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IN THE

SUPREME COURT OF THE UNITED STATES

IN RE WILLIE THOMAS --- PETITIONER

^{VS.}
Sec'y Florida Dept. of Corrections, Attorney General,
State of Florida, et al.

ON PETITION FOR WRIT OF HABEAS CORPUS

U.S. DISTRICT COURT (S.D. Fla.)

11th Circuit Court of Appeals

PETITION TO INVOKE ALL WRITS
28 U.S.C. 1651 (a)

WILLIE THOMAS # 654663

Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, Florida 34956

RECEIVED
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I. Question's presented

1. whether the District Court Approach to 2254 petition asserting a loss of a fundamental constitutional right to choose whether to testify in his own defense. The district court's deviation from legal mode of procedure, resulting in refusal to conduct Federal evidentiary hearing post to level of illegitimate and unconstitutional practices. See *Rock v. Arkansas* 483 U.S. 44, 51 (1987), *United States v. Teague*, 943 F.2d 1525 (11th Cir. 1992) (En Banc)
2. whether District court abused of Discretion constitute extra judicial proceeding when he (judge) refused to contemplate "where justice requires" before dismissing 2254 petition requesting leave to amend. District court judge failed to employ the courts limited discretion granted by 2254 (b), nor is equitable discretion grounded in the miscarriage of the justice exception. See. *NEGRON V. City of Miami Beach*, 113 F. 3d 1563, 1570 (11th Cir. 1997)
See *Slattery Company Inc. v. United States* 231 F.2d 37 (1956 U.S. App. *Bruant v Dupree*, 252 F. 3d 1161, 1163 (11th Cir. 2001)
Lexis 3365 No. 15741). *Advanced Futility Argument*, 936 F. 3d 1184
See. *Hawk v Olson*, 326 U.S. 271, 279 (1945) *Tyler v Betts*, 391 F.2d 993, 995 (5th Cir. 1968)
3. Whether District judge refusal to follow an applicable rule of law expressly articulated by the Supreme Court of the United States amounts to judicial usurpation of power. See *Espey v. Wainwright* 734 F.2d 748, 750 (11th Cir. 1984)

4. Whether the 11th Circuit made a contrary ruling concerning the loss of a fundamental constitutional right to testify here by denying petitioner relief where the facts of the case are clearly evident on the face of the court record and included in a remand order from the 11th Circuit, who's statement was that the parties agree the trial court judge made a legal statement of the law that misinformed the petitioner. The 11th Circuit wanted to know what the petitioner was thinking after this information was given by the trial judge. On limited remand petitioner honestly testified under oath as to what he was thinking at that time, and what he had been told by trial counsel concerning use of prior conviction if he choose to testify. The colloquy initiated by trial judge is identical as to what occurred in cases decided by the 11th Circuit and the facts clearly show petitioner's case deals with the same set of facts layed out in several prior cases dealing with the loss of a fundamental right to testify that the 11th Circuit has granted relief. Here the District court and the 11th Circuit failed the petitioner according to the facts of this case. After the petitioner testified at a limited hearing afforded by the 11th Circuit, the District court judge who has previously shown bias toward the petitioner was allowed to hold a hearing on fact finding as to whether the petitioner was credible, deny the petitioner; of which the 11th Circuit upheld this bias judge ruling **A** cases such as this. Petitioner's argument

concerning the use of prior felony convictions involving dishonesty for impeachment, which improperly caused Thomas to deny his only defense by waiving his right to testify? Petitioner's case revolves around trial counsels failure to correctly advise petitioner on the use of prior convictions. This misadvice before and during Petitioner's trial lead Petitioner to make an unknowing and involuntary waiver of a fundamental constitutional right to testify at trial. Not only did trial counsel mislead Petitioner, the trial judge also misadvised the Petitioner during a colloquy which the trial judge initiated with Petitioner. Trial judge told Petitioner if he so choose to testify he would have to say yes to ten (10) crimes of dishonesty and that the state on cross would come back and open up Petitioners prior convictions to the jury. This caused Petitioner to think not only that he was doomed if he chose to take the stand and testify in his own behalf, but that the jury would be told about petitioner's prior convictions. Petitioner chose to go to trial because he did not commit the armed burglary or aggravated assault. Petitioner loss fundament constitutional right to testify. Was misled both by counsel and trial judge, yet petitioner has been denied relief at every level of the judicial system. This for petitioner's 5th, 6th and 14th Amendments to the United States Constitution has been denied and a manifest injustice has occurred due to these violations of the United States Constitutional Amendments. Denied due process of the law, (Effective Assistance of Trial Counsel) in a court of law. Trial counsel was

ineffective on the face of the record misadvising petitioner, Trial judge is on the face of the record misadvising petitioner without objection from trial counsel; yet nothing has been done in State or Federal court. Petitioner has asked for a evidentiary hearing on the facts and merits of the claims in this case. See, Steickland v. WASHINGTON 466 U.S. 668, 80-104 S.Ct. 2052 (1984)
See, UNITED STATES v Ly, 646 F. 3d 1307, 1313 (11th Cir 2011)
Blackburn v Folte, 828 F. 2d 1177, 1182 (6th Cir 1987)
UNITED STATES v Poe, 352 F. 2d 639, 640-41 (DC Cir 1965)
FLA. Stat. 90.610 (2009)
FLA. Evid. 610.6
FLA. STD. Jury Inst. (Crim) 3.9 (1981)
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III. Table of Authorities Cited

Federal cases

DUSSOUY V. Gulf Coast Investment Corp, 660 F.2d 594 (5th cir 1981)
FARRIS V. UNITED STATES, 333 F.3d 1211, 1215 (11th cir 2003)
FORMAN V. DAVIS, 371 U.S. 178, 9 - 83 S.Ct. 227
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STRECKLAND V. WASHINGTON, 466 U.S. 668, 80 - 104 S.Ct. 2052 (1984)
BRYANT V. Dupree, 252 F.3d 1161, 1163 (11th cir 2001)
HAWK V. DISON, 326 U.S. 271, 279 (1945)
NEGRON V. CITY OF MIAMI BEACH, 113 F.3d 1563, 1570 (11th cir 1997)
TYLER V. Beto, 391 F.2d 993, 995 (5th cir 1968)
ADVANCED FUTILITY ARGUMENT, 936 F.3d 1184
ROCK V. ARKANSAS, 483 U.S. 44, 51-53 (1987)
UNITED STATES V. TEAGUE, 953 F.2d 1525, 1532 (11th cir 1992)
UNITED STATES V. LY, 646 F.3d 1307, 1313 (11th cir 2011)
BLACKBURN V. FOLTZ, 828 F.2d 1177, 1182 (6th cir 1987)
UNITED STATES V. Poe, 352 F.2d 639, 640-41 (D.C. cir 1965)

STATE cases

THOMAS V. STATE 125 So 3d 928 (Fla 4th DCA 2013)
THOMAS V. STATE 139 So 3d 889 (Fla 2013)
THOMAS V. Sec'y Dept corr. 2018 US App. Lewis 2015 72018
WILCOX V. STATE 143 So 3d 359, 373 (Fla 2014)
GACCIA V. STATE 81 So 3d 30, 35 (Fla 3d Dist. 2009)
SCHOFELD V. STATE 67 So 3d 1666, 1071 (Fla. 2d Dist 2011)

Statutes and Rules

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION TO INVOKE ALL WRITS**

Petitioner respectfully prays that a all writs 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 **A** to the petition and is:

☐ reported at **not published**; 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 **B** to the petition and is:

☒ reported at **Thomas v. Sec'y Dept. Corr.**, 2018 U.S. App Lexis 212572018); 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 **C** to the petition and is:

☒ reported at **Thomas v. State**, 139 So.3d 889 (Fla. 2013)

☐ has been designated for publication but is not yet reported; or

☐ is unpublished

The opinion of the **Thomas v. State**, 125 So.3d 928 (Fla. 4th DCA 2013) court to review the merits appears at Appendix **C** to the petition and is:

☒ reported at **Thomas v. State**, 125 So.3d 928 (Fla. 4th DCA 2013)

☐ has been designated for publication but is not yet reported; or

☐ is unpublished



IN THE
SUPREME COURT OF THE UNITED STATES

~~Petition to~~ INVOKE ALL WRITS

Petitioner respectfully prays that a ALL WRITS issue to review the judgment below.

7-B V.

OPINIONS BELOW

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

- [] reported at Not Published; 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 B to the petition and is

- ☒ reported at Thomas v Sec'y Dept Corr. 2016 U.S. App. Lmx 2125 72018; 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 C to the petition and is

- ☒ reported at Thomas v State 134 So 3d 884 (Fla. 2013); or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Thomas v State 125 So. 3d 928 (Fla. 4th DCA 2013) court appears at Appendix C to the petition and is

- ☒ reported at Thomas v State 125 So 3d 928; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

Jurisdictional Statement

1. Judgement was entered denying Appellants 15 (A) Motion to Amend 28 - U.S.C. 2254 Petition. A timely Notice of appeal was filed on May 7, 2020.
2. The District Court's Jurisdiction was founded upon 28 U.S.C. 2254, in that Appellant was attacking a Judgement and Sentence Imposed by the State of Florida.
3. This Court's Jurisdiction is founded upon 28 U.S.C. 2253 in that Appellant is appealing from a final judgement in a Habeas Corpus case.
4. Mr. Thomas's Petition on Appeal to the 11th circuit Court of Appeals was Remanded to the Southern District on 2-24-2022, ON 7-26-2022 A limited hearing was held and on 10-19-2022 the 11th circuit Court of Appeals Affirmed the District Court of the Southern District's denial of leave to Amend Petitioner's 28 U.S.C. 2254 Petition. The 11th circuit Court of Appeals did Appoint Counsel under the Criminal Justice Act, the Southern District also did Appoint Counsel for above mentioned hearing.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 10-19-2022.

[☒] 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: N/A, 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. **NOT GRANTED**

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 2016 S.Ct - Fla.
A copy of that decision appears at Appendix D.

[] A timely petition for rehearing was thereafter denied on the following date: N/A, 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. § 1257(a).

VII.

Constitutional and Statutory Provisions Involved

1. United States Constitutional Amendment V:
2. United States Constitutional Amendment VI:
3. United States Constitutional Amendment XIV:

STATEMENT OF CASE

This case is before the Court on the petition of Willie Thomas for writ of habeas corpus under 28 u. s. c. 2254. Mr. Thomas was tried for (1) one count of Burglary while armed; (1) one count of aggravated battery with a deadly weapon and possession of cocaine.

On October 30, 2011, there was a guilty verdict returned for the above mentioned crimes. Mr. Thomas was sentenced to Life in prison with 30 years on October 14, 2011. There was a timely notice of appeal and the conviction was affirmed with an opinion.

See Thomas v. State, 125 so. 3d 928 (Fla. 4th DCA 2013).

Next, Mr. Thomas filed an appeal to the Florida Supreme court and this appeal was denied on August 18, 2014. See Thomas v. State, 139 so. 3d 889 (Fla. 2013). Supreme ct. Fla. On December 8, 2014 Mr. Thomas filed a motion to reduce or mitigate sentence. Mr. Thomas then filed a timely for post-conviction relief pursuant to Fla.R.Crim.P. Rule 3.850 on February 4, 2015 raising (10) issues. This motion was denied November 9, 2017 without an evidentiary hearing. There was a timely notice of appeal. Counsel for the appellant raise a single ground for review in the Fourth District Court of Appeal and that ground was Claim Four in the Appellants motion for post-conviction relief to writ : Did Judge reversibly err in not granting Thomas 3.850 Fla.R.Crim.P. motion, or in not holding an evidentiary hearing, because Thomas attorney and the judge misled Thomas concerning the use of prior felony convictions involving dishonesty for impeachment, which improperly caused Thomas to deny his only defense by waiving his right to testify ? Petitioner's case revolves around trial counsels failure to correctly advise petitioner on the the use of prior convictions. This misadvice before and during petitioner's trial lead petitioner to make an unknowing and

involuntary waiver of a fundamental constitutional right to testify at trial. Not only did trial counsel mislead petitioner, the trial judge also misadvised the petitioner during a colloquy which the trial judge initiated with petitioner. Trial judge told petitioner if he so choose to testify he would have to say yes to ten (10) crimes of dishonesty and that the state on cross would come back and open up petitioners prior convictions to the jury. This caused petitioner to think not only that he was doomed if he choose to take the stand and testify in his own behalf, but that the jury would be told about petitioner's prior convictions. Petitioner choose to go to trial because he did not commit the armed burglary or aggravated assault. Petitioner loss a fundamental constitutional right to testify. Was mislead by both trial counsel and trial judge , yet petitioner has been denied relief at every level of the judicial system. Thus for petitioner's 5th, 6th 14th amendments to the United States Constitution has been denied and a manifest injustice has occurred due to these violations of the United States constitutional amendments. Denied due process of the law, (Effective Assistance of Trial Counsel) in a court of law. Trial counsel was ineffective on the face on the record misadvising petitioner, Trial judge is on the face of the record misadvising petitioner without objection from trial counsel; yet nothing has been done in State or Federal court. Petitioner has asked for a evidentiary hearing on the facts and merits of the claims in this case.

REASONS FOR GRANTING THE PETITION

To avoid erroneous deprivations of the right to counsel, that is (effective-counsel); and the right to testify on your own behalf, this Court must uphold the Constitutional Rights and Provisions that have been in-acted to this United States Constitution. This case is about the right to effective counsel, the Due Process of the law and Equal Protection under the law. Petitioner in this case went to Trial because he did not commit the crimes he was arrested and charged for (Armed Burglary / Aggravated Battery), Although Petitioner was in Possession of Crack Cocaine. Petitioner knew he had to fight these charges, so he choose to go to trial. What the Petitioner did not know was all of his prior convictions although they came by Plea Agreements; they would be told to the jury if he choose to testify at Trial.

Petitioner was told this before and again during Trial by Trial Counsel, this misinformation caused Petitioner to unknowingly and involuntarily waive his Constitutional right to testify. Trial Counsel was ineffective at Trial by misadvising Petitioner wrong information concerning how his prior convictions would be used against him by the State, his (counsel) told Petitioner the State would tell the jury of his priors and what they were if he choose to testify. Then the Trial Judge initiated a colloquy with the Petitioner about whether he wanted to testify. Petitioner told the judge that he was concerned as to how the jury would view his prior convictions and form their own opinion of his guilt. Trial judge went on to tell Petitioner he would have say yes to (10) ten crimes of dishonesty, if petitioner choose to testify, this without objection from Trial counsel.

This further confuse Petitioner because he did not know if the trial judge was giving him the right information concerning the law. As it turned out to

be, the Petitioner was also misadvised by both Trial counsel and Trial judge and no one corrected this misinformation given to Petitioner during his trial, causing petitioner to waive his fundamental constitutional right to testify unknowingly and involuntarily. Under the constitution a fundamental Constitutional right cannot be waived unknowingly and involuntarily. This right must be waived knowingly and voluntarily. On remand from the 11th Circuit Court of Appeals back to the Southern District Court, Petitioner testified that Trial Counsel had told petitioner if he testified that the State would in fact open up his prior conviction to the jury. Petitioner testified to this on remand and told the Court that he was confused at trial and choose not to testify because of the mis-advice he was a given by both trial counsel and trial judge.

Petitioner also testified had he been properly advised concerning the use of his prior convictions and the law, that Petitioner would only have to say yes that he had 11 prior felony convictions then yes he would have choose to testify on his own behalf.

Petitioner told the Southern District Court yes he would have change his mind and testified during his trial. Yet the Southern District Court judge showed bias once again toward Petitioner by saying Petitioner was not credible, and it would be futile to allow Petitioner leave to Amend his § 2254 Petition to include his claim of ineffective counsel at trial and mis-advice by trial judge, all of which caused Petitioner to unknowingly and involuntarily to waive a fundamental constitution right to testify. This mis-advice by both trial counsel and trial judge on the face of the Court's Records clearly shows Petitioner's loss of his constitutional right to testify. District Court denied petitioner without holding a full evidentiary hearing.

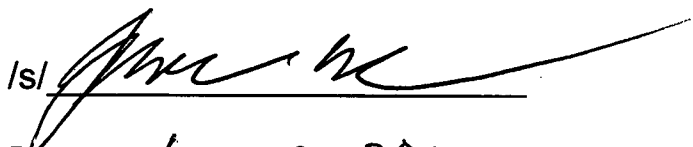
The State Court did the same, and thus a manifest injustice has occurred by resulting inactions of these Courts in this case. Petitioner has been denied Due Process of the law, denied Equal Protection under the laws and the loss of a Constitutional Right that can only be waived knowingly and voluntarily. Yet petitioner has been denied any relief. Petitioner deserves a New Trial; a fair and just trial such as the law requires under this United States Constitution.

CONCLUSION

For the foregoing reasons, Mr. Thomas respectfully request that this Court issue a All Writs to Review the Judgment of the 11th Circuit Court of Appeals.

This petition for All Writs should be granted.

Respectfully submitted,

/s/ 

Dated: JAN 18 - 2023
Willie Thomas Jr.
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