

22-7579

No. _____

FILED
MAY 01 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

KEITH GRANT SCHNEIDER — PETITIONER,

vs.

THE STATE OF FLORIDA — RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE FLORIDA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

KEITH GRANT SCHNEIDER
c/o Tomoka Correctional Institution
3950 Tiger Bay Rd.
Daytona Beach, FL 32124

QUESTION(S) PRESENTED

Where the initial review collateral proceeding is the first designated proceeding for a prisoner to raise a claim of infective assistance of counsel and an appeal is taken, does the appellate court, after appointing counsel for that appeal have a duty, under Anders v. California to conduct a full review of the record where appointed counsel has filed an Anders Brief?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

State of Florida v. Keith Grant Schneider, Case # 2012-CF-596
Circuit Court of Putnam County, Florida

Schneider v. State, Case # 5D19-2737 and 5D20-2147
Florida Fifth District Court of Appeal

Schneider v. State, SC18-1856 and SC22-1607
Florida Supreme Court

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APPENDIX B	Case Docket for Case # 5D20-2147 with <u>Anders</u> Brief entry and related order
APPENDIX C	State's Notice of Intent acknowledging <u>Anders</u> Brief
APPENDIX D	Order Dismissing Appeal without <u>Anders</u> Review

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TABLE OF AUTHORITIES CITED

CASES

Anders v. California, 386 U.S. 738, 186 L. Ed. 2d 493, 87 S. Ct. 1396 (1962)

Martinez v. Ryan, 566 U.S. 1, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012)

STATUTES AND RULES

OTHER

United States Constitution, Amendments Five and Six

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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

The opinion of the highest State Court to review the merits appears at Appendix A to the petition and is reported at Schneider v. State, SC18-1856 and SC22-1607.

JURISDICTION

The date of which the highest state court decided my case was on January 31, 2023. A copy of that decision appears at Appendix A.

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Amendment Five which provides in part that no person shall be “deprived of life, liberty, or property without due process of law...”
2. Amendment Six which provides in part that “In all criminal prosecutions the accused shall have... the assistance of counsel for his defense.”

STATEMENT OF THE CASE

1. On October 5, 2020, the Putnam County, Florida, Circuit Court entered a final order denying Petitioner's pro se Rule 3.850 Motion for Postconviction Relief, alleging in part claims of Ineffective Assistance of Counsel.
2. On October 12, 2020, Petitioner filed a timely Notice of Appeal in the Fifth District Court of Appeal.
3. On October 15, 2020, the District Court of Appeal acknowledged the appeal and assigned case number 5D20-2147.¹
4. Subsequent to acknowledging the appeal, the District Court of Appeal appointed counsel sua sponte.
5. On December 28, 2020, appointed counsel filed an Anders Brief and on March 11, 2021, the State filed a Notice of Intent.²
6. On December 21, 2020, the District Court of Appeal entered an order permitting Petitioner to file an additional brief.
7. Petitioner, with no understanding of law or appellate rules, was unsuccessful in his attempts to file a brief and the District Court entered an order of December 1, 2021, striking his third amended brief and dismissed the appeal without reviewing the record.
8. On November 22, 2022, Petitioner file a Petition for Writ of Mandamus in the Florida Supreme Court seeking to compel the Fifth District Court of Appeal to reinstate his appeal and conduct an independent review of the record pursuant to Anders v. California.
9. On January 31, 2023, the Florida Supreme Court issued an order in which it determined that Petitioner has failed to show a clear legal right to the relief requested.
10. Within the time permitted by rule, Petitioner files the instant petition.

¹ See Appendix B

² See Appendix C

REASONS FOR GRANTING THE PETITION

A. Where a prisoner's initial review state collateral proceeding is the first place a prisoner can raise his or her claim(s) of ineffective assistance of counsel (IAC), that proceeding becomes a prisoner's one and only appeal as to the IAC claim. Thereafter, if an appeal is taken and appointed counsel files an Anders³ Brief, courts should follow the Anders requirements of conducting a full review of the record. In this case the Florida State Supreme Court has determined that Petitioner cannot demonstrate a clear legal right to have the Florida Fifth District Court of Appeal conduct a full review of the record on appeal of his initial review collateral proceeding raising claims of IAC. This Court should grant this petition a matter of great public importance because:

1. This court has determined in Martinez v. Ryan, 566 U.S. 1, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012) that the first designated proceeding for a prisoner to raise a claim of IAC "is in many ways the equivalent of prisoner's direct appeal as to the IAC claim." id. 1315. Florida, along with many other states, currently allow IAC claims to be presented only as part of an initial review collateral proceeding. This court also determined that the right to effective trial counsel is a "bedrock principle of this Nation's justice system." id. 1312. In these states, courts can appoint postconviction counsel but often do not. Where a State court appoints counsel for a postconviction proceeding appeal and the appeal is the equivalent of a direct review of an IAC claim(s), courts should be obligated to conduct a full review of the record on appeal where appointed counsel has filed an Anders Brief. The Florida Supreme Court has characterized Petitioner's request for the Fifth District Court of Appeal to conduct a full review after the filing of an Anders Brief on his postconviction appeal as the assertion of a "right." This court should determine whether the Anders full review

3 Anders v. California, 386 U.S. 738, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967)

requirement has created a "right" and alternatively whether state courts must conduct a full review of the record on appeal after an Anders Brief is filed on appeal from an initial review collateral proceedings raising IAC claims.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Keith Schneider V. 48093 - PRO SE
Keith Schneider, DC # V48095
Tomoka Correctional Institution
3950 Tiger Bay Rd.
Daytona Beach, FL 32124

Date: MAY 01 2023