NO. 20-1304

IN THE
SUPREME COURT OF THE UNITED STATES

In re. REXFORD TWEED
Petitioner

v.

RON DESANTIS, FLORIDA GOVERNOR

ASHLEY MOODY, FLORIDA ATTORNEY GENERAL

Respondent's

APPLICATION FOR ORIGINAL HABEAS CORPUS UNDER
28 USC §2241(C)(3)(2006); 28 USC §1651(a); 28 USC §1251;
TO HONORABLE SUPREME COURT JUSTICE CLARENCE THOMAS

Taken from final judgment of the United States Eleventh Circuit Court of Appeal denial of 28 USC §2244(b) Second and Successive application for Habeas Corpus, Case No: 07-10075 and from U.S. Eleventh Circuit Court of Appeal Case No: 04-13588-H; raising the same or similar cause of action as here at bar Question One, with no ruling on the merits of the case. See Felker v. Turpin, 518 U.S. 651, 658, 661-665 (1996); that involves State and Federal Court adjudication resulting in a decision that is contrary to, or involved unreasonable application of United States Supreme Court precedent that was clearly established at time of adjudication.

Rexford Tweed, *pro se*
Union Correctional Institution
P.O. Box 1000
Raiford, Florida 32083

Rexford Tweed *pro se*
Rexford Tweed, DC# 116365
Petitioner

Date December 23, 2020

QUESTION ONE

There exists exceptional circumstances of a United States Constitutional magnitude, wherein, based on substantive United States Supreme and other Federal Courts findings and dicta, the life portion of Florida Capital Criminal sentencing statute §775.082 (1) and (6) (1987) is an "indeterminate" prison sentence and was created by the Florida Legislature in direct CONFLICT with the Florida Constitution Article I, Section 17, that "forbids" indefinite prison sentences. In this habeas corpus cause of action, indefinite and indeterminate are synonymous. This legal fact, in accordance with this Court in Smiley v. Holm, 285 U.S. 355, 368 (1932), is in direct CONFLICT with the Constitution of the United States.

This creates a habeas corpus constitutional action as to whether the life portion of Florida sentencing statute §775.082 (1) and (6) (1987), to which Petitioner [and approximately 4,000 other current Florida prisoners are incarcerated], is unconstitutional under the United States Constitution and whether Petitioner is confined in the State of Florida in direct violation of the laws and Constitution of the United States.

QUESTION TWO

There exists substantive exceptional circumstances of a United States Sixth Amendment Constitutional violation, wherein, based on this Court's findings in Alleyne v. United States, 133 S. Ct. 2151 (2013) citing Apprendi v. New Jersey, 120 S. Ct. 2348 (2000), and astatutory minimum sentencing; the Florida Legislature created and continues to sustain a Florida Parole Statute §947.02; .007; .017; .13; .16(2); .165; .18; .20 (1987); that the Florida Commission on Offender Review [the Florida Parole Commission], continues to apply to Petitioner [and approximately 4,000 other current Florida Prisoners]; that provides authority to and sustains the Florida Parole Commission to continue aggravating petitioners [and others] Parole eligibility date by decades, for "elements of his crime," not presented to a Jury, raised in the information or admitted to by Petitioner for purposes of aggravation at time of Parole eligibility; in direct CONFLICT with this Court. Petitioner having a liberty interest to Constitutional Parole eligibility under Florida Sentencing Statute §775.082(1) and (6) (1987), to Life with eligibility for parole after 25 years.

This creates a habeas corpus constitutional action as to whether Florida Parole Statute §947.02; .007; .017;. 13; .16(2); .165; .18; .20 (1987) is currently constitutional under the United States Constitution Sixth, Eighth and Fourteenth Amendments, as applied to Petitioner at time of Parole eligibility; and whether Petitioner is being confined in the State of Florida in violation of the laws and constitution of the United States?

QUESTION THREE

Did the lower United States Eleventh Circuit Court of Appeal Case No: 14-11099-C and District Courts, Middle District of Florida, Jacksonville Division, Tweed v. Rick Scott Governor, et. al. Case No: 3:14-CV-95-J-39-MCR and Tampa Division Tweed v. Rick Scott, Governor et. al. Case No: 8:14-CV-217-T-23-MAP; commit error, under findings by this Court in Wilkerson v. Dotson, 125 S. Ct. 1242 (2005); Skinner v. Switzer, 131 S. Ct. 1289 (2011), wherein Petitioner sought in a CIVIL ACTION, and NO remedy to his conviction or prison sentence; as to whether Florida "Capital Life Prison Statute and Sentence under Florida Sentencing Statute §775.082(1) and (6) (1987), with a 25 year minimum mandatory followed by eligibility for parole, was the same indeterminate prison life sentence identified by this Court in Ewing v. California, 123 S. Ct. 1179, 1180, 1183 (2000), and a United States unconstitutional statute under the Sixth, Eighth and Fourteenth Amendments; wherein, this Court, and many other federal courts had established this sentence as an indeterminate prison sentence; and the Florida Constitution, Article I, Section 17 "forbids" indefinite prison sentences, establishing that the State Legislature is not following its own Constitution. The Federal Courts having denied Petitioner without ruling on the merits, Petitioner's CIVIL ACTION as being a HABEAS CORPUS; and again denied Petitioner the right to appeal with sanctions, the HABEAS CORPUS finding? Petitioner sought from the United States Eleventh Circuit Court of Appeal right to appeal and C.O.A. habeas corpus findings Case No: 14-11099-C. The Eleventh Circuit followed suit and denied right to appeal with sanctions. Thus a findings and sanctions remain precedent in those federal courts and warrant this Court's Appellate authority and review over these findings and sanctions.

Petitioner previously brought this action before this Court and it was dismissed without ruling on the merits for abuse of the indigency statute Case No: 18-9626 dated October 7, 2019, received October 28, 2019.

Petitioner is alleging exceptional circumstances and error of Habeas Corpus ruling and sanctions, including abuse of indigency statute under Naitzke v. Williams, 109 S. Ct. 1827, 1833 (1989); and the

State of Florida not following its own constitution under Smiley v. Holm, 285 U.S. 355, 368 (1932)?

TABLE OF CONTENTS

CONTENT: PAGE(S)

APPENDIX ANNOTATED

CITATION PAGE(S)

ceived a clear definite sentence of life... this section provides for indeterminate sentencing setting forth a range of time for imprisonment. However, you were not sentenced to a range of time of 25 years to life: you were sentenced to an exact specified Time of Life."

Office of General Counsel. ---------- 117

(12) Petitioner's Public Records Request to the Florida Commission on Offender Review requesting "the number of Florida Prisoners with a life sentence and a 25 year minimum mandatory before eligibility for parole, that actually received parole each year over the last five (5) years?"

Response: "The Commission has no records responsive to your request....This concludes the Commission's obligation related to your May 19, 2017 Public Records request." Public Records Unit, Office of General Counsel.---------- 118

(13) United States Supreme Court Case No: 18-9626, denied *informa pauperis* and Writ of Habeas Corpus dismissed, dated October 7, 2019. Received 10/28/19. ---------- 119

(14) Petitioner files March 23, 2017 legal Brief to the Florida Commission on Offender Review completely setting forth his United States Sixth Amendment Parole and Statutory minimum sentencing rights under Alleyne Supra citing Apprendi Supra, and now three (3) years later they still have not responded. This is a denial of due process under the Fourteenth Amendment of the United States Constitution.---------- 120

TABLE OF CITATIONS

UNITED STATES CONSTITUTION

CITATION PAGE(S)

FEDERAL STATUTES

FEDERAL CASES

FLORIDA SUPREME COURT

FLORIDA CONSTITUTION

FLORIDA STATUTES

FLORIDA CASES

NO._____

IN THE

IN THE SUPREME COURT OF THE UNITED STATES

In re. REXFORD TWEED, PETITIONER

v.

RON DESANTIS-FLORIDA GOVERNOR
ASHLEY MOODY-FLORIDA ATTORNEY GENERAL
RESPONDENT'S

CERTIFICATION BY PETITIONER

Petitioner, REXFORD TWEED, *pro se*, DECLARES and CERTIFIES, that this Application for Original Habeas Corpus To Honorable Supreme Court Justice Thomas, under penalty of perjury per 28 U.S.C. §1746, is of extraordinary and substantial, substantive intervening jurisdictional circumstances and controlling nature; raising United States Fifth, Sixth, Eighth, and Fourteenth Amendment Constitutional violations resulting in findings that are contrary to and clearly established by this Court and other Lower Federal Appellate Courts.

Pro se

Rexford Tweed, DC# 116365
Union Correctional Institution
P.O. Box 1000
Raiford, Florida 32083

Date: _____, 2020

UNITED STATES CONSTITUTIONAL ISSUES

FIFTH AMENDMENT – Denial of Due Process.

SIXTH AMENDMENT- Violation of Statutory Minimum sentence.

EIGHTH AMENDMENT- Cruel and Unusual Punishment.

FOURTEENTH AMENDMENT- Denial of Procedural due process and equal protection under the law.

JURISDICTION

1). Application for Original Habeas Corpus under 28 U.S.C. §2241 (c) (3) (2006) taken from U.S. Eleventh Circuit Court of Appeal Case No: 07-10075. Appendix No. 1. See Felker v. Turpin, 518 U.S. 651, 658, 661-665 (1996). See also In re. Dursainvil, 119 F. 3d 245, 248 (3rd Cir. 1997); Sanders v. United States, 83 S. Ct. 1068 (1963) (Ends of Justice).

2). Further jurisdiction is established under 28 U.S.C. §§ 1651(a); 2253 (c); 2403(b). Jurisdiction over State Court issues under 28 U.S.C. §§1257(a); 1365.

3). Petitioner comes before this Court from a Final Order and denial of an Application to the United States Eleventh Circuit Court of Appeal; In re. Rexford Tweed seeking a 28 U.S.C. §2244(b) Second and Successive Habeas Corpus Case No: 07-10075-G. Denied February 7, 2007. Appendix No. 1. Take Judicial Notice of previous Application for Second and Successive Habeas Corpus to the U.S. Eleventh Circuit Court of Appeal on July 30, 2004; Case No: 04-13588-H. Appendix No. 2. It was denied July 30, 2004! Both were denied without ruling on the merits of Petitioner's action.

4). Petitioner raised in both pleadings above, a Florida indefinite indeterminate prison sentence in direct conflict with Fl. Const; establishing that he has been subsequently unconstitutionally sentenced under United States Unconstitution Florida Statute §775.082 (1) and (6) (1987), wherein, in accordance with United States Supreme Court and other Federal Court findings and dicta, Petitioner's life prison sentence that is eligible for parole after 25 years, is an indeterminate / indefinite prison sentence in direct CONFLICT with Article I §17 of the Florida Constitution that "forbids" indefinite prison sentences. Florida Legislature has created a criminal sentence in direct CONFLICT with its own constitution, a procedural, due process and equal protection violation under the U.S. Fourteenth Amendment and Smiley v. Holm, 285 S. Ct. 359, 368 (1932). This is a State caused impediment. Petitioner has been unable to prosecute this cause of action with a ruling on the merits.

5). There exists here a United States Constitutional Question of Florida Statutes, §§775.082 (1) and (6) (1987); 947...(1987), under 28 U.S.C. §2403(b). Petitioner has exhausted all his United States

available Federal Constitutional remedy and has not received a ruling on the merits. This will aid in this Court's Appellate Jurisdiction. No reasonable jurist would have sentenced petitioner to a indefinite prison sentence in direct violation of Article I §17 of the Florida Constitution.

6). There exists here a substantive, substantial, exceptional, and extraordinary liberty interest circumstance of state criminal statutes that lack constitutional subject matter jurisdiction to sentence petitioner to an "indefinite " prison sentence; that in addition to petitioner, directly affects approximately 4,000 other current Florida prisoners; as defined by the U.S. Supreme Court and "forbidden" by the Florida Constitution, Article 1 §17, resulting in a U.S. Constitutional violation; wherein, this Court clearly established a general principle that "a Court has no authority to leave in place a .... Sentence that violates substantive rule, regardless of whether the...sentence became final before the rule was announced." Montgomery v. Louisiana, 136 S. Ct. 718 (2016) citing Ex parte Siebold, 100 U.S. 371 (1880); Teague, 489 U.S. at 292, 312, 109 S. Ct. 1060. Petitioner is NOT arguing Florida's State power to define crime but upon the manner in which Florida is enforcing penal codes. See Rochin v. Peoples of Calif., 72 S. Ct. 205, 207 (1952). U.S. Constitution 1 §8 cl. 18, §10 cl.1. Amendments 13 and 14.

7). In addition, there exist here United States Sixth Amendment violation as determined by this Court in Alleyne v. United States, 133 S. Ct. 2151 (2013) citing Apprendi v. New Jersey, 120 S. Ct. 2348 (2000), wherein, the Florida Commission on Offender Review are aggravating statutory minimum parole dates after twenty-five (25) years, based on elements of the crime, that also affects approximately 4,000 other current Florida prisoners with a like prison sentence.

JURISDICTION
FEDERAL PROSECUTION

8). Motion to U.S. District Court, Middle District of Florida, Tampa Division, Case No: 98-858-T-23A for enlargement of time to file Habeas Corpus. Dismissed as untimely filed March 31, 1999.

9). Appealed above Case No. 98-858-T-23A to U.S. Eleventh Circuit Court of Appeal Case No: 99-11894-JJ. Denied July 31, 2000.

10). *Certiorari* to U.S. Supreme Court Case No: 00-7674. Motion for Rehearing denied February

20, 2001.

11). Petition 28 U.S.C. §2254 to the United States District Court, Southern District of Florida; Miami Division, Case No: 04-20158. Court transferred it on May 5, 2004; to the Middle District of Florida, Jacksonville Division.

12). Petition 28 U.S.C. §2254 Habeas Corpus, U.S. District Court Jacksonville Division, Case No: 3:04-cv-378-J-99-MMH; Court transferred it to U.S. District Court Tampa Division, on May 28, 2004.

13). Petition for 28 U.S.C. §2254 Habeas Corpus, U.S. District Court, Tampa, Fla., Case No: 8:04-cv-1247-T-26 EAJ was dismissed June 2, 2004, for lack of subject matter jurisdiction.

14). Petitioner then filed in the U.S. Eleventh Circuit Court of Appeal, a Motion for Second and Successive habeas corpus 28 U.S.C. §2244(b), Case No: 04-13588-H on 6/18/04 (mail box rule). It was denied July 30, 2004.

15). Petitioner then files a Rule 60 (b)(6) Motion to U.S. District Court, Tampa Division, Case No: 8:07-cv-612-T-26-RAL-TGW, to recall or set aside judgment of above District Court Case, Tampa Division, Case No: 8:04-cv-1247-T-26 EAJ. It was ruled a Habeas Corpus and denied 4/09/07. Filed 4/8/07.

16). Petitioner then filed a Notice of Appeal with Memorandum of Law to above. It was denied 4/30/07. Appealability denied 5/1/07.

17). Petitioner then sought a Certificate of Appealability, and appeal of the habeas corpus lower court finding from the U.S. Eleventh Circuit Court of Appeal Case No: 07-12066-A. It was denied July 9, 2007. See Appendix No. 3.

18). Petitioner then filed to this Court a Petition for Writ of *Certiorari* Case No: 07-7033. Petitioner raised conflict between other U.S. District Courts of Appeal as to whether a Certificate of Appealability was required for a Rule 60 (b) Motion. It was denied without ruling on the merits 12/3/07.

19). Petitioner then filed a CIVIL ACTION in the U.S. District Court Jacksonville, Florida

Division, specifically and narrowly requesting declaratory judgment as to the United States Supreme Court definition of a State 25 year mandatory prison sentence followed by eligibility for parole in Ewing v. California, 123 S. Ct. 1179, 1180, 1183 (2003); as to whether it also defines the in Florida Statute §775.082 (1) and (6) (1987 life sentence. Specifically Not requesting judgment on Petitioner's Florida 25 year mandatory prison sentence followed by eligibility for parole set forth in Florida Statute §775.082 (1) and (6) (1987). See Case No. 3:14-cv-00095-J-39-BJD-MCR. It was filed and transferred the same date January 28, 2014; to U.S. District Court, Middle District of Florida, Tampa Division Case No: 8:14-cv-00217-VMC-MAP The Court in Note 1 identified this as a habeas corpus. See Appendix No. 4.

20). The U.S. District Court Tampa Division, Case No: 8:14-cv-00217-VMC-MAP denied this case as lack of jurisdiction on January 30, 2014. See Appendix No. 5. It was identified as a habeas corpus in Note 1.

21). Petitioner then filed a Rule 60(b)(6) Motion to the U.S. District Court Tampa Division on March 14, 2014; Case No. 8:14-cv-217-T-33 to recall or set aside judgment. On the same date March 14, 2014 the U.S. District Court denied indigency, denied right to appeal and ruled it frivolous..

22). Petitioner then files to the United States Eleventh Circuit Court of Appeal; for Appeal and Certificate of Appealability for habeas corpus finding; Tweed v. Gov. of State of Florida; Attorney General of Florida, Case No: 14-11099-c. It was denied November 5, 2014 as frivolous.

23). Petitioner then came before this Court in Application for Extension of Time to file *certiorari*, No. 14A 1038. It was approved by Honorable Justice Thomas on April 13, 2015 and extended time to file until June 28, 2015.

24). Petitioner then filed *Certiorari* from above on June 23, 2015; Case No: 15-5009. It was denied without ruling on the merits. Petitioner does not have this date or record.

25). Petitioner then filed before this Court a Motion For Leave of Court and Application for Rehearing to Honorable Justice Thomas, October 28, 2015 certifying extraordinary or substantial intervening jurisdiction and controlling nature of this cause of action being a Manifest Injustice. It was

denied, but here again, Petitioner does not have this date or record.

SUMMARY OF ARGUMENT
ISSUE ONE

26). In direct CONFLICT with this Court and other federal courts definition of an "indeterminate" prison sentence; the Florida Legislature created under Fla. Stat. §775.082(1) and (6); and the Florida Judiciary sustained under Ratliff v. State, 914 So. 2d 938, 940 (Fla. 2005) citing Alvarez v. State, 358 So. 2d. 10 (Fla. 1978); an indefinite / indeterminate prison sentence; which the Florida Executive Branch implemented against Petitioner as a capital indefinite / indeterminate life prison sentence with a 25 year minimum mandatory followed by eligibility of parole; that is in direct CONFLICT with the Florida Constitution Article I, §17 that "forbids" indefinite prison sentences making it a United States unconstitutional statute under the Fourteenth Amendment procedural due process and equal protection violation. See McGinnis v. Royster, 93 S. Ct. 1055, 1057 NY (1973). In this application indefinite and indeterminate are synonymous. See Smiley v. Holm, 285 U.S. 355, 368 (1932).

27). The State of Florida and the Florida Supreme Court maintain that the Florida life prison sentence with eligibility for parole after 25 years is a determinate prison sentence. See: Alvarez supra; Ratliff supra.

28). Stated another way: under issue one, Petitioner alleges in Habeas Corpus before this Court, that Florida's Life prison sentence under Fla. Stat. §775.082(1) and (6) (1987), is an indefinite / indeterminate prison sentence and that the Florida Legislature created a prison sentencing statute in direct CONFLICT with the Florida Constitution Article I §17; making it a United States Unconstitutional Statute under the Sixth, Eighth, and Fourteenth Amendments, citing Smiley v. Holm, 285 U.S. 355, 368 (1932); and that Petitioner is confined in the State of Florida in direct violation of the Constitution of the United States and seeks immediate release. No reasonable jurist or fact finder, knowing the facts in law of this case would of approved sentencing Petitioner to an indefinite / indeterminate Florida prison sentence. A procedural due process and equal protection under the U.S. Fourteenth Amendment violation that a substantive U.S. Constitutional violation exists in a liberty, interest matter that demands this Courts

discretionary review. See Montgomery v. Louisiana Supra citing Ex parte Siebold Supra; Teague, 489 U.S. at 292, 312, 109 s. Ct. 1060.

ISSUE TWO

29). The Executive Branch of Florida Government, in the body of the "Florida Commission on Offender Review," (the Florida Parole Commission as applied to Petitioner), at time of Petitioner's eligibility for parole 25 years after sentencing; the commission extends eligibility for parole date from January 20, 2014 to September 9, 2020; of which approximately 65 years aggravation is calculated using circumstantial evidence of his crime, not alleged in the information or admitted to for purposes of aggravation at time of parole eligibility; in direct CONFLICT with Petitioner's United States Sixth, Eighth, and Fourteenth Amendment habeas corpus rights under, in part: Alleyne v. United States, 133 S. Ct. 2151 (2013); citing Apprendi v. New Jersey, 120 S. Ct. 2348 (2000); resulting in an unreasonable application of Petitioner's United States Constitutional rights and this Court's precedent that include:

(A) Denial of Petitioner's United States Sixth Amendment statutory minimum sentencing rights. Alleyne Supra.

(B) Double Jeopardy: Green v. United States, 78 S. Ct. 221, 223 (1957).

(C) By Florida Legislating Fla. sentencing statute§775.082 (1) and (6) (1987), with Parole eligibility 25 years later; in Union with Florida Parole Statute §947. (1987), that provides the Florida Parole Commission authority to aggravate Petitioner's eligibility for parole date based on reassessing the elements of alleged elements of his crime; denied under the United States 8th, 14th Amendment, Petitioner's Speedy Trial and judgment rights.

(D). Petitioner plea bargained a guilty plea that allegedly settled all Petitioner's debt to society for his "crime and criminal record." A U.S. Constitutional violation under the Eighth and Fourteenth Amendments resulted, wherein, Florida aggravated Petitioner's parole eligibility again for elements of his crime.

(E). Direct CONFLICT with the Florida Constitution Article I, Section 18, that forbids a Florida

Agency from sentencing Petitioner to prison [by aggravating his parole eligibility date for elements of his crime]. By the Florida Legislature providing authority under Fla. Parole Statute §947 (1987), to the Florida Parole Commission, to aggravate Petitioner's eligibility for parole date for elements of his crime; placed the Florida Commission on Offender Review in a judicial, liberty interest capacity; that violates Florida's Constitution separation of powers doctrine Article II, Section 3; that then subsequently violates the U.S. Fourteenth Amendment. See Smiley v. Holm Supra. Placed the Florida Commission on Offender Review in a Judicial, liberty interest capacity; that violates Florida's Constitution separation of powers doctrine Article II, Section 3; that than subsequently violates the U.S. Fourteenth Amendment. See Smiley v. Holm Supra.

(F). In addition to above, the Florida Legislature violated the Florida Constitution Article II, Section 3, Separation of powers doctrine, wherein, the Florida Legislature in Florida Parole Statute §947, provided authority to the Florida Parole Commission to established rules, policy, procedures that effectuate Florida Law and violated Article II, Section 3 of the Florida Constitution, wherein the Florida Legislature did not follow its own constitution; a Sixth, Eighth and Fourteenth Amendment United States Constitutional violation. See Smiley v. Holm Supra. Only the Florida Legislature has constitutional authority to create law and cannot extend that authority to another branch of government.

G). No reasonable jurist or fact finder, knowing the facts in law of this case, would of approved an indefinite / indeterminate Florida Parole eligible Sentence for Petitioner.

ISSUE THREE

30). Petitioner in both issue one and two is attacking both lower federal courts and Florida Courts judgments against him that deal with his Florida prison sentence, and stating in sworn statement, that there exists here at bar substantive rule violations of United States Constitutional guarantee's that place certain criminal laws and punishments altogether beyond Florida's power to impose. That it follows, that when a State enforces a proscription or penalty barred by the constitution, the resulting conviction or sentence is by definition, unlawful. Montgomery v. Louisiana, 136 S. Ct. 718 (2016), citing Teague, 489

U.S. at 292, 312, 109 S. Ct. 1060.

31). Petitioner is alleging that he was sentenced under an unlawful Florida sentencing statutes §775.082 (1) and (6) (1987); established tentative parole release date under Florida parole statute §947. (1987); that violates his Sixth Amendment rights of the United States Constitution; and denied procedural due process by abuse of discretion in the lower federal courts, by finding petitioner's civil action, a habeas corpus, when in fact petitioner sought no relief from his conviction or prison sentence and this court authorized such a civil action in Wilkerson v. Dotson, 125 S. Ct. 1242 (2005); Skinner v. Switzer, 131 S. Ct. 1289 (2011). These were substantive violations of this Court and the Constitution of the United States.

32). This Court in Montgomery Supra citing Ex parte Siebold, 100 U.s. 371 (1880), established that if petitioner is attacking the state [sentencing] judgments against him on the ground that he had been convicted [sentenced] under an unconstitutional statute, it affects the foundation of the whole proceedings id 376. A conviction [or sentence] under an unconstitutional law "is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment...if the laws are unconstitutional and void, the ...Court acquired NO jurisdiction on the causes." Citing Siebold 100 U.s. 371, 376-77 (1880).

33) This Court established under Montgomery Supra citing Siebold, a general principle that: "A Court has NO authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced." See also Teague, 489 U.S. at 292, 312, 109 S. Ct. 1060.

34). A substantive rule forbids "criminal punishments of certain primary conduct" or prohibits "a certain category of punishments for a class of defendants [Florida capital life sentence under Fla. Stat. §775.082 (1) and (6)] because of their status or offense." Montgomery Supra, citing Penry, 492 US at 330. Also see Schriro v. Summerlin, 542 US 348, 353, 124 S. Ct. 2519. (A substantive rule "alters the range of conduct or the class of persons that the law punishes".

35). Substantive constitutional rules have been defined as those that place, as a matter of

constitutional interpretation, certain kinds of primary, private individual conduct beyond the power of the criminal laws making authority to proscribe

ISSUE THREE

36). Abuse of discretion by the United States District Court, Middle District of Florida, both Jacksonville Division Tweed v. Rick Scott Governor, et. al. Case No: 3:14-cv-95-J-39-MCR and Tampa Division Tweed v. Rick Scott Governor, et. al., Case No: 8:14-cv-217-T-MAP; Civil Court habeas corpus findings; and the United States Eleventh Circuit Court of Appeal subsequent finding, Case No: 14-11099-C; wherein, Petitioner sought to resolve the issues now before this Court in a Federal CIVIL ACTION; strictly and narrowly attacking what the United States Supreme Court definition of the Florida Capital Life Prison sentence "Statute" was, as applicable to Florida Statute §775.082(1) and (6) (1987); if it was an indeterminate, prison sentence; wherein, the Florida Legislative created an indefinite / indeterminate sentencing statute that is in direct CONFLICT with the Florida Constitution, Article I, Section 17, that "forbids" "indefinite" prison sentences. Petitioner clearly and specifically articulated that he sought no remedy to his prison conviction or prison sentence. Smiley v. Holm 285 U.S. 355, 368 (1932); Wilkerson v. Dotson, 125 S. Ct. 1242 (2005); Skinner v. Switzer, 131 S. Ct. 1289 (2011).

37). The Federal District Courts dismissed this action defining it as a Habeas Corpus, without ruling on the merits. Petitioner seeking a Certificate of Appealability for the habeas finding, was denied a Certificate of Appealability for the Habeas finding, and sanctioned by the U.S. District Court, Tampa, Division; and the U.S. Eleventh Circuit Court of Appeal Case No: 14-11099-C. Summary dismissal was improper because record did not show conclusively that Movant was not entitled to no relief. Fontaine v. United States ex. rel. McCann v. Adams, 320 U.S. 220, 221 (1943). See also Brewer v. United States, 614 Fed. Appx. 426 (11th Cir. 2015).

38). The above findings remain precedent in the applicable U.S. Courts which warrant this Court's Appellate Jurisdiction action. There are exceptional circumstances of an unreasonable application of United States Supreme Court, CIVIL vs. HABEAS CORUS and frivolous findings; here at bar, that

requires resolution as a matter of justice. Petitioner seeks relief from these frivolous findings, wherein, he did NOT present false or fictitious pleadings. Naitzke v. Williams, 109 S. Ct. 1827, 1833 (1989). There remains here abuse of discretion and fundamental error by Lower Federal Tribunals.

39). Petitioner is being held in a Florida Prison under Florida judgment in direct violation of the laws and Constitution of the United States, and does not know his precise release date which defines and indefinite prison sentence. Petitioner seeks immediate release.

40). Petitioner, in all State and Federal prosecutions applicable here at bar, has not received a ruling on his merits, an evidentiary, and opportunity to amend, and has continually been found frivolous and sanctioned; as well as being denied further prosecution as an indigent state prisoner.

41) Petitioner alleges, that there exists a profound amount of evidence, that return of this Habeas action to the Lower Federal Courts would further convolute this action, deny fairness and due process and would still result in further abuse of discretion by those courts.

This is the Court of last resort!

42). Conclusion: A sentence under an unconstitutional law "is not merely erroneous, but illegal and void, and cannot be a legal cause of imprisonment.... If the laws are unconstitutional and void, the ... Court acquired no jurisdiction of the causes." Montgomery Supra citing Siebold Supra id. 376-377.

43). A substantive rule forbids "criminal punishment of certain primary conduct" or prohibits "a certain category of punishment for a class or offense." Montgomery Supra citing Penry, 492 US at 330. See also, Schriro v. Summerlin, 542 US at 353, 124 S. Ct. 2519. (a substantive rule "alters the range of conduct or the class of persons that the law punishes.!)

44). This Court established under Montgomery Supra, citing Siebold, a general principle that: "A Court has NO authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced. See also Teague, 489 U.S. at 292, 312, 109 S. Ct. 1060. A flawless sentencing procedure does NOT legitimate a punishment where the State constitution immunizes the defendant from the sentence imposed.

Montgomery Supra (emphasis added).

APPLICATION FOR HABEAS CORPUS
HONORABLE SUPREME COURT JUSTICE CLARANCE THOMAS

45). Petitioner, Rexford Tweed, *pro se*, a Florida State Prisoner seeks application for an Original Habeas Corpus under 28 U.S.C. §2241 (c) (3) (2006). Petitioner has exhausted all his available State and Federal remedy and appears before this Honorable Court with no Federal ruling on the United States Constitutional basis of the three Habeas questions set forth herein. These three United State's Constitution issues also directly effect approximately four thousand (4,000) other current elderly Florida prisoners. All have served no less than 25 years prison, and many more than 40 years prison.

46). Petitioner is confined in the State of Florida in direct violation of the laws and Constitution of the United States and seeks immediate release. No fully advised reasonable jurist or fact finder would of sentenced Petitioner to the State sentence here at bar.

47). Contrary to this Court and Naitzke v. Williams, 109 S. Ct. 1827, 1833 (1989), at every stage of this Federal prosecution to resolve the United States Constitutional issues that Petitioner now raises before this Court, there have been exceptional circumstances, wherein, Petitioner has been procedurally barred from having fundamental United States Constitutional issues ruled on the merit. A Manifest Injustice has occurred.

STATEMENT OF CASE AND ARGUMENT FOR
HABEAS CORPUS

48). This is an "extreme omnibus case" of a Federal Court interpreting State Law where there exists exceptional circumstances of a State violating Petitioner's United States Fifth, Sixth, Eighth, and Fourteenth Amendment Constitutional rights in a convoluted series of actions; that also include the State of Florida creating and applying Florida Statutes that are in direct violation of Florida's own Constitution, that is so harmful to this cause of truth that, singly and cumulatively, it makes both Petitioner's conviction and prison sentence fundamentally unfair. Bell v. Duckworth, 861 F. 2d. 169, 170 (7th Cir. 1988) Cert. denied 489 U.S. 1088 (1989). See also Mc Cullough v. Singletary, 967 F. 2d 530, 536-37 (11th Cir. 1992).

49). In addition, to the Lower Federal Court's dismissing or denying Petitioner's actions without addressing clear United States Constitutional issues, the Courts subsequently sanctioned Petitioner under exceptional circumstances for raising those actions, resulting in procedural bars, now before this Court, that are in direct CONFLICT with well developed standing by this Court.

50). This is NOT a collateral attack on mere error of State Law, but one that raises to a United States Constitutional violation. Wilson v. Corcoran, 562 U.S. 1, 1, 5 (2010). See also Bradshaw v. Richey, 546 U.S. 74, 76 (2005). See Jones v. Cain, 600 F. 3d 527 (5th Cir. 2000). ("...Regardless of how a State Court applies State evidence rules, a Federal Habeas Court has an independent duty to determine whether the application violates the Constitution").

51). Wherein, this cause of action implicates the United States Constitutionality of Florida Statutes, consider:

> "... Furthermore, in immigration cases, the Supreme Court has held that review Of Statutory questions implicates due process of law. See Brownell v. We Shung, 77 S. Ct. 252, 255 N.1, (1956) ("due process" includes "conformity to statutory Grounds"), United States ex. rel. Accardi v. Shaughnessy, 74 S. Ct. 499, 502, 504 (1954) (using habeas to ensure the "due process required by the regulations" because The "crucial question is whether the alleged conduct of the Attorney General deprived Petitioner of any rights guaranteed him by the Statute or by the regulation issued pursuant thereto.").

McIntyre v. Caspari, 35 F. 3d 338, 342 (8th Cir. 1994).

> "... We are required in habeas matters to accept the State Courts' interpretation of State Law, Wainwright v. Goode, 464 U.S. 78, 84, 104 S. Ct. 378, 382 (1983) (*per curiam*), But we are not similarly bound as to the Constitutional effect of that construction. Missouri v. Hunter, 459 U.S. 359, 365, 103 S. Ct. 673, 679 (1983); Brown, 432 U.S. At 167, 97 S. Ct. at 2226. Further, as it is our duty in habeas cases to review *de novo* a State Court's legal conclusions, we are not required to presume that a State Courts, conclusions of law are correct. Laws v. Armontrout, 834 F. 2d 1401, 1407 (8th Cir. 1987). Cert. denied, 490 U.S. 1040, 109 S. Ct. 1944 (1989).

McIntyre supra id. 343

> "Although Federal Courts considering habeas matters must apply the State Courts interpretation of State law; Federal courts are not required to follow the State case if the construction would have an unconstitutional effect on defendant. Citing Cokeley v. Lockhart, 951 F. 2d 916, 919 (8th Cir. 1991), Cert. denied 113 S. Ct. 296, (1992). Habeas Corpus was granted. See also Missouri v. Hunter, Supra id. 368.

Third Judicial District v. Osborne, 557 U.S. 52, 67, 69 (2009).

> ("Federal courts may upset a State's Post-conviction Relief procedures... if they are Fundamentally inadequate to vindicate the substantive rights provided.").

52). This is the Court of last resort. Petitioner has exhausted all his State and Federal remedies and is barred from the Lower Federal and State Courts both as a *pro se* indigent and Second and Successive pleadings. Petitioner is indigent and has in excess of a $6,000.^{00}/_{100}$ hold on his Florida Prison Trust Account, and cannot pay court costs. This filing was an unexpected exception created by the brother of a friend, who provided the funds.

53). Petitioner is alleging that there exists here exceptional circumstances warranting the exercise of this Court's discretionary powers, wherein, this action rises to a United States Constitutional magnitude resulting in a Manifest Injustice, that also directly effects approximately 4,000 other current Florida elderly prisoners, all of whom have served no less than 25 years prison and many well over 40 years prison.

54). Petitioner, now comes before this Honorable Court in Application for an Original 28 U.S.C. §2241 (c)(3) (2006) Habeas Corpus, from a United States Eleventh Circuit Court of Appeal 28 U.S.C. §2244(b) Application for Second and Successive Habeas Corpus, Case No: 07-10075, raising the same issue as here at bar. It was denied without ruling on the merits of the case. See also Felker v. Turpin, 518 U.S. 651, 658, 661-775 (1996).

EXCEPTIONAL CIRCUMSTANCES WARRANTING THIS COURT'S EXERCISE OF IT'S DISCRETIONARY POWERS

55). The Florida Legislature created an indefinite / indeterminate life prison sentence of 25 years mandatory minimum followed by eligibility of parole under Fla. Stat. §775.082 (1) and (6) (1987), wherein, NO Florida prisoner (Petitioner) ever knows when his prison sentence ends, that is in direct CONFLICT with the Florida Constitution, Article I, Section 17 that "forbids" an "indefinite prison sentence. The Florida Supreme Court in Ratliff v. State, 914 So. 2d. 938, 940 (Fla. 2005) citing Alvarez v. State, 358 So. 2d 10 (Fla. 1978), has ruled this is not an indefinite prison sentence. See Appendix No. 2

last page.

56). This Court and other Federal Courts at time of adjudication, had consistently established that:

> "...A sentence to imprisonment in a State prison having a minimum And maximum limits fixed by the Court or the Governor, is an in-determinate prison sentence." McGinnis v. Royster, 93 S. Ct. 1055, 1057 NY (1973).

> "An indeterminate sentence is one for the maximum period imposed by the Court, subject to termination by the Parole Board at any time after service of minimum period. United States ex. rel. Paladino v. Com-missioner of Immigration, 2nd Cir., 43 F. 2d 821, 822.

57). For this cause of action indefinite and indeterminate are synonymous.

58). Petitioner alleges that there are extraordinary and exceptional circumstances allowing Petitioner, a *pro se* elderly litigant, with no training in the law; and where there are issues such as unconstitutional state statutes; that are beyond his control and unavoidable with diligence, that permits Petitioner equitable tolling to find and determine that Florida Statutes §§775.082 (1) and (6) (1987) and 947. (2014) at time of adjudication, are unconstitutional under the United States Constitution; also including under Section 28 U.S.C. §2244. See Wyzkowski v. Dept. of Corrections, 226 F. 3d. 1213, 1216 (11th Cir. 2000) citing Steed v. Head, 219 F. 3d 1298, 1300 (11th Cir. 2000) quoting Sandvik v. United States, 177 F. 3d. 1269, 1271 (11th Cir. 1999). See also Tinker v. Moore, 255 F. 3d. 1331 (11th Cir. 2001) citing Steed, 219 F. 3d at 1300. This Newly discovered evidence of these unconstitutional State statutes did bear on Petitioner's Florida detention.

59). Petitioner additionally alleges under the United States Constitution a Constitutional "Subject Matter Jurisdiction" issue here at bar wherein, Florida created a Florida Life Prison sentence under Fla. Stat. §775.082 (1) and (6) that is an indefinite / indeterminate prison sentence indirect CONFLICT with the Florida Constitution Article I §17; that "forbids" indefinite prison sentences, making this a United States 5th, 6th, 8th, and 14th Amendment (denial of procedural due process and equal protection under the

law) violation for lack of constitutional subject matter Jurisdiction. See State ex. rel. Caraker v. Amidon, 68 So. 2d. 403, 405 (Fla. 1953); United States v. Cotton, 122 S. Ct. 1781, 1785 (2002). The Florida Court did not have Florida Constitutional subject matter jurisdiction under Article I §17 of the Florida Constitution to sentence Petitioner to an indefinite prison sentence.

60). Within Question One and Two, includes a basis in law where Petitioner had a Florida created expectancy of a liberty interest and a procedural due process, as well as, equal protection under the Fourteenth Amendment of the United States Constitution. See:

Greenholtz v. Nebraska Penal Inmates, 99 S. Ct. 2100, 2106 (1999).

Board of Pardons v. Allen, 107 S. Ct. 2415, 2418 (1987);

Hewitt v. Helms, 103 S. Ct. 864, 868-869 (1983);

Connecticut v. Board of Pardens v. Dumschat, 105 S. Ct. 2460, 2466 (1981).

61). The Florida Legislature, in full knowledge of the United States Federal Case Law that established Petitioner's prison sentence as an indeterminate prison sentence that conflicted with the Florida Constitution Article I, §17; still went right ahead and created and enacted Florida Capital Life Sentencing Statute §775.082(1) and (6) (1973), in direct CONFLICT with this Court in Smiley v. Holm, 28 U.S. 355, 368 (1932):

> "... we find no suggestion in the Federal Constitution provisions of
> An attempt to endow the Legislature of the State with power to enact
> Laws of any manner – other than that which the Constitution of the
> State has provided that laws be enacted..."

62). This cause of action is also about a State keeping a prisoner beyond a statutory minimum prison sentence; which basis was established by this Court in Alleyne v. United States, 133 S. Ct. 2151 (2013), and is a 6th Amendment Constitutional violation; that is an exceptional reason to provide habeas corpus.

63). Petitioner at NO time knowingly or intelligently waived his Constitutional rights to this

cause of action, which is now cognizable in Habeas Corpus.

Innes v. Dalsheim, 864 F. 2d. 974, 979-80 (2d. Cir. 1988), Cert. denied, 493 U.S. 809 (1989).

64). A reasonable doubt remains as to the State's due process proceedings for this issue at bar. In re Winship, 90 S. Ct. 1068 (1970).

65). A Federal Court may consider a perceived error in State Law when the error is sufficiently egregious to amount to a denial of equal protection of due process of law. See:

Brown v. Maloney, 267 F. 3d 36 Cert. denied 122 S. Ct. 1371 (Mass 2001)

See also Mahaffery v. Schomig, 294 F. 3d 907 (Ill. 2002) Cert. denied 123 S. Ct. 890.

66). There has been NO good faith attempt by Florida to Correct this sentencing procedure. Rose v. Lundy, 102 S. Ct. 1198, 1201-04 (1982).

67). A Petitioner, having raised fundamental United States Constitutional issues and was found frivolous as he brought this cause of action up through the Lower Federal Courts' invokes the "Legal Standards" as to whether those frivolous findings, when viewed against the record and pleadings were so "palpably incredible," so "patently frivolous or false," as to warrant dismissal. Machibroda v. United States, 368 U.S. 487, 495 (1962). Fontaine v. United States, 411 U.S. 213, 215 (1973) *(per curiam)* (Summary dismissal was improper because record did not conclusively show that Movant was entitled to no relief.; United States ex. rel. McCann v. Adams, 320 U.S. .220, 221 (1943). Denton v. Hernandez, 504 U.S. at 34 (Summary dismissal through denial of right to proceed in *forma pauperis*, might constitute "abuse of discretion" if litigant [Petitioner] "was proceeding *pro se*.") Neitake v. Williams, 490 U.S. at 330.

68). Petitioner also invokes Boag v. Mac Dougall, 454 U.S. 364, 365 (1983) (liberally construing prisoner's *pro se* complaint); Lee v. United States, 707 Fed. Appx. 635, 638-39, 641 (11th Cir. 2017).

FACTS

69). Petitioner plead guilty to a Florida Capital Sexual Battery in Polk County, Florida on

September 6, 1989, Case No. 89-05043 A – XX and a Florida Life Prison sentence that was eligible for parole after 25 years. Petitioner was induced into this plea agreement by being told that parole eligibility would be solely based on his prison behavior record. That pleading guilty settled his debt to society for both his crime and criminal record. Petitioner's sentence was in accordance with Fla. Stat. §775.082 (1) and (6) (1987).

70). At the time limit for Petitioner to file his original Federal Habeas Corpus, Petitioner had been placed in prison confinement and all his legal files confiscated from him. Not denied by the State! Petitioner filed in the United States District Court, Middle District of Florida, Tampa Division, Case No: 98-858-T-23A for an enlargement of time to file habeas corpus. It was dismissed as Time Barred March 31, 1999. Petitioner then filed a Motion to alter or amend judgment. It was denied May 26, 1999. Petitioner then filed on June 21, 1999, a Petition For Certificate of Appealability. It was denied August 6, 1999.

71). Petitioner filed a 28 U.S.C. §2254 Federal Habeas Corpus for Newly Discovered Evidence in the United States District Court, Southern District of Florida, Miami Division, Case No: 04-20158, raising the elements of Question One to this cause of action, an indefinite / indeterminate prison sentence in direct violation of the Florida Constitution, Article I §17. Petitioner discovered this evidence from this Court in Ewing v. California, 123 S. Ct. 1179, 1180, 1183 (2003), wherein this Court in its dicta described the very same California prison sentence that Petitioner had, as an indeterminate prison sentence.

72). The U.S. Miami District Court transferred this case to the U.S. District Court Jacksonville Division on May 5, 2004. It became Jacksonville Division Case No: 3:04-cv-378-J-99 MMH, on May 28, 2004. The Jacksonville U.S. District Court transferred this case, Tweed v. Secretary, Florida Department of Corrections, on to the U.S. District Court Tampa Division, and it became Case No: 8:04-cv-1247-T-26-EAJ. It was dismissed June 4, 2004, for lack of subject matter jurisdiction, as being Second and Successive without authority from the United States Eleventh Circuit Court of Appeal.

73). Petitioner then sought from the United States Eleventh Circuit Court of Appeal a 28 U.S.C. §2244(b) Second and Successive Habeas Corpus Case No: 13588-H on June 18, 2004 (mailbox rule). It was resubmitted on July 16, 2004 (mailbox rule). It was denied July 30, 2004 without a ruling on the merits. See Appendix No. 2.

74). Petitioner then again returned to the U.S. Eleventh Circuit Court of Appeal for approval of a Second and Successive Habeas Corpus 28 U.S.C. §2244(b) Case No: 07-10075-G; Tweed v. Secretary Dept. of Corrections. It was denied February 7, 2007; without a ruling on the merits of the case. Petitioner raised the same issue as here in Question One. See Appendix No. 1.

75). Petitioner filed Civil request for declaratory judgment in the United States District Court, Jacksonville, Florida, Case No: 3:14-cv-00095-J-39-BJD-MCR to determine whether Petitioner's life prison sentence with eligibility for parole after 25 years under Fla. Stat. §775.082(1) and (6) (1987), was an indeterminate prison sentence as described by this Courts dicta in Ewing v. California, 123 S. Ct. 1179, 1180, 1183 (2003). It was labeled a Habeas Corpus in Note One and transferred to the Tampa Division, Case No. 8:14-cv-00217-VMC-MAP. See Appendix No. 4. The Tampa Division denied as lack of jurisdiction, and in Note 1, identified it as a habeas corpus. See Appendix No. 5.

76). Petitioner filed a similar Application for Habeas Corpus as this here at bar, to this Court Case No. 18-9626, and it was dismissed on, October 7, 2019, for *pro se* abuse of the indigency statute, without a ruling on the merits. See Appendix No. 13 A relative of a friend paid this Court fee! **NOTE;** Petitioner was provided the Affidavit of Indigency by this Court and instructed to fill it out and return it in a letter dated May 21, 2019, in order to proceed with this action! Petitioner is *pro se* and considered this an order necessary to continue prosecuting this case in this Court.

STATEMENT OF CASE AND ARGUMENT
QUESTION ONE

77). Based on a substantial Federal basis of law, findings and dicta, by this Honorable Court and other Federal Courts, Petitioner's Florida Capital Life Prison sentence set forth within Florida Stat.§775.082 (1) and (6) (1987), is an indefinite / indeterminate prison sentence in direct violation of the

Florida Constitution, Article I, Section 17, that for all time applicable here "forbids" indefinite prison sentences; establishing here at bar that that portion of Florida Stat. §775.082 (1) and (6) (1987); dealing with a capital life prison sentence that is eligible for parole after 25 years, and created by the Florida Legislature in direct CONFLICT with Florida's own constitution, and as applied to Petitioner; is a United States Unconstitutional Florida Statute under the Fifth, Sixth, Eighth, and Fourteenth Amendments, wherein, there exists here exceptional circumstances and an unreasonable application of established Federal Law, by Florida, for not following its own Constitution, resulting in Petitioner being in Florida custody in direct violation of the laws and Constitution of the United States. In other words, there exists here, Florida noncompliance with the United States Constitution and Federal Case law.

78). At the time of Petitioner's adjudication of guilt and life prison sentence on September 6, 1989, and significantly subsequent to the State of Florida creating this unconstitutional prison sentence in 1973; this Court established that a State Legislature had to create law within the bounds of its own constitution. See Smiley v. Holm, 285 U.S. 355, 368 (1932).

79). A Manifest Injustice has occurred and Petitioner has a United States illegal, unconstitutional prison sentence. NO reasonable jurist or fact finder would have sentenced Petitioner to a parole eligible indefinite / indeterminate prison sentence, knowing the facts and law of the United States and Florida Constitutions. There exists here an extraordinary and exceptional magnitude of United States Constitutional violation.

80). Critical to this cause of action is the knowledge that in Florida, when a statute is found unconstitutional, it is unconstitutional from its enactment; "Not only and simply from the time of the Court's decision." See Martinez v. Scanlan, 582 So. 2d. 1167, 1174 (Fla. 1991) citing Russo v. State, 270 So. 2d 438 (Fla. 4th DCA 1992); State ex. rel. Blalock v. Lee, 1. So. 2d, 193, 194 (Fla. 1941).

81). Petitioner is challenging the United States Constitutionality of his Florida prison sentence, and seeks a Constitutional prison sentence. The only alternative Florida Life prison sentence available and eligible to Petitioner is a 40 year life prison sentence under Florida Statute §775.082(3)(a).

Resentencing to this statute would establish immediate release from prison, with no parole or conditional release.

82). In a Florida 40 year life prison sentence defendant [Petitioner] receives 1/3 off the sentence and 20 days gain-time for good behavior. For a 40 year life sentence, the prisoner does less than 17 years prison plus any lost gain-time for behavior issues. See: Fla. Stat. §944.275.

83). Petitioner's incarceration starts January 19, 1989. Petitioner has already served more than 31 years and that time, including earned gain-time, exceeds any lost gain-time for behavior issues. Under the Florida Constitution Article I §17, Petitioner cannot be resentenced to a parole eligible prison sentence.

IN SPECIFIC PART:

84). Petitioner requests a Habeas Corpus review and Eighth Amendment violation for Petitioner's claim, that his Florida prison sentence, both in Questions One and Two, that has exceeded both the Florida Constitutional maximum of an indefinite / indeterminate prison sentence that is eligible for parole after 25 years; that in real terms of aggravation for elements of the crime after 25 years, has exceeded the statutory maximum. That even though it 'ultimately turns on a question of State Law, [there is a U.S. Eighth Amendment violation] "... because the Eighth Amendment bars a prison sentence beyond the legislative [and constitutional] created maximum'" "

Echols v. Thomas, 33 F. 2d Cir., 1277 (11th Cir. 1994) *per curiam.*

Withrow v. Williams, 113 S. Ct. 1745 (1993) (extends important Federal Common Law principals to State Prisoners).

85). Both Petitioner's prosecution and parole eligibility were so infected with unfairness as to make the conviction a denial of due process. Donnelly v. De Christaforo, 416 U.S. 637, 642 (1974), accord Sawyer v. Smith, 497 U.S. 227, 235 (1990); Darden v. Wainwright, 477 U.S. 168, 181-83 (1986); Henderson v. Kibbe, 431 U.S. 145, 154 (1977). See also Payne v. Tennessee, 501 U.S. 808, 825 (1991).

86). When the Florida Legislature created this life sentence with eligibility for parole in direct

CONFLICT with Article I §17 of the Florida Constitution, there was a total absence of explanation from legislative body for this paradigm. This silence compels us to "start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used." Richards v. United States, 369 U.S. 1, 9, 82 S. Ct. 585, 591 (1962).

(87). This Court set forth in Hicks on behalf of Feiock v. Feiock, 108 S. Ct. 1423, 1433 N.11 (1988), relative to a probation sentence; that Petitioner applies here at bar for a parole sentence, to establish this parole sentence is an indefinite / indeterminate prison sentence that is "forbidden" by the Florida Constitution.

(88). A term of parole may be revoked or enlarged by the Florida Commission on Offender Review and the sentence (including incarceration) may be reimposed at any time for a variety of reasons without all the safeguards that are ordinarily afforded in Criminal proceedings against him that may arise in the future (for example, this fact might influence the parole sentencing determination made in a future reconsideration for some wholly independent offense). No one person can ever determine when this incarceration or prison sentence will end! Petitioner never knows if or when his prison sentence will end, especially since his parole eligible date has been set at 09/19/2090. See Appendix #6. Subsequently, Petitioner's prison sentence is forbidden under the Florida Constitution making it a United States Constitutional violation wherein, the Florida Legislature has created a Florida Sentencing Statute in direct CONFLICT with its own Constitution. Petitioner is confined in the State of Florida in direct violation of the Constitution and laws of the United States. In regard and applicable here is the natural meaning of words; see F.D.I.C. v. Meyer, 114 S. Ct. 996 (1994) citing Smith v. United States, 113 S. Ct. 2050 (1993), statutes §165 Natural meaning. See also what Justice Scalia set forth in the dissenting opinion in Johnson v. United States, 120 S. Ct. 1795 (2000), the term "revoke" is not defined by the statute, and thus should be construed "in accordance with its ordinary or natural meaning," citing F.D.I.C. Supra. The word "forbids" and "indefinite," in the Florida Constitution should be construed in their natural meaning.

89) Petitioner alleges Exceptional Circumstances for Question One are dramatically articulated and established by the Florida Supreme Courts findings in Ratliff v. State, 914 So. 2d 938, 940 (Fla. 2005); directly addressing both an indefinite prison sentence and a vague statute under parole eligible Fla. Stat. §775.082 (1), when it set forth:

> "....It is abundantly clear that the [Florida] Legislature, by prescribing a sentence of life imprisonment, intends the defendant remain in prison for the rest of his life...citing Alvarez v. State, 358 So. 2d 10 (Fla. 1978).
>
> Alvarez v. State, 358 So. 2d 10, (Fla. 1978).
>
> "We also reject Petitioner's contention that statute [§§775.082; 775.083; Or 775.084] is an unconstitutional vague or indefinite. Although no person can predict the maximum length of time which can be served by a prisoner under sentence of life, this itself does not render a life sentence impermissibly indefinite."

90). Petitioner, and thousands of other current Florida prisoners sentenced to eligibility for parole, never know when their prison sentence will end. Florida's monthly published Tentative Parole Release Date provided Petitioner consistently shows that date to be "99/98/99". This is an omnibus fundamental cause of action before this Honorable Court. See Appendix No. 4, last page.

91) Long before the Florida Supreme Court in Alvarez Supra, this court and other Federal Courts established that State parole eligible sentence were indeterminate prison sentences. See McGinnis v. Royster, 93 S. Ct. 1055, 1057 N.4 (1973). See also Story v. Rives, 97 F. 2d 182, 187 (1938) (cites omitted); People v. Washington, 264 F.2d N.Y. 335, 338 (1934) (cities omitted).

92) This Court should note that when evaluating the constitutionality of Fla. Stat. §775.082(1) and (6) (1987), the Florida Statute §775.021 (1) (1987) sets forth:

> "The provisions of this Code and Offenses defined by other statutes shall be strictly construed, when language is susceptible of differing constructions, it shall be construed most favorable to the accused..." Under Federal Construction, the State must follow its own law.

93). Applicable to both questions one and two in terms of the fundamental basis before this Court: A sentence under unconstitutional law "is not merely erroneous, but illegal and void, and cannot be

a legal cause of imprisonment ... if the laws are unconstitutional and void, the ... Court acquired no jurisdiction of the causes." Montgomery Supra citing Siebold Supra id. 376-377.

94). A substantive rule forbids "criminal punishment of certain primary conduct" or prohibits "a certain category of punishment for a class of defendants [Florida capital life prison under Fla. Stat. §775.082 (1) and (6)] because of their status or offense." Montgomery Supra, citing Penry, 492 U.S. at 330. See also Schriro v. Summerlin, 542 U.S. at 353, 124 S. Ct. 2519. (a substantive rule "alters the range of conduct or the class of persons that the law punishes.").

95). This Court established under Montgomery Supra citing Siebold Supra, a general principle that: "A Court has NO authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced. See also Teague, 489 U.S. at 292, 312, 109 S. Ct. 1060. A flawless sentencing procedure does NOT legitimate a punishment where the state constitution immunizes the defendant from the sentences imposed. Montgomery Supra. (emphasis added).

96) Petitioner's Newly Discovered Evidence that he had an indefinite prison sentence, was discovered when he read this Court's findings and dicta in Ewing v. California, 123 S. Ct. 1179, 1180, 1183 (2003), established grounds for habeas corpus. See Townsend v. Sain, 372 U.S. 293, 317 (1963). Manifest miscarriage of justice based on recent discovery of new facts, section 28 U.S.C. §2244(b)(2)(B)(ii); the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty and sentenced Petitioner to this indefinite indeterminate prison sentence.

97) In the matter of the time it took Petitioner; from time of conviction and sentence, to discover that Florida Sentencing Statute for a life prison sentence under Fla. Stat. §775.082(1) and (6) was unconstitutional; Petitioner is a *pro se* elderly prisoner, without any training in the law, is computer illiterate, and was naïve to the integrity of the Florida laws and Public Defender provided. This Court has

ruled:

> "No one man be required under peril of life or property to speculate as to the meaning of penal statutes. "All are entitled to be informed as to what the State commands and forbids." Lanzella v. New Jersey, 59 S. Ct. 618, 619 (1939).

STATEMENT OF CASE AND ARGUMENT QUESTION TWO

98) There exists clear unresolved United States Sixth Amendment Constitutional CONFLICT, applicable to Petitioner and approximately 4,000 other current Florida prisoners; between this Court's Sixth Amendment statutory minimum prison sentences and using elements of the crime to aggravate statutory eligible parole date by the Parole Commission; established by this Court in Alleyne v. United States, 133 S. Ct. 2151 (2013); citing Apprendi v. New Jersey, 120 S. Ct. 2348 (2000). See also, Blakely v. Washington, 124 S. Ct. 2531 (2004); Cunningham v. California, 127 S. Ct. 856, 860 (2007), and Florida Parole eligibility actions by the Florida Commission on Offender Review (the Florida Parole Commission), "at time of parole eligibility consideration" and provided for by the Florida Legislataure in Florida Parole Statute §947.

IN SPECIFIC PART:

99) Florida Capital life prison sentence under Fla. Stat. §775.082 (1) and (6) (1987), provides Petitioner an established liberty interest eligibility for Parole after 25 years prison. The Florida Commission on Offender Review is unilaterally aggravating (and or suspending) at time of parole eligibility date, consideration of parole eligibility usually by many decades, in conformity with the Florida Supreme Court in Alvarez Supra; that the Florida Legislature intends "....the defendant remain in prison for the rest of his life..."; based on elements of his crime and that this is further supported and authorized by the Florida Parole Statute §947. See Appendix #6.

100). That Parole Statute §947.002 provides, in part: (A) Objective Parole criteria will be designed to give primary weight to the offender's present criminal offense and past criminal record; (B) That parole is an act of grace not a right; (C) The Parole Commission has authority to adopt rules for its governance in accordance with the Florida Administrative Procedures Act. Petitioner is specifically

alleging United States, CONFLICT with Florida Parole Statute: §947.02; .07; .017; .13; .17(2); .18; .20 (1987), established under Alleyne Supra.

101). Petitioner's Question Two encompasses and invokes all the basis in law here, set forth in Statement of Case Question One and Three.

FUNDAMENTAL BASIS HERE AT BAR:

102). An element of this pleading is that Petitioner pled guilty to Sexual Battery and a Capital Life Sentence that was eligible for parole after 25 years! Petitioner was told at time he pled guilty, that his guilty plea settled "all his debt to society" for his crime and criminal record, and that parole eligibility would be based only on his prison behavior record. Petitioner would NOT have pled guilty had he been informed at time of guilty plea that he would again, for a second time, upon parole consideration 25 years later, face jeopardy for all the elements of his crime. It is "objectively unreasonable" for Petitioner to have pled guilty in a plea bargain, if he has knowledge that the State of Florida, through its convoluted and contradictory State statutes, constitution and Florida Supreme Court findings; that provide total discretion, without specific limits, to the Florida Commission on Offender Review; to effectively act in a judicial capacity and basically nullify his plea agreement and aggravate Petitioner's prison sentence; without guidelines or limits! Also a Florida separation of powers doctrine violation, under the Florida Constitution Article II, Section 3. The State of Florida and the Commission on Offender Review, unreasonably declines to extend a logical Sixth Amendment principal of United States Supreme Court Case law to another context. See Michael v. Crosby, 430 F. 3d 1310 (11th Cir. 2005). See also Bell v. Cone, 122 S. Ct. 1843 (2002).

103). In Atwell v. State, 197 So. 2d 1040 (Fla. 2016), the Florida Supreme Court observed that the Florida Commission On Offender Review could set a potential Parole Release date (P.P.R.D.), wherein, the range "could span from hundreds of months to nearly ten thousand months." This is Cruel and unusual punishment!

104). Petitioner is alleging that this is an "extreme case" of liberty interests of a Federal Court

examining State law determinations as unconstitutional, under the Constitution of the United States. See Mc Cullough v. Singletary, 967 F. 2d 530, 535-36 (11th Cir. 1992), Cert. denied 507 U.S. 975 (1993).

105). There exist here Florida Parole sentencing decisions, as applicable to Petitioner, that are clearly contrary to or involve an unreasonable application of clearly established United States Supreme Court Case Law, that calls into question the United States Constitutionality of Florida Statute §947. (1987). See Mitchell v. Esparza, 540 U.S. 12, 15-16, 120 S. Ct. 7 (quoting Williams v. Taylor, 120 S. Ct. 1495 (2000).

106). There is "reason to suspect that Federal rights are being improperly obstructed" by the Florida Courts through its interpretation or reinterpretation of Florida Law. See Wisconsin v. Mitchell, 508 U.S. 476, 483 (1993).

107). At time of Petitioner's adjudication of guilt, the Florida Parole Commission took on a different political agenda; then later started arbitrarily to just suspend parole dates at time of parole eligibility. See Apprendix #7 which is evidence of a list of Florida prisoners who had their parole date suspended at time of eligibility for parole. Less the one's who died in prison, the remaining prisoners are still here 17 years later.

108).This narrow action addresses the United States Sixth Amendment constitutionality of that Florida Parole statute §947., and the subsequent Florida Commission on Offender Review Parole action in 2014, relative to Petitioner; and subsequent to this Courts findings of a statutory minimum prison sentence in Alleyne Supra citing Apprendi Supra, and aggravating Petitioner's Parole eligibility sentence by 76 years, 8 months, substantially based on elements of Petitioner's crime. [See Appendix 6 and 9-12]. At the time of Petitioner's initial parole eligibility consideration, this Court's Sixth Amendment findings were well established and both the Florida Legislature via Florida Parole statute §947.; and the Florida Commission on Offender Review; have with deliberate, willful and capricious purpose, violated Petitioner's Sixth Amendment Constitutional right of a statutory minimum sentence as applied to Petitioner. Petitioner being 85 years old, this has resulted in making Petitioner's prison sentence a

"Natural Life" prison sentence. Petitioner certainly did not plead to the jeopardy of a Natural Life prison sentence.

109). Petitioner became eligible for parole after 25 years on January 20, 2014. Wherefore, Petitioner was reviewed for parole on October 8, 2014 and parole eligibility was set off until September 19, 2090; an aggravation of 76 years, 8 months, mostly, but not all, for elements of his crime; three times the original statutory sentence for Petitioner's crime and what he pled to. This is arbitrary State action and cruel and unusual punishment. An Eighth Amendment violation. See Appendix No. 6. See also Appenedix No's 9-12.

110). There exists here an unresolved United States Constitutional CONFLICT between this Court in Alleyne Supra and Petitioner's Sixth Amendment right to a Florida statutory minimum prison sentence and eligibility for parole; and the Florida legislative parole statute applicable to Petitioner at time of parole eligibility set forth here in part, in §947.002 and (6): all compounded by the fact that Petitioner pled guilty to settle this CONFLICT.

> (2) "objective parole criterior will be designed to give primary weight to the seriousness of the offender's present criminal offense and past criminal record. In considering the risk of recidivism, practice has shown that the best predictor is a prior record."
>
> (6) "It is the intent of the Legislature that this decision to parole an inmate from incarceration portions of his sentence is an act of grace of the State and shall not be considered a right."

111). Petitioner alleges he had a United States Sixth Amendment right at time of parole consideration, to a United States Sixth Amendment statutory minimum prison sentence. Alleyne Supra citing Apprendi Supra.

112). Petitioner also alleges that not only is the Florida Parole statute 947., unconstitutional, as applied to Petitioner under the United States Sixth Amendment; but the actions by the Florida Commission on Offender Review in aggravating Petitioner's Parole eligibility for elements of his crime were similarly unconstitutional as above.

113). The elements of Petitioner's crime used for parole eligibility aggravation were not proven by a jury, were not raised in the indictment [information] by the State Attorney for purposes of parole aggravation and were not admitted to by Petitioner for parole aggravation at time of parole eligibility consideration. "An unforeseeable judicial enlargement of a criminal statute, applied retroactively, violates the Federal Due Process right to fair warning of what constitutes criminal conduct." Clark v. Brown, 450 F. 3d 898 (9th Cir. 2006).

114). It is a critical element here of due process under the United States Fourteenth Amendment, that at time of pleading guilty, Petitioner NEVER received NOTICE that he could again be aggravated and sentenced for elements of his crime.

115). "....The sentence is the judgment," and the judgment, including the Eligibility for parole judgment, is the question before this Court. Brady v. State of Maryland, 86 S. Ct. 1194, 1195 (1963) citing Berman v. United States, 58 S. Ct. 164, 166. Petitioner has a clear Sixth Amendment Constitutional right to a Speedy Judgment. Not a judgment 25 to 100rd. years later (9/19/2090)! This is further compounded by the Florida Constitution Article I §18 that constitutionally forbids any Florida Agency, such as the Florida Commission On Offender Review, from sentencing anyone to prison. Florida did not have Florida constitutional subject matter Jurisdiction for this parole finding, which is also a United States Fifth and Fourteenth Due Process and equal protection violation.

116). Under Fla. State. §947.16(1), Petitioner has 60 days to object to the Florida Parole Commission findings. That took place on October 8, 2014. Petitioner Filed written objections to the Florida Commission on Offender Review raising the issues here at bar on August 4, 2014; August 20, 2014; October 7, 2014; October 23, 2014; January 5, 2015; January 21, 2015; June 17, 2015; July 14, 2015; March 23, 2017.

117). Petitioner is not arguing Florida's State power to define crime but upon the manner in which Florida is enforcing penal codes. See Rochin v. Peoples of California, 72 S. Ct. 205, 207 (1952), U.S. Const. 1 §8 cl. 18, §10 cl. 1, Amendments 13 and 14.

118). In Florida, the Legislature cannot extend its legislative power and authority to another branch of Florida government. See Purslay v. City of Ft. Myers, 100 So. 366 (Fla. 1924). The Florida Constitutional separation of powers doctrine, Article II, Section 3, prevents this from happening. But that is exactly what has happened here with the Florida Parole statute §947., here at bar. The Florida Commission on Offender Review, has been provided total authority to establish its own Parole rules, policy and procedures, without specific [not general] guidelines or limits. This is done by people, not elected by society; yet they have the enormous power to establish natural life prison sentences. This violates the very fundamental democratic principal of law. This violates both the Fifth and Fourteenth Amendments due process, equal protection and fairness Constitutional doctrines.

> "[I]n a democratic society, legislatures, not courts [or parole commissions] are constituted to respond to the will and consequently the moral values of the people."
> Gregg v. Georgia, 96 S. Ct. 2909, 2926 (U.S. 1976) citing
> Furman v. Georgia, 92 S. Ct. 2726, 2800 (1972).

119). This Court set forth in Lynce v. Mathis, 117 S. Ct. 891, 895 (1997):

> "...In both the civil and criminal context, the constitution places limits on the sovereigns ability to use lawmaking power to modify bargains it has made with its subjects, United States v. Windstar Corp., 116 S. Ct. 2432 (1996)..."

120). "It is now well established that when a liberty interest arises out of State Law, the substantive and procedural protections accorded that interest is a question of law." Ellard v. Alabama Bd. of Pardon and Parole, 824 F. 2d 937, 943 (11th Cir. 1987) citing Bearden v. Georgia, 103 S. Ct. 2064, 2069 (n.17) (1983); Vitek v. Jones, 445 U.S. at 1262-63.

121). This Court clearly held that State Action that affects the length of sentence triggers the Fourteenth Amendment U.S.C. protections. See Sandin v. Conner, 115 S. Ct. 2293 (1995); Wolff v. McDonnell, 94 S. Ct. 2963 (1974).

122). Petitioner is also alleging an equal protection Fourteenth Amendment violation, wherein, the violation infringes on fundamental Constitutional rights. See F.C.C. v. Beach Common'ns, 508 U.S. 307, 313 (1993).

123). The Acts by the State of Florida in both Questions One and Two, were so lawless, that requiring Petitioner to return to this forum to commence habeas proceedings compounds the illegality. Ex Parte Yarbrough, 110 U.S. 651, 653 (1884), Accord Ex Parte Grossman, 267 U.S. 87, 122 (1925). This writ is of such a character as to be an exception to the rule of procedure. Ex Parte Royal, 117 U.S. 254 (1886).

124). Petitioner also alleges here an issue of double jeopardy, wherein, at time of pleading guilty for elements of the crime to settle his debt to society; the State of Florida again requires Petitioner, at time of parole eligibility; be subject to the experience of jeopardy for elements of his crime, for the same offense. This violates:

> Green v. United States, 78 S. Ct. 221, 223 (1957);
> Price v. Georgia, 90 S. Ct. 1757, 1762;
> United States v. Jorn, 91 S. Ct. 547, 554 (1971).

125). This statement of case is all inclusive under Alleyne Supra id. 2162,

> "As noted, the essential Sixth Amendment inquiry is whether a fact is an element of the crime, when a finding of fact alters the legally prescribed punishment so as to aggravate it, the fact necessarily forms a constitutional part of a New Offense and must be submitted to the Jury [or specifically admitted too]. It is no answer to say the defendant could have received the same sentence with or without the fact..."

126). When Petitioner's Florida Parole jurisdiction took place the controlling prevailing law was the Sixth Amendment and Alleyne Supra. There exists here at bar a clear due process unfairness in this Florida law, policy and procedure.

127). In the alternative under Question One, that Petitioner's life prison sentence under Fla. Stat. §775.082 (1) and (6) (1987), is not found unconstitutional; Petitioner seeks United States Constitutional Parole findings for Florida Parole Statute and whether Petitioner is confined in the State of Florida in violation of the laws and constitution of the United States. Petitioner seeks immediate release from prison.

APPENDIX SUMMARY

128). Petitioner sets forth here further brief evidence of the convoluted Florida Parole problem here at bar for Petitioner.

Appendix No. 9: Florida Commission on Offender Review letter verifying they have released no one on Parole with this Florida Life prison sentence of 25 year minimum mandatory followed by eligibility for parole. Office of General Counsel for Florida Commission On Offender Review.

Appendix No. 10: Parole Commission letter providing Petitioner NOTICE that he is eligible for parole after 25 years. Office of General Counsel.

Appendix No. 11: CONFLICT with No. 5, above. Parole Commission notifies Petitioner, as a result of Petitioner's Parole eligibility objection, that he was sentenced to an exact specific time of life. Office of General Counsel.

Appendix No. 12: The Florida Commission on Offender Review responds to Petitioner's Freedom of Information Request; as to number of recent Florida prisoners it has paroled with Petitioner's 25 year mandatory life prison sentence that is eligible for Parole after 25 years. The Commission responded that, they do NOT have that data! Office of General Counsel.

Appendix No. 14: Petitioner files March 23, 2017 legal Brief to this Florida Commission on Offender Review completely setting forth his United States Sixth Amendment parole and statutory minimum sentencing rights under Alleyne Supra and Apprendi Supra, and now three (3) years later they still do not respond. This is denial of due process under the Fourteenth Amendment of the United States Constitution.

STATEMENT OF CASE AND ARGUMENT
QUESTION THREE

129). Petitioner previously sought to resolve the issues now here before this Court, by filing a Federal Civil Action with the specific and narrow intent of determining only the United States Constitutionality of Florida Life Prison Sentence with a 25 year minimum mandatory followed by eligibility for parole under Florida Statute §775.082(1) and (6) (1987); as an indeterminate / indefinite

prison sentence, as set forth here in Question One. Petitioner specifically stated he was not requesting any remedy or relief from his conviction or prison sentence; but this was ignored and the lower United States District Courts labeled Petitioner's Civil cause of action a Habeas Corpus in [Note One]; denied Petitioner a right to appeal that Habeas Corpus finding and sanctioned Petitioner as frivolous for filing to appeal that habeas finding. Petitioner sought only a declaration as to whether his Florida Life sentence was also an indeterminate prison sentence as defined by this Court in Ewing v. California, 123 S. Ct. 1179, 1180, 1183 (2003).

IN SPECIFIC PART:

130). Petitioner's basis in law for filing a Federal Civil Action seeking declaratory judgment of a Florida Life sentence statute as an indeterminate sentence under §775.082 (1) and (6) (1987) was Wilkerson v. Dotson, 544 U.S. at 76, 77-78 (quoting Edwards 520 U.S. at 648)), the Court in Wilkerson held that the prisoner's claims for future relief (which, if successful, will not necessarily imply the invalidity of confinement or shorten its duration) are 'distant' from the " 'core of habeas corpus'" and therefore, can be brought in a section 1983 action. In Skinner v. Switzer, 562 U.S. 521 (2011), the Court '[a]dher[ed] to our opinion in Dotson...[by] hold[ing] that a post-conviction claim for D.N.A. testing is properly pursued in a §1983 action,' notwithstanding the District Attorney's argument that Switzer' ultimate aim ... is to use that test results as a platform for attacking his conviction,' because '[s]uccess in the suit gains for the prisoner only access to the DNA evidence, which may prove exculpatory, inculpatory, or inconclusive' and '[i]n no event will a judgment that simply orders D.N.A. tests 'necessarily impl[y] the unlawfulness of the State's custody.'" " Id. at 534, 535.

131). If in Petitioner's case, the life portion of Florida Statute §775.082 (1) and (6) (1987) was found to be indeterminate and subsequently unconstitutional, that does NOT trump Petitioner's conviction or incarceration. It only results in a platform for further proceedings. That is what this Court provided Petitioner in Dotson Supra and Skinner Supra. The lower Federal Courts erred in finding and treating Petitioner's action a habeas corpus; and removing that error, that is now current prevailing case law in

both the United States Eleventh Circuit Court of Appeal and the U.S. District Court of Florida, will aid in this Court's Appellate jurisdiction.

132). Petitioner seeks whether the lower United States District Courts, Middle District of Florida, Jacksonville Division, Tweed v. Rick Scott Governor, et. al. Case No: 3:14-cv-95-J-39-MCR and Tampa Division, Tweed v. Rick Scott, Governor et. al. Case No: 8:14-cv-217-T-MAP; committed error as established by this Court in Wilkerson v. Dotson, 125 S. Ct. 1242 (2005); Skinner v. Switzer, 131 S. Ct. 1289 (2011); dismissing and treating Petitioner's Civil Action as habeas corpus, denying Petitioner a right to appeal that habeas corpus finding and finding Petitioner frivolous for this cause of action?

133). Additionally, compounded by the fact that Petitioner sought the right to appeal this habeas corpus finding with the United States Eleventh Circuit Court of Appeal Case No: 14-11099-C, and that right to C.O.A. appeal was denied and Petitioner again sanctioned. These rulings remain as precedent in those lower Federal Courts; with a ruling on the merits of Petitioner's cause of action. 134). Also, the lower Federal courts erred when dismissing with prejudice Petitioner's Civil suit. See Jackson v. Vannay, 49 F. 3d. 175 (5th Cir.) *(per curiam)*, cert. denied, 516 U.S. 851 (1995) (Heck requires dismissal without prejudice of section 1983...) See also Schafer v. Moore, 46 F. 3d. 43, 45 (8th Cir. 1995); Wallace v. Kato, 549 U.S. 384, 399 and N.3 (2007).

135). This Court also dismissed this action, for abuse of indigency Case No: 18-9626, without a ruling on the merits. Petitioner alleges exceptional circumstances and seeks relief of all Habeas rulings with sanctions, including abuse of indigency. Naitzke v. Williams, 109 S. Ct. 1827, 1833 (1989). NOTE: That Petitioner filed this above case with this Court with no affidavit of indigency request, and this Court wrote back, providing an affidavit of indigency form and requested Petitioner fill it out and return it. This Court never requested a filing fee. See this Courts letter dated May 21, 2019. Petitioner is *pro se*. He considered this letter an order necessary to continue prosecuting this cause of action.

136). Petitioner incorporates here in Question III, that separate and applicable case law he raised and set forth in Questions II and III.

137). Petitioner alleges that when the lower U. S. District Courts denied Civil Action, and defined Petitioner's action a habeas corpus without an evidentiary hearing, and then found Petitioner frivolous; when he requested a right to appeal that habeas finding; and *sue sponte* Summary judgment and frivolous finding "cannot stand because ... the Court resolved a factual dispute in favor of the Government" rather than following rule that "Truth of the facts alleged in ... [Tweeds] petition" must be "assume[d]". Walton v. Johnson, 407 F. 3d 285, 295 (4th Cir. 2005) citing Walker v. True, 399 F. 3d 315, 319 (4th Cir. 2005) (vacating district court's grant of Summary judgment and remanding for evidentiary hearing... "In ruling on such a motion the district court was obliged to 'assume all facts plead by'... [Tweed] 'to be true'). Cave v. Singletary, 971 F. 2d. 1513, 1517 (11th Cir. 1992).

138). In this cause of action the United States Eleventh Circuit Court of Appeal denied a right to C.O.A. appeal the Court's habeas finding of Petitioner's fact bound Civil case, as being a habeas corpus, without any finding that Petitioner's pleading was potentially false, and where there was real possibility of a constitutional error. Blackledge, 431 U.S. at 75. N.7, accord Fontain v. United States, 411 U.S. 213, 215 (1972) (*per curiam*); United States ex. rel. Mc Cann v. Adams, 320 U.S. 220, 221 (1943) (*per curiam*); Denton v. Hernandez, 504 U.S. at 32-33. (Summary dismissal by means of denial of *informa pauperis* status is reversible abuse of discretion when district court "inappropriately resolved genuine issues of disputed fact").

139). When frivolousness is test for dismissal, Court may not summarily dismiss solely because it disbelieves prisoners allegations and believes respondents, unless prisoner's version of facts is inherently implausible or internally inconsistent). Wesson v. Oglesby, 910 F. 2d. 278, 282 (5th Cir. 1990).

140). "It is time to stop treating justice and due process" as competing values." Due Process is indispensible to justice." Christine Rose in Commentary Magazine.com.and quoted in the Week Magazine May 22, 2020.

CONCLUSION

141). In this Honorable Court's appellate discretion, hear this Original Habeas Corpus on its

merits. Petitioner seeks resentencing under Florida Law to a United States Constitutional sentence that has no parole, probation or conditional release!

PERJURY STATEMENT

142). Rexford Tweed, *pro se* and affiant, under 28 U.S.C. §1746, DECLARES and CERTIFIES under penalty of perjury, that all the facts and statements in the foregoing are true and correct. Petitioner has NOT created this pleading in any way to delay, mislead, misdirect, misinform this Honorable Court from a true endeavor of obtaining justice, a fundamental democratic right.

Rexford Tweed *Pro se*
Rexford Tweed, #116365 Affiant
Union Correctional Insitution
P.O. Box 1000
Raiford, Florida 32083
December 23, 2020

APPENDIX ANNOTATED

CITATION PAGE(S)

(7) A January 10, 2003 list of 423 Florida Prisoners who had at time of Parole eligibility, their parole date arbitrarily suspended and most, if they have not died in prison, still remain in Florida Prison now 17 years later. Evidence of parole issue problem.---------- 96

(8) Petitioner's Motion For Rehearing to this Honorable Court Case No: 00-7674.---------- 103

(9) Florida Parole Commission paroled in FY 2006-2007, zero Florida Prisoners with a life sentence and 25 years mandatory, dated May 29, 2008. Office of Chairman ----------. 115

(10) Florida Commission on Offender Review responding to Petitioner's August, 2014, Commission objection, stating I am eligible for parole under Case 89-5043 via Chapter 95-294 Laws of Florida. Dated August 15, 2014. Office of General Counsel.---------- 116

(11) **IMPORTANT:** Florida Commission on Offender Review responding to Petitioner's Parole Objection dated October 7, 2014; for being sentenced to an indefinite prison sentence. Commission Office of General Counsel responds: "....Our records indicate that you received a clear definite sentence of life... this section provides for indeterminate sentencing setting forth a range of time for imprisonment. However, you were not sentenced to a range of time of 25 years to life: you were sentenced to an exact specified Time of Life." Office of General Counsel.---------- 117

(12) Petitioner's Public Records Request to the Florida Commission on Offender Review requesting "the number of Florida Prisoners with a life sentence and a 25 year minimum mandatory before eligibility for parole, that actually received parole each year over the last five (5) years?"

Response: "The Commission has no records responsive to your request....This concludes the Commission's obligation related to your May 19, 2017 Public Records request." Public Records Unit, Office of General Counsel.---------- 118

(13) United States Supreme Court Case No: 18-9626, denied *informa pauperis* and Writ of Habeas Corpus dismissed, dated October 7, 2019. Received 10/28/19.---------- 119

(14) Petitioner files March 23, 2017 legal Brief to the Florida Commission on Offender Review

completely setting forth his United States Sixth Amendment Parole and Statutory minimum sentencing rights under Alleyne supra and Apprendi Supra, and now three (3) years later they still have not responded. This is a denial of due process under the Fourteenth Amendment of the United States Constitution. 120

Additional material from this filing is available in the Clerk's Office.