

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: SC07-1579

FRANKLIN McCLURE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

FILED
THOMAS D. HALL
2007 AUG 27 P 12:40
CLERK, SUPREME COURT
BY _____

PETITIONER'S JURISDICTIONAL BRIEF

On Review from the Fourth District Court of Appeals,
State of Florida

SUBMITTED BY:

FRANKLIN McCLURE
Desoto C.I. Work Camp
13617 S.E. Highway 70
Arcadia, Florida 34266

Petitioner *pro se*

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Constitutional Provisions and Statutes

U.S.C.A. 6, 14 Amend., Due Process of Law

Statutes

Article V & section (3)(b)(3), Fla. Const.

Florida Rule of Appellate Procedure 9.030(a)(2)

STATEMENT OF CASE AND FACTS

On January 18, 2001, the Defendant's Franklin McClure was charged with DUI Manslaughter after a traffic crash while under the influence of a prescribed substance namely Xanax, by his doctor. The State charged the Defendant with Violation Section 316.193(1) and (3)(c)(3).

Information was subsequently amended to add to a Count of Manslaughter on November 6, 2002 the Defendant's proceeded to trial and was found guilty of DUI Manslaughter and the Lesser Included Offense of Vehicular Homicide on Count II, and sentenced to 12 years Florida State Prison with a Criminal Score Sheet reflecting an 124.64 month.

SUMMARY OF THE ARGUMENT

Claim 1

DEFENDANT CLAIM THAT HIS SIXTH, FOURTEENTH AMENDMENT AND DUE PROCESS OF LAW WAS VIOLATED, WHERE COUNSEL'S FAILED TO OBJECT TO THE INTRODUCTION OF THE BLOOD DRAW.

Claim 2

DEFENDANT CLAIMS THAT HIS SIXTH, FOURTEENTH RIGHTS WERE VIOLATED WHERE COUNSEL'S FAILED TO OBJECT OR CHALLENGE AFFIDAVIT FOR PROBABLE CAUSE.

Claim 3

DEFENDANT CLAIMS IN *BRADY*¹ VIOLATION WHERE THE TRIAL COURT ERRED IN SUMMARILY DENYING DEFENDANT'S CLAIM THAT THE STATE WITHHELD EVIDENCE IN THE DEFENDANT TRIAL.

Claim 4

DEFENDANT CLAIMS COUNSEL'S FAILED TO SECURE AN EXPERT WITNESSES.

¹ *Brady v. Maryland*, 83 S.Ct. 1194.

JURISDICTIONAL STATEMENT

This court is vested with jurisdiction to issue all writs necessary to the complete exercise of its jurisdiction pursuant to Article V, section (3)(b)(3) of the Florida Constitution.

Fla. Const. Fla.R.App. 9.030.(A)(2) to review a decision of a district court of appeal that expressly and directly conflicts a decision of the Supreme Court or another district court of appeal on the same point of law.

1. When the trial court allowed the State and defense to violate the Defendant's Sixth, Fourteenth Amendment, and Due Process of Law, the court lost jurisdiction over the subject matter of the Defendant's case, since subject matter jurisdiction implicates fundamental error, this subject may be raised at any time.

2. Article III jurisdiction is always an antecedent question.

3. Hypothetical jurisdiction, that enables a court to resolve contested of law when its jurisdiction is in doubt.

ARGUMENT

In Ground One: Defendant's claim that counsel's failed to object to the Information of Blood Draw, which counsel was well aware that the Issue could have been preserved and raised on appeal but chose to deal with it on trial level.

In Ground Two: Defendant's claim Ineffective of Counsel's has allow a false sworn affidavit made in behalf of Corporal Bell's and Deputy Brian Hagan a Traffic Homicide Investigator. See PAGE 7 of Transcript of Proceeding on line 25 arrest affidavit apparently says Bell says there are no mechanical problems with the vehicle on PAGE 8. Deputy Hagan stated that there was a problem with the power steering in the vehicle. Counsel's failed to challenge the affidavit probable cause between the two officer's statement. *Strickland v. Washington*.

In Ground Three. Defendant claims counsel failed to object to evidence found in a locker 2-weeks prior to going to trial. The evidence was never placed in to the evidence locker.

Counsel's failed on his part to contemporaneously object at trial.

Ground Four: Defendant claims that counsel's failing to secure a expert witnesses in regard to the mechanical condiction of the Defendant of the Defendant vehicle, and rebut the testimony of the State's toxicologist, there was never any mechanical problems with the Defendant vehicle.

1. Defendant has shown that his counsel's fell way below performance under prevailing professional standard under Strickland Test:

2. Defendant shown that his counsel's substantial deficiency affected the fairness and reliability of the proceeding that confidence in the outcome is undermined.

CONCLUSION

Defendant's Franklin McClure pro se certifies that his Brief is presented in good faith and not for the purpose of delay.

I DECLARE UNDER PENALTY OF PERJURY that I have read the foregoing Brief and that facts stated therein are true and correct.

Respectfully submitted,

Franklin McClure / Pro se
FRANKLIN McCLURE
Desoto C.I. Work Camp
13617 S.E. Highway 70
Arcadia, Florida 34266-7800

Petitioner pro se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I placed this document in the hands of correctional officials at Desoto C.I. Annex for mailing to:

- Office of the Attorney General
1515 North Flagler Drive
West Palm Beach, Florida 33401

on this 22 day of August, 2007.

Franklin McClure / Pro se
FRANKLIN McCLURE
Petitioner pro se

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that the foregoing has been computer-generated in Courier New 12-point font.

Franklin McClure / Pro se
FRANKLIN McCLURE
Petitioner pro se