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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Kengi Merritt — PETITIONER
(Your Name)

vs.

Florida Dept of Corr. et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court of Appeals of the United States
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kengi Merritt DC# W-03532
(Your Name)
Charlotte Correctional Institution
33123 Oil Well Rd.
(Address)

Punta Gorda, Fla. 33955
(City, State, Zip Code)

N/A
(Phone Number)

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QUESTION(S) PRESENTED

First Question Presented - Whether the State Courts ruling or denial of Mr. Merritt's Claims was Contrary to already established Federal Law as interpreted by the United States Supreme Court or an unreasonable application of Federal Law to the facts of Mr. Merritt's Claims in the Court below.

Second Question Presented - Whether the State Court ruling or denial of Mr. Merritt's Claims was Contrary to already established Federal Law and/or an unreasonable application of the United States Supreme Court's ruling in *Strickland v. Washington* - where trial Counsel was Constitutionally Ineffective for failing to object to inclusion of Jury Instruction on Attempted Sexual Battery - where the State only presented evidence of a Completed act at trial and not an Attempted act of Sexual Battery - In violation of Mr. Merritt's 6th and Fourteenth Amendment right to a fair and Impartial trial - ~~the~~ Mr. Merritt's 6th amendment Right to effective Assistance of Counsel and last but not least Mr. Merritt's right to due process and equal protection of Law.

Third Question Presented - Does Mr. Merritt's Claims raised in the Court below established the presence of a Federal Question - Which is debatable amongst Jurist of reasonable reason encouraging further appellate

review or the granting of a Certificate of Appealability before the Eleventh Circuit Court of Appeals of the United States - as required under federal law in 28 USC § 2254 Cases.

Fourth Question Presented - Whether the decision set forth in the United States Circuit Court of Appeals constitutes a binding precedent in all State Courts within their Geographical Jurisdiction - Where failure to authenticate or establish the Identity of the Speaker in a recorded telecommunications violates the 5th, 6th, and 14th Amendments of the United States Constitution in Criminal Proceedings.

Fifth Question Presented - Whether Trial Counsel's failure to challenge or object to the State's failure to establish the authenticity or Identity of the ~~Speakers~~ Persons Speaking prior to the admission or Introduction of recorded telephone conversations constitutes Ineffective Assistance of Counsel under the 6th Amendment - Where the Identity of the persons speaking are not established or Identified in open Court.

Sixth Question Presented - Whether Trial Court's Ruling - Sustaining the State of Florida's hearsay objection constitutes an abuse of discretion - Where the Witness testified to one incident or fact and then Recanted the Statement and Suggesting another concerning a Material fact of Mr. Merritts Case - ~~constitutes~~ **LEGAL** a deprivation of Mr. Merritts right to confront his accusers

And deprived Mr. Merritt of the opportunity to defend himself through the use of vigorous cross examination to establish the motive or bias of the witness to live on the stand before a jury of his peers in violation of Mr. Merritt's right to a fair and impartial trial, And Mr. Merritt's right to due process, and equal protection of law.

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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. Florida Department of Corrections.
2. Julie Jones - Florida Department of Corrections - Secretary.
3. Pamela Jo Bondi - Attorney General of the State of Florida.
4. The State of Florida.
5. The State of Florida - Palm Beach County State Attorneys Office.
6. David Aronberg - Palm Beach County State Attorney in and for the State of Florida.

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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 A 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 B 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 C 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 Fourth District Court on Direct Appeal court appears at Appendix D 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 11/08/2017.

☒ 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 April 28th 2016.
A copy of that decision appears at Appendix C.

☐ 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. Fifth and Fourteenth Amendment right to due process and Equal Protection of Law.
2. Sixth Amendment Right to a fair and Impartial Trial and Effective Assistance of Counsel.
3. Federal Evidence Code § 901
4. Florida Evidence Code § 90-901
5. Florida Evidence Code 90-401 (2011)
6. Florida Evidence Code 90-404.18
7. Fla. Stat. § 794.022
8. Fla. Stat. § 777.04
9. Fla Evidence Code § 90-801
10. Fla. R. Crim. P. 3.510

STATEMENT OF THE CASE

Mr. Merritt was charged by an Eight Count information in Case No[#] 502010CF008673-AMB as follows: Count I - Sexual Battery on Person less than 12 years of age (V-is-MAB), Count II - Sexual Battery on Person less than 12 years of age (V-is-MAB), Count III - Lewd or Lascivious Molestation (V-is-MAB), Count IV - Sexual Battery on person less than 12 years of Age (V-is-MB), Count V - Lewd or Lascivious Molestation (V-is-MB), Count VI - Sexual Battery on person less than 12 years of age (V-is-LP), Count VII - Lewd or Lascivious Exhibition (V-is-LP) and Count VIII Sexual Battery on Person less than 12 Years of age (V-is-JW).

Mr. Merritt entered a plea of not guilty and a jury trial of this case began on February 10, 2011. The Jury returned a verdict on February 15, 2011. And Mr. Merritt was found guilty as follows:

Count I Guilty of the lesser Included offense of Attempted Sexual Battery on a person less than 12 Years of age.

Count II Guilty of the lesser Included Offense of Attempted Sexual Battery on a person less than 12 years of age.

Count III Guilty of Lewd or Lascivious Molestation as charged

Count IV Guilty of Sexual Battery on a person less than

12 years of age as Charged.

Count V - Guilty of lewd or lascivious Molestation as charged.

Count VI - Guilty of Sexual Battery on a person less than 12 years of age as charged.

Count VII - Guilty of lewd or lascivious exhibition as charged

Count VIII - Guilty of Sexual Battery on a Person less than 12 years of age as charged.

The Court immediately Sentenced Mr. Merritt to Concurrent life Sentences for Counts IV VI and VIII, The Court made a finding that the Defendant was a Sexual predator and would need to register as such if he ever got out of prison. The Court then Sentenced ~~to~~ Mr. Merritt on Counts I, II, III and V to 30 years to run Concurrent and on Count VII the Court Sentenced Mr. Merritt to 15 years also running Concurrent and last but not least the Court Sentenced Mr. Merritt on Counts III and V to an additional Life time probation.

Mr. Merritt filed a timely Notice of Appeal and argued as follows:

(Part-1) The Trial Court Committed reversible error when it Sustained the State objection and kept out ~~the victim~~ witness

prior admission to other sexual activity that provided an alternative explanation for victim's abnormal genitalia which created a reasonable doubt.

(Part II) The Trial Court committed reversible error when it sustained State objection which kept out child victim's/witness prior explanation of prior "yes" to sexual activity other than the accused.

(Part III) This Evidence was not hearsay

(Part IV) The Trial Court committed reversible error as the error was not harmless.

On March 6th, 2013. The Fourth District Court of Appeals affirmed Mr. Merritt's case with an opinion denying relief in the State Court. (See Appendix-D.)

On May 23rd, 2013 Mr. Merritt filed a timely Motion for Post-Conviction Relief And Raised the following Grounds requesting relief:

Ground One - Mr Merritt was denied his Constitutional Right to Effective Assistance of Counsel, due process of law and a fair trial - Where Counsel failed to move to suppress or object to the introduction of a taped conversation without first establishing authenticity or the identity of the persons speaking in said recording prior to the State's introduction of the recording into evidence.

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Ground Two: ~~Mr.~~ Mr. Merritt was denied his Constitutional Right to Effective Assistance of Counsel, due process of law, and a fair Trial - Where Counsel failed to object to the jury Instruction on Attempted Sexual Battery - Where the State only presented evidence of a Completed act on Count I and II of the charging Information.

On March 4th 2015 The lower tribunal Court denied Relief and Mr Merritt filed a timely Notice of Appeal and on April 28th 2016 The Fourth District Court of Appeals Per Curiam Affirmed without an Opinion (See Attached Appendix Exhibit-C)

On May 16th 2016 - Mr. Merritt filed a timely Petition for Writ of Habeas Corpus in the United States Southern District Court of Florida Case No[#] 16-80803-CV - Middlebrooks/White Pursuant to Title 28 USC §2254. And on May 25th 2016 The U.S. Southern District Court of Florida issued an Order to Show Cause.

On July 11th 2016 The State of Florida filed a Response to the order to Show Cause And Mr. Merritt filed a timely Reply on July 26th 2016.

On May 30th 2017 The Honorable Magistrate Judge White issued a Report and Recommendation And Mr. Merritt filed a time objection to the Magistrates Report on July 12th 2017

On July 24th 2017 The Honorable U.S. District Judge Donald M.
(4)

Middle Brooks entered an Order adopting Report and Recommendation of the Magistrate Judge. (See Attached Appendix-B)

On August 9th 2017 Mr. Merritt filed a Notice of Appeal and Renewed Request for Certificate of Appealability.

On 11/08/2017 The Eleventh Judicial Circuit Court Judge Robin S. Rosenbaum denied Mr. Merritts Request for a (COA) (See-Appendix Exhibit-A)

Mr. Merritt did not file or Request a Rehearing.

The Present Request for Certiorari Review by this Honorable Court follows:

REASONS FOR GRANTING THE PETITION

Mr. Merritt's Case presents a Question of great Public Importance and Certiorari Review Should be granted by this Honorable Court to Maintain Uniformity of law through out the United States.

Mr. Merritt hereby Incorporates by Reference all arguments of law and facts Raised in the Courts below Both State and Federal.

Conclusion

This Court Should grant Certiorari Review to answer the Questions of Great Public Importance presented in the present Case and to Maintain Uniformity of law throughout the United States.

Respectfully Submitted,

Kengi Merritt

Kengi Merritt - In Proper Person

Dated: February - 6th 2018