No. 19-7783

IN THE SUPREME COURT OF THE UNITED STATES

FEBRUARY ____, 2020

In re Billy J. Martin,
Petitioner.

V.

MARK INCH, Secretary Florida D.O.C.
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE UNITED STATES
OF AMERICA

PETITION FOR WRIT OF CERTIORARI

BILLY J. MARTIN
(Your Name)

UNION CORRECTIONAL INSTITUTION
(Address)

RAIFORD, FLORIDA 32083

None available
(Phone Number

(QUESTION(S) PRESETED

If a Florida U.S. Citizen is convicted of a crime by and through the perpetration of fraud on the trial Judge, and the jury by the assistant state attorney's office intentionally and knowingly at trial introducing perjured testimony to obtain a convicion. Do these facts violate the petitioner's 14th Amendment rights to due precess of law ?

When an entire Court ignore's a juror's decent from the verdict during polling of the jury, does this create a fundamental error and a violation of due process of law?

PARTIES TO THIS PROCEEDING

[ ] All parties in the caption of the case on the cover page.

[X] 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 in the subject of this petition is as follows.

1. **Citrus County, Florida Assistant State Attorney Thomas Boll**
2. **Citrus County, Florida Assistant State Attorney Richard Buxman**
3. **Florida Supreme Court Judge Canady**
4. **Citrus County Public Defender Eric Evilsizer**
5. **Citrus County, Circuit Judge Ricard A. Howard**
6. **Florida Supreme Court Judge Larbarga**
7. **Florida Supreme Court Judge Lawson**
8. **Eleventh Circuit Judge Marcus**
9. **Florida Supreme Court Judge Munez**
10. **Florida Supreme Court Judge Polston**
11. **Eleventh Circuit Judge Jill Pryor**
12. **Citrus County Assistant State Attoryney Ric Ridgeway**
13. **Eleventh Circuit Judge Rosenbaum**

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SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARARI

Petitioner respectfully prays that a writ of certiorarari issue to review the judgment below.

OPINION BELOW

[x] For cases from **federal courts:**

The pinion of the United States court of appeals appears at Appendix B to the petition and is

[ ] reported at _____; or.

[ ] has been designated for publication but is not yet reported: or.

[X] is unpublished.

[ ] The opinion of the United States district court appears at Appendix ____ to the petition and is

[ ] reported at _____; or..

[ ] has been designated for publication but is not yet reported; or.

[ ] is unpublished.

[X] 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 unreported. **PRELIMINARY STATEMENT**

The record and exhibits attached clearly show that the conviction was obtained by fraud upon the court, the record also shows that juror Ms. Nancy L. Crow dissented from the verdict and trial court ignored the dissent without questioning the juror.

STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

In exceptional circumstances where a conviction secured by the use of false evidence must fall under the due process clause where the state, although not soliciting the flase evidence allows it to go uncorrected when it appears this Court may issue writs of certiorarari in aid of its appellate jurisdiction. 28 U.S.C. §§ 1651(a) and 2241.

It is that authority that is invoked here. See Felker v. Turpin, 518 U.S. 651, 660 (1996) ("[W]e conclude that Title I of the [Antiterrorism and Effective Death Penalty] Act [of 1996] has not repealed our authority to entertain writs of certiorari.

PROCEDURAL HISTORY

Mr. Martin has filed his Rule 3.850 & state habeas post conviction motions in the Florida State Court systems to no avail. The Florida Courts refuses to address the merits of the claims. After exhausting the claims in the Florida courts, the Petitioner filed his claims to the United States Middle District Court of Florida. Unfortunately for Mr. Martin, the federal court "REFUSED TO ADDRESS THE MERITS". Mr. Martin after discovering the attached newly discovered evidence

applied to the Eleventh Circuit under 28 U.S.C. § 2244(b)(3)(A), however the court ruled that the evidence shows that even though the traffic stop was improper, the police officer was an unreliable witness and perjured himself, and the prosecuter failed to disclose evidence about the officer. However you still had the gun. Completely ignoring the fact the gun was the fruit of an llegal traffic stop.

REASON FOR GRANTING CERTIORARI

The Petitioner has exhausted all available remedies in the lower tribunals, state and federal, without receiving a ruling on the merits of the claims presented herein and this Court is the last resort for the Petitioner to obtain a fair and impartial hearing on the merits of his constitutional issues. Petitioner respectfully requests this Court to remand this case back to the Florida Supreme Court to order the lower Florida State Court to rule on the merits of the claims presented herein.

This Court should grant Mr. Martin's claims presented in this application for a Writ of certiorari, because if this Court does not Mr. Martin will never have his issues resolved on their merits in accordance with the 5th, 6th and 14th Amendments.

GROUND ONE

THE LOWER TRIBUNALS DEPRIVED MARTIN OF HIS DUE PROCESS RIGHTS WHEN IT ALLOWED THE STATE TO OBTAIN A CONVICTION BY FRAUDULENT TESTIMONY.

STATEMENT OF FACTS

Petitioner requests this Honorable Court to recognize that the probable cause affidavit is the basis for the request for this Court to issue a writ of Certiorari in the instant case. The affidavit alleges that on February 7, 2004 at or about 10:30 p.m. 41 North in the area of South Dunnellon, Citrus Springs between C-39 North and South Dunnellon former Citrus county Deputy Joyner initiated a traffic stop-and-search. The attached record will show that if not for the exceptional circumstances involved in this case it would never have made it to a charging information and a trial; in the Fifth Judicial Circuit in and for Citrus County Florida the Honorable Judge Richard Howard presiding.

Petitioner avers that he, with his father's help, taped a piece of red plastic, visquine, over the recently broken out right tail light reflector so that both tail lights would show a red color when the brake pedal was depressed. Both side quarter panel red lights and both tail lights worked when his car was stopped by officer Joyner. However, on the night in question, without petitioner's knowledge the top right corner of the tape holding the red colored plastic, visquine, had come loose causing a small white light to show. Petitioner's automobile was in a very

minor accident while it was parked in a Wal Mart parking lot. Petitioner did not discover the damage to his tail lights until he returned to his parked car from shoppong.

Petitioner avers that the initial encounter with officer Joyner was an illegal traffic stop and any and all events that follow are illegal as fruits of the poisonous tree. The attached record will show that the State prosecution team knowingly, and intentionally, fabricated false testimony in order to prevent a law suit, and to obtain a petitioners false, illegal conviction. The attached record will also show the Fifth Judicial Circuit State Attorney's office in and for Citrus County, Florida intentionally and knowingly committed fraud on the court and the jurors, and also withheld exculpatory and state witness impeaching evidence from the defense. The attached evidence demonstrates that the State Court prosecution failed to disclose exculpatory and impeachment evidence and permitted Citrus County Sheriff former officer Joyner to remain on active patrol status, knowing that Joyner and his k-9 were untrained and in ,violation of attacking Martin in his car in his seat belt and under investigation for stealing K-9 training drugs. This petition for writ of certiorari follows.

GROUND ONE

EVIDENCE SHOWS THAT STATE PROSECUTOR AND ARRESTING OFFICER COMMITTED FRAUD UPON THE COURT

Petitioner avers that the attached probable cause affidavit used by the State to file formal charges **is the truth,** on what happened on highway 19 on the night of February 7, 2004 at or about 10:30 p.m. See **APPENDIX-C** sworn to probable cause affidavit.

PROBABLE CAUSE AFFIDAVIT/CHARGING DOCUMENT

SUBMITTED BY: JOYNER, DOUGLAS BADGE #4748 (AR04000665). ON 02/07/04 WHILE CONDUCTING ROUTINE TRAFFIC PATROL, I OBSERVED AN OLDER MODEL VEHICLE WITHOUT A RIGHT TAIL LIGHT, WHICH WAS EMITTING A WHITE LIGHT, AT THAT TIME I INITIATED A TRAFFIC STOP ON THE VEHICLE AND I ADVISED THE DEFENDANT ON THE REASON FOR THE TRAFFIC STOP.

Officer Joyner advised petitioner that the reason for stopping his vehicle was that his right rear tail light was emitting a white light.

On March 12, 1992 the Florida Supreme Court decided Doctor v. State, 596 So. 2d 442 (Fla. 1992) citing to the exact same circumstances as the illegal traffic stop in the instant case.

Under normal circumstances any reasonable assistant state attorney would dismiss the charges knowing that the officer made a mistake in law. And no further action would be taken against Petitioner. Mr. Martin would have been released from the County jail and Deputy Joyner would continue his career more the wiser.

However in the instant case exceptional circumstances exist. Former deputy Joyner allowed his **non-certified k-9** dog to attack Mr. Martin in his car while he was confined by his seat belt, See Attached **APPENDIX-D** emergency room report of pertitioner Martin's leg. Petitioner Martin had a five (5) inch gaping wound required corner stitching the skin and seven (7) staples to close, along with several other puncture wounds.

In and effort to avoid a law suit by petitioner, the record will show that the State's prosecution team made an unwise decision and decided to prosecute this case knowing that they would be coaching Officer Joyner into committing perjury, a fraud upon the court and the jurors, this is evidenced by the record.

See the attached **APPENDIX-E** six photo's taken by the state's investigator showing that the above sworn to affidavit is the truth and not the fraudulent testimony that state's prosecution team and deputy Joyner put together prior to depositions, suppression hearing, and Jury trial stating **"the right taillight was completely out and the crack with white light was in the left taillight."** note there is no crack in the left taillight.

Additionally Joyner and State Attorney laid the blame on the police department's typist/reporter stating that she must of missed a sentence in the sworn affidavit. The attached record before this Court supports the above probable cause affidavit, as being true and also rendering Joyner's entire testimony a fraud. The police department's typist/reporter had missed a sentence is pretextual excuse drempt up by the state attorney's office. **See APPENDIX (C).**

Attached at **APPENDIX-F** is a warning ticket never issued to petitioner Martin, but this Court should note this ticket is signed by former Deputy Joyner, but not signed by the petitioner, showing only the right taillight is circled for equipment violation. This traffic ticket was not in the original discovery supplied by the state attorney's office, nor was the personal file of former officer Joyner which was essential to the defense and would have destroyed officer Joyner's credibility. The traffic ticket was shown to petitioner just prior to trial by his attorney, saying," Have you ever seen this before?", petitioner answered "No," and Deputy Joyner's personal file was only obtained through the freedom of information act after petitioner's trial.

The State Attorney and Deputy Joyner knew perfectly well they were committing a fraud upon the court by introducing Deputy Joyner's perjured testimony. See attached **APPENDIX-C-F** that confirm that the attached probable cause affidavit is the truth.

In Giglio v. United States, 405 U.S. 150, 31 L. Ed. 2D 104, 92 S. Ct. 763 (1972), the United States Supreme Court ruled, " As long ago as Mooney v. Holohan, 294 US 103, 112, 79 L. Ed. 791, 794, 55 S. Ct. 340, 98 ALR 406 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation known false evidence is incompatible with "rudimentary demands of justice." this was also held in Pyle v. Kansas, 317 US 213, 87 L. Ed 214, 63 S. Ct. 177 (1942). In Napue v. Illinois, 360 US 264, 3 L Ed 2d 1217, 79 S. Ct. 1173 (1959), we said, "[t]he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." Id., at 269, 3 L Ed 2d at 1221. Thereafter Brady v. Maryland, 373 US. at 87, 10 L Ed 2d at 218, 405 US 154;83 S. Ct. 1194 (1963), held that suppression of material evidence justifies a new trial "irrespective of the good faith or bad faith of the prosecution." See American Bar Association , Project on Standards for Criminal Justice, Prosecution Function and the Defense Function, at, §3.11(a). When the "reliability of a given witness may well be determinative of guilt or innocence." nondisclosure of evidence affecting credibility falls within this general rule. Napue, supra; 360 US at 269, 3 L. Ed 2d, at 1221. We do not, however, automatically require a new trial whenever " a combing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict ... " United States v. Keogh, 391 F.2d 138, 148 (CA2 1968). A finding of materiality of the

evidence is required under Brady, supra, 373 US, at 87, 10 L Ed 2d, at 218. A new trial is required if "the false testimony could in any reasonable likelihood have affected the judgment of the jury ... " Napue, supra, at 271, 3 L Ed 2d at 1222.

Petitioner contends that had the defense had access to the impeachment evidence contained in officer Joyner's personal file showing his lack of proper training and lack of proper K-9 training and certification, along with his more probable than not theft of K-9 training drugs, both marijuana and cocaine, the defense would have during officer Joyner's cross examination shown the jurors that his trial testimony was highly suspect which would have affected the judgment of the jury.

In the instant case the State's entire case depended on former Deputy Joyner's false testimony. Without his false testimony the motion to suppress all evidence due to it being obtained during an unconstitutional traffic stop would have been granted and there would have been no conviction. Without Joyner's false testimony there is absolutely no way the State could have pressed formal charges. Considering the state withheld the personal file during discovery that refuted Joyner's credibility as a witness which was an important issue in this case, and evidence of his failure to maintain acceptable training records and attend mandated training along with the theft of the missing training drugs were all essential to his

credibility. See attached **APPENDIX-G** personal file of former deputy Joyner "Transcribed by LINHART, DANNY, SGT.

"Upon conducting an interview with Deputy Brunk he advised that he never viewed Joyner's narcotics. He elaborated by stating in the past year, 2004-2005, Joyner was seldom at training and the times they did train together other individual's narcotics were used.

Further reading of this report reveals that deputy Joyner was under internal investigation for missing narcotics from the training drugs, as follows:

1. Marijuana weight approximately 1 gram less.

2. Marijuana weight approximately 16.9 grams missing Cocaine HCL 1.6 grams less than the average.

3. Cocaine HCL 5.3 grams missing.

4. Cocaine base Joyner's package was missing

Who would know that the investigation was reported to no other than **Assistant State Attorney Richard Buxman** the initial state attorney assigned to petitioner's case who contacted **State Attorney Ric Ridgeway** and they declined to press charges less than 30 days after Mr. Martin was sentenced using Joyner's perjured testimony which was instrumental in convicting Mr. Martin.

It should also be recognize that assistant State Attorney **Thomas Boll** prosecuted the instant case knowing that officer Joyner was telling a lie a fraud on the court and the jurors.

In Doctor v. State, supra. The Florida Supreme Court stated, "finally we reject the State's suggestion that the stop in this case was legal because the officers reasonably suspected that the taillight was in violation of the law". The trial judge held the stop permissible because, "the officer determined in his own mind on that evening ... that the left rear taillight was out." Reasonable suspicion, however, is not judged by a subjective standard, but rather by an objective one. Terry v. Ohio, 392 U.S., at 21-22.

Law enforcement officers are charged with knowledge of the law. A reasonable officer would have known the statutory requirements for taillights as prescribed by, in this case, §316.221, Fla. Stat. (2004). Thus, a reasonable officer would have known that Doctor's vehicle was in compliance with the law since red taillights were visible on both sides of the rear of the vehicle. Doctor, supra. While a trial court's determination on a motion to suppress will normally be accorded great deference, See Johnson v. State, 438 So. 2d 774 (Fla. 1983), Cert. Denied,. 465 U.S. 1051, 79 L. Ed. 2d 724, 104 S. Ct. 1329 (1984), we are compelled to reach an opposite conclusion where, as here, the trial court applied the wrong legal standard, See, e.g. Alvarez v. State,. 515 So. 2d 286, 291 (Fla. 4th DCA (1987).

In sum, there can be no question that the stop was illegal, the seizure was invalid and the cocaine and gun should have been suppressed.

The problem with the instant case is officer Joyner allowed K-9 "Blade" to attack Martin in his car while Martin was confined by his seat belt. The attached **APPENDIX-G** will show that Blade was not certified. And the reported reason for officer Douglas Joyner's Badge #4748. resignation from the Citrus County Sheriff Department less than thirty days after the false testimony in Martin's case was his criminal activity, theft of drugs from training exercises. See resignation **APPENDIX-G**

This was due to Joyner's failure to maintain acceptable training records for K-9 Blade. It should be clear from the face of the attached record why the prosecutor made the unwise decision to use the fraudulent testimony in an attempt to avoid a law suit, due to a rogue officer with an non-certified k-9 attacking a licensed and insured, registered Florida citizen, in his car, confined by his seat belt, knowingly violating the Fourth Amendment for his own drug shakedown.

Keep in mind that without the perjured testimony, the probable cause affidavit alone is in violation of the 4th Amendment [citing] Giglio, Supra. coupled with the aforesaid fraud upon the court, you have a complete breakdown of procedural due process.

To prevent a law suit the state prosecution knowingly committed fraud upon the court, the attached record has shown that former officer Joyner was under internal investigation from 2004-2005, essential dates to this case, for missing K-9 training drugs from the Sheriff's department, and K-9 Blade was not certified, due to Joyner's failure to maintain mandated training records.

The attached records will show that Citrus County Sheriff's Department knew about Joyner's failure to attend mandated K-9 training as well as his failure to attend mandated patrol training and that he was very probably stealing the missing training drugs and either selling them or using them himself.

The record before this court shows that SGT. Linhart, Danny knew about it, Deputy SGT. Tim Martin knew about it, Deputy Ryan Glaze knew about it, Deputy Brunk knew about it, Deputy Payne knew about it, and Lt. Frank knew about the missing drugs. It is also clear from the attached personal file of former officer Joyner that State Attorney Richard Buxman knew about the missing drugs and State Attorney Ric Ridgeway knew about it. Less than thirty days after the fraudulent testimony in Martin's trial Deputy Joyner was allowed to resign from the Citrus County Sheriff Department. Without any further legal consequences in Joyner's narcotic theft. **See Atached APPENDIX- G**

Based upon the above personel file of former deputy Joyner the record shows that Joyner should not have been allowed to turn Citrus County streets into

an illegal training facility for his own shakedown of Florida's citizens for his personal use of drugs.

Joyner testified that this is his routine even if it's a 90 year old lady, he stops them to see if older people are carrying drugs, or to test his non-certified dog out for training purposes. See **APPENDIX-H.** Martin will ask this Court to take a totality of the circumstances review of the attached record showing that Martin is currently being detained illegaly due to fraud committed upon the court and jurors. See attached trial record at **APPENDIX-H** direct and cross examination of Joyner, the only missing ingredient's are the attached Picture's and the warning ticket suppressed by the state attorney's office. Additionally Joyner's personal record seals the fraud upon the court. Based upon the above attached material evidence there can be no doubt that actual fraud was practiced on the Court and is deserving of no protection from this Honorable Court.

DISCOVERY OF EVIDENCE

The evidence about former officer Joyner was discovered when, on or about November of 2014, Martin received his first visit from his Mother, and the conversation came up about former officer Joyner, Martin's Mother informed him that she heard that the officer got fired from the sheriff's office.

On March 4, 2015, through due diligence, Martin finally located attorney Colleen Kasperek, Martin's first court appointed attorney. Martin mailed her an

inquiry letter in reference to former Deputy Joyner being fired from the Citrus County Sheriff's office. On April 14, 2015 Martin received a response letter from attorney Kasperek, noting that former officer Joyner was terminated from the Sheriff's office. Attorney Kasperek informed Martin to contact the Sheriff's office for further information. Petitioner Martin then requested a copy of former officer Joyner's personnel records from the Citrus County Sheriffs office. Martin then first became aware of information that the prosecution was previously aware of but hid from the defense. Both the State Attorney & Sheriff's offices knew that former K-9 Deputy Joyner failed to meet all of the following required training standards of the Citrus County Sheriff's Office, Florida Department of law Enforcement, K-9 officer qualifications, and missing training drugs.

The same State officials were aware that Joyner's vehicle stop of Martin was nothing more than Joyner's need for drugs and need for a training exercise to unlawfully supplement his poor record of K-9 training, that the aforementioned violated the Fourth Amendment, to the U.S. Constitution.

It must be noted that the above information was a surprise to Martin who would never believe that a Deputy Sheriff would be guilty of the above crime of stealing drugs from the very place that he works, maybe from the drug dealer's on the street's, but not where he works. This would be like believing the very same Deputy Sheriff in this Honorable Court is guilty of tampering with evidence.

Petitioner and this court are aware that this happens from time to time, it's just not a normal circumstance for this line of behavior to happen.

The attach personal record shows that Deputy Brunk and Deputy Payne elaborated on former deputy Joyner's failure to participate in mandated K-9 training. The attached trial testimony reveals:

Q. so this wasn't a routine traffic stop? A routine traffic stop where you pull someone over, write the ticket, and move on?

A. I'm a K-9 deputy. That;s my routine, I'm not a regular patrol deputy, I'm a K-9 deputy one of my job duties is to walk my dog.

Q. Each and every vehicle?

A. I don't do it on all vehicles, man, if I was to pull you over, I wouldn't walk my dog. It all depends.

Q. Why would you walk around Mr. Martin's and not mine?

A. I try to walk around every car but call for services. I mean,if I pull over a 90-year old lady, I walk it around. It all depends I don't profile people I'm going to walk, black or white I walk around basically every car. I walk around basically every car. I walk around older females' cars to make sure they're not carrying illegal drugs or testing my dog out for training purpose.

GROUND TWO
MARTIN WAS DENIED DUE PROCESS WHEN DURING THE POLLING OF THE JURY, JUROR STATED NOT GUILTY AND TRIAL COURT IGNORED THE DISSENT

Defendant avers that the record clearly evidences that his sentence and judgment are illegal, fails to comport with statutory and constitutional limitations.

Specifically, the record **APPENDIX-I** reveals that on July 19, 2005, during mandated allocution the following occurred:

The Court: "Mr. Martin, anything you'd like to, say before imposition of sentence, sir?".

The Defendant: "Yes, sir. Your Honor, I would like to, since my attorney Mr. Evilsizer has not addressed this Court, I would like to file a verbal motion, Your Honor, for a mistrial and a retrial on the grounds that *juror seat number three, Ms. Nancy L. Crow, after jury Deliberation's stated* ***not guilty*** *during the polling of the Jury."* [1]

(EXH.#1 page 38, sentencing transcript, see also **APPENDIX-J** polling of the jury.)

1

□ Although Defendant requested via the verbal motion, a mistrial and a retrial and the same may have been procedurally inappropriate, because the allegation of less than unanimous verdict was brought before the Court when Defendant was afforded his allocution rights, the Court was required to dispose of the legal impediment, if possible, prior to imposition of judgment and sentence. In this instance, it was ignored.

Defendant respectfully contends that no legal sentence or judgment could be imposed until and unless this matter presented in allocution was resolved.

According to Florida rule of Criminal procedure 3.450. POLLING THE JURY.

On the motion of either the state or the defendant or on its own motion, the court shall cause the jurors to be asked severally if the verdict rendered is their verdict. If a juror dissents, the court must direct that the jury be sent back for further consideration. If there is no dissent the verdict shall be entered of record and the jurors discharged. However, no motion to poll the jury shall be entertained after the jury is discharged or the verdict recorded.

The sentence is the judgment and as such are inseparable. Petitioner avers that when MS. Crow who was the first juror polled **dissented** from the verdict the entire court went quite and everyone was looking at Judge Howard for a response but he did not say anything, consequently the clerk of court again asked, Ms. Crow "is this your verdict?" Keep in mind that Ms. Crow's verdict is now "**NOT GUILTY**",and her answer is "**Yes, Yes, I'm sorry.**" . This is the reason why rule 3.450 was implemented to prevent situations like the instant case when a juror dissents the trial court must stop the polling and find out what the juror ment when she disented or send the jury back for further deliberation's. It should be noted that

the question [?] mark does not represent a question when the answer was a definitive statement of "**NOT GUILTY**" this can only be looked at as a typo error.

Accordingly the question is how can a court ignore a constitutional claim of this magnitude when this court has already ruled on the law pertaining to the constitutional violation above.

See for example Burton v. Stewart, 549 US 147, 127 S Ct 793 (2007) holding in part that "[f]inal judgment in a criminal case means sentence. The sentence is the judgment."*Id.* (quoting Berman v. United States, 302 U.S. 211, 212, 58 S. Ct. 164, 166 (1937) The Court in this matter was without authority to impose the resulting sentence when Defendant exercised his right to allocution and stated that the verdict was obtained by less than six jurors.(see EXH. #1&2) Such a sentence fails to comport with the Sixth and Fourteenth Amendments as well as Article 1§ 9 and 16, and 22, Florida Constitution. Such a sentence is illegal on its face. At no time after Defendant expressed the structural error in allocution was the matter addressed. The record verifies that the Court went onto impose judgment and sentence without regard to the gravity of the fundamentally flawed verdict. Such a correction is mandated by Mancino, *supra.[quoting] Burton v. Stewart, 549 US 147, 127 S. Ct. 793 (2007).*

CONCLUSION

For the obvious reasons set forth herein this Court should grant Mr. Martin's request for a writ of certiorari and order the Florida Court system to resolve this matter on the merits of trial transcript and material evidence attached to this request for writ of certiorari , petitioner would ask this court for a time served deal or in the alternitive release the defendant from custody, or the grant a new trial.

Respectfully Submitted:

/s/ Billy J. Martin

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