

19-6717

No. \_\_\_\_\_

Supreme Court, U.S.  
FILED

OCT 22 2019

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

JESS LEE GREEN — PETITIONER  
(Your Name)

VS.

STATE OF MISSISSIPPI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE STATE OF MISSISSIPPI  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jess Lee Green  
(Your Name)

#144704 / PO Box 1419  
(Address)

Leakesville, MS 39451-1419  
(City, State, Zip Code)

N/A  
(Phone Number)

**ORIGINAL** **ORIGIN**

QUESTION(S) PRESENTED

1. Is the right to due process at trial and/or during guilty plea process a fundamental constitutional right?

(i)

## 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

Appendix A Opinion of the MS Court of Appeals

Appendix B Motion for Rehearing

Appendix C Order Denying Rehearing

Appendix D Order of MS Supreme Court denying Certiorari

Appendix E Opinion of State Trial Court

Appendix F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>SCOTUS</u>	
Malloy v. Hogan, 378 US 1 (1964)	2
McDonald v. City of Chicago, Ill., 561 US 742 (2010)	2, 4
Palko v. Connecticut, 302 US 319 (1937)	2
<u>MS Supreme Court</u>	
Rowland v. State, 42 So. 3d 503 (Miss. 2010)	2, 4
<u>MS COA</u>	
Boyd v. State, 155 So. 3d 914 (Miss. Ct. App. 2015)	4.
STATUTES AND RULES	
Miss. Code Ann. § 9-4-3	1.
Miss. Code Ann. § 99-39-5	2.
Miss. Code Ann. § 99-39-23	2.
M.R.A.P. 17	passim
OTHER	
U.S. Constitution Amend. 5	0
U.S. Constitution Amend. 14	0
Mississippi Constitution Art. 3, Sec. 14	2

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 is unpublished.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 Mississippi Supreme Court court appears at Appendix D 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 August 14, 2019. A copy of that decision appears at Appendix E.

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

No person shall be deprived of life, liberty, or property without due process of law. U.S. Constitution, Amendment 5. No state shall deprive any person of life, liberty, or property without due process of law. U.S. Constitution, Amendment 14. Our state's constitution affirms this mandate. Mississippi Constitution, Article 3, Section 14.

In Mississippi there are several procedural bars that may apply to post-conviction litigation. See, e.g., Miss. Code Ann. §§ 99-39-5 and 99-39-23. However, this Court has ruled that "errors affecting fundamental constitutional rights are excepted from the procedural bars of the UPCCRA". Bowland v. State, 42 So. 3d 503, 506 (99) (Miss. 2010).

In Palik v. Connecticut, 302 US 319 (1937) the United States Supreme Court famously said that due process protects those rights that are at the very essence of a scheme of ordered liberty and essential to a fair and enlightened system of justice. Id., at 325. Any violation of due process is a violation of a fundamental right because the constitutional right to due process is itself a fundamental right. The Court abandoned the notion that the 14th Amendment applies to the states only a watered down, subjective version of the individual guarantees of the Bill of Rights, and stated that it is incongruous to apply different standards in a state court than in federal court. McDonald v. City of Chicago, Ill., 561 US 742, 765-66 (2010) (citing Malloy v. Hogan, 378 US 1, 10-11 (1964)).

The U.S. Constitution guarantees due process. The 14th Amendment requires this state to recognize the U.S. Constitution's guarantees ~ including due process ~ as fundamental protections. McDonald, 561 US, at 763-66.

Therefore, in Mississippi, claims affecting due process should be excepted from the UPCCRA's procedural bars. Bowland, 42 So. 3d, at 506 (99).

## STATEMENT OF THE CASE

In October 2016 Green filed a post-conviction collateral relief petition in the Circuit Court of Jackson County. Jess Green v. State of Mississippi, # 2016-00198 (1)(3) (underlying criminal case # 2007-11,198(1)).

Green claimed that his due process rights were violated when (a) the trial court failed to address self-evident psychological problems, (b) the trial court accepted Green's pleas absent any factual basis for the guilty pleas. C.P. 2-8. The Circuit Court summarily denied the petition and held that Green's claims were procedurally barred. C.P. 13-16.

Green timely appealed. The Court of Appeals held that the right to due process is not recognized as a 'fundamental' right in Mississippi, and therefore claims involving due process are not excepted from the procedural bars of the UPCCRA. Opinion below, at 4-5 (g) 12) (Appendix A). The Circuit Court's decision was affirmed February 19, 2019.

Green timely sought rehearing which was denied June 11, 2019. This Petition for a Writ of Certiorari timely follows.

## REASONS FOR GRANTING THE PETITION

The United States Supreme Court has made it abundantly clear that the rights contained in the Bill of Rights, which include the right to due process, are fundamental in nature and must be viewed as fundamental by the states. Mc Donald, *supra.*, at 763 - 66.

This Court has made it abundantly clear that errors affecting fundamental rights are excepted from the UPCCRA's procedural bars. Rowland, *supra.*, at 506 (g) 9).

Nevertheless, the Court of Appeals is clear that the only rights found to be fundamental in Mississippi are double jeopardy, an illegal sentence, denial of due process at sentencing, and ex post facto claims. Boyd v. State, 155 So. 3d 914, 918 (Miss. Ct. App. 2015). The Court of Appeals affirmed in this instant case that due process rights are not deemed fundamental in this state. Opinion below, at 4-5 (g) 12) (Appendix A).

To date no court in this state has explained exactly how or why a violation of due process in sentencing is a 'fundamental rights violation' while a violation of due process at trial or in the plea process is not a 'fundamental rights violation'. This state's case law literally states that a person's right to due process in sentencing is 'fundamental', but a person's right to due process in the plea process or at trial is not.

In UPCCRA proceedings, procedural bars cannot be applied to claims involving a violation of due process in sentencing; but claims involving due process violations in the plea or trial process are subject to those same procedural bars.

This is an issue of sufficient significance to warrant this Court's review.

In the State of Mississippi, due process during the trial or plea phase is NOT considered a fundamental right.

This Court should grant Certiorari to clarify that due process is a fundamental constitutional right.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

K. less Green

Date: October 22, 2019