

ORIGINAL
UNION CORRECTIONAL INSTITUTION

IN THE
SUPREME COURT OF THE UNITED STATES

APR 02 2018
BY *[Signature]*
FOR MAILING

October Term, 2017

No: _____

OSVALDO BENITEZ, JR.,
Petitioner.

Vs.

STATE OF FLORIDA
Respondent.

Petition for a Writ of Habeas Corpus to the
United States Court of Appeals

PETITION FOR WRIT OF HABEAS CORPUS

OSVALDO BENITEZ, JR., *PRO SE*

Oswaldo Benitez, Jr.
187934
Union Correctional Institution
P.O. Box 1000
Raiford, Florida 32083

001

QUESTION PRESENTED

Discriminatory exercise of peremptory challenges based on Race or Ethnicity vitiates Mr. Benitez rights to equal protection and to be tried by an impartial jury under the U.S. and State Constitutions, due to trial courts failure to properly follow through on a Baston Claim by counsels.

LIST OF PARTIES

1. The Florida Supreme Court.
2. The Second District Court of Appeal for Florida.
3. The Tenth Judicial Circuit Court, Highland County, Florida.
4. The Attorney General, Florida.
5. The State Attorney's Office, Highland County, Florida.

TABLE OF CONTENTS

<u>CONTENTS:</u>	<u>PAGE(S)</u>
QUESTION PRESENTED.....	2
LIST OF PARTIES.....	2
TABLE OF CONTENTS.....	3
TABLE OF AUTHORITIES.....	4
OPINIONS BELOW.....	5
JURISDICTION.....	6
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	6
STATEMENT OF FACT.....	7
STATEMENT.....	8
REASON FOR GRANTING THE PETITION.....	11
CONCLUSION.....	12
PENALTY OF PERJURY.....	12
CERTIFICATE OF COMPLIANCE.....	13
PROOF OF SERVICE.....	14

TABLE OF AUTHORITY CITED

CASES: PAGE(S)

Baston v. Kentucky,
476 U.S. 135 S. Ct. 429, 190 L. Ed. 2d. 317, 320 (2014).....2, 6, 9, 10,11

Felkner v. Jackson,
562 U.S. 594, 598, 131 S. Ct. 1305, 179 L. Ed. 374 (2011)..... 10

Gleb. V. Frost,
574 U.S. 135 S. Ct. 429, 190 L. Ed. 2d. 317, 320 (2014)..... 8

Johnson v. California,
545 U.S. 162 L. Ed. 2d. 129 (2005)..... 10

Miller-El v. Cockrell,
537 U.S. 322, 328 S. Ct. 1029, 154, L. Ed. 2d. 931 (2003)..... 9

Moore v. State,
820 So. 2d. 199 (Fla. 2002)..... 6

CONSTITUTIONAL PROVISIONS:

U.S.C.A. Const. Amend. 14, Const. Art. 1 §2, 16..... 6

Sixth and Fourteenth Amendments, U.S.C. 6

STATUTES:

28 U.S.C. 1201 (C)..... 6

28 U.S.C. 2253 (C)..... 11

28 U.S.C. 1254 (1) 6

OTHER RULES:

Fla. R. Crim. P. Rule 3.850 (g)..... 6

S.Ct. Rule 29 14

Rule 33 (1)(b)..... 13

Rule 33 (1)(d)(i)..... 13

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2017

No: _____

OSVALDO BENITEZ, JR.,
Petitioner.

Vs.

STATE OF FLORIDA
Respondent.

Petition for a Writ of *Habeas Corpus* to the
United States Court of Appeals

PETITION FOR WRIT OF *HABEAS CORPUS*

Oswaldo Benitez, Jr. (hereinafter "Petitioner") petitions for a Writ of *Habeas Corpus* to review the judgments of the Florida State Courts, that deny relief of Petitioner's "BASTON" claims, involving prosecutors discriminatory exercise of peremptory challenges based on race. That were last raised with the U.S. District Court, Southern District of Florida.

OPINIONS BELOW

The opinion of the U.S. District Court, Southern District of Florida. (Exhibit-1)

JURISDICTION

JURISDICTION

The Judgment of the Florida State Courts, Florida Supreme Court [redacted]
[redacted] and the Second District Court of Appeal, Florida, and the
[redacted] Tenth Judicial Circuit, Highland County, Florida. Finally, the U.S. District Court, that
addressed the legal challenges of Petitioner rights argued before the Florida State
Courts. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) the Petition
is timely filed pursuant to 28 U.S.C. §2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

The Sixth and Fourteenth Amendments of the United States Constitution
protects a defendant's right to equal protection and be tried by an impartial jury.

Under Section of State Constitution guaranteeing right to impartial jury, and
under equal protection provisions of the State and Federal Constitutions, if
explanation for exercising peremptory strike against *Venirer person*, who is a
member of distinct racial group, is not facially race-neutral, the inquiry is over and
strike will be denied. (U.S.C.A. Const. Amend. 14, Const. Art. 1, §2, 16).

When the prosecution strikes every potential Hispanic Juror, a Reviewing
Court has a responsibility to ensure that the trial court's denial of the defendant's
Baston claim was not influenced by Constitutional Error.

STATEMENT OF FACTS

On February 29, 2016 the Petitioner filed a Motion for Post-conviction Relief where the Petitioner argued a BASTON issue, where the trial court had determined that the prosecution had committed a systematic exclusion based on race of juror's. The Petitioner provided attachments that clearly shown he was never provided with the *voir dire* jury selection proceedings and only after receiving said trial transcript for the first-time, did the Petitioner discovered a BASTON issue, and submitted the Motion for Post-conviction Relief challenging the fundamental error, of which, the Lower Tribunal denied on April 11, 2016.

On April 26, 2016 the Petitioner filed a Motion For Rehearing with the Lower Tribunal, where he responded to the trial courts reasons for its denial and pointed to; Moore v. State, 820 So. 2d. 199 (Fla. 2002), arguing that defendant had provided ample reasons, supported by documentation as required.

On June 03, 2016, forty-four (44) days had elapsed, because Fla. R. Crim. P. Rule 3.850(g) states a rehearing must be denied if no response for Lower Tribunal after forty-four (44) days.

At which point the Petitioner filed a Notice of Appeal to the Second District Court of Appeals on June 04, 2016.

The Lower Tribunal in response to Petitioner's Notice of Appeal provided it's denial of Appellant's Motion For Rehearing on June 23, 2016.

An Initial Brief was submitted with the Second District Court of Appeal on June 21, 2016, the Appellate Court denied the Appellant's Appeal on March 08,

2017.

A Motion For Rehearing was submitted to the Appellate Court on March 21, 2017, the Second District Court of Appeal denied Appellant's Motion For Rehearing on April 05, 2017. A Mandate was issued by the Second District Court of Appeal on April 26, 2017.

On April 17, 2017 the Petitioner filed a Writ of Jurisdiction to the Florida Supreme Court. The Florida Supreme Court dismissed the Writ of Jurisdiction on April 26, 2017,

STATEMENT

The Petitioner had exhausted all remedies in the State courts of Florida. In each Motion, Petition, and Brief, the States Attorney and Attorney General for the State of Florida had the opportunity to demonstrate harmless error in response to Petitioner's claim of a "Fundamental Error," and had chose to avoid the merit presented by Petitioner.

Because, "In the absence of "the rare type of error" that requires automatic reversal, relief is appropriate only if the prosecutor cannot demonstrate harmlessness." (Gleb. V. Frost, 574 U.S. 135 S. Ct. 429, 190 L. Ed. 2d. 317, 320 (2014)).

The obvious reasoning for the States Attorneys not to broach the subject of harmlessness, is due to the Facts of the record clearly and definitely show that the Lower Tribunals trial court failed to protect Petitioner's right to an impartial jury, due to prosecutor striking two Hispanic jurors, because the Petitioner is himself

Hispanic.

“Discriminatory exercise of peremptory challenges based on Race or Ethnicity violates a defendants rights to equal protection and to be tried by an impartial jury under the U.S. and State Constitutions.”

(Baston v. Kentucky, 476 U.S. 79, 86-7, 106 S. Ct. 1712, 90 L. Ed. 2d. 69 (1986)).

The misconduct of the prosecutor was so severe that it resulted in Fundamental Error, requiring the Court to grant relief in the absence of the generally required contemporaneous objection.

The initial incident occurred when the State claimed to the Court of defenses strike of a white Caucasian, and how he believed a pattern was beginning, and asked the Court for a “neutral reason” for striking. When the Court asked defense to respond, defense states, “we would like to raise the fact that the State has stricken both Hispanic individuals from the jury.”

At this point, the trial judge should have assessed criminal defendant’s challenge to prosecutors use of peremptory strikes using the three-part procedure first announced in Baston.

After the defense makes a “*prima facie* showing that a peremptory challenge was exercised on the basis of race,” the prosecution is given the opportunity to “offer a race-neutral basis for striking the jurors in question.”

(Miller-El v. Cockrell, 537 U.S. 322, 328, 123 S.Ct. 1029, 154 L. Ed. 2d. 931 (2003)).

The Court then “decides whether it was more likely than not that the challenge was improperly motivated.”

(Johnson v. California, 545 U.S. 162, 169, 170, 125 S. Ct. 2410, 162 L. Ed. 2d. 129 (2005)).

This determination is a factual one, which the Court must accord ‘great deference.’”

(Felkner v. Jackson, 562 U.S. 594, 598, 131 S. Ct. 1305, 179 L. Ed. 2d. 374 (2011)).

The trial court, after hearing prosecutors race-neutral basis, regarding striking of the two Hispanic jurors stated: “I’ve got to hear something more than they’ve got kids or grandkids or they don’t have kids. I mean, it’s no better if they’ve got kids or they don’t have kids in terms of being race-neutral.

The Trial Court made it’s determination that the challenge was improperly motivated, but failed to follow through with the proper Baston hearing, because only one of the Hispanic jurors were allowed to serve, but the young Hispanic with no children was forgotten and basically ignored by the Court.

The record shows the trial court making an indication on the record, that it not only refused to accept the race-neutral explanation through it’s engagement in a “genuineness analysis, it just failed to fully explore as it was required to do once a claim of “Discriminatory exercise of peremptory challenges” were made by counsels.

REASON FOR GRANTING PETITION

The record shows that there is a conflict of decisions by the State Courts, with applicable decisions of the Supreme Court. Most of all, the importance of the issue is the major basis for securing review, the fundamental error concerns an important Constitutional problem, as it relates to “Discriminatory exercise of Peremptory challenges based on Race, violating the Petitioner’s rights to equal protection and an impartial jury.

(Baston v. Kentucky, 476 U.S. 79, 86-7, 106 S. Ct. 1712, 90 L. Ed. 2d. 69 (1986)).

Baston recognized that it is fundamentally unfair to permit racial considerations to drive the use of peremptory challenges against jurors. When the prosecution strikes every potential Hispanic juror, a reviewing court has a responsibility to ensure that the trial court’s denial of Petitioner’s Baston claim was not influenced by constitutional error.

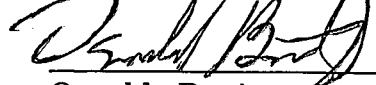
The Petitioner made a substantial showing of the denial of a Constitutional Right as stated in “28 U.S.C. §2253 (c)(2).”

CONCLUSION

The Petition for a Writ of Habeas Corpus should be granted.

Date: April 02, 2018

Respectfully submitted,



Osvaldo Benitez, Jr. *pro se*,
#187934

Union Correctional Institution
P.O. Box 1000
Raiford, Florida 32083

PENALTY OF PERJURY

I DECLARE, under penalty of perjury, that the mentioned information contained in this Writ of Habeas Corpus is true and correct, complying with the Federal Rules.

Date: April 02, 2018



Osvaldo Benitez, Jr. *pro se*,
#187934

Union Correctional Institution
P.O. Box 1000
Raiford, Florida 32083