

19-5292

NO.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

JUL 10 2019

OFFICE OF THE CLERK

FRANKY JOSEPH, PETITIONER

VS.

STATE OF FLORIDA, RESPONDENT.

On Petition For a Writ of Certiorari to
The Florida Third District Court of Appeal

PETITION FOR A WRIT OF CERTIORARI

FRANKY JOSEPH, *Pro se*
Franklin Correctional Inst.
1760 Highway 67 North
Carribelle, Florida 32322

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JUL 23 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION PRESENTED

The decision of the Florida Supreme Court, from which the Florida State District Court of Appeal's decision derives, is glaringly egregious and contrary to the holding of this Court, and a progeny of high courts of other states, that this court ruled on the merits of the underlying Eighth Amendment claim in *Virginia v. LeBlanc*, 37 S.Ct. 1726 (2017). The questions presented are:

1. Does the Florida Supreme Court's contrary and broad reading of *LeBlanc* infringe upon Petitioner's Constitutional right to have a meaningful review of his federal constitutional question, and adjudication thereof on the merits in accord with due process?

2. Does the Florida Supreme Court's reliance on *LeBlanc* as a merits based decision to overturn a previous decision favorably resolving Petitioner's Eighth Amendment claim, unconstitutionally deprive him of the constitutional protection afforded by the Court's previous decision?

3. Does the decision of the Florida Supreme Court in *State v. Michel*, 257 So.3d 3 (Fla. 2018), depart from the concepts of constitutional fairness, and judicial integrity particularly, where it is clear that the Court applied an egregious and objectively unreasonable analysis of the plain language of this Court in *Virginia v. Le Blanc*, to overturn a previous decision a minority of the Florida Supreme court, at that time, had opposed.

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. The State of Florida

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4, 6
REASONS FOR GRANTING THE WRIT.....	7, 10
CONCLUSION.....	10

INDEX TO APPENDICES

APPENDIX A: Decision of State Court of Appeals

APPENDIX B: Decision of Florida State Post-Conviction Court

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBERS
Atwell v. State, 197 So.3d 1040 (Fla. 2016)	4
Carter v. State, 192 A.3d 695 (Md. 2018)	9
Franklin v. State, 258 So.3d 1239 (Fla. 2018)	6
Grady v. North Carolina , 135 S.Ct. 1368 (2015).....	8
Madison v. Alabama, No. 17-7505 (Feb. 27, 2019).....	7
People v. Contreras, 411 P.3. 445(2018).....	8
Ramah Navajo Sch. Bd., Inc. v. Bureau of Rev. of New Mexico, 458 U.S. 832, 846 (1982).....	9
State v. Michel, 257 So.3d 3 (Fla. 2018)	4,5,6
Virginia v. LeBlanc, 137 S.Ct.1726 (2017)	5
Wearry v. Cain, 136 S.Ct. 102 (2016).....	8

IN THE
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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

This case arises from the State Court.

The opinion of the highest state court to review the merits appears at **Appendix A**, to the petition and has been designated for publication but is not yet reported.

The opinion of the State post-conviction court appears at **Appendix B**, to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was June 12th, 2019. A copy of that decision appears at Appendix A. No rehearing was sought.

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

CONSTITUTIONAL PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment provides: "[N]or shall any state deprive any person of life liberty, or property, without due process of law..."

STATEMENT OF THE CASE

Herein petitioner relies upon the following facts to seek a summary reversal of the Florida Supreme Court's ruling in *State v. Michel*, 257 So.3d 3 (Fla. 2018), and ultimately, that of the Florida Third District Court of Appeals:

On May 26th, 2016, the Florida Supreme court, after conducting an in-depth analysis of Florida's parole system as applied to juvenile offenders found that it failed to comply with this Court's holdings in *Graham*, *Miller* and *Montgomery*. The Court held: "We conclude that Florida's existing parole system, as set forth by statute, does not provide for individualized consideration of Atwell's juvenile status at the time of the murder, as required by *Miller*, and that his sentence, which is virtually indistinguishable from a sentence of life without parole, is therefore unconstitutional." *Atwell*, 197 So.3d at 1041.

Therein, the minority issued a written opinion respectfully dissenting.

Relying upon the court's decision in *Atwell* Petitioner sought review of his parole eligible sentence alleging that his sentence was illegal because it violated his federal

constitutional rights under the Eight Amendment. His motion was granted and he was awaiting a hearing to demonstrate, in accordance with this court's decisions in *Miller* and *Graham*, that he was entitled to relief.

While Petitioner's case was pending this court decided *Virginia v. LeBlanc*, 137 S.Ct.1726 (2017). Wherein, after observing that there was a reasonable argument that Virginia's geriatric release program violated the Eight Amendment as applied to juvenile offenders, and that "[p]erhaps the logical next step from *Graham* [v. Florida, 560 U.S. 48 (2010)] would be to hold that a geriatric release program does not satisfy the Eight Amendment, but perhaps not," this Court stated with unmistakable clarity that:

These arguments cannot be resolved on federal habeas review. Because this case arises "only in that narrow context," the Court 'express [eg] no view on the merits of the underlying Eight Amendment claim. Woods, *supra*, at 135 S.Ct., at 1378 (internal quotation marks omitted). Nor does the Court "suggest or imply that the underlying issue , if presented on direct review, would be insubstantial."

LeBlanc, 137 S.Ct. at 1729.

However, contrary to this plan language, the Florida Supreme Court in *State v. Michel*, 257 So.3d 3 (Fla. 2018),

overturned its previous decision in *Atwell*, therein concluding that, the "more recent decision of *LeBlanc*... has clarified that the majority's holding [in *Atwell*] does not properly apply United States Supreme Court precedent." *Michel*, 257 So.3d at 6.

In essence the Court treated this Court's ruling in *LeBlanc* as a merits based decision.

Ultimately, Petitioner's motion was denied by the State post-conviction Court and affirmed by the State Court of Appeals citing to *State v. Michel*, 257 So.3d 3 (Fla. 2018) and *Franklin v. State*, 258 So.3d 1239 (Fla. 2018).

Because of the Florida Supreme Court's decision, petitioner has been deprived of a meaningful constitutional analysis that comports with due process and the assurance that his constitutional rights under the Eight Amendment are not being violated.

REASONS FOR GRANTING THE PETITION

1. The Court's error has allowed the State court to side step its constitutional duty as protectors of the constitution and deprive Petitioner of the assurance that his constitutional rights under the Eight Amendment are not being infringed upon and/or has been properly addressed and resolved in accordance with due process.

For this reason, this is an appropriate case for error correction by this court. The Florida Supreme Court's broad reading of LeBlanc is contrary to the settled precedent of this Court on the scope of its AEDPA decisions, expressed as recently as this Term in *Madison v. Alabama*, No. 17-7505 (Feb. 27, 2019). If courts use this Court's AEDPA jurisprudence to determine the scope of a constitutional right, the net effect will be a closed loop that will preclude a defendant from having the merits of his or her constitutional claim adjudicated, either in federal or state court. No court-state or federal-will rigorously analyze the underlying constitutional question.

2. Given the clarity of this Court's ruling in LeBlanc and well established law that forbids Courts from treating this Court's AEDPA decision as merits decisions, reasonable jurist of like minds could agree that the decision of the Florida Supreme court raises a degree of suspicion as to the integrity of the ruling or at the very least is egregiously erroneous.

This Court occasionally summarily reverses a lower court decision that is plainly incorrect. See, Wearry v. Cain, 136 S.Ct. 102 (2016) (per curiam) (holding that the court has not shied away from summarily reversing cases when lower courts have egregiously misapplied settled law) See also Grady v. North Carolina , 135 S.Ct. 1368 (2015)

B. The decision below conflicts with the decisions of other state high courts.

Other courts have acknowledged that LeBlanc speaks only to the limitations of federal habeas review, not to the merits of the Eighth Amendment issue. In People v. Contreras, 411 P.3. 445 (2018) , the California Supreme Court reviewed lengthy sentences imposed on two juvenile offenders. While the case was pending before the court, the California Legislature enacted an

"elderly parole program." In addressing whether that program satisfies Graham's requirement that juvenile offenders be afforded a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation, the California Supreme Court discussed LeBlanc and concluded, "like the high court in LeBlanc, we decline to resolve in this case whether the availability of an elderly parole hearing at age 60 for a juvenile non-homicide offender satisfies the Eight Amendment concerns set forth in Graham." Contreras, 411 P.3 at 461.

Likewise, the Court of Appeals of Maryland recognized that this court in LeBlanc did not rule on the merits of the underlying claim. See, Carter v. State, 192 A.3d 695, 706 n.9 (Md. 2018).

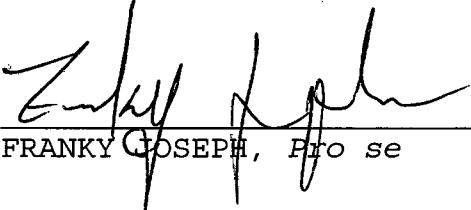
Florida appears to be the only state to have concluded that this Court reached an Eight Amendment decision on the merits in LeBlanc. It is important that state courts "follow both the letter and the spirit of this Court's decisions. *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832, 846 (1982). Therefore, when this Court states in an AEDPA case that it is not ruling on, or expressing a view of, the underlying federal claim, lower courts must respect that statement.

For this reason this Court should exercise its supervisory powers to correct the course of the Supreme court's decision and those of the lower court's that are bound to follow before it drifts too far into the murky waters of bad precedent.

CONCLUSION

The petition for a writ of certiorari should be granted. The decision below should be vacated and the case remanded with directions that the Supreme Court of Florida reconsider its decision in light of the narrow reach of the federal habeas decision in LeBlanc.

Respectfully submitted



FRANKY JOSEPH, Pro se
Date: 7-10-