

NO. 22-5906

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM LEE THOMPSON,

Petitioner

vs.

STATE OF FLORIDA,

Respondent.

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

PETITIONER'S MOTION FOR:

LEAVE TO FILE OUT-OF-TIME PETITION FOR REHEARING;
REHEARING OF ORDER DENYING CERTIORARI;
AND VACATUR AND REMAND IN LIGHT OF *CRUZ V. ARIZONA*, No. 21-846

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February 27, 2023

Petitioner William Lee Thompson, who is under a death sentence imposed by the State of Florida, respectfully moves the Court to:

1. Treat these papers as a petition for rehearing of its order of January 9, 2023 denying the petition for certiorari herein, and grant leave for their filing out of time;

2. Grant the rehearing petition, vacate the decision below, and remand this cause to the Supreme Court of Florida for reconsideration in light of *Cruz v. Arizona*, No. 21-846, 2023 WL 2144416 (Feb. 22, 2023).

In support, Mr. Thompson respectfully shows:

1. On October 21, 2022, Petitioner filed a petition for a writ of certiorari to the Supreme Court of Florida asserting the unconstitutionality of his death sentence, which had been upheld by that court. A copy of the petition is annexed hereto as Exhibit A.

2. The petition recounted that in 2016 the Florida Supreme Court had determined in *Walls v. State*, 213 So. 3d 340 (Fla. 2016) that *Hall v. Florida*, 572 U.S. 701 (2014) (invalidating Florida's flat cutoff of an IQ score of 70 for determining the presence of intellectual disability) was retroactive as a matter of state law to postconviction proceedings. Accordingly, and in light of the manifest injustice that would otherwise transpire, that court had remanded Petitioner's case for an evidentiary hearing complying with *Hall*. See *Thompson v. State*, 208 So. 3d 49 (Fla. 2016); Ex. A at 11-13.

3. But, the petition continued, in 2020, "the Florida Supreme Court *sua*

sponte revisited *Walls* in *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020). After a shift in the Florida Supreme Court’s composition, the court receded from *Walls* and held that *Hall* does not apply retroactively. *Id.* at 1024.” Ex. A at 13.

4. In the decision sought to be reviewed, the Florida Supreme Court held that its decision in *Phillips* constituted an intervening change in law such that Thompson was no longer entitled to the retroactive application of *Hall*. See *Thompson v. State*, 341 So. 3d 303 (Fla. 2022); Ex. A at 17.

5. The second Question Presented by the petition was:

[W]hether the Florida Supreme Court violated Petitioner’s Eighth and Fourteenth Amendment rights by applying Florida’s law of-the-case doctrine arbitrarily so as to deny him the benefit of *Hall* [*v. Florida*, 572 U.S. 701 (2014)] in disregard of the rule that only a “firmly established and regularly followed state practice . . . can prevent implementation of federal constitutional rights.” *James v. Kentucky*, 466 U.S. 341, 348-349 (1984).

6. In support of an affirmative answer to the question, Petitioner specifically called the Court’s attention to the pendency of *Cruz* and argued at length (Ex. A. at 29-31) that in his case, like *Cruz*,

. . . a state court has barred a federal claim through the application of an amorphous law-of-the-case rule, which is subject to manipulation whenever the state courts are hostile to the federal rights at stake.

. . . .

. . . in both cases a state’s highest court has turned away a federal claim by applying an issue-preclusion rule that is administered through a verbal formula or formulas that enable the state courts to turn the rule off-and-on at will to suit their result-directed predilections.

Ex. A. at 29-30

7. This Court denied the petition on January 9, 2023. Under Rule 44 (2), the time to seek rehearing of that order expired 25 days later, on February 3, 2023.

8. On February 22, 2023, the Court decided *Cruz* favorably to Mr. Cruz, a death-sentenced prisoner from Arizona. The opinion rested on the proposition that, “Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 457, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958).” 2023 WL 2144416, at *6. The dissent fully embraced that rule, *id.* at *9, but argued that it was not violated in the circumstances at hand.

9. The *Cruz* decision is of substantial importance to a determination of the issue presented by Mr. Thompson’s petition. Indeed, if *Cruz* had been decided while that petition was pending or within 25 days thereafter, Mr. Thompson would have promptly sought an order granting the petition, vacating the decision below, and remanding the cause to the Florida Supreme Court for reconsideration in light of *Cruz*.

10. His inability to follow that course now flows simply from the vagaries of the timing of the processing of cases on this Court’s docket. But he has made this motion as soon as feasible after the rendition of *Cruz*. The Court should accordingly exercise its established authority to grant leave for the filing of this motion, notwithstanding that it is formally out of time. See *United States v. Ohio Power Co.*, 353 U.S. 98 (1957); *Gondeck v. Pan American World Airways*, 382 U.S. 25 (1965).

11. On reconsideration, the Court should follow the course laid out above in Paragraph 9: grant certiorari, vacate the decision below, and remand the cause to the Florida Supreme Court for reconsideration in light of *Cruz*.

12. Taking that path will serve the ends of justice, judicial efficiency and federalism because Mr. Thompson, the Florida Supreme Court, and the federal courts share an interest in the remand he seeks.

13. In the absence of a remand, Mr. Thompson will be relegated to pursuing his claim by federal habeas corpus. That would be procedurally disadvantageous to him, burdensome to the federal courts, and disrespectful to the Florida courts. The Florida Supreme Court should be given the first opportunity to consider the implications of *Cruz* for its decision in *Phillips*, a decision that has in the past few years been applied to the detriment of several Death Row inmates in similar positions to those of Mr. Thompson. *See, e.g., Pittman v. State*, 337 So. 3d 776, 777 (Fla. 2022); *Nixon v. State*, 327 So. 3d 780, 781 (Fla. 2021); *Freeman v. State*, 300 So. 3d 591, 593 (Fla. 2020); *Cave v. State*, 299 So. 3d 352, 353 (Fla. 2020).

Conclusion

The Court should remand this cause to the Supreme Court of Florida for reconsideration in light of *Cruz*.

Respectfully submitted,



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Rule 44.2 Certification

As counsel of record to Petitioner, I certify that the foregoing is restricted to the grounds specified in Rule 44.2, and is presented in good faith and not for delay.



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