

No. 24-5554

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

AUG 28 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

HARRY LEE GOULDSBORO II — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

DISTRICT COURT OF APPEALS SIXTH DISTRICT

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

PETITION FOR WRIT OF CERTIORARI

HARRY LEE GOULDSBORO II

(Your Name)

BREVARD COUNTY JAIL COMPLEX ATTN: LEGAL MAIL

(Address)

860 CAMP ROAD COCOA, FL 32927

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

ORIGINAL

1. Does a manifest injustice occur when the defendant accepts a plea without the court or his attorney explaining that pleading to a single technical violation of probation, which is not a substantial and willful violation, that results in a maximum five-year prison sanction, which renders the plea involuntary? In violation of due process, and fundamental error.
2. Whether a manifest injustice occurred when the court and defendant's counsel failed to inform the defendant of his right to withdraw his plea prior to sentencing in accordance with Fla. R. Crim. P. Rule #3.170, after the new charge was dismissed? In violation of due process, and fundamental error.
3. Whether a manifest injustice occurred when the court revoked the defendant's probation for the technical violation, which is not a substantial and willful violation, and sentenced him to a five-year prison sanction? In violation of due process, and fundamental error.
4. Whether a manifest injustice occurred when the court and counsel failed to follow Fla. R. Crim. P. Rule #3.170(J) Time and Circumstances of Plea, when the court and counsel failed to provide the defendant with a reasonable amount of time to consider the plea, in violation of due process and fundamental error?
5. Whether a manifest injustice occurred when the court and counsel failed to introduce FL ST 948.06 as the authority for violations of probation and departed from the essential requirements of law when it sentenced the defendant to an unauthorized five-year maximum prison sentence, in violation of due process and fundamental error?
6. Whether the 6th DCA departed from the essential requirements of law by affirming the lower court's ruling approving an illegal sentence, ~~in conflict with~~ and an involuntary plea, in conflict with the 6th DCA's ruling in *Bean v. State*, 6023-786 Fla. App. Apr. 05, 2024 and *Cruz v. State*, 6023-919 Fla. App. Mar 01, 2024, and the district court's rulings in *Marcus v. State*, 346 So.3d 117 Fla. App. 2022 and *Watkins v. State*, 502023-3374 Fla. App. Jun 07, 2024?
7. Whether the 6th DCA departed from the essential requirements of law by affirming the lower court's ruling summarily denying all of the defendant's claims without holding an evidentiary hearing when the claims were not conclusively refuted by the record in direct conflict with the district court rulings in *Hugan v. State*, 190 So.3d 210 Fla. App. 2016, *Garcia v. State*, 701 So.2d 607 Fla. 2d DCA 1997, *Molina v. State*, 520 So.2d 320 Fla. 2d DCA 1998, *Copeland v. State*, 864 So.2d 1197 Fla. 1st DCA 2004, *Faulstick v. State*, 5th DCA Fla. 2022, *Knight v. State*, 187 So.3d 207 Fla. 5th DCA 2016, *Limbaugh v. State*, 16 So.3d 954 Fla. 5th DCA 2004, *Laing v. State*, 200 So.3d 166 Fla. 5th DCA 2016, *Mangini v. State*, 302 So.3d 1058 Fla. 5th DCA 2020, *Niemi v. State*, 284 So.3d 1193 Fla. 5th DCA 2019, and *Rousey v. State*, 226 So.3d 1015 Fla. App. 2017?

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

1. CASE NO.: 6023-2883 District Court Case Number. Judgment entered July 31, 2024.
2. LOWER TRIBUNAL No.: 2018-CF-004010-A-O. Judgment entered May 24, 2023.

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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 18th Judicial Circuit court appears at Appendix F 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 6/11/2024.
A copy of that decision appears at Appendix ~~C~~.

☒ A timely petition for rehearing was thereafter denied on the following date: 7/31/2024, 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

1. 5th and 14th Amendments of the U.S. Constitution

- A. Due process of law violation for failing to inform defendant of maximum penalty for technical violation; revoking probation; not advising of right to withdraw plea before sentencing; not providing reasonable time to consider plea.
- B. Due process of law violation for affirming lower court's ruling approving an illegal sentence in direct conflict with other 6th DCA rulings and other district court rulings, and departing from essential requirements of law.
- C. Due process of law violation for affirming lower court's ruling summarily denying all of defendant's claims without holding an evidentiary hearing when the claims were not conclusively refuted by the record, in direct conflict with district court rulings.

2. Sixth Amendment of the U.S. Constitution

- A. Ineffective assistance of counsel for failing to advise defendant he faced a 5-year maximum for pleading to a technical violation; of his right to withdraw his plea before sentencing; of permitted sanctions for technical violations under FLST 948.06; of his right to have a reasonable amount of time to consider the plea, in accordance with Fla. R. Crim. P. Rule # 3.170(F),

3. FLST 948.06 Violation of probation or community control. Section (2)(G) and (1)(H) 1-7

- 4. Fla. R. Crim. P. Rule # 3.170 (F), (J), and (L) [(F) Withdrawal of plea before sentence; (J) Time and Circumstances of plea; (L) Motion to withdraw plea after sentencing]
- 5. Fla. R. Crim. P. Rule # 3.172 (A), (C)(1) and (9) [(A) Voluntariness; (C)(1) Nature of the charge; (C)(9) Sexually Violent or Sexually Motivated Offenses]
- 6. Fla. R. Crim. P. Rule # 3.850 (A)(5) [plea was involuntary]

STATEMENT OF THE CASE

1. On May 24, 2021 the Petitioner Filed a pro se 3.800 Motion to Correct an Illegal Sentence in the lower tribunal.
2. On May 24, 2023, the lower tribunal denied the motion.
3. On June 9, 2023, the Petitioner Filed a pro se Emergency Appeal of Order Denying Defendant's Motion to Correct Illegal Sentence to the 5th DCA. The 5th DCA transferred the case to the 6th DCA.
4. The Petitioner Filed a Notice of Inquiry to the 6th DCA on January 25, 2024. (Case No.: 6D23-2883).
5. On June 11, 2024, the 6th DCA Order Denying Appellant's Appeal of Lower Tribunal's Order Denying 3.800 Postconviction Motion was received. The order did contain a written opinion.
6. On June 21, 2024, the Petitioner Filed an Amended Motion For Rehearing, Rehearing En Banc, Certification, and Written Opinion.
7. On July 31, 2024, the 6th DCA denied the Petitioner's Amended Motion For Rehearing, without an opinion.
8. On August 15, 2024, the Petitioner Filed a timely Notice of Appeal to the United States Supreme Court and Florida Supreme Court to properly preserve my right to appeal in compliance with Fla. R. App. P. 9.140 and 9.141.
9. The Petitioner has 90 days to submit a writ of certiorari to the United States Supreme Court and he has timely Filed his writ on August 28, 2024. The Petitioner has properly preserved his right to appeal and claims therein by timely Filing motions to withdraw plea and direct appeal, and there are no procedural bars to the Petitioner's claims that would preclude relief.

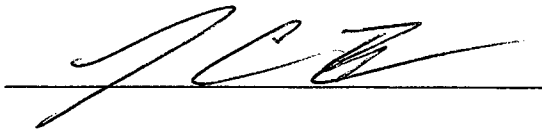
REASONS FOR GRANTING THE PETITION

1. The Petitioner was denied his 5th and 14th Constitutional rights to due process of law by submitting to an involuntary plea predicated by the court's and counsel's failure to inform him of the maximum penalty for pleading to a technical violation of probation, resulting in fundamental error and a manifest injustice.
2. The Lower Tribunal departed from the essential requirements of law by unlawfully revoking the Petitioner's probation and sentencing him to a 5-year maximum sentence in violation of FL ST 948.06.
3. Counsel provided ineffective assistance by failing to advise Petitioner of his right to withdraw his plea before sentencing, and for misadvising defendant as to his maximum exposure for a technical violation, and for also failing to present FL ST 948.06 as an authoritative source governing probation sanctions.
4. The Lower Tribunal sentenced the defendant to an illegal sentence, which amounts to a fundamental error and may be corrected at any time.
5. The Lower Tribunal departed from the essential requirements of law by failing to follow precedent established in district court rulings regarding technical violations, and its ruling in this case is in direct conflict with multiple rulings from each district court.
6. The 6th DCA departed from the essential requirements of law by per curiam affirming the lower court's illegal ruling, then subsequently denying the Petitioner's Motion for Rehearing without a written opinion. The 6th DCA's ruling is in direct conflict with district court rulings from the 6th DCA and the other respective district courts.
7. The State filed a Petition for Civil Commitment based on this illegal sentence and conviction which could confine the defendant indefinitely because Florida's civil commitment law applies to sexually violent crimes and sexually motivated crimes and the underlying charge for which the technical violation applies subjects the defendant to indefinite civil commitment. The collateral consequences require the U.S. Supreme Court to intervene and correct an obvious manifest injustice.
8. The U.S. Supreme Court's discretionary review is essential in this case to definitively establish Supreme Court precedence for sanctions for technical violations and approving the rulings from the Florida Supreme Court and district courts of appeal affirmative stance on non-prison sanctions for technical violations and forbidding probation revocations for technical violations that are not willful and substantial violations. A ruling overturning the Petitioner's illegal sentence and conviction will impact hundreds of pre-trial detainees facing technical violations as well as hundreds of convicted prisoners who can cite this ruling as grounds for postconviction relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to be "J. C. B.", is written over a horizontal line.

Date: August 28th, 2024