

21-7931
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

APR 25 2022

OFFICE OF THE CLERK

John Bailen — PETITIONER
(Your Name)

vs.

State of Florida, Et AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Florida's Second District Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John Bailen
(Your Name)

Bay Correctional Facility, 5400 Bayline Drive
(Address)

Panama City, FL 32404
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether Trial and or appeals attorneys Can on their own waive structural defect as relates to biased, prejudicial, vindictive judge and in the course of doing so themselves doing absolutely nothing to help me amounts to ^{them also} being structural defects?
2. Whether it is Constitutionally ^{permissible} for Respondents to place a ^{bar and or} de facto bar on my filings in retaliation for my complaints raising Record retaliation and racism by Court officials?
3. Whether it is Constitutionally permissible to grant relief to a white defendant or party on same issues raised by me in same manner but deny me — I can find no case where a white person was denied relief in a similar situation, of course I am Black?
4. Whether it is ever Constitutionally permissible to hold a defendant in prison years or even days past completion of sentence?
5. Whether ~~as~~ this will be treated as a matter ^{of integrity} of the Court and thus continued to resolution after my death — I am 78 years old?
Please continue.

LIST OF PARTIES

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

[X] 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:

Ricky D. Dixon, Sec'y Florida Dep't of Corrections, Jessie Williams, Warden Bay Correctional Facility, Joseph Walker, Prosecutor, Donald Horro, Trial Attorney, William Slicker, Appeal Attorney

RELATED CASES

Bailey v. Ricky D. Dixon, No.: 2022-0239, Second District Court of Appeals of Florida, Judgment entered Feb. 23, 2022.

Bailey v. Ricky D. Dixon, No.: 2022-0874, Second District Court of Appeals of Florida, Judgment pending.

Bailey v. Florida Comm'n on Offender Review, Florida Dep't Corrs., Warden Bay C.F., No.: SC 22-0329, Supreme Court of Florida, Judgment pending.

Bailey v. Secretary, Dep't of Corrs., et AL., No.: 8:21-cv-2191-SDM-CPT, U.S. District Court for the Middle District of Florida, Judgment pending.

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APPENDIX B	Change of Plea Hearing, November 14, 1991
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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

☐ 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 is not yet reported; or,
☐ is unpublished.

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

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

☒ reported at wnk; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Second District Appeals court appears at Appendix A to the petition and is

☒ reported at wnk; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 02/23/2022.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment I

"Congress shall make no law ... prohibiting ... The right of the people ... to petition the Government for a redress of grievances."

Amendment ~~IV~~ V

"No person shall ^{be held to answer for a ... crime ...} nor be deprived of life, liberty, or property, without due process of law; ..."

Amendment VI

"In all criminal prosecutions, the accused shall enjoy the right to ... ^{an} impartial jury [and judge] ... and to have the Assistance of Counsel for his defence."

Amendment XIV

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall they deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Emphasis added."

Universal Declaration of Human Rights

Article 8

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

STATEMENT OF THE CASE

I first raised the issues in regards the Judge Brandt Downey need to recuse himself in a pro se motion to recuse because my trial attorney Mr. Donald Horroxx refused to do so. The motion was meritorious and filed pursuant to Turner v. State, 598 So.2d 186 (Fla. 1 DCA 1992) (a pro se filed motion to recuse while represented by counsel). I filed the motion due to the Threats of the Judge as he strongly urged me to take his offer and not go to trial or else I would die in prison and due to us being adversaries because of my being in an interracial marriage with a successful, professional, white wife, Linda Osmundson (deceased) former Executive Director of CASA of St. Petersburg, Florida, a domestic Abuse Treatment and Shelter. This is all of Record.

I raised the issues in this matter as ineffective trial counsel for not coming to my defense. He refused to file a motion or adopt my motion and he stood by and did nothing while the judge violated all rules and canons state and Federal in regards refusal. See App. B and C, Change of Pleas November 14, 1991 and motion to Disqualify hearing on September 29, 1992, respectively.

I raised the issues in this matter as ineffective ^{the} appeals counsel for not raising the issue on direct appeal as the issues were manifest on the face of the Record. The ineffective counsel issues were timely and properly raised and the merits have never been reached. Thus, I filed successively and was punished for doing so by the trial court barring further filings and the higher courts then placed de facto court bars against me.

I have filed so many times over the years I've lost count. And still the courts will not reach merits as it misled me to believe it would. See Jopps v. State, 865 So. 2d 1253 (Fla. 2004) (If merits not reached a defendant can file successively).

Cont...

Statement of The Case Cont...

As a result of This biased judge I had an unfair trial and vindictive sentences

all raised and ignored more than once, the offers by the Judge ranged

from the offers at App. B down to 7 years. After I refused the

offers, ^{and} ignored his threats to keep me from trial or punish me if I go

to trial he sentenced me in a manner that totaled 40 years because I

electd ~~to~~ go to trial. This is all of record.

This has gone through State and Federal Courts years ago.

Additionally, as the threats to punish me if I went to trial were on

Record at App. B the Judge's denial of ever saying them makes him

a blatant liar at App. C and his taking "great issue" made his dis-

qualification mandatory, see Turner. and see J+J Industries v. Carpet

Showcase of Tampa, 723 So. 2d 281 (Fla. 2d CA 1994) (Judge Brandt Downey

again violating Rules, Canons, etc. in re recusal as in Dougherty, ^{below,} ~~and~~ and

in case at ~~the~~ hand. It should be noted that Judge B. Downey ~~was~~

was forced into retirement because of his disrespect for the Judiciary.

In his denying the motion to recuse Judge Brandt Downey

Statement of The Case Cont...

violated state and Federal law as his disqualification was required. He took issue with the motion and went beyond determining its sufficiency and lied about not ever threatening me about going to trial and his prejudice and bias is of record, thus, violating: Florida Rules of Criminal Procedure Rule 3.230 ; Florida Statute 38.10 ; Code of Judicial Conduct Canon 3 et al, and 28 U.S.C. § 144 , § 455 .

Finally, Respondents should have given belated relief on or before February 23, 2022 in case No.: 2022-0239.

REASONS FOR GRANTING THE PETITION

It is clear I should have been given relief when I first filed a quarter century ago. And I can find no case where a white defendant was not given relief in a similar situation. Even the infamous Ted Bundy was given relief when as here the Judge went beyond determining the legal sufficiency of motion to recuse. Bundy v. Rudd, 366 So. 2d 440 (Fla. 1978). And Bundy was not even threatened as I was at App. B.

This is clearly a manifest injustice case. In essence I was without an attorney at motion to recuse hearing and at appeal as they were present but did nothing to really make a difference — not to mention during trial. Lewis v. Zatecky, ~~993~~ 993 F. 3d 994 (7th Cir. 2001) (Attorney present but did nothing to help defendant) and see Cronin v. United States or United States v. Cronin, 446 U.S. 648 (1984).

This is a case of non-waivable "structural errors" in re attorneys and Judge. see Dougherty v. State, 813 So. 2d 217 (2002) ^{Fla.} citing Duncan v. Louisiana, 391 U.S. 145, 156, 20 L. Ed. 2d 491, 88 S.Ct. 1444 (1968), Morgan v. Illinois, 504 U.S. 719, 727, 119 L. Ed. 2d 492, 112 S.Ct. 2222 (1992), Chapman v. California, 386 U.S. 18, 17 L. Ed. 2d 705, 87 S.Ct. 824 (1967), Arizona v. Fulminante, 499 U.S. 279, 307-08, 113 L. Ed. 2d 302, 111 S.Ct. 1246 (1991).

And I believe ^{as} Judge ~~Downey~~ ^{is or} Downey pushed me to take a plea and promised otherwise I'd die in prison ^{is or} has something very much similar to Williams v. Pennsylvania, 136 S.Ct. 1899 (2016).

And it is well-settled law that a vindictive sentences cannot stand. Moreover it is over because Judge Downey neglected to sentence me at July 15, 1994 resentence to habitual and consecutive sentences. This may have been oversight but it must stand as resented. Apps. D and C. Thus, the sentences must adhere to guidelines of 5 1/2 - 7 yrs. total.

To protect the integrity of the courts and promote confidence in the judicial system.

Reasons for Granting The Petition

Cont..

I am a 78 year old non-violent black man well past my life expectancy, a cancer and heart attack survivor, with serious improperly treated or inadequately treated chronic illnesses, a military veteran with service-connected mental disabilities.

This petition should be treated in a liberal manner as I am indigent, pro se, unlearned in law and cannot obtain an attorney. And, finally, this is my last resort. See Erickson v. Pardus, 127 S.Ct. 2197 (2007).

If more facts are needed in regards the issues herein please allow me to present them, some of record, but some not, all will be under oath and I agree to take a polygraph examination, and will gladly do so. And or please appoint an Attorney.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John Bailey

Date: 04/25/2022