

19-7338

NO: \_\_\_\_\_

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

DAVID P. MORAN — PETITIONER

V

STATE OF FLORIDA — RESPONDENT

ON A PETITION FOR WRIT OF CERTIORARI TO THE FIFTH DISTRICT  
COURT OF APPEAL DAYTONA BEACH, FLORIDA

PETITION FOR WRIT OF CERTIORARI

David P. Moran X97428  
Columbia C. I. Annex  
251 SE Corrections Way  
Lake City, FL 32025  
Pro Se Litigant

## **QUESTION PRESENTED**

1. Should two charges for the same episode of conduct and the same victim with no temporal break whatsoever be sentenced to consecutive prison terms even without minimum mandatory implications involved?

## **LIST OF PARTIES**

Fifth District Court of Appeal  
300 South Beach Street  
Daytona Beach, Florida 32114

Office Of The Attorney General  
444 Seabreeze Boulevard  
5th Floor  
Daytona Beach, Florida 32118

Orange County Circuit Court  
Ninth Judicial Circuit  
425 North Orange Avenue  
Orlando, Florida 32801

Office Of The State Attorney  
Ninth Judicial Circuit  
415 North Orange Avenue  
Suite 300  
Orlando, Florida 32801

## **RELATED CASES**

\*Moran v State, 5D19-2611, Fifth District Court of Appeal. Judgment entered

December 24th 2019.

\*State v Moran, 16-CF-006177-A-OR, Orange County Circuit Court Ninth.  
Judgment Entered August 12<sup>th</sup> 2019.

## TABLE OF CONTENTS

QUESTION PRESENTED .....	I
LIST OF PARTIES .....	II
RELATED CASES .....	II
TABLE OF CONTENTS .....	III
INDEX TO APPENDICES .....	III
TABLE OF AUTHORITIES .....	IV
OPINIONS BELOW .....	1
JURISDICTION .....	2
CONSTITUTIONAL PROVISIONS .....	3
STATEMENT OF FACTS .....	4
STATEMENT OF CASE .....	4
REASONS FOR GRANTING PETITION .....	7
CONCLUSION .....	8

## INDEX TO APPENDICES

- Appendix A.** Fifth District Court of Appeal Denies summary denial of motion to correct illegal sentence (Fla. R. App. P. 9.141(b)(2)).
- Appendix B.** Orange County Circuit Court denies motion to correct illegal sentence (Fla. R. Crim. P. 3.800(a)).
- Appendix C.** Orange County Circuit Court grants motion to correct sentence (Fla. R. Crim. P. 3.800(b)).
- Appendix D.** Excerpt from sentencing hearing.
- Appendix E.** Excerpt from record on appeal.

## TABLE OF AUTHORITIES

### CASES

Fraley v State 641 So. 2d. 128 (3 <sup>rd</sup> DCA 1994)-----	5
Missouri v Hunter 459 US 359, 74 L. Ed. 2d. 535, 103 S. Ct. 673 (USSC 1983)-----	7
United States v Covington 565 F. 3d. 1336 (U. S. C. A. 11 <sup>th</sup> Cir. 2009)-----	7
United States v Perez 956 F. 2d. 1098 (U. S. C. A. 11 <sup>th</sup> Cir. 1992)-----	5
United States v Williams 340 F. 3d. 1231 (U. S. C. A. 11 <sup>th</sup> Cir. 2003) -----	6
Wanless v State Fla. App. Lexis 6869 (1 <sup>st</sup> DCA 2019)-----	6

### RULES

18 USCS § 3D1.2 -----	6
18 USCS §3553(a)-----	6
18 USCS §3584(b)-----	6
Fla. R. App. P. 9.141(b)(2) -----	iii
Fla. R. Crim. P. 3.800(a) -----	iii
Fla. R. Crim. P. 3.800(b) -----	iii

**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**

The opinion of the Orange County Circuit Court appears at Appendix B and C to the petition and is unpublished. No opinion was provided in the Fifth District Court of Appeal denial.

### **JURISDICTION**

The date on which the highest state Court decided my case was December 24<sup>th</sup>, 2019. A copy of that decision appears at Appendix A.

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

## CONSTITUTIONAL PROVISIONS

U. S. Constitution Amendment eight ..... 4

...nor cruel and unusual punishment inflicted

U. S. Constitution Amendment Fourteen ..... 5

...nor shall any state deprive any person of life, liberty, or property, without  
due process of law.



**STATEMENT OF FACTS**  
**SENTENCING PROCEEDINGS**

The following is a record of relevant sentencing proceedings. On September 15<sup>th</sup> 2017 a sentencing hearing was held (See Appendix D). The defendant was sentenced to life on count 1, 25 years on count 2, 15 years on count 3, and 1 year on count 4. Count 1 was run consecutive to counts 2, 3, and 4. Counts 2, 3, and 4 were run concurrent with each other (See Appendix E). On April 2<sup>nd</sup> 2018 a motion to correct sentence was submitted to the Court. On April 16<sup>th</sup> 2018 the motion to correct sentence was granted to remove the five year minimum mandatory from count 2 (See Appendix C).

**APPELLATE PROCEEDINGS**

The following is a record of relevant appellate proceedings. On July 31<sup>st</sup> 2019 a motion to correct illegal sentence was submitted to the Court. On August 12<sup>th</sup> 2019 the motion to correct illegal sentence was denied (See Appendix B). On September 27<sup>th</sup> 2019 an initial brief was submitted challenging the summary denial of the motion to correct illegal sentence. On October 15<sup>th</sup> 2019 a response of not filing answer to initial brief was submitted by the attorney general. On December 24<sup>th</sup> 2019 the initial brief challenging the summary denial of the motion to correct illegal sentence was denied (See Appendix A).

**STATEMENT OF CASE**

Sentencing the defendant to consecutive prison terms is a violation of his U. S. Constitutional 8<sup>th</sup> amendment right not to be subjected to cruel and unusual

punishment. This is due to any unjustified extra time in a hostile environment puts the defendant at risk of life and limb. Potential prison reform may one day assign a number to a life sentence. This could be the difference in serving an extra 25 years or not. This issue also violated the defendant's U. S. Constitutional 14<sup>th</sup> amendment right to due process of law. A consecutive sentence for the same episode of conduct and same victim with no temporal break whatsoever creates a substantial violation of due process.

This Court must review this issue using a plenary standard of review. "The imposition of consecutive sentences is an issue of law subject to plenary review." (United States v Perez 956 F. 2d. 1098 (U. S. C. A. 11<sup>th</sup> Cir. 1992))

The Defendant now wishes to go on record by stating this motion is simply a legal argument that can obtain him relief. The contents of this petition are in no way to be construed as an admission of guilt to these counts. The trial Court erred in sentencing the Defendant to consecutive terms of imprisonment since counts 1 and 2 of attempted murder and aggravated battery are for the exact same episode of conduct and the same victim without any temporal break. Judge Adams cites this case law in her denial of the Defendant's motion since this case involves minimum mandatory charges. (See appendix B). "When convictions arise from the same criminal episode and involve the same victim, the sentence terms should be run concurrently." (Fraley v State 641 So. 2d. 128 (3<sup>rd</sup> DCA 1994)).

The Defendant while there is evidence on the record that this was not an intentional act struck mason the sole victim only once with his vehicle. This concept

is analogous to the case law cited below in which the accused in this case used a firearm. Judge Adams totally disregards this case law in her denial as this case focuses on the actual act itself as being the reason for a reverse and remand. “Consecutive sentences are illegal where there was only a single discharge of the firearm and only one person was shot during a single criminal episode.” (Wanless v State Fla. App. Lexis 6869 (1<sup>st</sup> DCA 2019) .

In federal sentencing cases you can see the precedent being laid out when a Court considers sentencing. Federal courts group counts together if they involve the same act and same victim. Despite the Defendant’s act not being intentional it clearly qualifies under these guidelines. “Guidelines 18 USCS §3D1.2 states that multiple offenses may be grouped together only when counts involve the same victim and the same act”. (United States v Williams 340 F. 3d. 1231 (U. S. C. A. 11<sup>th</sup> Cir. 2003)).

The other factor which this Court must consider is what the legislature intended for the maximum punishment to be for this one act. The legislature did not authorize more than a single life sentence as a minimum mandatory for this one act. In terms of potential to beat certain charges on appeal and not others the Defendant is not treating this as an academic issue. “An appellate Court reviews a District Court’s imposition of a consecutive sentence only for abuse of discretion. 18 USCS §3584(b) authorizes the District Court to impose a consecutive sentence provided that it first considers the 18 USCS §3553(a) factors. Once these factors are considered, the only limitation on running sentences consecutively is that the

resulting total sentence must be reasonable and ordinarily a sentence within the advisory guidelines range is reasonable. (United States v Covington 565 F. 3d. 1336 (U. S. C. A. 11<sup>th</sup> Cir. 2009)).

The Defendant will not bother going into the double jeopardy implications in this case as the action being challenged is the consecutive terms of imprisonment. “Where with respect to cumulative sentences imposed in a single trial, the double jeopardy clause does no more than prevent the sentencing Court from proscribing greater punishment than the legislature intended.” (Missouri v Hunter 459 US 359, 74 L. Ed. 2d. 535, 103 S. Ct. 673 (USSC 1983)).

The removal of the minimum mandatory from Count 2 still does not empower the judge to impose consecutive sentences in this case because this situation involved the same episode of conduct and the same victim. Furthermore, the only reason for the state attorney to remove the minimum mandatory from count 2 would be so the judge could sentence the Defendant to consecutive terms of imprisonment. This is why federal sentencing guidelines cited above are also important. The fact is the officer suffered only a broken leg and is not permanently injured. Even if the Defendant had intent to injure or murder the officer which he did not, the life plus 25 sentence is overtly unreasonable.

### **REASONS FOR GRANTING PETITION**

This Honorable Court should grant certiorari review of this petition as it will promote fair sentencing practices to all criminal defendants charged with aggravated battery and attempted murder. This Court needs to bring Florida

sentencing guidelines in line with federal sentencing guideline. Consecutive sentences should be barred when the convictions arise from the same episode of conduct and the same victim with no temporal break whatsoever. This should be enforced regardless of whether there are any minimum mandatory implications involved or not.

### CONCLUSION

This petition for a writ of certiorari should be granted. This request is made in good faith. The petitioner swears the facts contained in this petition for writ of certiorari are true and correct.

Respectfully submitted,

/s/ D. Moran  
David P. Moran X97428  
Pro Se Litigant

Date: January 2nd 2020

# APPENDIX A