No. 22-6512

IN THE

SUPREME COURT OF THE UNITED STATES

Frank L. Perry — PETITIONER
(Your Name)

vs.

Ricky D. Dixon, ETC. — RESPONDENT(S)
Sec'y Dept. OF Corrections - Florida

ON PETITION FOR A WRIT OF CERTIORARI TO

Florida Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

Amended PETITION FOR WRIT OF CERTIORARI

Frank L. Perry
(Your Name)

P.O. Box 800
(Address)

Raiford, Florida 32083
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I.

WHETHER THE LOWER FLORIDA STATE COURT'S ERROR IN FAILING TO CORRECTLY CALCULATE THE DATE THAT PETITIONER'S DIRECT REVIEW OF HIS CASE BECAME "FINAL" IN ACCORDANCE WITH THIS COURT'S PRECEDENT IN *GRIFFIN V. KENTUCKY, U.S. V. JOHNSON* AND *LINKLETTER V. WALKER,* THUS RESULTING IN THE FAILURE TO APPLY THE STATE HOLDINGS OF *MONTGOMERY V. STATE* AND *LAMB V. STATE* WHICH WERE DECIDED WHILE PETITIONER'S CASE WAS ON DIRECT REVIEW AND NOT YET FINAL, DEPRIVED PETITIONER OF DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION.

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.

Related Cases

State V. Perry, 01-2004-4870A	Judgment entered Sept. 18, 2009
Perry V. State, 1D10-1374	Judgment entered July 23, 2010
Perry V. State, 1D11-4243	Judgment entered APR. 27, 2011
Perry V. State, 1D18-0555	Judgment entered Apr. 3, 2013
United State Dist. Court, 1-13-CV-111-MP-GRJ.	Judgment entered Aug. 9, 2016
Perry V. State, 1D18-0994	Judgment entered July 17, 2019
Perry V. Dixon, Secy Dept. OF. Corr, S.C. 22-680	Judgment entered July 20, 2022
Rehearing Denied	Judgment entered Aug. 12, 2022

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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 **federal courts:**

The opinion of the United States court of appeals appears at Appendix _____ 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[ ] is unpublished.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 _____ 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[ ] is unpublished.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 K 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 Eighth Judicial Circuit of Alachua Co, court appears at Appendix A 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 _____.

[ ] 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 July 20, 2022. A copy of that decision appears at Appendix K.

[✓] A timely petition for rehearing was thereafter denied on the following date: August 11, 2022, and a copy of the order denying rehearing appears at Appendix L.

[ ] 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

FEDERAL

Due Process Clause of the Fourteenth Amendment to the U.S. Constitution

Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution

STATE

§782.07, *Florida Statutes* (2005) (Florida's Voluntary Manslaughter statute)

§777.04, *Florida Statutes* (2005) (Florida's Attempt Statute)

Florida Standard Jury Instructions in Criminal Cases / Standard Jury Instruction 6.6 (2005)
(Attempted Voluntary Manslaughter)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the U.S Constitution which states, in relevant part, as follows:

> **Sec. 1 [Citizens of the United States].**
>
> **"No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."**

* * *

This case also involves, in relevant part, the following state (criminal) statute:

§782.07, *Florida Statutes* (2005) (Florida's Voluntary Manslaughter statute):

> **(1) The killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification according to the provisions of chapter 776 and in cases in which such killing shall not be excusable homicide or murder, according to the provisions of this chapter, is manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.**

* * *

This case also involves, in relevant part, the following state (criminal) standard jury instruction:

> **Florida Standard Jury Instructions in Criminal Cases / Standard Jury Instruction 6.6 (2005)** (regarding

Attempted Voluntary Manslaughter):

6.6 ATTEMPTED VOLUNTARY MANSLAUGHTER
§§ 782.07 and 777.04, Fla Stat.

To prove the crime of Attempted Voluntary Manslaughter, the State must prove the following element beyond a reasonable doubt:

(Defendant) committed an act [or procured the commission of an act], which was intended to cause the death of (victim) and would have resulted in the death of (victim) except that someone prevented (defendant) from killing (victim) or [he][she] failed to do so.

* * *

STATEMENT OF THE CASE

Petitioner, Frank L. Perry, a U.S. Citizen ("Petitioner"), was charged by information by the State of Florida with one count of attempted first degree premeditated murder and one count of simple battery.

On June 21, 2005, Petitioner proceeded to a jury trial in Alachua County, Florida ("trial").

Upon conclusion of trial, the trial court instructed the jury on the offenses of battery and attempted first degree premeditated murder, along with with attempted second degree murder and attempted voluntary manslaughter[1], as lesser included offenses to the offense of attempted first degree premeditated murder (collectively, "defective jury instructions").

Unbeknownst to Petitioner and his defense counsel at the time, standard jury instruction 6.6 for attempted voluntary manslaughter, approved by the Florida Supreme Court, was fundamentally flawed in that it contained an "intent to kill" element. See Appendix A.

Manslaughter under Florida law does not require an intent to kill element. See language of §782.07 in the "Constitutional and Statutory Provisions Involved" section of this petition, *infra*.

Applying the defective jury instructions, the jury found Petitioner guilty of

1 **§§782.07** and **777.04**, *Florida Statutes* (2005).

attempted second degree murder (the "conviction") and not guilty of simple battery. See Appendix B.

Petitioner timely appealed his conviction on other grounds to the First District Court of Appeal of Florida ("Florida appeals court"), which *per curiam* affirmed with a brief written opinion on May 6, 2006. See *Perry v. State*, 927 So. 2d 228 (Fla. 1st DCA 2006). See Appendix C.

Petitioner sought rehearing, which was denied on June 26, 2006[2].

Petitioner sought further direct review with the Florida Supreme Court by filing a timely *pro se* notice to invoke the court's discretionary jurisdiction on July 26, 2006, Florida's equivalent of taking an appeal.

Petitioner's case remained open and pending for several years until September 18, 2009, whereupon the Florida Supreme Court dismissed his case after declining discretionary review. See Appendix D.

Petitioner did not seek further direct review.

Petitioner's case then became "final" by operation of law after 90 days

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2 The mandate from the Florida appeals court was prematurely issued, despite Petitioner's timely filing of his motion for rehearing pursuant to the "prison mailbox rule". See Rule 9.420(a), *Fla. R. App. P.* (2006) This error by the Florida appeals court does not preclude relief under state law. See *Minnich v. State*, 130 So. 3d 695, 696 (Fla. 1st DCA 2011)(Petitioner granted habeas corpus relief by way of a new trial as a result of flawed manslaughter jury instructions as a lesser included offense of attempted first-degree murder due to the "unique procedural posture" of the case.) Petitioner's procedural circumstances concerning Petitioner's inability to recall the mandate in his case are similar to those in *Minnich*.

elapsed on December 18, 2009 ("direct review")[3].

Notably, and crucial to the Petitioner's argument before this Court, during Petitioner's direct review of his case or prior to the trial court's decision becoming "final" on December 18, 2009, the following applicable state cases favorable to the Petitioner's case were decided by the same Florida appeals court:

(1.) *Montgomery v. State*, 70 So. 3d 603 (Fla. 1st DCA 2009) (decided Feb. 12, 2009[4])

(2.) *Lamb v. State*, 18 So. 3d 734, 735 (Fla. 1st DCA 2009) (decided Oct. 14, 2009[5])

(collectively, "decisions").

Although the trial court in the Petitioner's case gave the Florida standard jury instruction 6.6 concerning attempted voluntary manslaughter at the time of trial, this instruction was held to be fundamentally flawed in *Montgomery,* which was

3 See *Griffith v. Kentucky*, 479 U.S. 314, 107 S. Ct. 708, 93 L. Ed. 649 n.6 (1987) (holding that "by "final" we mean a case which a judgment of conviction has been rendered, the availability of appeal exhausted and the time for a petition of certiorari elapsed or a petition for certiorari finally denied."); *United States v. Johnson*, 457 U.S. 537, 542, 107 S. Ct. 2579, 2582, n. 8 (1982)(citing *Linkletter v. Walker*, 381 U.S. 618, 622, 85 S. Ct. 1731, 1733, n. 5 (1965); see, also, Supreme Court Rule 13. Review on Certiorari: Time for Petitioning ("A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.").

4 *Montgomery* was later approved by the Florida Supreme Court. See *State v. Montgomery*, 39 So. 3d 252 (Fla. 2010) (decided April 8, 2010).

5 The Florida appeals court (the same court which denied Petitioner's successive *Montgomery* claims) held that the standard jury instruction for the lesser included offense of attempted manslaughter suffers from "the same infirmities as the instruction in *Montgomery*"."

decided on February 12, 2009, during Petitioner's direct review.

Montgomery held that where the defendant's conviction was only one step removed from the necessarily lesser included offense of manslaughter and because the jury instruction for manslaughter imposed an additional element that the defendant "intentionally caused [the victim's] death" ("intent to kill"), the conviction was reversed and remanded for a new trial. See Appendix B.

Put a little differently, the Florida appeals court in *Montgomery,* held that the unobjected to addition of the intent to kill element in the standard jury instruction for manslaughter was fundamental error under Florida state law because the jury's finding that the defendant did not intend to kill the victim--as evidenced by the second degree attempted murder verdict--precluded it from returning a verdict for voluntary manslaughter under the jury instructions given because second degree attempted murder does not require an intent to kill, nor is this element present in Florida's statutory definition of manslaughter. See n. 3 below.

Therefore, based on the above timeline, *Montgomery* clearly applies to the Petitioner's case.

The holding in *Montgomery* was extended to a jury instruction for attempted voluntary manslaughter in *Lamb v. State,* which was also decided prior to the Petitioner's case becoming final, on October 14, 2009.

Accordingly, on November 19, 2009, upon confirmation in *Lamb* that

Montgomery applied to attempted manslaughter, Petitioner filed his motion for postconviction relief with the state trial court, which was later amended[6] to include the ground for relief based on the newly-minted holdings of *Montgomery* and *Lamb* (Ground J), claiming that the same defective manslaughter jury instruction used in the *Montgomery* and *Lamb* cases, which were decided while he was pending direct review and his case was not yet final, was used in his trial; therefore, he should be afforded relief pursuant to *Montgomery* and *Lamb*.

This is a clearly meritorious ground. Petitioner, therefore, should have received relief as he was clearly within the *Montgomery* "pipeline" as that term is defined by state law[7].

Instead, the trial court summarily denied postconviction relief on June 22, 2011, concluding the date Petitioner's case became final by stating, in relevant part, as follows:

> "All of the decisions [cited by the defendant] were entered subsequent to Defendant's conviction and sentence being affirmed by the First District Court of Appeals on May 3, 2006. Thus, they would not apply retroactively to

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6 Under the state's "relation back" doctrine, which should be liberally applied, any amendment to a motion or pleading shall relate back to the date of the original document so long as the claim(s) asserted therein arise out of the same conduct as set forth in the original motion or pleading. See *Holley v. Innovative Technology of Destin, Inc.*, 803 So. 2d 749, 750 (Fla. 1st DCA 2001).

7 See *Mitchell v. Moore*, 786 So. 2d 521, 532, n. 8 (Fla. 2001)(Recognizing that the "pipeline" theory allows a defendant to seek application of new rule of law if the case is pending on direct review or not yet final when the new law of rule was announced)(citing to *Griffith v. Kentucky*).

Defendant's case." See Appendix E.

This was error.

The trial court's conclusion in its order summarily denying postconviction relief as to this crucial date of finality upon completion of direct review in Petitioner's case was erroneous because Petitioner had first sought timely direct review from the First District Court of Appeals and then subsequently sought timely review from the Florida Supreme Court, which did not dismiss his request for discretionary review until September 17, 2009.

Therefore, in accordance with this Court's precedent (see n. 3, *supra*), Petitioner's case did not become "final" until after 90 days lapsed on Petitioner's right to file a petition for writ of certiorari with this Court, which was December 18, 2009.

Therefore, relief in the form of a new trial should have been granted by the trial court after considering Petitioner's motion for postconviction relief because the Petitioner was clearly in the *Montgomery* pipeline.

The trial court's improper calculation of the date that Petitioner's direct review of his case became final is the exact point when the Petitioner's case "went off the rails" and a miscarriage of justice occurred.

Petitioner has been seeking justice ever since, to no avail.

After the summary denial of his postconviction motion, Petitioner took

another appeal[8] raising the trial court's date calculation error in denying the *Montgomery* claim; however, despite the obvious meritorious nature of Petitioner's claim, this appeal also resulted in a *per curiam* affirmed decision by the Florida appeals court July 23, 2010.

There was no written opinion by the Florida appeals court explaining why the Petitioner was denied relief, despite the fact that it appeared to be such a "clear-cut" case and despite the same court issuing a number of recent reversals based on *Montgomery* in 2009 and 2010. See n. 12.

Notwithstanding, Petitioner repeatedly pursued relief *pro se* in the Florida appeals court from 2011 – 2018[9], which repeatedly refused to consider his *Montgomery* pipeline claim[10], so much so that the Petitioner was actually barred from the very same Florida appeals court that issued the *Montgomery* and *Lamb* opinions, even though Petitioner's argument was clearly meritorious. See Appendix F.

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8 This time, the appeal was from the order of the postconviction court summarily denying relief.

9 See "Related Cases" section elsewhere in this Petition for a list of cases previously filed concerning this issue.

10 Under the state's "manifest injustice" doctrine, which is similar to the "miscarriage of justice" doctrine seen in the federal court system, Florida's appellate courts have the power to reconsider and correct erroneous rulings [made in earlier appeals] in exceptional circumstances, even successive petitions that are technically procedurally barred where reliance on the previous decision would result in a manifest injustice. See *Marshall v. State*, 240 So. 3d 111 (Fla. 3rd DCA 2018).

This continuous, persistent effort by Petitioner to correct this miscarriage of justice led to the filing of a federal habeas corpus petition in U.S. District Court for North Florida ("federal district court") in 2016 seeking a new trial based on *Montgomery* and *Lamb* ("petition"). See Appendix G.

The federal district court, upon reviewing his petition, issued an order to show cause to the State of Florida why relief should not be granted, prompting the following response from the Florida Attorney General ("State"):

> "The trial court incorrectly determined the date of finality of Petitioner's judgment and sentence to be May 3, 2006. Petitioner sought review in the Florida Supreme Court and *thus his conviction did not become final until the Florida Supreme Court denied review on September 18, 2009.*" [*Emphasis added*]. See Appendix H.

The State conceded trial court error when the trial court stated Petitioner's case was final was May 3, 2006, but then also proceeded to incorrectly calculate the date Petitioner's case became final by stating that Petitioner's direct review of his case became final on September 18, 2009, the day after the Florida Supreme Court denied review.

Therefore, this date calculation was also incorrect.

It was incorrect because the State neglected to include the 90-day time period in which to file a petition for writ of certiorari with this Court after the Florida Supreme Court denied discretionary review on September 17, 2009, which made the Petitioner's direct review of his state court decision "final" after 90 days

had lapsed on December 18, 2009, not May 3, 2006, as the trial court had indicated in 2010, and not September 18, 2009, as the Florida Attorney General had indicated in 2016.

Thus, the federal district court, in apparent reliance on the State's erroneous calculation as to the date Petitioner's case became final, denied the petition. See Appendix I.

In 2022, Petitioner filed another (successive) petition for habeas corpus directly to the Florida Supreme Court (see Appendix J), who denied his petition July 20, 2022, with a brief written opinion claiming Petitioner was "procedurally barred". See Appendix K.

Petitioner's motion for rehearing was stricken as unauthorized on August 12, 2022. See Appendix L.

Accordingly, based on the foregoing facts and unique procedural history, Petitioner humbly, and desperately, seeks a "last resort" review of this issue from this Court via this petition for writ of certiorari[11].

11 This petition was timely filed with this Court in that it was postmarked October 18, 2022, and received by the Clerk October 25, 2022.

REASONS FOR GRANTING THE PETITION

The reason for granting the petition is not only to prevent a miscarriage of justice in Petitioner's case, but also to preserve this Court's integrity concerning its definition of when a case becomes "final" under *Griffin*, *Johnson* and *Linkletter.*

Petitioner's 2005 conviction and sentence was based upon fundamentally flawed attempted manslaughter instructions that were determined to be erroneous by a Florida appeals court in *Montgomery* and *Lamb* in 2009 while Petitioner's case was still pending on direct review in the state appeals court system and, therefore, not yet "final" as this Court itself has defined this term.

The genesis of the error was when a Florida trial court improperly calculated the date that Petitioner's case became final in an order denying motion for postconviction relief (see Appendix E), by stating as follows:

> "13. As to ground (J), Defendant alleges that the trial court committed fundamental error by giving an improper jury instruction. In support of his claim, Defendant cites to several recent cases which have found that the standard jury instruction for Attempted Manslaughter by Act is fundamentally erroneous. See, e.g., *Rushing v. State*, 35 Fla. L. Weekly D1376 (Fla. 1st DCA June 21, 2010); *Lamb v. State*, 18 So. 3d 734 (Fla. 1st DCA 2009). *All of the decisions were entered subsequent to Defendant's conviction and sentence being affirmed by the First District Court of Appeals on May 3, 2006. Thus, they would not apply retroactively to Defendant's case.* See *Harricharan v. State*, 59 So. 3d 1162 (Fla. 5th DCA 2011). Accordingly this claim is without merit." [*Emphasis added*].

This Court's holdings in *Griffith v. Kentucky*, 479 U.S. 314, 107 S. Ct. 708, 93 L. Ed. 649 n.6 (1987) and *U.S. v. Johnson*, 457 U.S. 537, 542, n. 8 (citing to *Linkletter v. Walker* 381 U.S. 618, 622, n. 5 (1965) are clearly on point: They state that "final" means a case in which a judgment of conviction has been rendered, the availability of appeal exhausted, *and the time for petition of certiorari has elapsed ...". [Emphasis added].*

Petitioner's case was not "final" until December 18, 2009 under this Court's well-established precedent. The *Montgomery* decision was issued on February 12, 2009, and the *Lamb* decision was issued on October 14, 2009, both of which were decided during the pendency of Petitioner's direct review with the Florida Supreme Court and his case was not yet "final"; therefore, they should have been considered by the postconviction court.

They were not.

During Petitioner's federal habeas corpus review (see Appendix G), the State conceded as much in its response to an order to show cause issued by the U.S. District Court for North Florida when it stated as follows:

> "The trial court incorrectly determined the date of finality of Petitioner's judgment and sentence to be May 3, 2006. Petitioner sought review in the Florida Supreme Court and *thus his conviction did not become final until the Florida Supreme Court denied review on September 18, 2009.*" [*Emphasis added*]

However, the State also erred when it neglected to include the 90-day time

period in which to file a petition for writ of certiorari with this Court, which made the Petitioner's state court decision final on December 18, 2009, and yet the federal district court denied his petition for writ of habeas corpus (see Appendix I), despite raising this meritorious ground (see Ground 7 of Appendix G).

It is a miscarriage of justice under these highly individualized factual and procedural circumstances to deny Petitioner the same relief that has been afforded to other numerous similarly-situated defendants in the State of Florida--notably to those in the very same Florida appeals court[12]--due to the Florida criminal justice

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12 See *Stinson v. State*, 69 So. 3d 291, 292 (Fla. 1st DCA 2009)("We are required to reverse...based on the trial court's instruction on the [flawed] lesser included offense of manslaughter by act...[because] the trial court stated that the State was required to prove that "[she] intentionally caused the death of [the victim]."*)*; *Ward v. State*, 12 So. 3d 920 (Fla. 1st DCA 2009)([F]undamental error occurred in this case when the trial court gave the standard jury instruction for the lesser included offense of manslaughter by act, which improperly imposed the additional element of intent to kill."); *Hardee v. State*, 69 So. 3d 292 (Fla. 1st DCA 2009)(Conviction for second degree murder reversed and case remanded for a new trial because the trial court gave the [flawed] standard jury instruction for the lesser included offense of manslaughter by act.); *Rushing v. State*, 133 So. 3d 943 (Fla. 1st DCA 2010)(Trial court's use of the standard jury instruction required reversal of conviction for attempted second degree murder after appellant challenged his conviction due to trial court's use of Standard Jury Instruction (Criminal) 6.6); see, also, *Burton v. State*, 125 So. 3d 788 (Fla. 5th DCA 2011)(Reversed for a new trial after Burton challenged his attempted second degree murder conviction based on the trial court's unobjected to use of Standard Jury Instruction (Criminal) 6.6 to instruct on the lesser included offense of attempted voluntary manslaughter); *De La Hoz v. Crews*, 123 So. 3d 101, 105 (Fla. 3d DCA 2013)(Inmate's petition for writ of habeas corpus granted because of the erroneous manslaughter by act instruction; to *"not to extend the same relief to [him] as was provided to similarly situated defendants during the same time frame was manifestly unjust.") [Emphasis added]*; *Wardlow v. State*, 212 So. 2d 1091 (Fla. 2d DCA 2017)(Petition for writ of

system's inability to correctly calculate the date Petitioner's case became final.

The Florida trial judge erred. The Florida Appeals Court erred--repeatedly. The Florida Attorney General also erred. And, more recently, the Florida Supreme Court erred.

More importantly, this Court's failure to apply its own precedent to Petitioner's case would upend decades of precedent concerning this Court's definition of "final" as this term has been applied to cases throughout the entire country pending direct review and could potentially inject chaos into the entire American criminal justice system.

In summary, the entire criminal justice system in Florida, from top-to-bottom, failed the Petitioner despite decades long precedent from this Court defining the word "final" for purposes of direct review. It is an error that has potentially national implications. One, therefore, cannot imagine a more compelling basis for this Court to accept certiorari in such a case.

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habeas corpus granted after petitioner challenged his second degree murder conviction on the basis that appellate counsel did not raise the flawed manslaughter jury instruction); *Marshall v. State*, 240 So. 3d 111, 112, 118 (Fla. 3d DCA 2018)(Petitioner granted habeas corpus relief on successive petition based on ineffective assistance of appellate counsel after appellate counsel failed to file a supplemental brief in his direct appeal citing to *Montgomery.* "[H]ad [he] been placed in the *Montgomery* pipeline when this Court affirmed his conviction and sentence for second degree murder on direct appeal, *we find it extremely likely, if not virtually certain,* that [he] ultimately would have been granted a new trial that he now seeks in his instant petition."). [*Emphasis added*].

In summary, it is a violation of the Petitioner's constitutional rights under the Fourteenth Amendment to the U.S. Constitution in the manner in which the Florida criminal justice system has handled, and botched, this case concerning a simple mathematical date calculation set forth by this Court decades ago.

Petitioner now has nowhere left to turn, except to this Court, as a court of "last resort", to correct this miscarriage of justice and error of national proportion, humbly asking this Court to consider granting certiorari in this case and, upon careful review of the merits of this case, reverse and remand for a new trial pursuant to the holdings in *Montgomery* and *Lamb and* based on this Court's longstanding precedent in *Griffith, Johnson* and *Linkletter.*

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Frank F. Perry

Date: 10-18-2022