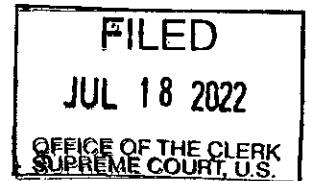


22-5245

No.: \_\_\_\_\_

ORIGINAL



IN THE  
SUPREME COURT OF THE UNITED STATES

PAMELA McCOY – PETITIONER


vs.

RICKY DIXON – RESPONDENT  
Secretary, Fla. Dep't of Corrections

ON PETITION FOR WRIT OF CERTIORARI TO

Fifth District Court of Appeals, State of Florida

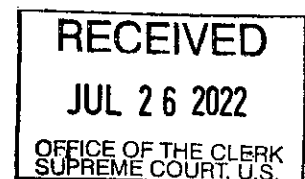
PETITION FOR WRIT OF CERTIORARI

  
Pamela McCoy, DC# U17996  
Gadsden Correctional Facility  
6044 Greensboro Hwy.  
Quincy, Florida 32351

Provided to Gadsden  
Correctional Facility on

JUL 18

For mailing by



### **Question Presented**

- I. Does the decision of the Florida State Courts to deny the Petitioner relief ruling that the Petitioner's thirty-five (35) year sentence as a juvenile was constitutional, failing to adopt a review mechanism for her sentence and failing to conduct a hearing to ascertain rehabilitation and maturity violate the Petitioner's right to a fair proceeding, to be free from cruel and unusual punishment, equal protection and due process of law pursuant to the Fifth, Eighth, and Fourteenth Amendments and therefore created a manifest injustice?

## 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 the petition is as follows:

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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 at Appendix \_\_\_\_ to the petition and is

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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.

The opinion of the Fifth Judicial Circuit court appears at Appendix C, E to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported to; 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 United States Court of Appeals decided my case was March 22, 2022. A copy of that decision appears at Appendix B.

☒ A timely petition for rehearing was thereafter denied on the following date: April 29, 2022, and a copy of the order denying rehearing appears at Appendix A.

☐ 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. §1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS**

United States Constitution Fifth Amendment guaranteeing a fair proceeding.

United States Constitution Eighth Amendment forbidding juvenile sentences that lack a review mechanism for evaluating demonstrable maturity and rehabilitation, barring cruel and unusual punishment.

United States Constitution Fourteenth Amendment right to Due Process and Equal Protection of law in the treatment of similarly situated individuals.

Florida Law 2014-220 codified in sections 775.082, 921.1401, and 921.1402, Florida Statutes (2014) – juvenile sentencing laws – juveniles entitled to a sentencing hearing and judicial review of any sentence of twenty (20) years or more.



## STATEMENT OF THE CASE

On December 27, 2001, the Petitioner, Pamela McCoy, at the age of thirteen (13) was charged in case number 01-CF-2749 with one (1) count of Burglary with Assault, one (1) count of Robbery a deadly weapon, and one (1) count of Attempted Felony Murder.

On December 29, 2001, the Petitioner was charged and subsequently indicted on February 1, 2002 in case number 02-CF-0217 for one (1) count of Attempted Robbery with a weapon<sup>1</sup> and one (1) count of First Degree Premeditated Murder (Principal).

On July 15, 2003, at the age of fifteen (15), the Petitioner entered into a negotiated plea agreement to principal to second degree murder, Burglary of a Dwelling (armed), Robbery with a deadly weapon, and Attempted first degree murder, and was sentenced to a term of thirty-five (35) years; except Attempted Robbery with a deadly weapon, of which she received a term of fifteen (15) years; all counts running concurrent.

On February 28, 2018, the Petitioner filed a Motion to Correct an Illegal Sentence arguing that her thirty-five (35) year sentence for Second Degree Murder is a de facto life sentence that does not provide meaningful opportunity for early release based upon demonstrated maturity and rehabilitation.

The Petitioner was subsequently scheduled for an evidentiary hearing where the State conceded that the Petitioner's sentences are not eligible for parole, meaning that

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<sup>1</sup> The charge of Attempted Robbery with a deadly weapon is not the subject of this petition as this charge does not meet the criteria of Florida laws and statutes, as well as any cite contained herein, and further this portion of the Petitioner's sentence has already been served.

other than any gain time awarded to the Petitioner by the Department of Corrections, there is no mechanism for her to obtain early release from her sentences.

However, the State later rescinded their concession and thereby, the Petitioner, though copies of her program participation certificates were included in her record on appeal transmitted from the Fifth Judicial Circuit Court to the Fifth District Court of Appeal, were not reviewed, and therefore, the Petitioner did not receive any relief on her claim.

On December 6, 2019, the Fifth Judicial Circuit entered an order denying the Petitioner's Motion to Correct Illegal Sentence, concluding that the Petitioner's sentence is neither a life or de facto life sentence under case number 2001-CF-000217-B, the circuit court held that her homicide sentence did not receive a life sentence, that she would certainly be released during her natural life and the thirty-five (35) year sentence did not implicate *Miller* and is constitutional. The Petitioner appealed their decision to the Fifth District Court of Appeal.

On April 28, 2020, the Fifth District Court of Appeal per curiam, affirmed the Petitioner's appeal in DCA case number 5D19-3653 and issued its mandate on May 22, 2020.

On December 6, 2021, the Petitioner filed a second Rule 3.800 Motion to Correct Illegal Sentence arguing her sentence is illegal under enacted laws of Florida Legislature chapter 2014-220 codified at Florida Statutes, section 921.1402 which sets forth periodic reviews of all lengthy juvenile sentences.

On January 6, 2022, the Fifth Judicial Circuit Court entered an order denying the Petitioner's motion erroneously alleging that the Petitioner's motion was successive and failed to allege new and different grounds. The Petitioner appeals their decision.

On March 22, 2022, the Fifth District Court of Appeal per curiam, affirmed the Petitioner's cause in DCA case number 5D22-0289 and issued its mandate on May 24, 2022.

On April 2, 2022, filed a Motion for Rehearing and Request for Written Opinion in the Fifth District Court of Appeal.

On April 29, 2022, the Fifth District Court of Appeal denied her Motion for Rehearing and Request for Written Opinion.

The Petitioner hereby files this timely petition for writ of certiorari.

## REASONS FOR GRANTING THE PETITIONS

QUESTION I: Does the decision of the Florida State Courts to deny the Petitioner relief ruling that the Petitioner's thirty-five (35) years sentence as a juvenile was constitutional; the Court failing to adapt a review mechanism for her sentence and failing to conduct a hearing to ascertain rehabilitation and maturity, violate the Petitioner's right to a fair proceeding, right to be free from cruel and unusual punishment, right to equal protection and due process of law pursuant to the Fifth, Eighth, and Fourteenth Amendments and therefore create a manifest injustice?

The United States Constitution, Fourteenth Amendment emphatically states:

"All persons born or naturalized in the United State and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States 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."

Moreover, the Eighth Amendment of the U.S. Constitution, cruel and unusual punishment clause prohibits the imposition of inherently barbaric punishments under all circumstances and embodied in the cruel and unusual punishment ban is the "...precept...that punishment for crime should be graduated and proportioned to the offense." *Weems v. United States*, 217 U.S. 319, 367, 30 S. Ct. 544, 54 L.Ed. 793 (1909).

The United States was founded on these inalienable fundamental rights and specifically speaking, when compared to a juvenile, their entitlement to rights enjoyed by similarly situated individuals under Equal Protection who are also United States citizens

raises an issue of importance beyond the particular facts and parties involved.

In the instant case, with impeccable understanding and application of these long established Constitutional Amendments and through the lens of Florida laws and legislative intent, we view the Petitioner, Pamela McCoy's sentence, who was thirteen (13) years old at the time she was charged and ultimately entered into a negotiated plea agreement at the age of fifteen (15) for the offenses of Burglary with Assault, Robbery with a deadly weapon, Attempted Felony Murder, Attempted Robbery with a weapon, and Principal to Second Degree Murder. The Petitioner was sentenced to a term of thirty-five (35) years within the Florida Department of Corrections. The Petitioner's sentence was rendered in 2003, and therefore did not include a judicial review mechanism that would allow for meaningful opportunity for early release based on demonstrated maturity and rehabilitation during her natural lifetime.

Pursuant to chapter 2014-220, Laws of Florida, a procedural law that is to be applied retroactively, codified in sections; 775.082, 921.1401, and 921.1402, Florida Statute (2014) asserts that a juvenile is entitled to a sentencing hearing and a judicial review of any sentence of twenty (20) years or more. However, the Fifth District Court of Appeals for the State of Florida denied the Petitioner's Motion for Rehearing and Request for Written Opinion, siding with the lower court's decision that the Petitioner's thirty-five (35) year sentence as a juvenile was constitutional; that she neither has a life or de facto life sentence that her accrued gain time would allow her to be released during her natural life time. Their decision is contrary to chapter 2014-220, laws of Florida and

previous rulings made in Florida state courts, as well as this Honorable United States Supreme Court.

Florida Statutes, section 775.082(3)(c)(2014) provide that a juvenile non-homicide offender sentenced to a term of twenty (20) or more is entitled to a review of her sentence after twenty (20) years pursuant to section 921.1402(2), Florida Statutes (2014).

This applies to the Petitioner's non-homicide charges of Armed Burglary of a dwelling, Robbery with a deadly weapon, and Attempted Felony Murder in lower court case number 2001-CF-002749-B-02, which require a judicial review in accordance with the holding of this Honorable Court in *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2001, 176 L.Ed.2d 825 (2010). *Graham*, supra, emphatically purports that the:

“Eighth Amendment will not tolerate prison sentences that lack a review mechanism for evaluating [juvenile] offenders for demonstrable maturity and reform...because any term of imprisonment for a juvenile is qualitatively different than a comparable period of incarceration is for an adult.” (emphasis added)

Also see *Roper v. Simmons*, 543 U.S. 551, 553, 125 S. Ct. 1183, 161 L.Ed.2d 1 (2005)(“*Roper* established that because juveniles have lessened culpability they are less deserving of the most severe punishments.”)

Moreover, in view of Florida cases, the Fifth District Court of Appeal, the same court that ruled that the Petitioner was not entitled to relief, vacated and remanded *Peterson v. State*, 193 So. 3d 1034 (Fla. 5<sup>th</sup> DCA 2016) for resentencing, holding in its overview that:

“[1] The constitutionality of a juvenile non-homicide offenders lengthy term-of-years sentence was not solely dependent of his life expectancy; [2] *lengthy term-of-years sentences for these offenders without a review mechanism and the opportunity for early release, were constitutionally infirm...*” (emphasis added)

*Peterson*, supra, further explained:

“...regardless of whether a juvenile offender's sentence is a de facto life sentence, a lengthy term of years sentence that does not afford a non-homicide juvenile offender a meaningful opportunity for early release based on demonstrated maturity and rehabilitation violates *Graham* and the Eighth Amendment, requiring resentencing with retroactive application of the 2014 sentencing framework...” citing *Montgomery v. State*, 230 So. 3d 1256 (Fla. 5<sup>th</sup> DCA 2017)

Also see the Florida Supreme Court's decision in *Kelsey v. State*, 206 So. 3d 5 (Fla. 2016)(“After we made clear that *Graham* does indeed apply to a term-of-years sentences, we have declined to require that such sentences be 'de facto life' sentences for *Graham* to apply.”) and *Guzman v. State*, 183 So. 3d 1025, 1026 (Fla. 2016).

The Fifth District Court of Appeal in *Montgomery v. State*, 230 So. 3d 1256 (Fla. 5<sup>th</sup> DCA 2017) cites *Kelsey*, supra, as well where the Florida Supreme Court reiterated its reasoning that:

“...the constitutionality of a juvenile offender's sentence is not based on the length of sentence, but rather, it is dependent upon whether the sentence provided the offender with a meaningful opportunity for early release based on maturation and rehabilitation...based on its decision in *Henry* [*v. State*, 175 So. 3d 675 (Fla. 2015)] which it described as 'unequivocal'; it reaffirmed that all juvenile offenders whose sentences met the standard defined by the legislature in chapter 2014-220, laws of Florida, which includes any sentence longer than twenty years, are entitled to judicial review, not simply those term-of-years

sentences that are 'de facto life.'" (emphasis added)

Also see *Johnson v. State*, 215 So. 3d 1237, 1243 (Fla. 2017).

The Florida Supreme Court held in *Johnson*, supra, as to the accrual of gain time and the legislative intent of gain time in comparison to early release based on demonstrated maturity and rehabilitation:

"...Gain time has been in existence in Florida since 1889 and is a tool the Department uses to encourage satisfactory inmate behavior and motivate program and work participation. In summary, gain time is not defined by the Florida Statutes, the Florida Department of Corrections, or the Florida Supreme Court as an opportunity for early release based on demonstrated maturity and rehabilitation. Instead all three [Florida Statutes 944.275, 944.28, 944.281] define gain time as merely an opportunity to shorten one's sentence." (emphasis added)(quashed decision of Fifth District Court of Appeal and remanded for resentencing)

In the Petitioner's case, there is no reliable evidence in the record that would support that she was accorded a judicial review on her non-homicide cases in the state courts nor was she provided a fair review of her claims in the state courts as her counterparts in *Peterson*, *Kelsey*, *Guzman*, *Montgomery*, *Henry*, and *Johnson*, which violates her Fourteenth Amendment right to Equal Protection under the law and renders her sentence, which is absent judicial mechanism affording the opportunity for early release based on rehabilitation and maturity, unconstitutional under the cruel and unusual provision of the Eighth Amendment.

As to the Petitioner's principal to Second Degree Murder offense enumerated in lower court case number 2002-CF-000217-B, the lower courts of Florida alleges in its



decision of denial that her sentence was not a life sentence and because the Defendant will “certainly” be released during her natural life, and finally, it avers the Petitioner's thirty-five (35) year sentence does not implicate *Miller v. Alabama*, 567 U.S. 460, 183 L.Ed.2d 407 (2012).

However, the Fifth District Court of Appeal's decision in the Petitioner's case directly conflicts with the Florida Supreme Court's in *Thomas v. State*, 177 So. 3d 590 (Fla. 2015) which held that though *Thomas* did not have a life sentence for first degree murder, but forty (40) years, the Florida Supreme Court reversed and remanded for re-sentencing “in conformance with the framework established in chapter 2014-220, laws of Florida...we noted...because the juvenile in *Thomas* committed a homicide his sentence implicated *Miller*...”

In *Tyson v. State*, 199 So. 3d 1087 (Fla. 5<sup>th</sup> DCA 2016), the same Fifth District Court of Appeal who rejected the Petitioner's claim, opined reference to *Thomas*, supra, stating:

“...if the constitutionality of a juvenile non-homicide offender's sentence is based solely in whether the juvenile received a de facto life sentence, then pursuant to *Thomas* a juvenile homicide offender whose forty year sentence is invalid, and therefore entitled to resentencing under the new juvenile sentencing law...”

The framework of chapter 2014-220, laws of Florida, provides under the 2014 juvenile sentencing statutes, a juvenile offender who commits a life or first degree felony punishable by life is entitled to an individualized sentencing hearing under sections

775.082(3) and 921.1401 Florida Statutes (2014). And the hearing is to provide the juvenile with an opportunity for sentence modification of any sentence of twenty (20) years or more, based on maturity and rehabilitation. Any decision outside of the parameters of these established Florida laws, in the Petitioner's case, violates the Petitioner's constitutional right to Equal Protection under the Fourteenth Amendment because other juvenile offenders who have been convicted of similar or greater crimes will be and have been entitled to a judicial review of their sentences pursuant to Florida Statutes, section 921.1401. The Petitioner's Due Process right, right to a fair proceeding and Eighth Amendment right to have a sentence devoid of cruel and unusual punishment, have also been violated.

Lastly, and again, the Petitioner's thirty-five (35) year sentence for Principal to Second Degree Murder violates the Eighth Amendment's "...precept of justice that punishment for crime should be graduated and proportioned to the offense" and provide the petitioner with a meaningful opportunity for early release by demonstrating maturity and rehabilitation.

The petitioner avers she was unequivocally denied her constitutional rights by Florida state courts and the Petitioner prays this Honorable Court grant and hears argument based on the consideration for accepting cases for review where the existence of conflict between the decision of the Fifth District Court of Appeals is sought and decisions of other Florida appellate courts, as well as the Florida Supreme Court on the same issues. And further, in the interest of correcting a manifest injustice, the Petitioner

relies on this Honorable Court to remand her cause to the Florida state courts to render a sentence consistent with the framework of 2014-220, laws of Florida, section 775.082(3), 921.1401, and 921.1402 outlining juvenile sentences.

### CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests this Honorable Court issue a writ of certiorari to review the judgment of the Fifth District Court of Appeals, State of Florida.

Dated: July 18<sup>th</sup>, 2022

Respectfully Submitted,

  
Pamela McCoy, DC# 017996