No. 18-7988

IN THE

SUPREME COURT OF THE UNITED STATES

James Forney — PETITIONER
(Your Name)

vs.

State of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

James Forney - 125989
(Your Name)
Columbia Annex C.I.
216 S.E. Corrections Way
(Address)

Lake City, Fl. 32025
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

Have we really reached the point where state judges can commit felonies from the bench against the citizens with a sense of impunity?

Since this citizen's case examples such, and has exhausted the state avenues available today; will this Court please redress the merits of this case [FN], and what is perceived to be the root unconstitutional **abridgement** that affords such egregious state conduct?

FN. Does a court admin rule override a statute's jurisdiction limit imposed upon the courts?

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

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

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[ ] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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 17th Jud. Cir (Broward) 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[ ] is unpublished.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 26 June 2018. A copy of that decision appears at Appendix C.

[ ] 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 23 Nov. 2018 (date) on 4 Oct. 2018 (date) in Application No. 18A357.

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

Constitutional and Statutory Provisions Involved

F.S. § 38.10 Disqualification of judge for prejudice; application; affidavit; etc. — Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. However, when any party to any action has suggested the disqualification of a trial judge and an order has been made admitting the disqualification of such judge and another judge has been assigned and transferred to act in lieu of the judge so held to be disqualified, the judge so assigned and transferred is not disqualified on account of alleged prejudice against the party making the suggestion in the first instance, or in favor of the adverse party, unless such judge admits and holds that it is then a fact that he or she does not stand fair and impartial between the parties. If such judge holds, rules, and adjudges that he or she does stand fair and impartial as between the parties and their respective interests, he or she shall cause such ruling to be entered on the minutes of the court and shall proceed to preside as judge in the pending cause. The ruling of such judge may be assigned as error and may be reviewed as are other rulings of the trial court.

Fl. Judicial Administration Rule 2.330, Disqualification of Trial Judge.

(j) Time for Determination. The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subsection (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.

(c) Motion. A motion to disqualify shall:
(1) be in writing;
(2) allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification;
(3) be sworn to by the party by signing the motion under oath or by a seperate affidavit; and
(4) include the dates of all previously granted motions to disqualify filed under this rule in the case, and the dates of the orders granting those motions

The attorney for the party shall also seperately certify that the motion and the client's statements are made in good faith. In addition to filing with the clerk, the movant shall immediately serve a copy of the motion on the subject judge as set forth in Florida Rules of Civil Procedure 1.080.

Fl. R. Civ. P. Rule 1.080

Rule 1.080. Service and Filing of Pleadings, Orders, and Documents.

(a) Service. Every pleading subsequent to the initial pleading, all orders, and every other document filed in the action must be served in conformity with the requirements of Florida Rule of Judicial Administration 2.516

(b) Filing. All documents shall be filed in conformity with the require-

ments of Florida Rules of Judicial Administration 2.525.

Author's Comment — 1967

Filing

Filing is accomplished when the paper is delivered or placed in the hands of the officer entitled to receive it, U.S. v Misco Homestead Assn. (C.C.A. 8th) 185 Fed. 2d 283. However, the Florida Courts have strictly construed the filing requirement to mean that that pleading must actually be filed with the court, and mere service is insufficient to present the pleading to the court. Pan American World Airways v Gregory, 96 So. 2d 669 (Fla. App. 1957).

Fl. R. Jud. Admin.

Rule 2.516. Service of Pleadings and Documents.

(a) Service; When Required. Unless the court otherwise orders, or a statute or supreme court administrative order specifies a different means of service, every pleading subsequent to the initial pleading and every other document filed in any court proceeding, except applications for witness subpoenas and documents served by formal notice or required to be served in the manner provided for service of formal notice, must be served in accordance with this rule on each party. No service need be made on parties against whom a default has been entered, except that pleadings asserting new or additional claims against them must be served in the manner provided for service of summons.

(d) Filing. All documents must be filed with the court either before service or immediately thereafter, unless otherwise provided for by general law or other rules. If the original of any bond or other document required to be an original is not placed in the court file or deposited with the clerk, a certified copy must be so placed

by the clerk.

(e) Filing Defined. The filing of documents with the court as required by these rules must be made by filing them with the clerk in accordance with rule 2.525, except that the judge may permit documents to be filed with the judge, in which event the judge must note the filing date before him or her on the document, and transmit them to the clerk. The date of filing is that shown on the face of the document by the judge's notation or the clerk's time stamp, whichever is earlier.

Rule 2.525. Electronic Filing. (N/A to prisoners)
(d) Exceptions. Paper documents and other submissions may be manually submitted to the clerk or court.

Florida Constitution Article I §21. Access to courts.--The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

Florida Constitution Article I §22. Trial by jury. -- The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

STATEMENT OF THE CASE

The instant matter presented here, after being frustratingly exhausted in the state courts, involves only one ground of Newly Discovered Evidence ("NDE" herein). The evidence is physical and unrefuttable (if such had ever been afforded due process of a public and lawful hearing on matters). The NDE involves the trial judge's criminality in unconstitutionally contriving a conviction of this citizen. The conviction was/is for 1ST degree Murder (cf. Appendix "E"-"K"; Judgment and Sentence documents), of what truely is a case of self-defense, and defense of home: "Castle Doctrine".

The NDE that this citizen found was/is where the "record on appeal" had been altered (F.S. § 838.022 (1)(b)(2008): 3rd degree felony) at one paragraph — the most essential paragraph — in the jury instructions for self-defense and defense of home (found on IRA 298). Culpability for the altered record has since been traced to the trial judge. The alteration is in the opposite context than what was actually read and given to the jury. The jury was told that the defendant "must retreat" before taking lethal action; the altered paragraph sent to the 4DCA for the direct appeal had the true context of a "Castle Doctrine" instruction of "no retreat", which the trial judge was absolutely refusing to give, in trial, to the jury.

The altered record was traced within the transcripts, and found in the timeline of trial events, when committed, and now serves as physical evidence for proving the "intent" element of a greater crime the trial judge committed: knowingly and deliberately "tampering with the jury" and their decision making ability (F.S. §918.12(2008): 3rd degree felony — 12 counts).

Additionally, the NDE proves the trial judge exceeded her lawful jurisdiction and usurped the jury's jurisdiction over the facts of the case; making herself judge, jury, and executioner, in clear violation of this citizen's demanded right of "Trial by Jury" (Fl. Const. Art. 1 § 22).

The altered record had a dual purpose: (1) to deceive the reviewing authorities into believing that a "castle doctrine" instruction was given, thus hiding the judge's committed crime of "tampering with the jury", and (2) to decimate the direct appeal to insure the continued incarceration of this prejudiced citizen.

In Florida, any motion for postconviction relief has to be filed in the sentencing court, including NDE claims of the judge's improprieties, i.e., file to the subject judge.

In the absence of a recusal, the following relevant facts reflect the absurdity of a judge insisting on presiding over raised claims of that judge's own criminal conduct in contriving the conviction:

NDE BACKROUND

1. The initial discovery was sometime between 18 Sept. and 9 Oct. 2014, when finalizing the submission of **PC16** (1ST postconviction motion), and noted within Ground 3 at fact #11. The Ground was of counsel's ineffectiveness toward the same jury instruction, and then blamed for not seeing the change (later I explained that he or I could have never seen the judge's after hours altering or slight of hand with the "file set" of instructions).
2. The judge's culpability was traced by her admitting to working on one of three pages that has different margins from the full set of jury instructions — those three page's margins are the same to themselves, only.
3. This citizen timely filed his postconviction relief motion for the NDE, titled: (**NE1**) "Second Postconviction Relief Motion, Raising One Newly Discoverd Evidence Claim"
   (**NE2**) "Appendix..."
   (**NE3**) "Memorandum of Law..."
4. The subject judge, within days, fraudulently and summarily denied as "successive" and therefore "untimely". The fraud: the subject judge misrepresented defendant's submitted "apple" to be an "orange". Violating: F.S. §§§ 918.13(1)(b); 838.022(1)(a); 838.022(1)(c).
5. The 4DCA ignored the clear 'black & white' printed fraud by the lower court and issued a PCA without opinion ("PCA-O").

In my opinion, Violating: F.S. § 838.022 (1)(c).

6. Fl.S.Ct. claimed "No Jurisdiction" because of the PCA-O (Also this court claims that they have no certiorari powers — as a matter of law, it is a false claim, and causes constitutional rights to be abridged.)
Abridged Right: Fl. Const. Art. I § 21, "The courts shall be open..."

* 7. U.S.S.Ct. Certiorari was **not** then sought, mainly because this citizen thought it more prudent to first seek REINSTATEMENT of the NDE claim due to the subject judge's fraud against it.

NDE PRESENT PATH

i.e., Attempted REINSTATEMENT

8. Since the first attempt did not seek recusal formally, and no self-recusal issued, the main thrust for the REINSTATEMENT attempt was to get another judge assigned to this case (and merits).

9. This citizen timely filed for relief of the fraudulent postconviction order, and included:

(SF1) "Motion for Statutory Disqualification of Judge", relying on F.S. § 38.10, and premised on the known felonies by this judge.

(SF2) "Affidavit" in support of disqualification motion

(SF3) "Motion to Set Aside the Froudulent Postconviction Order, and Reinstatement of the Raised Merits."
(enclosed NE1-3, merits, in case SF3 was granted)

(SF4) "Motion for 'Priority Status' Designation of the Reinstated Postconviction Motion."

10. The subject judge denied SF1, SF2 (disqualification) as "legally insufficient" to insist on presiding over the new allegations of her "fraudulent order" of Sept. 2016 (cf. #4 above), as well as keep control over the merits of the initial felony conduct in trial; **however**, in the absence of a recusal the subject judge has been caught by some of the pitfalls that the REINSTATEMENT proceedings strategically presented.

Such as, when the subject judge also denied SF3 — refusing to personally admit to issuing a fraudulent order — and seperating out the "enclosures" (NE1-3), filing them then to set up for "abuse of

procedure" arguments, has in fact overlooked, that by issuing an order to the state to respond now, to the identical motion denied last year (2016) without having the state to respond to, clearly proves the prior conduct (2016) detailed within SF3, to be error — and the only "error" possible was the subject judge's own "fraud" — tripping herself, i.e., essentially admitting the felony conduct of 2016.

11. Appeal in 4DCA, for the denied disqualification (SF1,2), was sought by Prohibition #4D17-2951: Denied (?? a premise of a judge's committed felonies are "legally insufficient" ??)

12. A second motion for disqualification (SF5,6) relying on "Predisposition", was "filed" under F.S. §38.10, received and signed for by an agent of the court; BUT, ignored by the subject judge, who then exceeded her jurisdiction over the merits (NE 1-3), and summarily denied them as "Successive" and therefore "Untimely" (see now, Appendix "B").

13. Appeal of the ignored disqualification motion (SF5,6) was sought by Prohibition #4D17-3542: Dismissed without prejudice; for appeal.

14. SF9 "Motion for Rehearing and/or Objection" was timely "filed" to the court, clearly detailing the divested jurisdiction over the merits of the cause due to the statutory protections afforded by Legislature when a motion for disqualification (SF5,6) was "filed" under F.S. §38.10; BUT, the subject judge denied the rehearing: also in excess of lawful jurisdiction because no ruling has ever issued on SF5,6 — and as a matter of law, still pending (in my opinion).

15. Appeal in 4DCA was sought (full) #4D17-3854, relying on the divested jurisdiction over the merits, because of the unresolved disqualification: PCA with opinion issued on 28 Feb. 2018 (see now, Appendix "A"), citing an Administrative Rule and an off-point (to the instant) case that dealt with "automatic granting" or not, where the 4DCA is unlawfully applying extra servicing to now be an extra hurdle for invoking jurisdiction of the statute's protection once "filed".

16. Appeal - because of the opinion - was sought in Florida's Supreme Court, #SC18-750; jurisdictional briefs were required and then the court declined to accept jurisdiction, on **26 June 2018** (see now, Appendix "C").

So, even if this citizen were to concede that "automatic granting" of SF5,6 disqualification has not happened because this citizen did not see the obscure new requirement (that did not affect SF1,2 which was "filed" in the exact same manner) in Fl. Jud. Admin. Rule 2.330(c) to also serve a copy to the judge after "filing" with the Clerk (of the same court); This citizen still contends that SF5,6 should still be pending, as a matter of law, because a judicial admin rule cannot act jurisdictionally here against the "filed" motion, which is how the 4DCA is attempting to read and impose the caselaw as (cf. Appendix "A").

Neither the 4DCA nor Fl. S. Ct. are constitutionally vested to hamper (change in any manner) the jurisdictional limitations imposed upon the judiciary of Florida by the Legislature when they enacted F.S. §38.10.

Or even perhaps, as this citizen has just recently found, that 4DCA has now failed to follow their own prior ruling in Rosado v State, 76 So.3d 1140 (Fla. 4th DCA 2012); which stipulates that "automatic granting" should have happened because the subject judge (claims no personal copy received) was made aware of the existence of the disqualification motion by other means; and in this instant case, at least two (2) other means put the subject judge on notice of the existing disqualification motion:

1.) Served as a party of the Prohibition cause #4D17-3542, for the motion being ignored (cf. #13 above); **and** a copy of the motion was attached to the petition as "Exhibit '1'."
2.) in a "Motion for Rehearing and/or Objection" (SF19) the pendency of the disqualification motion was fully detailed (cf. #14 above).

Wherefore, it is believed that both the 4DCA's and the lower tribunal's judgments should be reversed, and the matter remanded back to a new circuit judge to reconsider the REINSTATEMENT proceedings, or perhaps that this Court will afford full briefing and redress here.

REASONS FOR GRANTING

IF the 4DCA's written opinion is correct, then the citizens of Florida are in grave trouble of the resulting ramifications revealed:

If 4DCA is correct: means the 4DCA is free from prior rulings of that court, cf. Rosado v State, 76 So.3d 1140 (Fla. 4th DCA 2012), (even when the trial judge had not received a copy of the motion to disqualify, the record indicates that the judge had been aware of the motion during its pendency, requiring the motion to be deemed granted, pursuant to rule 2.330(j).).

If 4DCA is correct: means all DCA's are free to ignore Legislature's intended judicial jurisdictional limitations §38.10 imposes when "filed".

If 4DCA is correct: means all trial courts are free to ignore Legislature's intended judicial jurisdictional limitations §38.10 imposes when "filed".

If 4DCA is correct: means Florida's Supreme Court wasted time debating "automatic granting" in Braddy v State, 111 So.3d 810, 833 (Fla 2012), because if the true matter is "jurisdictional" by an extra imposed serve requirement, then every thing else afterwards is moot.

If 4DCA is correct: means Fl.S.Ct. can actually exceed their constitutional powers, and change the judiciary's jurisdiction by court rule whenever they no longer agree with Legislature's limits.

If 4DCA is correct: means DCA's and trial judges are free to make any caselaw say whatever they want it to say, regardless of what is printed; exceeding their constitutionally vested powers.

If 4DCA is correct: means that **no citizen** can ever really feel safe from the judicial system's tyrannical whims.

If 4DCA is correct **and** Fl.S.Ct. failed to be open for redressing the matter:

(A) then Fl.S.Ct is in violation of Fl.Const.Art. I §21, i.e., "The courts **shall be open** to every person for

redress of any injury..." (emphasis is mine).
*In my opinion, "shall" is not "descretionary", and therefore the state's Constitutional Amendment of 1980 abolishing ~~the~~ appeal avenue of right from DCA's to the S.Ct. was/is unconstitutional, because it created an **abridgement** to the right constitutionally mandated in Fl. Const. Art. I § 21, when injury occurs in a DCA.

(B) because Fl.S.Ct. also falsely claims that they do not have "common law certiorari" under their all writs jurisdiction (I contended this in the jurisdictional brief to them: SF19; **BUT**, such would reopen their doors).

(C) then Fl. S. Ct. also failed their supervisory mandate of Fl. Const. Art. 5 § 2(a).

OR, if this citizen is correct: means that the 4DCA is in error, **and**:

(A) that "law" really does mean "law" (for all); and

(B) that a felonious judge may be removed from the bench (after due process is afforded there too); and

(C) that an illegally incarcerated citizen shall finally have due process for seeking a restoration of **Liberty**.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 18 Nov. 2018