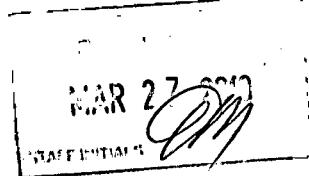


No. \_\_\_\_\_

18-8803



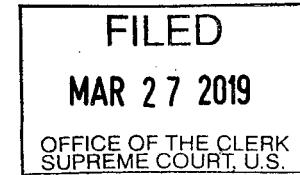
IN THE

**SUPREME COURT OF THE UNITED STATES**

**ORIGINAL**

**RAYMOND J. RAMIREZ - PETITIONER**  
**AKA RENE RAMIREZ**

vs.



**STATE OF FLORIDA - RESPONDENT(S)**

**ON PETITION FOR A WRIT OF CERTIORARI TO**  
**FOURTH DISTRICT COURT OF APPEAL**

**PETITION FOR WRIT OF CERTIORARI**

**Raymond J. Ramirez L55488**

**1599 SW 187th Avenue**

**Miami, Florida, 33194 - 2801**

**305-228-2000**

**Warden**

## QUESTION(S) PRESENTED

Whether the State of Florida / State Court violated the 14<sup>th</sup> Amendment of United States Constitution by enlarging a jurisdictional rule without authority and entered a judgment of conviction / sentence lacking jurisdiction to do so?

## **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:

Ashley Moody – Attorney General, State of Florida

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## STATUTES AND RULES

Florida Statute 918.015(2), (2012)

Florida Rules of Court Rule 3.191(j), (2012)

## OTHER

United States Constitution, Article VI, Clause 2.

United States Constitution Amendment 14, Section 1

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**

[ X ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D 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[ ] is unpublished.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 17<sup>th</sup> Circuit Court, Broward County, Florida appears at Appendix B to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[X] has been designated for publication but is not yet reported; or,

**JURISDICTION**

[X] For cases from **state courts**:

The date on which the highest state court decided my case was January 31, 2019. A copy of that decision appears at Appendix D.

[X] A timely petition rehearing was thereafter denied on the following date: March 15, 2019, and a copy of the order denying rehearing appears at Appendix E.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Article VI, Clause 2, Supreme Law: This Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.

Amendment 14, Section 1. Citizens of the United States: All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

## **STATUTES**

Florida Statute 918-015(2), (2012): The Supreme Court shall, by rule of said Court, provide procedures through which the right to speedy trial is guaranteed by subsection (1) and by S. 16, Art. I, of the State Constitution, shall be realized.

## **REGULATION**

Florida Rules of Criminal Procedure Rule 3.191(j) delay and continuances; effect on Motion: If trial of the accused does not commence within the periods of time established by this rule, a pending Motion for Discharge shall be granted by the Court unless it is shown that:

- 1) A time extension has been ordered under subdivision (i) and that extension has not expired;
- 2) The failure to hold trial is attributable to the accused, or a co-defendant in the same trial, or their counsel;
- 3) The accused was unavailable for trial under subdivision (k); or
- 4) The demand referred to in subdivision (g) if invalid.

If the Court finds that discharge is not appropriate for reasons under subdivisions (j)(2)(3) or (4), the pending Motion for Discharge shall be denied, provided, however, that trial shall be scheduled and commence within 90 days of a written or recorded order of denial.

## **STATEMENT OF THE CASE**

This case presents a question based both on due process and equal protection of the laws, as, it is believed that the State Court has exceeded its authority both on a State and Federal constitutional level.

The material facts pertinent to this Court's consideration are as follows:

On March 28, 2014, the State Court denied a Motion for Discharge which triggered Fla. R. Crim. P. Rule 3.191(j) (See Appendix A at pg. 13-18).

Trial did not commence within the 90 days mandated by Rule 3.191(j). That section of the rule is jurisdictional and not discretionary.

On October 28, 2016, the State Court entered an judgment of conviction and sentence, after Petitioner pled no contest while maintaining innocence. Counsel did not file appeal.

On September 26, 2017, a pro se Motion for Post Conviction Relief ("PCR") filed in State Court which raised two claims, one being: "The Circuit Court lacked jurisdiction to enter judgment and sentence." Id. at 2 of PCR Motion. Petitioner asserted that: "As to principles of due process and equal protection of the laws, Ramirez is entitled to be forever discharged of the crimes in the cause." Id. at 5 of PCR Motion.

On June 29, 2018, the PCR Court entered an unelaborated order denying relief "in all respects." (See Appendix B).

On July 10, 2018, Petitioner filed a timely Motion for Rehearing that specifically requested an evidentiary hearing "to develop an adequate record for appellate purposes (State and Federal)." Id. at 2 of Motion.

On October 29, 2018, the PCR Court denied said Rehearing Motion without holding an evidentiary hearing. (See Appendix C).

Petitioner timely filed Notice of Appeal of both orders mentioned above. On December 7, 2018, Petitioner timely filed appeal brief in the Fourth District Court of Appeal for the State of Florida, essentially restating "the Circuit Court lacked jurisdiction to enter judgment and sentence," and citing to the 14<sup>th</sup> Amendment for relief. Id. at 7-8 of Brief.

The Fourth District Court of Appeal per curiam affirmed without opinion the PCR Court's order denying relief on January 31, 2019. (See Appendix D).

Petitioner timely filed Motion for Rehearing on February 14, 2019, specifically cited to 14<sup>th</sup> Amendment and stating: "Due process and equal protection require Rehearing be granted and the order denying relief reversed." (See Appendix E). Id. at 4 of Motion.

The above statement was based in part on citation to decisional law

of the Florida Supreme Court that: "A jurisdictional rule cannot be altered by the Court or by agreement of the parties," and "the rule of judicial construction, expressio Unis Est Exclusio Alterius, is applicable....[I]f the areas are to be extended it should be accomplished by the Supreme Court, it having spoken on and limited the subject. Otherwise, the 19<sup>th</sup> Circuit would be enlarging and amending the Rules of Procedure by use of power it does not have." Id. at 3-4 of Motion. The Fourth DCA denied Motion for Rehearing on March 15, 2019, without opinion. (See Appendix F).

The initial basis of Petitioner's claim was founded on the plain language of Rule 3.191(j), and the supportive holding of the Florida Supreme Court that "the Motion for Discharge was properly denied, but the judicial discretion of the trial Judge is limited to the extent that trial must be commenced within ninety days." *State ex rel. Butler v. Cullen*, 253 So. 2d 861, 864 (Fla. 1971). (See Appendix G).

Petitioner's point of contention is that per Florida Statute 918.015(2), which the Florida legislature prescribes: "The Supreme Court shall, by rule of said Court, provide procedures through which the right to speedy trial is guaranteed," the 14<sup>th</sup> Amendment is implicated; and that the express points of decisional law by the Florida Supreme Court show Rule 3.191(j) is jurisdictional, and the Judge has no further discretion but to commence trial

within 90 days or jurisdiction of the Court is lost.

On February 25, 2019, Petitioner filed a "Notice of Supplemental Authority" to the Fourth DCA citing to *Gonzalez v. Thaler*, 132 S. Ct. 641 (2012) to support claim that Rule 3.191(j) is "jurisdictional" and cannot be altered based on its plain language, and therefore, "the Circuit Court lacked jurisdiction to enter judgment and sentence" mandating relief.

The State of Florida/State Court's decision is unreasonable and arbitrary in light of relevant State and Federal law, and as prescribed by Rule 10(c), has decided an important Federal question in a way that conflicts with relevant decisions of this Court.

Because Petitioner fairly apprised the State Court of the 14<sup>th</sup> Amendment violation that encompassed "the Circuit Court lacked jurisdiction to enter judgment and sentence," the State Court, while liberally construing Petitioner's claim, should be aware of U.S. Supreme Court law regarding the issue – being that the supremacy clause is always at full force, and need not be invoked.

The substance of Petitioner's claim was the language prescribed in Rule 3.191(j), which F.S. 918.015(2) enforces, and thus turned on the federal question – whether that portion of the rule is jurisdictional or non-jurisdictional, and whether enlargement of that portion of the rule without

authority would violate the 14<sup>th</sup> Amendment, as generally asserted by Petitioner.

The State Court failed to answer the question, and instead, summarily denied relief without stating its rationale or citing to any precedent refuting Petitioner's contention. (See App. A).

The fact that the Florida Supreme Court in *State ex. rel. Butler v. Cullen*, 253 So. 2d 861 (Fla. 1971), expressly holds that "the judicial discretion of the trial Judge is limited to the extent that trial must be commenced within ninety days" as prescribed by rule, supports the jurisdictional claim and that the judicial discretion has been "limited" to commencing trial; no discretion to grant further continuance, is permitted.

Therefore, the Florida Supreme Court's interpretation of the rule and speaking on its enforcement, together with the Florida legislature prescribing such enforcement of rule by Supreme Court, has created a 14<sup>th</sup> Amendment issue – due process and equal protection of the law.

By citing to *Gonzalez v. Thaler*, 132 S. Ct. 641 (2012), Petitioner hoped to place the State Court on notice that this Court has distinguished between a "jurisdictional and non-jurisdictional rule."

This Court stated: "Truly jurisdictional rules govern a Court's adjudicatory authority, while non-jurisdictional claim – processing rules do

not." Id. at 648.

Holding true to that statement would mean that Rule 3.191(j) is "truly jurisdictional" because it goes to the trial Court's adjudicatory authority in that:

"If the Court finds that discharge is not appropriate for reasons under subdivisions (j)(2)(3), or (4), the pending Motion for Discharge shall be denied, provided, however, that trial shall be scheduled and commence within 90 days of a written or recorded order of denial." Id.

The 90 day time-frame is what confers jurisdiction on the trial Court to commence trial, and if trial does not commence "within" said time-frame jurisdiction is lost (as there is no exception provided in that paragraph).

Accordingly this Court should grant Certiorari review and answer the question: whether the State of Florida / State Court violated the 14<sup>th</sup> Amendment of the United States Constitution by enlarging a jurisdictional rule without authority and entered a judgment of conviction / sentence lacking jurisdiction to do so.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 27 day of March, 2019. See Title 28 U.S.C.S. Section 1746.

  
Raymond J. Ramirez # L55488

## **REASONS FOR GRANTING THE PETITION**

Based on the facts stated herein, Certiorari should be granted to emphasize what the law of the land is in regard to a jurisdictional rule and its application within a State Court through the 14<sup>th</sup> Amendment of the United States Constitution.

## CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,



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Date: March 27, 2019