

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOVAN HOWARD

Petitioner

VS.

**THE FLORIDA DEPARTMENT OF CORRECTIONS
JULIE L. JONES, SECRETARY.**

Respondent,

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

PETITION FOR WRIT OF CERTIORARI

Pro'se Petitioner.

Jovan Howard DC# 079919.
Columbia Correctional Annex.
253, S.E. Corrections Way.
Lake City Fl, 32025.

QUESTIONS PRESENTED

1.Whether Habeas Corpus was the proper remedy for the petitioner unlawfully detained against his will because the prosecution unlawfully altered an amended information for burglary dwelling against the petitioner after the amended information had been served upon the petitioner a {prisoner} by including the name **Gerald Gordon** to the petitioner's name as an a/k/a in the charge.

And whether the unauthorized act of the alteration operates to arrest the power of the trial court to proceed to trial on such indictment or information, that would consequently entitle the petitioner to seek his release from the Florida Department of Corrections where he is unlawfully detained and held prisoner against his will in violation of his constitutional right to due process of law. See' U.S.C.A. § 14.

And the **Fla. Constitution. Art. 1§15.**

2. And whether the respondents were required to abide by the requirements of due process of law where the unauthorized alteration of the amended information by the act of the prosecuting officer, who amended the information without lawful authority to do so rendered the amended information void.

3. Whether the questions presented are in compliance with **State, ex rel, J.H. Wentworth, v. D,C, Coleman, 121 Fla. 13; 163 So.316 (1935)** Where Plaintiff in error prisoner challenged the judgment of the Circuit Court for Dade County (Florida) that denied the prisoner's petition for habeas corpus relief against defendant in error sheriff. Habeas corpus was the proper remedy for a prisoner where the prosecution altered an indictment against a prisoner after the indictment had been served upon the prisoner by changing the first two initials of the prisoner's name in the charge. A grand jury returned an indictment against the prisoner., and the warrant was served. Then, the prosecution, without notice or approval from the prisoner, altered the indictment. The original indictment had

listed a certain name as the accused. The alteration served to change the initials of the accused first name so as to correspond with that of the prisoner. The prisoner brought an action for habeas corpus relief in the trial court, but was unsuccessful. He appealed. On review, the court determined that habeas corpus relief was an appropriate remedy in such cases because the prosecution's alteration of the document served as a **nolle prosequi** of the charge. The court entered judgment in favor of the prisoner. Where it was shown by the record that on march 10th 1932, the county solicitor of Dade County filed in the criminal court of record of that county an information purporting to charge the plaintiff in error with the offense of embezzlement. **In this information as filed the solicitor by mistake described an element of the offense charged as having been done by one G.W. Wentworth, whereas J.H. Wentworth was intended to be named.** The accused was arrested, gave bond, and was thereupon furnished, as required by statute with a certified copy of the information filed against him. **It was after all this had transpired that the county solicitor undertook, by way of alteration of the information, to correct his error in the charging part of the same by changing the name G.W. Wentworth, wherever it appeared therein, to read J.H. Wentworth.** The plaintiff in error, **J.H. Wentworth**, sued out a writ of habeas corpus in the Circuit Court of Dade County, in which proceeding he advanced the contention that he should be discharged from custody in the instant case because it was shown that the sole cause for his detention by the respondent was an arrest under a **capias** that had been issued on a criminal information charging him with embezzlement. **Such information, so it was alleged, had become void and of no legal effect because of an alleged unlawful and unauthorized alteration made therein by the county solicitor, after the same had been filed and **capias** thereon issued, no notice or hearing, nor order of the court permitting the same, having been applied for or had as a predicate for such alteration.**

LIST OF PARTIES

All parties do not appear in the caption of 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:

Florida Department of Corrections: General Counsel, Kenneth S. Steely, 501 S. Calhoun Street Tallahassee fl, 32399.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

The petitioner respectfully pray's 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 at **appendix (H)** to this petition. The opinion from the 1st District Court of Appeal Per curiam affirmed.

The opinion of the lower tribunal The Circuit Court of the 3rd Judicial Circuit in and for Columbia County of Florida appears at **appendix (I)**. Order dismissing complaint for petition for Writ of Habeas Corpus with written opinion for dismissal.

STATEMENT OF JURISDICTION

The date on which the highest state court decided my case was on June 25th(2018) and it appears at **appendix (H)**. The Jurisdiction of this court is invoked under **28 U.S.C. 1257(a)**.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.A. § 14.

No state shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the law.

Florida Constitution. Art. 1 § 15.

(a) No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial.

Florida Statutes. 79.01.

When any person detained in custody, whether charged with a criminal offense or not, applies to the Supreme Court or any justice thereof, or to any district court of appeal or any judge thereof or to any circuit judge for a writ of habeas corpus and shows by affidavit or evidence probable cause to believe that he or she is detained without lawful authority, the court, justice, or judge to whom such application is made shall grant the writ forthwith, against the person in whose custody the applicant is detained and returnable immediately before any of the courts, justices, or judges as the writ directs.

STATEMENT OF THE CASE

This cause came before the Circuit Court of the third Judicial Circuit in and for Columbia County of Florida. The petitioner pro'se on November 7th (2017) filed with the Columbia county clerk of court a complaint for petition for Writ of Habeas corpus. **appendix (A)**. In that petition, the petitioner claim that his current detention was unlawful and that he was entitled to immediate release from the department of corrections where he is unlawfully detained. Because it was shown by the record that on February 15th (2006) the office of the state attorney in and for Broward County of Florida filed in the criminal court of record of the above said county an amended information charging the petitioner in error for the offense of Burglary of a Dwelling. In that amended information as filed, the State Attorney intentionally described the element of the offense charged as having been done by **Jovan Howard a/k/a Gerald Gordon**. A name the petitioner never used as an alias. As such the petitioner complaint was that the respondent was without lawful authority to deprive the petitioner of his constitutional right to seek immediate release from custody of where he is being unlawfully detained in violation of his constitutional right to due process of law **U.S.C.A. 14. Fla. Const. Article 1§15**. The petitioner made a prima facie showing that he was entitled to immediate release from the Florida Department of Corrections where he is unlawfully detained because the state attorney amended information **appendix (B)** for Burglary Dwelling was unlawfully altered intentionally to include **a/k/a Gerald Gordon**. That is also named in the petitioner's uniform commitment to the Florida Department of Corrections **appendix (C)**. The petitioner's complaint for petition for writ of habeas corpus was filed under the authority of **79.01 F.S. and Fla. R. Civ. P. 1.630(d)(5)**. The Circuit Court Judge issued an order dismissing the petitioner's complaint for petition for Writ of Habeas Corpus. **appendix (D)**. The petitioner appealed to the 1st District Court of Appeals.

REASONS FOR GRANTING THE PETITION

The reasons for granting the petition is because the amended information in this case for burglary of a dwelling was unlawfully altered by the act of the prosecuting officer, who amended the information without lawful authority to do so in violation of the petitioner's constitutional right to due process of law **U.S.C.A. 14**, and the **Florida Constitution Art 1 § 15**.

On February 15th 2006 the office of the State Attorney in and for Broward County of Florida for the 17th Judicial Circuit Court charged the petitioner by an amended information for burglary of a dwelling, which occurred in august of 2003 Case No.06-2580-CF-10A. **See' appendix (B). The amended information filed on February 15th 2006.**

The petitioner was in {prison} in the custody of the Florida Department of Corrections when the information was amended by the State Attorney's office to say that the petitioner was also known as **Gerald Gordon**. The petitioner was brought before the court from prison to stand trial by a jury, and was found guilty as charged in the amended information that followed the petitioner's uniform commitment to the Florida Department of Corrections.

The amended information that followed the petitioner's uniform commitment to the Florida Department of Corrections was altered.

Because it is shown by the record that on February 15th 2006 the office of the State Attorney in and for Broward County of Florida, filed in the criminal court of record of the above said county an amended information charging the petitioner in error for the offense of burglary dwelling under sections **810.02(1) § 810.02(3) F.S.(2003)**. In that amended information as filed, the State Attorney **Intentionally** described the element of the offense charged as having been done by **Jovan Howard a/k/a Gerald Gordon**. Whereas **a/k/a Gerald Gordon** was intended to

be named in the amended information as the sole purpose for amending the information. See' **Howard v. State, 27 So.3d 104 Fla.4thDCA 2009.** The Fourth District Court of Appeal, affirmed with a written opinion stating that the State amended the information for the sole purpose of adding **Howard's alias.** appendix (K).

In May of 2013 the petitioner filed a motion to correct the record. He complained the records in his criminal case contained a false name which he did not use. **Gerald Gordon**, a name of an individual whom the officer's questioned around the time of the offense who was doing work at a nearby home in the same neighborhood. The petitioner in that motion noted that the original information **appendix (J)** only charged his committed name. **Jovan Howard**. But the state filed an amended information that intentionally described the element of the offense charged as having been done by **Jovan Howard a/k/a Gerald Gordon**. In response to the petitioner's motion, on appeal, The State Attorney General asserted that the information was amended to reflect **Howard's** {alias} and was not a clerical error. See' **Howard v. State 139 So.3d 975 Fla. 4th DCA 2014** Where the court held that on remand that the trial court was required to consider the defendant's motion to remove an alias from the record documents related to his criminal conviction as a motion to correct a clerical mistake. It was after all that had transpired that the court undertook by way of alteration to correct error in the charging part of the same by ordering that the name **Gerald Gordon** was removed from all documents in the above styled cause. Then- [The Circuit Court in a **nunc pro tunc** order to correct the record removed the name **Gerald Gordon** from the written sentence judgment].

On June 22nd 2017 the petitioner then filed a petition to correct the record, and on July 17th 2017 **Circuit Court Judge Paul L. Backman**, issues an order granting

the petitioner's petition to correct the record. See' **appendix (E) Order granting petitioner's petition to correct the record.**

But the July 17th 2017 order to correct the record did not remove the name **Gerald Gordon** from the amended information because the amended information was altered. See' **appendix (B) The amended information filed on February 15th 2006.**

The name **Gerald Gordon** was never removed from the amended information because the amended information was altered. See' **appendix (B)**. The amended information followed the petitioner's uniform commitment to custody of the Florida Department of Corrections that includes the name **Gerald Gordon**, as an a/k/a. See' **appendix (C)**.

See' **State, ex rel, J.H. Wentworth, v. D,C, Coleman, 121 Fla. 13; 163 So.316 (1935)** Where it was shown by the record that on march 10th 1932, the county solicitor of Dade County filed in the criminal court of record of that county an information purporting to charge the plaintiff in error with the offense of embezzlement. **In this information as filed the solicitor by mistake described an element of the offense charged as having been done by one G.W. Wentworth, Whereas J.H. Wentworth was intended to be named.** The accused was arrested, gave bond, and was thereupon furnished, as required by statute with a certified copy of the information filed against him. **It was after all this had transpired that the county solicitor undertook, by way of alteration of the information, to correct his error in the charging part of the same by changing the name G.W. Wentworth, wherever it appeared therein, to read J.H. Wentworth.**

The plaintiff in error, **J.H. Wentworth**, sued out a writ of habeas corpus in the Circuit Court of Dade County, in which proceeding he advanced the contention

that he should be discharged from custody in the instant case because it was shown that the sole cause for his detention by the respondent was an arrest under a writ of capias that had been issued on a criminal information charging him with embezzlement. **Such information, so it was alleged, had become void and of no legal effect because of an alleged unlawful and unauthorized alteration made therein by the county solicitor, after the same had been filed and capias thereon issued, no notice or hearing, nor order of the court permitting the same, having been applied for or had as a predicate for such alteration.**

[Note]' The amended information still charges that the burglary was committed by **Jovan Howard a/k/a Gerald Gordon.** {Suspect} **Gerald Gordon** was detained by police officers but was never arrested or swabbed for DNA. See' **appendix (F) Broward Sheriff's Office Event Report Suspect - Arrestee - Missing person, Gerald Gordon.** See' **appendix (G) Broward Sheriff's Office Event Report Narrative, Gerald Gordon.**

Furthermore, it is a fact that the act of the unauthorized alteration of the amended information according to the Supreme Court of Florida is held the equivalent of a legal dismissal or **nolle prosequi** operating as a vitiation of same by the prosecuting officer who altered the amended information, **Deliberately**.

The petitioner in this case contends that the proceeding before this court fully establish the unlawful alteration complained of, and, indeed, the same in no way can be refuted either before this court or by any appropriate denial of the petitioner's claim that such alteration was made.

The petitioner in a trial by a jury was found guilty as charged by an altered information that had become void and of no legal effect because of an unlawful and unauthorized alteration made by the office of the State Attorney without notice

or hearing, nor order of the court permitting such, applied for or had as a predicate for such alteration.

Habeas Corpus relief was an appropriate remedy in this case because the prosecution's alteration of the charging document was not a clerical error but served as a **nolle prosequi** of the charge. The petitioner is entitled to immediate release from where he is being unlawfully detained against his will due to a void charging document in violation of his constitutional right to due process of law **U.S.C.A. § 14**, and the **Florida Constitution Art. 1§15**. The amended information that followed the petitioner's commitment to the Florida Department of Corrections complained of had become void and of no legal effect because of an unlawful and unauthorized alteration made by the office of the State Attorney without notice or hearing, nor order of the court permitting such, applied for or had as a predicate for such alteration.

It is for these reasons the amended information complained of that followed the petitioner commitment to the Florida Department of Corrections was **null** and **void** and was of no legal effect due to the unlawful and unauthorized alteration made by the office of the state attorney or the prosecuting officer who altered the amended information. And that for the same above stated reasons this court should grant the writ.

CONCLUSION

For the foregoing reasons, the petitioner respectfully request that this petition for writ of certiorari should be granted.

Following that: The amended information complained of, that followed the petitioner commitment to the Florida Department of Corrections was **null and void** and was of no legal effect due to the unlawful and unauthorized alteration made by the office of the State Attorney or the prosecuting officer who altered the amended information.

RESPECTFULLY SUBMITTED

Jovan Howard DC# 079919.
Columbia Correctional Annex.
253, S.E. Corrections Way.
Lake City Fl, 32025.

Jovan Howard
PETITIONER

Dated: August 8, 2018.