

24-7399

Application No.: 25-

ORIGINAL

Supreme Court, U.S.
FILED

APR - 1 2025

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

LAKE J. ROBINSON – PETITIONER

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS
FLORIDA ATTORNEY GENERAL - RESPONDENTS

On Petition for Writ of Certiorari from denial orders of
The United States Court of Appeals for the 11th Circuit

PETITION FOR WRIT OF CERTIORARI

Submitted by:

Lake J. Robinson, Pro Se
D/C # 108330
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QUESTION PRESENTED

1. Defense Counsel was ineffective for failing to request a pretrial immunity hearing based on erroneous reasoning that Appellant was not entitled to the Florida Stand Your Ground immunity laws in violation of the 6th and 14th Amendments of the US Constitution. The State and U.S. Circuit Courts decided an important question of federal law (ex post facto) that has not been, but should be, settled by this court has decided an important federal question in a way that conflicts with relevant decisions of this Court decisions in *Peugh v. U.S.* 133 S. Ct. 2072 (2013) and *Carmell vs. Texas*, 120 S. Ct. 1620 (2000).
2. The question whether a state law is properly characterized as falling under the Federal Constitution's Art I, 10, cl 1 prohibition against ex post facto laws is a federal question that the United States Supreme Court determines for itself.

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- X** 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:

| | |
|---------------------------------------|--|
| Abudu, Nancy G. | United States Circuit Judge |
| Brown, Lindsay | Asst. State Attorney (Trial Prosecutor) |
| Ciklin, C.J. | Judge Fourth DCA (Direct Appeal) |
| Koenig, Deborah | Asst. Att. Gen. (Feb Hab./3.850) |
| Jones, Marrisa | Trial Attorney |
| May, J. | Judge Fourth DCA (3.850 Appeal) |
| Moody, Ashley | State Attorney General |
| Moore, Michael K. Hon. | U.S. District Judge (Fed. Hab.) |
| Ostapoff, Tatjana | Asst. Public Defender (Direct Appeal) |
| Robinson, Lake J. | Petitioner/Appellant |
| Schosberg-Feuer, Samantha Hon. | Circuit Judge (Trial/Sentencing) |
| Surber, Melanie Dale | Asst. Att. Gen. (Direct Appeal) |
| Suskauer, Scott Hon. | Circuit Judge (Postconviction) |

RELATED CASES

- *Robinson v. Sec'y FDOC*, 9:23-cv-81298-KMM (Southern District Miami Division, Opinion issued on March 25, 2024).
- *Robinson v. Sec'y*, FDOC, 24-11889-J (11th Cir. 2024), Eleventh Circuit Court of Appeal, Atlanta, Georgia (Certificate of Appealability). Opinion entered December 31, 2024.
- *Robinson v. Sec'y*, FDOC, 24-11889-J (11th Cir. 2024), Eleventh Circuit Court of Appeal, Atlanta, Georgia (Certificate of Appealability). Denial of Motion for Reconsideration entered February 14, 2024.

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OPINIONS BELOW

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

[] 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 _____ to the petition and is:

[] reported at _____; or
or

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

[] is unpublished.

The opinion of the lower tribunal appears at _____ 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:

- [] No petition for rehearing was timely filed in my case.
- [] A timely Petition for Rehearing was denied by the U.S. Circuit Court of Appeals on the following date: February 14, 2025, and a copy of the order denying rehearing appears at Appendix A.
- [] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.
- [] 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 on _____. A copy of that decision appears at _____; or

- [] 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 writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.
- [] The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Issues Involved

The Fourteenth Amendment of the U.S. Constitution provides, in pertinent part, as follows:

“No State shall make or enforce any law which will abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of the law; nor deny any person within its jurisdiction the equal protection of the laws.”

The Sixth Amendment of the U.S. Constitution provides as follows:

“In all criminal prosecutions, the accused shall enjoy the right to ... to have the effective assistance of Counsel for his defense.”

STATEMENT OF THE CASE

In Count one the State of Florida filed information charging the Lake J. Robinson on or about March 31, 2013, in the County of Palm Beach and State of Florida did unlawfully from a premeditated design attempt to commit First Degree Murder, an offense prohibited by law, and in such attempt did act toward the commission of such offense by shooting Herbertha Lavern Buckle, but Lake J. Robinson failed in the perpetration or was intercepted or prevented in the execution of said offense, and during the commission or attempt to commit any offense listed in Florida Statute 775.087(2)(a)1, Lake J. Robinson actually possessed a firearm or destructive device as those terms are defined in section 790.001, Florida Statutes, and further during the course of committing or attempting to commit any offense listed in Florida Statute 775.087(2)(a)1, Lake J. Robinson discharged a firearm or destructive device as defined in section 790.001, Florida Statutes, and, as the result of the discharge, death or great bodily harm was inflicted upon Herbertha Lavern Buckle, contrary to Florida Statutes 777.04(1) and 782.04(1)(a)(1) and 775.087(1) and (2).

In Count 2 of the charging information, the State filed that Lake J. Robinson on or about March 31, 2013, in the County of Palm Beach and State of Florida did unlawfully from a premeditated design attempt to commit First Degree Murder, an offense prohibited by law, and in such attempt did act toward the commission of such offense by shooting James Williams, but Lake J. Robinson failed in the perpetration or was intercepted or prevented in the execution of said offense, and during the commission or attempt to commit any offense listed in Florida Statute 775.087(2)(a)1, Lake J. Robinson actually possessed a firearm or destructive device as those terms are defined in section 790.001, Florida Statutes, and further during the course of committing or attempting to commit any offense listed in Florida Statute 775.087(2)(a)1, Lake J.

Robinson discharged a firearm or destructive device as defined in section 790.001, Florida Statutes, and, as the result of the discharge, death or great bodily harm was inflicted upon James Williams, contrary to Florida Statutes 777.04(1) and 782.04(1)(a)(1) and 775.087(1) and (2).

The appellant was prosecuted for two counts of attempted first-degree murder after shooting his girlfriend Herbertha Buckle (Scooby) and her son, James Williams (Scrappy) at a barbecue on Easter Sunday of 2013. The Appellant discharged his shotgun which was loaded with birdshot and struck Buckle in the abdomen and Williams in the hand. The appellant who is a convicted felon testified and maintained that he acted in self defense after Buckle approached with a metal bar and Williams brandished a firearm. The discharge of the birdshot hitting Buckle and Williams was in self defense. Earlier in the day Williams had assaulted the appellant rendering him severely beaten and unconscious. Ms. Buckle testified that her son and his father, her ex-husband came to the house she shared with the appellant for a barbecue on March 31, 2013. Buckle testified that she was in the kitchen when she heard an argument between appellant and her son. She denied seeing the fight, but saw appellant lying on the ground semi-conscious. Buckle testified that the appellant complained about the ex-husband being inside the house.

Mr. Williams testified he got upset when he heard the appellant arguing with his mother about his father being in the house. Williams began the fight by throwing punches at the appellant who was beaten to the ground and kicked unconscious by Williams. He testified that his mother came outside and broke up the fight. Photographs of the appellant's injuries and evidence of him losing consciousness and experiencing dizziness was introduced at trial.

After the fight Ms. Buckle and Mr. Williams moved the party down the street to Mr. William's house. The appellant after gaining consciousness drove down the street to Mr. William's house but remained in his truck.

After a couple of hours Williams, Ms. Buckle and Albert Buckle returned to where the appellant resided to pick up Williams' car, which he had not been able to start earlier in the day. The appellant was outside talking with a neighbor by the name of Curtis Bell when Williams and Buckle approached. Williams got into the car and brandished a firearm and an argument ensued. Ms. Buckle picked up a three foot metal bar and Williams brandished the firearm while in the car. Ms. Buckle stated she picked up the metal bar because she knew the appellant had a bat in the truck and she wanted to protect her son. After seeing the metal bar and the firearm the appellant went to his truck and retrieved a shotgun. The appellant fired the birdshot into the car and then turned and fired a round of birdshot at Ms. Buckle who was running towards him with the metal bar. The appellant fired a second shot in the direction of Williams who was in possession of the .38 and then left the premises. The appellant turned himself into law enforcement later that evening. The appellant testified he was in fear for his life as he had already been beaten severely earlier in the day by Williams who now was brandishing a .38 caliber firearm with his mother running at him with a 3 foot metal bar. The appellant testified he felt "it was either them or me." The appellant testified that he fired three rapid shots in self defense. He would not have fired if he had not felt threatened.

Prior to trial Mr. Williams pled guilty to three drug charges including possession of cocaine, after negotiating with the same prosecutor who would try the instant attempted murder case. Although he faced a potential sentence of 16 years in prison, Williams received an actual sentence of only two days.

The State trial court errors were unconstitutional and the deficiency and prejudice of State trial counsel was constitutionally ineffective.

The State Courts and U. S. Circuit Court has decided the Petitioner's case differently than

the United States Supreme Court has on a set of materially indistinguishable facts. Because State Courts, U. S. District Court and U. S. Circuit Court has issued rulings contrary to the United States Supreme court decision in this application should be granted and a Writ of Certiorari should issue.

REASONS FOR GRANTING THE PETITION

GROUND ONE:

Defense Counsel was ineffective for failing to request a pretrial immunity hearing based on erroneous reasoning that Appellant was not entitled to the Florida Stand Your Ground immunity laws in violation of the 6th and 14th Amendments of the US Constitution.

Facts and Argument

The Petitioner alleged in the State courts and in his Federal Habeas Corpus that trial counsel was ineffective for failure to research the existing laws enforce that supported the appellant's request for a pretrial hearing for immunity his case. Trial counsel erroneously reasoned that the appellant was not eligible because he was a convicted felon. The appellant presented facts and the State and Federal courts have agreed that James Williams prior to the shooting had dragged the appellant outside, knocked him out and kicked him unconscious.

Because the State Court and the U.S. Court of Appeals have decided an important question of federal law that has not been, but should be, settled by this court has decided an important federal question in a way that conflicts with relevant decisions of this Court the appellant prays the court will grant this writ and allow briefing on the merits.

The State and U. S. Circuit Court erroneously applied a 2022 State case to deny the appellants issues that transpired in April of 2013. Each court in their denial orders cite and rely on *Simmons v. State*, 337 So. 3d 470, 471 (Fla. 1st DCA 2022), a case when applied to the appellant's right to stand his ground violates Ex Post Facto laws of both the State and U. S. States Constitutions. Neither the State of Florida nor the United States allow retroactive application of this case by the Courts, State or Defendants unless approved by the Florida Supreme Court or the United States Supreme Court. The Florida Supreme Court has not approved retroactive application of the *Simmons* case. However the courts in the case at bar has erroneously applied retroaction that is constitutionally illegal in the State of Florida. Article X, section 9 of the Florida Constitution strictly forbids applying retroactive application in criminal cases. The U. S. Circuit Court has misapplied the law by agreeing with an erroneous decision of the State trial court in violation of Federal Constitution's Art I, 10.

The Courts never address the issue as to whether the appellant as a convicted felon was entitled to a pretrial stand your ground hearing and the application of a retroactive case to deny relief. Trial counsel told the appellant that he did not qualify because he was a convicted felon. The issue has never been whether the trial court would have granted a motion to stand your ground in hindsight. The issue is he was told he was not entitled because he was a convicted felon.

Pursuant to the Florida Statute at the time of the appellant's trial, a criminal defendant may raise his claim of self-defense immunity from criminal prosecution at a pretrial immunity hearing, even if he was a convicted felon. See F.S. § 776.032(4). The entire purpose of this immunity hearing is to provide a mechanism by which a person who is asserting a lawful self-defense may have the defense heard early in the process to avoid the time and expense of a trial.

Pursuant to F.S. § 776.032 and F.S. § 776.012(1) even a convicted felon in possession of a firearm may raise his claim of self-defense immunity from prosecution at a pretrial immunity hearing.

In the case at bar, Trial Counsel told the Appellant he was not entitled to a pretrial immunity hearing from prosecution because he was a convicted felon in possession of a firearm.

No trial counsel operating on the standards set forth in *Strickland* would have made that determination based on case laws decided on this issue prior to the appellant's trial.

In the same jurisdiction the State Fourth District Court of appeal had previously held in *Hill v. State*, 143 So.3d 981 (Fla. 4th DCA 2014) that *Hill*, a convicted felon in possession of a firearm, was not precluded from claiming justifiable use of force under § 776.012(1) or from seeking immunity from prosecution pursuant to § 776.032.

Trial Counsel knew that Buckles, Williams, and Buckles' brother show up later in the day at appellant's residence, Buckle arms herself with a three foot metal bar, and her son Williams is brandishing a .38 caliber firearm. The appellant retrieves his shotgun loaded with bird shot rounds and fires at the aggressors to make away of escape from the possible harm or death he felt was about to happen.

The appellant contends that he (a convicted felon) was entitled to a pre-trial stand your ground hearing. At the stand your ground hearing the appellant would have been able to present his visible injuries and neighbor witnesses to testify to the propensity for violence that Buckles and Williams exhibited in the community. It must be noted that at trial the court granted the State's motion to preclude any mention of their past records of violence. However, the pretrial hearing would have precluded the alleged victims (all close relatives) from corroborating their statements as presented at trial. The trial was put off for over 2½ years which allowed the near

relatives to rehearse their story prior to jury trial. The ruling here violated *ex post facto* laws and was decided on what a trial judge would have ruled on in hindsight. The appellant was entitled to the pretrial stand your ground hearing when trial counsel stated he was not. Neither the State Courts nor U. S. Circuit Court have correctly addressed this fact.

The State Courts and U. S. Circuit Court in their denial based on *Simmons v. State*, 337 So. 3d 470 (Fla. 1st DCA 2022) which held that "When a jury rejects a claim of self-defense at trial *beyond a reasonable doubt*, there is no reasonable probability that a trial judge would have rendered a different judgment at a Stand-Your-Ground hearing with a lower standard of proof".

The rulings violate the U.S. Constitution's application of Ex Post Facto law. The United States Constitution prohibits both federal and state governments from enacting any "ex post facto Law." Art. I, 9, cl. 3; Art. I, 10. The phrase "ex post facto law" was a term of art with an established meaning at the time of the framing. The definition that the term has acquired in English common law includes: (1) every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action; (2) every law that aggravates a crime, or makes it greater than it was, when committed; (3) every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed; and (4) every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offense, in order to convict the offender. (Sotomayor, J., joined by Kennedy, Ginsburg, Breyer, and Kagan, JJ.)

See *Peugh v. U.S.* 133 S. Ct. 2072 (2013)

The *Simmons* case relied on to deny the appellant relief is unquestionably a case law "that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offence, in order to convict the offender." Under the law in

effect at the time the acts were committed, the petitioner was entitled to a stand your ground hearing whether he was a convicted felon or not. See *Carmell, vs. Texas*, 120 S. Ct. 1620 (2000).

The deficiency and prejudice to the Appellant was harmful. The failure of trial counsel to file the pretrial motion to stand your ground based on the rationale that the defendant was a convicted felon was deficient and prejudicial in violation of *Strickland v. Washington*, 466 U.S. 668 (1984). The rulings violate the U.S. Constitution's application of Ex Post Facto law and are contrary to *Carmell, vs. Texas*, 120 S. Ct. 1620 (2000) and *Peugh v. U.S.* 133 S. Ct. 2072 (2013)

CONCLUSION

Because the State Court and the U.S. Court of Appeals have decided an important question of federal law that has not been, but should be, settled by this court, and has decided an important federal question in a way that conflicts with relevant decisions of this Court the appellant prays the court will grant this writ and allow briefing on the merits.

This Court should grant the instant writ of certiorari and allow briefing on the fact that trial counsel was ineffective under *Strickland*¹ for failing to adhere to her Sixth Amendment obligations in filing and preparing to defend the Appellant on his right to stand his ground thus denying him his Fourteenth Amendment right to due process of law.


/s/ 
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¹ *Strickland v. Washington*, 466 U.S. 668 (1984)

OATH

Under penalty of perjury, I certify that all of the facts and statements contained in this document are true and correct and that on the 23 day of May 2025 and that I have handed this Writ of Certiorari to a prison official for mailing to this Court and the appropriate Respondents with pre-paid postage.


/s/ John S. Lake
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