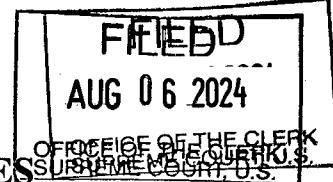


24-5751
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



NICOLAS DOMINIQUE – PETITIONER

vs.

STATE OF FLORIDA – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

**THE FOURTH DISTRICT COURT OF APPEAL
ON CIRCUIT COURT DECISION**

PETITION FOR WRIT OF CERTIORARI

**NICOLAS DOMINIQUE, *pro se*, #L75788
Suwannee Correctional Institution
5964 U.S. Highway 90
Live Oak, FL 32060**

QUESTION(S) PRESENTED

IS IT EVER DEEMED UNCONSTITUTIONAL WHEN A JUDGE USE THE VICTIM IMPACT STATEMENT AS AN AGGRAVATING FACTOR OR AS FACT FINDING TO INCREASE DEFENDANT'S PUNISHMENT, WITHOUT A JURY DETERMINING THE FACTUAL BASIS RULED UNCONSTITUTIONAL IN *APPRENDI V. NEW JERSEY*, 530 U.S. 466, 490, 147 L.ED. 2D 435, 120 S.CT. 2348 (2000) WHEN FACTS FOUND BY THE JUDGE, RATHER THAN BY THE JURY BEYOND A REASONABLE DOUBT WAS USED TO INCREASE PUNISHMENT

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:

- 1.) The January 8, 2024 Denial of my Motion to Correct Sentence by the lower Court of Broward County, 17th Judicial Circuit, Case No.: 05-17224-CF-10-A,
- 2.) The June 6, 2024 Denial of Petitioner's appeal by the 4th District Court of Appeal, Case No.: 4D 2024-0312,
- 3.) July 16, 2024 Denial of Motion for Rehearing and/or Certification, Case No.: 4D 2024-0312.

RELATED CASES

Whereas, here in the instant case, the Supreme Court has already evaluated these analysis under *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) making this a clearly established principle of law, and the ruling in the instant case is in direct conflict with the decision of the United States Supreme Court.

There has been numerous cases where the Court has previously granted certiorari, review on the same kind of issues similar to the Petitioner's, see e.g., *Alleyne v. United States*, 570 U.S. 99; 133 S. Ct. 2151; 186 L. Ed. 2d 314 (2013), see *Hurst v Florida*, 577 U.S. 92, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016), *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), and also *United States v. Haymond*, 139 S. Ct. 2369; 204 L. Ed. 2d 897 (2019).

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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 **state courts**:

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

reported at the 4th District Court of Appeal; or,

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

is unpublished.

The opinion of the Lower Court of Broward County, 17th Judicial Circuit Court appears at Appendix B to the petition and is

reported at Broward County, 17th Judicial Circuit; or,

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

is unpublished.

JURISDICTION

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

The date on which the highest state court decided my case was on June 6, 2024. This petition is timely filed. A copy of that decision appears at Appendix A.

[] A timely Petition for Rehearing or Certification of a Question of Great Public Importance was thereafter denied on the following date: July 16, 2024, and a copy of the Order denying rehearing appears at Appendix C.

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

The Florida Supreme Court dismissed Discretionary Jurisdiction on August 16, 2024, and appears at Appendix D.

On August 14, 2024 Petition for Writ of Certiorari was returned and Petitioner was given 60 days to correct and resubmit.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner argues constitutional violation of Sixth Amendment rights pertaining to an *Apprendi* error, because the Court required finding made by a Sentencing Judge (using the lesser preponderance of evidence standard) rather than a jury (using the greater beyond a reasonable doubt standard), which in effect aggravated defendant's sentence beyond the legally prescribed range of available sentences in violation of his Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution.

Also Fla.R.App.P. 9.141(b)(2)(D), due to the 4th District Court of Appeal not attaching portions of the record refuting Appellant's allegations.

STATEMENT OF THE CASE

Petitioner filed a Motion to Correct Illegal Sentence which was denied on January 8, 2024 by the lower Court of Broward County. This decision was appealed by the Petitioner on January 29, 2024.

On February 26, 2024 Petitioner filed his Initial Brief, however, on March 1, 2024 an Order stating that Appellant's February 29, 2024 Initial Brief was stricken as not compliance with Fla.R.App.P. 9.420(d) in that the Certificate of Service did not show that a copy was sent to the Attorney General and that Appellant may re-file document properly with (15) Fifteen days. Appendix E.

On March 12, 2024 Petitioner properly re-filed his Initial Brief where his question was first presented to the Fourth District Court of Appeal stating:

Factfinding made by a Sentencing Judge rather than a jury, that aggravated defendant's sentence beyond the legally prescribed range of available sentence violated his constitutional Sixth Amendment rights.

Which was simply denied, with no Answer Brief. Petitioner is seeking review of the judgments, of both the lower court of Broward County, 17th Judicial Circuit, Appendix B and that of the Fourth District Court of Appeal denied by the appellate courts on June 6, 2024, Appendix A.

Petitioner then also filed a Motion for Rehearing and/or Certification of a Question of Great Public Importance on June 17, 2024 where this question was raised to the 4th DCA Court of Appeal:

IS IT EVER DEEMED UNCONSTITUTIONAL WHEN A JUDGE USE THE VICTIM IMPACT STATEMENT AS AN AGGRAVATING FACTOR OR AS FACT FINDING TO INCREASE DEFENDANT'S PUNISHMENT, WITHOUT A JURY DETERMINING THE FACTUAL BASIS RULED UNCONSTITUTIONAL IN *APPRENDI V. NEW JERSEY*, 530 U.S. 466, 490, 147 L.ED. 2D 435, 120 S.CT. 2348 (2000) WHEN FACTS FOUND BY THE JUDGE, RATHER THAN BY THE JURY BEYOND A REASONABLE DOUBT WAS USED TO INCREASE PUNISHMENT

Which was denied July 16, 2024, Appendix C.

REASONS FOR GRANTING THE PETITION

It is important to understand the posture of this case. The Appellate Court has never ordered transmission of the record, briefs on the merits, or oral argument. Appendix F. A decision on the merits without a record, briefs on the merits, or oral argument violates the most basic of Due Process.

The challenged ruling in Dominique's case is a simple denial of his motion with no statement of the factual or legal basis for the ruling. Although the lower Court's Order contains additional language addressing the issue, it did not attach portions of the record refuting Appellant's allegations. Fla.R.App.P. 9.141(b)(2)(D) Appendix B and A. Petitioner was never even provided with any kind of copy of the State's response, and is not accurately contested, furthermore a silent record in itself is conceding to Defendant's argument.

Second, the denial of Petitioner's motion came with no statement of the factual or legal basis for the ruling.

And Third, the challenged ruling in Dominique's case is a denial of Petitioner's elemental due process, when case was dismissed without his having any opportunity to prove claim, and where his claim was not refuted by the record or denied on the merits.

As an elementary matter of due process, the prisoner is entitled to be heard on his claim. In all three cases, the orders do not "contain a statement or citation effectively establishing a point of law upon which the decision rests" with regard to the contested rulings.

In no event, however, could the trial Court, as it did in the instant case, simply dismiss the claim without giving the prisoner an opportunity of some kind to prove his claim. The subsequent denial of review after dismissal perpetuated the lack of any chance to be heard, and was a departure from the essential requirements of law amounting to not affording procedural due process.

The Appellate Courts failure to act is disheartening because this case reflects the kind of situation where the Court's have previously found summary action appropriate:

The relevant facts are not in dispute, and the decision before us clearly conflicts with settled law of this Court on an important matter. The United States Supreme Court in *Apprendi* held that a state scheme that keeps from the jury facts exposing defendants to greater or additional punishment may raise serious constitutional concerns.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

S/ 

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