

S.H.
PROVIDED TO
MARTIN CORRECTIONAL INSTITUTION
ON 12/28/23
FOR MAILING

No. 22-7406

IN THE
SUPREME COURT OF THE UNITED STATES

SHAWN HENRY --- PETITIONER

vs.

STATE OF FLORIDA --- RESPONDENT(S)

ON PETITION FOR REHEARING
UNITED STATES SUPREME COURT RULE 44

PETITION FOR A REHEARING

SHAWN HENRY DC# 123242
MARTIN CORRECTIONAL INSTITUTION
1150 S.W. Allapattah Road
Indiantown, Florida 34956-4301

COMES NOW, the Petitioner, Shawn Henry, Pursuant to Rule 44, moves this Honorable Supreme Court for Leave to file Petition for Rehearing to prevent [and] correct a fundamental miscarriage of justice. See: Coleman v. Thompson, 501 U.S. 722 at 750 (1991).

The intervening circumstances that are raised in this cause are:

1.) The Petitioner was denied due process of Law within the Fourteenth

Amendment of the United States Constitution whereas exculpatory evidence presented in the case, and was conceded by the State, was insufficient to prove the "Ownership Element" of Burglary for the Felony Murder Theory, in violation of Yates v. United States, 354 U.S. 298.

Thereby, resulting that an Evidentiary Hearing should have been conducted according to the fundamental principles of due process.

2.) The Lower Tribunal failed to consider or address due process violations,

whereas the Prosecutor allows and permits defendant/petitioner to be tried upon a faulty Indictment based on perjured testimony. Thereby resulting in a serious misapplication of the law. This variance in the Indictment warrants a dismissal of the charges.

And in support thereof petitioner will state affirmatively that:

(1) This case involves exceptional circumstances which confines this Court

review to evaluating it in relation to the Federal Constitution. See:

Smith v. Phillips, 455 U.S. 209 at 221 n.7 (1982)(citing Chandler v. Florida, 499 U.S. 560 at 570 and n. 2 (1981)).

(2) This Article III High Court may intervene “only” to correct wrongs of

Constitutional dimension. Id. at 221 and n. 7.

Here, Petitioner on May 10, 2023 placed in Prison Official hands for mailing both this Honorable Court Notice, and waiver form to: Ashley Moody, Chief Officer of the State of Florida. See: Attached.

Even if it was not my place to forward said documents to Florida Attorney General, I expected that the Clerk of Court provided Due Process of Service as a matter of course. However, no reply was serviced upon this Court by any means which presents mixed question of fact and law under these circumstances; and suggest new reasons why this Court’s initial decision to deny Certiorari was wrong. See: Richmond v. Arizona, 434 U.S. 1323 at 1325 n. 3 (1977)(distinguished authority) See: Accompanying Motion for Sanctions per Federal Rules of Civil Procedure Rule 11 (c)(1)-(2).

Petitioner contends *arguendo*, that the Supremacy Clause [Art. VI cl.2] give force to Federal action authorized by the Constitution. See: Cook v. Moffate & Curtis, 46 U.S. 295, 12 L.Ed.159 (1947).

Thus, the correction of a miscarriage of justice is not merely a judicial power, it is an unrenunciable judicial duty to render the Federal Constitution in violative. This Court must ensure that justice is applied fairly and evenly.

This case clearly presents a Giglio violation, *inter alia*, reflected by the evidence that the Petitioner’s State conviction was obtained and secured by the use of false

evidence which violated the Constitutional Guaranty of the 14th Amendment. See: Giglio v. United States, 405 U.S. 150 at 153 and n. 2 (1972).

In fact a long series of case(s) in this very Court established the proposition that:

“The Fourteenth Amendment cannot tolerate a State Criminal conviction by the knowing use of false evidence.”

See: Miller v. Pate, 386 U.S. 1 at 7 and n. 2 (1967).

There has been no deviation from that established principal in Sixty (60) years plus! There can be no retreat from that principal here and now.

The State of Florida's failure to adhere to this High Court order violates Rule 15. Which is mandatory when filing a Brief in opposition. Moreso, importance of the Attorney General silence demonstrates tacit agreement that Petitioner's Constitutional Right had in fact been violated.

THIS IS OF GREAT PUBLIC IMPORTANCE BECAUSE:

It would without doubt convey the wrong alternative to the State of Florida. And the error will certainly repeat itself over and over if this Court fails to correct the wrong of Constitutional dimension. While the State of Florida would appear to be a forum not affected nor bound by [Art. VI cl.2]. And this High Court precedents.

THE SUPREMACY CLAUSE

Under § 1343(3), Congress has created federal jurisdiction of any civil action authorized by law to redress the deprivation under color of state law “of any right, privilege or immunity secured [1] by the Constitution of the United States or [2] by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.” Henry points out that the first prepositional

phrase can be fairly read to describe rights secured by the Supremacy Clause. For even though that Clause is not a source of any federal rights, it does “secure” federal rights by according them priority whenever they come in conflict with State law.¹ As to other rights protected by the Constitution and hence secured by it, brought within the provisions of R.S. § 5508, 18 U.S.C.A. § 51; Logan v. United States, 144 U.S. 263, 12 S.Ct. 617, 36 L.Ed. 429; In re Quarles and Butler, 158 U.S. 532 15 S.Ct. 959, 39 L.Ed. 1080; United States v. Mosley, 238 U.S. 383, 35 S.Ct. 904, 59 L.Ed. 1355; Hague v. CIO, 307 U.S. 496, 526-527, 59 S.Ct. 954, 969, 83 L.Ed. 1423.

The due process clause contains a substantive component that bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them. Zinermon v. Burch, 494 U.S. 113, 125, 110 S.Ct. 975, 983, 108 L.Ed.2d 100 (1990). See also: Salerno, *supra*, 481 U.S. at 746, 107 S.Ct. at 2101; Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 664-665, 88 L.Ed.2d 662 (1986). Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action. Youngberg v. Romeo, 457 U.S. 307, 316, 102 S.Ct. 2452, 2458, 73 L.Ed.2d 28 (1982) “It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection”. Jones, *supra*, 463 U.S. at 361, 103 S.Ct. at 3048

¹ The argument that the phrase in the statute ‘secured by the Constitution’ refers to rights created, rather than protected by it, is not persuasive. The preamble of the Constitution, proclaiming the establishment of the Constitution in order to ‘secure the Blessings of Liberty, uses the word ‘secure’ in the sense of ‘protect’ or ‘make certain.’

The Supreme Court of the United States have always been careful not to “minimize the importance and fundamental nature” of the individual’s right to liberty. Salerno, *supra*, 481 U.S. at 750, 107 S.Ct. at 2103.

The United States Supreme Court has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.. See: e,g, Jackson v. Indiana, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972); Humphrey v. Cady, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972); In re Gault, 387 U.S. 1. 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); Specht v. Patterson, 386 U.S. 605, 87 S.Ct. 1209, 18 L.Ed.2d 326 (1967).

To allow such treatment against Henry overlooks any accountability by the Florida’s Judicial System as well as corrective measures by Florida’s Penal System. Such treatment allows a manifest injustice. That the Ends of justice will never come unto Henry. Thereby, allowing the State of Florida to be hypocrites of the union, in and for the United States of America. And that there is not a Constitution in which the State of Florida has to be accountable for, regardless of Due Process, and Equal Protection of the law withstanding any Constitutional Amendments, that has been the roots of the United States for all it’s historical existence.

WHEREFORE, the fundamental miscarriage of justice exception should apply in this case “where the interest of justice absolutely presents a compelling demand for its application.

The Court should vacate or recall its mandate, and issue the Writ, or alternatively, direct the U.S. District Court to inquire into Giglio, which must be corrected when ever it appears or presented for resolution.

Presented in Good Faith, and not for delay by Pro se Inmate unrepresented by Counsel.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a copy of the foregoing, including Rule 11(c)(2) pleading has been placed in Martin C.I. Official hands for mailing to:

Attorney General
Ashley Moody
The Capitol PL-01
Tallahassee, Florida 32399-1050

This 28 day of December, 2023.

/s/ Shawn Henry
Shawn Henry #123242
Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, Florida 34956-4301

S.A. 15
PROVIDED TO
MARTIN CORRECTIONAL INSTITUTION
ON 12/28/23
FOR MAILING

United States Supreme Court Case No. 22-7406

UNITED STATES SUPREME COURT

Shawn Henry,)
Petitioner,)
)
v.) Case No.: 22-7406
)
)
State of Florida,)
Respondent/Defendant.)

CERTIFICATE STATING THAT THE GROUNDS ARE LIMITED
TO INTERVENING CIRCUMSTANCES OF SUBSTANTIAL
OR CONTROLLING EFFECT

COMES NOW, the Petitioner, Shawn Henry, moves the Court to proceed in this matter, according to the United States Supreme Court Rule 44, for Rehearing, and that the Petitioner is proceeding in forma pauperis under Rule 39, of the Supreme Court Rules and the number of copies required for a petition by such a person under Rule 12.2. This motion is presented in good faith and not for delay.

AUTHORITY

Pursuant to the Rules of the United States Supreme Court for Rehearing Rule 44, and all other applicable application that the United States Supreme Court shall deem appropriate and lawful.

The intervening circumstances that are raised in this cause are:

- 1.) The Petitioner was denied due process of Law within the Fourteenth Amendment of the United States Constitution whereas exculpatory evidence presented in the case, and was conceded by the State, was insufficient to prove the "Ownership Element" of Burglary for the Felony Murder Theory, in violation of Yates v. United States, 354 U.S. 298. Thereby, resulting that an Evidentiary Hearing should have been conducted according to the fundamental principles of due process.
- 2.) The Lower Tribunal failed to consider or address due process violations, whereas the Prosecutor allows and permits defendant/petitioner to be tried upon a faulty Indictment based on perjured testimony. Thereby resulting in a serious misapplication of the law. This variance in the Indictment warrants a dismissal of the charges.

WHEREAS, the Petitioner, Shawn Henry, respectfully requests that this United States Supreme Court will issue an Order GRANTING this said Motion for Rehearing.

Respectfully submitted,

/s/ Shawn Henry
Shawn Henry
DC# 123242
Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, Florida 34956-4301

UNITED STATES SUPREME COURT

Shawn Henry,)
Petitioner,)
v.) Case No.: 22-7406
State of Florida,)
Respondent/Defendant.)

PROOF OF SERVICE

I, Shawn Henry, do swear or declare that on this date, December 29th, 2023, as required by Rules of the United States Supreme Court, I have served the enclosed "CERTIFICATE STATING THAT THE GROUNDS ARE LIMITED TO INTERVENING CIRCUMSTANCES OF SUBSTANTIAL OR CONTROLLING EFFECT"; on each party to the above proceeding and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days. The names and addresses of those served are as follows:

Attorney General Ashley Moody, The Capitol PL-01, Tallahassee, Florida 32399-1050

I declare under penalty of perjury that the foregoing is true and correct. Executed on December, 29th, 2023.

/s/ Shawn Henry
(Signature)

S.H.

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SHAWN HENRY --- PETITIONER

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STATE OF FLORIDA --- RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached Motion for Rehearing without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☐ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s): _____

☒ Petitioner has **not** previously been granted leave to proceed in forma pauperis in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and;

☐ The appointment was made under the following provision of law: _____, or

☐ a copy of the order of appointment is appended.

Shawn Henry
(Signature)