

19-5313 ORIGINAL
No. _____

PROVIDED TO TOMOKA
CORRECTIONAL INSTITUTION
ON 16-19-19
FOR MAILING BY OA *JK*

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
JUN 19 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

THOMAS ARTHUR KAHLOW — PETITIONER

(Your Name)

vs.

MARK S. INCH, Secretary — RESPONDENT(S)
Florida Department of Corrections

ON PETITION FOR A WRIT OF CERTIORARI TO

FIFTH DISTRICT COURT OF APPEAL, STATE OF FLORIDA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Thomas Arthur Kahlow #112340

(Your Name)

Tomoka Correctional Institution
3950 Tiger Bay Road

(Address)

Daytona Beach, FL 32124-1098

(City, State, Zip Code)

(386) 323-1070

(Phone Number)

RECEIVED

JUN 26 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

WHETHER THE RIGHT TO DUE PROCESS OF LAW
GUARANTEED BY THE UNITED STATES CONSTITU-
TION'S FOURTEENTH AMENDMENT IS DENIED BY
FLORIDA'S IMPOSITION OF A CAPITAL LIFE IM-
PRISONMENT SENTENCE THAT IN EFFECT IS THE
INDEFINITE IMPRISONMENT ARTICLE I, SECTION
17 OF THE FLORIDA CONSTITUTION DECLARES IS
FORBIDDEN EXCESSIVE PUNISHMENT WITHOUT
ANY PERMISSIBLE EXCEPTION, WHICH FLORIDA
DOCUMENTS AS INDEFINITE IMPRISONMENT BY
SETTING A RELEASE DATE FAR BEYOND THE
GREGORIAN CALENDAR THAT THE FEDERAL
STATUTES LIMIT ALL STATE GOVERNMENTS TO
WHEN MEASURING THE PASSAGE OF TIME.

LIST OF PARTIES

All parties appear in the caption of the case on the cover 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:

Supreme Court of Florida

Attorney General Ashley Moody, State of Florida

State Attorney, Seventh Judicial Circuit, Volusia County

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	12
STATEMENT OF THE CASE	16
REASONS FOR GRANTING THE WRIT	18
CONCLUSION.....	30

INDEX TO APPENDICES

APPENDIX A - Fifth DCA Per Curiam Affirmed Order

APPENDIX B - Fifth DCA Rehearing denial and Mandate

APPENDIX C - Order denying Motion To Correct Illegal Sentence

APPENDIX D - Florida Administrative Code rule 33-603.402(1)(a)5.

APPENDIX E - Inmate Gain Time Notice ("99,98,9999" release date)

APPENDIX F - Florida Constitution Revision Commission Summary

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 _____ to the petition and is

[] reported at _____; 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 _____ to the petition and is

[] reported at _____; 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 C-1 to the petition and is

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

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; 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 _____.

[] 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: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. 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 Feb. 12, 2019. A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: March 21, 2019, and a copy of the order denying rehearing appears at Appendix B-1.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

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

JURISDICTION (continued)

The Petitioner's Motion To Correct Illegal Sentence was filed in his sentencing court pursuant to Florida Rule of Criminal Procedure 3.800(a), which authorizes that motion to be filed "at any time" to correct a sentence that is illegal by being "imposed in violation of a constitutional right," *State v. Mancino*, 714 So. 2d 429, 433 (Fla. 1998); or that "patently fails to comport with statutory or constitutional limitations," *Gibson v. State*, 775 So. 2d 353, 354 (Fla. 2nd DCA 2000). Therefore that motion was "a properly filed application" pursuant to Title 28 U.S.C. § 2244(d)(2):

"The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection."

A state's mandate denying a rule 3.800 motion begins the one-year time limit to petition a federal court, *Ford v. Moore*, 296 F.3d 1035 (11th Cir. 2002).

Florida's Fifth District Court of Appeal (5th DCA) issued its April 9, 2019 Mandate (Appendix B-2) of its March 21, 2019 Order (Appendix B-1) denying the Petitioner's Motion

For Rehearing And Written Opinion regarding its February 12, 2019 Decision that PER CURIAM AFFIRMED the sentencing court's December 4, 2018 ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE (Appendix C) that quoted the Florida Supreme Court's ruling in *Alvarez v. State*, 358 So. 2d 10, 12 (Fla. 1978), which used a triple-negative phrase to avoid specifying which one or how many, if any, of the other "Excessive punishments - Excessive fines, cruel and unusual punishment, attainder, forfeiture of estate, . . . and unreasonable detention of witnesses" also declared "forbidden" in Article I, section 17 of the Florida Constitution must be imposed in addition to "indefinite imprisonment" because ". . . this in itself [that] no person can predict the maximum length of time which can be served by a prisoner under a sentence of life . . . does not render a life sentence impermissibly indefinite." (three negatives emphasized)

The reliance on *Deering v. State*, 988 So. 2d 1237 (Fla. 5th DCA 2008) by the Petitioner's sentencing and appellate courts is misplaced because Deering claimed his sentence required "hard labor" and therefore is "cruel and unusual punishment," neither of which claims were ever raised by the Petitioner.

And the state courts' reliance on *Johnson v. Crosby*, 897 So. 2d 546, 547 (Fla. 3rd DCA 2005), repeated its reliance

on the triple-negative self-contradictory phrase in *Alvarez*, *supra* at 12, while ignoring the obvious logic in the dissenting opinions at 14:

“Moreover, if the net effect of a penal statute is an indefinite term of imprisonment, the law is at odds with Article I, section 17 of the Florida Constitution.”

The “net effect” of Florida Statutes section 775.082 that authorized the life imprisonment sentence imposed on the Petitioner is “an indefinite term of imprisonment,” because all prison wardens and staff in Florida must by law enforce Florida Administrative Code rule 33-603.402(1)(a)5.:

“If serving a sentence with no definite term, that is, a life sentence . . .”
(Appendix D)

In *Roberts v. State*, 821 So. 2d 1144, 1145 (Fla. 3rd DCA 2002), the court stated the obvious, which the Respondent herein acknowledged as true:

“[A] life sentence is indefinite, making one-third indeterminable. Appellee State of Florida concedes to this argument and we agree.”

Florida’s courts impose and affirm life imprisonment sentences by relying on *Alvarez*, *supra*, and *Ratliff v. State*, 914 So. 2d 938, 940 (Fla. 2005), which quoted the same

triple-negative self-contradiction relied on in *Alvarez* at 12, and which further defied reality at 940 to deny the right declared in Article I, section 17 by ruling:

“There is nothing indefinite about such a [life] sentence.”

In *Dorminey v. State*, 314 So. 2d 134, 136 (Fla. 1975); and again in *Owens v. State*, 316 So. 2d 537, 538 (Fla. 1975), that same court ruled that the imposition of a life imprisonment sentence pursuant to Fla. Statutes sec. 775.082 is NOT unconstitutional BECAUSE a parole is available under Art. IV, § 8(c) of the Fla. Constitution. Therefore the Petitioner's sentence of life imprisonment is unconstitutional because a parole is in effect not available by being arbitrary and unreliable.

The Petitioner's right declared in Florida's Constitution to be free from the “excessive punishment” of “indefinite imprisonment is clearly a due process right and therefore protected by the Fourteenth Amendment of the United States Constitution. This Court held in *Vitek v. Jones*, 100 S.Ct. 1254 (1980) at 1261:

“Once a State has granted prisoners a liberty interest, we held that due process protections are necessary ‘to insure that the state-created right is not arbitrarily abrogated.’ [Wolff v. McDonnell] 94 S.Ct. [2963] at 2975 [1974].”

In *Ellard v. Alabama Board of Pardons and Paroles*, 824 F.2d 937 (11th Cir. 1987), the court explained at 943:

“Contrary to the state’s contentions, words and form do matter. Indeed, they are the essence of a substantive liberty interest created by state law. . . . The due process clause, in short, prohibits the states from negating by their actions rights that they have conferred by their words.”

and at 945:

“It is now well established that when a liberty interest arises out of state law, the substantive and procedural protections to be accorded that interest is a question of federal law.”

That ruling relied on this Court’s decision in *Bearden v. Georgia*, 103 S.Ct. 2064, 2069 (1983). In *Hewitt v. Helms*, 103 S.Ct. 864 (1983), this Court held at 868-869:

“Liberty interests protected by the Fourteenth Amendment arise from two sources —the Due Process Clause itself and the laws of the States. *Meachum v. Fano*, . . . 96 S.Ct. 2532, 2537-2540, . . . (1976).”

And in *Cleveland Board of Education v. Loudermill*, 105 S.Ct. 1487 (1985), this Court explained at 1493:

“If a clearer holding is needed, we provide it today. The point is straightforward: the Due

Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures.”

Which followed *Hicks v. Oklahoma*, 100 S.Ct. 2227 (1980) at 2229:

“When, however, a state’s failure to adhere to its own law violates a federal right, it is cognizable in federal court.”

In *Beebe v. Phelps*, 650 F.2d 774 (5th Cir. 1981) at 776-777, that court quoted this Court’s holding in *Wolff v. McDonnell*, 94 S.Ct. 2963, 2975 (1974):

“... the Court held that nothing in the Constitution requires the granting of good time credit, but that once a State adopts good time provisions and a prisoner earns credit, the deprivation of that good time constitutes a substantial sanction, and a prisoner properly can claim that a summary deprivation of good time amounts to a deprivation of liberty without due process of law.”

That was followed in *Walter v. Deeds*, 50 F.3d 670 (9th Cir. 1995) and explained at 673:

“Therefore, when a state has provided a specific method for determining whether a certain sentence shall be imposed ‘it is not correct to say that the defendant’s interest’ in having that method adhered to ‘is merely a matter of state procedural law.’”

The Petitioner's due process right to the date of his tentative release from imprisonment being based on the same calendar as the one used by the federal government and governments of all other states has been denied him by Florida's use of a "99/98/9999" date that is not part of the Gregorian calendar (Appendix E). The Gregorian calendar established in 1582 and adopted by the American colonies in 1752 is the ONLY calendar authorized for use by state governments and the ONLY calendar codified by federal laws: Title 26 United States Code § 1602, § 2502, § 2504, § 3111, § 3121, § 4981, § 4982, § 6013; 29 U.S.C. § 1306; 42 U.S.C. § 412, § 413, § 430; and 45 U.S.C. § 358, for example. In *Peters v. U.S.*, 94 F. 127 (9th Cir. 1899), the court explained at 134:

"In *Engleman v. State* [2 Ind. 91, 93] the court said: 'It is a fact, historically known, that Christian nations have generally adopted the Gregorian calendar, numbering the years from the birth of Christ. This is a Christian state, and has adopted the same, and when a year is mentioned in our legislative or judicial proceedings, and no mention is made of the Jewish, Mahometan, or other system of reckoning time, all understand the Christian calendar to be used.'"

In *Lagandaon v. Ashcroft*, 383 F.3d 983 (9th Cir. 2004), that court further explained at 985:

“How long is a year? We are not the first to confront this question. See e.g., British Calendar Act, 1751, 24 Geo. 2 c. 23 (Eng.) (adopting the Gregorian calendar); Pope Gregory XIII, *Inter Gravissimas* (1582), reprinted in VIII BULLARUM DIPLOMATUM ET PRIVILEGIORUM SANCTORUM ROMANPONTIFICUM 386 (Sebastiano Franco & Henrico Dalmazzo, eds. 1863), translation available at (declaring the modern, or Gregorian, calendar, in which years begin January 1 and end December 31). Following our august predecessors, we hold that a year, other than a leap year, is 365 days.”

Around the year 550 A.D., Flavius Magnus Aurelius Cassiodorus explained:

“If we learn the hours by it, if we calculate the courses of the moon, if we take note of the time lapsed in the recurring year, we will be taught by numbers and preserved from confusion. Remove the *computus* [time reckoning] from the world, and everything is given over to blind ignorance. It is impossible to distinguish from other living creatures anyone who does not understand how to quantify.”

David Ewing Duncan, *Calendar* p. 68 (Avon 1998)

The Respondent “does not understand how to quantify,” as proven by the Petitioner’s “CURRENT TENTATIVE RELEASE DATE: 99/98/9999” on the monthly gain-time notices provided to him (Appendix E).

The Petitioner asserts that seeking relief from lower federal

courts would be an exercise in futility because other prisoners have attempted that only to be denied because the courts refuse to quantify the time required to serve a life imprisonment sentence and instead rely on the Florida Supreme Court's rulings in *Alvarez, supra*, and *Ratliff, supra*, that uphold the constitutionality of Florida Statutes section 775.082 even though that "law is at odds with Article I, section 17 of the Florida Constitution" by having "the net effect of an indefinite term of imprisonment" because the Respondent enforces it as "a sentence with no definite term" (Appendix D: Fla. Admin. Code r. 33-603.402(1)(a) 5.).

Therefore the Petitioner invokes the jurisdiction of this Court pursuant to the doctrine established in *Rooker v. Fidelity Trust Co.*, 44 S.Ct. 149 (1923); and *District of Columbia Court of Appeals v. Feldman*, 103 S.Ct. 1303 (1983), to uphold the U.S. Constitution's Fourteenth Amendment guarantee of "due process of law" by ruling that Florida Statutes section 775.082 is unconstitutional for violating the Florida Constitution's Article I, section 17 right that declared "indefinite imprisonment [is] forbidden" without any mention of an additional requirement for or permissible exception to that prohibited "excessive punishment."

"An unconstitutional law is void, and is as no law." *Ex Parte Siebold et al.*, 100 U.S. 371, 376 (1880).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

	Page
Thirteenth Amendment of the United States Constitution	21
Fourteenth Amendment of the United States Constitution	6,11,20
Article I, section 17 of the Florida Constitution	<u>4,6,11,19,20,25,26</u>
Article IV, § 8(c) of the Florida Constitution	6
Title 26 U.S.C. § 1602, § 2502, § 2504, § 3111, § 4981, § 6013	8
Title 28 U.S.C. § 2244(d)(2)	3
Title 29 U.S.C. § 1306	8
Title 42 U.S.C. § 412, § 413, § 430	8
Title 45 U.S.C. § 358	8
Florida Statute section 775.082	<u>5,6,11,23</u>
Florida Rule of Criminal Procedure 3.800(a)	3
Florida Administrative Code rule 33-603.402(1)(a)5.	5,11
Florida Standard Jury Instruction 2.09	29
Northwest Ordinance of 1787	21
Black's Law Dictionary (Sixth and Tenth Editions)	19
Ballantine's Law Dictionary (Third Edition)	19
Webster's Third New International Dictionary	19
David Ewing Duncan, <i>Calendar</i>	10
Charlton W. Tebeau, <i>A History of Florida</i>	20
Michael Gannon, <i>Florida: A Short History</i>	20
Hans Christian Andersen, <i>The Emperor's New Clothes</i>	26

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Adirim v. Miami</i> , 348 So. 2d 1226 (Fla. 3rd DCA 1977) . . .	25
<i>Alvarez v. State</i> , 358 So. 2d 10 (Fla. 1978)	4, 5, 11
<i>Armstrong v. Harris</i> , 773 So. 2d 7 (Fla. 2000)	24
<i>Arnett v. State</i> , 591 So. 2d 1014 (Fla. 1st DCA 1991)	27
<i>Bacon v. State</i> , 22 Fla. 46 (1886)	28
<i>Bearden v. Georgia</i> , 103 S.Ct. 2064 (1983)	7
<i>Beebe v. Phelps</i> , 650 F.2d 774 (5th Cir. 1981)	8
<i>Bueno v. State</i> , 23 So. 862 (Fla. 1898)	25
<i>Bush v. State</i> , 319 So. 2d 126 (Fla. 2nd DCA 1975)	25
<i>Carnley v. Cochran</i> , 118 So. 2d 629 (Fla. 1960)	25
<i>Cleveland Board of Education v. Loudermill</i> , 105 S.Ct. 1487 (1985)	7, 8
<i>Cook v. State</i> , 481 So. 2d 1285 (Fla. 4th DCA 1986)	27
<i>Cordera-Pena v. State</i> , 421 So. 2d 661 (Fla. 3rd DCA 1982) . . .	27
<i>Deering v. State</i> , 988 So. 2d 1237 (Fla. 5th DCA 2008)	4
<i>District of Columbia Court of Appeals v. Feldman</i> , 103 S.Ct. 1303 (1983)	11
<i>Dorminey v. State</i> , 314 So. 2d 134 (Fla. 1975)	6
<i>Echols v. State</i> , 484 So. 2d 568 (Fla. 1985)	27
<i>Ellard v. Alabama Board of Pardons and Paroles</i> , 824 F.2d 937 (11th Cir. 1987) . . .	7
<i>Ellis v. State</i> , 406 So. 2d 76 (Fla. 2nd DCA 1981)	26
<i>Ex Parte Lott Bryant</i> , 4 So. 854 (Fla. 1888)	25
<i>Ex Parte Peacock</i> , 6 So. 473 (Fla. 1889)	25
<i>Ex Parte Siebold et al.</i> , 100 U.S. 371 (1880)	11

<u>CASES (continued)</u>	<u>Page Number</u>
<i>Ex Parte William Pells</i> , 9 So. 833 (1891)	25
<i>Fogel v. Commissioner</i> , 203 F.2d 347 (5th Cir. 1953) . . .	28
<i>Ford v. Moore</i> , 296 F.3d 1035 (11th Cir. 2002)	3
<i>Frazier v. State</i> , 488 So. 2d 166 (Fla. 1st DCA 1986)	27
<i>Gibson v. Florida Legislative Investigation Committee</i> , 108 So. 2d 729 (Fla. 1958)	23
<i>Gibson v. State</i> , 775 So. 2d 353 (Fla. 2nd DCA 2000)	3
<i>Grebstein v. Lehman</i> , 128 So. 811 (Fla. 1930), (<i>State ex rel.</i>) .	25
<i>Hewitt v. Helms</i> , 103 S.Ct. 864 (1983)	7
<i>Hicks v. Oklahoma</i> , 100 S.Ct. 2227 (1980)	8
<i>Holmer v. State</i> , 28 So. 2d 586 (Fla. 1947)	23
<i>Holston v. Florida Parole and Probation Commission</i> , 394 So. 2d 1110 (Fla. 1st DCA 1981)	28
<i>In Re Inquiry Concerning A Judge, Etc.</i> , 357 So. 2d 172 (Fla. 1978)	29
<i>Johnson v. Crosby</i> , 897 So. 2d 546 (Fla. 3rd DCA 2005)	4
<i>King v. State</i> , 594 So. 2d 858 (Fla. 4th DCA 1992)	27
<i>Kiyemba v. Obama</i> , 130 S.Ct. 1235 (2010)	28
<i>Kosek v. State</i> , 448 So. 2d 57 (Fla. 5th DCA 1984)	27
<i>Lagandaon v. Ashcroft</i> , 383 F.3d 983 (9th Cir. 2004)	9,10
<i>Local Lodge Number 1248 v. St. Regis Paper Co.</i> , 125 So. 2d 337 (Fla. 1960)	25
<i>Okanogan Indians v. United States</i> , 49 S.Ct. 463 (1929)	28
<i>Owens v. State</i> , 316 So. 2d 537 (Fla. 1975)	6
<i>Peters v. United States</i> , 94 F. 127 (9th Cir. 1899)	8
<i>Ratliff v. State</i> , 914 So. 2d 938 (Fla. 2005)	5,6,11
<i>Raske v. Martinez</i> , 876 F.2d 1496 (11th Cir. 1989)	26

CASES (continued)Page Number

<i>Roberts v. State</i> , 11 So. 536 (Fla. 1892)	25
<i>Roberts v. State</i> , 821 So. 2d 1144 (Fla. 3rd DCA 2002) .	5, 27
<i>Rooker v. Fidelity Trust Co.</i> , 44 S.Ct. 149 (1923)	11
<i>Sheriff Holland v. State</i> , 1 So. 521 (Fla. 1887)	25
<i>Sebring Airport Authority v. McIntyre</i> , 783 So. 2d 238 (Fla. 2001) .	23
<i>State ex rel. Byrd v. Anderson</i> , 168 So. 2d 554 (Fla. 1st DCA 1964) .	25
<i>State ex rel. Davis v. City of Stuart</i> , 120 So. 335 (Fla. 1929) .	24
<i>State ex rel. Powell v. Leon County</i> , 182 So. 639 (Fla. 1938) .	23
<i>State ex rel. West v. Butler</i> , 69 So. 771 (1915)	22, 23
<i>State v. Mancino</i> , 714 So. 2d 429 (Fla. 1998)	3
<i>State v. Mobley</i> , 481 So. 2d 481 (Fla. 1986)	27
<i>Tinsley v. Anderson</i> , 171 U.S. 101 (1898)	28, 29
<i>United States v. Cleveland Indians Baseball Co.</i> , 121 S.Ct. 1433 (2001) .	28
<i>United States v. Milner</i> , 688 Fed. Appx. 854 (11th Cir. 2017) .	27, 28
<i>Viera v. State</i> , 698 So. 2d 918 (Fla. 5th DCA 1997)	27
<i>Vitek v. Jones</i> , 100 S.Ct. 1254 (1980)	6
<i>Wainwright v. State</i> , 704 So. 2d 511 (Fla. 1997)	27
<i>Wallace v. State</i> , 26 So. 713 (Fla. 1899)	25
<i>Walter v. Deeds</i> , 50 F.3d 670 (9th Cir. 1995)	8
<i>Williams v. Dannellon</i> , 169 So. 631 (Fla. 1936)	23
<i>Williams v. State</i> , 868 So. 2d 1234 (Fla. 1st DCA 2004) . . .	27
<i>Willis v. State</i> , 447 So. 2d 283 (Fla. 2nd DCA 1983)	27
<i>Woodson v. State</i> , 439 So. 2d 976 (Fla. 3rd DCA 1983) . . .	27

STATEMENT OF THE CASE

The Petitioner was charged by Indictment with committing First Degree Murder on May 31, 1987 in Case Number 1987-003055 CFAES of the Seventh Judicial Circuit Court in and for Volusia County, Florida. The Petitioner was found guilty by trial jury for a crime that now would not even be prosecuted, because he was standing his ground and using a firearm to defend himself when attacked a second time while he (the Petitioner) was attempting to flee and reach a hospital after being physically battered (suffering a concussion) and cut by a knife on his face (beside his right eye) by the alleged victim. In his attempt to use only the force necessary to prevent a second battery and knifing, the Petitioner aimed his pistol toward his assailant's legs. The concussion suffered by the Petitioner only a few minutes earlier and the blood covering his eyes from the fresh knife wound on his face impaired his aim as his assailant descended a slope while rushing toward the Petitioner, resulting in fatal gunshot wounds to his assailant's (victim's) body.

On July 1, 1988 the trial court adjudicated the Petitioner guilty of First Degree Murder and on July 5, 1988 sentenced him to life imprisonment with a mandatory minimum of twenty-five years before becoming eligible for release on a parole that is actually NOT available because most of Florida's parole-eligible

prisoners are denied parole by the indefinite “suspension” of their Presumptive Parole Release Date (P.P.R.D.) based on an “Extraordinary Review.”

Like over a thousand other Florida prisoners whose P.P.R.D. passed by long ago (even several decades) after being “suspended” based on myriad arbitrary reasons, leaving them still indefinitely imprisoned, the Petitioner expects his September 2027 P.P.R.D. to be also suspended indefinitely.

REASONS FOR GRANTING THE PETITION

Florida's courts have defied reality and reduced law to an absurd conundrum by imposing life imprisonment sentences authorized by its legislature's statutes and upheld by its highest court's determination that there is nothing indefinite about those sentences, even though that ruling directly contradicts Florida's Administrative Code (prison) rule, which defines and enforces life imprisonment as a sentence with no definite term, and plainly violates the Florida Constitution's Declaration of Rights that forbids indefinite imprisonment and permits no exception. That violation denies the United States Constitution's Fourteenth Amendment right to due process of law by permitting with that action (indefinite imprisonment) an excessive punishment the Florida Constitution's words declare is forbidden; and by consequently violating the Federal statutes which mandate that all states follow the Gregorian calendar to measure the passage of time. By establishing "99/98/9999" as the release date for those serving a life imprisonment sentence, Florida is relying on an extra-terrestrial calendar, because no Earth year has "99" months (lunar orbits of Earth) and no Earth month has "98" days (unless there actually is a year when it takes 9,702 days for Earth to orbit the Sun just once). That calendar is not only a violation of federal law but also a ludicrous denial of reality.

Article I, section 17 of Florida's Constitution declares that:

“Excessive fines, cruel and unusual punishment, attainder, forfeiture of estate, **indefinite imprisonment**, and unreasonable detention of witnesses are **forbidden**.”

See-

Black's Law Dictionary, page 889 (Tenth Edition, Thomson Reuters 2014), defines:

“**indeterminate sentencing**. (1941) The practice of not imposing a definite term of confinement, but instead prescribing a range for the minimum and maximum term, leaving the precise term to be fixed in some other way, usu. based on the prisoner's conduct and apparent rehabilitation while incarcerated. - Also termed **indefinite sentencing**.”

Black's Law Dictionary, p. 949 (Sixth Ed. 1991), defines:

“**Indeterminate (indefinite) sentence**. . . . A completely indeterminate sentence has a minimum of one day and a maximum of natural life.”

Ballantine's Law Dictionary (Third Edition) defines:

“**indefinite imprisonment**: The punishment of imprisonment prescribed by a sentence for crime, the term of which is fixed or rendered calculable by neither the sentence nor statute. Authority: 21 American Jurisprudence 2nd, Criminal Law § 534.”

Webster's Third New International Dictionary (1990) defines:

“**indefinite**: of a nature that is not or cannot be clearly determined; having no fixed limits; indeterminate in extent or amount.”

If this Court will not require Florida's courts to support, protect, and defend the right declared in Article I, section 17 of Florida's Constitution that forbids indefinite imprisonment, by providing a Gregorian calendar date for the release from life imprisonment, then this Court's failure to act will negate that 134-year-old will of the people of Florida (still) declared in their Constitution, and effectively deny the due process of law guaranteed by the Fourteenth Amendment of the United States Constitution and likewise void the federal statutes that require state governments to measure the passage of time in accordance with only the Gregorian calendar that took effect in the American colonies in 1752 by order of King George, and that was adopted by the United States after winning independence.

The historical record relied on by the Petitioner explains why the Florida Constitution was amended in 1885 to forbid "indefinite imprisonment." The sources of that record are two books: Charlton W. Tebeau's *A History of Florida* (University of Miami Press 1981); and Michael Gannon's *Florida: A Short History* (The University Press of Florida 1993). These scholarly books explained how for twenty years after the U.S. Civil War, from 1865 to 1885, Florida's legislature, judiciary, six governors (David Walker, Harrison Reed, Ossian Hart, Marcellus Stearns, George Drew, William Bloxham), and county sheriffs exploited the

'punishment clause' ("as a punishment for crime") exception to the U.S. Constitution's Thirteenth Amendment abolishment of slavery (taken directly from the Northwest Ordinance of 1787) to arrest the emancipated slaves for committing any action or omission defined as a "crime" by the legislature's Black Codes and Jim Crow Laws and return those "criminals" to the plantations, where they were forced to perform labor as state prisoners until they die or are freed at the discretion of the local sheriff. The amendments in 1885 to the Florida Constitution's Declaration of Rights were enacted to stop the surreptitious resumption of slavery, by requiring a plea hearing and/or trial in a courtroom before a conviction; a limit of one year of incarceration in a county jail for a misdemeanor; and a fixed period of imprisonment with a time of commencement and termination. Apparently the voters of Florida amended their State Constitution to stop lifetime enslavement by making "indefinite imprisonment" a "forbidden" punishment, which requires a termination date for every sentence of imprisonment, according to the thirteen controlling decisions that followed. That prohibition lasted less than 100 years before Florida's courts resumed enslaving people for "life" for violating secondary (statutory) laws. The thousands of "life" imprisonment sentences imposed in the past 42 years violate Florida's

primary organic law by requiring "indefinite imprisonment" that usurps the will of the people as expressed in the Florida Constitution and demonstrates the absence of due process and equal protection of the law.

The Florida Supreme Court formerly recognized the Florida Constitution as the primary state law, as reported in *State ex rel. West v. Butler*, 70 Fla. 102 at 123, 69 So. 771 at 777 (Fla. 1915):

"While the lawmaking power of the legislature is limited only by the express and clearly implied provisions of the Federal and State Constitutions, and while all fair intemperies should be indulged in favor of the constitutionality of a duly enacted statute, yet the provisions expressed and implied of the constitution are superior to legislative enactments, and the Constitution must prevail where a statute conflicts therewith; and where the terms of a statute plainly conflict with an applicable provision of the constitution, it is the duty of the court in proceedings where the matter is appropriately presented to 'support, protect and defend the constitution,' by giving effect to its provisions, even if in doing so the statute is held to be inoperative. [citations omitted] Express or implied provisions of the constitutions cannot be altered, contracted or enlarged by legislative enactments."

and at 70 Fla. 124, 69 So. 777:

“Every word of a State constitution should be given its intended meaning and effect, and essential provisions of a constitution are to be regarded as being mandatory.”

In *Gibson v. Florida Legislative Investigation Committee*, 108 So. 2d 729, 740 (Fla. 1958), the Florida Supreme Court recognized the limitation of its power, because “a court has no power to tamper with [the constitution]. If a change is made the people will have to make it.” The Florida Supreme Court recognized the Legislature’s limitation, *Sebring Airport Authority v. McIntyre*, 783 So. 2d 238, 244 (Fla. 2001), the “touchstone against which the Legislature’s enactments are to be judicially measured” is the constitution itself, rather than “common usage.”

The provisions of Florida’s Constitution cannot be altered, contracted, or enlarged by legislative enactment, *Holmer v. State*, 28 So. 2d 586 (Fla. 1947), because a fundamental rule of law is that the legislature may not by indirect action do that which it is prohibited by the Constitution to do by direct action, *State ex rel. Powell v. Leon County*, 182 So. 639 (Fla. 1938). When a statute is determined to violate organic law, that statute is rendered inoperative by the dominant force of the Constitution, *Williams v. Dannellon*, 169 So. 631 (Fla. 1936). In 1936, Florida Statute section 775.082 would have been “rendered inoperative.”

The Florida Constitution is the primary law of Florida, which leaves the legislature's statutes subordinate to and limited by the rights declared in the Florida Constitution's Article I Declaration of Rights. That primacy was emphasized by Florida's Supreme Court in *Armstrong v. Harris*, 773 So. 2d 7, 21 (Fla. 2000), when quoting its explanation in *State ex rel. Davis v. City of Stuart*, 120 So. 335 (Fla. 1929) at 347:

“It is significant that our Constitution thus commences by specifying those things which the state government must not do, before specifying certain things that it may do, ...”

The Florida Supreme Court further explained in *Armstrong, supra*, at 17:

“This Court in *Traylor v. State*, 596 So. 2d 957, 962 (Fla. 1992) explained that our system of constitutional government in Florida is grounded on a principle of ‘robust individualism’ and that our state constitutional rights thus provide greater freedom from government intrusion into the lives of citizens than do their federal counterparts: ... ‘In short: the federal Constitution ... represents the floor for basic freedoms; the state constitution, the ceiling.’”

By amending their Constitution in 1885 to declare “indefinite imprisonment [is] forbidden” without any permissible exception,

the voters of Florida established "the ceiling" of punishment that limits sentences to "a fixed period of imprisonment" with "a time of termination" because "indefinite imprisonment shall not be allowed," which are how Florida's highest courts interpreted that amendment from 1887 to 1977, as reported in many cases: *Sheriff Holland v. State*, 1 So. 521, 526 (Fla. 1887); *Ex Parte Lott Bryant*, 4 So. 854, 855 (Fla. 1888); *Ex Parte Peacock*, 6 So. 473, 479 (Fla. 1889); *Ex Parte William Pells*, 9 So. 833, 835 (Fla. 1891); *Roberts v. State*, 11 So. 536 537 (Fla. 1892); *Bueno v. State*, 23 So. 862, 865 (Fla. 1898); *Wallace v. State*, 26 So. 713, 725 (Fla. 1899); *State ex rel. Grebstein v. Lehman*, 128 So. 811 (Fla. 1930); *Carnley v. Cochran*, 118 So. 2d 629, 631 (Fla. 1960); *Local Lodge Number 1248 v. St. Regis Paper Co.*, 125 So. 2d 337, 342 (Fla. 1960); *State ex rel. Byrd v. Anderson*, 168 So. 2d 554, 555 (Fla. 1st DCA 1964); *Bush v. State*, 319 So. 2d 126 (Fla. 2nd DCA 1975); and *Adirim v. Miami*, 348 So. 2d 1226, 1227 (Fla. 3rd DCA 1977). After the Legislature's Florida Constitution Revision Commission failed on "12/8/77" to place a proposed amendment on the ballot in 1978 to amend the prohibition against indefinite imprisonment in Article I,

section 17, to allow an exception for those convicted of committing "murders which are heinous, cruel or atrocious" (see Appendix F), Florida's courts illegally amended the Florida Constitution by ignoring and thereby voiding Article I, section 17, which denied due process and equal protection of the laws for the Petitioner.

Like the boy who pointed out the obvious fact that the Emperor was actually wearing no clothes at all while parading around in public, as depicted by Hans Christian Andersen in his tale, *The Emperor's New Clothes* (Unicorn 1989), the Petitioner is pointing at the nudity of his life imprisonment sentence, which makes it obscene by usurping the will of the people as expressed in Article I, section 17. This Court should follow the ruling in *Raske v. Martinez*, 876 F.2d 1496, 1502 (11th Cir. 1989):

"The federal courts recognize no doctrine of 'constitutional mistake' that can absolve a legislature from the consequences of a misapprehension concerning a statute's constitutionality."

By recognizing (the obvious) that "a sentence of imprisonment for a term of years is a definite sentence," in *Ellis v. State*, 406 So. 2d 76 (Fla. 2nd DCA 1981), the courts admit the opposite is true, that a sentence of imprisonment for no "term of years" is not "a definite sentence."

Just as Florida's prison wardens and staff are required by state administrative law to execute the Petitioner's life imprisonment as "a sentence with no definite term," Florida's Supreme Court and every District Court of Appeal have ruled that a sentencing court cannot retain jurisdiction over one-third of a life imprisonment sentence because "a life sentence has no known termination point," therefore the one-third portion of an unknown whole is just as indefinite as the whole life sentence. "[N]o known termination point" is synonymous with the definition of "indefinite" in every college and law dictionary. A few of those rulings are: *Echols v. State*, 484 So. 2d 568, 574 (Fla. 1985); *State v. Mobley*, 481 So. 2d 481 (Fla. 1986); *Wainwright v. State*, 704 So. 2d 511, 515 (Fla. 1997); *Frazier v. State*, 488 So. 2d 166, 168 (Fla. 1st DCA 1986); *Arnett v. State*, 591 So. 2d 1014 (Fla. 1st DCA 1991); *Williams v. State*, 868 So. 2d 1234 (Fla. 1st DCA 2004); *Willis v. State*, 447 So. 2d 283 (Fla. 2nd DCA 1983); *Cordera-Pena v. State*, 421 So. 2d 661 (Fla. 3rd DCA 1982); *Woodson v. State*, 439 So. 2d 976, 977 (Fla. 3rd DCA 1983); *Roberts v. State*, 821 So. 2d 1144, 1145 (Fla. 3rd DCA 2002); *Cook v. State*, 481 So. 2d 1285, 1286 (Fla. 4th DCA 1986); *King v. State*, 594 So. 2d 858 (Fla. 4th DCA 1992); *Kosek v. State*, 448 So. 2d 57, 58 (Fla. 5th DCA 1984); and *Viera v. State*, 698 So. 2d 918, 919 (Fla. 5th DCA 1997).

In *United States v. Milner*, 688 Fed. Appx. 854, 855

(11th Cir. 2017), the court held:

“Milner’s lifespan is indefinite, so subtracting his eight-month prison sentence is a practical impossibility.”

In *Holston v. Florida Parole and Probation Commission*, 394 So. 2d 1110, 1111 (Fla. 1st DCA 1981), the court stated the obvious for the benefit of those who do not understand the purpose of a calendar: “‘life’ is not an objective ‘date’.” The Respondent should be required to use only the Gregorian calendar to determine the termination date of the Petitioner’s imprisonment, not an unknown calendar’s date, “99/98/9999” (Appendix E), which is not codified in any federal statute and therefore not authorized for any official use, as is the Gregorian calendar in *Okanogan Indians v. United States*, 49 S.Ct. 463 (1929); *United States v. Cleveland Indians Baseball Co.*, 121 S.Ct. 1433 (2001); *Fogel v. Commissioner*, 203 F.2d 347 (5th Cir. 1953); and *Bacon v. State*, 22 Fla. 46 (1886).

Not even an executive order can keep a person imprisoned indefinitely, per *Kiyemba v. Obama*, 130 S.Ct. 1235 (2010).

In *Tinsley v. Anderson*, 43 L.Ed. 91, 171 U.S. 101 (1898), the appellant’s counsel argued at 94:

“In effect, the appellant was sentenced to an indefinite imprisonment. An order of that character was beyond the power of the court to make.”

Florida's Supreme Court explained in *In Re Inquiry Concerning A Judge, Etc.*, 357 So. 2d 172, 179 (Fla. 1978):

“Judges are required to follow the law and apply it fairly and objectively to all who appear before them. No judge is permitted to substitute his concept of what the law ought to be for what the law actually is.”

This Court should order Florida's criminal court judges to ‘walk the talk’ by practicing what they routinely preach to juries from Instruction 2.09 of the Florida Standard Jury Instructions in Criminal Cases:

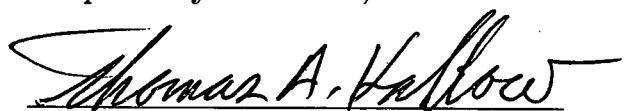
“Even if you do not like the laws that must be applied, you must use them. For over two centuries we have agreed to a constitution and to live by the law. No one of us has the right to violate rules we all share.”

Therefore, Florida's criminal courts should be required to “support, protect, and defend” their own Constitution by providing the due process of imposing sentences of imprisonment for no more than forty years with a legal termination date.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas A. Holloway".

Date: June 19, 2019