CASE NO. 03 9832

Supreme Court, U.S.
FILED
MAR 0 1 2004
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2003

ORIGINAL

IN RE: SHAIKH SHI'ITE T. AL-AMIN KHASHOGGI, F/K/A KIP A. STERLING, a Certified Law Clerk, Independent Paralegal, as the Next Best Friend of:
KEVIN G. GIPSON, an Incompetent, Individual and Class Member;
LORENZO M. WILLIAMS, an Incompetent, Individual and Class Member,
Petitioner(s).

PETITION FOR AN EXTRAORDINARY WRIT
TO UNITED STATES SUPREME COURT

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

Respectfully Submitted,

/s/ Kevin Gipson
KEVIN G. GIPSON
D.C.# 262264
SUMTER CORR. INSTITUTION
P.O. BOX 667
BUSHNELL, FL. 33513-0667
PETITIONER
CLASS MEMBER

/s/ Lorenzo M Williams
LORENZO M. WILLIAMS
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P.O. BOX 667
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PETITIONER
CLASS MEMBER

/s/ Shaikh Shi'ite T. Al-Amin Khashoggi
SHAIKH SHI'ITE T. AL-AMIN KHASHOGGI
F/K/A KIP A. STERLING, D.C.# 493177
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PETITIONER
NEXT BEST FRIEND

QUESTIONS PRESENTED

Petitioner(s) submit that the following questions presented, answered affirmatively by this Honorable Court, GRANTING an extraordinary writ, will clearly identify how the writ will be in aid of this Court's appellate jurisdiction, indicating what exceptional circumstances warrant the exercise of the Court's discretionary powers, and why adequate relief cannot be obtained in any other form or from any other court. Rule 20.1, United States Supreme Court.

1. WHETHER UNDER THE ALL WRIT ACT, THIS COURT HAS AUTHORITY TO ISSUE COMMANDS AS NECESSARY TO EFFECTUATE ORDERS IT HAS PREVIOUSLY ISSUED AND EXTENDS TO PERSONS WHO WERE NOT PARTIES TO ORIGINAL ACTION ?

2. WHETHER THE LOWER TRIBUNALS HAVE SO DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER WHEREIN THE TRIAL COURTS AND THE DISTRICT COURT OF APPEAL HAVE NUMEROUSLY DECIDED IMPORTANT QUESTIONS IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT; FAILED TO UPHOLD ITS DUTIES AND FOLLOW THE PRECEDENTING LAW ANNOUNCED AND ADOPTED BY THIS COURT, AND ITS DECISION IN THESE AREAS OF LAW; AND THE COURT'S DENIALS DIRECTLY AND BY IMPLICATION CONFLICTS WITH PREVIOUS DECISIONS OF CONTROLLING LAW OF THIS COURT.

3. WHETHER THIS CLASS ACTION CLASS IS IMPORTANT FOR THE ISSUES IT RAISES, TO RESOLVE THE QUESTION OF WHAT CASES A REVERSAL DECISION IS TO BE APPLIED TO SHOULD THIS COURT HOLD THAT A DECISION IN PETITIONER(S)' FAVOR SHALL BE RETROACTIVELY APPLIED TO CASES PARALLEL TO THEIR OWN; CASES SUBSEQUENTLY ADJUDICATED AFTER THE RULING MADE WITHIN BORRELL V. STATE, 478 SO.2D 1185 (FLA. APP. 4 DIST. 1985) ?

4. WHETHER A HOLDING THEREFROM IS BASED UPON THE RATIONAL REASONING OF BORRELL, SUPRA, WHICH HAS INTERPRETED THE STATUTORY LAW OF SECTION 775.084(3)(a)6, FLORIDA STATUTES THAT THE TRIAL COURTS MUST FIND THAT IN APPLYING A HABITUAL OFFENDER SENTENCE, IT MUST BE "NECESSARY FOR THE PROTECTION OF THE PUBLIC," WHICH WAS NOT DONE ?

5. WHETHER THE STANDARD OF "NECESSARY FOR THE PROTECTION OF THE PUBLIC" HAS BEEN A PREREQUISITE IN THE STATE OF FLORIDA IN EXCESS OF FIFTEEN (15) YEARS; A PREREQUISITE LONG AGO MADE PRIOR TO THE ADJUDICATION OF THESE PETITIONER(S)' CASES, APPLICABLE TO THIS CLASS ACTION CASE ?

6. WHETHER RETROACTIVE APPLICATION OF THIS PRESENT CLASS ACTION CASE TO FINALIZED HABITUAL FELONY OFFENDER/HABITUAL VIOLENT FELONY OFFENDER SENTENCES WOULD REQUIRE THE COURTS OF THE STATE OF FLORIDA TO REVISIT THOUSANDS OF SAID TYPE CONVICTIONS AND SENTENCES OF THE POTENTIAL MEMBERS OF THIS CLASS ACTION CASE, AND TO EXTENSIVELY REVIEW STALE RECORDS TO DETERMINE IF THE "NECESSARY FOR THE PROTECTION OF THE PUBLIC" FINDINGS WERE MADE AND/OR DISPUTED AT TRIAL BY THE JURY AND/OR BY THE SENTENCING COURT ?

7. WHETHER A HOLDING THEREFROM WOULD SO MOVE THIS COURT TO NOT EXPRESSLY LIMIT RETROACTIVE APPLICATION OF ITS DECISION REVERSING THE LOWER TRIBUNALS TO NONFINAL CASES BECAUSE APPLYING A DECISION TO FINAL CASES WOULD NOT HAVE AN ADVERSE EFFECT ON THE ADMINISTRATION OF JUSTICE, BUT WOULD PROVIDE THE THOUSANDS OF POTENTIAL CLASS MEMBERS WHO STAND TO BE AFFECTED BY THIS CLASS ACTION CASE WITH THE FUNDAMENTAL DUE PROCESS AND THE EQUAL PROTECTION OF THE LAW THAT HAS BEEN THUSLY DENIED, CONTRARY TO AMENDMENT FOURTEEN, UNITED STATES CONSTITUTION, DISTINGUISHING WITT V. STATE, 387 SO.2D 922 (FLA. 1980) WITH STOVALL V. DENNO, 87 S.CT. 1967 (1967); WASHINGTON V. GLUCKSBERG, 117 S.CT. 2258 (1997) ?

8. WHETHER THE FAILURE OF THE LOWER TRIBUNALS TO AFFORD THESE CLASS MEMBER OF THEIR GUARANTEED RIGHTS AFFORDED BY AMENDMENT FOURTEEN, UNITED STATES CONSTITUTION HAVE RESULTED IN A VIOLATION OF THE EX POST FACTO CLAUSE WHEN APPLIED TO PERSONS, LIKE PETITIONER(S), WHOSE OFFENSES WERE COMMITTED AFTER THE EFFECTIVE DATE OF BORRELL AND SIMILAR CASES ?

9. WHETHER PETITIONER(S) HAVE COMPELLINGLY ESTABLISHED TO THIS COURT THE ELEMENTS OF AN EQUAL PROTECTION CLAIM, AMONGST OTHERS, AS OTHERWISE ENTITLEMENTS TO RELIEF INCLUDING ACTUAL INNOCENCE AND NEWLY DISCOVERED EVIDENCE AS INDEPENDENT CLAIMS, AS WELL AS CLAIMS CONSISTENT WITH CLASS ACTIONS SEEN BELOW, IN ACCORDS TO CITY OF CLEBURNE, TEXAS V. CLEBURNE LIVING CENTER, 473 U.S. 432, 438 (1985) ?

10. WHETHER PETITIONER(S) HAVE IDENTIFIED FOR THIS COURT, TO CERTIFY A CLASS ACTION, A RIGOROUS ANALYSIS TO DETERMINE THAT THE ELEMENTS OF THE CLASS ACTION RULE OF PROCEDURE ARE SATISFIED ?

11. WHETHER THE COMMON QUESTIONS OF LAW OR FACT PREDOMINATE OVER THE INDIVIDUAL QUESTIONS OF THE SEPARATE MEMBERS AND THAT THE CLASS ACTION BE MANAGEABLE AND SUPERIOR TO OTHER AVAILABLE METHODS OF FAIRLY ADJUDICATING THE CONTROVERSY ?

12. WHETHER SEEKING CERTIFICATION OF A CLASS ACTION UNDER THE RULE, PETITIONER(S) HAVE THE BURDEN OF ESTABLISHING THAT THE CASE IS CERTIFIABLE AS A CLASS ACTION ?

13. WHETHER THE DETERMINATION THAT A CASE MEETS THE REQUIREMENTS OF A CLASS ACTION IS A FACTUAL FINDING THAT IS WITHIN THIS COURT'S DISCRETION ?

14. WHETHER THE ANALYSIS TO BE UNDERTAKEN BY THE COURT IN DETERMINING THAT PURPORTED CLASS REPRESENTATIVES CAN PROVE THEIR OWN INDIVIDUAL CASES, AND BY SO DOING, NECESSARILY PROVE THE CASES FOR EACH ONE OF THE TENS OF THOUSANDS OF OTHER MEMBERS OF THE CLASS ?

15. WHETHER APPLYING THIS ANALYSIS TO THE INSTANT CASE, PETITIONER(S) HAVE SHOWN THAT THE CLASS IS COMPRISED OF PRE-TRIAL DETAINEES WHO QUALIFY AS RECIDIVIST'S, PROBATIONER'S, AND COMMUNITY CONTROL RECIPIENTS WHO ARE SENTENCED AS RECIDIVISTS; AND STATE PRISON INMATES, ALL WHO

WERE SELECTIVELY PROSECUTED AS HABITUAL FELONY OFFENDERS/HABITUAL VIOLENT FELONY OFFENDERS PURSUANT TO SECTION 775.084, FLORIDA STATUTES, SHOWING NUMEROSITY, COMMONALITY AND SUPERIORITY, MAKING THE CASE MANAGEABLE AND UPHOLD THE PURPOSE OF THE CLASS ACTION RULE ?

16. WHETHER PETITIONER(S) INDIVIDUAL ISSUES, IN ADDITION TO THE COMMON ISSUES OF THE CLASS MEMBERS AND THE CLASS CERTIFICATION OF THE ISSUES OF NUMEROSITY AND COMMONALITY SHOULD BE UPHELD PURSUANT TO RODRIGUEZ DE QUIJAS V. SHEARSON/AMERICAN EXPRESS, 109 S. CT. 1917 (1989) ?

17. WHETHER THE THRESHHOLD AND SUBSTANTIAL PROCEDURAL QUESTION OF WHETHER THIS COURT, ON A PETITION FOR EXTRAORDINARY WRIT MUST SET ASIDE AN UNLAWFUL CONVICTION AND/OR SENTENCE UPON DETERMINING WHETHER THE COLLATERAL ATTACKS ARE BARRED WHERE THE INITIAL PLEADINGS WHICH PRECEDED THIS COURT'S PRONOUNCEMENT UNDER CERTIORARI REVIEW IN ACCORDS TO FLANDERS V. GRAVES, 299 F.3D 974 (8TH CIR. 2002) ?

18. WHETHER THE PRIMARY ISSUE HERE IS A SUBSTANTIVE DUE PROCESS OF LAW WHICH IS A SUMMARIZED CONSTITUTIONAL GUARANTEE OF RESPECT FOR THE PERSONAL RIGHTS WHICH ARE SO ROOTED IN THE TRADITIONS AND CONSCIENCE OF OUR PEOPLE AS TO BE RANKED AS FUNDAMENTAL, PURSUANT TO WASHINGTON V. GLUCKSBERG, 117 S.CT. 2258 (1997) ?

19. WHETHER PURSUANT TO SUPREME COURT RULE 20.4, PETITIONER(S) CONTENTION THAT THIS PETITION SEEKING A WRIT OF HABEAS CORPUS AND/OR WRIT OF ERROR CORAM NOBIS COMPLIES WITH THE REQUIREMENTS OF 28 U.S.C. § 2241 AND § 2242 ?

20. WHETHER SECTION 775.084, FLORIDA STATUTES IS UNCONSTITUTIONAL FOR THE FLORIDA LEGISLATURE'S REMOVAL FROM THE JURY THE ASSESSMENT OF FACTS THAT INCREASE THE PRESCRIBED RANGE OF PENALTIES TO WHICH A CRIMINAL DEFENDANT IS EXPOSED ?

21. WHETHER SECTION 775.084, FLORIDA STATUTES IS UNCONSTITUTIONAL WHEREAS IT VIOLATES THE SINGLE SUBJECT REQUIREMENT OF THE FLORIDA CONSTITUTION ?

22. WHETHER SECTION 775.084, FLORIDA STATUTES IS UNCONSTITUTIONALLY INEQUITABLE, STANDARDLESS, IRRATIONAL, VAGUE, AND SUBJECT TO ARBITRARY AND CAPRICIOUS APPLICATION; PROVIDES NO DUE PROCESS OF LAW; AND VIOLATES THE SEPARATION OF POWERS DOCTRINE ?

23. WHETHER SECTION 775.084, FLORIDA STATUTES IS AN UNCONSTITUTIONALLY LEGISLATIVE ENACTED STATUTE AND CONSTITUTIONALLY INVALID REQUIRING THAT IT BE STRICKEN IN ITS ENTIRETY, UNTIL MADE VALID, WITH RETROACTIVITY REQUIRING THAT DEFENDANT'S SENTENCED THERETO MUST BE AFFORDED A GUIDELINE SENTENCE PURSUANT TO RULE 3.701, FLORIDA RULES OF CRIMINAL PROCEDURE, OR TO THAT OF A SENTENCE NO MORE THAN THE STATUTORY MAXIMUM PURSUANT TO SECTION 775.082, FLORIDA STATUTES ?

24. WHETHER THE TRIAL COURT DEPARTED AND EXCEEDED FROM THE GUIDELINES SENTENCE RECOMMENDATION IN SENTENCING MANDATORILY INSTEAD OF PERMISSIVELY ?

25. WHETHER THE TRIAL COURT FAILED TO ASSESS THE FACTS ON THE STATE'S FAILURE

TO PROVE BEYOND A REASONABLE DOUBT, RELYING ON THE PREPONDERANCE OF THE EVIDENCE STANDARD TO SHOW THAT THE MAXIMUM SENTENCE BEYOND THE STATUTORY RANGE AUTHORIZED WAS "NECESSARY FOR THE PROTECTION OF THE PUBLIC" REQUIRED BY SECTION 775.084, FLORIDA STATUTES ?

26. WHETHER SECTION 775.084, FLORIDA STATUTES DOES NOT COMPORT TO CONSTITUTIONAL LIMITATIONS AND BY DEFINITION IS ILLEGAL AND MAY BE ATTACKED AT ANY TIME ?

27. WHETHER IN A PROSECUTION AS A HABITUAL OFFENDER PURSUANT TO SECTION 775.084, FLORIDA STATUTES AS A RECIDIVIST, SIMILAR TO ESTABLISHED FLORIDA LAW IN A PROSECUTION FOR UNLAWFUL POSSESSION OF A FIREARM BY A CONVICTED FELON UNDER SECTION 790.23, FLORIDA STATUTES, PREJUDICIAL ERROR RESULTS WHEN THE TYPE OF THE PRIOR CONVICTION AS WELL AS THE FACT OF SUCH CONVICTION IS ADMITTED INTO EVIDENCE IN ORDER TO ESTABLISH DEFENDANT'S STATUS AS A CONVICTED FELON ?

28. WHETHER IN A PROSECUTION AS A HABITUAL OFFENDER PURSUANT TO SECTION 775.084, FLORIDA STATUTES AS A RECIDIVIST, WHERE FLORIDA COURTS HAVE NOTED THAT A DEFENDANT'S PRIOR RECORD IS A SUBSTANTIAL ELEMENT TO BE PROVED BY THE STATE AND THUS HAVE PERMITTED SUCH IF EVIDENCE TO BE HEARD BY THE JURY AS LONG AS THE EVIDENCE OF THE PRIOR RECORD DID NOT BECOME A FEATURE OF THE TRIAL/HEARING UNDER SECTION 790.23, FLORIDA STATUTES IN CHARGING SAID SAME IN AN INDICTMENT/INFORMATION, SHOULD ALSO BE CHARGED IN PROSECUTIONS PURSUANT TO SECTION 775.084, FLORIDA STATUTES ?

29. WHETHER IT WAS PREJUDICIAL ERROR AND/OR AN IMPERMISSIBLE DELEGATION OF JUDICIAL POWER FOR THE FLORIDA LEGISLATURE TO DELEGATE TO TRIAL COURT JUDGES TO MAKE FINDINGS OF FACT IN A PROSECUTION PURSUANT TO SECTION 775.084, FLORIDA STATUTES BE SO PREJUDICIAL AS TO VITIATE A TRIAL AND/OR ALFORD PLEA ?

30. WHETHER A TRIAL COURT FINDING A DEFENDANT TO BE A HABITUAL OFFENDER PURSUANT TO SECTION 775.084, FLORIDA STATUTES DID NOT SATISFY THE STATUTORY REQUIREMENTS FOR SPECIFIC FINDINGS BEFORE SENTENCING FOR THE PURPOSE OF IDENTIFICATION IN HAVING THE DEFENDANT FINGERPRINTED WHERE COPIES OF PRIORS WERE NOT CERTIFIED DENY DUE PROCESS WHERE THERE IS A POSSIBILITY THAT THE RECORDS ARE NOT DEFENDANT'S, WHERE DEFENDANT HAS A COMMON NAME; WHERE THE DEFENDANT'S PRIOR RECORD, FOR SENTENCING PURPOSES IS UNDULY PREJUDICED ?

31. WHETHER THE TRIAL COURT COMMITS FUNDAMENTAL REVERSIBLE ERROR IN CLASSIFYING AND SENTENCING A DEFENDANT PURSUANT TO SECTION 775.084, FLORIDA STATUTES VIOLATES THE DOUBLE JEOPARDY CLAUSE UNDER MONGE V. CALIFORNIA, 118 S.CT. 2246 (1998) TO DEPART FROM THE GUIDELINES RANGE BE IMPROPER ON BASIS OF PRIOR RECORD ALREADY FACTORED INTO THE GUIDELINES SENTENCING RANGE ?

32. WHETHER APPRENDI V. NEW JERSEY, 120 S.CT. 2348 (2000) OVERRULES SPECHT V.

PATTERSON, 87 S.CT. 1209 ...67) AS RELIED ON BY FLORIDA COURTS IN ENTSEY V. STATE, 383 So.2d 219 (FLA.1980) TO PROVIDE VALIDITY TO SECTION 775.084, FLORIDA STATUTES ?

33. WHETHER APPRENDI V. NEW JERSEY, DOES OVERRULE SPECHT V. PATTERSON, AS RELIED ON BY FLORIDA COURTS IN ENTSEY V. STATE, WHERE THE FLORIDA SUPREME COURT REJECTED A PETITIONER'S DUE PROCESS ARGUMENT THAT PARTICULAR FACTS REQUIRED FOR HIS SENTENCING UNDER A HABITUAL OFFENDER STATUTE WERE SUBJECT TO STANDARD OF BEING PROVED BEYOND A REASONABLE DOUBT TO A JURY, WHICH WAS A RELIANCE UPON A UNCONSTITUTIONALLY LEGISLATIVE ENACTED STATUTE; ARE HABITUAL OFFENDER SENTENCES PURSUANT TO SECTION 775.084, FLORIDA STATUTES INVALID FOR FAILING TO COMPORT TO CONSTITUTIONAL LIMITATIONS, AND IF SO, WOULD THE ENHANCED SENTENCING FOR RECIDIVISM BASED UPON THE UNCONSTITUTIONALLY LEGISLATIVE ENACTED STATUTE CREATE AN EX POST FACTO VIOLATION ?

34. WHETHER THE TRIAL COURT COMMITTED FUNDAMENTAL REVERSIBLE ERROR IN ITS ACCEPTANCE OF THE FACTUAL BASIS' MADE BY THE STATE'S LITERAL INTERPRETATION OF SECTION 787.01, FLORIDA STATUTES, ALLOWING PETITIONER TO PLEAD TO A NON-EXISTENT CRIME OF KIDNAPPING VIOLATE HIS RIGHTS TO DUE PROCESS AN EQUAL PROTECTION OF THE LAW PURSUANT TO AMENDMENTS FIVE, SIX, AND FOURTEEN, UNITED STATES CONSTITUTION ?

35. WHETHER THE TRIAL COURT ERRED IN ACCEPTING PETITIONER'S PLEA ITHOUT CONDUCTING A FORMAL INQUIRY TOWARDS A JUDICIAL DETERMINATION OF FACTUAL FINDINGS PURSUANT TO RULES 3.170(J) AND 3.172(A), FLORIDA RULES OF CRIMINAL PROCEDURE IN ACCORDS TO AMENDMENT FOURTEEN UNITED STATES CONSTITUTION ?

36. WHETHER DEFENSE COUNSEL WAS INEFFECTIVE, INCOMPETENT, AND LEGALLY DEFICIENT WHEREIN COUNSEL PROVIDED MISADVICE ON THE LEGALITIES OF THE CHARGE OF KIDNAPPING BY FAILING TO PROPERLY INVESTIGATE THE FACTS, ADVISING PETITIONER THAT THERE WAS NOT A VIABLE DEFENSE CONTRARY TO FAISON V. STATE, 426 So.2d 963 (FLA. 1983), SHOWING THAT THE PLEA AND SENTENCING PROCEEDING BEFORE THE TRIAL COURT WERE FUNDAMENTALLY UNFAIR OR UNRELIABLE PURSUANT TO LOCKHART V. FRETWELL, 113 S.CT. 839 (1993); STRICKLAND V. WASHINGTON, 104 S.CT. 2052 (1984); AMENDMENTS SIX AND FOURTEEN, UNITED STATES CONSTITUTION ?

37. WHETHER INSUFFICIENT EVIDENCE OF IDENTITY WARRANTS A REVERSAL BECAUSE THE ACCUSED'S GUILT IS NOT ESTABLISHED WITH SUBSTANTIAL AND COMPETENT EVIDENCE WHEN THE STATE FAILS TO PROVE THE IDENTITY OF THE ACCUSED BEYOND A REASONABLE DOUBT, A COURT MUST GRANT A JUDGMENT OF ACQUITTAL PURSUANT TO MCNEIL V. STATE, 104 FLA. 360, 139 So. 791 (FLA. 1932) WHEREAS THIS RULE APPLIES EVEN THOUGH THE JURY HAS THE PROVINCE TO DECIDE FACTUAL ISSUES PURSUANT TO TIBBS V. STATE, 337 So.2d 788 (FLA. 1976) SAID NOT TO VIOLATE PETITIONER'S RIGHTS AFFORDED IN ACCORDS TO AMENDMENTS FOUR, FIVE, SIX, AND FOURTEEN, UNITED STATES CONSTITUTION ?

38. WHETHER A VICTIM'S IDENTIFICATION WERE INSUFFICIENT PURSUANT TO FLORIDA LAW, AND A DEFENDANT, PURSUANT TO SCHLUP V. DELO, 513 U.S. 298 (1995); O'NEAL V. McANINCH, 513 U.S. 432 (1995), SHOULD THROUGH NEW RELIABLE EVIDENCE OF A SWORN AFFIDAVIT OF A NEW WITNESS, DISCOVERED THROUGH DUE DILIGENCE THAT HE IS ACTUALLY INNOCENT, BE ENTITLED TO A NEW TRIAL OR A EVIDENTIARY HEARING IN ACCORDS TO AMENDMENTS SIX AND FOURTEEN, UNITED STATES CONSTITUTION ?

39. WHETHER DEFENSE COUNSEL WHO FAILED TO RAISE AN ISSUE ON APPEAL WHICH NEGATES TWO (2) LIFE SENTENCES PETITIONER RECEIVED WHEREIN, ACCORDING TO FLORIDA LAW SHOULD HAVE GRANTED A JUDGMENT OF ACQUITTAL WHERE DEFENDANT'S GUILT WAS NOT ESTABLISHED WITH SUBSTANTIAL AND COMPETENT EVIDENCE WHEN THE STATE FAILED TO PROVE THE IDENTITY OF THE DEFENDANT BEYOND A REASONABLE DOUBT, CONSTITUTE CONSTITUTIONALLY DEFICIENT ASSISTANCE PURSUANT TO STRICKLAND V. WASHINGTON, 104 S.CT. 2052 (1984); UNITED STATES V. KISSICK, 69 F.3D 1048 (10TH CIR. 1995); BANKS V. REYNOLDS, 54 F.3D 1508 (10TH CIR. 1995), SHOWING THAT DEFENDANT'S JURY TRIAL AND SENTENCING PROCEEDINGS BEFORE THE TRIAL COURT ARE FUNDAMENTALLY UNFAIR OR UNRELIABLE PURSUANT TO LOCKHART V. FRETWELL, 113 S.CT. 839 (1993), CONTRARY TO AMENDMENTS FIVE, SIX, AND FOURTEEN, UNITED STATES CONSTITUTION ?

OPINIONS BELOW

Petitioner Gipson:

The opinion of the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida, Order Denying in Part Defendant's Motion to Correct Illegal Sentence; and Order to Show Cause, was issued on July 24, 2001, and appears in the joint appendix, Volume II, Exhibit 1, Appendix B, to this petition.

The opinion of the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida, Order Granting in Part Defendant's Motion to Correct Illegal Sentence; Order Appointing the Public Defender; and Directions to the State, was issued on October 3, 2001, and appears in the joint appendix, Volume II, Exhibit 1, Appendix C, to this petition.

The opinion of the Florida Supreme Court, Order Denying Petition, was issued on March 5, 2002, and appears in the joint appendix, Volume II, Exhibit 1, Appendix D, to this petition.

The opinion of the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida, Order Denying Petition for Writ of Error Coram Nobis, was issued on August 6, 2002, and appears in the joint appendix, Volume II, Exhibit 1, Appendix E, to this petition.

The opinion of the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida, Order Denying Defendant's Motion to Correct Illegal Sentence, was issued on December 17, 2002, and appears in the joint appendix, Volume II, Exhibit 1, Appendix F, to this petition.

The opinion of the Second District Court of Appeal, State of Florida, was issued on December 18, 2002, and appears in the joint appendix, Volume II, Exhibit 1, Appendix G, to this petition.

The opinion of the Second District Court of Appeal, State of Florida, Order Denying Motion for Rehearing and Motion for Rehearing En Banc or Clarification, was issued on February 7, 2003, and appears in the joint appendix, Volume II, Exhibit 1, Appendix H, to this petition.

The mandate of the Second District Court of Appeal, State of Florida, was issued on March 6, 2003, and appears in the joint appendix, Volume II, Exhibit 1, Appendix I, to this petition.

The opinion of the Eleventh Circuit, United States Court of Appeals, was issued on April 9, 2003, and appears in the joint appendix, Volume II, Exhibit 1, Appendix J, to this petition.

The opinion of the United States Supreme Court, returning petitioner's Petition for Writ of Certiorari, identified and appearing in the joint appendix, Volume I, Appendix A, to this petition, was issued on June 6, 2003, and appears in the joint appendix, Volume II, Exhibit 2, Appendix K, to this petition.

The opinion of the Florida Supreme Court, Order dismissing Petition to Invoke All Writs Jurisdiction, was issued on September 23, 2003, and appears in the joint appendix, Volume II, Exhibit 3, Appendix L, to this petition.

Petitioner Williams:

The opinion of the Circuit Court of the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida, was issued on September 23, 2002, and appears in the joint appendix, Volume IV, Exhibit 1, Appendix N, to this petition.

The opinion of the Second District Court of Appeal, State of Florida, was issued on January 8, 2003, and appears in the joint appendix, Volume III, Exhibit 1, Appendix O, to this petition.

The opinion of the Second District Court of Appeal, State of Florida, Order Denying Motion for Rehearing and Motion for Rehearing En Banc or Clarification, was issued on January 31, 2003, and appears in the joint appendix, Volume III, Exhibit 1, Appendix P, to this petition.

The opinion of the United States Supreme Court, denying petitioner's Petition for Writ of Certiorari, identified and appearing in the joint appendix, Volume III, Appendix M, to this petition, was issued on May 27, 2003, and appears in the joint appendix, Volume III, Exhibit 2, Appendix Q, to this petition.

Petitioner Al-Amin Khashoggi:

No opinions appear for this petitioner who, as the Next Best Friend, is assisting petitioners Gipson and Williams in this class action whereas, issues presented by inmates helping fellow inmates with legal matters have been litigated on numerous occassions in our courts. See, generally, Jerald, J., Director, Annotation, Relief Under Federal Civil Rights Act to State Prisoners Complaining of Interference with Access to Courts, 23 A.L.R., Fed. 6 (1975). See also Johnson v. Avery, 393 U.S. 483 (1968); Hooks v. Wainwright, 352 F. Supp. 1103 (M.D. Fla. 1973); accords, Bounds v. Smith, 430 U.S. 817 (1977); Cummings v. Chiles, 600 So. 2d 1135 (Fla. App. 1 Dist. 1992).

This petitioner has an interest in the outcome of these proceedings whereas he too is a recidivist sentenced pursuant to Section 775.084, Florida Statutes, identified and appearing in the joint appendix, Volume III, Exhibit 3, Appendix R, to this petition.

JURISDICTION

This court's jurisdiction is invoked under Title 28 U.S.C. § 1251; Title 28 U.S.C. § 1651(a); Amendment XI, United States Constitution; Article III, United States Constitution; Rules 18, 19, 20, and 23, Federal Rules of Civil Procedure; and Supreme Court Rules 17 and 20.

Petitioner(s)' further contend that an Extraordinary Writ should be granted in this cause for the following compelling reasons and shows:

> HOW THE WRIT WILL BE IN AID OF THE COURT'S APPELLATE JURISDICTION, WHAT EXCEPTIONAL CIRCUMSTANCES WARRANT THE EXERCISE OF THE COURT'S DISCRETIONARY POWERS, AND WHY ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT. --- UNITED STATES SUPREME COURT, RULE 20.1.

This court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. See, e.g., Jones v. Lilly, 37 F.3d 964 (3d Cir. 1994); United States v. Jawanmard, 767 F. Supp. 1109 (D. Kansas 1991) (Courts have power to vacate conviction on equitable grounds under the All-Writs Act).

Petitioner(s) submit further that under 28 U.S.C. § 1651, forms of habeas corpus writs are not limited to those recognized in Section 2241 of this title or to those recognized in this country when this section in its original form first came into existence, but this section is a legislatively approved source of procedural instruments designed to achieve the rational ends of the law as new problems arise. Phillips v. Hiatt, 83 F. Supp. 935 (D.C. Delaware 1949).

Moreover, under the All Writs Act, this Court has authority to issue commands as

necessary to effectuate or as it has previously issued and extends to persons who were not parties to original action but are in position to frustrate implementation of court order. Mongelli v. Mongelli, 849 F. Supp. 215 (S.D.N.Y. 1994).

Petitioner(s) contend that adequate relief cannot be obtained in any other form or from any other court premised upon the constitutional and statutory provisions involved within this class action case, further identified in the statement of the case, both herein-below showing:

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions, treaties, statutes, ordinances, and regulations involved in this class action case are lengthy and their apparent text shall be set out in the joint appendix, Volume V, Appendix S, to this petition.

STATEMENT OF THE CASE

WHEREAS the lower tribunals have so departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power wherein the trial court's and the district court of appeal have numerously decided important questions in a way that conflicts with relevant decisions of this Court; and failed to uphold its duties and follow the precedenting law announced and adopted by this Court, and its decision in these area of law; and the court's denials directly and by implication conflicts with previous decisions of controlling law of this Court. See, e.g., Supreme Court Rule 10;

WHEREAS this class action case is important for the issues it raises. To resolve the question of what cases a reversal decision is to be applied to, this Court must hold that a decision in petitioner(s)' favor shall be retroactively applied to cases parallel to their own, cases subsequently adjudicated after the ruling made within Borrell v. State, 478 So.2d 1185 (Fla. App. 4 Dist. 1985);

WHEREAS a holding therefrom is based upon the rational reasoning of Borrell, supra, which has interpreted the statutory law of Section 775.084 (3)(a)6, Florida Statutes that the trial courts must find that in applying a habitual offender sentence, it must be "necessary for the protection of the public," which was not done;

WHEREAS the standard of "necessary for the protection of the public" has been a prerequisite in the State of Florida in excess of fifteen (15) years; a prerequisite long ago made prior to the adjudication of these petitioner(s)' cases, applicable to this class action case;

WHEREAS retroactive application of this present class action case to finalized habitual felony offender/habitual violent felony offender sentences would require the courts of the State of Florida to revisit thousands of said type convictions and sentences of the potential members of this class action case, and to extensively review State records

to determine if the "necessary for the protection of the public" findings were made and/or disputed at trial by the jury and/or the sentencing by the court. Therefore, petitioner(s) would so move this Court to not expressly limit retroactive application of its decision reversing the lower tribunals to nonfinal cases because applying a decision to final cases would not have an adverse effect on the administration of justice, but would provide the thousands of potential class members who stand to be affected by this class action case with the fundamental due process and the equal protection of the law that has been thusly denied, contrary to Amendment XIV, United States Constitution, distinguishing Lilitt v. State, 387 So.2d 922 (Fla. 1980). See also Stovall v. Denno, 87 S.Ct. 1967 (1967); Washington v. Glucksberg, 117 S.Ct. 2258 (1997);

WHEREAS the failure of the lower tribunals to afford these class members of their guaranteed rights afforded by Amendment XIV, United States Constitution have resulted in a violation of the ex post facto clause when applied to persons, like petitioner(s), whose offenses were committed after the effective date of Borrell and similiar cases;

WHEREAS petitioner(s) shall compellingly establish to this Court the elements of an equal protection claim, amongst others, as otherwise entitlements to relief including actual innocence and newly discovered evidence as independent claims; as well as claims consisten with class actions. See, e.g., City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432, 438 (1985) (The Equal Protection Clause of the Fourteenth Amendment requires that no State shall "deny to any person within its jurisdiction the equal protection of the laws.");

WHEREAS petitioner(s) would further identify that for this Court to certify a class action, it must first, after a "rigorous analysis," determine that the following elements of the class action rule of procedure are satisfied: (1) the members of the class are so numerous that separate joinder of each member is impracticable; (2) the claim of the representative party raises questions of law or fact raised by the claim of each member in the class; (3) the claim of the representative party is typical of the claims of each of the other members of the class; and (4) the representative party can adequately represent the interest of each of the other members of the class. Giordano v. Radio Corp. of Am., 183 F.2d 558, 560 (3d Cir. 1950).

WHEREAS the common questions of law or fact predominate over the individual questions of the separate members and that the class action be manageable and superior to other available methods of fairly adjudicating the controversy. Weeks v. Bareco Oil Co., 125 F.2d 84, 88-90, 93-94 (7th Cir. 1941).

WHEREAS seeking certification of a class action under this rule, petitioner(s) have the burden of establishing that the case is certifiable as a class action. Mannings v. Board of Public Inst. of Hillsborough County, Fla., 277 F.2d 370 (5th Cir. 1960).

WHEREAS the determination that a case meets the requirements of a class action is a factual finding that is within this Court's discretion;

WHEREAS IN Humana, Inc. v. Castillo, 728 So. 2d 261 (Fla. 2d DCA 1998), the court summarized the analysis to be undertaken by the court in determining whether purported class representatives can prove their own individual cases and, by so doing, necessarily prove the cases for each one of the thousands of other members of the class. If they cannot, a class should not be certified. See also Pentland v. Dravo Corp., 152 F. 2d 851 (3d Cir. 1945); Oppenheimer v. F.J. Young & Co, 144 F. 2d 387 (2d Cir. 1944).

WHEREAS applying this analysis to the instant case, petitioner(s) show that the class is comprised of pre-trial detainees who qualify as recidivist's; probationer's and community control recipients who were sentenced as recidivists; and State prison inmates, all who were selectively prosecuted as habitual felony offenders/habitual violent felony offenders pursuant to Section 775.084, Florida Statutes, showing numerosity, commonality and superiority, making the case manageable and upholds the purpose of the class action rule. Windham v. Am. Brands, Inc., 565 F.2d 59, 68 (4th Cir. 1977);

WHEREAS petitioner(s) additionally have individual issues, they believe that the common issues of the class members and the class certification of the issues of numerosity and commonality should be upheld. See, e.g., Rodriguez De Quijas v. Shearson/American Express, 109 S. Ct. 1917 (1989) where this Court held

> If a precedent of this Court has direct application in a case, yet appears to reasons rejected in some other line of decisions, the Lather courts I should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.

Id. Bottoson v. Moore, 833 So. 2d 693, 695 (Fla. 2002), cert. den., 123 S.Ct. 662 (2002);

WHEREAS the threshold and substantial procedural question is whether this Court, on a petition for extraordinary writ must set aside an unlawful conviction and/or sentence upon determining whether the collateral attacks are barred where the initial pleadings which preceded this Court's pronouncement under certiorari review. See, e.g., Flanders v. Graves, 299 F.3d 974 (8th Cir. 2002) (A habeas petitioner who can show actual innocence can get his constitutional claims considered on their merits in petition for habeas relief, even if he can not show cause and prejudice for procedurally defaulting on those claims);

WHEREAS the primary issue here is a substantive due process of law which is a summarized constitutional guarantee of respect for the personal rights which are so rooted in the traditions and conscience of our people as to be ranked as fundamental. Washington v. Glucksberg, 117 S.Ct. 2258 (1997); and

WHEREAS pursuant to Supreme Court Rule 20.4, petitioner(s) contend that this petition is seeking a writ of habeas corpus and/or writ of error coram nobis, and complies with the requirements of 28 U.S.C. § 2241 and 2242. In particular with the provision in the last paragraph of § 2242, which requires a statement of the "reasons for not making application to

the district court of the district in which the applicant is held, petitioner(s) state that their reasons were premised upon the applicability of Supreme Court Rule 10. Moreover, to justify the granting of a writ of habeas corpus, the petitioner(s) show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JUN 0 6 2002
THOMAS K. KAHN
CLERK

NO. 02-12832-E

IN RE: LORENZO MCCLOUD WILLIAMS,

Petitioner.

Application for Leave to File a Second or Successive
Habeas Corpus Petition, 28 U.S.C. § 2244(b)

Before ANDERSON, DUBINA and WILSON, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. § 2244(b)(3)(A), as amended by § 106 of the Antiterrorism and Effective Death Penalty Act of 1996, Lorenzo McCloud Williams has filed an application seeking an order authorizing the district court to consider a second or successive petition for a writ of habeas corpus. Such authorization may be granted only if:

> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
>
> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2).

In his application, Williams indicates that he wishes to raise one claim of trial court and appellate court error in a second or successive § 2254 petition, based upon newly discovered evidence. Williams claims that the identification evidence used to convict him was weak and unsupported by any other evidence. He argues that he has an affidavit from Sean McNair, whom he encountered in prison in September 2000, ten years after his convictions. Williams claims that this affidavit contains newly discovered evidence of his innocence. Although Williams has not attached a copy of the affidavit, he alleges that it establishes his alibi for the night of August 22, 1990, ostensibly the night when one or both of the armed robberies occurred. He further alleges that the affidavit corroborates his claim, raised in the state courts and federal district court, that his trial counsel was ineffective for failing to locate three other alibi witnesses who, along with Williams and McNair, were "drinking liquor and beer in large quantities" at McNair's residence on the night in question. Williams alleges that McNair also stated that, on that same night, Williams and the three others left McNair's residence at about 11:15 p.m. and that, a couple of hours later, McNair saw Williams asleep in the back seat of a police vehicle.

Apparently, Williams believes that this "newly discovered evidence" shows that he did not commit one or both of the robberies in question. However, aside from Williams' failure to inform the Court of the date or dates of the alleged robberies, it is clear from McNair's alleged statements that he was not with Williams for the entire evening in question. This affidavit thus would not be sufficient to convince a reasonable factfinder of Williams' innocence. Furthermore, the existence of alibi witnesses, whether or not McNair was one of them, was not unknown to Williams at the time he filed his initial § 2254 petition.

Accordingly, because Williams has failed to make a prima facie showing of the existence of

either of the grounds set forth in § 2244(b)(2), his application for leave to file a second or successive petition is hereby DENIED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 03-11369-A

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
APR 09 2003
THOMAS K. KAHN
CLERK

IN RE: KEVIN GIPSON,

Petitioner.

Application for Leave to File a Second or Successive Habeas Corpus Petition, 28 U.S.C. § 2244(b)

Before : TJOFLAT, BIRCH and MARCUS, Circuit JUDGES.

BY THE PANEL:

Pursuant to 28 U.S.C. § 2244(b)(3)(A), as amended by § 106 of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Gipson has filed an application seeking an order authorizing the district court to consider a second or successive petition for a writ of habeas corpus. Such authorization may be granted only if:

> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
>
> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for the constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2).

In this application, Gipson indicates that he wishes to raise the following claims in a second or successive petition: (1) the trial court erred in accepting his guilty plea because the court did not receive a complete factual proffer concerning the kidnaping charges, and (2) his trial counsel was ineffective for stipulating to the factual basis offered regarding his guilty plea to the kidnaping charges.

Gipson states that his claims are supported by new rules of law and cites to several Florida state court cases. These state cases, however, do not qualify under the statute because they are not new rules of constitutional law made retroactive to cases on collateral review by the Supreme Court. 28 U.S.C. § 2244(b)(2)(A). Thus, Gipson has not demonstrated that his claims meet the statutory criteria for filing a second or successive habeas corpus petition. See 28 U.S.C. § 2244(b)(2)(A), (B). Accordingly, because Gipson has not made a prima facie showing of the existence of either of the grounds set forth in § 2244(b)(2), his application for leave to file a second or successive habeas petition is DENIED.