

No. 22-6133

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

AUG 30 2022

OFFICE OF THE CLERK

David Priester — PETITIONER
(Your Name)

vs.
SECY OF Florida's
Dept of Corrections
Ashley Moody, A.G. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court of Appeals, Denied (C.O.A.)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David Priester #ES9730
(Your Name)

Jefferson Corr. Institution
(Address) 1080 Big Oak Road

Monticello, Florida 32344
(City, State, Zip Code)

(Phone Number)

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NOV 22 2022

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- Did the Eleventh Circuit Court of Appeals err in denying the petitioner's Certificate of Appealability [C.O.A.] without specifying the motion's grounds to be without federalism or constitutionality, particularly where the petitioner's challenge to the legality of his detention has no other recourse?
- Was the petitioner's waiver of counsel for *Faretta v. California*, 442 U.S. 806, 95 S. Ct. 2525. In reexamining the state's determination of *Faretta's* voluntary waiver of counsel in supporting *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 was in conformity with a waiver without influence? Where petitioner was not counselled by his attorney, his mental state was not examined and the waiver was influenced by counsel's inactions to pretrial representation where such is influential, would it comport with a voluntary waiver for *Faretta*, or have undue influence?
- Was the standard of *Jackson v. Virginia*, 443 U.S. 307, 90 S. Ct. 2781, for its support or inferences, drawn from the testimony or lack of testimony of either the complaining witness or victim of Battery or identity theft, where one gave inconsistent testimony for battery, and the other gave no testimony as a prerequisite to the statute of grand theft? Is this acceptable?
- Does the petitioner have a due process right to effective assistance from standby counsel, should he ask for such assistance for *Faretta v. California* 442 U.S. 806, 95 S. Ct. 2525

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: Afeher, Phil, Elected State Attorney 18th Judicial Cir. Fla., Brett, U.S.C.J. U.S.C.A. 11th Cir. Ga., Chance, Debra, Assistant Attorney Gen. Fla., Cohen, Jay P., Judge, Fifth DCA, Fla., Corrente, Carmen F., Assistant Attorney Gen. Fla., Dalton, Roy B., Junior U.S.M.D.J. Fla., Evander, Kerry I., Judge, Fifth DCA, Fla., Gorton, Christopher E., Public Defender, Seminole County, Fla., Herr, Mark E., Judge Seminole County, Fla., Hoffman, Leslie R., U.S. Magistrate, M.D. Fla., Krause, Debra L., Judge, Seminole County, Fla., Martigano, Joanne Nicole, Assistant Appellate Public Defender, 5th DCA, Fla., Nelson, Debra S., Circuit Judge, 11th Judicial Circuit Fla., Purdy S. Jones, Appellate Defender, Fifth DCA, Fla., Rauch, Lori, Asst. State Atty. Seminole Cty. Fla., Ryan, Nancy, Asst. App. Pub. Def. 5th DCA, Fla., Shumway, Sara, Asst. State Atty. Seminole Cty. Fla., Wallis, F. Rand; SOCA Fla.

RELATED CASES

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TABLE OF AUTHORITIES CITED

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Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788.	
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Machin v. Wainwright, 758 F.2d 1431, 1435.	
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STATUTES AND RULES

Fl. R. 3.111(d)
Fl. Crim. R. Pro. 3.140(g)
Fl. Crim. R. Pro. 817.685
Fl. Stat. 90.803(6)(a)
Fl. Stat. 812.014(2)(c)1
Fl. Stat. 817.568(2)(a)
Fl. Stat. 322.212(1)
Fl. Stat. 817.60(6)(b)
Fl. Stat. 784.07(2)(b)
Fl. Stat. 843.02

OTHER

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 appears at Appendix E to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; 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 271 So.3d 991; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 3, 2022.

☐ 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 highest state court decided my case was April 16, 2019.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: MAY 17, 2019, 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 INVOLVED

Fourth Amendment

Fifth Amendment

Sixth Amendment

Fourteenth Amendment

Thirteenth Amendment

Eighth Amendment

First Amendment

28 U.S.C. 2254(d)

28 U.S.C. 2254(b)

28 U.S.C. 2244(b)

28 U.S.C. 2253(c)

28 U.S.C. 1254(1)

Florida

(F3). 812.014(2)(c)1

(F3). 817.568(2)(a)

(F3). 322.212(1)

(F3). 817.60(6)(b)

(F3). 784.07(2)(b)

(M1). 843.02

Fla. Crim. B. 140(g)

STATEMENT OF THE CASE

On May 13, 2017 petitioner was for his arrest on May 12, 2017, in circuit court: Seminole County, Florida case no. 2017 CF01605A. By information: Grand Theft Criminal Use of Personal Identification Information, Unauthorized Use of Driver's License or Identification Card, Forgery of Credit Card With Intent to Defraud, Battery On A Law Enforcement Officer for 3rd degree felonies, with Assisting Officer Without Violence, for a 1st degree misdemeanor. A bench trial before the Hon. Debra S. Nelson, found guilty as charged.

Sentenced to five (5) years for grand theft and five (5) years for criminal use of personal identification information, consecutive. With the remaining felony counts, a sentence of five (5) years each to run concurrent for a judgment of probation with 185 days jail time credited to the misdemeanor for its time served.

Notice of appeal was filed November 22, 2017: case no. 5017-3723. While in process, filed a post-conviction alleging Brady violation and denial of standby counsel's effective assistance. Was dismissed; see Appendix. Motion for sentence modification denied. State writ of habeas corpus denied; see Appendix.

Appellate attorney Nicole Joanne Martigano appointed April 17, 2018. Filed an Anders brief on September 12, 2018. The Florida Fifth DCA ordered the hearing of October 2017. The record supplemented by attorney Nancy Ryan. Petitioner submitted pro se brief: brief offered Grand Theft and Battery on a Law Enforcement Officer, for FL 3.140(g) was deficient.

April 16, 2019, the fifth DCA affirmed per curiam. The mandate issued June 10, 2019. January 29, 2019 this Court writ of certiorari was barred as untimely. Petitioner filed a

writ of habeas corpus: see Appendix, alleging innocence of the act or its statute by its proof for lawful detention, asserting the state court determined there was an unreasonable application of the facts: 28 U.S.C. 2254 (b).

March 4, 2021, state answered with motion to dismiss. See Appendix re: mix petition, unexhausted or available state remedy. No constitutional right to standby counsel's effective assistance, waiver of counsel met Farella. Anders brief reflects state court opinion.

July 7, 2021: Court ordered petitioner to reply. Petitioner replied on October 4, 2021; see Appendix. January 25, 2022: district court dismisses writ with prejudice and denies a Certificate of Appealability [COA]. April 21, 2022, petitioner with the eleventh circuit court of appeals filed a motion for a COA. See Appendix. June 3, 2022, the petition to proceed in forma pauper and the granting of a COA was denied. Order received on June 17, 2022.

REASONS FOR GRANTING THE PETITION

- 1) Deputy Sheriff's testimony for battery is inconsistent seen at: 95-15-17. He testifies that the petitioner approached him and that it was when he had reached to grab the petitioner's arm. That was when the petitioner had jerked his arm away and with both hands raised, it was when the petitioner shoved him: 96-21-22. Yet, while on cross-examination, the deputy sheriff testified at 1-3-12 that he had reached to grab the petitioner's arm as the petitioner began to pass. This is crucial - in this version of events, he claimed to be behind the petitioner and is consistent with details supporting unintended touching. The inconsistency was not argued for *Anders v. California* and *Evitts v. Lucey*. And for *Jackson v. Virginia*, it is demonstrated that the ushering in of the consistent version with details supporting innocence represents itself for that of being recantation or unlike his initial testimony, it's consistent with the testimony of Martinez and this continuity was not reasonably applied for 28 U.S.C. 2254(b).
- 2) The trial court erred when it asked the petitioner if he wanted stand by counsel. Farett's hearing at ----- where he said yes ----- and instead of assigning new counsel appointed the same counsel ----- was erroneous seeing that he had unambiguously declined representation by this attorney ----- for *Nelson v. State* ----- as it impaired his due process right for Florida CPR 3.111(d)(5) preventing him from testifying with the aid of counsel for Florida CPR 3.111(d)(5).
- 3) Petitioner received ineffective counsel, and that counsel had not verified a complainant for the sworn affidavits alleging a complaint.

- 4) Counsel was ineffective for not requesting examination of petitioner with discovery supporting reasonable basis; scheduled to see a doctor before his arrest for anxiety, arguing that his waiver of counsel for *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, was not free of anxiety inducement for its argument.
- 5) Counsel's representation had not covered the pretrial stage for *Strickland v. Washington*, 446 U.S. 668, 104 S. Ct. 2052, precluding motions, trial tactics, suggestions and advice.
- 6) Testimony for grand theft dominion as an element for intent where there had been no testimony of theft or attempted theft should have been granted 28 U.S.C. 2254 (b) as a reasonable application.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: NOVember 14, 2022