

19-7176 ~~ORIGINATE~~
No.:

IN THE SUPREME COURT OF THE UNITED STATES

DAVID P. MORAN – Petitioner

v.

LETTER REC'D.

STATE OF FLORIDA – Respondent

ON A PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT
TALLAHASSEE, FLORIDA

PETITION FOR WRIT OF CERTIORARI

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Pro Se Litigant

QUESTIONS PRESENTED

1. Should recusal of a judge be allowed during the post conviction relief phase if the prejudice and bias of the trial judge is apparent on the face of the record from his abuse of discretion in the decisions he made during and before trial?

LIST OF PARTIES

Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399

Fifth District Court Of Appeals
300 South Beach Street
Daytona Beach, Florida 32114

Office of the Attorney General
444 Seabreeze Boulevard 5th Floor
Daytona Beach, Florida 32118

Orange County Circuit Court
Ninth Judicial Circuit
425 North Orange Avenue
Orlando, Florida 32801

Office of the State Attorney
Ninth Judicial Circuit
415 North Orange Avenue
Suite 200
Orlando, Florida 32801

RELATED CASES

*Moran v State, SC19-1204, Florida Supreme Court, Judgment Entered August 13th 2019.

*Moran v State, 5D19-1371, Fifth District Court of Appeals, Judgment Entered June 24th 2019.

*State v Moran, 16-CF-005177-A-OR, Orange County Circuit Court Ninth, Judgment Entered April 18th 2019.

TABLE OF CONTENTS

QUESTIONS PRESENTED	1
LIST OF PARTIES.....	II
RELATED CASES	II
TABLE OF CONTENTS.....	III
INDEX TO APPENDICES	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	0
JURISDICTION	1
CONSTITUTIONAL PROVISIONS	2
PRELIMINARY STATEMENT	3
STATEMENT OF FACTS.....	3
STATEMENT OF CASE.....	4
REASONS FOR GRANTING THE PETITION.....	8
CONCLUSION	8

INDEX TO APPENDICES

APPENDIX A Florida Supreme Court Dismisses All Writ's Jurisdictional Brief.

APPENDIX B Fifth District Court Of Appeal Denies Writ Of Prohibition And It's Addendum's And Amendment's

APPENDIX C Fifth District Court Of Appeal Denies Motion For Clarification Of The Writ Of Prohibition

APPENDIX D Orange County Circuit Court Denies Motion To Disqualify Judge Carsten

APPENDIX E Orange County Circuit Court Grants Motion For Clarification Of The Motion To Disqualify Judge Carsten

TABLE OF AUTHORITIES

CASE LAW

Bundy v Ruth, 366 So. 2d. 440 (FSC 1978)	7
Suarez v Duggar 527 So. 2d. 190 (FSC 1988)).....	7
United States v Killough 848 F. 2d. 1523 (U. S. C. A. 11 th Cir. 1988)	8

RULES

Fla. R. Jud. Adm. 2.160(f)	7
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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.

OPINIONS BELOW

The opinion of the Florida Supreme Court appears at Appendix A to the petition and is unpublished. Because this case was dismissed by the Florida Supreme Court for lack of jurisdiction the decision of the last order of the Fifth District Court Of Appeal appears in appendix C to the petition and is unpublished.

JURISDICTION

The date on which the highest court decided my case was August 13, 2019. A copy of that decision appears at Appendix A.

A timely motion for rehearing was denied on July 31st 2019, and a copy of the order denying rehearing appears at Appendix C.

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

CONSTITUTIONAL PROVISIONS

	page
U. S. Constitution Amendment	6
Six	

In all criminal prosecutions, the accused shall enjoy a right to a speedy and public trial, by an impartial jury...and to have assistance of counsel for his defense.

U. S. Constitution Amendment	6, 9
Fourteen	

...nor shall any state deprive any person of life, liberty, or property, without due process of law...

PRELIMINARY STATEMENT

If this Honorable Court wishes to review the motion to disqualify judge that was submitted to the Orange County Circuit Court, it must proceed to the Orange County Clerk of Court website and open the docket entry from April 8th 2019. The defendant feels it is imperative for this Court to review these documents as they contain the full argument on this issue.

STATEMENT OF FACTS

TRIAL PROCEEDINGS

The following is a list of trial proceedings relevant to this writ. On April 25th 2017 a motion to suppress hearing was held before Judge Keith Carsten. On April 28th 2017 the motion to suppress was denied by Judge Keith Carsten. On July 24th 2017 a motion for reconsideration of the motion to suppress denial hearing was held before judge Keith Carsten. On July 24th 2017, the motion for reconsideration was denied by judge Keith Carsten. On July 24th 2017 to July 27th 2017 a trial was held before Judge Keith Carsten.

APPELLATE PROCEEDINGS

The following is a list of appellate proceedings relevant to this writ. On April 8th 2019 a motion to disqualify judge Keith Carsten was submitted to the Orange County Circuit Court. On April 18th, 2019 the motion to disqualify judge Keith Carsten was denied by Judge Gail Adams. On May 3rd 2019, a motion to for reconsideration and/or clarification of the reason for denial of the motion to disqualify judge Keith Carsten was submitted to the Orange County Circuit Court. On July 17th

2019 the motion for clarification was granted by judge Gail Adams. On May 14th 2019, a writ of prohibition was submitted to the Fifth District Court of Appeal. On May 24th 2019 an addendum to the writ of prohibition was submitted to the Fifth District Court of Appeal. On June 19th 2019 an amended writ of prohibition was submitted to the Fifth District Court of Appeal. On June 24th 2019 all three writs of prohibition were denied by the Fifth District Court of Appeal. On July 3rd 2019 a motion for clarification of the reason for denial of the writ of prohibition was submitted to the Fifth District Court of Appeal. On July 31st 2019 the motion for clarification was denied by the Fifth District Court of Appeal. On July 22nd 2019, an all writ's jurisdictional brief was submitted to the Florida Supreme Court. On August 13th 2019, the all writ's jurisdictional brief was dismissed due to lack of issuance of opinion by the Fifth District Court of Appeal.

STATEMENT OF CASE

On April 25th 2017 sufficient evidence was presented at the motion to suppress hearing to suggest the Defendant was not in the proper state of mind to make a knowing and voluntary waiver of his Miranda rights when two detectives came to interview him in the hospital on May 18th 2016. Judge Carsten abused his discretion by not properly suppressing the hospital interview. On July 24th 2017 newer overwhelming evidence was presented at the motion for reconsideration hearing to suggest the Defendant was not in his proper state of mind to make a knowing and voluntary waiver of his Miranda rights. Judge Carsten once again further abused his discretion by not properly suppressing the hospital interview. This incriminating

statement despite it not being true was used in trial heavily against the defendant thereby violating his U. S. Constitutional 6th Amendment right to a fair trial and his U. S. Constitutional 14th Amendment right to due process of law.

During trial the state attorney made an improper statement of the law in closing arguments that vitiated from the fairness of the trial. He made a statement that compelled the jury to find the Defendant guilty for another reason besides the state proved its case beyond a reasonable doubt. Judge Carsten abused his discretion by not granting the motion for mistrial thereby violating the Defendant's U. S. Constitutional 6th Amendment right to a fair trial and his U. S. Constitutional 14th Amendment right to due process of the law.

During trial Judge Carsten denied both judgment of acquittal's that were motioned for by Defendant's counsel. All of the evidence against the Defendant was speculative, circumstantial, and based on provable false evidence elicited by the state attorney. None of the elements needed for conviction were met including the element of intent on aggravated battery and attempted murder. Judge Carsten abused his discretion by not granting the judgment of acquittal thereby violating the Defendant's U. S. Constitutional 6th Amendment right to a fair trial and his U. S. Constitutional 14th Amendment right to due process of the law.

The Fifth District Court of Appeal should have at least denied the writ of prohibition with an opinion considering the Defendant adequately showed prejudice and bias by Judge Carsten towards him. Judge Adams clearly passed on the truth of the facts alleged in the motion to disqualify judge submitted on the Orange County

Circuit Court. At the very least the denial should have referenced these facts the Defendant alleged in the motion to disqualify with an adequate rebuttal by the Court as to how these wrong decisions by Judge Carsten did not prove bias and prejudice. "The judge has no authority to pass on the truth of the facts alleged in the motion or to make any other decision concerning the merits of the motion." (Bundy v Ruth, 366 So. 2d. 440 (FSC 1978)).

The motion the Defendant initially presented to the trial Court was more than sufficient on its face. The Defendant was correct in that he adequately showed Judge Carsten abused his discretion several times during and before trial. "If the motion is sufficient on its face, then the judge must immediately enter an order granting disqualification and proceed no further in the action." (Fla. R. Jud. Adm. 2.160(f))

In this case the Defendant has presented his reasons with a good faith belief that he cannot receive fair unbiased post conviction review from Judge Carsten as he through evidence of the face of the record has shown he did not receive a fair trial in violation of his U. S. Constitutional 6th Amendment right to a fair trial and his U. S. Constitutional 14th Amendment right to due process of law. "A party seeking to disqualify a judge need only show a well grounded fear that he will not receive a fair trial at the hands of the judge. It is not a question of how the judge feels, as much as it is a question of what feeling resides in a petitioner's mind and the basis for that feeling." (Suarez v Duggar 527 So. 2d. 190 (FSC 1988)).

Judge Carsten had an extrajudicial bias for the Winter Garden Police Department. FDLE agent Dave Hubbard had acquired a search warrant for the

Defendant's vehicle. In the search warrant he cited the potential to charge the police with "shooting into an occupied vehicle". Judge Carsten did everything in his power to ensure the Defendant came back with a guilty verdict so the state attorney office would not be able to file those charges against the officers of the Winter Garden Police Department. "A judge must disqualify himself if his impartiality might reasonably be questioned or if he has a personal bias or prejudice against a party. 28 U. S. C. §455. Usually, bias is sufficient to disqualify a judge if it stems from an extrajudicial source, except where such pervasive bias and prejudice is shown by other judicial conduct as would constitute bias against a party. A judge should be disqualified only if a reasonable person, apprised of all the facts and circumstances, would question the judge's impartiality." (United States v Killough 848 F. 2d. 1523 (U. S. C. A. 11th Cir. 1988))

The Defendant has only recently been granted pro se status when his appellate counsel's motion to withdraw as counsel was granted by the Fifth District Court of Appeal on February 19th 2019. It would have been impossible for the Defendant to put a motion to disqualify judge in ten days before trial. There is direct evidence on the face of the record of bias and prejudice by Judge Carsten towards the Defendant. Judge Adams in her granting of the motion for clarification cites the fact that Judge Carsten is no longer assigned to the Defendant's case as he is trying civil cases now. This fact does not excuse Judge Carsten from being able to be recused from the Defendant's case. The recusal of Judge Carsten should still be granted as a matter of record. Denial of the motion to disqualify and writ of prohibition is a continuing

violation of the defendant's U. S. Constitutional 14th Amendment right to due process as he could potentially use this in arguing issues of fundamental Court error.

REASONS FOR GRANTING THE PETITION

The goal of this review is not simply to recuse a single trial judge from the Defendant's case. There needs to be a provision put in for allowing recusal's of trial judges after trial and during post conviction proceedings. There should be a burden placed upon the defendant to prove on the face of the record that his trial judge is/was biased and prejudiced towards him. Upon an adequate showing of bias and prejudice by the judge towards the defendant he should be allowed to recuse his judge. This will allow the defendant to receive fair unbiased post conviction review. This will put more pressure on trial judge's to take great care in the decisions they make during and before trial to assure that the accused receives a fair trial.

CONCLUSION

The petition for writ of certiorari should be granted. This request is made in good faith. The petitioner swears the facts contained in this petition for writ of certiorari are true and correct.

Respectfully Submitted,



DAVID P. MORAN, DC# X97428
Pro Se Litigant

Date: September 24th, 2019