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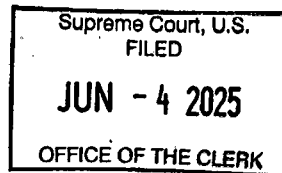
No.

In the Supreme Court of the United States

Brian Smith, Petitioner

v.

State of Florida, Respondents



**ON PETITION FOR A WRIT OF
CERTIORARI
TO THE FLORIDA SUPREME COURT**

**AMENDED
PETITION FOR A WRIT OF CERTIORARI**

**Brian Smith, *Pro Se*
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**Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399
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Question Presented for Review

Does case law from the Florida Supreme Court in 1999 take Precedence over Case law from the Florida 1st DCA in 1988? When a circuit court judge does not use due diligence with the law he is basing his decision on, the Appellate court is prejudiced against your style of case issuing a PCA and the Florida Supreme Court can't touch a PCA, what remedy is left on the path to a Jury Trial as they can't find me guilty of possessing something that I did not have?

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Table of Authorities

Cases

Wood v. State,

750 So. 2d 592 (Fla. SC 1999).....4,6

Wall v. State,

525 So 2d 486, 487 (1st dca 1988).....6,2a

Rules

Fla. Rules of Crim. Procedure 3.850.....4,5,6,2a

Petition for a Writ of Certiorari

Brian Smith respectfully petitions this court for a writ of certiorari to review the judgment of the Florida Supreme Court.

Citations of Opinions

1. State of Florida v. Brian Smith, 2014CF4158
Ninth Judicial Circuit Court, Osceola, Florida
January 17th, 2024.....Page 2a
2. Brian Smith v. State of Florida, 6D2024-0375
Florida's Sixth District Court of Appeal
December 3rd, 2024.....Page 1a
January 29th, 2025.....Page 3a
3. Brian Smith v. State of Florida, SC2025-0298
Florida Supreme Court
March 6th, 2025.....Page 4a

Statement of the Basis for the Jurisdiction

The Florida Supreme Court refused to take Discretionary Jurisdiction on March 6th, 2025. This Court's jurisdiction rests on 28 U.S.C. 1257(a).

Statutory Provisions

This case involves the Fla. Rules of Crim. Procedure 3.850 that states:

The following grounds may be claims for RELIEFE FROM JUDGMENT OR RELEASE FROM CUSTODY by a person who has been tried and found guilty or has entered a plea of guilty or nolo contendere before a court established by the laws of Florida:

Custody is not a requirement to claim relief from judgment

STATEMENT OF THE CASE

Brief history of the case and why I filed the motion. In 2014, I was irresponsibly downloading large lists of pornography without paying attention to the file names. It would seem that the lists contained files that depicted sex by a minor and as I discovered these very disgusting files, I would delete them immediately as it was not what I wanted. So that I would not be sharing any more of the bad files, I moved a bunch of files to a thumb drive.

The detective had been running the investigation for over three months and when she went to get the search warrant, I was not sharing any more files, so she used a list that was 3 months old which is stale evidence.

My forensic expert testified in deposition that the files I was charged with were not found in the evidence. They had already been deleted. I was thinking that how could I be found guilty of possessing files that I did not possess. I told my lawyer this and that I wanted to go to trial. He told me they would just ask the judge to change the file names and I said not after they seat the jury. He got mad, threatened me, told me that when the jury hears the charges they would be prejudice and find me guilty and do I want 2 years or 33. He scared me into taking the plea bargain.

While incarcerated, it really bothered me that I took the plea bargain when I believe that I would not have been found guilty since I did not possess those files.

While in prison, an inmate told me about the 3.850 post-conviction motion. I did my best to find out more but was not able to go to the law library or get any help and I feel that I was denied access to the courts. When I got out of prison, I was denied going to the law library by my probation officer and because of my type of case, I could not find a lawyer that would talk to me without a large payment. It was not till I was in county jail for a VOP that my Public Defender agreed to get me the forms for the 3.850 which I filled out and filed on 03/20/2020. Judge Carsten held my motion for almost four years till I was no longer incarcerated or on probation and on January 17th, 2024, Judge Carsten dismissed the Motion for Post-Conviction citing "Under Florida Rule of Criminal Procedure 3.850, a defendant must be in custody under a sentence of a court established by the laws of Florida claiming the right to be released." (App. 2a). Here in lies the grave error. There is no custody requirement in Florida Rules of Criminal Procedure 3.850. It was removed by the Florida Supreme Court in 1999. (See *Wood v. State*, 750 So. 2d 592 (Fla. SC 1999)) Judge Carston made a legal error and had no reason to dismiss my case.

On February 22, 2024, I filed a notice of appeal to the 6th DCA. On April 4th 2024, I filled an amended appellant Brief Detailing how the Florida Supreme court had removed the custody requirement in FL. Rule Crim. P. 3.850 in 1999 and that the dismissal should be reversed. The 6th DCA issued a PCA on December 23, 2024. Because of the type of case, they were refusing to deal with it. I filed for a rehearing on December 16th, 2024 that was denied on January 21, 2025. I filed for a written opinion on February 9th, 2025 and it was stricken as unauthorized on February 13th, 2025. I rewrote and refiled for a written opinion on February 17th, 2025 and it was denied on 04/23/2025.

I filed a notice of appeal to the Florida Supreme Court on March 3rd, 2025 and it was dismissed on March 6th, 2025.

REASONS FOR GRANTING THE WRIT

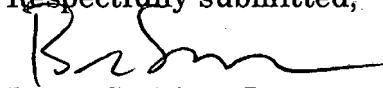
Was Judge Carsten Refusing to apply controlling statutes or binding precedent from a higher court or just not using due diligence when applying the most current case law? He cites "wall v. state, 525 So 2d 486, 487 (1st dca 1988)" for his decision to dismiss while in "Wood v. State, 750 So. 2d 592 (Fla. SC 1999)" which trumps this, the Florida Supreme Court removed the in custody requirement in FL. Rule Crim. P. 3.850.

In my appellate brief to the Florida 6th DCA, I detailed how Judge Carsten had made a error of law with the custody requirements and that the dismissal should be reversed. It was a clear error of law which is supported by the statute, FL. Rule Crim. P. 3.850. and the case law "Wood v. State, 750 So. 2d 592 (Fla. SC 1999)". I do not believe the DCA put any effort into examining the case and continue my denial of a jury trial by peers.

This is a very serious matter when a Judge, with all the resources available to them, does not give due diligence researching what he basis his decision on. The large majority of these motions are filed from jail or prison pro se by indigent inmates who do not have the knowledge or resources to recognize such a legal error as this. Therefor The US Supreme court should take this issue on for all of those out there that are not able to. This is the only path for me to have a jury trial and clear my name.

CONCLUSION

Brian Smith Respectfully Requests this Court to
grant this petition for a Writ of Certiorari
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brian Smith', with a stylized, flowing script.

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