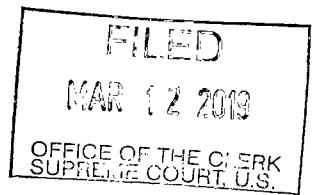


19-5323 ORIGINAL
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

EDWARDO DE JUAN — PETITIONER
(Your Name)

vs.
ATTORNEY GENERAL
STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

EDWARDO DE JUAN #169291
(Your Name)

216 S.E. Corrections Way
(Address)

LAKE CITY, FLORIDA 32025
(City, State, Zip Code)

(N/A)
(Phone Number)

QUESTION(S) PRESENTED

WHETHER PETITIONER'S CONSTITUTIONAL
RIGHTS WERE VIOLATED WHERE (1) PETITIONER
FILED A POSTCONVICTION MOTION WHERE (A) ELEMENTS
OF STATUTE OR CRIME WERE SHOWN NOT TO
EXIST AND (B) CONFLICT EXISTS IN DECISION
OF CASE LAW OR SAID STATUTE, CREATING A
DUE PROCESS VIOLATION OR EQUAL PROTECTION
OF LAW.

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:

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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

BLAKEMORE V. STATE, 746 So.2d 1182-87 (4th DCA) - - - - - 6,7

LARTER V. STATE, 786 So.2d. 1173 (Fla. 2001) - - - - - 6,7

STATE V. FAULK, 102 Florida 886, 136 So.2d 601 (1931) - - - - - 6,8

In re Winship, 90 S. Ct. 1068 (1970) - - - - - 5,7

STATUTES AND RULES

28 U.S.C.1257 (a) - - - - -

775.082 (3)(c) Florida Statutes (2010) - - - - - 5

Florida Statute 944.40 - - - - - 5,7,8

OTHER

U. S. CONSTITUTION AMENDMENT 14th (SECTION 1) - - - - -

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**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at DIA; 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 is unpublished.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 DIA; 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 is unpublished.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

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 is unpublished.

The opinion of the FIRST DCA court appears at Appendix B to the petition and is
 reported at DOUVIAN v. STATE (APRIL 30, 2018) (1018-0105); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

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 _____. *D/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 DEC. 17, 2018. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____. *D/A*

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 _____. *D/A*

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE FOURTEENTH AMENDMENT OF THE UNITED STATES

CONSTITUTION PROVIDES IN PERTINENT PART AS FOLLOWS:

NEITHER SHALL ANY STATE DEPRIVE ANY PERSON
OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE
PROCESS OF THE LAW, NOR DENY TO ANY PERSON
WITHIN ITS JURISDICTION THE EQUAL PROTECTION
OF THE LAW.

U. S. CONSTITUTION Amendment 14th (SECTION 1)

PASSED BY CONGRESS JUNE 13th, 1866. RATIFIED
July 9th, 1868.

STATEMENT OF THE CASE

On October 20th, 2009, Petitioner was charged by information with two counts: (1) Escape and (2) False Imprisonment. On September 23rd 2011, an amended information was filed dropping the false imprisonment, as it could not be proved. At that time, the escape charge should have been dropped or dismissed as well, as the crime of escape reverted back to the Department of Corrections, Chapter 33 (Administrative issue): "Being in an Unauthorized Area." As the underlying felony has been dismissed (false imprisonment) and there had been no escape.

The Petitioner never left the confines of Taylor C.I., even though he was on a rooftop inside the prison compound (through no fault of his own, as testified to by his co-defendant's at trial). He never left the care, control, and custody of the Department of Corrections as described by Florida Statute 944.40 which states: "The physical act of leaving, or not being in custody, which was not completed by Petitioner.

On October 5th, 2011, Petitioner was found guilty and sentenced to 15 years.

REASONS FOR GRANTING THE PETITION

PETITIONER WAS DENIED DUE PROCESS OF LAW AND EQUAL PROTECTION OF LAW (14th AMEND.) WHEN HE WAS CONVICTED OF FLORIDA STATUTES 944.40 ESCAPE, WITHOUT ALL THE REQUIRED STATUTORY ELEMENTS OF THE CRIME BEING PROVEN. SEE: *In re Winship*, 90 S.Ct. 1068 (1970).

THE FIRST DISTRICT COURT OF APPEAL (FLORIDA) STATED IN THE ORDER OF DENIAL:

"ESCAPE, WHETHER ATTEMPTED OR COMPLETED, IS STILL A SECOND-DEGREE FELONY UNDER SECTION 944.40, PUNISHABLE BY UP TO FIFTEEN YEARS IN PRISON PURSUANT TO SECTION 775.082(3)(c), FLORIDA STATUTES (2010). APPELLANT'S 15 YEAR SENTENCE IS LAWFUL." (APPENDIX C).

PETITIONER WAS NOT CHARGED WITH "ATTEMPTED ESCAPE" NOR WAS HE FOUND GUILTY BY A JURY OF "ATTEMPTED ESCAPE." HE WAS CHARGED WITH AND FOUND GUILTY OF ESCAPE. DUE PROCESS DOES NOT ALLOW THE VIOLATION OF A SUBSTANTIVE RIGHT OR EVERY ELEMENT OF THE CHARGED CRIME TO BE PROVEN BEFORE A DEFENDANT CAN BE SENTENCED TO PRISON.

NOR SHALL A COURT STATE IT DOES NOT MATTER IF THE ELEMENTS WERE PROVEN OR NOT, BECAUSE AN ATTEMPT OF THE SAME CRIME CARRIES THE SAME LENGTH OF SENTENCE, REGARDLESS OF THE FACT

PETITIONER WAS NOT FOUND GUILTY OF "ATTEMPTED ESCAPE."

THE COURT MADE THIS RULING EVEN THOUGH ALL THE REQUIRED ELEMENTS OF THE CRIME WERE NOT MET AS REQUIRED BY LAW, AND THE FACTUAL CIRCUMSTANCES DID NOT ALLOW FOR THE SENTENCE IMPOSED. *BLAKELY v. STATE*, 746 So.2d 1182, 1186-87 (4th DCA) AND *LARTER v. STATE*, 786 So.2d 1173 (FLA. 2001).

B. CONFLICT EXISTS IN DECISION OF CASE LAW OR THE STATUTE, CREATING A DUE PROCESS VIOLATION OR EQUAL PROTECTION OF LAW IN *STATE v. FAULK*, 102 FLORIDA 886, 136 So.2d 601 (1931).

THE FACTUAL CIRCUMSTANCES DO NOT ALLOW FOR THE SENTENCE IMPOSED AS PETITIONER'S CO-DEFENDANTS TESTIFIED AT TRIAL. PETITIONER WAS FORCED ON TOP OF THE BUILDING BY THEM; HE DID NOT WILLINGLY PARTICIPATE IN ANY CRIME. FURTHERMORE, THE STATE PROSECUTOR DROPPED COUNT II: FALSE IMPRISONMENT.

WHEN THIS OCCURRED, THE ESCAPE CHARGE SHOULD HAVE REVERTED BACK TO AN ADMINISTRATIVE ISSUE FOR THE FLORIDA DEPARTMENT OF CORRECTIONS UNDER CHAPTER 33: "BEING IN AN UNAUTHORIZED AREA." AS PETITIONER NEVER LEFT THE INSIDE

OF THE FENCED-IN PRISON COMPOUND, NOR DID HE ATTEMPT TO CLIMB A FENCE TO GET OUT. HE WAS ON A ROOFTOP WITHIN THE PRISON COMPOUND. *BLAKELY v. STATE*, 746 So.2d 1182, 1186-87 (4th DCA) AND *CARTER v. STATE*, 786 So.2d. 1173 (FLA. 2001), WHICH STATES:

"THE SENTENCE MUST IMPOSE A KIND OF PUNISHMENT THAT NO JUDGE UNDER THE ENTIRE BODY OF SENTENCING STATUTES COULD POSSIBLY INFILCT UNDER ANY SET OF FACTUAL CIRCUMSTANCES."

AS THE CASE AT BAR WILL SHOW THE REQUIRED ELEMENTS OF ESCAPE, FLORIDA STATUTES 944.40; THE PHYSICAL ACT OF LEAVING, OR NOT BEING IN WITNESS OF, AND OUT OF SIGHT OF HIS OR HER WITNESS, THE OFFENSE IS COMPLETE. SEE: *IN RE WINSHIP*, 96 S. Ct. 1068 (1970), WHICH STATES:

"THE DEFENDANT MUST BE FOUND GUILTY OF ALL THE REQUIRED ELEMENTS OF THE STATUTE TO SATISFY DUE PROCESS."

THE DISTRICT COURT'S DECISION IS IN DIRECT CONFLICT WITH THE DECISION OF THE FLORIDA SUPREME COURT IN STATE V. FAULK, 102 FLORIDA 886, 136 So.2d. 601 (1951) WHICH, WITHIN THE WRITTEN FACTS AND OPINION OF THE CASE, CLEARLY DEFINES WHAT ESCAPE IS.

THE FLORIDA SUPREME COURT CORRECTLY INTERPRETED FLORIDA STATUTE 944.40 IN FAULK, AND THE COURT PASSED ON REAFFIRMING THAT INTERPRETATION BY NOT ACCEPTING DISCRETIONARY REVIEW AND QUASHING THE CONTRARY DECISION OF THE DISTRICT COURT BELOW.

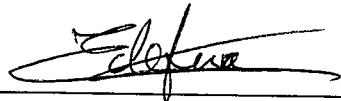
THERE IS NO QUESTION THE PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED. TO ALLOW THE FLORIDA

COURTS TO REMAIN AS THE ABSOLUTE POWER IN THIS INSTANT WHEN ITS DECISION IS IN VIOLATION OF THE LAW OF THE LAND AND IS CONTRADICTORY TO THE TREND OF THIS HONORABLE COURT IN ITS UPHOLDING OF THE LAWS OF THE UNITED STATES OF AMERICA. FOR THE FOREGOING REASONS, IT IS RESPECTFULLY SUBMITTED THAT THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: MARCH 12th, 2019