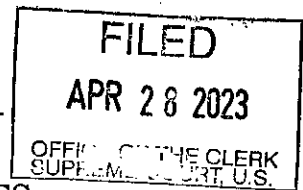


22-7598
No. _____

ORIGINAL



IN THE SUPREME COURT OF THE UNITED STATES

PROVIDED TO
SUMTER CORRECTIONAL INSTITUTION
DATE 4/28/2023
OFFICER INITIALS [Signature]

LARRY DONAHILL JONES - PETITIONER,

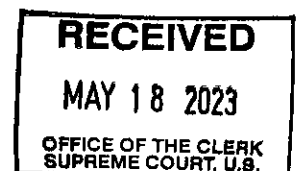
vs.

STATE OF FLORIDA – RESPONDENT(S)

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

LARRY DONAHILL JONES
SUMTER CORRECTIONAL INSTITUTION
9544 COUNTY ROAD 476 B
BUSHNELL, FLORIDA 33513



LIST OF PARTIES

X 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. A list of all parties to the proceeding in the Court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

Cases	Page
<i>Batson v. Kentucky</i> , 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).....	5, 6
<i>Daar v. Burofrd</i> , 339 U.S. 200, 203 (1950).....	8
<i>Hawk v. Olsen</i> , 326 U.S. 271, 278-79 (1945)	8
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<i>Napue v. Illinois</i> , 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).....	7
<i>Purkett v. Elem.</i> , 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995).....	5, 7
<i>United States v. Giglio</i> , 405 U.S. 150, 92 S.Ct. 363, 31 L.Ed.2d 104 (1972).....	5, 7
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JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 2, 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: February 7, 2023, and a copy of the order denying rehearing appears at Appendix F.

☐ 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 timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Equal Protection Clause of the Fourteenth Amendment
to the United States Constitution

Sixth Amendment of the United States Constitution

QUESTIONS PRESENTED

1. DOES THE LOWER COURT'S DECISION DENYING PETITIONER'S CLAIM (THAT THE TRIAL COURT ERRED IN STRIKING A PROSPECTIVE JUROR ABSENT A SUFFICIENT RACE-NEUTRAL AND GENUINE REASON) VIOLATE THE EQUAL PROTECTION PROVISIONS OF THE UNITED STATES CONSTITUTION ACCORDING TO THE *NEIL/BATSON* TEST AS ANNUNCIATED BY THE UNITED STATES SUPREME COURT IN *PURKETT v. ELEM.*, 115 S.Ct. 1769 (1995)?
2. DOES THE LOWER COURT'S DECISION ALLOWING THE TRIAL COURT TO PROVIDE RACE-NEUTRAL REASONS (FOR THE BENEFIT OF THE STATE) IN STRIKING A PROSPECTIVE JUROR VIOLATE THE UNITED STATES CONSTITUTION IN LIGHT OF THE UNITED STATES SUPREME COURT DECISION IN *WILLIAMS v. LOUISIANA*, 136 S.Ct. 2156 (2016)?
3. DOES THE LOWER COURT'S DECISION DENYING PETITIONER'S *GIGLIO* CLAIM (THAT THE PROSECUTOR ELICITED PERJURED TESTIMONY FROM THE VICTIM) VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AS ANNUNCIATED BY THE UNITED STATES SUPREME COURT DECISION IN *NAPUE v. ILLINOIS*, 79 S.Ct. 1173 (1959)?

STATEMENT OF THE CASE

Petitioner, who is African-American, was charged by Information on October 6, 2008, with multiple Counts of Sexual Battery upon a child, Sexual Battery involving familial or custodial authority, and one count of Lewd and Lascivious Molestation. Petitioner's defense at trial was that the victim's story, due to its inconsistencies, lacked credibility. The trial was held seven years after Petitioner's arrest (in 2015). The victim was 22 years old at the time she testified at trial. She testified that numerous sexual encounters between her and the Petitioner occurred between them from age 11 until she was 15 years old.

On July 20, 2015, jury selection began. During selection the State moved to strike prospective juror #10, Ms. Merriman, an African-American woman. Petitioner objected, asking for a race neutral reason. The State provided a non-verbal basis for striking Ms. Merriman. Petitioner argued that a non-verbal basis for striking a juror did not satisfy Petitioner's demand for a race-neutral reason. The juror was examined further by the parties wherein it was discovered the Ms. Merriman had been previously arrested but adjudication had been withheld. The State did not inquire about the nature of the charge which frustrated the Judge. The State restated its non-verbal basis for granting Merriman and only that reason. The Judge rejected Petitioner's non-verbal argument against the strike stating, "the arrest alone on this particular case is a race-neutral reason." Juror Merriman was stricken from the jury.

Petitioner was convicted by a jury of six of his peers for a capital offense and sentenced to Life in prison. Petitioner appealed the judgment of conviction and sentence to the Fourth District Court of Appeals raising the issue that the Trial Court erred in striking prospective juror Merriman absent a sufficient race-neutral and genuine reason, arguing among other things that the Trial Judge himself effectively supplied the State with an entirely different race-neutral basis. The Fourth District *per curiam* affirmed the Trial Court's decision.

Petitioner filed a Motion for Postconviction Relief alleging numerous claims of ineffective assistance of counsel. One of the claims in the motion, Ground 6, alleged a *Giglio* violation by the State in that the prosecutor elicited perjured testimony from the victim. Specifically, the victim had made the original allegation that Petitioner put his penis in her "butt" without using the term "anal sex." Evidence elicited at trial from the victim's medical examination proved there was absolutely no damage to the victim's anus. The prosecutor paints the picture as the victim did not know the meaning of "anal sex," eliciting testimony from the victim allowing her to now testify under oath that no anal sex had occurred.

The PCR motion was denied by the Trial Court and the Fourth District Court of Appeals *per curiam* affirmed the denial of the PCR.

Petitioner raised the above Direct Appeal and PCR claims to the United States District Court, Southern District of Florida in a U.S.C. §2254 petition. The Southern District denied the Petition. The United States Court of Appeals for the

Eleventh Circuit denied Petitioner a Certificate of Appealability. This Petition for Writ of Certiorari follows.

Petitioner seeks review of the state-court judgments, specifically in the Court of first instance, and in the subsequent State Appellate proceeding and in subsequent Federal habeas corpus proceedings where the federal questions sought to be reviewed were raised. Petitioner's federal questions are timely and properly raised and this Court has jurisdiction to review the judgment on a Writ of Certiorari.

REASONS WHY THE WRIT SHOULD BE GRANTED

The State of Florida's Fourth District Court of Appeal has sided with the Seventeenth Judicial Circuit, Broward County, Florida and decided an important question of Federal Law contrary to decisions of the United States Supreme Court.

As to the first question presented in this petition concerning striking a prospective juror absent a sufficient race-neutral and genuine reason, in the instant case, the record supports the prosecutor gave a non-verbal basis for striking Ms. Merriman and only a non-verbal basis.

"She does not appear to be taking this seriously, was laughing during the questioning. She acknowledged she was laughing during the questions, when she was brought in here."

In 1986, the United States Supreme Court, in *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986) found that discriminatory exercise of preemptory challenges based on race or ethnicity violated a Defendant's rights to equal protection and to be tried by an impartial jury under the United States and State constitutions. In 1995, the United States Supreme Court modernized and restated the *Batson* test in *Purkett v. Elem.*, 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995)

In *Batson*, 476 U.S. AT 106, Justice Marshall, J., in a concerning opinion stated:

"Preemptory challenges based on bare looks and gestures are not acceptable reasons unless observed by the Trial Judge and confirmed by the Judge on the record.

In the instant case, there is no substantive difference between Merriman laughing and the “bare looks and gestures” articulated in *Batson*, and Merriman laughing was not observed by the Trial Judge or confirmed by the Judge on the record.

As to the second question presented in this petition concerning the Trial Court providing a race-neutral reason for the State for the purposes of striking Ms. Merriman, the prosecutor placed on the record that the basis for striking Ms. Merriman was her laughing. Despite this being the only basis presented by the prosecutor for the strike, the Judge inserts into the record (for the benefit of the State) “the arrest alone on this particular case is a race-neutral reason.”

In 2016, the United States Supreme Court decided *Williams v. Louisiana*, 579 U.S. 911, 136 S.Ct. 2156, 195 L.Ed.2d (2016). *Williams* cited *Batson*’s second step that “the Trial Court [must] demand an explanation from the prosecutor.” See *Johnson v. California*, 545 U.S. 162, 172, 125 S.Ct. 2410, 162 L.Ed.2d 129 (2005)(The *Batson* framework is designed to produce actual answers [from a prosecutor] to suspicions and inferences that discrimination may have infected the jury selection process). It is improper to rely on judicial speculation to resolve plausible claims of discrimination. *Williams* at 136 S.Ct. 2157, (the United States Supreme Court has made clear...that the State is obligated to offer a race-neutral reason. The Judge is an arbiter, not a participant in the judicial process. Allowing the Court to provide race-neutral reasons for the State violates the Constitution.)

As to the third question presented in this petition concerning Petitioner's claims that the prosecutor elicited perjured testimony from the victim, a *Giglio* violation, and violated the due process clause of the Fourteenth Amendment, the United States Supreme Court in *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959) articulated that when the State, although not soliciting false evidence; allows false evidence to go uncorrected when it appears (360 U.S. 264 at 269) the result is deception of the Court and jurors. See also *Mooney v. Holohan*, 294 U.S. 103, 112, 55 S.Ct. 340, 79 L.Ed. 791 (1935)(deliberate deception of a Court and jurors by the prosecution of known false evidence is incompatible with "rudimentary demands of justice"). *Napue* and *Mooney* are cited in *United States v. Giglio*, 405 U.S. 150, 92 S.Ct. 363, 31 L.Ed.2d 104 (1972).

CONCLUSION

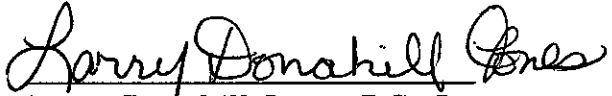
The applicability of the United States Supreme Court decisions in *Purkett*, *Williams*, and *Napue* (as cited herein) to this case (as decided by the lower courts) are contrary to decisions of the United States Supreme Court in those case. The law requires obedience to the United States Supreme Court decisions. A fair-minded jurist in this matter could argue that the lower courts have departed from the essential requirements of law and that these violations of the clearly established principle of law is a miscarriage of justice. The lower courts' interpretation and application of the constitutional provisions of the Sixth and Fourteenth Amendments to the United States Constitution constitute a basis for granting certiorari review. It would be unreasonable to conclude otherwise.

Petitioner has herein stated a good cause of action and argues that through denial of the asserted constitutional rights he has not had the kind of trial in the State Court which the Sixth and Fourteenth Amendments require, therefore relief is required.

The filing of this writ "command[s] general recognition as the essential remedy to safeguard a citizen against imprisonment by State or nation in violation of his constitutional rights. *Daar v. Burofrd*, 339 U.S. 200, 203 (1950); *Wade v. Mayo*, 334 U.S. 672, 677 (1948); *Hawk v. Olsen*, 326 U.S. 271, 278-79 (1945).

The petition for a Writ of Certiorari should be granted.

Respectfully submitted,


Larry Donahill Jones, DC# I48125

Dated:

April 28, 2023