No. 23-7333

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

THOMAS ARNOLD
Petitioner

Vs.

STATE OF FLORIDA
Respondent

On Petition for Writ Of Certiorari to

(Name of court that last ruled on merits of your case)
FLORIDA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Thomas Arnold DC# 100520
Graceville Correctional Facility
5168 Ezell Rd.
Graceville, FL 32440

Petitioner pro se

QUESTIONS PRESENTED

Whether State Post Conviction Appellant's are denied access to the court violating due process of law and equal protections of the law under the 14th Amendment of the U.S. Constitution when denied a State Constitutional Right to Appeal by the State's Appellate Court simply because Petitioner cannot afford an attorney.

Whether State Post Conviction Appellant's are denied access to the court violating and due process of law and equal protections of the law under the 14th Amendment of the U.S. Constitution when the State Supreme Court initiated a denial of right to Appeal Protected under the State Constitution.

Whether State Post Conviction Petitioner's are denied due process of law and equal protections of the law under the 14th Amendment of the U.S. Constitution when post conviction court refused to review claims under the manifest injustice exception held under Federal and State law.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page

[ ] All parties do not appear in the caption of the case on the cover page. a list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

UNKNOWN IF ANY

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

TABLE OF AUTHORITIES CITED CONT.

PAGE NUMBER

STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari Issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix ____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported;or,

[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported;or,

[ ] is unpublished.

[X] For cases from state courts:

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

[ ] reported at _____; or,

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

[ ] is unpublished.

The opinion of the Florida First District Court of Appeal appears at Appendix C to the petition and is

[ ] reported at _____; or,

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

[ ] is unpublished.

JURISDICTION

[ ] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

[X] For cases from state courts:

The date on which the highest state court decided my case was 03/19/2024.
A copy of that decision appears at Appendix _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 _____.

[ ] An extension of time to file the petition for 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).

CONSTITUTION AND STATUTORY PROVISIONS

Amendment 14 United States Constitution

Sec. 1. [Citizens of the United States.]

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

STATEMENT OF THE CASE

On August 3, 1990 the Petitioner was charged by amended information in Case No.: 1990-CF-2999 with Armed Robbery with a firearm (Counts 1, 2, and 3) and Kidnapping (Counts 4, 5, and 6). In the Second Judicial Circuit Tallahassee Florida. **(Appendix L)**

On April 3, 1991 the Petitioner entered into a negotiated plea agreement **(Appendix J)** with the State to the lesser offenses of Strong Armed Robbery (Counts 1, 2, and 3), *second degree felonies* and False Imprisonment (Counts 4, 5, and 6), *third degree felonies,* with a stipulation of no agreement to the sentence. After all parties stipulated to the facts in the complaint/Police Report the Court accepted the negotiated plea. The State then moved for a habitual sentence. The Court found the Petitioner to qualify as a Habitual Violent Felony Offender (HVFO). **and (Appendix I)**

At the plea hearing the Court then sentenced the Petitioner to 15 years as an HVFO on counts 1, 2, and 3 and 10 years as an HVFO (double the statutory maximum) on Counts 4, 5, and 6 with a 10 year minimum mandatory. The Court ran Counts 1, 2, and 3 consecutive, and Counts 4, 5, and 6 consecutive to each other, but concurrent with Counts 1, 2, and 3. The Court then ordered Case 1990-CF-2999 to run consecutive to case No.: 1990-CF-3870. **(Appendix K)**

Petitioner appealed "arguing that the trial court failed to make the necessary HVFO findings under the statute." ***Arnold v. State***, 611 So.2d 21 (Fla. 1st DCA 1992), quashed in ***State v. Arnold***, 620 So.2d 1129 (Fla. 1993).

The Appellant has challenged the illegal consecutive HVFO sentencing of the six (6) counts that occurred in a single criminal episode in prior motions pursuant to ***Hale v. State***, 630

So.2d 521 (Fla. 1993). All motions were summarily denied. The Petitioner appealed each denial, which were per curiam affirmed.

On August 25, 2016 The First District Court of Appeal in Case No.: 1D16-3009 dismissed the appeal and issued sanctions for repetitive flings barring any future filings in the District Court concerning Case No.: 1990-CF-2999 **that are not signed by an attorney. (Appendix H)** This ruling was not appealable in the Florida Supreme Court.

Appellant obtained funds due to the Covid-19 Economic Impact Payments payments and used all the funds to hire counsel in accordance with the First DCA's sanction ruling in Case No.:1D16-3009.

On Sept. 14, 2022 Appellant retained Counsel filed a Petition for Writ of Habeas Corpus in the Circuit Court, ***alleging illegal detention*** due to sentencing not authorized by statute with review available under the manifest injustice exception. **(Appendix G)**

On October 27, 2022 the post-conviction court dismissed the Writ of Habeas Corpus construing it as a post-conviction relief motion ruling collateral estoppel under ruling in ***Dixon v. State***, 730 So. 2d 265, 269 (1999). Motion of rehearing was not filed. **(Appendix F)**

On November 21, 2022 Appellant's Counsel David W. Collins Florida Bar# 475289 E-filed a notice of appeal to the Circuit court and the Office of the State Attorney.**(Appendix E)**

On December 1, 2022, the Notice of Appeal was filed in the DCA, reflecting a filing date in the lower tribunal of November 21, 2022 Case No.: 1D2022-3838.

On January 4, 2023 Counsel Collins filed motion to withdraw as counsel and filed an amended motion for leave to withdraw as counsel on Feb. 8, 2022 stating that the notice of appeal was filed to preserve Petitioner's Appellate Rights. **(Appendix D)**

On February 1, 2024 even though retained counsel filed the notice of appeal, the First District Court of Appeal dismissed Petitioner's appeal because Petitioner did not have counsel during the appeal process. **(Appendix C)**

Petitioner is barred from filing any pro se motions in the District Court of Appeal, no motion for appointment of counsel could be filed and no rehearing was filed.

On February 15, 2024 Petitioner filed a writ of mandamus (the only available relief) in the Florida Supreme Court to reinstate Petitioner's appeal. **(Appendix B)**

On March 1, 2024 the Florida Supreme Court denied the petition for writ of mandamus. No rehearing was not allowed. **(Appendix A)**

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari to clarify indigent Petitioner's Constitutional right to access to the court and The State court's duty to review claims under the manifest injustice exception.

This questions before this Honorable Court concerns the deprivation of an indigent Petitioner's State granted rights to appeal an adverse ruling in a State post-conviction proceeding.

The questions presented are far reaching and effect all post-conviction Appellants that have a State granted right to appeal averse rulings that claims may not be further reviewed under Federal Habeas petitions due to the ADEPA time limitations.

This Honorable Court's ruling concerning access to the court and availability of review under the manifest injustice exception is needed to determine the scope of indigent Petitioner's access of the court, due process and equal protections under the 14th Amendment of the U.S. Constitution.

A definitive ruling by this court is needed because the State Supreme Court's has determined that it has the power and authority to construe the State Constitution in a manner which may differ from the manner in which the United States Supreme Court has construed a similar provision in the Federal Constitution as held in ***Lebron v. State,*** 799 So. 2d 997 (Fla. 2001)

Denial of Access to the Court in a State granted right to Appeal

The Petitioner has been denied access to the courts, denial of due process and denial of equal protections of the law guaranteed under the 14th Amendment to the U.S. Constitution. in an attempt to obtain State granted right to appellate review. This denial of the Constitutional Right is simply because of his indigency in violation of the ruling in ***Ross v. Moffitt***, 417 U.S. 600, 607, 41 L.Ed.2d. 341, 94 S.Ct. 2437 (1974) holding "A state cannot arbitrarily cut off

criminal appeal rights for indigents while leaving open avenues of appeal for more affluent persons."

The Petitioner was previously sanctioned[1] by the Florida District Court of Appeal in Case No.:1D16-3009 **(Appendix H).** The sanction was for repetitive post-conviction filings concerning Circuit Court Case No.: 1990-CF-2999. (Petitioner's claims have never been ruled on the merits nor ruled as frivolous flings). This sanction was not appealable in the Florida Supreme Court and Petitioner did not believe in good faith that this Honorable Court would accept certiorari review, so review was not filed.

The above DCA's sanction ruling specifically stated the gate-keeping function for review to be: "The clerk of this court is directed not to accept any future filings concerning that case unless they are signed by a member in good standing of The Florida Bar." This is the only gate-keeping function ordered by the court to obtain review by Appeal. The filing of the notice of appeal by "counsel" is the gate-keeping trigger to obtain an appeal once Appellants are sanctioned in the State District Court of Appeal, this is in accordance with ruling in ***Spencer*** . Once notice of appeal is properly filed "by an attorney" in good standing of the Florida Bar the court of appeal must hear the case and there is no other gates to be guarded.. When notice is properly filed Article V, §4(b), of the Florida Constitution and as provided in Fla.R.App.P. 9.030(b)(1), hold the district court of appeal must hear appeals from final orders of trial courts, not directly reviewable by the supreme court or a circuit court. Petitioner believes that is the same rule when a notice is properly filed in federal court under Section 2253(c) of Title 28 concerning appeals.

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1 Sanctions held under ruling in ***State v. Spencer,*** 751 So. 2d 47 (Fla. 1999)

Petitioner is indigent but due to the Economic Impact Payments (EIP) (federal stimulus payments) Petitioner obtained the funds to hire counsel who reviewed Petitioner's case that found merit in the claim then filed a State habeas petition (claiming illegal detention due to a sentence that is not authorized by statute with review available under the manifest injustice exception) in the Florida Second Judicial Circuit Case No.: 1990-CF-2999. The State habeas petition was denied in the post-conviction court and "counsel" did file a notice of appeal.

The Appellate clerk did docket the appeal Case No.: 1D22-3838 (the notice of appeal was filed in accordance with the prior sanction order in Case No.:1D16-3009). In Florida the Post Conviction Appeal's are held under Fla.R.App.P. 9.141(b)(2)(c)(i) which provides that "No Briefs" are required in appeals from orders denying post-conviction relief without an evidentiary hearing, review is "de novo," limited to the record and whether the claims are facially invalid.

The Florida District Court dismissed Petitioner's Appeal after 14 months of being filed by the clerk because Petitioner failed to obtain counsel during the appellate process.[2] **(Appendix C)** Petitioner is indigent and cannot hire counsel during the appellate process and the DCA's sanction bars Petitioner from filing a pro se motion for appointment of counsel that would be available under ruling in ***Russo v. Akers,*** 724 So. 2d 1151 (Fla. 1998). If the court ordered briefing.

As briefs are not mandatory in the review process, counsel is not needed for any court action. The DCA's ruling can only be seen in one way, to deny an indigent Petitioner access to the court. If counsel was needed due process considerations would demand the court appoint counsel in accordance with ruling in ***Russo*** above. (Review dismissal in **Appendix C**)

2 The sanction order in Case No.:1D16-3009 **(Appendix H)** does not specify that Petitioner must retain counsel during the appellate process. The order states that Counsel is only needed to initiate the process by filing the notice of appeal.

The Florida First District Court of Appeal's dismissal of Petitioner's appeal is in violation of the U.S. Supreme Court's ruling in ***Long v District Court of Iowa,*** 385 US 192, 17 L Ed 2d 290; 87 S Ct 362 (1966) holding that having established a post-conviction procedure, a State cannot condition its availability to an indigent upon any financial consideration. And the same rule applies to protect an indigent against a financial obstacle to the exercise of a state-created right to appeal from an adverse decision in a post-conviction proceeding.

Without a ruling by this court as to the deprivation of Constitutional rights, the Florida courts will continue to dismiss appeals by Indigent Appellants that have previously been sanctioned even though they have complied with the procedural gate-keeping mechanism. Such Appellants are denied access to the court, denied due process of law and denied equal protections of the law under the 14th Amendment to the U.S. Constitution.

Denial of State Guaranteed Right to Appeal

The Florida courts as have the Federal courts initiate judicial sanctions for "Frivolous ***and*** Repetitive" filings of pro se' Petitioners. In the Federal court this is under Fed. R. Civ. P. 11. The 11th Cir. Federal Court of Appeal held in ***Langermann v. Dubbin,*** 613 Fed. Appx. 850 (11th Cir. 2015) has determined that the "only restriction" placed upon injunctions designed to protect against abusive and vexatious litigation is that **a litigant cannot be completely foreclosed from any access to the court.**

The Florida Supreme Court's as to sanctioning is held in ***State v. Spencer,*** 751 So. 2d 47 (Fla. 1999), but the Florida Supreme Court had also determined in ***Huffman, v. State,*** 813 So. 2d 10 (Fla. 2000) that if a court sanctions by prohibiting further pro se filings,

Appellants/Petitioners have no right to continue to file in the courts. **(Appendix A - denial of Petitioner's State petition for writ of mandamus to reinstate appeal in the Fla. 1st DCA)**

This blanket ban of denial of State Constitutional Right to appeal an adverse ruling is upheld even when Petitioner obtained paid counsel to file in the court therefore, **litigants are completely foreclosed from any "Right to access to the court."** This ruling is in violation of the due process of law and equal protections of the law clauses of the 14th Amendment to the U.S. Constitution.

The Florida Supreme Court's ruling completely foreclosing the State created right to Appeal when Petitioners comply with the sanction order and obtain counsel is a denial of due process of law and violates the U.S. Supreme Court's ruling in ***Evitts v. Lucey***, 469 U.S. 387, 400-01, 105 S. Ct. 830, 838-39, 83 L. Ed. 2d 821 (1985) holding "When a state opts to act in a field where its action has significant discretionary elements, such as the establishment of a system of appellate review as of right although not required to do so, it must nonetheless act in accord with the dictates of the Constitution, and, in particular, in accord with the due process clause of the Fourteenth Amendment."

The Florida Supreme Court's determination in ***Huffman*** that Appellants forfeit all rights to appeal which denies Petitioners a State created rights guaranteed by the Florida Statute § 924.066 (2) hold that either the state or a prisoner in custody may obtain review in the next higher state court of a trial court's adverse ruling granting or denying collateral relief. The Guarantee is also included in the Florida Constitution Art. I, Sect. 21 holding The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay. And again under Article V, §4(b), of the Florida Constitution and as provided in

Fla.R.App.P. 9.030(b)(1), the district court of appeal must hear appeals from final orders of trial courts, not directly reviewable by the supreme court or a circuit court.

The Petitioner understands that the courts have limited resources and that sometimes sanctions are warranted, But sanctions should only be issued when the claims presented actually have been "ruled on the merits" are repetitive AND "FOUND BY THE COURT TO BE FRIVOLOUS". But once sanctioned and the Petitioners comply with having an attorney review and file petitions due process demands that those petitions may not be barred from the right of review by a previous sanction order, to do so denies petitioners access to the courts protected under the due process and equal protections clauses of the 14th Amend. to the U.S. Constitution.

As stated previously without a definitive ruling by this court as to the deprivation of Constitutional rights, the Florida courts will continue the denial of a State created right to appeal by Indigent Appellants that have previously been sanctioned but have hired counsel and that have complied with the procedural gate-keeping mechanism. Such Appellants are denied access to the court, denied due process of law and denied equal protections of the law under the 14th Amendment to the U.S. Constitution.

Constitutional right to review of claims under the manifest injustice exception held under Federal and State law.

The manifest injustice exception to collateral estoppel is held under the ruling the federal courts under ruling in ***United States v. Quintana***, 300 F.3d 1227, 1232 (11th Cir. 2002) citing the U.S. Supreme Court's ruling in ***Johnson v. United States***, 520 U.S. 461, **466-67,** 137 L. Ed. 2d 718, 117 S. Ct. 1544 (1997), and The manifest injustice exception was adopted in Florida in ***State v. McBride,*** 848 So. 2d 287, 292 (Fla. 2003) citing the U.S. Supreme Court's ruling in ***Comm'r of Internal Revenue v. Sunnen,*** 333 U.S. 591, 599, 92 L. Ed. 898, 68 S. Ct. 715

(1948). The court in ***Quintana*** determined that "To demonstrate manifest injustice, a petitioner must demonstrate (1) that there was error; (2) that was plain; (3) that affected his substantial rights; and (4) that affected the fundamental fairness of the proceedings.

The Florida courts have determined a similar process to demonstrate manifest injustice. In ***Vega v. State,*** 288 So. 3d 1252, 1258 (Fla. 5th DCA 2020) the court held "To establish manifest injustice, the "**reviewing court"** must be left with the definite and firm conviction that a mistake has been committed. The error must also affect the defendant's substantial rights. To show that an error affected one's substantial rights, the defendant must show that there is a reasonable probability of a different result in the outcome of the case. This ruling predisposes the belief that once plead the court has a duty to review the claims under the manifest injustice exception and to make a determination on that exception. The Florida courts have also determined the court's have a duty to correct manifest injustices if it can under ruling in ***Perez v. State***, 118 So. 3d 298 (Fla. 3d DCA 2013).

The State post conviction and appellate courts have routinely pick and choose motions for review or refuse to review untimely motions without a determination if the manifest injustice exception exists to collateral estoppel when the exception is plead. **(see APPENDIX F denial of petition pleading review available under the manifest injustice exception to collateral estoppel)** This occurs even when a clear manifest injustice has occurred plain on the face of the record. This refusal to review under and make a determination as to if the manifest injustice exception exists is a denial of due process and equal protections of the law protected under the 14th Amendment of the United States Constitution and Florida Constitution Art. 1 Sect. 2 (equal protections) and Art. 1 Sect. 9 (due process of the law).

As stated in ***McBride*** when the Florida Supreme court adopted the manifest injustice exception to collateral estoppel, the Florida Supreme Court relied on the U.S. Supreme Court's previous ruling in ***Comm'r of Internal Revenue v. Sunnen,*** 333 U.S. 591, 599, 92 L. Ed. 898, 68 S. Ct. 715 (1948) that collateral estoppel doctrine "does contain" a manifest injustice exception. When State court issues a dismissal/denial under collateral estoppel and refuses to make a determination as to whether a manifest injustice exception exists (when it is plead), is not in concert with the decision of the U.S. Supreme Court's ruling of exemption of collateral estoppel in ***Comm'r of Internal Revenue v. Sunnen***, 333 U.S. at 599 and denies Petitioners right to relief under that exception.

Review of **Appendix G** The Petitioner's Petition for State Writ of Habeas Corpus in the Circuit Court clearly shows a claim of illegal detention due to petitioner's sentencing not authorized by statute (Petitioner's false imprisonment charges 4, 5, and 6 HVFO sentences are Double the Statutory maximum and run consecutive) held under ruling in ***Hale v. State,*** 630 So. 2d 521 (Fla.1993) (Consecutive Habitual Felony Offender sentencing for a single criminal episode not authorized by statue). Review was plead under the manifest injustice exception to collateral estoppel. The single criminal episode was articulated in the complaint/police report **(Appendix L page 1 Complaint/police report)** (robbery and false imprisonment of 3 victims at one time and place without a temporal break in event) and the facts in the Complaint/Police Report were stipulated by all parties and the court. (see **Appendix I - sentencing transcript** page 6 line 25, page 7 lines 1-5). Stipulations are part of the record as ruled in ***Troup v. Bird,*** 53 So. 2d 717, 721 (Fla. 1951) Which held "when a case is tried upon stipulated facts the stipulation is binding not only upon the parties but also upon the trial and appellate courts and further that no other or different facts will be presumed to exist." Thus part of the record.

The Court in ***State v. Callaway***, 658 So. 2d 983 (Fla. 1995) found ***Hale*** sentencing errors significantly impacts a defendant's constitutional liberty interest as it cannot withstand a due process analysis. Hale sentencing errors are not authorized by statute. The Florida courts have determined that a sentence in excess of that authorized by statute constitute a manifest injustice under ruling in ***Eason v. State,*** 932 So. 2d 465 (Fla. 1st DCA 2006). The court in ***Dixon v. State,*** 730 So. 2d 265, 267 (Fla. 1999) ruled a 2 year time limit for filing ***Hale*** claims. In ***McBride*** years after in 2003 the Florida Supreme Court adopted a manifest injustice exception to collateral estoppel. This ruling in ***McBride*** is controlling over ruling in ***Dixon*** and denial by the circuit court to review under the manifest injustice exception is a denial of due process and equal protections of the law protected under the 14th Amendment of the United States Constitution and Florida Constitution's Art. 1 § 2 and Art. 1 §9.

A definitive ruling by this Honorable Court is need to insure State post conviction Petitioner's Constitutional rights to review of claims plead under the manifest injustice exception to collateral estoppel and law of the case. The ruling by this Honorable Court is needed as Florida courts have determined that they are not bound by decisions of other federal courts such as ***Quintana*** and only bound by the decisions of the U.S. Supreme Court. See ***Harris v. State,*** 238 So. 3d 396, 400 (Fla. 3d DCA 2018).

CONCLUSION

The petition for Writ of Certiorari should be granted

Respectfully Submitted

Thomas Arnold

Thomas Arnold #100520

Date: April 17, 2024