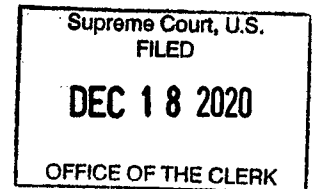


20-7349

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



BOBBY MELLARD — PETITIONER
(Your Name)

vs.

Inch SECT. FL. DEPT. OF CORR. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Bobby MELLARD
(Your Name)

Wakulla Correctional Institution
(Address)

110 McLAUGHLIN DRIVE, CRAWFORDVILLE, FL 32327-4963
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1 Whether a conviction predicated on an structural error
violates Petitioner's Sixth and Fourteenth Amendment rights
of the United States Constitution.

2) Whether it's a violation of the Petitioner's substantial right to choose
during trial, to exclude exonerating evidence of DNA or proceed to
trial on a stipulation or waiver of the exonerating evidence of DNA
in violation of the Petitioner's due process right to a fair trial.

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
ARIZONA V. FULMINATE 499 U.S. 279 309-10, 111 S.Ct. 1246 113 L.Ed. 2d 302 (1991)	3
VASQUEZ V. HILLERY 474 U.S. 254-263-64 106 S.Ct. 617, 623 88 L.Ed. 2d 3 598 (1986).	3
UNITED STATES V. OSTERBROCK, 891 F.2d 1216, 1218 (CA-10, 1989).	3

STATUTES AND RULES

812.13(2)(a) Florida Statutes.	4
812.133(1)(2)(a) Florida Statutes	4

OTHER

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 INCH SECRETARY FLORIDA DEPARTMENT OF CORRECTIONS.

RELATED CASES

NONE.

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 NONE; 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☐ is unpublished.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 A to the petition and is

- ☒ reported at 891 F.2d 1216; 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 739 So.2d 1166, 140 Fla. 155

- ☒ reported at 92 So.2d 641, 92 So.2d 259, 235 So.3d 320, 394 So.2d 417; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the NONE 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 NONE.

☒ 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: NONE, 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 NONE (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 NONE.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: NONE, 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 NONE (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

1. The issue, where the United States Supreme Court has identified

errors which defn analysis by Harmless-error Standards as errors which result in structural defects in the Constitution of

trial mechanism-structural defects affecting the framework

within which the trial process see Arizona v. Fulminante, 499 U.S. 279, 309-10, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991). Such errors involving a

structural defect in the framework of a trial deprive defendants

of basic protections without which a criminal trial cannot reliably

serve its function as a vehicle for determination of guilt or innocence

and no criminal punishment may be regarded as fundamentally fair.

2.

This Constitutional error, deprived the petitioner of an actual innocent

claim, where he was forced by the court to choose between his Constitutional

right to proceed to a fair trial or waive his Constitutional right to

a speedy trial. See Appendix B.

Under that standard, before a Constitutional error can be found to be

harmless, the reviewing court must be satisfied beyond a reasonable

doubt that the error did not contribute to the conviction. See United States

v. Osterbrock, 891 F.2d 1216, 1218 (11th Cir. 1989).

This plain error, that result from the judicial circuit court

resulted from a judge who is not fair an impartial resulted in

a structural error, that requires reversal. While such error has

been held by the United States Supreme Court as structural, and has

determined that its a special category of errors which must be

corrected regardless of their effect on the outcome of the case

Id. 499 U.S. 279. Due to the nature of structural error, whether

a defendant objects or fails to object to such an error at trial

is simply irrelevant, reversal is required because structural error

is a fundamental flaw in the trial process and undermines the

structural integrity of the criminal trial itself. See

Vasquez v. Hillery 474 U.S. 263-64, 106 S.Ct. 617, 623 88 L.Ed.2d

598 (1986).

As such under the Equal Protection Clause petitioner is entitled to

same relief, and therefore, prays for a review by this Honorable Court.

STATEMENT OF THE CASE

THE PETITIONER WAS CHARGED WITH FELONY INFORMATION WITH ONE COUNT OF ROBBERY WITH A FIREARM 812.13(2)(a) AND ONE COUNT OF CARRYING WITH A FIREARM 812.133(1)(2)(a). F.S.

FROM AN INCIDENT THAT TOOK PLACE INITIALLY INSIDE AN APARTMENT WERE TWO MASK MEN, WHILE ARMED WITH FIREARMS DEMANDED MONEY AND PROPERTY FROM THE VICTIM, AND DURING THE EVENT THE VICTIM WAS BEATEN WITH A FIREARM, BUT MANAGED TO ESCAPE OUT OF A WINDOW BUT NOT BEFORE, THE PERPETRATORS OBTAINED THE CAR KEYS AND LEFT IN THE VEHICLE.

THEREAFTER, AND INVESTIGATION LEAD THE DETECTIVE TO BELIEVE THE APPELLANT WAS A PERSON OF INTEREST ALONG WITH HIS CO-DEFENDANT, AND COLLECTED SEVERAL PIECES OF TANGIBLE EVIDENCE, AND THE CASE PROCEEDED TO TRIAL BY A JURY. THAT LEAD TO THIS CONVICTION THAT WAS OBTAINED IN VIOLATION OF THE UNITED STATES CONSTITUTION.

WHERE THE PETITIONER WAS SENTENCED TO 30 YEARS IN PRISON AND A TIMELY NOTICE OF APPEAL WAS FILED TO THE FOURTH DISTRICT COURT OF APPEAL, THAT WAS SUBSEQUENTLY AFFIRMED AND MANDATE WAS ISSUED. FEBRUARY 22, 2012.

PETITIONER FILED SEVERAL COLLATERAL MOTIONS ATTACKING HIS JUDGEMENT AND SENTENCE BUT TO NO AVAIL.

AFTER HIS APPELLANT PROCEDURE WAS EXHAUSTED WITH NO AVAIL.

PETITIONER FILED THE CURRENT WRIT OF HABEAS CORPUS ALLEGING STRUCTURAL ERROR.

REASONS FOR GRANTING THE PETITION

The Petitioner's Petition should be granted because the face of the record supports that a substantial rights violation has occurred in this case. And the error is plain on the record, that constitutes a structural error, from these extraordinary circumstances that as a matter of law must be corrected. Whereas, the Fourth District Court of Appeal decision is in conflict with the decision of United States Supreme Court on the same important matter, and such a decision, departed from the accepted and usual course of judicial proceedings and such departure by the Fourth District Court of Appeal, calls for this honorable court to exercise its supervisory jurisdictional power.

CONCLUSION

THE PETITIONER PRAYS THAT THIS HONORABLE COURT REVIEW
THIS PETITION AND AFTER SUCH REVIEW CONCLUDE THAT A PRINIPAL ERROR
HAS BEEN DEMONSTRATED THAT AFFECTED THE SUBSTANTIAL RIGHT AND WARRANTS RELIEF
The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bahly Melhars

Date: 17 OF December

NATURE OF RELIEF SOUGHT

WHEREFORE, PETITIONER DEEMS THIS HONORABLE COURT TO ENTER A WRIT OF HABEAS CORPUS IN THIS CASE AND ORDER SHOW (HOUSE WITH A NEW TERM) SHOULD NOT BE GRANTED BASED ON THE ABOVE TWO ISSUE BEFORE THIS HONORABLE COURT, THAT ARE MICROTORGUS AND FILED IN GOOD FAITH. AND ANY OTHER RELIEF THIS COURT DEEM JUST.

Respectfully Submitted,
Robby McLeod
Robby McLeod, prose DE# 185224

DECLARATION

UNDER PENALTIES OF PERJURY, I declare that I HAVE READ THE FOREGOING WRIT OF HABEAS CORPUS AND THAT THE FACTS STATED IN IT ARE TRUE, ACCORD. Florida Statutes, 92.525 (2008).

Respectfully Submitted,
Robby McLeod
Robby McLeod, prose DE# 185224
110 McLEOD DRIVE
CRAWFORDVILLE FL, 32327-4963