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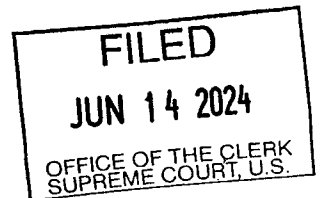
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IN THE

SUPREME COURT OF THE UNITED STATES



Nukarri Williams — PETITIONER
(Your Name)

VS.

State of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

First District Court of Appeal, State of Florida

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

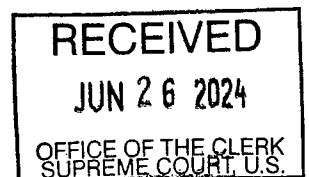
PETITION FOR WRIT OF CERTIORARI

Nukarri Williams
(Your Name)

Jackson Correctional Inst.
5563 10th Street
(Address)

Malone, FL 32445
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

WHETHER THE STATE COURT'S FAILURE TO PROVIDE THE PETITIONER WITH THE RELIEF PROVIDED TO SIMILARLY SITUATED DEFENDANTS VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FEDERAL CONSTITUTION'S FOURTEENTH AMENDMENT

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:

RELATED CASES

N/A

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Constitutional Law 314 3

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A 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☐ is unpublished.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 First District Court of Appeal court appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

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

☐ No petition for rehearing was timely filed in my case.

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Feb. 22, 2024.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date:
March 22, 2024, and a copy of the order denying rehearing appears at Appendix A.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional LAW 314 EQUAL PROTECTION application of law
The equal protection clause of the Federal Constitution's Fourteenth Amendment creates no substantive rights, but instead embodies a general rule that states must treat like cases alike but may treat unlike cases accordingly; generally speaking, laws that apply evenhandedly to all comply with the equal protection clause. See *Vacco v. Quill*, 521 US 793, 138 L ed 2d 834, 117 S.Ct 2293 (1997)

STATEMENT OF THE CASE

See Attachments 4A-40

In case 2003-CF-972, on April 20, 2003, the Petitioner was charged by Indictment in Leon County Florida with First Degree Murder contrary to Fla. Stat. 782.04(1)(a)(1) and Attempted First Degree Murder contrary to 782.04(1)(a)(1). On June 8, 2004, in the Second Judicial Circuit Court in and for Leon County, a jury found the Petitioner guilty as charged, and on the same day was sentenced to a term of Natural Life in prison. The Petitioner appealed his conviction and sentence to the First District Court of Appeal for the State of Florida and the District Court issued a Per Curiam Affirmed Mandate issued on August 1, 2006. On June 9, 2008, the Petitioner filed a timely filed Fla. R. Crim. P. 3.850 Motion for Postconviction Relief, alleging six grounds of ineffective assistance of trial counsel. On June 19, 2008, the Second Judicial Circuit Court entered an order summarily denying all six claims without an evidentiary hearing or response from the state. See order Appendix C.

The claim within the above mentioned postconviction motion that is at issue is claim 1A: Misadvice by counsel that portion of his intended trial testimony would be inadmissible at trial, and counsel's failure to properly advise the defendant about testifying and refusing to discuss the strategic implications of testify with defendant after learning that that the defendant wanted to testify renders the waiver involuntary. See claim Appendix C

In its summary denial of claim A1, the Circuit Court stated, "Defendant claims his counsel was deficient for preventing him from testifying and failing to file a motion to suppress his post-miranda statement to police. Neither claim has any merit. The first claim is conclusively refuted by the record. The Court engaged in an extensive colloquy with Defendant regarding his right to testify. He indicated that he understood the decision to testify or not testify was his and his alone, that he had not been threatened or coerced into testifying or not testifying, and that he had adequate time to discuss with his attorney the pros and cons of his decision. The Court even explained to Defendant that he was not permitted to return later and claim that his attorney prevented him from testifying; Defendant stated he understood this concept. As for his claim that his attorney failed to file a motion to suppress his statement, Defendant is unable to show any prejudice, because the statements were not introduced at trial." See order Appendix C

Following the above mentioned denial, the Petitioner filed a Timely Motion for Rehearing. In the motion the Petitioner argued, "it is unquestioned that the Court conducted an in-depth and lengthy inquiry into the defendant's waiver. However, the claim in the motion is that the waiver was involuntary due to counsel's misadvice and the defendant's reliance on that misadvice was the basis for his belief that he waived testifying in his own behalf."

"The claim of the waiver being involuntary does not center on whether or not the defendant was threatened or promised anything if he waived testifying, but moreso on whether or not the waiver was involuntary because the defendant was under the mindset that was instilled by counsel's misadvice. The order does not address the claim as presented in the motion nor does it deny the claim based on the two prong test of *Strickland v. Washington*, 466 US 668, 104 S.Ct 2052, 80 L.Ed 674 (1984)."

The Petitioner, then directed the Court to *Gay v. State*, 936 So.2d 723, 724 (Fla. 1st DCA 2006), and explained that, "as in the instant case, the defendant affirmatively chose not to testify. However, the waiver was attributed to counsel's misadvice and the portions of the record attached to the summary denial did not conclusively rebut the claim. Therefore, the First District Court of Appeal reversed and remanded the issue back to the Circuit Court to conduct an evidentiary hearing." See Motion for Prehearing, Appendix C

Gay, supra, is on all fours with the instant case and although the Petitioner highlighted this issue to the Court, it still denied said motion, stating, "no legal or factual reason exist to recede from its earlier order." See Order Appendix C

The Petitioner then appealed the Court's decision to the First District Court of Appeal, and the District Court upheld the Circuit Court's decision with a silent Per Curiam Affirmed. See Order, Appendix D

On November 2, 2022, the Petitioner, through Counsel filed a successive motion for post-conviction relief re-raising claim 1A. To support the filing of said motion the Petitioner relied on *Deras v. State*, 54 So.3d 1023 (Fla. 3d DCA 2011). In *Deras*, supra, Deras had filed an issue in a timely Fla. R. Crim. P. Rule 3.850 postconviction motion. Upon filing the issue, it was summarily denied, and then appealed to the Third District Court of Appeal, and the District Court upheld the Circuit Court's denial.

Deras later filed a successive motion for relief pursuant to Fla. R. Crim. P. Rule 3.850 re-raising the same issue that had been raised in his original motion. Upon filing said motion, the Court denied the motion as untimely. Deras then appealed the lower court's decision to the Third DCA. On appeal the District Court overturned the lower court's denial and gave instructions for the lower court to revisit Deras' claim. To be specific the District Court stated, "[w]e acknowledge that the defendant has made this argument in a previous postconviction motion, and that relief was denied. Nonetheless, if what the defendant claims is true, his claim should be revisited under the manifest exception articulated in *State v. McBride*, 848 So.2d 287, 291-92 (Fla. 2003) Id. at 1024. The Court found that when a manifest injustice issue was properly raised then it should be considered on the merits despite the fact that it may be untimely, and may have been

summarily denied in a prior order. The Petitioner's situation is on all fours with *Deras*, supra, therefore the Petitioner followed the footsteps of *Deras*.

To demonstrate that his situation resulted in a manifest injustice, the Petitioner supported his argument with *Stephens v. State*, 974 So.2d 453 (Fla. 2d DCA 2008) which is on all fours with the Petitioner's situation. The Court in *Stephens* held that a manifest injustice occurs when two similarly situated defendant's presenting the same issue receive incongruous rulings. See motion, App. B

Following the re-filing of the above mentioned claim, the Second Judicial Circuit Court dismissed the Petitioner's motion. In doing so it stated, "the instant motion for postconviction relief is both untimely and successive. As such it is procedurally barred. Fla. R. Crim. P. 3.850(b)(h)(2). To escape the procedure restrictions defendant alleges denial of his motion would result in a manifest injustice. However, [i]ncanting the words 'manifest injustice' does not excuse the procedural bars.

McClellion v. State, 186 So.3d 1129, 1132 (Fla. 4th DCA 2016); see also *Cuffy v. State*, 190 So.3d 86, 87 (Fla. 4th DCA 2015). ("Rule 3.850 contains no manifest injustice exception to the rule's time limitation or bar against filing successive postconviction motions.") The Court concludes the denial of defendant motion would not result in a manifest injustice despite his incantation otherwise.

This is particularly true where the motion raises a similar ground from defendant's first

motion for postconviction relief, which was denied by prior order, said order was affirmed on appeal nearly fifteen years ago (1008-4119), and for which defendant moved for rehearing on the same basis that defendant now claims entitles him to an evidentiary hearing; that the Court did not conclusively refute the claim that trial counsel rendered misadvice as to defendant's right to testify. See Order App. B

Following the above mentioned denial, the Petitioner, through Counsel, filed a timely appeal. On appeal the Petitioner argued two issues. ISSUE ONE: The trial court erred in summarily denying the appellant's successive motion for postconviction relief as the appellant has asserted a legally sufficient claim of ineffective assistance of counsel which has not been conclusively refuted by the record, and ISSUE TWO: The trial court erred in summarily denying the appellant's successive motion for postconviction relief where the failure to award the appellant an evidentiary hearing on his initial claim of ineffective assistance of counsel in his timely motion for postconviction relief amounted to a manifest injustice.

In issue one, the Petitioner demonstrated to the District Court that his claim is legally sufficient and was not refuted. In issue two, the Petitioner demonstrated why his successive motion for postconviction relief should have been reviewed on the merits, and why he should have been granted the requested relief.

In issue two, the Petitioner argued, "The Courts have found" that a defendant seeking to bring an untimely or successive postconviction motion must meet strict requirements for establishing the narrow exceptions to these procedural bars. See, e.g. Fla. R. Crim. P. 3.850(b)(1); *Christopher v. State*, 489 So. 2d 22, 24 (Fla. 1986). The Courts have relaxed the procedural bar in order to correct a manifest injustice. See, e.g. *Johnson v. State*, 9 So. 3d 640 (Fla. 4th DCA 2009). *Ersten v. State*, 78 So. 3d 60, 61 (Fla. 4th DCA 2012). To prevent a manifest injustice and a denial of due process, relief may be afforded even to a litigant raising a successive claim. *Haager v. State*, 36 So. 3d 883 (Fla. 2d DCA 2010), *Stephens v. State*, 974 So. 2d 455, 457 (Fla. 2d DCA 2008). In *State v. McBride*, 848 So. 2d 287, 292 (Fla. 2003) the Florida Supreme Court conducted a detailed review of state and federal case law on this issue of manifest injustice and found that collateral estoppel will not be invoked to bar relief where its application would result in a manifest injustice.

In *Deras v. State*, 54 So. 3d 1023 (Fla. 3d DCA 2011) the Court considered the denial of a motion for postconviction as untimely when the motion raised grounds for relief that were summarily denied in an earlier motion. In overturning the denial and awarding a hearing, the Court stated [w]e acknowledge that the defendant has made this argument in a previous postconviction motion, and that relief was denied. Nonetheless, if what the defendant claims is true, his claim should

be revisited under the manifest injustice exception articulated in *State v. McBride*, 848 So.2d 287, 291-92 (Fla. 2003), *Id.* at 1024. The Court found that when a manifest injustice issue was properly raised then it should be considered on the merits despite the fact that it may be untimely and may have been summarily denied in a prior order.

The Courts have consistently found that a manifest injustice occurs when two similarly situated defendants presenting the same issue receive incongruous ruling. In *Stephens v. State*, 974 So.2d 455 (Fla. 2d DCA 2008), the defendant argued in a motion for postconviction relief that a manifest injustice had occurred where the District Court of Appeal had denied him resentencing based on the lower court's misconception that they had no choice but to sentence the defendant to life in prison where a similarly situated defendant in *Bristol v. State*, 710 So.2d 761 (Fla. 2d DCA 1998) had been granted a resentencing in the same situation. In addressing these inconsistent decisions, the State argued that Mr. Stephens had previously raised this claim and the denial had been affirmed by the Court. The Court nevertheless granted resentencing finding that "to prevent a manifest injustice and a denial of due process, relief may be afforded even to a litigant raising a successive claim. See *State v. McBride*, 848 So.2d 287, 291 (Fla. 2003); *Lawton v. State*, 731 So.2d 60, 61 (Fla. 2d DCA 1999)." *Id.* at 457 The Courts have an "inherent authority to grant

a writ of habeas corpus to avoid incongruous and manifestly unfair results." *Stephens v. State*, 974 So.2d 455, 457 (Fla. 2d DCA 2008). Relief may be granted even on a successive petition or claim where failing to do so would result in manifest injustice. *Figueroa v. State*, 84 So.3d 1158, 1162 (Fla. 2d DCA 2012); *Stephens*, 974 So.2d at 457; *Johnson v. State*, 226 So.3d 908, 910 (Fla. 4th DCA 2017). In addition, under Florida law, appellate courts have the power to reconsider and correct erroneous rulings made in earlier appeals in exceptional circumstances and where reliance on the previous decision would result in manifest injustice. *State v. Atkins*, 69 So.3d 261 (Fla. 2011).

In the Appellant's case, the Trial Court summary denial of Claim 1(a) of the timely pro se motion for postconviction relief based on misadvice on the right to testify was error as the records attached by the Trial Court did not refute the specific allegations of misadvice. The First District Court of Appeals likewise committed error in per curiam affirming the decision of the lower Court and not remanding the case back to the Trial Court for an Evidentiary Hearing to take place. This error should be revisited, despite the successive and untimely nature of the claim, as the Appellant was legally entitled to an evidentiary hearing on the merits of the claim of misadvice and was entitled to an opportunity to establish that his attorney provided ineffective assistance that prejudiced him at trial. Where a decision by the Court is clearly wrong under the prevailing case law, procedural bars should not be a means to

deny relief that would give the Courts an opportunity to correct a past mistake and protect a defendant's due process rights.

Beyond the fact that this manifest injustice based on an incorrect ruling that has denied a defendant a hearing he should have been entitled to, this is also an example of disparate treatment of similarly situated defendants presenting the same issue to the Court yet receiving incongruous rulings. The Second District Court of Appeal and the Fourth District Court of Appeal have specifically found that it is a manifest injustice to deny an Appellant the same relief afforded to an identically situated Appellant. See *Stephens v. State*, 974 So.2d 455, 457 (Fla. 2d DCA 2008) and *Johnson v. State*, 9 So.3d 640, (Fla. 4th DCA 2009).

As discussed briefly in Issue One (i), the First District Court of Appeal addressed this same issue in *Gay v. State*, 936 So.2d 723 (Fla. 1st DCA 2006), issued a little less than (3) years before the mandate issued in the Appellant's case. In *Gay*, the Court summarily denied the Defendant's Post-conviction Claim of misadvice on the right to testify, attaching the portion of the trial transcript where the Defendant affirmatively chose not to testify. In reversing the summary denial this Court found where the attached portion of the record do not conclusively rebut the claim the matter must be reversed back to the Trial Court to either attach records that conclusively refute the assertions or to hold an Evidentiary Hearing. *Id.* at 724.

In *Askew v. State*, 265 So.3d 693 (Fla. 1st DCA 2019) this Court reached a similar conclusion to that in *Gay*, finding that, "because the trial court's colloquy with Appellant regarding the waiver of his right to testify at trial does not conclusively refute this claim, we reverse and remand for an evidentiary hearing. *Id.* at 694. In Appellant's case, he has made a colorable claim of misadvice on the right to testify where if true he should be entitled to relief as affecting his ability to make a knowing, intelligent, and voluntary decision about whether to testify. The Court, in attaching the portion of the trial transcript where the Appellant states that he understands he has a right to testify and is choosing not to, does not refute the specific allegations of misadvice that Trial Counsel informed he could not testify this was an act of self-defense after a drug transaction gone bad when he had not told the police about it, that he could not explain things to the jury and could not explain his initial statement to law enforcement, and finally that the prosecutor would keep objecting to his testimony and these objections would be sustained by the Court. These asserted statements by Trial Counsel are incorrect as to the rules of evidence and what is admissible during a trial and would not allow a Defendant to make an informed decision about whether to testify at trial. As the Court failed to attach records to refute the specific allegations of misadvice, it was error to summarily deny the claim without

an evidentiary hearing. The First District Court of Appeal's decision to affirm this summary denial is incongruous with the Court's ruling in Gay and Ashew thereby creating a manifest injustice in similarly situated Appellant's receiving inconsistent ruling. These inconsistent rulings create one of those rare circumstances, where the court should exercise its inherent authority to grant relief on a successive and untimely motion to avoid incongruous and manifestly unfair results. See *Stephens v. State*, 974 So.2d 455 (Fla. 2d DCA 2008) and *Deras v. State*, 54 So.3d 1023 (Fla. 3d DCA 2011). See Initial Brief, Appendix A

Upon filing the above mentioned appeal the First District Court of Appeal upheld the Second Judicial Circuit Court's dismissal Per Curiam Affirmed. See Order, Appendix A

The Petitioner then filed a timely rehearing and motion for written opinion, pursuant to Fla. R. App. P. 9.330 which allows said motions to be filed together.

In the motion for written opinion, the Petitioner through Counsel stated, "under Florida Rule of Appellate Procedure 9.330(a)(2)(b), a party can motion the court for a written opinion based on a belief that a written opinion would provide: an explanation for an apparent deviation from prior precedent."

"The Appellant would argue that the initial Mandate, Per Curiam Affirming the Lower Court's Order Denying the motion for Postconviction Relief as to 1A on May 1, 2009, and the order issued in this Appeal amount to a deviation from prior preced-

ent with similarly situated Defendants that have presented the same issue to the First District Court of Appeal. In *Gay v. State*, 936 So.2d 723 (Fla. 1st DCA 2006) the Appellant affirmatively chose not to testify however, he attributed this waiver to counsel's misadvice. The First District Court of Appeal reversed the summary denial finding the portions of the record attached to the lower court's order, the colloquy of the Defendant waiving his right, did not conclusively refute the claim where it did not address the alleged misadvice. Based on the failure to refute the claim, the First District Court of Appeal reversed and remanded the issue back to the Circuit Court to conduct an evidentiary hearing. The First District Court of Appeal has reversed similar summary denials in *Ashew v. State*, 844 So.2d 754, 755 (Fla. 1st DCA 2003) both of which involve situations where the attached trial transcripts did not conclusively refute the Appellant's specific claim of counsel's misadvice on the right to testify. Similarly to the above cited cases, the Defendant's claim of misadvice on the right to testify was not refuted by the colloquy attached by the Lower Court to its denial. Specifically, the Colloquy does not refute the Appellant's assertion of misadvice that he could not testify that this was an act of self-defense in a drug transaction gone bad, where he had not told police about it initially. The colloquy does not refute the claim that Appellant was misadvised that he could not explain things to the jury, and could not explain his initial statement to law enforcement.

Finally, the colloquy does not refute the Appellant's claim that he was misadvised that he could not testify clearly because the prosecutor would keep objecting and these objections would be sustained by the Court.

While the denial of Claim 1(a) was affirmed on appeal by this Court in 2009, Appellate courts have the power to reconsider and correct erroneous rulings made in earlier appeals in exceptional circumstances and where reliance on the previous decision would result in manifest injustice. See *State v. Atkins*, 69 So.3d 261 (Fla. 2011). Further, the Courts have found that a manifest injustice occurs when two similarly situated defendants presenting the same issue receive incongruous rulings. See *Stephens v. State*, 974 So.2d 455 (Fla. 2d DCA 2008).

Finally, the Courts have granted hearings on untimely and successive postconviction issues finding ⁶[w]e acknowledge that the defendant has made this argument in a previous postconviction motion, and that relief was denied. Nonetheless, if what the defendant claims is true, his claim should be revisited under the manifest injustice exception articulated in *State v. McBride*, 848 So.2d 287, 291-92. See *Deras v. State*, 54 So.3d 1023 (Fla. 3d DCA 2011).

The Appellant would argue that if this Court is going to affirm the Lower Court's Order, than it should provide a Written Order to explain the deviation from the First District Court of Appeal precedents discussed above.

In the Rehearing section of said motion, the Petitioner, argued through Counsel that Appellant is additionally requesting rehearing as they have a good faith belief this Court may have overlooked or misapprehend the caselaw and argument provided in the Appellant's Initial Brief in Per Curiam Affirming the Lower Court's Summary Denial of the Appellant's Successive Motion for Postconviction Relief. See Motion, Appendix A

Upon filing the above mentioned Motion for Written Opinion and Rehearing, the First District Court of Appeal denied said motion on March 22, 2024. See Order Appendix A

REASONS FOR GRANTING THE PETITION

SEE Attachment SA-SD

In *Vacco v. Quill*, 521 U.S. 793, 138 L.Ed.2d 834, 117 S.Ct. 2293 (1997) the United States Supreme Court held that, "The equal protection clause of the Federal Constitution's Fourteenth Amendment commands that no state shall deny to any person within its jurisdiction the equal protection of the laws." This provision creates no substantive rights. *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 33, 36 L.Ed.2d 16, 93 S.Ct. 1278 (1973) *id.* at 59, 36 L.Ed.2d 16, 93 S.Ct. 1278 (Stewart, J. concurring) Instead it embodies a general rule that states must treat like cases alike, but may treat unlike case accordingly. *Plyler v. Doe*, 457 U.S. 202, 216, 72 L.Ed.2d 786, 102 S.Ct. 2382 (1982)

In the case at bar, the Petitioner, in his original motion for postconviction relief, filed on June 9, 2008, put forth a claim that his trial counsel misadvised him that portion of his intended trial testimony would be inadmissible at trial, failed to properly advise him about testifying, and refused to discuss the strategic implications of testifying that applied to him.

Upon filing said claim, the Court summarily denied it. In its denial, the failed to address the claim as it was presented in the motion. The Court attached the colloquy of the Petitioner waiving his right to refute the claim. The colloquy failed to address the Petitioner's allegations of misadvice, and thus did not refute his claim.

In rehearing, the Petitioner, pointed this out to the Court and in addition directed the Court to *Gay v. State*, 936 So.2d 723 (Fla. 1st DCA 2006).

In *Gay*, *supra*, the Defendant had waived his right to testify, and in his postconviction motion he contributed the waiver to Counsel's misadvice. Upon filing said claim, the Court summarily denied it and attached the colloquy of *Gay* waiving his right to refute the claim. *Gay* appealed the Court's decision to the First District Court of Appeal, and the District Court reversed and remanded the issue back to the lower Court with instructions to conduct an evidentiary hearing because the colloquy failed to address the misadvice, therefore it did not refute the claim.

The Petitioner's case is on all fours with *Gay*, *supra*. Therefore, the First District Court of Appeal's decision, in the Petitioner's case, is in conflict with its own precedent. In *Stephens v. State*, 974 So.2d 455 (Fla. 2d DCA 2008) the Second District Court of Appeal determined that, "to give one defendant relief, and deny another defendant that same relief under virtually identical circumstances is a manifest injustice."

In order to get the claim back before the Court for it to correct the above mentioned error, the Petitioner filed a second or successive Fla. R. Crim. P. 3.850. To support the filing, the Petitioner used *Deras v. State*, 54 So.3d 1023 (Fla. 3d DCA 2011), which is on all fours with the Petitioner's procedural circumstances. In *Deras*, *supra*, the defendant filed a timely Fla. R. Crim. P. 3.850, just as the Petitioner did. It was summarily denied, and *Deras* appealed the issue to the Third District Court of Appeal, and the

District Court upheld the lower Court's denial.

Deras later filed a second or successive motion for postconviction relief presenting the same issue that was in his original 3.850. Upon said filing the Circuit Court denied the motion as untimely. Deras then appealed the issue to the Third District Court of Appeal, and the District Court reversed and remanded the issue back to the lower Court to review the issue on its merits. In doing so it stated, "[w]e acknowledge that the defendant has made this argument in a previous postconviction motion, and that relief was denied. Nonetheless, if what the defendant claims is true, his claim should be revisited under the manifest injustice exception articulated in *State v. McBride*, 848 So.2d 287-291-292 (Fla.2003) id at 1024, the Court found that when a manifest injustice was properly raised then it should be considered on the merits despite the fact that it may be untimely and may have been summarily denied in a prior order.

Although the Petitioner's circumstances are on all fours with that of Deras, and Stephens, supra, established that the denial of the Petitioner's issue resulted in a manifest injustice, the Circuit Court still dismissed the issue and on appeal, the First District Court of Appeal upheld the decision Per Curiam Affirmed. This is a plain error committed by the First District Court of Appeal and it is in conflict with the Third District Court of Appeal's decision in Deras, supra.

Moreover, the First District Court of Appeal failed to correct its error which it originally

made in the originally appeal in 2009 by an avenue given to it by the Florida Supreme Court. See *State v. Atkins*, 69 So.3d 26 (Fla. 2011). The Supreme Court held that, "under Florida Law, appellate courts have the power to reconsider and correct erroneous rulings made in earlier appeals in exceptional circumstances and where reliance on the previous decision would result in manifest injustice."

The issues in the instance case, not only result in a manifest injustice, and a denial of due process, they also result in a violation of the Equal protection clause of the Federal Constitution's Fourteenth Amendment where the Petitioner was not afforded the equal protection of the laws established by *Gay v. State*, 936 So.2d 723 (Fla. 1st DCA 2006), *Deras v. State*, 54 So.3d 1023 (Fla. 3d DCA 2011), *Stephens v. State*, 974 So.2d 455 (Fla. 2d DCA 2003) and *State v. Atkins*, 69 So.3d 261 (Fla. 2011) being that these case are on all fours with the Petitioner's case. See *Vacco, supra*.

It is the Petitioner's belief that National Importance exist in the Supreme Court deciding the posed question involved where this Court's ruling will help similiar situated individuals that have filed valid issues with merit in State Courts and the State refuses to provide the relief that it has provided to similiar situated individuals.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Nukani Williams

Date: June 13, 2024