

MAR 06 2022

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No. 21-7985

IN THE SUPREME COURT OF THE UNITED
STATES

FREDDIE GLOVER - Petitioner

VS.

STATE OF FLORIDA - Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
FIRST DISTRICT COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

FREDDIE GLOVER J46261
GULF CORRECTIONAL INSTITUTION
500 IKE STEELE ROAD
WEWAHITCHKA, FLORIDA 32465-0010

INMATE'S INITIALS *FG*

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Questions Presented

- (1). Whether Glover's Due Process Rights were violated by not allowing him opportunity to "Reply" to State Counsel Answer Brief prior to making a ruling to the Subject Matter being timely Appealed?
- (2). Whether Glover's Due Process Rights were violated when he was tried for a Capital Crime charged by Information instead of presentment or Indictment returned by a Grand Jury?

LISTED PARTIES

All parties do not appear in the caption of the case on the cover page. A list of the parties to the proceedings in the court whose judgment is the subject of this Petition is as follows:

- 1) Attorney General for the State of Florida - Ashley Moody, also Pamela Jo Bondi
- 2) Honorable Circuit Court Judge - Jeb Branham
Honorable Circuit Court Judge - Virginia Norton
- 3) Freddie Glover - Petitioner
- 4) State Attorney Assistance of Counsel - Melissa W. Nelson
- 5) Court Appointed Counsel - Zachary Shafer and Senovia Portis

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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 State Courts:

1. The opinion of the Highest State Court to review the merits appears at Appendix "A" to the Petition and is designated for publication but is not yet reported.
2. The opinion of the Highest State Court denying the Motion For Rehearing and Rehearing En Banc, at Appendix "B" to the Petition and is designated for publication but is not yet reported.
3. The opinion of the 4th Judicial Circuit Court, Duval County, State of Florida, to review the merits appears at Appendix "C" to the Petition and is designated for publication but is not yet reported.

The opinion of the Supreme Court of Florida denying Notice To Invoke Discretionary Review appears at Appendix "D" to the Petition and is designated for publication but is not yet reported.

JURISDICTION

[] For cases from State Courts:

The date on which the Highest State Court decided the instant case was Aug. 6th 2021.

A copy of that decision appears at Appendix "A".

A timely Petition for Rehearing and Rehearing En Banc was thereafter denied on Jan. 19th 2022, and a copy of the order denying Rehearing and Rehearing En Banc appear at Appendix "B".

The date of which the lower court decided the instant case was on Aug. 6th 2021, and a copy of the order denying appears at Appendix "C".

The date of which the Supreme Court of Florida denied Notice to Invoke Discretionary Review was on Jan. 19th 2022 appears at Appendix "D".

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

Constitutional And Statutory Provisions Involved

Fifth Amendment of the United States Constitution

No Person shall be deprived of Life, Liberty, or Property, without Due Process of Law.

Fourteenth Amendment of the United States Constitution

Nor shall any state 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.

Article 1, Section §9, of Florida Constitution

No person shall be deprived of life, liberty, or Property without Due Process of Law.

Article 1, Section §15(a), of United States Constitution

"No person shall be tried for a Capital Crime without Presentment or Indictment returned by a Grand Jury

Hunter v. State, 358 So.2d 557 (Fla. 4th DCA 1978)

"The alleged defect affected the very Jurisdiction of the Circuit Court to try and proceed to Trial see Fla. Rule Criminal Procedure 3.190"

STATEMENT OF FACTS

On or about December 14, 2011 Glover was tried and convicted by a Florida Jury on a three (3) count Information.

The charges included: Count One: "Capital Sexual Battery" (victim was under 12); Count two: Lewd or Lascivious battery; and Count Three: Sale, Distribution, or showing of obscene material to a minor.

Subsequently Glover was sentenced for Count One to a lesser included offense of Battery and to the original Counts that were properly charged by Information labeled as Counts two and three.

Glover was given 365 days, time served on Count One lesser included offense; Life imprisonment on Count two, and 5 years state prison on Count three after being found guilty of a lesser offense. This is error.

There is currently nothing pending in any Court for the instant case.

Glover pose two Questions of Great Public Importance herein.

Whether Glover's Due Process Rights were violated by not allowing him fair opportunity to "Reply" to State Counsel Answer Brief prior to making a ruling to the Subject Matter being appealed?

Question One

Under the 14th amendment of the United States Constitution, the 5th amendment, the Due Process Clause requires that no person be deprived of life, liberty, or property without due process of law, see *Ker v. Cal.*, 374 U.S. 23, 37 (1963). ("The 14th amendment Due Process Clause fully incorporates the 4th amendment. What constitutes Due Process of Law varies from situation to situation, but the core of the idea is that a person should always have notice and a chance to present his or her side of in a legal dispute. see: *Mapp v. Ohio*, 367 U.S. 643 (1961).")

Here, the record shows that the lower Court violated Glover's "Due Process" Clause Rights when it did not afford him an opportunity to be heard with respect to the deprivation of his right to present a "legal defense" by allowing him to reply to the Attorney General's contention.

Moreover, the lower Court entered its order absent the Attorney General's chance to be heard. The record support Glover position that the Attorney General's office put the Court on notice that its assistant was appearing on their behalf. Also there is nothing in the Record that shows that the Attorney General had no intention of not filing an answer brief, unless notified by the lower Court. Here the Attorney General failed its brief, such filing certainly infers that they felt Glover initial argument had merit, or, at least merited discussion. Thus, the lower Court premature ruling violated Glover Due Process Rights under the 5th, 14th amendments of the United States Constitution.

Whether Glover's Due Process Rights were violated when he was tried and convicted for a Capital Crime charged by Information instead of Presentment or Indictment returned by a Grand Jury?

Question Two

Glover contended he was tried for a Capital Crime not made by indictment of a Grand Jury. The State Attorneys filed a three count Information, the first Count was for Sexual Battery Capital (victim under 12), Count two lewd or lascivious battery, and Count three Sale, distribution, or showing obscene material to minors.

"Given the provision of our Declaration of Rights, it follows that no court has Jurisdiction to try an offense when the Defendant is not charged by a Present and valid Information or Indictment in the instance of a crime.

Glover contended he was tried on an Information when the nature of count one of the information demanded an Indictment pursuant to article I section 15(c) Fla. Const. see:

Glover went to trial under the information when there should have been an Indictment see:

Thus, the trial court's Jurisdiction to proceed to trial was "affected" by this defect because it rendered the Trial Court's Jurisdiction to try and convict Glover void. The defect affected the very Jurisdiction of the circuit court to proceed to trial. see *Hunter v. State*, 358 So. 2d at 557; also *Cole v. Arkansas*, 333 U.S. 196, 201 68 S.Ct. 514 (1948) this Honorable Court went on to comment that:

"It is much a violation of Due Process to send an accused to prison following conviction of a crime on which he was never tried, as it would be to convict him upon a charge that was never made" see also *De Jonge v. Oregon*, 57 S.Ct. 255 (1937) where the Court had

previously stated that:

"[C]onviction upon a charge not made would be a sheer denial of Due Process." Glover contends that because the Information failed to comport with the Mandatory requirements of Law, as previously demonstrated above and supported by the Face of the Record any ruling, or verdict imposed as a result thereof is void because of the lack of Subject matter Jurisdiction, and the sentence that Glover received is illegal. see: Polk County v. Sofka, 702 So.2d 1243-45 (Fla. 1997), citing Slingsbaum v. State, 751 So.2d 89-90 (Fla. 2nd DCA 1999) ("Holding ... where it can be determined ... that a sentence has been imposed by a court without Jurisdiction, that sentence is illegal, whatever it's length. see Hunter v. State, 358 So.2d, 557 (Fla. 4 DCA 1978).

Whether Glover's Trial Court exercising Jurisdiction to try and convict him for a Capital Crime filed by information rather than Indictment violate Glover's Constitutional Guarantee to the 4th, 5th, 6th, and 14th Amendments of our United States Constitution Glover has brought this Question to this Honorable Court's attention to be answered.

Moreover, Glover strongly contends that the State Attorney's filing of an Information which was not founded upon the Mandatory requirement, was indeed tantamount to not filing any information at all, which created a constitutional defect that "affected" the Jurisdiction of the Court that tried and convicted him. see Bradley v. State, 374 So.2d 1154 (Fla. 3rd DCA 1979), Hunter v. State, 358, So.2d at 557. (Fla. 4th DCA 1978),

Glover prays this Honorable Court acknowledge this Manifest Constitutional Error and correct it and issue all relief deem just by this Court.

Reason For GRANTING THE PETITION

The failure of this Honorable Court to correct these errors would clearly be unfair to Mr. Glover, thus, violating his Due Process rights under the 14th amendment of the United States Constitution see State v. Weeks, 166 So. 2d 892 (Fla. 1964) ("Fundamental Unfairness" of a court violates a defendant's Due Process rights within the 14th amendment of the U.S. Const.; if a error on the face of the record such as taking Glover to jury trial on a Capital offense filed by information rather than Indictment clearly violate Glover Due Process rights thus, posed as Question two to be answered by this Honorable Court. Glover contends not correcting an error on the face of the record leaves room for the most vital term none as "Miscarriage of Justice." see also Carnell v. Texas, 529 U.S. 513 (2000). It is well established law that no person shall be tried and/or convicted for a Capital Crime unless a Grand Jury return an Indictment. see: Hunter v. State, 358 So. 2d at 557 (Fla. 4th DCA 1978)

Here, in the instant case the State Attorney's conclusion to file a Information for Capital offense instead of getting an Indictment from a Grand Jury was unreasonable.

This defect affected the very jurisdiction of the circuit court to proceed to trial this conclusion although supported by the record the circuit court still proceeded to trial regardless of the lack of jurisdiction. see Manucy v. Wadsworth, 293 So. 2d 345 (Fla. 1974); Id. Hunter.

Glover "Cultural Incompetence" is of National Importance and having this Honorable Court answer the Question posed will greatly assist in the search for the truth of the subject matters being challenged.

Stare Decisis

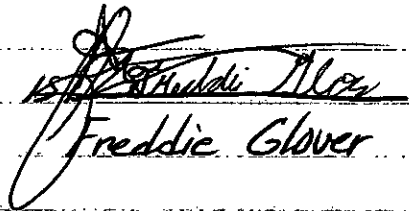
This Court has repeatedly stated that the Doctrine of stare decisis "is grounded on the need for stability in the law and has been a fundamental tenet of Anglo-American Jurisprudence for centuries ... adopted and codified by the Florida legislature in 1829 and ... memorialized by this Court nearly a century and a half ago." *North Fla. Women's Health and Counseling Services, Inc. v. State*, 866 So.2d 612, 637-638 (Fla. 2003); *State v. Gray*, 654 So.2d 552 (Fla. 1995) ("Stare Decisis provides stability to law and to the society governed by that law."); Fifth Amendment of the United States Constitution (Due Process of Law) Rights.

Glover contend reason for granting this Petition is supported by the record he was tried and convicted for a Capital Crime filed by Information instead of by Grand Jury Indictment.

Moreover, Glover contend whether or not the offense charged was and/or is a Capital offense. If it is, Presentment of an indictment by Grand Jury is absolutely necessary. Fla. Const. Art. I § 15. If it is not, an information filed by the State Attorney will suffice.

Conclusion

The Petition for Writ of Certiorari should be
granted.


Freddie Glover

Executed on this 9th day of May 2022