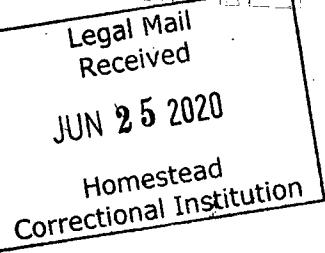


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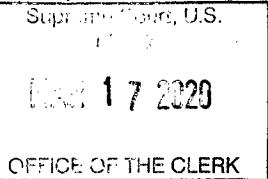
**Venise Metayer,
Petitioner,**

v.

Case No. : 19-6957



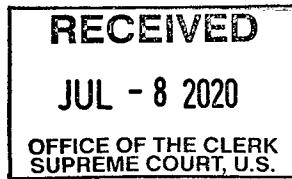
V.M.



**Mark Inch, Secretary,
Florida Department of Corrections,
Respondent.**

MOTION FOR REHEARING

COME NOW, the Petitioner, Venise Metayer, pro se, hereby files this Motion for Rehearing pursuant to the Supreme Court Rule 44 following an order rendered by this Honorable Court on February 24, 2020; denying her Petition for Writ of Certiorari. The Petitioner avers that she raises grounds of intervening circumstances of a substantial or controlling effect. The Petitioner presents her claims in good faith and not for delay or vexation. The Petitioner submits as follows:



The Petitioner raises viable claims of substantial violations to her Fifth Amendment right to be free from receiving multiple

punishments, "...punishing twice or attempting a second time to punish criminally for the same offense." Witt v. United States, 515 U.S. 389, 396, 132 L.Ed. 2d 351, 115 S.Ct. 2199 (1995).

Moreover, this honorable Court held in United States v. Usery, 135 l.Ed. 2d 549, 518 U.S. 267, 116 S.Ct. 2135 (1996)

that:

Fifth Amendment serves the function of preventing both successive punishments and successive prosecutions; the protection against multiple punishments prohibits the government from punishing twice or attempting a second time "The Double Jeopardy Clause of the Federal Constitution, to punish criminally for the same offense."

In the instant case, on May 26, 2011 at a plea hearing held in the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida, the Petitioner entered into a negotiated plea agreement to the following charges:

**Second Degree Murder with a deadly weapon
Kidnapping with a weapon or Aggravated Battery
Armed Robbery with a weapon
Grand Theft in the third degree**

This plea was negotiated after the Petitioner provided substantial assistance to the State. This plea was negotiated at the direction of the Petitioner's defense attorney to her that this negotiated plea was in her best interest. However, the lower court, the state not the defense attorney recognized that

the Petitioner was receiving multiple punishments for the same offense, a violation of Petitioner's Fifth Amendment right protecting her against double jeopardy, rendering her sentence illegal; thus depriving her of a fair and impartial proceeding.

It is abundantly clear that the Petitioner's Armed Robbery with a weapon offense, a first degree felon, and Grand Theft in the third degree offense, shared the same elements and substance as is evidenced by the indictment presented by the grand jury of the Eleventh Judicial Circuit, Miami-Dade County (See Exhibit "B" of Petitioner's Petition for Writ of Certiorari- see attached).

"Robbery with a weapon...U.S currency, electric equipment, personal items, and various containers that were used to transport Ramundd Sylvester's property out of his residence..."

"Grand Theft...U.S. coin or currency, electric equipment, personal items, and various containers that the defendants used to transport Ramundd Sylvester's property out of his residence..."

These two (2) separate charges named the same property appropriated, proving that the Petitioner incurred multiple punishments for the offense in a single criminal transaction and meets the Blackburger's standard.

As Grand Theft, a third degree felony and Robbery with a weapon, a first degree felony, contain the very same elements; the taking and appropriating one's property unlawfully, the lesser included offense of Grand Theft is subsumed by the greater offense of Robbery. Florida State law prohibits dual convictions and dual convictions are improper under as double jeopardy lense.

Further, this Honorable Court, The Supreme Court of the United States held in **Rutledge v. United States, 517 U.S. 292, 134 L.Ed. 2d 419, 116 S.Ct. 1241 (1996)** that according to the **Federal Constitution, "...the United States Supreme Court will presume that where two Statutory provisions proscribe the same offense, a legislature does not intend to impose two punishments for that offense."**

The Petitioner's negotiated plea and subsequent Conviction for Robbery with a weapon and Grand Theft considerably and substantially violated the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution and the convictions that occurred as a result cannot stand.

The Petitioner was also charged with Kidnapping with a weapon (Life felony) or Aggravated Battery (third degree felony) enumerated as Court III on the Petitioner's Indictment. On the Petitioner's judgment (Petitioner's Appendix C- Petition for

Writ of Certiorari- see attached), the Aggravated Battery was improperly classified as a life felony because its improper grouping with kidnapping with a weapon. Kidnapping with a weapon and Aggravated Battery share the same "threat" elements and "use of weapon" or "threat of use of a weapon" elements, however Aggravated Battery is a lesser charge. Therefore, the Kidnapping with a weapon charge alone satisfied the requisite elements and lesser charge is subsumed by the greater charge.

The lower court, the state and defense attorney failed to recognize that the Petitioners plea agreement was constructed with charges that resulted in cumulative punishment for offenses possessing the same elements, a double jeopardy violation. The Petitioner's right to a fair proceeding was substantially violated.

Florida law outlines in the Florida Statutes, Section 775.021 (1) (4) (a) - Rules of Construction, that the lower court has a duty to review the Petitioner's record on 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 protection against double jeopardy were not violated.

Moreover, each of the Petitioner's offenses except the Grand Theft charge indicated that a weapon was used in the

alleged commission of these crimes which increased the severity ranking of each offense and ultimately determined what the plea agreement she would be offered and how it would be structured/constructed by the state. However no weapon of any kind was ever recovered from the scene, nor did the Petitioner use a weapon, there was no DNA or finger prints evidence to support that the Petitioners committed the crime and consequently, the victim succumbed as a result of asphyxiation and not due to a weapon. This greatly prejudiced the Petitioner and the construction of this illegal plea agreement caused her Due Process rights under the Fourteenth Amendment to be violated.

Finally, the Petitioner was advised in Number 21 of her plea agreement 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 or expunge. However, the plea agreement failed to state that it did not apply to a motion to correct an illegal sentence. Trial/lower 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 agreement instead of giving the inference the Petitioner's judgment and sentence was final and could not be challenged, as the intent of a plea agreement does not waive all of the

Petitioner's constitutional rights to challenge an illegal sentence. The record will demonstrate that the Petitioner never filed a direct appeal or post conviction in her case.

In conclusion, the Petitioner has raised meritorious grounds of a substantial or controlling effect. Unequivocally demonstrating that her constitutional rights to protection against receiving multiple punishments for the same criminal episode (Double Jeopardy Clause, Fifth Amendment) were violated, which resulted in the Petitioner entering into an illegal negotiated plea agreement; a violation of her Due Process right under the Fourteenth Amendment as well.

WHEREFORE, the Petitioner requests this Honorable Court to grant her rehearing on the constitutional violation claims raised in her Petition for Writ of Certiorari and grant any and all relief this Honorable Court deems just and proper.

Respectfully Submitted,


Venise Metayer
Venise Metayer, DC # 163985

OATH CERTIFICATION

UNDER PENALTIES OF PERJURY, I, VENICE METAYER, hereby certify that this motion for rehearing contains only grounds which are limited to intervening circumstances of substantial or controlling effect. I also certify that this Motion for Rehearing is presented in good faith and not for delay, in accordance with Rules of the Supreme Court of the United States, Rule 44.

By signing this certification and motion, I certify that as a pro se litigant, I understand English, have read the foregoing motion, and understand its contents and the facts contained therein are true and correct.

Sworn to on this 25 day of June, 2020

Venise Metayer

**Venise Metayer, DC # 163985
Homestead Correctional Institution
19000 S.W. 377th Street, Suite 200
Florida City, Florida 33034**