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IN THE
SUPREME COURT OF THE UNITED STATES

JAMES ARTHUR BRINSON, PETITIONER

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,
RESPONDENTS,

ON PETITION FOR A WRIT OF *CERTIORARI* TO

THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

JAMES ARTHUR BRINSON
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QUESTIONS PRESENTED

IS A CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS BEING DENIED WHEN A FRAUD ON A STATE COURT DECISION IS USED TO PROVE UNTIMELINESS WHEN FEDERAL COURTS DO NOT IDENTIFY A FRAUD ON THE COURT AS A FINAL DECISION?

LIST OF PARTIES

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

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF *CERTIORARI*

OPINIONS BELOW

The opinion of the Eleventh Circuit Court of Appeals appears at Appendix A to the Petition and is unpublished.

The opinion of the Middle District Court of Appeals of Florida appears at Appendix A to the Petition and is unpublished.

JURISDICTION

The date on which the Eleventh Circuit Court of Appeals decided my case was August 8, 2018.

A timely Motion for Rehearing was denied on September 19, 2018.

Copies of decisions appears at Appendix B.

The date on which the Middle District of Appeals of Florida decided my case was November 21, 2017.

A timely Motion for Rehearing was denied on March 9, 2018.

Copies of decisions appears at Appendix B.

Jurisdiction of this Honorable Court is invoked under 28 U.S.C. §1254(1).

AMENDMENTS AND RULES INVOLVED

The 5th, and 14th Amendments were denied due to unwarranted rules which denied access to the courts such as, Rule 60(b)(6), and Rule 60 (c)(1). A Rule 59 was presented asserting Brinson failed to demonstrate Newly Discovered Evidence and a Manifest error of law and fact. Brinson had asserted a Rule 60(b) Motion (under the saving clause Rule 60 (d)(3)), (set aside a Judgment for fraud on the Court).

STATEMENT OF THE CASE

On February 23, 1990, an information was filed on the Petitioner, James Arthur Brinson, as followed:

Count One; Aggravated Assault

Count Two; Armed Robbery

Count Three; Fleeing To Elude

Count Four; Armed Robbery

Count Five; Armed Robbery

See Appendix C pg's. 1-6.

On October 4, 1990 a Severance Hearing was held to remove Count Five from the above information. Defense prevailed and Count Five was rule to be removed from Counts One through Four. See Appendix D. In amended information Count Five remain on charging information for trial. See Appendix E pg's. 10-14. On December 21, 1990 State filed a Williams Rule Motion and prevailed. Court ruled for identification issue that the witness was allowed to identify the perpetrator by a statement that was allegedly made during Count Five Robbery. The presiding Judge, Honorable Dennis P. Maloney, held "if this were a situation where Mr. Hines (sic) was going to say I'm sure that that's Mr. Brinson who robbed me on the 4th because that's the same Brinson who robbed me on the 112th, I'd say, no, that's out." See Appendix F, pg. 17, lines 12-16.

Before trial Judge Maloney and Defense Counsel Scott K. Spviack were substituted. On March 4, 1991 trial was presided under Honorable Charles A. Davis, and Defense Counsel Julia J. Williamson replaced Mr. Spviack. Judge Davis failed to familiarized himself with the case before trial, and had to rely on the State to informed him about Count Five. "What about Count Five?" See Appendix G, pg's. 4-5, lines 25, 1. The State, whom was not substituted, told the

Court that Count Five was severed. Then the State gave Judge Davis his misinterpretation of the Williams Rule Restriction rendered by Judge Maloney. “ I will simply restrict Mr. Hynds, the fact that he was robbed on the 12th and that Mr. Brinson was there and Mr. Brinson, in fact, recognized him and made a statement that he had seen him before, seen him too many times. And that’s what we’re restricting.” See Appendix G, pg. 6, lines 5-13. In the State’s opening he made improper statements pertaining to the January 12th robbery such as, “held the gun on David Hynds on the 12th., holding the gun to David Hynds that second time on the 12th.,Let me repeat that. He held the gun on David Hynds on January 12th,”. See Appendix G., pg’s, 122-123, lines 25-1, 4-6, 11-12. During testimony the State ask Mr. Hynds what he was ordered not to do by Judge Maloney. “That person then that robbed you on the 12th, is that the same person that you’ve earlier identified in court as the person that robbed you on the 4th?” See Appendix G, pg’s, 166-167, lines 25, 1-3. No instructions from the bench to enforce Judge Maloney’s ruling, and Defense Counsel failed to object.

A timely Direct Appeal was filed on the Williams Rule evidence from another robbery and was *per curiam affirmed* on September 18, 1992.

Brinson filed a Habeas Corpus on December 5, 2014 asserting structural errors. State submitted September 18, 1992 decision as evidence to the Federal Court to prove untimeliness on January 28, 2015. See Appendix H. pg’s. 2-5.

Brinson filed a Rule 60(b) Motion (under the saving clause Rule 60(d)(3)). The Middle District of Appeals of Florida denied the Motion asserting that the Rule 60 (b) Motion was raised in a reasonable time period, according to, Rule 60 (c)(1). On the Rehearing Brinson asserted that the Court misconstrued the reasonable time period because under Rule 60(d)(3) (fraud on the court) has no time limit. The Middle District Court ruled on the Rehearing that Brinson failed to show a Manifest errors of law or fact. Then the Eleventh Circuit denied Brinson’s

Certificate of Appealability, because he failed to demonstrate a Manifest Error of law or fact, and failed to articulate how the fraud on the State Court was perpetrated on the Federal Court. Rehearing was denied failing to raise new evidence.

REASONS FOR GRANTING THE PETITION

Brinson is asserting an abused of discretion occurred that has denied his constitutional right of access to the courts. The Middle District of Florida presented procedures that was unwarranted by renaming the Motion to a Rule 60(b)(6) from a Rule 60(b) Motion (under the saving clause Rule 60(d)(3)), then presented an unreasonable time period under Rule 60(c)(1), which a Rule 60(d)(3) is an exception pertaining to fraud on the court. Then the Court ruled in Brinson's rehearing that he failed to demonstrate newly discovered evidence, and failed to demonstrate that the Court committed a Manifest Error of law or fact. The fraud on the Federal Court occurred on January 28, 2015, which is newly discovered evidence in Brinson's case, and the Court committed a Manifest Error of laws by justifying unwarranted procedures to rendered their decision. The Court stated inaccurate procedures to rule a decision, which is an abused of discretion. Brinson argued this abused of discretion to the Eleventh Circuit in his Certificate of Appealability and the Court denied the allegations.

Then the Court failed to interpret how the fraud on the Federal Court occurred. The fraud on the State Court transcended to the Federal Court when the State used the decision to proved untimeliness from a decision produced by fraud on the court. The Court also failed to interpret how the fraud on the State Court occurred. The fraud did not occurred by asking a witness a question. It occurred by the prosecutor lying to the Court concerning a prior ruling. The fraud is about a judicial proceeding, not the evidence or the questioning of a witness. The prosecutor lied to the Court with an erroneous instruction. The Circuit Court failed to recognize the fraudulent act against the Court. It is in plain sight, in a prior ruling under a different Judge a restriction was made and the prosecutor, whom was not substituted, lied to the substituted Judge on the ruling made by the prior Judge. The restriction was to insured Count Five remains separate. When the

prosecutor accused Brinson of committing January 12th Robbery he violated a procedural proceeding which defiled the Court's integrity. This intentional deception by the State was a careful plan to discredit Brinson's character.

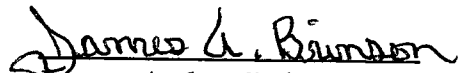
The Court must have believed January 12th Robbery would placed the judgment in question or the Court would have never rendered a severance of January 12th Robbery (Count Five). Then the Court rendered the restriction to secure the severance in the Williams Rule Hearing. This deception by the prosecutor was against the Court, not Brinson. This deception by the State was against the trial court and the decision was based on fraud on the Court. According to, United States v. Williams, 790 F. 3d 1059, 1071 (10th Cir. 2015) "A decision produced by fraud on the Court is not in essence a decision at all, and never becomes final." Also see Burke v. United States :: 2005 U.S. Dist. LEXIS 25908 (3rd Cir. 2005); Fierror v. Johnson, 197 F. 3d 147, 154 n.6 (5th Cir. 1999); United States v. MacDonald :: 1998 U.S. App. LEXIS 22073 (4th Cir. 1998). (Quoting Kenner v. Comm'r., 387 F. 2d. 689, 691 (7th Cir. 1968)).

If the decision never becomes final then the State committed fraud on the Federal Court by submitting a decision based on fraud to proved untimeliness. By using unwarranted procedures denied Brinson his Constitutional Right of Access to the Courts to argue a legitimate assertion. Fraud on the Federal Court. This newly discovered evidence was not available at trial because the State was in the act of committing the fraud during trial. Now the State has committed the same error by submitting the fraudulent act to the Federal Court.

CONCLUSION

Due to the unwarranted procedures Brinson prays this Honorable Court to remand the case back to the Middle District of Appeals of Florida for a show cause ordered to show why Brinson's Rule 60 (b) Motion (under the saving clause Rule 60 (d)(3) does not meet the requirements of fraud on a Federal Court.

Respectfully submitted,



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