

No. SC20-263

IN THE
SUPREME COURT OF THE UNITED STATES

Tony Owen DuPree — PETITIONER
(Your Name)

vs.

State of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
(Actual Innocence Manifest Of Injustice)

Florida State Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tony Owen DuPree
(Your Name)

9544 CR 476B
(Address)

Bushnell, Fla 33513
(City, State, Zip Code)

(Phone Number)

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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☐ is unpublished.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☐ is unpublished.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 C 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☐ is unpublished.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☐ is unpublished.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 Feb, 21, 2020. A copy of that decision appears at Appendix #C.

☐ A timely petition for rehearing was thereafter denied on the following date: Feb, 21, 2020, and a copy of the order denying rehearing appears at Appendix #C.

☐ 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).

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:

RELATED CASES

See - page (ii)

QUESTION(S) PRESENTED

(1). Is the Florida Supreme Court correct in saying it lacks jurisdiction where Petitioner raised Actual Innocence claim, bringing Newly Discovered evidence that the State knowingly perjured itself by stating to the jury that Petitioner's alibi witness was never located? (And lower tribunal denied)?

(2). Is the Florida State Supreme Court correct in saying it lacks jurisdiction where the lower tribunal claimed Petitioner is time barred from the court to Effectuate Intent of Plea agreement?

(3). Is the Florida State Supreme Court correct in saying it lacks jurisdiction, where the Florida State Supreme Court has developed new case law in the form of Courts New Opinion which apply's to Petitioner sentence, same as in Florida State Supreme Courts New Opinion?

(4). Is the Florida State Supreme Court correct in saying it lacks jurisdiction where the lower tribunal was perpetrating Judicial Vindictiveness / Fraud where after a New trial where Petitioner was convicted of a lesser charge but given a more severe sentence takeing away Petitioner's opportunity for parole even though the sentence verbal and written is not natural life, by statute it is?

(5). Is the Florida State Supreme Court correct in saying it lacks jurisdiction where the lower tribunal suppressed and Destroyed evidence favorable to -

Petitioner, not limited to stopping Petitioner from testifying to the jury that the 45 year old murder victim called 911 in order to help authorities arrest Roy L. Lawrence hours before Roy murder Clara who was in hiding from Roy; Roy's nephew stated that Roy killed Clara; The State obtained a Grandjury indictment based on a perjured statement by State's investigator that he had a witness identify Petitioner. The witness denied ever identifying Petitioner and both State witnesses wrongly identified a attorney and a member of the jury as the man they saw. Was the court correct in leaving this out when the State reenacted testimony of deceased State witnesses using the district attorney's secretary to role play State witnesses testimony; Also destroying all evidence after trial before Petitioner could have it tested? Not limited to prints, cigarette butts of murder perpetrators.

(6) Is the Florida State Supreme Court correct in saying it lacks jurisdiction, where the lower tribunal refused to allow a new attorney on the case, in a New trial to deposition any witnesses?

(7) Is the Florida State Supreme Court correct in saying it lacks jurisdiction, where the lower tribunal refused to grant funding for experts in forensic's for Petitioner where State was allowed to use forensic's experts as State witnesses?

(8) Is the Florida State Supreme Court correct in saying it lacks jurisdiction, where the lower tribunal-

allowed States investigator to twist words of Petitioners forced from him through sleep deprivation; Investigator refused to place Petitioners in a cell even after he refused to sign away his right to remain silent and stated he did not want to speak with them? Even after his refusal and hours of sleep deprivation questioning they would only place Petitioners in a cell used only for disciplinary deprived of phone and away from all human contact?

(9). Is the Florida State Supreme Court correct in saying it lacks jurisdiction, where the lower tribunal knew that Petitioners attorney at New trial was an ex-police officer in the very department with the States witnesses and were friends. Petitioner had lived in Santa Rosa County a short time and was unaware.

Shouldn't the attorney and the State have made Petitioner aware of this major conflict of interest?

The attorney for Petitioner who was friends with States witnesses while working with them was Glen Arnold.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1 - (A)

State Knowingly Utilized Perjured Testimony (No Time Bar)

The State knowingly procured indictment against Petitioner for 1st Degree Murder, based on a perjured typed report by Investigator Jim Spencer stating he had a witness pick Petitioner's photo out of a line-up of photos. Jim Spencer during his deposition stated that his above report to procure Grandjury indictment based on Ma. Margie Baggett identifying Petitioner was not true but was a typo by him.

After New Trial Petitioner learned that the State did locate Petitioner's alibi witness which would clear Petitioner of murder, but State's witness investigator Jim Spencer told the jury that the alibi witness was never found.

Petitioner's 6th and 14th Amendment rights were clearly violated by the State's indictment by fraud and the State's perjured testimony in trial. See - U.S. v. Haese, 162 F. 3d 359 (5th Cir. 1998) - Held that defendant's convictions must be reversed on due process grounds where the government knowingly elicits, or fails to correct materially false statements from witness.

This Honorable Court, accordingly, must remand this case to the circuit court for evidentiary hearing or in short, vacate the conviction as seen in Haese; to ensure that Manifest of Injustice within its reach is surfaced corrected. (Court's records show that Petitioner's alibi was found).

2 - (B)

Effectuate Intent of Plea Agreement (No Time Bar)

If this Honorable Court will look at Exhibit # D, here-in. The State in the Plea Agreement clearly states it will NOT seek the Habitual and this charge will run

with what was reduced to 2nd Degree Murder.

However, once Petitioner's charge was reduced to 2nd degree murder by jury findings, the Petitioner was sentenced as a Habitual, thus violating a stipulation NOT to Habitualize. (Until this point the State had signed off on a recommended sentence of 17 to 22 years; See - Exhibit # E, attached here-in, two pages).

Stipulations are binding not only upon the parties, but also upon the trial and appellate courts. See - U.S. v. Hellman, 560, F.2d 1235 (C.A. Fla. 1977).

Petitioner's 6th and 14th Amendment Rights have been violated since he only has two charges, they are run concurrent, you cannot Habitualize one without the other, and which neither was originally habitualized at 1st trial and sentence.

See authority as aforementioned, Hensley v. Municipal Court, supra; Gunn v. Newsome, supra; Engle v. Isaac, supra.

Petitioner would seek relief from this Honorable Court by "effectuate the intent of the plea agreement." See - Foster v. State, 2016 WL 3766778 (Fla. 2nd DCA 2016); to ensure that Manifest Of Injustice within its reach are surfaced and corrected.

3- (C).

Court's New Opinion (No Time Bar)

The Florida State Supreme Court has new opinions. See - Stephens v. State, 9 So. 3d 640 (2009); Hawkins v. State, 195 So. 3d 1196 (Fla. 1st DCA 2016) - Holding, that prior to 1995, "Life Felonies were not subject to habitual felony offender enhancement." - (Petitioner was sentenced in 1994).

It would be a manifest injustice to deny Petitioner the same relief afforded other defendants identically situated, that does not promote, and in fact corrodes, un-

iformity in the decisions of the court.

Petitioner's 6th and 14th Amendment Rights were violated when counsel failed to inform petitioner that State might enhance his life felony if he exercised his appeal rights, also the court violated all Due Process rights by enhancement of Life Felony.

This Honorable Court, accordingly, must remand this case to the circuit court for evidentiary hearing or in short, vacate the conviction, to ensure that Manifest Of Injustice within its reach is surfaced ^{and} corrected.

4 - (D)

Judicial Vindictiveness / Fraud

The Parole Board has informed Petitioner that under his original sentence for 1st degree murder (a capital felony) he was eligible for parole after 25 years. But under Judge Bell's new enhancement under Habitual, for the lesser offense, 2nd degree murder, which is a first degree felony, Petitioner is no longer eligible for parole (Even though his sentencing sheet Exhibit #E, says parole eligible).

Petitioner's 5th, 6th, 7th, 8th, 9th, and 14th Amendment Rights were violated under Double Jeopardy, Separations of Powers and all Due Process Rights U.S.C.A.

See - Carter v. State, 786 So.2d 1173, 1178 (Fla. 2001), and parallel explanation by the Second DCA in Cote, "that a judge is never authorized to impose a written sentence that increases the length of the sentence beyond the term orally pronounced." See - Exhibit #F.

This Honorable Court, accordingly, must remand this case to the circuit court for evidentiary hearing or in short, vacate the conviction, to ensure that a Mani-

fact of Injustice within its reach has been surfaced and corrected.

5-(E)

Suppressed And Destroyed Evidence
(No Time Bar)

The allegation of illegal conviction was an exceptional circumstance warranting relaxation of the law of the doctrine, See - 881 So. 2d at 17; Also, Brumit v. State, 971 So. 2d 205, 33 Fla. 1. Weekly D168, (Fla. App. 4 Dist. 2007). Petitioner has shown herein verifiable records proving conclusively that the State committed fraud to obtain the indictment and fraud to obtain a conviction and fraud in sentence against Petitioner.

Since the Court denied Petitioner's new attorney in a new trial to hold any depositions and denied Petitioner any Forensic expert. And the State claimed they never spoke to Petitioner's alibi witness Petitioner's only defense since his attorney called no witnesses; Was to take the stand and point out that Clara had been hiding from her husband Roy L. Lawrence for weeks, and on the day Petitioner met Clara she explained and even requested Petitioner give her a ride from her daughters home to Clara's mother's home which he did and at Clara's mother's home Clara called 911. The State stopped Petitioner 12 times from giving the jury the facts that Clara in her 911 call gave police directions where to find Roy L. Lawrence hiding from police and that Roy found Clara soon after the call and killed/possibly drowned her. This 911 call would have made a difference in the jury's decision, but they were not allowed to hear it.

A defendant is entitled to have his jury instructed on the law applicable to his theory of defense if there is any

evidence presented supporting such a theory, even if the only evidence presented supporting the defense theory comes from the defendant's own testimony. - See - Bozeman v. State, 714 So. 2d 572 (Fla. 1st DCA 1998).

Also but not limited to, the State immediately after New Trial obtained a Court Order to destroy all evidence in the case, so that after the court denied Petitioner Forensic experts, the State ensured that Petitioner could never have experts examine evidence. See - Williamson v. Reynolds, 904 F. Supp. 1529 (E.D. OKL (1994) Holding - When forensic and expert testimony are critical parts of prosecution of indigent defendant, due process requires State to provide expert who is not beholden to prosecution; fact that forensic evidence and expert testimony are crucial to prosecution is sufficient showing of need for expert assistance and prejudice to defendant without it. U.S.C.A. Const. Amendments 5th, 6th, 14th. Judge Bell refused request for such forensic and experts be provided for the defense. Counsel was totally ineffective against expert in forensics - not limited to expert on tire tracks - expert on finger prints etc.

This Honorable Court, accordingly, must remand this case to the circuit court for evidentiary hearing or in short, vacate the conviction, to ensure that a Manifest Of Injustice within its reach is surfaced and corrected (Also destroyed cigarette butts of murder perpetrator).

6-(F).

Right To Remain Silent

(No Time Bar)

Investigator Spencer and Bryant refused to place Petitioner in a cell after he refused to sign a waiver of his rights. Investigator went on to use sleep deprivation for hours into the AM hours. Even threatening

to jail Petitioner's mother and wife if he wouldn't at least go over where he had lived and cars he drove over the years; information that was not related to questions about any crimes the Investigator said. After repeating addresses and cars he drove Petitioner refused to repeat it all over again and said - 'I am not repeating it again, you know what happened.' Investigators were allowed to twist this statement in trial. It should not have been allowed since Petitioner refused to give up his right to remain silent. See - Martinez v. Ryan (2012). Petitioner's 6th and 14th Amend Rights U.S.C.A. have been violated. See - Exhibit #6.

This Honorable Court, accordingly, must remand this case to the circuit court for evidentiary hearing or in short, vacate the conviction, to ensure that a Manifest of Injustice within its reach is surfaced and corrected.

7- (G)

Attorney Client Conflict (No Time Bar)

The ultimate attorney client conflict was for the Petitioner to learn after his New trial that his attorney had been a police officer in the same town and department with State witnesses Bryan and Spencer, and were actually good friends with them.

Petitioner was denied a conflict free attorney and had no knowledge of the above said information while the State did know and did not bring it to the attention of the Court and Petitioner.

Petitioner's 6th and 14th Amendment rights were clearly violated by the State's failure to bring to the attention

of the Court and Petitioner, the ultimate conflict that Petitioner's attorney Glen Arnold and State's witnesses not limited to Investigator Larry Bryant and Investigator Jim Spencer were all friends working together in the Milton, Fla police department. See - U.S. v. Haese, 162 F. 3d 359 (5th Cir. 1998) - Held that defendant's conviction must be reversed on due process grounds where the government knowingly elicits, or fails to correct materially false statements from witness.

This Honorable Court, accordingly, must remand this case to the circuit court for evidentiary hearing or in short, vacate the conviction as seen in Haese, to ensure that a Manifest Of Injustice within its reach is surfaced and corrected. See - Exhibit #6.

8 - (H)

Denied Depositions In New Trial (No Time Bar)

The court denied Petitioner and his attorney Glen Arnold taking depositions in New Trial where attorney Glen Arnold was new to the case. There were needed depositions not limited to the murder perpetrator Roy L. Lawrence who had never been deposed. Since depositions is part of due process in a New Trial and Judge Kenneth B. Bell denied the motion to take depositions, Petitioner has never had his new trial.

The allegation of illegal conviction was and exceptional circumstance warranting relaxation of the law of the doctrine, See - 881 So. 2d at 17; Also, Brumit v. State, 971 So. 2d 205, 33 Fla. L. Weekly D168, (Fla. App. 4 Dist. 2007).

Petitioner's 5th, 6th, 7th, 8th, 9th and 14th Amend Rights were violated. See - Exhibit # G.

This Honorable Court, accordingly, must remand this case to the circuit court for evidentiary hearing or in short, vacate the conviction, to ensure that a Manifest Of Injustice within its reach has been surfaced and corrected.

Denied Forensic Experts (No Time Bar)

The State called several experts during trial concerning the side of a thumb-print claimed to be Petitioner's; Tire tracks claimed to be Petitioner's; and a coroner who testified there was enough water in the lungs of the 45 year old victim that scientifically could prove cause of death could have been drowning (The victim was found in a popular swimming area). Petitioner's 5th, 6th, 14th U.S.C.A. Const. Amend Rights were violated by the court denying Petitioner's request for forensic experts. See - Williamson v. Reynolds, 904 F. Supp. 1529 (E.D. OKL 1995) Holding that when forensic evidence and expert testimony are critical parts of prosecution of indigent defendant, due process requires State to provide expert who is not beholden to prosecution; fact that forensic evidence and expert testimony are crucial to prosecution is sufficient showing of need for expert assistance (especially concerning death of victim in Petitioner's case) and prejudice to Petitioner without it. See - Exhibit # G, five pages.

This Honorable Court, accordingly, must remand this case to the circuit court for evidentiary hearing or in short, vacate the conviction, to ensure that a Manifest Of

Injustice within its reach is surfaced and corrected.

Standard of Review

Newly discovered evidence, constitutional errors, fundamental errors and manifest injustice can be raised at any time and also here in changes in new law. This is a proper motion to raise such a claim - All Writs/Post-conviction Petition For A Writ Of Certiorari relief outside the two-year time limitation. These claims were unknown to Petitioner by the use of due diligence. See - Martinez v. Ryan, 132 S. Ct. 1308 (2012); Jones v. State, 591 So. 2d 911 (Fla. 1991); Delgado v. State, 743 So. 2d 569 (Fla. 3rd DCA 1999). This newly discovered evidence would have probably produced an acquittal at trial. See - Schlup v. Delo, 513 U.S. 298, at 324, 115 S. Ct. 851 at 865, 130 L. Ed. 2d (1995); Williams v. State, 110 So. 2d 654 (Fla. 1959); also Stephens v. State, 829 So. 2d 945 (Fla. 1st DCA 2002).

Fla. R. Crim. P. 3.850(b)(2), Fla. R. App. P. 9.141(b), Hoffman v. State, 571 So. 2d 449 (Fla. 1990), and schedule an evidentiary hearing, or state with specificity relying upon attachment of the court record to an order delineating the facts and law conclusively demonstrating relief is not entitled on each legally sufficient claims are summarily denied. For the standard of review, See - Patton v. State, 784 So. 2d 380, 386 (Fla. 2000); Maharaj v. State, 684 So. 2d 726, 728 (Fla. 1996); Lee v. State, 789 So. 2d 1176 (Fla. 3rd DCA 2001); Porter v. State, 788 So. 2d 917 (Fla. 2001); See also Winship, 397 U.S. 358, 364 (1970) Holding that - "it is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned." Id. at 364. In his concurring opinion, Justice Harlan noted that standard

is "bottomed on a fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free.")

REASONS FOR GRANTING THE PETITION

The allegation of illegal conviction was an exceptional circumstance warranting relaxation of the law of the doctrine, 881 So. 2d at 17. Also, Brumit v. State, 971 So. 2d 205, 33 Fla. L. Weekly D168; (Fla. App. 4 Dist. 2007). Petitioner here in has shown illegal conviction.

Martinez v. Ryan, 198 S. Ct. 130 (2012) - The Supreme Court noted that while confined to prison, a prisoner is in no position to develop the evidentiary basis for a claim of ineffective assistance, which often turns on evidence outside the trial record.

Petitioner respectfully requests this Honorable Court to reverse conviction and sentence, or appoint conflict free counsel to help Petitioner with the complexities of this case, investigating statements etc; set appropriate hearings, vacate sentence and conviction or grant any other relief essential to ensure that miscarriage of justice within its reach are surfaced and corrected.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tony DuPree

Date: Aug, 22, 2020

No. SC20-263

IN THE
SUPREME COURT OF THE UNITED STATES

Tony Owen DuPree — PETITIONER
(Your Name)

VS.

State of Florida — RESPONDENT(S)

PROOF OF SERVICE

I, Tony Owen DuPree, do swear or declare that on this date, _____, 20____, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Clerk of U.S. Supreme Court, One First St. N.E. Washington D.C. 20543
Attorney General PL01 The Capital, Tallahassee, Fla 32399

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Aug, 22, _____, 2020

Tony DuPree
(Signature)