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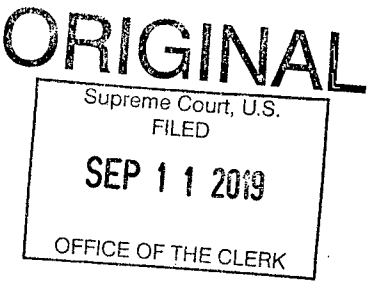

IN THE

SUPREME COURT OF THE UNITED STATES

BRIAN W. WHITAKER – PETITIONER

vs.

STATE OF FLORIDA – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

SECOND DISTRICT COURT OF APPEALS, STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

BRIAN WHITAKER

LAWTEY CORRECTIONAL INSTITUTION

PO BOX 2000

LAWTEY, FL 32058

QUESTION(S) PRESENTED

1. Do the guarantees of equal protection and due process of law, per the Fifth and Fourteenth Amendment of the United States Constitution; extend to individuals seeking postconviction relief?

2. Does it appear that some individuals, seeking Postconviction relief, are being subjected to arbitrary governmental action by State courts, when it appears, on the face of the record, that a procedural bar exists preventing them from seeking relief under 28 U.S.C §2254 as per the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)?

3. Do Circuit and District Court(s), (State level Courts), create a "class of one", in violation of a petitioner's due process and equal protection rights, when they depart from the essential requirements of the law at each stage of the postconviction proceedings, without explanation or justification?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

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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

[X] For cases from **state courts:**

The opinion of the Second District Court of Appeals appears at Appendix A to the petition and is:

[X] is unpublished.

JURISDICTION

[X] For cases from **state courts:**

The date on which the highest state court to decide my case was May 22, 2019. A copy of that decision appears at Appendix A.

[X] A timely petition for rehearing was thereafter denied on the following date: June 25, 2019, and a copy of the order denying rehearing appears at Appendix F.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment (United States Constitution):

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property, without due process of law*; nor shall private property be taken for public use, without just compensation.

Sixth Amendment (United States Constitution):

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, *by an impartial jury* of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Fourteenth Amendment (United States Constitution):

Section 1. [Citizens of the United States.]

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 to any person within its jurisdiction the equal protection of the laws.*

STATUTES

STATEMENT OF THE CASE

On March 24, 2016, petitioner filed a Motion for Postconviction Relief; pursuant to Florida Rules of Criminal Procedure (hereinafter Fl. R. Crim. Pr.) §3.850, *infra,* through counsel, Carl McPhail—Fl. Bar #104533, (hereinafter "McPhail"), to the Tenth Judicial Circuit, in and for Polk County, State of Florida. This motion was dismissed on April 04, 2016 without prejudice "facially insufficient". "Defendant's Amended Motion for Postconviction Relief" was filed on April 15, 2016. The amended motion was dismissed without prejudice by the Circuit Court, "legally insufficient", on April 21, 2016. On May 18, 2016 "Defendant's Second Amended Motion", (motion at bar) was filed and accepted (legally and facially sufficient) by the Circuit Court.

On June 03, 2016 the Honorable Judge Wayne M. Durden (Judge for the Tenth Judicial Circuit, in and for the County of Polk, State of Florida, hereinafter "Judge Durden") issued an "Order to Show Cause" instructing the State of Florida to respond to the motion at bar. On August 31, 2016 Joseph Spataro—Fl. Bar #0016260, (Assistant Statewide Prosecutor, hereinafter "Spataro") filed "State's Response to Defendant's Amended Motion for Postconviction Relief".

On September 8, 2016 Judge Durden entered an order, (*See Appendix C),* "summarily denying" claims 1-5 and 7-10 wholly agreeing with the arguments presented by Spataro in his response, and finding no need to hold an evidentiary hearing. Granting an evidentiary hearing on claims 6 & 11, where Spataro conceded that a hearing was needed to resolve these claims, and on claim 12 because in Spataro's response he claimed to not be able to find the claim anywhere in the motion at bar.

On September 21, 2016 petitioner filed the Defendant's Reply and Request to Strike Plaintiff's Response, (*See Appendix – K*) through McPhail. In this motion defendant points

out to the court just a few examples of the most obvious places showing that Spataro's response was written in response to "Defendant's Amended Motion", and not to "Defendant's Second Amended Motion", asking the court to strike Spataro's response, and allow him an opportunity to properly address the motion at bar.

On September 29, 2016 Judge Durden denied relief, and stated that the "State has properly responded to the merits of Defendant's claims." (*See Appendix – J*) A review of both motions would show that although there are some of the same grounds contained in both, as a whole they are entirely different with many new claims and sub-claims added.

On March 7, 2017 Judge Durden entered a Final Order Denying Defendant's Amended Motion for Postconviction Relief, (*See Appendix B)* stating that grounds 1-5, 7-10 and 13 "have already been denied". With the "Final Order" Judge Durden was required to attach records supporting the summary denial of all of the claims denied without an evidentiary hearing. However, he departed from the essential requirements of the law when he attached no records at all to the denial of the claims.

According to Fl. R. Crim. Pr. §3.850(f)(5)(2017):

> "If the motion is legally sufficient but...grounds in the motion can be conclusively resolved either as a matter of law or by reliance upon the records in the case, the motion shall be denied without a hearing by the entry of a final order. *If the denial is based on the records in the case, a copy of that portion of the files and records that conclusively shows that the defendant is entitled to no relief shall be attached to the final order.*"(emphasis added) *Florida Rules of Court*, Volume 1 (2017 Ed.)

The reason that the Florida Supreme Court has put rules specifically governing postconviction proceedings into place can best be summarized in a decision made by the Third District Court of Appeals whereas they stated that:

> "Consequently, when the Rule 3.850 motion presents a legally sufficient ground, the trial court cannot merely recite that the record conclusively demonstrates the movant is entitled to no relief and enter its

> order accordingly. If an evidentiary hearing is not granted, the movant's rights must be protected by furnishing the appellate court with the material that defeats the motion." *Walker v. State,* 432 So. 2d 727 (Fl. 3d 1983)(emphasis added)

The Florida Supreme Court has long recognized that the only possible way to create a record; to be reviewed, in postconviction proceedings, where no evidentiary hearing(s) were held, is for the lower tribunal to attach the record(s) justifying the denial of claim(s). If this is not done the Appellate Court would not have a record to review, and thus would be unable to review the decision(s) of the lower tribunal for error. This would leave appellants at the whim of the appellate, and circuit, courts, thus denying appellants any type of protection against unreasonable and/or arbitrary decision(s), thus, negating the entire appellate process. Hence, the reasoning behind creating specific rules that govern postconviction proceedings.

On March 17, 2017 defendant's newly hired counsel, Tanya M. Dugree—Fl. Bar # 664561 (hereinafter "Dugree") filed, on behalf of defendant, "Defendant's Pro Se Motion for Rehearing" (*See Appendix H).* In the motion defendant points out to the Court all of the places that show Spataro's response was directed to a motion that had been dismissed, it further points the Court to look at all of the claims and sub-claims that Spataro never responded too. The motion points out to the Court that because Spataro's response was directed to a different motion his references, on certain claims, to the trial transcripts are in error, and that because the Court simply adopted, and incorporated, Spataro's response for denial of the claims the referenced records do not conclusively refute the claims. And, in the majority of the claims there is no reference to the record, nor any record(s) attached at all.

Finally, the motion points out to the Court that the reason it had to depart from the essential requirements of the law, by not attaching any records to the denial, stems from

Spataro not responding to the correct motion, thus the Court does not have correct information in front of it in order to review and make an informed decision.

On April 26, 2017, Dugree filed an "Amended Motion for Rehearing", (*See Appendix I)*, wholly adopting "Defendant's Pro Se Motion for Rehearing", further pointing out to the Court that the Court has departed from the essential requirements of the law by not performing its duties required by Fl. R. Crim. Pr. §3.850(f)(5), *supra*. It further argues that the Court was required to hold evidentiary hearing(s) on the denied claims, yet failed to do so, and the Court has overlooked many points of law.

On May 16, 2017, Judge Durden issued an order "Denying Defendant's Amended Motion for Rehearing (*See Appendix C)*; wholly adopting Spataro's response and attaching only the records that Spataro previously referenced in his response.

Thereafter, Dugree timely filed a Notice of Appeal, appealing all of the decisions issued by the Court.

On June 25, 2018, Dugree filed "Appellant's Amended Initial Brief" to the Appellate Court. In the brief, it is argued that the record attachments do not refute the claims made by defendant, that many claims and sub-claims have never been responded too, and there are no record attachments at all, justifying denial, on many claims. In the initial brief it further shows why the record attachments, that are attached, do not refute the claims, and the errors in the lower court's reasoning for denial of the claims. Thus, all arguments point to the fact that according to Fl. R. App. Pr. 9.141(D), *infra,* the Appellate Court has to remand this matter back to the lower tribunal to either attach the proper records to the denial, or hold evidentiary hearing(s) on the claim(s) that cannot be conclusively refuted by the record(s).

On January 9, 2019, Jonathan S. Tannen—Fl. Bar #70842 (Assistant Attorney General, hereinafter "Tannen") filed the "Answer Brief of Appellee". In the "Answer Brief" Tannen, does not attempt to refute any of Appellant's claims in his initial brief; he attempts only to address the original claims made in the motion accepted by the lower tribunal, making arguments that were not, but could/should have been presented to the lower tribunal, and arguments that Appellant has never had an opportunity to address.

Tannen also invites the appellate court to employ the "Tipsy Coachman Doctrine" in order to deny the Appellant relief. Florida Courts "recognize[] that the "tipsy coachman doctrine is a longstanding principle of appellate law that allows an appellate court to affirm a trial court that reaches the right result but for the wrong reason so long as there is any basis which would support the judgment *in the record*". *Robertson v. State*, 829 So. 2d 901, 906 (Fla. 2002)(emphasis added).

However, employing the "tipsy coachman doctrine" in postconviction appellate proceedings is contrary to Fl. R. App. Pr. §9.141(b)(D)(2019) which states:

> "§9.141 Review Proceedings in...Postconviction Criminal Cases
> (b) **Appeals from Postconviction Proceedings, Under Fl. R. Crim. Pr. ... 3.850...**
> (D) *Disposition* On appeal from the denial of relief, unless *the record* shows conclusively that the appellant is entitled to no relief, the order shall be reversed and the cause remanded for an evidentiary hearing or other appropriate relief."(emphasis added). *Florida Rules of Court Volume 1* (2019 Ed.).

This invitation to invoke the "tipsy coachman doctrine" is further in error due to the fact that this doctrine of law will permit a court acting in its appellate capacity to deny relief only if it finds valid reasoning *in the record*, yet Appellant's argument, in his Initial Brief, were based upon the fact that Spataro's original response, in the lower tribunal, was fashioned to a motion that had been previously dismissed, and then the lower tribunal

adopted and incorporated that same response as justification for denial of the claims; further, the record before the appellate court could not be shown to conclusively refute Appellant's claims, and in many claims there are no records attachments at all.

Thus, even employing the tipsy coachman doctrine would not be possible in this case, unless the appellate court either used Tannen's argument, in his "Answer Brief", that have never been presented to the lower tribunal or they simply believed that appellant was guilty and therefore the right result was reached, even without legal justification of the lower court's decision (the wrong/any legal reason).

Yet, on May 22, 2019, the Second District Court of Appeals, in and for the State of Florida, issued a Per Curiam Affirmance decision (*See Appendix A)* in Petitioner's case.

On June 3, 2019 petitioner filed a "Motion for Rehearing, Rehearing (En Banc), and/or Request for Published Opinion" (*See Appendix G).*

In this motion petitioner points to the fact that none of Tannen's arguments in his answer brief have ever been presented to the lower tribunal, Tannen has asked the Court to employ a doctrine of law that obliterates all of the postconviction rules currently in place, that many claims and sub-claims have never been responded too, and that there are many claims and sub-claims that have no record attachments at all justifying denial of them. That motion also asks the Court to consider the fact that its decision puts itself in conflict with sister courts, with its own previous decisions and by issuing a PCA opinion it is departing from the essential requirements of the law.

On June 26, 2019 the District Court issued an order denying Appellant's Motion for Rehearing (*See Appendix F).*

On July 8, 2019 Petitioner filed a "Motion for Certification" (*See Appendix E)* asking the District Court to allow Petitioner to submit a question to it, so that he could attempt to

invoke discretionary jurisdiction, to allow the question to be certified to the Florida Supreme Court. The question involved would be asking the Supreme Court, if allowing District Courts to employ the tipsy coachman doctrine in some cases, while remanding other cases back for further proceedings, especially when the lower tribunal has attached no records at all, violates an Appellant's right to equal protection and due process. As of the writing of this writ the District Court has not responded to the Motion for Certification.

When the Circuit and District courts, collectively and in concert with one another, departed from the essential requirements of the law in this particular case, they treated petitioner differently than others that are similarly situated seeking relief under the established guidelines and rules set forth by the Supreme Court of Florida. This was all done with no apparent legal reason, without any explanation or justification, thus violating petitioner's equal protection and due process of law rights.

When the Circuit Court decided to summarily deny claims made by the Petitioner, without holding evidentiary hearing(s), it was required to attach the specific portions of the record it relied upon to determine that Petitioner was not entitled to no relief. The Court failed to do so in this case.

When the Circuit Court failed to perform its ministerial duty, the District Court was required to reverse and remand the matter back to the Circuit Court with instructions to "either attach those portions of the record that conclusively show defendant is entitled to no relief, and/or hold evidentiary hearings". Yet, the District Court failed to do so in this case, and simply issued a "Per Curiam" Affirmance decision instead.

A cursory review of "Florida Judicial Decisions (1996 to Present)" (LexisNexis Legal Research Program C/D version) shows that as of the April 29, 2019 update; this same District Court has sent 2 (two) cases back under the same circumstances with the

instructions "either attach those portions of the record that conclusively show defendant is entitled to no relief, and/or hold evidentiary hearings". As of the April 29, 2019 update there have been approximately 20 (twenty) case sent back to the Circuit Courts from the 5 (five) District Courts within the State of Florida collectively with the same instructions.

A further review of the same legal research program shows that in 2018 the Second District reversed approximately 11 (eleven) cases under the exact same circumstances, and collectively the 5 (five) District Courts reversed 76 (seventy six) cases similarly situated, in 2017 the Second had (5) five, collectively all 5 (five) had 78 (seventy eight) cases similarly situated, and in 2016 the Second had 8 (eight), and collectively all 5 (five) had 91 (ninety one) cases similarly situated. In every one of these cases the matter was reversed and remanded for further proceedings with instructions. Yet, Petitioner was not!

All of this shows that there are, and continue to be, others who are similarly situated and are being given the full protections of the Florida Rules of Court to have their postconviction claims thoroughly reviewed, investigated, and ruled upon on their merits. However, in the instant case this Petitioner is not being afforded any of these rights, nor being protected from arbitrary government action.

Instead, in the instant case the Circuit Court denied Petitioner's claims attached no records as justification, and the District Court issued a "Per Curiam" Affirmance decision disposing of the matter. Thus, setting this Petitioner apart from others, with no apparent reason, and without justification, creating a "class of one" violating the Petitioner's Fifth, Sixth, and Fourteenth amendment protections of the United States Constitution.

The United States Supreme Court has recognized successful equal protection claims brought by a "class of one," where a plaintiff alleges that he or she has been intentionally

treated differently from others similarly situated and that there is no rational basis for the difference in treatment.

Now, because the Circuit Court did not provide legal justification for the denial of Petitioner's claims the only way for the District Court to find legal justification to agree with the lower court's findings, they would have to agree with the arguments presented by Tannen in his "Answer Brief", arguments that have never been presented to the lower court, and then employ the Tipsy Coachman doctrine of law.

Ironically, in a decision by the Second District Court of Appeals, they have previously held that "[t]hus because the trial court did not have the opportunity to make a factual finding regarding that issue, we will not employ the tipsy coachman doctrine or make the factual finding in the first instance. *See In re Estate of Assimakopoulos*, 228 So. 3d 709, 715 n.3 (Fla. 2d DCA2017) (refusing to apply tipsy coachman doctrine where issue raised on appeal depended on a factual finding that was not made by trial court below); *Bueno v. Workman*, 20 So. 3d 993, 998 (Fla. 4th DCA2009) (same); *Bryant v. Fla. Parole Comm'n*, 965 So. 2d 825, 825 (Fla. 1st DCA2007) (same)." *See Footnote #4, Tank Tech, Inc. v. Valley Tank Testing, LLC* 244 So. 3d 383 (Fl. 2nd DCA2018).

Thus, using the Tipsy Coachman to agree with the lower court's decision, in this case, would be contrary to their one of their own holdings. This is just one example of how the decision(s) in this case puts the Second District in conflict with their own holdings.

All of this begs the question, why would the District Court depart from the essential requirements of law in this case, by simply issuing a "Per Curiam" Affirmance decision, when they are required to reverse and remand the matter back to the Circuit Court with instructions? Especially, when it is clear that other cases similarly situated are being reversed and remanded with instructions.

When the District Court does a review of the procedural history section of the petitioner's Motion for Postconviction Relief it would appear that a procedural bar exists to petitioner seeking relief under 28 U.S.C. §2254.

Therefore, if the court(s) decided to work in concert with one another, only agreeing that petitioner was guilty and should serve his imposed sentence, or agreeing with the arguments made by Tannen, with no meaningful review of his postconviction claims, there would be no meaningful opportunity for review of the decision(s).

Thus, further review of the decision(s) made in this case would not take place and Petitioner would have to simply accept and serve his sentence; there would be no opportunity for a higher court to review the decision(s) made in this case and the departure from the essential requirements of law would never be detected/found. And, there would be no chance that the District Court could be overturned.

Section §2254(d) reflects the view that habeas corpus is a guard against extreme malfunctions in the state criminal justice systems, not a substitute for ordinary error correction through appeal. Yet, if Petitioner cannot overcome the "time limit" constraints to file a petition under §2254, he would not be able to further pursue postconviction relief.

And, if the State courts had departed from the essential requirements of law at each stage of the postconviction proceedings these "malfunctions in the state criminal justice system" would not be reviewed, thus Petitioner would have been subjected to arbitrary government action with no redress.

Further, because the Florida Supreme Court does not grant certiorari review of cases this would be the end of the road for this Petitioner. Thus, even if a thorough review of his postconviction claims would/could show that his trial counsel failed him, he was actually innocent, not guilty to the extent of the charge he faced, or any other error had

taken place during his trial, he would spend 30 (thirty) years being punished, 15 (fifteen) years' incarceration followed by 15 (fifteen) years probation. All of this, just because the State Courts made the decision to simply deny the Petitioner any relief, with no legal, or apparent, justification.

All of this would be a result of the Circuit and District Court departing from the essential requirement of law. The District Court subjecting Petitioner to arbitrary government action. Yet many others are being treated differently, and being given protections against these malfunction of the state criminal justice system. Thus, without apparent reason/justification Petitioner is being singled out, having his equal protection and due process rights violated and based upon the record it would appear that Petitioner has no opportunity for redress/recourse.

REASONS FOR GRANTING THE PETITION

Our Country is in a constant state of civil unrest, with many people not having a complete understanding of our judicial system, (i.e. some people get charged with a crime, some do not, and some people who get convicted of crime receive harsh penalties, long sentences, while others do not). When these misunderstandings of our judicial system occur it typically results in some form of public display of outrage, which is never good for any party involved.

This case presents a case of first impression whereas this Court has the opportunity to make a statement; not only to all citizens involved in the legal community, but every citizen in America, that this Country is, and was formed as a Constitutional Republic. As such, our judicial system is built on the foundation that every person has certain Constitutional rights, and that every judge and court should always remember these rights when rendering decisions, regardless of their own personal beliefs, biases or alliances. Reminding everyone that there are times when the judicial branch of our government (Judges, Prosecutors, and Defense Counsels) has a duty to protect the inalienable, God given, and constitutional rights of: victim(s); sometimes the accused; and yes sometimes even persons convicted of a crime(s), regardless of the seriousness of the accusation or the crime itself.

There are hundreds, if not thousands, of cases decided every year whereas people are convicted of crimes and yet were not afforded fair and impartial proceedings, and/or they were taken to trial with an attorney who did not represent them to the best of their ability, not necessarily through counsel's own intentional negligence. There are many times whereas trial counsel is simply inexperienced, was not as prepared as they should have been, outside influences affected their abilities to prepare, or perform that particular day,

or they simply were not as sharp that day (thinking quickly on their feet) as they normally are.

Some of these cases are corrected through the appellate process, whenever a trial judge makes an error. However, most trial judges have been a member of the legal community for many years, have presided over many cases, thus their error rate is typically small. Leaving, most errors that occur, during trial, actually due to trial counsel error(s) and these errors are not typically reviewable on direct appeal, except in the rare case that the errors are so egregious that they become fundamental error. This also means that in order to correct the trial counsel errors that have occurred the "convicted" must seek relief through a postconviction process. Unfortunately, the relief sought is not typically granted.

A review of some of the most publicized cases, whereas a person sat in prison for many years only to have their conviction overturned, would show that had their postconviction pleadings been given a thorough review and serious consideration—there is a better than not chance their convictions would have been overturned many years earlier, and they would not have been subjected to many more years incarceration.

A written opinion from this court re-emphasizing the fact that even though a person may have been convicted of a crime, is not reason enough to neglect nor ignore their constitutional rights, would go a long way in helping to prevent legitimate postconviction claims from being ignored, and disregarded without proper review.

This is not meant to say that there are not many postconviction cases whereas a person seeking relief is simply looking for loopholes and or making meritless claims. However, this should not cloud the judgment of the judges who are assigned to review these cases. Just like when a person is taken to trial on a charge the judge and jury has to decide a case only on the evidence presented to it during the duration of the trial. The trier-of-fact

cannot allow any outside influences, biases, investigations, or alliances to influence their decision. Our system of justice allows for voir dire just to make sure that all jurists can abide by these standards, if they cannot they are not chosen to serve.

When a judge is presented a pleading seeking postconviction relief he/she should treat it as if it is its own trial, not allowing any decision to be influenced by anything not before him in that particular matter, including his/her own biases, investigations, or alliances.

A decision by this court creating a "rare exception" to the time limits set forth in the AEDPA, (not equitable tolling) allowing a petitioner to have his state court decision reviewed, as per 28 U.S.C §2254, when it is apparent on the face of the record that a state court has completely disregarded their own processes, rules, and/or statutes would go a long way to ensuring that every postconviction claim is, at a minimum, thoroughly reviewed, thus preventing thousands, if not hundreds of thousands, of postconviction seekers being denied their rights and simply denied at the whim of a court(s).

This rare exception could serve as a checks and balance system, so that even if somehow there existed a time bar for review of his/her postconviction proceedings through §2254, a state court would not be able to simply ignore or disregard the person's claims, (issue a non-published denial without reviewing the merits of the claims) as they could still face a review of their decision(s) by a higher court.

A decision by this court could encourage state courts, across the country, to create a "postconviction rights" packet/ document that are handed to every person convicted of a crime that explains all of the available options to them after their adjudication. Contained within this packet/document it could also explain any and/or all applicable timelines, in which to file for relief from their convictions, this would help to educate persons who have

been convicted, and their loved ones allowing them to make more informed and timely decisions. Thus, helping to prevent situations whereas a person convicted misses a critical step in the review process. This would also serve to educate individuals, and their loved ones, whom are not familiar with the legal processes and systems put in place to protect their rights. This would also go a long way in preventing "miscarriages of justice" as individuals convicted, who know that there conviction was obtained improperly, would be informed as to how to have their cases reviewed properly.

When State courts ignore their own processes, rules, and/or statutes, as they did in the instant case, they do so in violation of a person's Fifth, Sixth, and Fourteenth Amendment (United States Constitution) rights. Further, when it appears that a procedural bar exists to them seeking relief under §2254, the State court does not have to consider that their decision can/will be reviewed by any other court.

According to 42 U.S.C §1983, "...except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted...," thus when a State court chooses to simply ignore the claims brought forth by individuals seeking postconviction relief (and it is apparent on the face of the record) they do so with complete immunity, and without fear of recourse by a petitioner. This allows judges and courts to act with complete immunity when they decide to arbitrarily deny, dismiss or strike motions, petitions, and writs.

A decision in this case would not create a "gateway" whereas many new cases would be filed, and/or allow a large number of people to seek and/or receive relief from their sentences already imposed. As the rare exception that is proposed above would only be granted where it can be shown, on the face of the record, that the State Court(s) have acted arbitrarily, and not just when the decision made is in dispute.

A decision by this Court would serve as a statement that every Court and their Jurists should seek to protect the rights of people seeking relief, by ensuring a proper review of all of their claims brought forth.

There is a real possibility that the arbitrary action that this Petitioner is being subjected to, in Florida, is also happening in countless other cases and in many other States. A decision in this case would go a long way to protect the rights of people seeking postconviction relief in every state, and in all cases.

Understanding that this case involves the rights of a person already convicted, and this Court has many other issues to deal with, yet by granting certiorari in this case this Court could issue a written opinion that would unequivocally remind all State courts that even if a person has been convicted of a crime(s) they are still "citizens" of this Country and the State where they were convicted. Thus, they should still be treated as such, and not discriminated against. Even though some individuals decide to break the law, and they get convicted they do relinquish certain rights; they do not forfeit all of their rights, and do not become anything less than a "citizen".

In fact, in many counties of the State of Florida they are setting up "Integrity Review Committees" in order to review the convictions of individuals who seem to have enough people claiming that they were wrongly convicted. This Petitioner can't help but wonder how many other "Integrity Review Committees", or the like are being set up in other States and Counties across the Country.

A written opinion by this Court would effectively make these "Review Committees" obsolete, as State Courts would have properly reviewed all postconviction claims and would have discovered most errors made by trial counsel. This would also prevent individuals from spending a portion of their life incarcerated only to have their conviction overturned,

then having a State agency dip into their budget to pay these individuals as "wrongfully incarcerated".

It is almost always front page news when a person gets exonerated after spending many years in prison, this media attention always paints the original prosecutor and judge in a bad light, and makes it seem that the original trial counsel was a "bumbling idiot". These portrayals of our justice system is what allows the general public to continue to have a negative impression of our judicial system.

However, this Court could take a major step in eliminating all of this simply by taking the time to send a message to all Courts, Jurists, and their peers. And, this case presents the perfect opportunity to do such.

This case also presents the rare opportunity to present, not only to members of the legal community, but also to the public at large, what many jurists have said, and many jurists continue to believe and that is:

> It has been said a number of times that it is more important that no innocent man be convicted than a guilty man go free. *See In re Winship*, 397 U.S. 358, 372, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) (Harlan, J., concurring)
>
> ("It is far worse to convict an innocent man than to let a guilty man go free."); *Furman v. Georgia*, 408 U.S. 238, 367 n. 158, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972) (Marshall, J., concurring)
>
> ("It is better for ten guilty people to be set free than for one innocent man to be unjustly imprisoned.") (quoting William O. Douglas, *Foreword* to Jerome Frank & Barbara Frank, *Not Guilty* 11-12 (1957)).

In closing, a written opinion in this case would send a clear message to every citizen, in our Country, and every person involved in the legal community, in all States and Provinces, that we/they all have a duty to protect the rights of every citizen not just the ones that they choose. The message would be clear that this Court is interested in and in

favor of equal protection, due process and fair and impartial proceedings for each and every citizen -- the bedrock principles of "Constitutional Law". And, that before any Court simply attempts to ignore all of this, their decision(s) will more than likely be reviewed for integrity. And, finally that all Courts should strive to conduct all of their proceedings fairly, impartially and with the aim to ensure the integrity of the proceedings themselves.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Whitaker, Brian

Date: 9/11/19