

No. 18-9690 ORIGINAL

FILED
MAY 12 2019

IN THE

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

BURT M. LOCKETT — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Florida Fourth District Court of Appeal

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Curt Marquain Lockett
(Your Name)

Santa Rosa C. I. Main Unit, 5850 E. Milton Rd.
(Address)

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(City, State, Zip Code)

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QUESTION(S) PRESENTED

Q1: Should a habeas petitioner's claims of actual innocence, supported by the face of the court record, be subject to defenses of abusive or successive use of writ?

Q2: Regardless of procedural bars, does a clear showing of actual innocence warrant an evidentiary hearing?

Q3: Should procedural bar(s) ever keep a man from obtaining post conviction relief when evidence of his innocence is on the face of the court record?

Q4: Does petitioner's showing of actual innocence serve as a gateway through which to have his otherwise barred constitutional claims heard on merits? (Does Schlup standard apply here?)

Q5: Does the Court recognize that a constitutional violation probably resulted in the conviction of one who is actually innocent? (Does Carrier standard apply?)

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:

Aronberg, Dave - State Attorney, Palm Beach County
Bondi, Pamela Jo - Attorney General, Florida
Clemons, Aaron - Asst. Public Defender
~~Jones, Nicole~~ - Asst. Public Defender
Kastrenakes, John S. - Circuit Judge, 15th Jud. Cir. Ct. of Fla.
Lockett, Curt M. - Petitioner
Warner, Taylor and May, JJ - Fla. Fourth DCA

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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**:

N/A

The opinion of the United States court of appeals 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 is unpublished.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 United States district 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.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

unknown
 reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Florida Fourth District Court of Appeal court appears at Appendix A to the petition and is

unknown
 reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[] For cases from **federal courts**:

N/A

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: _____, 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. A _____.

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 March 26, 2019. A copy of that decision appears at Appendix 6.

[] 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. A _____.

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

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
<u>Carswell v. State</u> , 23 So. 2d 195, 198 (Fla. 4th DCA 2009)	6, 7
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STATUTES AND RULES

3.140 Rules of Criminal Procedure, Florida	6
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OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Sixth & Fourteenth Amendment Due Process
- Fifth Amendment Charge by Presentment/Indictment
- Eighth Amendment Illegal Detention
- Art. I § 16 Fla. Const. Charge by Information
- 3.140 Fla. Rules of Crim. P. Charge by Information

STATEMENT OF THE CASE

Petitioner is not trained in the sciences of law, but he is sure of two things.

1) He is innocent of the charges for which he is convicted. 2) The face of the court record will reflect his actual innocence. Petitioner is aware that his previous postconviction motions may not have properly stated his claims, but the present one under review does clearly. Constitutional right violations/deprivations and fraud by defense counsel and prosecution are the proximate cause of Petitioner's involuntary guilty plea, conviction and imprisonment. The state of Florida brought fraudulent, frivolous and factually insufficient charges against Petitioner. Petitioner's defense counsel neglected to afford Petitioner the most basic rights while facing these charges that he did not commit, and misled him, under duress, into accepting a plea agreement and conviction of said charges, including one for which Petitioner has never been formally charged by information.

Petitioner attempted to have his claims of actual innocence, ineffective counsel, and involuntary plea heard on several occasions to no avail. On Nov. 8, 2017, the Florida 15th Judicial Circuit Court pro se barred petitioner. On Aug. 16, 2018, Petitioner filed a successive Habeas Petition with the Florida 4th DCA, which was dismissed as "repetitive, successive, frivolous, and abusive."

Petitioner contends that absent defense counsel's negligence, omissions and misadvice, he would not have accepted the plea; that he would not be in prison convicted of offenses he did not commit.

Petitioner asserts that his claim meets the Carrler standard (Murray v. Carrler, 477 U.S. 478, 106 S.Ct. 2639) which requires a habeas petitioner to show that a constitutional violation has probably resulted in the conviction of one who is actually innocent, held in Schlup v. Delo, 513 U.S. 298, 115 S.Ct. 851 (U.S. Mo. 1995).

The district court citing of procedural bars to deny relief after such a clear showing of actual innocence results in a miscarriage of justice. "Procedural bars will not be invoked when their application would result in a manifest injustice." West v. State, 790 So.2d 513, 514 (Fla 5th DCA 2001). Petitioner wishes to assert actual innocence as a gateway to have his otherwise defaulted constitutional claims heard on merits under Schlup.

Count 1 of case no. 08CF007989 and Count 3 of case no. 08CF007988 are frivolous,

fraudulent and completely devoid of fact. The Burton court held "orders that are the product of fraud, collusion, deceit or mistake may be vacated, modified or otherwise acted upon at any time." State v Burton, 314 So.2d 136 (Fla 1975). Further holding "the Supreme Court of Florida is concerned with the power of a court to protect itself and the true administration of justice from fraud practiced upon it." The Florida Fifth District Court of Appeal held that "a final order procured by fraudulent testimony against a defendant in a criminal case is deserving of no protection, and due process requires that he be given every opportunity to expose the fraud and obtain relief from it." In State v. Glover, 564 So.2d 191 (Fla. 5th DCA 1990).

Petitioner is convicted and imprisoned on Attempted 800.04 (5)(a) and (b), Fla. Stat. without any accusatory writ to support it; a clear violation of the Fifth Amendment of the U.S. Constitution, Article 1 § 16, Fla. Const., and 3.140, Fla. Rules of Criminal Procedure. "No person shall be held to answer for a crime unless on a presentment or indictment." Amendment V, U.S. Const. "Conviction on a charge not made by indictment or information is a denial of due process." State v. Gray, 435 So.2d 816, 818 (Fla. 1983). The same district court that dismissed petitioner's claim held that "It is a due process violation to convict a defendant of a crime with which he was not charged." Carswell v. State, 23 So.2d 195, 198 (Fla 4th DCA 2009). The Fla. Fourth DCA has made it clear that a conviction without formal charges is a due process violation. In this case the same violation has resulted in an unlawful conviction and illegal detention.

REASONS FOR GRANTING THE PETITION

Within Petitioner's Habeas Petition he calls upon the face of the court record as evidence of actual innocence. He is entitled to a hearing to examine the record and validate his claims.

Allowing procedural bars to stand despite such clear showing of actual innocence would result in a manifest injustice.

The central purpose any system of criminal justice is to convict the guilty and free the innocent. U.S. v. Nobile, 422 U.S. 225, 230, 95 S.Ct. 2160, 2166 (1975). Due process requires that Petitioner be given every opportunity to expose the fraud that caused his imprisonment and obtain relief from it. State v. Glover, 564 So.2d 191 (Fla. 5th DCA 1990).

The Florida Fourth District Court of Appeal must uphold its ruling in Carswell by granting Petitioner relief on the ground that he is convicted of a charge with which he has never been charged.

Petitioner's actual innocence claims overcome procedural bars. It is a miscarriage of justice to dismiss a clear showing of actual innocence as abusive. His actual innocence claims serves as a gateway through which he could have his otherwise defaulted constitutional claims heard on merits.

It is physically impossible for Petitioner to have committed the contested offenses, and surely no reasonable juror would have found him guilty. House v. Bell, 547 U.S. 518, 126 S.Ct. 2064 (U.S. 2006).

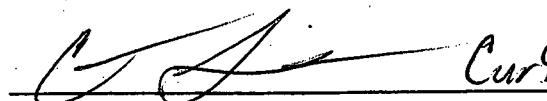
RELIEF SOUGHT

In pursuit of conviction reversal, Petitioner seeks to have his Habeas Petition heard on merits and subsequent evidentiary hearing.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 *Curt M. Lockett, Petitioner*

Date: _____