

Supreme Court OF The United States

In Re, Burt Leon Setts - Petitioner

No. 23-6360

On Petition For Rehearing

Shane Swain; Warden - Respondent.

Petition For Rehearing

Burt Leon Setts; P.O. Se
Cross City, C.I., 568 N.E.
255TH Street.
Cross City, Fl. 32628

Question(s) Presented

3

Whether The Trial Court LACKED
Jurisdiction And- OR Subject Matter
Jurisdiction To Convict Petitioner?

Because, The Prosecuting OFFicer Per-
mitted A Non- Prosecuting OFFicer
OF Thect. To File A CAPITAL Crime, First
Degree Murder, Fla. Stat(s)782.04(1)(A)
Upon A Misdemeanor Charging IN-
strument, An Arrest Warrant. A Mr.
Allen VANLANDINGHAM, His Investi-
gator.

2.

4.

Question Presented

Whether, The Prosecuting Officer OF The Court Deprived Petitioner OF A Standing In Court? Rendering The Court Without Jurisdiction And-Or Subject Matter Jurisdiction. By Intentionally Charging him With A CAPITAL Crime, First Degree Murder. By Depriving Petitioner OF Five (5) Pretrial Proceedings. And Permitted His Investigator, To File Such A Charge Upon A Misdemeanor Charging Instrument An Arrested Warrant 782.04(1)(a). Violated The Civil Right Act OF 1866, Due Process Clause, U.S.C. 14th Amend. Fla. Const. Art. I, ss 9, 4th, 5th. Due Process Clause And the Capital Clause.

3.

209 U.S. 123 *Ex parte Young* (1909)
The question of jurisdiction, whether
of the circuit court or of this court,
... It is a question, however, which
we are called upon, and which it
is our duty, to decide. *I.d.* at 142

282 F. 138: *Ex parte Craig*. (1922) The
Supreme Court consistently adhered
to the principle announced in these
early cases. Thus in *Matter of Gre-
gory* 219 U.S. 210, where the person
applying for the writ had been con-
victed of a crime in the Police Court
of the District of Columbia... *I.y.*,
hearing this application, this court does
not sit to review the correctness
of the conclusion of the Police Court
as to the violation of the statute by
the petitioner, or of the decision of
the sufficiency of the information
filed against him. The question here
is not one of guilt or innocence, but
simply whether the court below had
jurisdiction to try the issues; and
as we find that the statute con-
ferred that jurisdiction, the applica-
tion for a writ of Habeas Corpus
must be denied. *I.D.* at 147

Preliminary Statement

As an initial matter Petitioner cited the wrong Florida Statute by mistake, as to First Degree Murder as Fla. Stat. 784.04(1)(A) instead of 782.04(1)(A). However, on a consideration of the whole record, this Court would have AFFIRMED Petitioner's Allegations. See, Appendix (A) and (b) habeas petition^{App. (b)} And the mistake in pertinent part is the document is only about 30% legible as it was received by Petitioner.

TABLE OF Authorities Cited

| CASES | Pg. # |
|--|---------|
| Booker v. State, 497 So. 2d 957 (Fla. 1st Dist 1986) | 19. |
| Carbajal v. State, 75 So. 3d 258 (Fla. 2011) | 14. |
| Ex parte Craig, 282 F. 138 (1922) | 4. |
| Ex parte Young, 209 U.S. 123 (1909) | 4. |
| Hunter v. State, 358 So. 2d 557 (Fla. 1978) | 18. |
| Littleton v. Berbling, 468 F. 2d 389 | 19. |
| McKenzie v. State, 272 So. 2d 3d 808 (Fla. 2019) | 13. |
| Murray v. Regier, 872 So. 2d 217 (Fla. 2002) | 15 |
| In re Civil Rights Cases, 109 U.S. 3 (1883) | 23. |
| Ragsdale v. Classroom Teachers of Dallas, U.S. District Court 5th Cir, 2007 U.S. Dist Lexis 112453 | 21. |
| State v. Anderson, 537 So. 2d 1373 (Fla 1989) | 14. |
| State v. Gray, 435 So. 2d 816 (Fla. 1983) | 14. |
| Stevens v. Beard, 2022 U.S. Dist Lexis 177890 | 17. |
| Shepherd v. U.S. 2010 U.S. Dist Lexis 44291. | 19 |
| Strauder v. West Virginia, 100 U.S. 303 | |
| Vasquez v. Hillery, 474 U.S. 254 | 17. 24. |

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Constitutional And Statutory Provisions Involved

6.

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|--------------------------------|------------------------|
| Fla. Const. Art. I, ss 15 (A), | 12, 13, 15, 16, 18, 22 |
| Fla. Const. Art, I. ss 9., | 13, 15, |
| Fla. U.S.C., 4. Amend. | 13, |
| U.S.C. 5th. Amend., | 12, 13, 16, 22 |
| U.S.C. 6th. Amend. | 20, |
| U.S.C. 13th. Amend. | 23. |
| | 24 |
| | 6. |

U.S.C. 14th. Amend., 3, 10, 12, 13, 16, 20, 21, 23

Fla. Stat. (s) 782.04. (1)(A), 4, 5, 6, 8, 10, 11, 14, 15, 16
Civil Right Act OF 1866, 3, 11, 21, 22, 12, 23
Fla. Stat. (s) 901.02(1) 18
Fla. R. Crim. P. 3.140(A)
Fla. R. Crim. P. 3.130(A) 19, 23
Fla. R. Crim. P. 3.133(A)(1) 20, 230
Fla. R. Crim. P. 3.160(A) 23

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| App. A | Order |
| App. B | Arrest Warrant |
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| App. D | Information Transcribed |
| App. E | Progress Docket |
| App. F | Information |
| App. G | Judgment |
| App. H | Habeas Corpus petition |

Petitioner's response to this Court's
ruling as to Rule 39.8. Frivolousness

1. At Pg. # 8. habeas petition: Petitioner were held to answer for a capital crime, First degree murder under 782.04(1)(a) Fla. Stat. upon no indictment of a grand jury violating Amend. 5., U. S. C. Capital crime clause.
2. "On 12-6-1982, Petitioner was held to answer for a capital crime upon no indictment of a grand jury. Violated Amend. 5. U. S. C. "No person shall be held to answer for a capital crime, unless on a ... Indictment of a grand jury."
3. Although Petitioner did not point to Appendix (a) and (b) habeas petition the [Court] would have affirmed this fact.
4. At Pg. # 9. Petitioner cites this Court's holding in Ex Parte Bain, 12 U. S. 1. The declaration of Article V of the Amendments to the Constitution, that "No person shall be held to answer a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury" is

Jurisdictional and no court of the United States has authority to try a prisoner... therefore, it must be understood to have used the language which they did in declaring that no person should be called to answer for any capital... except upon an indictment... of a grand jury was indispensable...

1. Had this Court made a consideration of the record as on
5. Had this Court made a consideration on the whole record it would have affirmed this fact.
6. This Court designed a two prong test to determine frivolousness. In, Pennsylvania v. Claudio, 350 U.S. 116, H.N.T. #3, "Where a denial of an accused's constitutional rights under the due process clause... is alleged in an appropriate proceeding, such as habeas corpus, by factual allegations not patently frivolous or false on a consideration of the whole record, the proceeding should have not be summarily dismissed.

7.

"Petitioner were held to answer for a capital crime of First Degree Murder under 782.04 (1)(a) Fla. Stat. Upon no indictment of a grand jury"

8. The allegation were taken from the U.S.C. 5th. Amend. in pertinent part thus not patently frivolous or false. ~~Petitioner cited to App. (a)(6)~~

9. Thereon, Petitioner is entitled to a consideration of the whole record, the proceeding show not been summarily dismissed.

10. At Pg. #12. (ss) #11. The Court lacked subject matter jurisdiction because it deprived Petitioner of all pretrial proceedings violating the Equal Protection Clause of the 14th. Amend., U.S.C. and Due Process Clause.

11. Petitioner's allegation not patently frivolous or false, because he has a constitutional right to all proceeding under the Due Process Clauses of the 14th. Amend. U.S.C. "Nor Shall Any State Deprived Any Person Of... liberty ... Without Due Process OF LAW;

Nor Deny To Any Person Within Its Jurisdiction The Equal Protection Of The Laws.

12. And the Civil Rights Act OF 1866, "All Persons Within The Jurisdiction OF The United States Shall Have The Same Right In Every State An Territory To MAKE And Enforce Contracts, To Sue, Be Parties, Give Evidence, And To The Full And Equal Benefit OF All Laws And Proceedings For The Security OF Persons And Property As Is Enjoyed By White Citizens".

13. Petitioner's Factual allegation not patent-
ly Frivolous or False ON A consideration
OF the whole record see, App. (a), (b) and
(e), the proceeding should not been
summarily dismissed, habeas petition.

14. Issue # 3.

Whether Trial Court LACKED Jurisdiction AND-
or Subject Matter Jurisdiction To Convict-
ed Petitioner. BECAUSE, The Prosecuting OFFicer
Permitted A Non- Prosecuting OFFicer OF
The Court To File A CAPITAL Crime First De-
gree Murder, FLA. STAT.(s) 782.04 (1)(A)
Upon A Misdeamor Charging Instrument
An Arrest WARRANT. A Mr. Allen Vanland-
ingham, His Investigator.

Violated Fla. Const. Art. 1.0(c5) 15 (A) "No Person Shall Be tried For CAPITAL Crime Without Indictment By A Grand Jury... Under OATH Filed By The Prosecuting OFFicer OF The Court. And The Due Process CLAUSES OF The U.S.C. 14th. Amend; Fla. Const. Art, 1. (c5) 9, U.S.C. 5th. Amend. CAPITAL Crime Clause, And The 4th. Amend. U.S.C. No Warrant Shall Issue, But Upon Probable Cause.

15. An arrest warrant can only charge A Misdemeanor only. Fla. Stat. (c5) 901.02 (1) A ISSUANCE OF ARREST WARRANTS. # (1) A judge Upon examination of the complaint AND proofs submitted, if satisfied that probable cause existed For the issuance of an arrest warrant signed by the judge with the judge's NAME OF OFFICE.

16. # (2). The court may issue a warrant for the defendant's arrest when all of the following circumstances apply : (a) A complaint has been filed charging the commission of a Misdemeanor only. App. (A)(b) habeas petition appendix (b) attached and (c)

17. Violated Fla. Const. Art, 1.0(c5) 15 (A)

"No Person Shall Be Tried For Capital Crime Without... Indictment By A Grand Jury... Under Oath Filed By The prosecuting Officer Of The Court. 4th. Amend. U.S. C. "No Warrant Shall Issue But Upon Probable Cause." 5th. Amend. U.S.C. Capital crime clause, Due Process Clause of the 14th. Amend. U.S.C., Fla. Const. Art. 1. (s) 9. App. (b)(c) attached.

18. In criminal proceedings, A court jurisdiction is invoked by indictment, information" *McKenzie v. State*, 272 So.3d 808, 810 (Fla 2019)

19. Petitioner were arrested For First Degree Murder upon an arrested warrant, A misdemeanor charging instrument. A charging instrument is essential to invoke the circuit court subject matter jurisdiction. Jurisdiction does not exist under Art. 1. (s) 15 (9) of the Florida Constitution unless, there is an extant information, indictment... Filed by the state.

20. Information or indictment is an essential requisite of jurisdiction, which cannot be waived.

21. The arrest warrant completely failed to charge an official crime of first degree murder. Which must be by a grand jury.

22. In *Carbajal v. State*, 75 So. 3d 258, 262, (Fla. 2011) this Court has explained that jurisdiction does not exist under Article VI, section 15 of the Florida Constitution unless, there is an extant information, indictment, or presentment filed by the state. *State v. Anderson*, 537 So. 2d 1373, 1374 (Fla. 1989). We have also explained, however, that which a charging instrument is essential to invoke the circuit court's subject matter jurisdiction. *State v. Gray*, 443 So. 2d 816, 818 (Fla. 1983). In other words, while an information or indictment is an essential requisite of jurisdiction, which cannot be waived,...

23. The trial court's jurisdiction was never invoked.

24. In permitting Mr. Allen Van Landingham to file an arrest warrant, charging First Degree Murder, 782.04(1)(A) was illegal. Rendered the trial court without jurisdiction, and/or subject matter jurisdiction. App. 5 (c)(b)(7)

25. The district court stated that it habeas jurisdiction was limited to determining whether the challenged order was entered without jurisdiction or was illegal. I.D. At 220. MURRAY v. Regier, 872 So.2d 217 (Fla. 2002).

ISSUE #4

26. The Prosecuting Officer OF The Court Deprived Petitioner OF A Standing In Court. The Trial Court LACKED Jurisdiction AND OR Subject Matter Jurisdiction. By Intentionally Depriving Petitioner OF Five (5) Pretrial Proceedings. And Permitted A Non-prosecuting Officer OF The Court, To Charge A CAPITAL Crime, First Degree Murder 982.04(1)(a), Upon A Misdemeanor Charging Instrument, An Arrested WARRANT. VI. STATED Fla. CONST. Art. 1. (s) 15(A) U.S.C. 5th. Amend. CAPITAL Crime CLAUSE The Due Process CLAUSES OF The Civil Right Act OF 1866, U.S.C., 14th. Amend. Fla. CONST. Art, 1. (s) 9.

27. The Prosecuting Officer OF The Mr. Neill WADE, permitted his investigator, A Mr. VAN ANDINGHAM to File an CAPITAL Crime upon a Misdemeanor charging instrument an Arrest warrant For First degree murder. And deprived Petitioner OF Five pretrial proceedings.

~~Federal rights is left to State Courts, and removal is warranted only in the rare situation where it can be predicted by reason of the operation of a persuasive and explicit State or Federal Law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the State Court. In the absence of any such discriminatory State enactment a defendant must show an "equivalent basis" for the "Firm prediction that he would be denied or cannot enforce the specified Federal right in the State Court."~~

Although Non-Discriminatory on its face. The Fla. Const. Art 1, (s) 15 (A) were effected for reasons of racial discrimination. In the complete denial of a Grand Jury. To charge a Capital Crime. Under Fla. Stat. (s) 782.04 (1)(A). Violates the 14th Amend. U.S.C., Equal Protection Clause.

On 6-12-1982, an arrest warrant were issued for defendant's arrested, for First Degree Murder a Capital Crime, under Fla. Stat. (s) 782.04 (1)(A).

No Grand Jury's indictment were ^{Not} sought, depriving defendant completely of a grand jury. Violating the Equal Protection Clause, of the 14th Amend U.S.C.

Fla. Const. Art, 1., (s) 15 (A) provides in part, "No person shall be tried for Capital Crime . . . Without . . . Indictment by a Grand Jury.

Which means: "No person shall be held to answer for a Capital Crime . . . Unless on a . . . Indictment of a Grand Jury. 5th Amend. U.S.C.

The warrant was filed by an investigator for the state Attorney Office Mr. Vanlandingham. App (D)

The prosecutor Mr. Nell Wade appendix (C) and the investigator are both white persons. In the complete deprivation of a grand jury, constitute an unlawful all white persons grand jury, against a black person. "He was originally arrested upon a warrant issued by this court for First Degree Murder" lines 12-14 app. (C) pg. #3. AND APP. (C)

Such action support a policy of automatic reversal, and-or-a void conviction deliberately charging defendant on account of his race.

In, Vasquez v. Hillery, 474 U.S. 254, 264. The opinion of the Court in Mitchell ably presented other justifications, based on the necessity for vindicating 14th. amend rights, supporting a policy of automatic reversal in cases of grand jury discrimination.

A conviction is void under the qual protection clause of the Federal Constitution if the prosecutor . . . deliberately charged the defendant on accouont of his race. Supr Vasquez, N.Nt. #7., 2022 U.S. Dist LEXIS 177890, Stevens v. Beard.

Equal protection of the laws to the race thus excluded, since the Constitution of juries is a very essential part of the protection which the trial by jury is intended to secure. The very ideal of a jury is a body of men composed of the peers or

equals of the person whose rights it is selected or summoned to determine, that is of persons having the same legal status in society as that which he holds. *Strader v. West Virginia*, 100 U.S. 303, No. 2.

Where, the state charged appellant by information for a capital crime... the trial court no jurisdiction over him, Art. I. (3) 15 (A) and Fla. R. Crim. P. 3.140 (a) required that prosecution for a capital crime be initiated by... indictment by a grand jury. Reversed. *Hunter v. State*, 358 So.2d 557 (Fla. 1978)

In the instance case the prose for intentionally charged by every deprivation possible.

And on consideration of the record as a whole these facts will be proven.

Petitioner, has been denied a standing in court as shown above constitute the

necessary incidents of slavery, constituting its substance and visible form.

Littleton v. Berbling. 468 F. 2 d 389, N.#27

"The defense of subject matter jurisdiction. May be raised at anytime and any stage of a proceeding. Shepherd v. U.S. 2010 U.S. Dist LEXIS 442921.

There under: Petitioner present the following issue as jurisdictional issues, on rehearing.

The question of whether a court has subject matter jurisdiction involve a claim of Fundamental Error which can be raised at anytime. . . Booker, v. State, 497 So. 2d 957 N. #2 (Fla. 1st Dist 1986).

Whether the Deprivation of the Following statutes constitute that the Court lacked Subject Matter Jurisdiction ? or Jurisdiction

The Petitioner was afforded no First Appearance Hearing under
Fla.R.Crim.P. 3.130 (A)

Prompt First Appearance, . . . every arrested person must be taken before a judge, either in person or by audio-video communication technology in the discretion of the court, within 24 hours of arrest.

An official record of the proceeding must be maintained.

The progress Docket for Case 82000412 CFMA show's that Petitioner was not afforded that protection of Fla.R.Crim.P.3.130 (A) App. (e) AND

Such violation constitute a denial of the Due Process and Equal Protection Clauses of the 14th Amend. U.S.C. and 6th Amend. No Attorney was appointed by the court.

Petitioner, was afforded no, Pretrial Probable Cause Determination and adversary Preliminary Hearing. Under Fla.R.Crim.P.R.3.133 (A)(1).

(A) Non adversary Probable Cause Determination (1) Defendant in custody.

In all cases in which the defendant is in custody, a nonadversary probable cause determination "shall" be held before a judge within 48 hours from the time of the defendant's arrest...

Appendix (H) attached show that Petitioner was deprived of the protection of Fla.R.Crim.P. 3.133 (A)(1). A violation the Equal Protection Clause.

Petitioner, was afforded no Fla.R.Crim.P.3.160 (A) Arraignment Hearing as to First Degree Murder.

(A) Nature of Arraignment must be conducted in open court or by audio-video communication technology in the discretion of the court and of the judge or clerk or prosecutor must consist of the judge or clerk or prosecuting attorney reading, the indictment or information on which the defendant will be tried to the defendant or stating orally to the defendant the substance of the charge or charges and calling on the defendant to plead thereto. the reading or statement as to the charge or charges may be waived by the defendant. If, the defendant is represented

by counsel, counsel may file a written plea of not guilty at or before arraignment and there upon arraignment must be deemed waived.

The deprivation of Fla.R.Crim.P.3.160 (A)'s protection violates the Equal Protection Clauses of the 14th. Amend. U.S.C. See App. (e) no arraignment hearing was had as to First Degree Murder.

Petitioner's case involves an alleged confession, however, he was afforded no Hearing on the admissibility of confessions, under Fla.Stat.(5) 90.105 (3) provides:

Hearing on the admissibility of confession "SHALL" be conducted out of the hearing of the jury.

Under the Civil Rights Act of 1866, all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce . . . to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens. U.S. District Court 5th Circuit; 2007 U.S. Dist LEXIS 112453 Ragsdale v. Classroom Teachers of Dallas.

The prosecution denied to Petitioner a legal standing in court, which amounts to the necessary incident of slavery constituting its substance and visible form.

The long existence of African Slavery in this country gave us very distinct notions of what it was, and what were its necessary incidents . . . to have a standing

in court . . . the inseparable incidents of the institution. Severer punishments for crimes were imposed on the slave than on free persons guilty of the same offences.

Nt. #27.

Congress, as we have seen, by the Civil Rights Bill of 1866, passed in view of the thirteenth Amendment, before the Fourteenth was adopted, undertook to wipe out these burdens and disabilities, the necessary incidents of slavery, constituting its substance and visible form.

The only question under the present head, therefore, is whether the refusal to any persons of the accommodation of . . . State Law . . . does inflict upon such person any manner of servitude, or form of slavery, as those terms are understood in this country? Id. at 23. Littleton v. Berbling, 478 F.2d 389 citing, In re Civil Rights Cases 109 U.S. 3, 22 (1883).

Racial Discrimination: Differential Treatment . . . "A failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored. Black's Law Dictionary 11th Ed. By Bryan A. Garner (2019). i.e., White citizens and BLACK citizens.

The deprivations of the following protective authorities constitute, A deprivation of a standing in court; used discriminatorily. *Violated the following:*

1. Fla. Stat. (s) 27.181 (2)
2. Fla. Const. Art, 1 (s) 15 (A), capital crime clause.
3. 5th Amend. U.S.C., capital crime clause.

4. 13th Amend. U.S.C., Due Process ~~Clause~~.
5. 14th Amend. U.S.C., Due Process ~~Clause~~.
6. 6th Amend. U.S.C. Right to counsel ~~Clause~~.
7. Fla.R.Crim.P. 3.130 (A)
8. Fla.R.Crim.P. 3.133 (A)(1)
9. Fla.R.Crim.P. 3.160 (A)
10. Fla. Stat. (s) 90.105 (3)

The Petitioner will not be allowed the opportunity to enforce the alleged rights in the State Court, due to racial discrimination.

The Petitioner have filed approx. (40) Criminal Motions in the State Courts AND FEDERAL COURTS.

all refuse to rule in accordance with the law. ANOTHER RECORD AS A VETO,
YET THE CLAIM OF FRIVOLOUS IS CONTINUALLY BEING MADE.
"Many wrongs maybe obnoxious to the prohibitions of the 14th Amendment

which are not, in any just sense, incidents or elements of slavery, such, for example would be stealing, for example, to be seized and hung by the posse comitatus without regular trials. In re Civil Rights Cases, 109 U.S. 3, 23 (1883), the depravation of a First appearance Hearing under Fla.R.Crim.P.3.130 (A), a pretrial probable cause hearing Fla.R.CrimP. 3 .133 an Arraignment Hearing Fla.R.Crim.P. 3.160 (A) (A), a admissibility of confession hearing, Fla. Stat. (S) 90.105 (3) is no regular trial.

What reasonable distinction can be found for the differential in treatment of Petitioner? Where no law was proven to be violated by Petitioner. But racial discrimination, deliberately charging him on account of his race.

A conviction is void under the equal protection clause of the Federal Constitution if the prosecutor... deliberately charged the defendant on account of his race 106, S. Ct. 617, N. #7. VASQUEZ, SUPRA, habeas petition, attached.

Petitioner is in involuntary servitude without being duly convicted, under 13th Amend. U.S.C. slavery clause.

This Court owed Petitioner a duty to decide whether, the trial court had jurisdiction or had no jurisdictions. See habeas petition, Pg. 10-(A)

The question of jurisdiction, whether of the circuit court or of this court, is a question, however, which we are called upon, and which it is our duty, to decide. Id at 142
YOUNG, SUPRA,

This Court's decision did not answer this question as Rule 39.8.

Had this Court made a consideration of the record as a whole it would have found the it did not.

CONCLUSION

The petition for a writ of habeas corpus should be granted.

Respectfully submitted,

Burt Leon Setts

Date: 1/12/2021

25.

CONCLUSION

**That this Honorable Court dismiss the State Court conviction, as void
conviction.**

UNNOTARIZED OATH

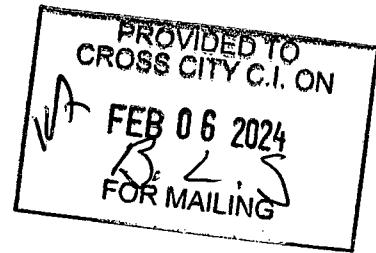
Under penalties of perjury, I declare that I have read the foregoing

I, Burt Setts, and the facts stated therein are true and correct on this
8th day of February, 2024

Respectfully Submitted,

Burt Setts
Burt Setts, DC # 063236

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

Burt Leon Setts — PETITIONER
(Your Name)

VS.

Stone Swain — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The petitioner asks leave to file the attached petition for a PETITION FOR REHEARING without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

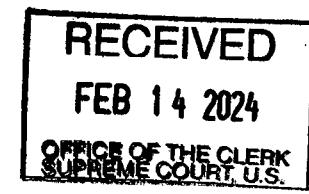
Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: _____
_____, or

a copy of the order of appointment is appended.

Burt Setts
(Signature)



**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Burt Leon Setts, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

| Income source | Average monthly amount during the past 12 months | | Amount expected next month | |
|--|---|----------------|-------------------------------|----------------|
| | You | Spouse | You | Spouse |
| Employment | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> |
| Self-employment | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> |
| Income from real property (such as rental income) | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> |
| Interest and dividends | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> |
| Gifts | \$ <u>80.00</u> | \$ <u>NONE</u> | \$ <u>80.00</u> | \$ <u>NONE</u> |
| Alimony | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> |
| Child Support | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> |
| Retirement (such as social security, pensions, annuities, insurance) | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> |
| Disability (such as social security, insurance payments) | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> |
| Unemployment payments | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> |
| Public-assistance (such as welfare) | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> |
| Other (specify): | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> |
| Total monthly income: | \$ <u>80.00</u> | \$ <u>NONE</u> | \$ <u>NONE</u> | \$ <u>NONE</u> |

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of Employment | Gross monthly pay |
|-------------|-------------|---------------------|-------------------|
| <u>None</u> | <u>None</u> | <u>None</u> | \$ <u>None</u> |
| <u>None</u> | <u>None</u> | <u>None</u> | \$ <u>None</u> |
| <u>None</u> | <u>None</u> | <u>None</u> | \$ <u>None</u> |

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of Employment | Gross monthly pay |
|-------------|-------------|---------------------|-------------------|
| <u>None</u> | <u>None</u> | <u>None</u> | \$ <u>None</u> |
| <u>None</u> | <u>None</u> | <u>None</u> | \$ <u>None</u> |
| <u>None</u> | <u>None</u> | <u>None</u> | \$ <u>None</u> |

4. How much cash do you and your spouse have? \$ 0

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

| Type of account (e.g., checking or savings) | Amount you have | Amount your spouse has |
|---|-----------------|------------------------|
| <u>None</u> | \$ <u>None</u> | \$ <u>None</u> |
| <u>None</u> | \$ <u>None</u> | \$ <u>None</u> |
| <u>None</u> | \$ <u>None</u> | \$ <u>None</u> |

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value _____

Other real estate
Value _____

Motor Vehicle #1
Year, make & model _____
Value _____

Motor Vehicle #2
Year, make & model _____
Value _____

Other assets
Description _____
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

| Person owing you or your spouse money | Amount owed to you | Amount owed to your spouse |
|---------------------------------------|--------------------|----------------------------|
| <u>none</u> | \$ <u>none</u> | \$ <u>none</u> |
| <u>none</u> | \$ <u>none</u> | \$ <u>none</u> |
| <u>none</u> | \$ <u>none</u> | \$ <u>none</u> |

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

| Name | Relationship | Age |
|-------------|--------------|-------------|
| <u>none</u> | <u>none</u> | <u>none</u> |
| <u>none</u> | <u>none</u> | <u>none</u> |
| <u>none</u> | <u>none</u> | <u>none</u> |

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

| | You | Your spouse |
|--|----------------|----------------|
| Rent or home-mortgage payment (include lot rented for mobile home) | \$ <u>none</u> | \$ <u>none</u> |
| Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| Utilities (electricity, heating fuel, water, sewer, and telephone) | \$ <u>none</u> | \$ <u>none</u> |
| Home maintenance (repairs and upkeep) | \$ <u>none</u> | \$ <u>none</u> |
| Food | \$ <u>none</u> | \$ <u>none</u> |
| Clothing | \$ <u>none</u> | \$ <u>none</u> |
| Laundry and dry-cleaning | \$ <u>none</u> | \$ <u>none</u> |
| Medical and dental expenses | \$ <u>none</u> | \$ <u>none</u> |

| | You | Your spouse |
|---|----------------|--------------------|
| Transportation (not including motor vehicle payments) | \$ <u>None</u> | \$ <u>None</u> |
| Recreation, entertainment, newspapers, magazines, etc. | \$ <u>None</u> | \$ <u>None</u> |
| Insurance (not deducted from wages or included in mortgage payments) | | |
| Homeowner's or renter's | \$ <u>None</u> | \$ <u>None</u> |
| Life | \$ <u>None</u> | \$ <u>None</u> |
| Health | \$ <u>None</u> | \$ <u>None</u> |
| Motor Vehicle | \$ <u>None</u> | \$ <u>None</u> |
| Other: _____ | \$ <u>None</u> | \$ <u>None</u> |
| Taxes (not deducted from wages or included in mortgage payments) | | |
| (specify): _____ | \$ <u>None</u> | \$ <u>None</u> |
| Installment payments | | |
| Motor Vehicle | \$ <u>None</u> | \$ <u>None</u> |
| Credit card(s) | \$ <u>None</u> | \$ <u>None</u> |
| Department store(s) | \$ <u>None</u> | \$ <u>None</u> |
| Other: _____ | \$ <u>None</u> | \$ <u>None</u> |
| Alimony, maintenance, and support paid to others | \$ <u>None</u> | \$ <u>None</u> |
| Regular expenses for operation of business, profession, or farm (attach detailed statement) | \$ <u>None</u> | \$ <u>None</u> |
| Other (specify): _____ | \$ <u>None</u> | \$ <u>None</u> |
| Total monthly expenses: | <u>\$ None</u> | <u>\$ None</u> |

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid - or will you be paying - an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: _____, 20____


(Signature)

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

App. (a)

January 16, 2024

Scott S. Harris
Clerk of the Court
(202) 479-3011

Mr. Burt Leon Setts
Prisoner ID #063236, D2113L
Cross City C.I.
568 N.E. 255 St.
Cross CIty, FL 32628

Re: In Re Burt Setts
No. 23-6360

Dear Mr. Setts:

The Court today entered the following order in the above-entitled case:

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of habeas corpus is dismissed. See Rule 39.8.

Sincerely,



Scott S. Harris, Clerk

In the County Court

GAUDEN

County, Florida

App(b)

STATE OF FLORIDA

BURT SMITH

WARRANT

Dated

Address

-CF-

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA,

WHEREAS, a complaint has been filed before me by

John W. Burt, Esq., of the City of

being first duly sworn says that on the

in Gauden, County, Florida, the defendant

did then and there commit the offense of

murder, in that he did then and there

contrary to the statute, rule, regulation, or other provision of law in such case made and provided, and against the
peace and dignity of the State of Florida.

THESE ARE, THEREFORE, to command you to arrest, instantly the defendant, and to bring him before me, to be dealt with according to law.

Given under my hand and seal this 6 day of December

000165

CO: FIRST APPEARANCE MAGISTRATE

DEFENDANT: BURT SEITS

CHARGES: MURDER - FIRST DEGREE

SUMMARY OF OFFENSE AND PROBABLE CAUSE

THE ABOVE NAMED DEFENDANT WAS ARRESTED FOR THE CRIME OF MURDER
of James Barnes, who was also known by the name of James Andrews Barnes.

Last seen alive on May 24, 1981 after he

Andrews Barnes in Quincy, Florida. See also Report of the Coroner

1981 and on June 1, 1981, the body and several items were

found in a wooded area near the Atlantic City, Florida.

James North of Quincy in Calhoun County, Michigan

had the following information, that the dead body was found in

the following manner, he said he found the body in a

wooded area near the Atlantic City, Florida.

He further stated that he found the body in a

wooded area near the Atlantic City, Florida.

He further stated that he found the body in a

wooded area near the Atlantic City, Florida.

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He further stated that he found the body in a

wooded area near the Atlantic City, Florida.

He further stated that he found the body in a

wooded area near the Atlantic City, Florida.

000-166-0000

CONTINUED - SUMMARY OF OFFENSE AND PREGAULTE GAUFE AFFIDAVIT

An individual interrogated with the Defendant BURT SETTS reported that SETTS had told him that SETTS and one WILLIE JACKSON JOHNSON also known as "Unc" had in fact raped and killed a black female in Cassette County. The described details of the attack matched the details of the actual crime. The girl was made to have been drugged in order to prevent her from reporting that she had been raped.

Both BETTS and JOHNSON had been previously involved in a
similar killing in Leon County where the victim was left alive
but severely beaten. JOHNSON was found guilty of this killing
and was sentenced to death. JOHNSON's appeal and JOHNSON was convicted only
recently. In this recent killing, JOHNSON was out on bail at the time
of the killing. In this recent killing, JOHNSON was out on bail at the time
of the killing. JOHNSON had known Plaintiff
for the number of times he has seen Plaintiff
since he was born.

Both STAVIS and FORDON were subsequently arrested for armed robbery on September 9, 1981 and were later convicted and sentenced to State Prison.

Under the direction of State Attorney and the
Department of Law Enforcement traveled to Union Correctional
Institution, 1100 Main Street, Pleasanton, Calif.

...and the other, which he had made in his room, gave a series of statements in which he admitted his own guilt and the names of his accomplices and his master, who had been in the room.

CONTINUED - SUMMARY OF DEFENSE AND PROBABILITY

defended the car, a 1975 white and blue Pontiac LeMans, and the car was found in the possession of ROBERT L. JOHNSON and himself in committing the rape.

Chemical examination of the jacket by the Illinois State Police Crime Laboratory and the Chicago Police Department Enforcement Laboratory indicated that the jacket was not worn.

Additional witnesses corroborated that the victim was last seen in the company of ROBERT L. JOHNSON and that he was picked up the night before the victim was last seen. ROBERT L. JOHNSON was last seen at 10:30 P.M. the night before disappearance.

00017

App. (C)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR GADSDEN COUNTY, FLORIDA.

FELONY CASE NO. 82-412A

STATE OF FLORIDA

-VS-

BURT SETTS,

Defendant.

Reporter's transcribed notes of proceedings had on
January 18, 1983, in the Gadsden County Courthouse at
Quincy, Florida; the Honorable Ben C. Willis, judge of
the above Court, presiding.

APPEARANCES: For the State:

NEAL G. WADE, Esq.
Assistant State Attorney
24 West Washington Street
Quincy, Florida 32351

For the defendant:

GORDON B. SCOTT, Esq.
Assistant Public Defender
26 North Adams Street
Quincy, Florida 32351

The Defendant, Burt Setts

JOHN DAY, Probation Officer
Department of Corrections
Quincy, Florida 32351

Also Present:

PRISCILLA WILLIAMS
OFFICIAL COURT REPORTER
CIRCUIT OF FLORIDA

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[THEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD
ON JANUARY 18, 1983, IN OPEN COURT, AT 2:30 P.M.];

THE COURT: All right, what else do we have?

MR. WADE: Your honor, the next matter we have
to bring before the court is regarding State of
Florida versus Burt Setts, Case No. 82-412.

THE COURT: What's the name?

MR. WADE: Burt Setts.

THE COURT: What's that a charge of?

MR. WADE: Mr. Setts is charged by Information and
is present before the court with the offenses of
Second Degree Murder and Sexual Battery. He was
originally arrested upon a warrant issued by this
court for First Degree Murder. Mr. Setts appears
before the court for the purpose of entering a plea
pursuant to a plea agreement which requires, among
other things, his cooperation and testimony against
his co-defendant, Willie Jackson Johnson.

There is a written plea agreement that the
parties intend to sign before the court and then
file with the court.

THE COURT: Mr. Setts?

MR. SETTS: At this time, your honor, we would
waive the reading of the Information and enter a plea
of Guilty to Count One and Guilty to Count Two, in

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THE COURT: Mr. Setts, you are entering a plea
of guilty to two charges, each of which is a life
felony; that is, you could get a life sentence for
it. One is Murder in the Second Degree and the other
is Sexual Battery.

Now, what is the contract?

MR. WADE: Your honor, there is a written
agreement for plea. We intend to file the original
with the court. I believe Mr. Setts has had an
opportunity to review it.

THE DEFENDANT: Yes, sir.

THE COURT: Well, what is it, that he will
cooperate in the prosecution of his co-defendant?

MR. WADE: Yes, sir. Specifically, the State
and the defendant have agreed that the defendant,
Burt Setts, in lieu of being prosecuted for First
Degree Murder, is to be permitted to enter a plea
of Guilty to Second Degree Murder and Sexual
Battery.

Two, that there are no agreements or under-
standings as to what sentence shall be imposed; and
it is understood that the court has the power to
retain jurisdiction over any parole of the defendant
for up to one-third of any sentence imposed.

Three, that the defendant is to cooperate fully

1 STATE OF FLORIDA)
2 COUNTY OF GADSDEN)
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CERTIFICATE OF OFFICIAL COURT REPORTER

I, PRISCILLA WILLIAMS, Registered Professional Reporter; Notary Public, State of Florida at large; and Official Court Reporter, Second Judicial Circuit of Florida, do hereby certify that I was authorized to and did report the foregoing proceedings at the time and place and in the cause indicated in the caption; that I later reduced the same to typewriting or had the same reduced to typewriting under my personal supervision and that the foregoing Pages 1 through 13, inclusive, constitute a true and correct transcription of my shorthand notes of such proceedings had before me.

WITNESS my hand and seal at Quincy, Florida,
this 4th day of June, 1984.

Priscilla Williams (SEAL)

PRISCILLA WILLIAMS, R.P.R.
Official Court Reporter
Gadsden County Courthouse
Quincy, Florida 32351

App. (c.d.)

TRANSCRIPT

CASE # 522-1A-0075

DATE: 09/22/82

TIME OF CALL: 1

LOCATION: Tallahassee Operation Center

CALL TO TELEPHONE # () N/A FROM # ()

MONITORING AGENT: _____

SUBJECTS: KB - Ken Bridges

SV - Allen Vanlandingham

BS - Burt Sette

000049

FDLE Case #522-1A-0075
Statement - Setts
September 22, 1982
Page Two

KB Testing 1, 2, 3. Test 1, 2, 3. This will be a statement from Burt Leon Setts taken at the Tallahassee Operations Center, on September 22, 1982, time approximately nine twenty-five. Present during the interview is myself, SA Ken Bridges; State Attorney Investigator Allen Vanlandingham and Burt Setts. This is regarding FDLE case number 522-1A-0075, the Eleneice Sanders homicide investigation. Burt, I'm gonna advise you of your rights from the form, uh, before we ask you any questions concerning this, uh, alleged homicide of Eleneice Sanders you must fully understand you rights. One, you have the right to remain silent. Anything you say can and will be used as evidence against you in a court. If you wish, you have the right to call or obtain an attorney at this time and ask his advise before saying anything and to have him with you during any questioning. If you want an attorney and cannot afford to hire one, the court will appoint one for you and you have a right to this court appointed attorney's advise before saying anything and to have him present with you during any questioning. If you decide to answer questions now and waive your rights to first talk with an attorney or have an attorney present with you during questioning, you will still have the right to stop answering at any time until you talk to a lawyer. Burt, do you understand these rights?

BS Yeah.

KB I'm going to ask you to sign the form here where it says, "I fully understand what my rights are". Right ~~the first~~, the second part of this form is the waiver of rights. It says, "I have carefully read the above statement and I fully understand what my rights are. I do not want an attorney at this time and I am willing to make a statement and answer any questions concernin

FDLE Case #522-1A-0075
Statement - Setts
September 22, 1982
Page 22

BS Right.

KB You there's a couple of points you had a clear up.

BS Right, right.

KB And this was voluntary.

BS Right.

KB Okay. This, this'll be the end-of the-statement. My name's Ken Bridges,
Special Agent with the Department of Law Enforcement.

SV Allen Vanlandingham, Investigator with the State Attorney's Office.

KB Burt, would you state your name, please?

BS Burt Setts.

KB And your date of birth.

BS October 17, 1960.

KB Okay. End of statement.

I, BURT SETTS, acknowledge that I have read the above transcript
of my statement made on September 22, 1982, and swear that everything con-
tained in said statement is true and correct.

SWORN AND SUBSCRIBED TO this 29th day of November, 1982.

Burt Setts
BURT SETTS

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 29th DAY OF NOVEMBER 1982.

Allen W. Vanlandingham
NOTARY PUBLIC

006070

Notary Public, State of Florida
My Commission Expires May 26, 1985
Benton County Clerk - Lawrence, Inc.

App. (e)

Progress Docket for Case 82000412CFMA
State of Florida vs. BURT SETTS DOB: 10/17/1960

| <u>Date</u> | <u>Date Entered</u> | <u>Description</u> |
|-------------|---------------------|--|
| 9/22/2022 | | 9/22/2022 DEFENDANT'S REQUEST FOR DOCUMENTS FILED |
| 6/23/2020 | | 6/23/2020 NOTICE OF INQUIRY FILED |
| 2/18/2020 | | 2/18/2020 ORDER RETURNED UNDELIVERED |
| 1/16/2020 | | 1/16/2020 JUDGE ASSIGNED: ROBERT R WHEELER |
| 1/16/2020 | | 1/16/2020 ORDER DENYING DEFENDANT'S MOTION FILED |
| 1/15/2020 | | 1/15/2020 MOTION FOR APPOINTMENT OF COUNSEL FILED |
| 1/15/2020 | | 1/15/2020 CASE RE-OPENED. REASON : OTHER REASON |
| 1/8/2020 | | 1/8/2020 ORDER DISMISSING DEFENDANT'S POSTCONVICTION MOTION FILED |
| 12/30/2019 | | 12/30/2019 MOTION TO SUPPRESS EVIDENCE FILED |
| 12/30/2019 | | 12/30/2019 CASE RE-OPENED. REASON : OTHER REASON |
| 2/14/2019 | | 2/14/2019 SUPREME COURT FILED (DISMISSED) |
| 12/3/2018 | | 12/3/2018 DCA ORDER FILED (OTSC) |
| 6/18/2018 | | 6/18/2018 LETTER FROM DEF FILED |
| 5/8/2018 | | 5/8/2018 ORDER DENYING MOTION FOR POST CONVICTION RELIEF FILED |
| 3/28/2018 | | 3/28/2018 LETTER FROM DEF FILED |
| 12/5/2017 | | 12/5/2017 CASE RE-OPENED. REASON : POST CONV RELIEF |
| 12/5/2017 | | 12/5/2017 MOTION FOR POST CONVICTION RELIEF FILED |
| 9/25/2013 | | 10/3/2013 ORDER DISMISSING MOTION FOR POST CONVICTION RELIEF FILED |
| 7/16/2013 | | 10/2/2013 COPY OF APPENDIX |
| 7/16/2013 | | 7/16/2013 REOPENED FOR POST CONV RELIEF |
| 7/16/2013 | | 7/16/2013 AMENDED MOTION FOR POST CONVICTION RELIEF FILED |
| 3/4/2013 | | 3/4/2013 CLOSED FOR OTHER REASON |
| 3/4/2013 | | 3/4/2013 CASE CLOSED |
| 3/4/2013 | | 3/4/2013 ORDER DENYING MOTION FOR REHEARING FILED |
| 2/19/2013 | | 2/20/2013 REOPENED FOR OTHER REASON |
| 2/19/2013 | | 2/20/2013 MOTION FOR REHEARING FILED |

Progress Docket for Case 82000412CFMA

State of Florida vs. BURT SETTS DOB: 10/17/1960

1/31/2013 2/20/2013 CLOSED FOR POST CONV RELIEF
1/31/2013 2/20/2013 CASE CLOSED
1/31/2013 1/31/2013 ORDER DENYING MOTION FOR POST CONVICTION RELIEF FILED
4/26/2012 4/26/2012 SUPPLEMENTARY GROUNDS FOUR AND FIVE FILED
4/23/2012 4/23/2012 NOTICE OF INQUIRY FILED
10/14/2011 10/14/2011 NOTICE OF INQUIRY FILED
5/26/2011 5/31/2011 AMENDED MOTION FOR POST CONVICTION RELIEF FILED
5/11/2011 5/11/2011 DEF MOTION FOR POST CONVICTION RELIEF FILED
5/10/2011 5/11/2011 REOPENED FOR POST CONV RELIEF
3/30/2011 3/30/2011 CLOSED FOR MOTION-CORRECT SENTENCE
3/30/2011 3/30/2011 CASE CLOSED
3/30/2011 3/30/2011 ORDER DENYING MOTION TO CORRECT SENTENCE FILED
3/4/2011 3/4/2011 JUDGE JONATHAN SJOSTROM ASSIGNED
2/21/2011 2/21/2011 DEF'S NOTICE OF INQUIRY FILED
10/28/2010 10/28/2010 REOPENED FOR MOTION-CORRECT SENTENCE
10/28/2010 10/28/2010 JUDGE SHEFFIELD, FRANK E ASSIGNED
10/28/2010 10/28/2010 MOTION TO CORRECT SENTENCE FILED
8/26/2010 8/26/2010 BELATED REHEARING IS HEREBY STRICKEN AS UNTIMELY)
8/26/2010 8/26/2010 SUPREME COURT ORDER FILED (PETITIONER'S MOTION FOR
5/27/2010 5/27/2010 SUPREME COURT ORDER FILED (PETITION DENIED)
2/3/2010 2/3/2010 SUPREME COURT ORDER FILED (FILING FEE)
2/3/2010 2/3/2010 SUPREME COURT ACKNOWLEDGMENT LETTER OF NEW CASE FILED
2/18/2009 2/18/2009 DCA RECORDS (3.190) RETURNED FILED (2 VOLS)
1/8/2009 1/8/2009 DCA MANDATE AND OPINION FILED (AFFIRMED)
12/29/2008 12/29/2008 DEF REQ FOR DOCKET FILED
8/21/2008 8/21/2008 COPY OF DCA ORDER FILED (NO FILING FEE DUE)
8/20/2008 8/21/2008 DCA ORDER FILED (NO FILING FEE DUE)
8/8/2008 8/11/2008 LETTER OF INQUIRY FILED

Progress Docket for Case 82000412CFMA

State of Florida vs. BURT SETTS DOB: 10/17/1960

7/29/2008 7/30/2008 APPLICATION FOR CRIMINAL INDIGENT STATUS FILED
7/29/2008 7/30/2008 AFFIDAVIT OF INDIGENT STATUS FILED.(NOT PAID)(INDIGENT)
7/23/2008 7/23/2008 DCA ORDER FILED (AFFIDAVIT OF INSOLVENCY)
7/21/2008 7/21/2008 MOTION TO REINSTATE PETITION FOR WRIT OF MANDAMUS FILE
7/18/2008 7/18/2008 AFFIDAVIT OF INDIGENCY BY APPELLANT FILED
7/18/2008 7/18/2008 MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS/
7/10/2008 7/10/2008 DCA ORDER FILED (FILING FEE)
7/10/2008 7/10/2008 DCA LETTER - RECEIPT OF NOTICE OF APPEAL FILED
6/23/2008 6/23/2008 NOTICE OF APPEAL FILED
5/29/2008 5/29/2008 NOTICE OF INQUIRY FILED
5/23/2008 5/23/2008 CASE CLOSED
5/23/2008 5/23/2008 CLOSED FOR OTHER REASON
5/23/2008 5/23/2008 ORDER DENYING DEF'S RULE 3.190 MOTION TO DISMISS FILED
5/21/2008 5/21/2008 CASE REKEYED FROM OLD SYSTEM.
5/21/2008 5/21/2008 JUDGE BATEMAN ASSIGNED
4/25/2008 5/21/2008 REOPENED FOR OTHER REASON
4/25/2008 5/21/2008 MOTION TO DISMISS FILED
10/18/1983 9/26/2013 SENTENCED TO 00 00 00 OF DL ACTION - NO ACTION
10/18/1983 9/26/2013 SENTENCED TO 000 10 04 OF CREDIT TIME SERVED
10/18/1983 9/26/2013 SENTENCED TO 000 00 00 075 00 00 OF CONFINEMENT - PRISON
10/18/1983 5/21/2008 CASE CLOSED
10/18/1983 5/21/2008 CREDIT FOR TIME SRV FOR 10 MOS 4 DYS - CNT 2
10/18/1983 5/21/2008 SENTENCE IS CONCURRENT WITH 82412CFA -001 - CNT 2
10/18/1983 5/21/2008 MAX CONF-PRISON FOR 75 YRS - CNT 2
10/18/1983 5/21/2008 DEFENDANT SENTENCED AS FOLLOWS - CNT 2:
10/18/1983 5/21/2008 DEFENDANT APPEARED PRES W/ATTY FOR NO TRIAL TRIAL CNT: 2
10/18/1983 5/21/2008 CREDIT FOR TIME SRV FOR 10 MOS 4 DYS - CNT 1
10/18/1983 5/21/2008 MAX CONF-PRISON FOR 75 YRS - CNT 1

Progress Docket for Case **82000412CFMA**

State of Florida vs. BURT SETTS DOB: 10/17/1960

| | |
|------------|--|
| 10/18/1983 | 5/21/2008 DEFENDANT SENTENCED AS FOLLOWS - CNT 1: |
| 10/18/1983 | 5/21/2008 DEFENDANT APPEARED PRES W/ATTY FOR NO TRIAL TRIAL CNT: 1 |
| 10/18/1983 | 5/21/2008 DEFENDANT ENTERED PLEA OF NOLO CONTENDERE CNT: 1,CNT: 2 |
| 1/18/1983 | 5/21/2008 N/A SEQ: 1,SEQ: 2 |
| 1/18/1983 | 5/21/2008 CASE FILED WITH CLERK |

App. (F)

82-412 CASE NO.

THE STATE OF FLORIDA JAN 18 1982 AM 3:02

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL
CIRCUIT, IN AND FOR GADSDEN
COUNTY, FLORIDA.

vs.

BURT SETTS,
GADSDEN COUNTY, FLA.
Defendant(s).

INFORMATION

CT. I: MURDER - 2ND DEGREE
CT. II: SEXUAL BATTERY

INFORMATION FOR:

IN THE NAME OF AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

DONALD S. MODESITT, State Attorney for the Second Judicial Circuit of the State of Florida, charges that in Gadsden County, Florida, the above named defendant(s), on or between May 28, 1981 and June 5, 1981

did then and there unlawfully kill a human being, Eleniece Sanders, also known as "Moosie", by striking her with a blunt object or by other means not specifically known, said killing being perpetrated by an act imminently dangerous to another, and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, contrary to Section 782.04(2), Florida Statutes.

COUNT II: And Donald S. Modesitt, as State Attorney aforesaid, further information makes that BURT SETTS, of the County of Gadsden and State of Florida, on or between May 28, 1981 and June 5, 1981, in the County of Gadsden and State of Florida, did then and there with intent to attain sexual arousal or gratification unlawfully commit a sexual battery upon Eleniece Sanders, also known as "Moosie", a female over the age of eleven (11) years, to-wit: twenty (20) years of age, by vaginal penetration by, or union with, the sex organ of another without the consent of Eleniece Sanders, also known as "Moosie", and in the process thereof used a deadly weapon, to-wit: a blunt object, or used actual physical force likely to cause serious personal injury, contrary to Section 794.011(3), Florida Statutes.

STATE OF FLORIDA
COUNTY OF GADSDEN

DONALD S. MODESITT, STATE ATTORNEY
SECOND JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR GADSDEN COUNTY.

Personally appeared before me, Donald S. Modesitt, State Attorney for the Second Judicial Circuit of the State of Florida, in and for Gadsden County, or his designated Assistant State Attorney, who, being first duly sworn, says that the allegations as set forth in the foregoing INFORMATION are based

Chief A. W. W.
STATE ATTORNEY OF

PROBATION VIOLATOR
(Check If Applicable)

(Check If Applicable)

IN THE CIRCUIT COURT, Second
JUDICIAL CIRCUIT, IN AND FOR
Gadsden COUNTY, FLORIDA

DIVISION _____
CASE NUMBER 82-CF-412-A

STATE OF FLORIDA

STATE OF FLORIDA CASE NUMBER 02-CE-1118-11

—18—

Burt Setts

Defendant

JUDGMENT

The Defendant, Burt Setts, being personally before this
Court represented by Gordon Scott, Asst. Public Defender, his attorney of record, and having:

(Check Applicable Provision)

- Been tried and found guilty of the following crime(s)
- Entered a plea of guilty to the following crime(s)
- Entered a plea of nolo contendere to the following crime(s)

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

\$15,00

The Defendant is hereby ordered to pay the sum of ten dollars (\$10.00) pursuant to F.S. 960.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of two dollars (\$2.00) as a court cost pursuant to F.S. 943.25(4).

The Defendant is ordered to pay an additional sum of two dollars (\$2.00) pursuant to F.S. 943.25(8).
(This provision is optional; not applicable unless checked).

1a

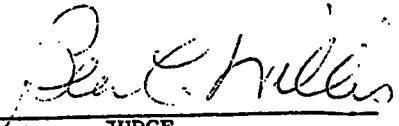
Imposition of Sentence
Stayed and Withheld
(Check if Applicable)

The Court hereby stays and withholds the imposition of sentence as to count(s) _____ and places the Defendant on probation for a period of _____ under the supervision of the Department of Corrections (conditions of probation set forth in separate order.)

Sentence Deferred
Until Later Date
(Check if Applicable)

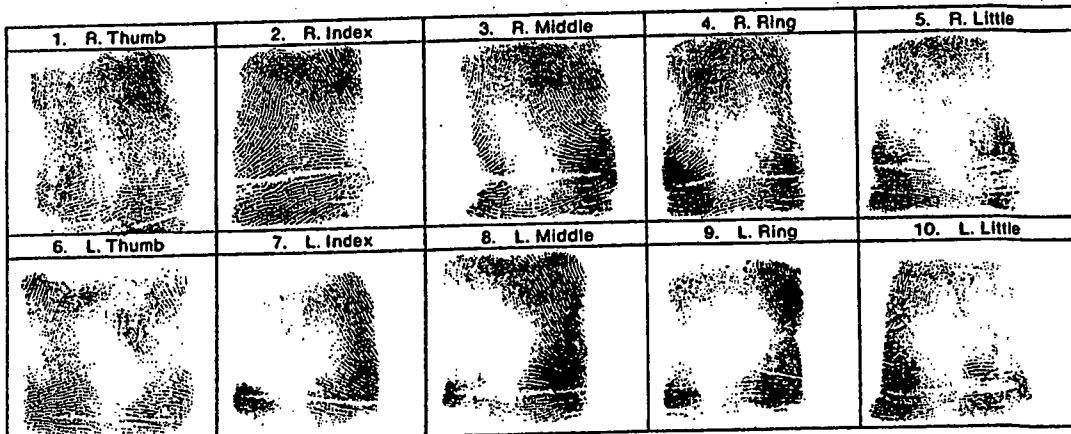
The Court hereby defers imposition of sentence until _____ (date)

The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.



JUDGE

FINGERPRINTS OF DEFENDANT

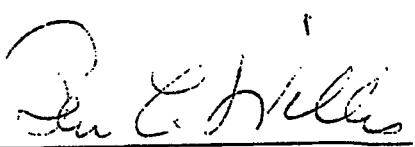


Fingerprints taken by:

R. B. Breeden Deputy Sheriff

Name and Title

DONE AND ORDERED in Open Court at Gadsden County, Florida, this 18th day of October A.D. 1983. I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, Burt Setta, and that they were placed thereon by said Defendant in my presence in Open Court this date.



JUDGE

Defendant Burt Setts
 Case Number 82-CF-412-A

SENTENCE

(As to Count 1)

The Defendant, being personally before this Court, accompanied by his attorney, Gordon Scott, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown,

(Check either provision if applicable)

- and the Court having on _____ deferred imposition of sentence until this date.
- and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein,

IT IS THE SENTENCE OF THE LAW that:

- The Defendant pay a fine of \$ _____, plus \$ _____ as the 5% surcharge required by F.S. 960.25.
- The Defendant is hereby committed to the custody of the Department of Corrections
- The Defendant is hereby committed to the custody of the Sheriff of _____ County, Florida
(Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one; unmarked sections are inapplicable)

If "split" sentence complete either of these two paragraphs

- For a term of Natural Life
- For a term of 75 years
- For an Indeterminate period of 6 months to _____ years.
- Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.
- However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Firearm — 3 year mandatory minimum

- It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.

Drug Trafficking — mandatory minimum

- It is further ordered that the _____ year minimum provisions of F.S. 893.135(1)() are hereby imposed for the sentence specified in this count.

Retention of Jurisdiction

- The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of 25 years. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

Habitual Offender

- The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Jail Credit

- It is further ordered that the Defendant shall be allowed a total of 304 days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

Defendant Burt Scott
 Case Number 82-CF-412-A

SENTENCE

(As to Count 2)

The Defendant, being personally before this Court, accompanied by his attorney, Gordon Scott, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown,

and the Court having on _____ deferred imposition of sentence until this date.

(Check either provision if applicable) and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein,

IT IS THE SENTENCE OF THE LAW that;

The Defendant pay a fine of \$ _____, plus \$ _____ as the 5% surcharge required by F.S. 960.25.

The Defendant is hereby committed to the custody of the Department of Corrections

The Defendant is hereby committed to the custody of the Sheriff of _____ County, Florida
 (Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one; unmarked sections are inapplicable)

For a term of Natural Life
 For a term of 75 years
 For an indeterminate period of 6 months to _____ years.

Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

If "split" sentence
 complete either of
 these two paragraphs

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Firearm — 3 year mandatory minimum It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.

Drug Trafficking — mandatory minimum It is further ordered that the _____ year minimum provisions of F.S. 893.135(1)() are hereby imposed for the sentence specified in this count.

Retention of Jurisdiction The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

Habitual Offender The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Jail Credit It is further ordered that the Defendant shall be allowed a total of 304 days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

Defendant Burt Setts
 Case Number 82-CF-412-A

Consecutive/Concurrent
(As to other convictions)

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run consecutive to concurrent with (check one) the following:

Any active sentence being served.

Specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of Gadsden County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

In imposing the above sentence, the Court further recommends _____

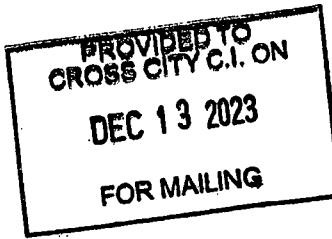
Execution and Commencement of sentence is Delayed for
thirty (30) days from this date.

DONE AND ORDERED in Open Court at Gadsden County, Florida, this 18th day
 of October A.D. 1983.

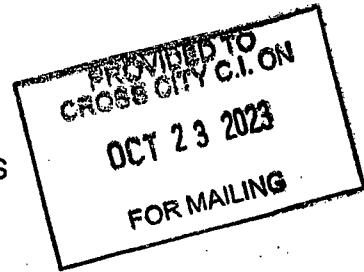
Ben E. Miller
 JUDGE

App. (h)

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES



In Re Burt Leon Setts — PETITIONER
(Your Name)

ON PETITION FOR A WRIT OF HABEAS CORPUS

Burt Leon Setts v. Shone Swain, Warden
RESPONDENT (s)

PETITION FOR WRIT OF HABEAS CORPUS

Burt Leon Setts
(Your Name)

Cross City, C.I., 568 NE. 255 ST.
(Address)

Cross City, FL 32628
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether, Holding Petitioner To Answer
For A Capital Crime Without A GRAND
Jury's Indictment, Under THE U.S.C.
5TH. Amendment Violated Due Process?
Rendered The TRIAL Court Without Juris-
diction To Convicted Petitioner?

2.

Whether, The Trial Court Lacked
Jurisdiction To Convicted Petitioner,
By Depriving Petitioner of All Pretrial
Proceeding Or Hearings, Violated DUE
Process Under The 14th. Amend-
ment U.S.C.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue.

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 N/A to the petition and is

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

TABLE OF AUTHORITIES CITED

| CASES | PAGE NUMBER |
|--|-------------|
| Abernathy, Ex Parte, 320 U.S. 219 | 7. |
| Alachua Reg'l Juve. v. T.O. 684 So. 2d 814/ ¹⁴ _{15.} | |
| Browder v. Director, D.O.C., 434 U.S. 257 | 15. |
| Calley v. Callaway 519 F.2d 184 | 7. |
| Dunser v. Aronoff, 915 F.2d 1071 | 14. |
| Ex Parte Bain, 121 U.S. 1. | 9. |
| Ex Parte Yarbrough, 110 U.S. 651 | 11. |
| Freytag v. Commissioner | 12. |
| Kerr v. United States District, 426 U.S. 394 | 9. |
| Mabry v. Beaumont, U.S. Dist. Lexis 1550, | 14. |
| Re Chapman, 166 U.S. 661 | 11. |
| STATUTES AND RULES | |
| Fifth Amend. U.S.C., 7, 8, 10, second Page | |
| 28 U.S.C. (s) 2254 (b)(ii) | 7. |
| 28 U.S.C.A. (s) 377, 451 | 7. |
| Fla. Stat. (s) 784.04 (1)(a) | 8. |
| Fla. R. Crim. P. 3.130 (a) | 12. |
| Fla. Stat. (s) 90.105 (3) | 13. |
| Fla. R. Crim. P. 3.133 (a) | 13. |
| Fla. R. Crim. P. 3.160 (a) | 13. |

OTHER

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| OPINIONS BELOW..... | <i>None</i> | 1 |
| JURISDICTION..... | <i>None</i> | |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | <i>7, 8, 10, 15,</i> | |
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| REASONS FOR GRANTING THE WRIT | <i>7-15</i> | |
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INDEX TO APPENDICES

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APPENDIX B Plea Proceeding

APPENDIX C Information

APPENDIX D Judgment

APPENDIX E Progress Docket For Case

APPENDIX F

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, Ben C. Willes

RELATED CASES

Re Bonner, 151 L. S. 2442
Shepherd v. L. S., 2010 U.S. Dist Lexis 44292.

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 N/A. A copy of that decision appears at Appendix N/A.

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

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

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

STATEMENT OF THE CASE
& RULE 20.4(A) STATEMENT

The jurisdiction conferred on the S. Ct. of the U.S., by 28 U.S.C. (s) 377, 451, to issue writs of habeas corpus in aid of its appellate jurisdiction is discretionary and will not, save in exceptional circumstances, be exercised in cases where an adequate remedy may be had in a lower Federal court, or if the relief sought is from the judgment of a state court, where the petitioner has not exhausted his remedies in state courts. 320 U.S. 219 Abernathy, Ex Parte, H.Nt. #1.

Exhaustion of state court remedies not required where trial court lacked jurisdiction.

Court acted without jurisdiction or exception. All circumstances have been presented which are so fundamentally defective result in a mis carriage of justice. Calley v. Callaway 519 F.2d 184.

This is brought pursuant to 28 U.S.C. 2254 (b) (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

Petitioner present, court lacks jurisdiction to convicted as exceptional circumstances.

REASONS FOR GRANTING THE PETITION

Petitioner were held to answer
for a capital crime of First de-
gree murder under 784.04(1)
(a) Fla. Stat.

Upon no indictment of a grand
jury violating Amend 5, U.S.C.,
Capital crime clause,

On 12-6-1982, petitioner was held
to answer for a capital crime upon
no indictment of a grand jury.
Violating Amend. 5., U.S.C.

"No Person Shall be held to Ans-
wer For A Capital... crime, unless
On A... Indictment OF A Grand
Jury."

3. In so doing deprived the court of jurisdiction of proceeding to try the Petitioner and sentence him to imprisonment provide for in the statute.

App. (c), (d)

4. A case in point is Ex parte Bain, 121 U.S., 1 where the Petitioner had been convicted on an indictment which, because it had been amended after it was returned by the grand jury, was thought to be "no indictment of a grand jury. Kerr v. United States District court, 426 U.S. 394, N. #7 . . .

"The declaration of article V of the Amendments to the Constitution, that "no person shall be held to answer a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury," is jurisdictional; and no court of the United States has Authority to try a prisoner without indictment or presentment in such cases.

Upon an indictment so changed the court can proceed no further. There is nothing (in the language of the Constitution) which the prisoner can be held to answer. A trial on such indictment is void. There is nothing to try.

According to principles long settled in this court the prisoner, who stands sentenced to the penitentiary on such trial, is entitled to his discharge by Writ of Habeas Corpus.

The jurisdiction of the that court is denied in this case upon two principal grounds: The First of these relates to matters connected with the impaneling of the grand jury and its competency to find the indictment under which the petitioner was convicted. . . Id. n. #5.

We have no difficulty in holding that the indictment on which he was tried was no indictment of a grand jury. . . the jurisdiction of the offense is gone, and the court has no right to proceed any further in the progress of the case for want of an indictment.

If there is nothing before the court which the prisoner, in the language of the Constitution, can be "held to answer: he is then entitled to be discharged so far as the offense originally presented to the court by the indictment is concerned.

As the Petitioner were held to answer for a capital crime upon no indictment of a grand jury. Violating Amend. 5. U.S.C., capital crime clause. He is entitled to be discharged of the offenses of conviction App. (c) and #4.

5. In the instant case the had no personal jurisdiction or no jurisdiction of the charge. Petitioner is held under sentence of a court in regard to a matter wholly beyond or without the jurisdiction of that court.

209 U.S. 123 Ex parte Young (1909)
The question of jurisdiction, whether
of the circuit court or of this court,
... It is a question, however, which
we are called upon, and which it
is our duty, to decide. Id. at 142

282 F. 138: Ex parte Craig. (1922) The
Supreme Court consistently adhered
to the principle announced in these
early cases. Thus in Matter of Gre-
gory 219 U.S. 210, where the person
applying for the writ had been con-
victed of a crime in the Police Court
of the District of Columbia... In
hearing this application, this court do-
es not sit to review the correctness
of the conclusion of the Police Court
as to the violation of the statute by
the petitioner, or of the decision of
the sufficiency of the information
filed against him. The question here
is not one of guilt or innocence, but
simply whether the court below had
jurisdiction to try the issues; and
as we find that the statute con-
ferred that jurisdiction, the appli-
cation for a writ of Habeas Corpus
must be denied. Id. at 147

6. It is not only within the authority, but it is the duty of this court to inquire into the cause of commitment and to discharge Petitioner from confinement.

7. A case in point is Ex Parte Yarbrough, 110 U.S. 651 N. 2.

When a prisoner is held under sentence of any court of the United States in regard to a matter wholly beyond or without the jurisdiction of that court, it is not only within the authority, but it the duty of this court to inquire into the cause of commitment and discharge him from confinement.

Re Chapman, 166 U.S. 661 at Appearance of Counsel, citing People, McDonald v. Keeler . . . "An imprisonment by orders, judgments or decrees made in absence of jurisdiction are absolutely void in law and constitute False imprisonment not involving mere error, but being void owing to be the absence of power or jurisdiction, and being relivable on habeas corpus.

Re Bonner, 151 U.S. 2442, where a judgment is unauthorized, and therefore void, the prisoner will be discharged on habeas corpus without a reversal of judgment.

8. Since such a jurisdictional defect deprives not only the initial court but also the Appellate Court of its power over the case.

9. Therefore, no court, but the United States Supreme Court has proper authority to inquire into the jurisdiction court of commitment.

10. Since such a jurisdiction defect deprives not only the initial court but also the Appellate Court of its power over the case or controversy . . .

Freytag v. Commissioner 501 U.S. 868; 896.

ISSUE #2.

11. The Court lacked subject matter jurisdiction because it deprived Petitioner of all pretrial proceedings. Violating the Equal Protection Clause of the 14th Amend., U.S.C., and Due Process Clause.

12. On 12/6/82, Petitioner was arrested and charged with First degree murder. App.(a)

13. Petitioner did not enter a court until 1/18/83, approximately three (3) months after the arrest. App.(b)

14. Petitioner were afforded no first appearance hereing under Fla. R. Crim. P. 3.130(A) Prompt First Appearance: Every arrested person must be taken before a judge, either in person or by audio-video communication technology in the discretion of the court, within 24 hours of arrest. An official record of the proceeding must be maintained.

15. The progress Docket for Case 82000-412 CF|MA show no such hearing, thus, deprived court of jurisdiction. App.(e)

Case involves an alleged confession, Petitioner were afforded no Hearing on the admissibility of confession.

Fla. Stat.(s) 90.105 (3). Preliminary Questions: provides: Hearings on the Admissibility of Confessions shall be conducted out of the hearing of the jury.

16. Petitioner were afforded no pretrial probable cause determination and adversary preliminary Hearing under Fla. R. Crim. P. 3.133 (A) None Adversary-probable cause determination.(1) Defendant in custody.

In all cases in which the defendant is in custody, a non-adversary probable cause determination shall be held before a judge within 48 hours from the time of the defendant's arrest . . . App(e) show no such hearing occurred.

17. Petitioner were afforded no Arraignment hearing under Fla. R. Crim. P. 3.160 (a) Nature of Arraignment must be conducted in open court or by audio-video communication technology in the discretion of the court and of the judge or clerk or prosecutor reading, the indictment or information on which the defendant will be tried to the defendant or stating orally to the defendant the substance of the charge or charges and calling on the defendant to plead thereto. The reading or statement as to the charge or charges may be waived by the defendant.

18. In failing to afford Petitioner the above mentioned hearing deprived Petitioner of his right to the Equal Protection and Due Process Clauses of

the 14th Amend. U.S.C., nor shall any State deprived any person of . . . liberty . . . without Due Process of Law; Nor Deny to any person within its Jurisdiction the Equal Protection of the Laws.

19. When a defendant facially attacks subject matter jurisdiction, the Court must accept the Plaintiff material allegations in the complaint as true.

Because lack of subject matter jurisdiction is a non-waivable, fatal defect, it, may be raised by party at anytime. 2010 U.S. Dist LEXIS 44292, Shepherd v. U.S., at standard of review. Id. The Supreme Court, as well as more recent decision from other circuit, has taken the position that challenges to jurisdiction must be addressed by the court. Citing, Dunser v. Aronoff, 915 F. 2d 1071, 1074.

The Functions of the writ where a party, who has applied for its aid in custody, do not extend beyond an inquiry into the jurisdiction of the court by which it was issued and the validity of the process upon its face. 1922 U.S. Dist Lexis 1550 Mabry v. Beaumont.

... its duty under 28 U.S.C.S. 2243 to summarily hear and determine the facts in regard to an application for writ of habeas corpus. Browder v. Director, Department of Corrections of Illinois, 434 U.S. 257, N. #7.

"It shall be returned within (3) days unless for good cause additional time, not exceeding twenty days is allowed (4) The person to whom the writ or order is directed shall make a return certifying the true cause of the detention. (5) When the writ or order is returned a day shall be set for hearing, not more than five days after the return, unless for good cause additional time is allowed."

The proper respondent in a habeas corpus petition is the party that has actual custody and is in a position to physically produce the petitioner...
Alachua Reg'l Juvenile Det.Ctr. 814 v. T.O. (FLA 1996) 684 So. 2d

CONCLUSION

The petition for a writ of habeas corpus should be granted.

Respectfully submitted,

Burt Leon Setts

Date: 10/ 12023

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Burt Leon Setts — PETITIONER
(Your Name)

VS.

Shane Swain, Warden — RESPONDENT(S)

PROOF OF SERVICE

I, Burt Leon Setts, do swear or declare that on this date,
_____, 20_____, as required by Supreme Court Rule 29 I have
served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*
and PETITION FOR A WRIT OF HABEAS CORPUS on each party to the above
proceeding or that party's counsel, and on every other person required to be served, by
depositing an envelope containing the above documents in the United States mail
properly addressed to each of them and with first-class postage prepaid, or by
delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Shane Swain, Warden, Cross City C.I., 568
NE. 255 ST. Cross City FL 32628

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20____

Burt Leon Setts
(Signature)