

No. 19-8690

ORIGINAL

FL SC No.: SC20-220

Supreme Court, U.S.
FILED

APR 29 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Jimmy Lee Wheeler — PETITIONER
(Your Name)

vs.

State of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Florida
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jimmy Lee Wheeler
(Your Name)

110 Melaleuca Drive
(Address)

Crawfordville, Florida 32327
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

*> Whether Due Process Was Circumvented here?;

- 1) Whether The Claims Filed upon represents "Structural defects";?
- 2) Whether The Claims represents "Structural error";?
- 3) If These Claims are related in Nature of Fraud, deceit or Collusion;?
- 4) Whether due process was denied by not allowing any Challenges;?
- 5) Whether the Claims of 'presence' and 'pronouncement' Warrants A reversal of A resulting Conviction Where defendant Was not at all present;? (For either one was Constitutional error), etc.
- 6) Whether Structural error defects Over rules The two Cases Filed by State's Appeals Court? see Exhibit Appendix A. (2)
- 7) Whether these Claims Can be All Consolidated as requested for A Cumulative evaluation upon a Factual due process determination? especially, Since they All were related to "false pretense" upon A Criminal Fraudulent publication, etc. . . (denied due process; page #5)?
- 8) Whether there is A Conflict upon 'discrepancy' Which Was Addressed by State's "Amended information" on Feb. 2, 2016. 'Voided' The judgment due to revisiting the Charging information After the Sentencing has begin Serving WAS error for A "Fatal-Variance";?
- 9) Whether the State's Misconduct Cause "double jeopardy" to Attach as Clearly Alleged in the Petition for Certiorari; see pages: 2, 6, 10, 11, 12, 15, 19, 23, 29, 30; (Constituted Malicious prosecution);
- 10) Whether Petitioner's Claims of due process Violation denied him equal protection of the law by failing to allow his presence in the Court room For the pronouncement of the Sentence, Sentences and judgment Was Constitutional error, see pages: 3, 9, 12, 17, 27, 28, 30, etc. . . (Warrant reversal).

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:

Mark S. Inch & Secretary, Department of Corrections (DOC).
State of Florida, State's Attorney's Office Polk County
Florida.

RELATED CASES:

Criminal

- 1) 2D10-2105; 2D19-162; 2D19-2823; 532009CF00007101XXXX;
- 2) SC19-1916; SC20-220; 532008CF00025601XXXX.
- 3) 8:17-cv-00364-SDM-TGW; 18-12970-K; (All are on the Current Convictions (Criminal)).

Civil:

- * 4) 19-14103-B; 20-10184-J; 8:18-cv-1716-T-33TGW; (CF74-2445; CF74-2446; and CF74-2447); 4:19-cv-00411-MW-HTC; Dated 2/21/1975.

All of these Claims are directly related to Fraudulent Conduct; and are all under Collateral Attack, Which need to be Consolidated for a Cumulative Factual determination, etc... see State's information attached as Appendix A.1-3; Charges Crime on possession of (SAID CASH)! All of these Cases under Civil are the Same Claims. See Appendix C. (2). Attach here.

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APPENDIX D	Order of the State Supreme Court denying rehearing;
APPENDIX E	Unfiled related Case with direction to seek Certiorari in this Court and Case disclosures with (counsel appearance) and Judgment.
APPENDIX F	related Case banned which granted (doc. 34, 35 and 36); and reference to Florida Bar # <u>19-4141</u> ;
APPENDIX G	important information on the Court's Failure to allow any Challenger to establish a relevant issue in dispute; see 1-10;
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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

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix E (1) to the petition and is

☒ reported at 18-12970-K And F (1); 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 D (1) to the petition and is

☒ reported at 232 So. 3d 975 (Fla. 2d DCA 2017); 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 D (2) to the petition and is

☒ reported at CASE NO.: SC20-220; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Middle District (Florida) court appears at Appendix E (1) to the petition and is

☒ reported at 8:17-cv-364-T-23TGW (Published); 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 April 9, 2020 / And April 6, 2020 "Same Case," Civil, And Criminal, et al..

☐ 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: March 16, 2019 / 4-6-2020 and a copy of the order denying rehearing appears at Appendix A(15) & A. (16).

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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 April 17, 2020. A copy of that decision appears at Appendix D. (1).

☐ A timely petition for rehearing was thereafter denied on the following date: April 17, 2020 and a copy of the order denying rehearing appears at Appendix D. (1).

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Amendments:

28 U.S.C.A. §§ 1254, 1257; page #: 6 /
28 U.S.C.A. § 1651. page #: 6 / 5. and 6. page #: 18; And Art 34,
Amendments:

First, Fifth, Sixth, Seventh, And Fourteenth Amendments, page 34.
Article V, § 3(b)(1), Fla. Const. (2009); Articles: And Art. V, § 3(b)(7), § 3(b)(3).
Article I, § 9 and 10, page # 5. And Article III, § (2), page #: 25, page 33.
775.082, page #: 28;

Florida Statutes: > 92.525(2) E.S. (2009).

777.04(?) (?); 794.011. (?) (?); And 800.04. (?) (?) (?) (?) . page #: 15 / 36.

Rules:

Florida Rules of Criminal Procedures:

Rule 3.170(1), page #: 1;
Rule 3.210(a), page #: 1;
Rule 3.215(c), page #: 1;
Rule 3.700(a) and (b), page #: 9;
Rule 3.180(a) and (b), page #: 9;
Rule 3.171(c), page #: 13;
Rule 3.172(a), page #: 13;
Rule 3.210(a)(1), page #: 14;
Rule 3.800(a), page #: 17;
Rule 3.850(b), page #: 17;
Rule 3.111(b)(2),

Fed. R. App. P. (2A), page #: 22;
Rule 39, page #: 22;
Rule 14, page #: 22.
Rule 10(a) Caption.

STATEMENT OF THE CASE

This Matter is before this Honorable Court With Multiple 'Sentencing defects' in the Criminal prosecution; and related Cases in Nature of There 'Malicious Misconduct' and 'False Publication' in the Absence of Petitioner's 'presence' to be 'pronounced' guilty of any Crimes State Charged and later tried to Cure the Structural defect of a Fundamental error, and Constituted by an unlawful belated Amended to the Charged Statute's degree for an illegal increase-ment After the Sentence, Sanctions, and Judgment had begun Serving; resulted in Structural error and double-jeopardy Attached to the increased Charged State Statute! From a Second-degree Attempted Sexual battery, and lewd on lascivious Manner a Second-degree Felony punishable up to a Maximum of (15-years - imprisonment); Which is Malicious prosecution Which Should be Considered a great Public important issue to be Corrected and Vacated From the Criminal history for the foregoing reasons:

On March 19, 2010, Petitioner was Coerced to sign a guilty plea by defense Counsel while he was on mind altering psy-drugs (Mentally-incompetent) and (legally-impaired) without a clue as to understood the legal rights being waived involuntary; Absent due process of law. State was allowed to offer a plea without any evidence to support the charges filed; which was clearly Maliciously enforced which incorporated: For Case No. CF08-2256-XX 2-Counts of (Attempted Sexual battery) pursuant to Fla. Stat. 794.011 (?) (?) From the (Same) Criminal episode, For 25-yrs. on Counts 1 and 2;

And on Case No. CF09-000071-XX; Counts 1, 2, 3, and 4, 25-years each; pursuant to Fla. Stat. 794.011(?) (Same) Statutory elements! Which not only fails to charge a (specific-section) of the Statute's subsection violated, it constituted ["double-jeopardy"] in violation of the due process Clause; Constitutional Amendments 5, 6, and 14th. Which are essential elements to charge the crime; And Count # 5. State charged 1-Count of lewd or lascivious Manner, a Second-degree offense! punishable by a Maximum of (15-yr. - imprisonment); State's plea incorporated 25-years for Count-5; And All Counts were ordered to run Concurrent to Count-5 in both Cases; Which State after the plea was signed in the Court's (holding-cell) while Wheeler was all drugged up on "psy-med" which aided to the signing of the State's plea; rendered signed (involuntary), Absent due process of law. see Argument of Writ pages: 3-14.

Thus, the plea was excessive and maliciously enforced to include a (5-year State consecutive probation sentence); followed by (life-time State probation sentence) which is a condemned judgment with the State's Department of Corrections (DOC), such upon which the trial judge, State Assistant Attorney and defense Court appointed Counsel all corroborated this malicious plea (illegally composed) to exceed Statutory Maximum and constituted "double jeopardy" for both Cases, under vindictive and malicious structural defects, which record of criminal history of Custodian (FDOC) reveals this sort of prosecution against Petitioner Wheeler has an extensive history which exposes 46-years of "Fraud" and "False Publication"; which the Custodial Criminal record reveals 3-Concurrent robberies conviction with a "gun" to-wit: "deadly weapon" State never changed; and the

Unchanged 'gun' was Never a Feature in the robbery by (Snatch-N-grab); Case related by Fraudulent Acts Case pending dismissal in the Eleventh Circuit Court of Appeals No. 19-14103-B, directly related to appeal's case No. 20-10184-J, both Claim are for the Same issue raised; the 1975 robbery Convictions; Which are expired, but are still pending in the Custodial documented Criminal history as 3- robberies with a 'gun' to-wit: 'deadly Weapon' Which record reveals is unchanged; Which has a Current Affect on every Conviction after February 21, 1975. See Also, Appendix C.(2) And a Court's order Clarifying the unchanged 'gun' 'Firearm' or 'deadly Weapon' at appendix C.4. This is a related Case of Misrepresentation resulting in False Publication.

Supporting Factors;

This Manner of review would be 'unpredictable', if All the Appendix, Exhibits were not put before this Honorable Court for a Cumulative thorough evaluation of All the related Facts; And thus I'm Compelled to Make the last Stand of My Actual innocence Claim be evidenced by Facts and excerpts from the record Where there has never been any Challenger Allowed; And An Unrighteous "procedural bar" set up to keep the Fraudulent Acts of Misconduct Concealed; of the State's prosecution's Unauthorized Amended information on Feb. 2, 2016. Which State's Acts Made an (increase) in the prior Statute's degree 7-years After the Sentence is being Served. see App's Judgment entered on March 31, 2010. Without Petitioner's presence; see Certiorari pages: 8, 9, 10, 12, 17, 27, 28, 30 and 34 Which Concisely revealed "Structural error" throughout the entire Writ.

SUPPORTING FACTS:

This Court Should Find too Many Factual Unrefuted and Uncontested Constitutional error here that each reviewing judge Could Find Meritorious to grant the All Writs Act Which Was initially Filed for this Case and The Second District Court of Appeals turned it into a "habeas Corpus" Writ; and transcribed it to the Florida Supreme Court After it learned that the Claim Was under Collateral Attach. Which involved (Prosecutorial-Misconduct and Fraud on the Court). see Appendix A. >(A1D); in every claim Filed no review of the record has ever been granted simply because the record is Fraudulent in part; And due process Was denied in every attempt to Correct the "Structural Errors". see Certiorari at pages: 1; a time Motion to Withdraw guilty plea Was denied. see Appendix B. (5)-(7) on May 3, 2010; pursuant to Fla.R. Crim. P. Rule 3.170(1) (R. 110-112).

Thus, Mr. Wheeler's Competency Was a relevant Factor to him signing a guilty plea, with 7-Witnesses and an Alibi witness for his defense. and the fact that defense Counsel had been Filed upon and the prosecution, six-months prior to the plea Coercion and again Afterward: see Florida Bar #: 194141; and another case on record, Clearly supports Petitioner's Claim of being Vindictively discriminated against the equal protection of the law, and "Governmental Misconduct Which Violated defendants' due process." see Appendix F. (7); and Certiorari page 13; Facts are that Petitioner had a Constitutional right to be present for 'pronouncement' of any and all "Critical Stages" of the Trial and judgment, otherwise he is not lawfully adjudicated guilty of the crimes.

ISSUES ON THE MERITS:

Here, there are 6-grounds in the Certiorari Writ; and 12-issues in support of those grounds which are all fatally vital to the judicial system's rudimentary demands of justice. see U.S. v. Agurs, 427 U.S. 97, 103-04, 96 S.Ct. 2392, 49 L.Ed. 2d 342 (1975); appendix B. (2), document # 4, Amended Charging information! and Certiorari Writ, pages: 9, 24, 31; Such an error can hardly be considered harmless. Where the record reveals that the Act to increase the Charged Statute was in fact, a deliberate act of prosecutorial misconduct, so Filed upon thoroughly under due diligence, to no avail, etc...

* > "Presence" and "Pronouncement;"

The following rules of Court provides and states that a Court of record 'MUST' be orally articulated for completion and in compliance with the dictates of current law for the conviction of a judicial prosecution to stand adjudicated, it must be able to withstand challenger and evidentiary reviews by the recorded evidence adduced against the offense charged, etc. See Rule 3.70D(b); in the instant case up for Certiorari review, it is "Crystal Clear" that Petitioner did not receive a fair and impartial trial. Where he was not evidenced as being put on legal notice about a trial or judgment to give a statement of credibility upon his own defense; and thus, it is "Abominable" to convict a man behind his back! Thus, there is absolutely no evidence state filed in the record to define guilt of the charges filed; and Petitioner has never intentionally admitted to the offenses, etc...

* REASONS FOR GRANTING THE PETITION

The record reveals Severe injustice to this manner of prosecution: Thus, the record Supports every Claim petitioner has raised to seek a Challenge to the Criminal records, and that the trial Court Failed to impose a (guideline Sentence) under Rule 3.701(b) and (c)(2) ch. 794 and 800 Which Such error Allowed and 'unlawful' and 'illegal' increasement of the Charged Statute's degree Which to Cure the defective plea that exceeds Statutory Maximum for the Second-degree offense State Charged, etc. . . .

Appendix A (2), document # 3, Case No. CF09-71, And Facts herewith; Thus, the quest For Court Appointed Counsel was Also denied. see appendix I, Rule 3.111(b)(2). The Right To Be Competent to Stand trial. Rule 3.210(a) appendix A.(9). * > To Stand Trial : "denied."

Petitioners Facts are All incorporated in the pending Petition For Writ of Certiorari and the Appendix to support the 7-grounds, 10-points of law overlook, and 18-Issues with 9-Arguments; Standard of Review, on "Manifest Malicious Structural errors"; and Constitutional Claims, under the Fifth, Sixth and Fourteenth Amendments; see page # 18 of Writ. And page # 19 on direct conflict For based related Fraudulent Conduct and False Publication that the State Courts All Circumvented to deny due process of law; Which is No doubt a Great Public Important issue on "public trust." And Also Support by a Memorandum of this Court's own holding on "Structural error defects", see pages: "23-33", with an Oath and Affidavit to Support there truths, in light of obtaining due process of law; under the Constitutional Safeguard and equal protection therein, * This Be So Prayed.

JUDICIAL NOTICE ;

Please pardon My lack of legal knowledge; I'm still recovering from these "facts".
Petitioner plead his Cause to this Honorable Court by and through
his previous Petition For A "Writ of Certiorari review" of :
Malicious Prosecution, Fundamental error, Manifest injustice,
Manifest Miscarriage of justice, Prosecutorial Misconduct,
Structural-defects, Structural error; Which has been lead
by "invasion of Privacy", "entrapment", "False Arrest", "fraud",
"deceit", "Misrepresentation", "Mistake", "unlawful" and "illegal" Form
of Vindictive, Malicious prosecution upon an innocent Man
Simply because he was put on psymedications by the jails'
physicians for a (Stomach-Virus); Which allowed state to
Steal Petitioner's Freedom! With the aid of A "jealous hearted
(ex-girl-friend); and there is No evidence in the record to
prove otherwise, And there is No evidence in the record to Sustain there
Convictions, etc.

NOTE THAT:

Related Case:

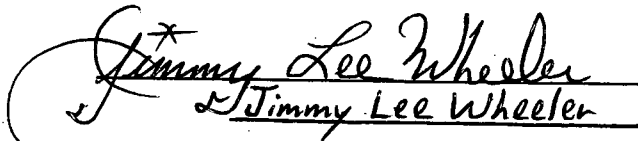
On Feb. 2, 2016, State Filed an "Unauthorized" Amended information
With the Clerk's Files; see records' Exhibit B. (2), doc. #4, for
Case No. CA09-71, Appeal No. 2019-2823, (habeas Corpus writ); And
FL SC No. SC20-220; pending before this Court for review if
granted.

Thus, the alleged State "bar" to review is enforced in "error";
and intentionally to prevent and stop any Challengers to expose
the Fraudulent Conduct of 46-years, Past and Present. See Appendix
A. (3) Case No. 19-14103-B titled Motion to proceed in Forma pauperis
dated Feb. 25, 2020; reference by Exhibit A. (6). The appeals Court
state that the Case was dismissed for failure to pay the fees,
for filing when petitioner was already declared indigent by the
First District Court of Appeals in that Case, appealed to the district Court.

Likewise, The Cumulative effect of trial Counsel, as well as Court appointed Appellate Counsel's numerous deficiencies amounts to a deprivation of the Petitioners 4th, 6th, 5th, and 14th Amendment rights to the effective assistance of Counsel and the Petitioners Habeas Corpus for the All Writs Act should have been granted because State Conceded that the district Court of Appeals Failed to allow any Challenges to the record that would give a reliable source of an Argument or Challenge to the record denied here on every attempt which Created a "bat"; Where the State Misconstrued the pro se Newly discovered evidence with Counsel's direct appeal Filings; which are two different Claims; an evidentiary hearing would reveal an innocent Man was prosecuted without evidence of a Crime, etc. **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Jimmy Lee Wheeler

Date: June 1, 2020

No. _____

FLSC No. SC 20-220

IN THE
SUPREME COURT OF THE UNITED STATES

Jimmy Lee Wheeler — PETITIONER
(Your Name)

VS.

Mark S. Inch, Secretary, etc. — RESPONDENT(S)

PROOF OF SERVICE

I, Jimmy Lee Wheeler, do swear or declare that on this date, _____, 2020, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Mark S. Inch, Secretary, Florida Department of Corrections, Office of the General Counsel, Ashley B. Moody, A.G., 501 South Calhoun Street, Tallahassee, Florida 32399-2500; and The Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 4, 2020

LEGAL MAIL
Provided to
Wakulla CI

JUN 04 2020

FORMAILING

Jimmy Lee Wheeler
(Signature)

AFFIDAVIT OF PETITIONER

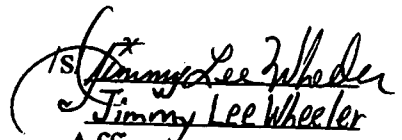
STATE OF FLORIDA
COUNTY OF WAKULLA

COMES NOW THE AFFIANT

Jimmy Lee Wheeler D.C.#: 046120; EC#413102, In proper person before this Honorable Court of Appellate review and state that, I Am the Appellant/Petitioner in the foregoing affidavit who hereby attest that I do speak English, and have read the foregoing proposed order requesting review and a just remedy to correct the injustice manifested against me in the pending two cases filed in case no:18-12970-k; and respectfully requesting consolidation of case no: 18-13862-G, which are both related to constitutional violations of manifest injustice on 'fraud' and 'false publication', amounting to 44-years of cruel and unusual punishment, which have affected the Life and Liberty of Petitioner; (joinder); Rule 3.151 (a);Rule 1.270(a). (For Cumulative review).

Also That,

This request is made in 'good faith' with personal knowledge of all stated facts herein, which are true and correct and warrants Habeas release after review as a matter of law, to correct 'Structural error'. Which are true and correct in accordance with section 92.525 (2), Florida Statutes (2010). On this 4 day of June 2020


Jimmy Lee Wheeler
Affiant

D.C.#:046120
Civil Right's Advocate
In the legal pursuit of
Justice.