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ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

AUG 22 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Valentino Bernard Lee — PETITIONER
(Your Name)

VS.

STATE OF Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF FLORIDA AUGUST 3, 2023

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Valentino Bernard Lee

(Your Name)

GULF CORRECTIONAL INSTITUTION

(Address)

500 IKE STEELE ROAD WENAH, FL 32465

(City, State, Zip Code)

(Phone Number)

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

QUESTION OF GREAT INTEREST

THE PARTIES STIPULATED THE FACTUAL BASIS FOR THE DEFENDANT PLEA. NO FACTUAL BASIS IN THE RECORD INSUFFICIENT PETITIONER CONTENDS THE CIRCUIT COURT DEPARTED FROM THE ESSENTIAL REQUIREMENT OF THE LAW THE MANIFEST WEIGHT OF THE EVIDENCE BECAUSE THERE WAS NO SUBSTANTIAL EVIDENCE UPON WHICH A TRIER OF FACT COULD REASONABLY CONCLUDE THAT THE ELEMENTS OF THE OFFENSES HAVE BEEN PROVEN BEYOND A REASONABLE DOUBT. A VIOLATION OF A CLEARLY ESTABLISHED PRINCIPLES OF LAW RESULTING IN A MISCARRIAGE OF JUSTICE.

QUESTION OF GREAT INTEREST

THE TRIAL COURT ERRED IN SENTENCING DEFENDANT TO A MANDATORY TERM OF 10 YEARS IN THE INFORMATION UNDER THE 10/20/11 LIFE STATUTE § 775.087(2)(A)(i), FLA. STAT. FOR POSSESSING OF A FIREARM HANDGUN DEADLY WEAPON IN THE INFORMATION BECAUSE THE STATE DID NOT ALLEGE A FIREARM IN CONNECTION WITH ANY OF THE CHARGES. AND IN PLEADING DEFENDANT DID NOT STIPULATE EITHER TO HIS POSSESSION OF A FIREARM OR TO THE APPLICABILITY OF § 775.087(2)(A)(i) ALTHOUGH THE STATE ALLEGED A DEADLY WEAPON, DANGEROUS WEAPON "SUCH ITEMS DID NOT QUALIFY AS A FIREARM FOR PURPOSES OF IMPOSING A MANDATORY MINIMUM SENTENCE UNDER § 775.087(2)(A)(i) UNDER 10-20-11 LIFE STATUTE

QUESTION OF GREAT INTEREST

PURSUANT TO AN ENHANCED MANDATORY MINIMUM SENTENCE UNDER THE 10/20/11 LIFE STATUTE § 775.087(2)(A)(i), FLA. STAT. (2015) THE STATE MUST ALLEGE THE GROUNDS FOR ENHANCEMENT IN THE CHARGING DOCUMENT, AND THE JURY MUST MAKE FACTUAL FINDINGS REGARDING THOSE GROUNDS. A 10 YEAR MANDATORY MINIMUM SENTENCE UNDER § 775.087(2)(A)(i) THEREFORE, REQUIRES THAT THE STATE PLEAD AND ACTUALLY POSSESSED A "FIREARM

QUESTION(S) PRESENTED

- (5) TRIAL COUNSEL'S FAILURE TO INVESTIGATE AND ADVISE DEFENDANT OF THE LAW IN RELATION TO THE FACTS CAUSED THE PLEA TO BE INVOLUNTARILY ENTERED VOID AS VIOLATION OF DUE PROCESS.
- (6) IN *McMANN V. RICHARDSON*, 397 U.S. 759, 766, 90 S. CT 1444, 25 L Ed. 2d 763 (1970)
- (7) IT A FUNDAMENTAL ERROR TO IMPOSE THREE YEAR MINIMUM MANDATORY SENTENCES IN COUNT TWO AND THREE OF THE INFORMATION BECAUSE DID TRIAL COURT PROPERLY INVOKE FLA STAT 775.087(2) WHEN DEFENDANT ATTORNEY STIPULATING FACTUAL BASIS FOR POSSESSION OF A FIREARM THE MINIMUM MANDATORY WOULD NOT BE AUTHORIZED BY LAW AND ITS IMPOSITION WOULD BE ILLEGAL IMPOSED ON THE DEFENDANT IN ACTUAL POSSESSION HE NEVER NEVER HAD ACTUAL POSSESSION OF THE FIREARM. POSSESSION IS A STATUTORY ELEMENT OF THE CRIME.
- (8) THE STATE INCORRECTLY CHARGED DEFENDANT WITH ARMED BURGLARY WITH ASSAULT OR BATTERY AS A SINGLE OFFENSE THE CHARGE CONSISTS OF TWO SEPARATE OFFENSES BEING TWICE PLACED IN JEOPARDY FOR THE SAME OFFENSE SINGLE CRIMINAL EPISODE U.S CONSTITUTION AMENDMENTS 5 AND 14 1.59 FLORIDA CONSTITUTION. BECAUSE THOSE OFFENSES WERE SUBSUMED WITHIN THE DEFENDANT'S CONVICTION OF BURGLARY WITH AN ASSAULT OR BATTERY WITH A FIREARM A MALGRATION OF SECTIONS 810.02(a) AND 810.02(b) FLORIDA STATUTES (2011)
- (9) PURSUE AN ENHANCED MANDATORY MINIMUM SENTENCE UNDER THE 10/26/11 FLORIDA STATUTE 775. (2)(b)(i) FLA STAT (2015) THE STATE MUST ALLEGE THE GROUNDS FOR ENHANCEMENT IN THE CHARGING DOCUMENT. AND THE JURY MUST MAKE FACTUAL FINDING REGARDING THOSE GROUNDS 10 YEAR MANDATORY MINIMUM SENTENCE UNDER 775.087 (2)(b)(i) THEREFORE REQUIRES THAT THE STATE PLEADING AND ACTUALLY POSSESSED A "FIREARM"

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:

JUDGE MALLORY D. COOPER
JUDGE MARK BORELLO
LAWYER SCOTT D. LEMIS BAR NO. RF AND 23-7914
LAWYER JAMES FRANKS
STATE ATTORNEY ANGELA B. COREY
STATE ATTORNEY R. L. SMITH
RICKY D. DIXON ETC
MARCIA MORALES HOWARD
JILL PAVOR, BASHER. AND HULL, CIRCUIT JUDGES.

RELATED CASES

ARMED BURGLARY WITH ASSAULT OR BATTERY
POSSESSION OF A FIREARM BY A CONVICTED FELON
AGGRAVATED ASSAULT WITH A DEADLY WEAPON

BURGLARY TO A CONVEYANCE:

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CASES

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FEDERAL RULE 11 STANDARD 1.6

BOYKIN V ALABAMA, 395 U.S. 238, 89 S. CT. 1709, 23 L. Ed. 2d 274 (1969)

BRADY V UNITED, 397 U.S. 742, 90 S. CT 1463, 25 L. Ed. 2d 747 (1970)

MC CARTHY V. UNITED STATES, 394 U.S. 459 89 S. CT 1166, 22 L. Ed. 2d 418 (1969)

KOEHLING V STATE

597 So 2d 256 (Fla 1998)

GOSWICK V STATE

143 So 2d 817 (Fla 1962)

WILLIAMS V. STATE

316 So 2d 267 (Fla. 1975)

JACKSON V STATE

659 So 2d 1060 (Fla 1995)

LEATH V STATE

805 So 2d 956 (Fla 2d DCA 2007)

STATUTES AND RULES

FEDERAL RULE 11

STANDARD 1.6 AMERICAN BAR ASSOCIATION STANDARD OF CRIMINAL
RULE OF CRIMINAL PROCEDURE RULE 3.170(d)

RULE 3.170 PRINCIPALLY SETS FORTH NECESSARY PROCEDURAL
STEPS TO COMPLY WITH THE CONSTITUTIONAL MANDATE OF BOYKIN
V. ALABAMA. SURRA THE FOLLOWING ARE THE THREE ESSENTIAL RE-
QUIREMENTS FOR TAKING A GUILTY PLEA MUST BE A FACTUAL BASIS FOR
THE PLEA.

THE DEFENDANT WAS PREJUDICED BY THE COURT NONCOMPLIANCE WITH
THE RULE. INFORMATION TO SUPPORTING. PLEA RULE OF CRIMINAL PROCEDURE
RULE 3.170(c)

OTHER

THE FACTS SUBMITTED A PREDICATE FOR THE PLEA OF GUILTY TO A
CHARGE OF AGGRAVATED ASSAULT SHOW ASSAULT AND BATTERY, BUT
FAILED TO SHOW THAT A DEADLY WEAPON WAS INVOLVED, THERE WAS
A LACK OF FACTUAL BASIS TO SUPPORT APPELLANT'S GUILTY PLEA
AND THEREFORE IMPROPER FOR THE TRIAL COURT TO ACCEPT THE
PLEA. Fla. R. Crim. P., RULE 3.170(c)

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.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits 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 SUPREME COURT OF FLORIDA 8/31/2023 court appears at Appendix A 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 a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 8/3/2023.
A copy of that decision appears at Appendix A.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

DEFENDANT WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY ARTICLE I, 9 FLORIDA CONSTITUTION AND THE SIX AND FOURTEENTH AMENDMENT TO THE UNITED STATE CONSTITUTION.

5 AMENDMENT TO THE UNITED STATE CONSTITUTION

5. AMENDMENT TO THE DUE PROCESS
DUE PROCESS

FLORIDA CONSTITUTION 1.9

THIS RULE IS DATTERED IN PART AFTER FEDERAL RULE 11. AND STANDARD 1.6 AMERICAN

RULE 3.170 PRINCIPALLY SETS FORTH NECESSARY PROCEDURAL STEPS TO COMPLY WITH THE CONSTITUTIONAL MANDATE OF *BOYKIN V ALABAMA*

FOR A SIMILAR REQUIREMENT SEE MICH. STAT. ANN. § 28.1058 (1954)
MICH. SUP. CT. RULE 35A; *IN RE VALLE*, 364 MICH. 471, 100 N.W.2d 673 (1961);
PEOPLE V BARROWS, 358 MICH. 267, 99 N.W.2d 347 (1959);
DEED PIE V COATES, 337 MICH. 56, 59 N.W. 2d 83 (1953)
STINSON V. UNITED STATES, 316 F.2d 554 (5TH CIR 1963)

THE NORMAL CONSEQUENCE OF A DETERMINATION THAT THERE IS NOT A FACTUAL BASIS FOR THE PLEA WOULD BE FOR THE COURT TO SET ASIDE THE PLEA AND ENTER A PLEA OF NOT GUILTY.

MRC MANN V RICHARDSON 397 U.S. 759, 766. 90 S. CT 1441, 25 LEd. 2d 763 [1970]

8 AMENDMENT TO THE UNITED STATE CONSTITUTION

STATEMENT OF THE CASE

NAME AND LOCATION OF THE COURT THAT ENTERED THE
JUDGMENT OF CONVICTION UNDER ATTACK: FOURTH JUDICIAL
CIRCUIT, DUVAL COUNTY, FLORIDA

LENGTH OF SENTENCE: IN CASE NO.: 2010-CF-739: 10 YEARS
IN CASE NO.: 2010-CF-3684: 25 YEARS

NATURE OF OFFENSE(S):

BURGLARY TO A CONVEYANCE:

CASE NO.: 2010-CF-739

CASE NO.: 2010-CF-3684

ARMED BURGLARY WITH ASSAULT OR BATTERY
POSSESSION OF A FIREARM BY A CONVICTED FELON
AGGRAVATED ASSAULT WITH A DEADLY WEAPON

DEFENDANT PLEAD GUILTY IN BOTH CASE

JUDGE ONLY

FILED A MOTION TO WITHDRAW PLEA BEFORE SENTENCING
APPEALED FROM THE JUDGMENT OF CONVICTION

FOLLOWING THE APPEAL

NAME OF THE APPEAL

THE TRIAL JUDGE ABUSED HIS DISCRETION IN DENYING HIS
MOTION TO WITHDRAW HIS PLEA BEFORE SENTENCING

REASON FOR GRANTING THE WRIT

PETITIONER SEEKS CERTIORARI REVIEW OF A JUDGMENT ENTERED SUMMARY DENIAL OF PETITIONER'S MOTION TO WITHDRAW HIS CONTEND PLED TO CHARGES BECAUSE PETITIONER RAISED THE POSSIBILITY OF A DEFENSE COURT FAILED TO DEMONSTRATE THAT THE TRIAL COURT MADE FURTHER INQUIRY REGARDING THE FACTUAL BASIS

THE PROPER INQUIRY UNDER CERTIORARI REVIEW LIMITED TO WHETHER THE CIRCUIT COURT AFFORDED PROCEDURAL DUE PROCESS AND WHETHER IT APPLIED THE CORRECT LAW. A VIOLATION OF CLEARLY ESTABLISHED PRINCIPLES OF LAW RESULTING IN A MISCARRIAGE OF JUSTICE.

TRIAL COURT ASKED DEFENDANT LAWYER ANY LEGAL EXCEPTIONS OR OBJECTIONS FOR PURPOSES OF THE PLEA; DEFENDANT LAWYER RESPONDED NO WE ARE STIPULATING FOR THE PURPOSES OF THE PLEA.

IN KOENIG V. STATE, 597 So. 2d 256, 258 (Fla. 1992), THE COURT STATED THAT EVEN THOUGH COUNSEL STIPULATED TO A FACTUAL BASIS FOR THE PLEA WAS DEFICIENT ON THE RECORD TO ESTABLISH THE OFFENSE TO WHICH THE DEFENDANT ENTERED HIS PLEA. SEE RULE 3.172(b) FLA. R. CRIM. P. (TRIAL COURT 639 So. 2d 1051) THIS RULE IS PATTERNED IN PART AFTER FEDERAL RULE 11 AND STANDARD 1.6 AMERICAN BAR ASSOCIATION STANDARDS OF CRIMINAL JUSTICE. IT SETS OUT THE GUIDELINES NECESSARY TO MEET THE REQUIREMENT EXPRESSED IN BOYKIN V. ALABAMA 395 U.S. 238, 89 S. CT. 1709, 23 L. ED. 2d 279 (1969); BRADY V. UNITED STATES, 397 U.S. 742, 90 S. CT. 1463 25 L. ED. 2d 747 (1970); AND MCCARTHY V. UNITED STATES, 394 U.S. 459, 89 S. CT. 1166 22 L. ED. 2d 418 (1969). BEFORE ENTERING GUILTY PLEA, SHOULD SATISFY ITSELF THAT THERE IS A FACTUAL BASIS FOR THE PLEA. THIS COURT FOLLOWED KOENIG IN GOODWIN V. STATE, 598 So. 2d 295 (Fla. 1ST DCA 1992)

REASON FOR GRANTING THE WRIT

THERE WAS NOTHING ON THE RECORD TO ESTABLISH THAT PETITIONER UNDERSTOOD THE CONTENTS OF THE PLEA OF GUILTY. *BAKER V. STATE*, 620 So 2d 1122 (Fla 1st DCA 1993). PETITIONER ALLEGED THAT HE WAS NOT GUILTY OF POSSESSION OF A FIREARM BY A CONVICTED FELON, ARMED BURGLARY AND ABBRAVATED ASSAULT WITH WITH FIREARM.

TRIAL COURTS ASKED PROSECUTOR TO RECITE A BRIEF FACTUAL BASIS FOR EACH CASE. STATE RECITED THAT THE STATE IS PREPARED TO PROVE THAT CASE. NO EVIDENCE WAS PRESENTED IN DIRECT CONTENTION OF THE TRIAL COURTS INCLUDE NO TESTIMONY NO PHYSICAL EVIDENCE REGARDING THE DETAILS OF THE VICTIMS STATEMENT. TRIAL COURT COMMITTED PREJUDICIAL ERROR WHEN IT PERMITTED IRRELEVANT EVIDENCE TO BE PRESENTED IN DIRECT CONTENTION OF IT ORDER NOT TO INCLUDE TESTIMONY REGARDING THE DETAILS OF ARREST AND IN VIOLATION OF EVIDENCE RULE CONCERNING DEADLY WEAPON HANDGUN FIREARM. THERE WAS A LACK OF FACTUAL BASIS.

TRIAL COURT ASKED DEFENDANT LAWYER ANY LEGAL EXCEPTIONS OR OBJECTIONS FOR PURPOSES OF THE PLEA. LAWYER RESPONDED, WE ARE STIPULATING FOR THE PURPOSES OF THE FACTUAL BASIS.

THE PURPOSE OF DETERMINING WHETHER A FACTUAL BASIS FOR A EXISTS IS TO PREVENT A DEFENDANT FROM MISTAKENLY ENTERING A PLEA TO THE WRONG OFFENSE. IT IS REVERSIBLE ERROR FOR A TRIAL JUDGE TO RELY SOLELY ON COUNSEL'S STIPULATION OF A SUFFICIENT FACTUAL BASIS FOR A PLEA WHEN THERE ARE NO SUPPORTING FACTS IN THE RECORD.

REASONS FOR GRANTING THE WRIT

REASONS FOR GRANTING THE WRIT THE PARTIES STIPULATED THE FACTUAL BASIS FOR THE DEFENDANT PLEA. NO FACTUAL BASIS IN THE RECORD INSUFFICIENT. PETITIONER CONTENDS THE CIRCUIT COURT DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF THE LAW THE MANIFEST WEIGHT OF THE EVIDENCE BECAUSE THERE WAS NO SUBSTANTIAL EVIDENCE UPON WHICH A TRIER OF FACT COULD REASONABLY CONCLUDE THAT THE ELEMENTS OF THE OFFENSES HAS BEEN PROVEN BEYOND A REASONABLE DOUBT.

THE FAILURE TO FOLLOW THE NECESSARY PROCEDURES IN ACCEPTING THE PLEA NOT SOLELY THE FAULT OF THE TRIAL JUDGE. THE PROPER PROCEDURAL STEPS ARE FOLLOWED IS SHARED BY THE JUDGE, THE PROSECUTOR, AND THE DEFENDANT ATTORNEY.

DEFENDANT CONVICTIONS AND SENTENCE ARE THE RESULT OF A MISAPPRaisal OF JUSTICE. WHERE EVIDENCE SHOWS HE IS ACTUALLY INNOCENT OF THE CHARGED OFFENSES.

THE PURPOSE OF THE FACTUAL BASIS REQUIREMENT IS TO INSURE THAT THE FACTS OF THE CASE FIT THE OFFENSE WITH WHICH THE DEFENDANT IS CHARGED. *DAVIS V STATE* 605 SO 2D 936 938 (FLA 1ST DCA 1992) QUOTING *WILLIAMS V STATE* 316 SO 2D 267, 271, FLA 1975) ACCORD *PELHAM V STATE*, 737 SO 2D 572, 572 573 1ST DCA 1994) ACCORD THE PURPOSE OF DETERMINING WHETHER A FACTUAL BASIS FOR A PLEA EXISTS IS TO PREVENT A DEFENDANT FROM MISTAKENLY ENTERING IN THE RECORD FACTUAL INFORMATION TO ESTABLISH THE OFFENSE TO WHICH THE DEFENDANT HAS ENTERED HIS PLEA.

ON AUGUST 3, 2011 ON DEFENDANT'S PRO-SE MOTION TO
WITHDRAW PLEA OF GUILTY FILED ON JUNE 6 2011 BY DEFEND-
ANT'S AND HIS CONFLICT-FREE COUNSEL'S MOTION TO WITHDRAW PLEA
OF GUILTY FILED ON JUNE 27, 2011 WAS DENY

SEPTEMBER 2 2015 DEFENDANT LAWERY SCOTT DOUGLAS LEEMIS; RFD
NO. 23-7914 CASE NO1 SC15-1189 LOWER TRIBUNAL NO(S) 2015-90,118(OSC)
DISBARRED FROM THE PRACTICE OF LAW IN THE STATE OF FLORIDA

DEFENDANT CONVICTION IN VIOLATION OF PETITIONER'S 6 AND 8TH AMEN-
DMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. GUARANTEED BY THE
DUE PROCESS COUNSEL COMMITTED PREJUDICIAL ON THE DEFENDANT
THE CERTIORARI SHOULD BE GRANTED.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Valentino Bernard Lee

Date: 11-8-2023

RELIEF SOUGHT

WHEREFORE, THE PETITIONER REQUEST THAT THIS HONORABLE COURT
SHOULD GRANTED WRIT OF CERTIORARI OR APPOINTMENT COUNSEL
OR FACTUAL EVIDENCE HEARD OR PRESENTENCE INVESTIGATION
OR SUFFICIENT FACTUAL INFORMATION FOR FACTUAL BASIS OR PLED
AN NEW