

Provided to South Bay Corr. and Rehab. Facility  
on Jan. 17, 2020 for mailing.

NO. 19-7532

IN THE  
SUPREME COURT OF THE UNITED STATES

**ORIGINAL**

Supreme Court, U.S.  
FILED

**JAN 16 2020**

OFFICE OF THE CLERK

TRAVIS ANTHONY WELSH  
PETITIONER

VS.

STATE OF FLORIDA  
RESPONDENT

---

ON PETITION FOR WRIT OF CERTIORARI TO THE FOURTH JUDICIAL  
CIRCUIT COURT IN AND FOR DUVAL COUNTY FLORIDA

---

**PETITION FOR WRIT OF CERTIORARI**

---

TRAVIS ANTHONY WELSH  
DC# D95328  
SOUTH BAY CORRECTIONAL & REHABILATATION FACILITY  
P.O. BOX 7171  
SOUTH BAY, FLORIDA 33493

RECEIVED

**JAN 30 2020**

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

QUESTIONS PRESENTED

I.

DID THE COURTS REFUSAL TO ACCEPT THE TIMELY 3.850 MOTION FILING BECAUSE IT DID NOT IDENTIFY THE CIRCUIT COURT IN THE CERTIFICATION OF SERVICE VIOLATE THE PETITIONER'S 14<sup>TH</sup> AMENDMENT RIGHT TO DUE PROCESS OF LAW?

II.

DID THE CIRCUIT VIOLATE WELSH'S AMENDMENT RIGHT TO PETITION FOR A REDRESS OF HIS GRIEVANCES WHEN IT USED THE LAW OF THE CASE DOCTRINE TO DETERMINE THE CLAIMS WERE FRIVILOUS AND THREATEN PUNITIVE SANCTIONS EVEN THOUGH THE MERITS WERE NEVER REACHED?

III.

DOES FLORIDA'S CAPITAL SEXUAL BATTERY STATUTE FOR ORAL/VAGINAL UNION VIOLATE THE 14<sup>TH</sup> AMENDMENT UPON PRESENTMENT OF INFORMATION RATHER THAN BY INDICTMENT?

IV.

DOES THE CAPITAL SEXUAL BATTERY STATUE'S MANDATORY LIFE WITHOUT PAROLE SENTENCE FOR FIRST TIME OFFENDERS CONVICTED SOLELY ON THE UNCORROBORATED TESTIMONY OF THE VICTIM WITNESS VIOLATE THE 8<sup>TH</sup> AMENDMENT?

V.

DOES THE EVIDENTIARY PROVISION OF FLORIDA'S CAPITAL SEXUAL BATTERY STATUTE RENDER THE LAW FACIALLY UNCONSTITUTIONAL UNDER THE VOID FOR VAGUENESS DOCTRINE?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

## CERTIFICATE OF INTERESTED PERSONS

The following persons have interests in the outcome of this decision:

Anderson, Bruce R.: Honorable 4<sup>th</sup> Circuit Court Judge

Day, Lance: Honorable 4<sup>th</sup> Circuit Court Judge

Hulsey, Mark III: Honorable 4<sup>th</sup> Circuit Court Judge

Healy, Russell: Honorable 4<sup>th</sup> Circuit Court Judge

Fussel, ~~Ronnie~~: Honorable 4<sup>th</sup> Circuit Court Clerk

Moody, Ashley: Florida Attorney General

Samuels, Kristina: Honorable 4<sup>th</sup> Circuit Court Clerk

III

## TABLE OF CONTENTS

Questions for Review	ii
Certificate of Interested Persons	iii
Table of Contents	iv
Table of Cited Authorities	v
Opinions Entered	1
Jurisdictional Statement	2
Constitutional Provisions	3
Statement of Case	4
Argument	5

## INDEX TO APPENDIXES

A: Latest Florida Supreme Court Opinion	12
B: Latest Florida District Court of Appeal	13
C: Chronological 4 <sup>th</sup> Circuit Court Opinion	15-27
D: State Attorney 2016 response of timely service in 2004-2005	29-37
E: Defendant's 2004 Rule 3.850 Motion Face and Date Stamp	39
F: Defendant's 2004 Certificate of Service and Date Stamp	40-42
G: Published Examples of Similar addresses for Clerk and State Attorney	44-45
H: U.S. Middle District Court opinion confirming defendant's timely service in 2004-2005	49-55
I: Florida Supreme Court opinion in similar case	57-60

IV

## TABLE OF AUTHORITIES

### CASES:

Class v. United States, s. ct. case no. 16-424 (2018)	8
Ex Parte Royall, 117 U.S. 241 (1886) void convictions	8
Gutierrez v. State, 177 So.3d 226 (Fl. 2015)	7
Grayred v. Rockford, 408 U.S. 104, (1972)	5
Skinner v. Oklahoma, 316 U.S. 535 (1942)	5
Virginia v. Black, 538 U.S. 343 (2003)	7

### STATUTES:

794.011 and 784.022	5
800.04	6
33-210,102 Fl. Admin.	9

### RULES:

3.030 (b) (4) shall be considered complete upon mailing	
(e) certificate of service	8
9.420 Rules of Appellate Procedure, (d) proof of service	8
(2) by pro se inmates: I certify that I placed this	
document in the hands of prison officials for mailing	
to the (State Attorney or Attorney General) on (Date)	

V

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 ENTERED

The opinion adopted by the highest state Court to review the merits appears at appendix "B" to the petition with additional merit opinion by the Circuit Court at Appendix "C" and State Attorney at "D".

Opinion of the Court: Though the timely filed July 9, 2004 Rule 3.850 was received by the State Attorney there was no Clerk of Court inclusion in the proof of service and is not acceptable proof that a copy was filed in the Circuit Court. Because the Circuit Court has no record of the Rule 3.850 motion being filed and the prisoners cannot prove it was properly filed, it is deemed procedurally barred. The motion was prison date stamped on face of motion, certificate of service and first page of exhibits. Appendix "E" and "F".

## JURISDICTION

The date on which the highest State Court decided my case was October 18, 2019. A copy of that opinion appears at Appendix "A".

The jurisdiction of this Court is invoked under 28 U.S.C §1257: The State Court has decided an important Federal Question in a way that conflicts with relevant decisions of this Court.

## STANDING

Travis Welsh has exhausted all available state remedies and procedures to exercise his rights to redress his grievances. He currently has no other resource. The State Courts have called his claims frivolous and threatened sanctions. He has nowhere else to turn. The deprivation of his fundamental rights to due process and habeas corpus give this petitioner standing.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

14<sup>TH</sup> Amendment: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...

1<sup>st</sup> Amendment: Congress shall make no law... abridging the right of the people to... petition the government for a redress of grievances.

Article 1, Sect. 9: The privilege of the writ of Habeas Corpus shall not be suspended...

Fla. R. App. P. 9.420; filing: Service, (d) Proof of service: (2) by pro se inmates: "I certify that I placed this document in the hands of prison officials for mailing to the (State Attorney or Attorney General)(date).

Fla. R. Crim. P. 3.030 (b) (4), shall be considered complete upon mailing € certificate of service.

Fla. Statute 794.011 (1) (h), sexual battery means oral, anal or vaginal union with the sexual organ of another or penetration by any other object.

794.011 (2) (a), upon a person under 12 yrs. Of age commits a capital felony punishable by life in prison without parole.

794.022 Rules of Evidence (1), the testimony of the victim need not be corroborated in a prosecution under 749.011.

## STATEMENT OF THE CASE

In December of 2000 I was tried for a crime under an unconstitutional capital statute without an indictment. I swore my innocence and the State provided no evidence a crime occurred, the jury was convinced to final quit because the law required no victim testimony corroboration. I was constitutionally processed and my jury improperly skewed. When I filed for relief the Court Clerk either misplaced my motion or it was lost in the mail. Many times I tried to prove I timely filed my motion. Ten years later in 2017 the State Attorney finally agreed that, though it appeared it was sent to them in a timely manner, my certificate failed to include the Court in the proof of service rendering it invalid. See: Appendix "D"

This absurd interpretation of state rule 9.420, as well as the adversarial conclusion, is unacceptably prejudicial to pro-se prisoners who are forced to rely upon circumstances outside their control for the completion of procedural due process. By adopting the State Attorney's legal analysis the Trial Court judge clearly denied the petitioner's fundamental rights to redress his grievances, exercise his rights to the writ of Habeas Corpus and procedural due process of law. See: ART. 1 sect. 9, U.S.C.A.; 1<sup>st</sup> Amendment U.S.C.A.; 14<sup>th</sup> Amendment U.S.C.A.

There are fundamental issues that I feel will invalidate my trial and conviction. The State Courts are denying my right to a forum for a redress on the merits of my claim through the established pro-se motion avenue. No lawyer was made available beyond the direct appeal stage for post-conviction purposes.

ARGUMENT  
EQUAL PROTECTIONS

As a matter of due process a law is void if it impermissibly delegates basic policy matters to policemen, judges and juries for the resolution on an *ad hoc* and subjective basis, with all the attendant dangers of arbitrary and discriminatory application. See: Grayned v. Rockford, 408 U.S. 104, 108-109 (1972); Connolly v. General Construction Co., 369 U.S. 385, 391 (1926)

By entering a law that criminalizes the oral union and the sexual organs of another the state criminalizes an act that leaves no evidence it occurred. And when the law stipulates no victim corroboration is required to prosecute, a skewing occurs that supports arrest, detention and conviction for offended sensitivities. Because there is a ~~companion~~ statute that describes the exact prohibited behavior, but without the evidentiary provision, the law allows for basic policy matters of which law to fall under solely up to law enforcers to resolve on an *ad hoc* basis with all the attendant dangers of arbitrary and discriminatory application, a clear violation of the 14<sup>th</sup> Amendment equal projections. See: Skinner v. Oklahoma, 316 U.S. 535 (1942); Justice Douglas noted that when the law lays an unequal hand on those who have committed the same quality of offence it has made as invidious a discrimination

inaction as if it has selected a particular race or nationality for oppressive treatment; F.S. 794.011 v. F.S. 800.04 (1990)

794.011(1)(h) sexual battery means oral, anal, or vaginal union with the sexual organs of another.

800.04 lewd or lascivious offense committed upon or in the presence of a person less than 16 yrs. of age: (1) definitions.

(a) sexual activity means oral, anal, or vaginal union with the sexual organs of another.

### VOID FOR VAGUENESS

The degree of constitutionally tolerated broadness is not easily calculated but can be measured through its varied applications.

Imagine if the member of a political faction wanted to prevent an opposing faction member from obtaining an appointment for a government seat by accusing them of sexual battery. Under Florida law the accused would be arrested and held for trial. Their political future would no longer be viable. Their liberty subject to the skewing of character assassinations by zealous prosecutors. The recent confirmations are a wake up call to the power of accusations without proof or witnesses; especially when a Natural life without parole is mandatory.

The time has come for these statutes to not only be separate degrees of one another but to undergo a constitutionally based legal analysis.

The problem legislators share when crafting laws; is scope. To draft with narrow particularity is to risk neuter by easy evasion of the legislative intent; to draft with great generality is to risk ensnarement of the innocent in a net designed for others.

see: L.Tribe American Constitutional Law, 2 ed. (1988) pg. 1033.

When the innocent are snared by the evidentiary provision of this broad law its unacceptable skewing towards conviction cannot pass constitutional muster.

In 2003 this court considered a very similar provision in the Virginia cross burning statute. This court found the evidentiary provision allowing for any cross burning as proof of intent to intimidate caused an unacceptable skewing towards convictions, see Virginia v. Black, 538 U.S. 343 (2003).

In 2015 Florida's 794.011 Statute was challenged in the State Supreme Court. The Court determined that when the trial judge recited the evidentiary provision in the law of the case jury instruction, an unacceptable skewing takes place, see: Gutierrez v. State, 127 So. 3d 226 (Fla. 2015). Although Gutierrez's conviction was overturned, the statute itself remained intact. The trial judge no longer instructs on the evidentiary provision but the state attorneys continue to do so. Unjust convictions still follow.

#### Reason for Granting Petition

As an indigent prisoner Travis Anthony Welsh is severely handicapped and is a Federally handicapped physically. He challenged the constitutional validity of his trial and conviction under the state law specifically created for that purpose: see Fla. R. Crim. P. 3.850. He provided the proper proof of service to prison officials and all as stipulated by law: Florida Administrative Code 33-210, 102 (8)(g); Florida Crim. P. 3.030; Florida R. App. P. 9.420. However, when it appeared the court either misplaced his motion or it was lost in the mail, the court opined that because he didn't include the circuit court clerk as opposing party in his certificate of service and they had no record of receipt in court docket, that the defendant's rights are null and void.

Note: This defendant proved at trial that he did not reside in Florida jurisdiction seven of the twelve month window of offense date as alleged by prosecutors. Alleged victim could not pinpoint a day, week, nor month of offense per trial transcripts and depositions.

This opinion renders fundamental principles of due process meaningless. His continuing efforts to exercise his rights are being blocked through "law of the case doctrine". Please note that U.S. Middle District Court Justice M.M. Howard agreed Welsh filed in timely manner to lower courts but did not get to her instance for her help. see Exhibit H. Now the court threatens punitive sanctions. It's now an issue of last resort.

This writ should be granted because:

1.) Not even a guilty plea can prevent a party from challenging the constitutionality of a statute of conviction. Glass v. United States, S. Ct. case 16-424 (2018), and,

2.) Any conviction under an unconstitutional statute is void. Ex parte Bayall, 117 U.S. 241 (1886).

As no state court has ruled on the merits of Welsh's claims, this court can only ~~pass~~ whether or not his fundamental due process and constitutional rights were illegitimately abridged. The state attorney admitted that they were timely served with a copy of the 2004-2005 Motions that the court says they never received. The court never asked the state attorney if they were served for over 10 years. The court did not look at any thing but their court docket. The benefit of doubt belongs to the defendant, not the institution. Institutions were

created to serve the people. This prisoner did attend to follow prison legal mail rules under Florida Statute 33, 210.102 (8)(g) as verified by prison date stamp on face of motion or certificate of service, and upon first page of exhibits. Exhibits E and F.

Whether these actions violated equal protection because of lower court total discretion without evidentiary hearing, requires a constitutionally based legal analysis to resolve the wrong perpetrated since 2004. Travis Anthony Welsh prays this court will recognize the methods used against defendant that deprived him of a forum to be heard. Find the lower court was in error when they received defendant's prose prison date stamped Rule 3.850 Motion in spite of the minor argument over the certificate of service which is nullified as the State confirmed timely service in 2004-2005 in their 2016 Response. Exhibit D Issue a writ to the 4<sup>th</sup> Circuit Court to allow Welsh (30) thirty days to re-file belated Amended Rule 3.850 Ineffective Assistance of Trial Counsel Motion, with a file date of July 9, 2004.

### Conclusion

Wherefore, Travis Anthony Welsh respectfully requires that this honorable court issue a writ of certiorari to determine if the state courts violated his 1<sup>st</sup> Amendment right to redress his grievances and or his 14<sup>th</sup> Amendment right to due process of law by denying him a Habeas Corpus forum to challenge his conviction on appeal.

Respectfully,

Travis A. Welsh

Travis A. Welsh #95321  
S.P.C.F.  
P.O. Box 7171  
South Bay 33493