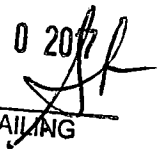


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UNION CORRECTIONAL INSTITUTION

AUG 10 2017

BY: 
FOR MAILING

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO: SC17-1284

MICHAEL R. MORRISSEY,
Petitioner.

v.

STATE OF FLORIDA,
Respondent.

**PETITIONER'S REPLY TO RESPONDENT'S
BRIEF ON JURISDICTION**

FILED

JOHN A. TOMASINO

AUG 14 2017

CLERK, SUPREME COURT

BY _____

STRICKLEN

Michael Morrissey, #088079

Union Correctional Institution

Post Office Box 1000

Raiford, Florida 32083

THE CONFLICT-THEORY

Jurisdiction to Review based on an alleged conflict requires a preliminary determination as to whether the lower Appeal Court announced a decision on a point of law which, if permitted to stand, would be out of harmony with a prior decision of the Supreme Court or another Lower Appeal Court on the same point, thereby generating confusion and instability among the precedents. See Kyle v. Kyle, 139 So. 2d. 885 (Fla. 1962).

The first and most obvious conflict can be found in Demick v. State, 451 So. 2d. 526 (4th DCA 1983), compared to Morrissey v. State, 451 So. 2d. 526 (4th DCA 1983). The misguided interpretation of the disposition of co-defendant's case illustrates the danger of rigidly adhering to the doctrine of *stare decisis* at the expense of fidelity to due process and equal protection of law guaranteed by Sixth Amendment as applied to the State by the Fourteenth Amendment. In trying to decide rightly, the three Judge panel of the Fourth District Court of Appeal made a decision which was not only illogical, but also contrary to the Law and Supreme Court precedents.

The patent unfairness of applying different remedies to co-defendant's direct appeal warrants Review by this Honorable Court. The question to be decided in and of itself bespeaks a Fundamental Error. Research has failed to reveal any prior decision disposing of the aspect of this particular point raised herein.

There is also a common sense presumption state was cognizant of the well-established doctrine that comments on accused's post-arrest silence are plain

reversible error under controlling precedents in the Florida Supreme Court¹ and the United States Supreme Court². State Lawyers should not be allowed to manipulate proceedings to their own strategic advantage at an unacceptable lost to justice and judicial resources.

With all due respect, the Petitioner would point out that the Supremacy Clause makes Federal law (and precedents) “the Supreme law of the land... anything in the Constitution or Laws of any State to the contrary notwithstanding.” See U.S. Constitution, Article VI, cl. 2 “cannot be read to permit an approach to pre-emption that renders conflict pre-emption all but meaningless. In other words, State Law that conflicts with Federal Law are without effect.” Maryland v. Louisiana, 451 U.S. at 746, 101 Ct. 2114.

“Under the Supremacy Clause, from which our pre-emption doctrine is derived, any State Law, however clearly within a State’s acknowledge power, which interferes with or is contrary to Federal Law, must yield.” (Internal quotation marks omitted). Gade v. National Solid Wastes Management Assoc., 505 U.S. 88, 108, 112 S. Ct. 2374 (1992).

The issues raised are not abusive, repetitive, malicious or frivolous but that was the decision of the Appellate Court. *Sua Sponte*, this Honorable Court can and should, address Fundamental Error(s) notwithstanding Appellant’s failure to raise it on Appeal. See Standford v. Rubin, 237 So. 2d. 134 (Fla. 1970). (Fundamental Error may be found by Court itself in reaching its conclusion, even if it was not

¹ Donovan v. State, 417 So. 2d. 674 (Fla. 1982) (The Court emphasized “that comment on accused’s post-arrest silence are *per se* Reversible.”)

² Doyle v. Ohio, 426 U.S. 610, 96 S. Ct. 2240 (1976). (a deprivation of due process results).

mentioned in either the brief or Oral Argument.)

The Petitioner sincerely believes his Brief has demonstrated a Manifest Injustice has indeed occurred which now requires remediation. In Anglin v. Mayo, 88 So. 913, 919, (Fla. 1956) this Court held in a well-REASONED opinion: (“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 justice, as the niceties of the procedure are not anywhere near as important as the determination of the ultimate question as the legality of the restraint.”)

The state functionaries, including Appointed Appellate Counsel, are responsible for the legal quagmire this case has devolved into. The State has not addressed the merits of Morrissey’s issues, relying on technicalities to urge dismissal. The misconduct and mistakes were done intentionally in order to afford the State a more favorable opportunity to convict defendant. The Petitioner asks this Court to adhere to the spirit of Fla. Rules of Appellate Procedure 9.040 (d), which is to disregard any procedural error or defect that does not adversely affect the substantial rights of the parties. The State has no right to benefit from the misconduct complained of in jurisdictional brief.

IN REGARD TO THE REQUIREMENT OF JUSTICIABILITY

There is a common sense presumption in the validity of conviction in the instant case is drawn into question on the ground it is repugnant to Florida and Federal Constitution, Applicable Laws and Precedents of the Florida Supreme Court.

The Petitioner prays the Court to apply the principle of Anglin v. Mayo, Supra, and issue such appropriate orders as will do justice in this case.

This case is an AFFRONT to the integrity and reputation of the Judicial proceedings. The departure from usual course of law calls for an exercise of this Court's Supervisory Power.

Further, the Petitioner sayeth naught.

Respectfully submitted,

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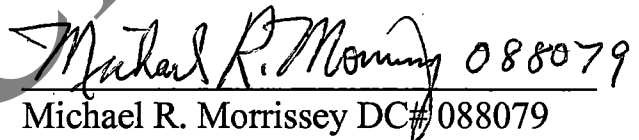
STRICTLY CONFIDENTIAL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that pursuant to Rule 9.240(d)(2) FLORIDA RULES OF APPELLATE PROCEDURE, (2017 that I have placed a true and correct copy of this **Reply Brief**, in the hands of the authorized mail clerk at the Union Correctional Institution, for mailing, via prepaid first-class U.S. Mail to:

JAMES J. CARNEY,
Sr. Assistant Attorney General
1515 N. Flagler Drive
Ninth Floor
West Palm Beach, Florida 33401-2299

On this 9 day of August, 2017.


Michael R. Morrissey DC#088079

STRIKED

CERTIFICATE OF COMPLAANCE

I HEREBY CERTIFY, the Petitioner's **Reply Brief** complies with the FONT requirements of Rule 9.210 (A)(2) of the Florida Rules of Appellant Procedure.

Date: Aug. 9, 2017

Respectfully submitted,

Michael R. Morrissey 088079
Michael R. Morrissey DC#/#088079

STRICKEN