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No. 20-5175

ORIGINAL

Supreme Court, U.S.  
FILED

JUL 14 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN DAVID WILSON JR — PETITIONER  
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FLORIDA SUPREME COURT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOHN DAVID WILSON JR  
(Your Name)  
MARTIN CORRECTIONAL INSTITUTION  
1150 S.W. ALA PATHA ROAD  
(Address)

INDIAN TOWN FL 34596  
(City, State, Zip Code)

(Phone Number)

RECEIVED

JUL 24 2020

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

THE FLORIDA SUPREME COURT HAS COMMITTED ERROR WHEN IT FAILED TO REACH THE MERITS OF: IS A DOUBLE JEOPARDY CLAIM ACTIONABLE BY A FLA. R. CRIM. P. RULE 3.800 (a).

WHEN PRESENTED BY THE CERREKELLA EXCEPTION.

THAT CLAIMS OF DOUBLE JEOPARDY ENHANCEMENT OF A SINGLE ACT INVOLVING A FIREARM, THAT ENHANCES TWO OR MORE CONVICTIONS ARE ACTIONABLE BY 3.800 (a)

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

CERKEWA VS STATE, 916 SO.2d 41 (FLA 2005)

CLEVELAND VS STATE, 587 SO.2d 1145 (FLA. 1991)

HOPPING VS STATE, 708 SO.2d 263, 265 (FLA 1998)

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## **TABLE OF AUTHORITIES CITED**

**CASES**

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**STATUTES AND RULES**

**OTHER**

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix N/A to the petition and is

- ☐ reported at N/A; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix N/A to the petition and is

- ☐ reported at N/A; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the SECOND DISTRICT COURT OF APPEALS court appears at Appendix B to the petition and is

- ☒ reported at 2019-3829; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was N/A.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was MAY 20, 2020.  
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A N/A.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

IN DETERMINING WHETHER CONGRESS INTENDED TO AUTHORIZE CUMULATIVE PUNISHMENTS, THE APPLICABLE RULE, ANNOUNCED IN *BLOCKBURGER VS. U.S.*, 284 U.S. 299, 304, 76 L. Ed. 306, 52 S. CT. 180, IS THAT "WHERE THE SAME ACT OR TRANSACTION CONSTITUTES A VIOLATION OF TWO DISTINCT STATUTORY PROVISIONS, THE TEST TO BE APPLIED TO DETERMINE WHETHER THERE ARE TWO OFFENSES OR ONLY ONE, IS WHETHER EACH PROVISION REQUIRES PROOF OF A FACT WHICH THE OTHER DOES NOT."

THE STATUTORY PROVISION INVOLVED HERE SPECIFY DIFFERENT ENDS AS PROSCRIBED *CERKEWA VS STATE*, 588 S.W.2D 1058 (FLA. 3<sup>RD</sup> DCA. 1991) WHICH IN PART STATE,  
(PRESUMPT TO FLA. R. CRIM. P. 3.800(a)) A DEFENDANT WAS ENTITLED TO HAVE A DETERMINATION OF THE MERITS OF HIS DOUBLE JEOPARDY CLAIM AS TO WHETHER HIS FELONY CONVICTION FOR ATTEMPTED 1<sup>ST</sup> DEGREE MURDER COULD BE ENHANCED BECAUSE OF HIS USE OF A FIREARM IN COMMITTING THE SAME UNDER ~~CLEVER~~ CLEVELAND VS STATE, WHICH HELD THAT THE SINGLE ACT INVOLVING THE USE OF THE SAME FIREARM IN THE COMMISSION OF THE FELONY COULD NOT FORM THE BASIS OF A SEPARATE CONVICTION AND SENTENCE FOR THE USE OF THE FIREARM; PLEASE SEE, *CERKEWA*, *ET AL.*



## STATEMENT OF THE CASE

COUNT ONE: I'M CHARGED BY SUPERSEDING INFORMATION OF:  
ATTEMPTED FIRST DEGREE MURDER (WITH A FIREARM, DISCHARGING  
A FIREARM, AND INFLECTING GREAT BODILY HARM)

COUNT TWO: AGGRAVATE STALKING, (WITH A FIREARM, DISCHARGING A FIREARM  
AND INFLECTING GREAT BODILY HARM)

THE JURY MADE A DETERMINATION, OF

- 1) ONE VICTIM
- 2) ONE CRIMINAL ACT

THE TRIAL COURT SENTENCED ME TO;

- 1) ~~COUNT~~ COUNT ONE: NATURAL LIFE
- 2) COUNT TWO: NATURAL LIFE

I APPEALED

THE TRIAL COURT OPINED THAT DOUBLE JEOPARDY ARE NOT PRESENTABLE  
ON A FLA. R. CRIM. P. RULE 3.800 (a).

WHERE ~~CERRELLA~~ <sup>CLEVELAND</sup> ~~id.~~ SAYS IT IS. (WHEN A FELONY CONVICTION IS  
ENHANCED BECAUSE OF THE USE OF A FIREARM IN COMMITTING THE FELONY THE  
SINGLE ACT INVOLVING THE USE OF THE SAME FIREARM IN THE COMMISSION  
OF THE FELONY CANNOT FORM THE BASIS OF A SEPARATE CONVICTION  
AND SENTENCE FOR THE USE OF THE FIREARM; ALSO SEE, CERRELLA, ~~id.~~  
IN MY CASE I WAS ENHANCED BY THE 10-20-LIFE STATUTORY  
ENHANCEMENT ON BOTH CHARGES, IN VIOLATION OF STATE, FEDERAL,  
AND CONSTITUTION LAW AND PROCEDURES.

## REASONS FOR GRANTING THE PETITION

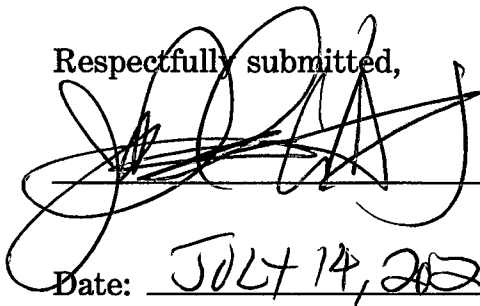
THE TRIAL COURT, 2DCA, AND FLORIDA SUPREME COURT FAILED TO RULE ON THE MERITS IN VIOLATION OF STATE, FEDERAL, AND CONSTITUTIONAL LAW.

DUE TO THIS VIOLATION THE SUPREME COURT MUST ISSUE A REVERSAL, REMAND, FOR RECONSIDERATION, AND A DETERMINATION ON THE MERITS.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



A large, stylized handwritten signature in black ink, written over a horizontal line.

Date: JULY 14, 2020