

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

DENVER IVAN WILSON PETITIONER
(Your Name)

VS.

JULIE JONES SEC'y — RESPONDENT(S)
DEPT. OF CORR Fla.
ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

DENVER IVAN WILSON, D.C. #X05951
(Your Name)
Hardee Correctional Inst.
6901 State Road 62
(Address)

Bowling Green, Fl. 33834
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether the trial Courts denial of Petitioners Writ of Habeas Corpus Filed Pursuant to Florida Rules of Court 3.850 (m) alleging that Petitioner Could have filed a timely ineffective assistance of Counsel Claim based on Counsel's misadvice about Sentence enhancement for Subsequent Sentencing violated the United States Constitutional Rights of Petitioner Pursuant to Amendment fourteenth. when the ruling conflicts with Stare decisis Case law from the Florida Supreme Court were it was found that affirmative misadvice by Counsel about the Collateral effect of future sentence-enhancing Potential does not meet Strickland's requirements for a valid Claim of ineffective assistance of Counsel. and,

Whether denying Petitioner relief under the State Habeas Corpus, under the Circumstances, denied Petitioner a Cure for the Procedural due Process violated? Amendment 14th

4

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:

Julie Jones Secretary Fla. Dept. of Corr.
501 S. Calhoun St.
Tallahassee Fl. 32399

Orange County 9th Judicial Circuit
Tiffany Moore Russell
P.O. Box 4994
Orlando Fl. 32802

Fifth District Court of Appeals
300 South Beach Street
Daytona Beach Fl. 32114

Office of Attorney General
Rebecca Roark Wall
Assistance, Attorney General
444 Seabreeze Blvd.
Daytona Beach, Fl. 32118

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5-11
REASONS FOR GRANTING THE WRIT	12-17
CONCLUSION.....	18

INDEX TO APPENDICES

APPENDIX A	Writ of Habeas Corpus to Correct Manifest injustice
APPENDIX B	Order Denying writ of Habeas Corpus to Correct a Manifest injustice
APPENDIX C	Appellant's initial Brief
APPENDIX D	Answer Brief of Appellee with Appendix to Brief
APPENDIX E	Reply Brief for Appellant with Appendix
APPENDIX F	Fifth District Court of Appeals Per Curiam affirmance without Opinion and mandate

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
McKowen v. state 831 So. 2d. 794 (Fla. 5th DCA 2002)	9
Major v. state 814 So. 2d. 424 (Fla. 2002)	9
State v. Dickey 928 So. 2d. 1193 (Fla. 2006)	9, 14, 15
Bates v. State 887 So. 2d. 1214 (Fla. 2004)	9
Hill v. Lockhart 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d. 203 (1985)	14
Adams v. state 957 So. 2d. 1183 (Fla. App. 3rd DCA 2006)	17
Simmons v. state 485 So. 2d. 475 (Fla. App. 2nd DCA 1986)	17
Wright v. state 857 So. 2d. 861 (Fla. 2003)	8
Ogburn v. Cleveland 380 Fed. Appx. 927 (11th Cir 2010)	12

STATUTES AND RULES

Florida Statute 7M5.084(d)	14
Florida Rules of Criminal Procedure 3.850(m)	
..... 4, 16	
Florida Rules of Criminal Procedure 3.703(27)	... 6

OTHER

United States Constitution Amendment Sixth, and fourteenth	... 10, 3
---	-----------

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 F 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 9th Judicial Circuit Court court appears at Appendix B 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 August 7, 2018
A copy of that decision appears at Appendix F.

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

☐ 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

United States Constitution Amendment 14th

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

United States Constitution Amendment Sixth

STATEMENT OF THE CASE

1. On October 7th, 1998 the Petitioner entered a Plea negotiation for a Charge of Burglary of an unoccupied Structure Committed on June 24, 1998 case number CR-98-8711B.
2. Petitioner also had another pending charge of Burglary of an unoccupied structure pending within the 9th judicial Circuit committed on August 31, 1998 Prior to the Plea negotiations Case number CR-98-1996
3. Petitioner's Counsel advised him during the Plea negotiations that his two pending cases CR-98-8711B and CR-98-1996 were consolidated, would be sentenced at the same time and that the adjudication of guilt would be withheld. Counsel advised Petitioner that the charges could not be used to enhance a subsequent sentence. [APPX. A at 4]

STATEMENT OF THE CASE (CONT.)

4. Petitioner had been in special learning disability classes his entire educational career and at the time of the plea negotiations had a fourth grade skill level in Language [APPX. E, at APPX. D]
5. On April 26, 1999 Petitioner believed that the plea was honored after viewing a records check and scoresheet prepared by the Florida Department of Corrections. The disposition date of case numbers CR-98-8711B and CR-98-1996 are dated October 7th, 1998 and the sentence was three (3) years probation. [APPX. A at Exhibit A]
6. On November 3rd, 2000 Petitioner was taken to trial on case number CR-98-1996 and found guilty of burglary and sentence pursuant to Florida Rules of Criminal Procedure 3.703 (27) case number CR-98-8711B was utilized as a

STATEMENT OF THE CASE (CONT.)

Prior felony to enhance the sentence from a non-State Prison sanction to a State Prison Sentence in Case number CR-98-1996.

7. On November 1, 2006 both Cases CR-98-8711B and CR-98-1996 were utilized as separate Convictions to enhance the Petitioners Current Sentence under the Violent Career Criminal Statute 775.084 Fla. Stat. 2006 [APPX. A at Exh. B]
8. On November 9th 2015 Petitioner filed a motion for Postconviction alleging that a manifest injustice had taken place at the violation of Probation Plea and that his Plea was involuntary. On December 10th 2015 the motion was denied.
9. On December 8th 2017 Petitioner filed a Writ of Habeas Corpus, and motion to withdraw Plea claiming manifest injustice. [APPX. A]

STATEMENT OF THE CASE (CONT.)

10. On January 24, 2018 the trial Court denied the writ of Habeas Corpus stating:

"Petitioner attempts to couch this argument as one appropriate for a Writ of Habeas Corpus. He is actually raising an untimely ineffective assistance of Counsel Claim. Which is not Cognizable under the rule." [Appx. B [citing; Wright v. State - 857 So. 2d. 861 (Fla. 2003)

11. On rehearing Petitioner argued that the Court Overlooked that Petitioner could not have discovered the Claim within the two years for filing a 3.850 motion. []

12. The trial Court denied the rehearing but accepted the fact when the Claim was first discovered as the year 2000. [] The trial Court stated that the Claim should have been filed in a timely Postconviction relief. []

13. On Appeal Petitioner argued that: The trial Courts legal Conclusion that Petitioner raised an ineffective assistance of Counsel Claim that could have been raised in a timely motion for Postconviction

STATEMENT OF THE CASE (CONT.)

relief was erroneous under the circumstances.

[APPX. Cat 5-II] Petitioner Briefed an argument stating that he could not have raised the Claim in a timely motion for Postconviction relief because Stare decisis case law ruled that allegations of misadvice by trial Counsel on the sentence - enhancing consequences of a defendant's Plea for future criminal behavior was not Cognizable as an ineffective assistance of Counsel Claim. Petitioner cited: McKown v. State, 831 So. 2d. 794 (Fla. 5th DCA 2002), Major v. State, 814 So. 2d. 424 (Fla. 2002), State v. Dickey 928 So. 2d. 1193 (Fla. 2006), and Bates v. State 887 So. 2d. 1214 (Fla. 2004) [APPX C-6-9]

14. Petitioner argued that he was placed in a position where the Courts first ruled that the Claim he wanted to raise was not Cognizable. Then

STATEMENT OF THE CASE (CONT.)

the Court ruled in 2008 that the same Claim was Cognizable but only for motions pending at that time. The trial Court now rules the Claim is not Cognizable in habeas Corpus. Petitioner argued that he had no remedy or vehicle to seek relief and no Procedural due Process under the United States Constitution Amend.

14th [APPX. C, at-10]

15. The Attorney General, Assistant Attorney briefed the issues and filed Appendix raising on appeal that the trial Court Correctly denied Habeas relief [APPX. D]

16. Petitioner filed a reply brief and Appendix in response [APPX. E] alleging that his Claim was misconstrued and not given a Broad minded reading and that Petitioner's Circumstance was rare and should be

STATEMENT OF THE CASE (CONT.)

afforded Habeas Proceedings. [APPX. C, at - 11]

17. On August 7, 2018 the Fifth District Court of Appeals for Florida Per Curiam affirmed, without Opinion the Appeal case number 5D18-1258 and issued mandate on August 31, 2018 [APPX F.]

REASONS FOR GRANTING THE PETITION

18. Procedural due process violations do not become complete unless and until the state fails to provide due process. In other words, the state may cure a procedural due process violation by providing a later procedural remedy; only when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation exist. SEE:

Dgburia v. Cleveland 380 Fed. Appx. 927 (11th Cir. 2010)

19. The trial court's legal conclusion stated:

"while the Petitioner attempts to couch this argument as one appropriate for a writ of Habeas Corpus, he is actually raising an untimely ineffective assistance of Counsel Claim, which is not cognizable under the rule."
[Appx. B □]

REASONS FOR GRANTING THE PETITION (CONT.)

22. The same year that Petitioner's Current Sentence was enhanced under Florida Statutes 775.084(d) as a violent Career Criminal, both conviction from cases CR-98-8711B and CR-98-1996 were utilized for the enhancement. The Florida Supreme Court made a decision in the case of State v. Dickey 928 So. 2d. 1193 (Fla. 2006) which answered a Certified Question of "whether allegations of affirmative misadvice by trial counsel on the sentence enhancing consequences of a Defendant's plea for future criminal behavior in an otherwise facially sufficient motion are cognizable as an ineffective assistance of counsel claim." The "Dickey" Court analyzed the case of Hill v. Lockhart 474 U.S. 52, 58, 106 S. Ct. 366, 88 L. Ed. 2d. 203 (1985). In "Hill" this Court applied the Strickland test to claims of ineffective assistance in pleading guilty to a crime. The Court modified the prejudice requirement stating that in plea cases the issue is "whether

REASONS FOR GRANTING THE PETITION (CONT.)

Counsel's constitutionally ineffective performance affected the outcome of the Plea Process. In other words, in order to satisfy the prejudice requirement, the defendant must show that there is a reasonable probability that, but for Counsel's error, he would not have pleaded guilty and would have insisted on going to trial." Dickey at (928 So.2d. 1197) The Court in Dickey concluded that a claim that Counsel affirmatively misadvised a defendant about the collateral effect of future sentence-enhancing potential does not meet Strickland's requirements for a valid claim of ineffective assistance of Counsel. Therefore the trial court's legal conclusion denying Petitioner's writ of Habeas Corpus stating that Petitioner's claim was a claim of ineffective assistance of Counsel that could have and should have been timely raised is not supported by law. The Postconviction Rule would not have adequately ~~to~~ test the legality of Petitioner's detention.

REASONS FOR GRANTING THE PETITION (CONT.)

23. Florida Rules of Criminal Procedure 3.850 (m) states

"An application for writ of Habeas Corpus on behalf of a prisoner who is authorized to apply for relief by motion pursuant to this rule shall not be entertained if it appears that the applicant has failed to apply for relief by motion, to the Court that sentenced the applicant or that the Court has denied the applicant relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of the applicants detention."

24. The trial Court in denying Petitioner Habeas relief alleged that his Claim was not cognizable in Habeas Corpus [APPX. B] Therefore no vehicle exist for the Claim, a 3.850 motion would have been ineffective and not cognizable just like the Habeas Corpus motion.

REASONS FOR GRANTING THE PETITION (CONT.)

25. Florida Courts have used the writ of Habeas Corpus to correct manifest injustice in a plea context SEE: Adams v. State 957 So. 2d. 1183 (Fla. App. 3rd Dist 2006) Petitioner has a continuing liberty interest as his instant Conviction was used to enhance his current Sentence and Petitioner is in custody for the Purpose of attacking his Prior Conviction SEE: Simmons v. State - 485 So. 2d. 475 (Fla. App. 2nd DCA 1986)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Denver Ivan Wilson

Date: October 2, 2018