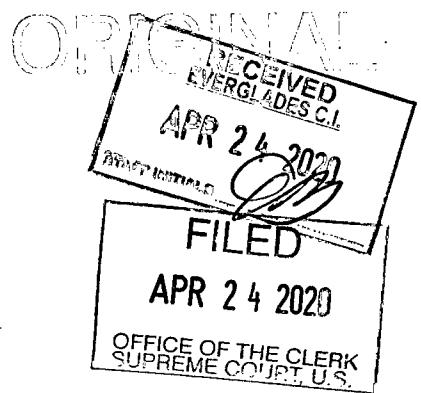


No. 19-8433



IN THE

SUPREME COURT OF THE UNITED STATES

ANTHONY P. JOHN, PETITIONER,

vs.

MARK INCH; ASHLEY MOODY, RESPONDENT(S).

ON PETITION FOR A WRIT OF CERTIORARI TO
SECOND DISTRICT COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

Anthony P. John
Everglades Correctional Institution
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Miami, Florida, 33194 - 2801

QUESTION(S) PRESENTED

WHETHER THE COURTS BELOW DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE RELEVANT DECISIONS OF THIS HONORABLE COURT WHEN THEY DENIED OR DISMISSED WITHOUT AN EVIDENTIARY HEARING – PETITIONER’S RULE 3.800, 3.850 MOTIONS, OR HABEAS CORPUS PETITION FOR POSTCONVICTION RELIEF ALLEGING PETITIONER WAS DENIED HIS FIFTH, SIX AND FOURTEENTH AMENDMENT RIGHTS UNDER DUE PROCESS OF THE LAWS AND RIGHT TO COUNSEL?

LIST OF PARTIES

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

[] 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 is the subject of this petition is as follows:

TABLE OF CONTENTS

Question Presented	ii
Jurisdiction.....	vii
Constitutional and Statutory Provisions Involved	viii
Statement of the Case	1
Reasons for Granting the Petition.....	3
Conclusion.....	8

INDEX TO APPENDICES

APPENDIX A,	January 22, 2020, the Second District Court of Appeal per curiam affirmed the trial court's order and issued an order in Case No.: 2D18-0704, March 9, 2020.
APPENDIX B,	June 21, 2019, Sixth Judicial Circuit Court dismissed order of Defendant's "Successive Motion for Postconviction Relief 3.850 to be treated as Habeas Corpus – 3.850(M), in Case No.: CRC-0218617CFANO
APPENDIX C,	April 6, 2020, Supreme Court of Florida dismissal of Petition for Discretionary Review, citing a lack of jurisdiction, in Case No.: SC20-484.

TABLE OF AUTHORITIES CITED

<u>Cases</u>	<u>Page</u>
<i>Cole v. Arkansas</i> , 333 U.S. 196, 201, 68 S.Ct. 514, 92 L.Ed. 644 (1948)	3
<i>Gonzalez, v. Gonzalez</i> , 654, So.2d 257 (Fla. 3 rd DCA 1995)	3
<i>James v. Draper</i> , 940 F. 2d 46 (3 rd Cir. 1991)	3
<i>Johnson v. Avery</i> , 393 U.S. 483, 485, 89 S.Ct. 747, 21 L.Ed. 718 (1969)	5
<i>Lafler v. Cooper</i> , 132 S.Ct. 1376 (U.S. 2012).....	4
<i>Marshall v. Board of Education</i> , 575 F.2d 417, 422 (3 rd Cir. 1978).....	3
<i>Powell v. Alabama</i> , 287 U.S. 45, 53 S.Ct. 55, 57 (1932)	5
<i>Prinzee v. Thurmond</i> , 721 So.2d 827 (Fla. 3 rd DCA 2009).....	4
<i>Townsend v. Burke</i> , 334, U.S. 736, 68 S.Ct. 1252, 92 L.Ed. 1690 (1948).....	5
<i>Tully v. Scheu</i> , (1979) CA3 NJ 607 F.2d 31	4
<i>Tuomi v. Jones</i> , 2017 U.S. Dist. LEXIS 56966 April 12, 2017.....	3
<i>United States v. One Toshiba Color Television</i> , 213 F.3d 147, 157 (3 rd Cir. 2000)	4
 <u>Statutes and Rules</u>	
Title 28 U.S.C. §1257.....	3
3.800(a).....	2
3.850 Fla.R.Crim.P.....	2
1.140(h), Fla.R.Civ.P.....	3
 <u>Constitution</u>	
Fifth Amendment, United States Const.....	2, 5
Sixth Amendment, United States Const	2, 4, 5
Fourteenth Amendment. U.S. Const.....	2, 4, 5

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

[] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix ___ to the petition and is

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

[√] 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

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[√] is unpublished.

The opinion of the Sixth Judicial Circuit Court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[√] is unpublished.

JURISDICTION

[] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was NA

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date NA, and a copy of the order denying rehearing appears at Appendix NA

[] An extension of time to file the petition for a writ of certiorari was granted to and including NA.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[√] For cases from state courts:

The date on which the highest state court decided my case was 1-22-2020.

A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: NA, and a copy of the order denying rehearing appears at Appendix NA

[√] An extension of time to file the petition for a writ of certiorari was granted to and including NA (date) on NA (date) in Application A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 5

Rights of the accused.

...Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb...nor be deprived of life, liberty, or property without due process of law...

AMENDMENT 6

In all criminal proceedings, the accused shall enjoy the right to...have the assistance of Counsel for his defense.

AMENDMENT 14

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 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.

STATEMENT OF THE CASE AND FACTS

February 10, 2003, Mr. John appeared before Judge Lauren C. Laughlin in the Sixth Judicial Circuit Court for Pinellas County (Florida), pled guilty to two first time misdemeanors, Count II, Driving While License Suspended or Revoked, and Count III, Fleeing and Eluding. His sentence of twelve months felony probation for Count I, Possession of Cocaine, and six months misdemeanor probation for Count II, DWLSR, and twelve months misdemeanor probation for Count III, Fleeing and Eluding,¹ were all charged in a three-count information.²

After violating the unlawful probation, Mr. John appeared May 2, 2003, before Judge Laughlin where she revoked the probation and proceeded to conduct a plea hearing on the Count I, possession of cocaine charge. Mr. John admitted to the violation of probation and then proceeded to plead guilty to Count I, possession of cocaine. He was then resentenced and placed back on probation, now being twenty-four months for Count I, possession of cocaine, sixty days for Count II, DWLSR, and twelve months for the Count III, fleeing and eluding. July 2, 2004, Mr. John was once again before Judge Laughlin for violation of probation, and once again he was placed back on probation, this time it was twenty-four months for the felony Count I, possession of cocaine, and twelve months for the misdemeanor Count III, fleeing and eluding. Ultimately, July 16, 2004, Mr. John, accepted a sentence of one year and one day in State prison for the Count I, possession of cocaine without the benefit of being represented by counsel, where he never waived his rights to counsel.³ (The February 10, 2003 hearings were not transcribed⁴).

¹ See "R," February. 10, 2003, Warrant and Affidavit, February. 28th 2003, and March 30, 2004, Violation Reports, pgs. 21-27; Case Summary of Count One, pg. 36; Docket Statement, pp. 37-42 and; February 10, 2003, Drug Court Change of Plea Form, pp. 46, 47.

² See "R," Felony Information, pp. 18, 19.

³ See "R," Judgment and Sentencing Documents, pp. 55-58.

⁴ See "R," Certificate of Non-Existence of Record dated 8-10-18 pg. 44.

Mr. John has filed several 3.800(a) and 3.850 Fla.R.Crim.P., motions and at least one (1) Habeas Corpus Petition⁵ for postconviction relief, all either denied or dismissed without an evidentiary hearing. Each of these motions were appealed to the Second District Court of Appeal, and each motion was per curiam affirmed until the Second DCA on March 9, 2020, issued an order expressly construing a provision of the Florida Constitution. Mr. John used this order to invoke the discretionary review of the State's highest court, however, on April 6, 2020, the Florida Supreme Court dismissed this case citing a lack of jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. Its true, the Second DCA did in fact per curiam affirm the trial court's decision in case number 2D18-0704 February 6, 2019, and its denial of Petitioner's motion for rehearing March 15, 2019, prior to issuing its order on this case number March 9, 2020.

⁵ See "R" pp. 3, 80, and 95, the record is incomplete and does not show the 3.800(a) motions.

REASON FOR GRANTING THE PETITION

Any sentence imposed prior to a finding of guilt based upon the due process provisions of the United States Constitution 5th, 6th, and 14th Amendments, violates the constitutional due process rights of the defendant, and a judgment that has been entered in violation of due process is void. A court's jurisdiction at the hearing of a trial may be lost in the course of the proceeding due to failure to complete the court when failing to secure a conviction prior to sentencing a defendant. It's as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried, as it would be to convict him upon a charge that was never made. Citation omitted; *Cole v. Arkansas*, 333 U.S. 196, 201, 68 S.Ct. 514, 92 L.Ed. 644 (1948). A court's lack of jurisdiction over subject matter of a person is a void judgment in violation of the Constitution of the United States and can be attacked at any time. *Tuomi v. Jones*, 2017 U.S. Dist. LEXIS 56966 April 12, 2017; citing Fla.R.Civ.P. 1.140(h); *Gonzalez v. Gonzalez*, 654 So.2d 257 (Fla. 3rd DCA 1995). A judgment is void only "if the court that rendered it lacked jurisdiction of the subject matter of the parties or entered a decree which is not within the powers granted to it by law." *Marshall v. Board of Education*, 575 F.2d 417, 422 (3rd Cir. 1978). A void judgment is one which from its inception was a complete nullity and without legal effect, because a void judgment is null and without effect, the vacating of such a judgment is merely a formality and does not intrude upon the notion of mutual respect in federal-state interests. Federal district courts and federal courts of appeal lack jurisdiction to review or reverse a state court judgment on the merits. For example a district court has no jurisdictional power to set aside a state default judgment. Any such federal review must be addressed directly to the United State Supreme Court from the State's highest court pursuant to 28 U.S.C. § 1257. *James v. Draper*, 940 F.2d 46 (3rd Cir. 1991). A decision whether or not to

vacate a void judgment is not within the ambit of a trial court's discretion, if a judgment previously entered is void, the trial court must vacate the judgment. If a court lacks subject matter jurisdiction, any judgment is void, and no passage of time can render a void judgment valid. Citation omitted. *United States v. One Toshiba Color Television*, 213 F.3d 147, 157 (3rd Cir. 2000). Indeed this legal principle is grounded in the notion that the passage of time cannot make valid that which has always been void. Defendant has legitimate interest in character of procedure, which leads to imposition of sentence, even if he may have no right to particular result of sentencing process and defendant has right to counsel at sentencing stage of criminal procedures; [resentencing] procedures are also "critical stage of criminal proceedings" for purposes of defendant's right to effective assistance of counsel. A right to effective assistance of counsel exist during sentencing in both capitol and non-capitol cases. *Prinzee v. Thurmond*, 721 So.2d 827 (Fla. 3rd DCA 1998); *Tully v. Scheu* (1979 CA3 NJ) 607 F.2d 31; *Lafler v. Cooper*, 132 S.Ct. 1376 (U.S. 2012). Prisoner was sentenced on the basis of assumptions concerning his criminal record which were materially untrue. Such a result whether caused by carelessness or design, is inconsistent with due process law, and such a conviction cannot stand. *Townsend v. Burke*, 334 U.S. 736, 68 S.Ct. 1252, 92 L.Ed. 1690 (1948). If the accused, however, is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or liberty. (Citation Omitted). We conclude that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process of law clause of the Fourteenth Amendment, and among them the fundamental right of the accused to the aid of counsel in a criminal prosecution. *Powell v. Alabama*, 287 U.S. 45, 53 S.Ct. 55, 57 (1932).

The State postconviction court rulings are based on an unreasonable determination of the facts in light of the preponderance of evidence presented by the Petitioner. Additionally the District Court of Appeal rulings was also based on an unreasonable determination of the facts in light of the preponderance of evidence by the Petitioner.

Based on the above stated facts and law, it seems reasonably probable that any court of reason presented with such overwhelming evidence of a void judgment would remand this case for vacating conviction.

In sum, the trial court should have given special attention to the overwhelming evidence presented by the Petitioner, and appointed counsel due to Petitioner had demonstrated that his claim had merit. *Johnson v. Avery*, 393 U.S. 483, 485, 89 S.Ct. 747, 21 L.Ed. 718 (1969). At the very least it should have held an evidentiary hearing due to the lack of the plea colloquy record evidence. Had the court done so, Petitioner believes the court would have come to a just conclusion, and their decision would have been different, overturning a void judgment.

THE QUESTION PRESENTED IS IMPORTANT

Petitioner is presenting an important Federal question of constitutional dimension in which the lower courts did not apply the standard prescribed in void judgments. Petitioner affirmatively asserts that this case would have had a different outcome had the lower courts conducted an evidentiary hearing to determine why did the trial court sentenced Petitioner prior to a finding of guilt. Had the district court conducted an evidentiary hearing, it might have come to understand why the trial court failed to set aside a void judgment, howbeit, the Petitioner does not believe there is a valid reason for not doing so.

In this case, this Honorable Court should set a new precedent requiring that all cases where the evidence points to a void judgment such as the Petitioner's be set for an evidentiary hearing to determine the facts and make a ruling based on the guaranteed Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

A review of the decision below is important because this Honorable Court should find that the State postconviction court's denial of Petitioner's void judgment and lack of counsel claims was based on an unreasonable determination of the facts in light of the overwhelming preponderance of evidence presented by Petitioner despite no record evidence of the plea colloquy. The judgment of the trial court should be vacated and the case remanded for further proceedings.

In sum, lower courts across this nation would benefit greatly from this Court's input on an issue such as the Petitioner's because it would clarify and set a consistent standard throughout the courts. Moreover, a decision in this case would no doubt bring about more justice to the defendants who have been denied due process of law that is guaranteed by the United States Constitution.

Petitioner respectfully requests that this Honorable Court reverse the decision of Second District Court of Appeal and remand for further proceedings.

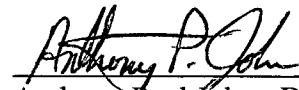
CONCLUSION

The Petitioner respectfully prays that this Honorable Court grants his petition for a writ of certiorari.

The Petition for a writ of certiorari should be granted.

Date: April 24th 2020.

Respectfully submitted,



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