No. 23-5373 ORIGINAL

In The

Supreme Court of the United States

RONALD BARNETT,

Petitioner,

versus

STATE OF FLORIDA

Respondent(s).

On Petition for Writ of Certiorari
To The Third District Court of Appeal
State of Florida

PETITION FOR WRIT OF CERTIORARI

Ronald Barnett
RONALD BARNETT, Petitioner
DC# M63300
DeSoto Correctional Institution Annex
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

QUESTIONS PRESENTED

I. WHETHER THE THIRD DISTRICT COURT OF APPEAL AND FLORIDA SUPREME COURT VIOLATED THE LAWS GOVERNING THE SEPARATION OF POWER BY CREATING AN UNWRITTEN EX POST FACTO LAW GIVING JUDICIAL COURTS UNLIMITED JURISDICTION TO IMPOSE THE SEXUAL PREDATOR DESIGNATION CONTRARY TO THE EXPRESSED STATUTE OF LIMITATIONS IN FLORIDA STATUTE § 775.21(5)(A)2. IN VIOLATION OF THE PETITIONER'S FIFTH AND FOURTEENTH AMENDMENTS CONSTITUTIONAL RIGHTS

LIST OF PARTIES

☑ 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

RELATED CASES

Alvarez v. State, 345 So.3d 378 (Fla. 3rd DCA 2022)

Bush v Schiavo, 885 So.2d 321, 329 (Fla. 2004) cert. denied 543 U.S. 1121, 160 L.Ed.2d 1069, 125 S.Ct. 1086 (2005)

Chiles v. Children A,B,C,D,E & F, 589 So.2d 260, 264 (Fla. 1991)

Cuevas v. State, 31 So.3d 290 (Fla. 3rd DCA 2010)

Devine v. United States, 202 F.3d 547, 551 (2nd Cir. 2008)

Dragon v State, 3. So.3d 1188 (Fla. 2009)

Espindola v. State, 855 So.2d 1281 (Fla. 3rd DCA 2003)

Fla. Dep't of Revenue v. Fla. Mun Power Agency, 789 So.2d 320, 324 (Fla. 2001)

Holley v. Adams, 238 So.2d 401, 404-405 (Fla. 1970)

Holly v. Auld, 450 So.2d 217 (Fla. 1984)

Lindsey v. Washington 301 U.S. 397, 81 L.Ed. 1182, 57 S.Ct. 797 (1937)

Sacramento v. Lewis, 523 U.S. 833, 845, 140 L.Ed.2d 1043, 118 S.Ct. 1708 (1998)

Saintelier v. State, 990 So.2d 494, 497 (Fla. 2008)

State v. Atkinson, 831 So.2d 172, 174 (Fla. 2002)

State v. Cotton, 769 So.2d 345, 353 (Fla. 2000)

State v. Lewars, 259 So.3d 793 (Fla. 2018)

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No. _____

In The

Supreme Court of the United States

RONALD BARNETT,

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STATE OF FLORIDA

Respondent(s).

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 petition 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 C 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 Eleventh Judicial Circuit court appears at Appendix H 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 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 March 22, 2023
A copy of that decision appears at Appendix C.

☑ A timely motion for rehearing was thereafter denied on the following date: April 14, 2023, and a copy of the order denying rehearing
appears at Appendix A.

☐. An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____, in Application No. A.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 9, Florida Constitution: No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

Article II, Section 3, Florida Constitution: The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Article I, § 10, cl. 1, United States Constitution:

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Article I, § 9, cl. 3, United States Constitution: No Bill of Attainder or ex post facto Law shall be passed.

Article III, U.S. Constitution: The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Amendment V, United States Constitution, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or pubic danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV, Section 1, United States Constitution, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

1. On March 24, 2006, the Petitioner was charged with one count of lewd and lascivious molestation on a child less than twelve.
2. On April 21-23, 2008, a jury trial was held and the Petitioner was declared guilty.
3. On June 30, 2008, the court adjudicated the Petitioner guilty and imposed a 35-year, 25 years minimum mandatory, MDSO life probation sentence.
4. On April 2, 2013, the Petitioner filed a Motion To Correct Illegal Sentence.
5. On July 26, 2013, the Petitioner was re-sentenced to a 25-year sentence followed by five years MDSO probation and on August 9, 2013, the sentence was corrected.
6. On July 20, 2022, over fourteen years after the original sentencing date, the trial court filed an order designating the Defendant as a sexual predator.
7. On August 10, 2022, the Petitioner filed a Motion To Correct Illegal Sentence challenging the designation. (**Appendix I**)
8. On August 23, 2022, the lower court submitted its denial order on the motion. (**Appendix H**)
9. On September 18, 2022, a Notice of Appeal was filed and an Acknowledgment of New Case was issued on September 27, 2022. (**Appendix G**)
10. On December 28, 2022, the Petitioner's Initial Brief was fined with Florida's Third District Court of Appeal. (3rd DCA) (**Appendix F**)
11. On March 22, 2023, the 3rd DCA *per curiam* the lower court's decision. (**Appendix C**)

12. On April 6, 2023, the Petitioner filed a timely Motion For Rehearing. (**Appendix B**)

13. On April 14, 2023, the 3rd DCA submitted its Order denying the Petitioner's Motion For Rehearing. (**Appendix A**)

After a jury trial in April 2008, the Petitioner was adjudicated guilty of one count of lewd and lascivious molestation on a child less than twelve. At the time of sentencing, the State did not seek any designations nor did the court make any written findings. As a result of the illegal sentence imposed during the June 30, 2008 sentencing hearing, the Petitioner was resentenced on July 26, 2013. During this resentencing hearing, the State did not seek any designations and the court did not make any written finding. On July 20, 2022, over fourteen years after the original sentencing hearing and nearly nine years after the resentencing hearing, the lower court, in an *ex parte* hearing, issued an order designating the Petitioner as a sexual predator in violation of the procedures set forth in Section 775.21(5)(a)2., Florida Statutes. The Petitioner's Fifth Amendment, Fourteenth Amendment, and Florida Constitution Article I, § 9, Constitutional rights to Due Process have been violated by Florida Third District Court of Appeal and Florida Supreme Court granting unlimited jurisdiction to the lower courts in violation of the Separation of Powers and *Ex Post Facto* Laws. The violation has usurped Florida Legislature's intent that is unambiguous in Florida's Sexual Predator Act.

This petition follows within 90 days of being affirmed.

REASONS FOR GRANTING THE PETITION

ARGUMENT ONE

WHETHER THE THIRD DISTRICT COURT OF APPEAL AND FLORIDA SUPREME COURT VIOLATED THE LAWS GOVERNING THE SEPARATION OF POWERS BY CREATING AN UNWRITTEN EX POST FACTO LAW TO GIVE JUDICIAL COURTS UNLIMITED JURISDICTION TO IMPOSE THE SEXUAL PREDATOR DESIGNATION CONTRARY TO THE EXPRESSED STATUTE OF LIMITATIONS IN FLORIDA STATUTE § 775.21(5)(a)2. IN VIOLATION OF THE PETITIONER'S FIFTH AND FOURTEENTH AMENDMENTS, AND FLORIDA'S ARTICLE I, § 9 CONSTITUTIONAL RIGHTS

Since times immemorial and the establishment of the United States government, it has been unilaterally agreed that it is the solemn duty of the judicial department to interpret laws. **U.S. v Dickson**, 40 U.S. 141, 10 L.Ed 689 (1841) Article III, U.S. Constitution; 16 AM Jur.2d Const. L. § 210; **Fla. Dep't of Revenue v. Fla. Mun Power Agency**, 789 So.2d 320, 324 (Fla. 2001). In Article II, § 3, Florida's Constitution, it is law that "[t]he powers of the state government shall be divided into legislative, executive and judicial branches. **No person belonging to one branch shall exercise any powers appertaining to either of the other branches** unless expressly provided herein." (Emphasis added) Throughout history, the Florida courts have held firm in adhering to the separation of powers. In **Holley v. Adams**, 238 So.2d 401, 404-405 (Fla. 1970), the Florida Supreme Court held, "It is the function of the court to interpret the law, not to legislate." In **Holly v. Auld**, 450 So.2d 217 (Fla. 1984), it was stated, "We are bound- by our precedent and doctrine of separation of powers to **apply the statute as written**." (Emphasis added) As well, in **Chiles v. Children A,B,C,D,E & F**, 589 So.2d 260, 264 (Fla. 1991); **State v. Cotton**, 769 So.2d 345, 353 (Fla. 2000) and **Bush v Schiavo**, 885 So.2d 321, 329 (Fla. 2004) cert.

denied 543 U.S. 1121, 160 L.Ed.2d 1069, 125 S.Ct. 1086 (2005), the Florida Supreme Court has held, "In construing our constitution, we have traditionally applied a strict separation of powers doctrine [and] no branch may encroach upon the powers of another." Furthermore, to express its historical precedence, in **Wright v. City of Miami Gardens**, 200 So.3d 765 (Fla. 2016) the Florida Supreme Court has opined, "This is certainly beyond our power because as a coequal branch of government with utmost respect for the separation of powers, we can neither legislate nor question the wisdom of Legislature." In continuance of its governance and well established adherence, in **State v. Lewars**, 259 So.3d 793 (Fla. 2018), the Florida Supreme Court again held, "**We are bound** by our precedent and doctrine of separation of powers **to apply the statute as written**." (Emphasis added)

In the case at hand, the lower court, in an ex parte hearing, imposed the sexual predator designation over fourteen years after the expressed statute of limitations in Section 775.21(5)(a)2., Florida Statutes. The subparagraph of the Florida Sexual Predator Act states in pertinent part"

> "An offender ... who is **before the court for sentencing for a current offense** ... the sentencing court **must** make a written finding **at the time of sentencing** that the offender is a sexual predator...." (Emphasis added)

Legislative intent is unambiguous in identifying the class of offenders — "[a]n offender ... who is before the court for sentencing for a current offense" — and the requirement and statute of limitations imposed upon the court — "**must** make a written finding **at** the time of sentencing" — for designating an offender as a sexual predator. This Court and Florida's Supreme Court and Third District Court of Appeal have unilaterally agreed that it is the judicial

branch of government duty to not alter the wording of statutes but to interpret statutes as they are written and give effect to each word in the statute; otherwise, it would be a violation of the separation of powers doctrine and the due process rights of an offender under the Fifth and Fourteenth Amendments.

In **Sacramento v. Lewis**, 523 U.S. 833, 845, 140 L.Ed.2d 1043, 118 S.Ct. 1708 (1998), this Court has held that it is the Due Process Clause that protects the individual against the arbitrary and unreasonable exercise of governmental power. Florida's Supreme Court and Third District Court of Appeal have violated that edict by removing and adding legislative intent to Section 775.21(5)(a)2., Florida Sexual Predator Act. In this current case, the State of Florida has argued that § 775.21(5)(a)2. does not address a specific class of offenders (**Appendix D**, P. 5); **State v. McKenzie**, 331 So.3d 666 (Fla. 2021) and it does not express an intention of a waiver of the right to make the finding in the future. **Cuevas v. State**, 31 So.3d 290 (Fla. 3rd DCA 2010). By doing so, the Florida courts have derailed due process and must be restrained here because their actions have violated the separation of powers doctrine by embarrassing the Legislative arm of government by intruding upon its law making authority. The Florida Supreme Court and Third District Court of Appeals interpretation of legislative intent has arbitrarily changed the meaning of the plain language of Section 775.21(5)(a)2. and led to the false conclusion that they have the authority to delegate to the lower courts absolute and unfettered jurisdiction for imposing the sexual predator designation over those offenders who fell under § 775.21(5)(a)2., F.S.A.

It is a significant step under the separation of powers principles for the Florida Supreme Court and Third District Court of Appeal to determine that they have the authority, under judicial power, to change, create and enforce a cause of action that usurps Legislative intent and

violates a Petitioner's constitutional Due Process Rights in order to remedy a lower court's failure to adhere to the edicts of Florida Statutes § 775.21(5)(a)2. The subsection of the Florida Sexual Predator Act clearly identifies a category of offenders where it states, "An offender ... who is before the court for sentencing for a current offense...." This category of offenders is unmistakably distinguished from those identified in Section 775.21(5)(a)1., Florida Statues and Section 775.21(5)(a)3., Florida Statutes. Individuals who have been civilly committed under Chapter 394, Florida Statutes and those who have established temporary or permanent residency in Florida and have committed an offense in another jurisdiction that is similar to an enumerated offense were intentionally separated from offenders who are "before the court for sentencing for a current offense". The Florida Legislature purposely did so in the Florida Sexual Predator Act (775.21), in order to provide clear and concise procedural mechanism for designating particular offenders as sexual predators and to implement Legislature's substantive policy.

The Florida Supreme Court and Third District Court of Appeal argue that the expressed statute of limitations of "at the time of sentencing" is not a restriction on the lower court's jurisdiction, 331 So.3d at 673, (**Appendix D** P. 5) in violation of the Petitioner's due process rights. Had the Florida courts operated according to its rulings in **Holly v. Auld**, 450 So.2d 217 (Fla. 1984) and **State v. Lewars**, 259 So.3d 793 (Fla. 2018) and applied Section 775.21(5)(a)2. as written in its plain text they would not have violated the principles of the separation of powers and created an illegal, unwritten ex post facto law that grants lower courts unlimited jurisdiction over those offenders who are "**before the court for sentencing for a current offense.**"

To further justify the Fifth Amendment and Fourteenth Amendment and Article I, Section 9, Florida Constitutional violations, the Florida Supreme Court in *McKenzie* and the Third District Court of Appeal in *Cuevas* and **Alvarez v. State**, 345 So.3d 378 (Fla. 3rd DCA 2022) holds that Section 775.21(5)(c), Florida Statutes of the Act grants them authority to give absolute jurisdiction to the lower courts for imposing the sexual predator designation. This is a misinterpretation and misapplication of Legislature's intent. The statutory content of Section 775.21(5)(c), F.S.A., states:

> "If the Department of Corrections ... obtains information ... that an offender meets the sexual predator criteria but the court did not make a written finding ... the Department of Corrections ... shall notify the state attorney ... **for offenders described in subparagraph (a)1., or ... for offender described in subparagraph (a)3....**"" (Emphasis added)

The expressed restriction is specific only to offenders from categories (a)1. and (a)3. who meet the criteria to be designated as a sexual predator. The Florida Legislature's unambiguous recapture clause's strict interpretation, as written, does not include offenders identified in Section 775.21(5)(a)2. because these particular offenders are before the court for a current offense; whereas, those in the other two groups have been previously convicted under Chapter 394 or of a similar enumerated offense from another jurisdiction, respectively. For the Florida Supreme Court and Third District Court of Appeal to inject subparagraph (a)2. into Section 775.21(5)(c) and give lower courts jurisdiction beyond "**must** make a written finding **at the time of sentencing**" (Emphasis added) is a clear violation of the Federal and State separation of powers clauses and a violation of the Petitioner's due process rights. To impose the sexual predator designation over fourteen years after the expressed statute of limitations of "at the

time of sentencing" is unreasonable and unconscionable towards an offender who meets the designation requirements under § 775.21(5)(a)2.

In **Espindola v. State**, 855 So.2d 1281 (Fla. 3rd DCA 2003), Florida's Third District Court of Appeal held, "We however, cannot judicially amend Section 775.21 [(5)(c)] as that province in Florida is left solely to the legislature." The Florida Supreme Court and Third District Court of Appeal decision to not adhere to precedence has led to an unwritten ex post facto law in violation of the Petitioner's rights under the Fifth and Fourteenth amendments. Black's Law Dictionary, page 726 (11th Ed.) defines ex post facto as "done or made after the fact; having retroactive force or effect." Furthermore, Ballentine's Law Dictionary (3rd ed.) defines ex post facto as "...in relation to the offense or its consequences, alters the situation of a party to his disadvantage." **Lindsey v. Washington** 301 U.S. 397, 81 L.Ed. 1182, 57 S.Ct. 797 (1937) This Court's definition of an ex post facto law does not only extend to the enhancement of a punishment but it includes the actual law itself (written or unwritten) and the imposition of conditions, as a result of that law, that leads to the disadvantage of a party.

The Florida Supreme Court and Third District Court of Appeal, after the enactment of the Florida Sexual Predator Act, created an unwritten law to include Section 775.21(5)(a)2., as part of Section 775.21(5)(c), in order to grant absolute and unfettered jurisdiction to lower courts for imposing the sexual predator designation on those offenders identified by § 775.21(5)(a)2., F.S.A. This is the epitome of an ex post facto law, which has been followed for decades, by the Florida courts, illegally.

In **Devine v. United States**, 202 F.3d 547, 551 (2nd Cir. 2008) and Authority 16 AM Jur.2d Const. L. § 198, it was held that, "if the words of a statute are unambiguous, judicial inquiry

should end, and the law is interpreted according to the plain meaning of its words." Interpreting that Section 775.21(5)(a)2. is mentioned as a part of Section 775.21(5)(c), when the language clearly shows otherwise, is a violation of Article I, § 9, cl. 3, United States Constitution, and Article I, § 10, cl. 1, United States Constitution the separation of powers and the Petitioner's Federal and State rights to due process.

The Florida Supreme Court and Third District Court of Appeal would argue that the sexual predator designation is not a punishment, yet all Florida courts have unilaterally agreed that it is an extension of the sentencing process and may be challenged pursuant to Rule 3.800(a), Florida Rules of Criminal Procedure Motion to Correct Illegal Sentence, **State v. McMahon**, 94 So.3d 468 (Fla. 2012); **Dragon v State**, 3. So.3d 1188 (Fla. 2009) and **Saintelier v. State**, 990 So.2d 494, 497 (Fla. 2008). It would be unconstitutional for the State of Florida to provide an avenue for resolving an issue but then allow its courts to deny that avenue under the precept that the avenue is improper for the issue, especially when this Court has held in **Sacramento v. Lewis**, 523 U.S. 833, 845, 140 L.Ed.2d 1043, 118 S.Ct. 1708 (1998) that "the [sexual predator] designation constitutes a deprivation of a protected liberty interest." Even in **State v. Atkinson**, 831 So.2d 172, 174 (Fla. 2002), the Florida Supreme Court held that, "The Act can impose on an individual a substantial deprivation of liberty ... one that is indeterminate duration...."

In light of the above rulings, it is an absolute violation of the Ex Post Facto Clause for the Florida Supreme Court and Third District Court of Appeal to usurp legislative intent in order to allow lower courts to substantially deprive an offender of his liberty interests over fourteen years after the expressed statute of limitations of "for a current offense **at the time of**

sentencing." The combination of violations even boarders on the line of denying the Petitioner equal protection of the law.

No court in the land can deny that Section 775.21(5)(a)2., is specific to those offenders who are before the court for sentencing. As well, no court can deny that the plain language of subparagraph (a)2. also states that the court must make its written findings **at the time of sentencing**. In the same, no court can locate any other portion of the Florida Sexual Predator Act where it alters or gives the authority to alter § 775.21(5)(a)2., F.S.A. In addition, no court, without adding its own interpretation of legislative intent, can show where the Act undoubtedly states that a recapture clause exist for those offenders who are particularly designated pursuant to § 775.21(5)(a)2., Florida Statutes. Section 775.21(5)(a)2. is not mentioned anywhere else in the Act because Florida Legislature's language is unambiguous and all inclusive for that category of offenders — "**An offender ... who is before the court for sentencing for a current offense ... the sentencing court must make a written finding at the time of sentencing that the offender is a sexual predator....**" (Emphasis added)

In this case, the Florida Supreme Court and Third District Court of Appeal rulings to grant lower courts unlimited jurisdiction over those offenders who meet the criteria for being designated under Florida Statutes § 775.21(5)(a)2., despite legislative intent being unambiguous in that it must occur **at the time of sentencing**, is a clear violation of the Petitioners Fifth and Fourteenth Amendments and Article I, Section 9, Florida Constitutional rights. Fourteen years after the sentencing hearing does not constitute **at the time of sentencing**. In violating the Petitioner's rights to due process of having the law, as written; applied to his circumstances, the Florida Supreme Court and Third District Court of Appeal has violated the separation of powers

clause by implementing an unwritten ex post facto law giving lower courts obdurate jurisdiction although the expressed statute of limitations of **at the time of sentencing** is unmistakable.

WHEREFORE, the Petitioner respectfully requests for the Florida Supreme Court and Third District Court of Appeal to be cited for their constitutional violations and for an order directing the courts to strike the illegally imposed sexual predator designation.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

/s/ Ronald Barnett
Ronald Barnett, Petitioner

Date: August 7, 2023