No. _____

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IN THE
UNITED STATES SUPREME COURT

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In re JOHNNY RAY BENNETT
PETITIONER

v.

SECRETARY, DEPARTMENT OF
CORRECTIONS et al,
RESPONDENTS



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# PETITION FOR WRIT OF CERTIORARI

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APPEALS FROM THE ELEVENTH CIRCUIT COURT
OF APPEALS

JOHNNY RAY BENNETT, #623036
MARION CORRECTIONAL INSTITUTION
P.O. BOX 158
LOWELL, FLORIDA, 32663-0158

No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

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**In re JOHNNY RAY BENNETT** - PETITIONER

vs.

**SEC. FLORIDA DEPT. OF CORRECTIONS et. al.** - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI

**THE ELEVENTH CIRCUIT COURT OF APPEALS**

# PETITION FOR A WRIT OF CERTIORARI

JOHNNY RAY BENNETT
MARION CORRECTIONAL INSTITUTION
P.O. BOX 158
LOWELL, FLORIDA, 32663-0158

(352)-401-6400

## QUESTIONS PRESENTED

WOULD THE 2002 ENACTMENTS VIOLATE THE EX POST FACTO CLAUSES OF THE STATE AND FEDERAL CONSTITUTION, IF ITS RETROACTIVITY DID NOT CURE THE DEFECTS OF CHAPTER 99-188 LAWS OF FLORIDA?

COULD THE TRIER OF FACT LOSE SUBJECT MATTER JURISDICTION TO THE SENTENCING STATUTES THAT THE PETITIONER INVOLUNTARILY PLEAD TO WERE UNDER CONSTITUTIONAL SCRUTINY, COULD HE THEN CLAIM UNLAWFUL DETENTION?

WOULD A PARTICULAR EX POST FACTO VIOLATIONS BE GROUNDS FOR A PRISONER TO CLAIM THAT HE IS BEING HELD IN VIOLATION OF BOTH STATE AND FEDERAL LAW?

SHOULD AN INDIGENT PRISONER'S CIVIL RIGHTS SUIT THAT IS MISLABELED CONTINUE IN HABEAS PROCEEDINGS WHILE CONTINUING TO CLAIM UNLAWFUL CUSTODY?

COULD A PRISONER BE JEOPARDIZED SIMULTANEOUSLY BY STATE AND FEDERAL LAW, AND IF SO, SHOULD IT BE CALLED DOUBLE EX POST FACTO?

## LIST OF PARTIES

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

[✓] 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) Florida Supreme Court
2) Fifth District Court of Appeals
3) State Trial Court
4) United States District Court

A. Corporate Disclosure Statement as required Sup. Ct. Rule 29.6 is referred to the previous motion for leave to proceed in forma pauperis in the United States Court of Appeals, filed January 4th, 2018.

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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 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 B to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix E 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 Fla. Supreme court appears at Appendix E to the petition and is

[ ] reported at N/A; or,
[ ] 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 3/30/18.

[☑] 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, 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 and including N/A (date) on N/A (date) in Application No. N/A A N/A.

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

[☑] For cases from **state courts**:

The date on which the highest state court decided my case was 1/25/11. A copy of that decision appears at Appendix (E) Judg. #2

[☑] A timely petition for rehearing was thereafter denied on the following date: 3/18/11, and a copy of the order denying rehearing appears at Appendix (E) Judg. #3

[ ] 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. N/A A N/A.

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

## STATEMENT OF THE CASE

Petitioner states that: this action is invoking the Court's original jurisdiction under Art. III of the Constitution of the United States. See also 28 U.S.C. § 1251 and U.S. Const. Amend. 11

S. Ct. Rule 22.1: addressed to an individual Justice.

## PROCEEDINGS ON RECORD

Motion for Postconviction Relief filed on June 21, 2001; denied; timely appealed; denied; Motion to Correct Illegal Sentence filed July 30, 2004 denied; timely appealed; denied; Motion for Postconviction Relief filed January 21, 2005; denied; timely appealed; denied, Motion for Postconviction Relief April 25, 2007, Amended Motion for Postconviction Relief filed May 14, 2007; denied; did not appeal; Motion to Correct Illegal Sentence filed June 28, 2007, denied; Order to Show Cause on July 31, 2007; filed Rebuttal; Order of Sanction filed August 20, 2007; timely appealed; PCA on September 12, 2008. Belated habeas corpus 9.141(c) filed September 28, 2010; dismissed November 12, 2010; Notice to invoke Discretionary Review filed November 1, 2010; denied January 25, 2011; Reconsideration filed February 21, 2011; denied March 18, 2011; Notice of Removal filed March 27, 2011; Order approving to refile on approval form on April 19, 2011; voluntary dismissal filed June 13, 2011; Order dismissing without prejudice filed July 1, 2011; § 2244(b) filed September 27, 2012; denied as unnecessary; Motion for Post Judgment Release filed December 31, 2012; denied; § 2254 filed November 9, 2012; denied and dismissed with prejudice on July 18, 2013; Judgment on July 19, 2013; Motion for Post Judgment Release filed December 1, 2013; denied January 7, 2013; amended Post Judgment Release filed January 16, 2013; denied February 25, 2013; Notice of Appeal timely filed with Rule 60(b) filed August 9, 2013 with reconsideration for (COA) and Motion for (IFP) filed August 19, 2013; denied February 25, 2014; did not appeal; Motion for Leave to file

(Release Motion) filed October 22, 2015; returned; writ of Certiorari filed January 11, 2016; returned as "out of time," filed § 2244(b) on February 9, 2017; denied March 3, 2017; Motion for Relief from Judgment filed September 29, 2017; denied October 4, 2017; received denial 2 weeks later; filed amended Motion for Relief from Judgment on October 5, 2017; denied October 16, 2017; received denial 2 weeks later; mistakenly used the incorrect address on the (IFP); Notice of Appeal filed October 23, 2017; 2nd Notice of Appeal field November 1, 2017; Motion to Supplement/ add documents filed November 9, 2017; denied; Motion for Leave to Appear in forma pauperis filed November 27, 2017; denied November 27, 2017; Notice from U.S. Court of Appeals filed November 27, 2017; Reconsideration for Granting of a (COA) 2nd Motion for Leave to Proceed in forma pauperis filed December 21, 2017; returned unfiled December 26, 2017; filed Amended of the same; returned thereafter; Motion for Leave to proceed in forma pauperis on January 4, 2018; denied March 30, 2018; did not appeal; filed this writ of Certiorari on May 31st, 2018.

This Petition shall allege plain and concise statements as directed:

**GROUND 1: PETITIONER IS ENTITLED TO HIS IMMEDIATE RELEASE FROM CUSTODY**

**I**. The Eleventh Circuit Court of Appeals asserts that Bennett's § 2254 petition filed on November 9, 2012 is untimely; denied a (COA) and (IFP) as moot. See Appendix A: Appeals Court, No. 17-14788-F, Order #1, Pg. 1, 2, No. 13-13691-A, Order #4, Pg. 1, 2.

Petitioner's case first commenced as mislabeled Civil Rights suit under 28 U.S.C. § 1331 as a "Notice of Removal" on March 27, 2011; dismissed without prejudice July 1, 2011 with permission to refile on April 19, 2011. Petitioner was seeking release from unlawful custody; actually suing for being deprived of his liberty for 18 calendar years. 28 U.S.C. § 2241(c)(3); 28

U.S.C. § 2254. Although the § 2254 was dismissed without prejudice previously to this Order above, there is a logical explanation. The Court of Appeals' judgment is erroneous to that of another Court of Appeals see Reid v. Angelone, 369 F.3d 363 (4th Cir. 2004); a (COA) for an appeal from a Rule 60(b) Motion is necessary to achieve the Congressional purpose underlying 28 U.S.C. § 2253(c)(2). Bennett's cause should not have been denied or dismissed with prejudice see Appendix B: Order #3, and #4, on procedural grounds because of a default ruling. See Appendix B, Order #8, Pg. 5.

The Court of Appeals concludes that a federal doctrine of equitable tolling would apply to the § 1983 cause of action while challenges to the conviction or sentence were being exhausted. See No. 5 in Heck vs. Humphrey, 512 U.S. 477, 114 S. Ct. 2364 (1994) "Bennett exhausted his State remedies on March 18, 201, see Appendix E, Judg. #3. In addition, the statutes Petitioner was convicted and sentenced by has previously been "invalidated twice" pursuant to Heck, supra, for Bennett's liberty deprivation under color of state law and for Compensation; *i*d at No. 15 see e.g., Taylor v. State, 818 So. 2d 544, 546, 550 (Fla. 2d DCA 2002) and Hersey v. State, 831 So. 2d 679, 680 (Fla. 5th DCA 2002). In conclusion, Petitioner could properly challenge the duration of his confinement under 42 U.S.C. § 1983 instead of being required to seek relief under Federal Habeas Corpus Statutes e.g., Presiser v. Rodriquez, 411 U.S. 475, 36 L.Ed. 2d 439, 93, S. Ct. 1827 (1973) at No. 15; c.f. Wilkinson v. Dotson, 544 U.S. 74, 81, 125 S. Ct. 1242, 161 L.Ed 2d 253, 254 (2005).

**II.** The 11th Circuit Court of Appeals entered a judgment in conflict with a decision of another Court of Appeals. See Appendix A, Order #3 & Order #4.

**(A).** In the direct appeal proceedings in 2012, the Respondents were required by Habeas 5 Rule pursuant to the Order from the U.S. District Courts' to supply Petitioner with an answer for

his cause of detention as well as the appropriate documents such as: the Direct appeal record, the Initial Brief, the pro se Initial Brief, and documents that show his true cause of detention such as: 1) the information and indictment sheet(s); 2) the sentencing guidelines sheet(s); and 3) the sexual predator designation sheet, see Appendix D, Indict #1, Order #3. This is considered as deceiving the Courts of the true cause of Petitioner's detention. See F.R.C.P. Rule 60(b)(3); e.g. Thompson v. Greene, 427 F.3d 263 (4th Cir. 2005), 14th Amendment U.S.C.A., F. R. C. P. Rule 5(A)(C).

**(B).** The 11th Circuit Court of Appeals departed from the usual course of judicial proceedings as this Court in Slack v. McDaniels, 120 S. Ct. 1595 (2000); which states in pertinent part: when a district court denies a (COA) without reaching the Constitutional merits of the case, a (COA) should issue. Petitioner has not received a (COA) as of yet. See Appendix A, Order #1, and Order #3.

**(C).** The 11th Circuit Court of Appeals and the U.S. District Court denied Petitioner a (IFP) in forma pauperis which prohibits the appeal to a pauper; contrary to 28 U.S.C. § 1915(a)(1)(4). See Appendix B, Order #7, Appendix A, Order #1, Pg. 1, 2.

**III.** The United States District Court and the Florida Supreme Court judgments were in contrary to the judgment in Castro v. United States, 540 U.S. 375, 124 S. Ct. 786 (2003).

The District Court had re-characterized Petitioner's second Notice of Appeal to the 11th Circuit Court of Appeals filed November 1, 2017, without giving him warning or an opportunity to amend it e.g. Johnson v. Bell, 605 F.3d 333, 336 (6th Cir. 2010) See Appendix B, Order #5.

The Florida Supreme Court construed Petitioner's jurisdiction brief as a writ of Mandamus and then denied it. See Appendix E, Dec. #1 and #2.

## A CONFLICT ANALYSIS OF RETROACTIVITY AND EX POST FACTO

"99-188 Chapter laws of Florida affected a substantial change in law." Memorably, from an inmate's perspective, Taylor, supra *id* at 546, 550 declared this Chapter law mentioned above violative of the single subject rule that contained (21) sentencing statutes. Meanwhile, the Fifth DCA in Hersey, supra, also concluded that the three-strike Violent Felony Offender Act indeed violate Art. III, sec. 6 of the Florida Constitution, but upheld the sentences imposed of a few prisoners, holding that the "2002 enactments" by Legislative retroactively cured the defects. The 5th DCA also certified either a question of great public importance or a conflict with Green v. State, 839 So. 2d 748 (Fla. 2d DCA 2003) a year later receded from Hersey v. State, 831 So. 2d 679 (Fla. 5th DCA 2002) and held that the 2002 Legislation could not retroactively cure the single subject rule violation without violating the ex post facto causes of the State and Federal Constitutions of which Jones was affected by Ch. 02-209 see, Jones v. State, 872 So. 2d 938, 940 (Fla. 5th DCA 2004). The 1st, and 3rd and 4th Districts agree that Ch. 99-188 does not violate Art. III, sec. 6.

The other conflict or determination that needs to be resolved is between the Florida Supreme Court in Franklin v. State, 887 So. 2d 1083 (Fla. 2004), Hersey v. State, 908 So. 2d 1050 (Fla. 2005); and State v. Jones, 908 So. 2d 1054 (Fla. 2005) as all agree with Green v. State, 887 So. 2d 1089, 1090 (Fla. 2004); and conclude that "it's unnecessary for us to address the retroactive application of 2002 Legislation to crimes occurring before that Legislation took effect would be in violation of the ex post facto clauses of the Florida and United States Constitution.

Furthermore, Judge Cope dissenting opinion on section 13 needs a final determination on these issues, *id*. at Franklin at 1082 2nd par. It should be noted that Bennett has been adversely

affected and disadvantaged by Section 7, 8, and 13 prior to the 2002 enactments. Fla. Const. Art. 1, sec. 10; Art. 1, sec. 9.

F. R. Civ. Proc. Rule 15(c)(1) relates back to the § 2254 filed November 9, 2012. Petitioner was charged with Armed Burglary of a Dwelling F.S. 810.02 (b)(2) and Sexual Battery F.S. 794.011 (3) on August 27, 1999, convicted on May 22, 2000 to an involuntary plea of nolo contendere and sentenced on June 20, 2000 to two (2) concurrent 35-year sentences and two (2) ten-year minimum mandatory sentences and designation as a Sexual Predator. F.S. 775.24(3)(c); all in all the judge had lack of subject matter jurisdiction to proceed at that time. 28 U.S.C. § 2241(c)(3), U.S.C.A. 14th Amend. See Appendix D, Indict. #1 and Order #3, 18 U.S.C.A. § 3161(h).

Pursuant to F. R. Crim. Proc. Rule 52(b); Counsel was the true cause for the procedural default and Petitioner claims he is "actually innocent" of being "railroaded" through invalid statutes and for Counsel saying in one of those proceedings after several continuances that there is no such thing as an insanity defense. This caused a fundamental miscarriage of justice. Jurists of reason would have prevented Petitioner's involuntary plea of nolo contendere to these statutes at that moment in time. See Cf. Murry v. Carrier, 477 U.S. 478, 488, 106 S. Ct. 2639 (1986); e.g. Schlups vs. Delo, 513 U.S. 298, 316, 115 S. Ct. 851, 130 L.Ed. 2d 808, 810 (1995). Aside from this, Petitioner scored out to 180.4 points. See Appendix D, C.P.C. #2.

When the only applicable statute at the time of sentencing was F.S. 921.001 (1999). And according to State v. Thompson, 750 So. 2d 643, 649 (Fla. 1999), "It would be improper to sentence the defendant under the valid laws in effect at the time of the Original Sentence, because those valid laws would include the unconstitutional chapter that has been cured."

Therefore, Petitioner can conclude that there was not a remedy adequate to obtain relief, see Appendix C, Opinion #1, so he presumed that he has been deprived of his liberty without any present resolution for relief, which was manifestly unjust. 18 U.S.C. § 3161(h); U.S.C.A. 14th Amend.

## SUMMARY OF THE ARGUMENT

Its now evident that this cause primarily commenced as a Civil Rights violation that was mislabeled by mistake and lack of knowledge, but the Preiser puzzle was discovered years ago and wasn't understood until now where Petitioner respectfully request this Court to make a determination.

## IN CONCLUSION

Petitioner respectfully requests this Honorable Court to take judicial notice of the conflicts, Constitutional issues and questions because adequate relief cannot be obtained in any other form and in any other court an that by exceptional and unusual circumstances warrants the exercise of this Courts discretionary powers. 28 U.S.C. § 2106.

A complete review is necessary to prevent a fundamental miscarriage of justice. See Coleman v. Thompson, 501 U.S. 722, 735, 740, 115 L.Ed 2d 640, 111 S. Ct. 2546 (1991)(declining to apply long presumption to summary dismissal order).

WHEREFORE, Petitioner respectfully prays for the granting of the Writ of Certiorari, Remand back to the Court of Appeals to immediately release him from unlawful custody on his own recognizance. F. R. A. Proc. Rule 23(c); Sup. Ct. Rule 36.3(b) 4.

Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594 (U.S. Ill. 1972) Petitioner is a pro se litigant, laymen in the science of law and should not be held by stringent standards of formal pleadings drafted by lawyers.

The Ex post facto clauses and its retroactivity to the "2002 enactments" are drawn into question and Petitioner is unaware if the U.S. Attorney General or the State Attorney General certified the question pursuant to 28 U.S.C. § 2403(a) and 28 U.S.C. § 2403(b). 6-month Inmate account attached w/authorized signature.

## REASONS FOR GRANTING PETITION

1) Without jurisdiction, the Court cannot proceed at all in any cause. Ex parte McCardle, 74 U.S. 511, 514 (U.S. Miss. 1868) There is no authority to hold the Petitioner under the sentence. Ex Parte Wilson, 5 S. Ct. 935, 114 U.S. 417 (U.S. Miss. 1885); U.S.C.A. 14th Amend.,

2) No adequate notice of the deprivation or opportunity to contest it. Matthews v. Eldridge, 424 U.S. 319, 348, 96 S. Ct. 893, 47 L.Ed 2d (1976); Art. I, sec. 9 Fla. Const.,

3) A pauper entitled to appeal in good faith, without paying the statutory filing fee, 28 U.S.C. § 1915(a)(1)(4),

**4)** Civil Rights violation suit, 42 U.S.C. § 1983; 28 U.S.C. § 1331.

## OATH

I declare (or certify, verify, or state) under penalty of perjury that the forgoing Writ of Certiorari is true and correct.

Executed this 31st of May 2018.

28 U.S.C. § 1746

Johnny R Bennett

Johnny Ray Bennett
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P.O. Box 158
Lowell, Florida, 32663-0158

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Johnny L. Bennett

Date: May 31st, 2018