

18-6860

No. _____

IN THE
Supreme Court of the United States

Supreme Court, U.S.
FILED

NOV 16 2018
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JOHNNY RAY MCCLOUD,

Petitioner;

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Julie Jones, and

ATTORNEY GENERAL OF FLORIDA, Pamela Jo Bondi,

Respondent(s).

On Petition for Writ of Certiorari
To The United States Court of Appeals Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

JOHNNY RAY McCLOUD
Petitioner, *pro se*
DeSoto Correctional Institution Annex
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

I. Was *Perkins v. State*, 682 So. 2d 1083 (Fla. 1996) correctly applied? See Johnny Ray McCloud's 2254 Petition for Writ of Habeas Corpus.

II. Does the *Young* decision apply to the case at hand as it was issued after Johnny Ray McCloud's conviction? See *Young v. State*, 2013 WL 5270683 (Fla. 2013).

1. This case present fundamental question of the interpretation of the 5th and 14th Amendment right to due process and equal protection of law under Florida Statutes concerning what constitutes a dwelling versus a storage building.

LIST OF PARTIES

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

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Fla. Stat. 810.011(2)).	

IN THE SUPREME COURT OF THE UNITED STATES

JOHNNY RAY MCCLOUD, *Petitioner*,
versus
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Julie Jones, and
ATTORNEY GENERAL OF FLORIDA, Pamela Jo Bondi, *Respondent(s)*.

*PETITION FOR WRIT OF CERTIORARI TO THE
11th FEDERAL CIRCUIT COURT OF APPEALS*

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

OPINIONS BELOW

For cases from federal courts: Appendix "B"

The opinion of the United States Court of Appeals

The opinion of the United States District Court

For cases from state courts: Appendix "A" - *N/A*

The opinion of the highest state court to review the merits appears at various Appendices to the petition.

JURISDICTION

For cases from federal courts:

For cases from state courts:

The date on which the highest state court decided this case _____ and appears at Appendix "A".

The date on which the highest federal court decided this case _____ and appears at Appendix "B"

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th and 14th Amendment right to due process and equal protection of law.

STATEMENT OF THE CASE

1. While walking his dog, McCloud's neighbor discovered McCloud and a woman stealing a sofa from the neighbor's shed. A jury convicted McCloud of second degree burglary of a dwelling in violation of Fla. Stat. 810.02(3)(b) and petit theft in violation of Fla. Stat. 812.014. McCloud was sentenced as a PRR to fifteen (15) years imprisonment.

REASONS FOR GRANTING THE WRIT

1. The lower tribunal failed to allow Johnny Ray McCloud the opportunity to amend his post conviction motion pursuant to *Spera v. State*, 971 So. 2d 754 (Fla. 2007).
2. The Eleventh Circuit denied Johnny Ray McCloud's motion under *Perkins v. State*, 682 So. 2d 1083 (Fla. 1996) except that the controlling case law, at the time of his conviction was *Munoz v. State*, 937 So. 2d at 688 (quoting *State v. Bennett*, 565 So. 2d 803 (Fla. 2nd DCA 1990)).

The structure in question was modified by its owner to make it unsuitable for lodging and was utilized as a storage shed. More importantly, Polk County had removed the electric meter ten (10) years prior and the building lacked any utilities, so that Polk County notified the owner in writing that the status of the structure was changed from dwelling to storage.

Johnny Ray McCloud points to the controlling case at the time of his conviction; Munoz v. State which specifically quotes *State v. Bennett*, 565 So. 2d 803 (Fla. 2d DCA1990).

In *Bennett*, the court considered residential burglary charges against a defendant who had stolen property from an unoccupied mobile home located on a sales lot, under a statute defining an applicable "dwelling" as "a building or conveyance of any kind, either temporary or permanent, mobile, or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night . . ." *Id.* at 805 (quoting Fla. Stat. 810.011(2)).

Although the court concluded that such a property could be covered by the statute, it "stop[ped] short . . . of holding that the . . . statute justifies [a charge of residential burglary] any time someone enters a structure that theoretically could serve as housing."

It is the character and purpose of the house that determines its status as a dwelling for purposes of 810.011(2), Fla. Stat. (2009). Section 810.011(2) must be given its plain and obvious meaning unless a literal interpretation would produce an unreasonable or ridiculous result. It appears that the plain and obvious meaning of 810.011(2) can be ascertained, without producing an unreasonable conclusion. The plain meaning of the statute indicates an intent for the state of emergency exception to apply to the portion of the statute requiring a roof, not the portion requiring a certain "design." 810.011(2), Fla. Stat. (2009) provides that during the time of a state of emergency, the term includes such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof. The plain language of the statute indicates a legislative intent to protect the "dwelling" status of a house that is destroyed during a state of emergency, despite the fact that the roof no longer exists. This reading of the statute does not remove the requirement that the intended purpose or character of the building be that "designed to be occupied by

people lodging therein at night." This reading of the statute also effectuates the legislative intent without the need of adding an additional element not explicitly stated in the statute.

CONCLUSION

The Florida courts and the Federal courts misapplied the intention of state and federal law, therefore:

In view of the foregoing facts, arguments, and authorities, Petitioner respectfully submits that a writ of certiorari should be granted.

Respectfully submitted,

/s/ *John Ray McCloud*
JOHNNY RAY MCLOUD, Petitioner

Date: 11 - 7, 2018