

N: 23-5231

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
JUN 28 2023
OFFICE OF THE CLERK

IN RE
MARIA NAVARRO MARTIN, Petitioner
v.
STATE OF FLORIDA, Respondent

ON APPEAL FROM THE UNITED STATES COURT OF
APPEAL FOR THE ELEVENTH CIRCUIT

EX-PARTE
PETITION FOR
WRIT OF HABEAS CORPUS
Pursuant 28 USC § 2241

MARIA NAVARRO MARTIN
#19C32311-BDerm-CCCN
PBx 4970, Orlando
Florida 32802-4970

QUESTIONS PRESENTED

(1) Is the Conviction imposed in a Fla. Statute 914.22 (1)(2), void if the Statute was declared Vague and Unconstitutional and that it violated the Due process Clause of Florida Constitution and United States Constitution?

(2) Are the Facts alleged in the defendant's Motion to Dismiss deemed admitted; if the plaintiff, failed to file a demurrer or Traverse to specific facts alleged in the defendant's Motion, as is required by F.R.C.P. 3.190(d) (1977 Amendment)?

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS.
Under the authority of 28 USC § 2241

Petitioner, respectfully prays that a Petition for Writ
of Habeas Corpus be issue to review the judgment below:

OPINIONS BELOW

[X] FROM CASES OF FEDERAL COURTS:

The opinion of the United States Court of Appeals
appears at appendix A; to the petition docket # 22-5339
and is:

[] reported at _____ or,

[] has been designated for publication but is not yet reported

[*] Is unpublished

JURISDICTION

[X] For Cases From Federal Court

The date on which the United States Court of Appeal for the Eleventh Circuit decided my case, are attached in the SC. Docket N: 22-~~5339~~.

[X] No petition for rehearing was timely filed in my case.

The Jurisdiction of this Court is invoked under 28 USC § 1254(1) and Conforms to the Art III of the Constitution of the United States, and under the provisions of 28 USC § 1251, Amend. 11, US Constitution; 28 USC § 2251, and 28 USC § 1651(2)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

- United States Constitution, Amend V, XIV
- Constitutional Law § 840, § 520, § 850, § 171, § 850
- 28 USC § 2241 (b).
- 28 USC § 1651 (2)
- 28 USC § 224E
- 28 USC § 2250
- 28 USC § 2283
- 18 USC § 3662
- Fla Rule Crim. Proc. 3.190 (d)
- Fla Statute § 914.22 (1)(2)
- Fla. Statute § 914.22 (5)(a)
- Fla. Statute § 409.920(2)(2) + and 409.920(2)(b) J.C.
- Fla. Statute § 933.
- Fla Rule App. Proc. 9.200 (a)(1)(2)(3)
- Fla Rule App. Proc. 9.430 (d)(B)
- 2 USC § 288 et seq. (1978)
- 28 USC § 1915 (b)(4)

for the Eleventh Circuit Case N: 22-11351-J and 22-11353-J, including but not limited to all the Court record filed in the District Court of Appeal, Middle District Orlando Div: Case N: 6:22-CV-149-PBS-EJK, additionally, because those items are already within the Court filed in their entirety, and are readily available to the parties, the petitioner will not be attaching individualized copy of the referred Records, since that are actually confined in a State Court without access to copy the documents. To the referenced Record herein after referred as "Response to Petition" (RP), followed by page Number. All the other Exhibits are attached herein.

STATEMENTS OF THE CASE.

The petitioner is seeking a Writ of Habeas Corpus, pursuant 28 USC § 2241, since that the petitioner has exhausted all the available remedies in State Court; which had loses all the jurisdiction over the person, by the filing of a Notice of Removal in the Florida Dept of Corrections, since, September 2019.

"Once a notice of removal is filed the State Court shall proceed no further unless and until the case is remanded." 28 USC § 1446(d). "The State Court loses all the jurisdiction over the case, and being without jurisdiction, its subsequent proceedings and judgments are not simply but absolutely void, Every order thereafter made in that Court is Coram Non Judge," See Kern v. Hurd Koper, 103 US 485, 493, 26 LEd. 354 (1981). Stearns Ship Co. v. Tugman, 106 US 118, 122, 15 CT, 58, 27, LEd. 87 (1902). Fed Practice P. § 373C, pp. 727-729 (2018)

"Petitioner has made a continual good faith effort to bring her petition before the proper forum and has faced roadblocks at every turn," See *Gibson v. Klevenhagen*, 777 F.2d 1056, 1059 (5th Cir 1985); which, "allows a petitioner to seek federal relief before state proceedings are completed," See *Reed v. Chappell*, 574 U.S. 1041-42 (2014). (Sotomayor Justice, opinion).

The denial of the relief sought in the United States Court of Appeal for the Eleventh Circuit; the District Court of Appeal of Middle District of Florida, Orlando Division and Ocala Division, and of the Ninth Judicial Circuit Court of Orlando Florida, was through denial of right to proceed in forma pauperis; which might constitute "ABUSE of discretion," if litigant was proceeding pro se," See *Maleng v. Cook*, 490 U.S. at 330, 488, 493, 494 (1989) (per Curiam). "Summarily dismissed by means of denial in forma pauperis status is reversible error abuse of discretion when district court inappropriately resolved genuine issues," See *Wesson v. Oglesby*, 910 F.2d 278, 282 (5th Cir 1990).

The lower court(s) are declaring invalid the Fed. law 28 USC § 1915(b)(4); "in no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has not assets and no means by which to pay initial partial filing fee". Also declaring invalid the F.R.A.P. 9430(d)(B); "In Cases involving criminal or collateral criminal proceedings, an incarcerated party who has been declared indigent for purposes of proceedings in the lower Tribunal, remains indigent." the petitioner was declared insolvent on August 22, 2021; in the lower Tribunal. (Order attached to Motion To Leave proceed in forma pauperis).

The petitioner alleged, that despite of numerous requests made to officials of Dept of Corrections, the monthly payments copy, required by the United States Court of Appeal of the Eleventh Circuit, was not provided to the petitioner, which the applications were denied in this Court.
"For want of Prosecutor."

This honorable Court should review its decision, since that: "A United States Court of Appeal has entered a decision in conflict with the decision by a State Court of last resort and that so far departed from the accepted and usual course of judicial proceedings," as to call for an exercise of this Court's supervisory power.

The decision in *Mitchell v. Moore*, 786 S.2d, 521, 2001 F. Lexis 736 (Fl. 2001), stated: "Since that the procedural hurdles caused by the copy requirements of the prisoner indigency, statutes § 57085, can and in some case do rise to the level of access to the Courts, it is unconstitutional, under Fla. Const. Art. I § 21," and contrary to the decision rendered on *CHILDS v. Ortiz*; allow to the petitioner skip monthly payments, requirements of 28 USC § 1915(b)(4), if she could show Cause." See *CHILD v. Ortiz*, 259 F. App. 139 (10th Cir 2007) because the defendant had stated a previous adjudication of Indigency.

The decision of the United Court of Appeal for the Eleventh Circuit is contrary to the decisions rendered on, *Hughes v. Beck*, 161 Fed App 797 (10th Cir 2006), *Kincade v. Sparkman*, 117 F.3d 949, 1997 App'ed. 0192 (6th Cir 1997), *Gargu v. Thaler*, 555 F.3d 888 (5th Cir 2009), *Malone v. Hendrick*, 271 F.3d 1139 (8th Cir 2001), *Paul v. Narberry*, 655 F.3d 702 (7th Cir 1999); which is established "filing fee are inapplicable", to habeas Corpus proceedings, which the Court applied erroneously the 28 USC § 2254.

"The Due process of Law, by Contrast, is not limited as it protects defendant's during entire Criminal proceedings through and after Trial," See *Melby v. Pfeiffer*, 750. "A Federal Court may grant the writ if the State Court arrives at a Conclusion opposite to that reached by the United States Supreme Court on a Question of Law," See *Parker*, 244 F.2d at 837, 36. 28 USC § 2254(e)(2). The petitioner alleged the Violation of Fourth Amendment of the United States Constitution and the Due Process Clause in State and Federal Court, and the judgment and Sentence in a Fla. Statute, declared previously Unconstitutional and declaring invalid an important provision of the Fla. Statute 914.22 (5)(2). "IT is unprofessional Conduct for a prosecutor to recommend a indictment... before they are satisfied, they will be able to establish the suspect's guilt beyond a reasonable doubt," See *United States v. Eirell*, 383 US, 116, 152 LEd.2d 627, 86 S.Ct 773 (1996). "Exceptions exists for instances in which habeas petitioner had no realistic opportunity to litigate her Fourth Amendment Claims fully and fairly in State Court System," See *Sanna v. DiPaolo*, 265 F.3d 1, (1st Cir 2004). "to indicate a private right, need only allege an invasion to that right to establish standing," See *Spekter v. Robins*, 575 US, 136 S.Ct. 1540, 194 LEd.2d 633 at 650 (2016). *Frank v. Gaes*, 139 S.Ct. 1041 (2021).

The petitioner alleged, without be decided by the Court, that "the Statute of Conviction employed an unconstitutional penalty provision, her consent to be punished under the Statute, precluded this defense," See *Brandy*, *supra* at 756-757, 90 S.Ct. 1963, 25 LEd.2d, 747.

The petitioner allege, the Sentence and judgment in the Case N: 2017-CF-010498-A-0 on the Count One of the information, violate (d) The Due Process of the Law. "Petitioner preserved these specific arguments and whether the Sentence was substantively unreasonable if was a legal error at issue in an appellate challenge to the substantive reasonableness of the Sentence," See *Holguin-Hernandez v. United States*, 140 S.Ct. 762, 266 L.Ed.2d 952 (2020), US. Lexis 365, 28 Fl. Lexis N: 18-7731 (2020), but being denied also, a certificate of appealability by means to proceed in forma pauperis.

Persuant, Reagan Justice opinion, "Paragraph (2) of subsection (1) of the Section 944.22, Florida Statute (1985), are Unconstitutional, Art. I § 9 of Florida Constitution and Accord US. Constitution Amendment XIV."

"By requiring the defendant to prove his innocence, this Section would relieve the STATE of its obligation to prove the defendant's guilt, beyond a reasonable doubt, of every element of the crime, that should deprive defendant of Due process of Law," 397 US 355, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970). *Malloney v. Wilbur*, 421 US 684, 95 S.Ct. 1881, 49 L.Ed. 2d 508 (1975). *John v. State*, 476 S.2d 123 (Fl. 1985). (Bell Justice, opinion) *State v. Cohen*, affirm the Trial's Court order declaring Section 944.22 (1)(2) Unconstitutional. (Downey, and Lett, JJ concur). In *STATE v. COHEN*, 595 S.2d 394, 1989, Fl. App. Lexis 749 (Fl. 4th DCA 1989) aff'd, 568 S.2d 49, 1990, Fl. Lexis 1173 (Fl. 2nd DCA 1991). Which "the Conviction imposed should be Vacate retroactively", pursuant *Bell v. State*, 585 S.2d 1125, 1991 (Fl. Lexis App. 9050 (Fl. 2nd DCA 1991)).

The Supreme Court of Florida, held "not only is Vague, the Statute is also Unconstitutional," See *STATE v. COHEN*, which "the Statute was unconstitutionally void-for vagueness under the Fifth Amendment's Due Process Clause," See *Johnson v. United States*, 576 US, 135 S.Ct, 192 LEd.2d 569, 578. "Void-for vagueness was a substantial decision that applied retroactively to a prisoner's case on collateral review," See *Welch v. United States*, 136 S.Ct, 1257, 194 LEd.2d 387 (2016). "In our Constitutional order a Vague Law, is not Law at all," (Justice Gorsuch, opinion) in *United States v. Davis*, 139 S.Ct, 2319, 2019 LEd.2d 757 (2019).

"An Unconstitutional Statute is deemed Void from the Time of its enactment," See *State ex rel. Nureen Green*, 88 Fl. 249, 102 So. 759 (1924). "The application of a facially unconstitutional Statute is a fundamental Error," See *Trushy, Part v. State*, 528 So.2d 104 (Fl. 4th DCA 1987). "An fundamental Error may be raised at any Time," See *Hamm v. State*, 380 So.2d 110 (Fl. 2nd DCA).

"It is unprofessional Conduct for a prosecutor to recommend an indictment before establish the suspect's guilt beyond a reasonable doubt" pursuant *United States v. Ennell*, 323 US, 116 S.Ct. (1996), not only the prosecutor recommended an indictment in a Fla Statute declared Unconstitutional; if not also declaring invalid the Fla. Statute 914.22(5)(a) which is establish: "An official proceeding need not be pending or about to be instituted at Time of the offense".

Upon Court statements the official proceeding was "pending" at Time of the judgment and Sentence. (See RP, Exhibit A, P. 1025-113). which the Court erroneously denied

The Motion for Judgment of Acquittal, rendered on April 22, 2019, previously to the Sentence imposed, the Court was declaring invalid the Federal Statute 914.22 (5)(2), and being it an Element of the Crime, "Withheld Testimony in an official proceeding", (See RP, Exhibit A, 277), not known at Time of the Sentence and judgment.

"The Text... simply lists the elements that make a defendant's behavior criminal. As a matter of ordinary English grammar, the U.S. Supreme Court normally reads the statutory term 'knowingly', as applying to all the subsequently listed elements of the Crime." See *Dehaif v. United States*, 139 S.Ct. 2191, 204 L.Ed.2d 594, 2019 US LEXIS 4199, 27 Fla. L.W. Fed. S1c11 (2019). *Flores-Figueroa v. United States*, 556 U.S. 646, 650, 129 S.Ct. 1886, 173, L.Ed.2d 853 (2009).

The petitioner adopts and incorporate all the Facts stated in the Reply Brief filed on the Cause N° 22-5339 filed in this Supreme Court of United States, as evidences that the Conviction was imposed upon perjured evidence, in violation of the Constitutional Law § 840 being it's a Conduct of the State, upon Const. Law § 520, and which the petitioner alleged as the State Court failed to comply with its Duties to protect the petitioner's Constitutional Rights, pursuant Const. Law § 171.

Pursuant the Const. Law §§ 520-850 - The Due process was violated by the Court, declaring invalid the Mandate rendered in the DC. Case N° 5021-1785, declaring invalid the F.R. AP. 9.200 and 9.480 (d)(B); denying proceed in Formas pauperis,

"the Courts below erred in summarily denying the petition for Habeas Corpus without acting on the application in either (1) issuing an order to show Cause or (2) ordering a hearing on the factual matters presented by the allegations of the petition." See *Widger v. Johnston*, 312 U.S. 275, 85 L.Ed. 830, 61 S.Ct. 574, 28 USC § 2243, and where "Exceptions exist for instances in which habeas petitioner had no realistic opportunity to litigate her Fourth Amendment claim fully and fairly in STATE System", See *Sanna v. Dipack*, 265 F.3d 1, (1st Cir 2001). "The due process of law, by contrast, is not limited, as it protects defendants during entire criminal proceedings through and after trial." See *Halsey v. Pfeiffer*, 750; being its filed, as follows:

(1) A first petition for Writ of Habeas Corpus filed in the District Court of Appeal Middle District, Orlando Division Case N^o 6:22-CV-00804-RBD-LHP, denied by means of proceed in Forma pauperis, being now the Case in review of the United States Court of Appeal of the Eleventh Circuit, Case N^o 22-12175-F, denied by means to proceed in Forma Pauperis.

(2) A Second petition for Writ of Habeas Corpus filed in the District Court of Appeal, Middle District OCALA DIVISION, Case N^o Case: 22-CV-00405-TPB-PRL, denied Certificate of appealability for means to proceed in forma pauperis, being now the Case in Review of the United States Court of Appeal for the Eleventh Circuit Case N^o 22-13409-J, being it also denied by means to proceed in Forma pauperis.

As Justice Breyer explained in *Magnwood v. Patterson*, 561 US 320, 130 S.Ct. 2788, 177 L.Ed.2d 592 (2010), "An application containing a claim that the petitioner had no fair opportunity to raise in her first habeas petition, is not a second or successive application." at 343, 130 S.Ct. 2788, 177 L.Ed.2d 592 (2010).

The petitioner alleged that despite of numerous request to Classification officers in the institution(s) where is in STATE Custody, the copy requirements of indigency status were not provided. "Since that procedural hardship caused by the copy requirements of the prisoner Indigency Statutes, can and in some case do rise to the level of access to Courts, it is unconstitutional under Florida Access to the Courts provisions of the Florida Constitution Art I § 21, interest of justice, requires that Court apply this new rule to all the inmates who file motions seeking to reinstate their cases", See *Mitchell v. Moore*, 788 So.2d, 521, 2001, FL Lexis 736 (Fl. 2001).

"Requirements of 28 USC § 1915(b)(4) permitting to her skip monthly payments if she could show Cause", See *CHILDS v. Ortiz*, 259 F. App. 139 (10th Cir 2007), and since that "Filing Fee was inapplicable to Habeas Corpus proceedings", under *Hughes v. Beck*, 161 Fed App. 797 (6th Cir 2000); *Kincade v. Sparkman*, 117 F.3d 949, 1997 Fed App. 192P (6th Cir 1997); *Garcia v. Thder*, 885 F.3d, 888 (5th Cir 2009); *Malone v. Hendrick*, 271 F.3d, 1139 (8th Cir 2001); *Paul v. Murberry*, 658 F.3d 702 (7th Cir 2011); *William v. Marshall*, 795 F. Supp. 978, 92, DAD 11168 (1992), being "it an abuse of discretion if litigant was proceeding pro se", See *Maleng v. Cook*, 490 US. at 330, 488, 493, 494 (1989) (Per Curiam).

"Summarily dismissal by means of denial in Forma pauperis status, is reversible error abuse of discretion when district court inappropriately resolved genuine issues," See *Wesson v. Oglesby*, 910 F.2d, 278, 282 (5th Cir 1990). "That portion of the order is immediately appealable," See *Roberts v. United States Dist Court*, 339 US 844, 845, 70 S.Ct, 954, 94 L.Ed. 1328, (1950) (per Curiam). "The denial of pauperis status may presently be raised on Appeal," See *Richardson v. Washington*, 2021 US App. Lexis 1744, N: 20-2161 (6th Cir 2021); *Wood v. Dahlberg*, 894 F.2d, 167, n (6th Cir 1990) (per Curiam). *Phillips v. King*, 886 F.2d 824, 825 (6th Cir 1988).

The second petition for writ of Habeas Corpus, in the lower court Case N: 22-13409-J was filed under the authority of 28 USC § 2241. "We hold that the scope of habeas review available in 28 USC § 2241 petitions, by aliens challenging removal orders includes, error of law, including both statutory interpretation and application of law to UNDISPUTED facts or adjudicated facts," See *Oghudimkpa v. Ashcroft*, 392 F.3d, 207, 212 (CA3, 2003), and where the defendant alleged: (1) IT was a case of statutory interpretation, (2) that was retroactive, invalidate the sentence imposed, (3) that the unapplied sentence present an error sufficiently grave to be deemed a miscarriage of justice or a fundamental defect." See *Hill v. Master*, 836 F. 3d 595 (6th Cir 2016) and IT, "included application of legal standard to undisputed or established facts," See *Guerrero-Lasprilla v. Barr*, 140 S.Ct. 1062, 206 L.Ed.2d, 271, 2020 US Lexis 1907, 28 F.4d Fed. S 81 (2020). *Calcano v. Martinez*, 533 US 351; *Reed v. Chappell*, 574, US 1641 (2014).

(3) A Third Application for Writ of Habeas Corpus was filed in the Court of Appeal for the Armed Forces, being it now in Review on District Court Court of Appeal for the Middle District of Orlando Div. Case N:- 6:22-CV-149-RBD-ETK; which was ordered:

2.- Within fourteen (14) days from the date of this order, the petitioner shall file an Amended Petition for Writ of Habeas Corpus... and only the claims listed therein will be addressed by the Court, "rendered by United Magistrate Judge EMBRY J. KID on January 30, 2023, and being actually in Review this Cause, the petitioner adapts and incorporate all the Records filed in this Cause, which are prima facie evidence of Malicious prosecution, as follow:

(A) The Conviction was imposed upon perjured Evidence, (Cst Law § 840.2 "The Constitutional requirement of due process is not satisfied where a conviction is obtained by the presentation of testimony known to the prosecuting authorities to be perjured." See *McDonough v. Smith*, 139 S.Ct. 2149, 204 L.Ed.2d 506, 2019 U.S. Lexis 480, 27 FL. Fed. 965 N:16-485 (2019) (Sotomayor, Justice opinion). "Malicious prosecution is the Common-Law tort most analogous to her fabrication of Evidence Claims", See also, *Wolfe v. State*, 190 So.2d 397 (FLA 1st DCA 1966), *Lee v. State*, 324 So.2d 644 (1976), in support the petitioner adapts and incorporate the following records filed:

(i) Exhibit 3, presented at Trial (Evidence Receipt).

- Prosecutor statements "Zamora sing for it" (RP, Trial T.P. 144-4)

- Prosecutor statements was "Hand delivered", (RP, Trial T.P. 143-420)

- Prosecutor Statements, "No", was delivered. (RP, Trial T. P. 142-174)
- Sustained objection as Speculation (RP, Trial T. P. 193-213)
- State Exhibit 3 presented with a signature different (RP, P. 1139)

(B) Const. Law § 52C - Due Process - Conduct of prosecuting officers;
An Inadvertent discovery violation was found by the Court:

"In the context of a Brady claim, a witness's attempt to obtain a deal before testifying is material." See *Wearry v. Cain*, 577 U.S. 385, 136 S.Ct. 1002, 194 L.Ed.2d 78, 2016, US Lexis 1654 (2018).

"The Confession of G-defendant... must be timely and it must be total",
See *Mattews v. State*, 353 S.2d 1274 (2nd Dist. 1978); In support

the petitioner adapt and incorporate the following records:

- Previous Court order restricting the access to discovery (RP. 891, 125)
- Order Confidentiality of discovery (RP, P. 83)
- Plea not delivered to Counsel at Trial (RP, Trial T. P. 142-18)
- Inadvertent discovery violation found at Trial (RP Trial T. P. 183-213)
- Plea offer filed after Trial (RP, P. 279)
- Requested via email to prosecutor being denied (RP, P. 737)
- Statements prosecutor: That's the complete discovery (RP, Trial T. P. 7)
- Statements prosecutor after Trial "Honestly maybe 8 or 10 CD", (RP 979-980)
- State attorney emails No have the discovery, (RP, P. 321-323)
- State discovery Exhibit, showing Disc B - (RP, P. 226)
- Emails requesting in Motion to Compel (RP, P. 217)
- State Response "only one CD", (RP, P. 121-122)
- Flash-Drive not delivered before Trial (RP, P. 225)

(C) Conviction was imposed upon the use of perjured evidences as STATE Exhibit 1 - Charging Document - showing a Count N=2, found Noble Contendere, after Trial. "Trial Court violate (a) Contention Clause... by introducing impeaching evidence of witness's prior conviction." See *Wrazer v. Hall*, 494 F.3d, 1192 (9th Cir. 2007). "it may be reconsidered where a subsequent hearing or trial develop material changes as evidence... would result in 'Manifest Injustice'". See *Henry v. State*, 49 S.2d, 1361, 1364 (Fl. 1994) Cert. denied, 516 US 830, 136 L.Ed.2d, 55, 116 S.Ct. 101 (1995), In Support, as follows:

- Charging document with Count 2, presented (RP, P. 1037-1038)
- Exhibit presented to jury (RP Trial T. P. 136-41)
- Count 2, Found Noble Contendere (Reply to RP, Exhibit 2)

(D) - the jury instructions, were written by the State, omitting of the jury Room, the STATE Exhibit N=2 (Packet of Information) which should be showed, as follows:

- Jury Instructions, omitting Exhibit 2 (RP, P. 277-278)
- Contained packet of Information, showed as Exhibit 2 (RP, P. 1040 through 1137), which are filed perjured Affidavit to access to our emails accounts as follows:
- Google Notifications regarding subpoena (RP, P. 1061-1062)
- Perjured Affidavit after access issued (RP, P. 1040-1153)
- False Court Seal of Affidavit (RP, P. 1053)
- Subpoena previous access to our emails (RP, Exhibits, Page 571-572-573)
- Falses Check delivered by the State (RP, P. 1107)
- Evidences of Collateral Attack (RP, P. 1117, 1133, 1134)

"The Supreme Court has never held that government may subpoena third parties for records on which the suspect has a reasonable expectation of privacy." See *United States v. Carpenter*, 138 S.Ct. 2066 (2018), *United States v. Marshall*, 671 F.3d 266, 282, 388 (CA-2010).

(E) The petitioner's cell-phone was confiscated by the Agents at Time of the Arrest, without a Search Warrant. "Brady requires the STATE to disclose material information within its possession or control that is favorable to the defense." See *Reichman v. State*, 966 S.2d, 298, 307 (Fl. 2007), *Brady v. Maryland*, 373 U.S. 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). In support the following records:

- Cell-phone requested at Trial (RP. Trial T. P. 280-119)
- Cell-phone requested at Evidentiary hearing (RP. Exh.D, P. 834)
- Affidavit of Confiscation (RP P. 491)
- Evidence Receipt by the State (RP. P. 489)
- Statements prosecutor "not seek a Warrant", (RP. Exh.D. P. 125)

(F) The Arrest Affidavit is invalid, pursuant, *Florida v. Telnie*, 421 S.2d, 1087, 1982 Fl. App. lexis (Fl. 4th DCA 1982), *United States v. Martin*, 297 F.3d, 1308, 1314 (11th Cir 2002). "The Failure of an affiant to subscribe the affidavit for Search Warrant, as is required by Fl. Statute § 933.06, Invalidate the Warrant." In support the petitioner adopts and incorporates the following records:

- Warrant Arrest Affidavit as Homeland Security Agent, being a STATE Agent (RP. P. 30)
- Investigative Notes as STATE Agent (RP. 568-570)
- Statements prosecutor "No seek a Warrant", (RP. Exh.D - P. 125).

(g) "the government violate (d) Constitutional due process if withheld evidence that is material and favorable to the defense, to the guilt or punishment", (Swit v. Cain, 565 US. 73, 75, 132 S.Ct. 627, 131 L.Ed.2d 571 (2012). "Prosecution knowing presentation of false evidence violate (d) Due Process", See Holloway v. Mann, 335 F.3d 707 (3rd Cir) 6/12/06, 343 US 976 (2007).

The State presented perjured testimony of the State witness Ernesto Piville to procure the Conviction, as follows:

- 1) - Before Trial, in deposition, Mr. Piville stated: "Maria never said that to me" (RP. P. 413 through 441).
- 2) At Trial, Mr. Piville change his Testimony, after State also stated: "the State is paying for they are here", regarding witnesses Testimony (See RP. P. 293-412 Trial Transcripts).
- 3) At Trial the Testimony changed was: "To check the paperwork, study it, show it to your attorney so that you won't have to go to Court on Monday" (RP Trial T. P. 216-44).
- 4) Inconsistent statements of State Witness Ms. Benech who stated: "there was not to go to Court, there was a message for me not to take a plea", (RP. Trial T. P. 276 - 418).

Being its statements, an Element of the Crime, as Withheld Testimony in a official proceeding; this perjured statements, should demonstrated that was not known. "the Statutory Term 'knowingly' as applying to all the subsequently listed elements of the crime", See Behar v. United States, 139 S.Ct. 2191, 204 L.Ed.2d 594, 2019 US Lexis 4191, 27 F.L.W. S1011 (2019). Flores-Figueroa v. U.S. 558 US 646 (2009).

The Court, declared invalid the Fla Statute 914.22(5)(a), which is established: "the official proceeding ~~need~~ not be pending"; upon Court statements: "I believe that the case that was pending against Ms. Beneesh and Ms. Navarro Martin", (See R.P. P.385-386, Exhibit D); being now its original proceeding in Review, since that the facts alleged in the defendant's Motion to Dismiss were deemed admitted and since that the Court failed to comply with the Mandate rendered upon Sixth District Court of Appeal Case N-6D-23-2246, "there is denial of due process, where inherently vague statutory language permits selective law enforcement"; See Smith v. Gagnan, 415 US. 566 94 Sct. 1242, 39 LEd 2d 605 (1974), "Trial Court erred in denying defendant's Motion for judgment of acquittal because there was no evidence that defendant had the means or the desire to intimidate her", See Benegas & Membran v. State, 182, S2d. 865 2016 Fl.App.lexis. 235 (Fl. 4th DCA 2016).

The Sentence was imposed upon an Florida Statute, declared "unconstitutional" and "vague", pursuant. State v. CHEN, 545 S2d, 894, 1989 Fl. App.lexis 749 (Fl. 4th DCA 1989), aff'd, 568, S2d, 49, 1990 Fl. Lexis, 1173 (Fl. 2nd DCA 1991) and which the petitioner is entitled to have her conviction vacate, retroactively, Pursuant Bell v. State, 585 S2d, 1125, 1991 (Fl. Lexis App 9050 (Fl. 2nd DCA 1991), "It violate (d) the due process of the Law", pursuant State v. Chen, "the Statute was unconstitutionally void-for vagueness under the Fifth Amendment's Due Process Clause", See Johnson v. United States, 576 US. 835 Sct. 192 LEd. 2d. 569, 578, "Void for vagueness was a substantive decision that applied retroactively", See Welebs v. United States, 136 Sct. 1257, 194 LEd 2d 387 (2016).

(H) The State violate (c) the Federal Law "Ethics in Government Act, 28 USC § 288 et seq (1978), in order to make possible to identify conflicts of interest on executive-branch employees.

"IT is a professional misconduct for a lawyer to violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another." The Professionals Rule 1.8(F) prohibited Transactions to an lawyer for accept compensation for representation for one other than the client, in support of this misconduct and conflict of interest, the petitioner adopt and incorporate the following records:

- Statements Lawyer on Court were was offered \$ 50,000 to his fees in offer convey by the State, (RP. P. 888-889)
- Email offering a plea in exchange of properties (RP, P. 555)
- Rewards to the Unit of 50% of the properties Seized (RP. P. 540)
- Payments made to State Witnesses (RP. Trilt. P. 293-112)
- Falses Court Orders delivered by the State attorney office as to seizure of properties (RP, P. 590-591-592-593).
- Investigative Notes "Unsigned Warrant", (RP - 568)
- Warrant issued to only the properties of the Corporation (RP. P. 566-567)
- Evidence Receipt of all the properties, seized to the petitioner and her family without a Warrant (RP. P. 573-589)
- Evidence Receipt as Homeland Security Dept, (a Federal Search) (RP, P 603-Through 617).
- Evidence of Collateral Attack, after a Tweet sent to the Former President (RP. P. 1117, 624-627-704-1133-1134).

(I) the petitioner request to this honorable Court, be reviewed the United States Court of Appeal Case N: 22-13409-J, which the allegations regarding the Lower Tribunal Case N: 2017-CF-CC1585-B-0, were deemed admitted, by the Failure of the STATE to filed a Traverse to the Defendant's Motion To Dismiss, in violation of F.R.C.P. 3.190(d).

The Court erred, since October 14, 2019, which is established by F.R.C.P. 3.190(d) "The demurrer or Traverse shall be filed a reasonable time before the hearing on the Motion to dismiss."

The defendant was not Transported to this hearing scheduled on October 14, 2019, being in State Custody denying the Court the defendant's Motion without a hearing on August 25, 2021.

"The Trial Court was mandate to a hearing on the merits," See Fox v. STATE, 364 So2d, 226, 1980 Fl. App. 16787 (Fl. 3rd DCA 1980) Merritt v. State, 394 So2d 114 (Fl. 1974). "This language is Mandatory," Ellis v. STATE, 346 So2d, 1044 (Fl. 1st DCA 1977).

Which "the allegations were deemed admitted" pursuant State v. Kalogeropoulos, 758, So2d 110 (Sup. Ct. Fla. 2000), State v. Kemp, 305 So2d, 833 (Fl. 3rd DCA 1977), State v. Morales, 693 So2d, 1983 (4th DCA 1997). Camp v. State, 293, So2d 114 (Fl. 1974), Mark v. State, 115 Fl. 497, 155 S. 787, 1934 Fl. lexis 1622 (1934).

The 1977 Amendment to F.R.C.P. 3.190(d) clearly now requires a specific Traverse to specific material fact or facts, being it the original proceeding which the Court is declaring invalid the F.R. Statute 914.22 (5)(2); it official proceeding need not be pending, and should be reviewed DE Novo, pursuant, Bell v. State, 835, So2d, 392 (2003).

ARGUMENTS CASE N: 22-13409-J

A Second petition for Writ of Habeas Corpus was filed in the District Court of Appeal, Miami Division, Case N: 22-22799-CIV-MARTINEZ, being it Transferred to the place of petitioner's confined at Time, Ocala Division. A new case N: was open in the District Court Middle District, Ocala Division, Case N: 5:22-CV-405-TPB-PRI, and being it ordered be Transferred to Orlando Division, without any Case N: at Time being reviewed by the Court, and denying to the petitioner file a Petition for Writ of Habeas Corpus pursuant § 28 USC § 2241, to the Undisputed facts of lower Court Case N: 2017EF001585-B-0, which as was stated, Is the "pending", official procedure by which the petitioner was sentenced, and being now the Case in appeal N: 22-13409-J, of the United States Court of Appeal for the Eleventh Circuit.

Two Contradictory order(s) were gave in the same Case, the District Court of Appeal, MIAMI DIVISION, allowed proceed in forma pauperis, and the United States Court of Appeal, denied proceed in forma pauperis, by "Want of prosecutor", being it a response to the Court.

"Unrebutted allegations of return to petition for Writ of Habeas Corpus must be Taken as True", See *Vitale v. Hunter*, 206 F.2d 828 (10th Cir 1953). *United States ex rel. Edelson v. Thompson*, 175 F.2d 140 (2nd Cir 1949). Fed. Law 28 § 2248.

"the dismissal of an appeal for 'WANT OF PROSECUTION' is clearly not an affirmance of the judgment," See *Drummond v. Hussen*, 14 NY 6, 61. "An application containing a claim that the petitioner had no fair opportunity to raise in her first habeas petition, is not a Second or Successive application", See *Magwood v. Patterson*, 561 US 320, 130 S Ct, 2788, 177 L Ed. 2d, 592 at 343 (2010) (Breyer Justice, opinion).

In this Second Petition for Writ of Habeas Corpus, pursuant 28 § 2241, the defendant alleged, that the Court erred, declaring invalid the F.R.C.P. 3.190 (d); denying the Case N: 2017-CF-001585-B-0; the defendant's Motion To dismiss, Order rendered by honorable Alvarez Chod on August 25, 2021.

Several Motions were filed with the District Court of Appeal Fifth District of Florida, Case N: 5D21-2434, which was dismissed by the "inability of the lower Clerk to complete the Records on Appeal", depriving the defendant of her right to reconstruct the Records, by prohibit filed her pro se Motions, by order rendered on December 1, 2021. "Trial Court departed of essentials requirements of the lower", denying the access to the Court guarantee by Art. I § 21 of Fla Const. See *Harris v. Gattie*, 263 So3d, 829, 2019 FL Lexis 795, 44 Fla. (2nd DCA 2019).

The defendant has a pending Case Docket N: 22-5339, with this Supreme Court of United State, and requested to the Circuit Court the Transcripts necessary, being it denied by

means to prohibit the defendant, the access to the Court, despite several motions filed alleging that the Defendant's Counsel assigned by the Court, stated on Court: "I don't can make that", when the Court asked to him, Why he don't filed the Motions Necessary, again depriving the defendant the right to reconstruct the Records.

On May 18, 2023, The Circuit Court, declared invalid the Mandate rendered by the Sixth District Court of Appeal in the Case No: 6D23-2246, which was ordered: "Further proceedings be had in Said Cause, if required, in accordance with the opinion of the Court attached hereto, and incorporate as part of this Order, and with The Laws and Rules of Procedure of the State of Florida", rendered on April 27, 2023.

On May 18, 2023, The petitioner requested to the Court her withdrawal of defendant's Counsel and her self-representation, in the above-styled Cause, being denied by the Court, requesting a Second evaluation of Competence, despite the Court was informed that a first evaluation of Competence, declared the petitioner, perfectly competent to her self-representation.

The Court not only declared invalid the Mandate rendered, also the F.R.C.P. 3111(d)(3) which establish: "Regardless of the defendant's legal skills or the complexity of the case, the Court shall not deny a defendant's unequivocal request to represent herself."

The Court is declaring invalid, also the F.R.A.P. 9.200 (2)(1)(2)(3), which the petitioner has right to her records on Appeal, at the filing of the Motion. Upon 18 § 3662 (c)(3). The Records shall be prima facie evidence, that the original was "pending", at time of the Sentence imposed, which the Circuit Court is declaring invalid the Fed. Law 28 USC § 2250 and 18 USC § 3662(b), 18 § 3742(d) and Fed. Rule 39(b).

In the Case in Review, Docket N: 22-~~11351~~ the defendant was denied a petition for Writ of Habeas Corpus. Pursuant 18 § 3771 (d)(3). "If the district Court denies the relief sought, The Movant may file a petition the Court of appeals for a Writ of Habeas Corpus."

The Federal Court had and must exercise jurisdiction in eminent domain proceedings when that jurisdiction is properly invoked. See *Allegheny v. Frank Mfg. Co.* 360 US 185, 79 S.Ct. 1060, 31 L.Ed.2d 1163. The petitioner alleged: "When federal officers participated with State officers in joint search of defendant's residence, it became "Federal Search" Subject To Constraints of Federal Law", *United States v. Ted Ford*, 875 F.2d 446 (5th Cir 1989), *Louisville Trust Co. v. Cincinnati*, 76 F.2d 96 (6th Cir) cert denied, 104 US 707, 17 S.Ct. 995, 41 L.Ed.2d 1183 (1986). "Could enjoin and restrain State Court from interfering with its control and disposition of res in its possession, or from seeking to assert its jurisdiction."

See *Jackson v. Parkersburg*. 8 OBERG, 233 F. 984 (D.W.Va. 1916).

In support, adopts and incorporate the following records.

- Search Warrant by Homeland Security Dpt (RP. Exh A.P. 566 - 567)
- Receipt of Homeland Security of Seizure of Properties (RP. Exh A.P. 5 Bat 5E9).

The Records filed as (RP, Exh. A, P. 566-567), can show that the Warrant was directed only to properties of the Corporation "Angels Center for Autism". The Records filed as (RP, Exh. A, P. 573 through 589), can show that numerous properties were Seized to petitioner and her family without a Search Warrant. "The Excessive Fines Clause is hereof incorporated by the Due process Clause of the Fourteenth Amendment" *Timbs v. Indiana*, 139 S.Ct. 682, (2019). "The automobile exception did not permit an officer to enter a house without a warrant to search the motorcycle," See *Gilline v. Commonwealth*, 292 Va. 488, 790 S.E.2d 611, 2016, 138 S.Ct. 1663 (2018), which the Warrant to the seizure of properties is invalid, "the affidavit must contain sufficient information to conclude that a fair probability existed that seizable evidence would be found in the place sought to be searched," See *United States v. Martin*, 297 F.3d 1308, 1314 (11th Cir 2002), which the decision of the United States Court appeal, is in direct and contradictory legal error to the decision, reached on *United States v. Martin*.

STATEMENTS REGARDING L.T. Case N: 2017-CF-001585-B-0

On February 7, 2017, the petitioner was charged with Two Counts of Information, in violation of Fla. Statute, §§ 409.920(2)(a)1 and 409.920(2)(b)1.c.; On March 21, 2019, after the filing the defendant's Motion to Dismiss in March 4, 2019, the Court 2, was entered NOLE PROSECUT, by the prosecution.

A hearing in the defendant's Motion to Dismiss was scheduled on October 14, 2019. Without the State filed at this time a demurrer or Traverse required by F.R.C.P. 3.190 (d): "the demurrer or Traverse shall be filed a reasonable time before the hearing on the Motion to Dismiss," which at this time, October 14, 2019, the State was not comply with the F.R.C.P. 3.190 (d).

The petitioner was in State Custody in Dept of Corrections of Ocala, Florida and was not transported to the hearing in the Motion. On August 25, 2022, the honorable Alvaro Chad, denied the defendant's Motion to Dismiss, without the State filed a sworn Traverse to specific facts allegedly declaring invalid the F.R.C.P. 3.190 (d). "In the absence of such denial the defendant is entitled to a hearing on the Merits of the Motion." See *Yessell v. State*, 382 S.2d, 1354 (Fl. 4th DCA 1980). *Fox v. State*, 384 S.2d, 228, 1980 Fl App Lexis 16787 (Fl 3rd DCA 1980). "This language is Mandatory," See *Ellis v. State*, 546 S.2d, 1044 (Fl 1st DCA 1977). *State v. Merritt*, 394, S.2d, 531, 1981 (Fl App Lexis 19572) (Fl. 3rd DCA 1981).

"The allegations in the Motion to Dismiss are deemed admitted." See *Camp v. State*, 293 S.2d, 114 Fl 1974, App Lexis 7597 (Fl. 4th DCA) (Ct. denied, 302, S.2d, 413, 1974 App Lex. 4636 (1974)). *State v. Camp*, 305, S.2d, 833 (Fl 3rd DCA 1974). *State v. Morales*, 693, S.2d, 1063 (4th DCA 1997).

the Fla. Sup. Ct. held in *State v. Kaleropoulos*, 758, So2d 110 (Sup. Ct. Fla. 2000). "A Traverse requires more than a 'dod not, did so', swearing matters. The State is required to specifically dispute the material facts alleged by the defendant," "the State had to comply with the F.R.C.P. 3190(d) and be more specific concerning the facts in dispute to deny a Motion to Dismiss." See F.R.C.P. 3190(d), 1977 Amendment.

Being it the "pending" case which the petitioner was sentenced; pursuant the decisions of Sup. Ct. of Florida, stated previously and the F.R.C.P. 3.190(d), the facts stated by the petitioner in her Motion to dismiss, were deemed admitted.

"When seeking to petition under § 2241 based on a misapplied Sentence, the petitioner must show that there is: (1) A case of Statutory interpretation; - (As was alleged in the Motion to dismiss the facts stated that Fla. Statute 409.920 (2)(2), violate (c) the nondelegation doctrine and Due Process of the Law; (2) that is retroactive and should not have been included in the initial motion; (3) that the misapplied Sentence present an error sufficiently grave to be deemed a miscarriage of justice or a fundamental defect. (facts stated previously, in a Sentence imposed in a Fla. Statute declared unconstitutional, and declaring invalid the Fla. ST. 904.22 (5)(a) which is it pending case). See *Hill v. Master*, 836 F.3d, 395 (6th Cir 2016); which the defendant is entitled to relief, under 28 § 2241.

On May 18, 2023, the Circuit Court denied the defendant's Motion to Nelson Inquire, which stated the Court is Mandate to further proceedings, follow the Laws and Rules of Proceeding of the State of Florida. Again the Circuit Court, declared invalid the F.R.C.P. 3.190 (d), denying the defendant's motion, despite the Facts alleged were deemed admitted, since October 14, 2019, its subsequent proceedings in State Court are not simply erroneous, but absolutely VOID. State v. Kegelopoulos, 75E, Sc21110 (Sup Ct. Fla. 2000).

REASONS FOR GRANTING THE WRIT.

This honorable Court, should find as a matter of judicial discretion, as to call for an exercise of this Court's supervisory power, that the decisions of the United States Court of Appeals for Eleventh Circuit denying petitioner proceed in forma Pauperis by WANT of Prosecution are based in Judicial Bias, since that the prosecution is engaged on Malicious prosecution and fabrication of perjured evidence, being it an abuse of discretion and a violation to the Rights guarantee by the United States Constitution Amend. IV, V and XIV.

The petitioner has the Scope of habeas review available in 28 USC § 2241 petition, by always challenging removal orders, which includes error of law, including both Statutory interpretation and application of Law to Undisputed Facts or adjudicated Facts.

the petitioner showed order(s), of both Federal Court and State Court, filed on the Case Docket No: 22-5339 and 22-7331, in this Supreme Court of United States, which the defendant is deprived proceed in forma pauperis, "For Want of Prosecution".

Being it a response to the petition for writ of Habeas Corpus filed in the lower Court, and where "the Court's below erred in summarily denying the petition for writ of Habeas Corpus without acting on the application, pursuant *Walker v. Johnston*, 342 US. 275, 85 LEd 830, 61 Sct. 574, 28 USC § 2243. This honorable Court should find that the Response "For want of prosecutor," is a response to the Court, which "the allegations of a return to the merits of habeas Corpus, if not Traversed, shall be accepted as True." 28 USC § 2248.

And final as matter of judicial discretion, that the petitioner is entitled to relief, since that:

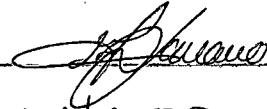
- (1) the Conviction Imposed in a Fla Statute 914.22(1)(2), is Void, since that the Statute was declared Unconstitu-tional and Vague and that violate (a) the Due Process of the Law of Fla Constitution ART I § 9 and United States Constitution Amend. ~~IV~~ V and XIV.
- (2) the Facts alleged in the defendant's Motion to Dismiss are deemed admitted, if the plaintiff failed to file a Traverse required by the F.R.C.P. 3190 (d), sworn to each specif. fact alleged in the defendant's Motion To Dismiss.
- (3) Any and all other relief that it Court deem just and proper.

CONCLUSION

this petition for writ of Habeas Corpus, should be granted.

OATH

Under the authority of Section § 92.525 Fla Statute and STATE v. Shegner, 628 So2d 1102 (Fl. 1994), the petitioner make the following oath under the penalties of perjury: "I declare under penalties of perjury, that I have read the foregoing document and that the facts and matters stated are True."



MARIA NAVARRO MARTIN

#19032311-PBex 32802-4970

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that I have filed the original of this document with the Clerk of Court of United State Supreme Court, on this day ~~May 28~~ 2023. I further certify that an accurate copy of this document be e-served by the Clerk to each lawyer on Record via e-filing Court System, and to STATE of Florida, 444 Seabreeze Blvd, Suite 500, Daytona Beach FL 32118 and to Solicitor General, Room 5616 Dpt of Justice, 950 Pennsylvania Ave NW, Washington DC, 20530-0001, on this day ~~May 28~~ 2023.



MARIA NAVARRO MARTIN

#19032311-PBex 32802-4970

Orlando, Florida 32802-4970.