

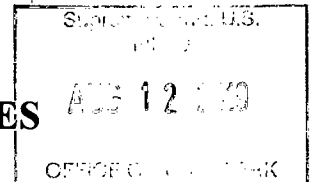
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No.

19-67420

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES



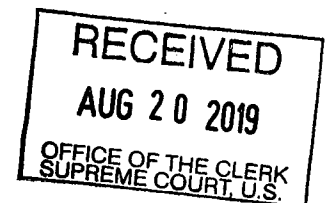
JORGE PRIETO (*PRO SE*) – PETITIONER

VS.

STATE OF FLORIDA – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO  
FLORIDA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI



Jorge Prieto, Petitioner, *pro se*  
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### **QUESTION(S) PRESENTED**

1. Did the state trial court have jurisdiction to vacate petitioner's (20) Twenty year sentence, and then re-impose a sentence of life imprisonment, sixteen (16) months after the conviction became final, thus violating double jeopardy?
2. Can subject matter jurisdiction be conferred upon a trial court by agreement or failure to object without violating due process of law?

## 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:

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**APPENDIX D (4)** Motion to enforce terms of plea agreement filed on March 12, 1996, with the 3.850 as the court denied the motion.

**APPENDIX E (5)** Third District Court of Appeal opinion filed August 6, 2008, petitioner is now prohibited from filing any further *pro se* appeals.

**APPENDIX F (6)** Petition for writ of Habeas Corpus, declaratory judgment or mandamus relief filed on March 6, 2019 to the Supreme Court of Florida. The court denied the petition as a Habeas Corpus on June 5, 2019.

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## 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 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☐ is unpublished.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 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 F 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 Third District Court of Appeal

court appears at Appendix E to the petition and is

☐ reported at PRIETO-990 SO. 2d 588 (FLA. 3DCA 2008); 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. \_\_\_\_\_.

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 **June 5, 2019.**  
A copy of that highest state that decision appears at Appendix **F**.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fifth Amendment to the U.S. Constitution, which prohibits a person from being twice punished for the same offense. See 5<sup>th</sup> Amendment U.S. Constitution.

## **STATEMENT OF THE CASE AND FACTS**

On November 15, 1993, the petitioner was arrested in Dade County, Florida and charged with attempted first degree murder. On December 7, 1994 petitioner pled guilty to attempted murder.

However, pursuant to the agreement, petitioner would receive a twenty- year sentence and agreed to testify truthfully against a codefendant. Additionally, the state agreed to nolle prosequi a capital murder charged against petitioner.

Under the plea agreement, if the state did not feel petitioner testified satisfactorily, the state could seek an increased sentence of life imprisonment for the attempted murder count and could refile the capital murder charge it had abandoned, and to seek the death penalty.

Petitioner filed a motion for post- conviction relief pursuant to Fla. R. Crim. P. 3.850, seeking to set aside the plea on the basis that defense counsel had not informed him of the deportation consequences, and that the INS had commenced deportation proceedings against him. Petitioner sought leave to amend his original motion during the evidentiary hearing on the motion, to assert that trial court had also failed to inform him of the deportation consequences of plea. The court did not rule on the request to amend and denied the postconviction motion. The court granted the state's motion to enforce plea agreement, and allowed the state to enhance petitioner's sentence to life imprisonment based on the finding that petitioner did not satisfactorily testify as agreed. Cf. Peart v. State, 705 So. 2d 1059 (Fla.3d DCA 1998)

Thus on March 12 1996, the trial court resentenced the petitioner to life imprisonment some sixteen (16) months outside the procedural time limits, and well after the conviction had become final. Subsequently on 2008 petitioner was Spencer barred from filing any pleadings in both the trial court and the district court appeal in relation to this conviction.

On March 6, 2019 petitioner filed his “Petition for Writ of Habeas Corpus, Declaratory judgment or Mandamus Relief with the Florida Supreme Court.

On June 5, 2019, the Florida Supreme Court denied the petition the basis that the petitioner was procedurally barred from bringing forth the issue.(See Exhibit-F).

## **REASON FOR GRANTING THE PETITION**

THE TRIAL COURT'S IMPOSITION OF A NATURAL LIFE SENTENCE SIXTEEN MONTHS AFTER THE ORIGINAL SENTENCE VESTED WAS EXPRESSLY PROHIBITED BY STATE AND FEDERAL LAW AND AMOUNTS TO A MANIFEST INJUSTICE, AND CONSTITUTES A DOUBLE JEOPARDY VIOLATION.

Petitioner's issue is as straight forward as can be, and its failure to be addressed at that state level is confounding.

1. On December 7, 1994. Petitioner pled guilty attempted first degree murder. Pursuant the plea agreement indicating that petitioner would receive twenty (20) years' imprisonment in exchange for his truthful testimony against his codefendant. Under the agreement if the state did not feel petitioner testified satisfactorily, the state could move to vacate the sentence, and have petitioner resentenced to life imprisonment.
2. Petitioner subsequently breached the terms of the agreement, according the state, by filing a motion to withdraw plea pursuant to rule 3.850. The state moved to enforce the plea agreement. The court granted the state motion finding that petitioner did not testify satisfactorily, and resentenced petitioner to natural life in prison. Petitioner has subsequently argued via petition for writ of Habeas Corpus that trial court did not have jurisdiction to vacate the original sentence and resentenced petitioner after the conviction became final and been denied on every state level. See McCoy v. State, 599. So. 2d 645, 649 (Fla.).

As the former issue, the law is specific that a defendant can not by virtue of a plea agreement confer jurisdiction upon the court. See White v. State, 568 So.2d 1318, 1319 (Fla. 2d DCA 1990), and a court's jurisdiction in criminal cases cannot be re-invoked after sentencing, where there no authorization for such action beyond the sixty-day limitation of Rule 3.800(c). See Sanchez v. State, 541 So.2d 1140, 1141 (Fla. 1989), and McCoy v. State, 599 So645, 649 (Fla.1992).

Moreover, this Court has consistently held that a trial judge in a criminal case may modify the sentence imposed upon a defendant during the same term of court, but the rule be subject to the constitutional guarantee against double jeopardy. Ex Parte Lange, 85 U.S. 163, 21 L. Ed 872 (1873) (Syllabus Note 6); cf. United States v. Benz, 282 U.S. 304, 306, 51 S. Ct. 113, 114, 75 L. Ed. 354 (1931).

The Benz court held:

“The distinction that the court during the same term may amend a sentence so as to mitigate the punishment, but not so as to increase it, is not based upon the ground that the court has lost control of the judgment in the latter case, but upon the ground that to increase the penalty is to subject the defendant to double punishment for the same offense in violation of the 5th Amendment to the Constitution, which provides that no person shall ‘be subject for the same offense to be twice put in jeopardy of life or limb.’ This is the basis of the decision in Ex parte Lange, supra.”

Benz, 282 U.S. at 307. See also Deutschmann v. United States, 254 F.2d 487, 489 (9<sup>th</sup> Cir. 1958), which unequivocally held that” “It is unconstitutional to increase a sentence after the prisoner began serving it.”

This Court has also previously addressed issues related to Florida’s violations of due process in its application, or inapplication, of its own laws. See Bunkley v. Florida, 123 S. Ct. 2020 (2003). And that this Court has stated that it will not take lightly cases where “a state court failed to apply it’s own law.” Bell v. Cone, 123 S. CT.847,853 (2003).

Petitioner has attempted to have the Florida courts correct its error, and as all too often happens, the Florida courts simply adopt the State’s position that the vacation of the original sentence after it vested, and subsequent resentencing of petitioner to natural life was “legal,” contrary to double jeopardy principles.

Petitioner asserts that because there is no evidence in the record of the original plea proceeding, no conclusion could be reached as to what benefit the state expected to receive from petitioner's testimony. The trial court did not base its finding that petitioner didn't testify satisfactorily on competent substantial evidence, in the absence of the fact that it no longer had jurisdiction to vacate the original sentence.

Federal and state law requires that a trial court make its evidentiary findings based on competent substantial evidence. See U.S. v. Hall, 515 F.3d 186 (3<sup>rd</sup> Cir 2008). The law also sets the same requirement when entering into a plea agreement. The state must make sure what the specific terms of the agreement, and what the state expects to gain from the agreement, are made part of the record in open court. See McCoy v. State, 599 So645, 649 (Fla.1992).

Thus, in granting the states motion to enforce the agreement the trial court not only deviated from the essential requirements of the law but, also violated the constitutional guarantee against double jeopardy, and thus its actions resulted in a manifest injustice.

This court has a legal duty to correct a manifest injustice, if it can. See United States v. Quintana, 300 F 3d 1227.1232(11<sup>th</sup> Cir. 2002).


## **RELIEF SOUGHT**

Petitioner seeks the vacation of his life sentence and a remand with directions that he be resentenced to the twenty (20) year sentence he had originally received.

## **CONCLUSION**

WHEREFORE, based on the foregoing facts, argument and authority, the Petitioner requests that this Honorable Court grant the instant Petition for Writ of Certiorari and resolve the Constitutional questions presented herein.

Respectfully submitted,

  
\_\_\_\_\_  
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