

No. _____

ORIGINAL

24-6373

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

JAN 14 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

HARRY LEE GOLDSBORO 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 GOLDSBORO 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

1. Does a manifest injustice occur when the Court and counsel fails to explain the potential collateral consequences of a plea, which renders the plea involuntary[§], resulting in a fundamental error and due process violation?
2. Does a manifest injustice occur when counsel provides affirmative misadvice regarding the potential collateral consequences of a plea, which renders the plea involuntary, resulting in a fundamental error and a due process violation, and also violates the 6th Amendment right to effective counsel?
3. Is a belated plea withdrawal motion timely filed when an appellant files the motion within two years of the discovery of new evidence, that was unknown and not able to be discovered through due diligence at the time the defendant signed the plea? Does the court's failure to accept the belated plea withdrawal as timely filed violate the appellant's right to due process?
4. Is a belated plea withdrawal motion timely filed when an appellant files the motion within two years of the discovery of affirmative misadvice of collateral consequences that was unknown at the time the defendant signed the plea? Does the court's denial of this claim violate due process?
5. Does a miscarriage of justice occur when a district court of appeals fails to fully consider the record on appeal and the appellant's postconviction motion when the court merely per curiam affirms the ruling within only seven days of receiving the summary record on appeal, and in the midst of court closures due to Hurricane Milton, resulting in a violation of due process?
6. Does a ~~man~~ miscarriage of justice occur when the 6th DCA departed from the essential requirements of law by per curiam 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 and also in direct conflict with the district court's rulings in:
1. Johnson v. State, 971 So.2d 212 Fla. App. 2008; 2. Murphy v. State, 820 So.2d 375, 376 Fla. 4th DCA 2002; 3. Gomez v. State, 28 So.2d 114 Fla. App. 2010; 4. State v. Leroux, 689 So.2d 233, 238 Fla. 1996; 5. Graham v. State, 779 So.2d 604 Fla. 2d DCA 2007; 6. Ghanavati v. State, 820 So.2d 989 Fla. App. 2002; 7. Watrous v. State, 793 So.2d 6 Fla. App. 2001; 8. Muse v. State, 23 So.2d 763 Fla. App. 2009; 9. Eissman v. State, 440 So.2d 770 Fla. App. 1983; 10. Dydek v. State, 400 So.2d 1255 Fla. 2d 1981; 11. Waugh v. State, 388 So.2d 253 Fla. 2d DCA 1980; 12. Williams v. State, 316 So.2d 649 Fla. 1975; 13. Yansh v. State, 420 So.2d 649 Fla. 2d DCA 1982; and 14. Nicol v. State, 892 So.2d 1169, 1171 Fla. 5th DCA 2005; which is violative of the appellant's right to due process?
7. Is the Appellant's rights to due process and effective assistance of counsel violated when counsel prematurely withdraws representation during the 30-day time period to withdraw a plea, thus preventing the Appellant from timely withdrawing his plea based on affirmative misadvice of collateral consequences.

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.: 6023-2876 District Court Case Number. Judgment entered October 15th, 2024.
2. LOWER TRIBUNAL No.: 2018-CF-004010-A-O. Judgment entered May 24, 2023.

TABLE OF AUTHORITIES CITED

CASES

1. Johnson v. State, 971 So. 2d 212 Fla. App. 2008 ... p. 2, 19, 20
2. Murphy v. State, 820 So. 2d 375, 376 Fla. 4th DCA 2002 ... p. 2, 19
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4. State v. Leroux, 689 So. 2d 235, 238 Fla. 1996 ... p. 2, 20
5. Graham v. State, 779 So. 2d 604 Fla. 2d DCA 2007 ... p. 2, 20
6. Chanaouti v. State, 820 So. 2d 989 Fla. App. 2002 ... p. 2, 20
7. Watrous v. State, 793 So. 2d 6 Fla. App. 2001 ... p. 2, 20
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11. Waugh v. State, 388 So. 2d 253 Fla. 2d DCA 1980 ... p. 3, 21
12. Williams v. State, 316 So. 2d 649 Fla. 1975 ... p. 3, 21
13. Yanshi v. State, 420 So. 2d 649 Fla. 2d DCA 1982 ... p. 3, 21
14. Nicol v. State, 892 So. 2d 1169, 1171 Fla. 5th DCA 2005 ... p. 3, 21

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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 A1 to the petition and is

☒ reported at Goldsboro v. State, SC2024-1714 Fla. Jan 03, 2025; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the 6th District court appears at Appendix B to the petition and is

☒ reported at Goldsboro v. State, 602023-2876 Fla. App. Oct. 15, 2024; 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 01/03/2025.
A copy of that decision appears at Appendix A1.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 5th and 14th Amendments of the U.S. Constitution; 6th Amendment of the U.S. Constitution
 - A. Due process of law violation and Failure to provide effective assistance of counsel for court's and counsel's Failure to advise and explain the potential collateral consequences of a plea, which renders the plea involuntary and results in a fundamental error.
 - B. Due process of law violation and Failure to provide effective assistance of counsel by providing affirmative misadvice regarding the potential collateral consequences of a plea, which renders the plea involuntary and results in a fundamental error.
 - C. The lower tribunal's Failure to accept the Appellant's belated motion to withdraw plea as timely Filed, as it was Filed within the two-year time limit of finding the newly discovered evidence and uncovering the collateral consequences, results in a violation of due process and is reversible error.
 - D. The district court of appeal's Failure to use a reasonable amount of time to consider the Appellant's summary record and the merits of his claims, instead of expeditiously and cursorily reviewing the case in less than one week during a major hurricane that caused court closures on a holiday weekend, resulted in a miscarriage of justice and an abuse of discretion that violated due process and represents a reversible error.
 - E. The district court of appeal's departure from the essential requirements of law by per curiam affirming the lower tribunal's summary denial of the Appellant's claims that were not conclusively refuted by the record and without holding an evidentiary hearing resulted in a miscarriage of justice and violated the Appellant's right to due process of law and represents a reversible error.
 - F. The district court of appeal's departure from the essential requirements of law by per curiam affirming the lower tribunal's summary denial of the Appellant's claims that were not conclusively refuted by the record and without holding an evidentiary hearing, is in direct conflict with other district court rulings, which results in a miscarriage of justice and violated the Appellant's right to due process of law and represents reversible error.
2. Fla. R. Crim. P. Rule # 3.170 (L) Motion to Withdraw Plea After Sentencing
3. Fla. R. Crim. P. Rule # 3.171 (C) Responsibilities of Defense Counsel
4. Fla. R. Crim. P. Rule # 3.172 (C)(1) and (7)
5. Fla. R. Crim. P. Rule # 3.850 (L) Belated Appeals and Discretionary Review
6. FL ST. 394.925
7. FL ST. 9.140
8. FL ST. 924.05
9. FL ST. 924.06

STATEMENT OF THE CASE

1. On April 10th, 2021, the Petitioner Filed a pro se 3.850 Motion For Belated Plea Withdrawal in the lower tribunal.
2. On May 15th, 2023, the lower tribunal denied the motion.
3. On May 24th, 2023, the Petitioner Filed a pro se Emergency Appeal of Order Denying Defendant's 3.850 Motion For Belated Plea Withdrawal to the 5th DCA.
4. On June 27th, 2023, the 5th DCA transferred the case to the 6th DCA.
5. On ~~June 11, 2024~~^{January 28th, 2024}, the Petitioner Filed a Notice of Inquiry to the 6th DCA (Case No.: 6D23-2876).
6. On July 3rd, 2024, the 6th DCA ordered the lower tribunal to transmit the record on appeal and the court ordered the Petitioner to submit an Initial Brief within 30 days, if he so chooses.
7. On July 27th, 2024, the Petitioner submitted a timely Filed Initial Brief, albeit without the record in order to ensure that it was timely Filed.
8. On October 7th, 2024, the 6th DCA indicated that the court received the record and accepted the Petitioner's Initial Brief as timely Filed.
9. On October 7th-11th, 2024, Hurricane Milton impacted Florida and caused a State of Emergency that resulted in court closures. In addition, Columbus Day was on Monday, October 14th, 2024.
10. On October 15th, 2024, the 6th DCA issued its order denying the Petitioner's 3.850 motion without an opinion. This timely Petition For Writ of Certiorari to the United States Supreme Court follows the Petitioner's timely Notice of Appeal Filed on October 22nd, 2024.
11. On November 13th, 2024, the Petitioner Filed an extension to File a writ of certiorari because he never received a ruling or response from his Notice of Appeal to the Florida Supreme Court Filed on August 15th, 2024. The U.S. Supreme Court granted the extension and the Florida Supreme Court ruled on the case on ~~November 26th, 2024~~^{January 3rd, 2025}. This timely Writ of ~~Prohibition~~ Certiorari now follows.

REASONS FOR GRANTING THE PETITION

1. The Petitioner was denied his 5th and 14th amendment constitutional rights to due process of law by submitting to an involuntary plea predicated by the court's and counsel's Failure to advise and explain the potential collateral consequences of the plea. The Petitioner's counsel also provided ineffective assistance and affirmative misadvice by failing to advise the Petitioner of the collateral consequences of being subject to civil commitment and having to register as a Felon despite the withholding adjudication clause. These issues render the plea involuntary and represent a Fundamental error that will result in a manifest injustice if the court's ruling is not overturned.
2. The lower tribunal departed from the essential requirements of law by summarily denying all of the Petitioner's claims that were not conclusively refuted by the record, without holding an evidentiary hearing. The court's denial of the Petitioner's motion will result in a manifest injustice if the court's ruling is not overturned.
3. The lower tribunal departed from the essential requirements of law by summarily denying all of the Petitioner's claims and by failing to follow the district court's rulings in precedent setting cases. The court violated the Petitioner's right to due process and a manifest injustice will occur if the court's ruling is not overturned.
4. The District Court of Appeals violated the Petitioner's right to due process by per curiam affirming the lower court's ruling and also departed from the essential requirements of law by failing to follow district court rulings in other precedent setting cases. A manifest injustice will occur if the district court's ruling is not overturned.
5. The State Filed a Petition for Civil Commitment based on a conviction for a technical violation of probation for which the underlying charge was False Imprisonment and Indecent Exposure, which are not sexually violent crimes; however, the court's Failure to explain the requirements for civil commitment and define "sexually motivated" crimes, in conjunction with counsel's affirmative misadvice led the Petitioner to submit to a plea that had severe, long-term collateral consequences that were unknown at the time the Petitioner signed the plea. This is a situation that affects every single defendant who submits to a plea because although the court is required to read the plea colloquy, there is no requirement for the court to define "sexually motivated" crime, which is a vague term that can easily include crimes that are not inherently sexual in nature, but can later be used to seek civil commitment and if counsel fails to explain the risk and provides affirmative misadvice, then thousands of defendants are at risk of facing the collateral consequences of being civilly committed without their knowledge, until it is too late. The Supreme Court's intervention is necessary to correct the court's surreptitious and cunning manipulation of the language included in the plea colloquy that misdirects a defendant into accepting a plea to which they are unaware of their vulnerability to the severe collateral consequences, which undermines the fairness of the proceedings and results in a manifest injustice, a miscarriage of justice, Fundamental error, and requires a reversal to correct the injustice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 01/08/2025