No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

WILLIAM KNIGHT - PETITIONER
(Your Name)

vs.

JULIE L. JONES - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FLORIDA SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

WILLIAM KNIGHT
(Your Name)

DADE CORRECTIONAL INSTITUTION
19000 SW 377TH STREET / D-2
FLORIDA CITY, FL 33034-6409
(Address)

UNKNOWN
(Phone Number)

QUESTION(S) PRESENTED

WHETHER TRIAL COURT ABUSED THEIR AUTHORITY BY ALLOWING THE STATE ATTORNEY OFFICE TO IMPOSE A SENTENCE CONTRARY TO THE REQUIREMENTS OF THE LAW ON DOUBLE JEOPARDY?

WHETHER TRIAL JUDGE ABUSED THEIR AUTHORITY BY IMPOSING A HABITUAL SENTENCE ON PETITIONER WITHOUT A LAWFUL CAUSE TO DO SO?

WHETHER 3RD D.C.A. JUDGES ABUSED THEIR AUTHORITY BY REFUSING TO COMPLY WITH THEIR OWN LAWS ON PETITIONER CLAIMS.

WHETHER THE SUPREME COURT JUDGES ABUSED THEIR AUTHORITY BY REFUSING TO ADDRESS PETITIONER'S CLAIM ON THE PROPER JURISDICTION TO ADDRESS PETITIONER CLAIMS ON ONE SINGLE EPISODE?

WHY TRIAL JUDGE CONDONE ALL CLAIMS ON PETITIONER'S ILLEGAL SENTENCE?

WHETHER ALL FLORIDA COURTS VIOLATED RULE 10 SEC (b)(c) BY REFUSING TO RESOLVE PETITIONER'S CONFLICT, ON ILLEGAL SENTENCE.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[**X**] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

(1) Judge Veronica A Diaz, 11th Judicial Circuit Court 1351 N.W. 12th St., Miami, Fl. 33125

(2) Clerk of the Court, 3rd DCA 2001 S.W. 117th Ave., Miami Fl. 33175-1716

(3) Attorney General's Office, Mrs. Pamela Jo Bondi, The Capitol, Suite PL01, Tallahassee, Fl. 32399-1050.

(4) Clerk of the Court, Supreme Court of Florida, 500 S. Duval St. Tallahassee, Fl. 32399

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix **N/A** to the petition and is
[ ] reported at **N/A**; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix **N/A** to the petition and is
[ ] reported at **N/A**; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix **F** to the petition and is
[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the **Trial** court appears at Appendix **B** to the petition and is
[ ] reported at **N/A**; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was **N/A**.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, a copy of the order denying rehearing appears at Appendix **N/A**.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including **N/A** (date) on **N/A** (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U.S. C. § 1254(1).

[**X**] For cases from **state courts:**

The date on which the highest state court decided my case was **June 13, 2018**. A copy of that decision appears at Appendix **M**.

[ ] A timely petition for rehearing was thereafter denied on the following date: **N/A**, and a copy of the order denying rehearing appears at Appendix **N/A**.

[ ] An extension of time to file the petition for a writ of certiorari was granted to an including **N/A** (date) on **N/A** (date) in Application No. ____ A **N/A**.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

MEMORANDUM OF LAW

The word "law" as used in this commandment means an enactment by the State Legislature, not by a city, or state commission or any other political body. See: [FN2]. This clause, the purpose of which is to identify the statute as an act of Legislature by expressing the authority behind the act. [FN5] is the essential to the validity of a statute [FN4].

JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C., Sec. (1254)(1) and F.S. 79.01(5)(9), *Bradford v. State*, 93 So.3d 1180 (Fla. 2012). When any person detained in custody, whether charged with a criminal offense or not, applies the U.S. Supreme Court, U.S. Court of Appeals, U.S. District Court of Appeal, or any Judge thereof or any Circuit Judge for a Writ of Habeas Corpus and shows by affidavit or evidence probable cause to believe that he or she is detained without lawful authority, the Court, Justice or Judge to whom such application is made shall grant the writ forthwith, against the person in whose custody the appellant is detained and returnable immediately before any of the Court's Justices or Judges as the writ directs.

Facially unconstitutional means that no set of circumstances exist under which the statute would be valid. See: *State v. Bales*, 343 So.2d 911 (Fla. 1977); *Cashatt v. State*, 873 So.2d 430 (Fla. 1st Dist. 2006); *Fla. Dept. of Rev. v. City of Gainesville*, 918 So.2d 250, at 256 (Fla. 2005). As the Courts stated in *Herrera v. Collins*, 113 S.Ct. at 853 (1992) ... Federal Habeas Court's sit to ensure that individuals are not imprisoned in violation of the Constitution, also not to correct errors of fact. See: *Moore v. Dempses*, 261 U.S. 86-88, 43 S.Ct. 265, 67 L.Ed. 543 (1923); "Judge Holmes" what we have to deal with on habeas review is not the Petitioner's

innocence or guilt, but solely the question of whether their Constitutional Rights have been preserved, *Hyde v. Shine*, 199 U.S. 62, 84, 25 S.Ct. 760-764, 50 L.Ed. 90 (1905). "It is well settled that upon habeas corpus the court will not weigh the evidence of any case."

Absence of Jurisdiction of the convicting court is a basis for certiorari review, cognizable under the due process clause. *See: Lowery v. Estelle*, 696 F.2d 333 (5th Cir. 1983); *Crosby v. Bradstreet*, Fla. 83 S.Ct. 1300 (1963); *Cotton v. Fla.*, 122 S.Ct. 1781 (2002).

In reference to Petitioner's civil rights being violated by the trial judge, "3rd DCA", Supreme Court of Florida, as well as my 1st, 5th, 6th, 8th, and 14th Amendments. Review the Civil Right Act of 1866, which Judges are required to adhere with the laws of that State.

STATEMENT OF THE CASE AND FACTS

1. On or about September 15, 2011, Petitioner was Arrested.

2. Over three (3) years later, on December 14, 2014, the State filed it's third amended Information/Indictment charging the Petitioner with 21 counts fraudulent use or possession of personal information, F.S. §817.568(2) F3; 1 count of unlawful possession of stolen credit or debit card, F.S. §817.60(8) F3; and 1 count of dealing credit cards of another, F.S. §817.60(5).

3. Petitioner had a jury trial and was subsequently deemed guilty of 4 counts of fraudulent use or possession with intent to fraudulently use; 17 counts of attempted fraudulent use or possession with intent to fraudulently use; 1 count of unlawful possession of a stolen credit or debit card; and 1 count of dealing in credit cards of another.

4. Mr. Knight was sentenced to an extended term of ten (10) Florida State Prison (F.S.P) for counts 1-22 to run concurrent to five (5) years F.S.P. for count 23. The Petitioner was sentenced as a habitual offender for counts 1-22.

5. A direct appeal was filed on or about October 26, 2015 and is still pending review and disposition by the Third District Court of Appeal.

STANDARD OF REVIEW

Rule 3.800(a) provides that a "Court may at any time correct an illegal sentence imposed by it." Fla. R. Crim. P. 3.800(a). The rule is "intended to balance the need for finality of sentences with the goal of ensuring that criminal Petitioners do not serve sentences contrary to the requirements of the law." *Carter v. State*, 786 So. 2d 1176 (Fla. 2001).

> To be illegal within the meaning or Rule 3.800(a), the sentence must impose a kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of factual circumstances. On the other hand, if it is possible under all the sentencing statutes – given a specific set of facts – to impose a particular sentence, then the sentence will not be illegal within Rule 3.800(a) even though the judge erred in imposing it.

Hereby, this Court must determine whether Petitioner's sentence is "a kind of punishment that no judge, under the entire body of sentencing statutes, could possibly inflict under any set of factual circumstances."

Thus, it is under this matrix of law that Petitioner's illegal sentence must be reviewed.

ARGUMENT ONE

> TRIAL COURT ERRED BY ILLEGALLY SENTENCING THE PETITIONER AS A HABITUAL FELONY OFFENDER.

The Petitioner avers that it was error to illegally sentence him as a habitual felony offender. The face of the record evinces that a separate hearing was not held and that Mr. Knight does not have the requisite predicate offenses for habitualization.

Florida Statute (2011) §775.084(1(a)(1-5) states in pertinent part that a habitual felony offender may receive an extended term of imprisonment if the following criteria(s) are met:

1. The Petitioner has been convicted of any combination of two or more felonies...
2. The felony for which Petitioner is to be sentenced was committed: a... or b. within 5 years of the date of the conviction of the Petitioner's last prior felony...or...release...

3. The felony for which the Petitioner is to be sentenced, and **one** of the **two prior** felony convictions, **is not** a violation of s. **893.13**... (emphasis added).
4. The Petitioner has not received a pardon...
5. A conviction of a felony...has not been set aside...

In addition, Florida Statute (2011) §775.084(5) is unambiguous where it states:

> "In order to be counted as a prior felony for purposes of sentencing under this section, the felony must have resulted in a conviction sentenced separately prior to the current offence and sentenced separately from any other felony conviction that is to be counted as a prior felony."

In this instant case, Mr. Knight argues that he did not have the **two** predicated offenses required by Florida Statute (2011) §775.084(1)(a) to be classified as a habitual felony offender and pursuant to *Bover v. State*, 797 So. 2d 1246 (Fla. 2001, SC-95649;; *Mack v. State*, 823 So. 2d 746 (Fla. 2002); SC00-2355; and *Johnson v. State*, 137 So. 3d 518 (4th DCA 2014) a Petitioner's habitual offender sentence is illegal and subject to challenge under Fla. R. Crim. P. Rule 3.800(a) where on the face of the record, the requisite predicate offenses essential to qualify before the non-presiding Judge Diaz, the State presented certified cases 94-33359, possession of cannabis with the intent to sell; 02-37323, possession of cocaine with the intent to deal or sell; and F03-24215, armed/cocaine trafficking (02-37323 and F03-24215 were sentenced at the same time) for the purposes of putting no record that the Petitioner was the person charged in those cases. It is important to note here that a separate hearing was never held in accordance with F.S. §775.084 for the determination of habitual felony offender status.

It is a well-known legal standard that after being deemed unconstitutional, legislative intent is to exempt the purchase or possession of a controlled substance from habitual felony offender enhanced sentencing. This applied both to the current offense or any prior convictions under F.S. 893.13. *Demery v. State*, 132 So. 3d 902 (1st DCA 2014). In *Blatch v. State*, 719 So. 2d 965 (4th DCA 1998) the Court held that §775.084(1)(a)(3) did not permit a violation of §893.13 to serve as a predicate offense. From the face of the record, it is clear that Mr. Knight has two priors that are charged under F.S. 893.13, which would leave only **one**

possible predicated offense, without **two**, in accord with §775.084(1)(a)(3), Mr. Knight cannot and should not be eligible for habitualization.

The State would argue that the statute allows for one prior offense to relate to a conviction for the purchase or possession of a controlled substance because it reads, "... and **one** of the **two prior** felony convictions, **is not** a violation of s. 893.13..." The State would proffer that the language "is not" means one can be. However, the interpretation is contradictory to legislative intent. As well, Mr. Knight avers the following:

[1] The word "is" means the present indicative of the verb "be";

[2] The word "be" means to exist or have reality; and

[3] The word "not" means in no may at all' to no extent.

Therefore, any reasonable person would conclude that the legislature meant for **"is not"** to be translated as: **"in no way at all to exist or have reality."** IF the Court accepts any other interpretation, the language of Florida Statues §775.084(1)(a)(3) would be ambiguous; thereby, requiring the rule of lenity to be applied to the Petitioner pursuant to F.S. §775.021(1). This section States in pertinent part:

> "...strictly construed; when language is susceptible to differing constructions, it shall be construed most favorable to the accused."

Furthermore, Mr. Knight offers the following examples in support of legislative intent to exempt §893.13 offenses for habitualization purposes:

1. Two prior offenses of possession of cannabis, F.S. §893.13 and possession of cocaine, F.S. §893.13. Since both are charged under s. 893.13, one **is not** a violation of section 893.13; therefore, a Petitioner cannot be habitualized;

2. Two prior offenses of possession of cannabis, F.S. §893.13, and armed/cocaine trafficking, F.S. §893.13, 775.087. Out of these two prior offenses, the rule fails because one offense is charged under §893.13. This statute, explicitly states the **"one"** of the two, **is not** a violation of 893.13; or

3. Two prior offenses of possession of cocaine, F.S. §893.13, and armed/cocaine trafficking, F.S. §893.135, 775.087. Once again, to meet statutory requirements, **one** of the two predicated offenses **in no way at all exists** as a violation of s. 893.13. Per the two prior convictions, one is a felony charged under section 893.13; thus, a Petitioner would not be legally eligible for habitualization.

The following examples are indicative of Mr. Knight's particular circumstances. Regardless of which prior offenses the State would attempt to use for habitualizing the Petitioner, they would never meet the burden of Florida Statute §893.13. *Ishmael v. State*, 735 So. 2d 509 (2nd DCA 1999). *Hughes v. State*, 850 So. 2d 664 (1st DCA 2003); *Ray v. State,* 40 Fla. L. Wkly. D 2494 (1st DCA 2003); *Ray v. State*, 885 So. 2d 443 (4th DCA 2004). The imposition of a habitual offender sentence for an offense that specifically **is not** subject to habitualization under the statutory scheme results in an illegal sentence.

Even if the State and sentencing court were adamant in violation Mr. Knights constitutional rights by illegally accepting a violation of Florida Statute 893.13 as a predicated offense, the Petitioner still would not have two prior felonies for consideration. The 2002 and 2004 cases were sentenced at the same time. The Supreme Court and Appellate Courts have consistently held that prior convictions must be sequential in order to meet the requirements for imposition of the habitual offender statue under F.S. §775.084(5). Sentences cannot be part of the same sentencing procedure in order to be considered sequential and they must be sentenced separately from any other predicate felony to be deemed a prior offense. *Mincey v. State*, 964 So. 2d 254 (4th DCA 2007); *Walker v. State*, 842 So. 2d 969 (4th DCA 2003); and *Bover v. State,* 797 So. 2d 1246 (S.Ct. 2001). The State would attempt to argue that the 2002 case is a violation of probation and meets the requirements as a predicated offense; however, the Third District Court held in *Benson v. State*, 829 So. 2d 388 (3rd DCA 2002) pursuant to *Overstreet*, when adjudication of guilt is withheld and a Petitioner is placed on community control, the conviction cannot be treated as a prior conviction pursuant to section 775.084(2). *Beazley v. State*, 18 So. 3d 46 (1st DCA 2009). The previously mentioned is an exact reflection of Mr. Knights Situation. In 2002, he received one year probation, adjudication withheld for a violation of section 893.13. Probation with adjudication withheld that is violated and

sentenced on the same day as new offenses does not meet sequential conviction requirements. *Kuminski v. State*, 848 So. 2d 1229 (2nd DCA 2003).

Walker v. State, 988 So. 2d 6 (2nd DCA 2007) unambiguously states that there are two required elements for habitual felony offender status. First, evidence of prior certified judgments meeting requirements of habitual felony offender statute for certain number of sequential convictions in necessary. Lastly, evidence that the judgment in fact involved the Petitioner is a must. If the State fails to present one of these elements, precedent requires a "directed verdict" against he State for its failure of proof. As well, failure to attach portions of the record to refute claim of sequential convictions demands a reversal.

ARGUMENT TWO

SENTENCING COURT ERRED BY ILLEGALLY SENTENCING PETITIONER PURSUANT TO AN ERRONEOUSLY CALCULATED CRIMINAL PUNISHMENT CODE GUIDELINES SCORESHEET.

For the sake of brevity and without further reiterations, the Petitioner incorporates the entirety of Argument (I) into this instant Claim.

Mr. Knight firmly states that the Court egregiously and fallaciously erred by illegally sentencing him to fifteen (15) years pursuant to miscalculated Criminal Punishment Code (CPC) guidelines scoresheet. The miscalculations placed the Petitioner in a much higher sentencing cell and the scoresheet errors present a pure issue of law; therefore the *de novo* standard of review should be applied. *Sanders v. State*, 35 So. 2d 864 (Fla. 2010). In addition, Rule 3.800(a) is the appropriate vehicle for addressing fundamental errors because "it permits scoresheet errors discernable on the face of the record" and "allows that a court may at any time correct an illegal sentence imposed by it." Florida Rules of Court, Rule 3.800(a) (2011); *Delgado v. State*, 948 So. 2d 883 (3rd DCA 2007); and *Hammond v. State*, 591 So. 2d 1119 (1st DCA 1992).

Contrary to Florida Rules of Court, Rule 3.701(d)(1), which states in pertinent part:

> "...State Attorney's office will prepare the scoresheets and present them to defense counsel for review as to accuracy in all cases unless the judge directs otherwise. The sentencing judge shall approve all scoresheets."

The sentencing judge purposely ignored the seventeen (17) misdemeanors that were listed as third degree felonies and one prior offense wrongly shown as a level 10 offense and incorrectly scored. The Petitioner was charged with 21 counts of fraudulent possession with intent to fraudulent use personal identification information pursuant to Florida Statute 817.568(2). Subsequent to a jury trial, Mr. Knight was deemed guilty of 17 "attempts" of the charged offense. F.S.A. §777.04(e) is unambiguous where it states that an attempt of a third degree is a misdemeanor for scoresheet purposes. As well, during the Petitioner's motion to set bond pending sentencing, the judge and defense counsel were in agreement that the "attempts" are indeed misdemeanors. Although counsel errantly written "6 third degree felonies and 13 misdemeanors," there are no doubts that the convictions were classified as misdemeanors. Nevertheless, the Court accepted the scoresheet submitted by the State, when, at the bond hearing, they provided corrected figures. Had the error not existed, in the efforts to secure a statutory maximum imposition, the "attempted" convictions would have been rated at .02 points for a total of 3.4 points instead of the 40.8 that was assessed. They would have equated to 72.3 total points (TSP) and 33.075 points for the lowest permissible sentence (LPS) in months.

As well, Mr. Knight points out that the State maliciously listed a prior record offense as a level 10 with 29 points. For that offense, the Petitioner was convicted of Armed/Cocaine trafficking and on September 8, 2005 it was listed as a level 8 offense. A total of 19 points should have been applied. If so, the prior record section would have totaled 24.2 points. With this adjustment alone, the TSP would have been 99.7, which would have led to an LPS of 54.775 months.

Regardless of the error, the Petitioner's lowest permissible sentence would fall outside of the range submitted to and fallaciously accepted by Judge A. Fajardo. However, the scoresheet dramatically adjusts when both errors are corrected. The primary offense – 22 points; additional offenses – 16.1 points; and the prior record – 24.2 points would equate to 62.3 total sentence points. With the appropriate deductions (28 points) and proper multiplies (.75), Mr. Knight would have scored out to an LPS of 25.725 months (2 years, 1 month and 23

days). This is a large disparity between what was originally calculated and the illegal 15-year sentence imposed.

Neither the interest of justice or judicial economy would be served if the illegal sentence is allowed to remain when it cannot be refuted by the face of the record. Although the previously mentioned are unpreserved scoresheet errors that are evinced by the record, they are still classified as fundamental errors. Such malfeasances that result in an illegal sentence becomes a facial attack on the constitutional validity of sentencing statutes, the way courts interpret them, and the subsequent application of the legislation. It is undoubtedly important for the trial court to have the benefit of a properly calculated scoresheet when making a sentencing decision. *State v. Mackey*, 719 So. 2d 284 (Fla. 1998). In conjunction, the errors must be corrected and the State cannot object to the scoresheet being properly prepared. *Hammond v. State*, 591 So. 2d 1119 (1st DCA 1992).

The State would argue that the errors are harmless because the Petitioner was habitualized. This argument is without merit and moot pursuant to Mr. Knight's first claim, see Argument 1. There is absolutely nothing on the face of the record to refute either of these claims; therefore, it is imperative for the Court to redress the scoresheet and apply the "Could-have-been-imposed" test. Irrefutably, it will be revealed that Judge Fajardo could not have imposed the illegal 15-year sentence.

ARGUMENT THREE

TRIAL COURT ERRED BY IMPOSING CONSECUTIVE SENTENCES THEREBY CAUSING AN ILLEGAL SENTENCE.

Petitioner asserts that the Trial Court erred by imposing consecutive sentences. Following a jury trial and a verdict of guilty for four (4) counts of fraudulent use/possession of personal information; seventeen (17) counts of attempted fraudulent use/possession of personal information; one (1) count of unlawful possession of stolen credit/debit card; and one (1) count of dealing in stolen credit cards, the Court sentences Mr. Knight to ten (10) years F.S.P. as an HO followed by five (5) F.S.P. for the unenhanced dealing in stolen credit/debit

cards conviction. The record evinces, beyond all doubts, that all of the alleged offenses occurred on the same day, September 15, 2011.

Since all of the crimes were the result of one criminal episode, the penalty, after the enhancement, could not be further increased by ordering sentences to run consecutively. In *Daniels v. State*, 595 So. 2d 952 (Fla. 1992) the Court stated, "Because the statute prescribing the penalty for Daniel's offenses does not contain a provision for a minimum mandatory sentence, we hold that ... sentences imposed .. out of same criminal episode may only be imposed concurrently and not consecutively." The Petitioner's sentencing structure is similar in nature to Daniels'. He did not have any minimum mandatory sentences; however, when Judge Fajardo became determined to maximize Mr. Knight's penalty, she in essence, created mandatory sentences. Unfortunately, the prejudicial consecutive sentence enhanced the penalty beyond the statutory maximum for an enhanced third degree felony under Florida Statute §775.084. Pursuant to *Hale v. State*, 630 So. 2d 521 (Fla. 1993), a remand of the sentence is required in order to correct the malfeasance.

Furthermore, Mr. Knight firmly states that the imposition of a non-habitual felony offender sentence, following an HFO term, which has been enhanced to the statutory maximum, is improper when the offenses arose out of a single criminal episode. Although the dealing in stolen credit cards conviction was not enhanced, it is still required to run concurrent to the HFO mandatory maximum sentenced. *Pangburn v. State*, 661 So. 2d 1182 (Fla. 1995); Parks v. State, 701 So. 2d 653 (Fla. 4th DCA 1997); and *Kiedrowski v. State*, 876 So. 2d 692 (Fla. App. 1 Dist. 2004). Once the habitual offender sentencing scheme is utilized to enhance a sentence beyond the statutory maximum on one or more counts arising from a single criminal episode, consecutive sentencing **may not be used** to further lengthen the overall sentence. *Fuller v. State*, 867 So. 2d 469 (Fla. App. 5 Dist. 2004). That legal requirement was purposefully ignored in this instant case.

The Petitioner's particular circumstance is dissimilar to the cited cases; nevertheless, the sentencing errors are the same. It is unmistakable that a third degree felony carries a maximum penalty of five years. As well, when enhanced, the Sentencing Court has the discretion to sentence a Petitioner up to a maximum of ten years. F.S.A. §775.084(4)(a)(3).

When Mr. Knight was sentenced to the enhanced maximum, all possibilities for consecutive sentences dissipated because the other offenses were out of the same criminal episode. The State would argue that the consecutive sentence was for a separate and distinct offense; yet, there are no parts of the record to support that claim. It is evidenced that the charges were alleged by the Assistant State Attorney to have occurred all at the same time. In addition, all of the charges **stemmed from the** same statute, §817. That alone further supports how intertwined the offenses are and how it is impossible to distinguish them apart from each other absent different names. Lastly, the State's argument further fails where Mr. Knight was charged for the same alleged victims under two different sections of F.S.A. §817. If any of the charged offenses would have happened separately, the State would not have sought the illegal habitualization and the Petitioner would have possibly been eligible for a sentence beyond the 15 years imposed.

ARGUMENT FOUR

SENTENCING COURT ERRED BY IMPOSING A TERM OF YEARS IN EXCESS OF STATUTORY MAXIMUM THUS CREATING AN ILLEGAL SENTENCE.

For the sake of brevity and without further reiterations, the Petitioner incorporates the entirety of Arguments I and III into this instant claim.

Mr. Knight avers that Judge Fajardo erred by illegally imposing a fifteen year sentence for the third degree felonies where the Petitioner was declared guilty. When a Criminal Punishment Code sentence is enhanced beyond the statutory maximum, other offenses arising out of the same criminal episode **may not be** run consecutive to the enhanced sentence, *Hale v. State*, 630 So .2d 521 (Fla. 1993), for the purposes of further extending the term. Florida Statute §775.082(4)(d) states that a third degree felony is punishable to a term not exceeding 5 years. As well, sections 775.084(4)(a)(3) and (4)(b)(3) evince that those enhanced under this statute may be sentenced up to 10 years.

In this instant case, the State sought habitualization of Counts 1-22 followed by five years probation for Count 22, without the enhancement. Instead, the Sentencing Court

pronounced an illegal sentence of 10 years for Counts 1-22 followed by 5 years F.S.P. for a total of 15 years. This is confirmed by the scoresheet and Sentence/Judgment documents. Pursuant to *Hale* and the previously mentioned statutes, a 15-year sentenced exceeds the statutory maximum of 10 year s for the enhanced third degree felonies that arose out of one criminal episode.

ARGUMENT FIVE

SENTENCING COURT ILLEGALLY IMPOSED A GENERAL SENTENCE FOR COUNTS 1-23

The Petitioner firmly states that the Sentencing Court imposed an illegal general sentence for Counts 1-23, which were all classified as third degree felonies. Florida Statute §775.021(4)(a,b) explicitly states that **each** criminal episode **shall be** sentenced separately because it is Legislature's intent "to convict and sentence for **each** offense committed in the course of one criminal episode." (emphasis added). In addition, Florida Rules of Criminal Procedures, Rule 3.701(12) reveals that "A sentence must be imposed for each offense. However, the total sentence cannot exceed the total guideline sentence..."

In this instant case, the Court orally pronounced a general sentence and later supported its decision on the written sentence document. Pursuant to Parks v. State, 765 So. 2d 351 (S.Ct. 2001), a general sentence is prohibited in Florida. See also *Dorfman v. State*, 351 So. 2d 954 (S.Ct. 1977). Judge Fajardo sentenced the Petitioner to ten (10) years F.S.P. as a habitual felony offender for Counts 1-22 followed by 5 years F.S.P. for Count 23. All counts stemmed from one criminal episode and are different facets of Florida Statute §817.

The law is clear that trial courts may no longer issue 'general' sentences which encompass more than one count. *Burgess v. State*, 691 So. 2d 607 (Fla. 4th DCA 1997). "General sentences on convictions of multiple offenses are improper, and each separate offense must carry a discrete sentence. The evil of a general sentence inheres in the uncertainty that its inscrutability creates ..." *Hughes v. State*, 177 So. 3d 689 (S.Ct. 2015).

It is irrefutable that Mr. Knight was imposed a general sentence and since it covered multiple counts, it is deemed illegal. *Holmes v. State*, 100 So. 3d 281 (Fla. 3rd DCA 2012); and *Kissel v. State*, 757 So. 2d 631 (Fla. 5th DCA 2000). To correct this egregious and fallacious act, a reversal for resentencing is required. *Brazley v. State*, 871 So. 2d 986 (Fla. 3rd DCA 2004); *Scott v. State*, 747 So. 2d 1018 (Fla. 3d DCA 1999); and *Hooks v. State*, 613 So. 2d 607 (Fla. 3rd DCA 1993). As well, the illegal sentence must be apportioned over all twenty-two (22) counts. *U.S. v. Olushina*, 191 Fed. Appx. 19 2006 US App. LEXIS 15884; and *State v. Jimenez*, 183 So. 3d 1020 (3rd DCA 2015). When apportioned, the Petitioner can only receive .4545 years per count to run consecutively with each other. Since Mr. Knight's convictions are the result of one criminal episode and he was illegally habitualized (see Argument I of hits instant motion), the Petitioner cannot receive consecutive sentences.

The State will argue that the Court is only required to re-pronounce the sentence to encompass ten (10) years for each count; however, that would violate the Petitioner's rights against Double Jeopardy since Mr. Knight has already served the apportionment (.4545 years) of the illegal sentence. To now require the Petitioner to serve twenty-two times the approximately 5 months and 15 days apportioned time would horrendously increase Mr. Knight's pronounce penalty per count. The fabric of justice would be ripped to shreds and the actions of the Court would be disingenuous, thereby putting the Court in a state of dishonesty.

REASONS FOR GRANTING THE PETITION

In *Hughes v. State*, 177 So. 3d 689 (Fla. 5th DCA 2015), the Court reiterated the principle that general sentences on convictions of multiple offenses are improper, and each separate offense must carry a discrete sentence: The evil of a general sentence... inheres in the uncertainty that its inscrutability creates, for if the trial judge had committed a reversible error as to any one count for any reason, the entire sentence would have to be vacated. A trial court lacked authority to increase a sentence on one count when it corrected an illegal sentence on another count.

In reference to Rule 10 Sec. (b): A State Court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals. Rule 10 Sec. (c): A State Court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be,

settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this court.

In *Parks v. State*, 765 So. 2d 351 (S.Ct. 2001). Decision of the trial court regarding sentencing quashed and remanded; the general sentence given to appellant was prohibited in Florida, Appellant's sentence that exceeded the maximum sentence allowed by statute constituted a fundamental sentencing error.

In *Mack v. State*, 823 So. 2d 746 (Fla. 2002), once review is granted as to one issue, a court may, in its discretion, address other issues properly raised an argued before it. Even where a judge determines that a Petitioner is a habitual felony offender, the judge can still determine that sentencing under the habitual offender statute is not necessary for the protection of the public. A Petitioner's habitual offender sentence is illegal and subject to challenge under Fla. R. Crim. P. 3.800(a) where, on the face of the record, the requisite predicate felonies essential to qualify him for habitualization do not exist.

In *Hale v. State*, 630 So. 2d 521 (Fla. 1993). Although Petitioner's sentence as a habitual violent felony offender did not implicate substantive due process or double jeopardy concerns, the court quashed and remanded Petitioner's consecutive sentences for two drug charges arising out of one cocaine sale because the habitual offender statute only permitted concurrent sentences where the underlying charges carried minimum mandatory terms.

In *Dorfman v. State*, 351 So. 2d 954 (Fla. 1977); It is virtually impossible to show that there has been any prejudice to Dorfman, particularly since he pled guilty to all nine counts. The evil of a general sentence, however, inheres in the uncertainty that its inscrutability creates, for if the trial Judge had committed a reversible error as to any count for any reason, the entire sentence would have to be vacated. Then, on resentencing, a failure to reduce a new sentence for the affirmed conviction or convictions could raise complications comparable to those arising from the imposition of a more severe sentence when a Petitioner is convicted on retrial of the charges which underlay the reversed conviction. We conclude and now hold that general sentences are no longer proper and they may not be imposed by any trial court.

In *Blockburger v. U.S.*, 284 U.S. 299 (1932). Where the same actor transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine

whether there are two offenses, or only one, is whether each provision requires proof of an additional fact which the other does not. A single act may be an offense against two statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the Petitioner from prosecution and punishment under the other.

In reference to Petitioner Knight's Certiorari, all GROUNDS are limited to intervening circumstances of substantial or controlling effect or other substantial grounds not previously presented.

In reference to all case cites within Petitioners were reverse and remanded to the trial court by the same Third District Court of Appeal, Review Exhibit (E) Dated August 9, 2017.

In reference to the Court's Order denying Petitioner's initial brief without attaching a portion of the record to refute any of the Petitioner's claims, violates his 1st, 8th, and 14th Amendment Rights to Due process of law (U.S.C.A.)

CONCLUSION/RELIEF SOUGHT

WHEREFORE, Petitioner Knight asserts that based on the foregoing applicable laws, citations of authority, arguments demonstrate a "valid" claim to have Rule 10(b)(c) invoked to the trial court or resentence Petitioner to ten years with all counts to run concurrent with each other. Grant this Certiorari to resolve this malfeasance committed, Remove imposed Habitual Felony Offender Status, correct scoresheet, award credit for time served on all counts within indictment/information.

Respectfully submitted,

/s/ William Knight

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