

PROVIDED TO AVON PARK  
CORRECTIONAL INSTITUTION  
ON 10-4-20 FOR MAILING  
BY B. Johnson RL

20-7158  
No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

RAYMOND J. RAMIREZ

(Your Name)

PETITIONER

**ORIGINAL**

vs.

SECRETARY, FLORIDA

DEPARTMENT OF CORRECTIONS

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

FILED  
OCT 04 2020  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

RAYMOND J. RAMIREZ

(Your Name)

AVON PARK CORRECTIONAL INSTITUTION  
8100 HWY 64 EAST

(Address)

AVON PARK, FL 33825

(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

QUESTION(S) PRESENTED

WHETHER A CERTIFICATE OF APPEALABILITY  
SHOULD HAVE BEEN GRANTED ?

WHETHER RULE 3.191 (j), FLORIDA RULES OF  
CRIMINAL PROCEDURE, IS TRULY JURISDICTIONAL  
AND GOVERNS THE COURTS ADJUDICATORY  
AUTHORITY ?

## 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

RAYMOND J. RAMIREZ V. SECRETARY DEPARTMENT OF CORRECTIONS, NO. 19-CV-61415, U.S. District Court for the Southern District of Florida. Judgment entered Aug. 30, 2019.

RAYMOND J. RAMIREZ V. SECRETARY DEPARTMENT OF CORRECTIONS, NO. 19-13902-G, U.S. COURT OF APPEALS For the Eleventh Circuit. Judgment entered Mar. 17, 2020.

State of Florida V. RAYMOND J. RAMIREZ, NO. 12-9673CF10A, Seventeenth Judicial Circuit Court Broward County Florida. Judgment entered June 29, 2018.

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Miller-El v. Cockrell, 123 S.Ct. 1029 (2003)	4
Hohn v. United States, 118 S.Ct. 1969 (1998)	4
Barker v. Wingo, 407 U.S. 514 (1972)	5-6
Russello v. United States, 464 U.S. 16 (1983)	6
Gonzalez v. Thaler, 132 S.Ct. 641 (2012)	6
United States v. Salerno, 112 S.Ct. 2503 (1992)	6
Butler v. Cullen, 253 So. 2d 861 (Fla. 1971)	7, 10
Metellus v. State, 900 So. 2d 491 (Fla. 2005)	7, 9
Strickland v. Washington, 466 U.S. 668 (1984)	9
State v. Craven, 955 So. 2d 1182 (Fla. 4th DCA 2007)	6
STATUTES AND RULES	
Florida Statute 918.015	8
Rule 3.191, Florida Rules of Criminal Procedure	8, 10
Title 28 USCS 2253	7
OTHER	

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	5-11
CONCLUSION.....	12

## INDEX TO APPENDICES

APPENDIX A : U.S. COURT OF APPEALS Eleventh Circuit Order Denying Certificate of Appealability

APPENDIX B : Eleventh Circuit Order denying Motion to Reconsider

APPENDIX C : U.S. District Court Southern District of Florida Order denying Federal habeas Corpus

APPENDIX D : Southern District of Florida Order denying Certificate of Appealability

APPENDIX E : Southern District of Florida Order Granting Leave to Proceed In forma Pauperis

APPENDIX F : Seventeenth Judicial Circuit Court Broward County Florida Order denying Post Conviction relief

APPENDIX G : CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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 A to the petition and is

reported at 2020 U.S. APP. LEXIS 8865; 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 C to the petition and is

reported at 2019 U.S. Dist. LEXIS 149617; 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 \_\_\_\_\_ 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 March 17, 2020.

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 17, 2020, and a copy of the order denying rehearing appears at Appendix B.

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 \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

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**

Amendment 5 of the U.S. Constitution

Amendment 6 of the U.S. Constitution

Amendment 14 of the U.S. Constitution

Title 28 United States Code Section 2253 (c)(2)

### STATEMENT OF THE CASE

A State Prisoner satisfies the proper Certificate of Appealability Standard by demonstrating that Jurists of Reason Could (a) disagree with a District Courts resolution of the Prisoners Federal Constitutional Claims, or (b) Conclude the issues Presented are adequate to deserve encouragement to Proceed further. Miller-El v. Cockrell, 123 S.Ct. 1029 (2003).

The United States Court of Appeals for the Eleventh Circuit, denied Petitioner a COA. (APP.A). Said Court also denied Petitioners Motion for Reconsideration of that denial. (APP.B).

The United States Supreme Court has Jurisdiction, on Certiorari, to review a denial, by a Circuit Judge or a Panel of a Federal Court of Appeals of a Certificate of Appealability. Hohn v. United States, 118 S.Ct. 1969 (1998).

The United States District Court for the Southern District of Florida, denied Petitioners timely Federal habeas Corpus. (APP.C). Said Court also denied a COA. (APP.D).

The denial of Petitioners Constitutional Claims is debatable, and the issues Presented are adequate to deserve encouragement to Proceed further.

## REASONS FOR GRANTING THE PETITION

The issues presented to this Court, if addressed and answered, will provide the people of the State of Florida and this country, clarity regarding their Constitutional right to be free from ambiguity, ineffective Counsel, and abuse of discretion.

This is a case where a defendant accepted the plain language of an adopted procedural rule, a rule like that of this Supreme Court, and decided to test the integrity of his Counsel, State attorney, and the Judge. The ultimate test was to see if Counsel would provide effective assistance, whether the State was really ready for trial, and whether the Judge would follow the letter of the law.

The defendant's Counsel was not effective, the State was not ready for trial, and the Judge did not follow the letter of the law.

The decisional law of this Court, which petitioner relies on, teaches that: "the speedy trial right is so slippery.... Recognizing this, some legislatures have enacted laws, and some Courts have adopted procedural rules which more narrowly define the right. The United States Court of Appeals for the Second Circuit has promulgated rules for the district Courts in that circuit establishing that the government must be ready for trial within six months

of the date of arrest, except in unusual circumstances, or the charge will be dismissed. This type of rule is also recommended by the American Bar Association." Barker v. Wingo, 407 US 522-523 (1972).

Likewise, the Florida Supreme Court adopted SPEEDY Trial Rule 3.191 to "more narrowly define the right." In said Rule, subsection (j), states that once a motion for discharge is denied "trial shall be scheduled and commence within 90 days of a written or recorded order of denial." There is no alternative provided.

Further decisional law of this Court teaches that: "Where Congress includes particular language in one section of a statute but omits it in another section of the same statute, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion." Russello v. United States 464 US 23 (1983).

This Court also teaches that "truly jurisdictional rules govern a court's adjudicatory authority." Gonzalez v. Thaler, 132 S. Ct. 641, 648 (2012). And that a "Court cannot alter... rules merely because litigants might prefer different rules in a particular class of cases." United States v. Salerno, 112 S. Ct. 2503, 2507 (1992).

Taking those words, the words of this Court, and putting them into play would mean that a COA should have been granted.

When Counsel adopted and argued Petitioners Motion for discharge, March 28, 2014, the terms of Rule 3.191(j) went into effect. State v. Craven, 955 So. 2d 1182, 1184 (Fla. 4th DCA 2007) ("Counsel can adopt and argue his clients pro se filings.")

Whether Counsel was ineffective in failing to file a subsequent Motion to discharge or motion to dismiss the case based on issue specific decisional law of the Florida Supreme Court, i.e., Butler v. Cullen, 253 So. 2d 861 (Fla. 1971), is debatable. Even though Counsel asked for a Continuance, the law did not permit such: "We must enforce the words it enacted." Saterno, at 2507.

Whether the trial Court lacked jurisdiction to convict and sentence the defendant because Rule 3.191(j) is "truly jurisdictional and governs the Courts adjudicatory authority" Gonzalez, supra, is debatable. "A jurisdictional rule cannot be altered by the Court or by agreement of the parties." Metellus v. State, 900 So. 2d 491, 495 (2005).

The decision of the district Court is debatable. The issues presented were adequate to deserve encouragement to proceed further. See 28 USCS 2253 (c)(2).

That is also to say their is no updated decisional law of this Court providing guidance to the lower Courts of this Country, specifically addressing the modern Speedy trial rules and when Counsel is ineffective for failing to follow those rules, and the Sanction imposed on the State attorney and trial Court for failing to follow said rules.

The Fifth, Sixth, and Fourteenth Amendment Prescribe "no Person shall be deprived of life, liberty, or property without due process of law... the assistance of Counsel for his defence... nor shall any State... deny to any Person within its jurisdiction the equal protection of the laws."

What is due process of law when a Court does not follow the law. What is the effective assistance of counsel when counsel does not know what the law permits and prohibits regarding his case. What is equal protection of the laws when the law includes case law, and the State attorney does not object to a continuance the law prohibits, but if the State did object the defendant would have had to go to trial on the ninetieth day.

This Court decided Barker v. Wingo, *supra*, in 1972, and addressed "some of the factors" a Court should consider when dealing with a speedy trial issue. The petitioner asserts that the speedy trial laws have changed since then and other factors must be considered when a Court decides a claim of speedy trial violation.

Without this Courts interpretation of Fla. R. Crim. P. Rule 3.191(j), which is implemented to enforce Fla. Stat. 918.015, petitioners constitutional claims will have fallen on deaf ears.

Assume for a moment that petitioners interpretation of Rule 3.191(j) is correct and based on Butler v. Cullen, *supra*, "the judicial discretion of the trial judge is limited to the extent that trial must be commenced within ninety days" of the denial of the motion for discharge; that would mean the trial judge had no "discretion" to grant a continuance outside of the ninety days because the trial judges discretion has been "limited to the extent... trial must be commenced within ninety days".

The trial Court lost jurisdiction of the case because trial did not commence on the ninetieth day as prescribed by rule and law. Therefore Counsel was ineffective according to Strickland v. Washington, 466 US 668 (1984).

So, the questions asked of this Court:

Whether a Certificate of Appealability should have been granted ?, and

Whether Rule 3.191(j), Fla. R. Crim. P., is truly jurisdictional and governs the Courts adjudicatory authority ?,

is beyond importance to just this Petitioner. In fact, being a voice of the People of the United States, I say that it is time for updated decisional law of this Court regarding the new speedy trial rules, to ensure a defendants Constitutional rights are not being violated.

In closing, the district Courts assessment of the Petitioners Constitutional claims are wrong, and reasonable Jurists could debate whether Counsel was ineffective under the Strickland Standard - if they relied on the correct case law of the Florida Supreme Court.

In the State of Florida, "A jurisdictional rule cannot be altered by the Court or by agreement of the parties." Metellus v. State, 900 So. 2d 491, 495 (Fla. 2005).

Rule 3.191(j) is "jurisdictional" as it clearly states:

"If the Court finds that discharge is not appropriate for reasons under subdivision (j)(2), (3), or (4), the pending motion for discharge shall be denied, provided, however, that trial shall be scheduled and commence within 90 days of a written or recorded order of denial."

A continuance granted beyond the "90 days" would have "altered" the jurisdictional rule, which is prohibited. The Court, nor the parties can agree to waive the 90 day time frame in which "trial shall... commence" to try and retain jurisdiction over the case.

The Fla. Supreme Court has a specific case dealing with the interpretation of that section of the rule and holds:

"The motion for discharge was properly denied, but the judicial discretion of the trial judge is limited to the extent that trial must be commenced within 90 days." Butler v. Cullen, 253 So. 2d 861, 864 (Fla. 1971).

A Continuance is discretionary, but when a motion for discharge is denied pursuant to Rule 3.191(j), the trial judge loses the discretion to grant a continuance beyond the 90 days because the "discretion of the trial judge is limited to the extent that trial must be commenced within ninety days."

Based on the plain language of Rule 3.191(j), and Metellus v. State, supra, and Butler v. Cullen, supra, Counsel was ineffective for failing to file a subsequent motion for discharge or motion to dismiss the case for violation of the speedy trial rule; the trial court lost jurisdiction over the case once the 90 days expired.

A certificate of appealability should have been granted.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: October 4, 2020