

No:

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM NEWKIRK,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

**APPLICATION FOR ENLARGEMENT OF TIME FOR FILING OF
A WRIT OF CERTIORARI**

COMES NOW, the Petitioner, William Newkirk, by and through his undersigned counsel, pursuant to Rule 13(5), and respectfully requests, based upon good cause, that the Court extend the time to file a Petition for Writ of Certiorari for a period of 60 days, and as grounds and in support thereof states as follows:

1. The Petitioner, William Newkirk, was convicted of Murder pursuant to Section 782.04, Fla.Stat., and Robbery “Firearm or Other Deadly Weapon, to wit: a .32 caliber revolver”, pursuant to Sections 812.13(1)(2)(a) and F.S. 777.011, Fla.Stat., and sentenced to Life imprisonment.
2. The Petitioner, William Newkirk, filed a Motion To Correct Illegal Sentence, Pursuant To Rule 3.800 (a) & (b) Fla. R. Crim. P. (2019), Or In The Alternative, Petition For Writ Of Habeas Corpus Based Upon Manifest Injustice, Request for an Evidentiary Hearing, and Incorporated Memorandum of Law.

3. The Motion was denied by the post-conviction court.
4. The Petitioner, William Newkirk, filed an appeal to the Fourth District Court of Appeal, raising the following issues:

I. APPELLANT'S CONCURRENT NATURAL LIFE SENTENCES IMPOSED ON ROBBERY FIREARMS COUNTS 2-3 WAS AN ILLEGAL SENTENCE, BASED UPON FUNDAMENTAL ERRORS OF THE TRIAL COURT EMBEDDED INTO APPELLANT'S CAPITAL MURDER PENALTY PHASE, ADVISORY SENTENCE FORM, AND SENTENCING, WHERE THE TRIAL COURT USED THE JURY'S PAROLABLE LIFE RECOMMENDATION TO SENTENCE APPELLANT TO NATURAL LIFE ON THE ROBBERY COUNTS

II. APPELLANT'S CONCURRENT NATURAL LIFE SENTENCES IMPOSED ON ROBBERY FIREARM COUNTS 2-3 WAS AN ILLEGAL SENTENCE IMPOSED, BASED UPON FUNDAMENTAL ERRORS OF THE TRIAL COURT EMBEDDED INTO APPELLANT'S CAPITAL MURDER PENALTY PHASE AND SENTENCING, WHERE THE TRIAL COURT NEITHER ORDERED A MANDATORY PRESENTENCE INVESTIGATION REPORT, CONDUCTED A SENTENCING HEARING, OR PERMITTED APPELLANT TO ALLOCUTE DURING SENTENCING, WHEN APPELLANT WAS NINETEEN YEARS OF AGE WITH NO PRIOR ADULT FELONIES AND SCORED BETWEEN PROBATION TO NATURAL LIFE ON THE ROBBERY COUNTS

III. APPELLANT'S CONCURRENT NATURAL LIFE SENTENCES IMPOSED ON ROBBERY FIREARM COUNTS 2-3 WAS AN ILLEGAL SENTENCE IMPOSED, BASED UPON UNLAWFUL APPLICATION OF FLORIDA STATUTES SECTION 775.087 BY THE TRIAL COURT AT SENTENCING TO APPELLANT'S TWO ROBBERY FIREARM COUNTS, FOLLOWING AN OFF THE RECORD CHARGE CONFERENCE REFERENCED ON THE RECORD

IV. APPELLANT'S CONCURRENT NATURAL LIFE SENTENCES IMPOSED ON ROBBERY FIREARM COUNTS 2-3, AS SECONDARY OFFENSES CHARGED, WAS AN ILLEGAL SENTENCE IMPOSED, BECAUSE IT EXCEEDS THE SENTENCE IMPOSED FOR THE PRIMARY OFFENSE CHARGED, CAPITAL MURDER, FOR WHICH A SENTENCE OF LIFE WITH A 25 YEAR MINIMUM MANDATORY WAS IMPOSED, SUCH THAT THE ROBBERY COUNTS WERE LIMITED TO THE STATUTORY MAXIMUM OF 30 YEARS AT APPELLANT'S SENTENCING

V. APPELLANT IS ENTITLED TO RESENTENCING BECAUSE APPELLANT WAS DENIED A SENTENCING HEARING BY THE TRIAL COURT IN VIOLATION OF ARTICLE 1 SECTION 9 OF THE FLORIDA CONSTITUTION, THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, FLORIDA STATUTES 921.231(1)(1980), RULE 3.720(B) FLA. R. CRIM. P. (1980), ALL AS FUNDAMENTAL ERROR OF THE TRIAL COURT AT SENTENCING, RESULTING IN THE UNLAWFUL IMPOSITION OF NATURAL LIFE SENTENCES

VI. APPELLANT IS ENTITLED TO RESENTENCING NOW, BASED UPON A CONSTRUCTIVE OFF-THE-RECORD AMENDMENT TO THE CAPITAL MURDER INDICTMENT- CHANGING ROBBERY- FIREARM TO ROBBERY-DEADLY WEAPON DURING TRIAL IN ORDER TO UNLAWFULLY FOSTER TRIAL COURT APPLICATION OF 775.087 DURING APPELLANT'S PENALTY PHASE AND SENTENCING, WHERE THE STATE CONCEDED THAT THE TRIAL COURT IMPROPERLY IMPOSED A 775.087 MINIMUM MANDATORY SENTENCE THAT WAS NEITHER CHARGED NOR ADJUDICATED ON-THE-RECORD

5. The Petitioner, William Newkirk, desires to seek certiorari review of the Trial Court and the District Court of Appeals for the State of Florida, 4th District as questions of constitutional magnitude are presented.

6. The basis for jurisdiction in this Court is a violation of the Petitioner's constitutional rights to due process of law, a meaningful adversarial process, and to a fair trial.

7. The Judgment sought to be reviewed in this case is the *per curiam* Opinion issued by the 4th District Court of Appeals in *William Newkirk v. State of Florida*, 4th DCA Case No: 4D2023-0997 on September 14, 2023, a copy of which is attached hereto as Exhibit "A".

8. Counsel's practice focuses on appellate and post-conviction matters in state and federal courts. An extension of time is justified in this case based upon:

- a) Counsel is working continuously and diligently on a number of appellate post-conviction matters in state and federal courts;

- b) Counsel had been delayed in the preparation of William Newkirk's Petition based upon medical and health reasons; and
 - c) Based upon sensitive personal family matters, counsel has been delayed in the preparation of William Newkirk's Petition.
9. Pursuant to Rule 13, Supreme Court Rules, this Application is filed with the Clerk at least 10 days from the deadline for filing said Petition and is based upon extraordinary circumstances warranting the requested relief.
10. This extension of time is based upon unforeseen circumstances and good cause.
11. No prejudice shall enure to any party as the Defendant is presently in custody.
12. The Petitioner has been in custody in excess of 43 years serving Life sentences.
13. It is respectfully requested that the time for the filing of the Petition for Writ of Certiorari be enlarged for a period of 60 days.

WHEREFORE, based upon the foregoing grounds and authority, the Petitioner, William Newkirk, respectfully request this Honorable Court enter an Order enlarging the time in which he may file his Petition for Writ of Certiorari up to and including 60 days from the date the relief is entered.

I hereby certify that on **November 29, 2023** I electronically filed the foregoing document with the Clerk of the Supreme Court via Electronic Filing / CM/ECF and also provided via U.S. Mail. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF and via U.S. Mail to the Solicitor General, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

Respectfully submitted,

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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

WILLIAM NEWKIRK,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2023-0997

[September 14, 2023]

Appeal of order denying rule 3.800 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Hunter Davis, Judge; L.T. Case Nos. 80-9947CF10B and 81-000634CF10B.

Richard L. Rosenbaum of the Law Offices of Richard Rosenbaum, Fort Lauderdale, for appellant.

No appearance required for appellee.

PER CURIAM.

Affirmed.

WARNER, CONNER and KUNTZ, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

"A"