Case No. 18-8431

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2018

DAVID K. BREWSTER, *Petitioner*,

v.

STATE OF FLORIDA, *Respondent.*

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

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QUESTION PRESENTED (Combined and Restated)

The Fourth District held that Petitioner's request for a refund of restitution, court costs, and fees, and an award of compensation for wrongful incarceration, was untimely because it was not made within 90 days of the vacation of Petitioner's conviction in a federal habeas corpus proceeding. The Fourth District rejected Petitioner's claim that this Court's opinion in Nelson v. Colorado, 581 U.S. ___, 137 S.Ct. 1249 (2017), is retroactive.

The question presented is whether Nelson should be applied retroactively so as to revive Petitioner's untimely claims.

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DECISION BELOW

The decision from which Petitioner seeks to invoke the discretionary review of this Court is Brewster v. State, 250 So. 3d 99 (Fla. 4th DCA), rev. denied, 2018 WL 6618274 (Fla. Dec. 17, 2018).

JURISDICTION

Petitioner seeks certiorari review of the order of the Fourth District finding this Court's decision in Nelson v. Colorado, 137 S.Ct. 1249 (2017), is not retroactive.

The judgment of the Florida Supreme Court was entered on December 17, 2008. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) and Rule 10 of the Rules of the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

Section 961.03 (1)(b)1., Fla. Stat., provides that a petition seeking eligibility for compensation based on the vacation of a conviction must be filed "[w]ithin 90 days after the order vacating a conviction and sentence becomes final if the person's conviction and sentence is vacated on or after July 1, 2008."

STATEMENT OF THE CASE AND FACTS

1. Course of Proceedings and Disposition in the Trial Court .

a. Case No. 02-1339.

On December 3, 2002, Petitioner was charged by Information in Case No. 02-1339 with knowingly executing, or attempted to execute, a scheme or artifice to defraud a financial institution. The prosecution was based on Petitioner's passing of three bad checks: (1) to Perry Wright, (2) to Mary Mazzarella, and (3) to Patricia Curzio.

After a jury trial, Petitioner was convicted as charged and on February 26, 2015, he was sentenced as a habitual offender to a seven (7) year term of imprisonment, followed by an eight (8) year term of probation. As a condition of probation, Petitioner was ordered to make restitution to Patricia Curzio in the amount of $2,200. A separate restitution hearing was ordered to be set for the amounts owed to Perry Wright and Mary Mazzarella, however that hearing did not take place because Petitioner immediately filed a notice of appeal of his conviction and sentence to the Fourth District Court of Appeal.

(1) Direct Appeal.

On May 3, 2006, the Fourth District affirmed Petitioner's conviction and sentence per curiam, without a written opinion. Brewster v. State, 930 So. 2d 628 (Fla. 4th DCA 2006). Mandate issued on August 3, 2006.

b. Case Nos. 02-720 and 02-1483.

Petitioner was charged in Case No. 02-720 with grand theft and uttering a forged instrument. Petitioner was alleged to have written a bad check to Ken Puttick in the amount of $600.00. In Case No. 02-1483, Petitioner was charged with counterfeiting a license tag.

On March 22, 2005, a little less than a month after Petitioner was sentenced in Case No. 02-1339, supra, and after he'd already filed a notice of appeal in that case, Petitioner entered into a negotiated plea agreement in Case Nos. 02-720 and 02-1483. In exchange for Petitioner's plea of no contest, the State agreed that Petitioner would be sentenced to a three (3) year term of probation, to run consecutive to his sentence in Case No. 02-1339. And additional term of the negotiated plea was that Petitioner was to make restitution in the amount of $600 to Ken Puttick, the victim in Case No. 02-720. Also pursuant to the negotiated plea agreement, Petitioner agreed to make restitution to the victims in unrelated Case No. 02-1339 as follows: (1) to Perry Wright in the amount of $2,275.00; (2) and to Mary Mazzarella in the amount of $1,048.89. Finally, the State agreed not

to oppose Petitioner's request that he be entitled to early termination of probation based on his payment of the specified restitution amounts.

Petitioner's plea and sentencing hearing was conducted immediately after he entered into the negotiated plea agreement with the State. The trial court's oral pronouncement of sentence included the negotiated term that Petitioner pay restitution in the amount of $600.00 to Ken Puttick for Case No. 02-720. The trial court also ordered Petitioner to pay $1,048.89 to Mary Mazzarella and $2,275.00 to Perry Wright (the victims in unrelated Case No. 02-1339). Additionally, the trial court ordered that Petitioner's probation would terminate upon the payment of his monetary obligations, without any further order of the court.

On March 24, 2005, the written order placing Petitioner on probation was filed with the clerk. Consistent with the trial court's oral pronouncement of sentence, the order required Petitioner to pay the restitution amounts set forth above. The order included a provision that Petitioner's probation would terminate upon the payment of his monetary obligations, without any further order of the court. Additionally, the trial court entered a separate restitution order in Case No. 02-720 ordering Petitioner to pay restitution in the amount of $600.00 to Ken Puttick.

Petitioner did not appeal his convictions or sentences in Case Nos. 02-720 and 02-1483.

2. Vacation of Petitioner's Conviction in Case No. 02-1339.

On June 12, 2009, the federal district court vacated Petitioner's conviction in Case No. 02-1339, and Petitioner began serving his probationary sentences in Case Nos. 02-720 and 02-1483. See Brewster v. McNeil, 720 F. Supp. 2d 1369 (S.D. Fla. 2009).

3. Petitioner's Partial Payment Of Restitution.

On July 17, 2009, Petitioner procured two personal money orders made payable to the Department of Corrections to pay the restitution amount to Ken Puttick ($600.00) and to cover his costs and fees in Case No. 02-720. By his own admission, Petitioner refused to pay the other restitution amounts contained in the probation order (those amounts related to the victims in Case No. 02-1339). According to Petitioner, he mailed the personal money orders for Case No. 02-720 to his probation officer, who received them on Tuesday, July 21, 2009.

4. Petitioner's Motion to Correct Sentence.

Petitioner filed a motion to correct sentence, pursuant to Fla. R. Crim. P. 3.800(a), wherein he argued that the vacation of his conviction in Case No. 02-1339 affected his negotiated plea agreement in the other two cases. Petitioner also requested that the trial court's written sentencing order be corrected to reflect the oral pronouncement of the trial court at his sentencing hearing held back in March, 2005.

On July 31, 2009, Petitioner's motion to correct sentence was heard by the trial court. The trial court denied the motion, finding that the restitution amounts awarded in Case Nos. 02-720 and 02-1438 were, in fact, orally pronounced by the trial court at sentencing. The trial court considered, and rejected, Petitioner's claim that the federal court's vacation of his conviction in Case No. 02-1339 affected his negotiated plea agreement in the other two cases. The trial court stated:

> While the restitution obligation originally arose in Case No. 2002-1339A, the restitution payments obligations were part of a valid plea agreement which has not been vacated and continue to be an outstanding obligation and a condition of probation in Case Nos. 2002CF720A and 2002CF1483A.

Petitioner did not file an appeal the trial court's denial of his 3.800(a) motion.

5. Petitioner's Petition for Monetary Damages.

Years later, on June 14, 2017, Petitioner filed a "Motion for Damages, For Return of Restitution and Compensation Pursuant to Nelson v. Colorado, 581 U.S. ___ (2017), 137 S. Ct. 1249 (2017)." Petitioner sought the following relief: (1) "damages for his illegal detention and false imprisonment" and more specifically, "damages for his illegal imprisonment from February 17, 2005 to June 12, 2009;" (2) return of fees and court costs; (3) and return of restitution. Petitioner claimed that the reasoning of this Court's recent decision in Nelson v. Colorado would

result in a finding that the failure to award Petitioner the requested amounts would result in a violation of due process.

The trial court denied the motion as follows: "The court finds the motion untimely filed pursuant to Florida Statutes, section 961.03; where Nelson v. Colorado has not been held by the United States Supreme Court or the Florida Supreme Court to apply retroactively to these Florida cases."

a. Appeal.

On appeal, the Fourth District affirmed the trial court's rulings. First, the Fourth District agreed with the trial court's determination that Petitioner's "Motion for Damages, For Return of Restitution and Compensation Pursuant to Nelson v. Colorado, 581 U.S. ——, 137 S.Ct. 1249, 197 L.Ed.2d 611 (2017)" was untimely filed because it was not filed within 90 days of the order dismissing his conviction, as required by § 961.03(1)(b)1., Fla. Stat. Brewster v. State, 250 So. 3d 99, 101-02 (Fla. 4th DCA 2018).

Second, the Fourth District affirmed the trial court's finding that Nelson is not retroactive. The Fourth District found that this Court's opinion in Nelson does not represent a revolutionary change in the law. Id. at 102. Relying on Witt v. State, 387 So. 2d 922 Fla. 1980), which in turn was based on this Court's decisions in Coker v. Georgia, 433 U.S. 584 (1977), Stovall v. Denno, 388 U.S. 293 (1967), and Linkletter v. Walker, 381 U.S. 618 (1965), the Fourth District reasoned that

Nelson involved procedural fairness and was merely an evolutionary refinement of the law. Id. The Fourth District determined there was also a second reason Nelson did not apply to Petitioner's case: in Nelson, the Court permitted "minimal procedures" for seeking a refund, and Florida's 90-day time limit constitutes such a "minimal procedure." Id.

b. Discretionary Review.

Petitioner sought discretionary review in the Florida Supreme Court, arguing that the decision of the Fourth District expressly declared a state statute valid. On December 17, 2018, the Court declined Petitioner's request for discretionary review. Brewster v. State, 2018 WL 6618274 (Fla. Dec. 17, 2018).

REASONS WHY THE PETITION SHOULD BE DENIED

PETITIONER'S MOTION WAS PROPERLY DENIED BECAUSE IT WAS UNTIMELY AND THIS COURT'S DECISION IN NELSON v. COLORADO, 137 S.CT. 1249 (2017), IS NOT RETROACTIVE.

In the trial court, Petitioner sought the return of monies paid for victim compensation, court costs and fees in three cases: one in which his conviction was vacated by the federal court (Case No. 02-1339), and two which resulted from a negotiated plea agreement (Case Nos. 02-720 and 02-1483). Petitioner also sought damages for wrongful incarceration in the amount of $1,500. However, with regard to monies paid for victim compensation, court costs and fees, Petitioner failed to make specific allegations as to each case, but instead broadly argued that

all monies paid should be returned to him based upon the vacatur of his conviction in Case No. 02-1339.[1]

The Victims of Wrongful Incarceration Compensation Act was enacted in 2008 and is contained in Chapter 961. See § 961.01-.06, Fla. Stat. Thus, the Act became effective approximately a year prior to the vacation of Petitioner's conviction in Case No. 02-1339 on June 12, 2009. According to the plain language of the Act, Petitioner was required to file a petition in the original sentencing court within 90 days of the vacation of his conviction. See § 961.03(1)(b)1., Fla. Stat.

Because the order dismissing Petitioner's conviction was rendered by the federal court on June 12, 2009, Petitioner had until September 10, 2009, to file his petition. Petitioner did not do so, but instead filed the instant petition approximately eight (8) years late. Thus, the Florida courts properly determined Petitioner's motion must be denied because it was untimely pursuant to the time limitations set forth in the state statute. The time limitation set forth an independent and adequate state ground upon which to deny Petitioner any relief.

I. The Trial Court Correctly Determined That Nelson v. Colorado Is Not Retroactive, Thereby Making Appellant's Claims Untimely.

[1]Petitioner's claim in this Court suffers from the same defect: other than Petitioner has added a specific amount of $3,693.45, he continues to fail to specifically identify which case and the specific amounts owed to him in each case for victim compensation, court costs and fees (Petition at p. 9).

However, Petitioner attempts to get around the statutory time-bar by relying on this Court's decision in Nelson v. Colorado, 137 S. Ct. 1239 (2017), and arguing the decision is retroactive (Petition at p. 12). Petitioner claims that "[t]he right of due process on which Nelson turns is a constitutional right and is substantive not procedural and should be applied retroactively" (Petition at p. 12).

In Nelson, this Court considered whether the Colorado Exoneration Act violated due process by requiring defendants, whose convictions had been reversed or vacated, to prove their innocence by clear and convincing evidence in order to obtain a refund of costs, fees, and restitution paid. There, two defendants' convictions were vacated, but the State of Colorado withheld the money it had obtained from the defendants for costs, fees and restitution as a result of the now-vacated convictions. Nelson, 137 S.Ct. at 1253. Colorado would return the money only if the defendants proved by clear and convincing evidence that they were innocent of the offense. See id. at 1254. Colorado had not proven anything about the defendants' guilt; "once those convictions were erased, the presumption of their innocence was restored." Id. at 1255. Thus, this Court determined that the "defendants should not be saddled with any proof burden . . . they are entitled to be presumed innocent." Id. at 1256. This Court concluded that there is a risk of erroneous deprivation of the defendants' interest in return of their money if the Exoneration Act is the exclusive remedy because "the Act conditions refund on

defendants' proof of innocence by clear and convincing evidence." Id. Accordingly, this Court held that Colorado's scheme for refunding a defendant when a criminal conviction is invalidated fails due process. See id. at 1257-58.

Turning to Petitioner's claim that Nelson should be applied retroactively, under the principles set forth in Teague v. Lane, 489 U.S. 288 (1989), "the retroactivity of our criminal procedure decisions turn on whether they are novel." Chaidez v. United States, 568 U.S. 342, 347 (2013). "When we announce a 'new rule,' a person whose conviction is already final may not benefit from the decision in a habeas or similar proceeding." Id. This Court recognizes two exceptions to the Teague formulation: (1) "watershed" procedural rules, and (2) new rules that implicate the type of individual conduct the government may proscribe (i.e., a substantive, rather than procedural, rule). Teague, 489 U.S. at 311.

As to whether the rule in Nelson is new, this Court must determine whether the decision states a rule that "was not **dictated** by precedent existing at the time the defendant's conviction became final," in opposition to "merely an application of the principle that governed" a prior matter. Chaidez, 568 U.S. at 347-48 (quoting Teague, 489 U.S. at 301, 307) (emphasis in the original). The Nelson decision clearly did not carve out a new understanding of due process as it applies to the presumption of innocence once a conviction has been vacated. This Court merely applied prior case law to the facts before it and did not state a new principle

of law. Thus, Nelson does not state a new rule that was not dictated by precedent at the time Petitioner's conviction became final. In fact, Petitioner can, and did, argue in his 2009 motion to correct sentence that the vacatur of his conviction meant that he did not have to pay restitution to the victims.

Furthermore, the exceptions in Teague do not apply. First, the rule set forth in Nelson is plainly procedural; that is, it does not concern the range of an individual's conduct that the government may punish, but specifically addresses the procedural mechanism required for a defendant to reclaim monies paid for restitution, court costs and fees. Second, the rule does not appear to be a watershed rule of criminal procedure. A "watershed" rule goes to "the **bedrock procedural elements** that must be found to vitiate the fairness of a particular conviction," such as a right to counsel at trial. Teague, 489 U.S. at 311 (quoting Mackey v. United States, 401 U.S. 667, 693-94 (1970)) (emphasis in the original). The rule stated in Nelson simply does not rise to that level. Instead, it is merely a reiteration of the definition of presumption of innocence. Thus, under the guidance of Teague, the rule in Nelson is not effective retroactively, and Petitioner here cannot rely on it to renew the time limitation contained in § 961.03(1)(b)1.

Furthermore, in Nelson, this Court did not find that a time limitation for making such a claim was unconstitutional. In fact, such a minor procedural bar was not the focus of this Court's opinion. With regard to a time bar on recovery,

this Court addressed "minimal procedures" for addressing such claims as follows: "To comport with due process, a State may not impose anything more than **minimal procedures** on the refund of exactions dependent upon a conviction subsequently invalidated." Id. at 1258 (emphasis added). A 90-day time limitation for filing of Petitioner's claim is a "minimal procedure" that is not violative of due process. Petitioner has never argued that the 90-day time limitation is a constitutional due process violation and any such claim is now procedurally barred.

II. Even If Nelson Is Determined to Apply Retroactively, it Only Applies to Petitioner's Claims for Restitution, Court Costs, and Fees, and Does Not Apply to His Claim for Compensation.

As noted, supra, Petitioner seeks the return of $3,693.45[2] for victim compensation, court costs, and fees in three cases: one in which his conviction was vacated by the federal court (Case No. 02-1339), and two which resulted from a plea agreement (Case Nos. 02-720 and 02-1483). Petitioner also seeks damages for wrongful incarceration in the amount of $1,500.[3] However, with regard to monies paid for victim compensation, court costs and fees, as he has done in the State courts, Petitioner fails to make specific allegations as to each case, but instead broadly argued that all monies paid should be returned to him based upon the vacatur of his conviction in Case No. 02-1339.

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[2]Petition at p. 9.

[3]Petition at p. 7.

A. Case No. 02-720.

Disposing of the easiest claim first, Petitioner is not entitled to recover the $600 in restitution he paid to the victim, Ken Puttick, in Case No. 02-720. Ken Puttick was the named victim in that case. Therefore, the restitution ordered to be paid to Mr. Puttick was in no way tied to Petitioner's vacated conviction in Case No. 02-1339. For the same reason, Petitioner is not entitled to recover court costs and fees imposed when Petitioner entered his pleas in 02-720 and 02-1483 because those costs and fees did not rely in any way on Petitioner's conviction in Case No. 02-1339.

B. Case Nos. 02-720 and 02-1483.

As noted, supra, in Case Nos. 02-720 and 02-1483, pursuant to a **negotiated plea agreement**, in exchange for a **probationary sentence** that would terminate immediately upon the payment of restitution, Petitioner also agreed to make restitution to the victims in unrelated Case No. 02-1339 as follows: (1) to Perry Wright in the amount of $2,275.00; (2) and to Mary Mazzarella in the amount of $1,048.89, for a total of $3,323.89.

Petitioner argues that the terms of the plea agreement regarding the payment of restitution to Perry Wright and Mary Mazzarella should be considered void, while he also apparently wishes to enjoy the other benefits of his bargain with the State, including a sentence reduced to probation, and early termination of that

probation based upon his payment of restitution. As a result of the plea agreement, Petitioner spent only a few short months on probation rather than either serving the full three year term of probation, or alternatively, a prison sentence.

It is well settled in Florida that a plea agreement is a contract between a defendant and the State, to which ordinary rules of contract law apply. See Churchill v. State, 219 So. 3d 14, 18 (Fla. 2017) (citing Garcia v. State, 722 So. 2d 905, 907 (Fla. 3d DCA 1998)). Petitioner contracted away his right to challenge the payment of restitution to the victims in the collateral case. At the time he entered into the plea agreement he was already in the process of challenging his (subsequently vacated) conviction in Case No. 02-1339.[4] At the time Petitioner agreed to pay restitution to those victims, he was aware that under the terms of the plea agreement, he would still be required to pay restitution to the victims even if his conviction in 02-1339 were to be somehow overturned. Thus, he freely contracted away his right to challenge the requirement that he pay the restitution amount.

Further, notwithstanding the payment of restitution, Petitioner's plea agreement with the State was a very favorable contract in the respect that Petitioner was sentenced to a short period of probation that would terminate immediately

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[4]Petitioner's notice of appeal in Case No. 02-1339 was filed on February 23, 2005. Petitioner did not enter his plea in the other two cases until March 24, 2005.

upon the payment of the restitution. Accordingly, Petitioner should not be allowed to reap the rewards of his bargained-for exchange and yet also be relieved of his corresponding duty to pay restitution.

Section 775.089(1)(b)2. also supports enforcement of the provision requiring Petitioner to pay the agreed-upon restitution:

> An order of restitution entered as part of a plea agreement is as definitive and binding as any other order of restitution, and a statement to such effect must be made part of the plea agreement. **A plea agreement may contain provisions that order restitution relating to criminal offenses committed by the defendant to which the defendant did not specifically enter a plea**.

§ 775.089(1)(b)2., Fla. Stat. (emphasis added).

Petitioner's plea agreement induced the State to forgo a restitution hearing once his conviction and sentence in Case No. 12-1339 was upheld on appeal. At sentencing in Case No. 02-1339, the trial court reserved jurisdiction to conduct a sentencing hearing as to restitution amounts owed to Perry Wright and Mary Mazzarella. It is well-settled law in Florida that such a hearing must take place within 60 days of sentence. See State v. Sanderson, 625 So. 2d 471, 471 (Fla. 1993); Fla. R. Crim. P. 3.800(b). However, the hearing did not immediately take place because Petitioner's notice of appeal, filed immediately after the entry of his sentence, divested the trial court of jurisdiction to conduct the hearing. See Silky v. State, 238 So. 2d 810, 812 (Fla. 4th DCA 2017).

The restitution hearing could have taken place within sixty days of the issuance of the mandate in the appeal affirming of Petitioner's conviction and sentence by the Fourth District on August 3, 2006. However, at that time, the State, in good faith reliance on the validity of the plea agreement entered in Case Nos. 02-720 and 02-1483, decided to forgo a restitution hearing in Case No. 02-1339. Thus, the State relied on Petitioner's compliance with the plea agreement. If the State is required to return the restitution amounts to Petitioner, it relied on the plea agreement to its detriment. This is yet another basis for allowing the parties to withdraw the plea agreement.

Generally, a defendant seeking correction of his sentence in contravention of a plea agreement must seek to withdraw his plea pursuant to Fla. R. Crim. P. 3.850, thus providing the State the opportunity to also withdraw from the agreement if it objects to the resentencing. See, e.g., Blocker v. State, 968 So. 2d 686 (Fla. 2d DCA 2007). The parties would be put back into their original positions prior to the entry of the plea. At that point, the State can choose to either proceed with trial or enter into a different negotiated plea agreement without the term requiring restitution in the collateral case.

Finally, in Nelson, this Court took into account the fact that the Colorado Exoneration Act was the exclusive remedy for a defendant to seek the return of restitution, court fees and costs after exoneration. However, as evidenced in this

case, Chapter 961 is not the exclusive remedy for Petitioner to seek return of those monies. In 2009, Petitioner filed a motion to correct sentence, pursuant to Fla. R. Crim. P. 3.800(a), seeking the same relief he currently seeks: return of restitution paid, court fees and costs. The trial court considered Petitioner's motion on the merits and did not dismiss the proceeding on any procedural grounds. Thus, Rule 3.800(a) provided Petitioner with an alternative remedy to seek the return of restitution, court fees and costs. Rule 3.800(a) does not contain the same standard of proof required in Chapter 961. Petitioner asserted to the trial court that his conviction in Case No. 02-1339 had been vacated by the federal court. In order to further proceed, he was not required to show by any level of proof, much less clear and convincing evidence, that he was innocent of the offense. Instead, he was merely required to show that his conviction in Case No. 02-1339 had been vacated, which he did by providing a copy of the federal court order. Thus, this Court's holding in Nelson is not applicable to the case at bar because Petitioner was allowed to raise his claim and have it considered on the merits without having to "prove" his innocence.

C. Case No. 02-1339.

With regard to Case No. 02-1339, Petitioner seeks only damages for wrongful incarceration in the amount of $1,500. Even if this Court determines that Nelson is retroactive, this Court's opinion has no bearing on Petitioner's claim for

compensation pursuant to Chapter 961. This Court's opinion in Nelson only addressed the issue of the refund of restitution, court costs, and fees paid as the result of the vacated conviction. Nelson did not address compensation for time served. As explained by Justice Alito in his concurrence:

> The American legal system has long treated compensation for the economic consequences of a reversed conviction very differently from the refund of fines and other payments made by a defendant pursuant to a criminal judgment. Statutes providing compensation for time wrongfully spent in prison are a 20th-century innovation: By 1970, only the Federal Government and four States had passed such laws. King, Compensation of Persons Erroneously Confined by the State, 118 U. Pa. L. Rev. 1091, 1109 (1970); United States v. Keegan, 71 F. Supp. 623, 626 (S.D.N.Y.1947) ("[T]here seems to have been no legislation by our Government on this subject" until 1938). Many other jurisdictions have done so since, but under most such laws, compensation is not automatic. Instead, the defendant bears the burden of proving actual innocence (and, sometimes, more). King, supra, at 1110 ("The burden of proving innocence in the compensation proceeding has from the start been placed upon the claimant"); see also Kahn, Presumed Guilty Until Proven Innocent: The Burden of Proof in Wrongful Conviction Claims Under State Compensation Statutes, 44 U. Mich. J. L. Reform 123, 145 (2010) (Most U.S. compensation statutes "require that claimants prove their innocence either by a preponderance of the evidence or by clear and convincing evidence" (footnote omitted)). In construing the federal statute, courts have held that a compensation proceeding "is not . . . a criminal trial" and that the burden of proof can be placed on the petitioner. United States v. Brunner, 200 F.2d 276, 279 (C.A.6 1952). **As noted, Colorado and many other States have similar statutes designed narrowly to compensate those few persons who can demonstrate that they are truly innocent. The Court apparently acknowledges that these statutes pose no constitutional difficulty. That is the correct conclusion**, but it is best justified by reference to history and tradition.

Nelson, 137 S. Ct. at 1261 (emphasis added). Thus, Florida's statutory scheme for compensation for time served is not precluded by this Court's opinion in Nelson.

Based on the foregoing, the petition for writ of certiorari should be denied.

CONCLUSION

Wherefore, based on the foregoing arguments and authorities, Respondent respectfully requests that the petition for writ of certiorari be denied.

Respectfully submitted,

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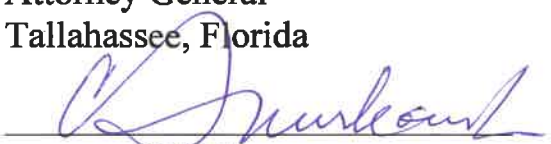

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