

IN THE SUPREME COURT OF FLORIDA

STEPHEN MALLET,

Petitioner,

V.

STATE OF FLORIDA,

Respondent.

CASE NO. SC19-1038
First DCA No. 1D17-4627
LT No. 37-2011-CF-290A

JURISDICTIONAL BRIEF OF PETITIONER

ANDY THOMAS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

DANIELLE JORDEN
ASSISTANT PUBLIC DEFENDER
FLA. BAR NO. 946834
LEON COUNTY COURTHOUSE
301 S. MONROE ST., SUITE 401
TALLAHASSEE, FL 32301
(850) 606-8500
danielle.jorden@flpd2.com

COUNSEL FOR PETITIONER

RECEIVED, 07/01/2019 03:46:29 PM, Clerk, Supreme Court

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT1

STATEMENT OF THE CASE AND FACTS2

SUMMARY OF THE ARGUMENT4

ARGUMENT5

WHETHER THIS COURT HAS JURISDICTION TO
REVIEW THE DECISION OF THE DISTRICT COURT OF
APPEAL IN PETITIONER’S CASE.....5

CONCLUSION6

CERTIFICATES OF SERVICE AND FONT SIZE6

TABLE OF AUTHORITIES

PAGES

CASES

Mallet v. State, 173 So.3d 890 (Fla. 1st DCA 2015).....2

Mallet v. State, 2019 WL 2182072 (Fla. 1st DCA May 21, 2019)1

O’Sullivan v. Boerckel, 526 U.S. 838, 119 S. Ct. 1728, 144 L.Ed.2d 1
(1999).....5

CONSTITUTIONAL PROVISIONS

Sixth Amendment, United States Constitution2

JURISDICTIONAL BRIEF OF PETITIONER

PRELIMINARY STATEMENT

Petitioner seeks review of the decision in Mallet v. State, 2019 WL 2182072 (Fla. 1st DCA May 21, 2019)(attached as an appendix to this brief). Petitioner was the Appellant and Respondent was the Appellee in the proceedings in the First District Court of Appeal. The parties will be referred to as they appear before this Court.

STATEMENT OF THE CASE AND FACTS

Petitioner entered open pleas to two counts of possession with intent to promote child pornography and one hundred seventeen counts of possession of child pornography. He was sentenced to forty years in prison followed by thirty years probation (Counts 3 through 10, five years in prison on each count, consecutive; Counts 1 and 2, fifteen years sex offender probation on each count, consecutive, and consecutive to Counts 3 through 10; and Counts 11 through 119, five years sex offender probation, concurrent). Petitioner's case was affirmed on direct appeal without published opinion. Mallet v. State, 173 So.3d 890 (Fla. 1st DCA 2015).

Appellant timely filed a Motion for Post-conviction Relief. An evidentiary hearing was held on the motion, which was denied by written order. On direct appeal of that order, Petitioner raised a single issue: that the trial court erred in denying Petitioner's post-conviction claim that trial counsel was ineffective. Petitioner argued that trial counsel's misadvice prior to the entry of his open plea and counsel's failure to properly reserve Petitioner's right to appeal the denial of his motion to dismiss constituted deficient performance and fell below a standard of reasonableness, thereby depriving Petitioner of his right to counsel as guaranteed by the Sixth Amendment. The First District Court affirmed the order

denying Petitioner's post-conviction motion, addressing the issue raised.

Petitioner now seeks discretionary review under this Court's conflict jurisdiction.

SUMMARY OF THE ARGUMENT

Because the argument is very brief, no summary has been included.

ARGUMENT

WHETHER THIS COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE DISTRICT COURT OF APPEAL IN PETITIONER'S CASE.

In the First District Court of Appeal, Petitioner argued that trial counsel's misadvice prior to the entry of his open plea and counsel's failure to properly reserve Petitioner's right to appeal the denial of his motion to dismiss constituted deficient performance and fell below a standard of reasonableness, thereby depriving Petitioner of his right to counsel as guaranteed by the Sixth Amendment. The First District affirmed the order denying Petitioner's post-conviction motion in a written opinion. Denial of right to counsel may present federal issues. Therefore, Petitioner requests that discretionary review be granted to review the ruling on the issues under O'Sullivan v. Boerckel, 526 U.S. 838, 119 S. Ct. 1728, 144 L.Ed.2d 1 (1999).

CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, Petitioner requests that this Court accept this case for review and order briefing on the merits.

CERTIFICATES OF SERVICE AND FONT SIZE

I hereby certify that a copy of the foregoing has been furnished by electronic mail to Trisha Meggs Pate, Office of the Attorney General, at crimapptlh@myfloridalegal.com, and by US mail to Mr. Stephen Mallet, DC # N27497, New River C I, P O Box 900, Raiford, FL 32083 this day of July 1, 2019.

I hereby certify that this brief has been prepared using Times New Roman 14 point font.

Respectfully submitted,

ANDY THOMAS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

/s/ Danielle Jordan

DANIELLE JORDEN
ASSISTANT PUBLIC DEFENDER
FLA. BAR NO. 946834
LEON COUNTY COURTHOUSE
301 S. MONROE ST., SUITE 401
TALLAHASSEE, FLORIDA 32301
(850) 606-8500
danielle.jorden@flpd2.com

COUNSEL FOR PETITIONER