No. 19-6594

IN THE SUPREME COURT OF THE UNITED STATES

DAVID INGRAHAM,

Petitioner,

V.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO

THE FLORIDA THIRD DISTRICT COURT OF APPEALS

PETITION FOR REHEARING

Order Denying Certiorari

Appendix A

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

January 13, 2020

Mr. David Ingraham
Prisoner ID 182610
500 Ike Steele Road
Wewahitchka, FL 32465

Re: David Ingraham
v. Florida
No. 19-6594

Dear Mr. Ingraham:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

No. 19-6594

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ON PETITION FOR WRIT OF CERTIORARI TO

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PETITION FOR REHEARING

Opinion of the Florida Third District Court of Appeals

Appendix B

Third District Court of Appeal

State of Florida

Opinion filed July 24, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-2460
Lower Tribunal Nos. 89-12383C & 89-21846

David Ingraham,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Martin Zilber, Judge.

Carlos J. Martinez, Public Defender, and Jonathan Greenberg, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Linda Katz, Assistant Attorney General, for appellee.

Before EMAS, C.J., and LOGUE and HENDON, JJ.

PER CURIAM.

with-parole sentence for first-degree murder violated Miller[3] and Graham;[4] and 2) his aggregate sentence of sixty years in prison for the non-homicide offenses (two consecutive thirty-year sentences on Counts II and III), to be served at the conclusion of his life-with-parole sentence on Count I, is unconstitutional and contrary to the Florida Supreme Court's decisions in Henry[5] and Kelsey.[6]

The trial court denied Ingraham's first claim, and we affirm. See Franklin v. State, 258 So. 3d 1239 (Fla. 2018); State v. Michel, 257 So. 3d 3 (Fla. 2018).

However, the trial court issued no ruling on Ingraham's claim that the aggregate sixty-year sentence, to be served at the conclusion of his life-with-parole sentence on Count I, is unconstitutional and contrary to Henry and Kelsey. Although we have the discretion to address this matter in the first instance, we decline to do so, and instead remand this cause for the trial court to conduct any further proceedings as may be appropriate, to make a determination on Ingraham's second claim, and to render an order accordingly.

Affirmed in part, remanded in part.

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[3] Miller v. Alabama, 567 U.S. 460 (2012).
[4] Graham v. Florida, 560 U.S. 48 (2010).
[5] Henry v. State, 175 So. 3d 675 (Fla. 2015).
[6] Kelsey v. State, 206 So. 3d 5 (Fla. 2016).

No. 19-6594

IN THE SUPREME COURT OF THE UNITED STATES

DAVID INGRAHAM,

Petitioner,

V.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO

THE FLORIDA THIRD DISTRICT COURT OF APPEALS

PETITION FOR REHEARING

Motion for Leave To Amend &

Accompanying Petition For Certiorari

Appendix C

No. _____
(Not yet assigned)

IN THE

SUPREME COURT OF THE UNITED STATES

DAVID INGRAHAM, PETITIONER

Vs.

STATE OF FLORIDA, RESPONDENT.

MOTION FOR LEAVE TO AMEND PETITION FOR WRIT OF CERTIORARI AND ACCOMPANYING AMENDED PETITION

(To the Honorable Justice Clarence Thomas)

DAVID INGRAHAM #182610 , Pro se
Gulf Correctional Inst. – Main Unit
500 Ike Steele Rd.
Wewahitchka, Florida 32465

MOTION FOR LEAVE TO AMEND

COMES NOW, the Petitioner, David Ingraham *pro se*, and hereby respectfully moves the Court to allow him to file with this Court an amended Petition For Writ Certiorari. In support hereof the following is shown:

1. Petitioner on or about September 5th, 2019, filed with this Court, his initial Petition for Writ of Certiorari. The Petition was received by this court on September 12th, 2019, but was returned for not containing a complete copy of the lower court's order.

2. As instructed by the Clerk, Petitioner corrected the defect and resubmitted his Petitioner on September 26th, 2019.

3. The instant request seeking leave to amend his petition is filed within the (90) day jurisdictional time frame for filing his Initial Petition, and is therefore, not designed for the purpose of delay.

4. In his Amended Petition, Petitioner wishes to present an additional question and argument that concerns a substantial ground. Namely, in summation, the lower court's decision is based upon nothing more than a change of membership of the court and therefore, violates the constitution and integrity of the judicial branch.

5. Petitioner submits this motion is filed in good faith and not for any improper purpose.

Because the State has filed no responsive pleading, the State will suffer no prejudice should leave be granted Petitioner to amend his petition.

WHEREFORE, Petitioner herewith submits his amended petition, and respectfully requests the court to grant him leave to file the said petition with this court.

Respectfully Submitted,

David Ingraham # 182610

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Office of the Attorney General, PL-01, The Capitol, Tallahassee, Fl., 32399, by handing said document to a prison official for mailing by pre-paid first class U.S. Mail.

On this 18th, day of October, 2019.

/s/

David Ingraham #182610
Gulf Correctional Institution\Main
500 Ike Steele Road
Wewahitchka, Florida 32465

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

DAVID INGRAHAM, PETITION

Vs.

STATE OF FLORIDA, RESPONDENT.

PROOF OF SERVICE

I David Ingraham , do swear or declare that on this date ~~September~~ October 17th 2019, as required by Supreme Court Rule 29 I have served the enclosed Amended Petition for A Writ Of Certiorari on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United State mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The name and address of those served are as follows:

Florida Attorney General: Ashley Moody, PL-01 The Capitol, Tallahassee, Florida, 32399-0001

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

Executed on October 18th, 2019.

/s/ David Ingraham

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

DAVID INGRAHAM, PETITIONER

Vs.

STATE OF FLORIDA, RESPONDENT.

On Petition For Writ of Certiorari to

The Florida Third District Court Of Appeal

(Amended)

PETITION FOR WRIT OF CERTIORARI

DAVID INGRAHAM #182610 , Pro se
Gulf Correctional Inst. – Main Unit
500 Ike Steele Rd.
Wewahitchka, Florida 32465

QUESTIONS PRESENTED

(1). Does the decision of the Florida Supreme Court in overturning its previous decision deciding a Federal Constitutional question, violate the principals of due process and judicial integrity where it is obvious that said decision in based upon nothing more than a change in membership of the court and the belief that the previous decision was wrongly decided?

(2). Does the decision of this Court in *Virginia v. LeBlanc*, 37 S.Ct. 1726 (2017), clarify that the Florida Supreme Court misapplied United States Supreme Court precedent in previously concluding Florida's parole system, as applied to juvenile offenders, violated the Eight Amendment. ?

(3) Does the Florida Supreme Court's reliance upon this Court's holding in *LeBlanc* permit the court to properly reconsider and settle, in accords with constitutional fairness and the principles of Stare Decisis, the issue of whether Florida's parole system violates petitioner's Eight Amendment right?

LIST OF PARTIES

A list of all parties to the proceedings in the court whose judgment is the subject of this petition is as follows:

1. The State of Florida

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully pray that a writ of certiorari issue to review the judgment below.

OPINION BELOW

This case arises from the State Court.

The opinion of the highest State Court to review the merits appears at **Appendix A**, to the petition and has been designated for publication but is not yet reported.

The opinion of the State post-conviction court appears at **Appendix B**, to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was July 24th, 2019. A copy of that decision appears at (Appendix A). No rehearing was sought.

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

CONSTITUTIONAL PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment provides: "[N]or shall any state deprive any person of life liberty, or property without due process of law..."

STATEMENT OF THE CASE

Herein Petitioner relies upon the following facts to seek a clarification of this Court's holding in *LeBlanc* and summary reversal of the Florida Supreme Court's decisions in *State v. Michel*, 257 So.3d 3 (Fla. 2108); *Franklin v. State*, 258 So.3d 1239 (Fla. 2018), and ultimately, that of the Florida Third District Court of Appeals.

In Atwell v. State, 197 So.3d 1040 (2016), the Florida Supreme Court after conducting an in-depth analysis of Florida's parole system as applied to juvenile offenders found that it failed to comply with this Court's holding in *Graham*, *Miller* and *Montgomery*. The Court held: " We conclude that Florida's existing parole system, as set forth by statute, does not provide for individualized consideration of Atwell's juvenile status at the time of the murder, as required by *Miller*, that his sentence, which is virtually indistinguishable from a sentence of life without parole, is therefore unconstitutional." *Atwell*, 197 So.3d at 1041.

The opinion in *Atwell*, was written by Justice Pariente, with Justice LaBarga, C.J., Quince and Perry, J.J. concurring. The decision was decided by a majority of the Court. Speaking for the minority, Justice Polston wrote a dissenting opinion in which Justices Lewis and Canady, J.J. concurred.

On December 30th, 2016, eight months after the decision in *Atwell* was decided, Justice Perry reached his mandatory retirement age and had to voluntarily

resign his position on the Court. On December 16th, 2016, Justice Alan Lawson was appointed by former Governor Rick Scott to succeed the retiring Justice.

Internet data lists Justice Lawson, Lewis, Canady and Polston as conservative Justices thus, giving Polston a majority of the Court.

Approximately one (1) month after Justice Lawson's appointment, jurisdiction to hear a case involving an inter District conflict regarding the application of *Atwell,* was granted in the case of *Michel.*

In *Michel,* Justice Polston concluded, contrary to this Court's holding in *Virginia v. LeBlanc*, 137 S.Ct. 1726 (2017)..., that this court's decision, "***Clarified that the majority's holding in Atwell does not properly apply United State Supreme Court precedent.***" *Michel*, 257 So.3d at n.6... Justices Canady and Lawson concurred and Lewis concurred in the result. The same Justice that issued a dissenting opinion in the Court's previous decision in *Atwell*, issued the opinion for the Court's, new majority, in *Michel.*

Approximately four months later in the case of *Franklin*, the Court reiterated its holding in *Michel* with all four justices concurring in the opinion.

Ultimately, Petitioner's motion was denied by the State Post-Conviction Court and affirmed by the State Court of Appeals citing to *State v. Michel*, 257 So.3d 3 (Fla. 2018)and *Franklin v. State*, 258 So.3d 1239 (Fla. 2018).

Because Petitioner has long ago exhausted his State and Federal appeal remedies he has no other viable forum to seek review of the State Court decision in

this case. The time limitations of Federal § 2244, precludes federal habeas review of this claim in either the District or Circuit Court of Appeals.

REASONS FOR GRANTING THE PETITION

In light of the fact that there could be no debate amongst reasonable jurist that the decision of the Florida Supreme Court lacks justification and is objectively unreasonable, looking through the Constitutional lenses of due process and equal protection of the law, it is unreservedly clear that the only perceivable change that has occurred since *Atwell* is in the makeup of the Florida Supreme Court, and obviously the degree of the new majority's belief that the decision rendered in *Atwell* was wrongly decided.

Over a quarter-century ago Justice Stewart of the United States Supreme Court addressed this issue and held that:

> "A basic change in the law upon a ground no firmer than a change in our membership invites the popular misconception that this institution is little different from the two political branches of the Government. No misconception could do more lasting injury to this Court and to the system of law which it is our abiding mission to serve". See, Mitchell v W. T. Grant Co., 94 S Ct 1895 (1974) (Stewart, J., dissenting).[1]

[1] The Florida Supreme Court has followed this principal, See, N. Fla. Women's Health & Counseling Service v. State, 866 So.2d 612 (Fla. 2003), holding in relevant part: ("We agree that a basic change in Florida law at this point would constitute an unprincipled abrogation of the doctrine of stare decisis and would invite the popular misconception that this Court is subject to the same political influence as the two political branches of government. Nothing could do more lasting injury to the legitimacy of this Court as an institution. It is in issues such as the present--where popular sentiments run strong and conflicts deep--that stability in the law is paramount and that the doctrine of stare decisis applies perforce...")

His concern was that such decisions would cast a dark cloud over the integrity of the court's decision and erode public trust in the judicial branch.

Although the decision of the Florida Supreme Court affects only the lowest of our society and thus, may not invite the popular misconception envisioned by Justice Stewart, it is still nonetheless, a decision that is shockingly disturbing and beckons for constitutional scrutiny. Particularly, because no other fair-minded jurist examining this Court's express holding in *LeBlanc,* would reasonably conclude that this Court reached the merits of the underlying Eight Amendment claim, the evidence that the new majority of the Florida Supreme Court employed an intellectually dishonest analysis of this Court's holding and presented it as justification for reversal of a prior decision they believed was wrongly decided, is overwhelmingly convincing.

In other words, and the petitioner hopes this Honorable Court will not frown upon him for not being politically correct but, the Florida Supreme Court's interpretation of this Court's holding in *LeBlanc*, is nothing more than an ingeniously disguised act of judicial tyranny perpetrated to disregard the due process principles of stare desisis. This is clearly a gross miscarriage of justice that the lower State Court's are bound to follow and consequently, will create, if this Court does not intervene, an extreme malfunction in the State Court judicial system that will preclude Petitioner from ever having his constitutional claim adjudicated on the merits. And moreover, undoubtedly, will cast a dark cloud over the integrity of the judicial process.

While this case may be of minor interest on the national scale and involves unpopular people, the constitutional guarantees to the fair administration of Justice and equal protection of the law is not just tailored for the upstanding pillars of our society, it is for all, the rich, disadvantaged and yes, even the outcast.

Thus, petitioner prays that lady justice will hear his cry and extend the hand of justice to right the injustice that has occurred in this case.

The decision of the Florida Supreme Court is the type of decision this Court should summarily reverse, as it is one that is shockingly erroneous and if left uncorrected would be an injustice to the spirit of Constitutional fairness and the principles of Stare Decisis. And moreover, would unjustly revive the violation of Petitioner's Eight Amendment right and allow it to persist without redress, or assurance, that meet the standards of Constitutional fairness, that his rights are not being violated.

No Court, inadvertently or intentional, should be allowed to grossly misread a holding of this Court, apply it in a way that is both egregiously wrong and clearly contrary to the holding of this court , and continue its course uncorrected.

B. The decision below conflict with the decision of other State high courts.

Other court have acknowledge that *LeBlanc* speaks only to the limitations of federal habeas review, not to the merits of the Eight Amendment issue. In *People v. Contreras*, 411 P.3 445 (2018), the California Supreme Court reviewed lengthy sentences imposed on two juvenile offenders. While the case was pending before the court, the California legislature enacted an "elderly parole program." In addressing whether that program satisfies *Graham's* requirement that juvenile offenders be afforded a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation, the California Supreme Court discussed *LeBlanc* and concluded, "Like the high court in *LeBlanc*, we decline to resolve in this case whether the availability of an elderly parole hearing at age 60 for a juvenile non-homicide offender satisfies the Eight Amendment concerns set forth in *Graham*." *Contreras*, 411 P.3. at 461.

Likewise, the Court of Appeals of Maryland recognized that this court in LeBlanc did not rule on the merits of the underlying claim. See, Carter v. State, 192 A.3d 695, 706 n.9 (Md. 2018).

Florida appears to be the only State to have concluded that this Court reached an Eight Amendment decision on the merits in *LeBlac*. It is important that State Courts "follow both the letter and spirit of this Court's decision. Ramah Navajo Sch. Bd., Inc v. Bureau of Revenue of New Mexico, 458 U.S. 832, 846 (1982). Therefore, when this court states in an AEDPA case that it is not ruling on , or

expressing a view of the underlying federal claim, lower courts must respect that statement

CONCLUSION

The petition for writ of certiorari should be granted. The decision of the Third District Court of Appeals should be vacated and the case remanded with directions that the Supreme Court of Florida reconsider its decision in light of the narrow reach of the federal habeas decision in *LeBlanc.*

Respectfully Submitted

David Ingraham, *Pro se*

Date: 9-17-19