

No. 19-5441

ORIGINAL

LEGAL MAIL
Provided to
Wakulla CI

JUL 26 2019

IN THE

FOR MAILING

SUPREME COURT OF THE UNITED STATES

JUL 12 2019

OFFICE OF THE CLERK

LOUIS MERCADO - PETITIONER

VS.

JACOB SOREY, WARDEN, - RESPONDENT(S)
WAKULLA ETC, et al

ON PETITION FOR A WRIT OF CERTIORARI TO

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 DRAYTON DRIVE

TALLAHASSEE, FLORIDA 32399-0950

PETITION FOR WRIT OF CERTIORARI

LOUIS MERCADO # C09615
WAKULLA CORRECTIONAL INSTITUTION
110 MELALEUCA DRIVE
CRAWFORDVILLE, FL 32327

LEGAL MAIL
Provided to
Wakulla CI

JUL 12 2019

FOR MAILING

11

QUESTION(S) PRESENTED

- 1 - WERE THE PETITIONER'S RIGHT TO THE UNITED STATES AND FLORIDA CONSTITUTIONS EGREGIOUSLY VIOLATED BY FLORIDA CIRCUIT AND APPELLATE COURTS?
- 2 - SHOULD STATE APPELLATE COURTS MAKE FINAL JUDICIAL DECISIONS ON CASES WHERE APPELLEE/DEFENDANT IS NOT PROPERLY NOTIFIED OF SAID APPEAL AND IS NOT GIVEN AN OPPORTUNITY TO PARTICIPATE IN ANY PART OF THE APPEAL PROCESS, IN VIOLATION OF PROVISIONAL PROTECTIONS UNDER STATE AND FEDERAL CONSTITUTIONS, WELL SETTLED SUBSTANTIVE FLORIDA LAW, AND RULES OF COURT PROCEDURES?
- 3 - SHOULD THE STATE OF FLORIDA, AFTER EMPANELING AND SWORNING IN THE JURY, DISCHARGING THE PLAINTIFF DUE TO INTENTIONAL PROSECUTORIAL MISCONDUCT, AND ORDERING THE CASE CLOSED BY FINAL ORDER, BE ALLOWED TO LATER RETRY THE PLAINTIFF WITH THE SAME CHARGE AS THE FIRST TRIAL, IN VIOLATION OF THE PLAINTIFF'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS AGAINST DOUBLE JEOPARDY.

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:

JULIE JONES, SECRETARY, FLORIDA DEPT. OF CORRECTIONS

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	6
REASONS FOR GRANTING THE WRIT	13
CONCLUSION	15

INDEX TO APPENDICES

APPENDIX A - OPINION OF THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, DATED APR. 8, 2019, AFFIRMING PER CURIAM AND WITHOUT OPINION.

APPENDIX B - ORDER FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, DISMISSING THE PETITIONER'S EMERGENCY PETITION FOR WRIT OF COMMON LAW HABEAS CORPUS.

APPENDIX C - DECISION OF THE SUPREME COURT OF FLORIDA, DATED JULY 3, 2019, DENYING REVIEW.

APPENDIX D - ORDER OF THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, DATED MAY 30, 2019, DENYING APPELLANT'S MOTION FOR REHEARING.

APPENDIX E - PETITIONER'S EMERGENCY PETITION FOR WRIT OF COMMON LAW HABEAS CORPUS DATED JUNE 15, 2017

APPENDIX F - PETITIONER'S INITIAL BRIEF DATED NOV. 9, 2017

APPENDIX G - ANSWER BRIEF OF THE STATE OF FLORIDA, APPELLEE, DATED DECEMBER 8, 2017

APPENDIX H - PETITIONER'S REPLY BRIEF DATED DECEMBER 26, 2017

APPENDIX I - PETITIONER'S MOTION FOR REHEARING DATED APRIL 19, 2019

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

OREGON V KENNEDY, 456 U.S. 667 (1982)	13
S.L.T. WAREHOUSE CO. V WEBS, 304 So. 2d 97 (1974)	13
STATE V GAINES, 770 So. 2d 1223 (2000)	13
STATE V GAINES, 777 So. 2d 1221 (2000)	13
U.S. V PADILLA, 639 F.3d 892, 897 (9th Cir. 2011)	6
U.S. V TORRIETTA, 696 F.3d 972, 980 (10th Cir. 2012)	6

STATUTES AND RULES

FLORIDA STATUTE 924.07	4
FLORIDA RULES OF APPELLATE PROCEDURE 9.140 (c)	4

OTHER

PADAVANO 27.25	14
----------------	----

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 _____; 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 _____; 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 C 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 DISTRICT COURT OF APPEAL, STATE OF FLORIDA court 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.

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 ____.

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 APRIL 8, 2019. A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: MAY 30, 2019, and a copy of the order denying rehearing appears at Appendix D.

☐ 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 ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. UNITED STATES CONSTITUTION

1. 5TH AMENDMENT

A. DOUBLE JEOPARDY

B. INVOCATION TO REMAIN SILENT.

2. 6TH AMENDMENT

A. FAIR TRIAL

B. INVOCATION TO OBTAIN REPRESENTATION

C. ASSISTANCE OF COUNSEL

3. 14TH AMENDMENT

A. DUE PROCESS

B. FLORIDA CONSTITUTION

1. ARTICLE 1, SECTION 9

A. DUE PROCESS

B. DOUBLE JEOPARDY

2. ARTICLE 1, SECTION 16

A. FAIR TRIAL

B. ASSISTANCE OF COUNSEL

C. FLORIDA STATE STATUTE

1. 924.07

CONSTITUTIONAL AND STATUTORY PROVISIONS - CONT

IN FLORIDA THE STATE'S LIMITED RIGHT TO SEEK AN APPEAL IS SET OUT IN § 924.07, FLA. STAT. (2009) AND CODIFIED IN FLA. R. APP. P. 9.140(C).

FLA. R. APP. P. 9.140(C) STATES THE FOLLOWING WITH RESPECT TO THE TYPES OF APPEALS THE STATE IS PERMITTED TO TAKE AND "SHOULD BE CONSTRUED NARROWLY".

- (1) APPEAL PERMITTED. THE STATE MAY APPEAL AN ORDER:
 - (A) DISMISSING AN INDICTMENT OR INFORMATION OR ANY COUNT THEREOF OR DISMISSING AN AFFIDAVIT CHARGING THE COMMISSION OF A CRIMINAL OFFENSE, THE VIOLATION OF PROBATION, THE VIOLATION OF COMMUNITY CONTROL, OR THE VIOLATION OF ANY SUPERVISED CORRECTIONAL RELEASE;
 - (B) SUPPRESSING BEFORE TRIAL CONFESSTIONS, ADMISSIONS, OR EVIDENCE OBTAINED BY SEARCH AND SEIZURE;
 - (C) GRANTING A NEW TRIAL;
 - (D) AFFIRMING JUDGMENTS;
 - (E) GRANTING A MOTION FOR JUDGMENT OF ACQUITTAL AFTER A JURY VERDICT;
 - (F) DISCHARGING A DEFENDANT UNDER FLORIDA RULE OF CRIMINAL PROCEDURE 3.191;
 - (G) DISCHARGING A PRISONER ON HABEAS CORPUS;
 - (H) FINDING A DEFENDANT INCOMPETENT OR INSANE;
 - (I) FINDING A DEFENDANT INTELLECTUALLY DISABLED UNDER FLORIDA RULE OF CRIMINAL PROCEDURE 3.203;
 - (J) GRANTING RELIEF UNDER FLORIDA RULE OF CRIMINAL PROCEDURE 3.801, 3.850, 3.851, OR 3.853;
 - (K) RULING ON A QUESTION OF LAW IF A CONVICTED DEFENDANT APPEALS THE JUDGMENT OF CONVICTION;

CONSTITUTIONAL AND STATUTORY PROVISIONS - CONT

- (L) WITH-HOLDING ADJUDICATION OF GUILT IN VIOLATION OF GENERAL LAW;
- (M) IMPOSING AN UNLAWFUL OR ILLEGAL SENTENCE OR IMPOSING A SENTENCE OUTSIDE THE RANGE PERMITTED BY THE SENTENCING GUIDELINES;
- (N) IMPOSING A SENTENCE OUTSIDE THE RANGE RECOMMENDED BY THE SENTENCING GUIDELINES;
- (O) DENYING RESTITUTION; OR
- (P) AS OTHERWISE PROVIDED BY GENERAL LAW FOR FINAL ORDERS.

STATEMENT OF THE CASE AND FACTS

The Petitioner sets forth that he is presently confined within Wakulla County, Florida at the Wakulla Correctional Institution, located at 110 Melaleuca Drive, Crawfordville, Florida 32327.

On the 15th day of June, 2017, concerning case no. 2017-CA-0105 with the 2nd Judicial Circuit Court, the Petitioner, acting in Pro Se Form, submitted an Emergency Petition For Writ of Common Law Habeas Corpus. The basis of the Petition was to invoke the Territorial Jurisdiction of said Honorable Court on claims that the Petitioner's conviction and current confinement were based on substantial claims of error as governed and protected by the United States Constitution, Amendments 5, 6, and 14; and the Florida Constitution, Article I, Section 9, in which seriously amounted to a manifest injustice, and said Petitioner is being unlawfully restrained of his liberty.

The Petitioner, in his Emergency Petition For Writ of Common Law Habeas Corpus, explains the Procedural History of his case, starting at his Jury Trial dating back to November 29th and 30th of 2011 (08-CF-11641), which ended in a mistrial due to the provocation and goading of prosecutorial misconduct. In said Jury Trial, Double Jeopardy attached when the Jury was sworn in and impaneled. See U.S. v PADILLA, 639 F.3d 892, 897 (9th Cir. 2011); U.S. v TURRIETTA, 696 F.3d 972, 980 (10th Cir. 2012).

Thereafter, a subsequent hearing was held on the 21st day of May, 2012, before the Honorable Judge Bob Le Blanc, who after hearing arguments from both the Petitioner's Attorney and the Assistant State Attorney,

granted a Motion to Bar Retrial, and DISCHARGED THE CASE, ORDERING THE CLERK OF COURT TO CLOSE THE CASE, stating:

"This court determines that the misconduct of the State was intended to provoke and/or goad the defendant into seeking a retrial, such that the dictates of Double Jeopardy apply," and also stated, "The Defendant is hereby discharged, and the Clerk of the Court is directed to close the case."

This was in nature, essentially, an acquittal. Yet, on the 23rd day of May, 2012, the State submitted a Notice of Appeal in violation of Florida Statute 924.07 and Florida Rules of Appellate Procedure 9.140(c); and to further exacerbate this violation of statute and rule, the 5th District Court of Appeal erroneously accepted jurisdiction.

On the 6th Day of November, 2012, the Assistant Attorney General, Pamela L. Koller, submitted the State's Initial Brief to the 5th DCA.

Neither the Notice of Appeal Filed by the State Attorney, nor the Initial Appellate Brief were ever provided to the Petitioner, and since no defense attorney was assigned to him, the Petitioner's Due Process rights were violated, and he was denied participation in said appellate proceeding in its entirety.

On the 9th day of August, 2013, the 5th DCA reversed the 9th Judicial Circuit Court order to bar retrial due to intentional prosecutorial misconduct, and remanded the case for further proceedings.

On the 22nd day of August, 2013, the Petitioner moved for a rehearing, asking the 5th DCA to vacate its reversal and to permit renewed briefing to fairly provide the Petitioner the opportunity to participate in the appellate proceeding. The Petitioner presented argument that he was without meaningful representation, to no fault of his own and beyond his control, at any point during the entire appellate process, which the State conceded to within their subsequent response.

On the 9th day of February, 2015, the Petitioner was retried before a newly selected jury, represented by the Public Defender's Office, effectively and prejudicially denying him of the provisional protections from double jeopardy as governed by both Florida State Constitutional rights and U.S. Federal Constitutional rights.

The Direct Appeal (SD15-575) Filed by the Petitioner concerning the February 12th, 2015, guilty verdict, argued issues unrelated to the instant action with respect to the State's unlawful appeal, the DCA's erroneous acceptance of jurisdiction, the Petitioner's lack of proper and appropriate representation, and constitutional violations concerning double jeopardy, due process, and unfair trial. Such issues, raised and argued herein, would have been raised accordingly during the irregular appellate process had the Petitioner been notified, and/or meaningful representation been made available. Mr. Mercado was egregiously ABANDONED, which resulted in an unchallenged default judgment in favor of the State.

On the 30th day of June, 2017, the 2nd Judicial Circuit Court in and for Wakulla County denied Mr. Mercado's Emergency Petition For Writ of Common Law Habeas Corpus, and on the 28th day of July, 2017, Mr. Mercado Filed a Notice of Appeal.

On the 9th day of November, 2017, Mr. Mercado Filed his Initial Appellate Brief with the 1st District Court of Appeal. (1817-3212)

On the 8th of December, 2017, the State Filed an Answer Brief, Focusing their argument solely on their misapprehended belief that Mr. Mercado was seeking to collaterally challenge his criminal judgment by the 9th Judicial Circuit Court.

On the 26th day of December, 2017, Mr. Mercado Filed a Reply Brief, disputing the State's contention, stating in length that his petition was not used to collaterally challenge his criminal judgment, but instead, clearly raised issues which attacked the highly egregious and illegal violations of his constitutional rights, with specific focus on, but not sole attention to, his Fifth Amendment right under the United States Constitution, and Article 1, Section 9 of the Florida Constitution. Both of which provisionally protect from double jeopardy. This was asserted, although Mr. Mercado's rights for proper representation, a fair trial, and due process were also violated.

On the 8th day of April, 2019, the 1st District Court of Appeal Per Curiam Affirmed the 2nd Judicial Circuit Court order denying Mr. Mercado's petition.

On the 19th day of April, 2019, Mr. Mercado Filed a timely Motion For Rehearing, asserting that his petition with the 2nd Judicial Circuit Court, and all subsequent arguments were for the purpose of attacking constitutional violations, such as:

A. United States Constitution

1. 5th Amendment
 - a. Double Jeopardy
 - b. Invocation to Remain Silent
2. 6th Amendment
 - a. Fair Trial
 - b. Invocation to Obtain Representation
 - c. Assistance of Counsel
3. 14th Amendment
 - a. Due Process

B. Florida Constitution

1. Article I, Section 9
 - a. Due Process
 - b. Double Jeopardy
2. Article I, Section 16
 - a. Fair Trial
 - b. Assistance of Counsel

On the 30th day of May, 2019, the 1st District Court of Appeal denied Mr. Mercado's request for a rehearing without a written decision/opinion.

This timely Filed Petition For Discretionary Review now follows.

SUMMARY OF THE ARGUMENT

First and Foremost, Mr. Mercado is not utilizing his Habeas Corpus to attack his conviction. His intention is to provide all of the facts of the case for the court to make an informative, educated decision as to the multiple state and Federal constitutional provisions that have been denied Mr. Mercado, and the prejudicial effect derived therefrom.

The record shows that double jeopardy attached after a mistrial was declared in case number 2008-CF-011641-0 due to intentional prosecutorial misconduct. The State violated an in-trial luncheon order, which created the intentional provocation of the defense to seek a mistrial, after goading the defense to do so; and the Trial Court's subsequent order to bar retrial was followed by the State violating Fla. Stat. § 924.07 by submitting an inappropriate and unlawful Notice of Appeal. The 5th DCA thereafter erred in their jurisdictional acceptance in said case number SD12-2122, and Mr. Mercado was therefore twice put in jeopardy for the same offense, which illegally denied him of his liberty.

On the 12th day of July, 2012, defense attorney Zachary Staumbos, P.A., from the initial trial, filed a Motion to Withdraw as Counsel of Record and to Appoint Counsel from the Office of the Public Defender. Mr. Staumbos, however, did not follow through with this motion and also failed to simultaneously file an Affidavit of Indigency, as required in obtaining assistance from the Public Defender's Office. This effectively left Mr. Mercado without proper representation.

On the 29th day of August, 2013, twenty (20) days after the 5th DCA reversed, without proper jurisdiction, the 9th Judicial Circuit Court's order to bar retrial, and one (1) year and one (1) month after Mr. Stoumbos Filed his Motion to Withdraw, the Trial Court Finally granted the Motion to Withdraw. This massively prejudicial error effectively left Mr. Mercado without meaningful representation at a crucial and time-sensitive point in the appellate proceeding surrounding the Motion to Bar Retrial.

These constitutional right violations, along with the violation of Fla. Stat. § 924.07 and Fla. R. App. P. 9.140(c)(3) that govern appeals by the State and serving copies on the defendant, contributed to the unfairness of Mr. Mercado's pre-trial, trial, and post-conviction proceedings, and further violated his due process rights. The 5th DCA's interpretation of state and federal constitutional rights is fundamentally misapprehended, and their understanding of state statute is fatally flawed. Furthermore, the 5th DCA has overlooked the points of controlling law which are codified within rules of court.

REASONS FOR GRANTING THE PETITION

THE STATE'S RIGHT TO APPEAL AN ADVERSE RULING IN A CRIMINAL CASE IS LIMITED AND STRICTLY GOVERNED BY STATUTE, RULE AND THE OVERRIDING CONSTITUTIONAL PROTECTION AGAINST DOUBLE JEOPARDY. SEE STATE V. GAINES, 777 SO. 2d 1221, 1230, n.8 (FLA. 2000). IN FLORIDA, THE STATE'S LIMITED RIGHT TO SEEK AN APPEAL IS SET OUT IN FLA. STAT. 924.07, AND SHOULD BE CONSTRUED NARROWLY. CODIFIED IN FLA. R. APP. P. 9.140(c), THERE IS NO OTHER GENERAL LAW OR RULE THAT PERMITS THE STATE TO APPEAL AN ADVERSE FINAL ORDER BARRING RETRIAL. OREGON V. KENNEDY, 456 U.S. 667 (1982)

WHEN THE TRIAL COURT ORIGINALLY ISSUED ITS MAY 22ND, 2012, ORDER BARRING THE RETRIAL OF MR. MERCADO ON THE BASIS OF DOUBLE JEOPARDY HAVING BEEN ATTACHED, THE CASE AGAINST MR. MERCADO ENDED. THE ORDER WAS A FINAL ORDER BECAUSE IT ENDED THE JUDICIAL LABOR IN THE CAUSE, AND NOTHING FURTHER REMAINED FOR THE COURT TO DO TO TERMINATE THE ACTION. STATE V. GAINES, 770 SO. 2d 1223-24 (2000) (CITING S.L.T. WAREHOUSE CO. V. WABBS, 304 SO. 2d 97, 99 (FLA. 1974)). THE ORDER BARRING RETRIAL ON THE BASIS OF DOUBLE JEOPARDY IS NOT AMONG THOSE TYPE'S OF ORDERS LISTED IN FLA. R. APP. P. 9.140(c) OR FLA. STAT. 924.07, AND THUS, THE STATE'S APPEAL WAS UNLAWFUL, AND THE 5TH DCA WAS IN ERROR FOR ACCEPTING JURISDICTION.

FURTHER, IN FACT, IS THAT THE ORDER RENDERED ON MAY 21ST, 2012, BY HONORABLE JUDGE BOB LA BLANC WAS A TWO PART ORDER. PART ONE OF THE ORDER BARRED RETRIAL DUE TO PROSECUTORIAL MISCONDUCT. PART TWO OF THE ORDER DISCHARGED THE CASE AND ORDERED THE CLERK OF COURT TO CLOSE THE CASE. THE STATE POSSESSED NO RIGHT TO SEEK AN APPEAL IN THE 5TH DCA, PER STATUTE, AND IT WAS FUNDAMENTAL ERROR FOR THE

5TH DCA TO ACCEPT JURISDICTION, PER RULE.

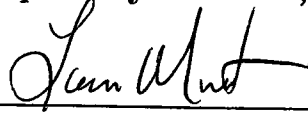
A DISMISSAL ORDER ENTERED AFTER DOUBLE JEOPARDY HAS ATTACHED IS AN ORDER DISMISSING THE CASE AGAINST THE DEFENDANT AND NOT MERELY AN ORDER DISMISSING THE ACCUSATORY PLEADING, AN ORDER DISMISSING THE CASE AFTER DOUBLE JEOPARDY HAS ATTACHED IS IN THE VERY NATURE OF AN ACQUITTAL. PADAVAND § 27.25.

WHEREFORE, BASED ON THE FOREGOING DISPOSITIVE FACTS, AUTHORITIES, CITATIONS AND ARGUMENTS THERE-TO, MR. MERCADO ASSERTS THAT HIS CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED IRREFUTABLY, AND HEREBY PRAYS THIS COURT WILL GRANT RELIEF ACCORDINGLY.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: July 12, 2019