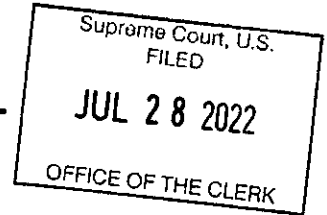


No. 22-5281

ORIGINAL

**IN THE SUPREME COURT OF
THE UNITED STATES**



LEONARDO T. MORALES - *Petitioner*

VS.

THE STATE OF FLORIDA - *Respondent*

**PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT**

PETITION FOR A WRIT OF CERTIORARI

PRO SE

Leonardo T. Morales,
D.O.C. # 103223
Blackwater River Correctional Rehab Facility
5914 Jeff Ates road
Milton, Florida 32583

QUESTION(S) PRESENTED

Florida Supreme Court had subject matter jurisdiction to entertain Petitioner's Writ of Habeas Corpus as the issue was one of law instead it applied Res. Judicata to deny the Writ conflicting with relevant decisions of this court. See, Sanders v. United States, 373 U.S. 1, 7-8, 83 S. Ct. 1068, 10 L. Ed. 2d 148 (1963); Preiser v. Rodriguez, 411 U.S. 475, 93 S. Ct. 1827 (1973); Schlup v. Delo, 513 U.S. 298, 317-319, 115 S. Ct. 851, 863 (1995), and Felker v. Turpin, 518 U.S. 651, 664-665, 116 S. Ct. 2333, 135 L. Ed. 2d 827 (1996). Because the previous decision was not on its merits.

"Your Petitioner was sentenced to what can be considered tantamount to a sentence under the wrong statutes in violation of due process. Hicks v. Oklahoma, 447 U.S. 343, 346, 65 L. Ed 2d 175, 100 S. Ct. 2227 (1980)." This court shall grant the petition under the "Fundamental miscarriage of justice exception"; McQuiggin v. Perkins, 569 U.S. 383, 392, 133 S. Ct. 1924, 185 L. Ed. 2d 1019 (2013); Herrera v. Collins, 506 U.S. 390, 404, 113 S. Ct. 853, 122 L. Ed. 2d 203 (1993).

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 this petition is as follows:

Leonardo T. Morales is an inmate confined under the custody, care and control of the Florida Department of Corrections.

Polston, Florida Supreme Court Judge

Labarga, JJ, Florida Supreme Court Judge

Muniz, Florida Supreme Court Judge

Counriel, Florida Supreme Court Judge

Grosshans, JJ, Florida Supreme Court Judge

Martin Green Bound, Circuit Judge for Miami-Dade County of Florida

Ashley Moody, Attorney General of Florida

Ricky Dixon, Secretary of Florida Department of Corrections

Richard L. Polin, Miami Bureau Chief of the Fla. Att. Gen.

Hon. Carlos J. Martinez, Head of the Public Defender Office for Miami-Dade County of Florida

Howard K. Blumberg, Morales' former appellate counsel

Katherine Fernandez Rundle, Head of the State Attorney Office for Miami-Dade County, Florida

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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 is issue in this case concerning the judgment below.

OPINION BELOW

[☒] For cases from State Courts

The opinion of the highest State Court to review the merits appears at Appendix A to this petition and is

[☒] Unpublished

JURISDICTION

[☒] For cases from **State Courts**:

The date on which the highest State Court decided this case was Tuesday, May 17, 2022. A copy of that decision appears at Appendix A.

[☒] Florida law does not authorized timely petition for rehearing under the circumstances.

The jurisdiction of this Court is invoked under 28 U.S.C. Sect. 1257(a) 28 U.S.C. Sect. 1651(a), and under Supreme Court Rules: Rule 10(b)(c). Rule 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth, Eighth, and Fourteenth Amendment U.S. Constitution

STATEMENT OF THE CASE AND FACTS

On March 14, 2022, in accordance with the "Mailbox Rule," the Petitioner filed a Petition for Writ of Habeas Corpus in the Florida Supreme Court following that court precedents which indicates the court had jurisdiction to entertain the Writ under the Manifest Injustice exception to the law of Florida. See the petition attached. Ex. "B".

Further for purposes of this petition, the Petitioner incorporate by references the Statement of the case and facts as set forth in the petition at page four through six. See Ex. "B" attached.

Unfortunately, the Florida Supreme Court declined to exercise its jurisdiction. Instead, it relies upon the "Doctrine of Res Judicata" to deny the petition. See Ex. "A" attached.

When the Florida intermediate appellate court remanded petitioner's case for resentenced. *Morales v. State*, 613 So. 2d 922 (Fla. 3d DCA 1994). Morales III, the Petitioner, was resentenced on May 21, 1994 Ex. "D" attached to the Writ filed in the Florida Supreme Court. Ex. "B"

This Honorable Court should take "Judicial Notice" of its previous decisions, in this case. *Dimmick v. Tompkins*, 194 U.S. 540, 24 S. Ct. 780, 48 L. Ed.

1110(1904). See, *Morales v. Crosby*, 544 U.S. 965, 125 S. Ct. 1737 (2005) Reh. den. *Morales v. Crosby*, 545 U.S. 1150, 125 S. Ct. 2059 (2005). In re *Leonardo T. Morales*, 556 U.S. 1180, 129 S. Ct. 2001, 173 L. Ed. 2d 1124 (2009), *Morales v. McNeil*, 562 U.S. 866, 131 S. Ct. 156, 178 L. Ed 2d 94 (2010); *Morales v. Florida*, *Us-137 S.Ct 1226, 197 L.Ed. 2d 483(2017) certiorari denied Morales v. Florida* U.S. – 137 S. Ct. 1210, 198 L. Ed. 2d 272 (2017) Rehearing denied. *Morales v. Florida*, 139 S. Ct. 1198, 203 L. Ed. 2d 192 (2019). This petition ensues.

REASONS FOR GRANTING THE WRIT

To address a fundamental miscarriage of justice notwithstanding existence of any procedural bar. *McQuiggin v. Perkins*, 569 U.S. 383, 392, 133 S. Ct. 1924, 185 L. Ed. 2d 1019 (2013); *Herrera v. Collins*, 506 U.S. 390, 404, 113 S. Ct. 853, 122, L. Ed. 2d 203 (1993). As it is more likely than not that no reasonable juror would have resentenced Petitioner to a natural life sentence for an ***unarmed burglary of a structure*** with an assault.¹ *Schlup v. Delo*, 513 U.S. 298, 327, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995). Where your Petitioner was 23 years old when he committed his offense and during resentencing he did not receive an individualized decision based on both the circumstances of the offense and his character and propensities; *Pennsylvania ex rel. Sullivan v. Ashe*, 302 U.S. 51, 55, 82 L. Ed. 43, 46, 58 S. Ct. 59

¹ *Hamelin v. Michigan*, 501 U.S. 957, 1025-26, 111 S. Ct. 2680 (1991); Life without possibility of parole, the second most severe penalty by law. Id at 2705

(1937); *Lockett v. Ohio*, 438 U.S. 586, 604, 98 S. Ct. 2954, 57 L. Ed 2d 973 (1978). Nor does the court consider mitigating factors, which Petitioner could have proffered based upon his character and prison record as a basis for a sentence less than life. *Skipper v. South Carolina*, 467 U.S. 1, 106 S. Ct. 1669, 90 L. Ed 1 (1986); *Woodson v. North Carolina*, 428 U.S. 280, 96 S. Ct. 2978, 49 L. Ed. 2d 944 (1976). Although this court has yet to consider a Petitioner's claim of actually innocent of his non capital sentence. *Sawyer v. Whitley*, 505 U.S. 333, 112 S. Ct. 2514, 120 L. Ed. 2d 269 (1992); *Jenkins v. Hutton*, 582 U.S. 137 S. Ct. 1769, 198 L. Ed. 2d 415 (2017), and *Dretke v. Halsey*, 541 U.S. 386, 393-94, 1245 S. Ct. 1847, 1842, 158 L. Ed. 659 (2004). This is such a case.

I.

“Florida Supreme Court had subject matter jurisdiction to entertain Petitioner’s Writ of Habeas Corpus as the issue was one of law. Instead, it applied Res Judicata to deny the Writ conflicting with relevant decisions of this court. Because the previous decision was not on its merits.”

It is clear, the State remedy available to your Petitioner before the Florida Supreme Court is nothing but a procedural morass offering no substantial hope of relief. *Cranberry v. Greer*, 481 U.S. 129, 95 L. Ed. 2d 119, 107 S. Ct. 1571 (1987).

FN # at 136

In its decision the Florida Supreme Court cited *Topps v. State*, 865 So. 2d 1253 (Fla. 2004) to justify the denial, but *Topps* requires that for a matter to have Res Judicata effect the disposition of a writ petition must be on the merits. *Id.* at 1255-57, which in Petitioner's case was on a procedural ground. *Sanders infra Id.* at 15-16.

Most significant, as pointed out by Petitioner under Florida Law, Florida courts do have subject matter jurisdiction to issue Writ of Habeas Corpus. Specifically, when the claim is one of illegal sentence which can be raised as "Manifest Injustice", at any time regardless of the Doctrines of Res Judicata, laws of the case or collateral estoppels. See, *State v. McBride*, 848 So. 2d 287 (Fla. 2003) which also holds, that the severity of the penalty can be considered a "Manifest Injustice" *Benjamin v. State*, 20 So. 3d 945, 947 (Fla. 3d DCA 2009).

Historically, this court has held that, Principle of Res judicata are not applicable to Habeas Corpus proceedings, and state prisoner who is attacking validity of fact or length of confinement and who has been denied relief in State Courts is not precluded from seeking Habeas relief on same claims in Federal courts. 28 U. S. C. 2254(d). See, *Preiser v. Rodriguez*, 411 U.S. 475, 93 S. Ct. 1827 1973). Moreover, it has also held that, "Conventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged. "If" government... [is] always [to] be accountable to the judiciary for a

man's imprisonment, access to the courts on habeas must not be thus impeded. The inapplicability of Res Judicata to Habeas, then, is inherent in the very role and function of the writ." *Sanders v. United States*, 373 U.S. 1, 7-8, 83 S. Ct. 1068, 10 L. Ed. 2d 148 (1963).

This court has consistently relied on the equitable nature of Habeas Corpus to preclude application of strict rules of Res judicata. *Schlup v. Delo*, 513 U.S. 298, 317-319, 115 S. Ct. 851, 863 (1995). However, this court in *Felker v. Turpin*, 518 U.S. 651, 664-665, 116 S. Ct. 2333, 135 L. ed. 2d 827 (1996) held that the "AEDPA" allowed for modified principle of Res judicata to the analysis of Habeas petitions. To the extent that the AEDPA requires a habeas petitioner to obtain leave from the court of appeals before filing a second habeas petition in the District Court. Nevertheless, Florida law does not have such procedure, the writ can be file for any reason, as in this case to challenge the illegality of the sentence under Manifest Injustices.

In sum, even if Petitioner raised the same ground in the prior petition before the Florida Supreme Court, the Court prior determination was not on the merits. The ends of justice would be served by reaching the merits of this petition. *Sanders*, Id at 15-16.

II.

“Your Petitioner was sentenced to what can be considered tantamount to a sentence under the wrong statutes in violation of due process. Hicks v. Oklahoma, 447 U.S. 343, 346, 65 L. Ed. 2d 175, 100 S. Ct. 2227 (1980)”

For purposes of this claim, Petitioner adopted and incorporated by reference his argument presented to the Florida Supreme Court in the Writ. ex. “B” page 6-13 attached but adds the following:

Under Florida law, the Legislature enacted Florida Statute 775.081 to define felonies in the following order: Capital felony, Life felony, First-degree felony, and Third-degree felony, etc... It further enacted Florida statute 775.082 to proscribe the punishment for each of the enumerated felonies category. However, your petitioner was not sentenced under these statutes. Instead, he was sentenced under Florida Sentencing Guidelines Amendment Rules of Criminal Procedure Rule 3.701, which came into effect on July 1st, 1984. *Smith v. State*, 537 So. 2d 982 (Fla. 1989), and see, *Morales v. State*, 563 So. 2d 211 (Fla. 3d DCA 1990); *Morales I*; *Morales v. State*, 580 So. 2d 788 (Fla. 3d 1991). *Morales II*, *Morales v. State*, 613 So. 2d 922 (Fla. 3d DCA); *Morales III*, Rev. Den. *Morales v. State*, 623 So. 2d 494 (Fla. 1993)

table of cases, and *Morales v. State*, 638 So. 2d 130 (Fla. DCA 1994) Rehearing denied July 12, 1994.

Under Florida Bar Amendment to Rules of Criminal Procedure (3.701, 3.988) Sentencing Guidelines, 451 So. 2d 824 (Fla. 1984); there are nine sentencing categories, but for purposes of the issue before this court only two categories are pertinent: Category two "Sexual Battery", and Category Five "Burglary".

While your Petitioner has found no Florida authority which have decided the precise issues upon which he claims he is actual innocent of the sentence. There are two specific clauses of this rule which shows the court used the wrong scoresheet, and shows that the Burglary is the "primary offense at conviction," under this Amendment applicable here. See Rule 3.701(d)(3), which states in pertinent part:

III.

"Primary Offense" is defined as the *most serious offense* at conviction. In the case of multiple offenses, the primary offense is determined in the following manner:

In this case, the Burglary conviction is a first-degree felony punishable by a term of imprisonment not exceeding 30 years or by a term of years not exceeding life imprisonment (PBL). The Sexual Battery is a Second-degree felony punishable by 15-year term of imprisonment. See Fla. Stat. 775.081(1); 775.082(b); 794.011(5)

and Fla. Stat. 810.02 (Ed. 1984). Ergo, the Primary offense is the Burglary based upon this first clause of the rule.

Again, the second clause of Rule 3.701(d)(3) provides in pertinent parts:

“In the case of multiple offense, the primary offense is determined in the following manner.”

a) A separate guideline scoresheet shall be prepared scoring each offense at conviction “with the other offenses at conviction scored as “Additional Offense at conviction.”

Under Fla. R. Crim. P. Rule 3.988 Scoring the 2nd-degree Sexual Battery by itself under category two, as the primary offense it produces 150 points with a recommended range of “any non-State prison sanction.” Scoring the Burglary by itself as the primary offense under category five as a 1st PBL, it produces 70 points with a recommended range of “community control or 12-30 months’ incarceration.” Which shows again, the “Primary offense” was the burglary, category five not the sexual battery category two.

Further, the first determination as to which offense is the “Primary Offense”, cannot be bypassed. Since it is the “Primary Offense” the offense which identified the proper category that is to be used in any particular case. See Committee notes to Rule 3.701(d)(3).

“The proper offense category is identified upon determination of the “Primary Offense.”

Under category five burglary the maximum penalty the court could have imposed was 12-years state prison sentence, not a natural life sentence without possibility of parole. Again, because the wrong category was used here where no other sources of authorities exists to have sentence your Petitioner to life, it can be said that your Petitioner was resentenced under the wrong statute in violation of Due Process.

The sentencing process, must satisfy the requirements of the Due Process. Even if a defendant has no substantive right to a particular sentence within the range authorized by statute, he does have a legitimate interest in the character of the procedure which leads to the imposition of sentence even if he may have no right to object to a particular result in the sentencing process. *Gardner v. Florida*, 430 U.S. 349, 358, 51 L. E. 2d 393, 97 S. Ct. 1197 (1977); *Witherspoon v. Illinois*, 391 U.S. 510, 521-523, 20 L. Ed. 2d 776, 88 S. Ct. 1770 (1968) Id at 542 FN #20.

CONCLUSION

The great writ of liberty ought not to be treated as though we were playing a game. *Darr v. Burford*, 339 U.S. 200, 225, 70 S. Ct. 587, 94 L. Ed. 761 (1950); “to no one will we sell, to no one will be refuse, or delay, right or justice.” *Griffin v. Illinois*, 351 U.S. 12, 17, 76 S. Ct. 585, 100 L. Ed. 891 (1956).

Here, your Petitioner is not playing games, he firmly believes he shall not die in prison on account of his poverty. When he has a colorable claim of actual innocence of the sentence. This court should issue the writ. The interest of justices will be served best.

Respectfully submitted,

/s/ Leonardo Morales
Leonardo T. Morales, DC#103223

UNNOTARIZED OATH AND DECLARATION

I, Leonardo T. Morales, swear under penalty of perjury, and I declare that I have read the instant Petition and the facts are true and correct under United States law. 18 U.S.C. Sect. 1621 and 28 U.S.C Sect. 1746.

Executed on this 27 day of July, 2022.

/s/ Leonardo Morales
Leonardo T. Morales, DC#103223

A

EXHIBIT

“A”

A