

IN THE
UNITED STATES SUPREME COURT

21-7290

CASE NO: _____ to be assigned _____

ORIGINAL

FILED

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SUPREME COURT, U.S.

JAMES L. CAUDLE,
PETITIONER,

V.

THE STATE OF FLORIDA,
RESPONDENT.

ON REVIEW FROM THE SUPREME COURT OF FLORIDA
NO: _____

PETITION FOR WRIT OF CERTIORARI

James L. Caudle,
DC# 532874
Tomoka Correctional Institution
3950 Tiger Bay Road
Daytona Beach, FL 32124

Petitioner, *Pro Se*

QUESTIONS PRESENTED

- I. Whether the right to due process of law has been denied by State courts allowing the State to evade addressing whether the right to confront the only accuser was denied by excluding her from the trial after she sent a written recantation to the State; and/or
- II. Whether the right to a presumption of innocence until proven guilty was denied by charges that presented conclusory assertions of guilt to shift the burden of proof to the Petitioner's prejudice; and/or
- III. Whether the right to an impartial jury was denied by a trial judge's *ex parte* communication with a juror without a curative instruction or alternate juror to replace the tampered juror; and/or
- IV. Whether the right to due process of law has been denied by life imprisonment punishment that requires the indefinite imprisonment forbidden by the State Constitution.

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Other Authorities

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OPINIONS BELOW

The opinion of the highest State Court to review the merits appears at APPENDIX A to the petition and is reported at (Unknown) v. State, _____ (Fla. ___ DCA. ___).

STATEMENT OF JURISDICTION

The date of which the highest State Court decided Petitioner's case was on 12-01-2021. A copy of that decision appears at APPENDIX A, from the Florida Supreme Court denying Petition for review.

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

The Petition For Discretionary Proceeding to the Florida Supreme Court (Appendix B-3) explained that COVID-19 quarantines in his prison often prevented access to its law library, and its new Warden's policy of requiring all prison cells to be "inspection-ready at all times" often prevented preparing his legal pleadings in his dormitory. Those two obstructions, virus quarantines and constant readiness for inspections, hindered the Petitioner from filing his pleadings in a timely fashion after the trial court waited over 14 years, until 2020, to address his 2006 Motion For Relief From Judgment. SEE the Motion To Enter Ruling at Appendix G.

The Petitioner invokes the *Rooker-Feldman* doctrine, upheld in *Rindley v. Gallagher*, 929 F.2d 1552 (11th Cir. 1991), to seek this Court's authority to review the final decision of Florida's highest court regarding liberty interest rights declared by Florida's Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

[illegible]

STATEMENT OF THE FACTS

- I. The trial court allowed the State to evade an order requiring the justification for the exclusion of the only accuser from testifying at trial, by prevaricating that trial counsel "did a magnificent job in preserving this issue." An evidentiary hearing would have shown that Barbara Denise Blair was kept away from the trial because she had recanted her accusation, in a letter to the State, which would leave only the testimony of a police officer who heard Blair's accusation prior to her recanting it. No physical evidence linked the Petitioner to the murder of Howard Lee Gadson. The exclusion of testimony by the one and only accuser denied the Petitioner his right to confront his accuser, contrary to the rulings in *Crawford v. Washington*, 541 U.S. 36, 68-69, 124 S.Ct. 1354, 1371 (2004), and *Cook v. State*, 595 So.2d 994 (Fla. 3rd DCA 1992), by admitting into trial a non-testifying co-defendant's hearsay accusation to a police detective.
- II. The State's written and oral conclusory assertions that the Petitioner "did . . . kill" Howard Lee Gadson presumed the Petitioner's guilt prior to his trial and burdened him with proving the negative, that he did not kill Howard Lee Gadson, which embarrassed the Petitioner by obstructing his defense. That conclusory assertion came from a 1939 session law enacted in a Florida criminal practice procedural statute, sec. 923.03, that was not adopted by the Florida Supreme Court as is required by Article V, § 2(a) of the Florida Constitution. The phrase, "did . . . kill," is a "conclusory assertion of guilt" according to *Cianci v. New Times Pub. Co.*, 639 F.2d 54, 56 (2nd Cir. 1980); and *Kelly v. Curtis*, 21 F.3d 1544, 1555 (11th Cir. 1994), and that presumption of guilt before an

adjudication of guilt by a court of law violates the requirement that charging documents "must allege" an offense, *Bell v. U.S.*, 11 S.Ct. 761 (1891); and *Illinois v. Somerville*, 93 S.Ct. 1066 (1973), because a person charged with a crime is entitled to a presumption of innocence, *Herrera v. Collins*, 113 S.Ct. 853, 859 (1993).

III. The trial judge conducted a private meeting with a juror who passed a note to him, inquiring about the disposition of the co-defendant, Barbara Denise Blair, who had confessed in her recantation letter to the State that she alone had killed Howard Lee Gadson upon discovering that he had sexually molested her 8-month-old female baby just as had raped her and her own mother, for which she was sentenced to 21 years of imprisonment but not allowed to testify at the Petitioner's trial. The trial judge ordered that inquiring juror to deceive the other jurors about the content of their private conversation. Those other jurors observed the note being passed from the inquiring juror and knew there was a private meeting with the judge when they were removed from the courtroom and sequestered. The note-passing juror was not replaced with an alternate juror, because there was none, and no curative instruction was provided to those other jurors, which allowed them to assume that the note-passing juror had been given special access to extra evidence sufficient to find the Petitioner guilty, when in fact there was none. "The most insidious result of *ex parte* communications is their effect on the appearance of impartiality," according to *Rose v. State*, 601 So. 2d 1181, 1183 (Fla. 1992); and *Rushen v. Spain*, 464 U.S. 114, 104 S.Ct. 453 (1983).

IV. The punishment imposed on the Petitioner violated his right to due process by being enhanced to life imprisonment because of a prior

misdemeanor conviction for assault in New York, and which imprisonment is indefinite by being enforced as "a sentence with no definite term" according to the prison rule, Fla. Administrative Code rule 33-603.402(1)(a)5., in direct denial of the declared right in Fla. Constitution Article I, section 17, which forbids "indefinite imprisonment." Thirteen rulings by the highest courts in Florida (Appendix H-14) upheld that constitutionally declared right by requiring every sentence of imprisonment to be for "a fixed period with a time of termination." According to *Ellard v. Alabama Board of Pardons and Paroles*, 824 F.2d 937 (11th Cir. 1997) at 943:

"The [Fourteenth Amendment] due process clause, in short, prohibits the States from negating by their actions rights that they have conferred by their words."

Because the Petitioner cannot be released on parole, his sentence of life imprisonment is unconstitutional according to *Dorminey v. State*, 314 So. 2d 134, 136 (Fla. 1975); and *Owens v. State*, 316 So. 2d 537, 538 (Fla. 1975). SEE Appendix B-5 and its Exhibit F.

Ignoring the 14 years between the Petitioner's Motion For Relief From Judgment (Appendix H) and no ruling (Appendix F) until after he filed a Motion To Enter Ruling (Appendix G), the State appellate court notified him that pursuant to Florida Supreme Court Administrative Order No. AOSC 19-76, "this case was not completed within the required time" (Appendix C). That *ex post facto* application of a procedural rule enacted after the Petitioner's alleged 1994 offense is prohibited by Article I, section 10 of both the U.S. and Florida Constitutions and the rulings in *Weaver v. Graham*, 450 U.S. 24, 101 S.Ct. 960, 964 (1981); and *State v. Barnum*, 921 So. 2d 513, 522 (Fla. 2005).

REASONS FOR GRANTING A WRIT OF CERTIORARI

1. Certiorari would uphold the right to a fair trial by allowing not only the accused to testify but also to confront the only accuser, especially when the State knew the accuser wrote a recantation and confessed to having killed the victim for having sexually molested the accuser's eight-month-old baby girl just as the victim had previously raped the accuser and her mother, which was why her mother divorced the victim;
2. Certiorari would uphold the right to a presumption of innocence that Florida denied the Petitioner by publicly announcing to a jury the conclusory assertion that he "did kill" the victim, in order to shift the burden of proof onto him by requiring that he prove the negative;
3. Certiorari would correct the verdict resulting from a trial judge's private hearing with a juror ordered to keep the content of their *ex parte* communication a secret, without an alternate juror available or curative instruction given;
4. Certiorari would stop Florida from its *ex post facto* application of a procedural rule that bars postconviction court proceedings and that was enacted after the Petitioner's alleged offense occurred; and
5. Certiorari would require Florida's courts to support the will of the people declared as a right in Florida Constitution Article I, section 17 by forbidding as "excessive punishment" the "indefinite imprisonment" that life imprisonment without the availability of a parole requires, by prison rule, which imposes "life" imprisonment as a death sentence by leaving death as the only means of release from imprisonment.

Granting a writ of certiorari in this case will follow the ruling in

Ellard, supra at 945:

"It is now well established that when a liberty interest arises out of State law, the substantive and procedural protections to be accorded that interest is a question of Federal law."

Which followed this Court's ruling in *Hicks v. Oklahoma*, 100 S.Ct. 2227 (1980) at 2229:

"When, however, a State's failure to adhere to its own law violates a Federal right, it is cognizable in Federal court."

That "Federal right" is the Fourteenth Amendment's guarantee of the due process in this State's laws, especially its organic primary law.

CONCLUSION

WHEREFORE, based the foregoing facts, argument, and cited authorities, the Petitioner prays that this court will grant certiorari.

Date: February 25, 2022

Respectfully submitted,

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