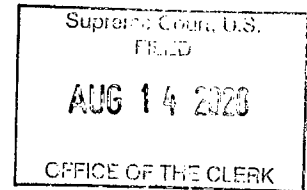


20-5508

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

DAVID P MORAN — PETITIONER



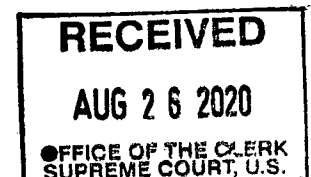
V

STATE OF FLORIDA — RESPONDENT

**ON A PETITION FOR WRIT OF CERTIORARI TO THE FIFTH DISTRICT
COURT OF APPEAL DAYTONA BEACH, FLORIDA**

PETITION FOR WRIT OF CERTIORARI

**David P. Moran X97428
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QUESTION PRESENTED

1. Is Fla. Stat. 924.051(1)(b) unconstitutional on its face due to its conflict with the due process clause of the U.S. Const. 14th Amend.?
2. Should a motion not being ruled on by the trial judge be automatically preserved for appellate review with or without an objection being offered?
3. Should a motion not being ruled on by the trial judge be automatically preserved for appellate review when the issue the motion's contents of is material to trial?

LIST OF PARTIES

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Daytona Beach, Florida 32118

Office of the State Attorney
Ninth Judicial Circuit
415 North Orange Avenue
Suite 300
Orlando, Florida 32801

RELATED CASES

*Moran v. State, 5D20-1177, Fifth District Court of Appeal. Judgment entered May 29th 2020.

*Moran v. State, 5D19-1833, Fifth District Court of Appeal. Judgment entered January 17th 2020.

*State v. Moran, 16-CF-006177-A-OR, Orange County Circuit Court, Judgment entered April 21st 2020.

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APPENDIX B. Fifth District Court of Appeal denies motion for rehearing, certification, and/or written opinion (**Fla. R. App. P. 9.330(a)**)

APPENDIX C. Orange County Circuit Court denies request to strike and amended motion for reconsideration (**Fla. R. Crm P. 3.190 (h)(3)**).

APPENDIX D. Fifth District Court of Appeal denies petition for writ of habeas corpus alleging ineffective assistance of appellate counsel with authored opinion (**Fla. R. App. P. 9.141 (d)**).

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**IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

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

OPINIONS BELOW

The opinion of the Orange County Circuit Court appears at appendix C to the petition and is unpublished. No opinion was provided in the Fifth District Court of Appeal denial.

JURISDICTION

The date on which the highest state court decided my case was May 29th 2020. A copy of that decision appears at appendix A. A timely motion for rehearing was thereafter denied on June 19th 2020. A copy of that decision appears at appendix B.

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

CONSTITUTIONAL PROVISIONS

U. S. Constitution Amendment Fourteen i, 6, 8

...nor shall any state deprive any person of life, liberty, or property without due process of the law, nor deny to any person within it's jurisdiction the equal protection of the laws.

Florida Constitution Art. I § 9 6, 8

No person shall be deprived of life, liberty, or property without due process of law.....

Florida Constitution Art. I § 2 6

All natural person, female and male alike, are equal before the law and have inalienable rights.....

Florida Constitution Art. V § 3(b)(3) 13

May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly and directly conflicts with a decision of another district court of appeal or the Florida Supreme Court on the same question of law.

PRELIMINARY STATEMENT

This honorable court is directed to incorporate by reference transcripts and pleadings from the Orange County Circuit Court. Included in some of the previous petitions is references to trial, sentencing, motion to suppress, and record on appeal. **(See appendix J)** This honorable court is directed to incorporate by reference pleadings from the Fifth District Court of Appeal. This court must examine previous pleadings to gain a full understanding of some of the issues presented in this petition. **(See appendix K)** This was done as this court has easy online access to these documents and so the petitioner did not have to submit a large bulk of documents in the appendix.

STATEMENT OF PROCEDURAL FACTS

The following is a listing of relevant trial court proceedings to this writ. (16-CF-006177-A-OR) April 25th 2017 Motion to suppress hearing. (RA 96-98) April 28th 2017 Motion to suppress denied. (RA 99-02) July 13th 2017 Motion for reconsideration submitted. (See appendix F) July 24th 2017 Motion for reconsideration hearing. (TT 1-18) July 24th 2017 to July 27th 2017 Trial. (RA 112-140) March 11th 2020 Request to strike and amended motion for reconsideration. April 21st 2020 Request to strike and amended motion for reconsideration denied. (See appendix C)

The following is a listing of relevant appellate court proceedings to this writ. (5D19-1833) June 21st 2019 Petition for writ of habeas corpus alleging ineffective assistance of appellate counsel submitted. August 20th 2019 State's answer. (See appendix E) September 12th 2019 Petitioner's reply. January 17th 2020 Petition denied with authored opinion. (See appendix D) January 27th 2020 Motion for rehearing, rehearing en banc, and/or certification submitted. January 29th 2020 Motion for rehearing, rehearing en banc, and/or certification denied.

The following is a listing of relevant appellate court proceedings to this writ. (5D20-1177) May 18th 2020 Petition for writ of habeas corpus challenging fundamental miscarriage of justice and manifest injustice submitted. May 29th 2020 Petition for writ of habeas corpus challenging fundamental miscarriage of justice and manifest injustice denied. (See appendix A) June 11th 2020. Motion for

rehearing, certification, and/or written opinion submitted. June 19th 2020 Motion for rehearing, certification, and/or written opinion denied. (See **appendix B**)

SUMMARY OF THE CASE

The sole issue being raised in this writ is the fact that a motion for reconsideration of a motion to suppress denial was never ruled on by the trial judge creating a substantial violation of the petitioner's U.S, Const. 14th Amend., his Fla. Const. Art. I § 9, and his Fla. Const, Art. I § 2 rights to due process of law and equal protection of the laws. Due process was violated as this issue denied the petitioner the ability to receive a fair hearing, trial, and direct appeal proceeding. Equal protection was violated as this issue denied the petitioner the right to a ruling on a motion that every other petitioner receives in a criminal case.

This issue qualifies as a fundamental error as the failure of the judge to rule on the motion created a situation in which the statement the petitioner gave could be used at trial whereas if the judge had granted the motion it would not have been. The contents of the motion where material to the issue of whether the statement was given freely and voluntarily and directly relates to the petitioner's "actual innocence" claim. The state stated in opening arguments "this case is simply about suicide by cop." (**TT 64**) Without the ability to use the contents of the statement the jury would have rendered a not guilty verdict. "An error of the court which goes to the foundation of the case, or which takes from a defendant a right essential to his defense on appeal." (**Ballentine's Law Dictionary 3rd Edition**)

This issue also qualifies as a manifest injustice as numerous other petitioners receive reverse and remands on their cases stemming from this kind of issue. The error of not ruling on this motion is clear and on the face of the record. "A direct, obvious, and observable error in a trial court." (**Black's Law Dictionary 10th Edition**)

STATEMENT OF CASE

On July 24th 2017 trial counsel informed the judge the motion for reconsideration he submitted to the court contained newer medical records listing the name, date, dose, and time of medications the petitioner was being given on the day that two detectives came to interview him in the intensive care unit of the hospital. (**TT 2-3, 470, See appendix F and G**) The judge inquired about certain medical records missing as exhibits. Trial counsel proceeds to hand the judge the missing records. (**TT 14-15**) The judge asks if there are any other pre-trial motions to be ruled on. (**TT 15**) The state asks the judge when a ruling is expected on the motion. The judge responds before the venire is brought in. (**TT 16**) Roughly five minutes later at 10:13 am the venire is brought in and the motion was still not ruled on. (**TT 18**)

On June 21st 2019 the petitioner in ground three of his petition for writ of habeas corpus alleging ineffective assistance of appellate counsel raised the issue that the motion did get ruled on but was missing from the trial transcripts. On August 20th 2019 the state rebutted with the theory that the motion did not get

ruled on thus not being preserved for appellate review. (**See appendix E**) On January 17th 2020 the Fifth District Court of Appeal denied the petition with an authored opinion. They never cited ground three in it's opinion presumably because they accepted the state's theory. (**See appendix D**)

On April 21st 2020 the Orange County Circuit Court denied the request to strike and amended motion for reconsideration. They cited the issue is collaterally estopped from being relitigated again, the trial court has the authority to rule on the motion or not, and the theory that the motion did not get ruled on. The petitioner is now proceeding forth with the theory the motion did not get ruled on. (**See appendix C**)

Fla. Stat. 924.051 (1)(b) should be declared unconstitutional on it's face. This statute is in conflict with the U.S. Const. 14th Amend. and the Fla. Const. Art. I § 9 right to due process as not ruling on a motion who's contents are related to a material issue at trial is an abuse of discretion. The fact that this level of abuse of discretion is not preserved for appellate review is an injustice this court is obligated to correct. "To be preserved the issue or legal argument must be raised and ruled on by the trial court." (**Fla. Stat. 924.051 (1)(b)**)

"A party's failure to obtain a ruling on a motion fails to preserve the issue for appellate review." (**Simpson v. State 3 So. 3d 1135 FSC 2009**)

"The failure of a party to get a timely ruling by a trial court constitutes a waiver of the matter for appellate purposes." (**Rhodes v. State 986 So. 2d 501 FSC**)

2008)

The next few case laws all state not ruling on a motion is an abuse of discretion. The contents of these motions were not as material to the issue at hand as they are in the instant case. "The court's failure to rule upon the motion to amend was tantamount to denial of the motion, which was an abuse of discretion."

(Skilled Services Corporation v. Reliance Insurance Company 763 So. 2d 1092 4th DCA 1999)

"We hold that it was an abuse of discretion to deny Kimball leave to amend by failing to rule on her motion prior to granting summary judgment." **(Kimball v. Publix Supermarkets 901 So. 2d 293 2nd DCA 2005)**

"Failure to consider and rule on significant pre-trial motions before issuing dispositive orders can be an abuse of discretion." **(Chudasama v. Mazda Motors Corporation 123 F. 3d 1353 USCA 11th Cir. 1997)**

"The district court's failure to rule on the motion to compel circumvented the policy underlying discovery in cases in which a summary judgment motion is filed." **(Snook v. Trust Company of Georgia Bank 859 F. 2d 865 USCA 11th Cir. 1988)**

"The failure to rule on a motion to appoint counsel, require a remand. On remand, a district court should clearly indicate its disposition of the request for appointment and its basis for that disposition." **(Willis v. Federal Bureau of Investigation 1999 US App Lexis 7354 USCA DC Cir. 1999)**

If not ruling on a motion for new trial is grounds for a new sentencing

proceeding then not ruling on a "pre-trial" motion whose contents are related to a material issue at trial is grounds for a new trial. Instructions should be sent to the trial court to vacate every action taken after the error by the judge occurred.

"Failure to rule on a motion for new trial prior to sentencing constitutes an error patent and necessitates that the sentence be vacated." (**Williams v. Goodwin** 2017 U.S. Dist. Lexis 180654 USDC 5th Cir. 2017)

"A state court's failure to rule on a motion for reconsideration is a denial of a habeas petitioner's due process rights." (**Simmons v. Schriro** 187 Fed. Appx. 753 USCA 9th Cir. 2006)

"The due process clause grants an aggrieved party the opportunity to present his case and have it's merits fairly judged." (**Logan v. Zimmerman Brush Company** 455 US 422, 71 L Ed 2d 265, 102 S Ct 1148 USSC 1982)

The first point the Orange County Circuit Court made in its denial of the request to strike and amended motion for reconsideration is that they had the authority to not rule on the motion. This argument fails for several reasons. The trial judge actually says he will issue a ruling on the motion before the venire is brought in. (TT 16) Roughly five minutes pass then at 10:13am the venire is brought in and the judge chooses to start trial blatantly disregarding it. (TT 18) Furthermore, trial counsel states there were newer facts that were previously unknown at the time of the motion to suppress hearing on April 25th 2017. The facts about the name, date, dose, and time of medications the petitioner was given

the day of the statement to detectives were contained in a second set of medical records.. (TT 2-3, 470, **See appendix F and G**) Even beyond this assertion there were undisclosed facts that due to trial counsel's negligence were not discovered until after he received both sets of medical records after he came to prison. These medical records included notes from medical professionals about the petitioner's state of mind as well as being housed in the intensive care unit at the time of the interview. (**See appendix H**) Furthermore, the state put forth the theory that the motion never got ruled on. (**See appendix E**) The petitioner asserts the motion did get ruled on but was missing from trial transcripts on ground three of the petition for writ of habeas corpus submitted to the Fifth District Court of Appeal on June 21st 2019. On January 17th 2020 the Fifth District Court of Appeal did not reference ground three in it's denial with authored opinion. (**See appendix D**) The trial court is assuming the theory that the motion never got ruled on is correct. (**See appendix C**) All of these facts were previously unknown to the petitioner until after trial. Therefore, the court was obligated to issue a ruling on the motion for reconsideration submitted on July 13th 2017 or the request to strike and amended motion for reconsideration submitted on March 11th 2020. "The motion to suppress shall be made before trial unless opportunity therefore did not exist or the petitioner was not aware of the grounds for the motion." (**Fla. R. Crm. P. 3.190(h)(3)**)

The second point the Orange County Circuit Court made in it's denial of the request to strike and amended motion for reconsideration is that the issue is

collaterally estopped from being relitigated again as it was previously litigated on direct appeal. There are numerous problems with this assertion. First the contents of the motion for reconsideration were never mentioned in appellate counsels Ander's brief. (See **appendix F**) Second there are numerous factual assertions and case laws in support of those facts that were never even mentioned in his Ander's brief. This court is directed to ground one of the petition for writ of habeas corpus that was submitted to the Fifth District Court of Appeal on June 21st 2019. This court is directed to the Ander's brief appellate counsel submitted to compare the arguments.. (See **appendix I**) Counsel did not argue anything resembling the issue in it's correct form .Therefore, collateral estoppel by default does not apply to this situation because the issue was never litigated properly in the first place.

This court does have the authority to compel the trial court to rule on the amended motion for reconsideration so the Fifth District Court of Appeal can review the contents of the issue in a new belated direct appeal if it denies the motion. The issue would then be properly preserved for direct appeal. "I conclude that the trial court should be directed to rule on the motion to depose. The majority correctly recognizes that the failure of the trial court to rule on this motion presents a current impediment for this court to review the claim, but then, strangely does not direct the trial court to remove this obstacle. Thus, the failure of the trial court to rule on the motion to depose was likely an oversight, which supports that the trial court should be directed to rule on the motion." (**Justice Lewis Dissent**) (**Rhodes v.**

REASONS FOR GRANTING THIS PETITION

The petitioner was not provided with the prerequisites necessary to invoke the Florida Supreme Court's discretionary jurisdiction. The Fifth District Court of Appeal did not issue an opinion in it's denial or provide any express language needed to declare a state statute invalid and certify conflict with other Florida case laws citing this to be an abuse of discretion and due process violation. Therefore, certiorari review of the United States Supreme Court is the only possible remedy. "May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly and directly conflicts with a decision of another district court of appeal or the Florida Supreme Court on the same question of law." (Fla. Const. Art. V § 3(b)(3))

This honorable court should grant review of this case to ensure the legislature is making Florida Statutes that are clear and apply to all potential situations that can possibly fall under that statute. This honorable court should grant review of this case to allow for these types of issues to be preserved for appellate review by default. This honorable court should grant review of this case to compel trial judges to issue rulings on all motions regardless of how material the issues are to a hearing or trial. This honorable court should grant review of this case to ensure the due process rights of the accused are satisfied when it comes to

issuing rulings on motions who's contents are essential to a fair trial.

CONCLUSION

This petition for writ of certiorari should be granted. This request is made in good faith. The petitioner swears the facts contained in this petition for writ of certiorari are true and correct.

D. Moran

David P. Moran X97428

Pro se Litigant

Date: July 2nd, 2020.