

ci.
5218-1649

18-66888

ORIGINAL

Legal Mail
Received
OCT 30 2018
Dade C.I.

No. _____

Supreme Court, U.S.
FILED
OCT 30 2018
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

STEPHEN DANIEL LEONARD — PETITIONER
(Your Name)

vs.

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

STEPHEN D. LEONARD # 448091
(Your Name)

19000 S.W. 377 St.
(Address)

Miami, FL. 33034
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Did the State trial Court violate Petitioner's right to Counsel by allowing the Miami-Dade County Public Defender fail to appear at the Court Ordered Nelson Hearing on January 29, 2018?
2. Did the State trial Court violate Petitioner's right to Counsel by allowing a Nelson Hearing to proceed without the Miami-Dade County Public Defender present as ordered and allowing the Monroe County Public Defender to appear in their place when the Monroe County Public Defender was fired and removed from the case on July 06, 2016?
3. Did the State appellate and State Supreme Courts violate Petitioner's due process rights by dismissing Petitioner's appeals based upon the Courts refusals to reach a conclusion or address the merits of the claims?
4. Did the State Courts violate Petitioner's Human Rights Protected under the Universal Declaration of Human Rights?

LIST OF PARTIES

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

[X] 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:

1. Attorney General Pam Bondi c/o Maglay Rodriguez, A.A.G., 1 S.E. 3rd Ave. Ste. #900
Miami, FL. 33131
2. Honorable Judge Timothy Koenig, 500 Whitehead St. Key West, FL. 33040
3. Honorable Kevin Madok, 302 Fleming St. Key West, FL. 33040
4. Honorable Mary Cary Blanks, 2001 S.W. 117 Ave. Miami, FL. 33040
5. Honorable John A. Tomasino, 500 S. Duval St. Tallahassee, FL. 32399

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-7
REASONS FOR GRANTING THE WRIT	8
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Anders v. California, 386 U.S. 738 (1967)	5, 8
Drafer v. State of Washington, 372 U.S. 487 (1963)	8
Giedon v. Wainwright, 372 U.S. 335 (1963)	8
Johnson v. Zerbst, 304 U.S. 458 (1938)	8
Logan v. State of Florida, 846 So.2d 472 (Fla. 2003)	5
Nelson v. State of Florida, 274 So.2d 256 (Fla. 4th DCA 1973)	6,
Strickland v. Washington, 466 U.S. 668 (1984)	6, 8
Powell v. Alabama, 287 U.S. 45 (1932)	8

STATUTES AND RULES

Florida Rules of Appellate Procedure 9.141 (5)(2)(A) (2015)	4
Florida Statute § 119.01 - § 119.11 (2018)	8
Florida Statute § 839.24 (2018)	8

OTHER

5 Am. Bur. 2d Appellate Review § 448 (2018)	8
Universal Declaration of Human Rights (12/10/1948)	8

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 Third District Court of Appeal of Florida court 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.

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 October 03, 2018. A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: October 03, 2018, and a copy of the order denying rehearing appears at Appendix A. (No Motion for Rehearing or Reinstatement was ordered by the Florida Supreme Court)

☐ 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 IV, Section 1, United States Constitution, which states in Pertinent Part:

"Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State."

Article VI, Section 2, United States Constitution, which states in Pertinent Part:

"This Constitution, and the Laws of the United States... and all Treaties made... Shall be the Supreme Law of the Land; and the judges in every State shall be bound thereby..."

Amendment VI, United States Constitution, which states:

"In all Criminal Prosecutions, the accused shall enjoy the right to a Speedy and Public trial, by an impartial jury of the State and district wherein the Crime shall have been Committed, which district shall have been previously ascertained by law, and to be informed of the nature and Cause of the accusation; to be confronted with the witnesses against him; to have Compulsory Process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Amendment XIV, Section 1, United States Constitution, which states in Pertinent Part:

"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."

STATEMENT OF THE CASE

Petitioner is an "appellant" Presently before the Florida Third District Court of Appeals on a direct Criminal appeal in case number 3D16-2203 / 3D16-2298. In appeal number 3D16-2203 Petitioner filed directions to the clerk and designation to the Court Reporter to prepare and transmit the record on appeal on August 03, 2016 and again on October 11, 2016. On October 17, 2016 the appellate Court remanded the case to the trial court (The Sixteenth Judicial Circuit Court of Florida) for an appointment of appellate Counsel and sua sponte Consolidated Case number 3D16-2203 under Case number 3D16-2298 "for all purposes" Knowing Case number 3D16-2298 is an unrequested appeal filed by the Monroe County Clerk of Court in the Sixteenth Judicial Circuit Court under a Postconviction Relief Motion Rule, which limits the Record-on-appeal: Florida Rules of Appellate Procedure 9.141(b)(2)(A) (2018).

Petitioner then was appointed appellate Counsel from the Miami-Dade County Public Defenders Office on October 19, 2016. Petitioner sent the Public Defenders multiple letters of correspondence concerning the claims on appeal and the fact that the record was already ordered on 10/11/2016 and 08/03/2016. Between October 2016 and December 18, 2016 the Public Defenders did not respond or reply to petitioner's letters, nor attempted to contact or communicate with petitioner in any form concerning their representation.

On December 19, 2016, the Public Defenders; Natasha Baker-Bradley and Carlos J. Martinez filed a "Motion To Modify The Record" and "Directions To The Clerk And Designation To The Approved Transcriptionist Or Approved Court Reporter" altering the records requested and altering the transcript dates to EXCLUDE the records and transcripts connected to the issues and claims requested to be made on appeal in the letters sent to the Public Defenders beginning in October 2016. The Public Defenders then failed to send petitioner copies of the 12/19/16

STATEMENT OF THE CASE

Motion To Modify The Record and Directions To The Clerk And Designation To The Approved Transcriptionist or Approved Court Reporter. Petitioner was unknowing.

On March 09, 2017 Petitioner moved the Florida Appellate Court to Remove Appellate Counsel and Appoint New Counsel. On March 14, 2017 the Appellate Court denied Petitioner's Motion based upon the theory that Petitioner could not present any motions under a "Hybrid" representation pursuant to Logan v. State of Florida, 846 So. 2d 472 (Fla. 2003)

On April 27, 2017, Petitioner's appeal was transferred to another Public Defender in the Miami-Dade County Public Defender's Office: Shannon Hemmingdinger, Esq., A.B.O.

On May 02, 2017, the Public Defender's filed an Anders Brief pursuant to Anders v. California, 386 U.S. 738 (1967)

On May 09, 2017, Petitioner objected to the Public Defender's Anders Brief, and moved the Appellate Court to Strike the Brief.

On May 10, 2017, Petitioner filed a Motion To Compel The Record-On-Appeal in the Appellate Court.

On May 17, 2017 the Appellate Court denied the Motion To Compel the Record-On-Appeal and the Petitioner appealed that order and filed a Petition for Writ of Mandamus in the Appeals Court. The Florida Third District Court of Appeal "lost" the Petition for Writ of Mandamus and also failed to file the Notice

STATEMENT OF THE CASE

of Appeal or transmit said NOA to the Florida Supreme Court.

Petitioner fought with the Florida Appellate Courts and Miami-Dade County Public Defender's Office for over seven (7) months about the Record-on-Appeal until December 20, 2017 when the Third District Court of Appeal remanded the Cases, (3D16-2203 (3D16-2298), to the trial Court for a Nelson Hearing: to hear arguments and receive evidence of Ineffective Assistance of Appellate Counsel under Nelson v. State, 274 So.2d 256 (Fla. 4th D.C.A. 1973), and Strickland v. Washington, 466 U.S. 668 (1984).

The trial Court noticed the Miami-Dade County Public Defender's of the Nelson Hearing on January 29, 2018, however, the Public Defender's failed to appear, and failed to provide the requested records and Correspondences of Petitioner as requested. In place of the Miami-Dade County Public Defender's Office Jason R. Smith, esq. A.P.D. of the Monroe County Public Defender's Office whom was previously fired and removed by the trial Court on July 06, 2016 appeared instead of the attorney's of record. Petitioner objected to the appearance of A.P.D. Jason R. Smith and the fact that the attorney's of record failed to appear, however, the Court continued to hear Petitioner's arguments, found Public defender's did not violate any laws or rights of their client, removed the public defender's from the case and allowed Petitioner to act pro-se.

On or about February 06, 2018, Petitioner filed a Motion For Rehearing with the trial Court on the Courts actions and Order on January 29, 2018 which

STATEMENT OF THE CASE

was denied. Petitioner appealed the trial Courts January 29, 2018 Court Order and Judicial Acts as unconstitutional under the Federal Constitution's Right To Counsel Pursuant to Amendment VI of the United States Constitution, and Amendment XIV of the United States Constitution.

On August 29, 2018 the Florida Third D.C.A. dismissed the Petitioner's interlocutory appeal "as duplicative of Case no. 3D16-2298", regardless of the fact that no claims or issues presented in 3D16-2298 resemble any claims and issues here in 3D18-656 ; 3D18-672. Petitioner moved for Rehearing and issuance of a written finding or opinion. On September 17, 2018 the D.C.A. denied Rehearing w/o opinion or clarification. On September 25, 2018 Petitioner filed a Petition for writ of Certiorari to the Florida Supreme Court upon the violations of Petitioner's Sixth Amendment Rights under the Federal Constitution.

On October 03, 2018 the Florida Supreme Court dismissed the Certiorari Case for Lack of Jurisdiction and further entered an order stating "No Motion for Rehearing or Reinstatement will be entertained by the Court."

This Appeal ensues.

The State of Florida and Appellate Courts have violated Petitioner's right to Records, and Counsel, then deprived Petitioner of due process by failing to remedy the violations, or allow review of the violations on appeals.

REASONS FOR GRANTING THE PETITION

1. Petitioner is entitled to a Full and Complete Record-on-appeal. Draper v. State of Washington, 372 U.S. 487, 83 S.Ct. 774, 9 L.Ed.2d 899 (1963); (5 Am. Jur. 2d Appellate Review § 448 (2018) (West's Key No. Digest, Crim. Law, 1110)) ("An indigent Criminal defendant who appeals his conviction is entitled under the Federal Constitution's Fourteenth Amendment to the use of a transcript or other record of his trial... to allow consideration of the errors assigned.") See also Florida Statute § 119.01 - § 119.11 (2018) and § 839.24 (2018); Article IV, Section 1, United States Constitution, Article VI, Section 2, United States Constitution, and Amendment XIV, Section 1, United States Constitution; Anders v. California, 386 U.S. 738 (1967).
2. Petitioner is entitled to Competent Counsel on Appeal of a Criminal Conviction in a Direct Appeal. Strickland v. Washington, 466 U.S. 668 (1984); Gideon v. Wainwright, 372 U.S. 335 (1963); Johnson v. Zerbst, 304 U.S. 458 (1938); Powell v. Alabama, 287 U.S. 45 (1932). See also Article IV, Section 1, United States Constitution; Article VI, Section 2, United States Constitution; Amendment VI, United States Constitution; Amendment XIV, Section 1, United States Constitution; and Article 1, Article 2, Article 3, Article 6, Article 7, Article 8, Article 9, Article 10, Article 12, Article 21 (2), Article 28 and Article 30 of the Universal Declaration of Human Rights (Ratified 12/10/48).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

EL

Date: October 30 2018