No. 19-6261

IN THE

SUPREME COURT OF THE UNITED STATES

JEREMIAH MARION
Petitioner,

Vs.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
DISTRICT COURT OF APPEAL FOR THE FOURTH DISTRICT FLORIDA

PETITION FOR WRIT OF CERTIORARI

JEREMIAH MARION
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QUESTIONS PRESENTED

DOES THE EVIDENTIARY PROVISION OF FLORIDA'S SEXUAL BATTERY STATUTE VIOLATE THE FOURTEENTH AMENDMENT? [1]

AND/OR

CAN A STATE LAW MANDATE LIFE WITHOUT PAROLE SENTENCES BASED ON UNCORROBORATED ACCUSATIONS OF SEXUAL BATTERY BY FIRST TIME OFFENDERS?[2]

AND/OR

DID THE STATE COURTS VIOLATE HIS 1ST AMENDMENT RIGHT TO PETITION FOR A REDRESS OF HIS GRIEVANCES?[3]

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[1] 794.022 Rules of Evidence. (1) The testimony of the victim need not be corroborated in a prosecution under 794.011.

[2] 794.011(1) (h) sexual battery means oral, anal, or vaginal union with sex organs 794.011(2) (a) anyone who commits sexual battery upon a person under the age of 12 commits a Capital felony punishable by life imprisonment without parole....

[3] Fla. R. Civ. P. 1.071 and Chapter 86 Fla. Statutes.

LIST OF PARTIES

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

CERTIFICATE OF INTERESTED PERSONS

The following persons have interests in the outcome of this decision:

Acuna, Kimberly T.: Fla. Asst. Att. General.

Becker, Ruth (Honorable): 16th Circuit Judge.

Emas, (Honorable): 3rd Dist. Court of Appeals Justice.

Fernandez, (Honorable): 3rd Dist. Court of Appeals Justice.

Forst, (Honorable) 4th Dist. Court of Appeals Justice.

Gerber, (Honorable): 4th Dist. Court of Appeals Justice.

Hilal, (Honorable): 4th Dist. Court of Appeals Justice.

Klingensmith, (Honorable): 4th Dist. Court of Appeals Justice.

May, (Honorable) 4th Dist. Court of Appeals Justice.

Miller, (Honorable) 3rd Dist. Court of Appeals Justice.

Moody, Ashley: Fla. Attorney General.

Nutt, James (Honorable): 15th Circuit Court Judge.

Warner, (Honorable): 4th Dist. Court of Appeals Justice.

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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 ENTERED

The opinion adopted by the highest state court to review the merits appears at Appendix "A" to the petition with additional merit opinion by the court at Appendix "D".

Opinion of the 4th District Court of Appeals: "The challenge is frivolous and any further attempts will result in sanctions and referral to prison officials for disciplinary procedures".

Opinion of the 16th circuit Judge Honorable Ruth Becker: "Many crimes must be proven based upon victim testimony alone without corroborating witnesses or physical evidence."

JURISDICTION

The date on which the highest state court decided my case was August 23, 2019. A copy of that decision appears at Appendix "A".

The Jurisdiction of this court is invoked under 28 U.S.C. §1257: The state court has decided an important federal question in a way that conflicts with relevant decisions of this court.

STANDING

Jeremiah Marion has exhausted all state procedures in his attempts to obtain a declaration already established by this court in a similar case.[4] Until this court resolves the constitutional question raised he has standing. But essentially the petitioner's right to petition the court for redress of his grievance was eliminated with the 4th Dist. Courts threat of sanctions and recommendation of disciplinary actions from prison officials.[5] He has no other recourse.

CONSTITUTIONAL AND STATUTORY PROVISIONS

14TH Amendment United States Constitution:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizen of the United States; nor shall any state deprive any person of

[4] *Virginia v. Black,* 538 U.S. 343 (2003) evidentiary provision is an unacceptable skewing towards convictions.
[5] 1st Amendment right to petition.

life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the law.[6]

Fla. Statute 794.011(1) (h) sexual battery means oral, anal or vaginal union with the sexual organ of another or penetration by any other object.

(2)(a) Upon a person under 12 years of age commits a capital felony punishable by life in prison without parole.

794.022 Rules of evidence. (1) The testimony of the victim need not be corroborated in a prosecution under 794.011.[7]

Fla. Statute 800.04 Lewd or Lascivious offense committed upon or in the presence of person less than 16 yrs. of age. (1) Definitions: (a) sexual activity means oral, anal, or vaginal union with, the sexual organs of another or penetration by any other object.

STATEMENT OF THE CASE

Jeremiah Marion utilized state civil procedure rule 1.071 to challenge Florida Statute 794.011 due to the overbroad powers delegated through the evidentiary provision contained in its section 794.022. His challenge was based upon the

[6] 794.011(1) (h) and 800.04(1) are identical conduct yet 794.011 can be prosecuted without corroborating evidence in violation of equal protections.

[7] A law that fails to define clearly the conduct it proscribes may in practical effect impermissibly delegate basic policy matters to policemen, judges, and jurors for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. *Grayned v. Rockford, 408 U.S. 104, 108, 109 (1972); U.S. v. Ross*, 9 F.3d 1182-1183 (7th Cir. 1993)

premise that the evidentiary provision was an unacceptable skew towards a conviction in cases prosecuted solely on victim accusations. A premise derived from this court[8] and the state supreme court. [9] Even though he was entitled to a declaratory judgment under procedural law[10] the court insisted that because he was a prisoner charged and convicted under the statute challenged his only remedy was through Habeas Corpus. Thus, the 15th circuit court dismissed the civil action. See: Appendix "G"

On Appeal to the 4th Dist. the Assistant Attorney General argued that because a constitutional challenge could be presented at any time under state habeas corpus law it was only cognizable in the court of conviction. The appellate court agreed and affirmed the dismissal. See Appendices "E" and "F".

A habeas petition was filed in the court of conviction. The court determined that lots of cases were tried based solely on witness testimony and nevertheless the petition was procedurally barred under state habeas corpus rule 3.850 because it could not be filed at any time. See Appendix "D".

On appeal it was pointed out that the court's opinion failed to address the unconstitutional skewing recognized by state and Federal Supreme Courts and the

[8] *Virginia v. Black*, 538 U.S. 343 (2003)
[9] *Gutierrez v. State, 177 So.3d 226 (2015)*
[10] Chapter 86 Fla. Statutes

procedural bar was contrary to the 4th DCA. Nonetheless the 3rd DCA affirmed the denial of the petition. See Appendix "C"

Jeremiah Marion returned to the Fourth District Court of Appeals with a petition for a writ of mandamus to the 15th circuit. He explained that the court of conviction and Third District Court refused to acknowledge the courts determination that a constitutional challenge could be filed at any time. He requested that the 15th circuit be ordered to reopen and hear the case as filed. The 4th DCA denied his petition and threatened him with both sanctions and disciplinary punishment from prison authorities for filing frivolous actions. See Appendix "A" and "B".

Jeremiah Marion turns to this court because he believes his argument is meritorious and deserves redress under the 1st Amendment and Art. 1 Sect. 5 of the Fla. Constitution. He believes many of the more than 97,000 prisoners being held in state institutions are being denied their 14th amendment right to due process because they are too poor to hire a lawyer, that their efforts to obtain justice are being dismissed out of hand simply because they are pro se filers. He believes that of the 12,600 prisoners convicted of sex offenses many are innocent and victims of the improper skewing that is implicit in the sexual battery statutes evidentiary provision. And he believes that many of the 13,466 prisoners serving life sentences are first time offenders accused and convicted of capital sexual battery under

statute 794.011(2)(a) due to the implicit skewing of its evidentiary provision. He believes the state legislature went too far when they codified a process that skew toward convictions of a capital offense that is non- violent but carries a life without parole penalty. Florida Sexual Battery statute is blatantly draconian.

ARGUMENT

As a matter of due process a law is void if it impermissibly delegates basic policy matters to policemen, Judges and juries for resolution on an ad hoc and subjective basis, with all the attendant dangers of arbitrary and discriminatory application. See: *Grayned v. Rockford,* 408 U.S. 104, 108-109 (1972); *Connally v. General Construction Co.*, 369 U.S. 385, 391 (1926).

In 1955 The American Law Institute promulgated "The Model Penal Code" and made it clear that it did not recommend or provide for criminal penalties for consensual sexual relations conducted in private. See; *A.L.T. Model Penal Code*, Comments pg. 372 (1980). It justifies its decision on three grounds. Number 3 states: "The laws were arbitrarily enforced and thus invited the danger of blackmail." See Comments at 277-78 (Tent draft Nov. 4th 1955).

By enacting a law that criminalizes the union with the sexual organs of another, or penetration by any other object, Florida has criminalized a form of sexual foreplay that leaves no evidence it ever occurred. And when they included

the evidentiary provision, that a victims testimony need not be corroborated for a prosecution, they went too far, because both statute 794.011 and 800.04 define the same prohibited conduct, and one has an evidentiary provision the other does not, policy matters of which statute to file under is left for law enforcers to resolve on an ad hoc basis with all the attendant dangers of arbitrary and discriminatory application. This is a clear violation of due process and equal protections. See *Skinner v. Oklahoma*, 316 U.S. 535 (1942) where Justice Douglas pointed out that when the law lays an unequal hand on those who have committed the same quality of offense it has made as invidious a discrimination as if it has selected a particular race or nationality for oppressive treatment.

Essentially, the evidentiary provision of this law which states specifically that "The testimony of the victim need not be corroborated in a prosecution under 794.011, is a provision that exposes the innocent to blackmail by unscrupulous liars." Exactly as feared by the American Law Institute in 1955.

The degree of constitutionally tolerated broadness is not easily calculated but can be measured through application. The recent confirmation hearings for Justice Cavanaugh are a perfect reason why accusations alone cannot support a criminal conviction for sexual assault. Once upon a time it may have been necessary to encourage victims to step up and report sexual assault. And as in most times of need the legislature responded. But in any particular response they

confront a dilemma, "to draft with narrow particularity is to risk nullification by easy evasion of the legislative purpose; to draft with great generality is to risk ensnarement of the innocent in a net designed for others." See *L. Tribe, America Constitutional law*, 2.ed 1988; pg. 1033. Contemporary Society no longer requires the encouragement of this overbroad, oppressive provision. Too many innocent people are being snared.

In 2003 this court considered a very similar provision in the Virginia cross burning statute. The state attempted to eliminate cross burning as an act of racial intimidation. Its attempt to codify control was so overbroad that this court was required to use the powers exemplified in *U.S. v. Butler*, 297 U.S. 1, (1936) to strike it down. Because when its text "any burning is proof of intent to intimidate "was placed beside the constitutional article invoked the law was found to be unconstitutional. This court found the evidentiary provision unacceptably skewed towards convictions. See: *Virginia v. Black*, 538 U.S. 343 (2003).

In Florida the evidentiary provision of 794.011 was challenged in the Supreme Court and found to be an unacceptable skew towards the conviction, but only when the judge recites it in his law of case jury instructions. See *Gutierrez v. State*, 177 So. 3d 226 (Fla. 2015). Unfortunately this does not help those cases where the jury was skewed by the prosecutor reciting the provision in closing. Even a Judges corrective instruction to remove the skunk cannot remove the

stench. The knowledge still encourages jurors to ignore exculpatory evidence and skew toward convictions out of victim sympathy. This law requires constitutional based analysis for validity.

REASON FOR GRANTING WRIT

As an indigent prisoner Jeremiah Marion is severely handicapped. He challenged the constitutional validity of this law in a civil action under state law specifically created for that purpose. See Fla. R. Civ. P. 1.071. He made it clear to the court that he was seeking a declaration only and not release from prison. See *Wilkinson v. Dodson*, 12 5 S.Ct 1242 (2005); and Fla. Statute Chapter 86, declaratory judgments. The courts insisted on treating the action as a Habeas Corpus. It was dismissed but not without a comment on the merits. The court casually explained that "many crimes must be proven based upon victim testimony alone without corroborating witnesses or physical evidence." See Appendix "D". Which is a fine example of judicial discretion. The problem here is that this law codifies it. This law takes away judicial discretion. This is the type of results driven legal analysis vilified by Robert Bork in his best seller, "The Tempting of America", at pg. 264-265. Bork explained that judges are restricted to constitutional based legal analysis. This casual dismissal of the merits is most assuredly the result of Mr. Marion's pro se status. Counsel presented this argument to the court for Black and Gutierrez and it was determined that this type of

evidentiary provision is unconstitutional. Jeremiah Marion prays this court will either address the merits of this case or appoint counsel to him for proper resolution.

SUMMARY

Finding justice for Marion does not expose a soft on crime paradigm. The presumption of innocence is not a fashion that can go in and out of style. It's a cornerstone principle of our criminal jurisprudence. I'm sure Mrs. Ford suffered an extremely humiliating experience as a teen and was seeking some type of closure in revenge. I don't believe her humiliation was the result of sexual assault. One thing is abundantly clear though; when the "me too" movement collides with Florida's Sexual Battery Statutes "evidentiary provision" the presumption of innocence is the first casualty. The 4th DCA calls this frivolous.

Before rational analysis can be applied to the merits of this case we must step out of the cyber cloud and stop letting the pack mold our opinions. Simply talk to your neighbors to find out what boundaries are acceptable. As Thomas Jefferson so brilliantly stated; "let us superintend all that our own eyes can see and all will work out for the best. " And then imagine what it would be like to stand accused of a sexual assault that never occurred and be forced to stand trial. How does one defend against such an invidious assault?

Throughout the history of our nation its people have fought relentlessly to overcome injustice from oppressive laws. From the forced sterilizations under *Buck v. Bell* to the decision in *Skinner v. Oklahoma* that ended it, the peoples right to petition the government for redress of their grievances has led the way to reform. See *Buck v. Bell*, 247 U.S. 200 (1927); *Skinner v. Oklahoma*, 316 U.S. 535 (1942). And let's not forget how thousands of innocent people were forced to defend themselves in Florida courts without the assistance of counsel until Gideon was appointed counsel to argue the practice before this court. See *Gideon v. Wainwright*, 372 U.S. 335 (1963). If not for the talents of noted counsel Abe Fortas Gideon would never have received justice. As it were, upon retrial he was found innocent, and his accusing witness discovered to be the actual perpetrator.

Whether this law violates equal protections because enforcers have full discretion to choose between another law proscribing identical behavior without the evidentiary provision (794.011 v. 800.04) or because it skews toward convictions in cases with no evidence a crime occurred, it requires a constitutionally based legal analysis to determine its validity. Jeremiah Marion presents this challenge.

CONCLUSION

Wherefore, Jeremiah Marion respectfully requests that this Honorable Court issue a writ of certiorari to determine if the state courts violated his 1st Amendment right to redress or 14th Amendment right to due process or equal protections, or if his constitutional challenge has merit, rule on the questions presented, or assign counsel to argue based upon this courts holdings and dictum in *Virginia v. Black*, 538 U.S. 343 (2003).

Respectfully Submitted

Jeremiah Marion

Jeremiah Marion 791838