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No. 22-7406

ORIGINAL

Supreme Court, U.S.
FILED

MAR 02 2023

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE SHAWN HENRY --- PETITIONER

vs.

STATE OF FLORIDA --- RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

District Court of Appeal Third District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shawn Henry
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RECEIVED

MAR 10 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

WHETHER PETITIONER WAS DENIED SUBSTANTIAL EQUALITY AND FAIR PROCESS WHERE STATE COURT ARBITRARILY DISCRIMINATED BETWEEN PERSONS APPLYING FOR RELIEF IN VIOLATION OF DUE PROCESS

WHETHER PETITIONER'S CONVICTION SECURED BY THE USE OF FALSE EVIDENCE MUST FALL UNDER THE DUE PROCESS CLAUSE WHEN THE STATE OF FLORIDA ALLOWED IT TO GO UNCORRECTED WHEN IT WAS PRESENTED FOR CONSIDERATION

WHETHER THIS HONORABLE HIGH COURT MUST INTERVENE WHERE ASST. PROSECUTOR'S ACTION VIOLATED A FEDERAL PROTECTED RIGHT GUARANTEED TO PETITIONER BY THE FOURTEENTH AMENDMENT [U.S.CONST.] AMEND. 14

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APPENDIX C	State Court denial of Rule 3.850
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APPENDIX E	State Response to Post-Conviction Motion
APPENDIX F	Defense Motion for Rehearing/Clarification in L.T.
APPENDIX G	Appellant's Initial Brief
APPENDIX H	Appellee's Answer Brief
APPENDIX I	Appellant's Reply to Appellee's Response

LIST OF PARTIES

[] All parties does not 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:

RELATED CASES

Anderson v. State, 574 So.2d 87, 91 (Fla. 1991)

Johnson v. State, 44 So.3d 51, 54 (Fla. 2010)

Mackerly v. State, 777 So. 2d 969 (Fla. 2001)(citing Yates Rule)

Yates v. United States, 354 U.S. 298, (1957)

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 is unpublished.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 is unpublished.

The opinion of the Trial, Post Conviction Court
appears at Appendix C 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 _____.

A copy of that decision appears at Appendix A.

A timely petitioner for rehearing was thereafter denied on the following date:

December 2, 2022, and a copy of the order denying rehearing Appears at Appendix B.

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

Constitutional Law § 509.850 Equal Protection - due Process - State Post Conviction proceeding.

A State which makes available a means of review of a criminal conviction is held to a Constitutional requirement of substantial equality and fair process, may not discriminate arbitrarily between persons applying for relief and must adhere to the requirements of due process.

Constitutional Law § 840

Deliberate deception of a Court and Jurors in a Criminal Case by the presentation of known false Evidence is incompatible with the rudimentary demands of justice.

STATEMENT OF THE CASE

On November 22, 2021 retained undersigned counsel, Thomas Neusom Fla. Bar No. 0037148 filed Motion to Vacate pursuant to Fla. R. Crim. P. Rule 3.850(b)(i) based on Newly Discovered Evidence, to wit: Sworn statement / affidavit of Jerome Morris

Attached in full as App. D.

On February 8, 2022, State of Florida filed it's response to First Amended Motion for Post - Conviction Relief.

See App. E.

On March 15, 2022, State Court conducted Huff Hearing to determine whether an Evidentiary hearing was required and simultaneously refuse to conduct Evidentiary hearing (Discussed in Initial Brief App G.)

On March , 2022 the Court entered judgment denying First Amended Motion for Post Conviction Relief.

See App. C.

On March 29, 2022 undersigned counsel filed timely Motion for Rehearing and Clarification to alert the Court of Law overlooked.

See App. F.

A timely Appeal was sought where undersigned filed an Initial Brief [August 17, 2022]

See App. G.

On October 4, 2022 Asst. Attorney General filed its Answer Brief. On October 22, 2022 undersigned Counsel filed Appellant's Reply to Appellee's response.

App. I. See App. H.

On December 2, 2022 District Court silent PCA'ed and denied subsequent Notice for Rehearing. See App. A and App. B

REASONS FOR GRANTING THE PETITION

This case involves a State inmate who through undersigned counsel with good standing with the Florida Bar filed a Motion under Fla. R.Crim.P. Rule 3.850(b)(1) based on Newly discovered Evidence in the form of sworn statement/Affidavit of Jerome Morris, [a] material witness of the alleged crime at issue.

Attached in full as App D

Because Florida Rules of Criminal Procedure is a legitimate available means of review of a State criminal conviction it is held to a Constitutional requirement of substantial equality and fair process, it may not arbitrary discriminate between persons applying for relief and must adhere to the requirements of due process. [Constitutional Law § 509.850] See: Whitney v. Florida, 389 U.S. 138-39 and n. 2 (1967).

STANDARD OF REVIEW

The legal standard governing review under Fla. R. Crim.P. 3.850(b)(i) and (d) where the sworn affidavit evidence shows there has been an infringement of the Constitutional Rights of the Petitioner/Movant as to render or subject the judgment vulnerable to collateral attack is laid down or spelled out in Nordelo v. State, 93 So.3d 178 at 187-88 (Fla. 2012).

In which Florida Supreme Court expressly articulated that such affidavit must be tried and tested at an evidentiary hearing, where it is subject to credibility determination. *Ibid.*

This case presents two distinct issues. The First is whether State Court failed to adhere to procedural due process. The Second is whether State Court failed to maintain the Constitutional requirement of substantial equality and fair process. See: Whitney, supra, 389 U.S. at 138-39 and n. 2.

I.

PETITIONER WAS DENIED PROCEDURAL DUE PROCESS WHERE THE COURT REFUSED TO CONDUCT AN EVIDENTIARY HEARING TO RESOLVE THE CONTROVERSY

Here in this instance, the factual allegations in Jerome Morris affidavit exposes two crucial material facts which promotes the necessity to conduct an Evidentiary "Inquiry" Hearing. (1)His testimony exculpate Petitioner of having committed Burglary that supported the theory of Felony Murder and (2) a Giglio violation occurred based on falsity that rendered the Indictment empty. See: Anderson v. State, 574 So.2d 87 at 91(Fla. 1991)(citing Giglio v. United States, 405 U.S. 150 at 153 and n. 2 (1972)).

The State in its response [App E pg. 2-3] presented its witnesses trial testimony: 1. (d) Hilroy Johnson the victim's Brother testified that he rented the home (where the shooting occurred) and allowed his brother to live there (T. 174-75) and (T. 176, 177-78). 1.(e) McCurdie also testified that the victim lived in the Apartment (T. 95) and 1. (f) Gregory Queeley that he live at the scene of the shooting along with the victim (T. 229). All which appears to support the Indictment that Vincent Patrick Johnson as owner or custodian of 1815 Northwest 84th Street #4. Dade County Florida.

On the contrary undersigned counsel in good Faith properly moved to establish a fact of falsity when he provided the sworn statement of Jerome Morris¹ And other sources which exist to establish a judicially noticeable fact that the Grand jury, the Court and Defendant was all deceived by perjured testimony; considering the other sources, to wit; Private Investigator, Hilda Brown, Arial photo. etc.

¹ Richardson v. State, 182 So.3d 918, 923 (Fla. 1st Dist. 2016)

EVIDENCE RELIEF ON

The State's position [App. E] filed February 8, 2022 is "whether victim legally rented the Apartment in which the homicide occurred is immaterial to Defendant's conviction for First Degree Murder and Armed Burglary".

Id. at page 4-6

Undersigned Counsel properly argued as a matter of law on Motion for Rehearing [App F] that "ownership status is a material element of Burglary. Id. at pg.2 See In re M.E., 370 So.2d 795, 796 (Fla. 1979); Anderson v. State, 356 So.2d 382 at 384 (Fla. 3rd DCA 1978).

In furtherance, Prosecutor represented that: "if the Court were to find merit in defendant's argument that the State cannot establish the "ownership" element for the underlying crime of Burglary in the charge of Felony Murder.

The Appellate Court in Henry v. State, 650 So.2d 707 [App E] at page 6 found there was sufficient evidence in the trial to prove premeditated Murder citing, Holton v. State, 573 So.3d 284 at 289.

Petitioner affirmatively contends that the State's proposition in both instances is misplaced. In this context the DCA Holton precedent is distinguished authority because it fails to address duel theories of Felony Murder and Premeditated Murder nor does it address a "General verdict."

Wherefore counsel for defense on "Rehearing" [App F] properly alert the Court that Mackerly v. State, 777 So.2d 969 (Fla. 2001) controls because of the Yates Rule [354 U.S. 311 n. 13]

Id at page 2

On March 15, 2022 the Court conducted a Huff Hearing to determine whether an Evidentiary Hearing was required and simultaneously denied or refused to conduct an Evidentiary hearing. And a timely notice of Appeal was filed. See Records on Appeal (R. 403-409).

Undersigned counsel filed an Initial Brief [App G] alerting State Appellate Court that Post Conviction Court abused its discretion in refusing

to conduct an Evidentiary contrary to the Rule established by Florida Supreme Court **Nordelo** precedent. Id. at pg. 5
Id. 93 So.3d at 184

And because the State conceded and/or stipulated to insufficient evidence to prove "ownership" element of Burglary for the Felony Murder theory. The failure to conduct evidentiary inquiry is a decision contrary to clearly established Federal Law as determined by the Supreme Court's **Yates** Rule.

At which time Petitioner's Mother spoke out in Open Court (R. 786):

"Your Honor what is this? They gave false statements it was an abandoned house nobody was paying rent."

The Court: I understand See [App G pg. 7]

Petitioner's proposition is the Indictment which register Vincent Johnson as owner and custodian of the premise is "materially" false and is predicated on perjured testimony. [App. G pg. 7]

Not only was the house abandon, it had no running water or electricity and no evidence was adduced that Hilroy Johnson rented the premise nor had possessory interest because he personally testified to the wrong address [1815 N.W. 84 Street] a place where the crime in fact did not occur and that none of the individuals ever entered the premises [1815 N.W. 84th Street]. The crime or incident for that matter occurred at [1811 N.W. 84th Street] which would and does actually expose Prosecutorial misconduct who in fact created a false possessory interest to justify the crime of Burglary as an underlying Felony for Murder rightfully argued during Appeal. [App G page 8]

Asst. Attorney General proposition in her answer Brief [App H] is the Affidavit of Jerome Morris does not establish a fatal variance between the indictment, and the proof at trial that Petitioner committed a Burglary or a Murder. Even if the victim did not live at that address or it was the wrong address it would not have made any difference to his finding of guilt. Id. at pg. 9

Asst. Attorney General further misrepresents that appellant's reliance on M.E., and Anderson is misplaced as M.E. supports the State's position because she is under the impression that In re M.E. 370 So.2d 279 (Fla. 1979) disapproved the "ownership element" in Anderson, 356 So.2d 382 (Fla. 3rd DCA 1978). However, the 3rd DCA relied on Anderson Ten years later in T.A. v. State , 553 So.2d 1310 (Fla. 3rd DCA 1989).

The State failed to recognize the rationale that:

"It is not simply because perjured statements are false that they lack First Amendment protection."

Perjured testimony is at war with justice because it caused the Court to render a judgment not resting on the truth. In Re Michael, 326 U.S. 224, 227 (1945).

Petitioner is entitled relief based on the Yates Rule due to the general verdict to which evidence clearly negates the Felony Murder theory. [App. 1]

Petitioner is entitled to relief based on the exposed Giglio violation in which the State Court allowed to go uncorrected when presented in this collateral review. [405 U.S. 150] id. at 153 n.2.

This Honorable High court must intervene because State Prosecutor solicited false statements to establish the underlying charge of Burglary to justify the theory of Felony Murder in which such act violated a Federal protected right guaranteed to petitioner by the Fourteenth Amendment to the United States Constitution; including the Due process clause under the Fifth Amendment. See: Smith v. Phillip, 455 U.S. 209 at 221 and n. 6 (1982) See: also Miller v. Pate, 386 U.S. 1 at 7 (1967).

CONCLUSION

The petition for a Writ of Certiorari should be granted by this Court to correct the miscarriage of justice Id. 286 U.S. at 7 or dismissed as improvidently granted, without prejudice to an application of Habeas Corpus in the United States District Court of Florida Southern District.

Respectfully submitted,

/s/ *Shawn Henry*
Shawn Henry
Date: February 1, 2023.
March