

November 4, 2021

Charlene Rosa 606814

Lowell Annex

11120 NW Gainesville Road

Ocala, Florida 34482.

Hon. Scott S. Harris, clerk

Supreme Court of the United States

Office of the clerk

Washington, DC 20543-0001

Supplemental Affidavit.

RE: Case No. 21-5076, No. 20-8142, and No. 20-8331

demanded by this Court on October 4, 2021 and is presently

pending on motion for rehearing / rehearing en banc.

Ms. Rosa contends that she does not understand how to put

this matter into a motion due to the complexity of this

case. I have no professional assistance. Limited research.

skill, time, and material in the prison, and I am

intellectually disabled under Florida law with a IQ

test score result of 72.

The issue is a certification of conflict as to whether

the error is harmless or not is necessary in this case.

I have not found anything in the Rules of the

Supreme Court of the United States or the limited

research material in the prison that could direct me

in the correct way to go about seeking a certification

of conflict as a petitioner. I saw where a Court of Appeal

can seek from the Supreme Courts a certification.

The issue of great public importance is: whether error is harmless.

In the case of Timothy Hurlst this Court held that:

We do not reach the states assertion that any error

was harmless, see *Woods v. United States* 527 U.S. 1, 18-19,

119 S.Ct. 1827, 144 L.Ed. 2d 35 (1999) (holding that the failure to submit an uncontested element of an offense to a jury may be harmless). [By this Court normally leave it to state courts to consider whether an error is harmless, and we see no reason to depart from that pattern here. See *King*, 536 U.S. at 609, n. 7, 122 S.Ct. 2428, 153 L.Ed. 2d 556.

Issue ONE

1. In my criminal case my conviction and sentence violate the Sixth Amendment in light of *King*, 575 U.S. —, 135 S.Ct. 1531, 191 L.Ed. 2d 558 (2015) but relief is procedurally barred by 1) the trial court failure to conduct a proper *Faretta* inquiry and 2) the trial court submit to the jury undisputed elements of the offense that presents a pure question of law. There were no disputed facts for the jury to decide. The trial court error was not preserve for direct appeal review due to the absence of a proper timely objection. However, a deficient *Faretta* inquiry constitutes fundamental error that can be raised for the first time on appeal. See *Curtis v. State*, 32 So. 2d 759, 761 (Fla. 2d DCA 2010).

The United States Supreme Court has held that; the Court recognize that *Faretta* and Rule 3.111(d) "require reversal when there is not a proper *Faretta* inquiry." *State v. Young*, 626 So. 2d 655, 657 (Fla. 1993).

This fundamental error was either overlooked or misapprehended by the 4th District Court of Appeal of the State of Florida in 2010 when the court affirmed conviction and sentence, rather than to reverse in accordance to *Faretta* and Rule 3.111(d).

The question is (1) Whether the Lower Federal Court would have lack subject matter jurisdiction on petition
page (2)

for a writ of habeas corpus in this matter on relief sought, the fact that the error was not preserve for appeal and for a de novo review from the district judge, due to the absence of a proper timely objection to the deficient Faretti Inquiry in the trial Court, and the state appellate Court misapprehension to reverse the conviction and sentence on the bases of this Fundamental Error.

- (2). Whether the lower Federal Courts have Jurisdiction to decide whether the ~~failure~~ state Court failure to conduct sufficient Faretti Inquiry was or was not harmless.

2.

Issue TWO

In this Court decision in *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed. 2d 403 (2004), the United States Supreme Court stated that, under Apprendi, a judge may impose any sentence authorized "on the basis of the facts reflected in the jury verdict or admitted by the defendant." 542 U.S., at 303, 124 S.Ct. 2531, 159 L.Ed. 2d 403 (emphasis deleted).

In my Criminal Case my trial lawyer 1). enter a guilty plea of third degree Felony to the Jury on the aggravated Factors of: Solicit to commit armed robbery/ Extortion, 2). Admitted each Element of the offense alleging that; allegedly the Victim was killed during the commission of the alleged aggravated Circumstances to which he enter a guilty plea, he argued that the Victim was brutally murdered by a ~~alleged~~ accomplice name Dutch, and that I set this course of action in motion by asking Dutch to get my money.

and;

3). The State of Florida illicit from my trial lawyer a stipulation of admissibility to the authenticity of alleged

Taped telephone record to lay a foundation for the business-records exception to the hearsay rule on this critical material evidence that constitutes the Elements of the offense in Indictment. see Fla. Stat Ann §§ 90.803(6), 90.902(11). — Jackson v. Household Finance Corp. 111, 236 So.3d 1170.

The foregoing guilty plea, admitted facts that constitutes the Elements of the offense charge, and the stipulation of admissibility of the authenticity of critical material evidence was involuntarily entered. I did not agree nor consent, and I protest to the Court out of the presence of the Jury.

The Trial Judge submit to the Jury the undisputed Elements that presented a pure question of Law for a judge to enter judgment and sentence. There were no disputed facts for the jury to decide on the question of fact on the issue of guilt or innocent.

The question presented is: "whether the Trial Judge submit to the Jury undisputed Elements that presents a pure question of Law was harmless.

and;

2. Whether the Trial Court failure to conduct sufficient Faretta inquiry into the voluntariness of a guilty plea, (6) admitted fact and (9) stipulation of admissibility of critical material evidence was harmless.

there is nothing on the record show that the State Court consider in this case whether the Error(s) is harmless, and these two errors are intertwined.

I am Entirely Innocent and has no involvement in the alleged murder of the Victim nor any knowledge that my former employer was dead or murdered prior to my arrest. My life and liberty is at stake, and

under the Sixth Amendment in conjunction with the Due process clause as set out in the Constitution by this Court, I have a clear right to a fair trial and impartial jury, for the State of Florida to prove each Element of the offense to a jury beyond a reasonable doubt, and for the jury to decide the question facts on the issue of guilt or innocent.

had the State and my trial lawyer not engage in fact finding by enter guilty plea, admitted Elements of the offense, and stipulation of admissibility to the authenticity of critical material evidence that constitute the indictment I would have been acquitted. and;

had the Trial Court conducted a proper Faretta Inquiry I would have had impartial jury determination on the question of facts on each Element of the offense and I would have been acquitted.

In the Faretta Inquiry I would have explicitly and Affirmatively inform the Court for the record that I do not agree nor give my assigned public defender Harry John William Jr. nor the State prosecutor David Frankel consent to violate my rights under the due process clause and the Sixth Amendment to a fair trial and impartial jury decision on the issue of guilt or innocent, the only fact for the jury to decide at this phase of the proceeding.

I would have invoke my right under the Due process clause that require the State to prove each element of the crime beyond a reasonable doubt, and for the disputed facts to be submit to the jury as an adversarial issue because I am innocent beyond a reasonable doubt, and I would have been Acquitted because the alleged taped telephone record" to which the State bases its claim is non-existence.

the State has not met its burden of prove that the

alleged "telephone record" to which constitute the Indictment is authentic. Rather the State of Florida illicit from my trial lawyer a stipulation of admissibility to the authenticity of the alleged "telephone record", which is critical material evidence that constitute the Indictment, to lay the foundation for the business-records exception to the hearsay rule. Fla. Stat. Ann §§ 90.803(6), 90.902(11). - Jackson v. Household Finance Corp. 111, 236 So. 3d. 1170 demonstrates that a Evidentiary hearing is necessary.

Moreover, had my trial lawyer not engage in any facts finding, I would have been acquitted because the Felony murder aspect of the Indictment to which he entered a guilty plea for third degree felony on the aggravated circumstance of: solicit to commit armed robbery/ extortion and First degree murder aspect alleging that the victim was brutally murdered by an alleged accomplice name Dutch was not prosecuted by the State in case no: 05-14414-H04 on 06/20/2007 prior to the June 25 through July 5, 2007 jury trial because of the State of Florida Failure to state a claim. The State lack probable cause for the prosecution. therefore there would not have been a trial on the Felony murder aspect of the Indictment and, I would have been acquitted from the murder- first degree aspect of the Indictment because the alleged Indictment had no Evidentiary Value and the State failed to carry its burden of prove to prove the crime of First degree premeditated murder by prove each Element of the crime beyond a reasonable doubt. see insufficient Evidence. The State of Florida argued during Post conviction Proceeding that my trial lawyer made a Strategic Decision. Further, the trial Court submit the undisputed Elements to the Jury, that presents a pure question of Law influence the Jury because the question of facts were undisputed.

base on the foregoing facts and law demonstrates that a decision as to whether the error(s) was harmless is necessary for the interest of justice.

Claim three

3. The third claim is that the state appellate court may have overlooked or misapprehended or reviewed the insufficiency of the evidence pursuant to the rule of appellate procedure 9.140 f. Had the 4th DCA review the insufficiency of the evidence I would have gotten relief under the two intervening decisions by the United States Supreme Court *Burks v. United States*, 437 U.S. 1, 98 S. Ct. 2141, 57 L. Ed 2d 1 (1978), and *Greene v. Mossey*, 437 U.S. 19, 98 S. Ct. 2151, 57 L. Ed 2d 15 (1978). *Burks* held that the double jeopardy clause prohibits retrial where an appellate court reverses a conviction on the ground that the evidence is insufficient, and *Greene* applied that newly-articulated constitutional principle to the states' judicial systems.

Conclusion

For all the foregoing reasons I wrote to you because it is necessary for the United States Supreme Court to decide whether to depart from its usual precedent to leave it to the state court to consider whether an error is harmless. *Thing*, 536 U.S., at 609, n. 7, 122 S. Ct. 2428, 153 L. Ed. 2d 556.

The United States Supreme Court held that; "Although" the doctrine of stare decisis is of fundamental importance to the rule of law, "... the Court's precedents are not sacrosanct... The U.S. Supreme Court have overruled prior decisions where the necessity and propriety of doing so has been established. *Thing*, 536 U.S., at 608, 122 S. Ct. 2428, 153 L. Ed 2d 556 [quoting *Patterson v. McLean credit union*, 491 U.S.

164, 172, 109 S. Ct. 2363, 105 L. Ed. 2d 132 (1989)). And in the Appendi context, the U.S. Supreme Court have found that "stare decisis does not compel adherence to a decision whose 'underpinnings' have been 'eroded by subsequent developments of constitutional law'." *Alleyne*, 570 U.S., at —, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (Sotomayer, J., concurring); see also *United States v. Grandin*, 515 U.S. 506, 519-520, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995) (overruling *Swinehair v. United States* 279 U.S. 263, 49 S. Ct. 268, 73 L. Ed. 692 (1929)); *King*, 536 U.S., at 609, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (overruling *Walton*, 497 U.S., at 639, 110 S. Ct. 3047, 111 L. Ed. 2d 511); *Alleyne*, 570 U.S., at —, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (overruling *Harris v. United States*, 536 U.S. 545, 122 S. Ct. 2406, 153 L. Ed. 2d 524 (2002)).

Rosa contends that a Certification of Conflict is necessary to correct a gross Fundamental Manifest Injustice and Miscarriage of Justice that is apparent on the face of the appellate record in the above style case from the Lower Federal Courts.

The Lower Federal Courts have over looked and, or MisApprehended that the errors committed by the State Court Trial proceeding as follow;

- (1) Failure to conduct a proper Faretti Inquiry and;
- (2) to submit to a Jury undisputed Elements to a Jury that presents a pure question of Law may not have been harmless.

In Addition, the Lower Federal Courts Erred by not request a Certificate of Conflict in this matter from either (a) the United States Supreme Court or (b) the State Court where the Courts Lack jurisdiction to make a independent decision as to whether the errors from a State Court proceeding was or was not harmless.

to deny as "Frivolous" Petitioner Meritorious Constitutional Claims in this matter, that was not preserve for 2254 proceeding in the Federal Court, due to the absence of a proper timely objection in the state criminal proceeding, demonstrates that there has been a violation of a clearly established principle of Law resulting in a miscarriage of Justice. — *Progressive Select Ins. Co. v. Florida Hosp. Medical Center* 236 So.3d 1183 as demonstrate in

- 1). *Faretta* and Rule 3.111(d), which held that; a Court must comply with the requirements for ensuring a valid guilty plea and that reversal is require when there is not a proper *Faretta* inquiry. *State v. Young*, 626 So. 2d 655, 657 (Fla. 1993) and;
- 2). The United States Supreme Court rule under *Apprendi* stated that: A "judge" may impose any sentence authorized "on the basis of the facts... admitted by a defendant," 542 U.S. at 303, 124 S. Ct. 2331, 159 L. Ed. 2d 403. "Not that a judge may submit to a jury any element of the offense admitted by a defense lawyer that presents a pure question of Law". and;
- 3). The United States Supreme Court rule that normally leave it to the state court to decide whether a error is harmless.
- 4). Federal Rule pursuant to 2254 that normally refuse to hear a petitioner claim "if the matter was not preserve for a de novo review or subsequent appeal" if need be in the Federal court, due to absence of a proper timely objection in the state criminal proceeding that went uncorrected by the state appellate court. not to deny Petition as Frivolous.
Base on the foregoing show that Fundamental Error appear on the face of the final order, and Petitioner have a right to impartial Jury trial as provided by the Sixth Amendment in conjunction to the Due process clause, where the record demonstrates that rights was involuntarily waived. *Allyne v. United States*, 570 U.S. —, —, 133 S. Ct. 2151, 186 L. Ed

2d 314 (2013). In *Apprendi v. New Jersey*, 530 U.S. 466, 494, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), this Court held that any fact that "exposes the defendant to a greater punishment than that authorized by the jury's guilty verdict" is an "Element" that must be submitted to a jury. In the years since *Apprendi*, this Court has applied its rule to instances involving plea bargains, *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

Mosa contends that she did not give her trial lawyer consent to admit guilt, and she did not agree for the State to illicit from her trial lawyer a stipulation of admissibility of critical material evidence that constitutes admitted to Elements as in the indictment. She is entirely innocent and the error influence the jury. During post conviction proceeding the State argued that the defense lawyer made a strategic decision in admitted guilt. Mosa asserts that Florida Strategic Decision violated the Sixth Amendment in light of *Ring*, 575 U.S. ___, 135 S. Ct. 1531, 191 L. Ed. 2d 558 (2015). The record shows that she rejected the State plea offer and exercised her right to impartial jury.

For all the foregoing reasons this Court should vacate its October 4, 2021 order for the interest of justice to resolve the issues raised in this matter as questions of great public importance in this Supplemental Motion and Affidavit.

Wherefore, Petitioner Mosa is requesting a Certification of Conflict on Pending Motion for Rehearing, rehearing En Banc in the above style cases in this Honorable United States Supreme Court of Constitutional Law, act of Congress, and Treaty.

Respectfully Submitted
Charlene Mosa

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Certificate of Service

I hereby Certify that I have place this Supplemental Affidavit, in the hands of a prison mail room personnel, to be mailed to:

1. Hon. Scott S. Harris, clerk
Supreme Court of the United States
Washington, DC 20543-0001

And To:

Office of the Attorney General
Criminal Appeal Division
1515 W. Flagler Drive
West Palm Beach, Florida 33401

And To:

Howard Finkelstein et al
201 S.E. 6th Street
Fort Lauderdale, Florida 33301

and To:

Michael S. Satz et al
201 S.E. 6th Street
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On this 4th day of November 2021.

Chantene Rosa 606814
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Supreme Court of the United States
Office of the Clerk

Charlene Rosa

Supreme Court No. 20-8142

V.

No. 21-5076

State of Florida

No. 20-8331

Notice to the Clerk

Come now Petitioner Charlene Rosa in prose, in proper person, and in necessity move this Honorable Court to consolidate this Petition for a Writ of Certiorari on rehearing, rehearing En banc, and, or Certificate of Conflict in one single petition covering all the above styled cases in accordance to this Court rule 12.4.

On 06-10-2021 the Attorney General's Office of the State of Florida, Assistant State Attorney Celia Terenzio certifies the Waiver to this Court case No. 20-8142 as the State of Florida as the responsible Respondent in the legal malpractice actions, rather than former Respondent Howard Finkelstein et al.

Since the remaining cases already the respondent is the State of Florida and is involve identical or closely related questions, pursuant to this Court rule 12.4 a single petition for a Writ of Certiorari covering all the Judgment from the same Court is suffices.

Wherefore, Petitioner Rosa filed this timely single Amended Petition for rehearing, rehearing En banc, and, or Certificate of Conflict for all the above Judgment.

Respectfully Submitted

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