

USCA 11th Cir 22-12636

No. _____

23 - 5888

FILED

JUN 12 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Howard L. Thompson — PETITIONER
(Your Name)

VS.

State of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals, 11th Circuit
Issues Never Ruled On the Merits; Dismissed As Time Barred, Sic
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Howard L. Thompson
(Your Name)

Liberty Correctional Institution
11064 N.W. Dempsey Barron Road
(Address)

Bristol, Florida 32321
(City, State, Zip Code)

(Phone Number)

Questions Presented For Review

1) Newly Discovered Evidence To Wit: Medical Exam Report That Is Inconclusive And Showed No Signs Of Trauma The Accuse Had No Knowledge Of The Medical Records Existence At The Time Of His Initial Proceeding The Medical Records Was Discovered By The Accuse And The Medical Records Would Prove His Innocence.

2) Actual Innocence Petitioner Establishes That The Newly Discovered Evidence To Wit: Medical Exam Report Will Prove His Innocence And It Is More Likely Than Not That No Reasonable Jury Would Find Him Guilty Beyond A Reasonable Doubt

3) Ineffective Asst of Counsel - Attorney of Record Was Ineffective For His Failure To Discover Or Present To The Trial Court The Medical Records That Demonstrates The Accuse Innocence Counsel Failure To Obtain The Medical Records Prejudice The Accuse.

4) Breach of Plea Agreement - State Breached The Plea Agreement When They Impose Fla Statute 943.0435 The Registration Law, Because The New Law Was Not A Part Of My Plea. Because The Sex Offender Law Was Neither Contemplated Nor In Effect When I Entered My Plea Or When Case Became Final. The Case Became Final On 10/21/93 And The Sex Offender, Registration Law Went Into Effect On 10/1/97.

List of Parties

- A) Jili Proyor, The Honorable (U.S. Court of Appeals, 11th Circuit) Circuit Judge
- B) Branch, The Honorable (U.S. Court of Appeals, 11th Circuit) Circuit Judge
- C) Grant, The Honorable (U.S. Court of Appeals, 11th Circuit) Circuit Judge
- D) Attonaga, The Honorable Cecilia Maria (U.S. District Judge)
- E) Cotton, Bruce (former 19th Circuit State Attorney)
- F) Egber, Mitchell (former Asst. Attorney General)
- G) Grosshans, The Honorable Jamie R (Justice Florida Supreme Court)
- H) Hedges, Sarah (former Asst. State Attorney)
- I) Hogan, Tiffany Anna (Asst. Public Defender)
- J) Kelly, Rebecca (Asst. Public Defender)
- K) Labatga, The Honorable Jorge (Justice Florida Supreme Court)
- L) Lawson, The Honorable E. Alan (Justice Florida Supreme Court)
- M) Lewis, David Alexander (former Asst. Public Defender)
- N) Luttig, Diamond R (Public Defender 19th Judicial Circuit)
- O) Mason, LeRonnie (former Conflic Counsel)
- P) Mirman, The Honorable Lawrence M (19th Circuit Judge)
- Q) Moody, Ashley (Attorney General)
- R) Muniz, The Carlos G (Justice Florida Supreme Court)
- S) Polston, The Honorable Ricky (Justice Florida Supreme Court)
- T) Schwab, The Honorable Charles (19th Circuit Judge)
- U) Solages-Jones, Sorraya M (Asst. Attorney General)
- Thompson, Howard Lee (Appellant)

■ All Parties do not appear in the caption of the case on the Follow Page all parties to ~~the~~ the proceeding in the court whose judgment is subject of this petition is as follows: Petitioner has listed all parties who judgment is the subject of this petition in the List of Parties. Petitioner has also Attached a Certificate of Interested Persons And Corporate Disclosure Statement.

IN THE UNITED STATES SUPREME COURT

1 FIRST STREET N.E.

Washington, D.C. 20543

Case No. 22-12636-J

Howard L. Thompson,
Appellant

v.
State of Florida, et al
Appellee

Certificate of INTERESTED Persons And Corporate Disclosure Statement

In Accordance with The ~~Applicable~~ Rule of Federal Procedure, The Petitioner Certifies That, To The Best of My Knowledge, The Following Persons Have Or May Have An Interest In The Outcome of This Case:

Attonaga, The Hon. Cecilia Maria (U.S. District Judge)

Cotton, Bruce (Former) 19th Circuit State Attorney

Egber, Mitchell (Former) Assistant Attorney General

Grosshans, The Hon. Jamie R. (Justice Florida Supreme Court)

Hedges, Sara (Former) Assistant State Attorney

Hogan, Tiffany Anna (Assistant Public Defender)

Kelley, Rebecca (Assistant Public Defender)

Labatga, The Hon. Jorge (Justice Florida Supreme Court)

Lawson, The Hon. C. Alan (Justice Florida Supreme Court)

Lewis, David Alexander (Asst. Public Defender)

Litt, Diamond R. (Public Defender 19th Judicial Circuit)

LEGAL

Mason, LeRonnie (Conflict Counsel)

Mirman, The Hon Lawrence M (19th Circuit Judge)

Moody, Ashley (Attorney General)

Muniz, The Hon Carlos G (Justice Florida Supreme Court)

Polston, The Hon Ricky (Justice Florida Supreme Court)

Schwab, The Hon Charles (19th Circuit Judge)

Solages-Jones, Sorraya M. (Asst. Attorney General)

Thompson, Howard Lee (Appellant)

Respectfully Submitted,

Howard L. Thompson

901174

Certificate of Service

I Herby Certify That A True Copy hereof has been furnished by
Mail On ~~Sept 19th~~ 9th, 2023 To: Office of The Clerk of Court,
September

Scott S. Harris

United States Supreme Court

1 First Street N.E. Washington, D.C.

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- D) *Harris v. Reed*, 498 U.S. 255, 109 S.Ct. 1038, 103 L.Ed. 2d 308 (1991)
- E) *William v. Chatman*, 510 Fed. 3d 1290, 1293 (11th Cir. 2000)
- F) *Artuz v. Bennett*, 531 U.S. 4, 12 S.Ct. 36, 1148 L.Ed. 2d 213 (1999)
- G) *Miami Dade County*, 846 F.3d 1180 U.S. Court of Appeals (24)
- H) *Doe v. Miami Dade Co.*, No. 15-14336, 838 F.3d 1050 (2016), WL 5334979 (11th Cir. Sept. 23, 2016) Page (24)

Statement for The Basis of Jurisdiction

A) The Basis of This Court Jurisdiction Is Indicated In The Judgment Or Order Dated 5/26/2023 TO Be Reviewed Was Entered By The United States Court of Appeals for The Eleventh Circuit. The Statutory Source for This Court Jurisdiction Is Under The 41st Amendment Favorable Evidence Is Subject To Constitutionally Mandated Disclosure When It Could Be Reasonably Taken To Put The Whole Case In Such A Different Light As To Undermine Confidence In The Verdict.

Basis of Jurisdiction

B) The Basis of This Court Jurisdiction Is Indicated In The Judgment Or Order Dated 3/28/2023 TO Be Reviewed Was Entered By The United States Court of Appeals for The Eleventh Circuit. The Statutory Source for The Court Jurisdiction Is Under Both The United States And Florida Constitution That Prohibits The Passage of Ex Post Facto Laws. U.S. Const. Art. 1 § 9 Clause 3; U.S. Const. Art. 1 § 10 clause 1; An Ex Post Facto Law Is A Law That Applies To Events Occurring Before Its Enactment That Disadvantage The Offender Affected By It By Altering The Definition of Criminal Conduct, For Increasing The Punishment For The Crime.

Constitutional And Statutory Provisions Involved

- 1) 28 U.S.C.A. § 2244(b)(2)(b)
- 2) 28 U.S.C.A. § 2244(b)(2)
- 3) 28 U.S.C.A. § 2244(b)
- 4) 28 U.S.C.A. § 2244(b)(1)(2)
- 5) 28 U.S.C.A. § 2244(d)(2)
- 6) 28 U.S.C.A. § 2244(d)

(13)

Statement of The Case
Backside →

Statement of The Case

On 8/19/93 Accuse Was Initially Charge With Domestic Violence, And Later With A Sexual Battery. The Case Involves A Husband And Wife Situation of A Domestic Altercation. On October 21st 1993 With Advice From Attorney of Record Accuse Accepted A Plea That Was Not In His Best Interest. Accuse Was Placed On 1 Year House Arrest, Followed By 2 Years Probation.

The Order Dated 5/20/23 U.S. Court of Appeals, 11th Circuit Is Clearly Erroneous To The Extent That The Court Erred In It's Findings And Conclusion That However, His (Petitioner) Motion For Reconsideration Is Denied Because He Has Offered No New Evidence Or Argument Of Merit. Accordingly Petitioner Has Raised A Meritorious Claim Of Newly Discovered Evidence In Law And Facts, And Made Specific Allegations Showing How The New Evidence, To Wit: Medical Exam Report Was Discovered, And A Reason To Believe That The Fully Developed Facts Might Entitle Him To Relief. Petitioner Made Persuasive Showing That Should've Convince The Court The Court As To Why He Believes Claim Of Newly Discovered Were Timely And Why Court Erred In Denying Claim As Successive. Petitioner Has Shown Cause To The Exception Provided To The Two-Year Time Limitation Were Applicable; And Issue Of Newly Discovered Evidence; To Wit: Medical Exam Report That Is Inconclusive And Showed No Signs Of Trauma Was Raised In State Court And Denied As Successive. In Sum Motion Fell Within The Exception To Limitation Period. State Suppressed The Evidence, And Accuse Could Not Have Ascertained The Medical Examination With The Exercise Of Due Diligence, Within The Time-Period, Because Some External Factor Beyond His Control Prevented Him From Filing His § 2254 Petition In A Timely Manner. The Accuse Learned Of The Medical Records Years Later Upon The Conversation I Had With My Wife (Charletha P. Thompson) After Visiting Her Residence. Specifically The Facts Came About When She Asked Me About, Me Happening To Register As A Sex Offender; I Explained To Her, Because Of The Sexual Battery Case In Which You Was The Victim 93-146250 FIOA, And That's When My Wife Explain To Me What Actually Happened. She Told Me The Police Came To Our Residence At The Time Of The Allegations, And Led Her To Believe That She Was Going To The Police Department To Due A Follow-Up. Instead Took Her To A Facility For Rape Victims, And That's When She Told

Me That They Was Doing A Check Up On Her; And She Said A Check Up For What; And She Told Me They Told Her An Examination. And I Ask Her An Examination For What; And She Told Me, A Medical Examination; And She Told Me That She Was Upset With The Police For Taking Her There TO A Rape Crisis Facility. She Further Stated That She Was Misled Into Believing That It Was Necessary That She Had To Take A Medical Examination. And She Further Said That She Was Embarrassed About The Whole Situation And That She Just Wanted To Get It Over With And Leave. And I Told Her I Never Knew You Went TO Take A Medical Examination; And From That Standpoint I Petitioned The Clerk of Courts 17th Judicial Circuit Broward County for The Medical Records. And The Clerk Office Told Me That They Do Not Have Any Medical Records In Case 93-146250 FIOA. And Clerk Office Advised Me TO GO TO The State Attorney Office TO See If They Have The Medical Records. I Went TO The State Attorney Office In Regarding The Medical Records. And State Attorney Office Told Me That They Have The Medical Records. And That I Would Have TO Come Back In 3 Days; And I Came Back In 3 Days With A Money Order For \$8.00 Dollars; And I Obtained The Medical Records.

Newly Discovered Evidence

Petitioner Has Met The Requirement Pursuant TO 28 USC A § 2244 (b)(2)(b) Newly Discovered Requirement. Statute § 2244(b)(2) Creates A Gatekeeping Mechanism In Which Satisfies § 2244(b) Requirements The Applicant Showing of Either (1) Newly Discovered Evidence That If Proven And Viewed In Light of The Evidence As A Whole Would Be Sufficient TO Establish By Clear And Convincing Evidence That A Reasonable Factfinder Would Found Movant Guilty of The Offense. Under (AEDPA) Governing Second Or Successive Petitions, If The Claim Presented In The Second Or Successive Petition The Analysis Proceeds TO Whether Claim Satisfies One Or Two Exceptions, 28 USC A § 2244(b) Petitioner Has Met The Criteria of § 2244(b) 2. The Facts Predicated For The Claim Could Not Have Been Discovered Previously Through The

Exercise of Due Diligence, (2) The Facts Underlying The Claim Proven And Viewed In Light Of The Evidence As A Whole Is Sufficient To Establish By Clear And Convincing Evidence That, But For Constitutional Errors, No Reasonable Juror Would Find Him Guilty Of The Offense. Movant Raises A Cognizable Claim Of Newly Discovered Evidence To Overcome A Procedural Bar. Petitioner Has Shown Cause For Default And Prejudice On The Grounds That Some Objective Factor External To The Accuse That Impeded His Efforts At His Trial To Comply With The State Procedural Rule And Errors Worked To His Substantial Disadvantage Affecting His Entire Trial With Errors Of Constitutional Dimension. Petitioner Had No Knowledge Of The Medical And State Failure To List Medical Records In His Discovery Submission; Defense Counsel Never Inquired To Or Requested Medical Records; State Suppressed The Evidence In Violation Of Brady V. Maryland. Petitioner Has Offered A Valid, Good Reason To Excuse The Procedural Default And Newly Discovered Evidence Exception Did Apply To Allow Movant To File His Motion Beyond The Two-Year Time Limitation Period; Nearly 19 Years Delay Between His 2003 Judgment In Case No. # 03-CV-60440 Denying His \$2254 Petition; His 2012 Judgment In Case # 12-CV-61652 Dismissing His \$2254 Petition; His 2015 Judgment In Case In Case 15-CV-21991 And His Present Petition 22-CV-41169 CMA; There Appears To Be A Valid Reason For The Delay In Filing Because He Relied On Intervening Events That Impeded An Earlier Filing Before His 2003 Judgment. The Newly Discovered Medical Records That Is Inconclusive And Showed No Signs Of Trauma Of Questionable Value Relating To His Findings. There Is A Reasonable Probability That The Medical Findings Would Certainly Change The Outcome In Favor Of The Accuse; That Fairminded Jurists Would Apprise His Innocent At Trial. The Undisclosed Medical Records Would Have Influenced The Outcome In Favor Of The Accuse. That ~~Under~~ Under The 14th Amendment Favorable Evidence Is Subject To Constitutionally Mandated Disclosure When It Could Reasonably

Be Taken To Put The Whole Case In Such A Different Light As To Undermine Confidence In The Verdict. Claim For Post-Conviction Relief Based On A Factual Predicate Not Previously Discoverable Are Success; But If The Purported Defect Did Not Rise Or Claim Did Not Ripen Until After The Conclusion Of The Previous Petition; The Latter Petition Based On That Defect Maybe Non-Successive. *Kyle v. Whitley* 514 U.S. 219, 435, 115 S.Ct. 1555, 131 L.Ed. 2d 490. The Supreme Court Held That (1) In Determining Whether Evidence Not Disclosed By State Was Material In Violation Of *Brady v. Maryland*, (2) Favorable Evidence State Failed To Disclose Would Have Made A Different Result. *U.S. v. Bagley* 473 U.S. 667, 682, 105 S.Ct. 3375, 87 L.Ed. 2d 481 (1985). The Supreme Court Held That Evidence Withheld By Government Is Material As Would Require Reversal Of Conviction.

Certiorari Jurisdiction

Gonzalez v. Crosby 545 U.S. 524, 125 S.Ct. 2641, 162 L.Ed. 2d 480 (2005). Court Granted Certiorari. 534 U.S. 1086, 125 S.Ct. 961, 160 L.Ed. 2d 896 (2005). Rule 60(b) Allows A Party To Seek Relief From A Final Judgment And Requests Re-Opening Of His Case Under A Limited Circumstances: Fraud, Mistake, Newly Discovered Evidence. Rule 60(b)(6) The Particular Provisions Under Which Petitioner Brought His Motion Permits Re-Opening When Movant Shows Any Reason Justifying Relief From The Operation Of The Judgment.

The Court Orders Dated 3/28/23 USCA 11th, 5/26/23 USCA 11th Is Conflict-
ing To The Extent That It Leads To Confusion. The Court Order Dated
3/28/23 Shows That The Court Granted Petitioner Leave To Proceed
In Forma Pauperis; However, The Court Order Dated 5/26/23 Is In Direct
Conflict To The Court Order Dated 3/28/23 To The Extent That It Mis-
leads The Petitioner As To The Court Standings. In Regards To His Position
On His Motion For Leave To Proceed In Forma Pauperis. Since The Order
Dated 5/26/23 Alleges That Howard L. Thompson Has Filed A Motion For
Leave To Move For Reconsideration Out Of Time And A Motion For Recon-
sideration Of This Court Order Dated 3/28/23 Denying Leave To Proceed
In Forma Pauperis. The Court Order Dated 3/28/23 Shows That His Motion
For (IFP) Is Granted. Per Say The Court, Because Mr. Thompson Is Indigent
And Seeks Leave To Proceed (IFP) From This Court; His Appeal Is Subject
To A Frivolity Determination. The Appeal Is Dismissed As Frivolous. Petitioner
Argue That The Court Erred In Its Conclusion, Since Court Miscon-
strued A Matter Of Law In Dismissing His Appeal As Frivolous On The Con-
dition That Because The District Court Dismissed Mr. Thompson Petition
As Impermissibly Successive, No COA Is Necessary. See Document #17,
Page 2 of 3, Dated: 8/10/22 (FLS b) Docket, Case 22-14169-Cv-Altonaga.
However, Per Say Court, Because That Conclusion Was Inarguably Correct
Based On His Prior Habeas Filings, This Appeal Is Frivolous. However, The
Dismissal Of His Appeal As Frivolous Is Misplaced; And The Term Frivo-
lous Is Misapplied. Petitioner Raised A Meritorious Claim Of Newly
Discovered Evidence, Actual Innocence, Ineffective Ass't of Counsel,
Breach of Plea Agreement, And Claims Presented Arguable Merits In Law
And Facts. Frivolous An Action Is Frivolous If It Is Without Arguable
Merit Either In Law Or Fact. Petitioner Claims Raised In His Prior Petition
Was Never Addressed On The Merits, But Dismissed As Time-Barred And
Others Denied As Unauthorized Successive. The District Court Ruling Pre-
cluded A Merit Determination Of His Claims. A Prior Non-Merit Ruling
Of His Petition As Impermissibly Successive Is Error. His Motion Did Not
Constitute A Successive §2254 Petition; Because It Only Challenge A
Procedural Default Ruling And Court Erred In Construing His Petition As
An Impermissible Successive Petition. Where Part Of His Motion

Raised A Meritorious Claim of Newly Discovered Evidence That By-
Pass A Procedural Default Ruling. In Three Prior Cases, Petitioner
Attempted To Seek Relief From His '93 Conviction Under Section 2254.
The First Was Denied As Time-Barred And The Others Were Dismissed As
Unauthorized Successive. Thompson v. District Court ~~9th~~ Southern
District, No # 03-CV-60440, 12-CV-61652, 15-CV-21991. Petitioner Claims
Raised In His Prior Petitions Was Never Addressed On The Merits.
Harris v. Reed, 498 U.S. 255, 109 S.Ct. 1038, 103 L.Ed.2d 308 Leaving In Effect
A Decision That Expressly Relies Upon Procedural Bar. The Harris Pre-
sumption Would Decide The Federal Question On The Merits. In Case
USCA 11th Circuit 22-12636 Habeas Petition Is Not Successive, And Dis-
trict Court Prior Ruling Is Not Equivalent Of A Second Or Successive
Petition. William v. Chatman 510 Fed.3d 1290, 1293 (11th Cir. 2000) William
Argue That His Motion Did Not Constitute A Successive 32254 Petition,
Because It Challenge A Procedural Default Ruling. Gonzalez v. Crosby
545 U.S. 524, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005) Court Held That
Motion Challenging District Court Prior Ruling Was Not Equivalent Of
A Second Or Successive Petition. Artuz v. Bennett 531 U.S. 4, 12 S.Ct. 361,
148 L.Ed.2d 213 There Is No Bar To Filing Motion That Asserts That A
Previous Ruling Which Precluded A Merit Determination Was In Error.

Statutory Or Equitable Tolling of Statute of Limitations
In Regards To Extraordinary Circumstances That Would Toll The
Statute of Limitations, "Newly Discovered Evidence, As A Basis for
Tolling The Limitation Period for Reopening A Case Provided for In Fed.
R. Civ. Proc. 60 b-2. Petitioner Discovered The Medical Records And Facts
Should've Triggered The 1 Year Limitation Period for Filing His Petition. Petitioner
Filed His 3850 Motion Within The 1 Year Time Period After He Discovered
The Medical Records. In Sum He Filed A 3850 Motion Immediately
After Discovering The Medical Records, And Raising Amongst Other Claims
Ineffective Asst. of Counsel, Actual Innocence, Breach of Plea Agreement,
Involuntary Plea, In Which Claims Was Dismissed As Successive. Petitioner
Petitioned The U.S. Dist. Court Southern District In Case 12-CV-61652 Order
ECF No. 5 (S.D. Fla. 2013) Dismissed As Successive. Alternatively To
Case 15-CV-21991 Order ECF No. 34 (S.D. Fla. 2016) Petition Was Properly
Filed As Well As His Present Petition 22-22-CV-14169 CMA And Case 22-12636
Did Toll The Limitation Period Due To His Properly Filed Petition In Case
12-CV-61652. Petitioner Properly Filed An Application for State Collateral
Review And Collateral Proceeding Tolloed The 1 Year Time Period 28 U.S.C.
3224(d)(2) Permitting Tolling for the Time Which A Properly Filed Application
for State Proceeding Or Other Collateral Review With Respect To The
Pertinent Judgment Is Pending. Petitioner Limitation Period Was
Tolloed Equitably Because 1) He Ascertain The Status of His Case (2) He
Pursued His Federal Claim With Diligence (3) Extraordinary Circumstances
Beyond His Control Prevented Him From Filing His 30254
Petition In A Timely Manner. Artuz v. Bennett 531 U.S. 412 S.Ct. 361 148
L.Ed. 2d 213 An Applicant for State Post Conviction Relief Can Be Properly
Filed Even If The State Dismissed It As Procedurally Barred. Id. At 8 9 12
S.Ct. 361 Almost 9 Months Later Petitioner Filed In The District Court A Pro
Se Motion To Amend Or Alter Judgment Contending Time-Bar Ruling Was
Incorrect. Under Artuz Construction of 2244(d) Which Permits A Court
To Relieve A Party From The Effects of A Final Judgment, Holding That
An Application for State Post Conviction Relief Was Properly Filed

And Would Toll The 1 Year Statute of Limitations. U.S.C.A. 11th Circuit, 22-14169-Civ-Attonaga. Petitioner contends that there is no specific time limitations on filing a Rule 60(b) Motion. He has offered grounds to excuse the procedural default, and nearly 19 years delay between the 2003 judgment denying his 32254 Petition and his 2012 Petition, 2015 Petition, his 2022 Petition is reasonable. There appears to be a valid reason for the delay in filing, because he relied on intervening events that impeded an earlier filing of his 2254 Petition. The case presents extraordinary circumstances that would have permitted the District Court to Re-open the Judgment in the 2012, 2015, and 2022 Habeas Petition, because he raised meritorious claim of newly discovered evidence to overcome a procedural bar. He has shown cause for default and prejudice on the grounds that some objective factor, external to the accused that impeded his efforts at trial to comply with the state procedural rule. Construction Under Artuz v. Bennett

Artuz v. Bennett 531 U.S. 4-1215, Et. 361-1481 Ed. 2d 2013. Petitioner appealed the U.S. Court of Appeal for 2nd Circuit 1995 3d 1116. Reversed. Certiorari was granted. The Supreme Court held that (1) Application for State Post Conviction or Collateral Review is properly filed as required to toll period under (AEDPA) for filing Habeas Corpus when it delivery and acceptance are in compliance with the applicable laws and rules governing filings, and (2) His prior state court Motion was properly filed though Motion contained claims that were procedurally barred. Artuz constitutes Extraordinary Circumstances as required for his prevailing Motion for Relief from Court Dismissal of Petition. Artuz Change the Law Regarding Tolling of Habeas Limitations.

The Court Order Dated: 6/17/22 (FLSD) Case 2:22-cv-141169-CMA is Clear Error To The Extent of The Court Conclusion That Petitioner Does Not Alleged Any Constitutional Violation With Respect To His Pre-Trial Detention, For Failure To Register As A Sex Offender Pursuant To Fla Statute 943.0435. The Court Order Dated 3/28/23 Is Clearly Erroneous In Regards To The Court Conclusion That However, The Petitioner Raised Challenges Only To ~~His~~ The Legality of His 1993 Conviction For Sexual Battery, Not His Present Detainment For Failure To Register As A Sex Offender. In The Order From (FLSD) 6/17/22 It Alleges That The Instant Petition Ostensibly Challenges His Pre-Trial Detention In St Lucie County Case 2020CF001865A In Which He Is Charged With Failure To Register As A Sex Offender. The Order Alleges That He Does Not Alleged Any Constitutional Violation With Respect To His Pre-Trial Detention. Each of His Four Grounds Asserts Errors Relating To His 1993 Conviction The Case In Which He Was Adjudged A Sex Offender. He Requested Relief From That Judgment, A Declaratory Order That He Is No Longer Subject To Florida Law Governing Sex Offenders. Fla Statute 943.0435 Has Been Unconstitutionally Applied To Case # 93-146250-10A, Because Statute 943.0435 Was Not Contemplated, Nor In Effect When Case Became Final. His Case Became Final On 10/21/93 And New Law Went Into Effect On 10/1/1997. In Sum The Imposition of Fla Statute 943.0435 Is An Ex-Post Facto Violation, Because It Applies To Events Occurring Before It's Enactment That Disadvantage The Offenders Affected By It.

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Const. Law- Ex Post Facto Clause Bills of Attainder

Both The United States And Florida Constitution Prohibits The Passage Of Ex-Post Facto Laws. U.S. Const. Art 1 § 9 cl 3; U.S. Const Art 1 § 9 cl 3; U.S. Const Art 1 § 9 cl 3; U.S. Const Art 1 § 10 cl 1; Fla Const Art 1 § 10 § 10 cl 1; Fla Const Art 1 § 10 An Ex-Post Facto Law Is A Law That Applies To Events Occurring Before Its Enactment That Disadvantage The Offender Affected By It By Altering The Definition Of Criminal Conduct For Increasing The Punishment For The Crime See U.S. Court of Appeals Of The 5th And 11th Circuit 2017 846 F. 3d 1180 Doe v. Miami Dade County. The U.S. Court of Appeals For The 11th And 5th Circuit Joins Its Sister Courts In Applying The Smith v. Doe Framework To Evaluate An Ex-Post Facto Challenge. Case Summary: Convicted Sex Offender Stated Plausible Claim That A Residency Restriction Ordinance Was So Punitive In Effect As To Violate The Ex-Post Facto Clause Of Federal And State Constitution. U.S. Const. Art 1 § 9 Clause 3 U.S. Const. Art 1 § 10 cl 1 And Fla. Const. Art 1 § 10 Inter alia The Ordinance Severely Restricted Available Affordable Housing Option. Overview: Holding (1) Convicted Sex Offenders Stated A Plausible Claim That A Residency Restriction Ordinance Was So Punitive In Effect As To Violate The Ex-Post Facto Clause Of The Federal And State Constitution U.S. Const Art 1 § 9 cl 3 U.S. Const Art 1 § 10 cl 1 And Fla Const 1 § 10; (2) The Ordinance Severely Restricted Available Housing Options It Was Excessive In Comparison To Its Public Safety Goal Of Addressing Recidivism It Undermine The Offender Ability To Successfully Re-Enter Society And Made It More Difficult For The Offender To Secure Housing Receive Treatment And Maintain Employment. An Appellate Court Role In Reviewing The Grant Of A Fed R. Civ P. 12(b)(6) Motion

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Merely To Determine Whether The Plaintiff Stated A Plausible Claim Such That They Should Be Permitted To Proceed To Discovery. Opinion by Wilson 846 F.3d 1182 Wilson, Cir Judge. We Vacate Our Prior Opinion. Doe v. Miami Dade County No. 15-14336, 838 F.3d 1050, 2016 WL 5334979 (11th Cir Sept 23 2016). And Substitute The Following Opinion In Its Place. Plaintiff-Appellee John Doe 12/3 2017 U.S. App Lexis 2) Doe 3 And The Fla. Action Committee Inc. (FAC) Collectively. The Plaintiff Appeal The District Court Dismissal of Their Ex-Post Facto Challenge To The Residency Restrictions (The Ordinance) Appeal. The Plaintiff Argue That They Pleaded Sufficient Facts To State A Claim That The Residency Restrictions Is So Punitive In Effect As To Violate The Ex-Post Facto Clause of The Federal And State Const. Likewise In Case 93-14625C FIOA Petitioner Pleaded Sufficient Facts To State A Claim That Fla Statute 943.0435 Is So Punitive In Effect As To Violate The Ex-Post Facto Clause of The Federal And State Const. In Doe v. Miami We Conclude That Doe 13 Have Alleged Plausible Ex-Post Facto Challenges To The Residency Restrictions: Specifically The Plaintiff Challenge The County Residency Restriction (1) As Void For Vagueness Under The 14th Amendment And Fla. Const. (2) As A Violation of Their Substantive Due Process Right To Personal Security And To Acquire Residential Property Under The 14th Amendment And State Const. (3) As An Unconstitutional Ex-Post Facto Law Under The Federal And State Constitution. The Plaintiff Properly Appealed The Dismissal of Their Ex-Post Facto Challenge Against The County. In The Instant Case, 93-14625C FIOA Petitioner Meets All Three Requirements, Because Fla Statute 943.0435 Applied Retroactively, As In Doe v. Miami Dade County 846 F.3d 1180 U.S. Court of Appeals

of The 5th And 11th Circuit 2017 Where Plaintiff Have Properly Alleged That The County Residency Restrictions Applied Retroactively To Them That The Restrictions Applied To Their Pre-Enactment Convictions for Qualifying Sex Offense;
(2) Fla. Statute 943.0435 Is Void For Vagueness Under The 14th Amendment And Fla. Const. (3) Fla. Statute 943.0435 Is A Violation of My Substantive Due Process Rights To Personal Security And To Acquire Residential Property Under The 14th Amendment And The Fla. Const. Fla. Statute 943.0435 Is An Unconstitutional Ex-Post Facto Law Under The Federal And Fla. Constitution. In Doe v. Miami Dade County, The County Does Not Contest That It Residency Restrictions Applies To Individuals Conviction of Relevant Sex Offenses Before The Passage of The Ordinance. Lynce, 519 U.S. At 441, 117 S.Ct. at 896. "A Statute Is Retroactive if It Applies To Events Occurring Before Its Enactment." Thus We Accept For Purpose of This Appeal That The Residency Restrictions Applies Retroactively; The Plaintiff Do Not Contest The County Assertion That The County Intended The Ordinance To Be Civil And Non-Punitive. In Case #93-146250 F10A Petitioner Do Not Contest The State Assertion That Fla. Statute 943.0435 Is Civil And Non-Punitive; However, The Effect of The Statute Are Self To Be Punitive, Because of The Punishment It Carries. Thus We Accept For Purpose of This Appeal That The County Intended To Create A Civil, Non-Punitive Regime Under The First Step of The Smith Analysis. Smith, 538 U.S. At 96, 123 S.Ct. 1149. Finally, Doe 1,3 Alleged That The County Residency Restrictions Applied Retroactive To Them That The Restrictions Applied To Their Pre-Enactment Conviction for Qualifying Sex Offenses. Accordingly, We Need Only 846 F.3d 1185 Decide Whether Doe 1,3 Allege Sufficient Facts To State A Plausible Claim

That The County Residency Restrictions Is So Punitive In Effect As To Violate The Federal And Florida Ex-Post Facto Clause Under Smith. See: Ashcroft v. Iqbal 556 U.S. 662, 677-79, 129 S.Ct. 1937, 1949-50, 173 L.Ed.2d 868 (2009). We Conclude They Have Done So. The Complaint Sufficiently Alleges That The County Residency Restriction Impose A Direct Restraint On Their Freedom To Select Or Residence Under The Affirmative Disability Or Restraint Factor. We Inquire How The Effect Of The Ordinance Are Felt By Those Subject To It. Smith 538 U.S. at 99-100, 123 S.Ct. at 1151. The Plaintiff Alleges In The Complaint That The County Residential Restrictions Severely Limits Housing Options For Individuals Subject To The Restrictions, Drastically Exacerbating Transience And Homelessness. See: U.S. Const. Art. I, § 9 cl. 3; 11 Art. I, § 10 cl. 1. Fla. Const. Art. I, § 10. An Ex Post Facto Law Is A Law That Applies To Events Occurring Before Its Enactment And That Disadvantage The Offender Affected By It, By Altering The Definition Of Criminal Conduct Or Increasing The Punishment For The Crime. Luncey v. Mathis 519 U.S. 433, 441, 117 S.Ct. 891, 896, 137 L.Ed.2d 63 (1997). In Smith v. Doe, The Supreme Court Outlined A Framework For Determining The Smith Framework To Evaluate An Ex-Post Facto Challenge To A Residency Restriction. On Sex 846 F.3d 1184. The Statutory Scheme Regarding Fla. Statute 943.0435 Is So Punitive Either In Purpose Or Effect As To Negate The State Intention To Deem It Civil.

Reason For Granting The Petition

The Conviction Is A Nullity Devoid On Its Face, Illegitimate. The Conviction Is The Product Of Cumulative Constitutional Errors That Is Fundamental, Extraordinary That Has To Be Corrected In The Interest Of Justice. The Cumulative Constitutional Errors Was The Mechanism That Created This Manifest Miscarriage Of Justice And An Unjust Result. The Conviction Is Outside The Bounds Of The Constitution

Conclusion

Petitioner Humbly Moves This Honorable ^{court} To Grant This Petition And The Relief This Court Deems Appropriate; Where Justice And Fairness Justifies The Action Demanded; Where The Ends Of Justice Would Be Served In Correcting A Manifest Miscarriage Of Justice.