No. 19-8302

IN THE

SUPREME COURT OF THE UNITED STATES

RICHARD H. MORRISON – PETITIONER

vs.

STATE OF FLORIDA – RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI

RICHARD H. MORRISON
DADE CORRECTIONAL INSTITUTION
19000 S.W. 377TH STREET
FLORIDA CITY, FLORIDA 33034

QUESTION(S) PRESENTED

It is true the state has the burden of proving by a preponderance of the evidence that the defendant qualifies as a PRR as defined in the statute Florida Statute 775.082?

It is true the state must provide record evidence of date, case number, and the name of the prison facility not solely relying on inadmissible hearsay?

Is it permissible for a trial court to take judicial notice of its own files, but the trial Judge has to put such evidence in the record of each case when sentencing a defendant as an habitual felony offender and a Prison Release Reoffender?

Why is the state so afraid to supplement the record to establish the defendant's release date?

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:

The Second District Court of Appeal

The Thirteenth Judicial Circuit Court

Table of Contents

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

Cases

Statutes and Rules

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: None; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

[ ] reported at: None; 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[ ] is unpublished.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 A 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[ ] is unpublished.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 Second District court appears at Appendix _____ to the petition and is

[ ] reported at: None; 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 None.

[ ] 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: None, 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. _____ 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 January 15, 2020. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: December 20, 2019, and a copy of the order denying rehearing appears at Appendix A.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including None _____ (date) on _____ (date) in Application No. _____ A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Manifest Injustice
2. Due Process Rights Violation
3. Fundamental Error
4. Double Jeopardy

STATEMENT OF THE CASE

In 1985, the Defendant was convicted of Delivery of Cocaine – a Second Degree Felony. In 1987, the Defendant was convicted of Delivery of Cannabis – a Third Degree Felony. In 1989, the trial court imposed a Habitual Felony Sentence of ten (10) years on the Defendant that was illegal. The Defendant did not qualify as a habitual felony offender at the time, because the state used a non-qualifying prior drug offense to aggravate the Defendant's sentence. In 1989, for the offense of possession of cocaine, the trial court had to find defendant had two prior felony convictions with one being within five (5) years of Defendant's new case. Defendant's prior sales conviction in 1985, and Defendant's prior possession in 1987, had to be the two relied upon by the trial court. On the score sheet for 1985, the sale would have scored 65 points as the primary offense and if you add 14 points for legal constraint the total would be 79 points – exceeding the 75 points for non-prison sanction. However, on the score sheet for 1987, the possession would have scored 42 points as the primary; the 1985 sale would be scored as 18 points as a prior conviction and to even score 14 points for legal constraint. Defendant's points would be 74 points in the range for any non-prison sanction. Although Defendant's plea-bargain for a sentence of 1 year and a day under the guidelines, he still did not score out to a sentence exceeding 1 year. In State v. Williams, 667 So.2d 191 (Fla. 1996), the court pointed out that an offense committed after October 1, 1988 – scoring out as a non-prison sanction the trial court can sentence to community control or 22 months in prison. Defendant's prior was committed in 1987, so this did not apply to the Defendant. In Lambert v. State, 545 So.2d 838, 841-41(Fla. 1989), the court clarified when the one –cell bump-up can occur, if the defendant is on probation and violate with a new case, defendant can be sentenced in the next higher cell. Even if the Defendant were on probation, this will not apply to him, because Defendant did not catch a new case. The attached score sheet is how the Defendant's 1987, should have been scored. With legal

constraint point or without legal constraint points, Defendant still scores out to a non-prison sanction. See Exhibit Appendix E. This illegal habitual sentence in (1989) affected Defendant's (2003) (Prison Release Reoffender) sentence, because the Defendant was still serving the (1989) ten (1) year sentence. Making it illegal as well because Defendant should have been released far beyond the three years to qualify as a (PRR) offender.

REASONS FOR GRANTING THE PETITION

The Appellant is currently serving a mandatory life sentence and is not eligible for any form of early release. Sentence imposed as a Prison Releasee Reoffender (PRR) that was trigger in part due to his release from prison from a sentence illegally imposed as a Habitual Felony Offender (H.F.O.) due to one of his prior convictions relied upon scored out as a non-prison sanction offense. The Appellant was currently serving this ten year (10) sentence on conditional release. The allegations made by the Appellant must be accepted as true until refuted conclusively by the record. The fact of the record not being available only compounded the illegality of the current sentence being imposed contrary to the substantive law of Florida and the trial court should have ordered that the records be supplemented. See Glover, State, 871 So.2d 1025 (Fla. 1st DCA 2004); Sinclair v. State, 853 So.2d 551(Fla. 1st DCA 203); Stabile v. State, 790 So.2d 1235 (Fla. 5th DCA 2001), decision approved, 838 So.2d 557 (Fla. 203); cf. Boyd v. State, 776 So.2d 317, 318 (Fla. 4th DCA 2001). This state must provide record evidence of the date the defendant was released from any prison term of supervision imposed for the last felony conviction. The state has the burden of proving by a preponderance of the evidence that the defendant qualifies as a (PRR).

See Davenport v. State, 971 So.2d 293, 295 (Fla. 4th DCA 2008) ("It is permissible for a trial court to take judicial notice of its own files, but the trial Judge has to put such evidence in the record of each case when sentencing a defendant as an (H.F.O.) and (PRR)"), rev. denied, 993 So.2d 511 (Fla. 2008). On remand, the state may present evidence to prove that the defendant meets the statutory requirements to be sentenced as a PRR. See Ward v. State, 11 So.3d 459, 59 (Fla. 3d DCA 2009); see also State v. Collins, 985 So.2d 985, 990 (Fla. 2008)([B]ecause a resentencing is a new proceeding, the state may present additional evidence on remand to prove the defendant qualifies for H.F.O. as well as PRR sentencing.") Challenged

sentence was imposed the state's failure to provide the requisite documentations of proof of the Defendant's release date from prison "essential to the imposition of a PRR sentence." Glover v. State, 871 So.2d 1025 (Fla. 1st DCA 2004); Sinclair v. State, 853 So.2d 551, 552 (Fla. 1st DCA 2003) essential that the Defendant qualified and establish that the Defendant qualified as a (Prison Release Reoffender) (holding competent proof of appellant's release date from prison"). This Court has jurisdiction, in subsequent appeal, to take judicial notice of the records in former Appeals in Morrison v. State, 911 So.2d 111 (Fla. 2d DCA 2005) pursuant to Sinclair v. State, 853 So.2d at 552.

This former appeal will clearly demonstrate from the face of the record that the imposition of the (PRR) sanction was based upon insufficient evidence. Which is erroneous, incorrect and inconsistent with the law or the facts. The lower court is clearly conflicted with the decisions of another court which is a manifest injustice.

In Martinez v. State, 211 So.3d 989, 991-92 (Fla. 2017) the Florida Supreme Court observed: Pursuant to the rules of criminal procedure, a court may at any time correct an "illegal sentence' when the pertinent court records demonstrate on their face that a defendant is entitled to relief. Fla.R.Crim.P. 3.800 (a) (1); See also Carter v. State, 786 So.2d 1173, 1176 (Fla. 2001) ("[R]ule 3.800(a) vests trial courts with the broad authority to correct an illegal sentence without imposing a time limitation on the ability of defendants to seek relief."). The intent of rule 3.800 (a) is to balance the need for finality of convictions and sentences with the goal of ensuring that criminal defendants do to serve sentences imposed contrary to the requirements of law. Plott v. State, 148 So.3d 90, 93 (Fla. 2014) (quoting Carter, 786 So.2d at 1176). Noting that the term "illegal sentence" is not defined in the rule, we have held that to be subject to correction under rule 3.800 (a) a sentence must be "one that no Judge under the entire body of sentencing laws could possibly impose. "Wright v. State, 911 So.2d 81, 83 (Fla. 2005) (citing Carter, 786 So.2d

at 1178). Put another way, [a] sentence that patently fails to comport with statutory or constitutional limitations is by definition illegal." Plott, 148 So.3d at 94 (alteration in original) (quoting State v. Mancino, 714 So.2d 429, 433 (Fla. 1998))).

We have recognized the few claims raised rule 3.800(a) "come within the illegality contemplated by the rule." Wright, 911 So.2d at 83. For example, in Wright, we held that a trial court's failure to provide written reason for retaining jurisdiction over a defendant's sentence did not constitute a illegal sentence subject to correction under the rule. Id. at 82. We explained that while the defendant was entitled to challenge this technical sentencing error on direct appeal, he could not do so in a rule 3.800 (a) motion because the error was not one involving "a court's patent lack of authority or jurisdiction, a violation of the sentencing maximums provided by the legislature, or a violation of some other fundamental right resulting in a person's wrongful imprisonment." Id. at 84. By comparison, we have held that a sentence that has been unconstitutionally enhanced in violation of the double jeopardy clause is illegal and, therefore, may be corrected under rule 3.800(a). Hopping v. State, 708 So.2d 263, 265 (Fla. 1998).

Generally, the trial courts introduce a notarized affidavit establishing the Defendant's last released date from prison, after the sentence was imposed. (See attached). The Appellant in his rehearing brought to the trial court's attention that "all person in prison under a sentence for the commission of a crime are there because the judicial system declared they did not follow and obey the law but, to the contrary, they did an illegal act. Certainly in imposing the sanctions of the law upon a defendant for illegal conduct the judicial system itself must follow and obey the law and not impose an illegal sentence, and when one is discovered, the system should willingly remedy it. To prevent a manifest injustice. This cycle goes on and on with prosecutors and trial judges, however, is well beyond any normal learning curve of statutory interpretation. Even small amounts of research into case history involving sentencing under this statute reveals that

for years and years, all over this state, prosecutors have arrived at sentencing procedures without the proof required by statute and set out in our case law. The state presents slightly deficient proof of (PRR), the defense does not object that the proof is not sufficient evidence; the trial Judge imposes (PRR) sentencing despite the deficiency. Defendant files a postconviction motion rule 3.800(a) to correct illegal sentence which was summarily denied and an appeal is filed, or hearings are held, appearances are made, orders or opinions are written and issued; frequently the sentence is affirmed and review is then sought by a higher court of appeal; again, briefs are written and filed by the defendant and the state, the motion is summarily denied. The fact is, all of this time and expense could be avoided if prosecutors were prepared with proper and sufficient evidence of (PRR) status, and if they are not, the trial judges would refuse to impose (PRR) sentencing. It seems so obvious, so fundamental, yet apparently, this has not been the order of things. The following is but a small sampling of appellate cases from each district courts of appeal involving the prosecutors' failure to present the information needed to correct enhanced sentencing that had been imposed. See McNair v. State, 920 So.2d 111 (Fla. 1st DCA 2006); Rogers v. State, 944 So.2d 513 (Fla. 4th DCA 2006); Riser v. State, 898 So.2d 116 (Fla. 2d DCA 2005) also Suarez v. State, 808 So.2d 1288 (Fla. 3d DCA 2002).

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

Richard H. Morrison

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