

No. 18-7314

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED  
OCT 28 2018  
OFFICE OF THE CLERK

DEONTAE THOMAS — PETITIONER  
(Your Name)

vs.

STATE of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SECOND DISTRICT COURT OF APPEAL (FLA.)  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DEONTAE Thomas # R12198  
(Your Name)  
Charlotte Correction Inst.  
33123 Oil Well Road  
(Address)

Punta Gorda fl 33955  
(City, State, Zip Code)

(Phone Number)

RECEIVED  
NOV - 6 2018  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**QUESTION(S) PRESENTED**

Whether Procedural Due Process of Law  
Mandated An Evidentiary hearing on  
Newly Discovered Evidence Claim.

Whether Petitioner was denied a detached  
-N- Neutral Judge in the First Instance

Whether Petitioner were denied the  
opportunity to be heard According to law

## **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 .....	5
CONCLUSION.....	8

## INDEX TO APPENDICES

APPENDIX A Intermediate Appellate Court Silent 'PCA'

APPENDIX B Circuit Court (6<sup>th</sup>) Summary Denial FR Cr. P 3.850

APPENDIX C Florida Supreme Court Decline Jurisdiction

APPENDIX D Petition To Invoke Certiorari Jurisdiction

APPENDIX E Intermediate Appellate Court Construal to Rule 9.120  
to Invoke Fla. Sup. Ct. discretionary Jurisdiction

APPENDIX F Petitioner (Appellant) Initial Brief

## TABLE OF AUTHORITIES CITED

### CASES

	PAGE NUMBER
<u>City of West Covina v. Perkins</u> , 525 U.S. 234 (1999)	5
<u>Concrete Pipe v. Pension trust</u> , 508 U.S. 602 (1993)	5
<u>Kesey v. Tamayo-Reyes</u> , 504 U.S. 1 (1992)	7, 8
<u>Moore v Illinois</u> , 408 U.S. 786 (1972)	6, 7
<u>Napue v Illinois</u> , 360 U.S. 264 (1959)	7
<u>Townsend v. Sain</u> , 372 U.S. 293 (1963)	7, 8

### STATUTES AND RULES

Fla. R. Crim. P. Rule 3.850(b)(1)	5
28 U.S.C. Section 455(b)(1), (5)(ii)	5
42 U.S.C. Section 1981(a)	7

### OTHER

U.S. Const. Article III Section 1	5
West F.S. A. Const. Article I Sections 9, 21	5
U.S.C.A. Const. Amend. 14	5

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 Sixth Judicial Circuit 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 8/22/18. A copy of that decision appears at Appendix A.

A timely petition for <sup>Certiorari</sup> rehearing was thereafter denied on the following date: 9/28/18, and a copy of the order denying rehearing appears at Appendix C.

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

The Fourteenth Amendment to the United States Constitution Requires the Right to a Fair And Unbiased Judge.

The Substantive Component of Due Process is Freedom From Arbitrary Governmental Action, Coupled with Equal Operation of the Law

The Equal Protection Clause of the Fourteenth Amendment is directed to the States And Essentially Mandates that: Those who is likely situated be treated the same.

## STATEMENT OF THE CASE

1. On August 16, 2017 Petitioner Filed [A] Fla. R Crim. P Rule 3.850(b)(1) Motion based on Newly discovered Evidence.  
SEE [APP. B ]
2. On November 29, 2017 Honorable Judge Federico, Denied the Motion without requiring a Response from the state And without conducting a fact-finding hearing, w/Attachments  
SEE [APP. B ]
3. Petitioner Filed timely Appeal And Subsequently Filed An Initial Brief.  
SEE [APP. F ]
4. On August 22, 2018 the Second District Court of Appeal Pursuant to Rule 9.141(b)(2) entered its silent per curiam AFFIRMED "PLA"  
SEE [APP. A ]
5. On September 24, 2018 Petitioner filed Petition to Invoke Appellate Court Certiorari Jurisdiction.  
SEE [APP. D ]
6. On September 26, 2018 Appellate Court Construed Cert. as Notice to Invoke Supreme Court Discretionary Jurisdiction.  
SEE [APP. E ]
7. On September 28, 2018 Supreme Court dismissed the case for lack of jurisdiction.  
SEE [APP. C ]

## REASONS FOR GRANTING THE PETITION

Petitioner was deprived of the Federal Protected Right to Procedural And Substantive Due Process Guarantees Under the Federal and State Constitutions. SEE U.S. C. A. Const. Amend. 14; (Fla. Const.) Article I § 9.21 where he was denied the Constitutional requirement of a 'Neutral' And 'Detached' Judge in the First Instance.

In this instance, Petitioner Filed An orderly and timely 3.850(b)(1) Pleading based on newly discovered evidence.

However, State Court Judge failed to employ the primary purpose of the notice (on the state) required by due process to ensure that the opportunity for a hearing were and is meaningful. SEE City of West Covina v. Perkins, 525 U.S. 234, 119 S.Ct., 678 (1999).

SEE [APP. B ]

This is so because the denial is based on an erroneous and objectively unreasonable finding of untimeliness, instead of legally insufficiency. This error clearly and plainly violated Article III Section 1 of the U.S. Constitution and 28 U.S.C. Section 455(b)(1), (5)(ii) because the Judge acted as a lawyer in Post Conviction Proceedings; in which judicial bias and deception arose.

First because of the Application of An incorrect standard were Employed where state Judge

---

<sup>1</sup> Concrete Pipe v. Pensiontrust, 508 U.S. 602 at 617 (U.S. 1993).

Misfeasance were the product of an erroneous belief that the two year period to file under newly discovered evidence claim commence following direct appeal; instead of two years following the discovery of the new evidence. As a result the Judge Relied on the inconsistent testimony of Ofc. Virden's during First And Second trial as being known at the time of trial [AS] the Means to disqualify the Newly discovered evidence [AS] newly discovered.

Id. at Page 2-3

Secondly Judge Federico Attempted to Vouch for the corrupt law enforcement officer in which the government investigated and concluded that a substantial pattern of corrupt behavior in multiple separate events demonstrates [A] habitual pattern of deception sufficient to 'undermine' the credibility of a known liar and the Judge's inferences do not conclusively refute that the officer's inconsistent testimony violates *NaPue v. Illinois*. And the prosecutor permitted the false testimony to go or remain uncorrected. See Moore v. Illinois, 408 U.S. 786 at 797 and n.2 (1972)

#### Necessity of Hearing

Finally State Post-Conviction Court Failed to conduct an adequate fact-finding hearing on the threshold adversarial issue that his conviction violates the 14th Amend. based on material false testimony of state's key wit-

ness in Violation of Napue, 360 U.S. 264 (1959) which re-  
Mains Uncorrected. Id. [408 U.S. 797 n.2].

The Failure to develop the Constitutional claim at a state Court hearing is not Attributable to the Petitioner [App. B] Wherefore, the intermediate Appellate Court [App. A] silent per curiam Affirmance Satisfies (1), (3) and (b) Circumstances delineated in Townsend v. Sain, 372 U.S. 293 at 312 (1963) accord Keeney v. Tamayo-Reyes, 504 U.S. 1 at 15 (1992).

Petitioner rightfully Argued in his initial brief [App. E] of the Fabricated testimony of officer Virden in the 2nd trial as inconsistant with [that] in the 1st trial.

Wherefore, the newly discovered Evidence [is] Sufficient to warrant 'testing' and being 'tried' at an evidentiary hearing. Whereby state Court failure in this Context Constitutes [the] Failure to afford Procedural due Process of law. A Violation of 42 U.S.C. § 1981(a)

All of which was Orderly directed to state Appellate Court Attention in state Certiorari [App. D] which was Erroneously Construed to An Incorrect Standard of Review [App. E] not Attributable to the Petitioner

Thus, An Adequate Fact-finding hearing were and [is] Constitutionally Mandated because the Petitioner stands Convicted in Violation of the fundamental liberties of [his] Person Safeguarded Against state Arbitrary Actions by the federal Constitution Articulated in this Court's Keeney decision [504 U.S. 1 at 15]

Wherefore, This Honorable Court Should be Constrained to Reverse the State Court Judgment And Remand For An Evidentiary hearing To Test And Try the Relevant testimonial Evidence of a Known Liar. In Accord with Townsend And Keeney Progeny.

### **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Montae Thomas

Date: Oct 29, 18