

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOHN CAMMALLERI,

Petitioner,

v.

MARK S. INCH,

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA FOURTH
DISTRICT COURT OF APPEAL

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF
CERTIORARI

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Counsel for the Petitioner

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Introduction

Pursuant to this Court's Rule 13.5, the Petitioner, John Cammalleri, respectfully requests a thirty-day extension of time within which to file a petition for a writ of certiorari in this Court, to and including April 23, 2019.

Jurisdiction

The opinion/order of the Florida Fourth District Court of Appeal affirming the Petitioner's conviction was entered on November 29, 2018. The motion for rehearing was denied on January 23, 2019. Unless extended, the time within which to file a petition for a writ of certiorari would expire on April 23, 2019.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. Copies of the opinions/orders of the Florida Fourth District Court of Appeal are included in the appendix to this motion.

Argument

The Petitioner will be seeking certiorari review of two issues. The first issue is whether the trial court's denial of the Petitioner's motion to suppress, and admission of the Petitioner's involuntary statements to law enforcement violated the Petitioner's Fifth and Fourteenth Amendment right to due process. The second issue is whether the trial court's denial of the Petitioner's introduction of evidence that detectives

deceived the Petitioner regarding the results of the CVSA (lie-detector test) violated the Petitioner's Fifth and Fourteenth Amendment right to a fair trial.

Unfortunately undersigned counsel's schedule requires him to seek an extension of time in this case. In particular, in the next five weeks, undersigned counsel will be out of his office attending three oral arguments scheduled before Florida appellate courts and one postconviction evidentiary hearing before a Florida circuit court – an unusually high number for undersigned counsel to attend within a five-week period.¹ Additionally, since the order of the Florida Fourth District Court of Appeal denying the motion for rehearing was entered, undersigned counsel has participated in one postconviction evidentiary hearing before a Florida circuit court and seven oral arguments before Florida appellate courts.

Therefore, the Petitioner requests an extension of thirty days to file the petition for a writ of certiorari. No party will be prejudiced by the granting of a thirty-day extension in this case.

Accordingly, the Petitioner respectfully requests that an order be entered extending the time to petition for writ of certiorari by thirty days.

¹ Undersigned counsel is scheduled to appear at the following oral arguments: (1) *Russell v. State*, case number 2D18-0187, pending before the Florida Second District Court of Appeal; (2) *Kiley v. State*, case number 5D17-3314, pending before the Florida Fifth District Court of Appeal; and, (3) *Summers v. State*, case number 2D17-3134, pending before the Florida Second District Court of Appeal. Undersigned counsel will appear at a postconviction evidentiary hearing in *State v. MacKendrick*, case number 207-CF-44, pending before the Florida Second Judicial Circuit Court (Liberty County).

Respectfully submitted,

/s/ Michael Ufferman

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CERTIFICATE OF SERVICE

I, Michael Ufferman, a member of the Bar of this Court, hereby certify that on the 10th day of April, 2019, a copy of this Application For Extension of Time To File A Petition For A Writ Of Certiorari in the above-entitled case was mailed, first class postage prepaid, to Assistant Attorney General Georgina Jimenez-Orosa, Office of the Attorney General, 1515 North Flagler Drive, Suite 900, West Palm Beach, Florida 33401 (counsel for the Respondent herein). I further certify that all parties required to be served have been served.

/s/ Michael Ufferman
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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JOHN A. CAMMALLERI,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D16-3518

[November 29, 2018]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit,
Indian River County; Cynthia L. Cox, Judge; L.T. Case No. 2014-CF-
000067-A.

Michael Ufferman of Michael Ufferman Law Firm, P.A., Tallahassee, for
appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Georgina
Jimenez-Orosa, Senior Assistant Attorney General, West Palm Beach, for
appellee.

PER CURIAM.

Affirmed.

GROSS, MAY, JJ., and CARACUZZO, CHERYL, Associate Judge, concur.

* * *

Not final until disposition of timely filed motion for rehearing.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JOHN S. CAMMALLERI,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D16-3518

[January 23, 2019]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Cynthia L. Cox, Judge; L.T. Case No. 2014-CF-000067-A.

Michael Ufferman of Michael Ufferman Law Firm, P.A., Tallahassee, for appellant.

Ashley B. Moody, Attorney General, Tallahassee, and Georgina Jimenez-Orosa, Senior Assistant Attorney General, West Palm Beach, for appellee.

ON MOTION FOR REHEARING

PER CURIAM.

We grant appellant's motion for rehearing as it pertains to the final judgment imposing civil lien and affirm appellant's conviction and sentence in all respects. We vacate our prior opinion and substitute the following.

After appellant was convicted and sentenced for one count of sexual battery on a child under 12, the trial court entered a final judgment imposing civil lien, which stated:

THIS MATTER having come before the Court on September 30, 2016 pursuant to Florida Statute Section 960.293(2)(b) and finding that the Defendant has been convicted of an offense *other than a capital or life felony* and that damages are assessed at \$50 per day of incarceration, it is hereby

ORDERED AND ADJUDGED that Indian River County (Sheriff) shall recover from the Defendant damages of **\$49,500.00**, and State of Florida (DOC) shall recover from the Defendant damages of **\$200,500.00** which shall bear interest at the statutory rate pursuant to Section 55.03, Florida Statutes, for all of which let execution issue.

(Emphasis added). Thereafter, appellant filed a motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2), asserting that the final judgment imposing civil lien should be amended to (1) correctly reflect that the conviction was for a capital or life felony, rather than an offense other than a capital or life felony, and (2) remove the \$50 per day of incarceration language.

Because the trial court did not rule on the motion within the sixty-day time period,¹ appellant moved for rehearing on the pending rule 3.800(b) motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(1)(B). Forty-two days after the motion for rehearing was filed, the trial court ordered an expedited responsive pleading on the rule 3.800(b)(2) motion. In response, the state conceded the judgment should be amended to correctly reflect that appellant was convicted of a capital felony and that \$250,000 be assessed as liquidated damages for the cost of incarceration. The trial court granted appellant's rule 3.800(b) motion and amended the first paragraph of the final judgment to state:

THIS MATTER having come before the Court on September 30, 2016 pursuant to Florida Statute Section 960.293(2)(b) and finding that the Defendant has been convicted of a capital or felony offense, and that damages are assessed as follows.

Although appellant acknowledges on appeal that the trial court granted the rule 3.800(b) motion and entered an amended final judgment with the aforementioned changes, he notes that the order was rendered after the expiration of the applicable time periods set forth in rule 3.800(b).

"Florida Rule of Criminal Procedure 3.800(b) expressly provides that the trial court must rule on a motion to correct sentencing error within sixty days of filing or the motion is deemed denied." *Wilson v. State*, 846 So. 2d 1201, 1203 (Fla. 4th DCA 2003) (citing Fla. R. Crim. P. 3.800(b). "Once the sixty days has passed with no action on the motion, the trial court's jurisdiction ends." *Id.* Rule 3.800(b)(2)(B) further provides that the trial court must rule on a timely motion for rehearing within 40 days from

¹ According to the trial court, the motion was e-filed, but "never served and/or provided to the court."

the date of the order of which rehearing is sought or the motion is deemed denied.

In this case, the trial court did not rule on the rule 3.800(b) motion within 60 days, nor did it rule on the motion for rehearing within 40 days. Accordingly, the trial court lacked jurisdiction to grant the 3.800(b) motion and the subsequent amended final judgment is deemed a nullity.

We therefore remand for entry of a corrected, amended final judgment imposing civil lien in accordance with this opinion.

Affirmed in part, reversed in part, and remanded.

GROSS, MAY, JJ., and CARACUZZO, CHERYL, Associate Judge, concur.

* * *