

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KEVIN WILMOT — PETITIONER
(Your Name)

vs.

State Of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth District Court Of Appeal
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KEVIN WILMOT
(Your Name)

19562 S.E. Institution Drive
(Address)

Blountstown, Florida 32424
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

CAN the State of Florida Violate State AND Federal Constitutional Amendments And Provisions That Are Guaranteed because the Prisoner is Poor AND CANNOT Obtain Counsel ?

CAN the State of Florida Continue to hold A State Prisoner With A True UNLAWFUL AND UNCONSTITUTIONAL Sentence After the Prisoner repeatedly files proper Motions that receive erroneous rulings ?

Is the Federal Constitution Offended When A State Deprives A Convicted Felon Due Process of Law by ILLEGALLY holding him past A Legal Lawful Sentence that Should of been imposed in the Original Sentencing if he Would of had Competent Counsel during the Sentencing Proceeding ?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	11
CONCLUSION.....	13

INDEX TO APPENDICES

APPENDIX A - Decision of State Court of Appeals
APPENDIX B - Petitioners Original Writ of Habeas Corpus
APPENDIX C - Appendix to Writ of Habeas Corpus
APPENDIX D
APPENDIX E
APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Mosely V State, 112 So. 3d 538, 539 (FIA. 1st DCA 2013)	— — — — 8
Philmore V State, 760 So. 2d 239 (FIA. 4th DCA 2000)	— — — 6
Smith V State, 773 So. 2d 1278 (FIA. 5th DCA 2000)	— — — 6
State V. Mosely, 149 So. 3d 684 (FIA. 2014)	— — — 8

STATUTES AND RULES

Florida Statute 775.082 (1999)	— — — — 6
Florida Rule of Criminal Procedure 3.800(A)	— — — 4, 7, 8

OTHER

Article 1, Section 9, Florida Constitution	— — — — 10
Article 1, Section 9, United States Constitution	— — — — 10
Eight Amendment, United States Constitution	— — — — 10
Fourteenth Amendment, United States Constitution	— — — — 10

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the Trial Court court appears at Appendix C to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was June 25, 2018.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 1, Section 9, Florida Constitution

Article 1, Section 9, United States Constitution

Eight Amendment, United States Constitution

Fourteenth Amendment, United States Constitution

Florida Statute 775.082 (1999)

STATEMENT OF CASE

Petitioner, KEVIN WILMOT, (hereinafter Wilmot) Avers that THE STATE OF FLORIDA has imposed an illegal and unconstitutional sentence upon him.

Wilmot was arrested on September 16, 2000, and charged with Attempted Sexual Battery.

Wilmot and his Attorney, Larry D. Powers, FLA. Bar No.

442045, Attended a Demand for Speedy Trial Hearing

which was filed by the defense in which Judge Hutcheson

presided on December 1st, (2000). * Judge Hutcheson

was Wilmot's Trial Judge and two evidentiary hearings

(2002), (2008), along with the erroneous rulings of

post-conviction motions including the illegal sentence

motion, Rule 3.800(A), he is now retired. *

The defense motion was granted to proceed to trial on

a sole second degree felony charge. However, the

Trial Judge Hutcheson, Allowed Assistant State Attorney Leah Ransbottom Case, FLA. Bar No. 0001589, to Amend to "All New Charges", two Second degree felonies and one first degree felony in which Wilnot proceeded directly to trial. * Leah Ransbottom Case is now a Judge in the justice building where Wilnot has to file any post-conviction motions. *

Wilnot was convicted by Jury of an Amended information in the Seventh Judicial Circuit, Volusia County, Florida, Case No. 00-35019-CFAS, of :

COUNT-I, Burglary of a Dwelling With Battery
COUNT-II, Attempted Sexual Battery
COUNT-III, Aggravated Battery Upon a Pregnant Woman

on January 12, (2001).

Wilnot was sentenced on March 29, (2001), to :

COUNT-I, Mandatory Life
COUNT-II, Mandatory Fifteen years
COUNT-III, Mandatory Fifteen years

All Sentences are under Florida's Prison Releasee

Reoffender Act.. Florida Statute 775.082 (1999).

All Sentence's run consecutive to one Another.

At the time of Wilmot's Arrest. (2000), and his Sentencing

in (2001), The Fifth District Court of Appeal had clearly

established law that "Prohibited" Prison Releasee Reoffender

Sentences to run Consecutively.

Smith v. State, 773 So.2d 1278 (Fla. 5th DCA 2000)

Philmore v. State, 760 So.2d 239 (Fla 4th DCA 2000)

My Next Sentencing issue is that the battery that was

used in COUNT-III, Aggravated battery Upon a Pregnant Woman,
(the only battery proved at trial) ...

... WAS AGAIN TAKEN ...

And used in COUNT-I, Burglary of a Dwelling with
Battery

This is demonstrated by documentation :

A) The Amended information, B) Prosecutors Opening Statement,
C) The Victims Testimony, D) Prosecutors Closing Argument,
E) Jury Instructions, F) Jury's Verdict.

The Simple battery was used twice.. the first time it was elevated to A Second degree felony because the victim was pregnant.. the "Same" battery.. was Again used And Added to the burglary Charge, A Second degree felony.. which now enhances to A first degree felony And (PBL), Punishable by Life And the Prison Releasee ReOffender Act.

One Single battery enhanced two Separate Charges in which I Was Sentenced twice.

Wilmot filed A Rule 3.800(A) raising these two issues And was erroneously denied.

This is the procedural history And dates of the Rule 3.800(A):

- (1) Rule 3.800(A) filed with Supporting exhibits MAY 31, 2013.
- (2) Court orders State to respond on June 4, 2013.
- (3) State files response on September 23, 2013.
- (4) Wilmot files "Notice to Rule" on December 26, 2013.
- (5) Wilmot files A "Second Notice to Rule on JANUARY 22, 2014.
- (6) Wilmot files A "third Notice to Rule on March 11, 2014.

- (7) Wilmot files "Motion for Disqualification of Judge",
on March 21, 2014.
- (8) Judge denies Motion for Disqualification in a two page
order on April 9, 2014.
- (9) On April 11, 2014, the Judge denies GROUND-II of the
Rule 3.800(A) Stating that it is "Successive" of A
"Similar" Claim (Double Jeopardy issue).

GROUND-I WAS "STAYED" Where the Fifth And First
District Courts on Appeal disagreed and Certified Conflict
to the Florida Supreme Court.
Mosely V. State, 112 So. 3d 538, 539 (Fla. 1st DCA 2013).

- (10) On December 30, 2014, the Trial Court issued its final
order on GROUND-I, Stating "The Florida Supreme
Court has held that "A Trial Court [MAY] order (PRR)
Sentences to run Consecutively for Crimes Committed
during A Single Criminal episode."
State V. Mosely, 149 So. 3d 684 (Fla. 2014), Id. At 684.

This Case does not Apply to me Fourteen years "After"
Sentencing.

THE APPEAL

Wilmot filed A timely Appeal to Correct the Manifest
Injustice Submitting his brief on February 6, 2015.

The Month of June, 2015, Wilmot filed A Notice of Inquiry And requested A Docket Sheet. Upon receiving the Docket Sheet Wilmot noticed that the Clerk of the lower Court did not transmit My Motion with Supporting exhibits for the Appellate proceedings.

Wilmot immediately filed A "Motion to Stay Appellate proceedings pending the transmittal of the documents"

where I may receive A fair Appellate hearing.

This was denied along with my Appeal.

Wilmot filed for Re-hearing and Attached A Copy of his original motion with Supporting exhibits.

Motion for Re-hearing denied on August 13, 2015.

Mandate issued September 1, 2015.

Wilmot filed A Writ of Habeas Corpus to the Fifth

District Court of Appeal on June 13, 2018, with

Supporting exhibits which was denied June 25, 2018.

Under the Florida Constitution, Article 1, Section 9,
and the Fourteenth Amendment of the United States
Constitution... Which is Applicable to proceedings in the
Courts of the States... "A person may not be deprived
of Life, Liberty, or property without due process of
law. In general, due process requires fundamental
fairness in the conduct of Criminal proceedings.

Article 1, Section 9, of the United States Constitution
provide that No Court Shall Suspend the writ of habeas
Corpus except in Cases of rebellion or invasion.

Wilnot Avers that the Eight Amendment to the
United States Constitution is violated Where he Suffers
from Cruel or Unusual punishment by the illegal
And Unconstitutional Sentence(s) imposed upon him.

REASONS FOR GRANTING THE PETITION

This particular case, based upon the facts, would most definitely be in the interest of the Criminal Justice System and particularly in the interest of those similarly situated where a convicted person that is sentenced unconstitutionally and then properly alerts the courts through proper motions has his/her motion as "Successive" or, "Procedurally barred" denied. No State or Federal government should be able to sentence any person contrary to their established laws and violate State and Federal Constitutional Amendment and provisions... because a person is... (1) pro-se... (2) poor... (3) cannot enjoy the benefit of any legal representation. If this petitioner was well off and had hired legal representation he would of been released over a year ago... the sentence would not stand. A convicted prisoner who claims

their Sentence is illegal And Unconstitutional And being detained without due process of law Should be entitled (At least) to have their Claim(s) heard on the Merits, And Answered According to the laws And Constitutions that do Apply to those Claim(s). This petition Should be heard to Show that the United States Supreme Court Will not be deaf to erroneous violations that offend the United States Constitution When it is Alerted because the petitioner is pro-se, poor, And Without the benefit of Counsel. This petition would represent those in Similarly Situated legal positions who are pro-se And poor And would demonstrate to the Criminal Justice System that the United States Supreme Court Will Continue to enforce the Constitution And laws of the land When lower Courts disregard them.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kern Wilmet

Date: 9/5/18