

PROVIDED TO
MARTIN CORRECTIONAL INSTITUTION
ON 10/05/2021
FOR MAILING LSC

No
20-8042

IN THE
SUPREME COURT OF THE UNITED STATES

Jorge Cervantes – Petitioner

ORIGINAL

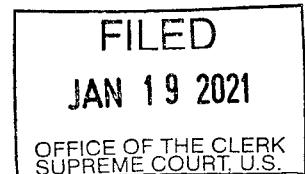
vs.

Sec'y, DOC, et al. (Fla.) – Respondents

ON PETITION FOR WRIT OF CERTIORARI TO
THE ELEVENTH CIRCUIT COURT OF APPEALS, ATLANTA, GA

PETITION FOR WRIT OF CERTIORARI

Jorge Cervantes # V38548



Martin Correctional Institution
1150 SW Allapattah Road
Indiantown, FL 34956
(772) 597-3705

QUESTIONS PRESENTED

1. Did the trial court use the incorrect standard to review the issues and thus incorrectly apply the fact to the law under *Strickland*?
2. Is the court's decision then both "contrary to" or involves an unreasonable application of clearly established federal law, as determined by the United States Supreme Court?
3. Was the state court decision based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding?
4. Is the state court's failure to make the requisite findings of fact and law sufficient reason to hold a federal evidentiary hearing?

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:

PLEASE VIEW PROCEEDING PAGE

RELATED CASES

- 1- State of Florida v CERVANTES Case # 2010-CF-30536
- 2- CERVANTES v State of Florida Cite 91 So 3d 151 (Fla. 5th DCA 2012); (table)
- 3- CERVANTES v State of Florida Cite 247 So 3d 510 (Fla. 5th DCA 2018); (table)

CERTIFICATE OF INTERESTED PERSONS

1. Trial Judge Honorable R. Michael Hutcheson.
2. Evidentiary hearing Judge Honorable Terence R. Perkins, U.S. Court, Middle District of Florida, Orlando Division.
3. Senior Judge Honorable G. Kendall Sharp, U.S. Court, Middle District of Florida, Orlando Division.
4. Magistrate Judge Honorable Karla R. Spaulding, U.S. Court, Middle District of Florida, Orlando Division.
5. Magistrate Judge Honorable Leslie R. Hoffman, U.S. Court, Middle District of Florida, Orlando Division.
6. Eleventh Circuit Judge Honorable Jill Priyor, U.S. Court of Appeal, Eleventh Circuit.
7. Trial Ass. Regional Counsel, Katherine Littell Hinchey, Trial Attorney.
8. Trial Ass. State Attorney Ed. Davis.
9. Trial Ass. State Attorney Heata Trigones.
10. Evidentiary hearing defense attorney Alan T. Holt.
11. Evidentiary hearing Ass. State Attorney Rose Marry Calhoun.
12. Direct appeal Attorney Paula C. Coffman.
13. Attorney for Appeal of Denial of Postconviction Relief, Anthony M. Candela.
14. Secretary, Florida DOC Mark Inch.
15. Assistant Attorney General Rebecca Rock McGuigan.

Note: Party #14 is the exception to parties 7 thru 15, the others (7,8,9,10,11,12,13, and 15) are within the 7th Judicial Circuit Court, State of Florida

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Haines v. Kenner</i> 92 S.Ct. 594	
<i>Rose v. Lundy</i> , 102 S.Ct. 1198	
<i>Slack v. McDaniel</i> , 529 U.S. 473, 120 S.Ct. 1595 (2000)	

STATUTES AND RULES

Rule 12-2 (Eleventh Circuit Court of Appeals)

OTHER

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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 F to the petition and is

reported at CITE UNKNOWN; 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 G to the petition and is

reported at CITE UNKNOWN; 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 E to the petition and is

reported at CERVANTES v State 247 So 3d 510 (Fla. 5th DCA 2018); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the SEVENTH JUDICIAL CIRCUIT court appears at Appendix I to the petition and is

reported at 91 So 3d 151 (Fla. 5th DCA 2012) (5d11-2344); 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 September 03, 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: October 16, 2020, and a copy of the order denying rehearing appears at Appendix A.

[✓] An extension of time to file the petition for a writ of certiorari was granted to and including MAY 04, 2021 (date) on MARCH 05, 2021 (date) in Application No. A. (SEE APPENDIX B)

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 July 9, 2019. A copy of that decision appears at Appendix C.

[✓] 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

U.S.C.A. Amendment V

U.S.C.A. Amendment VI

U.S.C.A. Amendment XIV

STATEMENT OF THE CASE

This case concluded when the Eleventh Circuit Court of Appeals recognizing unpaid filing fees, subsequently denied application for COA, issue as mandate.¹ Notwithstanding, Petitioner utilized Eleventh Circuit Rule 27-2, seeking reconsideration.² Due to the Eleventh Circuit mandating the case based upon the procedural noncompliance; filing fee; error, deviating from redress of the motion and petition, certified conflict ensued.³

In furtherance, justifying Petitioner's basis seeking issuance of a title 28 U.S.C. § 2254 in the Middle Dist. Ct., Orlando, FL,⁴ Cervantes collaterally attacked the (Fla.) Seventh Judicial Circuit Court decision (case no.:2010-CF-30536). Wherein he preserved Federal standard claims cognizant under U.S.C.A. Amendments 5, 6, and 14.

Although pursuant to Fla.R.Crim.P. 3.850, Petitioner/Defendant did receive an evidentiary hearing, predicated upon ineffective counsel (failure to call alibi witness, etc.). See U.S.C.A. Amendment 5 and 6 respectively. His postconviction motion was subsequently denied, prompting appeal of collateral attacks.

Notwithstanding State and Federal collateral remedy exhaustion requirements, in nexus to the Eleventh Circuit not redressing the constitutional

¹ Case no.: 6:18-cv-1302-Orl-18LRH, Doc. 33, and attachment.

² See appended exhibit.

³ See *Rose v. Lundy*., *infra*

⁴ See appended exhibit E, Title 28 U.S.C. § 2254.

infirmities steadfast in Petitioner's case in toto, this timely certiorari is hereto presented.

REASON FOR GRANTING THE PETITION

By promulgating basis for issuance of the writ, enunciating its predicate facts will guarantee disparate prohibition, while scrutiny of due process and equal protection (via 14th Amendment) secures vested public interest.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jorge Lescano
Date: May 04 2021