

20-7569

No. _____

FILED
FEB 01 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Deidre M. Hunt — PETITIONER
(Your Name)

vs.

State of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth District Court of Appeal
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Deidre M. Hunt, DC# 161918
(Your Name)

Lowell Ct - 11120 NW Gainesville Rd.
(Address)

Ocala, FL 34482
(City, State, Zip Code)

—
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1) Pursuant to Haines v. Kerner, 404 US 519 (1972), Is an indigent, pro se state prisoner entitled to "liberal construction" of state post-conviction claim premised on inadvertent misapplication of the supportive case law?

2) Pursuant to F.R.C.P, Rule 3.850 (h)(2), does it constitute abuse for court to dismiss post-conviction motion where the Defendant alleged new or different grounds, even though based on same case law was cited to substantiate the new and separate claim?

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

NONE

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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 _____ 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 is unpublished.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 is unpublished.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 A to the petition and is

reported at Fifth District Court of Appeal; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the 7th Judicial Circuit Court, Volusia County, Florida appears at Appendix B 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 is unpublished.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 9/29/2020.
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: 11/5/2020, and a copy of the order denying rehearing appears at Appendix C.

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

Fourteenth Amendment - Due Process

- * Question #1 pertains to the application of Haines v. Kerner. The petitioner respectfully urges that, as an indigent pro-se prisoner, she was entitled to liberal construction of the post-conviction claim she raised, and of Montgomery's retroactivity. Failure to afford the liberal construction contemplated by this court in Haines v. Kerner, violated the Petitioner's right to due process, generated by the Constitutions of the United States and the State of Florida.
- * Question #2 pertains to the application of F.R.C.P. 3.850 (h)(2). The petitioner respectfully urges that, as an indigent, prose prisoner, she was entitled to have her 3.850 motion decided on its merits instead of being dismissed as successive for citing retroactive case law in two distinctly different 3.850 motions that cited Montgomery. Failure to afford petitioner a ruling on the merits of her 3.850 motion violated her right to due process guaranteed by the US Constitution and ³ Constitution of State of Florida.

STATEMENT OF THE CASE

On May 7, 1990, Defendant pled guilty to two counts of first-degree murder, two counts of attempted first-degree murder, two counts of solicitation to commit first-degree murder, one count of conspiracy to commit first-degree murder, and one count of burglary of a dwelling while armed: Hunt v. State, 613 So. 2d 893 (1992). Defendant waived a penalty phase jury. The trial judge, upon finding of aggravating and mitigating factors, imposed a death sentence on Defendant for each count of first-degree murder. On direct appeal, Defendant's convictions were affirmed, but her sentences were vacated and remanded for resentencing.

On March 8, 1996, Defendant was permitted to withdraw her plea of guilty. On April 23, 1998, after a jury trial, Defendant was convicted in this case of two counts of first-degree murder, one count of conspiracy to commit first-degree murder, one count of solicitation to commit first-degree murder. Defendant was sentenced June 26, 1998, with corrected sentences filed nunc pro tunc on September 9, 1998 as follows: consecutive ₄ sentences of life

imprisonment with a minimum mandatory term of 25 years on each count of first-degree murder and concurrent sentences of 30 years of imprisonment on each count of solicitation and conspiracy. Defendant's convictions and sentences were affirmed on direct appeal. Mandate issued on March 13, 2000.

On July 16, 2001, Defendant filed her first motion for post-conviction, which was denied on the merits and per curium affirmed on appeal. On March 21, 2016, Defendant filed a successive 3.850 motion based on the U.S. Supreme Court's decisions in Hurst v. Florida, 136 S.Ct. 616 (2016) and Montgomery v. Louisiana, 136 S.Ct. 718 (2016), as revised (Jan 27, 2016). The Seventh Judicial Circuit denied Defendant's successive motion for post-conviction relief, finding that neither Hurst nor Montgomery were applicable to her case. In its prior written Order, the court found that Defendant was not entitled to relief pursuant to Hurst because it applies to the imposition of death sentences, and Defendant was not sentenced to death. - The court further found that Defendant was not entitled to relief

pursuant to Montgomery because it prohibits the imposition of life sentences without parole upon juvenile offenders. Defendant was not a juvenile offender at the time of the offenses, nor did she receive a life sentence without parole for any offense in this case. Therefore, the court found that Defendant had failed to establish a new fundamental constitutional right that applied to her case as contemplated under Rule 3.850(h)(2).

Defendant appealed. This courts decision was affirmed, and mandate issued on October 3, 2017.

Defendant filed a ' Motion for Post conviction Relief" on January 29, 2018 and her "Amended Motion for Post conviction Relief" on June, 18, 2018. The State filed its response on May 5, 2020. Defendants Motion was dismissed with prejudice on May 19, 2020.

On June 22, 2020 the acknowledgement of Petitioner's Notice of Appeal was filed, issuing Case # 20-1399.

On September 2, 2020, petitioner filed the initial brief, arguing the 2016 3.850

motion was separate and distinct from her 2018 3.850 motion, which deserved to be ruled on the merits of her claim and not dismissed.

On September 29, 2020, the Fifth DCA per curium affirmed the lower court's decision.

On October 14, 2020 (Mailbox Rule) Petitioner filed Motion for Rehearing, Motion for Written Opinion and Motion for Certification citing cases:

Mackey v. State, 236 So. 3d 504 (5th DCA 2018)

Cresenzo v. State 987 So. 2d 150 (2008)

Hampton v. State 504 So. 2d 57 (1st DCA)

On November 5, 2020, Motion for Rehearing, Motion for Written Opinion, and Motion for Certification was denied.

REASONS FOR GRANTING THE PETITION

This court has jurisdiction to review this case according to Rule 10 (c). Petitioners appeal of her 3.850 motion was dismissed with prejudice and without opinion. In Jenkins v. State, a per curium affirmed appeal is not eligible for discretionary review by the Florida Supreme Court.

Jenkins v. State, 385 So. 2d 1356 (June 26, 1980)

See also: Internal Operating Procedures of Florida Supreme Court, Florida Rules of Court.

The Supreme Court of Florida lacks jurisdiction to review per curium affirmed decision from April 1, 1980.

The 5th DCA dismissed the petitioners 3.850 motion (filed 2018) with prejudice, stating it was successive to the 3.850 motion filed in 2016. The petitioner states the motion

should have been decided on its merits because it was not successive. In 2016, the petitioner cited Montgomery as a retroactive point of law because of its historical breakdown of retroactivity on substantive law and classes of people. Petitioner cited Montgomery because she was trying to obtain retroactive application to the Hurst class of people; those who went through the capital sentencing phase without a unanimous jury decision.

In 2018, the petitioner cited Montgomery for its Miller application pertaining to its juvenile class of people.

The two 3850 motions were constructed for two distinctly separate grounds and separate applications of Montgomery.

In Hines v Kerner, this Honorable Court decided that pro se petitioners should not be held to the same standards as those formal pleadings drafted by lawyers. They are instead held to less stringent standards. The petitioner should have been given the opportunity of liberal construction by the 5th DCA when appealing the dismissal

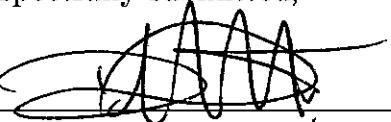
of the 2018 filing.

The 7th Judicial Circuit disregarded the petitioners intent and the 5th DCA affirmed their decision per curium without proper investigation of these two separate claims, denying the petitioner the opportunity to be heard on the new grounds presented in the 2018 filing, thus ultimately depriving the petitioner her right to due process under the fourteenth Amendment to the US Constitution.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Debra M. Hunt
Date: February 1st 2021

