

No. 21-5878

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
SEP 27 2021
OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES

LINAKER CHARLEMAGNE
Petitioner

ORIGINAL

v.

MARK S. INCH, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS
Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE ELEVENTH CIRCUIT COURT OF APPEAL
OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

LINAKER CHARLEMAGNE
DC # M87151
Madison Correctional Institution
382 S.W. MCI Way
Madison, FL 32340-4430

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Date CC Initials

QUESTION(S) PRESENTED

1. Whether District Court, departed from essential requirements of law, by not perfecting service on Petitioner in a timely manner, which denied constitutional rights of due process.
2. Whether Petitioner was denied right to conflict free counsel at Evidentiary hearing on Newly Discovered Evidence.
3. Whether Petitioner's case was a true self defense, based on sworn affidavit, of Cedric Johnson, sidebar conferences, evidence and investigative reports.

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:

NOTICE OF RELATED CASES

There are no related cases pending resolution before any state or federal court.

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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

[X] 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 not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[X] reported at *Charlemagne v. State*, 2021 U.S. Dist. Lexis 10736; or,
[] has been designated for publication but not yet reported; or,
[] is unpublished.

[X] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix G to the petition and is

[X] reported at *Charlemagne v. State*, 2019 Fla. Dist. Lexis 1927; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the 3rd District Court of Appeals appears at Appendix H to the petition and is

[X] reported at *Charlemagne v. State*, 279 So.3d 808 (Fla. 2019); or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 17, 2021.

[] 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).

[X] For cases from state courts:

The date on which the highest state court decided my case was November 12, 2019.

A copy of that highest state that decision appears at Appendix G.

[X] A timely petition for rehearing was thereafter denied on the following date: 2019, and a copy of the order denying rehearing appears at Appendix I.

[] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court in invoked under Rule 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner's Sixth Amendment Right to Assistance of Conflict Free Counsel was derived thereof, where the conflict arose as a result of representation by the Public Defender's office, *Cuyler v. Sullivan*, 446 U.S. 335, 100 S.Ct. 1708 (1980). See **Appendix E**, where counsel had known of the conflict of interest, during Evidentiary Hearing, but allowed prejudice to prevail until after Evidentiary hearing.

In **Appendix B**, as to Claim One, it was stated by justice or court..."State misconstrued this claim; and...the record is not complete...at pg.3 of **Appendix B**, Rule 8(a), determines whether an Evidentiary Hearing is warranted under *Townsend v. Sain*, 372 U.S., 83 S.Ct. 745 to resolve the conflict.

Petitioner was also denied of his First Amendment, Right to Redress, under Rule 8(b) where the Petitioner was not perfected service **Appendix D and F**, where it was demonstrated and acknowledged in the notice of appeal and judicial notice, Petitioner did expand the record with **Appendix D and E**.

Accordingly, under concepts of *Mcquiggins v. Perkins*; *Townsend v. Sain*; and *Shlup v. Delo*, Petitioner is entitled to Federal evidentiary hearing, with conflict free counsel, under the Sixth and Fourteenth Amendments of the United States Constitution.

STATEMENT OF THE CASE

Petitioner filed a Rule 3.850 motion in the Eleventh Judicial Circuit Court raising (5) Claims. The Court denied claims (1-4), but held an Evidentiary Hearing on Claim (5), which was based on newly discovered evidence “a Sworn Affidavit from Cedric Johnson,” the State’s key witness (See **Appendix A**).

Petitioner was represented by counsel with conflict, during evidentiary Hearing, after hearing the Court denied relief.

Petitioner filed a Rule 28 U.S.C. § 2254, the U.S. District Court reviewed and conceded record was not complete as to Claim (1) (See **Appendix B**, pg.3).

Petitioner asserts that Claims (2) and (5) conjunctively demonstrate Petitioner’s assertion of factually innocent of the crime and conviction, where State’s case is primarily rested on the know false testimony of Cedric Johnson, where the exculpatory evidence was withheld by State, from jury, such as sidebar conference which demonstrated “Petitioner’s” innocence...Cedric Johnson had gunshot particles on his hands” (See **Appendix C**, Amended § 2254, pg.4 of 21). The U.S. District Court declined to hold Evidentiary hearing.

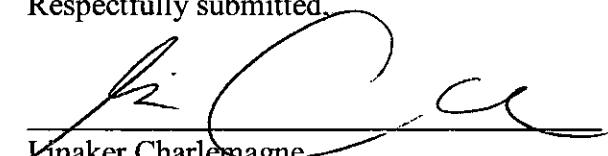
REASON FOR GRANTING THE WRIT

This Court should grant Writ, in the interest of justice, where Petitioner did not receive a fair Evidentiary Hearing, do not belong assisted by counsel with conflict in violation of the Sixth Amendment of the United States Constitution where Petitioner was not perfected service. Along with Evidence and Sworn Affidavit from the surviving victim that will exonerate Prisoner.

CONCLUSION

WHEREFORE, based on the foregoing statement of the case, constitutional and statutory provisions involved, and authority, the Petitioner requests that this Honorable Court grant the instant Petition for Writ of Certiorari and resolve the Constitutional questions presented above.

Respectfully submitted,



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Date: September 27, 2021