19-5099

IN THE SUPREME COURT OF THE UNITED STATES

JAMES THOMPSON,
Petitioner,

v.

STATE OF FLORIDA,
Respondent,
_____/

U.S. Supreme Court
Dist. Court: 3D18-309
CASE NO.: L.T. F11-30230

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

James Thompson
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Jackson Corr. Inst.
5563 10th Street
Malone, Florida 32445

QUESTION PRESENTED

The question presented involves the Florida practice and rule which do not permit litigants to seek review in the Florida Supreme Court when the district courts of appeal issue unelaborated Affirmance (PCA's) of trial court's decision. The issue is whether this practice unconstitutionally deprives Florida residents to full and complete access to their courts in violation of their Fifth and Fourteenth Amendment equal protection rights in that it individualously discriminates against Florida residents, wherefore under those rights can a tribunal and intermediate appellant court act as the highest court and / or court of last resort to deny relief based on fraud?

PARTIES TO PROCEEDINGS

Victoria Delpino, Judge, 1351 NW 12th St., Miami, Fla. 33125

Sandra Lipman, Att. Gen., One NE 3rd Ave., Miami, Fla. 33128

James Thompson, Pet., Jackson Corr. Inst., 5563 10th St., Malone, Fla. 32445

OPINIONS BELOW

The petitioner James Thompson seeks *Certiorari Relief* from the following denials in the circuit court and district court of Florida.

1) An unelaborated affirmance (PCA) opinion filed April 24, 2019.
2) The denial of the motion for rehearing filed May 8, 2019.
3) Order denying defendants motion for post conviction relief, and requiring the defendant to show cause why he should not be held in contempt for frivolous / successive filings.

JURISDICTION

This petition is filed within 90 days of all State final appellate renditions of order per Supreme Court R. 13.1 jurisdiction is invoked under Supreme Court Rule 21. (c). As the challenged Florida Statues and Rules are repugnant to the Constitution of the United States, as well as violating fundamental constitutional rights and in this case the final reviews are dependent upon fraud to extend the record and deny relief from the essential requirements of law.

The decisions in this case are final because Florida does not permit appeals from a district court of appeal to the Florida Supreme Court in cases where the district court has affirmed the trial court without issuing a written opinion Art V; 3 (b) 3 Fla. Const. and Fla. R. App. P. 9.030 (A) 4, require that the decision below

"expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law," *Jackson v. State*, 385 So.2d 1356, 1359 (Fla. 1980). *Jackson v. State*, 926 So.2d 1262, 1265 (Fla. 2006). "as we explained in Florida Star, this court discretionary review jurisdiction can be invoked only from a district court decision "That expressly address a question of law within the four corners of the opinion itself by containing a statement or citation effectively establishing a point of law. Upon which the decision rests," Florida Star, 530 So.2d at 288. We further explained that there can be actual conflict discernable in an opinion containing only a citation to other case law unless one of the cases cited as controlling authority is pending before this court, or has been reversed on appeal or review, or receded from by this court, or unless the citation explicitly notes a contrary holding of another district court or of this court "id at 288 n 3 *Persuad v. State,* 838 So.2d 529, 532-33 (Fla. 2003).

"Since the Florida Supreme Court lacks jurisdiction to hear per curiam opinions of district court of appeal that merely affirm [Fisher] was not entitled to petition for their review and his State court remedies are therefore exhausted, *Gandy v. State*, 846 So.2d 1141,1143 (Fla.2003), *Fisher v. Secretary Fla. Dept. of Corr.*, 2013 ul 5739788 (M.A. Fla. 2013) accordingly, based on our case law since *Jenkins*, it is clear that we've have explicitly held that this court lacks discretionary review jurisdiction over the following four types of cases. As per curiam

affirmance rendered without written opinion. See *Jenkins*, 385 So.2d at 1359 (2) as per curiam affirmance with a citation to (I) a case not pending review as a case that has not been quashed or reversed by this court. (II) a rule of procedure or (III) A statue see *Dodi Publishing*, 385 So.2d at 1369 and *Jollie*, 405 So.2d at 421; (3) a percuriam or other unelaborated denial of relief rendered without written opinion see *Stallworth*, 827 So.2d at 978 and (4) A per curiam or other unelaborated denial of relief with a citation to (I) a case not pending review or a case that has not been quashed or reversed by this court (II) a rule of procedure, or (III) a Statute See *Gandy*, 846 o.2d at 1144. None of these four scenarios, however, specially address the situation presented in this case, an unelaborated per curiam dismissal with a citation to cases not pending review in and not quashed by or reversed by this court.

Applying this court's decisions in *Jenkins, Dodi Publishing*, *Stallworth* and *Gandi*, to the notice to invoke this courts discretionary jurisdiction filed in this case, we conclude that our analysis in those cases as to unelaborated percuriam affirmance and denials is equally valid as to unelaborated per curiam dismissals. We therefore hold that this court does not have discretionary review jurisdiction over unelaborated per curiam dismissals from the district court of appeal. (1) That are issued without opinion or explanation. Whether in opinion form or by way of unpublished order. (2) That like the first district's decision in *Well's* case merely

cite to a case not pending review in or not quashed or reversed by this court, or to a statute or Rule of Procedure and do not contain any discussion of the facts in the case such that could be said that the district court "expressly" addresse(d) a question of law within the four corners of the opinion itself, *Florida Star*, 530 So.2d at 288 as well did in *Gandy,* we also take this opportunity to explain that in the future we will apply the reasoning of this opinion. *Jenkins, Dodi Publishing, Stallworth* and *Gandi*, to similar cases and will dismiss review for lack of jurisdiction. We hereby authorize the office of the clerk to administratively dismiss future petitions for review in similar cases.

STATUTORY AND RULE PROVISIONS INVOLVED

Art V, 4 (b) Fla. Cons, and R. 3.850 (b) 1 F.S. id. To 9.030 (A) (2) (A) 4 F.S. which limit the Florida Supreme Courts review to only those decisions below which expressly and directly conflict with a decision of another district court of appeal of the Supreme Court on the same question of law.

STATEMENT OF THE CASE AND FACTS

Wherefore in the instant case at hand, the petitioner filed a 3.850 motion July 31, 2017 which entailed Ineffective Assistance of Counsel and a Brady violation consolidated with an independent motion filed July 7, 2017.

Therefore upon its own discretion the court changed the application from a 3.850 to a 3.800 in violation of the best evidence R. 90.952 F.S. utilizing fraud to extend the existing record by instituting quasi judicial proceedings to the record preferencing as to post conviction proceedings. Shifting the standard of review and burden of proof to deny relief id. To requesting a procedural bar to prohibit any further attack on the conviction, thus being granted created a manifest injustice.

REASON FOR GRANTING CERTIORARI

The essential requirement of law has been departed in order to deny relief. Whereas the statute is clear, certain, and unambiguous 3.850 (b) F.S. "A motion to vacate a sentence that exceeds the limits provided by law may be filed at any time. No other motion shall be filed or considered pursuant to this rule if filed more than 2 years after the judgment and sentence become final unless it alleges the facts on which the claim is predicated were unknown to the Movant or the Movants attorney and could not have been ascertained by the exercise of due diligence."

Therefore as provided by 3.850 (L) " Belated appeal and discretionary review" allows the motion to be heard to correct the long holding obligation requiring the government to disclose all evidence that negates the guilt or innocence of an accused. Therefore the government has utilized fraud to foreclose

the violations, therefore creating a manifest injustice equivalent to a constitutional violation of due process 6th, 14th Amend. U.S.CA.

ARGUMENT

Wherefore in the case at hand the petitioner filed a 3.850 motion docketed July 31, 2017. Wherefore upon its own discretion, the court changed its application to a 3.800 motion, and consolidating the 3.850 with a previously filed 3.801 motion docketed July 7, 2017. To enforce the relief granted by the court January 28, 2015. Therefore violating the best evidence rule 90.952 F.S. "id" to utilizing quasi judicial proceedings to add to the record to shift the burden of proof. From the review required by the Brady Violation and Ineffective Assistance of Counsel pertaining to the allegations and attachments provided with the 3.850 motion.

Therefore as published by the order of the trial court which argues the procedural history of the transactions by stipulation of the docket sheet. Therefore failing to actual visibility of the actual filings in the record. Whereas the response fails to obtain the case numbers in the proceedings referred to therefore easily misleading the court. Whereas in line 4, the notice of appeal being initiated July 25, 2012. Is in case number (3D12.1980) moving to line 5 stipulates the filing of a second motion for post conviction, being denied August 22, 2012. Thus being the attempt to appeal the May 12, 2012 motion. But title headed wrong and sent to the

circuit court. Therefore being sent back to the circuit court and creating a second court order in 3D12-1980. Therefore failing to acknowledge this being the second order of denial by the lower tribunal. Wherefore exhibit (L) published the first August 7, 2012 order of denial.

Therefore by the pronouncement of *Daniels*, 712 So.2d at 766 "additionally, because we find that *Daniels* post-conviction motion was prematurely filed. Daniels may refile the motion without prejudice following an adverse decision in his direct appeal and the motion will not be subject to the restriction against successive motion under rule 3.850 (f)." Therefore as pronounced in the Supreme Courts precedence, neither the circuit court nor the district court has jurisdiction to rule on a premature 3.850 motion. Therefore bringing it to the courts attention failed to recognize the established law. Therefore leaving the essential requirement of law.

Therefore publishing in line 11"on December 8, 2014 the defendant filed another pleading entitled Writ of Mandamus" "id" in line 15 on June 18, 2015 the defendant filed yet another post conviction motion, entitled Order to Show Cause." Wherefore both these proceedings are fraudulent to the post conviction proceedings wherefore both these proceedings are "quasi-judicial" request to invoke the jurisdiction of the court to act in its appellant capacity as orchestrated by ART. 5, 5 (b) Fla. Const.

Therefore providing argument to the 3.850 motion, the States claim in instant motion Sara Imm, inappropriately stipulated in that. The contents of the 3.850 motion simply stated Ineffective Assistance of Counsel, pertaining to the failure of the attorneys investigation failing to address the *Brady Violation* under the title heading "violation of due process," which is clearly orchestrated by the case law, *Antone*, 355 So.2d 777, *Lee*, 538 So.2d 63 and *Griffits,* 472 So.2d 834, and reference attached all affidavits and communication between the departments. Then within the "argument" stipulates 3.800 and therefore defrauded the court by utilizing the collateral estoppel Rule to deny review of the possibility of the State Attorney suppressing evidence to sustain the conviction. Additionally shifting the weight from the State to prove disclosure pertaining to the affidavits and investigative reports that was in possession of the State Attorney. See exhibit (A) pg. 155: 15-22, *Antone Supra*, 355 So.2d 777, "just as there is no distinction between different prosecutorial offices within the executive branch of the United States government for purposes of a *Brady Violation*. There is no distinction between corresponding departments of the executive branch of Florida's government for the same purpose." Whereas exhibit (A) reflects that communication, before the trial had already accured therefore having knowledge of the investigators completed assessment, and affidavits to initiate another independent case within the dependency court. Therefore the failure to address the

Brady Violation titled violation of due process in the 3.850 motion, the court erred in its denial. *Lee Supra*, 538 So.2d 63" When the State violates a discovery rule, the trial court has discretion to determine whether the violation resulted in harm or prejudice to the defendant, but this distinction can be properly exercised only after adequate inquiry into all surrounding circumstances. In making this inquiry, the trial Judge must determine whether the States discovery violation was inadvertent or willful, whether the violation was trivial or substantial, and most importantly, what effect it had on the State to show the defendant was not prejudice in the preparation of his defense. A trial court's failure to conduct such an adequate inquiry constitutes per se reversible error." Id. To *Griffis*, 472 So.2d 834, "Fla. R. Crim. P. 3.220 (A)1, requires the State to disclose to defense counsel, within 15 days after written demand, statements made by the accused together with the name and address of each witness to the statements" Therefore being a constitutional violation per due process, 14th Amendment U.S.C.A. Therefore by the Fla. Supreme Courts Jurisprudence in *Nordela*, 93 So.3d 178, "upon receiving a motion filed under 3.850. A trial court must first determine whether the motion is facially sufficient, i. e. whether it sets out a cognizable claim for relief based upon the legal and factual grounds asserted only after the trial court deems the motion (or particular claims within it) facially sufficient does it review the record for evidence refuting the claim. Rule 3.850 distinguishes between claims that are facially

insufficient and those that are facially sufficient but are also conclusively refuted by the record. A determination of facial sufficiency will rest upon an examination of the face or contents of the post conviction motion. Because the determination of facial sufficiency under R. 3.850 is one of law and involves an evaluation of the legal sufficiency of the claim alleged. The evidence in the record will ordinarily be irrelevant to such an evaluation." Therefore upon the States Sara Imm publishing a reply to the 3.850 motion by attempting to induce the procedural bar. Which fails record support. Whereas exhibits (J - M) reflect all orders were denied without prejudice or the court lack jurisdiction. Wherefore in the prior 3.800 motion. It failed to publish portions of the record to refute the allegations ie. Specifies that the claims should have been raised in a 3.850 motion. Therefore as provided by the record and prior court orders of denial, See exhibits (J-M) being denied without prejudice or jurisdiction of the court i.e. to failure to expressly address the claim of ineffective assistance and violation of due process," *Brady Violation*," within the direct appeal the court is without record support, *Nordela*, 93 So.3d 178," but where the motion (3.850) contains allegations of substantial material facts stating a claim cognizable in post conviction proceedings, the motion must be evaluated in light of the trial record. In cases where there has been no evidentiary hearing, an appellant court must accept the defendant's factual allegations to the extent the record do not refute them. In other words the appellant court must examine each

claim to determine if it's legally sufficient, and if so, determine whether or not the claim is refuted by the record." Therefore leaving the essential requirements of law to deprive the petitioner adequate review as orchestrated by the jurisprudence of Florida's legislature.

Therefore as published in the language of 3.850(b); i.e. to *State v Green*, 944 So.2d 208, "3.850 (b) provides that a motion to vacate a sentence that exceeds the limits provided by law may be filed at any time, but all other motions filed under 3.850 (b) in a noncapital case must be filed within 2 years, after the judgment and sentence became final 3.850(b)1 authorizes a motion filed beyond the 2 year period if the motion alleges that the facts on which the claim is predicated were unknown to the movant or the movants attorney and could not have been ascertained with the exercise of due diligence." Therefore as articulated by case law and statutory rule the courts capability to address the issue in the 3.850 motion. Therefore leaving the essential requirement of law by utilizing fraudulent information to mislead the court, pursuant to the record wherefore as provided by *Wilson v Sellers*, 138 S. Ct. 1188, 200 L. Ed 2d 530, 2018 U.S. Lexus 2496, U.S. L. Wkly 4181, "(holding) Federal habeas law employed a "look through" presumption in cases where the last state court to review a petition for habeas relief issued a summary decision and federal courts were required to look through unexplained decisions to the instant related State court decision that provide a relevant

rational." Therefore if the court would have reviewed the record accurately, it would have been seen that there is no prior 3.850 motion to be considered as a prior post conviction proceeding to summarily deny the instant 3.850 motion. Wherefore as cited in the statutorial rule 3.850(b) 1, "a motion can be filed at any time, after the two year limit if it alleges, that the evidence was unknown to the movant or his counsel and could not have been uncovered by due diligence at the time of trial," Therefore the court has departed from the essential requirements of law.

To deprive the petitioner of review derived by law. Therefore seeking the Court to grant the *Certiorari* quashing the Circuit and District Courts denials.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy has by U.S. Mail has been forwarded to the Court on this the 1 day of July, 2019.

/s/ James Thompson

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