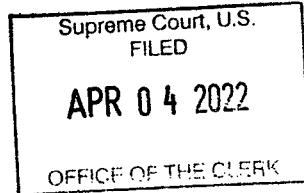


IN THE SUPREME COURT  
OF THE UNITED STATES OF AMERICA

No. 22-5267



JOHN E. MURRAY

Petitioner/Appellant

v.

STATE OF FLORIDA

Respondent/Appellees

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**PETITION FOR WRIT OF CERTIORARI**

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JOHN E. MURRAY  
Marion Correctional Institution  
P.O. Box 158  
Lowell, Florida 32663

**CERTIFICATE OF INTERESTED PERSONS**  
**AND CORPORATE DISCLOSURE STATEMENT**

In accordance with the United States Supreme Court Rule 14.1(b) the petitioner files the following notice certifying that the following individuals have been involved in one way or another with a judgment of the case currently being reviewed:

Alva, Marlene, Honorable Appellate Judge, (5<sup>th</sup> DCA)

Chase, Meloney, Honorable Trial Judge, (18<sup>th</sup> Jud. Cir.)

Dowdy, Jeff (Public Defender)

Moody, Ashley (Attorney General, State of Florida)

Morris, Allison (Assistant Attorney General, State of Florida)

Schoenberg, Michael (Public Defender)

Valentini, Anna (Attorney, State of Florida)

Respectfully Submitted,



John E. Murray III  
DC# N60292

## **QUESTIONS PRESENTED FOR REVIEW**

1. Will the United States Supreme Court allow the State courts to abuse their discretion by denying a rule 3.850 motion determined to be facially deficient, without give the defendant at least one opportunity to amend the deficiency?
2. Where State rules of criminal procedure permit in good faith, the correction of a deficiency in a proceeding filed with the courts, and the defendant is denied at least one opportunity to correct the deficiency... In accordance with the Federal Constitution, would the United States Supreme Court allow a potentially cognizable claim to go without being addressed because of an abuse of discretion?
3. Can the United States Supreme Court remand a case back to the district court for an order to be issued compelling the circuit court to allow the defendant an opportunity to amend a facially deficient rule 3.850 motion that was denied for being facially deficient?

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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**:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is reported at 2022 Fla. LEXIS 29 (January 3, 2022).

The opinion of the circuit court for review failing to give the opportunity to amend, the denial of the rule 3.850 Motion, appears at Appendix A to the petition and is reported at 330 So.3d 915; 279 So.3d 723.

## JURISDICTION

The Fifth District Court of Appeals in the State of Florida has made a decision that is in conflict with the other district courts in the State. In fact, the decision is in conflict with its own Fla. R. Crim. P. 3.850. This rule governs the timeliness, the contents of the motion, the wording and style of the oath used, and the action(s) to be taken when specific circumstances occur in the filing, in the record, or with the type of decision given.

The Florida rules of criminal procedure 3.850(f)(2), that governs the motion deemed by the circuit court as being facially deficient, requires that a motion (3.850 post conviction motion), that has been timely filed, and is considered insufficient on its face, shall have a non-final, non-appealable order entered by the court the motion was filed in, that allows the defendant 60 days to amend the motion. No order was issued. See also *Gonzalez v. State*, 271 So. 3d 80 (Fla. 3d DCA 2019). A trial court abuses its discretion when it summarily denies a timely 3.850 motion without permitting amendment. *Ramirez v. State*, 324 So. 3d 1025 (Fla. 3d DCA 2021). No amendment was permitted.

In the case at hand, just as in *Spera v. State*, 971 So.2d 754; 2007 Fla. LEXIS 2010; 32 Fla. L. Weekly S. 680, one of the two ineffective assistance of counsel prongs was not reached. The claim was over an action that cannot be refuted by the

record, and could not be proven as untrue. Strickland v. Washington, 466 U.S. 668; 104 S.Ct. 2052; 80 L.Ed.2d 674 (1984).

The Florida Supreme Court quashed the decision of the 4<sup>th</sup> DCA in Spera, and remanded the case ordering the trial court to allow the petitioner to amend his pleading. The Florida Supreme Court lacked jurisdiction in the case of cause, because the DCA in this case, failed to elaborate on their decision, and the State Supreme Court does not entertain decisions without an opinion.

## STATEMENT OF THE CASE

The Petitioner was indicted for first-degree premeditated murder. Case #2018CF000585A on March 13, 2018. He entered a negotiated plea of guilty to the lesser-included crime of second-degree murder-reclassified, a life felony on February 6, 2019. On April 4, 2019 the petitioner filed a “Motion to Correct and Illegal Sentence”, which was denied April 10, 2019. On April 19, 2021 the petitioner timely filed a Rule 3.850 Motion for Post Conviction Relief. The lower court summarily denied the 3.850 motion on May 4, 2021. The petitioner filed for an extension of time to file a rehearing and filed the motion for rehearing prior to the requested June 10<sup>th</sup> deadline. In that motion for rehearing the petitioner requested the lower court for one good faith opportunity to amend his pro se 3.850 motion for post conviction relief. On June 8, 2021 that motion for rehearing was denied without reason. The petitioner filed a Notice of Appeal to the Fifth DCA on June 18, 2021. On July 19, 2021, the initial brief was stricken for corrections. An additional initial brief was filed August 2, 2021. The state on August 23, 2021 refused to respond unless ordered by the court. On September 3, 2021 a summary denial was issued and on November 2, 2021, the decision was per curiam affirmed. On November 19, 2021, the petitioner filed a motion for rehearing/written opinion. On December 8, 2021, the petition for rehearing/written opinion was denied. On January 3, 2022, a mandate was issued. On December 28, 2021, the petitioner filed

a notice of Jurisdiction to the Supreme Court. On January 4, 2022, the Florida Supreme Court dismissed the case for lack of jurisdiction.

## **REASONS FOR GRANTING PETITION**

- 1) The petitioner's due process rights were violated when the circuit court of the 18<sup>th</sup> Judicial Circuit in and for Seminole County, Florida, denied the petitioner the due process right to amend for the first time a facially deficient motion.
- 2) The Fifth District Court of Appeal for the State of Florida abused its discretion by not recognizing the fact that the circuit court in Seminole Count failed to give the petitioner at least one opportunity to amend the motion the circuit court determined was facially deficient.

## ARGUMENT

The defendant filed a post conviction motion that was denied because of a pleading defect.... Subsequently, the defendant was not given a single opportunity to amend in good faith, the defective pleading.

On April 19, 2021, in the circuit court of the 18<sup>th</sup> Judicial Circuit in and for Seminole County, Florida, the petitioner timely filed a Rule 3.850 post conviction motion. Three grounds were raised on a first degree premeditated murder charge. The motion was denied. In the order denying the motion, the State alleges in grounds one and three that the defendant has failed to demonstrate that he was prejudiced in either ineffective assistance at trial counsel claims. The defendant was not given the opportunity to amend the motion.

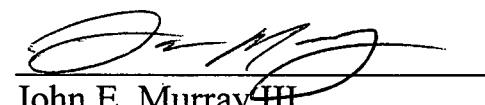
## CONCLUSION

The petitioner has respectfully provided a conformed copy of the order denying the petitioner's rule 3.850 post conviction motion, and a conformed copy of the request for a rehearing.

The orders showing the state alleging the deficiency over the ineffective assistance of counsel claims in grounds one and three. The rehearing shows the petitioner bringing to the court's attention their failure to observe a fact in law and allow the petitioner an ability to amend the deficiency.

Subsequently, it is respectfully requested that this Honorable Court invoke its jurisdiction and issue an order compelling the district court to issue an order compelling the circuit court to allow the petitioner to amend his Rule 3.850 motion filed on April 19, 2021. The petition for a writ of certiorari should be granted.

Respectfully submitted,



John E. Murray III  
DC# N60292  
Petitioner, Pro Se