No. _____

In The
Supreme Court of the United States

TRAVIS HAWKINS,

Petitioner,

v.

JULIE L. JONES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

DAVID W. COLLINS, ESQUIRE
COLLINS LAW FIRM
Florida Bar # 475289
310 North Jefferson Street
Monticello, Florida 32344
Collins.FL.Law@gmail.com
(850) 997-8111

Counsel of Record for Petitioner Travis Hawkins

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

I. WHETHER AN OBJECTION IS REQUIRED TO PRESERVE APPELLATE REVIEW FOR AN ALLEGED PUBLIC TRIAL VIOLATION.

II. WHETHER A FEDERAL COURT CAN RELY UPON A STATE COURT DECISION, WHICH DENIED RELIEF WITH THE ABSENCE OF AN OPINION, TO DENY A FEDERAL HABEAS PETITIONER RELIEF.

TABLE OF CONTENTS

APPENDIX

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Petitioner, Travis Hawkins, respectfully asks that a writ of certiorari issue to review the judgment and opinion of the Eleventh Circuit Court of Appeal of the United States filed on September 19, 2018 and November 6, 2018. Said opinion upheld/affirmed the District Court of the Northern District of Florida's opinion adopting the Magistrate's report denying the Petitioner relief.

OPINION BELOW

The opinion of the Eleventh Circuit Court of Appeal was unpublished and is attached and included in the appendix.

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. §1254(1). The decision of the Eleventh Circuit Court of Appeal for which the petitioner seeks review was issued on September 19, 2018 and November 6, 2018 denying Petitioner's timely petition. This petition is filed within 90 days under Rules 13.1 and 29.2 of this court.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment Six provides, in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and *public trial*. . . . (Emphasis added)

United States Constitution, Amendment Fourteen provides, in relevant part:

No state . . . shall deprive any person of life, liberty or property, without *due process of law*. . . . (Emphasis added)

STATEMENT OF THE CASE

Petitioner was convicted by jury of sexual battery in Case No. 2012-CF-4045 in Leon County Circuit Court for the Second Circuit of Florida. The Petitioner appealed raising the issue that he did not receive a public trial as guaranteed by the Sixth Amendment to the Constitution because the courtroom was closed illegally when the alleged victim testified.

On December 11, 2014, the Florida First District Court of Appeal (1st DCA) affirmed the judgement per curiam without opinion. *Hawkins v. State*, 152 So.3d 568 (Fla. 1st DCA, 2014).

Thereafter, Petitioner filed a timely petition for a Writ of Habeas Corpus in the United States District Court for the Northern District of Florida, making the same Federal constitutional argument of illegal courtroom closure that violated his right to a public trial.

Said District Court adopted the Magistrate's report and denied the Petitioner relief and denied issuance of a certificate of appealability. (See App. pp.5, 6) Thereafter, Petitioner sought a certificate of appealability from the Eleventh Circuit Court of Appeal of the United States and was denied such. (See App. p.3)

REASONS FOR GRANTING THE PETITION

This case presents an important issue of the erosion of the right a citizen has to a public trial and this Court's division on whether an objection to such is required for appellate review. Further, and equally important, this case presents the issue of whether a Federal Court can rely upon a per curium affirmance, issued without an opinion, to deny a federal habeas corpus petitioner on the basis that said appellate court's opinion denying such based upon independent and adequate state procedural grounds and/or the merits (or lack thereof) of the case.

This Court is asked in this petition to issue a writ of certiorari to the Eleventh Circuit Court of Appeal of the United States that answers the following questions/ issues:

I. Whether an objection is required to preserve appellate review when a violation of the right to a public trial is alleged.

II. Whether a Federal Court can rely upon a State Court decision of per curiam affirmance (without opinion) to decide

whether such denial was based upon state procedural grounds or the merits of the case in compliance with Federal Law.

I. WHETHER AN OBJECTION IS REQUIRED TO PRESERVE APPELLATE REVIEW FOR AN ALLEGED PUBLIC TRIAL VIOLATION.

It is uncontroverted that the Sixth Amendment insures to every citizen the right to a public trial.

This right was the result of the monarchy of old England depriving the colonists of such and claims of said "private" trials being unfair on both procedural and evidentiary grounds. *In Re Oliver*, 355 U.S. 257 (1948).

Surely the right to a public trial is based upon the expected fair proceeding that results when such a trial is kept in the public eye. *Oliver*, at 270.

The seminal case on this issue is *Waller v. Georgia*, 467 U.S. 39 (1984).

In *Waller* the Court opined:

1. In only rare cases, such as fairness to the defendant and government's interest in disclosure of sensitive information, may a courtroom be closed to the public.

2. Openness may be overcome only by an overriding interest based on findings that closure is essential to preserve said interest and is narrowly tailored to serve that interest (said

> analysis has been proceeded largely under the First Amendment).

Waller does not opine or hold that an objection is required to preserve the error of a violation of a defendant's right to a public trial.

In *Johnson v. United States*, 520 U.S. 461 (1997), Chief Justice William Rehnquist delivered the opinion of the Court that discussed Rules 52(b) and 30 of the Federal Rules of Criminal Procedure concerning error and the need or not to object for preservation reasons.

First, the Court indicated it would not expand Rule 52(b) to state court cases, as the instant case is, for analysis of whether an objection is required to preserve error. By implication Rule 30 and its "waiver" language also does not apply.

As such, Federal habeas challenges to state convictions are not subject to Rules 30 and 52(b).

Johnson then held that fundamental error, such as a violation of the Defendant's right to a public trial, need not be objected to for appellate review.

In *Neder v. United States*, 527 U.S. 1(1999) this Court, citing precedent, listed the fundamental constitutional errors that defy analysis by "harmless error" standards. These errors are so intrinsically harmful as to require automatic reversals they are "structural."

Neder recognized that *Waller* stood for the proposition that the violation of the guarantee of a public trial required reversal, without any showing of

prejudice, even though the values of a public trial may be intangible and unprovable in any particular case.

For the above stated reasons, the question of whether an objection is required to preserve the issue of a violation of the right to a public trial should be answered in the negative.

II. WHETHER A FEDERAL COURT CAN RELY UPON A STATE COURT DECISION, WHICH DENIED RELIEF WITH THE ABSENCE OF AN OPINION, TO DENY A FEDERAL HABEAS PETITIONER RELIEF.

In the report and recommendation, that was adopted and entered as the basis for the District Court's Order Denying Petitioner Relief, the Magistrate opined that the First DCA had given the petitioner a full opportunity to resolve the constitutional issue raised. (See App. p.15)

Further, said Magistrate reported that the Federal Court should not address or entertain the Petitioner's (a state prisoner) habeas claims because the prisoner failed to meet a state procedural requirement (i.e. object to preserve for appellate review the alleged violation of his right to a public trial). (See App. p.15)

To overcome a procedural default, such as failing to object to preserve an appellate issue, said Magistrate further reported, the petitioner must show prejudice of the alleged constitutional violation or demonstrate that a failure to consider said claims will

result in a fundamental miscarriage of justice. (See App. pp.10, 11, 12)

Said Magistrate's analysis is akin to a "*Strickland*" claim for ineffective assistance of counsel. Said analysis is 100% opposite of this Court's analysis in *Neder*, Id.

Further, the Magistrate's report cites Florida case law in support of the proposition that failure to object to a closure of the courtroom (which does not comply with *Waller*, Id.) creates a procedural default which prevents a Federal Court review. The report cites *Evans v. State*, 808 So.2d 92, 105 (Fla. 2001) as precedent that Florida Appellate Courts do not consider the merits of a Sixth Amendment public trial claim if there was no objection at trial. (See App. p.14)

This is an incomplete construction of *Evans*. Such lack of objection is mentioned. However, it is neither the reason nor basis for the denial of relief and indeed the Appellate Court not only considered the claim but denied it on other grounds. Also, in the Magistrate's report is a reference to *Alvarez v. State*, 827 So.2d 269 (Fla. 4th DCA 2002) as holding that the failure to object to the closure of trial courtroom constitutes a waiver of the right to a public trial and does not preserve the issue for review. (See App. p.14) The *Alvarez* Court holding applied to a revocation of probation hearing.

Finally, Federal habeas law stands for the maxim that a Federal Court may issue a writ of habeas corpus to a state prisoner only on the ground that he is in

custody in violation of the Constitution of the United States or its laws.

As for a due process claim the analysis is as simple as it is complex. First, is there a liberty or property interest of which a person has been deprived? If so, we ask whether the procedures followed by the State were constitutionally sufficient.

The Magistrate's report was adopted by the U.S. District Court in ordering a denial of relief to the petitioner. Also, said District Court and the Eleventh Circuit Court of Appeal denied the Petitioner certificates of appealability. As aforestated, the reasoning for said denial was that the State Appellate Court had afforded the Petitioner a full opportunity to raise his claims and that said court had denied such on the basis of procedural default, or on the merits. Also, included in said denial was that Petitioner failed to object to the Magistrate's report.

Further, said report opines that the First DCA's decision is not contrary to clearly established Supreme Court precedent and not contrary to *Waller*, Id. (See App. p.19)

As such, said report concludes the First DCA's rejection of the petitioner's public trial claim was neither contrary to, nor an unreasonable application of, Supreme Court precedent. Therefore, the petitioner is not entitled to Federal habeas relief. (See App. p.20)

Certificates of appealability were denied by both the District Court and Eleventh Circuit Court of Appeal on the same basis.

All of the aforestated conclusions of law were based upon conjecture of what the State Court per curium denial, without opinion, meant.

In *Ylst, Warden v. Nunnemaker*, 501 U.S. 797 (1991) this Court, in a similar, if not on point, decision wrote:

"The consequent question presented by the present case, therefore is how Federal Courts in habeas proceedings are to determine whether an unexplained order . . . rests on federal law?" (*Ylst*, at 802).

In answering said question this court held that an unexplained order of the State Court could not overcome a presumption that the State Court neither decided the case on the merits nor on a procedural default. (*Id*. at 806) As such, there is never a way in such a case to know if such a decision is in compliance with Federal law.

It is clear in this case the State Court did not issue an explanation within the order or opinion in which it is clear its decision was in compliance with Federal law. It did not issue an explanation at all. The orders so far in the Federal Court system have only used conjecture to imply such.

We cannot allow our cherished rights to be "factory assembly line" decided because of the volume of habeas petitions, rules of procedure of no real accord or a split

in the Court's decisions as to whether an objection is required to preserve a violation of a right to a public trial.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant the petition for certiorari.

Dated: Feb. 1, 2019

Respectfully submitted,

DAVID W. COLLINS, ESQUIRE
COLLINS LAW FIRM
Florida Bar # 475289
310 North Jefferson Street
Monticello, Florida 32344
Collins.FL.Law@gmail.com
(850) 997-8111
Counsel of Record for Petitioner Travis Hawkins