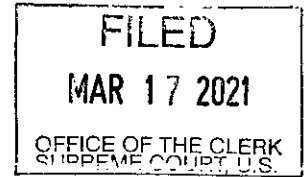


ORIGINAL

20-7901



IN THE
SUPREME COURT OF THE UNITED STATES

CHALIN MERRIHEW — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)
19th JUDICIAL TRIAL COURT, FL

ON PETITION FOR A WRIT OF CERTIORARI TO

DISTRICT COURT OF APPEAL OF THE FOURTH DISTRICT, FL
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

chalin merrihew B20636
(Your Name) (DC#)

FSP, P.O. Box 800
(Address)

Raiford, FL, 32083-0800
(City, State, Zip Code)

904-368-2500
(Phone Number)

QUESTION(S) PRESENTED

I.) Was Petitioner denied a fair trial when he did everything in his power to obtain clarity on how his withdraw plea hearing procedures function (in relation to contesting charges) from his counsel, but was completely ignored by counsel (with evidence in the legal record conclusively showing these circumstances to be true)?

II.) Did the STATE OF FLORIDA overcharge Petitioner with "deadly weapon" enhancements departing from the essential requirements of statutory law (when evidence conclusively shows per law that Petitioner's object was not used in a deadly manner)?

III. Did the lower 19th Judicial Circuit Tribunal deny Petitioner a fair trial by dismissing Petitioner's Postconviction motion for ineffective assistance of counsel when the facts show otherwise, and, did it deny a fair trial by bias and proven libel on Petitioner when it told Petitioner it was "not a fan of robberies at all" when evidence conclusively shows that the lower 19th Judicial Tribunal in fact is a fan of robberies by serving another man (with a more severe robbery than Petitioner) only 2 years, but serving Petitioner with 20 years?

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

• L.T. case no.: 432017CF000940A

• 4DCA no.: 21-0869

• Merrihew v. State, 2020 WL 6948518 (Fla. 4th DCA Nov. 25, 2020).

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED.....	0
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	7
PROOF OF SERVICE.....	8

INDEX TO APPENDICES

APPENDIX A Letter to Counsel.....	9
APPENDIX A2 Motion to Withdraw Plea ORDER.....	10
APPENDIX A3 "deadly weapon" Lab Report.....	11
APPENDIX B 2nd Letter to Counsel.....	12
APPENDIX B2 Main Accuser deposition.....	13
APPENDIX C Court/Counsel Transcript.....	14
APPENDIX C2 Petitioner Affidavit.....	15
APPENDIX D1 Respondent (19th Jud. Cir. Trial Court) Transcript.....	19
APPENDIX D2 News Article.....	20
APPENDIX E1 Jury Instructions 15-1.....	21
APPENDIX E2 Motion to Withdraw Plea.....	22
APPENDIX F1 Witness deposition.....	25
APPENDIX F2 Fourth DCA Appeal decision.....	26
APPENDIX F3 Fourth DCA Rehearing decision.....	27

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

- *Alcorn v. State of Florida* 121 So. 3d 419; 2013 Fla. LEXIS 1189; 38 Fla. L. Weekly S 397 #SCI-1322
-

STATUTES AND RULES

- §812.13 (2)(a). 4
- §812.13 (2)(c). 4
- Florida Rules of Appellate Procedure 9.100 (c)(1). 4
- Jury Instructions 15.1: number 2 & Enhanced Penalty (Florida). 4, 5
- Florida statute §2.330. 4
- Florida statute §3.171 (c)-(B)

OTHER

- Florida Constitution Article 1, Section 21. 4, 5
- U.S. Constitution 6th Amendment. 5
- U.S. Constitution 14th Amendment. 4

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 Fourth District Court of Appeals court appears at Appendix F2 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 11/25/20.
A copy of that decision appears at Appendix F2.

☒ A timely petition for rehearing was thereafter denied on the following date: 12/21/20, and a copy of the order denying rehearing appears at Appendix F3.

☐ 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

U.S. Constitution 6th Amendment

U.S. Constitution 14th Amendment

FL Constitution Article 1, Section 21

§ 812.13 (a)(2) (Florida)

§ 812.13 (2)(c) (Florida)

§ 2.330 (Florida)

FL Jury Instructions 15.1 (number 2 and Enhanced Penalty)

§ 3.171 (Florida)

STATEMENT OF THE CASE

COMES NOW, the Petitioner, CHALIN MERRIHEW, propria persona, filing petition for Writ of Certiorari pursuant to Florida Rules of Appellate Procedure Rule 9.100(c). The Petitioner will demonstrate that the lower trial tribunal departed from the essential requirements of law based on the following:

I. The Petitioner was illegally, inaccurately charged by the Respondent (STATE OF FLORIDA) with three "deadly weapon" enhancements (812.13(2)(a)) when Petitioner's evidence clearly shows 100% beyond a reasonable doubt that Petitioner should have correctly been charged "without a weapon" (812.13(2)(c)). Petitioner cannot be convicted and incarcerated for charges he did not commit which have no factual basis.

II. The Petitioner was denied a 6th Amendment U.S. Constitution fair trial by the 19th JUDICIAL TRIAL COURT who dismissed Petitioner's Postconviction motion for Ineffective Assistance of Counsel when Petitioner's evidence clearly shows 100% beyond a reasonable doubt that Petitioner was deprived of professional counsel. The 19th JUDICIAL TRIAL COURT also based its sentencing decision on a false statement, which can be proved by the Appendix supporting evidence.

The Petitioner is the Defendant in the L.T. case number and the Appellant in the 4th District Appellate case number, which is non-final in the trial court, and the Respondent is the Plaintiff and Appellee. On August 2, 2017, Respondent charged Petitioner inaccurately and illegally to three "deadly weapon" charge enhancements (812.13(2)(a)) that Petitioner can prove have no factual basis. On October 2, 2019, Petitioner sent a letter [see Exhibit A, pg. 9] to his attorney to ask how withdraw plea hearings work and to request that he argue the chargedowns of aforementioned "deadly weapon" enhancements, which he totally ignored and left Petitioner to argue his own defense [see Exhibit C, pg. 14] while he stood there acting as if I never mailed him aforementioned letter. Petitioner ended up doing his best to argue his own chargedown motion, which he sent to the trial court on August 2, 2019 [see Attach. C2, pg. 15] but ended up proceeding with the plea due to being left confused on how withdraw plea hearings work in relation to being opportunities for chargedowns or not (since Petitioner's attorney never replied to his inquiries on such, which left Petitioner vulnerable to attorney's then coercion that he could "guarantee" Petitioner 5 years in, 10 years paper out. ^{Attorneys must advise: See Alcorn v. State of FL} Petitioner then sent his attorney another letter, again requesting he argue the chargedowns [see Exhibit B, pg. 12] and again was ignored by his attorney. ^{Alcorn v. State of FL} Petitioner was subsequently sentenced 20 years for simple robbery (Petitioner's 1st offense) by Respondent (19th JUDICIAL TRIAL COURT) and denied relief due to Respondent's not comprehending the legal basis for ineffective assistance of counsel and charging one with a "deadly weapon." How the lower 19th JUDICIAL TRIAL COURT could dismiss Petitioner's Postconviction motion for relief is beyond me (if you don't believe me that my attorney ignored my 2 letters, call him directly: 772-834-9375 and he will tell you he didn't; how this man is allowed to continue practicing law is beyond me!) The Respondent (19th JUDICIAL TRIAL COURT) also committed libel/bias (§2.330) to arrive at his sentencing decision [see Attach. D1, pg. 19 and Attach. D2, pg. 20]. After sentencing, the Petitioner sent Respondent (19th JUD. TRIAL COURT) a motion to withdraw plea [see Attach. E2, pg. 22] which was later denied by Respondent (the same 19th Jud. TRIAL JUDGE who used libel/bias to sentence Petitioner) [see Attach. A2, pg. 10]. Petitioner appealed conviction, but it was affirmed by Respondent (Fourth District Court of Appeals, Florida) on Nov. 25, 2020, which apparently means they don't get the legal basis for charging one with a "deadly weapon" either.

BACKGROUND OF CASE

When Petitioner's discovery was released, it was revealed in the main accuser's Affidavit and later deposition that the most he felt from having Petitioner's plastic toy inoperable BB gun "pointed in his direction" was feeling "a little shaken up" [see Attach. B2, pg. 13]. He never testified in any Affidavit, depo, or trial court that he feared for his life when the plastic, inoperable toy BB gun was pointed in his direction. According to Robbery Jury Instructions 15.1 "Enhanced Penalty" section, in order for any object to be considered a "deadly weapon", it must be "used or threatened to be used in a way likely to cause death or great bodily harm" [see Attach. E1, pg. 21]. This same Jury Instruction at section number 2 states to be charged with only Simple Robbery, one must "use force, violence, assault, or putting in fear in the course of the taking." It is obviously intended by the State legislature of FL to have the jury make a distinction by these two rules for a "general fear" versus a "fear of death" from a victim. Since the Petitioner's main accuser only stated that he was "a little shaken up", the law controls here that this is a general "putting in fear" classification, not a "likely to cause death or great bodily harm" fear. In addition, the evidence also conclusively shows that Petitioner never verbally threatened accuser or used the plastic, inoperable toy BB gun to bludgeon, swing at, or otherwise use in a threatening manner, so Petitioner's plastic toy cannot be classified as a "deadly weapon" under Jury Instruction 15.1 Enhanced Penalty either. The evidence also conclusively shows the plastic, inoperable toy BB gun could not even function to shoot a projectile [see Attach. A3, pg. 11] and according to witness Mr. Edwin Whitaker, Petitioner only "walked" with the main accuser to the door [see Attach. F1, pg. 25], which contradicts the main accuser's perjurious, exaggerated story that the plastic, inoperable toy BB gun was "pressed against his temple"; even if this lie was true, according to the above Jury

instruction 15.1, could still not be charged with a "deadly weapon", as it is obvious to those with common sense, that simply pressing a plastic, inoperable toy BB gun against one's temple is not likely to cause death or great bodily harm. Simply walking with Mr. Tennant, the main accuser, is not enough to classify Petitioner's actions that day as "deadly" under the robbery Jury Instruction 15.1 Enhanced Penalty. Due to the Respondent's (STATE OF FLORIDA) excessive charging practice, which violates Petitioner's Florida Constitution Article 1, Section 21's Administration of justice right, Petitioner has been deprived of due process promised by the 14th Amendment of the Constitution. Lastly, on October 18, 2019, the Respondent (19th JUDICIAL TRIAL COURT) based his sentencing decision on "not being a fan of robberies at all" [see Attach. D1, pg. 19], but yet in a Herald-Tribune News article [see Attach. D2, pg. 20] this 19th JUDICIAL TRIAL COURT who told Petitioner he was "not a fan of robberies at all" is proven to be a very big fan of robberies after all, as he serves another man with less than 2 years for 2 counts of robbery with a firearm. This man also had criminal history and Petitioner did not, and this man's victims report a much, much worse robbery than Petitioner's. There is no logical explanation why he deserves less than 2 years and Petitioner deserves 20⁺! If Respondent told Petitioner at his sentencing hearing that he is "not a fan of robberies at all", then why did Respondent serve this other man less than 2 years for 2 counts of robbery with a firearm, but yet served Petitioner with 20 years?! for 1 count of simple robbery (even 20 for a "deadly" weapon would be excessive in comparison). This Respondent's "not a fan of robberies at all" is exposed as an outright false statement, which means Petitioner did not receive a fair trial, since this is how Respondent determined his sentencing decision. Proven libel/bias and over-charging in a court of law are criminal and are a high miscarriage of justice, and unfair and unequal sentencing are in violation of Petitioner's U.S. Constitution 6th Amendment and Florida Constitution Article 1, Section 21's administration of justice rights. Let not this lower tribunal and State depart from the essential requirements of law to such a high degree, for to do so would be a gross injustice and disregard for truth.

charlin merrihue
Petitioner

REASONS FOR GRANTING THE PETITION

The Petition for Writ of Certiorari quashing both the Affirmed order of the Appellate court and the conviction/adjudication of the lower tribunal and dismissing case no. 432017CF000940A should be granted for the following reasons=

I. Petitioner was denied a fair trial through misunderstanding how his withdraw plea hearing would function in regards to contesting deadly weapon enhancements due to ineffective assistance of counsel (counsel ignored Petitioner's procedural inquiries and legal requests) when duty requires attorney to advise (Alcorn v. State of FL) when defendant misunderstands procedure and=

II. Petitioner was overcharged by Respondent (STATE OF FLORIDA) with illegal "deadly weapon" enhancements when all evidence shows by law that Petitioner did not commit "deadly weapon" crimes.

and=

III. Petitioner was denied a fair trial by Respondent (19th JUDICIAL TRIAL COURT) through libel and bias (§2.330) being used to determine Petitioner's sentence instead of justice and truth.

and=

IV. Petitioner sees no valid, logical reason why he should not receive an equal sentence to Mr. Legleitner's 2-year sentence [Attach. D2, pg. 20], as all men are created equal, and Petitioner's robbery was much, much less serious than Mr. Legleitner's. How is Mr. Legleitner a better man than me??

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Chadler Menichew

Date: 4/19/2021