

20-6679

No. _____

ORIGINAL

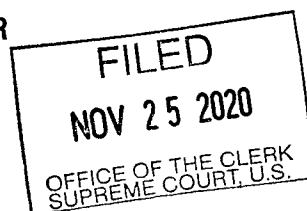
IN THE

SUPREME COURT OF THE UNITED STATES

LARRY DORTLEY — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

FIRST DISTRICT COURT OF APPEAL, STATE OF FLORIDA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Larry Dortley # 222093

(Your Name)

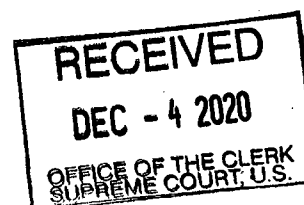
Zephyrhills Correctional Institution
2739 Gall Blvd.

(Address)

Zephyrhills, FL 33541-9701

(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

Petitioner, Larry Dortley, was declared incompetent to proceed to trial by the Third Judicial Circuit Court, Columbia County, Florida, and was involuntarily placed in the State Mental Hospital. Petitioner was thereafter removed from the State Mental Hospital, forced to trial, convicted of first degree murder and armed robbery, and sentenced to life imprisonment, while remaining under the order of incompetency.

- 1) Whether the Equal Protection and Due Process of Law Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and the United States Supreme Court decision in Drope v. Missouri, 420 U.S. 162 (1975) prohibit a state court from convicting and sentencing a person who has been declared incompetent?
- 2) Whether an invalid procedural bar can be imposed on an incompetent person to uphold an unconstitutional conviction?

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:

RELATED CASES

Dortley v. State, 495 So.2d 751 (Fla. 1st DCA 1986)
Dortley v. State, 556 So.2d 500 (Fla. 1st DCA 1990)
Dortley v. State, 568 So.2d 436 (Fla. 1st DCA 1990)
Dortley v. State, 996 So.2d 216 (Fla. 1st DCA 2008)
Dortley v. State, 41 So.3d 893 (Fla. 1st DCA 2010)
Dortley v. State, 48 So.3d 925 (Fla. 1st DCA 2010)
Dortley v. State, 285 So.3d 938 (Fla. 1st DCA 2019)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A - September 25, 2020, order of the First District Court of Appeal of Florida	
APPENDIX B - Order of the Third Judicial Circuit of Florida denying Petition for Writ of Habeas Corpus	
APPENDIX C - Motion for Rehearing	
APPENDIX D - Order of the Third Judicial Circuit of Florida denying Motion for Rehearing	
APPENDIX E - Initial Brief of Appellant	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Arizona v. Fulminante</i> , 499 U.S. 279 (1991)	6
<i>Carroll v. State</i> , 815 So.2d 601 (Fla.2002)	7
<i>Drope v. Missouri</i> , 420 U.S. 162 (1975)	i, 5, 6
<i>Godinez v. Moran</i> , 509 U.S. 389 (1993)	6
<i>Johnston v. Dugger</i> , 583 So.2d 657 (Fla.1991)	7
<i>Patton v. State</i> , 784 So.2d 380 (Fla.2000)	7
<i>United States v. Gonzalez-Lopez</i> , 548 U.S. 140 (2006)	6

STATUTES AND RULES

OTHER

Fifth Amendment to the United States Constitution	3, 6
Fourteenth Amendment to the United States Constitution	3, 6

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 _____ 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 Third Judicial Circuit 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.

JURISDICTION

☐ For cases from **federal courts**:

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

☐ 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: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ 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 September 25, 2020
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ 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

The Fifth Amendment to the United States Constitution:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment (Section 1) to the United States Constitution:

"1. 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

Petitioner was indicted on Count-I, First-Degree Murder; Count-II, Armed Burglary; and Count-III, Kidnapping, on March 5, 1982, in Columbia County, Florida. The Third Judicial Circuit Court ordered that Petitioner was incompetent to stand trial, and involuntarily committed him to the State Mental Hospital in Chattahoochee, Florida.

Petitioner was removed from the State Hospital and taken to trial without a determination or order that he was no longer incompetent to proceed.

Petitioner was convicted, by jury verdict, of first degree murder and armed burglary, and sentenced to life imprisonment. Petitioner's Counsel failed to file for, and, no direct appeal was had.

Petitioner filed a Petition for Writ of Habeas Corpus in the Third Judicial Circuit Court, in and for Columbia County, Florida attacking his conviction and sentence which occurred while he was under court ordered incompetence. The Circuit Court denied relief, citing state cases that hold the failure to conduct a competency hearing should be raised on direct appeal, and declared Petitioner's claim procedurally barred. (Appendix B).

Petitioner filed a motion for rehearing (Appendix C) pointing out that none of the cases in the court's order are applicable (Id., pg. 2), and that under the authority of

Drope v. Missouri, 420 U.S. 162 (1975), the State was prohibited from proceeding against Petitioner, an incompetent person, (Id., Pg.3). The Circuit Court denied rehearing based solely on its previous finding, (Appendix D).

Petitioner appealed the Circuit Court's Order to the First District Court of Appeal of Florida, claiming the Circuit Court misapplied state law, failed to follow the United States Supreme Court decision in Drope v. Missouri, 420 U.S. 162 (1975), thereby depriving Petitioner of equal protection of the law and due process of law, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. (Appendix E). The First District Court of Appeal affirmed, per curiam without opinion on September 25, 2020. (Appendix A).

REASONS FOR GRANTING THE PETITION

This Honorable Court declared in Drope v. Missouri, 420 U.S. 162, 171-172 (1975)¹, that a state court is prohibited from pursuing a Criminal Conviction on an incompetent person. Ignoring this Court's decision in Drope, the Third Judicial Circuit Court, Columbia County, Florida tried, convicted, and sentence Petitioner to a life sentence, after declaring him incompetent to proceed to trial.

The State of Florida's action of convicting and sentencing Petitioner, an incompetent, deprived him of due process of law and equal protection of law declared in Drope, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

Petitioner submits this error is a "structural defect" as defined in Arizona v. Fulminante, 499 U.S. 279, 309-310 (1991); United States v. Gonzalez-Lopez, 548 U.S. 140, 148-149 (2006), constitutes fundamental error, a manifest injustice, and cannot go uncorrected. Thus, this Honorable Court should grant Certiorari on this claim.

In denying Petitioner habeas corpus relief, the Third Judicial Circuit Court failed to address Petitioner's claim of being tried and convicted while declared incompetent, but ruled Petitioner's issue should have been raised on

¹ Affirmed in Godinez v. Moran, 509 U.S. 389, 396 (1993).

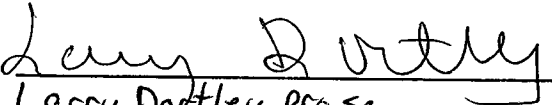
direct appeal and is procedurally barred, citing Carroll v. State, 815 So.2d 601, 610 (Fla. 2002) (citing Patton v. State, 784 So.2d 380, 393 (Fla. 2000); Johnston v. Dugger, 583 So.2d 657, 659 (Fla. 1991)). However, none of these cases apply to Petitioner's claim. In Carroll and Johnston there was no finding of incompetence, and in Patton the court was never advised there was a competency issue. These cases deal with errors in the competency hearing process.

In contrast, Petitioner had a competency hearing, was declared incompetent, and taken to trial, without a finding of competency, after being found incompetent. Thus, the State Court's procedural bar clearly does not apply to this case, but on appeal, the First District Court of Appeal merely affirmed this erroneous ruling, without opinion. Thus, the State Court's decision does not rest on independent and adequate state grounds, and this Honorable Court should grant certiorari for the reasons expressed above.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Larry Dortley, pro se

Date: November 25, 2020