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Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

Kevin J. Scott – Petitioner

Vs.

State of Florida – Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
FIFTH DISTRICT COURT OF APPEALS, STATE OF FLORIDA
PETITION FOR WRIT OF CERTIORARI

Kevin J. Scott, pro se
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Question Presented

Does a State Court that refuses to uniformly apply its own laws and rules to similarly situate state prisoners violate the Due Process and Equal Protection Clause if the 14th amendment of the United States Constitution?

If so, what is the applicable remedy?

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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 judgement below.

OPINIONS BELOW

The opinion of the highest State Court to review the merits appears at appendix A to the Petition and has been designated for publication but is not yet reported.

The opinion of Fourth Judicial Circuit, in and for Duval County, Florida appears at appendix B to the Petition and is unpublished.

JURISDICTION

The date on which the highest State Court decided my case was decided on March 25, 2025.

A copy of that decision appears at appendix A.

A timely Petition for rehearing was thereafter denied on May 2, 2025. A copy of the order denying rehearing appears at appendix C.

The jurisdiction of the U.S. Supreme Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOKED

XIV Amendment to the United States Constitution

-Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall 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 law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On October 25, 2007, Kevin Jerome Scott, herein Mr. Scott, was charged by information with the second-degree murder and attempted armed robbery of Kristo Binjaku. These charges stemmed from an incident that occurred at a "Coin Laundry" on June 30, 2007. On December 6, 2007, Mr. Scott was indicted by a grand jury for first-degree murder in Count 1, attempted armed robbery in Count 2, and possession of a firearm by a convicted felon in Count 3. On April 23, 2009, the State filed an Information further charging Mr. Scott with aggravated battery of Gention Koci, which was consolidated into the above case, Case no. 2007 – CF – 14830.

On April 27, 2009, Mr. Scott proceeded to trial by jury and was found guilty of Counts 1, 2 and 4 (renumbered to 3 for trial). Count 3 was later nolle prossed by the State. On May 5, 2009, the jury recommended the death penalty for Count 1. The

Court further sentenced Mr. Scott to concurrent sentences of 25 years and 15 years in the Florida Department of Corrections as to Count 2 and Count 4, respectively.

On July 21, 2011, the Florida Supreme Court issues its mandate that affirmed Mr. Scott's convictions, but vacated the death penalty as disproportionate. See, Scott v. State, 66 So.3d 923 (Fla. 2011). On August 25, 2011 Mr. Scott was resentenced to life in prison without the possibility of parole.

Relevant to this Petition, on May 8, 2012, Mr. Scott filed a pro se Motion for Post-Conviction Relief pursuant to Florida Rule of Criminal Procedure 3.850. This Motion was amended several times, including supplementing Grounds 5 and 6, and was submitted for the final time on July 25, 2014. (See Appendix D).

Mr. Scott's Ground 5 claim was: COUNSEL WAS INEFFECTIVE FOR FILING A MOTION TO DISMISS COUNT 4 (AGGREGATED BATTERY) BASED UPON A SPEEDY TRIAL VIOLATION. (See Appendix D pg. 16). Mr. Scott's Ground 6 claim was: COUNSEL WAS INEFFECTIVE FOR FAILING TO REQUEST ANY CAUTIONARY INSTRUCTION FOR JURY TO CONSIDER CONCERNING TRANSCRIPTS USED AS AN AID ALONGSIDE PARTIALLY INAUDIBLE, UNINTELLIGIBLE RECORDING.

(See Appendix D pg. 18).

On January 6, 2017 the Court entered a final order denying Mr. Scott's Motion for Post-Conviction relief.

On November 13, 2024, Mr. Scott filed a pro se "Second or Successive Motion for Post-Conviction Relief under Fla. R. Crim. P 3.850(m), alleging a manifest

injustice and requesting habeas corpus relief. (See appendix E) Mr. Scott's claim in this motion was: THE FUNDAMENTAL CONSTITUTIONAL ERROR DERIVING FROM THE INTENTIONAL, DELAYED FILING OF COUNT #4 (AGGRAVATED BATTERY) BY THE STATE IS A PLAIN ERROR, MANIFEST INJUSTICE VIOLATION.

(See Appendix E pg. 4).

On January 21, 2025, Mr. Scott's motion for habeas corpus relief was denied as untimely and impermissively successive, (see Appendix B). Mr. Scott timely appealed the denial arguing that the prosecutorial misconduct ground had not, in fact, been raised previously, and that a habeas petition constitutes a manifest injustice is never time barred.

The Fifth District Court of Appeal summary affirmed the lower court's order, (See Appendix A) and denied a timely motion for rehearing on May 2, 2025. (See Appendix C) Fla. R. Crim. P. 3.850(f) unambiguously sets out the rules on how a court must deal with a facially sufficient motion. Fla. R. Crim. P. 3.850(m) also gives strict reasoning for a denial of a habeas corpus motion for postconviction relief.

Mr. Scott's "Second or Successive Motion for Postconviction Relief" 3.850(m) does not meet any of the criteria for summary denial. The Fifth District Court of Appeal summary affirmance of the lower courts denial clearly goes against its own laws and rules. This denied Mr. Scott the due process and equal protection of law guaranteed by the 14th amendment of the United States Constitution.

Mr. Scott has no further remedy available in the State Courts. He would also be untimely to pursue a habeas corpus remedy in the Federal Courts pursuant to §2254 habeas corpus petition. This timely petition for a writ of certiorari follows.

REASONS FOR GRANTING THE WRIT

“[W]hether there are a lot of people who suffer or whether there are a few who suffer, it seems to us that the principle of equal application of the law... ought to receive recognition.”

-Miller v. Albright, 523 U.S. 420, 471 (1998).

Equal protection of law, a right guaranteed every person under the United States Constitution, also means equal application of the law. No state in this country has the right to treat similarly situated people differently under the law. This case is about as much more than Mr. Scott's postconviction motion not being refuted by the record. It is about holding state courts accountable under the Equal Protection and Due Process Clause. It is about a remedy being provided to State prisoners, being deprived of their liberty, when a federal remedy is no longer available to them.

In the present case, Mr. Scott has followed all state procedure to attempt to ensure that his claim would be viewed fairly, equally, and decided on the merits of the cause. While the trial court denied Mr. Scott's claim, it did so without refuting it conclusively on the record. This goes against clearly established Florida law. “Fla. R. App. P. 9.141(b)(2)(D), which governs summary denials of motions for postconviction relief in non-death cases... unless the record shows conclusively that the appellant is entitled to no relief, the order shall be reversed.” McLin v. State, 827 So 2d 948 (Fla. 2002). “The claims must be either facially invalid or conclusively refuted by the

record.” Foster v. State, 810 So.2d 910 (Fla. 2002) See also Nordelo v. State, 93 So 3d 178 (Fla. 2012); Dennis v. State, 385 So 3d 671 (Fla. 5th DCA 2024).

The trial court in this case did no such thing. It ruled that the claim was untimely and impermissively successive, (See Appendix B pg. 4), but did not prove the reasoning by the record or by law.

As to the untimeliness of Mr. Scott’s motion, it was filed pursuant to Fla. R. Crim. P. 3.850(m) habeas corpus as a “manifest injustice.” Succinctly, it alleged prosecutorial misconduct by the prosecutor lying on the record to the trial court about why an additional charge was added a mere 4 days before trial. this gave Mr. Scott no time to prepare a defense to that charge.

One can hardly believe that the state has an interest in the finality of a conviction that relied on the State’s own false statement to the court. The court, relying on this false statement then allowed the new felony charge to move forward to trial in 4 days.

A Fla. R. Crim. P. 3.850(m) habeas corpus motion, by rule, has no time bar. It does, however, clearly explain the only reasons why a court may deny this motion as procedurally barred.

In the trial court’s order of denial, it stated that the claim was impermissively successive as it was raised previously as Ground 5 and Ground 6 in his previously filed 3.850 Motion for Postconviction Relief. (See Appendix B pg. 4). It is clear that the current claim does not at all reflect the previous two claims. (Compare Appendix D pg.16, 18 vs. Appendix E pg. 4).

A summary denial not on the merits, however erroneous, can be corrected by appealing the order to the District Court of Appeal that oversees that lower trial court. In the State of Florida the District Court of Appeal is considered, for all intents and purposed, the Court of last resort for exhaustion of a claim.

After Mr. Scott appealed to the Fifth District Court of Appeal, they summarily affirmed the lower courts order. (See Appendix A) now Mr. Scott is in a quandary! Mr. Scott has been denied the appropriate relief due by the State's own laws and rules. Relief that all other similarly situated State prisoners have been afforded. Furthermore, because Mr. Scott would be untimely on a §2254 Federal Habeas Petition, he has no further remedy. He is in no man's land.

The United States Constitution promises Mr. Scott Equal Protection of the law, but he has no access. "The Equal Protection clause forbids the government from intentionally treating [Scott] differently from others who where "similarly situated" unless there is a rational basis for the difference in treatment." Baptisle v. United States, 2023 U.S. Dist. LEXIS 212093 (11th Cir. 2023) (quoting Grinder v. City of Auburn, Ala., 618 F.3d 1240, 1263-64 (11th Cir 2010)).

State prisoners, not only in Florida, but across the country need the United States Supreme Court to give guidance on how to obtain accountability from the state courts when similarly situated prisoners are denied Equal Protection, and no longer qualify to submit a §2254 Federal habeas petition to seek redress.

CONCLUSION

Mr. Scott's rights under the 14th Amendment of the United States Constitution were violated when the Fifth District Court of Appeal denied him Equal Protection of Law afforded to other similarly situated state prisoners. He is time barred from filing a §2254 Habeas Petition in the Federal Courts to challenge this state action. Mr. Scott, and others who are similarly situated must have a remedy for redress. If not, it renders the 14th Amendment impotent, and allows a state to deny uninhibited any state prisoner relief knowing that a Federal Court can not be called upon. Only the United States Supreme Court can correct such an injustice, and Mr. Scott asks this most Honorable Court to grant this petition for writ of certiorari, return his motion to the trial court for a ruling on the merits, and any other relief it deems proper and fit.

Respectfully Submitted,

/s/ Kevin Scott

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