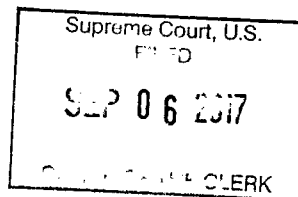


IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

CASE # **18-8732**

TO BE ASSIGNED



LEONORIS MILLER
Petitioner,
v.

JULIE L. JONES
Respondent

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Eleventh Circuit

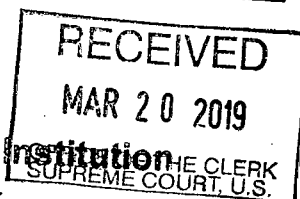
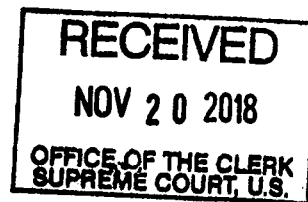
PETITION FOR WRIT OF CERTIORARI

Petitioner: Leonoris Miller
DC# N00515

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Respondent: Attorney General, State of Florida

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QUESTION PRESENTED

1. Whether permitting the jury to review child victim's video interview during deliberations, which included the child's description of a hopeful friendship that was shattered, denied Petitioner his right to a fair trial and due process?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Leonoris Miller respectfully petitions for writ of certiorari to review the judgment of the United States court of appeals for the Eleventh Circuit, denying petitioner's application for certificate of appealability.

OPINIONS BELOW

The following opinions and orders below are pertinent here, all of which are unpublished (1) Opinion on direct appeal by the First District Court of Florida, October 19, 2009; mandate November 4, 2009 ;(2) November 27, 2016 Order denying, writ of habeas corpus, by the district court for the northern district. (3) November 27, 2016 Order denying certificate of appealability, by the district court for the northern district (4) June 8, 2017 Order denying application for certificate of appealability by eleventh circuit.(See Appendix for copies.)

STATEMENT OF JURISDICTION

The District Court and Court of appeal for the Eleventh Circuit denied petitioner's request for certificate of appealability. In *Hohn v. United States*, 524 U.S. 236 (1998) this Court held that, pursuant to 28USC§ 1254(1), the United States Supreme Court has jurisdiction, on certiorari, to review a denial of a request for certificate of appealability by circuit judge or panel of Federal Court of Appeals.

STATUTORY PROVISIONS INVOLVED

The right of a state prisoner to seek federal habeas corpus relief is guaranteed in 28 USC §2254. The standard for relief under “AEDPA” is set forth in 28 USC §2254(d) (1).

STANDARD OF REVIEW: Denial of Certificate of Appealability

In *Miller-El v. Cockrell* 537 U.S.322, 123, S.Ct.(2003), this court clarified the standards for issuance of a certificate of appealability. Hereafter “COA” A prisoner seeking a “COA” need only demonstrate a substantial showing of the denial of a constitutional right. A petitioner satisfies this standard by demonstrating that jurist of reason could disagree with the district court’s resolution of his constitutional claims or that jurist could conclude the issues presented are adequate to deserve encouragement to proceed further. We do not require petitioner to prove, before the issuance of a COA, that some jurist would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail. 123 S.Ct. at 1034, Citing *Slack v. McDaniel* 529 U.S. 473,484 (2000). The review of this Court by means of a writ of certiorari is not a matter of right but of judicial discretion.

STATEMENT OF THE CASE

By amended information filed March 27, 2007 in case number 05CF0131, in the second judicial circuit, Leon County, the state of Florida charged petitioner with two counts in connection with events that took place on or between September 1, 1999, and May 31, 2001, involving victim B.C. (1) sexual battery on a child under 12 years of age by a defendant 18 years or older, in violation of section 794.011 (2)(a) Florida Statutes; and (2) lewd and lascivious molestation, in violation of section 800.04 (5)(b) Florida Statutes; Miller proceeded to a one day jury trial on March 28, 2007 before judge Kathleen Dekker. The jury found Miller guilty as charged on both counts. The judgment and sentence was rendered, March 30, 2007. The trial court adjudicated petitioner guilty and sentenced him to life in prison on each count, to run concurrently. Petitioner appealed his conviction and on October 19, 2009 the First DCA affirmed the sentence without a written opinion. On August 16, 2007 petitioner filed a motion to correct sentencing error pursuant Florida rule criminal procedure 3.800(b) (2). And argued that his life sentence for lewd and lascivious molestation was illegal and unconstitutional. On November 27, 2007 Judge Dekker amended petitioner's judgment and sentence to reflect that his sentence on count 2 is fifteen years in prison, to run concurrent with his sentence on count (1). On December 9, 2010n petitioner filed a motion for post-conviction relief rule 3.850. The court denied the motion on August 21,

2011 and June 12, 2012. The second order was entered following an evidentiary hearing which took place April 26, 2012. Petitioner appealed the denial of his 3.850 motion to the First DCA. On September 6, 2013 the First DCA per curiam affirmed the case without a written opinion. Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254 in this court on February 18, 2014.

STATEMENT OF PERTINENT FACTS

The judge allowed the videotape interview of the child victim to be viewed by the jury during deliberation, on this tape the victim gave comments about the petitioner and how he hurt her, after she trusted him. Allowing the jury to view this video, again during deliberation was prejudicial. And if petitioner did in fact convince the jury that there was a chance this alleged sexual battery didn't happen and maybe there was some kind of misunderstanding, about what did happen. That was shattered; because now the jury is viewing this tape all over again. And this created an unfair disadvantage which denied petitioner due process and a fair trial by an impartial jury.

REASON FOR GRANTING THE WRIT Argument Summary

The strength of the prosecution case was impaired by major contradictions in the testimony of the prosecution witness, by inconsistencies in the testimony of prosecution evidence generally, and lack of credibility. Allowing the jury to have

access to videotaped child statements during deliberations has much the same prejudicial effect as submitting depositions to the jury during deliberations. By permitting the jurors to see the interview once again in the jury room, created a real danger that the child's statement was unfairly given more emphasis than other testimony. Unlike the testimony in open court, this interview was conducted on an ex parte basis without the right of cross-examination. The Florida Supreme Court held that it was reversible error for a trial court to allow, videotaped out-of-court interviews with child victims of sexual abuse in the jury room during deliberations. The court discussed the fact that "videotaped depositions introduced into evidence would fall within the proscription" of Florida Rule of Criminal Procedure 3.400(d) that depositions cannot be taken into the jury room, and stated that it shared the view of the district court of appeal, that "allowing the jury to have access to videotaped witness statements during deliberations has much the same prejudicial effect as submitting depositions to the jury during deliberations. The defense failed to object to the trial court's decision to send the DVD into the jury room, rather than bringing the jury back into the courtroom to view the DVD, prejudiced the outcome of this case. *See Young v. State*, 645 So. 2d 965, 967-68 (Fla. 1994) (holding videotaped out-of-court interview of a child victim, introduced into evidence under section 90.803 (23), Florida Statutes (2010), is not allowed to

go into the jury room during deliberations but trial court may allow jury to view the videotape a second time in open court upon request pursuant to Rule 3.410).

Supporting Facts; in count (1) of the information the state alleged sexual battery by oral penetration of, B.C. and in count (2) the state alleged unlawful intentional touching in a lewd and lascivious manner. During deliberation they reviewed the following testimony;

Interviewer; so did he put his thing on top of your pocket or inside your pocketbook?

Child; I would say on top

Interviewer; are you sure about that.

Child; I usually just say play with it.

Interviewer; I want you to think about that question again, that I asked, if his thing was inside or outside your pocketbook. What do you think? What really happened?

Child; it was outside.

Interviewer; was his thing inside or outside your butt?

Child; It was outside.

Interviewer; Okay, now did he ever put his thing inside your butt?

Child; (shaking Head negatively).

Interviewer; and did he ever put his thing inside your pocketbook

Child; (shaking Head negatively).

Interviewer; No? Well that one time, you were in the living room, where he spit on his thing? Did he put it inside your pocketbook at that time?

Child; It was really confusing because I didn't I really know.

Child; I was wondering because, why it happened to me because, I didn't even do nothing to him I was actually trying to be a friend to him, but he didn't want me to be a friend.

The prejudicial effect of this video denied petitioner due process and a fair trial under state and U.S. Constitution.

CONCLUSION

Based on the foregoing, this court should grant the petition for writ of Certiorari and order full briefing.

September 6 2017

Respectfully Submitted


Leonoris Miller