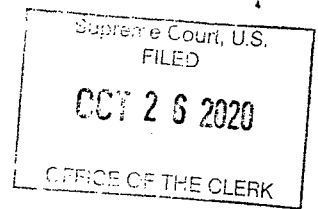


SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D.C. 20543-0001

Filed on November 18, 2020.



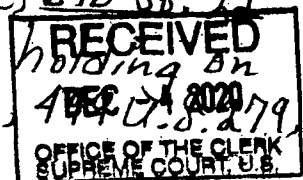
In Re: Wheeler v. Inch, Sec., FL D.O.C. No: 19-8690

OFFICIAL NOTICE OF REFILED MOTION FOR REHEARING:

COMES NOW the Petitioner, Jimmy Lee Wheeler, pro se, pursuant to Rule 44 (2) and (6); in compliance with Rule 34, respectfully Moves this Honorable Court to examine the Order of the Florida Supreme Court and the Second District Court of Appeals, which appears to be indirect conflict with this Court's previous rulings of "Structural-error". See [U.S. v. Olano, 504 U.S. 725, 735, 113 S. Ct. 1170, 1265, 123 L. Ed. 2d 508 (1993)]; and the Supreme Court of Florida's rulings under Fraud, deceit and Collusion. See State v. Burton, 314 So. 2d 136, 138 (Fla. 1975); Citing A ruling of the Second District Court of Appeals on the overall "discrepancy", created in the Charging document! Mandating Correction as a matter of law, etc... Rule 10, and Rule 13.

STANDARD OF REVIEW;

1. Is a "Manifest injustice". Stephens v. State, 974 So. 2d 435, 437 (Fla. 2d DCA 2008); State v. McBride, 848 So. 2d 291-92 (Fla. 2003); Conflicting with this Court's "Structural error". Citing [Arizona v. Fulmanate,



310, 111 So. Ct. 1246, 1265, 113 L. Ed. 2d 302 (1991)]; Citing [Rose v. Clark, 478 U.S. 570, 577-78, 106 S. Ct. 3101, 3105-06, 92 L. Ed. 460 (1986)]. See Also Questions Presented; herein at page #8. paragraphs 1-10 From the Writ of Certiorari.

2. Petitioner resubmits only (Three-Grounds); Which to State his Claims of Constitutional/Manifest errors; Which resulted in direct Conflict With rudimentary demands of justice." See [United States v. Agurs, 427 U.S. 97, 103-04, 96 So. Ct. 2392, 49 L. Ed. 2d 342 (1976)]; (Unauthorized Amendment), defecting the information to Void the judgment, For that Conviction. GROUND ONE;

3. The trial Court on March 19, 2010 Sentenced petitioner to a legal Sentence Which exceeded the Statutory Maximum for a Second degree Charged of Fense under Fla. Statuter 794.011(?) (?), and 800.04(?) (?). See Appendix A.(2) and B.(2) of record on Appeal; by involuntary plea, Petitioner was Sentenced to 25-years on each Count, and an Additional 25-years For lewd or lascivious Manner. Count #5 of Case No. CF09-000071-XX; And Attempted Sexual battery for Counts 1-4, all Which fails to Charge a Specific section of the Statutes State Claimed petitioner Violated. see Appendix A.(2) and B.(2) of Appeals' record, etc... (Amended on 2/2/2016), (Belated") Here are > Points of Law previously Overlooked:

POINT # ONE;

4. Petitioner raised Several important issues of due process Violations directly Affecting his Legal Sentence imposed; See Appendix A.(2) and B.(2), On Feb. 2, 2016 State Respondent Amy Smith, %

Assistant State's Attorney Who prosecuted the Case; had prohibitedly revisited the Charging document for an increasement of the Charged State Statute's degree; see Appendix B.(2); this act constituted a deliberate intention to deface the Charged Statute and increase its degree from a (Second-degree) (Level-7); to a (First-degree) (Level-9) in order to justify the Fundamental error which clearly exceeded the Statutory Maximum allowable for the Second-degree of offense charged and plead for which breached the plea agreement; > ARGUMENT : > (and may void the judgment).

5. Petitioner Proceeding in forma pauperis under Rule 39, Submitting this rehearing Motion under grounds stated for Rule 12.2 Briefly and distinctly presented; and Served as required by Rule 29; on the Pro se pleadings, under Rule 21, Fed. R. App. P. STRUCTURAL ERROR;
6. Petitioner seeks review by this Court of a "Fundamental-error" resulting in a "Manifest injustice" from an increased Charged State Statute, subject to be "voided" by the "increasement" Unlawfully Manifested; see also, "A Structural error in a Criminal process Always requires reversal of a Conviction, because such error renders the trial an unreliable vehicle for the determination of guilt." [Rose v. Clark, 478 U.S. 570, 577-78, 106 S.Ct. 3101, 3105-06, 92 L. Ed. 2d 460 (1986)]; Thus, it is evidenced that "Structural error Created in this Case. Consequences that are necessarily Unquantifiable and indeterminate; Such which warrants review, of (intervening Circumstances); -3- (Obstructing justice).

GROUND # TWO;

Procedural Rights:

The rulings of the Lower Courts Were Unfairly Sustained in Violation of Petitioner's 5th, 6th and 14th Amendments to the United States Constitution; Also under Article I, § 9 Florida Constitution As well as the Constitution of The United States;

ARGUMENT:

7. Petitioner has a due process right in the 6th Amendment's Confrontation Clause; as well as in the 5th and 14th amendments not to be Subject to an (increased sentence) for the same offense Charged; reference pending Writ of Certiorari pages 3-15; under Grounds 1-3; as is stated herein for Certiorari review to Certify this Courts ruling on "Structural error", "Where State's Functionaries resulted in prolong sentence from Governmental Misconduct of a defendant's increased conviction requires the dismissal of Criminal Charges." see [Anderson v. State, 574 So.2d 87, 92 (Fla. 1991)]; [U.S. v. Russell, 411 U.S. 423, 431-32, 93 S. Ct. 1637, 36 L. Ed. 2d 366 (1973)]; thus, (there should be no difference herein).

THIS COURT HAS HELD:

POINT - TWO:

8. "The principle that a State Attorney May not knowingly and intentionally, use (false evidence) or any manner of falsity to 'obtain' or 'sustain' a tainted conviction is implicit in any concept of ordered liberty." see [Mooney v. Holohan, 294 U.S. 103, 112, 55 S. Ct. 340, 79 L. Ed. 2d 791 (1935)]; Thus, as for such, the acts and omission for an unlawful increase is "Unconstitutionally enforced", and cannot be considered legally binding to sustain a conviction. See also, Appendix A.(2) and B.(2). States Amended information, is (Unauthorized); > for legal restraints in this case.

GROUND # THREE:

The Trial Court 'erred' by imposing the 25-years for State's Plea, which clearly Exceeded Statutory Maximum Allowed by law for a Second-degree Charged offense;

ARGUMENT:

9. There errors were pre-established upon a Sentence being Served 7-years into the adjudication; thus, as for such, the Respondent's Acts Constituted "MALICIOUS PROSECUTION." Which in terms, Merits a Valid Claim for habeas Corpus relief.

POINT-THREE;

10. Here, in the instant Case before this Honorable Court, there can be "No doubt", that the State's Respondent's Misconduct, errors and the Fundamental Misinterpretation, > Clearly Violated Mr. Wheeler's rights to due process of law! Const. Amend. 5, 6, and 14; All Violated Without a Challenge or a Review.
11. Thus, Such a Conflict in the law May not Fall under "harmless-error analysis"; therefore, the Misconduct in all the Claims presented in the Complaints before this Court Merits review to prevent further injustice, and the "prejudice" is so horriFically Unconstitutionally Manifested, that it Warrants "dismissal" and "discharge." especially, where State's Respondents Allowed No State level review to establish an appellate record for this Court's review. See [U.S. v. Deven, 260 F. 3d 150 (2d Cir. 2000)] (Conviction reversed where "No evidence" linked the Defendant to the offense Charged in the record; (such as here).

Supporting Facts ;

Petitioner's Conviction rests on an unlawful and illegal application of the law; and is the result of a Giglio and Brady Violation that was also Pre-Determined to "Obstruct justice" When the Assistant State's Attorney decided to re-visit the Charging Document to procure the "Fundamental error"; and Constituted A Manifest injustice now before this Honorable Court:

12. Petitioner, Mr. Wheeler Maintains that he was denied of any (preamble Challenger) in the State Court's proceedings; this was an 'error' and an 'oversight,' which undermines a lawful prosecution.
13. Thus, the result, of the Misconduct prolonged his sentence and obstructed the legality of the prosecution as to 'Void' the judgment; especially, if review is denied at this juncture where no other relief is available, etc... it would be a 'Manifest-Miscarriage of justice', if review is denied by this Court, where the Petitioner has Alleged that he was denied of his liberty without due process; where his subsequent conviction and sentence was the product of Fraud and a Brady and Giglio Violation under Prosecutorial Misconduct that on the face of the record. see Appendix A.(2) and B.(2), etc. (Unconstitutional).
14. More specifically, the Petitioner's Conviction rest on a False Statement Concerning a Specific Material Fact, this Falseity is established in the State's Charging "Amended information", in and of itself Warrants review and relief; thus, Cannot Stand, Absent due process of law! reviewable and reversible errors.

NATURE OF THE RELIEF SOUGHT

15. The nature of the relief sought by the pending Petition for Writ of Certiorari in support of habeas Corpus relief is to Compel this Court in the interest of justice to be able to Confront the increased instant judgment of conviction after the facts to rule that the instant Misconduct is in fact, "Prohibited" under Current Law; thus, the Sentence Must be Corrected! Where it is "Obstructed", and is therefore, null, and Void; and is now open to Collateral Attack based upon the Fraud Committed upon the Courts below, and is Standing Fully exposed before this Court; and to Convene an evidentiary hearing and Counsel, would justify to also grant habeas Corpus release once sufficient proof is thus, Apparent before this Court; With Absolute Authority to decide this Case Under Certiorari.
16. More Fundamentally, "The due process clause of the Fifth Amendment is violated when a Defendant has to suffer twice from the same judgment and sentence; and have to serve a sentence on an information which the government has made an unlawful increase! Contrary to the Charges initially filed, where the increase is Apparent and Material; and Whereas jeopardy had not attached." Anderson v. State, 574 So. 2d 87, 91 (Fla. 1991) (quoting United States v. Basurto, 497 F. 2d 781, 785-86 (9th Cir. 1974).
17. Accordingly "[T]he Florida Constitution provides that [n]o person shall be deprived of life, liberty or property without due process of Law." See Article I/9, Florida Constitution. The State violated that Section by its Amendment to the Charged Statute, absent due process; see Appendix A.(a) and B.(2).

= Questions to be Certified

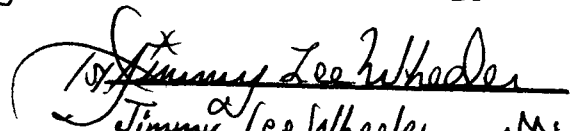
QUESTION(S) PRESENTED:

*-> Whether Due Process Was Circumvented here?;

- 1) Whether The Claims Filed upon represents "Structural defects";?
- 2) Whether The Claims represents "Structural error";?
- 3) If There Claims are related in Nature of Fraud, deceit or Collusion;?
- 4) Whether due process was denied by not allowing any Challenges;?
- 5) Whether the Claims of 'presence' and 'pronouncement' Warrants a reversal of A resulting Conviction Where defendant Was not at all present;? (For either one was Constitutional error). etc.
- 6) Whether Structural error defects Over rules The two Cases Filed by State's Appeals Court? see Exhibit Appendix A. (2)
- 7) Whether these Claims Can be All Consolidated As requested for A Cumulative evaluation upon A Factual due process determination? especially, Since they all were related to "False pretense" upon A Criminal Fraudulent publication, etc. . . (denied due process; page # 5)?
- 8) Whether there is A Conflict upon 'discrepancy' Which Was Adduced by States' "Amended information" on Feb. 2, 2016 'Voided' the judgment due to revisiting the Charging information After the Sentencing has begin serving was error for A "Fatal-Variance";?
- 9) Whether the State's Misconduct Cause "double jeopardy" to Attach as Clearly Alleged in the Petition for Certiorari; see pages: 2, 6, 10, 11, 12, 15, 19, 23, 29, 30; (Constituted Malicious prosecution);?
- 10) Whether Petitioner's Claims of due process Violations denied him equal protection of the law by failing to allow his presence in the Court room For the pronouncement of the Sentence, Sentences and judgment Was Constitutional error, see pages: 3, 9, 12, 17, 27, 28, 30, etc. . . (Warrant reversal)?

PETITIONER'S CERTIFICATE OF GROUNDS PRESENTED;

I CERTIFY that the grounds raised herein and in support of any pending Petition before this Court, have been read by me and the documents in support of these grounds for review are true and correct in accordance with Section 92.525(2), Florida Statutes. (2010); Submitted in good Faith; Rule 29(2).


Jimmy Lee Wheeler, Assistant
Civil Rights Advocate,
In The Legal Pursuit of Justice.

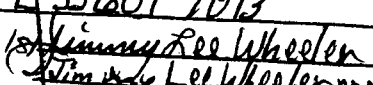
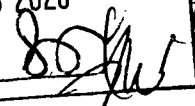
DECLARATION AND OATH

UNDER PENALTIES OF PERJURY I declare that I have read the foregoing document and swear that the facts stated in it are true and correct and that the grounds stated therein are briefly and distinctly as required by Rule 29. Petitioner in this pursuit has filed under in forma pauperis pursuant to Rule 24, of the Fed. R. App. P.; and that this request is filed in "good faith," and not for delay! Thus, a copy of this rehearing has been conveyed to the respondents. (D.O.C.); % office of the Attorney General.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been labeled as a Petition For Rehearing, placed into the hands of Institutional Staff at Wakulla Corr. Inst. M/U. For delivery by U.S. Mail to Office of The Attorney General % C. Suzanne Bechard, A.A.G., *Criminal Appeals Division Concourse Center 4 3507 E. Frontage Rd. Ste. 200 Tampa, FL 33607-7013

On this 18th day of November, 2020.

Provided to Wakulla CI	
NOV 18 2020	
for mailing	D.C. #D461201 W.C.I