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19-5293

FRANK L. OWENS,

Petitioner,

CASE NO. 19-5293

Vs.

MARK S. INCH, SEC. DEPT. OF CORREC. / ETAL,

Respondant,

PETITION FOR REHEARING

(AMENDED)

Now comes, Petitioner Frank L. Owens, (Criminal Law Paralegal), appearing pro se at law, and moves for the rehearing of this Honorable court's Oct. 2, 2019, order denying the Petition for writ of certiorari; therein, in compliance with this court's U.S. court rules, 44 and 29.2, (2019). As grounds for this Petition, Petitioner states the following infra:

1. This petition briefly and distinctly states its grounds. It is accompanied by a certificate stating that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented. This petition for rehearing is presented in good faith and not for delay (certify). See, U.S. court rule 44 (2019).

2. This petition for Rehearing, Rule 44, is to be liberally construed in favor of Petitioner (Pro se litigant), "however inventively pleaded" it may be. See, Haines v. Kerner, 925 S.Ct. 574 (1972).

ORIGINAL

IN THE UNITED STATES
SUPREME COURT

3. The quiclime of this petition for Rehearing is to properly point out overlooked facts or laws by the Honorable court, relevant to the proper administration of justice under its supervisory review powers. See, Art III §§ 1 and 2, U.S. Const. 28 U.S.C. § 1254; U.S. Court rule, 10.

4. Petitioner raised "five" federal constitutional claims involving "five" questions of federal great public importance, that are respectfully being sought for rehearing of the claims on grounds that were accidentally overlooked (infra) for reconsiderations.

GROUND ONE

IT IS OERLOCKED THAT PETITIONER'S RIGHT TO A FAIR PLEA PROCESS WAS VIOLATED (ERROR)

A) Counsel did not convey the "3 and 4" year plea offers during critical stage of adjudication, Exhcs. "J" and "K", ABA standards for criminal justice, pleas of guilty 14-3.2 (c) (3d ed. 1999). Stickland v. Washington, 466 U.S. 668 (1984); Missouri v. Frye, 407 U.S. 25 (2012).

B) Error still exists, where this claim was never refuted by the face of the record, and required an evidentiary hearing. Fla. R. Crim. P. Rule, 3.8.50, (CA019).

C) Effective Assistance of Counsel. Due Process and Equal Protection of law, will remain to be violated, resulting in a manifest injustice, if not corrected. U.S.C. 5th, 6th and 14th, Amend. (2015). Petitioner prays for reconsideration of this claim herein (for opinion or reversal).

GROUND TWO

ITS OVERRULED THAT THE STATE OF FLORIDA CONCEALED TO THIS GROUND, THAT CLAIM WAS NOT RESOLVED BY THE RECORD AND A EVIDENTIARY HEARING SHOULD BE CONDUCTED, RULE 3.850, EXH "F"

A) ITS overruled that, the state of Fla.

agreed with petitioner that, the available

DEFENSE witness that counsel

failed to call to testify (Mr. Ernest miles

TR, Exh. "E") testimony would've changed

the outcome in this case. Exh. "F". See,

Strickland v. Washington 466 U.S. 668 (1984).

Spellers v. State 963 so.2d 1117 (Fla. 5th DCA 2008).

B) Petitioner's rights to compulsory process was violated. U.S.C. 6th, Amend.

C) Error exists in this case where, "petitioner's opponent (state / plaintiff), [conceded] that defendant's claim was not [Resolved] by the

record, Tpp 1-473, Rpp 1-299, during adversarial process and a evidentiary hrg. should be held, to "grant Petitioner with fair procedural due Process", U.S.C. 14th, amend, "that was not given". (compulsary process was denied to Petitioner).

A evidentiary hrg. should be held, or a MANIFEST OF INJUSTICE will result. (clear constitutional violation).

Petitioner prays for reconsideration of this claim of error herein. (opinion or reversal).

GROUND THREE

ITS OVERLOOKED THAT PETITIONER'S CONVICTIONS FOR "CRIMINAL ATTEMPT" ARE UNCONSTITUTIONAL UNDER DUE PROCESS OF LAW

A) ITS overlooked that Petitioner's convictions for attempted aggravated assault rested upon no evidence at [a11] and violate due process U.S.C. 14th, Amend. See, Thompson v. Louisville, 362 U.S. 199 (1960).

B) Error exist, where no evidence in this case can support a criminal attempt conviction, under the Statute. Fla. Stat § 777.04(1), (2006); Rpp 145; Tpp 1-473.

C) Counsel's request for this lesser jury instruction of "criminal attempt", was a "impermissible one", and prejudiced Petitioner in the process to unconstitutional convictions (The state's case was that Petitioner did assault alleged victims ... not that he attempted to do so, pp. 112-119) - Strickland v. Washington, supra.

Evidentiary hrg. was warranted, Rule 3.850; A clear MANIFEST OF INJUSTICE will result if this clear error is not corrected.

Petitioner prays for Reconsideration of this claim of error herein. (opinion or reversal).

GROUND FOUR

IT'S OVERLOOKED THAT COUNSEL'S FAILURE TO INVESTIGATE PETITIONER'S CASE, TO BUILD A DEFENSE, GOT HER SANCTIONED BY THE FLORIDA SUPREME COURT, BY PETITIONER'S FLA. BAR COMPLAINT FILED AGAINST COUNSEL, VIOLATED DUE PROCESS

A) Counsel, did nothing to create a defense for Petitioner's trial case (do nothing strategy); this prejudiced him. Strickland v. Washington, supra.

B) Petitioner filed a Fla. Bar Complaint complaining about counsel's errors, of how

She did not call witnesses, investigate evidence and familiarize her self with the case to have a Defense thereon. As a result the Fla. Bar. investigated counsel's ethics and found that she acted incompetent contra Fla. Bar Rule 4-1.1. Moreover, the Fla. Bar. recommended counsel be sanctioned by the Fla. Supreme court after review of Petitioner's case and the Bar Complaint; Thereon, the Fla. Supreme court REPRIMANDED counsel by :-

" Putting her on 18 months probation and Fining her in the amount of \$4,500.00, paid to the Fla. Bar (Judgment Finding); SEE, Art V § 15, Fla. Const. (2008) -"

see, The Fla. Bar V. Leslie Sweets, Case # 2007-30,425 (2007); Fla. Supreme court Case # SC07-1781 (2008). Exhibits "C" and "D".

C) Error exists, that Petitioner's constitutional rights to a fair trial was violated. U.S.C. 5th, 6th and 14th, Amend. .

A clear MANIFEST OF INJUSTICE resulted here, and should be corrected. A evidentiary hrg. w-ould cure this Rule 3.850; Petitioner prays for re-consideration to correct this claim of error. (opinion or reversal).

GROUND FIVE

IT WAS OVERLOOKED THAT CLEAR FUNDAMENTAL ERROR OCCURRED WHERE JURORS PARDON POWERS, PARDONING PETITIONER, TO LESSER OFFENSE DID NOT RESULT IN A LESSER SENTENCE

A) It's overlooked that well established law in Florida made it clear that "Lesser included offenses carry lesser penalties". Ray v. State, 403 So. 2d 956 (1981); cf. Expart v. Grassman, 45 S. Ct. 332 at 333 ("imposing lesser punishment results from jury pardons"); U.S.C. 5th, 6th and 14th, amend. (Due Process).

B) Petitioner was charged with aggravated assault (5 yr. crime) and was pardoned by jury to lesser crime of attempted aggravated assault (5 yr. crime) (ERROR!); This violated due process where it took away from what "the jury [did]!" ; Equal protection of law was violated, "where Petitioner did not receive the same treatment as other Fla. Citizens had. U.S.C 14th, Amend. •

C) This clear constitutional error that resulted in a MANIFEST OF INJUSTICE should be corrected; Appellant counsel was ineffective not raising this on appeal, which prejudiced Petitioner. Strickland v. Washington, supra.

Petitioner prays for Reconsideration of this claim of error. (Opinion or reversal).

CONCLUSION

Petitioner prays that this Rehearing Petition, U.S. court rule, 44, (2019), is reconsidered, considering all "Five" claims of error raised in his certiorari petition, after final decision was made by this Honorable court (denial on: 10/7/19).

A rehearing Petition, Rule 44, can be granted if a MANIFEST OF INJUSTICE (Clear Error) occurred in the last original hearing, "which may encompass new matters, accidentally overlooked by this Honorable court" in support of due process. U.S.C. 1st, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 14th § I, Amend. (2019).

Petitioner prays for a opinion to be issued in his case "if least", if this Honorable court does not reverse and remand his case for an evidentiary hrg. under Fla. R-Crim. P. Rule, 3.850, (2019). Strickland V. Washington, 466 U.S. 668 (1984). This is Petitioner's "final and last chance" to have his federally preserved constitutional claims heard in this Honorable court.

Upon considerations, this Rehearing Petition should be granted, Rule 44, in part or whole and any other relief deemed necessary to prevent a MANIFEST OF INJUSTICE (Cause REVERSED and REMANDED). This petition was made in good faith.

I DECLARE UNDER PENALTY OF PERJURY, that the stated facts herein are true and correct.
Date: 11/18/19; 97-0 (VERIFICATION).

CERTIFICATE

In pursuant to U.S. court rule 44, the "five" grounds in this rehearing petition are limited to intervening circumstances of substantial or controlling effect or other substantial grounds not previously presented.

I HEREBY CERTIFY that this Petition for Rehearing is presented in good faith and not for delay. see, U.S. court Rule, 44.2 and 44.6 (2019).

11 / 18 / 19
(Dated)

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Petitioner / Pro'se

AFFIDAVIT OF MAILING

Under U.S. court rule, 29.2, this document was deposited in the institutions internal mail system on November 18th/2019, and is accompanied by this declaration (time: 10:00 A.M.) in compliance with 28 U.S.C. § 1796 (United States Postal Service by first class mail).

Petitioner / Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of this foregoing document, as proof of service has been mailed via U.S. mail to: The United States Supreme Court, Clerk of Court, 1 first Street, N.E., Washington, D.C. 20543, on this 18th day of November 2019.

Respectfully Submitted

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Frank L. Allen, Jr. #44533 / Petitioner
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