

RKIS

No.: 22-5245

Provided to Gadsden
Correctional Facility on

OCT 27 2022

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IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
OCT 27 2022
OFFICE OF THE CLERK

PAMELA McCOY – PETITIONER

vs.

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

PETITION FOR REHEARING

on Order entered October 3, 2022 DENYING
PETITION FOR WRIT OF CERTIORARI

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

PETITION FOR REHEARING

DEPARTMENT OF CORRECTIONS
QUINCY, FLORIDA 32351

RECEIVED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

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?

JURISDICTION AND STATEMENT OF TIMELINESS

The United States Supreme Court pursuant to Rule 44 and Rule 58 of the rules of the U.S. Supreme Court has jurisdiction and is authorized as a part of appellate procedure to hear a Petition for Rehearing of Petition for Writ of Certiorari within twenty-five (25) days after the entry of judgment or decision. The Petition avers this Honorable Court entered its order of denial on October 3, 2022 and therefore asserts this Petition for Rehearing is timely filed pursuant to the date stamp affixed to the appended certificate of service.

REASONS FOR REQUESTING REHEARING

Ground: The Petitioner never received a sentencing hearing and a judicial review that objectively weighed mitigating factors nor did the lower court establish a review mechanism for her as a juvenile offender pursuant to chapter 2014-220, laws of Florida, procedural law that is to be applied retroactively, codified in sections 775.082, 921.1401, and 921.1402, Florida Statutes (2014).

The Petitioner asserts that she presents the aforementioned ground in accordance with Rule 20 of the Rules of the Supreme Court and avers that her ground is limited to intervening circumstances of a substantial or controlling effect.

In the instant case, the United States Supreme Court overlooked the fact, in its denial that she was thirteen (13) years old at the time she was charged and subsequently entered into a plea agreement at the age of fifteen (15) for the charges of Burglary with Assault, Robbery with a deadly Weapon, Attempted Felony Murder, Attempted Robbery with a weapon and principal to Second Degree Murder and was sentenced to a term of thirty-five (35) years with the Florida Department of Corrections.

In 2014, the laws of Florida were amended following decisions in *Montgomery v. Alabama*, 567 U.S. 460, 183 L. Ed. 2d 407 (2012) and *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), establishing review mechanisms for juveniles with life sentences as well as non-homicide offenses where the offenders are reviewed for demonstrable maturity and reform.

Chapter 2014-220 of the laws of Florida codified sections 775.082, 921.1401, and 921.1402, Florida Statutes (2014) asserts that a juvenile is entitled to a sentencing hearing and a judicial review of any sentence of twenty (20) years or more. As the Petitioner was

sentenced in 2003 where her sentence did not include a judicial review mechanism that would allow for meaningful opportunity for early release based on rehabilitation during her lifetime, chapter 2014-220 is still applicable to the Petitioner as it is a procedural law that is to be applied retroactively. However, she has not been afforded a judicial review in Florida State Courts in accordance to its laws and has been denied appeals arguing this very fact.

In February 28, 2018, when the Petitioner initially presented that her thirty-five (35) year sentence was unconstitutional in Florida State courts citing *Graham*, supra, *Miller*, supra, *Henry v. State*, 175 So. 3d 675 (Fla. 2015), and *Gridine v. State*, 175 So. 3d 672 (Fla. 2015), initially the State conceded error in its Response to the Petitioner's Motion to Correct Illegal Sentence citing *Peterson v. State*, 193 So. 3d 1034 (Fla. 5th DCA 2016) where the *Peterson* court held that, "the court's admonition that a constitutional sentence is one that provides a meaningful opportunity for early release is not satisfied simply because the juvenile may be geriatrically released from prison at some point before the conclusion of his or her statistical or actuarial life expectancy," and ordered the juvenile resentenced under newly enacted §§775.082, 921.1401, and 921.1402, Florida Statutes.

In the instant case, after the State conceded error in the Petitioner's case, the Florida Supreme Court issued an opinion in *Franklin v. State*, 258 So. 3d 1239 (Fla. 2018)(holding that a juvenile's lengthy sentences with the possibility of parole do not violate *Graham*). Consequently, *Franklin's* cause is *in no* way relative to the Petitioner's

as she was sentenced to thirty-five (35) years in prison and is therefore not eligible for parole under the laws of the State of Florida enacted in 1995, codified in section 947.174, Florida Statutes.

On November 21, 2019, the Fifth Judicial Circuit, in and for Lake County, brought the Petitioner out to hearing on her motion, however, a hearing was never conducted because the State withdrew its initial response and substituted a response which relied principally on *Franklin*. An order directing Transcription of this hearing was entered on January 9, 2020 and the only documents provided in record were the Petitioner's certificates earned during incarceration which were never reviewed or considered. This motion was also denied; relief never granted.

Florida Statute, Section 775.082(3)(c)(2014) is clear it provides that a juvenile non-homicide offender sentenced to a term of twenty (20) or more years 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. 41, 130 S. Ct. 2001, 176 L. Ed. 2d. 825 (2010).

Graham, 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)

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 v. State*, 206 So. 3d 5 (Fla. 2016), *Guzman v. State*, 183 So. 3d 1025 (Fla. 2016), *Henry v. State*, 175 So. 3d 675 (Fla. 2015), and *Johnson v. State*, 215 So. 3d 1237 (Fla. 2017), 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 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 made outside of the parameters of these established laws and provisions violates the Petitioner's right to Equal Protection of the laws under the Fourteenth Amendment

due to the inherent fact that 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 proceedings and Eighth Amendment right to have a sentence devoid of cruel and unusual punishment, have also violated, creating a manifest injustice.

CONCLUSION

The Petitioner, for the foregoing reasons, requests that the order of denial of her petition for Writ of Certiorari is suspended during this term, that her cause receive full consideration based on its merits, and that this Honorable Court order the lower Florida courts to conduct a sentence review hearing in her cause that she is duly entitled to in accordance with its established law.

Respectfully Submitted,

 117996
Pamela McCoy, DC# U17996

CERTIFICATE OF COUNSEL
(or of a party unrepresented by counsel)

I, Pamela McCoy, DC# U17996, hereby do certify that I am a pro se litigant and further attest that I have restricted my argument to the ground specified herein and that my claims are presented in good faith and not for delay of any proceedings.

10/27/22
Date

Pamela McCoy U17996
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RICKY DIXON – RESPONDENT
Secretary, Fla. Dep't of Corrections

PROOF OF SERVICE

I, Pamela McCoy, do swear or declare that on this date, 10/27/22, 2022, as required by Supreme Court, Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR REHEARING on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States Mail properly addressed to each of them and with first-class postage prepaid or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

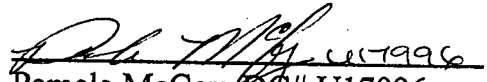
United States Supreme Court, 1 First St. NE, Washington, DC 20543,

and to

Office of the Attorney General, 444 Seabreeze Blvd., 5th Fl., Daytona Beach, FL 32118

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 27, 2022.


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Quincy, Florida 32351