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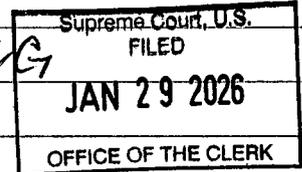
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SUPREME COURT OF THE UNITED STATES

CASE No: (T.B.A.)

ORIGINAL

IN RE MORGAN ALLEN ARMSTRONG



SECOND DISTRICT COURT OF APPEAL

FOR 6th JUDICIAL CIRCUIT COURT, PASCO

COUNTY, FLORIDA

PETITION FOR AN EXTRAORDINARY

WRIT OF HABEAS CORPUS

MORGAN ALLEN ARMSTRONG

DCR09246

Charlotte Correctional Institution

33123 oil Well Rd.

Punta Gorda, FL 33955

LIST OF PARTIES

MORGAN ALLEN ARMSTRONG - Petitioner

MICHAEL F. ANDREWS - STATE Trial Court

RYAN MCGEE - Assist, STATE Prosecutor

MARK MOE - Detective (Ret.)

MEENA PATEL - victim 887 case

FALGUNA PATEL - victim 888 case

JENNY MARKOPULS - Def, wit,

STEVE ARMSTRONG - STATE wit,

LINDA DEBOER - STATE wit,

CASEY STORER - STATE wit,

LEON MCWILLIAMS - STATE wit,

QUESTIONS

- (1) Did the STATE Court lose its jurisdiction when the F.S. 38,10 affidavit was filed?
- (2) Is the Davis decision unconstitutional as it held that a lack of Subject matter jurisdiction is susceptible to the Harmless Error Analysis?
- (3) By statute as worded is/can F.S. 38,10 be procedurally controlled by R. 2,330, and does F.S. 38,10 stand alone?
- (4) Can the STATE OF Florida create a Federal Liberty Interest?
- (5) Is the petitioner illegally detained?

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Complaint Affidavits and charging informations
both cases 887 & 888;

B- hearing transcripts 8-8-11 pgs 1-3, 27-28, 31,
35-36, 38, 41-44, 58-59, 71-73, 253, and
5p. document/affidavit E.S. 38.10
declaration court record pgs 71-75;

C - Williams Rule Evid. transcript p's 1-3, 26, 54, 94-95, Court orders Granting evidence 888 case 9-9-11, 887 case 9-7-11;

D - Sentencing transcript 10 p's and Judgments + Sentences both cases 887 + 888,

E - Order dismissing Post conviction Habeas Corpus, order denying rehearing motion, and D.C.A. P.C.A. decision, motion to Recall Mandate; certify question denial.

TABLE OF AUTHORITIES

Fed:

Chapman v California 87 Sot 824 (US 1969)	p. 10
Erle v. Tomplans 304 US, 64 (US, 1938)	p. 8
Grains v. Sec. Dept. Corr, 2020 US, Dist. Lexis 169343	
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Parker v STATE 873 So. 2d 270 (Fla. 1st DCA, 2005)	p. 13
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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix
the petition and is

reported at _____ ; or, _____ to
 has been designated for publication but is not yet reported; or,
 is unpublished. _____

The opinion of the United States district court appears at Appendix
the petition and is

reported at _____ ; or, _____ to
 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 E 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 6th Jud. Cir. Court and 2nd DCA court
appears at Appendix E to the petition and is

reported at _____ ; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

Petition For Writ of Habeas Corpus

Petitioner respectfully prays this court issue this writ, order petitioner's immediate release from this illegal detention, answering all posed questions herein.

Jurisdiction

The jurisdiction of this Court is invoked under S.Ct. R. 17(1), 20(1)(4 a, b), 35, 28 USC, 2101(e)(f); 28 USC, 1651; 28 USC, 2106, 28 USC, 1257(a); Ferrell v. Waterman SS. Co., 291 F. 604 (US, 1923) US, Dist. Lexis 1434 @ 3-6; Sterling v. Constantin 287 US, 378 (US, 1932).

Constitutional and Statutory Provisions

STATE: ES. 38, 10 Judge's General Provisions;

R. 2, 330 Disqualification of Judge; ES, 117, 10

Notary; ES, Evid. code 90, 404(2)(a) Williams I

Similar rule evid., F.S. 775, 021(1) rules of construction;

(ES 27) p 2 of 21

Fed: US Const. 1st, 4th, 5th, 6th, 8th, 14th Amend.
Rights; 28 USC 144

STATEMENT ON AFD of Appellate Jurisdiction

The Florida Supreme Court in Davis v STATE
347 So3d 315 (FLA, 5ct, 2022) made several
un-US Const holdings contrary to this court's
holding and controlling laws as pertains to
a lack of subject matter jurisdiction.

Petitioner files this document to obtain
clarification, reconciliation, and relief for
the above detailed questions and below
conflicts raised as argued.

Jurisdiction is governed by the Due Process
clause of the 14th Amend, see McIntyre v.
Nicastro 180 L.Ed.2d 765, 773-4 [FF, HVA]
(US, 2011) under which the Erie doctrine,
Erie v. Tompkins 304 US, 64 (US, 1938)

(cont) p. 8 of 21

properly places the ultimate question, decision, and authority in federal hands squarely upon Supremacy Clause Shoulders, STATE statutes and sovereignty not with standing when U.S. Const. Substantive laws and Rights are violated.

The 11th cir. has held that a federal court will not decide a STATE statute jurisdiction claim, see *Graines v. Sec. Dept. Corr.* 2020 US Dist. Lexis 169343 @ 5-8, while at the same time this court in *McIntyre* *Supra* @ 1, 2 verbalizes U.S. Const. authority over arbitrary STATE usurping of jurisdictional overreaching as being protected by the U.S. Const. 14th Amend.

Florida law has made a court(s) lack of subject matter jurisdiction and acting
(Cont) p. 9 of 21

without such, susceptible to the Harmless error analysis, in Davis supra, see also Chapman v. California 87 Sct, 824 (US, 1969); STATE v. Diguilio 491 So.2d 1129, 1135, 1138 (FLA, Sct, 1986), appealable as any other claim of error in direct review/appeal or in/by post conviction motion, 'not raisable at any time.'

This holding decision in Davis was made in relation to F.S. 38.10 Judges General provisions which outlines that the filing of a Affidavit that describes the bias and or fear, prejudice of the presiding court explaining that a fair proceeding cannot be had with said court, "immediately divests the court of its jurisdiction to preside" by stating "Shall proceed No further".

Davis held that F.S. 38.10 is procedurally governed by R. 2.330 "judicial disqualification motions", but that is not supported by either statutory language, neither mechanism cites to each other in their statutory construction, committee notes or any amendments. See *US, v. Tiger* 414 F.Supp.2d 1070, 1071-1078 (11th Cir 2006) (citing) *Conn. Nat. Bank v. German* 503 U.S. 249, 253-254 (U.S. 1992) "Cardinal Canon" "In any event, courts must presume that a legislature says in a statute what it means and means what it says."

"It is not the business of courts to attempt to state what congress 'meant to say' it is the responsibility of courts to enforce what is clearly said" *Id.*

"That being the law", it is a impossibility

(cont) p. 14 of 21

That F.S. 38.10 is procedurally governed by R. 2.330, except by judicial decree alone, the legislature clearly separated these two vehicles, the proof is in their individual operational timelines, they were not made or contemplated to be used together or for one to control the other.

R. 2.330(j) states that a motion to disqualify that is not ruled on in '30' days is deemed granted, while F.S. 38.10 states that upon the affidavit being filed, "the court shall proceed no further", no discretion exists in the use of the word "shall", R. 2.330(c) 1-5 mentions a affidavit, but it cannot be a F.S. 38.10 affidavit as the triggering timelines of effect/affect are in total opposition, '30 days as opposed to immediate',

The Florida legislature created a Federal US, Const. liberty interest in a stand alone protection of an unbiased trier of the facts (Court) in 38,10 that the Florida Supreme Court has by decree verbalized away in the Davis decision.

Prior Florida Supreme Court holdings have held that Fla. STAT. 38,10 protects a substantive right *Barnhill v. STATE* 834 so2d 836 (Fla. Ct, 2002) and that a judge lacks authority to make additional rulings per Fla. STAT. 38,10" *Parker v. STATE* 873 so2d 270 (Fla. Ct, 2005)

Fla. STAT. 38,10 has not statutorily been changed or amended from the *Barnhill*, *Parker* decisions till *Davis*, these holdings cannot be reconciled, moreover under Fla. STAT. 715.021 (1) rules of

construction, in ambiguity the ruling must

be made in the defendants favor, as such
F.S. 38.10's language 'must' control the
situation in its immediate nature, over R2.330.

The statute/R. parallels 28 U.S.C. 144 the
Federal bias court code which must be
considered in this conflict.

Finally, as a lack of subject matter jurisdiction
cannot be made susceptible to the Harmless
Error Analysis as held by this Court, *US. v.*

Guzman 167 F.3d 1350, 1352 n.5 (11th cir 1999),
Neder v. US, 1, 7 (US, 1999), the Florida

Supreme Court's decision in *Davis Supra*
was made and held its ruling in total
opposition and conflict with this court's law,
as F.S. 38.10 is clearly a lack of subject

matter issue, that Florida has now held that

a court must actively and affirmatively
(cont) p. 14 of 21

contribute and cultivate the convictions to be harmful for the court to be found to have acted w/o jurisdiction.

Petitioner contends that this case presents a writ in appellate jurisdiction as a STATE has violated this court's law, as its controlling holding, is a matter of great public importance for a entire state full of peoples Federal rights, and will vindicate us, constitutional rights in accord with equal protection of law upholding the US. Const. inviolate.

STATEMENT OF CASE

Petitioner was arrested in Las Vegas, NV on 3-6-10 for warrants out of Pasco Co, Florida for case #: 10-00886CFAWS-DIV4 extradited 16 days later, and found "Not Guilty" at jury trial on 3-8-11, but

When petitioner arrived in Florida he was charged with a total of '3' Armed Robberies w/ Deadly Weapon FS 812.13(2)(a) see App. Ex. 'A'.

Upon being found "Not Guilty" petitioner elected to proceed pro se' for the remaining two (2) cases, at a calendar call hearing held on 8-8-11, see App. Ex. 'B', at that time petitioner filed a Declaration / Affidavit FS, 38.10 which outlined the prejudice and bias of the presiding court whom had presided at the previous acquitted trial.

At that time the court offered petitioner the opportunity to write a recusal motion under impossible circumstances, attempted to coersse petitioner into agreeing to the jurisdiction he (court) had just lost, he also attempted

(cont.) p. 16 of 21

to minimize the effect/affect of the filed affidavit and recusal motion by stating that he could be reappointed to try the pending cases.

The court also stated that he would come off of his vacation to try petitioner's remaining cases.

Petitioner did not file a recusal motion, only the affidavit, and the court continued to preside.

Prior to the remaining trials the STATE sought to introduce Williams Rule/Similar fact Evidence under F.S. 90.404(2)(a), See App. Ex. 'C', the STATE's sole purpose for this evidence was as stated, the identifiers allegedly made by the victim(s), but the testimony given at the hearing by each victim for each respective case testified that they never saw the robber without the mask on, which is in direct conflict with the detective's P.C. affidavits, see App. Ex. A, this also raises the question as to how and under what circumstances did the victims complete photo packs.

The court ultimately granted said evidence for both cases and as his main reason stated was that each victim recognized his face, clearly contrary to given testimony of each victim, see App. Ex. 'C'

Court orders each case p. 6.

Both victims subsequently testified at each trial and one of them actually changed their testimony about the mask, also testified to photo packs made with the detective.

Petitioner was found Guilty for both remaining trials and at sentencing, the court again verbalized his bias by considering a acquitted crime when he pronounced the handed down two (2) 35 yr. Concurrent Sentences, see App. Ex. D, announcing his belief of petitioner's Guilt.

Petitioner has raised the lack of subject matter jurisdiction issue in the STATE tribunals multiple times raising all² Federal US, Const rights and holding US, set. Law to no avail, petitioner even moved to certify these some questions to the Fla Sct. which was denied, see App. Ex. 'E'.

Upon receiving the STATE's denial / refusal to adhere to any law pertaining here to, petitioner filed this petition.

Reason for Not Making Application to the
US, Dist. Court,

Petitioner is outside the 2244(d)(1) 1yr. time limitation,
the STATE courts refuse to address the clear illegal
detention of the petitioner and refuse to address the
Harmless error decision as applied to a lack of subject
matter jurisdiction and they refuse to certify the
questions to the Fla. S.Ct.,

petitioner has no recourse except this court, your laws are
intentionally being broken, as the controlling law of the STATE,

Reasons for Granting the WRIT

petitioner is being illegally detained by the STATE of
Florida in large part due to the Davis Supra Harmless
error decision, as they are saying my lack of subject
matter jurisdiction claim is time barred and procedurally
barred, which is a violation of all known laws,
including yours.

petitioner was tried by a court at two trials who lacked
jurisdiction, then he adjudicated petitioner Guilty and pronounced
Sentences signing the judgments and sentences.

This court is the only court that could/would reach the merits of issues presented, and this is the only court that can enforce its laws on a STATE court decision "Davis", that ruled in complete contravention of its laws, effecting/affecting a entire STATE of people U.S. citizens. entitled to the equal protection of the laws of this court, as petitioner is,

Conclusion

Petitioner humbly moves this court to Grant this writ decide and answer all presented questions and issues raised, and Grant all proper relief due, vindicating all constitutional rights and this courts' controlling decisions.