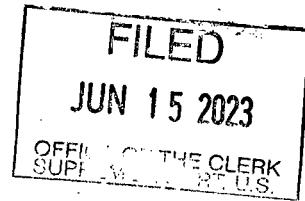


ORIGINAL

23-5661
No.

IN THE
SUPREME COURT OF THE UNITED STATES



ARNALDO MARTINEZ - PETITIONER

VS.

STATE OF FLORIDA - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
FIFTH DISTRICT COURT OF APPEAL, STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

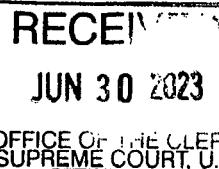
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Dade C.I.

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Arnaldo Martinez # 410095
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19000 S.W. 377th Street
Florida City, Florida 33034



QUESTION(S) PRESENTED

Did the Respondent, State of Florida, deny the petitioner of his Fifth and Fourteenth Amendment right to Due Process when it first, moved to prosecute for an offense that it knowingly and fraudulently mis-charged and then second, further misrepresented the facts when moving the court to dismiss the Petitioner's attempts to seek relief from that injustice?

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:

RELATES CASES

Martinez v. State, 2017 Fla. App. LEXIS 15044

Decided September 9, 2017

Martinez v. State, 319 So.3d 652

Decided June 22, 2021

Martinez v. State, 323 So.3d 1288

Decided September 10, 2021

Martinez v. State, 2022 Fla. App. LEXIS 8987

Decided December 20, 2022

*All cases in the Fifth District Court of Appeal, Florida

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APPENDIX A	State Appellate Court's Affirmance
APPENDIX B	State Appellate Court's Denial of Motion for Rehearing and Written Opinion

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
State v. Burton, 314 So.2d 136	11
STATUTE AND RULES	
Fla. Stat. 893.20	8, 10
Fla. Stat. 893.135(1)(a)	8
Fla. Stat. 893.135(1)(a)1	8
Fla. Stat. 896.10	8
Fla. Stat. 896.101(3)(a)	8
Fla.R.Civ.P. 1.540(b)	9, 10

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 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 of which the highest state court decided my case was December 20, 2022. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: February 16, 2023, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including June 16, 2013 on May 25, 2023 in Application No. 22A1026.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.A. Amend. 5

U.S.C.A. Amend. 14

STATEMENT OF THE CASE

Petitioner was charged in Count One of a fourth amended Information with Continuing a Criminal Enterprise (CCE); Count Two: Trafficking in Cannabis; Count Three: Conspiracy to Import, Possess, or Traffic in Cannabis; Count Four: Money Laundering; Count Five: Conspiracy to Import, Possess, or Traffic in Cannabis; Count Six: Money Laundering; and Count Seven: Trafficking in Cannabis. The offenses in the order as charged were enumerated under Florida Statues 893.20, 893.135(1)(a), 893.135(1)(a)(1, 896.10 101(3)(a), 893.135(a)(a)1, 896.101(3)(a), and 893.135(1)(a) respectfully.

On the day prior to trial respondent moved to nolle prosse Counts Five and Seven of the amended Information.

Petitioner then proceeded to trial on the remaining counts which, again, included just one count each of Conspiracy to Traffic in Cannabis and Trafficking in Cannabis.

Petitioner filed a direct appeal attacking his conviction and sentences, specifically that of his conviction and sentence for Continuing a Criminal Enterprise. The Fifth District Court of Appeal per curiam affirmed his convictions and sentences. As well did that court per curiam affirm the trial court's denial of the petitioner's subsequent post-trial collateral attacks on his convictions and

sentences.

On June 21, 2022, the petitioner filed a Motion for Relief From Judgment in the Circuit Court of the Eighteenth Judicial Circuit Court, Seminole County. In that motion the petitioner sought relief from his conviction and sentence on Count One of the Information charging him with Continuing a Criminal Enterprise. Petitioner's position was that the respondent had misled the trial court whereby committing fraud upon the court when it proceeded to trial on Count One while knowing that by nolle prossing Counts Five and Seven they then lacked the necessary predicate offenses to substantiate the CCE offense.

On June 29, 2022, the trial court dismissed the Fla.R.Civ.P. 1.540(b) Motion for Relief From Judgment after erroneously finding it to actually be an impermissibly successive Fla.R.Crim.P. 3.850 Motion for Postconviction Relief.

On July 27, 2022, the petitioner appealed and on December 20, 2022, the Fifth District Court of Appeal affirmed without opinion the trial court's dismissal.

On January 25, 2023, the petitioner filed motions for rehearing and for a written opinion and on February 16, 2023, the Fifth District Court of Appeal denied both motions.

The instant Petition for Writ of Certiorari follows:

REASONS FOR GRANTING THE PETITION

As previously mentioned petitioner was charged by Information in Count One with Continuing a Criminal Enterprise (CCE). In order for the respondent to have properly charged petitioner with the CCE offense it was necessary for respondent to have also charged him with three or more predicate offenses as is required in Florida Statute 893.20(1) which states in pertinent part that:

Any person who commits three or more felonies under this chapter (893) in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise. (F.S. 2009).

And while the respondent did initially charge the petitioner with the necessary requisite number of predicate 893 offenses (actually charging four) the respondent, when realizing that two of the charged counts were duplicative, moved just prior to trial to nolle process those two counts.

The petitioner moved before the trial court on a Florida Rule of Civil Procedure 1.540(b) motion asserting that his conviction for CCE was the product of a fraud upon the court. Petitioner reasoned that if not for the fact that respondent originally charged him with the duplicative 893 counts the respondent, having just two of the otherwise necessary 893 predicates, would

have been precluded by law from even charging the petitioner with the CCE count.

Upon filing his Fla.R.Civ.P. 1.540 the state trial court first held that although petitioner filed it under rule 1.540 relief under that rule was inapplicable in collateral criminal proceedings. And as such the court held that “[t]he defendant's motion for relief of judgment filed pursuant to Fla.R.Civ.P. 1.540(b) is dismissed.” The court did so without commenting on the merits of the motion. As well did the court make that determination without considering the fact that the Florida Supreme Court has held that “[a]ny order obtained by fraudulent representation to a court may be recalled and set aside, whether entered in a civil or criminal case. *See State v. Burton*, 314 So.2d 136 (Fla. 1975).

Whether by inadvertence or some other reason the respondent was permitted to prosecute a very serious offense that it should not have prosecuted. The petitioner, in turn, moved for relief under a firmly established state court rule, one that is still followed by the state's highest court. For the state court to now sidestep the issue of fraud upon the trial court by merely re-labeling the petitioner's pleading and then dismissing it as being impermissible filed surely warrants this Honorable Court's review.

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

[] 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.

[X] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[] reported at _____; or
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

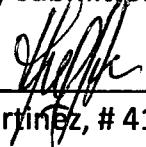
The opinion of the District Court of Appeal appears at Appendix A to the petition and is

[] reported at _____; or
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Arnaldo Martinez, # 410095
