

No. TO BE ASSIGNED

19-6806

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Dade C.J.

IN THE

SUPREME COURT OF THE UNITED STATES

ANTHONY JEROME STOKES

(Your Name)

PETITIONER

vs.

STATE OF FLORIDA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH DISTRICT COURT OF APPEAL (STATE OF FLORIDA)

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANTHONY JEROME STOKES

(Your Name)

DADE CORRECTIONAL INSTITUTION
1900 S.W. 377TH STREET

(Address)

FLORIDA CITY, FLORIDA 33034

(City, State, Zip Code)

N/A (UNKNOWN)

(Phone Number)

ORIGINAL

FILED

NOV 12 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

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NOV 19 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

I. **WHETHER**, THE DECISION OF THE APPELLANT COURT(S) IS EXPRESSLY AND DIRECT CONFLICT WITH STATE V. GRAY, 435 So.2d 816 (Fla. 1983) **ON THE** ISSUE OF WHETHER AN "INFORMATION (FATAALLY DEFECTIVE)", WHICH WHOLLY OMITTS AN ESSENTIAL ELEMENT(S) MUST BE RAISED ON DIRECT APPEAL, OR MAY BE RAISED AT ANY TIME - BEFORE TRIAL, AFTER TRIAL ON APPEAL, OR BY **HABEAS CORPUS**.

II. **WHETHER** A CONVICTION ON A CHARGE (ESSENTIAL ELEMENT) NOT CHARGED IN THE **INFORMATION** IS A DENIAL OF "DUE PROCESS".

III. **WHETHER** DOUBLE JEOPARDY CLAUSE PROHIBITS FURTHER PROSECUTION ON BURGLARY CHARGE WHERE JEOPARDY HAD ATTACHED, AND JUDGE RULED EVIDENCE INSUFFICIENT TO PROPERLY CHARGE (SPECIFIC INTENT) UNDERLYING FELONY AGGRAVATED BATTERY AND GRANTED ACQUITTAL.
SEE: GREENE V. MASSIE, 437 U.S. 19, 98 S. CT. 2151

IV. **WHETHER** THE APPELLATE COURT AND THE POSTCONVICTION COURT(S) HAS APPARENTLY OVERLOOKED THE FUNDAMENTALLY DEFECTIVE INFORMATION AND RESULTING CONVICTION AND SENTENCE ... RELIEF SHOULD HAVE BEEN GRANTED, WHEN PETITIONER FIRST RAISED ISSUE ON DIRECT APPEAL ... "UNCOMMON AND EXTRAORDINARY CIRCUMSTANCE" CONSTITUTING MANIFEST INJUSTICE.

V. **WHETHER** MID-TRIAL "MODIFICATION OF ESSENTIAL ELEMENT(S)" IS PER SE, 5TH AMENDMENT, REVERSIBLE ERROR.

QUESTION(S) PRESENTED

VI. WHETHER THE UNDERLYING FELONY [IS] PART OF THE CRIME CHARGED[,] WITHOUT THE UNDERLYING FELONY THE CHARGE [CAN] NOT STAND.

VII. WHETHER THE ESSENTIAL REQUIREMENT OF LAW AFFORDED THE DEFENDANT A CHANCE TO REPLY TO THE STATE'S RESPONSE ... INSTEAD OF THE COURT ISSUING IT'S DENIAL, ONE DAY AFTER STATE'S RESPONSE.

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:

RELATED CASES

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*SUPPLIED ON DEMAND (CASES)

STATUTES AND RULES

Fla. Chapter 79

810.02 (1)

810.02 (2) B

810.07

F.S. 784.045

784.021

OTHER

TAKE JUDICIAL NOTICE: CASE NO. 4D99-3042; DIRECT APPEAL (MOTIONS)
"INFORMATION SHEET" "JURY INSTRUCTIONS"
"TRANSCRIPTS"

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 _____ 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 SEVENTEENTH JUDICIAL CIRCUIT COURT/STATE OF FLA court 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 _____.

☐ 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 JUNE 20, 2019.
A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: AUGUST 20, 2019, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

A. DOUBLE JEOPARDY ... U.S.C.A. CONST. AMEND 5

B. DUE PROCESS ... U.S.C.A. CONST. AMEND ~~6~~, 14

C. EQUAL PROTECTION ... U.S.C.A. CONST. AMEND 4
" OF THE LAW "

STATEMENT OF THE CASE

1. ANTHONY JEROME ~~STOKES~~ ~~STOKES~~ WAS ARRESTED AND SUBSEQUENTLY CHARGED BY INFORMATION OF COUNT I ARMED BURGLARY OF A CONVEYANCE, AND COUNT II, AGGRAVATED BATTERY. F.S. 810.02(1), 810.02(2)B;

2. AFTER THE STATE RESTED ITS CASE, AND DEFENDANT'S OBJECTIONS, THE TRIAL COURT REDUCED THE CHARGE OF AGGRAVATED BATTERY TO AGGRAVATED ASSAULT.

3. STOKES WAS CONVICTED BY A JURY ON JULY 19, 1999, ON BOTH COUNTS; COUNT I-ARMED BURGLARY OF A CONVEYANCE, AND COUNT II-AGGRAVATED ASSAULT.

4. THE CASE WAS PRESIDED OVER BY THE HONORABLE JAMES I. COHN, CIRCUIT COURT JUDGE.

5. THE STATE WAS REPRESENTED BY MICHAEL J. SATZ, ESQ.

6. STOKES WAS REPRESENTED BY ALAN N. SCHREIBER, ESQ. AND BRIAN GERARD REIDY, ESQ.

7. ON AUGUST 20, 1999, STOKES MOTION FOR NEW TRIAL WAS DENIED, AND STOKES WAS SENTENCED BY THE HON. JAMES I. COHN, CONCURRENTLY ON COUNT I, ARMED BURGLARY TO LIFE IN PRISON AS A HABITUAL OFFENDER, AND ON COUNT II, AGGRAVATED ASSAULT TO 10 YEARS IN PRISON AS A HABITUAL OFFENDER.

8. STOKES APPEALED THE JUDGMENT AND SENTENCE TO THE 4TH DCA, APPELLATE CASE NUMBER 4099-3042. ON DECEMBER 13, 2000, THE FOURTH DCA AFFIRMED

STATEMENT OF THE CASE (CONT'D) Pg. 2

STOKES' CONVICTION AND SENTENCE ON COUNT 1, ARMED BURGLARY, BUT REVERSED STOKES CONVICTION ON COUNT II AGGRAVATED ASSAULT, A CHARGE WHICH HAD BEEN REDUCED FROM AGGRAVATED BATTERY BY THE TRIAL COURT OVER STOKES OBJECTION DURING TRIAL. THE APPELLATE COURT CONCLUDED AGGRAVATED ASSAULT IS NOT A LESSER INCLUDED OFFENSE OF AGGRAVATED BATTERY, AND THE ELEMENTS WEREN'T ALLEGED IN THE INFORMATION. A MANDATE WAS ISSUED ON JANUARY 26, 2001 AND STOKES CONVICTION FOR COUNT 1, ARMED BURGLARY BECAME FINAL ON THAT DATE. STOKES V. STATE, 773 SO.2d 1239 (FLA. 4TH DCA 2000), REHEARING DENIED.

9. ON FEBRUARY 14TH, 2001, THE TRIAL COURT VACATED THE JUDGMENT AND SENTENCE ON COUNT II ONLY.

10. STOKES FILED HIS FIRST RULE 3.850 MOTION FOR POST-CONVICTION RELIEF AND MEMORANDUM OF LAW ON AUGUST 3RD, 2001, CLAIMING, INTER ALIA, AS IN THE INSTANT PETITION, THAT THE "TRIAL COURT COMMITTED FUNDAMENTAL ERROR IN IMPROPERLY INSTRUCTING THE JURY ON A THEORY NOT CHARGED" AND THAT THE TRIAL COURT ERRED WHEN THE "JUDGE ORALLY AMENDED THE INFORMATION".

11. STOKES POST-CONVICTION MOTION WAS DENIED BY THE TRIAL COURT ON APRIL 10, 2002. STOKES APPEALED THE ORDER TO THE 4TH DCA... APPELLATE CASE NUMBER 4D02-2499. ON AUGUST 21, 2002, THE 4TH DCA AFFIRMED THE ORDER DENYING DEFENDANT'S RULE 3.850 MOTION, PER CURIAM AND ISSUED MANDATE ON OCTOBER 18, 2002.

12. IN A SUBSEQUENT POST-CONVICTION HEARING, DEFENDANT FILED A PETITION FOR WRIT OF HABEAS CORPUS IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF

STATEMENT OF THE CASE (CONT'D PAGE 3)

NOVEMBER 21, 2002, CLAIMING THAT THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR. STOKES PETITION FOR WRIT OF HABEAS CORPUS WAS DENIED ON OCTOBER 26TH 2004 BY THE FEDERAL COURT ... ON A MISTAKEN BELIEF THAT YOU COULD RELY ON A STATUTE, (EVEN IF IT'S NOT CHARGED IN THE INFORMATION. "Emphasis Supplied")

13. STOKES FILED HIS SECOND RULE 3.850 MOTION ON MARCH 29TH, 2005, WHICH WAS DENIED BY THE TRIAL COURT ON AUGUST 5TH, 2005. STOKES APPEALED TO THE 4TH DCA APPELLATE CASE NUMBER 4D05-3867. ON NOVEMBER 16, 2005, THE 4TH DCA AFFIRMED, PER CURIAM AND ISSUED ITS MANDATE ON JANUARY 27TH, 2006.

14. ~~Stokes~~ STOKES FILED HIS THIRD RULE 3.850 MOTION FOR POST-CONVICTION RELIEF ON AUGUST 16TH, 2006, ASSERTING THE CLAIMS RAISED IN THE INSTANT PETITION: INSUFFICIENT CHARGING INFORMATION. STOKES THIRD PETITION WAS DENIED BY THE TRIAL COURT ON DECEMBER 13TH, 2006 WHICH FOUND THE CLAIMS UNTIMELY AND PROCEDURALLY BARRED AS SUCCESSIVE.

15. STOKES WAS GRANTED A BELATED APPEAL: APPELLATE CASE NUMBER 4D07-1392, APPEAL ACKNOWLEDGED UNDER APPELLATE CASE NUMBER 4D07-2829. ON SEPTEMBER 12TH, 2007, THE 4TH DCA AFFIRMED THE ORDER DENYING THIRD PETITION, PER CURIAM, AND ISSUED ITS MANDATE ON OCTOBER 12TH, 2007.

16. ON APRIL 14TH, 2008 STOKES FILED A RULE 3.800 (a) MOTION TO CORRECT ILLEGAL SENTENCE, WHICH WAS DENIED BY THE TRIAL COURT ON APRIL 21ST, 2008.

STATEMENT OF THE CASE (CONTS 4th)

17. PETITIONER FILED A WRIT OF HABEAS CORPUS IN THE 11TH JUDICIAL CIRCUIT ... CASE NO. 08-23177 WHICH WAS DENIED.

18. STOKES APPEALED TO THE 3RD DCA, CASE NO. 3 D08-2109, WHICH WAS DENIED WITHOUT PREJUDICE FOR STOKES TO SEEK APPROPRIATE RELIEF IN THE 11TH JUDICIAL CIRCUIT, SEE ALSO 3 SO.3d 425.

19. STOKES FILED A PETITION FOR "WRIT OF HABEAS CORPUS" ON APRIL 22ND, 2009, WHICH WAS DENIED ON SEPTEMBER 29, 2009.

20. STOKES, (FAMILY AND FRIENDS) RETAINED COUNSEL TO FILE INSTANT PETITION "WRIT OF HABEAS CORPUS" BASED UPON MANIFEST INJUSTICE WHICH WAS FILED ON MARCH 19TH, 2018.

21. COURT ORDERED FOR STATE'S RESPONSE ON MARCH 20TH, 2018 ... RESPONSE ISSUED 9-4-2018, TRIAL COURT DENIED ON 9-5-2018.

22. PETITIONER FILED TIMELY NOTICE OF APPEAL, OCTOBER 1, 2018. ACKNOWLEDGEMENT OF NEW CASE 4D18-2947, ENTERED 10-4-2018.

23. FOURTH DCA DENIED ON JUNE 20TH, 2019 ... REHEARING WAS FILED ON JULY 2ND, 2019

24. REHEARING/EN BANC WAS DENIED ON AUGUST 20, 2019.

25. NOTICE TO INVOKE DISCRETIONARY REVIEW IN THE SUPREME COURT WAS FILED SEPT. 12TH, 2019.

26. FLA. SUPREME COURT, CASE NO. SC19-1564 DISMISSED, FOR LACK OF JURISDICTION, 9-17-2019. THIS APPEAL FOLLOWS:

REASONS FOR GRANTING THE PETITION

I. THE DECISION(S) OF THE LOWER TRIBUNAL(S) EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF OTHER APPELLATE DISTRICT COURTS AND DECISIONS OF THE (FLORIDA SUPREME COURT) IN STATE V. GRAY, 435 So. 2d 816 (Fla. 1983) ON A QUESTION OF LAW ... ON THE ISSUE OF WHETHER AN INFORMATION (DEFECTIVELY FILED) WHICH WHOLLY OMMITS AN ESSENTIAL ELEMENT MUST BE RAISED ON DIRECT APPEAL OR MAY IT BE RAISED AT ANY TIME.

II. PETITIONER'S CONSTITUTIONAL PROTECTION AGAINST DOUBLE JEOPARDY RIGHTS VIOLATED

III. IN ORDER TO PREVENT A MANIFEST INJUSTICE AND A DENIAL OF DUE PROCESS

IV. THE LOWER COURT(S) DECISION(S) HAVE SO FAR DEPARTED FROM THE THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS (DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW)

V. MID-TRIAL CHANGE OF ESSENTIAL ELEMENTS DURING TRIAL, SURELY PREJUDICIAL ... BY JUDGE PER REVERSIBLE, 5TH AMENDMENT RIGHT

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Anthony Jerome Stokes #645416

Date: NOVEMBER 12th, 2019