

SUPREME COURT OF THE UNITED STATES

No. 18-5742

Salomon Roberts VS. STATE OF FLORIDA

Petitioner

Respondent

NOTICE OF COMPLIANCE

This Cause before this Honorable Court Pursuant to Rule 44. "Rehearing" And Petitioner having obtained the Clerk's notice. Proceed to Correct And/or Amend [His] Pleading as advised; 12-10-18.

The Evidence of State Court records [App F App A Exhibits A thru C] before this Court [is] sufficient to Prove [the] Statute of Conviction Jurisdictional Element Under Hahn Inquiry.

I
"Miscarriage of Justice" Sentence Exceeds the "Statutory Maximum" Under Hahn, refers to Statute of Conviction."

In this Context Petitioner contends [He] is being held without Authorization by Any Congressional Statute SEE Gilbert v. U.S., 640 F.3d 1293, 1295 (11th Cir. 2011)
U.S. v. Peters, 310 F.3d 709 at 712 (11th Cir. 2002)

U.S. v. Hahn, 359 F.3d 1315, 1325 (10th Cir. 2004) (en banc)

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Petitioner's Life Sentence Imposed Following Violation of Probation [App F App A Ex C] "Exceeds the Statutory Maximum For the Statute of Conviction (s. 812.13) Fla. Stat. For anyone who committed the crime. Id. 640 F.3d at 1295 Accord Brown v. Warden, 817 F.3d 1278 at 1280 (11th Cir. 2016) Cf. [App F App A Ex. A And B]

This ground is limited to the intervening circumstances of this Honorable Court's U.S. v. Addonizio, 442 U.S. 178 at 185 and n.4 (1979) holding. See Peters, 310 F.3d at 712.

II

"Miscarriage of Justice" Conviction based on An Uncharged Crime [or] offense not tried is a violation of the Due Process Clause of the [U.S. Const.]

Petitioner infer that [his] Life Sentence Imposed 11-16-82 is for An Uncharged "Firearm Element" the Prosecution elected to Not-Prob as Condition-inducement For the Guilty Plea 10-31-78 SEE [App F App A Ex. A and B] based on the same operative facts. See U.S. v. Edmond, 780 F.3d 1126, 1130 (11th Cir. 2015)

While it is "SELF-evident" that a defendant's Conviction For a crime not charged [or] tried seriously affects the fairness, integrity and Public reputation of Judicial Proceedings, Id at 1130 The ~~above~~ Requirements are Met.

This ground is limited to the Intervening Circumstances

of this Honorable Court's Jackson v. Virginia, 443 U.S. 307, at 314 and n. 6 (1979) holding.

III

"[A] Fundamental Miscarriage of Justice would result from failure to hold Federal Evidentiary hearing"²

Petitioner contends that "a determination after a hearing on the merits of a factual issue, made by the state court of competent jurisdiction... shall be presumed to be correct" 28 U.S.C. § 2254(d) (1992). See Fierman v. Anderson, 188 F.3d 635 at 640 and n. 4 (11th Cir. 1999).

In this instance, state court failed to employ a fact-finding hearing on the threshold Eighth Amendment violation under Miller v. Alabama decision. See [App. D App. Ex.]

In fact the state court only address petitioner's request for appointment of public defender within Fla. R. Crim. P. Rule 3.802 [App. F App. A] without considering the constitutional claim period. See Whitney v. Florida, 389 U.S. 138, 88 S.Ct. 314 (1967).

Petitioner were not accord the constitutional requirement of substantial equality and fair process afforded to other persons applying for relief under 2014-220 Laws of Fla. Codified in Section 921.1401, 1402 Fla. Stat. (2016). Id. 139

² William v. Taylor, 529 U.S. 420 at 433 (2000) (citing Keeney v. Tamayo-Reyes, 504 U.S. 1 at 12, 118 LEd.2d 318)

Made Retroactive in Florida [28 U.S.C. § 2254(e)(2)(A)(i)]
Under *Falcon v. State*, 162 So. 3d 954 at 960 (Fla. 2016)
(quoting *Miller v. Alabama*, 133 S.Ct. 2061 at 2070 n.6)

"Eighth Amendment Prohibition of Cruel and Unusual Punishment" guarantees individuals the right not to be subjected to excessive sentences." *Id.* at 417 n.6

This Ground is limited to the intervening decision articulated in *Whitney*, supra, 389 U.S. 138 [See App 5]

In which Florida made available a means of review per Chapter 2014-220 Laws of Florida codified by Sections 921.1401 and 1402. However, its determination [is] objectively unreasonable to the extent that it discriminated arbitrarily between "[p]etitioner" and other "persons" applying for relief. *Id.* at 139 and n.2

Wherefore, the state court's decision not to consider petitioner's motion to review juvenile sentence was in error. See *Fairman*, 188 F.3d at 641. And a failure to address his claim would result in a fundamental miscarriage of justice (citing *Coleman v. Thompson*, 501 U.S. 722 at 750 (1991)).

Thus, because the state court refused to conduct a fact-finding hearing the constitutional claims were not adjudicated on the merits. Thus § 2254(e)(1) presumption of correctness is "[i]napplicable" [2254(d)]

See *Cullen v. Pinholster*, 179 LEd. 2d 557 at 573-74 (2011) because "[un]-like" Pinholster [the] Petitioner's Constitutional Claims were Not Adjudicated on the Merit.

Thus, As in *Whitney* [398 U.S. 138 n.1] the writ at a minimum should be dismissed as Improvidently granted without Prejudice to An Application for writ of Habeas Corpus in the United States District Court (S.D. Fla.)

IV

~~III~~ Substantial Ground not Previously Presented

"Whether the Sentence Imposed in Excess of the Statutory Maximum for the Statute of Conviction Presents two distinct Claims for Relief," even if both Allegations Arise From the Same Alleged Set of Operative Facts³

Petitioner Contends that the State Court Imposition of Life Without Parole on (s.812.13) Fla. Stat. Invalidated His Previously Adjudicated Plea. See *Bousley v. U.S.*, 140 LEd. 2d 828 at 834 (1998) whereas the excessive Sanction rendered Petitioner's Plea "involuntary" because a defendant cannot Plea to a Sentence for An Uncharged Crime Fed. R. Crim. P. Rule 11. Id. at 837 and n. [16] citing *Brady v. United States*, 397 U.S. 742, 748 (1970) Accord *U.S. v. Edmond*, 780 F.3d 1126 at 1130 [Acceptance of Plea for Uncharged Crime]

³ *Clisby v. Jones*, 960 F.2d 925 at 936 (11th Cir. 1992) (en banc)

This ground is limited to the Intervening decisions of this Court in McCarthy v. U.S., 22 LED. 2D 418 at 425 n.8 (1969) And Santobello v. New York, 30 LED. 2D 427 at 433 n.9 (1971).

For the sake of Argument the claimed errors which affirmatively appears in the record Alerts the Court of Counsel's deficient Performance ["errors so serious"] As to Undermined the Proper Functioning of the Adversarial Process that the trial cannot be relied on as having produced a just result. Strickland 80 LED. 2D 674 at 692 n.8 (1984).

The claims before this Court Pursuant to [Rule 44] Can be conclusively determined from Examination of the Pleading, supplemented by the domestic Records of state Court.

Petitioner contends in reliance on the Intervening decision of this Court Blackledge v. Allison, 431 U.S. 63 at 83 (1977) Because [HE] were deprived of the essence of Post-Conviction "collateral" Relief and all that the Constitution requires [ta] Allow a Prisoner "a reasonable opportunity to obtain a reliable judicial determination of the Fundamental legality of his Conviction - Sentence." Id at 83.

Presented IN Good Faith

Both Procedural And Substantive Components of the Due Process Clause Are Violated U.S.C.A. Const. Amend 5.14