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IN THE SUPREME COURT OF FLORIDA

WILLIAM DOUGLAS FREEMAN,
Petitioner,

-VS-

STATE OF FLORIDA,
Respondent(s).

FILED
THOMAS D. HALL
2012 MAY -9 PM 2:11
CLERK, SUPREME COURT
BY _____

CASE NO.: SC12-446

Lower Tribunal Case No(s): 5D11-4408, 2011-CA-3842

PETITIONER'S BRIEF ON JURISDICTION

ON REVIEW FROM THE FIFTH DISTRICT COURT OF APPEAL OF THE STATE OF
FLORIDA AND THE NINTH JUDICIAL CIRCUIT COURT FOR OSCEOLA COUNTY,
FLORIDA

Petitioner – Pro Se:

William Douglas Freeman
DC# 332787
Zephyrhills Correctional Institution
2739 Gall Blvd.
Zephyrhills, FL 33541-9701

STATEMENT OF CASE AND FACTS

The Petitioner, William Douglas Freeman, filed a 'Petition for Writ of Habeas Corpus' on November 4, 2011, in the Circuit Court of the Ninth Judicial Circuit, in and for Osceola County, Florida, asking the court to issue a writ effectuating his immediate release from unlawful detention due to a conviction obtained by a clear misapplication of the law in relation to the facts of the trial which has ultimately resulted in a manifest miscarriage of justice, and cited **THOMAS v. FLORIDA PAROLE COMM'N**, 872 So.2d 339 (Fla. 2d DCA 2004) ("There is a departure from the essential requirements of law, as grounds for obtaining habeas corpus relief, only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice"). In support of his petition, the Petitioner raised the following issues:

ONE: The trial court erred in allowing a conviction based upon a misapplication of clearly established law concerning the State's inability to clearly show that the alleged crime occurred during the period specified in the statement of particulars, and thus, the conviction has resulted in a manifest miscarriage of justice.

TWO: The trial court committed fundamental error in responding to a jury question in the negative which prejudiced the Petitioner in the presentation of his defense, and for also neglecting to give the State or the defense opportunity to address the question, and thus, the conviction has resulted in a denial of due process and a manifest injustice has occurred.

THREE: The circuit court clerk and the official court reporter are unable to reproduce a proper record for purposes of judicial review, thereby resulting in a manifest miscarriage of justice; a denial of due process under the law; and entitling the Petitioner to a new trial.

On November 16, 2011, without benefit of a response from the State, the Circuit Court entered an order denying the petition for writ of habeas corpus. In this order, Judge Jeffrey M. Fleming simply stated:

"Here, Petitioner does not claim that he is being illegally detained. In fact, his conviction was affirmed and he has had ample opportunity to seek post-conviction relief. Accordingly, his petition must be denied." Id.

On December 20, 2011, the Petitioner filed a Notice of Appeal in the Fifth District Court of Appeal of Florida in case number 5D11-4408. On December 21, 2011, the Petitioner filed his Initial Brief of Appellant. The Petitioner raised a single issue for appeal:

THE TRIAL COURT ERRED BY PROCEDURALLY DENYING THE APPELLANT'S PETITION FOR WRIT OF HABEAS CORPUS WHICH HAS RESULTED IN A MANIFEST MISCARRIAGE OF JUSTICE AND A DENIAL OF DUE PROCESS, WITHOUT FIRST RULING ON THE MERITS OF THE ISSUES.

“When a court of competent jurisdiction finds that a manifest injustice has occurred, it is the responsibility of that court to correct the injustice if it can in habeas corpus proceedings.” ADAMS v. STATE, 957 So.2d 1183 (Fla. 3rd DCA 2006).

The majority of the District Courts of this state have followed the same principle of law: JOHNSON v. STATE, 9 So.3d 640, 642 (Fla. 4th DCA 2009)(“We agree that it is a manifest injustice to deny [the petitioner] the same relief afforded other defendants identically situated. We grant the petition for writ of habeas corpus...”); STEPHENS v. STATE, 974 So.2d 455 ((Fla. 2nd DCA 2008)(“...to prevent a manifest injustice and a denial of due process, relief may be afforded even to a litigant raising a successive claim. In rare circumstances, this Court has exercised its inherent authority to grant a writ of habeas corpus to avoid incongruous and manifestly unfair results”); ZENO v. STATE, 910 So.2d 394, 396 (Fla. 2nd DCA 2005); LAWTON v. STATE, 731 So.2d 60, 61 (Fla. 2nd DCA 1999); and STATE v. McBRIDE, 848 So.2d 287, 291 (Fla. 2003).

The Circuit Court of the Ninth Judicial Circuit and the Fifth District Court of Appeal, have disregarded this long standing principle of law and refused to entertain or address the merit of the issues raised in the Petitioner’s habeas corpus petition. This has resulted in a direct violation of the Petitioner’s due process rights under the Florida and US Constitution’s. An issue that can only be resolved by this State’s highest Court.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that constitutes a direct conflict with a decision of the Florida Supreme Court on the same question of law. See, **Article V, Section 3(b)3 Fla. Const. (1980); Rule 9.030 (a)(2)(A) (iv), Fla.R.App.P.; and ENGLE v. LIGGETT GROUP, INC., 945 So.2d 1246 (Fla. 2006);** also **AQUILERA v. INSERVICES, INC., 905 So.2d 84 (Fla. 2005).**

“The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. 'The scope and the flexibility of the writ – it's capacity to reach all manner of illegal detention – it's ability to cut through barriers of form and procedural mazes – have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility essential to ensure that any miscarriages of justice within it's reach are surfaced and corrected'”; quoting from, **HARRIS v. NELSON, 394 U.S. 286, 291 (1969); see SANTANA v. HENRY, 12 So.3d 843, 846 (Fla. 1st DCA 2009); ANGLIN v. MAYO, 88 So.2d 918, 919 (Fla. 1956)(“If it appears to a court of competent jurisdiction that a man is being illegally restrained of his liberty, it is the responsibility of the court to brush aside formal technicalities and issue such appropriate orders as will do just justice”).**

ARGUMENT

By virtue of refusing to address the merit of the issues raised in the Petitioner's 'Petition for Writ of Habeas Corpus', the lower tribunal, as well as the District Court of Appeal for the Fifth District of Florida, have directly violated the Petitioner's due process rights under the Florida and United States Constitutions. It is the responsibility of the Supreme Court of Florida to police the courts of this state to assure that those constitutional rights bestowed have not been abridged, ignored, or violated in any way. Therefore the issue before this Court now, is one that ultimately requires intervention by this Honorable Court. Jurisdiction should be granted in this case to assure that the the precedents laid down by this Court are being lawfully adhered to by the lower courts of this state. No other relief is available to the Petitioner. To correct what this Court will find to be an obvious miscarriage of justice, requires that this Court grant proper jurisdiction to entertain the subject matter before you.

CONCLUSION

WHEREFORE based upon the foregoing facts and points of law, the Petitioner prays this Honorable Court will **GRANT** jurisdiction in this cause and allow the parties to be heard accordingly. To do anything less would be result in a direct violation of the Petitioner's due process rights and result in a manifest miscarriage of justice.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S.

Mail, postage prepaid, to the Office of the State Attorney General of Florida at 444 Seabreeze

Blvd., Daytona Beach, FL; 5th Floor, on this 4th day of May, 2012.

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