

18-8861  
NO.:

# ORIGINAL

IN THE  
**SUPREME COURT OF THE UNITED STATES**

FILED  
APR 08 2019

**ALLEN L. DORSEY, SR., PETITIONER.**

vs.

**SECRETARY DEPARTMENT OF CORRECTIONS, ET AL.,  
RESPONDENTS,**

**ON PETITION FOR WRIT OF CERTIORARI**

**ELEVENTH CIRCUIT, U.S. COURT OF APPEALS**

**PETITION FOR WRIT OF CERTIORARI**

**ALLEN L. DORSEY, SR. DC# 566306**  
**P.O. BOX 158**  
**LOWELL, FLORIDA, 32663-0158**

## **QUESTIONS PRESENTED**

1. Can a citizen be convicted of the uncharged crime of selling a Controlled Substance to Police Confidential Informant (C. I. #884902), but be charged in the Information with the sale of a control substance to Police Confidential Informant (C. I. # 690627)? See Exhibit "G" (Charging Information/State's Discovery)

## LIST OF PARTIES

[ ] All parties appear in the Caption of the case on the cover of the next 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:

- 1). Allen L. Dorsey, Sr., - Petitioner
- 2). State of Florida – Respondent
- 3). Secretary, Department of Corrections – Respondent
- 4). Warden, Marion Correctional Institution – Respondent

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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 appeals appears at Appendix "C" 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 is unpublished.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 "E" 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 is unpublished.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 \_\_\_\_\_ 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 is unpublished.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 \_\_\_\_\_ 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 is unpublished.

## 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: December 18, 2018, and a copy of the order denying rehearing appears at Appendix "B".

An extension of time to file the petition for a writ of certiorari was granted to and including May 16, 2019, on March 11, 2019, in Application No. 18A910.

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 \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

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 \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A violation of the Petitioner's Constitutional Rights under the Florida Constitution, under Article 1 §9 and the U.S. Constitution, under Amendments 5 and 14, that ensues the rights of "Due Process" to its citizens against the deprivation of life, liberty and the pursuit of happiness.

In the instant case at bar, the Petitioner is being denied his liberty in violation of his Due Process.

Pursuant to Jamies v. State, 51 So. 3d 445, 448 (Fla. S. Ct.); it is a fundamental principle of Due Process and fundamental error to convict a defendant of a crime that has not been charged by the State. This Honorable Court has long held that these defects can be raised at any time before trial, after trial, on appeal, or on habeas corpus. DeJonge v. Oregon, 299 U.S. 353, 57 S. Ct. 255, 81 L.Ed. 278 (1937). The Florida Supreme Court has also followed this well settled law pursuant to these principles in Gray v. State, 435 So. 2d 816, 818, and Figueroa v. State, 84 So. 3d 1158 and its progeny.

If it appears to a court of competent jurisdiction that a man is being illegally restrained of his liberty, it is the responsibility of the court to brush aside formal technicalities and issue appropriate orders as well do justice as stated in Anglin v. Mayo, 88 So. 2d 918, 919, (Fla. S. Ct.). This even applies to a petitioner who voluntarily enter into a plea to the uncharged crime. (Gibbs v. Mayo, 81 So. 2d 739 (Fla. S. Ct.)).

Vindication of Petitioner's "Due Process" is precisely the historical function of habeas corpus. (Fay v. Noia, 372 U.S. 391, 402 (U.S. S. Ct.)). Not the least merit of our

great constitutional system is that it safeguards extends to all, from the least deserving, as well as the most virtuous. (Hill v. Texas, 316 U.S. 400, 406 (U.S. S. Ct.)).

Pursuant to this Honorable Court's ruling in Harris v. Nelsen, 394 U.S. 286, 291 (U.S. S. Ct.), the Petitioner relies upon Habeas Corpus to retain the ability to cut through barriers of form and procedural mazes, that may seem to black him from curing this "manifest injustice". However, the Petitioner prays that this Honorable Court will accept this petition, and cure the "manifest injustice" that has occurred by exercising its supervisory jurisdiction and correct the fundamental error and the injustice. (See Adams v. State, 957 So. 2d 1183, 1186).

## **STATEMENT OF FACTS OF THE CASE**

Petitioner was charged via a State Charging Information on the 29th day of May 2009 with "Possession of MDMA w/int. to sell/deliver 1000 ft / Worship (F1)" in violation of Florida Statutes 893.03 (2)(a) 4 and 893.13 (1)(e) 1; - Count I and "Sale MDMA w/in 1000 ft. of place of Worship (F1) in volition of Florida Statutes 893.03 (2)(a) 4 and 893.13 (1)(e) 1; - Count II. See Exhibit "G".

On the 14th day of December 2009, the State filed their 3rd Amended Charging Information, changing the F. S. to 893.03 (1)(a)(39) on the day of trial and handed to the Petitioner during jury selection. See Exhibit "G".

Petitioner was found guilty as charged in the Charging Information on December 2009, and sentenced to 5 years in Florida State Prison in Count I and 15 years in Count II, to run concurrent to each other.

## REASONS FOR GRANTING PETITION

1. Petitioner was convicted of an uncharged crime and being illegally detained in violation of his "Due Process" Rights.
2. The State ignored its responsibility to apply the Fla. R. of P. in filing its Charging Information pursuant to Fla. R. Crim. P., Rule 3.140 (b), which states, "The Information filed shall be plain, concise and definite". Rule 3.140 (b) does not validate constitutional infirmities. The State violated the Petitioner's Constitutional Rights, protected under both the Fla. Const., Art. 1 §9 and the United States Const. under the 5th and 14th Amendment.
3. Petitioner was convicted on an uncharged crime and being illegally detained in Florida State Prison at Marion Correctional Institution at 3269 N.W. 105th Street, Ocala, Florida, 34475, under the supervision of Warden Varnes.
4. Based on the Constitution Rights violations stated above in herein this writ the District Court of Appeals – Middle District and the U.S. Court of Appeals. 11th Circuit should have granted the Writ of Habeas Corpus, pursuant to F. S. 79.01, 79.03, 79.05 and 79.09; Rule 9.100 Fla. R. App. P.; and Fla. Const. Art. 1 §9 and correct the manifest injustice and fundamental errors at the lowest level as required of them as a court of competent jurisdiction, so as to not impose upon this Honorable Court's most valuable time.

## CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully Submitted,

  
/s/   
Allen L. Dorsey, DC# 566306

Date: 8 APRIL 2019

## OATH

Under the penalty of perjury I do swear that the facts' and circumstances' are true and correct see, Kafo vs. U.S., F.3d 1063, 1068 (7th Cir. 2006) executed on

8 April, 2019

  
/s/   
Allen L. Dorsey, DC# 566306