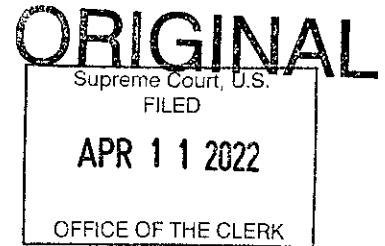


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No. **21-7729**



**IN THE
SUPREME COURT OF THE UNITED STATES**

WILLIAM WALLACE,
Petitioner,
vs.
STATE OF FLORIDA
Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioner, William Wallace, an inmate currently incarcerated at Graceville Correctional Facility in Graceville, Florida acting *pro se* respectfully petitions this Court for a Writ of Certiorari to review the judgment of the Eleventh Circuit Court of Appeals, Atlanta, Georgia, being Petitioner's Court of last resort, which conflict with decisions of the United States Supreme Court.

William Wallace, DC#563183
Graceville Correctional Facility
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QUESTIONS

Question One: Is the Florida State trial court at error when allowing the petitioner to plea out to a non-existing criminal charge that constitutes civil action?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix: A to the petition and is unpublished at this time. The opinion was issued on February 2, 2022.

The opinion of the United States District Court appears at Appendix: B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided Petitioner's case was February 2, 2022.

No petition for rehearing was filed in Petitioner's case.

The Jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, 6 & 14 § I Amendments of Due Process; that resulted in a miscarriage of Article I § 9 of Florida Constitution (1980); and the United States Constitutional Amendments 6 & 14 § I; see: *Rochin v. California*, 342 U.S. 162 (1952); under the due process clause of the Fourteenth Amendment; a state conviction cannot be brought about by methods that offend a sense of justice.

The U.S. Supreme Court has recognized that a prisoner "otherwise subject to defenses of abusive or successive use of writ may have his Federal Constitutional claim considered on the merits if he makes a proper showing of actual innocence". *Herrera v. Collins*, 506 U.S. 390, 404, 112 S.Ct. 853, 122 L.Ed.2d 203 (1993).

A Federal Court, faced with an actual-innocence gateway claim, should count unjustifiable delay on a habeas Petitioner's part, not as an absolute barrier to relief, but as a factor in determining whether actual innocence has been shown. Taking account of the delay in the context of the merits of this Petitioner's actual innocence claim, rather than treating time liness as a threshold inquiry, is tuned to the exception's underlying rationale of ensuring "that Federal Constitutional errors do not result in the incarceration of innocent persons". *Herrera*, 506 U.S., at 404, 113 S.Ct. 853, 122 L.Ed.2d 203.

But it does not stop there. Wallace is further alleging that the trial court lacked subject matter jurisdiction to adjudicate guilt and to impose the sentence under review.

The Court has applied this "fundamental miscarriage of justice exception" to overcome various procedural defaults, including, as most relevant here, failure to observe state procedural rules. See: *Coleman v. Thompson*, 501 U.S., 722, 750, 111 S.Ct. 2546, 115 L.Ed.2d 640.

The exception, the Supreme Court's decisions bear out, survived AEDPA's passage. See: *Calderon v. Thompson*, 523, U.S. 538, 558, 118 S.Ct. 1489, 140 L.Ed.2d 728; *House*, 547 U.S., at 537-538, 126 S.Ct. 2064, 165 L.Ed.2d 1.

These decisions "See[k] to balance the societal interest in Finality, Comity, and Conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary case". *Schlup*, 513 U.S., at 324, 115 S.Ct. 851, 130 L.Ed.2d 808.

It is well settled that questions about a court's jurisdiction cannot be waived. *Kelly v. United States*, 29 F.3d 1107, 1114 (7th Cir. 1994), citing *Freytag v. Commissioner of Internal Revenue*, 501 U.S. 868, 111 S.Ct. 2631, 2648, 115 L.Ed.2d 764 (1991) (Scalia, J., concurring the "nonwaivability" of lack of subject matter jurisdiction).

Lowery v. Young, 887 F.2d 1309, 1312 (7th Cir. 1989); *Young v. Lynaugh*, 821 F.2d 1133, 1137 (5th Cir. 1987). *U.S. v. Tucker*, 92 S.Ct. 589.

STATEMENT OF THE CASE AND FACTS

Procedural Posture

Petitioner Wallace is a state prisoner in Florida, serving a life sentence.

Wallace was convicted after an open plea for 1 count of arm robbery with a firearm. (Reserving the Right to appeal the Constitutionality of the Prison Release Reoffender Act) (Appendix: C).

Wallace's Appellate Attorney filed an Ander's brief and Wallace allowed the appeal to run out.

Wallace timely filed his post-conviction relief motion, Rule 3.850 and an evidentiary hearing was granted for October 20, 2003.

Wallace appealed the denial of his 3.850 to the 1st DCA, and was per curiam affirmed.

Wallace filed his petition for Writ of Habeas Corpus, (2254) where the district court dismissed it as untimely.

Wallace then filed a 3.800(a) motion to correct illegal sentence in case numbers 86-2448, 87-712, 89-815, and 98-3591 where a sanction was imposed.

Wallace proceeds with his 2254 on actual innocence in case number 86-2448. The District Court originally dismissed the 2254 with prejudice.

Wallace files an objection to the findings in the Report and Recommend action. (Appendix: D).

Wallace then files a Rule 60(b)(6) which was denied.

Wallace then filed for an Application for C.O.A. Which was granted.

Wallace's application was denied. Wallace timely filed this instant petition.

Argument Posture

- I. The Certificate of Appealability (COA) in the Eleventh Circuit Court of Appeals should have been granted since a reasonable jurist found the court's assessment of the constitutional claims debatable or wrong pursuant to *Slack v. McDaniel*, 529 U.S. 473, 484, (2000) and *Miller-El v. Cockrell*, 537 U.S. 336 (2003).
- II. Case Number 86-2448 involves Wallace taking a company owned vehicle to Tallahassee Ford Motors in Tallahassee, Florida for repairs. Since the vehicle had to be left for repairs, Wallace rented a vehicle, which the warranty covered that as well. When the car was ready, the service manager, John Sarvis, called Mr. Wallace to inform him that the car was ready, and that the cost was \$510.62. When Wallace arrived at the garage with a copy of the receipt for repairs the vehicle had before under warranty, the service manager was at lunch. When Wallace went into the garage to check on the car, the mechanic saw the receipt in Wallace's hand and told him to wait outside and he would bring the car to him.

The mechanic never asked any questions. It was the mechanic's responsibility to verify that the car was cleared for release. (Appendix-E probable cause affidavit, June 23rd, 1986).

Procedures of the Ford Motor Company's service department would preclude customers from walking into the garage and driving off with their car. The mechanic simply gave Wallace the vehicle back to him. Whether there was a dispute over any parts, service, or costs, etc., is a dispute which is not criminal in nature.

The matters of procedure and remedy in the contract between the Petitioner and Tallahassee Ford could only be the nature of a civil proceeding.

III. 86-2448 case was not a criminal case, without violating the Petitioner's Right of Due Process in a civil matter.

Furthermore, in case 86-2448, there were no material witness's testimony documented or evidence which could have been any basis for criminal charges. (Fla.R.Crim.P. 3.140(g)).

IV. In this case, the face of the records clearly show that an officer, who was not a "material witness" (Detective Joseph M. Doyle) was the only person to have filed charges. The complaint(s) or probable cause do not name any material witness(s) (*State v. Weinberg*, 780 So.2d 214 (Fla. 5th DCA 2001); to wit: investigating officer was not a material witness and thus information charging Petitioner with... could not be based solely on officer's affidavit, where officer simply collected evidence in the form of altered prescription, which doctor's office had verbally verified had been altered; only doctor and pharmacist, not officer, were material witnesses. *Id.* At 215 (Appendix-E, Appendix-F).

V. In case 86-2448, the mechanic who the officer alleged complained could be a "material witness". Under Florida procedure(s) challenged here, a person arrested and charged by information may be jailed or subjected to other restraints pending trial without any opportunity for probable cause determination, Fla.R.Crim.P. 3.120. Florida defended this practice on the ground that the prosecutor's decision to file an information is itself a determination of probable cause that furnishes sufficient reason to detain a Defendant pending trial. Although a conscientious decision that the evidence warrants prosecution affords a measure of protection against unfounded detention.

However, the United States Supreme Court did not think prosecutorial judgment standing alone meets the requirements of the Fourth (4th) Amendment.

Indeed, the U.S. Supreme Court's decision compel disapproval of Florida Procedure. *Gerstien v. Pugh*, 95 S.Ct. 854 (1975); citing, *Albrecht v. United States*, 47 S.Ct. 250, 251 (1927).

VI. Wallace contends that a manifest injustice has occurred. Court case number 86-2448 in Leon County, Florida Circuit Court, the arrest and judgment for grand theft in Leon County should be vacated.

VII. On February 14, 1987, Wallace was sentenced to 6 months in the county jail and two years probation. A motion to mitigate the 6 months was granted, and reduced to 60 days. On the 60th day, Wallace was released to New York detectives to be extradited back to New York to face charges for possession of stolen property. The state of Florida violated Wallace for the probation once extradited.

VIII. After serving time in New York, Wallace returned to Florida, and was arrested for 3 counts of robbery, to which, Wallace proceeded to trial.

After losing trial, the state sought to habitualize Wallace based on the two predicate offenses of grand theft of a motor vehicle (1987); and the grand theft (1986).

On October 11, 1989, before sentencing for the robberies, a probation hearing was conducted on the probation violations.

Wallace never admits guilt to the violation's. (Appendix-G: October 11, 1989 sentencing transcript page 3, line 17, 18).

The state also can't prove a violation (Appendix-G: sentencing transcript page 18, line 3 and 4.

Wallace contends that a violation of his "due process" rights were violated, because in this same hearing, the court used these probation's, to habitualize Wallace to a 10 years sentence. Wallace was never guilty if any type of violation's, and the judge (Padavano) used these, case 87-712; and case 86-2448 to habitualize the Petitioner in case number 89-815 to a 10 year sentence H.O., that caused Wallace to serve 9 years and two months of the 10 year sentence, placing Wallace (Appendix-H 86-2448, and 87-712 probation order's) up under the 1997 enactment of the Prison Release Reoffender Act. (Appendix-G: Oct 11, 1989 sentencing transcript, page 16, line 17-21; page 18, line 2-9).

IX. Wallace filed a 3.800(a) Motion to Correct an Illegal Sentence in June 6, 2006 to challenge the validity of an expired conviction in case number(s) 86-2448; 87-712; 89-815; and 98-3591.

A Petitioner may challenge on Habeas Corpus the validity of an expired conviction, where that conviction has been used to enhance his current confinement or sentence even

if he is no longer in custody for the prior convictions; *Maleng v. Cook*, 490 U.S. 448 (1989); where the Supreme Court concluded that habeas corpus has provided a remedy for "an allegedly unconstitutional conviction, even if Petitioner has served in entirety the sentence resulting from the conviction if that conviction had an effect on the present sentence".

In Petitioner's case, "manifest injustice" is the fundamental defect that concerns the authority of the Second Judicial Circuit Court in case number 86-2448.

In which, the Petitioner was charged with a crime that never existed.

After Wallace filed his 3.800(a) Motion to Correct an Illegal Sentence on June 6, 2006, Circuit Judge Kathleen F. Dekker ordered a show cause order on the Petitioner to why sanctions should not be imposed filed 7-14-06. When the Petitioner responded to the court order on 8-9-06, Judge Dekker ordered that the Petitioner is prohibited from filing any *pro se* 3.800 motion's without counsel on 9-20-06.

This sanction caused the Petitioner from attacking the validity of his 1986 conviction, where the Petitioner is currently serving a life sentence in the Florida Department of Corrections for armed robbery in case number 98-3591, caused by the habitual offender enhancement sentence in case number 89-815; to which the Petitioner was not released from prison until 1998, placing the Petitioner under the Prison Release Re-Offender Act (PRR); which case number 86-2448 was used as a predicate felony to enhance the 89-815 10 year sentence.

X. In order for the Petitioner to adequately claim that his first conviction was used to unconstitutionally enhance his second conviction, Petitioner must assert that there was a positive and demonstrable nexus between the current custody and the prior conviction; *Lowery v. Young*, 887 F.2d 1309, 1312 (7th Cir. 1989); quoting *Young v. Lynaugh*, 821 F.2d 1133, 1137 (5th Cir. 1987).

Lowery holds that a person in custody on (sentence B) may contend that custody on (sentence B) violates the constitution if it was augmented because of an invalid (sentence A).

Thacker v. Singletary, 145 F.Supp.2d 1332 (S.D. Fla. 2000); sentencing and punishment -798, 2255- under Florida Law, Petitioner's criminal history was over stated for means of enhancement and Petitioner was entitled for resentencing.

The custody question in *Lowery* is identified to the custody question in *Tucker*¹, which *Maleng*; reaffirmed, 109 S.Ct. at 1923.

XI. Trial court Judge Kathleen F. Dekker placed a sanction on the Petitioner in case numbers 86-2448, (case on review) 87-712; 89-815; and 98-3591, to which, when the Petitioner filed his 2254 Federal Habeas Corpus alleging "actual-innocence" in district court, case number 86-2448 on September 26, 2018; the Attorney General's Office responded with an unfounded notion that the reason for the sanction was placed on the Petitioner because of 17 post conviction repetitive filing's that the District Court magistrate also incorporated in her Report and Recommendation to discredit the Petitioner bringing his "actual-innocence" claim to the court when these allegations are unfounded to prevent the Petitioner from bringing what's in the dark to the light. (Appendix-I, Docketing Statement, Leon County Circuit Court, 1987-2007).

Docket statement will show that the one 3.800(a) Motion to Correct Illegal sentence filed June 6, 2006 was not ruled on, but a sanction placed on the Petitioner, forcing the Petitioner to file his 2254 habeas corpus to the U.S. District Court claiming "actual-innocence", to which, the U.S. District Court sided with the Attorney General's Office and disregarded the Petitioner's "actual-innocence" claim.

The merit of the Petitioner's claim on the expired and unconstitutional conviction in case number 86-2448 must be addressed invalidating the conviction that placed the Petitioner in custody and formed the legal basis for his current life-sentence incarceration. The facts underlying the claim made by the Petitioner when the former conviction affected the current case for which the Petitioner is imprisoned; *Harper v. Evans*, 941 F.2d 1583 (11th Cir. 1991).

1 *U.S. v. Tucker*, 92 S.Ct. 589.

accurately reflect the "corporation's automobile". Wallace did not take "his" automobile to the dealership for repairs as the automobile was owned and registered to a New York Corporation.

In the factual basis, the State alleges that the dealership [victim] made attempts to contact the Petitioner, yet failed to contact the corporate offices clearly marked and imprinted on the registration and warranty card presented to the Tallahassee Ford service manager and embossed on the service agreement.

The factual basis of the charge indicate that Wallace identified the vehicle as corporately owned with the corporation's name, address, state, telephone number among other vehicle identification shown on the vehicle registration and (ID) identification warranted vehicle.

Wallace was not responsible for the corporate debts; did not hold office in the corporation; did not have access to corporate funds, and was not stockholder.

The repair charges, the subject of the alleged grand theft, were the sole responsibility of the corporation which was never contacted by Tallahassee Ford. (Appendix: J, affidavit in support... Wallace & Wallace Chemical Co., 200-33 Linden Blvd., St. Albans, Queens, N.Y. 11412).

In addition, the Leon County Sheriff Department filed a defective warrant on June 13, 1986 for Wallace's arrest to the filing of the probable cause affidavit on June 23, 1986 (Appendix: E, probable cause affidavit and June 13, 1986 warrant).

Wallace was arrested on February 19, 1987 in violation of his constitutional rights.

DECLARATION

I hereby declare under penalty of perjury that I understand the English language or have had read to me in a language that I understand and therefore, state that the facts set forth are true and correct.

Respectfully Submitted,

/s/ William Wallace
William Wallace, DC# 563183

CONCLUSION

The petition for Writ of Certiorari should be granted.

Respectfully Submitted,

/s/ William Wallace
William Wallace, DC# 563183
Petitioner, *pro se*
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