictment of a grand jury.' Whereas, here, Petitioner states, that he was tried on an indictment drawn by Asst. Solicitor, James E. Hunter, on the grand jury's instruction ('Presentment')<sup>6</sup> that he be charged with drug trafficking in heroin, for the violation of S.C. Code Ann. § 44-53-370(e)(3). The indictment was found, not by the grand jury, but in fact by Asst. Solicitor, James E. Hunter, operating under the grand jury's bare instruction to indict for drug trafficking in heroin.

Even though the Grand Jury Foreman's signature appears on the indictment, this is nothing more than a presumption that the indictment reflects the will of the grand jury, and is judicial conjecture about the hypothetical acts of Spartanburg County Grand Jurors in its fullest rigor. Here, the State cannot produce any grand jury documents that a grand jury was selected, drawn, or summons, in accordance with S.C. Code Ann. §§ 14-7-1540 and 14-9-210. And since a court reporter was not present to record the preceding, the Spartanburg County Grand Jury process is susceptible to abuse. "The Petitioner would state within his motion the reason for seeking said grand jury documents, whereas, he believed that a grand jury was not selected, drawn, or summons," pursuant to S.C. Code Ann. § 14-7-1540. *Ibid.*

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<sup>5</sup> Petitioner has stated that a grand jury was not selected, drawn, or summoned pursuant to S.C. Code Ann. § 14-7-1540.

<sup>6</sup> The 'presentment' voted in this case does not satisfy the Constitutional requirement of a 'presentment or indictment of a grand jury,' lacking as it does the specificity of an adequate charging document.

The Respondent's Counsel (Valerie Garcia-Giovanoli, Asst. Att'y. General) would inform the Court during a PCR Motion hearing on February 21, 2018, that upon her investigation, she does not believe the documents Applicant seeks (impanelment documents including the sex, age, race of grand jury members, minutes of grand jury proceedings, etc.) even exist." (see Pet. Ex. – 1: Appx. pp. 426 – 430); (also see Pet. Ex. – 1: Appx. pp. 410 – 413, Ln. 19 – 25, 1 – 2, 11 – 12, 4 – 8) (February 21, 2018, Motion Hearing Transcript). *Ibid.*

In order to attack the Respondent's presumption that a legally impaneled grand jury was drawn, Petitioner should have access to the grand jury documents and access to the grand jury minutes. If on the basis of those documents and minutes, Petitioner can show a reasonable probability that an abuse of process and a constitutional violation has occurred or that the conviction lacks subject matter jurisdiction. Whereas, the PCR Court should have granted Petitioner's Motion for Summary Judgment to Obtain a Declaratory Judgment, and declaratory relief should have been entered declaring Petitioner's indictment be null and void in violation of his constitutional rights.

**1. Failure to Put Petitioner on Notice of the Nature and the Cause of Accusation**

Petitioner contends that the indictments are unconstitutionally overbroad and vague as the indictments as alleged, for it recites the elements of the statutory offense charged and does not contain any significant factual allegations to enable him to prepare an adequate defense.

An indictment is a critical document in criminal defense preparation that is grounded in constitutional and statutory principles. See S.C. Const. art. I, § 11 ("No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed...."); S.C. Code Ann. § 17-19-10 (2014) ("No person shall be held to answer in any court for an alleged

crime or offense, unless upon indictment by a grand jury....”). As was explained in *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005):

“The indictment is the charge of the state against the defendant, the pleading by which he is informed of the fact, and the nature and scope of the accusation. When that indictment is presented, that accusation made, that pleading filed, the accused has two courses of procedure open to him. He may question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined; or, waiving them, he may put in issue the truth of the accusation, and demand the judgment of his peers on the merits of the charge. If he omits the former, and chooses the latter, he ought not, when defeated on the latter, — when found guilty of the crime charged, — to be permitted to go back to the former, and inquire as to the manner and means by which the charge was presented.”

*Id.* at 102, 610 S.E.2d at 499-500 (citations omitted) (emphasis added).

The guarantee given to an accused in a criminal prosecution, that he is “to be fully informed of the nature and the cause of the accusation.” S.C. Const. Art. I, § 14; also see *State v. Johnston*, 149 S.C. 195, 146 S.E.2d 657 (S.C., 1929). The words, “to be fully informed of the nature and cause of the accusation,” as contained in [South Carolina’s] Constitution, we’re as strong as the language contained in section 13 of Article 1 of the Constitution of 1868,<sup>7</sup> where it was declared that one charged with [a] crime should not be held to answer “until the same is fully, fairly, plainly, substantially and formally described to him.” *Id.* “The indictment must contain the necessary elements of the offense and fully inform the accused of the nature of the accusation against him.” *Id.* An indictment is sufficient if it charges the crime substantially in the language of the common law or statute, or the crime is so plainly stated that the nature of the offense charged may be easily understood. See S.C. Code Ann. § 17-19-20 (1985).

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<sup>7</sup> South Carolina’s Constitution was amended and ratified by the 1971 Act No. 276 (1971 (57) 315) revised and rewrote this article, substituting present §§ 1 to 23 for former §§ 1 to 29. The present provisions of this section are similar to former §§ 18 and 25 of Article I as it existed prior to the 1971 revision. For similar provisions in the Constitution of 1868, see Const. 1868, Art. I, §§ 11, 13.



Here in Petitioner's case the offense charged is not easily understood, as Asst. Solicitor, James E. Hunter filed an indictment that charged the Petitioner as a principal with drug trafficking in heroin. The Spartanburg County Court of General Sessions convicted Petitioner guilty as an accomplice for drug trafficking in heroin, on May 23, 2013. Petitioner did not receive constitutionally adequate notice through trial testimony that he faced accomplice liability for drug trafficking in heroin. And did not learn that he could face accomplice liability for drug trafficking in heroin until the trial court announced its decision convicting him guilty under that theory. The judge's jury charge of "the Hand of One, is the Hand of All" is a fatal variance "that deprives the Petitioner of a fair notice of the charge and creates a difference between the allegations in the indictment and the proof actually introduced at trial." quoting Black's Law Dictionary 1787 (Deluxe 10<sup>th</sup> Ed. 2014). "The indictments must contain the necessary elements of the offense and fully inform the accused of the nature and cause of the accusation against him or her." quoting *State v. Johnson*, 314 S.C. 161, 442 S.E.2d 191 (1994).

Phrasing the indictment in the disjunctive does not provide Petitioner with notice of the nature and the cause of the accusation, since such phrasing leaves Petitioner uncertain as to which of the charged acts is being relied upon as the basis for the accusation against him. "The primary purpose of an indictment [is] to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense." *Evans v. State*, 363 S.C. 495, 508, 611 S.E.2d 510 (2005). As in *State v. Johnston, supra.*, with both the constitutional and statutory provisions as to indictments and being properly put on notice, the inquiry then is, did the indictment in this case charge the crime so substantially in the language of the statute prohibiting the same, or so plainly that the nature of the offense charge therein could be easily understood by a defendant to be put on notice of the nature and cause of the accusation; and did it meet the constitutional



guarantee given to the defendant “to be fully informed of the nature and cause of the accusation.” *Id.* “It is axiomatic that an indictment must include more than the elements of the charged offense.” See *State v. Baker*, 411 S.C. 583, 592, 769 S.E.2d 860 (2015).

The indictments as alleged, also fails to name, to whom Petitioner has knowingly conspired with and/or to whom he has knowingly aided and abetted within the body of the indictments. This should not have been done. For the indictments fails to fully inform the Petitioner of the nature and the cause of the accusation, that concur to ascertain the facts and it’s nature. As South Carolina Constitution Article I, § 14 States that: “any person charged with an offense shall enjoy the right ... to be fully informed of the nature and cause of the accusation.”

Petitioner’s indictments, can not show an agreement by two or more person that committed an unlawful act, coupled with an intent to achieve the agreement’s objective, and action or conduct that furthers the agreement to establish a “conspiracy” or show that Petitioner knowingly assisted or facilitated the commission of a crime, and/or to promote it’s accomplishment to establish that he “aided and abetted” someone in the commission of a crime previous to the finding of the indictment by the grand jury. In this respect the Petitioner is at a considerable disadvantage. As he proceeded to trial and was require to defend himself on the drug trafficking in heroin as a principal, but was convicted under the state’s common law jury charge of the “Hand of One, Hand of all” theory for accomplice liability for “conspiring” and/or “aiding and abetting” some undisclosed person. Therefore, which does not preserve to him his right, as declared by the South Carolina Constitution Article One section 14, to be fully “informed” of the accusation against him.

## **2. Abuse of Process**

In South Carolina’s criminal justice system, “the State has broad discretion as to whom to prosecute,” *Wayte v. United State*, 470 U.S. 598, 607, 105 S.Ct. 1524, 1530 (1985). “[S]o long as

the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision of whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.” *Id.* (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 364, 98 S.Ct. 663, 668, 54 L.Ed.2d 604 reh’g. denied, 435 U.S. 918, 98 S.Ct. 1477 (1978)).

Here in this case, Asst. Solicitor, James E. Hunter, has abused the Judicial Process of the Petitioner with his official lawlessness in the enforcement of South Carolina Statute § 44-53-370(e)(3), by bringing forth an indictment without a proper finding of probable cause or any type of direct/testimony evidence to substantiate the true-billing of that indictment, that he brought against Petitioner Garvin on December 6, 2012, pursuant to S.C. Code Ann. §§ 14-7-1540 and 14-9-210.

An abuse of process claim provides a remedy for one damaged by another’s perversion of a legal procedure for a purpose not intended by the procedure. Petitioner’s complaint for a declaratory judgment turns on whether Asst. Solicitor James E. Hunter, and the Spartanburg County Grand Jurors abused the process of Spartanburg County grand jury proceedings. Thus, violating Petitioner’s constitutional rights to be put on notice and to have proper judicial review. See S.C. Const. Art. I, §§ 14, 22. Whereas, depriving Petitioner of a requested preliminary hearing. Accordingly, Petitioner seeks to have a declaratory judgment to determine the legalities and the constitutionality of Spartanburg County Grand Jury proceeding.

An abuse of process is “the improper ... use of legitimately issued court process to obtain a result that is either unlawful or beyond the process’s of scope.” See “Abuse of Process” Black’s Law Dictionary 12 (Deluxe 10<sup>th</sup> Ed. 2014). “Process,” as used in this context, has been interpreted broadly to include the entire range of procedures incident to the litigation process. *Food Lion, Inc.*

*v. United Food & Commercial Workers Int'l. Union*, 351 S.C. 65, 70, 567 S.E.2d 251, 253 (Ct. App., 2002).

The essential elements of abuse of process are (1.) an ulterior purpose, and (2.) a willful Act in the use of the process that is not proper in the regular conduct of the proceedings. *Pallares v. Seinar*, 407 S.C. 359, 370, 756 S.E.2d 128 (S.C., 2014)(citation omitted). The first element, an “ulterior purpose,” exists if the process is used to secure an objective that is “not legitimate in the use of the process.” *D.R. Horton, Inc. v. Wescott Land Co.*, 398 S.C. 528, 551, 730 S.E.2d 340, 352 (Ct. App., 2012)(citations omitted). Petitioner contends that Asst. Solicitor, James E. Hunter, meets the first elements of abuse of process, because he has perverted Petitioner’s requested preliminary hearing proceedings for the improper ulterior purpose of furthering the objective of his prosecution without having the burden to establish reasonable probable cause to believe that a crime was committed for drug trafficking in heroin.

Asst. Solicitor, James E. Hunter, abused the grand jury process by not presenting evidence that would amount to a proper finding of probable cause. To whereas, he has “use[d] a [criminal] legal process ... against [Petitioner] primarily to accomplish a purpose for which it [was] not designed, is subject to liability for harm caused by the abuse of process.” *Id.* at 75, 567 S.E.2d at 255-56 (quoting Restatement (second) of Torts sec. 682 (1977)). Asst. Solicitor, James E. Hunter collateral objective was the “sole or Paramount reason for acting.” *Id.* at 75, 567 S.E.2d at 256.

Now, as to the second, or “willful act” element, South Carolina Supreme Court has stated that “[s]ome definite act ... not authorized by the process or aimed at an object not legitimate and the use of the process is required.” *Food Lion, Inc.*, 351 S.C. at 71, 567 S.E.2d at 253 (citation omitted). Thus, the element comprises three components: (1.) a “willful” or overt act (2.) “in the

use of the process” (3.) That is improper because it is either (a.) Unauthorized or (b.) aim at an illegitimate collateral objective. *Id.*

Petitioner has indisputably alleged the first element of abuse of process, by stating that Asst. Solicitor, James E. Hunter, has deprived Petitioner of a requested preliminary hearing for the improper ulterior purpose of furthering the objective of his prosecution without having the burden to establish reasonable probable cause to believe that a crime was committed for drug trafficking in heroin.” *Ibid.*; See *Food Lion, Inc.*, 351 S.C. at 72, 567 S.E.2d at 254. (citing *Hainer v. Am. Med. Int'l., Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997) (noting the improper purpose usually is “to obtain a collateral advantage [ ] not properly involved in the proceedings itself”)(quoting *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967)). As to the second element, Petitioner contends Asst. Solicitor, James E. Hunter committed the following “willful acts”:

- a. Did knowingly misrepresent to the courts that a grand jury was selected, drawn, and summons in accordance with S.C. Code Ann. §§ 14-7-1540 and 14-9-210 for collateral purposes ...
- b. Did knowingly employ the use of unlawful grand jury procedures for the return and publication of Petitioner, John Garvin’s true-billed indictments for collateral purposes ...
- c. Did knowingly presented no substantial or rationally persuasive evidence, pursuant to S.C. Code Ann. § 14-7-1550, on which to base the indictments for collateral purposes ...
- d. Did knowingly file indictments that was returned solely as a result of misleading and the improper manner in which no such evidence was ever presented to the Grand Jury for collateral purposes ...
- e. Did knowingly fail to bring forth an indictment that would put Petitioner on notice of the nature and cause of the accusation for the crime of drug trafficking in heroin that was charged for collateral purposes ...
- f. Did knowingly use the Grand Jury process that is not proper under the regular conduct of the proceedings to gain a collateral objective for collateral purposes ...

- g. Did knowingly conspired with other judicial officials to bring forth two true-billed indictments for collateral purposes ...

These “willful acts” were taken through which the process was misapplied and abused. Here, Petitioner has alleged that Asst. Solicitor, James E. Hunter has engaged in “willful acts” in the use of the process not proper under the regular conduct of the proceedings. Whereas, a collateral objective has been sought. That shows not only that the indictments were brought for an ulterior purpose, i.e., for collateral reasons, but that “willful acts” were taken through which the process was misapplied and abused. See *Huggins*, 249 S.C. at 214, 153 S.E.2d at 697 (“The abuse, the perversion, of the process ... is the foundation of the cause of action...”). *Kircher v. Greene*, 294 Ill. App.3d 672, 681-82, 691 N.E.2d 107, 116-17 (1998)(“The mere use of the legal process ... does not constitute abuse of process. `Some act must be alleged whereby there has been a misuse or perversion of the process of the Court.’”)(citations omitted).

### **3. Malicious Prosecution**

A fraudulent investigation and an unlawful seizure by arrest, detention, prosecution, conviction and incarceration by Asst. Solicitor, James E. Hunter, acting alone and together and in concert, with others, violated the procedural and substantive rights guaranteed to Petitioner by the Fourth and Fourteenth Amendments to the United States Constitution and to rights secured under the laws and Constitution of South Carolina Article One sections 3, 10, and 22.

Petitioner states that Asst. Solicitor, James E. Hunter, intentionally restrained and instigated the restraint of Petitioner against his will for 10 years and continues that restraint within the custody of South Carolina Department of Corrections at their Ridgeland Correctional Institution, without probable cause, reasonable suspicion, or lawful authority, and/or failed to intercede in the unlawful treatment of Petitioner as previously described and is malicious prosecution.

“[T]o maintain an action for malicious prosecution, a [movant] must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in [the] [movant’s] favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” See *Pallares v. Seinar*, 407 S.C. 359, 366, 756 S.E.2d 128, 131 (2014) (citing *Law v. S.C. Dep’t. Corr.*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006)).

For the *First* and *Second* elements, the record would show that, On December 6, 2012, immediately after being charged with drug trafficking in heroin for the violation of S.C. Code Ann. § 44-53-370(e)(3) and denying Petitioner of a requested preliminary hearing. Asst. Solicitor, James E. Hunter, acting alone and together and in concert, with others, maliciously, and without reasonable grounds therefor, obtained a County Grand Jury Indictment No.: 2012-GS-42-5978. (See Pet. Ex. – 1: Appx. pp. 1040 – 1041). Thus, instigating the filing and prosecution of a State criminal action in the Spartanburg County Court of General Sessions.

Also on December 6, 2012, Asst. Solicitor, James E. Hunter, instituted another indictment action against Petitioner in the Spartanburg County Court of General Sessions, on Indictment No.: 2012-GS-42-5979, (see Pet. Ex. – 1: Appx. pp. 1043 – 1044), based on the same claim. Which resulted in the prosecution of Petitioner as described above, and/or failed to prevent the detention, prosecution and incarceration of Petitioner. Whereas, Petitioner was never served with notice of those two indictments.

For the *Third* element, Petitioner states that, On October 10, 2013, in Spartanburg County Court of General Sessions, *State v. John Garvin*, Case No.: 2012-GS-42-5978, Asst. Solicitor,

James E. Hunter, dismissed<sup>8</sup> Indictment No.: 2012-GS-42-5978. (See Pet. Ex. – 1: Appx. pp. 1040 – 1041). After Petitioner made a Pro-se Motion for a Speedy Trial that was filed on May 31, 2013, to bring that case to trial, but was dismissed due to video evidence that proved Petitioner’s innocence of the alleged crime. The South Carolina Supreme Court “held a prosecutor’s dismissal of a charge is sufficient if the accused can demonstrate the charge was dismissed “for reasons which imply or are consistent with innocence.”” quoting *McKenny v. Jack Eckerd Co.*, 304 S.C. 21, 22, 402 S.E.2d 887, 888 (1991).

For the *Fourth* element, the Petitioner states that, in instituting the two indictments, Asst. Solicitor, James E. Hunter, acted maliciously without probable cause, and with intent to injure Petitioner, in that (1) he has deprived Petitioner of his October 25, 2012, requested preliminary hearing proceedings for the improper ulterior purpose of furthering the objective of his prosecution without having the burden to establish reasonable grounds for a probable cause finding to believe that a crime was committed for drug trafficking in heroin. (2) he has taken a single investigation and turned it into two separate indictments for the same crime. (3) Did knowingly violate the provisions of S.C. Code Ann. § 14-9-210 by (a) unlawfully impaneling a grand jury outside the jurisdiction of the Court of General Sessions; (b) utilizing an unlawful process for the return of two fraudulent true-billed indictments; (c) knowingly committed an offense of perjury in violation of S.C. Code Ann. § 16-9-10, by willfully printing false and misleading information within Petitioner’s two County indictments without a proper finding of probable cause; and (d) did knowingly conspire with several judicial personnel in violation of S.C. Code Ann. § 16-17-410,

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<sup>8</sup> *McKinney v. Jack Eckerd Co.*, 304 S.C. 21, 22, 402 S.E.2d 887 (1991) ( In *McKinney*, the narrow issue before this Court was whether a prosecutor’s dismissal of a criminal charge – as opposed to a judicial dismissal – was sufficient to prove a criminal proceeding terminated in the [movant’s] favor in order for the [movant] to maintain an action for malicious prosecution.)



for the purpose of completing a return and publication of Spartanburg County's illegal and void indictment. Whereas, Petitioner was never served with notice of those two indictments.

Here, in this case, on December 6, 2012, with the use of two falsified arrest warrants and the denial of Petitioner's requested preliminary hearing on October 25, 2012, Asst. Solicitor, James E. Hunter, maliciously accused Petitioner, without probable cause, of the below-mentioned crime that was presented before the Grand Jury of Spartanburg County Court of General Sessions, and as a result the alleged grand jury returned two indictments as followed:

**The First Indictment:** *The State v. John Garvin, 2012-GS-42-5978*

At a Court of General Sessions on Dec. 6, 2012, the Grand Jury of Spartanburg County present upon their oath:

**TRAFFICKING IN HEROIN**

That John Garvin did in Spartanburg County on or about July 7, 2012, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (4) four grams of Heroin, schedule I controlled substance, in violation of § 44-53-370, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

(See Pet. Ex. – 1: Appx. pp. 1040 – 1041).

**The Second Indictment:** *The State v. John Dwayne Garvin, 2012-GS-42-5979*

At a Court of General Sessions on Dec. 6, 2012, the Grand Jury of Spartanburg County present upon their oath:

**TRAFFICKING IN HEROIN**

That John Dwayne Garvin did in Spartanburg County on or about July 17, 2012, knowingly sell, manufacture, Cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (14) fourteen grams of

Heroin, schedule I controlled substance, in violation of § 44-53-370, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

(See Pet. Ex. – 1: Appx. pp. 1043 – 1044).

Petitioner was put on trial and convicted on the second indictment (Indictment No.: 2012-GS-42-5979), in this matter. Insomuch as, Asst. Solicitor, James E. Hunter, did submit to the courts a fabricated document (see Pet. Ex. – 1: Appx. p. 1100) and the perjured testimony of SLED Agent, Ashley Asbill and ATF Special Agent, David Pait, in the trial against Petitioner, testifying with the sole intent to prevail upon the courts for the appearance of presenting and establishing the trustworthiness of an alleged confession statement that was allegedly made by the Petitioner to be within the legal standard of *Jackson v. Denno, Supra.*, and *Miranda v. Arizona, Supra.*, then was placed into evidence after being redacted, with no objection from Petitioner's Court-Appointed Attorney, Scott D. Robinson.

When in truth and in fact, as Asst. Solicitor, James E. Hunter, very well knew, the alleged confession was the fruit of an arrest that was unsupported by probable cause and evidence of an opportunity to commit the crime charged was insufficient in order to establish the *corpus delicti* for drug trafficking. Asst. Solicitor, James E. Hunter, did not provide any facts that corroborate facts contained in the confession; any facts that establish the crime which corroborate facts contained in the confession; or facts under which the confession was made that show that the confession is trustworthy or reliable, taken together with the statement, that allow a reasonable inference that the crime of drug trafficking in heroin was committed. The details of Petitioner's alleged confession was not corroborated by SLED Agent, Ashley Asbill and ATF Special Agent, David Pait's testimony during Petitioner's *Jackson-Denno* hearing and trial.

The testimony of SLED Agent, Asbill and ATF Special Agent, Pait does not state or corroborate that Petitioner Garvin knew of or was even involved with the drug transaction. Asst. Solicitor, James E. Hunter, did not prove or corroborated that Petitioner actively participated in the underlying drug trafficking crime with advanced knowledge to provide sufficient independent evidence to support the trustworthiness of Petitioner's alleged confession to SLED Agent, Asbill and ATF Special Agent, Pait. The lack of independent evidence, taken together with the unincorporated alleged confession, does not present a reasonable inference that the crime of drug trafficking was committed by Petitioner Garvin.

For the *Fifth* element of malicious prosecution is the institution of judicial proceedings without probable cause against the Petitioner. "South Carolina has long embraced the rule that a true-bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution." quoting *Law*, 368 S.C. at 436, 629 S.E.2d at 649. The record will show that Asst. Solicitor, James E. Hunter, on May 21, 2013, stated during Petitioner's trial that his indictments was not a direct indictment. But that he based probable cause for the indictments on the arrest warrants. (See Pet. Ex. – 1: Appx. p. 11, Ln. 22-24). Petitioner states that his indictments were not presented with a witness or evidence to establish a factual finding of probable cause as is required pursuant to S.C. Code Ann. § 14-7-1550. The facts here in this case do not suppose a finding that Asst. Solicitor, James E. Hunter, had probable cause to pursue criminal charges against the Petitioner, John Garvin.

For the *Sixth* element of Asst. Solicitor, James E. Hunter's malicious prosecution of the Petitioner that had a resulting injury or damage to him. The record will show that Petitioner has been convicted and sentenced to 25 years and fined \$200,00.00. (see Pet. Ex. – 1: Appx. p. 299).

The record reveals that Asst. Solicitor, James E. Hunter, presented indictments before the Spartanburg County Grand Jury based upon the Petitioner's arrest warrants to establish a finding of probable cause to true-bill the two indictments. The two arrest warrants affidavit's submitted to the courts by Spartanburg County Sheriff's Officer, Ken Hancock, deliberately fabricated the statement within the affidavit of arrest warrant numbers: N-158303 and N-158322, with reckless disregard for the truth. In addition, the weight of evidence was also fabricated in warrant number: N-158303 with reckless disregard for the truth within both arrest warrants that was presented to two different Magistrate Judges. (See Pet. Ex. – 1: Appx. pp. 1122, 1125). The affidavits contained no information by which the Magistrate Judges could discern the importance for the arrest of Petitioner, John Garvin, or any type of investigation that occurred to identify John Garvin as a suspect to be charged as a principal for drug trafficking in heroin. Officer Hancock's false statement identifying Petitioner Garvin as a principal for drug trafficking in heroin was materially false and was made in reckless disregard of the truth. The affidavit's did not provide sufficiently reliable information for the issuing Judges to reasonably infer that the investigating officer obtained his information through a reliable source. Officer Hancock's affidavits contain no information to connect Petitioner Garvin to the crime of drug trafficking in heroin other than the bold statement that **“WARRANT BASED ON POLICE INVESTIGATION.”** (see Pet. Ex. – 1: Appx. pp. 1122, 1125). Officer Hancock's arrest warrant affidavits do not directly or indirectly, provide any information by which a Judge could discern how or why Petitioner Garvin even became a suspect to arrest or be indicted for drug trafficking in heroin. Asst. Solicitor, James E. Hunter, abuse of process and malicious prosecution as described above were motivated by an evil motive and intent, and involved a reckless and callous indifference to Petitioner's State and Federally protected rights, thus, entitling him to habeas corpus relief.

#### **4. Ineffective Assistance of Counsel**

There is no requirement that every defendant must get a perfect trial, but every defendant is entitled to due process, effective assistance of counsel, and a fair trial. See *Grove v. Emison*, 507 U.S. 25, 28, 113 S.Ct. 1075 (1993). Petitioner's trial was plagued by fatal flaws. His representation did not rise to the level of minimal standards required of counsel by the United States Constitution. The fundamental deprivation of Petitioner's constitutional right to effective assistance of counsel renders Petitioner's conviction and sentence voidable.

Here, Counsel Robinson's failure to challenge the probable cause finding of Petitioner's arrest warrants and his failure move to quash the indictments and to challenge the suborn testimony of the State's witnesses and the purported evidence presented by the State, (the inculpatory confession statement, see Pet. Ex. – 1: Appx. p. 1100), has constructively denied Petitioner's effective assistance of counsel and can no longer be trusted. Petitioner, John Garvin, had a due process right to have his trial jury hear all exculpatory evidence, (see Pet. Ex. – 1: Appx. pp. 1097 – 1098), regarding the State's agents before they rendered verdicts. Based on the withheld exculpatory evidence by Petitioner's trial counsel regarding alleged additional statements made by Jonathan Perez or Jonathan Garvin, (see Pet. Ex. – 1: Appx. pp. 1097 – 1098), it cannot be said with any confidence that justice was done. As such, the Petitioner continues to search for that which he has sought for more than ten years; a chance for a fair trial where a jury will be informed of all the evidence relevant to a determination of criminal culpability.

#### **5. Indictments Carried Out to Their Authorized Conclusion**

Even though the indictment no.: 2012-GS-42-5879 was carried to its authorized conclusion. Petitioner contends that because the indictment was obtained by Asst. Solicitor, James E. Hunter, for the alleged crime of drug trafficking in heroin, and that Petitioner was taken to trial

and illegally convicted and sentenced. That this should not be interpreted to mean that an abuse of process did not arise, where the process is carried out to its authorized conclusion. Clearly, the essence of a claim of abuse of process centers on events occurring outside of the process. The waiving of Petitioner preliminary hearing by Asst. Solicitor, James E. Hunter, on October 25, 2012, was outside of the grand jury's process and was done for collateral purposes.

The existence of probable cause for the drug trafficking indictments are in dispute. Nonetheless, there is clearly evidence in the record that shows Asst. Solicitor, James E. Hunter, initiated the indictments into Petitioner Garvin with the intent of perverting and denying Petitioner of a requested preliminary hearing proceedings for the improper ulterior purpose of furthering the objective of his prosecution without having the burden to establish reasonable grounds for a probable cause finding to believe that a crime was committed for drug trafficking in heroin. The "willful act" element of the abuse of process [claim] has been interpreted by [South Carolina] Court[']s to consist of three different components: (1.) an act that is either willful or overt; (2.) in the use of the process; (3.) that is ultimately reprehensible because it is either (a.) Unauthorized or (b.) Aimed at an illegitimate collateral objective. The evidence before this court is sufficient to create a jury question as to both the ulterior purpose element and all three aspects comprising the willful act element.

## II.

**THE DECISION OF THE FOURTH CIRCUIT COURT OF APPEALS MUST BE REVERSED, BECAUSE THE COURT ERRONEOUSLY APPLIED *SLACK v. McDANIEL*, SUPRA., TO CONTINUE THE DISTRICT COURT'S DENIAL OF PETITIONER'S HABEAS CORPUS ACTION SEEKING DECLARATORY RELIEF IN A CASE IN WHICH THERE HAS BEEN PRESENTED A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT THAT WAS MADE BEFORE THE DISTRICT COURT.**

Petitioner Garvin filed a pro-se petition for writ of habeas corpus in the Federal District Court of South Carolina under 28 U.S.C. § 2254(b)(1)(B)(ii). Because the State Court denied his

PCR application that sought post-conviction relief and declaratory relief. (See Appx. pp. \_\_\_\_).

Insomuch as, the South Carolina Supreme Court decline to entertain Petitioner's complaint for declaratory judgment to determine the legality and constitutionality of a County grand jury proceedings, the question before the Federal District Court was the same that was presented to the South Carolina Supreme Court and that is being presented before this Court. Due to circumstances that exist to render such process ineffective to protect the rights of the Petitioner within the meaning of 28 U.S.C. § 2254(b)(1)(B)(ii). The Federal District Court concluded that Petitioner's Ground Five issue failed to state a cognizable claim, (see Appx. p. 14), and that his motion for a declaratory judgment essentially restated Ground Five from his amended petition. Since the magistrate judge recommended dismissing Ground Five, the magistrate judge likewise recommended denying Garvin's motion. Garvin objects by reasserting that Ground Five is a cognizable claim. ECF No. 87 at 35. Garvin does not actually dispute that his motion for declaratory judgment, like Ground Five, is premised on arguing that the grand jury lacked subject matter jurisdiction based on alleged errors in the State Court process. See also ECF No. 63-3 ("Petitioner contends that his declaratory judgment motion is based solely on the fact that his two true-billed indictments are not sufficient to satisfy South Carolina's statutory required mode of procedure laws ...."). Since the Court similarly finds that Ground Five is not a cognizable claim in this habeas proceeding, the Court adopts the magistrate judge's recommendation and denies Garvin's motion. (See Appx. p. 24). Thus, denying Petitioner a certificate of appealability (COA).

Petitioner then sought to appeal to the Fourth Circuit. The Fourth Circuit denied Petitioner for a COA in a one page Order. (See Appx. pp. \_\_\_\_)(Order denying a COA because Petitioner Garvin "has not made a 'substantial showing of the denial of a constitutional right'" (quoting *Slack*



v. *McDaniel*, 529 U.S. 473, 483, 120 S.Ct. 1595 (2000) (quoting 28 U.S.C. § 2253(c)(2))).

Petitioner, now petitions for review in this Court.

A habeas petitioner may not appeal the denial of his habeas petition unless the District Court or Court of Appeals “issues a certificate of appealability.” 28 U.S.C. § 2253(c)(1). See *Gonzalez v. Thaler*, 565 U.S. 134, 143, n.5, 132 S.Ct. 641 (2012). Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), a COA “may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right.” See 28 U.S.C. § 2253(c)(2). To make that showing, a habeas petitioner must demonstrate “that reasonable jurists could debate whether ... the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack*, 529 U.S. at 484, 120 S.Ct. 1595 (internal quotation marks omitted). AEDPA does not “require petitioner[s] to prove, before the issuance of a COA, that some jurists would Grant the petition for habeas corpus.” *Miller-El v. Cockrell*, 537 U.S. 322, 338, 123 S.Ct. 1029 (2003). Rather, “[a]t the COA stage, the only question is whether” the “claim is reasonably debatable.” *Buck v. Davis*, 580 U.S. 100, 115-116, 137 S.Ct. 759, 773, 774 (2017).

In this case, the issue confronting the Fourth Circuit is whether reasonable jurists could debate that the Federal District Court’s disposition of Petitioner Garvin’s habeas petition. That question, in turn, depends on whether reasonable jurists could argue that did the Petitioner demonstrate an independent basis of federal jurisdiction and an actual case or active controversy within his Ground Five issue that was presented within his habeas corpus petition seeking a declaratory judgment to determine the legality and constitutionality of a County grand jury proceedings is cognizable for habeas review pursuant to 28 U.S.C. § 2201 and Article III of the United States Constitution.

**A. The Judgment of the District Court Must Be Reversed, Because This Is A Proper Case For The Grant of Declaratory Relief and Petitioner Is A Proper Party for Such Relief.**

“The District Court [has] authority to issue a declaratory judgment under 28 U.S.C. § 2201(a).” see *Calderon v. Ashmus*, 523 U.S. 740, 744, 118 S.Ct. 1694, 1697 (1998) (citation omitted). “[A] declaratory judgment [Petitioner] need only demonstrate an independent basis of federal jurisdiction and an actual case or controversy. *Id.* The District Court has federal question jurisdiction under 28 U.S.C. § 1331 because [Petitioner’s] case challenge[s]” the legality and constitutionality of Spartanburg County’s Grand jury process. Thus, making the case-or-controversy requirement was satisfied, because Spartanburg County Asst. Solicitor, James E. Hunter abused the County’s grand jury process to produce two fraudulent true-billed indictments without a proper finding of probable cause by a witness, as is required pursuant to South Carolina’s statutory laws for issuing true-billed indictments. *Id.*

**1. This Is A Proper Case For The Grant of Declaratory Relief.**

This is a “classic case for declaratory relief.” *Lake Carriers Association v. MacMullan*, 406 U.S. 498, 514, 92 S.Ct. 1749 (1972) (quoting Justice Powell’s dissenting opinion). The district court’s Order does not even assert that Petitioner’s Ground Five issue lacks the “rudiments of an active controversy between the parties” as a basis for its decision. An active and lively controversy currently exists between Petitioner Garvin and the Respondents. Petitioner has been subjected to an actual application of South Carolina’s drug trafficking statute on two occasions, one on July 12, 2012, and the second on December 6, 2012, without a proper finding of probable cause. (See Appx. pp. \_\_\_\_). But instead, the District Court would issue an Order adopting the magistrate judge’s recommendation and DENIED Petitioner Garvin’s motion for declaratory relief, all while

GRANTING the Respondent's motion for summary judgment, (see Appx. pp. \_\_\_\_), without discussing the facts or issues, but would simply just brush them aside.

The District Court's reputation with the Petitioner is simply procedurally dismissing, ignoring, downplaying and finding numerous excuses to deprive Petitioner of vindicating his constitutional rights within the District Court of South Carolina.<sup>9</sup> "The practical consequences that inure from the [District Court's Order] also undercut substantially the negative inference upon which the [District Court Order] relies on. [This Court has] consistently warned that Courts should resist an interpretation of AEDPA that would produce trouble some results and create procedural anomalies." quoting *Jones v. Hendrix*, 599 U.S. 465, 515, 143 S.Ct. 1857, 1890 (2023) (citation and internal quotation marks omitted).

The District Court's reasoning for denying Petitioner's motion for a declaratory judgment was incorrect. An active and lively controversy currently exists between the Petitioner and the Respondents. Petitioner Garvin has been subjected to prosecutorial misconduct and a malicious prosecution that was initiated by Asst. Solicitor, James E. Hunter, who has abused Spartanburg County's grand jury process by violating South Carolina's statutory laws for instituting a grand jury pursuant to S.C. Code Ann. §§ 14-7-1520, 14-7-1530, 14-7-1540, 14-7-1550, 14-7-1920, 14-7-1930, 14-9-170, 14-9-210, 14-7-220, 17-19-10, 17-19-20, 17-23-160, and 22-5-320. This Court has stated in *Lake Carriers Association, supra.*, "that in and of itself [Petitioner's] attack on the validity of the law [is] a live controversy, and not an attempt to obtain an advisory opinion." 406 U.S. at 507, 92 S.Ct. 1749. Furthermore, the District Court's Order granting the Respondent's motion for summary judgment will continue to insist on the strict enforcement of Petitioner's illegal conviction and sentence.

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<sup>9</sup> See (1) *Garvin v. Wright, et al.*, Case No. 2:13-cv-00442-DCN-BHH; (2) *Garvin v. Spartanburg County*, Case No. 7:13-cv-00454-DCN-BHH; and (3) *Garvin v. William*, Case No. 2:18-cv-00409-DCN-MGB.

A declaration of rights would be beneficial to the Petitioner. Whereas, A substantial question is presented on the merits of the controversy as to the extent that the Petitioner must tolerate the State's violation of his Fourteenth Amendment rights to due process, which in turn also violates title 18 U.S.C. § 1001 and 34 U.S.C. § 12601(a). Withal that being said, there are no remedy available to Petitioner in the State of South Carolina to vindicate the violation of his constitutional rights.

## **2. Petitioner Is A Proper Party for Declaratory Relief.**

The requirements of Article III standing are as followed:

“First, the [Petitioner] must have suffered an ‘injury in fact an invasion of a legally protect interest which is (a) concrete and particularized, and (b) ‘actual or imminent, not “conjectural or hypothetical.” Second, there must be a causal connection between the injury and the conduct complained of - the injury has to be ‘fairly ... trace[able] to the challenged action of the [Respondent’s], and not ... th[e] result [of] the independent action of some third party not before the Court.’ Third, it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 – 561, 112 S.Ct. 2130 (1992) (footnote and citations omitted).

A party invoking the Court's authority has a sufficient stake to permit it to appeal when it has “‘suffered an injury in fact’ that is caused by ‘the conduct complained of and that ‘will be redressed by a favorable decision.’” *Camreta v. Greene*, 563 U.S. 692, 701, 131 S.Ct. 2020, 2028 (2011) (quoting *Lujan, supra.*, 504 U.S. at 560 – 61)). “Article III of the Constitution grants this Court authority to adjudicate legal disputes only in the context of cases or controversies. To enforce this limitation, [this Court has] demand[ed] that litigants demonstrate a personal stake in the suit. The party invoking the Court's authority has such a stake when three conditions are satisfied: The petitioner must show that he has suffered an injury in fact” that is caused by the conduct complained of and that will be redressed by a favorable decision. [Insomuch as,] [t]he opposing party also must have an ongoing interest in the dispute, so that the case features that concrete

adverseness which sharpens the presentation of issues. To ensure, a case remains fit for federal – court adjudication, the parties must have the necessary stake not only at the outset of litigation, but throughout its course.” See *Camreta*, 563 U.S. at 701, 131 S.Ct. at 2028 (citation and internal quotation marks omitted).

“[O]ne of the controlling elements in the definition of a case or controversy under Article III” is standing. The requisite elements of Article III standing are well established: “A [Petitioner] must allege personal injury fairly traceable to the [Respondent’s] allegedly unlawful conduct and likely to be redressed by the requested relief.” *Hein v. Freedom From Religion Foundation, Inc.*, 551 U.S. 587, 127 S.Ct. 2553, 2562 (2007). That element of an active controversy also brings into question, whether the Petitioner is a proper party. In the present case, the Petitioner represent his interests in this matter, and did suffered just such an injury. “[Petitioner] has been indicted, and was actually [] prosecuted [, convicted and sentenced] by [the State of South Carolina] for violation of it’s [drug trafficking statute] at the time [his habeas corpus petition] was filed. [Petitioner] thus[,] has an acute, live controversy with the State and it’s [Asst. Solicitor, James E. Hunter].” Quoting and citing *Younger v. Harris*, 401 U.S. 37, 41, 91 S.Ct. 746, 749 (1971).

Since the lower court did not reach the merits of Petitioner’s Ground Five issue for declaratory relief, it would be an appropriate disposition to remand for a finding of whether or not Asst. Solicitor, James E. Hunter, did knowingly employed the use of unlawful procedures that abuse the County grand jury process for the return and publication of Petitioner’s two true-billed indictments as to deprive him of his Fourteenth Amendment rights to due process.<sup>10</sup> Petitioner

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<sup>10</sup> The District Court would not be adrift with respect to the appropriate standard to apply to reach its determination of whether or not declaratory relief is proper in the context of the mode of procedure for county grand jury proceedings of this prosecution action. This Court has already established a number of devices to prevent abuse of the lower Court’s equitable powers; for instance: abstention, case or controversy, imminence of prosecution or standing. What must be borne in mind is that the applicable principles are judicially created and, therefore, are completely subject to judicial control. They may be expanded or restructured to meet the exigencies of each case so that a proper balance is maintained between federal and State interests.

states that under *Younger*, supra., he is an appropriate party with a “genuine controversy.” Asst. Solicitor, James E. Hunter’s misconduct has an adversely impact in a real and concrete way upon Petitioner Garvin’s Fourteenth Amendment rights to due process was violated. The continued enforcement of Petitioner’s illegal conviction and sentence that deprives him of his liberty, otherwise available to the public at large. Insomuch as, making Petitioner a “proper party” for declaratory relief.

**B. *Slack v. McDaniel, Supra.*, is Inapplicable to this Case, Because Petitioner Has Made A Substantial Showing of The Denial of A Constitutional Right for Which Declaratory Relief May Be Granted.**

Petitioner states that he has made a “substantial showing” under the standard set forth in *Slack v. McDaniel, Supra.*, that “reasonable jurists could debate whether ... the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” 529 U.S. at 484, 120 S.Ct. 1595 (internal quotation marks omitted). The Fourth Circuit has erred by “failing to limit its examination [of Petitioner’s case] to a threshold inquiry[,] [whereas,] [t]he only issue before [that] court was the threshold jurisdictional question [of] whether to issue a COA. [Now,] [w]hen a court of appeals departs from the limited COA inquiry, without even [making a] full briefing or oral argument, and instead opines on the merits of an appeal, it is in essence deciding an appeal without jurisdiction.” quoting and citing *Johnson v. Vandergriff*, 600 U.S. \_\_\_, 143 S.Ct. 2551, 2553 – 54 (2023).

The Fourth Circuit has completely ignored Petitioner’s pleadings, (see Appx. \_\_\_, pp. \_\_\_), that has made a substantial showing that there has been abuse of Petitioner’s grand jury process that committed extrinsic fraud upon the court to produce two fraudulent true-billed indictments did utilize a fraudulent statement during Petitioner’s trial, that was plead within his Emergency Motion for Stay Pending Appeal, for Injunctive Relief pending Appeal and within his Motion to


Remand Case back to the District Court. (See Pet. Appx. – C, pp. 80a - 85a, 110a - 114a). Those motions are merit determination matter and a COA ruling is not the occasion for a ruling on the merit of Petitioner’s Motions. *Id.*

Contrary to the Fourth Circuit’s view, *Slack v. McDaniel, Supra.*, is not applicable to this case. Because Petitioner has made a substantial showing of “extraordinary circumstances where the danger of Irreparable loss is both great and immediate” and when bad faith has been enforced by the prosecution, that is cognizable for declaratory relief, pursuant to Article III of the United States Constitution. *Slack* is not concerned with the question of whether declaratory relief is appropriate against a prosecution’s abuse of a County Grand Jury Process that lacks personal and subject matter jurisdiction, is a showing that reasonable jurists could debate or that the issues presented are adequate to deserve encouragement to proceed further.

#### CONCLUSION

This Court should grant Petitioner’s petition for writ of certiorari to vacate and remand to the Court of Appeals with instructions to Remand to the District Court to consider Petitioner Garvin’s Ground Five for Declaratory Relief.<sup>11</sup>

**RESPECTFULLY SUBMITTED** this 30<sup>th</sup> day of August, 2024.

  
\_\_\_\_\_  
**John Garvin, # 355509, Pro-se.**  
**Ridgeland Correctional Institution**  
**P.O. Box # 2036**  
**Ridgeland, S.C. 29936**

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<sup>11</sup> In Petitioner’s habeas petition, he raised grand jury lacks subject matter jurisdiction claim which related to the abuse of the Spartanburg County Grand Jury process. See Pet. Appx. – D, pp. 498a - 539a, 670a - 688a. This claim is not procedurally defaulted and is fully exhausted. Because the South Carolina Supreme Court declined to entertain Petitioner’s Complaint for Declaratory Judgment within that Court’s Original Jurisdiction. However, the District Court has ruled this issue is not cognizable.



No. 23A1152

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IN THE  
SUPREME COURT OF THE UNITED STATES

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John Garvin – *Petitioner*,

v.

Levern Cohen, Warden – *Respondent*.

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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CERTIFICATE OF SERVICE

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I, John Garvin, certify that I have serve an **APPLICATION TO FILE BRIEF IN EXCESS OF PAGE LIMITATION AND A PETITION FOR WRIT OF CERTIORARI**, on the Court by depositing a copy of it in the United States Postal Mailbox to be delivered via United States First Class Postage Priority Two-day Mail on August 30, 2024, addressed to the Hon. Scott S. Harris, Clerk, 1 First Street, NE, Washington, D.C., 20543-0001; and also on September 3, 2024, to be delivered to Ms. Melody J. Brown, Sr. Asst. Deputy Att’y. General, by via e-mail to mbrown@scag.gov

**DATED: August 30, 2024**



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