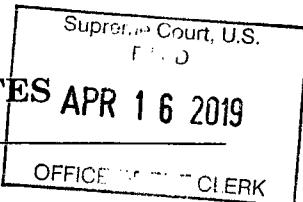


18-9568

ORIGINAL

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES



RODERICK MULLINS,

*Petitioner,*

VS.

STATE OF FLORIDA,

*Respondent.*

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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE DISTRICT COURT OF APPEAL FOR THE SECOND DISTRICT, FLORIDA

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AMENDED

PETITION FOR WRIT OF CERTIORARI

Roderick Mullins  
DC#352788  
SOUTH BAY CORRECTIONAL FACILITY  
P.O. BOX 7171  
SOUTH BAY, FLORIDA 33493

## **QUESTIONS PRESENTED**

Does the Florida "Life Means Life" sentence scheme violate the State Constitution's ban on indefinite imprisonment and the 14<sup>th</sup> Amendment Due Process of Law protections?

## **List of Parties**

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

## **CERTIFICATE OF INTERESTED PERSONS**

The following persons have interests in the outcome of this decision:

Avalon, Victoria: ASA Polk County, Florida

Bechard, Suzanne: Florida Supreme Court

Butterfield, Stacy: Florida Attorney General Clerk

Casanueva, Honorable Justice: Florida 2<sup>nd</sup> DCA

Klawikofsky, John M.: Lakeland Florida Assistant Attorney General

Kuenzel, Mary Elizabeth: Florida 2<sup>nd</sup> DCA Clerk

Lucas, Honorable Justice: Florida 2<sup>nd</sup> DCA

Rothstein-Yovakim, Honorable Justice: Florida 2<sup>nd</sup> DCA

Sites, Honorable William D.: 10<sup>th</sup> Judicial Circuit Judge

Taylor, Cerese Crawford: Assistant Attorney General Tampa, Florida

Tomasino, John A.: Florida Supreme Court Clerk

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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 ENTERED**

The opinion adopted by the highest state court to review the merits appears at Appendix “B” to the petition.

Opinion of court: Under state law, the judge has discretion to sentence for a “life means life” term of imprisonment.

## **JURISDICTION**

The date on which the highest state court decided my case was March 11, 2019. A copy of that decision appears at Appendix 2

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(c): The state court has decided an important federal question in a way that conflicts with relevant decisions of this court.

## **STANDING**

Roderick Mullins remains imprisoned in a state correctional facility without a specified release date in violation of the state constitution's ban on indefinite imprisonment. Until this court resolves the constitutional question raised he has standing.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS**

### **FL House Bill Chapter 2012-116:**

(1) For the preservation of liberty and the protection of individual rights, the people of the state of Florida adopted a Republican form of Government...

(6) Each officer of the State Government is obligated to construe the language of the state constitution consistent with its express and clearly implied intent, must give words their ordinary and customary meaning unless the context indicates otherwise, must construe all parts together to give them their full effect, and must not construe the terms of the state constitution to yield an absurd result.

### **FL Bill of Rights 1885, Section 8:**

Excessive bail shall not be required, nor excessive fines be imposed, nor cruel or unusual punishment or indefinite imprisonment allowed, nor shall witnesses be detained. (Fla. Const. 1885; Revised Article 1, Sect. 17, Fla. Const. 1968)

### **Merriam – Webster Dictionary (1997):**

Indefinite; having no fixed limit; vague

Indeterminate; not leading to a defined end; vague

### **Florida Statute 775.082 Penalties:**

(3) 2. For a life felony committed on or after October 1, 1983 by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years. After July 1, 1995 by a term of imprisonment for life or by imprisonment for a term of years not exceeding life.

Article IV, Section 4, U.S.C.A.:<sup>1</sup>

...every state is guaranteed a republican form of government.

14<sup>th</sup> Amendment U.S.C.A.:<sup>2</sup>

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 protections of the law.<sup>3</sup>

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<sup>1</sup> In a republic form of government power flows from the people through their elected representatives into a constitution. All laws must conform to the tenor of that document. This prevents oppressive political factionism.

<sup>2</sup> As a matter of due process, a law is void on its face if it is so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application. Connally v. General Construction Co., 269 U.S. 385, 391 (1926).

<sup>3</sup> A law that fails to define clearly the conduct it proscribes may in practical effect impermissibly delegate basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Grayned v. Rockford, 408 U.S. 104, 108, 109 (1972).

Sentencing under an unconstitutional statute violates due process of law. U.S. v. Ross, 9 F.3d 1182, 1193 (7<sup>th</sup> Cir. 1993).

## STATEMENT OF CASE

Roderick Mullins is serving a life sentence in the Florida Department of corrections as the result of a negotiated plea entered on July 30, 1993, for violating several state laws. He entered the plea with the understanding there was a 40 year cap on life sentences under statute 775.082; "Penalties, (3)2. for a life felony committed on or after October 1, 1983 by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years".

Upon entry into the department of corrections he began receiving monthly gain-time notifications. In the notices his release date is listed as an indeterminate 99/98/9999. See Appendix "L".

Based upon the state constitution's ban on indefinite imprisonment he filed a rule 3.800 motion to correct an illegal sentence. See Appendix "A".

The trial court ruled that the court had the discretion to sentence him to either a life term or a term of years capped at 40. See Appendix "B". The court validated its legal conclusion through stare decisis with a dispositive case *Peters v. State*, 658 So.2d 1175 (Fla. 2<sup>nd</sup> DCA 1995). The court of appeals affirmed, rejecting Mr. Mullins argument that the ambiguity of the statute rendered it facially void for vagueness and the courts conclusion contradicted the tenor of the state constitutional ban on indefinite imprisonment. See Appendix "C" through "K". Mr. Mullins argued that his 14<sup>th</sup> Amendment rights to due process were violated.

This case is not about the legality of indeterminate sentencing as discussed in cases like *Blakely v. Washington*, 124 S.Ct. 2531(2004), *Apprendi v. New Jersey*, 120

S.Ct. 2348 (2000), or their progeny. This case is about how indeterminate sentencing in Florida can be implemented in a way that respects the state constitution's ban on indeterminate imprisonment. The state court legal analysis that concluded the state legislature made it clear that they intended to codify "life means life" penalties, fails to recognize constitutional supremacy. A concept of Republicanism emphasized by late Justice Honorable Antonin Scalia in his best seller "Strict Originalism"; "if the courts are free to write the constitution anew, they will, by God, write it the way the majority of the Supreme Court Justices want; this of course is the end of the Bill of Rights, who's meaning will be committed to the very body it was meant to protect against; the majority."

Roderick Mullins avers that unless the state can designate the exact time and date of his death, he is serving a de facto indeterminate length of imprisonment, in violation of the state constitution. And that he was led to surrender his 6<sup>th</sup> Amendment rights to a jury trial by a vaguely worded statute that implied a 40 year cap on his life sentence. His complaint is about constitutional limitations on legislation and where he can turn when state courts blunder in their legal analysis. He prays for the same considerations given in *Blakely* *supra*, *Graham v. Florida*,560 U.S. 48 (2001); *Miller v. Alabama*,567 U.S. 460 (2012); *LeBlanc v. Virginia*,137 S.Ct. 1726, at 1729 (2013); and the recent immigration bill negated for its text " violent crime" being too broad by Justice Gorsuch.

## REASON FOR GRANTING PETITION

### The void for vagueness doctrine

The text of Florida's penalty statute in effect between October 1, 1983 and July 1, 1995 lacked the clarity required to meet the demands of due process under the 14<sup>th</sup> Amendment. F.S. 775.082 " by a term of years for life or by a term of imprisonment not exceeding 40 years," can be interpreted as a 40 year cap on life sentences. This interpretation would allow the statute to meet the constitutional prohibition on indefinite imprisonment.

The Florida Judiciary interprets statute 775.082 to mean the judge has the discretion to sentence for either life, an indefinite number of years, or up to 40 years imprisonment. See Appendix "B". This interpretation renders the statute constitutionally invalid due to its non definitive term for "life" as well as void for its lack of clarity.

As a matter of due process, a law is void on its face if it is so vague that a person of common intelligence must necessarily guess at its meaning but, as applied here, differ as to its application. *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926). Because, as in this case, a law that fails to clearly define the conduct it proscribes may in practical effect impermissibly delegate basic policy matters to policemen, judges, and juries for resolution or an ad hoc and subjective basis, with all the attendant dangers of arbitrary and discriminatory application. *Grayned v. Rockford*, 408 U.S. 104, 108, 109 (1972).

When challenged on the statutes ambiguity the state Supreme Court ruled that the legislature was clear in its attempt to enact a “life means life” penalty. But this ruling fails to recognize constitutional supremacy of law. See *U.S. v. Butler*, 297 U.S. 1 (1936) at 62; *Ratliff v. State*, 914 So.2d 938(2005). The *Butler* court described the procedure to use when addressing a constitutional challenge to a law. The court must place the constitutional Article invoked beside the law challenged and decide if it is constitutional, or not constitutional, after which its duty ends. This procedure for legal analysis requires the state court or this court to place Article 1, Section 17, “no indefinite imprisonment”, beside the statue challenged, “life or by a term of imprisonment not exceeding 40 years,” and determine if the latter respects the tenor of the former under the state courts interpretation. As pointed out by former U.S. Supreme Court nominee Robert Bork in his book “The Tempting of America”(at 264-65 (1990)); Lawyers use results driver legal analysis whereas a judge must use constitutionally based legal analysis.<sup>4</sup> When Mr. Mullins release date of 99/98/999 is measured against the state constitution it simply does not comply.

The degree of constitutionally tolerated vagueness is not easily calculated with precision. In any particular area the legislature confronts a dilemma ‘to draft with narrow particularity is to risk nullification by easy evasion of the legislative purpose; to draft with great generality is to risk ensnarement of the innocent in a net designed for others. See: L. Tribe, American Constitutional law, 1033 (2 ed. 1988). But in this case we must keep in mind the very purpose of a constitution. It protects us from oppression by political factions. The focus on fear platforms used by

many politicians to gain support and win elections use sound bytes to win votes. Once in office they tend to use unsupportable hyperbole to draft legislation. The constitution prevents election cycle factionists and knee jerk legislation that impinges on basic civil rights; Laws based upon perceived dangers that don't exist can damage a state's fiscal health and harm its citizens.

When the Kansas Supreme Court found *Appendi* infirmities in that states determinate sentencing, in *State v. Gould*, 271 Kan. 394, 404-414, 23 P.3d 801, 809, 814 (2001), the legislature responded, not by re-establishing indeterminate sentencing, but by applying *Appendi's* requirements to its current regime. See Act of May 29, 2002, ch. 170, 2002 Kan. Sess. Laws p.g. 1018-1023 (codified at Kan. Stat. Ann. Sect. 21-4718 (2003 Cum. Supp); *Blakely v. Washington*, 124 S.Ct. 2531 at 2541 (2004). Florida can simply acknowledge the 40 year cap.

Due process and the facts at issue:

- Article 1, Section 17, forbids indefinite imprisonment.
- The State Supreme Court ruled the legislature clearly intended for life to mean life imprisonment.
- The State Judiciary is not recognizing constitutional law supremacy.
- The petitioners release date of 99/98/9999 is indefinite and illegal.

### CONCLUSION

Throughout the history of the Florida Constitution there has been a ban on indefinite imprisonment. A fact reestablish at the constitutional revision convention of 1977 when proposal 33 was voted down 26 to 10. The commission refused to

amend Art. 1, Sect. 17, to include life without parole sentences. See *In Re Advisory Opinion to Governor*, 112 So.2d 843 (Fla. 1959); *De Sisto College inc. v. Town of ...*, 706 F.Supp. 1479 C.M.D. Fla. 1989); *aff: 888 F.2d 766* (11<sup>th</sup> Cir. 1989). The courts position in this case appears to violate 14<sup>th</sup> Amend. Due process.

Wherefore, Roderick Mullins respectfully requests that this Honorable Court issue a Writ of Certiorari to review his case and answer the constitutional question raised.

**Does the Florida "life means life" sentencing scheme violate the state constitution's ban on indefinite imprisonment and 14<sup>th</sup> Amendment due process of law protections.**

Respectfully Submitted this 11 day of April 2019,

*Roderick E. Mullins*  
Roderick Mullins DC#352788  
South Bay Corr. & Rehab. Facility  
P.O. Box 7171  
South Bay, Fl. 33493

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by placing it into the hands of prison mailroom officials on this 11 day of April 2019, for delivery via U.S. Mail, postage paid, to the Florida Attorney General, 3507 E. Frontage Rd., Suite 200, Tampa, FL 33607-7013.

*Re-Sent May 17, 2019*

*Roderick E. Mullins*  
Roderick Mullins  
*Roderick E. Mullins*  
Roderick Mullins DC#352788