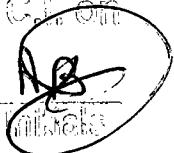


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IN THE SUPREME COURT OF THE UNITED STATES

ARTHUR BRADDY
Petitioner

V.

STATE OF FLORIDA
Respondent

**ON PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA FIRST DISTRICT
COURT OF APPEAL**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

DID THE STATE OF FLORIDA VIOLATE PETITIONER'S RIGHT TO DUE PROCESS BY FAILING TO CORRECT THE TRIAL COURT'S IMPOSITION OF A MINIMUM MANDATORY SENTENCE WHICH WAS EXPRESSLY IMPROPER UNDER THE APPLICABLE FLORIDA STATUTES?

LIST OF PARTIES

ALL PARTIES APPEAR IN THE CAPTION OF THE CASE
ON THE COVER PAGE.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

The unpublished per curiam affirmance by the Florida First District Court of Appeal of Petitioner Arthur Braddy's appeal of the final judgment of the circuit court for Duval County, Florida Dated May 11, 2018 and attached hereto as Appendix1.

STATEMENT OF JURISDICTION

Petitioner invokes the jurisdiction of this court pursuant to 28 U.S.C, § 1254(1) and 28 U.S.C, § 1257(a) Because the First District Court of Appeal elected not to write an opinion, the Supreme Court of Florida was without jurisdiction to review the case and the First District court of Appeal is the highest state court in which a decision could be had. Florida Constitution Art. V § 3(b); Florida Supreme court manual for internal operating procedures II B. 1. (a)(1); Jenkins v. State, 385 So.2d 1356 (Fla. 1980)

Jurisdiction is further consistent with Supreme Court rules 10(c) and 13(1) for the reasons set forth herein.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides that “No State shall deprive any person of life, liberty or property without due process of law”

I.)Section 775.084(1)(b) (2007), Florida Statutes states, in pertinent part:

“Habitual Violent Felony Offender” means a defendant for whom the court may impose an extended term of imprisonment if it finds that:

1. The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

- a.** Arson;
- b.** Sexual battery;
- c.** Robbery;
- d.** Kidnapping;
- e.** Aggravated child abuse;
- f.** Aggravated abuse of an elderly;
- g.** Aggravated assault with a deadly weapon;
- h.** Murder;
- i.** Manslaughter;
- j.** Aggravated manslaughter on elderly;
- k.** Aggravated manslaughter on a child;
- l.** Unlawful discharge of bomb;
- m.** Armed burglary;
- n.** Aggravated battery;
- o.** Aggravated stalking.

Sec. 4 (b) 2: The Court may sentence the Habitual Violent Felony Offender as follows:

2. In the case of a felony of the second degree, for a term of years not exceeding 30, and such offender shall not be eligible for release for 10 years.

II.) Section 775.087 Florida Statutes states, in pertinent part:

(2) (a) 1. Any person who is convicted of a felony or an attempt to commit a felony, regardless of whether the use of a weapon is an element of the felony, and the conviction was for:

(Enumerated List) . . .

And during the commission of the offense, such person actually possessed a "firearm" shall be sentenced to a minimum term of imprisonment of 10 years, *except that a person who is convicted for aggravated assault, possession of a firearm by a felon, or burglary of a conveyance shall be sentenced to a minimum term of imprisonment of 3 years.*

STATEMENT OF THE CASE AND FACTS

On November 18, 2007 Petitioner was found guilty by a jury of possession of a firearm by a convicted felon. (Appendix 2) On December 10, 2007, Petitioner was sentenced to 25 years as a Habitual Violent Felony Offender (HVFO) with 10 years to serve on a minimum/mandatory basis pursuant to the HVFO Statute (§ 775.087, Fla. Statutes).

Prior to trial, the State had served notice to Petitioner of it's intent to classify Petitioner as an HVFO and seek sentencing under said statute, including a minimum mandatory sentence. (Appendix 3). In said Notice, the State expressly relied upon a 1985 conviction for burglary of a dwelling by Petitioner as the predicate for invocation of the HVFO sentencing statute. Accepting the State's Notice and recommendation for sentencing, the Trial Court entered it's 25 - years sentence and 10 year minimum/mandatory requirement.

Petitioner challenged the court's sentence by Postconviction motion, the denial of which is the basis for this Petition as indicated in Appendix 1.

REASONS FOR GRANTING THE PETITION

**THE TRIAL COURTS IMPOSITION OF A TEN
YEAR MINIMUM MANDATORY SENTENCE WAS
EXPRESSLY PROHIBITED BY FLORIDA LAW
AND THE APPELLATE COURTS FAILING TO
CORRECT THE ERROR HAS RESULTED IN THE
CONTINUING DEPRIVATION OF PETITIONER'S
RIGHT TO DUE PROCESS**

Petitioner's issue is as straight forward as it's failure to be addressed is confounding:

1. His prior conviction relied upon by the State is not an enumerated felony under the HVFO statute and therefore, his HVFO classification was illegal; and
2. His conviction of possession of a firearm by convicted felon was enumerated specifically as requiring a 3 year minimum/mandatory sentence and therefore, the 10 years imposed by the Court was, likewise, illegal.

As to the former issue, in order for the State to seek, and the Court to impose, a sentence under the HVFO statute (Sec. 775.084), the State must file notice seeking same and set forth the qualifying, or enumerated, prior convictions invoking the Statute. The State's Notice however (Appendix 3) relied upon a conviction in Petitioner's distant past (burglary of a dwelling) which, simply, was

not an enumerated felony under the Statute as listed in §775.084 (1) (b) 1; and the classification as HVFO, and the Court's ability to sentence Petitioner to the enhancements under § 775.084 (4) (b) 2 for the conviction of possession of a firearm by felon, a 2nd degree felony, was thereby rendered null and void.

As for the latter issue, Florida Statute § 775.087 is known as the “10-20-Life Statute” in that it allows minimum/mandatory sentences of 10 years, 20 years or Life for the possession of a firearm in a felony, the discharge of a firearm in a felony, or the discharge of a firearm in a felony which causes death or great bodily harm, respectively. The Trial Court ignored this provision however and such error has been rubber-stamped by the Appellate Court since.

There is however a specific exception under the Statute if the subject conviction for invoking the Statute was for possession of a firearm by a felon, in which case the minimum mandatory sentence was mandated to be 3 years. § 775.087 (2) (a) 1.

This Court has previously addressed issues related to Florida's violations of due process in it's application, or inapplication, of its own laws. In Bunkley v. Florida, 123 S.Ct.2020 (2003), a case which also involved a burglary and the determination of weapon as an enhancing factor, this Court reversed and remanded a conviction where it was demonstrated that the Petitioner “did not violate an

element of the Statute” and that therefore “his conviction did not satisfy the strictures of the due process clause”. ID, at 2023.

This Court has also held that it will not take lightly cases where “a State Court failed to apply its own law.” Bell v. Cone, 123 S.Ct. 847, 853 (2005)

Petitioner attempted to have the Trial Court correct its error, and as all too often it happens, however, the Trial Court simply adopted the State’s conclusory position that the sentence was “legal”.

Furthermore, and as it also happens too often in Florida, the Appellate Courts simply “PCA’d” Petitioner’s appeal, a frustrating device which allows Florida’s Appellate Court to “Per Curiam Affirm” an appeal without opinion, explanation, or justification, and leaves persons such as Petitioner with review by this Court as the only option to redress a wrong. (Appendix 4)

This Petitioner has done, to seek this Court’s review and correction of what can only be seen as a State’s refusal in abide by it’s own laws.

CONCLUSION

The Trial Court erred in it's sentence of Petitioner in the imposition of a 10 - year minimum mandatory sentence. Petitioner properly raised the issue for correction by motion to the Trial Court which was denied. The Appellate Court affirmed the Trial Court's denial by Per Curiam opinion without explanation. Review by this Court is requested to redress what is apparent as the State of Florida's refusal to apply it's own law and thereafter it's failure to correct the error once it was properly raised.

Respectfully Submitted,
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