No. 24-6926

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

ELIJAH BANKSTON - *Petitioner*
(Your Name)

vs.

STATE OF FLORIDA- *Respondent(s)*

on

PETITION FOR A WRIT OF CERTIORARI

to

FLORIDA SUPREME, FLORIDA
(Name of Court that last ruled on merits of your case)

PETITION FOR A WRIT OF CERTIORARI

ELIJAH BANKSTON
(Your Name)
F.D.O.C. # 076544
BLACKWATER RIVER CORRECTIONAL FACILITY
5914 JEFF ATES ROAD
MILTON, FLORIDA 32583

QUESTION(S) PRESENTED

QUESTION(S) PRESENTED

This Court's original jurisdiction to issue the Writ of Certiorari to complete exercising of its authority and jurisdiction is therefore properly invoked pursuant to Florida Appeals Attorney ineffectiveness, whom failed to file a fundamental reversible error in Mr. Bankston's case on direct appeal and thereby creating a manifest injustice in this case, contrary to the United States Supreme Court decision in *Johnson v. Wainwright,* 498 So. 2d 988, cert. denied, 481 U.S. 1016, 107 S. Ct. 1984, 95 L. Ed. 2d 500 (1987). Here in this case, "Appellant counsel was held ineffective for failing to challenge jury separation on appeal.

Here, in Mr. Bankston's case, because Appellate counsel failed to raise this issue on appeal constitutes actual prejudice under *Strickland v. Washington,* supra., and in violation of *Anders v. California,* supra.

Because Mr. Bankston rightfully had the authority to file a second successive Petition for Writ of Habeas Corpus under prima facie Florida case law cited in his initial petition in the 4th District Court of Appeal and the Florida Supreme Court departed from the pertinent law under *State v. Akins,* 69 So. 3d 261, 288 (Fla. 2011). Also see, *Muehleman v. State* and *Baker v. State,* 3 So. 3d 1149, 1165 (Fla. 2009). Under a manifest injustice exception Mr. Bankston should have been able to proceed under clearly established State law contrary to well-established Federal law. See, *Arizona v. California,* 460 U.S. 605, 618 (1983). Holding under Florida Law,

"Appellate Court has the power to reconsider and correct erroneous rulings [made in earlier appeals] in exceptional circumstances and where reliance on the previous decision would result in a manifest injustice." *State v. Akins,* 69 So. 3d 261, 288 (Fla. 2011) quoting *Muehleman v. State,* 3 So. 3d 1149, 1165 (Fla. 2009). "The law of case does not rigidly hold a court to its former decisions, but not rigidly hold a Court to its former decisions, but is only addressed to its good sense." *Higgins v. Cal Pruned Apricot Growers,* directs a Court discretion it does not limit the tribunal's power." *Arizona v. California,* 460 U.S. 605, 618 (1983), citing *S. Ry v. Clift,* 260 U.S. 436, 444 (1912). Appellate courts have powers to reconsider and correct erroneous rulings made in earlier appeals or petitions in exceptional circumstances and where reliance on the previous decision would result in a manifest injustice.

Here, Mr. Bankston was required to proceed under State law, which now constitutes a grave manifest injustice and a clear violation of due process of law under the Due Process Clause and the equal protection clause in violation of the 5th and 6th Amendments.

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:

ALL PARTIES: Elijah Bankston
State of Florida
Florida Supreme Court
Fourth DCA

TABLE OF CONTENTS

Page:

INDEX TO APPENDICES

- The lower court case number cited as 062017CF00514A88810.

  Fourth District Court of Appeals case number cited as 4D2024-2410.

  Florida Supreme Court case number cited as SC2024-1715

TABLE OF AUTHORITIES CITED

Cases: **Page(s):**

Statutes and Rules:

Writ of Certiorari under Florida Rules Statutes and provisions under Florida law, which Florida Supreme Court has jurisdiction for review Fla. R. App. P. 9.030(b)(3)

5th Amendment U.S.C. 6th Amendment U.S.C. 14th Amendment U.S.C.

Other:

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari 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 √ to the petition and is;
[√] reported at Case # SC2024-1715 October 23, 2024; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Fourth DCA Court appears at Appendix "B" to this petition and is;
[√] reported at 4D2024-2410 Lower Terminal Case # 17000514CF10A;
See Appendix "B" 4DCA opinion order that the September 19, 2024 petition alleging ineffective assistance of appellate counsel is dismissed as successive. Fla. App. P. 9.141(d)(b)(c), *Morris v. State,* 134 SO. 3d 1066, 1067-68 (Fla. 4th DCA 2013).

JURISDICTION

[ ] For cases from **Federal Courts:**

The date on which the United States Court of Appeals decided my case was _____, 20___.

[ ] 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 October 23, 2024. A copy of that decision appears at Appendix "A".

[√] A timely petition for rehearing was thereafter denied on the following date: _____, 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). See Fla. R. App. P. 9.030(b)(3)
The Fourth District Court of Appeals decision date: September 19, 2024

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Florida Supreme Court's original jurisdiction to issue the Writ of Certiorari to complete exercising of its authority and jurisdiction is therefore properly involved pursuant to Fla. R. App. P. 9.030(b)(3). See also *Sheley v. Florida Parole Commission,* 720 So. 2d 216 (Fla. 1998).

The Fourth District Court of Appeal deprived the Petitioner of a fair ruling under adequate case law and a prima facie claim of a manifest injustice because Petitioner apparently filed a second petition for a Writ of Habeas Corpus, under ineffective assistance of counsel in violation of *Anders v. California,* and *Strickland v. Washington,* supra. Under the circumstances, Appellate Counsel for the Fourth DCA failed to file a fundamental reversible error which entitles the Petitioner to a new trial proceeding as required under U.S. Supreme Court case law and contrary to the Florida Supreme Court's previous decisions that entitled Mr. Bankston to a new trial proceeding under mandatory retroactive case law legal citations.

Petitioner was entitled for his case to be reviewed or reversal and remanded under *Johnson v. Wainright,* 498 So. 2d 988; Court denied 481 U.S. 1016, 107 S. Ct. 1984, 95 L. Ed. 2d 500 (1987) which certifies that appellate counsel was constitutionally ineffective which constituted a reverse and remand for a new trial, and which violated Petitioner's constitutional rights to due process and equal protection 5th, 6th, and 14th Amendment U.S.C.

STATEMENT OF THE CASE

That the Fourth DCA and the Florida Supreme Court departed from the essential requirements of law under its own statutory legal authority under the manifest injustice exception due to Mr. Bankston filing a second or successive petitioner under the manifest injustice, due to the Fourth DCA Appeals Court Appellate Counsel violating *Anders v. California,* and *Strickland v. Washington,* due to refusing to file a fundamental reversible error due to Mr. Bankston's trial counsel objecting to the judge separating the jury for 4 days to go to their homes over the weekend, thus substantially departing from the essential requirements of the law and also departing from the rules of Court, Fla. Statutes, and prima facie and statutory Florida law. Violating the Florida Constitutional Article, I, Section 16 of the Florida Constitution Article I, Section 16 of the Florida Constitution, as well as the United States Constitution under the 5th and the 6th Amendment to the U.S. Constitution.

Because the trial court proceeded to separate the jury for the (4) days over trial counsel's objections violated the United States Supreme Court precedents under *Johnson v. Wainwright,* 498 So. 2d 988, cert. denied, 481 U.S. 1016, 107 S. Ct. 1984, 95 L. Ed. 2d 500 (1987): which constitutes counsel was ineffective in the appellate proceedings, and deprived Petitioner of a fair Appellate process and violated his due process and equal protection rights, procedurally and substantially.

"MANIFEST INJUSTICE"

Under Florida law and adequate legal citations there is one exception to bring procedurally barred postconviction claims. An Appellate Court will result from a strict and adherence to the rule. *Strazzulla v. State,* 177 So. 2d 4. But, when the Court finds that a manifest injustice has accrued, it is the responsibility of that court to correct that "injustice." *Adams v. State,* 957 So. 2d 1236 (Fla. 2004). Under citing *Baker v. State,* 878 So. 2d 1236 (Fla. 2004). Under Fla. Law, "Appellate Courts have the power to reconsider and correct erroneous rulings [made in earlier appeals] in exceptional circumstances where reliance on the previous decision would result in a manifest injustice." *State v. Atkins,* 69 So. 3d 261, 288 (Fla. 2011); quoting *Muehleman v. State,* 3 So. 3d 1149, 1165 (Fla. 2009). "The law of the case does not rigidly account to its former decisions, but is only addressed to its good sense." *Higgins v. Cal. Prune & Apricot Growers,* direct s a court's discretion, it does not limit the tribunals powers." *Arizona v. California,* 460 U.S. 605, 618 (1983), citing *S. Ry v. Clift,* 260 U.S. 436, 444 (1912). Appellate Courts have the power to reconsider and correct erroneous rulings made in earlier appeals or petitions in exceptional circumstances and where reliance on the previous decision would result in a manifest injustice.

Here, the Florida Supreme Court and the Fourth DCA failed to adhere to its own rules, statues and legal citations. "That deprived Petitioner of Due Process and

of the equal protection clause of the 5th, 6th and 14 Amendments." Mr. Bankston contends that the crux of the respondents from the departure from the pertinent law applicable here was:

Mr. Bankston contends that he filed a second petition under Rule 9.100 under the writ provision under a clear manifest injustice based upon the face of the record. That Appellate Counsel is held ineffective by refusing to raise constitutional fundamental reversible errors, "due to a four (4) day separation of the jurors' claim that the trial counsel sufficiently and adequately preserved this claim through objection and on the Petitioner's behalf." And thereby Appellant counsel was obligated to file this claim on appeal under supporting Florida Supreme Court's pervious decisions. See the United States Supreme Court's authority supporting Mr. Bankston's reverse in this case. See, *Johnson v. Wainwright,* 498 So. 2d 288.

Appellant/Petitioner avers that he is entitled to a new trial because the trial court reversibly erred in separating the jurors for four (4) days in violation of Florida Supreme Court authority and the United States Constitution under the Due Process Clause and the Equal Protection Clause in violation of the 5th, 6th and 14th Amendments to the U.S.C.

In the Florida Supreme Court case consistent with these decisions, in *Johnson v. Wainwright,* (1987); 481 U.S. 1016, 107 S. Ct. 1984, 95 L. Ed. 2d 500 (1987);

"Appellant counsel was held ineffective for failing to challenge jury separation or appeal when trial on appeal."

Here, Mr. Bankston would not further and properly receive a fair trial in this case after all the information was exposed to the media before deliberation, which the State Court allowed the jury to separate before they came up with verdict in this case. See, *Durano v. State,* 1262 So. 2d 733 (Fla. 3d DCA 1972); which lines the present case concerned as prosecution for a serious but not capital felony, the present case concerned a prosecution for a serious but not capital felony, the Court said, "the right of a Defendant to have a jury deliberating his guilt or innocence free from any distractions, outside or improperly influenced while going about this normal activities away from the courthouse in the midst of deliberations is so great that the procedure must be disapproved to non-capital as well as capital trials.

REASONS FOR GRANTING THE PETITION

The reason for granting the petition is because the State procedural process was inadequate and unconstitutionally worked a manifest injustice which deprived Mr. Bankston of a fair federal procedure due to the Appellate Counsel refusing to file an adequate fundamental reversible error on the face of the record consistent with U.S. Supreme Court authority consistent with *Johnson v. Wainwright,* 498 So. 2d 988, cert denied, 481 U.S. 1016, 107 S. Ct. 1984, 95 L. Ed. 2d 500 (1987).

"Appellant Counsel was held ineffective for failing to challenge jury separation on appeal when trial on appeal."

Appellant/Petitioner avers that he is entitled to a new trial because the trial court reversibly erred in separating the jurors for four (4) days in violation of Florida Supreme Court authority and United States Constitution under the Due Process and Equal Protection Clauses consistent with the 5th, 6th and 14th Amendments to the U.S. Constitution.

Appellate counsel was ineffective for failure to raise fundamental reversible error after trial court proceeded to separate the jurors for four (4) days over trial counsel's objections of an illegal trial procedure in violation of the 5th, 6th and 14th Amendments to the U.S. Constitution.

CONCLUSION

This Petition for a Writ of Certiorari should be granted. Contrary to substantial U.S. Supreme Court authority and Due Process and equal protection of the 5th, 6th and 14th Amendments. Of law contrary to the 5th, 6th and 14th Amendment to the U.S. Constitution.

Respectfully submitted,

/s/ Elijah Bankston

Elijah Bankston

Date: 2-25-25