

19-7280
No.:

FILED

AUG 29 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID EVERETT JONES

Petitioner

PROVIDED TO
Century C.I.

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v.s.

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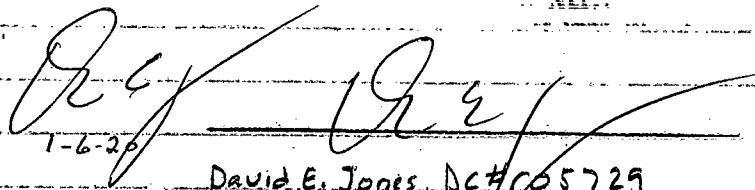
STATE OF FLORIDA

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE
ELEVENTH CIRCUIT COURT OF APPEALS

SECOND CORRECTED

PETITION FOR A WRIT OF CERTIORARI


1-6-20

David E. Jones, DC #05729

Petitioner, Pro Se

Century Correctional Institution

400 Tedder Road

Century, Florida 32535

QUESTIONS PRESENTED

1. Whether Jones' successful Fla. R. Crim. P. 3.801 motion created a new judgment, sufficient to restart his one-year Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") filing deadline, so as to make his Federal habeas petition timely.
2. Whether a Corrected/Amended Sentence providing additional credit for jail time results in a new sentence and judgment for the purposes of restarting the AEDPA's one-year limitations period, pursuant to Burton v. Stewart, 549 U.S. 147, 127 S.Ct. 793 (2007), and Ferreira v. FDPC, 494 F.3d 1286 (11th Cir. 2007).
3. Whether the Eleventh Circuit Court of Appeals reversibly erred in affirming the judgment of the U.S. District Court for the Middle District of Florida, Tampa Division, holding that Jones' successful Fla. R. Crim. P. 3.801 motion did not create a new judgment sufficient to restart his one-year AEDPA filing deadline, and denying Jones' Federal habeas petition as untimely.
4. Whether the U.S. District Court for the Middle District of Florida, Tampa Division, reversibly erred by denying Jones' Federal habeas petition as untimely.
5. Whether the constitutionality of a state statute, as applied resulting in the substantial denial of a constitutional protection, and potentially applicable to a similar Act of Congress, raises a question of manifest justice of such magnitude as to require/justify an exception to the one-year AEDPA limitations period.

CERTIFICATE OF INTERESTED PERSONS
CORPORATE DISCLOSURE STATEMENT

Anderson, _____, Judge, 11th Circuit Court of Appeals
Bendi, Pamela Jo, Former Attorney General of Florida
Corcoran-Daly, Erin, Asst. State Attorney, Fla. 5th Judicial Circuit
Hernandez-Covington, Virginia M., U.S. District Judge - M.D. Fla.
Herriden, Lisa D., Asst. State Attorney, Fla. 5th Judicial Circuit
Inch, Mark, Secretary, Florida Department of Corrections
Jones, Julie L., Former Secretary, Fla. Dep't of Corr.
Jordan, Adalberto, U.S. Circuit Judge, 11th Circuit Court of Appeals
King, Brad, State Attorney, Fla. 5th Judicial Circuit
Merritt, Daniel B., Sr., Circuit (Trial) Judge, Fla. 5th Judicial Circuit
Moody, Ashley, Attorney General of Florida
Pryor, Jill, Judge, 11th Circuit Court of Appeals
TjoFlat, _____, Judge, 11th Circuit Court of Appeals
Toner, Stephen E., Jr., Circuit Judge, Fla. 5th Judicial Circuit
Wall, Rebecca, Asst. Attorney General of Florida

Confidential Child Victim of Sexual Battery

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8:17-cv-932-T-33AAS

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- B-2 Order of Florida's Fifth Judicial Circuit Court for Hernando County, Florida, granting Jones' amended motion to correct sentence, case no. CF-2008-2300, with original attachments.
- B-3 Order of the U.S. Circuit Court of Appeals for the Eleventh Circuit, case no. 18-11583-B, granting Jones' motion for a certificate of appealability.
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the U.S. Circuit Court of Appeals for the Eleventh Circuit affirming the judgment of the U.S. District Court for the Middle District of Florida (Tampa Division) appears at Appendix A, and was not selected for publication in the Federal Reporter.

The judgment of the U.S. District Court for the Middle District of Florida (Tampa Division) denying the Petition for a Writ of Habeas Corpus (18 U.S.C. § 2254) as untimely, appears at Appendix B-1.

The Order of the Circuit Court of the Fifth Judicial Circuit for Hernando County, Florida, granting Jones' Amended Motion to Correct Sentence (Fla. R. Crim. P. 3.801), along with the Corrected/Amended Sentence, appears at Appendix B-2.

The Order of the U.S. Circuit Court of Appeals for the Eleventh Circuit granting Jones' Request for a Certificate of Appealability, appears at Appendix B-3.

The Order of the U.S. District Court for the Middle District of Florida (Tampa Division) denying Jones' Motion to Re-open the Case appears at Appendix C.

JURISDICTION

The jurisdiction of this Court to entertain this Cause arises From the timely submission of the initial Petition for a Writ of Certiorari on August 29, 2019, via the mail box rule (S.Ct. R. 29.2), which date is within the ninety (90) days From the entry of the decision of the Eleventh Circuit Court of Appeals, pursuant to S.Ct. R. 13, and the subsequent timely submission of the (First) Corrected Petition for a Writ of Certiorari on or before November 11, 2019, which date is within the sixty (60) days From the date of the letter of the Clerk of the Supreme Court requiring the submission of same, pursuant to S.Ct. R. 14.5, and the subsequent timely submission of the instant Second Corrected Petition for a Writ of Certiorari on or before January 14, 2020, which date is within the sixty days From the date of the letter of the Clerk of Supreme Court requiring submission hereof, pursuant to S.Ct. R. 14.5, to-wit:

The decision of the Eleventh Circuit Court of Appeals sought to be reviewed was rendered on May 31, 2019. A copy thereof appears at Appendix A.

The initial Petition was timely submitted, via the mail box rule (S.Ct. R. 29.2) on August 29, 2019, which date is clearly within the ninety day period prescribed by S.Ct. R. 13.1, and was received by the Clerk on September 6, 2019, as evidenced by the Clerk's letter requiring submission of the (First) Corrected Petition. A copy of said letter appears at Appendix F.

The (First) Corrected Petition and Corrected Combined Appendices were subsequently timely submitted, via the mail box rule, on November 6, 2019, which date is within the sixty day period prescribed by S.Ct. R. 14.5, and were received by the Clerk on November 14, 2019, as evidenced by the Clerk's letter requiring submission of the instant Second Corrected Petition. A copy of said letter appears at

Appendix G.

The instant Second Corrected Petition and Second Corrected Combined Appendices are timely Filed, pursuant to the mail box rule, where same have been submitted and/or post marked on or before January 14, 2020, which date is within the sixty day period prescribed by S.Ct.R. 14.5.

Therefore, this Honorable Court may exercise its discretionary jurisdiction pursuant to 28 U.S.C. §§ 1254(1), 1257(A), and/or 2102(c); S.Ct.R. 13.3 and/or 14.5.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

ARTICLE I, SECTION 9, Second Clause, provides:

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety, may require it;

AMENDMENT I provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IV provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT IX provides:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X provides:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XIV provides:

Section 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES

United States Code

18 U.S.C. § 2511(2)(a)(iii)(c) provides that:

It shall not be unlawful under this chapter for a person acting under the color of law to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

Florida Statutes

Section 934.03(2)(c) provides that:

It is lawful under ss. 934.03 - 934.09 for an investigative or law enforcement officer or a person acting under the direction of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.

STATEMENT OF THE CASE

The case below originated in the Circuit Court of the Fifth Judicial Circuit, in and for Hernando County, State of Florida, as Case No. 2008-CF-2300, State of Florida v. David Everett Jones.

Following the affirmation of Jones' state judgment of conviction and sentence on appeal, Jones successfully moved for additional Jail Time Credits under Fla. R. Crim. P. 3.801, resulting in the issuance of a corrected/amended sentence to include twenty-three (23) additional days of jail time credit. (Appx. B-2).

Subsequently, Jones brought a Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254, in the United States District Court, Middle District of Florida, in Case No. 8:17-cv-932-VMC-AAS. The petition was dismissed as untimely, the District Court holding that Jones' successful Fla. R. Crim. P. 3.801 motion did not result in a "new judgment" for the purposes of restarting the one-year limitations period applicable to the Antiterrorism and Effective Death Penalty Act of 1996. (Appx. B-1). Jones' Motion to Reopen the case was also denied. (Appx. B-3).

Jones applied for and was granted a Certificate of Appealability by the United States Circuit Court of Appeals for the Eleventh Circuit on the sole question of "Whether Jones' successful Fla. R. Crim. P. 3.801 motion created a new judgment, sufficient to restart his one-year Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") Filing deadline, so as to make his Federal habeas petition timely?" (Appx. B-3).

The Eleventh Circuit Court of Appeals affirmed the Middle District's aforesaid decision in a written opinion which was not selected for publication. (Appx. A).

REASONS FOR GRANTING THE WRIT

ARGUMENT

The particular facts and circumstances of the case below present this Honorable Court with an opportunity, to further enrich the body of the law as a whole where it involves one or more Questions of Constitutional dimension, not only as regarding the question of what constitutes a "corrected" or "amended" sentence for purposes of this Court's holding in Burton v. Stewart, 549 U.S. 147, 127 S.Ct. 793, 166 L.Ed.2d 628 (U.S. 2007), but also to clear the way, for important and broad reaching Questions of Constitutional dimension arising from Jones' underlying substantial claims to be considered on their merits, to wit:

1. Whether the State's actions in the case below, of recruiting Jones' ex-wife to entice Jones into making statements which could be construed as incriminating in order to record same, without Jones' knowledge or consent, for use as evidence against Jones in a criminal case, pursuant to § 934.03(2)(c), Florida Statutes, AFTER Jones had invoked his Constitutional Right to Remain Silent and to have the Assistance of Counsel, rendered the application of § 934.03(2)(c), Fla. Stat., under the facts of this case, unconstitutional as violative of Jones' Federal Constitutional Rights under Amendments Four, Five, Six, Nine, and/or Fourteen, United States Constitution; and therefore,

Whether Title 18 U.S.C. § 2511(2)(a)(iii)(c), would be rendered unconstitutional if applied/utilized under similar circumstances as aforesaid, where 18 U.S.C. § 2511(2)(a)(iii)(c) is worded nearly identically, to § 934.03(2)(c), Fla. Stat. (same likely, having been derived or copied from 18 U.S.C. § 2511(2)(a)(iii)(c)); and therefore,

Whether similar or identical provisions of the laws of other states would be rendered unconstitutional where applied/ utilized under similar circumstances as aforesaid;

2. Whether an attorney may be held to have been ineffective by disregarding a defendant's decision to testify in his own behalf and/or by hampering a defendant's ability to effectively do so, by failing to use all reasonable means to prepare said defendant to give testimony, i.e., by going over the prospective testimony; practicing or rehearsing the prospective testimony; preparing the defendant to face cross-examination; advising defendant on courtroom etiquette, posture, eye contact, attitude, and/or comportment; by actively undermining defendant's self-esteem or self-confidence; and/or; by actively discouraging defendant from testifying, despite defendant being his only friendly witness and knowing that the lack of any physical incriminating evidence was no bar to the jury finding guilt in this type of case under Florida law. See, § 794.02(1), Fla. Stat.;

3. Whether an attorney may be held to have been ineffective by alerting the state to a fatal deficiency in its evidence in such a manner and time as to allow the state the opportunity to correct the oversight and thus secure a conviction;

4. Whether an attorney may be held to have been ineffective by failing to effectively object to the admission of irrelevant similar fact and/or collateral crimes evidence;

5. Whether an attorney may be held to have been ineffective by failing to impeach a state witness where counsel had an available and relevant means to do so;
6. Whether an attorney may be held to have been ineffective by failing to move in limine to exclude and/or to otherwise effectively object to the admission of adverse state testimony on grounds of relevance, improper bolstering, and/or other unfair prejudice;
7. Whether an attorney may be held to have been ineffective by failing to adequately and meaningfully advise, and/or misadvising a defendant regarding the state offer of a plea settlement, causing the defendant to reject same;
8. Whether an attorney may be held to have been ineffective by failing to effectively and adequately object to the prosecutor's comments regarding the fact that Florida law does not require any evidence to corroborate the testimony of the accuser to permit a verdict of guilty;
9. Whether an attorney may be held to have been ineffective by failing to move that the jury verdict form be amended to read "not proven", rather than "not guilty," after having laid a substantial foundation for same during voir dire of the jury venire;
10. Whether an attorney may be held to have been ineffective by making unnecessary, improper, and/or confusing and prejudicial comments to the prospective jurors during voir dire;

11. Whether a trial court commits reversible Fundamental and/or otherwise harmful error by allowing the prosecution to make improper, impermissible, and/or otherwise unfairly prejudicial comments and/or arguments to the jury venire and/or trial jury in closing;
12. Whether an appellate attorney may be held to have been ineffective by failing to raise on appeal any claim alleging the ineffective assistance of trial counsel which is plain upon the face of the record;
13. Whether an appellate counsel may be held to have been ineffective by failing to raise on appeal any claim alleging that the trial court committed Fundamental and/or otherwise harmful error by allowing the prosecutor to make improper, impermissible, and/or otherwise unfairly prejudicial comments and/or arguments to the jury venire and/or the trial jury in closing;
14. Whether an attorney may be held to have been ineffective by failing to contemporaneously object to the State's use of evidence of a defendant's recorded statements to a civilian state agent on grounds that said recording was obtained in direct violation of said defendant's Constitutional Rights under Amendments Four, Five, Six, Nine, and/or Fourteen;
15. Whether an attorney may be held to have been ineffective by failing to directly challenge the constitutionality of a state or federal statute as applied.

With specific regard to the Questions Presented herein for consideration; Jones respectfully contends that his successful Fla. R. Crim. P. 3.801 motion did, in Fact and law, result in a new or corrected judgment, as recognized by this Honorable Court in Burton v. Stewart, 549 U.S. 147, 127 S.Ct. 793 (2007), and its brethren and progeny, where (1) a motion Filed under Fla. R. Crim. P. 3.801, in Fact and law, tells the running of the limitations period provided in 28 USC §2244(d), because such is an attack upon the legality of the sentence; (2) under Florida law, in order for a sentence of imprisonment to be legal, "the court imposing a sentence shall allow a defendant credit for all of the time [...] he spent in the county jail before sentencing. The credit must be for a specified period of time and shall be provided for in the sentence." Section 921.161(1), Fl. Stat. (emphasis added). Additionally, "a person sentenced to imprisonment [...] shall receive credit on [...] his sentence for all time spent between sentencing and being placed in custody of the [D]epartment [of Corrections]." Section 921.161(2), Fl. Stat. (emphasis added);

(3) "[A] sentence that does not mandate credit for time served would be illegal since a trial court has no discretion to impose a sentence without crediting a defendant with time served," State v. Mancino, 714 So.2d 429, 433 (Fla. 1998);

(4) "[I]n Florida, a sentence which incorrectly calculated jail credit is an illegal sentence. Chavis v. Jones, 2015 U.S. Dist. LEXIS 12090, 2015 WL 428672 *3-4 (N.D. Fla. February 2, 2015), citing State v. Mancino, 714 So.2d [Fla.] 433 [supra]. Accordingly, a '[j]udgment setting out the corrected sentence is a new judgment,' citing Brown v. Sec'y, Dept. of Corrections, 2014 U.S. Dist. LEXIS 90969, 2014 WL 2991131, *3-4 (N.D. Fla. June 3, 2014); Baron v. Jones, 2017 U.S. Dist. LEXIS 162435 (S.D. Fla. September 29, 2017);

Wherefore, Jones contends that because the sentence of the state

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court originally imposed thereby, without correctly providing him with the jail credit to which he was legally entitled, same being a necessary, intrinsic, and statutorily mandated part of every legal sentence of imprisonment, Jones' sentences were illegal as a matter of clearly established law, ab initio, and therefore could NOT lawfully authorize Jones' imprisonment, and thus, cannot meet the standard set out in Patterson v. Sec'y, Fla. Dep't of Corr., 849 F.3d 1321, 1326 (11th Cir. 2017) (Appx. A, pp.3-4).

Accordingly, because the corrected sentence rendered on October 3, 2014, is the only legal sentence imposed by the state court below authorizing Jones' imprisonment, the limitations period imposed by 28 U.S.C. § 2244(d) began to run on November 30, 2016, once all of Jones' overlapping state post-conviction and appellate proceedings had concluded. (See, Appx. E-1 at point "B").

Jones respectfully submits that this Honorable Court should grant this Cause because, although this Court has recognized that the issuance of an amended, "corrected" sentence will trigger a "re-start" of the limitations period imposed by 28 U.S.C. § 2244(d), Ferreira v. McDonough, 549 U.S. 1200, 1256, 167 L.Ed.2d 65 (2007), this Court has not explicitly set out precisely what qualifies as a "corrected" sentence for purposes of re-starting the section 2244(d) limitations period, particularly whether or not a "corrected" sentence issued to provide previously withheld jail time credit would satisfy such qualifying criteria. Given the difference of opinion on the subject between the District Courts of the Northern and Southern Districts of Florida and the courts of the Middle District of Florida; ~~and the~~ division among the jurists of the Eleventh Circuit Court of Appeals; see Patterson v. Sec'y, Dep't. of Corr., 849 F.3d 1321 (11th Cir. 2017) (en banc), Dissenting Opinion; the nature of the underlying substantive issues raised within Jones' Second Amended Petition for a Writ of Habeas Corpus, supra (and Appx. E-1), which same address or otherwise invoke matters

of Federal law, id., potentially, giving rise to additional Questions of Federal constitutional magnitude; and the clear potential for one or more of the instant Questions Presented, and one or more of the prospective Questions embodied in Jones' aforesaid Habeas petition, to have far reaching and substantive application to and/or impact upon matters of Federal law and the laws of the several states, as affecting the Constitutional and other rights of criminal defendants, Jones' respectfully submits that the matters at bar are ripe for consideration by this Most Honorable Court.

With respect to Jones' underlying substantive issues having the potential to invoke Federal jurisdiction, Jones respectfully points out that his habeas grounds One, Fourteen, and Fifteen, which each address different but related aspects of the same or similar issue, reasonably frame the same or similar potential Question of Federal constitutional magnitude sufficient to warrant the attention of this Court, to-wit, whether the Government may recruit non-police/non-governmental employee agents to secretly interrogate a person suspected of a crime, and electronically intercept same under the provisions of 18 U.S.C. § 2511(2)(a)(iii)(c), section 934.03(2)(c), Fla. Stat., or similar statute of another state, subsequent to that person clearly and unambiguously invoking their Right to Remain Silent and to the Assistance of Counsel, and then use that "evidence" at trial against said person, Jones' respectfully contends that, as applied/utilized in the underlying case, 18 U.S.C. § 2511(2)(a)(iii)(c) and section 934.03(2)(c), Fla. Stat. would be violative of the Constitution of the United States, Amendments Four, Five, Six, Nine, Ten, and/or Fourteen, where police and prosecutors relied upon either or both statutes to circumvent the protections guaranteed by said Amendments, and

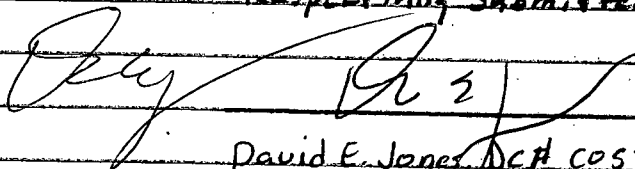
where "[f]ederal law has pre-empted the field of wiretaps, and any state law regulating interception of wire communication must provide safeguards at least as stringent as those set out in federal statute," *State v. Aurilio*, 366 So.2d 71 (Fla. 4th DCA 1978), cert. denied, 376 So.2d 76 (Fla. 1979). In fact, a plain reading of § 934.03(2)(c), Fla. Stat., clearly demonstrates that it is substantially the same as 18 U.S.C. § 2511(2)(a)(iii)(c).

CONCLUSION

WHEREFORE, for the reasons aforesaid, this Most Honorable Court should exercise its discretionary jurisdiction, grant the instant petition, issue the writ, and remand the cause for further proceedings below.

It is so prayed.

Respectfully Submitted,



David E. Jones, DCH C05729

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