19-7963

ORIGINAL

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ON 3-5-20 (DATE) FOR MAILING
(STAFF INITIAL) V.Y. (I/M INITIAL)

CASE NUMBER: 99-007229CF10A
99-020176CF10A
99-020177CF10A

Supreme Court, U.S.
FILED
FEB 19 2020
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

YEHOWSHUA YISRAEL,
Petitioner,

V.

MARK S. INCH SEC'Y FLA. DEPT. OF CORRECTIONS
Respondent,

On Certiorari to the Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

Petitioner: YEHOWHUA YISRAEL
DC# 089407
Mayo Correctional Institution
8784 U.S. Highway 27 West
Mayo, Florida 32066

Respondent: MARK S. INCH SEC'Y FLA. DEPT. OF CORRECTIONS
501 South Calhoun Street
Tallahassee, Florida 32399

QUESTIONS PRESENTED

1. Did the trial Court and State of Florida Prosecutor invoked a miscarriage of Justice and manifest Injustice as to wair their conduct did not comport with the 14th Amendment of the United States Constitution and Corresponding Article I, Section 9, of the Florida Constitution Due Process Clause; That Violated Procedural Due process and Deprived the Petitioner of his substantive Due Process Rights: Protected and guaranteed Petitioner by the 14th Amendment United States Constitution and Corresponding Article I, Section 9, Florida State Constitution?

2. Did the trial Court have jurisdiction over the re-filed identical original information, which was or are invalid because the State unlawfully Due Process it on or under the initial original Information filing prosecution and under the initial original Information custodial arrest and arrest number. In which the State never executed an lawful (re)-arrest of the petition on the (re)-filed identical original Information, which was illegally re-filed while it was still initially active and pending previously originally filed. And it was illegally re-filed before the State dismiss or Nolle prosequi it originally filed; The State illegally re-filed the same charges before the same active charges originally filed and still pending was nolle prosequi, and the State never Lawfully re-filed the same charges after the State Nolle prosequi them originally filed. And the State never executed an Lawful

release of the Petitioner from the initial filing of the original information prosecution and its initial sole vested custodial arrest and arrest number, after the state Nolle prosequi the initial filing of the original information. (Also the State illegally re-filed TWO of the charges from an repealed inapplicable subsection of the Florida Statutes, which rendered them unconstitutionally void). So is this manner of conduct a Lack of Jurisdiction, miscarriage of Justice, manifest Injustice; Comported with Due Process?

LIST OF PARTIES

MARK S. INCH Sec'Y Fla. Dept. OF Corrections
501 South Calhoun St., Tallahassee, Florida 32399-

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IN THE SUPREME COURT OF THE UNITED STATES PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays for mercy and Justness that a Writ of Certiorari issue to review the Judgments below.

Cases from State Court of Florida 17th Judicial Circuit Court Broward County; to review the merits appears at Appendix #A, #C, #D, and #E to the petition.

Cases from State Court of Florida Fourth District Court of Appeal West Palm Beach County to review the merits appears at Appendix #B, #E, #F, #G and #H to the petition.

Cases from the Supreme Court of Florida to review the merits appears at Appendix #K and #L to the petition.

The 17th Judicial Circuit Court of Broward County, Florida, decided my case represented by attorney May 3, 2019.

The Fourth District Court of Appeal of West Palm Beach County, Florida, decided my pro se case July 16, 2019.

The Supreme Court of Florida decided my pro se Petition for writ of Habeas Corpus February 11, 2020.

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

STATEMENT OF JURISDICTION

This Honorable Court has inherent authority to issue a writ of certiorari if there are violations of the State and trial Court Departure from the essential requirement of law and violation of a clearly established principle of law, and violation of one's substantive Due process rights, and Procedural Due Process Law resulting in a miscarriage of Justice. And inherent authority to correct a manifest injustice, that is plainly and obviously unjust, conduct that did not comport with Due process, and matters where trial court lacks jurisdiction. The Jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The State and trial Court did not comport and violated these constitutional and statutory provisions. The 14th Amendment of the United States Constitution, Article I, Section 9, of the Florida Constitution, Florida Statutes 800.04(3) 1997, Florida Statutes 901.16, Florida Statutes 907.04, Florida Rules of Criminal procedural 3.610(1)(b), Florida Rules of Criminal procedural 3.160(e), Federal Rule 44(a),(b), and the Nolle Prosequi Rules and Procedurals.

FACTUAL AND PROCEDURAL STATEMENT OF THE CASE

1. The Petitioner was arrested on April 20, 1999 by Hollywood Police Department arrest No.:HW99-001617 see the face of the record App. H page 3, and was booked April 20,1999 and admitted April 21, 1999 into the Broward County main jail see the Face of the record App. H pages 15 and 16 "Counts 2-6 #99-007229CF10A" of the Broward County main jail April 20, 1999 Booking Report #BCCN7208.

2. And on May 10, 1999 the (20th) day of the April 20, 1999 Hollywood Police Dept. custodial arrest, arrest probable cause affidavit #HW99-55838, OBTS #611004981, and arrest No.: HW99-001617 App. H page 3. The State of Florida in the county of Broward charged the Petitioner by way of information document with the following felony charges: Count (1) Burglary of Dwelling with Battery

1997 F.S. 810.02(1) and 1997 F.S. 810.02(2)(a) (Feb. 27, 1999); Count (2) Burglary of Dwelling with Battery 1997 F.S. 810.02(1) and 1997 F.S. 810.02(2)(a) (April 20, 1999); Counts (3) Indecent Assault pursuant to the 1997 F.S.800.04 subsections (3) (Feb. 27, 1999); Count (4) Indecent Assault pursuant to the 1997 F.S.800.04 subsections (3) (April 20, 1999); Count (5) Indecent Assault pursuant to the 1997 F.S.800.04 subsections (3) (April 20, 1999). The above charges were originally filed under Case No: 99-007229CF10A. See the face of the record App. H pages 4-6.

3. Then on May 18, 1999 the (28th) day of the April 20, 1999 Hollywood Police Dept. Custodial arrest and Arrest No.: HW99-001617. The State of Florida in the County of Broward arraigned the Petitioner on all five felony count charges under Case No.: 99-007229 CF10A. See the face of the record App. H pages 6.

4. Then on November 8, 1999 the (203rd) day of the April 20, 1999 Hollywood Police Dept. Custodial arrest and Arrest No.: HW99-001617, and (183) days prior to originally filing the charges May 10, 1999 which were still active and being prosecuted on by the State under Case No.: 99-007229CF10A. The State "RE-FILED" and "RECHARGED" The Petitioner with the identical original charging information. Taking Counts Two(2), Four(4), and Five(5) of the original Information under Case No: 99-007229CF10A re-filed them as Counts One(1), Two(2), and Three(3) under Case No.: 99-020176CF10A. And Counts One(1), and

Three(3) of the original Information under Case No.: 99-007229CF10A re-filed them as Counts(1)and Two(2) under Case No.: 99-020177CF10A. See the Face of the record App. H pages 7-8 and App. H pages 9-10.

5. Also, on Nov. 8, 1999, the State of Florida re-filed counts Three(3) of Case No.: 99-020176CF10A and Counts Two(2) of case No.: 99-020177CF10A from the now repealed subsection (3) of the 1997 800.04 F.S. well after the new enacted Oct. 1,1999 effective date of the Superseding 1999-21 F.S.. Which makes the re-filed charges Count Three(3) under Case No.:99-020176CF10A and Count Two(2) under Case No.: 99-020177CF10A unconstitutionally void. See the Face of the record the re-filed date App. H pages 8 and App. H pages 10.

6. Then on November 18, 1999 on the (213th) day of the April 20, 1999 Hollywood Police Dept. Custodial arrest and Arrest No.: HW99-001617. The State brought the Petitioner to a pre-trial hearing without the Petitioner's Court appointed private attorney, Matthew Destry. And in the absence of proper legal representation, the State Nolle prosequi the original charging information filed under Case No.:" 99-007229CF10A which vested the trial court's jurisdiction. See the Face of the record App. H pages 11. This was done without the State lawfully discharging the Petitioner from the initial original Information prosecution and its initial vested April 20, 1999 Hollywood Police Dept. Custodial arrest and arrest No.:HW99-001617-13991617. See the Face of the record App. H page 17 "Counts

2-6 99-007229CF10A" of the Broward County main Jail CIS inmate summary 13991617. And in the "same" Nov. 18, 1999 pre-trial proceeding and "under" the initial original April 20, 1999 Hollywood Police Dept. Custodial Arrest and Arrest No.: HW99-001617. The State illegally arraigned the Petitioner on the identical original charges "RE-FILED" under Case No.:99-020176CF10A and 99-020177CF10A which did not vest the trial court jurisdiction. See the Face of the record App. H pages 14. This being illegally done without the Petitioner being lawfully (re)arrest pursuant to F.S.901.16 on the (re)filed identical original charges. See the Face of the record App. H pages 19-26; and without having proper legal representation Pursuant to Fla.R.Crim.P.3.160(E) and Federal.R.44(a),(b).

7. Then the Petitioner proceeded to trial on the invalid re-filed original charging information and was found guilty January 5, 2000, and was sentenced Feb.11, 2000, and was given (304) days county jail credit # 99-020177CF10A App. H pages 12. Calculation started from April 20, 1999 initial arrest to Feb.11, 2000, sentencing, which validates there never was a break in the State's original prosecution of the original information filed May 10, 1999 under Case No.: 99-007229CF10A App. H pages 4-6; From the illegal refilling Nov. 8, 1999 of the original information alleging same conduct and same criminal episode under Case No.: 99-020177CF10A App. H pages 9-10. The calculated days should have been (86) days from Nov. 18, 1999 alleged re-arrest to Feb.11, 2000 sentencing if the

Petitioner was released and re-arrested but not. See the face of the record App. H pages 4-6, App. H pages 9-10, App. H pages 12, and App. H pages 17 Counts 2,3,4,5,6, #99-007229, and 7,8, #99-020177 of the Broward County main Jail CIS inmate summary 13991617. And it also validates there were no lawful break in the chain of the April 20, 1999 Hollywood Police Dept. arrest and custody booking, from the alleged fraudulent Nov. 18, 1999 Hollywood Police Dept. re-arrest and re-booking by capias warrant pursuant to F.S. 901.16 and F.S. 907.04. The face of the record shows the legal filing and the illegal re-filing of the original charging information was all due process under the initial April 20, 1999 Hollywood Police Dept. Custodial arrest and Arrest No.: HW99-001617-13991617; and the same initial April 20, 1999 Broward County main Jail booking report BCCN No.: 7208. See the face of the record App. H pages 15-16 Counts 2-11 of the April 20, 1999 Broward County main Jail booking report #7208 , App. H pages 19-26 and App. H pages 27. In which by law the April 20, 1999 Arrest No.: HW99-001617 and the April 20, 1999 Broward County main Jail booking report BCCN No.: 7208; should be lawfully independently different from the fraudulent alleged Nov. 18, 1999 re-arrest number by capias warrant by Hollywood Police Dept. Pursuant to F.S. 901.16 and from the Broward County main Jail booking report number Pursuant to F.S. 907.04; Which validates the original charges are invalidly re-filed under Case No.: 99-020177CF10A and never lawfully vested the trial court's jurisdiction.

8. Then the Petitioner proceed to trial on the invalid re-filed original charging information and was found guilty Aug. 15, 2000 and was sentenced Sept. 15, 2000, and was given (516) days County Jail Credit #99-020176CF10A App. H pages 13. Calculation started from April 20, 1999 initial arrest to Sept. 15, 2000 sentencing, which validates there never was a break in the State's original prosecution of the original information filed May 10, 1999 under Case No.:99-007229CF10A App. H pages 4-6; From the illegal refilling Nov. 8, 1999 of the original information alleging same conduct and same criminal episode under Case No.: 99-020176Cf10A App. H pages 7-8. The calculated days should have been (302) days from Nov.18,1999 alleged re-arrest to Sept. 15, 2000 sentencing if the Petitioner was released and re-arrested but not. See the face of the record App. H pages 4-6, App. H pages 7-8, App. H pages 13, and App. H pages 17-18 Counts 2,3,4,5,6 #99-007229, and Counts 11 #99-020176 of the Broward County main Jail CIS inmate summary 13991617. And it also validates there were no lawful break in the chain of the April 20, 1999 Hollywood Police Dept. arrest and custody booking, from the alleged Fraudulent Nov. 18, 1999 Hollywood Police Dept. re-arrest and re-booking by capias warrant pursuant to F.S. 901.16 and F.S. 907.04. The Face of the record shows the legal filing and the illegal re-filing of the original charging information was all due process under the initial April 20, 1999 Hollywood Police Dept. Custodial arrest and Arrest No.: HW99-001617-

13991617; and the same initial April 20, 1999 Broward County main Jail booking report BCCN No.: 7208. See the face of the record App. H pages 15-16 Counts 2-11 of the April 20, 1999 Broward County main Jail Booking Report #7208, App. H pages 19-26 and App. H pages 27. In which by law the April 20, 1999 arrest No.: HW99-001617 and the April 20, 1999 Broward County main Jail Booking report BCCN No.: 7208; should be lawfully independently different from the Fraudulent alleged Nov. 18, 1999 re-arrest number by capias warrant by Hollywood police Dept., pursuant to F.S. 901.16 and from the Broward County main Jail booking report number pursuant to F.S. 907.04; Which validates the original charges are invalidly re-filed under Case No.: 99-020176CF10A and never lawfully vested the trial court's jurisdiction.

9. Then the Petitioner's family hired an attorney for $3,500 dollars to file an Petition for Writ of Habeas Corpus. See the face of the record App. C pages 1-5.

10. The State's meritless response. See the face of the record App. D pages 1-4

11. The Court's erroneous Denial of petition. See the face of the record App. A pages 1-4.

12. Letter of Lawyer retiring from law. See the face of the record App. E pages 1, which latter got a one year suspension by the Florida Bar and could not file an appeal in the 4 DCA Fla. Bar #38385.

13. The Petitioner was barred from filing *pro se* pleadings or appeal in the Fourth District Court of Appeal of the State of Florida June 25, 2014 No. 4D13-4774.

14. So the Petitioner tried to Apply by filing and Habeas Corpus, supplement to Habeas Corpus with an Appendix. See the Face of the record App. F pages 1-14, App. G pages 1-9, and App. H pages 1-28 citing lack of jurisdiction, miscarriage of justice, and manifest injustice, but to no avail. See the face of record App. B pages 1.

15. On August 22, 2019, the Petitioner filed for a Writ of Certiorari to the Supreme Court of the United States and received by the Supreme Court Clerk of Court on August 29, 2019. In which the Clerk of the Court returned the Writ of Certiorari and its attached appendix, instructing the Petitioner to first seek review by a United State Court of Appeals or by the highest State Court in which a decision could be had. See the face of the record App. I pages 1.

16. Then on September 12, 2019, the Petitioner filed a Application for Leave to file a successive Habeas Corpus petition with appendix in the Eleventh Circuit 19-13620-C.

17. Then on October 09, 2019 the Eleventh Circuit judges denied Petitioner leave to file a successive Habeas Corpus No. 19-13620-C.

18. Then on October 21, 2019, the Petitioner filed again a Writ of Certiorari to the Supreme Court of the United States and received by the U.S. Supreme Court Clerk on October 29, 2019. In which the Clerk returned the Writ of Certiorari and its attached Appendix in accord to 28 U.S.C. 2244(b)(3)(E). See the face of the record App. J pages 1.

19. Then on November 12, 2019, Petitioner filed a pro se Petition for Writ of Habeas Corpus to the Supreme Court of Florida. See the face of the record App. K pages 1-29 and this conjoined App. A through H.

20. Then on February 11, 2020, the Supreme Court of Florida refused to fundamentally invoke its jurisdiction. See the face of the record App. L pages 1.

ARGUMENT

The Petitioner was barred from filing *pro se* pleadings and appeals of any ruling of the trial court. So the Petitioner's family came together to raise 3,500 dollars to hire Mr.David Jay Bernstein Fla. Bar #38385 to file an Habeas Corpus in the lower court. See App. C pages 1-5 and appeal any order of denial of the trial court to the Fourth District Court of Appeals. But due to uncommon and extraordinary circumstances the Petitioner's attorney was strongly recommended to cease the practice of law. See App. E pages 1, and was suspended from

practicing law for one year by the Florida Bar. And he could not file an appeal nor could the Petitioner Due to the sanction imposed June 25, 2014 No: 4D13-4774. But the Petitioner tried to *pro se* file an Habeas Corpus , Supplement to Habeas Corpus , and an appendix See App. F pages 1-14, App. G pages 1-9, and App. H pages 1-28. But it was returned Based on the June 25, 2014 sanctions. See the face of the record App. B pages 1. The trial court's order of denial is erroneous and violated Petitioner's Due Process because it took the Petition for Writ of Habeas Corpus filed by an attorney as a 3.850 Post Conviction Motion , which the trial court stated that it was legally insufficient, Pursuant to Rule 3.850(c) and (n), Fla. Rules of Crim. P., as it was not under oath. In fact, it is not even signed by the Defendant. Therefore, the trial court lacked jurisdiction, to rule on an insufficient pleading and by law was to afford the Petitioner the right to make the pleading sufficient, by entering order to dismiss pleading without prejudice to make pleading sufficient. See court order App. A pages 3, The trial court's erroneous order of denial violated Petitioner's Due Process when its order, it stated, that habeas corpus relief is not available as a substitute for relief under rule 3.850 and not available to obtain collateral post-conviction relief (as the instant petition for writ of habeas corpus attempts to do) citing Baker v. State, 878 So. 2d 1236, 1246 (Fla. 2004) misconstrued an prima facial and meritorious sufficient Petition for Writ of Habeas Corpus to Correct Manifest Injustice and trial court lack of

jurisdiction filed by an attorney. When Baker v. State, 878 So. 2d at 1246 states: that writ is enshrined in our constitution to be used as a means to correct manifest injustice and its availability for use when all other remedies have been exhausted has served our society well over many centuries. This Court will, of course, remain alert to claims of manifest injustice, as will all Florida courts. See the Court order of denial App. A pages 3 and Petitioner's Petition for Writ of Habeas Corpus filed by an attorney App. C pages 1-5. And also the 4th District Court of Appeal should have heard and ruled on the claims of lack of Jurisdiction, miscarriage of Justice, and manifest Injustice. When the Petitioner filed a prima facie *pro se* Petition for Writ of Habeas Corpus, with a supplement to Petition of Habeas Corpus, with an appendix of the valid face of the record See App. F pages 1-14, App. G pages 1-9, and App. H pages 1-28, and court rejections form App. B pages 1.

Also the Supreme Court of Florida should have adhered to its own precedents in Baker v. State, 878 So. 2d at 1246 which states: that writ is enshrined in our Constitution to be used as a means to correct manifest injustice and its availability for use when all other remedies have been exhausted has served our society well over many centuries. This court will, of course, remain alert to the claims of manifest injustice, as will all Florida courts. In which the Supreme Court should have invoked jurisdiction and granted relief of Petitioner's prima facie Petition for Writ of Habeas Corpus meritorious claims of manifest injustice and

App. K pages 1-29,

lack of jurisdiction on the face of the record. And the instant November 12, 2019 filed petition for Writ of Habeas Corpus prima facially and sufficiently alleges manifest injustice and meritoriously demonstrates manifest injustice and lack of jurisdiction as illustrated in the petition for Writ of Habeas Corpus filed by attorney for Petitioner App. C pages 1-5 and by pro se petition for writ of Habeas Corpus by Petitioner App. F pages 1-14, App. G pages 1-9, and App. H pages 1-28 and the Supreme Court of Florida should have fundamentally invoked jurisdiction and granted on the merits of the Case of Claims especially of manifest injustice, miscarriage of injustice, and Lack of Jurisdiction as alleged in the instant Petition for Writ of Habeas Corpus. An exceptions to Baker v. State, 878 So. 2d at 1246 precedent law of cases, the doctrine of successiveness by prima facie showing of manifest injustice, lack of jurisdiction. Also collateral estoppel doctrine contains an exception where manifest injustice is prima facie shown. (The main focus in the instant cause are there's an manifest injustice and Lack of Jurisdiction on the face of the record?) The instant Habeas Corpus alleges 1. Manifest Injustice, 2. Lack of Jurisdiction, and 3. Miscarriage of Justice. Which in Claim 1. manifest injustice the Petitioner has validated by the face of the record App. A through H there was error, that was plain, that affected substantial rights, and affected the fundamental fairness of a proceeding.

Claims 2. Lack of Jurisdiction the Petitioner has validated and illustrated by the face of the record App. A, through App. H, that the re-filed same charges are invalid, the state illegally re-filed them while they were still active and pending, the state illegally refiled them Nov. 8, 1999 before the State Nolle prosequi them Nov. 18, 1999. The State never released the Petitioner from the original filing prosecution and restraint after the Nov. 18, 1999 Nolle prosequi, nor did the State have Petitioner rearrested and rebooked on the invalid refiled same charges. Also the state illegally refiled Counts 3 of Case No. 99-020176CF10A and Counts 2 of Case No. 99-020177CF10A from repeal 800.04(3) 1997 F.S. that portion of the statute was never reenacted in the new 1999-21 800.04 Fla. Stat. and after Oct. 1, 1999 indecent assault was no longer a charge in the 800.04 Fla. Stat. (so the Petitioner is showing by the valid face of the record, that he was not lawfully recharged and rearrested of a charge after the state on Nov. 18, 1999 Nolle prosequi all the charges against the Petitioner, which constitutes lack of jurisdiction).

Claims 3. Miscarriage of justice the Petitioner has validated and illustrated by the face of the record App. A, THROUGH App. H; as to where he has been convicted by an unconstitutional ordinance, there were violations of clear established principles of laws, and departure from the essential requirement of laws, which essentially amounts to violations of procedural and substantive due

process rights. (in accord to the Constitution one must be properly and lawfully released when all charges have been dropped by Nolle prosequi and after the finality of Due Course of Law, properly re-charge and re-arrest one of a factual charge. In which is non-existent in Petitioner's cause, Petitioner is innocent of an non-existent charge or crime of indecent assault and innocent lawfully by the new reenacted 800.04 Fla. Stat. 1999-21 and the non-lawful re-arrest of a charge a manifest injustice, lack of jurisdiction, a miscarriage of Justice). The Supreme Court of Florida fundamentally failed to adhere to the law of the cases, the doctrine of successiveness, and collateral estoppel doctrine that contains an exception to overcome procedural rules and defaults by showing of manifest injustice, also Lack of Jurisdiction, and miscarriage of justice when the State and trial court departed from clear established principles of laws, essential requirements of laws and does not afford Procedural Due Process: The Supreme Court of Florida did not adhere to its own precedents of Baker v. State, 878 So. 2d at 1246 (Fla. 2004) misconstrued the claims of manifest injustice, lack of jurisdiction, and miscarriage of justice meritoriously illustrated in the instant November 12, 2019 Habeas Corpus; and did not fundamentally refute the 3 claims as to did or did not the Petitioner meet the required standards of either of especially "manifest injustice", lack of jurisdiction, or miscarriage of injustice to overcome procedural default or procedural rules. Just like the lower tribunal App. A pages 1-4 in regards to the

App. K pages 1-29

prima facie meritorious claims in App. C pages 1-5. In which the Supreme Court of Florida, just like the Florida Fourth District Court of Appeal, and the lower tribunal's failure to consider or refute the meritorious claims and prima facie validated face of the record manifesting a Lack of Jurisdiction and especially a "manifest injustice". Failure to adhere to the Precedents of Baker v. State, 878 So. 2d at 1246 resulting to the Supreme Court of Florida, 4 DCA of Florida, and lower tribunal 17th Circuit of Florida committing a fundamental miscarriage of Justice, a fundamental "manifest injustice" and a continued fundamental unfair manner of derogation of Petitioner's substantive and procedural Due Process rights. See APP. L pgs 1. Because the Federal Courts guarantee that it will not be barred from hearing claims involving an actual manifest injustice. And use it's legal flexibility essential to insure that manifest injustice within its reach are surfaced and corrected. And inquire in to the cause of the prejudice of the claim and its affect, for it's the true substance of justness and fundamental freedom against lawless state actions that violates the constitutional laws of the United States. And manifest injustice claims shall NOT be stifled by discriminating generalities or complexities of federalism, scheme of government, or limitations enforceable by other, which, by avoiding abuses generated others. But must have the ability to cut through barriers of form and procedural mazes; not suffocate the writ in stifling formalisms or hobble its effectiveness with the manacles of arcane and scholastic procedural requirement.

But dispose of the matter as true just law requires; to yield to the imperative of correcting a fundamentally unjust incarceration; the principles of comity and finality. And it should be equally fair that a prisoner must always have some opportunity to reopen his case if he can make a sufficient showing he is the victim of a manifest injustice. This Honorable Court preserve the exception which enables the federal writ to grant relief in case of manifest injustice an exception that cannot be adequately bound by a simply state rule and procedural mazes. Because it holds an honored position in our jurisprudence and is a just bulwark against lawless state action that violates fundamental fairness, which is involved in the case itself, and the authority of whether an individual shall be justly imprisoned. And not whether the individual shall be convicted or acquitted of charges on which is to be tried.

The Petitioner on the face of the record has been charged by original filing and by re-filing of the same original charges under the initial original sole April 20, 1999 Hollywood Police Dept. Custodial arrest and Arrest No.: HW99-001617-13991617. See the face of the record App. H pages 4-6, App. H pages 7-8, App. H pages 9-10, and App. H pages 15-16 "Counts 2-6 99-007229", "Counts 7-8 99-020177", and "Counts 9-11 99-020176" of the April 20, 1999 Broward County main Jail Booking report #7208.

The Petitioner on the face of the record has two different Judgments and sentences on the same identical charges under the initial sole April 20, 1999

Hollywood Police Dept. custodial arrest and Arrest No.:HW99-001617-13991617. See the face of the record "App. H pages 11 #99-007229 App. H pages 17 Counts 2-6 #99-007229"; "App. H pages 12 #99-020177 App. H pages 17 Counts 7-8 #99-020177"; and "App. H pages 13 #99-020176 App. H pages 18 Counts 11 #99-020176". On the original filing of the charges a judgment and sentence of Nolle prosequi entered on the face of the record under Case No.:99-007229CF10A. Hollywood Police Dept. April 20, 1999 Custodial arrest and Arrest No.: HW99-001617; also on the original charges re-filed a Judgment and sentence of imprisonment entered on the face of the record under Case No.:99-020176CF10A and 99-020177CF10A. also under Hollywood Police Dept. April 20, 1999 Custodial arrest and arrest No.:HW99-001617. "One of those rare uncommon and extraordinary circumstances" a manifest injustice that is plainly and obviously unjust and a conduct or action that did not and does not "comport" with Due Process.

This Court has inherent authority to grant a writ of certiorari when the State and trial court did not afford lawful procedural due process and departed from a clear established principle of law and essential requirement of law resulting in a miscarriage of justice. The issue here is the "illegality of procedure" and not an erroneous proceeding. Procedure so illegal that justice requires that it be corrected. This court espoused the view that the duty of a trial judge to apply to admitted

facts; a correct principle of law which are such a fundamental and essential element of the Judicial process that a litigant cannot be said to have had the "remedy by due course of law." Guaranteed by the Declaration of Rights of our Constitution, if the trial judge fails or refuses to perform that duty. Alleged error pertain to the trial court's jurisdiction or the regularity of procedure. This court holding that certiorari can be used to review a conviction brought about by an unconstitutional ordinance, a violation of a clearly established principle of law resulting in a miscarriage of Justice, and departure from the essential requirement of law which essentially amounts to violations of due process rights.

Also this court may consider and reverse a manifest injustice at any time. Law of Cases and the doctrine of successiveness maybe overcome by showing of manifest injustice , relief may be granted even on a claim where failing to do so would result in manifest injustice. Concluding that the collateral estoppel doctrine contains an exception where manifest injustice is shown and to avoid incongruous and manifestly unfair results; relief may be provided to prevent a manifest injustice in the exercise of this court's inherent authority to grant a Habeas Corpus or writ of Certiorari.

Also, United States Supreme Court decisions on void orders based on violations of constitutional protections, The limitations inherent in the requirement of due process and equal protection of the law extend to judicial as well as political

branches of government, so that a judgment may not be rendered in violation of Constitutional limitations and guarantees. A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place. It is not entitled to enforcement. All proceedings founded on the void Judgment are themselves regarded as invalid. It is a fundamental doctrine of law that a party affected by a void judgment must have his day in court, and the opportunity to be heard. A void judgment does not create any binding obligation, a judgment which is void upon its face, and which requires only an inspection of the judgment roll to demonstrate its wants of vitality is a dead limb upon the judicial tree, which should be lopped off, if the power to do so exists. An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes to issue. A void judgment is no judgment at all and is without legal effect, a court must vacate any judgment entered in excess of its jurisdiction. No court can declare that it has the legal power to hear or decide cases, i.e. jurisdiction. Jurisdiction must be proven and on the record, without jurisdiction no court can issue a judgment that isn't void ab initio, void from the beginning, void on its face, without force and effect, a nullity. The states re-filing of the same charges and the

manner the way the trial court conducted its authority over the same re-filed charges did not "comport" with Due Process.

The basic Due Process rights guarantee of the Florida Constitution provides that "no person shall be deprived of life, liberty, or property without Due Process of law" Article I, Section 9, Florida Constitution. Substantive Due Process under the Florida Constitution protects the Full Panoply of the individuals right from unwarranted encroachment by the government, to ascertain whether the encroachment can be justified. Courts have considered the propriety of the state's purpose: the nature of the party being subject to state action; the substance of the individual's rights being infringed upon; the nexus between the means chosen by the state and the goal it intended to achieve; whether less restrictive alternatives were available; and whether individuals are ultimately being treated in a Fundamentally unfair manner in derogation of their Substantive Rights.

In the instant cause, the state violated the Petitioner's substantive Due Process rights, resulting in a miscarriage of Justice and manifest injustice. When the state "under the initial sole" April 20, 1999 Hollywood Police Dept. Custodial arrest and Arrest No.:HW99-001617 re-filed the identical charging information, recharging the Petitioner with the same charges that were still active and pending under the original Information, being persecuted on by the state under Case No.:99-007229CF10A. On May 10, 1999 the (20^{th}) day of the initial April 20, 1999

Hollywood Police Dept. Custodial arrest and its Arrest No.:HW99-001617; The state filed the original charging information under Case No.:99-007229CF10A and arraigned the Petitioner May 18, 1999. See the face of the record App. H pages 4-6. However, on November 8, 1999 the (203rd) day of the initial April 20, 1999 Hollywood Police Dept. Custodial arrest and its Arrest No.:HW99-001617, the State "RE-FILED[1]" and recharged the Petitioner with the identical charging information under Case No's.: 99-020176CF10A and 99-020177CF10A. See the face of the record App. H pages 7-8 and App. H pages 9-10. This was plainly and obviously unjust. And then on Nov. 18, 1999 the (213th) day of the initial April 20, 1999 Hollywood Police Dept. Custodial arrest and Arrest No.: HW99-001617; The state brought the Petitioner to a pre-trial hearing before the trial court without Petitioner's court appointed private attorney Matthew Destry, and in the absence of proper legal representation. The State Nolle prosequi the initial May 10, 1999 filing of the original information under Case No.: 99-007229CF10A which lawfully vested the trial court's jurisdiction and the initial April 20, 1999 Hollywood Police Department Custodial Arrest and Arrest No.: HW99-001617. See the face of the record App. H pages 11. And in the "same" Nov. 18, 1999 pre-trial proceeding and "under" the initial April 20, 1999 Hollywood Police Dept.

[1] The State did not **AMEND** the original information which constitutes a none break in the initial persecution and initial arrest. But "RE-FILING" of the original information does constitute a break in the initial persecution and initial arrest, and mandates an independent (re)-Due process, (re)-arrest on the (re)-filed original information. And not illegally latch on to the initial original Information prosecution under #99-007229CF10A and its vested April 20, 1999 arrest and Arrest No.: HW99-001617. which the state illegally did.

Custodial Arrest and Arrest No.: HW99-001617. The State unlawfully arraigned the Petitioner on the identical charges "RE-FILED[2]" under Case No's.: 99-020176CF10A and 99-020177CF10A. See the face of the record App. H pages 14. This conduct was done without the state lawfully executing a discharge of the Petitioner from the initial original information persecution under Case No.:99-007229-CF10A and its initial April 20, 1999 Hollywood Police Dept. Custodial Arrest and Arrest No.: HW99-001617; warranted by the authority of the Nolle prosequi. See the face of the record App. H pages 17 "Counts 2-6 "99-007229CF10A" of the Broward County main Jail CIS inmate summary "13991617". Nor did the state lawfully execute an (re)-arrest of the Petitioner on the (re)-filed identical original charges under Case No's.: 99-020176CF10A and 99-020177CF10A Pusuant to F.S.901.16 and F.S.907.04. See the face of the record App. H pages 19-26. And the state conduct on Nov. 18, 1999 was executed without the Petitioner having proper legal representation, which is protection and guaranteed Petitioner by the 14th Amendment of the United States Constitution, and Fla.R.Crim.P.3.160(e) and Fed.Rule 44(a)(b). See Powell v. Alabama, 287 U.S. 45,69,53 S. Ct. 55, 64 77 L. Ed. 158 (1932) precedent where, "this Court has held that a person accused of a crime requires the guiding hand of counsel at

[2] The "RE-FILED" identical original charging information could not validly supersede and vest the trial court jurisdiction over the vested original charging information, because it was invalidly re-filed on the original charging information prosecution foundation and its initial vested April 20, 1999 HWPD Custodial Arrest and Arrest No.: HW99-001617. Making the re-filed identical charging information Due Process invalid and lacked the trial court's jurisdiction.

"every step" in the proceedings against him," and that the constitutional principle is not limited to the presence of counsel at trial. "It is central to that principle that in addition to counsel's presence at trial, the accused is "guaranteed" that he need not stand "alone" against the state at "any stage" of the prosecution, formal or informal, in court or out, where counsel's absence might "derogate" from the accused's rights "of the constitution" (emphasis added). It calls upon us to analyze whether potential "substantial prejudice" to Defendant's rights inheres in the "particular confrontation" and the ability of counsel to help avoid that "prejudice". Applying this test, the court has "held" that "critical stages" "include the pre-trial type of arraignment" where certain rights may be sacrificed or lost. This clear departure from the clear established principle of law and essential requirement of law violated Procedural Due Process which deprived Petitioner of his substantive Due Process Rights and constitutes a miscarriage of Justice and a manifest injustice; that is plainly and obviously unjust, and did not "comport" with Due Process. Also The State fundamentally failed to execute a lawful dismissal or Nolle prosequi of the active pending original Information initially filed May 10, 1999 under Case No.:99-007229CF10A before re-filing the identical charges Nov. 8, 1999 under Case No's.: 99-020176CF10A and 99-020177CF10A. The state was fundamentally required to first dismiss or Nolle prosequi the active pending original information, Discharge the Petitioner from the active pending original

information prosecution under Case No.: 99-007229CF10A and its initial vested April 20, 1999 Hollywood Police Dept. Custodial arrest and Arrest No.: HW99-001617-13991617. And then re-file an valid information and then execute a valid (re)-arrest of the Petitioner on an subsequent re-filed valid information. So do to the manner in which the state and trial court conducted the filing and the re-filing of the identical original charges under the initial sole April 20, 1999 Hollywood Police Dept. Custodial arrest and Arrest No.: HW99-001617. It is very clear that the trial court lacked Jurisdiction over the subsequent invalid re-filed identical original information under Case No's.: 99-020176CF10A and 99-020177CF10A, and its judgment of convictions and sentences are void. And the state and trial court departed from the clear established principle of law and essential requirement of law violated Procedural Due Process, which deprived the Petitioner of the protection of his substantive Due Process Rights guaranteed to him by the 14th Amendment of the United States Constitution and corresponding Article I, Section 9, of the Florida Constitution. Resulting in a miscarriage of Justice and a manifest injustice that is plainly and obviously unjust, and did not "comport" with Due Process. See the face of the record App. H pages 15-16 "Counts 2-6 #99-007229", "Counts 7-8 #99-020177", and "Counts 11 #99-020176" of the Broward County main Jail April 20, 1999 Booking Report #7208, and App. H pages 19-26, and (App. H pages 4-6, App. H pages 7-8, and App. H pages 9-10).

In State v. Sokol, 208 So. 2d 156 (Fla. 3d DCA 1968), a case that provides substantive and procedural Due process guidance, the state announced a Nolle prosequi of the original information. And the Defendant was released from custody and from prosecution under the original information prosecution prior to the state re-filing original information. Because, in the instant case, the state fundamentally failed to dismiss or Nolle prosequi the active pending original information under Case No.: 99-007229CF10A prior to re-filing the subsequent identical active pending original information to under Case No's.: 99-020176CF10A and 99-020177CF10A making it invalid and the trial court lacked jurisdiction over the invalid re-filed identical original information, constituting a miscarriage of Justice and a manifest injustice that is plainly and obviously unjust actions that did not "comport" with Due Process.

2. Furthermore, the trial court lacked subject matter jurisdiction over Count Three (3) of Case No.: 99-020176CF10A App. H pages 7 and Count Two (2) of Case No.: 99-020177CF10A App. H pages 9 because they were untimely (re)-filed out of an repealed subsection. The 1997 F.S. 800.04 subsection (3) was repealed and reenacted by the New 1999-21 Fla. Law Stat. 800.04 and its applicable subsection. Deeming the 1997 800.04 subsection (3) of the Fla. Stat. inapplicable, after Oct. 1, 1999 and indecent assault was no longer deemed an infraction

pursuant to the new F. S. Laws. The state Nolle prosequi the timely original filing of all the charges under Case No.: 99-007229CF10A. And illegally re-filed Count Three (3) of Case No.: 99-020176CF10A and Count Two (2) 99-020177CF10A out of the repealed unconstitutional subsection (3) of the 1997 Florida Statutes 800.04. The re-filing was Nov. 8, 1999, 37 days well after the enacted new superseding 1999 Florida Statutes 800.04, and the Petitioner was "allegedly" re-arrested Nov. 18, 1999, 47 days well after the new enacted and effective 1999 Florida Statutes 800.04, and its applicable subsection which voided the 1997 800.04 F.S. and its subsection (3) rendering the trial court without proper jurisdiction. For the facially repealed unconstitutional statute are void and created no subject matter jurisdiction in the trial court, with which to convict the Petitioner. And a judgment and sentence that does not show jurisdiction are void, a miscarriage of justice, and a manifest injustice that is plainly and obviously unjust actions that did not and does not "comport" with Due Process. The Petitioner is entitled to have the judgments and sentences voided in Case No's.: 99-020176CF10A and 99-020177CF10A. See the face of the record App. H pages 17 "Counts 7-8 #99-020177" and App. H pages 18 "Counts 11 #99-020176" of the Broward County main Jail CIS inmate summary "13991617"; and is entitled to warranted discharge on the initial Nolle prosequi judgment and sentence on the initial original information prosecution under Case No.: 99-007229CF10A and its

initial vested April 20, 1999 Hollywood Police Department Custodial arrest and Arrest No.: HW99-001617-13991617. See the face of the record App. H pages 11 and App. H pages 17 "Counts 2-6 #99-007229" of the Broward County main Jail CIS inmate summary "13991617". Because this cause "lawfully" ended Nov. 18, 1999 Nolle prosequi; and any proceeding of the re-filed identical original information under Case No's.:#99-020176 and #99-020177 carried on subsequent under the initial filing of the original information prosecution foundation of Case No.: 99-007229CF10A and its initial vested April 20, 1999 Hollywood Police Dept. Custodial arrest and Arrest No.: HW99-001617-13991617 is nugatory, Also a NULLITY.

The re-filing of the identical original charges was invalidly Due Process under Case No.:99-007229CF10A original Information prosecution foundation and its initial vested April 20, 1999 Hollywood Police Department Custodial arrest and Arrest No.: HW99-001617 making the re-filed identical original charges invalid. There are no Nov. 18, 1999 signed Capias Warrant pursuant to F.S. 901.16 nor are there an Nov. 18, 1999 probable cause arrest report affidavit by Hollywood Police Dept. on the face of the record for the (re)-filed identical charges under Case No's.: 99-020176CF10A and 99-020177CF10A (The Petitioner was never arrested on the re-filed identical original charges Nov. 18, 1999 by capias warrant by Hollywood Police Dept.) which is constitutionally mandated, and makes the re-

filed identical original charges invalid and lack the trial Court's jurisdiction. See the face of the record App. H pages 19-26. The Petitioner was never "lawfully" released from custody on the initial filing of the original Information prosecution under Case No.: 99-007229CF10A which vested the trial court jurisdiction and the initial April 20, 1999 Hollywood Police Dept. Custodial arrest and Arrest No.: HW99-001617-13991617, release is warranted by the Nolle prosequi authority and constitutionally mandated which also makes the re-filed identical original charges invalid and lack the trial Court's jurisdiction. See the face of the record App. H pages 11 and App. H pages 17 "Counts 2-6 #99-007229" of the Broward County main Jail CIS inmate summary "13991617" a miscarriage of justice, and manifest injustice that is plainly and obviously unjust, conduct that did not "comport: with Due Process.

REASONS FOR ISSUING THE WRIT

On the face of the record the trial court and the state attorney departed from essential requirement of law which essentially amounts to violations of Petitioner's substantive Due Process Rights and the face of the record shows that the trial court and the state attorney did not afford Petitioner Procedural Due Process , and violated clearly established principles of laws resulting in the trial Court lack of jurisdiction, a miscarriage of Justice and a manifest injustice, that was incongruous

and a fundamentally unfair manner of derogating the Petitioner's substantive Due Process Rights and this manner of authority does not and did not "comport" with Due Process. And this Honorable Court is grounded on mercy and justness; and the Petitioner has prima facie demonstrated by the valid face of the record. That there was error, that was plain, that affected Petitioner's substantial rights, and that affected the fundamental fairness of the proceeding a clear manifest injustice. And failure to consider the merits of Petitioner's meritorious and prima facie claims would result in a fundamental miscarriage of justice, fundamental manifest injustice, deprivations of Due Course of Law, and a continued fundamental unfair manner of derogation of Petitioner's substantive Due Process Rights.

CONCLUSION

For the foregoing reasons, the Petitioner asks and prays, that this Honorable Court in the means of Justness, have mercy and issue the Writ of Certiorari in this Just cause, appoint counsel for Petitioner to represent him in this just cause; and order full briefing.

Respectfully Submitted,

Yehowshua Yisrael

Yehowshua Yisrael, Petitioner *pro se*
#089407
Mayo Correctional Institution
8784 U.S. HWY 27 West
Mayo, Florida 32066