

IN THE
SUPREME COURT OF THE UNITED STATES

18-8493

No:

JEREMEL REMYMARTIN SMITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeal
for the Eleventh Circuit

FILED

MAR 04 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI

Jeremel Remy Martin Smith, in pro se, respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the Eleventh Circuit Court of Appeal final order of denial on his application for certificate of appealability (COA), and request for reconsideration entered in case no. 18-13267-F, in that court on December 21, 2018. Appendix A-1.

The United States court of appeal for the Eleventh Circuit has entered a decision on an important question of federal law that has not been, but should be, settled by this Court, and has decided an important federal question in a way that conflicts with relevant decisions of this Court, as to call for an exercise of this Court's supervisory power regarding the COA standards in *Buck v. Davis*, 137 S.Ct. 759 (2017).

QUESTION(S) PRESENTED

WHETHER A YOUTHFUL OFFENDER CONVICTION CAN BE USED FOR PURPOSES OF A FELON-IN-POSSESSION-OF-A-FIREARM-AND-AMMUNITION STATUTE UNDER 18 U.S.C. § 922(g)(1) WHERE THE PREVIOUS ADJUDICATION WERE JUVENILE DELINQUENCY SANCTIONS AND LATER VACATED AND RE-SENTENCED UNDER THE FLORIDA STATUTE OF YOUTHFUL OFFENDER TO TWO DIFFERENT TERMS OF IMPRISONMENT FOR THE SAME OFFENSES

WHETHER 18 U.S.C. § 921(a)(20) APPLIES TO THE YOUTHFUL OFFENDER CONVICTIONS AND SANCTIONS WHERE THE STATE COURT SENTENCED PETITIONER TO TWO SEPARATE TERMS FOR THE SAME OFFENSES IN VIOLATION OF THE FLORIDA SENATE 2011 FLORIDA STATUTES WHICH CLEARLY STATES THAT THE COURT SHALL IMPOSE AN ADULT SANCTION OR A JUVENILE AND MAY NOT SENTENCE THE CHILD TO A COMBINATION OF ADULT AND JUVENILE PUNISHMENTS

WHETHER 18 U.S.C. § 921(a)(20) APPLIES TO THE JUVENILE SANCTIONS PORTION OF THE FLORIDA SENATE 2011 FLORIDA STATUTE WHERE IT STATES ADJUDICATION OF DELINQUENCY SHALL NOT BE DEEMED A CONVICTION, NOR SHALL IT OPERATE TO IMPOSE ANY OF THE CIVIL DISABILITIES ORDINARILY RESULTING FROM CONVICTION

WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS HAS MISAPPLIED THE STANDARD SET FORTH IN MILLER-EL V. COCKRELL, 537 U.S. 322 (2003), AND BUCK V. DAVIS, 137 S.C.T. 759 (2017), WHICH ALLOWS DEFENDANTS TO APPEAL ADVERSE § 2255 RULINGS THROUGH CERTIFICATE OF APPEALABILITY WHEN A PETITIONER MAKES A SHOWING THAT JURISTS OF REASON COULD DEBATE WHETHER THE DISTRICT COURT WAS CORRECT IN ITS PROCEDURAL RULING

WHETHER PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHT TO BE REPRESENTED BY COUNSEL OF HIS OWN CHOICE, UNITED STATES V. GONZALEZ-LOPEZ, 126 S.C.T. 2557 (2006)

LIST OF PARTIES

The United States of America is the only party involved in this case.

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TABLE OF AUTHORITIES CITED

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OPINION BELOW

The Eleventh Circuit's denial(s) of petitioner's application for a COA in appeal No. 18-13267-F, is contained in the Appendices, under **Appendix A-2**. The Eleventh Circuit's denial of petitioner's request for reconsideration pursuant to **11th Cir. R. 27-2**, are contained in the **Appendix A-1**.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The Eleventh Circuit's final order denying a COA was entered on **December 21, 2018**.

The district court had jurisdiction over petitioner's original proceedings pursuant to 18 U.S.C. § 3231 and 28 U.S.C. § 2255. The court of appeal had jurisdiction pursuant to 28 U.S.C. § 1291, 18 U.S.C. § 3742, and 28 U.S.C. § 2253.

The United States court of appeal for the Eleventh Circuit has entered a decision on an important question of federal law that has not been, but should be, settled by this Court, and has decided an important federal question in a way that conflicts with decisions of this Court, as to call for an exercise of this Court's supervisory power regarding the COA standards found in **Buck v. Davis, 137 S.Ct. 759 (2017)**.

STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner intends to rely on the following constitutional and statutory provisions:

Fifth Amendment;

No person shall ... be deprived of life, liberty, or property, without due process of law...

Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy, and public trial, by an impartial jury ..., and to be informed of the nature and cause of the accusation ... and to have the Assistance of Counsel for his defence.

28 U.S.C. § 2253(c):

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from---...

(A) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C. § 2255(a):

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

The Florida Senate 2011 Florida Statutes Chapter 985.565

See Statute in Appendix A-5, Florida Statute 958.04

18 U.S.C. § 921 (a)(20):

the conviction is governed by the law of the jurisdiction in which the prior offense was adjudicated.

18 U.S.C. § 922 (g)(1):

(g) It shall be unlawful for any person---

(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year

to possess a firearm or ammunition.

STATEMENT OF THE CASE

Jeremel R. Smith, the petitioner in this matter, was arrested for violation of 18 U.S.C. § 922(g)(1), for allegedly being a felon-in-possession-of-a-firearm. After being found guilty by jury trial, he was sentenced to a term of 100-months.

At trial, Petitioner did not stipulate to having a previous felony conviction, and the government introduced a number of prior juvenile and youthful offender adjudications. Notably, the only adult conviction Petitioner has, is a conviction by nolo contendere with adjudication withheld.

The underlying issue is whether the United States court of appeal for the Eleventh Circuit has entered a decision on an important question of federal law that has not been, but should be, settled by this Court, and has decided an important federal question in a way that conflicts with relevant decisions of this Court, as to call for an exercise of this Court's supervisory power regarding the Certificate of Appealability standard in **Buck v. Davis, 137 S.Ct. 759 (2017)**. And whether the Eleventh Circuit court of appeal, and the Southern District Court of Florida is obligated to follow the federal law found in **18 U.S.C. § 921(a)(20)**, regarding whether the juvenile and youthful offender convictions are governed by the law of the jurisdiction in which the prior offense was adjudicated. This question of federal law has not been decided and should be settled by this Court.

The district court did not allow Petitioner the opportunity

to be represented by counsel of his choosing, when he clearly informed the district judge that he had hired another attorney but he would need a continuance. The district court then denied his request for a continuance and made Petitioner proceed to trial with an attorney that he did not communicate with. The decision the district made has departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Courts supervisory power.

STATEMENT OF FACTS

On the night of December 18, 2015, the City of Miami Police Officer's responded to a domestic dispute (Petitioner was not involved in that dispute). When Officers arrived, they allegedly saw a man standing next to a parked car in the area near the address of the domestic dispute. The Officer's state, that upon seeing the police officers, the unidentified man inside ran inside a house. Officer's state that they went after this man, yet the record is void of his identity in the Officers report. Meanwhile, Officer DeWitt approached the parked vehicle, instead of proceeding to, or responding to the domestic dispute complaint the Officers were dispatched to. While on the seen, Officer DeWitt saw that someone inside the parked vehicle using a cell phone. It was Mr. Smith, and because the windows were tinted, Officer DeWitt walked in front of the car where he allegedly observed an open beer and gun resting on the car's center console. Again, Petitioner was not involved with the domestic dispute. Subsequently, Petitioner was arrested and charged with being a felon-in-possession-of-a-firearm and Ammunition in violation of Title 18 U.S.C. § 922(g)(1).

Petitioner was then appointed counsel, (Daryl E. Wilcox). Upon meeting Mr. Wilcox, Petitioner explained to him that he believes he is not a convicted felon. He explained to Mr. Wilcox's that the adjudications the court's are using, are juvenile adjudications and did not qualify as convictions. **See Appendix**

Exhibits A, B, C, and D. Petitioner further explained to Mr. Wilcox's that the state court sentencing judge, the

Honorable David Miller, informed him (Petitioner), prior to accepting his guilty plea to the juvenile offenses, that the adjudications would not have any effects on him in his adult life. Mr. Wilcox's failed to investigate Petitioner's claims regarding prior juvenile adjudications. Mr. Wilcox's kept persisting that Petitioner was a convicted felon, and he should sign the waiver admitting that he was a convicted felon for purposes of a Felon-in-Possession-of-a-Firearm and Ammunition. 18 U.S.C. § 922(g)(1).

Prior to trial, and based on Mr. Wilcox's position that he believed his client was a convicted felon. Petitioner decided to reach out to family members to retain private counsel. Notably, Counsel made attempts at Petitioner's request to withdraw from the case, and the district court would not allow him to withdraw. **See CR-DE-67,68. September 21, 2016.** On the day trial began, Petitioner informed the United States Marshal, that he had retained counsel and could he inform the district judge. After the Marshal informed the court that Petitioner had retained private counsel, and he was asking for a one (1) day continuance, because this particular day was a jewish holiday and his retained counsel would not be able to make a showing. The district court denied Petitioner's request, and because the trial had began, the retained counsel specifically stated he would not proceed in a trial that had already began. The agreement to represent Petitioner was contingent upon the district court granting a continuance of one day.

Notably, after the September 21, 2016 hearing, regarding the attorney withdrawing from the case, the attorney client

relationship became seriously strained, almost to the point of violence. In fact, Mr. Wilcox even called Petitioner "Dumb". At that point, Petitioner stop communicating with Mr. Wilcox's.

On October 3, 2016, the district court denied Petitioner's request to postpone the trial for one (1) day. **CR-DE-80, pg. 5.** Ultimately, Petitioner was found guilty by jury trial.

On July 10, 2018, Petitioner filed his timely 28 U.S.C. § 2255 motion setting forth the issues of ineffective assistance of trial counsel and appellant counsel based primarily on their failure to investigate Petitioner's claims regarding the juvenile adjudications and sanctions. Attached to Petitioner's § 2255 motion, are a number of exhibits detailing the juvenile and youthful offender adjudications, including reproduced copies of the **Florida Senate 2011 Florida Statute** that governs juvenile sanctions in the state of Florida. **See Appendix A Exhibit B.**

Against this backdrop, the questions presented to this United States Supreme Court involves questions of federal law that has not been, but should be settled by this Court, as to call for an exercise of this Court's supervisory power regarding 18 U.S.C. § 921(a)(20); *United States v. Gonzalez-Lopez*, 126 S.Ct. 2557 (2006); *Buck v. Davis*, 137 S.Ct. 759 (2017).

REASON FOR GRANTING WRIT

A grave miscarriage of justice has occurred in this matter where the Eleventh Circuit court of appeals has departed from its usual course of judicial proceedings on an important question of federal law, **18 U.S.C. § 921(a)(20)**, of whether juvenile sanctions can be used as adult conviction for purposes of the felon-in-possession-of-a-firearm statute **18 U.S.C. 922(g)(1)**, and does the district court and the Eleventh Circuit have to abide by Statute **18 U.S.C. 921(a)(20)** which states that: "the conviction is governed by the law of the jurisdiction in which the prior offense was adjudicated.

A grave miscarriage of justice has occurred in this matter where the Eleventh Circuit court of appeals has entered a decision in conflict with relevant decisions of this Court regarding his counsel of choice. **United States v. Gonzalez, 126 S.Ct. 2557 (2006)**.

The Eleventh Circuit court of appeals and the United States District Court for the Southern District of Florida has departed from usual course of judicial proceeding regarding the standard for Certificate of Appealability (COA) as set forth in **28 U.S.C. § 2253(c)(2)**. The Supreme Court's most recent guidance to this standard can be found in **Buck v. Davis, 137 S.Ct. 759 (2017)**, and both court's have ignored this standard. Therefore, based on the foregoing, this Court's supervisory power is needed and warranted in this matter to correct the miscarriage of justice that has occurred in this case.

SUMMATION

The underlying issue is whether the district court erred in summarily denying Petitioner's Title 28 U.S.C. § 2255 motion without developing a record sufficient to facilitate the Eleventh Circuit's review of all the issues pertinent to the ultimate merit of any issues for which a COA can be granted.

In the instant case, Petitioner was adjudicated as a juvenile delinquent for the following offenses that were used in trial his adult trial, without objection from his court appointed counsel. Adjudication occurred on June 8, 2009, pursuant to Florida Statutes, Order of Sentencing Chapter 985, §565. The juvenile court found the Petitioner guilty of **Concealed F/A/Carry; Firearm/Posn/Minor; Coke/Sell/Del/W/Int; Cann/Sell/Del/PSNW/I; Concealed F/A?Carry; Firearm/Posn/Minor; and Burglary/Unocc/Dwell.** See Appendix A-4, Exhibit A. The state court judge, the Honorable David Miller, ordered, that Petitioner be committed to the Department of Juvenile Justice (D.J.J.) and placed in a Moderate Risk, (level 6) program including conditional release (aftercare). The target program is Dade Juvenile Residential Facility. Periodic reports shall be submitted to this court so that this court may be duly notified of Defendant's progress and the terms of the discharge plan. Additionally, the Department of Juvenile Justice shall conduct any necessary medical examinations required for placement.

This child shall be declared indigent for costs for care, support and maintenance.

The order further stated; This child shall be under the

supervision of the Department of Juvenile Justice pursuant to Florida Statutes 985.565. The child shall be under the supervision of the Department for an indeterminate period of time until he reaches twenty-one (21) years of age or sooner if discharged by the department or order of this court. The department shall notify the court of its intent to discharge no later than fourteen (14) days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge. The Court shall retain jurisdiction over the child until he reaches the age of twenty-one (21), specifically for the purpose of allowing the child to complete such program and aftercare, thereby requiring the Department to advise this Court of its intent to discharge the child from its supervision.

The court further stated; If the child proves not suitable for the specified treatment, the Court may revoke this sentence and sentence the child as otherwise provided by law.

DONE and ORDERED in Miami-Dade County, Florida, this 8th day of June 2009. **See Appendix-4, Exhibits A, B, C, AND D.**

Subsequently, Petitioner did not complete the aftercare program and was arrested and charged with a crime of robbery by sudden snatching, which resulted in a Youthful Offender adjudication pursuant to Florida Statute 958.04., in which a different State court judge vacated the previous juvenile Adjudication of Delinquency that was entered on the day of June 8, 2009. **See Appendix-4, Exhibit C, the third page.** This document is

the order vacating Petitioner's juvenile adjudication of delinquency that was entered on June 8, 2009. Notably, when the State court vacated petitioner's juvenile adjudications, she re-sentenced petitioner to two separate terms for the previous juvenile terms. Thereby, violating the Florida Senate 2011 Florida Statutes listed in chapter 985.565(4)(b) **juvenile sanctions**.--which state in pertinent part that: "Adjudication of delinquency shall not be deemed a conviction, nor shall it operate to impose any of the civil disabilities ordinarily resulting from a conviction." The statute further states that: "The court shall impose an adult sanction or a juvenile sanction and may not sentence the child to a combination of adult and juvenile punishments."

The district court overlooked the fact that the State court sentenced petitioner to an adult term of imprisonment of 4 years, and a non-adult term of 364 days in the Dade County Jail for the same charges. Both sentences are listed as (Youthful Offender).. in accordance with F.S. 958.04 **See Appendix A-4, Exhibits A, B, C, and D.** The district court and the United States Court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court where **18 U.S.C. § 921(a)(20)** specifically states that: "the conviction is governed by the law of the jurisdiction in which the prior offense was adjudicated." The issue of whether the Youthful Offender conviction can be used for purposes of a Felon-in-Possession-of-a-Firearm is an important question of federal law that has not been, but should be, settled by this Court.

In Petitioner's Title 28 U.S.C. § 2255 motion, he presented

exhibit which he classified as Discrepancies in juvenile/Youthful offender Document's that clearly shows that the State court judge issued two different terms of incarceration for the same offenses. The district court used the more severe term of 4 years and ignored the 364 day terms. The 364 days terms of imprisonment do not meet the federal requirement's of a felony conviction, which leads to the Question of whether a Youthful Offender conviction can be used for purposes of violating federal statute 18 U.S.C. § 922(g)(1), or whether 18 U.S.C. § 921(a)(20) applies to the Youthful Offender convictions and sanction where the State court initially sentenced Petitioner to a juvenile sanction and then violated it's own state statute by combining a juvenile term with an adult term of imprisonment. The question of whether a Youthful Offender adjudication sanction qualify's as a Conviction for purposes of being a felon-in-possession-of-a-firearm had been presented to the Eleventh Circuit court of appeals, and they declined to resolve the issue by denying Petitioner's request for COA.

Supreme Court Standard for COA

The standard for issuing a COA is set forth in 28 U.S.C. § 2253, which provides that a COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Supreme Court's most recent guidance to this standard can be found in **Buck v. Davis**, 137 S.Ct. 759 (2017). In **Buck**, the Supreme Court explained that under § 2253(c)(2) the threshold and only question at the COA stage " is whether the applicant has shown that ' jurists of

reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.'" 137 S.Ct. at 773 (quoting **Miller-El v. Cockrell**, 537 U.S. 322, 327 (2003)). The Eleventh Circuit has decided the federal questions presented in Petitioner's application for COA in a way that conflicts with decisions of this Court, as to call for an exercise of this Court's supervisory power regarding the COA standards found in a number of Supreme Court decisions. See **Barefoot v. Estelle**, 463 U.S. 880, 893 (1983).

**WHETHER PETITIONER WAS DENIED HIS CONSTITUTIONAL
RIGHT TO BE REPRESENTED BY COUNSEL OF HIS OWN
CHOICE WAS DECIDED BY THE ELEVENTH CIRCUIT IN A
WAY THAT CONFLICTS WITH THIS COURT'S DECISION IN
UNITED STATES V. GONZALEZ-LOPEZ, 126 S.CT. 2557
(2006)**

The facts presented to the district court in Petitioner's § 2255 motion support Petitioner's claim that he was denied a constitutional right to be represented by counsel of his choice and the district court denied his request for a one (1) day continuance to see if the private attorney would appear.

The Supreme Court's has held that a trial court's erroneous deprivation of a federal criminal defendant's choice of counsel entitled the defendant to a reversal of his conviction on appellate review. In **United States v. Gonzalez-Lopez**, 126 S.Ct. 2557 (2006), the Federal Government conceded that the trial court (a Federal District Court) had erred when it had denied the defendant his choice of counsel-this error (1) violated the defendant's right, under the Federal Constitution's Sixth

Amendment, to counsel of choice, without the defendant's being required (as the Federal Government contended) to show prejudice from substitute counsel's performance; and (2) was not subject to harmless-error analysis. (**Scalia, J., joined by Stevens, Souter, Ginsburg, and Breyer, JJ.**) The Supreme Court explained in some detail why it would be impossible to apply the harmless error rule and gauge the prejudicial effect of depriving a defendant of the attorney he had retained and forcing him to use a different one during the entire trial and post-trial stages:

Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial. In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the "framework within the trial proceeds," **Fulminante, supra**, at 310, 111 S.Ct. 1246 - or indeed on whether it proceeds at all. It is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings. Many counseled decisions, including those involving plea bargains and cooperation with the government, do not even concern the conduct of the trial at all. Harmless-error analysis in such a context would be speculative into what might have occurred in an alternate universe. **Id.** at 150, 126 S.Ct. at 2564-65. The Court also explained the difference between the denial of retained counsel of choice and more typical ineffective assistance violations:

The United States court of appeals for the Eleventh Circuit, and the United States District Court, Southern District, issued a decision on an important question of federal law in a way that conflicts with relevant decisions of this Court, as to call for an exercise of this Court's supervisory power regarding

Petitioner's right to counsel of choice.

WHETHER 18 U.S.C. § 921(a)(20) APPLIES TO THE
JUVENILE SANCTIONS PORTION OF THE FLORIDA
SENATE 2011 FLORIDA STATUTE WHERE IT STATES
ADJUDICATION OF DELINQUENCY SHALL NOT BE DEEMED
A CONVICTION, NOR SHALL IT OPERATE TO IMPOSE
ANY OF THE CIVIL DISABILITIES ORDINARILY
RESULTING FROM CONVICTION

As a starting point, in *United States v. Clarke*, 822 F.3d 1213 (11th Cir. 2016), the Eleventh Circuit court of Appeals held that a guilty plea with adjudication withheld did not qualify as a "conviction" for the purposes of § 922(g). *Id.* at 1215. The court reasoned that since § 922(g)(1) is the federal felon-in-possession statute, *id.* at 1214, they looked to the Florida felon-in-possession statute, which prohibits a person from "own[ing] or [] hav[ing] in his or her care, custody, possession, or control any firearm ... if that person has been ...[c]onvicted of a felony in the courts of [Florida]." Fla. Stat. § 790.23(1). They then certified to the Florida Supreme Court whether a guilty plea with adjudication withheld constituted a conviction under the Florida statute, and it answered in the negative. *Clarke v. United States*, 184 So. 3d 1107, 1116 (Fla. 2016).

Clarke does not speak directly to this case, but the relevant statute there, Florida's felon-in-possession-of-a-firearm statute, is silent on whether an adjudication of Juvenile Delinquency qualified as a "conviction" for the purposes of the felon-in-possession statute. *Clarke*, 822 F.3d at 214 (addressing what constitutes a conviction under § 922(g), not § 924(e)); see also Santiago, 601 F.3d at 1243 (noting that what

constitutes a conviction under Florida law is context-specific). In *Santiago*, the question is whether a plea constitutes a conviction for purposes of § 924(e), which is a sentence enhancement provision. See *Santiago*, 601 F.3d at 1244 (emphasizing that "[t]his case...does not present the question of whether *Santiago* was 'convicted' of the 2001 offense for the purpose of supporting a charge under 18 U.S.C. § 922(g)(1) -- i.e., for determining whether *Santiago* is a convicted felon.") The Eleventh Circuit concluded that they must look to Florida law concerning sentencing enhancements for habitual felony offenders. *Santiago*, 601 F.3d at 1244. Florida's habitual-felony-offender statute provides that "[f]or the purposes of this section, the placing of a person on probation or community control without an adjudication of guilt shall be treated as a prior conviction." Fla. Stat. §775.084(2)(emphasis added). Petitioner in this matter is only citing *Clarke, Santiago*, as an example of an of what review was taken in those cases and how they based their determination of whether Florida conviction qualify for purposes of felon-in-possession statute.

Proceeding to Petitioner's juvenile/youthful offender adjudications, the Florida Statute distinguish between the two type's of punishment that a Delinquent could receive and how they should be treated. First, **Florida Senate 2011 Florida Statutes**
Title XLVII CRIMINAL PROCEDURE AND CORRECTIONS Chapter 985
JUVENILE JUSTICE; INTERSTATE COMPACT ON JUVENILE Section 565
Sentencing powers procedures alternatives for juveniles

prosecuted as adults.

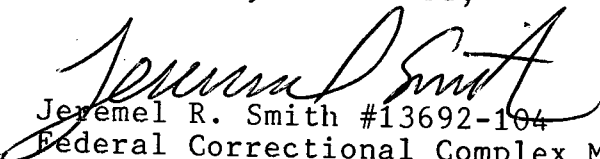
While Petitioner's juvenile adjudications involved a plea of guilty with stipulations that he complete the after-care program, which he did not, does not negate the fact that he plead guilty to the listed offense that the federal court used as adult convictions for purposes of establishing that he was a felon-in-possession-of-a-firearm. In short, the Eleventh Circuit court of appeals has so far departed from the accepted and usual course of judicial proceedings by not certifying the question to the Florida State Supreme Court as they have done in so many cases involving whether certain Florida convictions qualify for purposes of whether thoses convictions can be used as felony convictions for felon-in-possession-of-a-firearm.

In sum, the Eleventh Circuit and the district court believes that because Youthful Offender convictions can be used for enhancement purposes, they can also be used for felon-in-possession-of-a-firearm, without, certifying the question to the Florida State Supreme Court as they have done in so many other cases regarding Florida Statute. Therefore, because the Eleventh Circuit has departed from its usual course in judicial proceeding regarding whether the juvenile adjudications can be turned into adult adjudication for purposes of felon-in-possession-of-a-firearm, without certifying the question to the Florida Supreme Court. ~~This United States Supreme Court's supervisory power is~~ warranted and needed to correct the miscarriage of justice that has occurred in this matter.

CONCLUSION

Premised on the fact that the Eleventh Circuit Court of Appeal has departed from its usual course of judicial proceedings by not certifying whether the prior juvenile adjudications can be turned into adult convictions for purposes of using them for a felon-in-possession-of-a-firearm, and whether Petitioner was denied his constitutional right to be represented by counsel of his own choice.

Respectfully submitted,


Jeremel R. Smith #13692-104
Federal Correctional Complex Medium
P.O. Box 1032
Coleman, Florida 33521-1032

REQUESTED RELIEF

Petitioner is requesting that this Honorable Supreme Court Grant his petition, Vacate his conviction and Remand back to the United States Eleventh Circuit court of Appeals with instructions to rule on whether the juvenile and youthful offender convictions qualify for purposes of the felon-in-possession of a firearm statute.