

No: SC 20-841

December Term, 2020

IN THE

SUPREME COURT OF THE UNITED STATES

JIMMY LEE TOLIVER, Petitioner

v.

STATE OF FLORIDA, Respondent

EXHIBITS TO
PETITION FOR A WRIT OF CERTIORARI

Jimmy Lee Toliver for himself and on behalf of all
similarly situated Florida defendants

Jimmy Lee Toliver DC#J09505
Union Correctional Institution
P.O.Box 1000
Raiford, Florida 32083
Petitioner pro se

EXHIBIT “A”

Supreme Court of Florida

MONDAY, OCTOBER 26, 2020

CASE NO.: SC20-841
Lower Tribunal No(s).:
1D19-3842; 162004CF011669AXXXMA

JAMES L. TOLLIVER

vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)

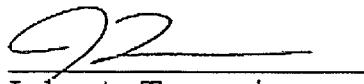
This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

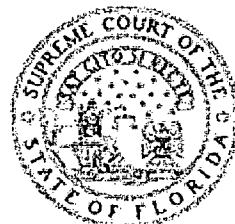
No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

POLSTON, LABARGA, LAWSON, MUÑIZ, and COURIEL, JJ., concur.

A True Copy

Test:


John A. Tomasino
Clerk, Supreme Court



dl

Served:

STEVEN E. WOODS
JAMES L. TOLLIVER
HON. RONNIE FUSSELL, CLERK
HON. MARK J. BORELLO, JUDGE
HON. KRISTINA SAMUELS, CLERK

EXHIBIT “B”

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-3842

JIMMY LEE TOLIVER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Petition for Writ of Habeas Corpus—Original Jurisdiction.

April 7, 2020

B.L. THOMAS, J.

Petitioner seeks a new trial and alleges ineffective assistance of appellate counsel and manifest injustice. He argues that he is entitled to relief because his appellate counsel failed to preserve the issue of an erroneous lesser-included offense jury instruction on manslaughter by placing his case in the pipeline of *Montgomery v. State*, 70 So. 3d 603 (Fla. 1st DCA 2009), *approved*, 39 So. 3d 252 (Fla. 2010). We disagree. We treat the petition as a petition for writ of habeas corpus. Petitioner having failed to demonstrate manifest injustice, the petition is dismissed as procedurally barred. *See Baker v. State*, 878 So. 2d 1236 (Fla. 2004).

Petitioner's conviction became final in 2007 after his direct appeal was affirmed in *Toliver v. State*, 953 So. 2d 713 (Fla. 1st

DCA 2007), *rev. denied*, 966 So. 2d 971 (Fla. 2007), and thus before the issuance of this Court’s opinion in *Montgomery v. State*, 70 So. 3d 603 (Fla. 1st DCA 2009). The holding in *Montgomery* does not apply retroactively to convictions that were final before the opinion issued. *Rozzelle v. State*, 29 So. 3d 1141, 1142 (Fla. 1st DCA 2009). Petitioner’s postconviction proceeding that was pending in 2009 could not operate to place him in the *Montgomery* pipeline. *See Castano v. State*, 119 So. 3d 1208, 1210-11 (Fla. 2012) (Pariente, J., concurring) (explaining that a pending postconviction proceeding can only operate to place the defendant in the pipeline of a case making new law if the new law would apply to claims appropriately raised in a postconviction proceeding rather than in direct appeal).

Additionally, Petitioner cannot demonstrate manifest injustice because the Florida Supreme Court’s recent opinion in *Knight v. State*, 2019 WL 6904690 (Fla. 2019), receded from *State v. Montgomery*, 39 So. 3d 252 (Fla. 2010).

We write also to address Petitioner’s filing history. Apart from the instant case, Petitioner has filed five other pro se actions in this Court attacking his judgment and sentence: 1D09-0739, 1D09-5656, 1D13-1188, 1D13-2185, and 1D18-5108. These actions include postconviction appeals, petitions for writ of habeas corpus, and a petition alleging ineffective assistance of appellate counsel. Petitioner has failed to obtain relief in these actions. Petitioner is warned that any future filings that this Court determines to be frivolous, may result in the imposition of sanctions, including a prohibition against any further pro se filings in this Court and a referral to the appropriate institution for disciplinary procedures as provided in section 944.279, Florida Statutes (2019) (providing that a prisoner who is found by a court to have brought a frivolous or malicious suit, action, claim, proceeding, or appeal is subject to disciplinary procedures pursuant to the rules of the Department of Corrections).

WOLF and ROBERTS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jimmy Lee Toliver, pro se, Petitioner.

Ashley Moody, Attorney General, Tallahassee, for Respondent.