

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OTIS L. TOWBRIDGE — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

3RD DISTRICT COURT OF APPEAL - FLORIDA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

OTIS L. TOWBRIDGE
(Your Name)

CENTURY C.I. 400 TEDDER ROAD
(Address)

CENTURY FLORIDA 32535
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

The trial court improperly dismissed the Appellant's Petition for Writ of Habeas Corpus alleging a manifest injustice due to defective verdict forms. The State argues that the Writ is the improper vehicle for the claim but the Appellant has exhausted all other remedies here with due diligence. The State tries to dance around the key legal issues of the claim and fails to address the key error here: The verdict forms do not say Otis Towbridge was found guilty of the charged crimes. Even the verdict read in open court does not name Appellant as being found guilty of the charged crime.

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:

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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☐ is unpublished.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☐ is unpublished.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 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☒ is unpublished.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 _____ 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☐ is unpublished.

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 JANUARY 10 2018. A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: JANUARY 10 2018, and a copy of the order denying rehearing appears at Appendix A.

☐ 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

(“Amendments V, VI, and XIV, ratified in 1791 & 1868”)

Amendment V, Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be deprived of life, liberty, or property, without due process of law.

Amendment VI, In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment XIV, Nor shall any state deprive any person of life, liberty, or property, without due process of law; Nor deny to any person within its jurisdiction the equal protection of the laws.

The Statutory Provisions... 28 U.S.C. § 2254

... 28 U.S.C. § 2253 (c) (2)

STATEMENT OF THE CASE

On July 29, 2003, the State filed criminal charges against the Defendant alleging two counts of aggravated battery with a deadly weapon. The Appellant was found guilty at trial and sentenced on September 17, 2003 to 40 years state prison, with 30 year minimum mandatory as a PRR and 15 minimum mandatory as a HVFO on Count I. Appellant got 30 years state prison with 30 years minimum mandatory as a PRR on Count II run concurrently. All state remedies were exhausted and Appellant recently filed a Writ of Habeas Corpus alleging "Manifest Injustice" which was denied without Appellant being present for the hearing, DECEMBER, 2017. Timely appeal was filed and this Initial Brief follows, AFTER BEING DENIED AGAIN IN THE FLORIDA SUPREME COURT IN MARCH OF 2018.

REASONS FOR GRANTING THE PETITION

The consensus of Florida's Appellate judges provides that it is the responsibility of the courts to brush aside procedural niceties and grant the great writ in cases where a Petitioner, like the one in the present case, proves a manifest injustice has occurred. The common law Writ of Habeas Corpus continues to be available for this purpose. See *McCormick v. State*, 164 So. 2d 557, 558 (Fla. 3d DCA 1964) ("Although criminal rule 1 {now listed as Rule 3.850} is rather broad in its scope, it has neither superseded nor abolished the common law writs of Habeas Corpus and *Coram Nobis*.") Thus, the procedure for the granting of this particular Writ is not to be circumscribed by hard and fast rules or technicalities which often accompany consideration, and "if it appears to a court of competent jurisdiction that a man is being illegally restrained of his liberty, it is the responsibility of the court to brush-aside formal technicalities and issue such orders as will do justice. In Habeas Corpus, the niceties of the procedure are not anywhere near as important as the determination of the ultimate question as to the legality of the restraint" See *Anglin v. Mayo*, 88 So. 2d 918, 919-20 (Fla. 1956).

In *Allison v. Baker*, 11 So. 2d 578 (Fla. 1943), Florida Supreme Court reiterated the basic purpose of the Writ: the Writ of Habeas Corpus is a high prerogative writ of ancient origin designed to obtain immediate relief from an unlawful imprisonment without sufficient legal reasons. Essentially, it is a writ of

inquiry and is issued to test the reasons or grounds or restraint and detention. The Writ is venerated by all free and liberty-loving people and recognized as a fundamental guarantee and protection of their right to liberty. See *Henry v. Santana*, 62 So. 3d 1122 (Fla. 2011); and, *State ex rel. Perky v. Browne*, 105 Fla. 631, 142 So. 247, 248 (1932).

The very nature of the Writ demands that it be administered with the initiative and flexibility essential to ensure that miscarriages of justice within its reach are surfaced and corrected. *Harris v. Nelson*, 394 U.S. 286, 291, 89 S.Ct 1082, 22 L.Ed. 2d 281 (1969). Therefore, “if the legislature created a right, it must have intended to create an adequate remedy to enforce that right.” *Florida Department of Corrections v. Abril*, 969 So. 2d 201, 222 FN15 (Fla. 2005). Thus, “these words do assume that for every inquiry done to an individual in his land, goods, person, or reputation, there is a remedy provided by law – either by statute or common law.” See *Cason v. Baskin*, 20 So. 2d 243, 250 (Fla. 1944). It is also imperative to note that the petition for Writ of Habeas Corpus is available to “test the validity of a verdict that is manifestly wrong.” See *Ex Parte Wilson*, 14 So. 2d 846 (Fla. 1943).

In rare circumstances, Florida Appellate Courts have exercised their inherent authority “to grant Writ of Habeas Corpus to avoid incongruous and manifestly unfair results.” See *City National Bank of Florida v. City of Tampa*, 67 So. 3d 293

(Fla. 2d DCA 2011). Moreover, it is the Petitioners claim henceforth that the results of the proceedings are incongruous and manifestly unfair due to a structural error, and the failure of this Honorable Court to correct the injustice {understood as plain error}, creates a legal conundrum where a manifest injustice would be left uncorrected. By statute, this Honorable Court has the authority and jurisdiction to do so.

Florida Statute §2.01 states, in part:

Common Law and Certain Statutes Declared In Force.

The common and statute laws of England, which are of a general and not a local nature, are in force in Florida, provided they are not inconsistent with the Constitution and laws of the United States and the acts of the legislature of the State.” *Id.*; See also Florida Statute §775.01.

Therefore, the Petitioner begs this Honorable Court’s indulgence as he looks to the Constitutions in order that the law should be enforced. The United States Constitution, Article I, section 9, clause 2 states in pertinent part:

“The privilege of the Writ of Habeas Corpus shall not be suspended unless when in cases of rebellion or invasion the public may require it.” *Id.*

The Florida Constitution shall be grantable of right freely and without cost. It shall be returnable without delay..." *Id.*

Although the Writ of Habeas Corpus *prima fascie* showing has been curtailed by the advent and usage of Rule 3.850, this powerful Writ "remains available for the rare case in which a prisoner has been provided no adequate or effective way to test the legality of his detention despite the procedure of Rule 3.850." See *Quarles v. State*, 56 So. 3d 857, 858 (Fla. 1st DCA 2011). Additionally, it is the duty of the court to consider and correct a "manifest injustice" where one has occurred. See *Lago v. State*, 975 So 2d 613, 314 (Fla. 3d DCA 2008).

The showing of manifest is not easy. The Eleventh Circuit Court of Appeals enunciated the following language with regard to the instant case, "Our case law equates manifest injustice with the plain error standard of review. *United States v. McClendon*, 195 F. 3d 598, 603 (11th Cir. 1999) (*per curiam*). To demonstrate manifest injustice, a Petitioner must demonstrate (1) that there was error; (2) that it was plain; (3) that it affected his substantial rights; and, (4) that it affected the fundamental fairness of the proceedings. *Johnson v. United States*, 520 U.S. 461, 466-67, 117 S.Ct. 1544, 137 L.Ed 2d 178 (1997)." *United States v. Quintana*, 300 F. 3d 1227 (11th Cir. [Fla.] 2002). Thus, in order to show a manifest injustice in the instant case, the Petitioner would need to show a fundamental procedural defect

which inherently resulted in a complete miscarriage of justice (constitutional error), or an omission inconsistent with the rudimentary demands of fair procedure. The departure from the essential requirements of the laws will support the "probable cause" determination necessary to grant the Writ of Habeas Corpus.

Florida Statute §79.01 states in pertinent part:

"79.1. Application and writ - - When any person detained in custody, whether charged with a criminal offense or not, applies to the Supreme Court or any justice thereof, or to any district court of appeal or any judge thereof or to any circuit judge for a writ of habeas corpus and shows by affidavit or evidence probable cause to believe that he or she is detained without lawful authority, the court, justice, or judge who whom such an application is made shall grant the writ forthwith, against the person in whose custody the applicant is detained and returnable immediately before any of the courts, justices, or judges as the writ directs." *Id.*

In order to effectively show a *prima facie* case sufficient to warrant the issuance of the Writ of Habeas Corpus, the complaint must allege: (1) that the

Petitioner is currently detained in custody; and show, (2) by proof of affidavit or evidence probable cause to believe that he is detained without lawful authority. *Quarles, supra*, at 858; and Fla. Stat. §79.01.

The Petitioner therefore states with certainty that a thorough reading of the instant petition for Writ of Habeas Corpus will show that he has fulfilled both criteria of the statute, and as such, the writ should issue forthwith.

DUE PROCESS OF LAW

The fundamental right due to process lies in the Fifth and Fourteenth Amendments of the United States Constitution and is brought forth through Article I, Section 9, of the Florida Constitution. "The touchstone of due process is the protection of the individual from the arbitrary action of government." *Dent v. West Virginia*, 129 U.S. 114, 123 (1889).

Procedural due process involves basic procedural rights guaranteed every citizen when the government seeks to deprive an individual of his freedom, meaning that the government "must" employ fundamentally fair procedures in order to deprive any citizen of their freedom.

Substantive due process may implicate, *inter alia*, the definition of offenses, presumption of innocence, vagueness, conduct of law enforcement officials, right

to a fair trial, and availability or harshness of remedies. See *Department of Law Enforcement v. Real Property*, 588 So. 2d 957 (Fla. 1991).

Thus, upon showing that this Honorable Court has departed from the essential requirements of law, a violation of due process is shown, and the Writ should be issued forthwith.

The face of the record in this case contains a defective verdict, as upon thorough review, it is revealed that both verdict forms do not actually state that the Petitioner is guilty of the charged offense. In facts, this Honorable Court made the following that the verdict forms contained no error, and that both were "legally sufficient." (T.T: pg. 659, line 8; pg. 660, line 7); See Exhibit . Legal research indicated that the caption of a verdict form, is not the verdict, and a caption "does not" state the findings of the jury. The verdict forms in the instant case, and attached Exhibit, are in fact, ambiguous and definitely state that as to Count I, TYRONE THOMPSON is GUILTY of aggravated battery, and as to Count 2, MARGARET DOUGLASS is GUILTY of aggravated battery. The failure of this Honorable Court to address this issue which fits all four criterion of the definition of a manifest injustice, showing (1) that there was an error (ambiguous and fundamentally flawed verdict form); (2) that it was plain (verdict form goes to the structural foundation of the case); (3) that it affected his substantial rights (substantive and procedural due process as enunciated by the 5th and 14th

Amendments to the United States Constitution), would cause this Honorable Court to fail to give effect to clearly established law representing a departure from the essential requirements of the law. This patent ambiguity occurs because of the fact that the word "Defendant" is not part of the verdict form, which is a requirement of the law. See Section 95:88, Florida Jurist 2d, Pleading and Practice Forms. This error represented a clear and concise departure from the essential requirements of the law and left uncorrected represents a manifest injustice.

In *Channell v. State*, 107 So. 2d 284, 287 (Fla. 3d DCA 1958), the Second District Court of Appeal held that "verdict rendered in criminal cases are required to be certain, and should signify a definite meaning devoid of ambiguity." *Id.* It is imperative to note here that where there is a critical deficiency in the verdict process, the courts cannot infer or assume the jury's findings, or the intent thereof. See *Washington v. State*, 46 So. 2d 417 (Fla. 1908); and *Hills v. State*, 994 So. 2d 412 (Fla. 3d DCA 2008). This error, which is plain, clear, and concise as a matter of record represents a violation of due process of law.

In *Williams v. State*, 528 So. 2d 453, 454 (Fla. 5th DCA 1988), the Fifth District court of Appeal held that "the rule of law in all criminal cases, is that any ambiguity in statutes rules, verdicts, judgments, sentences and any other matter is resolved in favor of the accused. *Id.* Thus, the instant case is ripe for the issuance of a Writ of Habeas Corpus, on this Petitioners behalf."

ATTACKING THE STATE'S RESPONSE

In their two-page response, the State Attorney's Office erroneously urges the court to deny the claim because Habeas Corpus was the improper vehicle to use to present the claim. However, Exhibits show that a veteran attorney would have taken the case for the Defendant, but the Defendant did not have the ten-thousand dollars to retain this attorney. Thus, the claim is not frivolous as endorsed by an officer of the court.

Furthermore, a hearing was held on the issue and the Defendant was not present. This adds more fuel to the fire: that the Defendant's trial and post-conviction proceeding have been manifestly unjust. The State argued that the Defendant did not have to be present, yet Exhibits show that notices for court appearance were mailed to the Defendant's home address and the State knew the Defendant was still incarcerated in prison; this was unjust. "A Defendant has the right to be present at all adversarial proceedings against him." See *Johnson v. U.S.*, 111 S.Ct. 2514 (1991).

Also, the law is clear that, "[c]onventional notions of finality have no place where life and liberty are at stake." *Sanders v. U.S.*, 83 S.Ct. 1068 (1963), as well as, "[e]rrors of this kind justify collateral relief no matter how long they may have been final..." *Rose v. Lundy*, 100 S.Ct. 111 (1980).

The Defendant's Postconviction and Amendments contain cognizable claims that are issues of fact. As in the present case, "[w]here the state court fails to reach and decide any issue of fact tendered by the Defendant he is entitled to an evidentiary hearing. There can be no semblance of a full and fair hearing unless state court actually reaches and decides the issues of fact tendered by the Defendant." See *Townsend v. Sain*, 83 S.Ct. 745 (1963).

Fla. R. Crim. Proc. 3.850, Fla. R. App. Proc. 9.141 and Due Process of law requires a trial court to: "Grant relief schedule an evidentiary hearing or state with specificity relying upon attachments of court records, an order conclusively demonstrating relief is not entitle on each legally sufficient ground raised." *Hoffman v. State*, 571 SO. 2d 779 (Fla. 1990). This was not done in this Petitioner's case.

The Arguments and exhibits presented in this brief clearly show that a manifest injustice has occurred in this case which should be corrected by this higher court. Thus the Florida Department of Corrections is unlawfully holding the Petitioner for crimes he has not been rightfully convicted of. The lower court has not employed the fair fundamentally sound procedures guaranteed before depriving the Petitioner of his freedom. These arbitrary actions of government clearly violate due process and failure to grant relief will create a further miscarriage of justice.

CONCLUSION

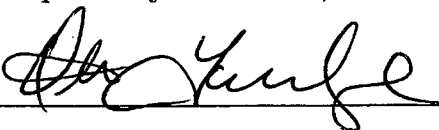
WHEREFORE, based on the foregoing clearly established laws and facts, the Appellant avers that he has made a *prima facie* case that entitles him to any and all relief that this Court deems just and proper including but not limited to an evidentiary hearing complete with competent appointed counsel and reversal of the Lower Courts denial of these claims. The issues herein are issues of fact and "there can be no semblance of a full and fair hearing unless the state court actually reaches and decides the issue of fact tendered by the Defendant." *Townsend v. Sain*, 83 S.Ct. 745 (1963). Respectfully any decision unfavorable to the Defendant in this matter will be contrary to clearly established law. *Williams v. Taylor*, 120 S.Ct. 1495 (2000). FINALLY THE PETITIONER ASKS THIS HONORABLE COURT TO ANSWER A CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE:

CAN A CLEARLY DEFECTIVE VERDICT FORM SUPPORT A CRIMINAL CONVICTION?

THE PETITIONER ASKS THIS HIGH COURT TO COMPARE THE VERDICT FORMS FROM HIS CASE TO ANY IN FLORIDAS STATE OR FEDERAL COURT. THE BODY OF THE FORMS DO NOT SAY THAT THE "DEFENDANT" IS GUILTY NOR SAY "OTIS TOWBRIDGE" IS GUILTY OF THE CRIME CHARGED. THE ORAL PRONOUNCEMENT READS THE SAME WAY. THE FORMS ARE CLEARLY AMBIGUOUS AND THEREFORE DEFECTIVE. THUS THE PETITIONER IS ENTITLED TO RELIEF.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: MAY 14, 2018