No. _____

In The

Supreme Court of the United States

JUAN FRANCISCO VEGA,

Petitioner,

-VS-

REBECCA KAPUSTA, Secretary,

FLORIDA DEPARTMENT OF CHILDREN AND

FAMILIES,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE

SECOND DISTRICT COURT OF APPEAL OF FLORIDA

APPENDIX-A

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JUAN FRANCISCO VEGA,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D18-2487

Opinion filed February 15, 2019.

Appeal from the Circuit Court for DeSoto County; Don T. Hall, Judge.

Juan Francisco Vega, pro se.

Ashley Moody, Attorney General, Tallahassee, and Blain A. Goff, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed.

KELLY, VILLANTI, and BLACK, JJ., Concur.

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FLORIDA DEPARTMENT OF CHILDREN AND

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ON PETITION FOR WRIT OF CERTIORARI TO THE

SECOND DISTRICT COURT OF APPEAL OF FLORIDA

APPENDIX-B

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR DESOTO COUNTY, FLORIDA

JUAN FRANCISCO VEGA,

Petitioner,

v.

CASE NO.: 2017-CA-000645

STATE OF FLORIDA;
FL DEPT. OF CHILDREN AND FAMILIES;
FL CIVIL COMMITMENT CENTER; AND
ELEVENTH JUDICIAL CIRCUIT COURT,

Respondents.
_____/

ORDER (1) STRIKING ELEVENTH JUDICIAL CIRCUIT COURT AS NAMED RESPONDENT; (1) DENYING "PETITION FOR WRIT OF HABEAS CORPUS"; AND (3) DENYING "SECOND AMENDED PETITION FOR WRIT OF HABEAS CORPUS"

This matter comes before the Court on Petitioner's *pro se* "Petition for Writ of Habeas Corpus," filed December 19, 2017; and "Second Amended Petition for Writ of Habeas Corpus," filed April 2, 2018.[1] Petitioner is currently in the custody of the Florida Department of Children and Families (DCF), and is detained at the Florida Civil Commitment Center (FCCC) in DeSoto County, Florida, pursuant to involuntary civil commitment proceedings under the Jimmy Ryce Act. *See* § 394.910 *et seq.*, Fla. Stat. The Court has reviewed both petitions, the case file, and the applicable law, and is otherwise duly advised in the premises.

Petitioner recounts the history of the proceedings in this case as follows:[2] On May 5, 1986, he pleaded guilty to several offenses filed in 4 separate cases in the Eleventh Judicial Circuit

[1] It appears that Petitioner's "Amended Petition for Writ of Habeas Corpus" was inadvertently filed by the Clerk's Office on January 20, 2018, in a separate case filed by Petitioner. *See* 2017-CA-000381. The Court recently dismissed that amended petition, by Order entered May 25, 2018, because of its facial insufficiency, and in recognition of the fact that the same claims were presented in this case. Through his "Motion to Hear and Rule," filed May 24, 2018, Petitioner has requested that this Court review and rule on his Second Amended Petition, which shall hereafter be referred to as "Petition."

[2] Petitioner attaches no documentation to his petition.

Court,[3] and he was sentenced to a total of 30 years in prison. On January 18, 2008, prior to the expiration of his sentence, the Florida Department of Corrections sent a letter to the Department of Children and Families to notify them of Defendant's anticipated release date, in order to initiate a multidisciplinary review for the purpose of civil commitment, pursuant to § 394.913, Fla. Stat. On March 24, 2009, the State filed a new criminal charge against Petitioner for armed kidnapping with the intent to commit a sexual battery,[4] based on a cold case DNA match. On July 8, 2009, the State filed a petition with the Eleventh Judicial Circuit Court to have Petitioner involuntarily committed as a sexually violent predator. Petitioner pleaded guilty to the armed kidnapping charge on March 1, 2011, and was sentenced to 42 months of incarceration with credit for time served. He asserts that, at the plea hearing, the trial court expressly refused Petitioner's request that the court dismiss the commitment proceeding in order to allow the State to file an amended petition that relied upon the new armed kidnapping conviction as the qualifying conviction for the petition. Petitioner was transported from prison to the Florida Civil Commitment Center on March 12, 2011, at the expiration of his sentences.

Present Case

Petitioner alleges that he is being unlawfully detained because there is no valid conviction for a sexually violent offense underlying the petition, as required for his detention. *See* § 394.914, Fla. Stat. Specifically, Petitioner contends that, at the time the State filed the petition to have him committed, pursuant to § 394.914, Fla. Stat., the convictions upon which the petition was based were already over 20 years old, and the applicable statute of limitation for civil actions, as set forth in § 95.11(1), Fla. Stat., prohibits "an action on a judgment or decree of a court of record in this state" unless it is filed within 20 years. Defendant argues this limitations period applies because

[3] Eleventh Judicial Circuit Court Case Nos. 85-9074, 86-4671, 85-32540, and 85-32539.
[4] Eleventh Judicial Circuit Court Case F0834057.

the process for committing him under the Jimmy Ryce Act is civil in nature, and the proceeding is based partly upon his criminal convictions, which constitute judgments of the court. Petitioner alternately cites to § 95.11(6), Fla. Stat., which permits application of the doctrine of laches to prohibit certain actions unless "commenced within the time provided for legal actions concerning the same subject matter." Finally, Petitioner points to § 90.11(9), Fla. Stat., which grants unlimited time to file an action related to a violation of § 794.011, Fla. Stat., if it involved a victim under the age of 16, unless the action was one that was already time-barred on or before July 1, 2010. Petitioner apparently implies that his victim(s) were under 16 years of age, so that § 95.11(9), Fla. Stat., barred his civil commitment proceedings once his sentences for those offenses expired.

1. **Facial Sufficiency**

The present motion is properly before the Court, as an inmate claiming an entitlement to immediate release from custody may seek judicial relief through a petition for a writ of habeas corpus filed in the circuit court in the county where the inmate is incarcerated. See § 79.01 *et seq.*, Fla. Stat.; Fla. R. Civ. P. 1.630; *and see Alachua Regional Juvenile Detention Center v. T.O.*, 684 So. 2d 814, 816 (Fla. 1996); *Harris v. State*, 133 So. 3d 1169, 1170 (Fla. 3d DCA 2014); *cf. Stang v. State*, 24 So. 3d 566, 569 (Fla. 2d DCA 2009) (treating certiorari petition as one for habeas relief based on claim of entitlement to immediate release from custody). Although Petitioner is not an inmate of the Florida Department of Corrections, the right to seek habeas relief also applies to civil detainees confined pursuant to the terms of the Jimmy Ryce Act. *See Bishop v. Sheldon*, 68 So. 3d 259, 260 (Fla. 2010); *Insko v. State*, 181 So. 3d 1260, 1262 (Fla. 2d DCA 2015) (per curiam); § 394.9215, Fla. Stat.

The Petition also appears to be facially sufficient because Petitioner has made sworn allegations, under penalty of perjury, as to the facts that he contends support finding that his

detention is unlawful. *See* § 79.01, Fla. Stat. (requiring that application for writ of habeas corpus show "by affidavit or evidence probable cause to believe that [the petitioner] is detained without lawful authority"); *Quarles v. State*, 56 So. 3d 857, 858 (Fla. 1st DCA 2011). Moreover, because Petitioner alleges an entitlement to immediate release from custody, and his claim is not amenable to administrative exhaustion, his failure to exhaust administrative remedies, as required under § 394.9215(1)(a), Fla. Stat., presents no bar to the Court's review. *See Santana v. Henry*, 62 So. 3d 1122 (Fla. 2011).

Petitioner may not, however, include the Eleventh Judicial Circuit Court as a named respondent. Petitioners seeking habeas relief may only include as a party respondent "the party that has actual custody and is in a position to physically produce the petitioner." *Alachua Regional Juvenile Detention Center*, 684 So. 2d at 816; *accord Stovall v. Cooper*, 860 So. 2d 5, 8 (Fla. 2d DCA 2003); *and see Clark v. State ex rel. Rubin*, 122 So. 2d 807 (Fla. 3d DCA 1960) (finding that patient committed by court to hospital could only name administrator of hospital as respondent to habeas petition, and could not name judges sitting on court). The Court shall, therefore, direct that the Eleventh Judicial Circuit Court be stricken as a party to this action.

2. **Analysis**

Our courts have characterized involuntary civil commitment proceedings for sexual offenders as "civil" in nature for the purpose of evaluating potential constitutional infirmities. *See Westerheide v. State*, 831 So. 2d 93 (Fla. 2002) and *Kansas v. Hendricks*, 521 U.S. 346 (1997). However, the courts' construction in that context does not lead to the ineluctable conclusion that § 95.11, Fla. Stat., applies to limit the State's ability to use past convictions as qualifying offenses under § 394.901 *et seq.*, Fla. Stat. In fact, such a construction would countervail the stated legislative intent of the Jimmy Ryce Act, which is to provide a civil commitment "procedure for

"the long-term care and treatment of sexually violent predators." § 394.910, Fla. Stat. If the Court adopted Petitioner's argument, the State could never seek the involuntary civil commitment of an inmate whose sentence(s) on the qualifying offense(s) exceeded 20 years. The Courts should avoid any construction that fails to give effect to the evident intent of the legislature. *See Deason v. Florida Department of Corrections*, 705 So. 2d 1374, 1375 (Fla. 1998); *accord Bautista v. State*, 863 So. 2d 1180, 1185 (Fla. 2003) ("Legislative intent is the polestar that guides a court's statutory construction analysis.").

Moreover, § 394.912, Fla. Stat., which contains the definition of "sexual violent offense," contains no limitation on the age of a qualifying conviction. Section 394.912(g) permits a qualifying "sexually violent offense" to be "any conviction for a felony offense in effect at *any time* before October 12, 1998, which is comparable to a sexually violent offense under paragraphs (a)-(f) or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense." § 394.912(g), Fla. Stat. (emphasis added). This language suggests that the legislature intentionally omitted any constraints on the age of an underlying conviction that could serve to qualify a detainee as a sexually violent predator.

While no court has directly addressed Petitioner's claim, some judges have considered the applicability of § 95.11, Fla. Stat., to Jimmy Ryce proceedings. Judge Padavano opined that "[i]t is doubtful that the statute of limitations can be applied at all in a Jimmy Ryce Act proceeding, as there is no point at which the action can be said to have accrued." *Anderson v. State*, 93 So. 3d 1201, 1209 (Fla. 1st DCA 2012) (en banc) (Padovano, J., concurring). His statement was made in response to commentary by Judge Rowe, who postulated in the same case that § 95.11(p), Fla.

Stat.,[5] provides a 4-year maximum on the State's ability to refile an amended Jimmy Ryce petition, once a probable cause determination has been made. *Id.* at 1222 n. 15 (Rowe, J. concurring).

The Court need not resolve the differences in opinion between Judges Padovano and Rowe, because both judges were commenting on the question of whether § 95.11, Fla. Stat., could serve as a *prospective* bar against the State taking an indeterminate amount of time to refile an amended petition of commitment, should the court dismiss an initial petition for the State's failure to try the detainee in a timely manner, pursuant to § 394.916, Fla. Stat.. Consequently, even if the Court adopted Judge Rowe's view on the applicability of § 95.11, Fla. Stat., this would not aid Petitioner because Judge Rowe envisioned allowing a limitations period to commence at or near to the time when a court found probable cause to find the detainee to be a sexually violent predator for the purpose of commitment; and not at the time that the detainee was originally adjudicated and sentenced on the underlying charge.

The Court, therefore, declines to apply § 95.11, Fla. Stat., in this context, on the strength of Judge Padavano's observation and a plain reading of the statute.[6] It is further worth noting that our courts have previously declined to apply § 95.11, Fla. Stat., to other quasi-civil contexts, such as administrative disciplinary proceedings, absent specific statutory authorization. *See, e.g., Hames v. City of Miami Firefighters' and Police Officers' Trust*, 980 So. 2d 1112, 1115-16 (Fla. 3d DCA 2008) (declining to apply § 95.11, Fla. Stat., to proceeding on forfeiture of public

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[5] Section 95.11(p), Fla. Stat., provides a 4-year limitations period for "[a]ny action not specifically provided for in these statutes."

[6] Section 95.11(9), Fla. Stat., is inapplicable for the additional reason that it was not yet enacted at the time of Petitioner's commitment proceedings; its effective date was July 1, 2010. *See* 2010 Fla. Sess. Law Serv. Ch. 2010-54 (H.B. 525). The doctrine of laches, pursuant to § 95.11(6), Fla. Stat., does not apply in this context since the State was not statutorily authorized to act in this matter until it received notification from the Department of Corrections as to Petitioner's proximate release date. *See* § 394.913, Fla. Stat.; *and see McCray v. State*, 699 So. 2d 1366 (Fla. 1997) (discussing doctrine of laches and its application).

retirement benefits); *Dep't of Highway Safety and Motor Vehicles v. Hagar*, 581 So. 2d 214, 217 (Fla. 5th DCA 1991) (finding no limitations period for driver license revocation proceeding); *and see Landes v. Department of Professional Regulation*, 441 So. 2d 686, 686 (Fla. 2d DCA 1983) (noting "civil and criminal statutes of limitations are inapplicable to administrative license revocation proceedings," in the absence of specific legislative authority); *and see Sarasota County v. Nat'l City Bank of Cleveland, Ohio*, 902 So. 2d 233, 234 (Fla. 2d DCA 2005) (explaining that nothing in chapter 95 suggests that legislature intended statutory limitations to apply to quasi-judicial proceedings initiated pursuant to administrative law).

It is, therefore,

ORDERED AND ADJUDGED as follows:

1. The Eleventh Judicial Circuit Court shall be stricken as a named respondent;
2. Petitioner's *pro se* "Petition for Writ of Habeas Corpus" and "Second Amended Petition for Writ of Habeas Corpus" shall be **DENIED**;
3. Petitioner has **THIRTY (30) DAYS** from the rendition of this Order within which to file an appeal.

DONE AND ORDERED in Chambers in Arcadia, DeSoto County, Florida, this 4 day of ~~May~~ June 2018.

DON T. HALL
Circuit Court Judge

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing order was furnished by U.S. Mail, hand delivery or electronic mail to: **Juan Francisco Vega,** Resident #991353, Florida Civil Commitment Center, 13619 Southeast Highway 70, Arcadia, Florida 34266; **Secretary Mike Carroll**, Florida Department of Children and Families, 1317 Winewood Blvd., Building 1, Room 202, Tallahassee, Florida 32399-0700, **Kristin Kanner**, Supervisor, Florida Civil Commitment Center, 13619 Southeast Highway 70, Arcadia, Florida 34266; and **Corporate Creations Network, Inc.**, Registered Agent for Correct Care Solutions, LLC, 11380 Prosperity Farms Road #221 E., Palm Beach Gardens, Florida 33410, on this 4 day of ~~May~~ June 2018.

By: _____
Judicial Assistant