

No. \_\_\_\_\_

\_\_\_\_\_  
In The  
Supreme Court of the United States

\_\_\_\_\_  
Thomas Arnold  
Petitioner

Vs.

Julie L. Jones, et al.  
Respondent

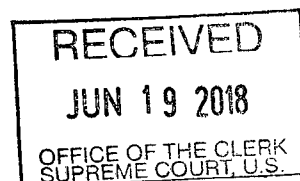
\_\_\_\_\_  
ON PETITION FOR WRIT OF CERTIORARI TO  
THE FLORIDA SUPREME COURT

\_\_\_\_\_  
Petition for Writ of Certiorari

\_\_\_\_\_  
Thomas Arnold 100520  
Graceville Correctional Facility  
5168 Ezell Rd.  
Graceville, FL 32440

Petitioner pro se

\_\_\_\_\_  
Provided to Graceville Correctional Facility on  
6/15/18 for mailing, by AV



## QUESTIONS PRESENTED

WHETHER PETITIONER HAS BEEN DENIED DUE PROCESS AND EQUAL PROTECTION UNDER THE U.S. CONSTITUTION AMENDMENT XIV, IN HIS STATE COLLATERAL PROCEEDINGS OF RIGHT.

WHETHER PETITIONER HAS A FEDERALLY PROTECTED LIBERTY INTEREST UNDER THE MANIFEST INJUSTICE RULING IN JOHNSON V. UNITED STATES, 520 U.S. 461, 466-467, 137 L.ED.2D 718, 117 S. CT. 1544 (1997) TO CORRECTION OF SENTENCING NOT AUTHORIZED BY STATE STATUTE.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page of this petition

Petitioner- Thomas Arnold 100520

Graceville Corr. Fac.

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Graceville Fla. 32440

Respondent- Julie L. Jones, ET AL.,

Sec. Florida Dept. of Corrections

Counsel for Respondent

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IN THE  
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PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the highest state court to review the  
merits appears a Appendix A to the petition and has ben  
designated for publication but is not yet reported.

JURISDICTION

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my case was March 13, 2018. A copy of that decision  
appears at Appendix A. Reahearing was not authorized  
and no extention of time to file the petition for writ of  
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Pertinent provisions are the U.S. Constitution  
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## STATEMENT OF THE CASE

This case concerns deprivation of constitutional rights under the U.S. Constitution Amendments XIV and VIII. The Federal questions were presented to The Florida Supreme Court, but were not accepted by that court. The order under review is a denial of a State Habeas Petition concerning two questions. Whether petitioner has a liberty interest in correcting a manifest injustice illegally detaining him under this Courts ruling in Johnson v. United States, 520 U.S. 461,466-467, 137 L.ED. 718, 117 S.Ct. 1544 (1997). The manifest injustice is a sentencing not authorized by Florida Statute in Hale v. State, 630 So.2d 521 (Fla.1993) (Trial courts are without statutory authority to impose consecutive habitual offender sentencing for a single criminal episode). This sentencing also is in violation of U.S. Constitution Amend. VIII, as this amendment bars a prison sentence beyond the legislative crafted maximum, See Echols v. Thomas, 33 F.3d 1277 (11th cir 1994).

Secondly, Arnold has been denied a federally protected liberty interest (held under the due process and equal protections clause of the U.S. Constitution Amend. XIV) in his state collateral proceedings to correct the manifest injustice illegally detaining him. Arnold has been deprived a full and fair hearing of his claims in state court. The Florida courts have systematically stymied relief by issuing procedural rulings of which Arnold cannot appeal. Arnold asks this Court to review the Constitutional deprivations. Petitioner has no other adequate means of relief. Arnold is barred from filing a federal habeas petition 28 U.S.C. 2254 due to the one year limitation of the (AEDPA). Arnold's state sentence in Florida is 30 years in excess of legislative authority.

On July 11, 1990 Arnold was arrested in Leon County Florida on Case 1990CF2999, for a robbery committed on July 1, 1990 at 2848-A North Mission Rd, Tallahassee Florida. The robbery had three victims / witnesses, Leon Akerly, Stacey Watral, and John Lacey. On April 3, 1991 the petitioner entered into a plea agreement to lesser degree offenses of three counts of strongarmed robbery, and three counts of false imprisonment, with a stipulation of NO agreement as to sentence. The sentencing court accepted the plea, found Arnold to be a Violent Habitual Offender (VHO). The court

then sentenced Arnold to three consecutive 15 year sentences for the strongarmed robbery charges, concurrent with three 10 year sentences for the false imprisonment charges, for a total of 45 years (VHO).

On November 29, 2011 Arnold filed a state motion Fla.R.App.P. 3.800(a) to correct an illegal sentence in case 1990CF2999. Arnold's claim was illegal consecutive (VHO) sentencing for a single criminal episode found not authorized by statute, See Hale v. State, 630 So.2d 521 (Fla.1993), State v. Callaway, 658 So.2d 983 (Fla. 1995), and Cotto v. State, 139 So.3d 283 (Fla. 2014). In the motion 3.800(a) Arnold directed the court to non-hearsay record portions the depositions of victims Leon Akerly and Stacey Watral. The depositions showed how Arnold entered the home of Leon Akerly, tapped up and robbed Leon Akerly, Stacey Watral, and John Lacey. That there was no temporal brake between offenses, a single criminal episode. Arnold directed the trial court to the sentencing transcripts page and line showing the illegal consecutive sentencing.

On March 20, 2012 the trial court denied the motion 3.800(a) both on the merits and procedurally. The trial court attached two prior denials (denied as facially insufficient not ruled on the merits) but did not attach record portions showing Arnold's offences were not a single criminal episode, this is violation of Fla.R.App.P. 9.140(g). (Appendix F denial by trial court) See Canavan v. State, 842 So.2d 306 (Fla.App.5 Dist 2003).

Arnold appealed the denial to the First Distirict Court of Appeal Tallahassee Florida Case 1D12-1740. Arnold briefed the appeal directing the appellate court that remand was warranted as the trial court failed to attach relevant portions of the record to refute the claim denied on the merit under Fla.R.App.P. 9.141(b)(2)(D). On June 26, 2012 the Dist. Court Affirmed the trial courts denial. See Arnold v. State, 91 So.3d 135 (Fla.App. 1 Dist 2012) (Appendix E).

On June 24, 2016 Arnold filed a petition for writ of habeas corpus to correct a manifest injustice in the District court. This is the procedure set forth in Adams v. State, 957 So.2d 1183 (Fla.App.3 Dist 2007). On August 25, 2016 the district court dismissed the petition and sanctioned Arnold. See Arnold v. State, 201 So.3d 178 (Fla.App.1 Dist 2016) (Appendix D), rehearing denied October 13, 2016. This dismissal was not reviewable by the Florida Supreme

Court due to ruling in Wells v. State, 132 So.3d 1110 (Fla. 2014).

As the district court refused to review the merits of Arnold's manifest injustice claim, petitioner filed a second habeas petition with claim of manifest injustice in the Florida Supreme Court case no SC17-1999. On March 13, 2017 the Florida Supreme Court denied the petition as successive and would not accept a rehearing. (Appendix E).

On May 11, 2017 Arnold filed in the trial court a successive motion 3.800(a) to correct a manifest injustice (Hale sentencing error). This was done to give each Florida court opportunity to correct the manifest injustice in petitioners sentencing. On May 24, 2017 the trial court denied the motion as it had been previously denied on the merits the trial court attached the denial on the merits of March 20, 2012. (Appendix B). Arnold could not appeal this denial due to sanctions in Arnold v. State, 201 So.2d 178 (Fla.App.1 Dist 2016).

On October 10, 2017 Arnold filed an institutional (D.O.C.) request to the sentencing specialist. The request asked in case 1990CF2999 at what date the first 15 year (VHO) sentence expired. The sentencing specialist returned a date of September 16, 2017. As of September 16, 2017 Arnold is unjustly incarcerated. On February 9, 2018 Arnold filed a new writ of habeas corpus in the Florida Supreme Court in accord with Fla.Stat. 79.01 illegal detention due to manifest injustice (under ruling in Johnson v. United States, 520 U.S. 461,466-467,137 L.Ed.2d 718,117 S.Ct. 1544(1997)) and denial of due process and equal protections in violation of the U.S. Constitution Amendment XIV. Case SC18-301.

On March 13, 2018 The Florida Supreme Court again denied to review holding the petition is the same as the petition denied on March 13,2017, (Appendix A) under review by this Court.

Arnold is being unlawfully detained due to the manifest injustice. Arnold has also been denied due process and equal protections in his state collateral proceedings to correct the manifest injustice, this is both a violation of U.S. Constitution Amend. XIV and VIII as it is a sentencing in excess of legislative authority.

## REASONS FOR GRANTING THE WRIT

This case involves questions of exceptional national importance that can only be decided by this Court. It squarely presents to this Court the question of whether this courts ruling in Johnson v. United States, 520 U.S. 461,466-467,137 L.Ed.2d 718,117 S.Ct. 1544(1997) provides state court defendants a federally protected right to correction of a manifest injustice. The Florida courts have failed to give Johnson due force and effect and gone so far as to omit the ruling from state court rulings( see, Perez v. State, 2012 Fla.App. Lexis 20051 (citing Johnson) and upon rehearing Perez v. State, 118 So.3d 298 (Fla.App.3 Dist.2013) (omitting Johnson ). The second question presented is whether state defendants have a Fourteenth Amendment right to due process and equal protections in state collateral proceeding of right. This determination is needed to assert federal rights in state collateral proceedings when petitioners are barred from filing a federal habeas petition 28 U.S.C. 2254 by the (AEDPA) 28 U.S.C. 2241. As it stands now (as in Arnold's case) the Florida courts can systematically stymie litigants by issuing procedural rulings from which he cannot appeal, and never have to determine litigants claims on the merits. Petitioners that are beyond the one year time line for filing federal habeas petitions when the state collateral review was not yet approved, have no avenue of relief to correct constitutional violations, and will be denied a full and fair review hearing on their claims.

Arnold has been sentenced to consecutive (VHO) sentencing in case 1990CF2999 for a single criminal episode found not to be statutorily authorized in Hale v. State, 630 So.2d 521(Fla.1993) and approved for Violent Habitual Offenders in Cotto v. State, 139 So.3d 283 (Fla.2014). A sentence not authorized by statute is a substantive due process violation. The Court in Mckinney v. Pate 20 F.3d 1550, 1556-1557 (11th cir 1994) holds "A finding that a right merits substantive due process protection means that the right is protected 'against certain government actions regardless of the fairness of the procedures used to implement them'. Also, Kephart v. Hadi, 932 So.2d 1086 (Fla.2006).

The courts of Florida have determined Hale sentencing errors may be corrected under Fla.R.Crim.P. 3.800(a), see Spires v. State, 796 So.2d 1245 (Fla.App.5 Dist 2001). The record portions must be non-hearsay, see Burgess v. State, 831 So.2d 137 (Fla.2002). The depositions Arnold directed to the court are non-hearsay in accord with Ohio v. Roberts, 448 U.S. 56, 73, 65 L.Ed. 2d 597, 100 S.Ct. 2531 (1980) and Crawford v. Washington, 541 U.S. 36, 68, 158 L.Ed. 2d 177, 124 S.Ct. 1354 (2004). The state and the defendants counsel both had adequate opportunity to cross-examine the witnesses. The state was represented by Asst. State Attorney Chris Canova and the defendant was represented by Alex Barker. The depositions give the trier of fact satisfactory basis for evaluating the truth of the prior statement, also, see James v. State, 400 So.2d 571 (Fla.1980).

Arnold's motion 3.800(a) Nov. 29, 2011 was filed in accordance with Florida law, see Lauramore v. State, 949 So.2d 307 (Fla.App.1 Dist 2007). The attachment of record portions refuting petitioners claim was mandatory, see Canavan v. State, 842 So.2d 306 (Fla.App.5 Dist 2003), also, Thomas v. State, 634 So.2d 175 (Fla.App.1 Dist 1994). A sentence not legally authorized by law is a manifest injustice, see Zolache v. State, 687 So.2d 298 (Fla.App.4 Dist 1997). The federal courts have authority to review the state sentencing in excess of statutory authority as it is barred by the U.S. Constitution Amend. VIII, see Echols v. Thomas, 33 F.3d 1277, 1279 (11th cir 1994). The eighth amendment is applicable to the state through the fourteenth amendment, see Robinson v. California, 370 U.S. 660, 666, 8 L.Ed.2d 758, 82 S.Ct. 1417 (1962). The Florida courts have also determined failure to correct an illegal sentence constitutes a manifest injustice, see Lawton v. State, 731 So.2d 60 (Fla.App.2 Dist 1999). It is also a manifest injustice to deny defendants the same relief afforded other identically situated defendants, see Johnson v. State, 9 So.3d 640, 642 (Fla.App.4 Dist 2009). The motions under Fla.R.Crim.P.3.800(a), and state habeas petitions Fla.Const.Art 1§ 13 are reviews of right in Florida.

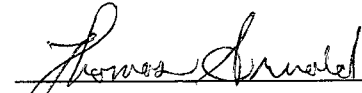
On September 16, 2017 if Arnold were to be sentenced in accordance with statutory authority his sentence would have expired. This court's review is needed for the thousands of litigants barred by the (AEDPA), but their claims have not yet developed until after the one year time limit to file for federal relief.

Florida authorized the use of motion 3.800(a) to correct Hale sentencing errors in Valdes v. State, 765 So.2d 774 (Fla.App.1 Dist 2000) and state habeas petitions to correct manifest injustice under Adams v. State, 957 So.2d 1183 (Fla. App 3 Dist 2007) were decided well after the enactment date of the (AEDPA) April 24, 1996. Does Arnold have an enforceable federal right to review on the merits of manifest injustice claims under Johnson above, and does Arnold have a federally enforceable right to due process and equal protections in his state collateral process of right? This is the only court that can determine these rights under the U.S. Constitution Amend. .

### CONCLUSION

The petition for Writ of Certiorari should be granted

Respectfully Submitted

  
Thomas Arnold 100520

Date: 8th day of June 2018