

19-6957

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

VENISE METAYER - PETITIONER

VS

MARK INCH, SECRETARY, FLORIDA

DEPARTMENT OF CORRECTIONS - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI

THE THIRD DISTRICT COURT OF APPEALS OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

Supreme Court
OCT 21 1985
OFFICE OF

Venise Metayer, DC# 163985  
Homestead Correctional Institution  
19000 S.W. 377<sup>th</sup> Street, Suite 200  
Florida City, FL 33034

QUESTION PRESENTED

- I. DID THE TRIAL/LOWER COURT CREATE A MANIFEST INJUSTICE WHEN IT ALLOWED THE PETITIONER TO PLEA TO CHARGES THAT VIOLATED DOUBLE JEOPARDY LAWS, WHEN THE TRIAL COURT FAILED IN ITS MINISTERIAL DUTY TO ENSURE THAT THE PETITIONER RECEIVED A FAIR AND IMPARTIAL SENTENCING HEARING AND WHEN THE TRIAL COURT FAILED TO INCLUDE IN THE PETITIONER'S PLEA AGREEMENT; VIOLATING THE PETITIONER'S FIFTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION?

## LIST OF PARTIES

- ☒ [X] All parties appear in the caption of the case on the 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 petitioner is as follows:

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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.

OPINION BELOW

☐ For cases from Federal Courts

The opinion of the United States Court of Appeals  
appear 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☐ is unpublished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 of appears at  
Appendix\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is  
not yet reported; or,

☐ unpublished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

opinions below, cont.

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but  
is not yet reported; or,

☒ is unpublished

The opinion of the Third District Court of Appeals 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☒ is unpublished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 of 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 hearing appears at  
Appendix \_\_\_\_\_

☐ An extension of time to file the Petition for  
Writ of Certiorari was granted to and  
including \_\_\_\_\_ on \_\_\_\_\_ in

Jurisdiction, Cont.

Application no.       A      

The Jurisdiction of this Court is invoked under

28 U.S.C. § 1254 (1)

☒ [X] For Cases from State Courts:

The date which the highest State Court decided my  
case was July 24, 2019.

A copy of the decision appears at Appendix A.

☐ [ ] No petition for rehearing was timely filed in my case.

☐ [ ] A timely petition for rehearing was thereafter  
denied on the following date:                     , and  
Appendix    .

☐ [ ] An extension of time to file the petition for Writ  
of Certiorari was granted to and including

                     on                     

in Application No.       A      

The jurisdiction of this Court is invoked under

28 U.S.C. § 1257 (a).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTIONAL AMENDMENT FIVE - THE RIGHT TO A FAIR AND IMPARTIAL PROCEEDING AND PROTECTION AGAINST DOUBLE JEOPARDY ATTACHMENT.

U.S. CONSTITUTIONAL AMENDMENT FOURTEEN - THE RIGHT TO DUE PROCESS.

### STATEMENT OF THE CASE

On August 31, 2007, the Petitioner was arrested and subsequently charged by information on September 21, 2007, with the following charges:

Count I - First Degree Murder

Count II - Attempted Robbery - Weapon

Count III - Kidnapping with a weapon, firearm

Aggravated battery

Count IV - Grand Theft - 3<sup>rd</sup> Degree

On May 17, 2011, the Petitioner was formally indicted by a grand jury in case number F07-30464A on the preceding charges. (See Appendix B).

On May 26, 2011, the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida signed an order ratifying the negotiated plea agreement the Petitioner accepted in open court, following a plea colloquy, to the following charges: Second Degree Murder with a deadly weapon, kidnapping with a weapon or Aggravated Battery, Armed Robbery and Third Degree Grand Theft. The Petitioner was sentenced to three (2) 25-year concurrent sentences and one (1) five year sentence, running concurrent to all other counts.

The Petitioner was represented by Rae Sheam, Esq. who advised the Petitioner in open court that she would not be able to file any motions to challenge her sentence and judgment because she entered into a negotiated plea and therefore a direct appeal or Motion for Post Conviction Relief was never filed in the Petitioners cause.

However, on August 18, 2017, the Petitioner did file a Motion to Correct Illegal Sentence which was subsequently denied by the lower court.

The Petitioner appealed the lower court's decision of denial to the Third District Court of Appeal, but her appeal was subsequently affirmed and Mandate issued on April 16, 2018.

On April 22, 2019, the Petitioner filed a petition for Writ of Habeas Corpus which is the subject of this foregoing petition for Writ of Certiorari, which was later denied by the lower court, the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida.

On May 29, 2019, the Petitioner filed a timely notice of appeal, and shortly thereafter filed her appeal of the lower court's decision.

On July 24, 2019, the Third District Court of Appeals Per Curium affirmed the Petitioner's appeal. (Appendix A).

The Petitioner did not file a Motion for Rehearing in her cause. This Writ of Certiorari follows.

#### REASON FOR GRANTING THE PETITION

The Petitioner was denied her constitutional right to a fair and impartial proceeding, Due Process of Law and right to be free from Double Jeopardy attachment as this Honorable Court held in Blockburger v. United States, 284, 180, 76 L.Ed. 306 (1932). U.S. 299, 52 S.Ct. The State courts have failed to grant relief. This Honorable Court should issue a Writ of Certiorari where her question concerns matters in which the District Courts are in conflict and which are violations of the U.S. Constitution especially where Petitioners negotiated plea stemmed from an illegal sentence where double jeopardy attached rendering her connection and sentence a manifest injustice. The question is asserted as follows:

- I. DID THE TRIAL COURT CREATE A MANIFEST INJUSTICE WHEN IT ALLOWED THE PETITIONER TO PLEA TO CHARGES THAT VIOLATED DOUBLE JEOPARDY LAWS, WHEN THE TRIAL COURT FAILED IN ITS MINISTERIAL DUTY TO ENSURE THAT THE PETITIONER RECEIVED A FAIR AND IMPARTIAL SENTENCING HEARING AND WHEN THE TRIAL COURT FAILED TO INCLUDE IN THE PETITIONERS PLEA AGREEMENT THAT SHE COULD CHALLENGE AN ILLEGAL PLEA AGREEMENT; VIOLATING THE

PETITIONERS FIFTH AND FOURTEENTH AMENDMENT RIGHTS OF  
THE UNITED STATES CONSTITUTION?

On May 26, 2011, at a plea hearing held in the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida, Judge Leonard Glick presiding, the Petitioner entered into a negotiated plea agreement as a result of providing substantial assistance. The Petitioner pled to Second Degree Murder with a deadly weapon, Kidnapping with a weapon or Aggravated Battery; Armed Robbery with a weapon and Grand Theft in the Third Degree. The Petitioner was advised by her counsel, Rae Sheam that this plea was in her best interest.

However, the lower court had a duty to the Petitioner to recognize that the charges she entered a plea to were in violation of the Double Jeopardy Clause of the Fifth Amendment, which deprived the petitioner of a fair and impartial proceeding and Due Process of law under the Fourteenth Amendment.

Primarily, the Petitioner was charged with Armed Robbery with a weapon and Grand Theft Robbery with a weapon is a first degree felony whereas Grand Theft is a third felony. Upon review of the Indictment filed on May 17, 2011 (See Appendix B), the information provided for Count II - Armed Robbery with a weapon, States the following properly was alleged to have been appropriate: "...U.S. currency, electric equipment, personal

items, and various containers that were used to transport Ramondd Sylvester's property out of his residence..."

In Count IV - Grand Theft, the same indictment avers that, "...U.S. coin and currency, electric equipment, personal items, and various containers that the defendants used to transport Ramondd Sylvester's property out of his residence..." The Petitioner was allowed to accept a plea by the trial/lower court to two (2) charges that contained not only the same elements but also the same property in question and proves to be a multiple punishment for the same offense, which occurred during the same criminal transaction and therefore this conviction cannot stand.

In Stoddard v. Secretary, Dept. of Corrections, 600 Fed. Appx. 696 (11<sup>th</sup> Cir. 2015), the Eleventh Circuit U.S. Court of Appeal held that:

"In addition to protecting against multiple prosecutions for the same offense, the clause also prohibits multiple punishments for the same offense imposed in a single proceeding."

When reviewing multiple convictions for the same offense, one must observe the three - step test outlined in Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932): 1) the convictions were based on an act or acts which occurred within the same criminal transaction and/or episode; 2)

the convictions were not predicated on distinct acts and 3) the convictions possessed identical elements.

Robbery and Grand Theft possess the very same elements because both entail taking another's property and appropriating it. Moreover, grand theft is a lesser included offense of the greater offense of Armed Robbery and is therefore subsumed by the Armed Robbery charge. Therefore, the Supreme Court of Florida concludes in Pizzo v. State, 945 So.2d 1205 (Fla. 2006) that dual conviction are impermissible and improper under a double jeopardy context.

Florida law outlines in the Florida Statutes, Section 775.021(1)(4)(a) - Rules of Construction, that the trial/lower court has a duty to review the Petitioners record in a light that is most favorable to her, and that means reviewing the charged offenses to ensure the Petitioner was not pleading to an illegal charge or that protections against double jeopardy were not violated.

Secondly, the Petitioner was also charged with Kidnapping with a weapon or Aggravated Battery, enumerated as Count III on the Indictment. This charge within itself is illegal.

Kidnapping with a weapon is a life felony, whereas Aggravated Battery is a third degree felony however, on the

Petitioners judgment (See Appendix C) the Aggravated Battery is delineated as a life long felony. Moreover, the indictment does not demonstrate that the petitioner Struck the victim with a deadly weapon, which would thereby create the premise for an aggravated battery charge, but that, "...defendant's carried, displayed, used, threatened or attempted to use a weapon to wit; a metal object that appears to be a tire iron..." The elements of Aggravated Battery were not satisfied and grouping Aggravated Battery with Kidnapping with a weapon as one uniform charge, when both of these charges are separate and distinct, and differ in severity ranking, prove to be an illegal charge, and violated double jeopardy.

Because Aggravated Battery is included with Kidnapping with a deadly weapon as one uniform charge under Petitioner's Count III on her indictment, judgment and sentence, this would demonstrate that this charge is subsumed by the Petitioner's greater offense of Second Degree Murder and would therefore constitute a multiple punishment for the same offense and her conviction cannot stand.

It is not the legislature's intent to permit cumulative punishment if the crimes charged possess the same elements Mosley v. Jones, 2018 U.S. App. LEXIS 32481 (11<sup>th</sup> Cir. 2018); United States v. Norman, 628 Fed. Appx. 876 (5<sup>th</sup> Cir. 2015)



The lower court failed to review the Petitioner's plea agreement in the most favorable light and it failed in its ministerial duty to ensure it provided the Petitioner with a fair and impartial proceeding and this includes but is not limited to ensuring the Petitioner is not entering into an illegal plea agreement based upon illegal charges or a charge that violated double jeopardy provisions.

The Petitioner was also charged as a principle, Florida Statute 777.011, on every charged offense when in fact, her plea agreement was based on the substantial assistance she provided in her case, that her co-defendant, Steve Carlo Armand, actually committed these crimes, in her presence but not at her direction or coercion. Moreover, the Petitioner was repeatedly charged and, in essence "penalized" by attaching "deadly weapon" to each charge (except Grand Theft) however no weapon of any kind was ever recovered, nor was one used by the Petitioner, No DNA or fingerprint evidence connect the Petitioner to this crime and consequently, the victim succumbed as a result of asphyxiation and not as a result of a weapon being used. The use of a "deadly weapon" being attached to every charge increased the severity ranking of each charged (See Florida Statute 775.087) offense which more than likely determined what she would be offered by the state and/or how the Petitioner's plea agreement would be

structured, severely prejudicing the Petitioner, depriving her of a fair proceeding. Had the lower court adequately reviewed the plea agreement and determined that this plea agreement was illegal, there is a reasonable probability that Petitioner would have received a lesser sentence, or even proceed to trial.

Finally, the Petitioner was advised in Number 21 of her plea agreement (See Appendix D) that she could not file any post conviction or reduction of sentence motions to set aside her guilty plea, or file a motion to seal and expunge. However, the plea agreement failed to state that did not apply to a motion to correct an illegal sentence as a Petitioner cannot plea to an illegal sentence. Trial Courts are not permitted to impose an illegal sentence, even pursuant to a negotiated plea agreement and this should have been properly included in the plea agreements instead of giving the inference the Petitioner's judgment and sentence was final and could not be challenged, as the entrance of a plea agreement does not Wave all of the Petitioners Constitutional rights or her right to challenge an illegal sentence<sup>1</sup>.

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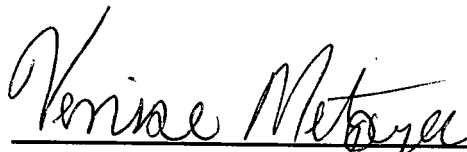
<sup>1</sup> The Petitioner never filed a direct appeal or post conviction in her case.

The Lower court failed in its ministerial duty to ensure the Petitioner was properly advised by counsel in open court, on record at plea colloquy and in the plea agreement Petitioner signed and agreed to. The Petitioner's right to Due Process under the Fourteenth Amendment was violated and this fundamental error reached down to the very validity of the Petitioner's conviction and warrants that her entire sentence is vacated and that a new proceeding is held. The Petitioner has been denied her Fifth and Fourteenth Amendment rights and a Writ should be issued.

#### CONCLUSION

This Petition for Writ of Certiorari should be granted as the Petitioner's claims are of public importance and involve a manifest injustice which deprived her of specific Constitutional rights.

Respectfully Submitted

A handwritten signature in cursive script, reading "Venise Metayer", written over a horizontal line.

Venise Metayer, DC# 163985

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IN THE SUPREME  
COURT OF THE UNITED STATES

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Venise Metayer - Petitioner

vs.

Mark Inch, Secretary, Florida  
Department of Corrections - Respondent

PROOF OF SERVICE

I, VENISE METAYER, DC#163985, do swear or declare that on this date, October 21, 2019, as required by Supreme Court Rule 29, I have served the enclosed Motion For Leave to Proceed Informa Pauperis and Petition for Writ of Certiorari on each party to the above proceeding or that part's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage paid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

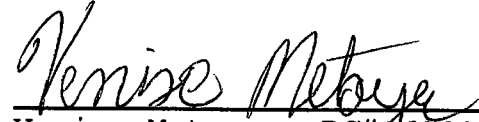
The Supreme Court of the United States  
One First Street, N.E.  
Washington, DC 20543

(And to)

Attorney General's Office  
1 S.E. 3<sup>rd</sup> Ave., Ste 900  
Miami, FL 33131-1706

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

Executed on this 21 day of October, 2019

  
\_\_\_\_\_  
Venise Metayer, DC#063985