

T.D.

NO. 19-6206

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

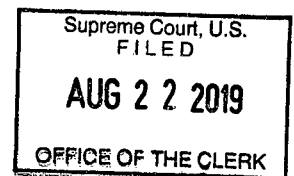
TROY DAVENPORT,

Petitioner,

VS.

MARK S. INCH,

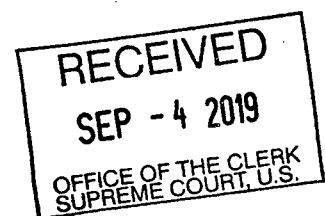
Respondent.



ON PETITION FOR A WRIT OF CERTIORARI TO
SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

Troy Davenport #646588
SOUTH BAY CORRECTIONAL FACILITY
P.O. BOX 7171
SOUTH BAY, FLORIDA 33493



QUESTIONS PRESENTED

Whether the state court employed procedures that did not adequately afford a full and fair hearing?

Whether the material facts of the newly discovered evidence were developed at the state court procedure?

Whether due process was violated by the pre-trial photographic identification procedure employed by the State?

Whether the unnecessarily suggestive identification procedure was proverbially untrustworthy where eyewitness given description matches word and not petitioner?

Whether any reasonable juror would have convicted petitioner in light of new evidence?

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT.....	5
CONCLUSION.....	6
PROOF OF SERVICE.....	7

INDEX TO APPENDICES

APPENDIX A.....	Order of Supreme Court of Florida
APPENDIX B.....	Motion for Post-Conviction Relief
APPENDIX C.....	State's Response
APPENDIX D.....	Order Denying Post-Conviction Relief
APPENDIX E.....	D.C.A. Per Curiam Affirmed
APPENDIX F.....	Acknowledgment of New Case Notice of Commencement to Clerk of Court

TABLE OF AUTHORITIES

Cases

<u>Schlup v. Delo</u> , 513 U.S. at 327	4
<u>Simmons v. U.S.</u> , 390 U.S. 377 (1968).....	4
<u>Stovall v. Denno</u> , 388 U.S. 293	4
<u>U.S. v. Wade</u> , 18 L. Ed. 2d 1149 (1967).....	4

Other Authorities

First Amendment	4
Fourteenth Amendment	4

Rules

Rule 1.070(a)	5
Supreme Court Rule 29	7

Treatises

28 U.S.C. §1257(a).....	3
-------------------------	---

**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.

[✓] For cases from state court:

The opinion of the 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.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____. A copy of that decision appears at Appendix _____

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeal 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. _____.

☒ For cases from state court:

The date on which the highest state court decided my case was June 19, 2019. A copy of that decision appears at Appendix A

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was thereafter denied 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. _____

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INCLUDED

Fourteenth Amendment of the United States Constitution

First Amendment of the United States Constitution

Sixth Amendment of the United States Constitution

Eighth Amendment of the United States Constitution

STATEMENT OF THE CASE AND FACTS

Petitioner filed a post-conviction relief motion based on newly discovered evidence of actual innocence on May 8, 2018. (App. B) See Schlup v. Delo, 513 U.S. at 327.

The state responded July 23, 2018. See Ms. Severra (prior statement attached to (App. C) U.S. v. Wade, 18 L. Ed. 2d 1149 (1967). Simmons v. U.S., 390 U.S. 377 (1968) also Stovall v. Denno, 388 U.S. 293.

Mr. Paul Backman, Circuit Judge issued Order denying Motion for Post-Conviction Relief August 6, 2018, without a full and fair hearing in violation of the Fourteenth and First Amendment. (App. D)

The Fourth District Court per curiam affirmed December 6, 2018. (App. E) January 16, 2019, the Florida Supreme Court treated Petitioner letter as a Petition for Writ of Habeas Corpus. (App. F) See also Notice of Commencement to Clerk of Court and \$40 check for service Rule 1.070(a).

June 19, 2019 the Petition for Writ of Habeas Corpus was denied without the fact finders reaching the merits depriving Petitioner of an adequate opportunity to establish illegal detention. The Florida Supreme Court's denial transgressed the principles of fundamental fairness rooted in the Fourteenth Amendment. (App. A)

REASONS FOR GRANTING THE PETITION

The merits of the newly discovered evidence were not resolved in the fundamentally unfair state hearing.

The procedure employed by the State Court was not adequate to afford a full and fair hearing.

The material facts of the newly discovered evidence were not adequately developed at the state court proceedings.

The state court procedure violated the Fourteenth and First Amendment(s) of the United States Constitution denying due process (Circuit, D.C.A., Supreme Court). The right to seek redress in the Supreme Court. (See App. A)

For the above reasons(s) Petition should be granted.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Troy Davenport

Troy Davenport DC#646588
South Bay Corr. Facility
P.O. Box 7171
South Bay, Florida 33493

I certify that the document contains 305 words excluding the parts of the document that are exempt by Supreme Court Rule 33.1(d) .

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON 22nd Day of Aug, 2019.

Troy Davenport

Troy Davenport DC#646588