

Supreme Court of the United States
Office of the Clerk

In re - Charlene Rosa

Supreme Court No. 21-5606

v.

State of Florida

Motion for Rehearing, Rehearing En Banc,
and/or Certification of Conflict

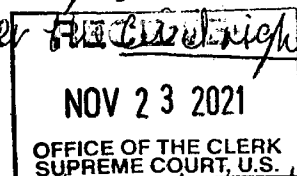
Come now, Petitioner Rosa in pro se, in proper person, and in necessity move this honorable Court for a Rehearing in the above style case.

On November 8, 2021 this Court enter an order denying Petitioner Rosa habeas corpus relief.

Petitioner Rosa is subject to the denial of Justice. A defect in the United States of America Organization of Courts or Administration of Justice, resulting in the Country's Violating its International legal duties to protect aliens under the due process and Equal Protection of the Law, under the United States Constitutional Law, act of Congress and treaty.

Petitioner Rosa contends that as a individual and a Citizen of Jamaica she invoke her rights under the due process and Equal protection under ~~the~~ the ~~Constitution~~ Constitution ~~rights act~~ rights act. See Inalienable right.

Petitioner assents that this Petition presents Extra Ordinary Circumstances for relief.



Question presented

Whether a Alien who is accuse of committed a crime in the United States have the Constitutional right during the criminal proceeding not to plea guilty to any part or whole of the state case, not to admitted Elements of the crime, and not to agree to allow the state a stipulation of admissibility to the authenticity of critical material Evidence that constitutes each element of the Indictment.

Whether a Trial Court owe a defendant a non-discretionary Ministerial duty to comply with the requirements for ensuring a Valid guilty plea.

Whether appellate Courts Failure to Review a Manifest Constitutional error of a deficient Forefetter inquiry by a trial Court that has an identifiable negative impact on the trial to such a degree that the Constitutional rights of a party are compromised demonstrates Inadequate remedy on appeal.

Whether a defendant who is denied due process and Equal protection is entitle to have a Court enter an order with specific findings of a Compelling Interest, that justifies and necessitates the law in question as to, why the Court is unable to comply, and the circumstances causing the delay.

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Grounds that demonstrates Entitlement To Extraordinary relief

Petitioner Rosa was accused, indicted, and charged by the State of Florida as a single defendant for one count of First degree premeditated murder for the stabbing death of her former employer. She enter a not guilty plea for one count of First degree murder case no: 04-10827 CF100.

On June 23 through July 5, 2007 the State of Florida introduce its case to the jury, where the trial judge charged the jury that the state indicted the defendant Rosa for one count of First degree murder for the stabbing death of the victim. during the trial the record show that the state accused ms. Rosa of got angry and stabbed the victim multiple times to her death, after the victim refused to pay her wages.

On the contrary, the record show Rosa trial lawyer introduce to the jury a accomplice theory and 1). Enter a guilty plea for third degree Felony, to aggravated circumstances of solicit to commit armed robbery accusing his client, the defendant Rosa of solicit a individual name Dutch to extort payment from her former employer and 2). Admitted Elements of the crime alleging that this alleged accomplice name Dutch Brutally stabbed the victim 43 times to her death and 3) he then agree for the state to obtain from the defense a stipulation of admissibility to the authenticity of critical material Evidence of "Telephone record" conversations that constitutes the indictment for the admission of such evidence under Fla. Stat. Ann. §§ 90.803(b), 90.902(1). - Jackson v. Household Finance Corp. 711 236 So. 3d 1170 to lay the foundation for the business record to the hearsay rule.

Nothing in the record show that Ms. Rosa enter a formal plea on offenses prior to her trial lawyer guilty plea to accomplice theory. also nothing in the record show that this accomplice theory, and aggravating Circumstances to which Rosa trial lawyer enter guilty plea and admitted Elements of the crime was before the jury by the State. Further nothing on the record show that the State Evidence was sufficient to lay a foundation for the Business-records exception to the hearsay rule under the Fla. Stat. Ann. §§ 90.803(6), 90.902(11). - Jackson v. Household Finance Corp. 771, 736 So. 3d 1170.

During Original Habeas Corpus proceeding the United States district court finds that Rosa trial lawyer had a Strategic justification for his action due to overwhelming Evidence, the 11th circuit court denied Application for a Certificate of Appealability finding that because Rosa did not make a Substantial showing of the denial of a Constitutional right, and Certiorari was denied in this court.

Petitioner Rosa returned to the Trial Court to properly Exhausted the procedural default on the part of the State Court. Subsequently the State response dated September 18, 2018 Conceded that the State Indicted Ms. Rosa for "Both" Premeditated and Felony Murder establish that she was tried in a Multiple prosecution trial by both the State of Florida on murder - first degree and the public Defender office of Broward County in guise as her defense lawyer on Felony Murder - first degree both under the Capital Felony Statute 782.04(1)(a).

Also, the defense attorney case show offenses that was terminated in a prior proceeding in Case NO. 05-10414 EFX04 because of the State Failure to State a claim. The State Court failed to make a final decision on Motion to correct Illegal Sentence.

On Appeal of the New-in-time 3.850 motion, the 4th

10CA of the State of Florida entered sanction on October 11, 2019, ordered that the clerk of this court is directed to no longer accept any paper filed by Charlene Rosa unless the document has been reviewed and signed by a member in good standing of the Florida Bar who certifies that a good faith basis exists for each claim presented and)

On March 10, 2020 the 4th DCA made additional finding order of the Court:

Article I, Section 16(b)(10) b. of the Florida Constitution provides that all state-level appeals and collateral attacks on any judgment must be complete within two years of the date of appeal in non-capital cases and five years from the date of appeal in the capital cases unless a court enters an order with specific findings as to why the court was unable to comply and the circumstances causing the delay. Pursuant to the administrative procedures and definitions set forth in Supreme Court of Florida Administrative Order M.AOSC.19-76, this case was not completed within the time frame required by Article I, Section 16(b)(10) b. because the applicable time frame had already expired by the time this case was filed. This order by the 4th DCA only purpose is to bar Rosa from the 1st Amendment to petition the Government and 13th Amendment.

Petitioner Rosa filed a timely Petition for a writ of Mandamus in the Florida Supreme Court subsequently the Florida Supreme Court finds that the Court will not entertain a person who the lower court finds abuse the judicial system. She filed a timely second-in-time petition for a writ of Habeas Corpus in the United States district Court while appeal was pending in the State Court and request for the district court to hold in abeyance until case final in State case. The district court denied and petitioner filed a timely rule 60(b) motion and Petition to the United States Court of Appeal for a writ of Mandamus, and subsequently petition this Court for a writ of Mandamus. The 11th Circuit Court order that Mandamus be dismissed by the clerk if Petitioner failed to pay the clerk of the

Count filing fees within fourteen days. Petitioner Mosa is indigent and Motion to proceed in forma pauperis was denied.

Her Motion to Correct Illegal Sentence is pending in the State Trial Court since May 24, 2017. She filed a number of notices of inquiries and Motion to rule to no avail.

Under Florida rule of criminal procedure 3.111(d) and Farettia inquiry the court must comply with the requirements for ensuring a valid guilty plea.

The Florida Supreme Court has held that Farettia and Rule 3.111(d) "require reversal when there is not a proper Farettia inquiry." State v. Young, 676 So. 2d 655, 657 (Fla. 1993).

There is nothing on the record show that the trial court conduct adequate Farettia inquiry, and nothing on the record show that the Petitioner Mosa knowingly and voluntarily gave her assigned trial public defender consent to pursue a Strategic Decision on accomplice Felony murder theory and to enter a not guilty plea to uncharged aggravated circumstances that could only serve purpose to link her as the principal perpetrator of the murder of her former employer to which she was on trial by the State as a single defendant accused of killed the victim.

Absent Mosa trial lawyer accomplice theory, she would have been acquitted because the State Evidence was insufficient to establish that she killed her former employer, and that the alleged "Telephone Record" conversations to which the Indictment relied was authentic to lay the foundation for the business records exception to the hearsay rule to provide for the admission of such Evidence.

Rosa contends that withdrawal of the guilty plea is necessary to correct a manifest injustice. "Frank v. Blackburn, 646 F.2d 873 (5th Cir. 1980); Miller v. State, 814 So.2d 1131, 1132 (Fla. 5th DCA 2002). "Manifest Injustice occurs whenever the plea was involuntarily." Blackburn, 646 F.2d at 891. She contends that the fact that:

1). The trial record is devoid of a "telephone record", or the testimony of a telephone company custodian, a person who would have knowledge of each of the elements and record keeping system, and 2) The State failed to present a certification or declaration that each of the elements has been satisfied for the admission of the authenticity of the alleged indictment under Fla. Stat. Ann. §§ 90.803 (6), 90.902(11). - Jackson v. Household Financial Corp. 771, 236 So.3d 1170 show that the critical material evidence to which the indictment relied is non-existence and establish Rosa's statement to the court at trial transcript page 3-6 and 9-10 prior to jury selection and out of the presence of the prospective jurors assenting that she did not have the alleged telephone conversations with the state witnesses. She was entitled to due process and equal protection on this critical material evidence.

2). likewise, the State of Florida action in and for the 14th Judicial Circuit Court terminated both counts on offenses to which Rosa's trial lawyer entered guilty plea and admitted each element of the crime show that he entered guilty plea and admitted each element of the crime on non-existence crimes that was terminated on 06/20/2007 in case No. 05-14414 CF104 because of the State failure to state a claim and;

2(b) after the trial judge entered judgment and sentence on July 5, 2007 on alleged indictment, then on 08/23/2007 the
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State of Florida and in and For the 17th Judicial Circuit Court Amended and enter circuit court disposition order on offenses to which Rosa trial lawyer enter guilty plea to third degree Murder for offenses of: Solicit to commit armed Robbery and admitted facts of accomplice theory alleging that the victim was brutally murdered by an accomplice which show case no. 03-14414CF1011. Establish a Strategic Decision on the part of the State of Florida to tried Ms. Rosa in a Multiple prosecution trial, where her Trial lawyer would enter a guilty plea on Terminated offenses Ellicit by the State that would have the same effect as a guilty Verdict and Conviction after a trial on the merits. This Strategic Decision by the State of Florida show a conness with Ms. Rosa trial lawyer and the trial Judge undue Influence to Wrongfully convicted a Alien as a scape Goat, because she don't know her rights, she was not informed of her rights and or understand her rights. She was denied Justice.

Equal protection. The Constitutional guaranteed under the 14th Amendment in conjunction with the Federal Constitution under the 5th Amendment held that the government must treat a person or class of persons the same as it treats other persons or classes in like Circumstances. In today's Constitutional jurisprudence, equal protection means that legislation that discriminates must have a rational basis for doing so. And if the legislation affects a Fundamental right (such as the right involves a Suspect Classification (such as race), it is UnConstitutional unless it can withstand Strict scrutiny.

Under Strict scrutiny the Standard applied to suspect Classifications (such as race) in Equal protection analysis and Fundamental rights (such as life, liberty and property) in due-process analysis. Under Strict scrutiny, the
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State must establish that it has a compelling interest that justifies and necessitates the law in question.

The United States district court justify Mosca trial lawyer action as a strategic decision due to overwhelming evidence to make this case go away cannot with stand strict scrutiny, where the defendant have the right to put the government alleged overwhelming evidence through meaningful adversarial testing.

Ms. Mosca have a inalienable right to impartial jury determination under the sixth Amendment on the issue of guilt or innocent, in conjunction with the due process clause that requires the state to prove to a jury each element of the crime beyond a reasonable doubt. *Alleyne v. United States*, 57 U.S. —, —, 133 S.Ct. 2151, 186 L.Ed. 2d 314 (2013).

Petitioner Mosca has demonstrated in the foregoing that absent the strategic decision by the state of Florida she would have been acquitted and on direct appeal had the 4th DCA review the insufficiency of the evidence as to the state case introduce to the jury as in indictment, and absent the defense lawyer accomplice theory, guilty plea, admitted elements of the crime and stipulation of admissibility to the authenticity of critical material evidence of alleged telephone records. See district court docket 1-7a. page no. 1088 of 1482. Conviction and sentence would have been reverse on direct appeal review under the two intervening decisions of the United States Supreme Court *Barks v. United States*, 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed. 2d 1 (1978), and *Greene v. Massey*, 437 U.S. 19, 98 S.Ct. 2151, 57 L.Ed. 2d 15 (1978). *Barks* had held that the double jeopardy clause prohibits retrial where an

appellate court reverse a conviction on the ground that the evidence is insufficient, and Greene applied that newly articulated constitutional principle to the states judicial systems under Rule 9.140(f) of the Florida Rules of Appellate Procedure (1977) that provides the relevant standards in the interest of Justice Ms. Rosa was entitled to a review on the insufficiency of the Evidence as a viable and independent ground for appellate reversal to correct a fundamental injustice that took place in the state trial court.

It is apparent on the face of the appellate record that the only purpose the trial court decision to submit the undisputed Elements to a jury that presents a pure question of Law was to influence the jury to return a verdict of guilty as charge First degree premeditated murder, as in indictment.

there were no disputed fact for the jury to decide, after Rosa trial lawyer enter a guilty plea and introduce accomplice theory, and allow the state to illicit a stipulation of admissibility to the authenticity of the alleged "telephone record". *Kotteakos v. United States*, 328 U.S. 750, 764, 90 L. Ed 1557, 66 S. Ct. 1239.

In *Hurst v. Florida* case, Florida argues, "King does not require jury findings on facts defendants have admitted." Brief for Respondent 41. Florida cites the United States Supreme court decision in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed 2d 403 (2004), in which Supreme stated that under Appendi, 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., 303, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (emphasis deleted). Base on the Facts admitted by Rosa trial lawyer that constitutes a guilty plea under Florida Capital Felony Statute 782.04(1) (a) demonstrates that the decision in Appendi apply to this case, where facts admitted by Rosa trial lawyer waived her right to a jury ~~impartial~~ jury trial and, or to be more accurate to a jury trial. The trial court erred in submit

To or sury the undisputed Elements that presence a pure question of Law, where it is incumbent on a trial Judge to decide the question of Law by entering judgment and sentence. see 542 U.S., at 310-312, 124 S. Ct. 7531, 159 L. Ed. 2d 403.

base on all the foregoing establish that Mosca have been denied Justice and present confinement violates the 13th Amendment Section 1 that held in pertinent part that; Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. U.S. Const. Amend. 1st, 4th, 5th, 6th, 13th and 14th.

Therefore Mandamus is necessary to compel the Lower Federal Court to perform its non-discretionary judicial duty owe to Mosca to make a merit determination on the procedural default by the State Court that Waive Ms. Mosca basic due process and Equal protection rights without her voluntary consent and where the State of Florida Strategic Decision violates the Sixth Amendment in light of King, 575 U.S. —, 135 S. Ct. 1331, 191 L. Ed. 2d 558 (2015).

Petitioner Mosca asserts that the foregoing Evidence demonstrates that her claim for Mandamus relief is meritorious, she have Exhausted all Avenue in this case and Appeal was Inadequate. a writ of Certiorari in this Court is discretionary and therefore is not adequate remedy to seek this kind of Extraordinary remedy to compel a lower Court to recognize Individual Constitutional rights that the Courts disregard as a Strategic Decision on the part of the trial lawyer just to make this case go away.

Petitioner Mosca has met the three prerequisites for Mandamus relief, where she have demonstrates that 1). she have

Clear right to relief Sought, 2). The Respondent have a Clear Non-discretionary duty to perform act owed to her and 3). There is no adequate remedy in any other form or any other Court to Compel the respondents to perform Constitutional duty owed to her as a matter of her civil rights as a individual, rights guaranteed by the due process and Equal protection of the Law, where life and liberty and property is at stake, *Yip v. Fed. Bureau of Prisons*, 363 F. Supp. 2d 548 (E.D.N.Y. 2005) (unpublished decision). See Also. *United States v. Greffin*, 152 Fed. Appx. 860 (11th Cir. 2005), cert. denied, 547 U.S. 1103, 126 S.Ct. 1893, 164 L.Ed 2d 557 (2006). U.S. Const. Amend. 1st, 4th, 5th, 6th, 13th and 14th.

UnNotorized Oath

Petitioner Rosa Certify that to the best of her knowledge and understanding, the Evidence presented in this Petition is True and is limited to Intervening Circumstances of a Substantial or Controlling effect or other substantial grounds not previously presented.

She further Certify that the grounds are restricted as specified in this court's rule, and that this Petition is presented in good Faith and not for delay.

Wherefore, For all the foregoing reason Petitioner request for this honorable Court to vacate its order denying mandamus relief, and pray that this honorable Court will grant Mandamus relief to Compel the lower Federal Courts to 1). perform Constitutional duty owed to Petitioner Rosa on the merit of her claim on procedural default on the part of the State Court deprived her of her individual right to due process and Equal Protection under the Law or 2). For the Court to enter an order with specific findings as to why the Court is unable to comply and the circumstances causing the delay.

Respectfully Submitted
~~Charles Rosa~~
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