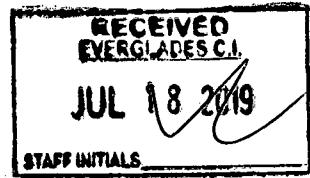


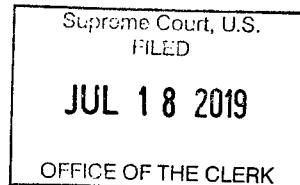
19-5360

No.

ORIGINAL



IN THE  
SUPREME COURT OF THE UNITED STATES



CURTIS NAIRN - PETITIONER  
(Your Name)

vs.

MARK INCH, et. al. - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ELEVENTH CIRCUIT COURT OF APPEAL  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

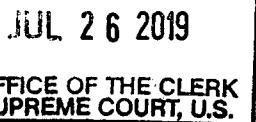
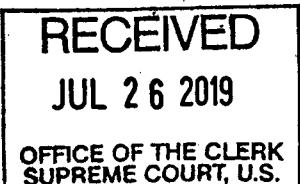
PETITION FOR WRIT OF CERTIORARI

Curtis Nairn  
(Your Name)

1599 SW 187th Avenue

Miami, Florida, 33194 - 2801

305-228-2000  
(Phone Number)



**QUESTION(S) PRESENTED**

Whether it would be futile for a prisoner to return to State Courts to have unexhausted claims exhausted with the assistance of counsel under Florida Spencer Sanction law based on the explicit language itself.

## **PARTIES**

The Petitioner is Curtis Nairn, a prisoner at Everglades Correctional facility in Miami, Florida. The respondents Julie Jones, Secretary Florida Department of Corrections has been replaced by Mark S. Inch. The new Secretary Florida Department of Corrections.

Attorney General, State of Florida

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**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**

The decision of the United States Court of Appeals for the 11<sup>th</sup> Circuit is unreported, unpublished. A copy of the opinion is attached as Appendix A.1 to the petition. The order of the United States District Court for the Southern District of Florida is unpublished. A copy of the opinion is attached as Appendix A.11.

**JURISDICTION**

The judgment of the United States Court of Appeals for the 11<sup>th</sup> Circuit was entered April 23<sup>rd</sup>, 2019. An order denying a motion for rehearing was entered on June 25<sup>th</sup>, 2019 and a copy of that order is attached as Appendix B to this petition. Jurisdiction is conferred by 28 U.S.C. §§ 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED**

This case involves Amendment XIV to the United States Constitution which provides:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

## **STATEMENT OF THE CASE**

On January 14<sup>th</sup>, 2014, while Petitioner Rule 3.850 Motion was being appealed in the State 4<sup>th</sup> District Court of Appeal, Petitioner timely filed a State Habeas Corpus pursuant to Florida Rule of Criminal Procedure 3.850(b)(3), due to counsel's failure to timely litigate a Miranda violation. The State trial Judge issued a show cause that the State must file a response within 90 days. The State requested a stay, and received it January 29<sup>th</sup>, 2014. The petition is still pending to date and the State has not filed a response yet.

The appeal of the Rule 3.850 Motion was completed and a mandate was issued May 1<sup>st</sup>, 2015. At the time when the State habeas petition was filed 308 days remained of the 365 days allowed by AEDPA one year statute of limitation.

On May 5<sup>th</sup> 2016, Petitioner filed a §2254 Federal Habeas Corpus Petition. The petition contained the issues still pending in the State trial Court. This made the petition a mixed petition. The United States District Court did not dismiss the petition without prejudice that Petitioner may return to the State forum to have the unexhausted claims exhausted.

Petitioner alleged on Rule 60(b) Motions that he can return to the State forum to exhaust the unexhausted claims with the assistance of counsel based on the plain language of Florida Spencer Sanction law itself.

The District Courts denied the Rule 60(b) Motion that it would be futile for petitioner to return to the State forum under Florida law to exhaust the unexhausted claims because Petitioner is sanctioned by the State District Court

of Appeal from filing pro se Motions. They further found that the claims are meritless. Neither the Federal Court or the State Court has ever given a full analysis or address the merits of the Miranda violation in the unexhausted claims. The United States Court of Appeal for the Eleventh Circuit affirmed. The Motions for Reconsideration was denied. This Certiorari follows:

#### **BASIS FOR FEDERAL JURISDICTION**

This case raises a question of the interpretation of due process and equal protection clause of the Fourteenth Amendment to the United States Constitution. The District Court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. 1331.

## **REASON FOR GRANTING THE WRIT**

### **A. Conflict With Decision Of Other Courts.**

The holding of the Courts below that it would be futile for a prisoner to return to State Courts to have unexhausted claims exhausted with the assistance of counsel under Florida law is directly contrary to the explicit language itself. *State v. Spencer*, 751 So. 2d 47 (Fla. 1999). In addition, that the claims are meritless is directly contrary to the trial Court show cause order that the State must file a response and the District Court's prior ruling.

### **B. Importance Of The Question Presented**

This case presents a fundamental question of the interpretation of Florida Spencer Sanction law. The question presented is of great public importance because it effects every prisoner in the entire State of Florida who has been sanctioned under Spencer or will be sanctioned under Spencer with a situation such as Petitioner. In view of the large amount of litigation over Florida Spencer Sanction law, guidance on the question is also of great importance to prisoners, because it affects their ability to receive fair decisions in proceedings that may result in months or years of incarceration and their constitutional right to appeal.

The issue's importance is enhanced by the fact that the lower Courts have seriously misinterpreted Florida Spencer Sanction law. The explicit language clearly states:

The clerk of this Court is directed to no longer accept any paper filed by Curtis Nairn (DC# L67295) unless the document has been reviewed and signed by a member in good standing of the Florida Bar who

certifies that a good faith basis exist for each claims presented. See Exhibit 1. See also *State v. Spencer*, 751 So. 2d 47 (Fla. 1999).

The common sense understanding of Florida Spencer Sanction law is that a prisoner can return with the assistance of counsel, and nothing in the order suggests otherwise.

If a Petitioner failed to exhaust his State Court remedies, and the Court to which the Petitioner would have required to present his claims in order to meet the exhaustion requirement would now find the claims procedurally barred, there is a procedural default for the purposes of Federal review. *Coleman v. Thompson*, 501 U.S. 722, 735 at 115 L. Ed. 2d 640, 111 S. Ct. 2546 (1991).

The lower Court's reasoning that it would be futile for a Prisoner to return to State Court to exhaust unexhausted claims based on the plain language of Spencer itself is a misinterpretation of Spencer Sanction law and incorrect, based on this Court in *Coleman*.

This Supreme Court held under *Gonzalez*, a legal error may be a "mistake" within Rule 60(b) when the purported error occurred in a "previous ruling which precluded a merits determination," such as a denial based on procedurally barred or unexhausted claim. *Id. Gonzalez v. Crosby*, 545 U.S. at 532-36 (2005).

In this case, the Courts below "mistake"/legal error occurred in its previous ruling which precluded a potentially meritorious determination, when they misinterpreted Florida Spencer Sanction law. This prevented petitioner from going to the State Courts to have the unexhausted claims exhausted which

would likely produce a full analysis of the merits. Where here the State trial Judge issued an order that the State must file a response to the "unexhausted" claims. See Exhibit 2. The Courts below "mistake"/legal error forecloses any relevant issues that would likely develop in the State forum. For example why counsel's Motion to Suppress did not include the Miranda violation. Why counsel didn't think Petitioner's recorded statement was prejudicial when the Courts below found it to be overwhelming evidence of guilt. See document # 31 at 14, 16. See Exhibit 3.

Certainly the explicit language of Spencer does suggest that prisoner can return with the assistance of counsel.

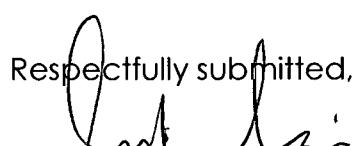
Thus, the Courts below seriously misinterpreted Florida Spencer Sanction law by failing to distinguish between a prisoner returning to State Court to exhaust unexhausted claims pro se and a prisoner returning with the assistance of counsel, whether appointed or retained to have their claims exhausted.

### **CONCLUSION**

For the following reasons, Certiorari should be granted in this Case.

Date: July 18<sup>th</sup>, 2019.

Respectfully submitted,

  
\_\_\_\_\_  
Curtis Nairn # L67295  
Everglades Correctional Inst.  
1599 S.W. 187th Avenue  
Miami, Florida 33194