

18-3739  
No. \_\_\_\_\_

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SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

18  
LEGAL MAIL  
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10/8/18 for mailing by \_\_\_\_\_

GERNARD DENEZ CHESTNUT — PETITIONER  
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Florida Supreme Court  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gernard Denez Chestnut  
(Your Name)

Florida State Prison P.O. Box 800  
(Address)

Hanford, Florida 32083  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

QUESTION(S) PRESENTED

IS WELL ESTABLISHED WELL COMPREHENDED FLORIDA SUPREME COURT CASELAW AND U.S. SUPREME COURT CASELAW BEING DELIBERATELY FLAUNTED AND DISREGARDED IN MANIFESTLY UNJUST DECISIONS IN OPEN DISCRIMINATION NOT WARRANTING OF THIS COURT'S DISCRETIONARY JURISDICTION ?

CAN EVERY OTHER CASE OF THE PLETHORA OF CASES IN FLORIDA WITH SAME SIMILAR ISSUES AS THE ONE PRESENTED IN THIS PETITION BE GRANTED RELIEF AND IT NOT BE MANIFESTLY UNJUST TO DENY ME THE SAME BENEFIT OF THE LAW ?

Review of this Case should also be considered because I clearly demonstrate a blatant Manifest Injustice. Undermining the Public integrity of the criminal justice system.

## 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:

District Court of Appeals First District  
Florida Supreme Court

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Montgomery v. State, 39 So. 3d 252 257 (Fla. 2010)	4,7
Williams v. State, 123 So. 3d 23 (Fla. 2013)	4,7
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## OTHER

Attempted Manslaughter 6.6 (Jury Instructions)
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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 is unpublished.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 Jenkins v. Wainwright, 322 So.2d 477, 478 (Fla. 1975); or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the District Court of Appeals court appears at Appendix B to the petition and is

reported at Baker v. State, 818 So.2d 1236 (Fla. 2004); 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\_\_\_\_\_.  
2

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 9/7/18.  
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\_\_\_\_\_.  
2

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth and Fourteenth Amendments listed in Bill of Rights of United States Constitution stipulating right to fair and impartial trial equitable protection of Laws and Due process of legal proceedings.

Florida Statues §§ 782.07 and 777.04

### STATEMENT OF THE CASE

The Florida Supreme Court Ruled that "if a jury is erroneously instructed on a lesser included offense regarding the element pertinent and material to what the jury must consider in reaching a verdict and defendant is convicted of a crime one-step-removed from the erroneous instruction it is fundamental error."

The Florida Supreme Court went further to precisely stipulate "if a jury is erroneously instructed on ~~the~~ necessarily lesser included offense of Attempted Manslaughter, and a defendant is convicted of a crime one-step-removed, and intent was in dispute, and pertinent and material to what the jury must consider in reaching its verdict it is fundamental error, which can not be subjected to a harmless error review, and requires Reversal of conviction, sentence, and a new trial."

The Florida Supreme Court further stipulated "the requisite proof required for the State to prove the crime of Attempted Manslaughter is "proof of Intentional unlawful acts" and no conviction can be obtained for this offense unless this element is proven beyond a reasonable doubt."

See Montgomery v. State, 39 So. 3d 252, 257 (Fla. 2010) Manslaughter extended to Attempted Manslaughter in Williams v. State, 123 So. 3d 23 (Fla. 2013)

also modifying the jury instruction on Attempted Manslaughter  
see Florida Statues §§ 782.07 and 777.04

(indicating the essential element of proof of Intentional unlawful acts).

The Entire element for proving the Offense of Attempted Manslaughter as Stipulated by the Florida Supreme Court was "Entirely Depleted / Omitted" (erroneously) from the jury instruction which is a Plain error Due process of law violation and Manifestly Unjust on its face alone,

plus it violates every prong that establishes fundamental error in specific regards to this issue as stipulated by the Florida Supreme Court, such as me being convicted of a "crime one-step-removed," "intent being in dispute," and "pertinent and material to what jury must consider in reaching a verdict," (the record so reflects).

No legal precedent stands to Justify why im being Denied the benefits of the law as stipulated im entitled to when this type of error is demonstrated.

## REASONS FOR GRANTING THE PETITION

It is impossible for a jury to fairly and lawfully consider a verdict on a necessary lesser offense if the judge completely fails to instruct them on the Essential Element required to be proven by the State beyond a reasonable doubt.

The essential elements of the offense can not be proven beyond a reasonable doubt if this information is depleted, which this Court deemed as Constitutional error requiring Reversal of conviction in Apprendi v. New Jersey, 530 U.S. 466 490 120 S.Ct. 2348 147 L.Ed 2d 435 (2000)

The record in my case reflects I was convicted of a crime "one-step-removed from the erroneous Attempted Manslaughter instruction" (Attempted second-degree murder), (2) intent was in dispute, as my sole defense was Mistaken identity. Mistaken identity does not concede intent (see Griffin v. State, 160 So. 3d 63 68-69 (Fla. 2015) holding that if A defendant claims he is not the perpetrator intent is still at issue and thus erroneous instruction is fundamental error), and (3) Intent was the essential element pertinent and material to what the jury must consider in reaching its verdict. According to the Florida Supreme Court's Caselaw the establishment of the above (3) prongs is "fundamental error" not subject to a harmless error review, and requires reversal and remand for new trial.

The preceding facts were stipulated in Montgomery v. State,  
39 So. 3d 252, 257 (Fla. 2010).

and Williams v. State 123 So.3d 23 (Fla. 2013).

The Florida Supreme Court refusing to afford me the relief as stipulated in the above Cases and every other similar case with similar issue is in direct Conflict and Inconsistency with their own CaseRulings and well established laws. as demonstrated in the foregoing.

This Court has also Ruled "Our Constitution provides that no person shall be deprived of life, liberty, or property without due process of law." See Chambers v. Florida, 309 US 227 235-236 and n. 8, 84 L Ed 716, 721 (S Ct 472 (1940).

To further demonstrate this is a blatant Manifest Injustice which should be corrected to keep Public integrity in presenting a similarly - situated case which has similar issues and some fundamental defects in which his case was Reversed and remanded for new trial, under the same circumstances of which Im being denied.

## SIMILARLY - SITUATED CASE

I hereby present that it would be manifestly unjust to deny me relief on the Claim that trial judge rendered erroneous instructions on the necessarily lesser included offense of Attempted manslaughter when it arises to "fundamental error". I was convicted of a crime "one-step-removed", (Attempted second degree murder), and my Claim suffers the same defects and Due process of law violations as "Morris Crenshaw v. State".

The information released in the Florida Law Weekly Volume 43 Number 34 Case No.: 2017-4187 demonstrates that we been subjected to the exact same circumstances as Crenshaw and denied the same relief repeatedly and over by the 1<sup>st</sup> DCA which even went as far as "SANCTIONING and barring me" from the Courts for trying to alert this Court to this issue.

Since my Claim is of the same fundamental nature as Crenshaw's, the Sanction and bar should be uplifted and Leave to file in new Conflict free Venue granted or transfer to proper Court acting in competence with Laws regarding this issue and remedy this manifest Injustice.

Just as Crenshaw we repeatedly raised this Claim in the 1<sup>st</sup> DCA and before the Florida Supreme Court and the Courts have refused to correct it by deeming my Petitions as "Successive" when;

"An appellate court has the power to reconsider and correct its erroneous rulings made in earlier appeals and original proceedings to prevent a manifest injustice" *State v. Atkins*, 69 So. 3d 261 268 (Fla. 2011); *Wardlow v. State*, 212 So. 3d 1091 1093-94 (Fla. 2d DCA 2017)

The Appellate Court released in its Opinion on August 15, 2018 that "Crenshaw correctly argued in past proceedings in this Court that the trial court committed fundamental error in giving an erroneous instruction on manslaughter when he was convicted of second degree murder, a crime one-step-removed from manslaughter." See State v. Montgomery, 39 So.3d 252, 254, 257 (Fla. 2010) (holding that standard jury instruction on second-degree murder improperly imposed intent as an additional element on the lesser - included offense of manslaughter and constituted fundamental error). See also Griffin v. State, 160 So.3d 63, 68-69 (Fla. 2015) (holding that if a defendant claims he is not the perpetrator, intent is still at issue and thus erroneous jury instruction is fundamental error).

In my Case improper intent was imposed because the element of the requisite intent (proof of intentional criminal acts) was erroneously omitted from the instruction and this element was pertinent and material to what jury had to consider in reaching its verdict.

Daniels v. State, 121 So.3d 409, 418-19 (Fla. 2013) (holding that giving of erroneous manslaughter instruction was fundamental error because the record reflected that the issue of whether Daniels intentionally caused the defendants death was disputed and was pertinent and material to what the jury had to consider in reaching its verdict). The Court however denied him relief in those earlier proceedings. See Crenshaw v. State, 211 So.3d 1036 (Fla. 2d DCA 2016) (denying petition for writ of habeas corpus); Crenshaw v. State, 129 So.3d 1073 (Fla. 2d DCA 2013) (denying petition alleging ineffective assistance of appellate counsel); Crenshaw v. State, 249 So.3d 754 (Fla. 2d DCA 2010) (per curiam affirmance). But an appellate court has the power to reconsider and correct its erroneous rulings made in earlier appeals and original proceedings to prevent a manifest injustice.

Crenshaw's argument has merit because it would be manifestly unjust to deny him relief under the circumstances where this Court and other district courts have given similarly situated appellants the benefit of *Montgomery* and have reversed for a new trial. See Kenney v. State, 217 So.3d 138, 143 (Fla. 3d DCA 2017) vacating conviction for second-degree murder and remanding for a new trial to prevent a manifest injustice under similar facts.

Petition granted, order vacated, conviction and sentence for second-degree murder reversed and case remanded for new trial. (LaRose, C.J., and Badalamenti, concur).

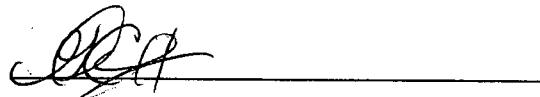
Similar - Situated Case analysis (MANIFEST INJUSTICE)	
(PETITIONER) CHESTNUT v. State (Florida)	<u>CRENSHAW v. State (Florida)</u>
(1) Erroneous Attempted Manslaughter instruction rendered at my trial.	Erroneous Attempted Manslaughter instruction rendered at trial.
(2) Intentional unlawful acts element unlawfully omitted from the instruction.	Intent to Kill element unlawfully imposed in instruction.
(3) Intent was in dispute.	Intent was in dispute.
(4) Intent was pertinent and material to what jury must consider in reaching a verdict.	Intent was pertinent and material to what jury must consider in reaching a verdict.
(5) I was convicted of a crime one-step removed from erroneous instruction (Attempted second-degree murder).	Convicted of a crime one-step-removed from erroneous instruction (Attempted second-degree murder).
(6) Sole defense of Mistaken Identity.	Sole defense of Mistaken Identity.

Every aspect of Crenshaw's case is Similar to my Case with only the same benefit of the law as was afforded to Crenshaw being Discriminated against me, which the Florida Courts have deemed to be incongruent with Uniformity of Court decisions and Manifestly Unjust.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10-5-18