Case No. 19-5292

IN THE SUPREME COURT OF THE UNITED STATES

FRANKY JOSEPH,

Petitioner,

V.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE FLORIDA THIRD DISTRICT COURT OF APPEALS

PETITION FOR REHEARING

Franky Joseph # _____
Franklin Correctional Inst.
1760 Highway 67 North
Carribelle, Fl. 32322

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PETITION FOR REHEARING

Comes Now Petitioner, Franky Joseph, *Pro Se*, and prays this Court to grant rehearing pursuant to Rule 44, and thereafter, grant him a Writ of Certiorari to review the opinion of the Florida Third District Court of Appeals and that of the Florida Supreme Court from which the Appeals court's decision derives.

In support of this petition, Mr. Joseph states the following.

Statement of Facts:

The opinion in *Atwell v. State*, 197 So.3d 1040 (Fla. 2016), determining that Florida's parole system, as applied to juvenile offenders, violated the Eight Amendment, was written by Justice Pariente, with Justice LaBarga, C.J., Quince and Perry, J.J. concurring. The decision was decided by a majority of the Court. Speaking for the minority, Justice Polston wrote a dissenting opinion in which Justices Lewis and Canady, J.J. concurred.

On December 30th, 2016, eight months after the decision in *Atwell* was decided, Justice Perry reached his mandatory retirement age and had to voluntarily resign his position on the Court. On December 16th, 2016, Justice Alan Lawson was appointed by former Governor Rick Scott to succeed the retiring Justice.

Internet data lists Justice Lawson, Lewis, Canady and Polston as conservative Justices thus, giving Polston a majority of the Court.

Approximately one (1) month after Justice Lawson's appointment, jurisdiction to hear a case involving an inter District conflict regarding the application of *Atwell,* was granted in the case of *State v. Michel,* 257 So.3d 3 (Fla. 2018).

In *Michel,* Justice Polston concluded, contrary to this Court's holding in *Virginia v. LeBlanc,* 137 S.Ct. 1726 (2017)..., that this court's decision, "***Clarified that the majority's holding in Atwell does not properly apply United State Supreme Court precedent.***" *Michel,* 257 So.3d at n.6... Justices Canady and Lawson concurred and Lewis concurred in the result. The same Justice that issued a dissenting opinion in the Court's previous decision in *Atwell,* issued the opinion for the Court's, new majority, in *Michel.*

Approximately four months later in the case of *Franklin v. State,* 258 So.3d 1239 (Fla. 2018), the Court reiterated its holding in *Michel* with all four justices concurring in the opinion.

REASONS MERITING REHEARING

In light of the fact that there could be no debate amongst reasonable jurist that the decision of the Florida Supreme Court lacks justification and is objectively unreasonable, looking through the Constitutional lenses of due process and equal protection of the law, it is unreservedly clear that the only perceivable change that has occurred since *Atwell* is in the makeup of the Florida Supreme Court, and obviously the degree of the new majority's belief that the decision rendered in *Atwell* was wrongly decided.

Over a quarter-century ago Justice Stewart of the United States Supreme Court addressed this issue and held that:

> "A basic change in the law upon a ground no firmer than a change in our membership invites the popular misconception that this institution is little different from the two political branches of the Government. No misconception could do more lasting injury to this Court and to the system of law which it is our abiding mission to serve". See, Mitchell v W. T. Grant Co., 94 S Ct 1895 (1974) (Stewart, J., dissenting).[1]

[1] The Florida Supreme Court has followed this principal, See, N. Fla. Women's Health & Counseling Service v. State, 866 So.2d 612 (Fla. 2003), holding in relevant part: ("We agree that a basic change in Florida law at this point would constitute an unprincipled abrogation of the doctrine of stare decisis and would invite the popular misconception that this Court is subject to the same political influence as the two political branches of government. Nothing could do more lasting injury to the legitimacy of this Court as an institution. It is in issues such as the present--where popular sentiments run strong and conflicts deep--that stability in the law is paramount and that the doctrine of stare decisis applies perforce...")

His concern was that such decisions would cast a dark cloud over the integrity of the court's decision and erode public trust in the judicial branch.

Although the decision of the Florida Supreme Court affects only the lowest of our society and thus, may not invite the popular misconception envisioned by Justice Stewart, it is still nonetheless, a decision that is shockingly disturbing and beckons for constitutional scrutiny. Particularly, because no other fair-minded jurist examining this Court's express holding in *LeBlanc,* would reasonably conclude that this Court reached the merits of the underlying Eight Amendment claim, Petitioner's claim that the new majority of the Florida Supreme Court employed an intellectually dishonest analysis of this Court's holding and presented it as justification for reversal of a prior decision they believed was wrongly decided, is overwhelmingly convincing.

In other words, and the petitioner hopes this Honorable Court will not frown upon him for not being politically correct but, the Florida Supreme Court's interpretation of this Court's holding in *LeBlanc*, is nothing more than an ingeniously disguised act of judicial tyranny perpetrated to disregard the due process principles of stare desisis. This is clearly a gross miscarriage of justice that the lower State Court's are bound to follow and consequently, will create, if this Court does not intervene, an extreme malfunction in the State Court judicial system that will preclude Petitioner from ever having his constitutional claim adjudicated on the merits. And moreover, undoubtedly, will cast a dark cloud over the integrity of the judicial process.

While this case may be of minor interest on the national scale and involves unpopular people, the constitutional guarantees to the fair administration of Justice and equal protection of the law is not just tailored for the upstanding pillars of our society, it is for all, the rich, disadvantaged and yes, even the outcast.

Thus, petitioner prays that lady justice will hear his cry and extend the hand of justice to right the injustice that has occurred in this case.

CONCLUSION

For the reasons stated, this Court should grant Rehearing of its judgment entered on October 7th, 2019, and issue a Writ of Certiorari to reconsider this case and hold the Florida Supreme Court accountable for failing to properly uphold and apply the law of this Court and ultimately, reverse the decision of the Third District Court of Appeals.

Respectfully Submitted

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