

Appendix (A)

M A N D A T E
from
**FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

This case having been brought to the Court, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with the opinion of this Court, and with the rules of procedure, and laws of the State of Florida.

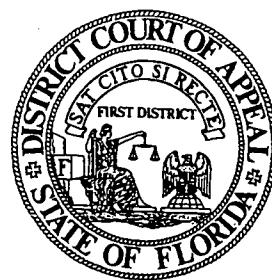
WITNESS the Honorable Stephanie W. Ray, Chief Judge, of the District Court of Appeal of Florida, First District, and the seal of said Court at Tallahassee, Florida, on this day.

November 05, 2019

Vernon Robinson v.
State of Florida

DCA Case No.: 1D18-1699
Lower Tribunal Case No.: 378-CF 1982

Kristina Samuels
KRISTINA SAMUELS, CLERK
District Court of Appeal of Florida, First District



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Mandate and opinion to: Hon. Ronnie Fussell, Clerk
cc: (without attached opinion)

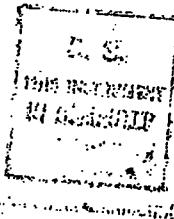
Hon. Ashley Moody, AG

Vernon Robinson

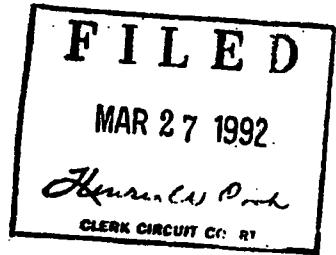
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IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA
VS
VERNON ROBINSON



CASE NUMBER: 82-378CF



MOTION TO CORRECT AN ILLEGAL SENTENCE

COMES NOW, the Defendant, VERNON ROBINSON, in proper person requests and moves this Honorable Court, pursuant to Florida Rules of Criminal Procedure 3.800 (a) to correct the illegal sentence imposed in the above style cause and would state the following in support thereof:

1. Defendant was sentence on May 7, 1982 for the allege charge of Armed Robbery, in violation of Florida Statute 812.13 (2) (a), a first degree felony. Punishable by imprisonment for a term of years not exceeding life imprisonment of as provided in Florida Statute 775.082. See Exhibit 1. According to Florida Statute 775.082 (3) (b); Penalties: For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment. In which the Defendant was illegally sentenced to 60 years running concurrent to 1979 Youthful Offender Acts' Case Number: 79-5200 by this court. See Exhibit 2.

2. Defendant understands that in the case of Patterson v State the Appellate Court ruled the Appellant could not be given mandatory three years imprisonment pursuant to Florida Statute 775.087, because sentencing provision under Florida Statute 958.05, Youthful Offender Act, were exclusive penalties available to sentencing

Judge. Patterson v State, 408 So. 2d 785 (2nd DCA 1982). This means Florida Statute 775.082 is no exception to the rule when it comes to a Youthful Offender. The record will show and prove that the Defendant was at the time of the commission of his alleged crime was a Youthful Offender. Only except to the Youthful Offender Statute is a person who has been found guilty of a capital or life felony may not be classified as a Youthful Offender. Florida Statute 958.04 (c).

3. Defendant's alleged crime was committed on January 2, 1982. See Exhibit 3. At which time he was only 20 year old and still a Youthful Offender, according to the law. See Exhibit 4. Who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime which is, under the laws of this state, a felony of first, second or third degree if such crime was committed before the Defendant's 21st birthday is eligible for Youthful Offender Classification. Florida Statute 958.04 (b) (1981). The court should have recognized this fact and held a predisposition hearing, since the Defendant had already been classified as a Youthful Offender in his 1979 case.

4. Defendant is fully aware that sentencing juvenile Defendant without ordering predisposition report are required by West's F.S.A. 39-111 (6) was error. Franklin v State, 476 So. 2d 1346 (1st DCA 1985) appeal after remand 498 So. 2d 1035 appeal after remand 515 So. 2d 400. Although a presentence investigation report prepared by DOC may in some cases be functional equivalent of a predisposition report, this section requiring a predisposition report prior to sentencing of juveniles to adult sanctions clearly mandates, by its use of word "shall", that a predisposition report be prepared, with recommendation, according to six listed criteria

in this section. E. C. v State, 445 So. 2d 661 (1st DCA 1984). It does not matter whether juvenile convicted as a adult or transferred to criminal division. Judge v State, 408 So. 2d 831. Trial court failure, in deciding to sentence juvenile offender as adult, to enter supporting written order which considered all criteria mandated by waiver statute 39.111 (6) (c) (d) constituted reversible error. Walker v State, 483 So. 2d 825 (3rd DCA 1986). Court's failure to fully consider six statutory criteria specified in provision allowing juveniles to be sentenced as adult, is error. Johnson v State, 486 So. 2d 596.

5. Defendant realizes now, this being so the judicial disposition of youthful offender act applies to this case at that time. The court may commit the youthful offender to the custody of the Department for a period not to exceed (6) years. The sentence of the court shall specify a period of not more than (4) years to be served by imprisonment and a period of not more than (2) years to be served in a community control program. The Defendant shall serve the sentence of court unless sooner released a provided by law. Florida Statute 958.05 (2). If the court finds any aggravating factors exists, the court may impose a minimum term of imprisonment of (1) year before eligibility for parole and shall make written findings as to the aggravating factor found to comply with this portion of the statute, upon sentencing the Defendant.

6. Defendant is quite aware that our legislators had an intent doing this period of time for the Youthful Offender Act. The purpose of this act is to improve the chances of correction and successful return to the community of youthful offenders sentenced to imprisonment by preventing their association with older and more experienced criminals during the terms of their confinement.

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It was the further intent of the Legislative to provide an additional sentencing alternative to be used in the discretion of the court when dealing with offenders who have demonstrated that they can no longer be handled safely as juveniles and who require more substantial limitations upon their liberty to ensure the protection of society. Florida Statute 958.021. This court has exceeded and gone was surpass the Legislation intent, which ignores and defiles the law.

7. Defendant contends that the Florida Supreme Court also noted that the existence of two or more contemporaneous and/or previous felony convictions does not preclude a Defendant from being classified as a Youthful Offender, it merely excludes him from mandatory classification as such. State v Goodson, 403 So. 2d 1337 (Fla. 1981). On post conviction appeal, the First District agreed with Petitioner that the sentence were excessive under State v Milbry, 476 So. 2d 128 (Fla. 1985), which held that a youthful offender cannot be sentenced in excess of the statutory maximum sentence an adult could receive for the same crime. Allen v State, 526 So. 2d 69 (Fla. 1988). To interpret the Youthful Offender Act in any other way would violate the express intent of the Legislature to provide a "sentencing alternative", that is more stringent than the juvenile system and less harsher than the adult system. Clearly the limitation on the time period for confinement is a primary benefit of the Youthful Offender alternative. Hence, imposition of consecutive and/or adult sentences resulting in a total commitment of more than six years would thwart the purpose of the act. A juvenile's commitment "shall not exceed the maximum term of imprisonment which an adult may serve for the same offense". JWH v State, 402 So. 2d 562 (1st DCA 1981). (D)

8. Defendant further contends that although the court can decline to classify a Defendant as a Youthful Offender, its must have a predisposition report/hearing and also he is entitle to a Pre-Sentence Investigation Report and an opportunity to present to the court facts which would materially affect the decision of the court to adjudicate the Defendant a Youthful Offender. The Defendant, his attorney and the state shall be entitled to inspect all factual material contained in the presentence report or diagnostic reports prepared or received by the department. Florida Statute 958.07. If a Pre-Sentence Report would have been conducted by this court the information would have clearly disclosed and revealed that the Defendant was a Youthful Offender at the time he allegedly committed this crime. In all cases in which the court has discretion as to what sentence may be imposed the court may refer the case to the probation and parole commission for investigation and recommendation. No sentence or sentences other than probation shall be imposed on any Defendant found guilty...., until after such investigation has first been made and the recommendations of the commission received and considered by the sentencing judge.

Florida Rules of Criminal Procedure 3.710.

9. Defendant in conclusion would like to remind this Honorable Court and the sentencing judge that the "Administration of Justice" is the most important and precious function a "DEMOCRACY" is called to perform and rules of procedure were never intended to defeat it. Courts must have rules to guide them in the performance of this function, but it has never been improper to toss "RIGHTS" and "COMMON SENSE" on the scale and weigh them with the evidence to reach a "JUST" result. Rules of procedure are as essential to administer "JUSTICE" as they are to conduct a base-
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ball game. But they should never be permitted to become so technical, fossilized and anti-quoted that they obscure the "JUSTICE" of the cause and lead to results that brings its Administration in dispute. This Administration has certainly came under dispute from the obvious illegal sentence imposed in this cause. This court's views ignores the established principle, that in the interest of "JUSTICE" in criminal prosecution and conviction, "is not that it shall win cases, but that "JUSTICE" shall be done. The Defendant is seeking "JUSTICE" and the proper sentence in this cause, which he feels this Honorable Court pride and honor wouldn't object and prevent from the facts within.

WHEREFORE, the Defendant humbly prays and hope that this Honorable Court would have mercy and leniency in his behalf. Deeply and sincerely consider the facts and cited authority in this cause and pleading and correct his illegal and unconstitutional sentence in the name of "JUSTICE".

Respectfully submitted,

Vernon Robinson

VERNON ROBINSON #060180
Hendry Correctional Institution
Rt 2, Box 13A - MB# 37
Immokalee, FL 33934-9747

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this motion has been furnished the State Attorney's Office via U. S. Mail on this date.

Vernon Robinson

VERNON ROBINSON

"Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are to the best of

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my knowledge and belief".

Vernon Robinson
VERNON ROBINSON

Executed Date: 3/24/92

cc: Florida Criminal Justice Society Institute
House of Representatives
Florida Senators
Governor Lawton Chiles
United States Justice Department

Ex-CDs

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In consideration thereof, it is

ORDERED AND ADJUDGED that said motion/petition is hereby denied.

DONE AND ORDERED in Chambers, Jacksonville, Duval County Florida this 30th day of March, 1992.

J. H. Hadde

Copies to:
Office of State Attorney
Defendant

CIRCUIT JUDGE

Vernon Robinson
Hendry Correctional Institution
Rt. 2, Box 13-A #37
Immokalee, Fl. 33934

EX-105

CERTIFICATE

I Vernon Robison, hereby do certify that the ground presented herein are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented before this Honorable Court. See> Appendix (A). The Petitioner also hereby certify that the petition for Belated Rehearing En Banc is presented in good faith and not for delay.'

Vernon Robison

Vernon Robison.