

ORIGINAL

No.

24-5716

FILED

SEP 25 2024

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

DALE B. GREEN — PETITIONER

(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Florida

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

PETITION FOR WRIT OF CERTIORARI

Dale B. Green R13013

(Your Name)

Tomoka Corr. Inst.

(Address)

3950 Tiger Bay Road

Daytona Beach Fla 32124

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

As a matter of law, must the state of Florida bear the blame for the Petitioner's Procedurally Barred ruling from the Supreme Court of Florida, rendered on, or about August 13, 2024, where the Petitioner's Trial Counsel and Appellate Counsel on direct appeal were both judicially appointed by the state of Florida, but, neither counseled with regards to Petitioner's Motion to Suppress his Confession, (made during Petitioner's Custodial interrogation conduct by Palatka Police Detective Mike Kelly on September 9, 2008,) raised/argued before the State trial Court/State district court of appeal, that as a matter of law the Petitioner properly invoked his right to "cut off questioning" during the Custodial interrogation, which was not scrupulously honored by Detective Kelly, where Kelly did not cease his questioning of the Petitioner.

## 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

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	5
REASONS FOR GRANTING THE WRIT.....	6
CONCLUSION.....	7

## INDEX TO APPENDICES

APPENDIX A : ORDER FROM THE SUPREME COURT OF FLORIDA

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

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 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[ ] is unpublished.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 United States district 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.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ 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 \_\_\_\_\_ 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.

## JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was N/A.

[ ] 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 \_\_\_\_\_.  
S

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A N/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 08/13/2024. 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 \_\_\_\_\_.  
2

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

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Right to remain silent/Privilege, under the Fifth Amendment to the United States Constitution.

Due Process of the Law, under the Fourteenth Amendment to the United States Constitution

Guaranteed Right to effective assistance of Counsel, under the Sixth Amendment to the United States Constitution

## STATEMENT OF THE CASE

1 On September 9, 2008, Petitioner was arrested by the Palatka Police Department and taken to their interrogation room for questioning about the fire at Petitioner's girlfriend's apartment, Initially Waived his Miranda right/Privilege under the Fifth Amendment to the United States Constitution.

However, during the interrogation the Petitioner tried to terminated the interrogation by invoking his right to cut off the questioning, under Miranda v Arizona, but Detective Kelly failed to scrupulously honor the Petitioner's invocation of his right to "cut off questioning" and continued to question the petitioner until Petitioner told Kelly that he set the fire.

2. Petitioner's state appointed trial Counsel filed a Motion to Suppress Petitioner's confession - asserting that Det. Kelly had obtained the confession in violation of the Fifth Amendment/Miranda right - Kelly had obtained the confession through coercion, the trial Court denied the motion several days before the Petitioner's trial, the court said, "it saw no coercion" and certainly the Petitioner knew that he had the right to stop the questioning at any time!

3. On July 23, 2024 Petitioner filed Writ of habeas corpus with Supreme Court of Florida alleging violation of Miranda right, the Petition was denied on August 13, 2024, as procedurally barred... Petition is not second appeal for issues that should have been raised on appeal.(See Appendix 1)

## REASONS FOR GRANTING THE PETITION

Where, the Petitioner is procedurally barred at the State level from seeking the correct ruling on his motion to suppress, hence, Detective Mike Kelly violated the Petitioner's right to "cut off questioning" under Miranda, should have been the trial court ruling, instead of, a ruling on the voluntariness of Petitioner's statements/confessions, the GRANTING of the Petitioner's Petition is needed to prevent a fundamental miscarriage of justice, where the reason for the Petitioner's default must be blamed on the state, for providing Petitioner with ineffective assistance of trial and/or appellate counsel. See Coleman v. Thompson 501 U.S. 722, 757, An Attorney's errors during an appeal on direct review may provide cause to excuse a procedural default; for if the attorney appointed by the state to pursue the direct appeal is ineffective, the prisoner has been denied fair process and opportunity to comply with state's procedures and obtain an adjudication on the merits of his claim.

Federal review of his claim is necessary to prevent a fundamental miscarriage of justice. Murray v. Carrier, 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed.2d-397, "the procedural default is result of ineffective assistance of counsel, the Sixth Amendment itself requires that the responsibility for the default be imputed to the state." 477 U.S., at 488, 91 L.Ed.2d 397, 106 S.Ct. 2639, In other words it is not the gravity of the attorney's error that matters, but that it constitutes a violation of Petitioner's right to counsel, so that the error must be seen as an external factor, i.e., "imputed to the state." see also Evitts v. Lucey, 469 U.S. 387, 396, 83 L.Ed.2d 821, 105 S.Ct. 830 (1985) ("The Constitutional mandate guaranteeing effective assistance of counsel] is addressed to the action of the state in obtaining a criminal conviction through a procedure that fails to meet the standard of, due process of the law"), principles of comity and finality "must yield to imperative of correcting, a fundamentally unjust incarceration, so as to allow federal courts to balance the societal interest in finality, comity and conservation of scarce judicial resources with individual interest in justice that arises in extraordinary case") Dretke v. Haley, 541 U.S. 386, 393 (2004) See also, United States v. Olano, 507 U.S. 725, 736-37 (1993) In our collateral review jurisdiction, the term miscarriage of justice means that the defendant is actually innocent, but in other criminal context the phrase has wider meaning extending to any error that "seriously affects the fairness, integrity or public reputation of judicial proceeding" independent of the defendant's innocence. In the instant case, the order denying Petitioner's right to cut off question, claim from the Supreme Court of Florida (APPXA) establishes cause for the Petitioner by saying that the issue should have been raised on appeal, in that, the order does not say barred by law of the case doctrine.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dale B Green

Date: September 24, 2024