Erroneous Interpretation of Applicable Law

I was convicted of three counts of attempted second-degree murder among other counts. In 2011, I filed a petition with the Fifth District of Appeal, State of Florida. In Argument Two of the petition, I argued that my appellate counsel was ineffective for failing to argue on appeal that the trial judge must instruct the jury on attempted voluntary manslaughter as necessarily lesser included offenses.

On May 3, 2011, the Clerk issued an order to the State. The States sole response was that when no timely request was made by my trial counsel, the trial judge's failure to instruct on a necessarily included offense in a noncapital case need to objected to by counsel. The State cited to Gorien, a Fifth DCA's decision in 2009.

To support my argument, I cited to Wimberly, a Florida Supreme Court's decision in 1986, which stated that trial judge has no discretion whether to instruct jury on necessarily lesser included offenses. Once the judge determine an offense is lesser included, an instruction must be given. However, on August 15th, 2011, the Clerk denied the petition without written opinion.

New Developments

In 2016, the Florida Supreme Court issued its decision in Walton. There, the defendant had been convicted at trial of the charged offense of attempted second-degree murder. The Supreme Court held that that the trial court was required (committed fundamental error) for failing to instruct the jury on attempted

Voluntary manslaughter as a necessarily lesser included offense for attempted second-degree murder. The Court cited Wimberly and remanded for a new trial.

In 2018, the Supreme Court in Roberts, like the defendant in Walton, Roberts was charged with and convicted of attempted second-degree murder and argued on appeal that the trial court must instruct the jury on attempted voluntary manslaughter as a lesser included offense of attempted second-degree murder. The Supreme Court relied on Walton and remanded for a new trial.

Is Gorter a good law?

The Florida Supreme Courts decisions in Walton and Roberts overruled Gorter, and it would be manifestly unjust not to grant Me a new trial. The Supreme Court of Florida has held that appellate courts have the power to reconsider and correct erroneous rulings. Well, the Clerk of the Fifth District Court of Appeal stated otherwise. All petitions filed thereafter were denied.

Corruption

On May 3, 2019, the Fifth DCA in Lathan, the defendant was convicted after of attempted second-degree murder and contended that his appellate counsel ineffectively represented him during his direct appeal by failing to argue that the trial court must instruct the jury on the necessarily lesser included offense of attempted voluntary manslaughter.

The Court denied the petition finding that Lathans trial counsel affirmatively waived the necessarily lesser included offense when counsel requested no lesser included. However, the Court certified questions of Great Public Importance to the Florida

Supreme Court because the Court has significant concerns as to the interplay between Chevron, Roberts etc.

Reality

The System does not appoint attorneys after direct appeal according to Florida law. Now, it is legal possible for the Fifth District Court of Appeal to continously denying me relief and in turn, asks the Florida Supreme Court for clarification on the identical question of law.

Greta Thunberg I admire you for your activism; I wish my sisters were courageously enough to protest a loving brother's freedom.

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