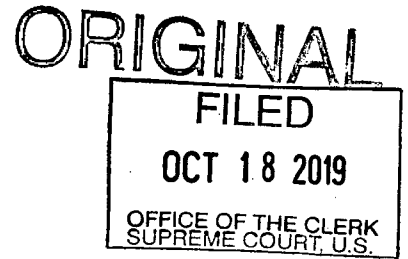


19-6453  
No. \_\_\_\_\_



IN THE  
SUPREME COURT OF THE UNITED STATES

JAMES E. LANG — PETITIONER  
(Your Name)

vs.

STATE OF FLORIDA et. al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SECOND DISTRICT COURT OF APPEAL, STATE OF FLORIDA  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAMES E. LANG

(Your Name)

Mayo Correctional Institute Annex  
8784 U.S. Highway 27 West

(Address)

Mayo, Florida 32066

(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

### QUESTION(S) PRESENTED

When a state's highest court corrects an erroneous interpretation of its statutory law committed by its lower appellate court, that has affirmed a conviction where the state has failed to prove an essential element of the convicted crime, can the state's "pipeline" law prevent the application of the correct interpretation to a final case in circumvention of Fiore v. White, 531 U.S. 225 (2001)?

## 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:

The State of Florida

Office of the Attorney General

Secretary, Florida Department of Corrections

## RELATED CASES

Bunkley v. Florida, 538 U.S. 835 (2003)

Bousley v. United States, 523 U.S. 614 (1998)

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### STATUTES AND RULES

§ 776.051

### OTHER

USCA Const. Amend. 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☐ is unpublished.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☐ is unpublished.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 A 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 \_\_\_\_\_ 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.

## 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 July 22, 2019.  
A copy of that decision appears at Appendix A.

☐ 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. \_\_\_\_ A \_\_\_\_.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

USCA Const. Amend. 14



## STATEMENT OF THE CASE

In the Thirteenth Judicial Circuit, in and for Hillsborough county, Florida, the Petitioner was charged with a six (6) count information that involved Aggravated Battery on Law Enforcement Officer, various weapon offenses and Grand Theft Motor vehicle.

On September 13, 1999, the Petitioner argued a Motion to Suppress the weapon offenses on the basis that the officers lacked articulable founded suspicion of criminal activity to subject him to an investigatory stop and consequently, the weapons were suppressible as fruit of the poisonous tree.

The Petitioner also submitted a Motion to Dismiss the Battery offense because being engaged in a lawful duty is an essential element to that offense. Consequently, since the officer lacked articulable founded suspicion of criminal activity to subject Petitioner to an investigatory stop, the officer was not engaged in a lawful duty at the moment of the battery.

After hearing testimony from police witnesses presented by the State Attorney's Office, the Hon. William Fuente ruled that the officers lacked articulable founded suspicion of criminal activity to subject Petitioner to an investigatory stop or to arrest him. See Appendix - B.

After filing all of the timely and appropriate appeals, Petitioner's convictions was affirmed based on the state appellate interpretation of statute 776.051.

However, in 2006, the Florida Supreme Court overruled the lower appellate interpretation of statute 776.051 on the basis that it was a misinterpretation. The Florida Supreme Court's correction held that if a officer subjects a person to an illegal investigatory stop, that officer is not engaged in a lawful duty and that essential element of Battery on a law enforcement officer is not proven. See, Tillman v. State, 934 So.2d 1263 (Fla. 2006).

The Petitioner has sought the retroactive application of the correct interpretation of law that establishes that the state has failed to prove an element of a crime charged, as required by the Due Process Clause of the United States Constitution, but was denied.

## REASONS FOR GRANTING THE PETITION

The granting of this petition will vindicate the federal rights of countless Floridians being denied these rights pursuant to Florida's "pipeline" rule and state law dilution. The essential lesson of Fiore v. White, 531 U.S. 225 (2001) is that the correct interpretation of statutory law, from a state's highest court that overrules a lower appellate court's interpretation, must be applied retroactively to final cases.

As it currently stands, everybody in the State of Florida can't obtain the application of Fiore because of Florida's "pipeline" rule and its state law dilution of its principles. The United States Supreme Court holds that state courts are responsible for a faithful application of the principles set out in its case, Randass v. Angelone, 530 U.S. 156, 168 (2000) but the said "pipeline" and dilution practices are preventing this.

### Florida's "pipeline" law

In State v. Johnson, 122 So.3d 856 (Fla. 2013), the Florida Supreme Court explained that when it announces a new rule of law (like Tillman), the decision generally applies to all cases that are pending on direct review or not yet final. Consequently, although Tillman v. State, 934 So.2d 1263 (Fla. 2006) correctly interpreted statutory law that was formerly misinterpreted by the lower appellate courts, it is only applied to cases that were pending on direct review and not yet final. This is Florida's "pipeline" law.

Florida's "pipeline" law is in direct conflict with Fiore that expressly holds that the correct interpretation must be applied to final cases with no issue of retroactivity. Florida's "pipeline" law creates an issue of retroactivity.

### State law dilution

In addition to Florida's "pipeline" law explained in State v. Johnson, *ibid.*, Florida dilutes the application of Fiore by expressly stating that Fiore will be analyzed pursuant to some additional considerations called the Witt standard. See, State v. Johnson, 122 So.3d 856 (Fla. 2013) and State v. Barnum, 921 So.2d 513 (Fla. 2005).

The United States Supreme Court, in Fiore, did not sanction the additional considerations of the Witt Standard and its consideration dilutes or erases the application of Fiore.

The citizens of the State of Florida, in general, and the Petitioner, in particular are being denied their federal rights pursuant to Florida law dilution or erasure of Fiore.

## CONCLUSION

WHEREFORE, based on:

- Florida's "pipeline" law preventing the application of Fiore, as the United States Supreme Court intended, to the people in Florida;
- Florida's practice of diluting or erasing the application of Fiore by considering it with a standard not expressed in Fiore;
- Florida law holding that one of the elements to its Battery on Law Enforcement offense is that the officer must be engaged in the lawful performance of duties at the moment of the alleged battery, State v. Henriquez, 485 So.2d 414, 415 (Fla. 1986)
- The state court ruling that the officer did not have probable cause to arrest or reasonable articulable suspicion to subject Petitioner to an investigatory stop, See Appendix B
- Florida law holding that when a officer has no reasonable suspicion to stop a person, that officer is not engaged in the lawful execution of a legal duty, Davis v. State, 973 So.2d 1277, 1279 (Fla. 2nd DCA 2008);
- The Due Process Clause of the Fourteenth Amendment require a state to prove each element of a charged offense, Jackson v. Virginia, 99 S.Ct. 2781 (1978);
- The Florida Supreme Court, in Tillman v. State, 934 So.2d 1263 (Fla. 2006) correcting the state law that was formerly misinterpreted by the lower appellate courts that sanctioned Petitioner's convictions; and
- Fiore v. White, 531 U.S. 225 (2001) holding that a state's highest court clarifying correctly what the state law is, must be applied to final cases,

this Petition for a Writ of Certiorari should be granted.

October 18, 2019  
Date

Respectfully Submitted,  
151 James E. Lang  
Petitioner pro se