

20-5450

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

AUG 10 2020

IN THE
OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

Darnell P Washington — PETITIONER
(Your Name)

vs.

State Of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

First District Court Of Appeal State Of Florida

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

PETITION FOR WRIT OF CERTIORARI

Darnell P Washington
(Your Name)

Santa Rosa Correctional Institution 5850 Milton Rd.
(Address)

Milton, Florida, 32583
(City, State, Zip Code)

None

(Phone Number)

QUESTION(S) PRESENTED

Does a defendant deserves relief from an illegal
sentence that constitutes cruel and unusual punishment
under article 1, section 17, of the Florida Constitution
and the eighth Amendment of the United States
Constitution?

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

None

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

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

OPINIONS BELOW

For cases from **federal courts**:

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

reported at _____; 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 is unpublished.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 _____ to the petition and is

reported at _____; 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 is unpublished.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 1 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 is unpublished.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 1st DCA court appears at Appendix 1 to the petition and is

reported at N/A; 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 is unpublished.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 _____.

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: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

For cases from **state courts**:

The date on which the highest state court decided my case was May 19, 2020. A copy of that decision appears at Appendix _____.

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 _____.

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. ___ A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions: Fla const Article X, section 9

Statutory: 775.087, 784.021

Article X, section 9 provided: "Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed."

Statute 775.087: 10, 20, Life enhancement

Statute 784.021: ~~Aggravated~~ Aggravated Assault with deadly weap

STATEMENT OF THE CASE

Florida Statute 775.087 known as 10, 20, Life was amended July 1, 2016 (HB-135/SB-228) deleting the crime of aggravated assault with deadly weapon (statute 784.021 (F3)) from the list of crimes subjected to the enhanced penalties of section 775.087 Florida Statute. The bill did not change the F3 aggravated assault with a deadly weapon Statute 784.021 itself, but changed the sentencing enhancement statute 775.087 only. Defendant proceeded to trial 12/14/16 for attempted Murder in the second degree and later was found guilty of lesser concluded offense of F3 aggravated assault with deadly weapon. On 4/13/17 defendant was sentenced to 20 years mandatory pursuant to Florida Statute 775.087 with finding that defendant possessed and discharged a fire arm.

REASONS FOR GRANTING THE PETITION

The trial court and First district court of appeals rely on article X, section 9 of the Florida Constitution stating "Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." In doing so trial court sentence defendant 20 years mandatory pursuant to statute 775.087. First District Court of Appeals affirmed this sentence without opinion on this issue denying defendant any access to the Florida Supreme Court of Appeals. The trial court and First District Court of Appeals are in direct conflict with the Florida Supreme Court of Appeals, as the Florida Supreme Court has held as long as over 100 years that article X section 9 does not encompass remedy or procedure for the prosecution and punishment of offenses but rather relates to the essence of the offense itself. see *Ex parte Pells*, 9 So. 833 (Fla 1880) *Mathis vs. State*, 12 So. 681, 683, 687 (Fla 1893) also *State vs. Watts*, 558 So.2d 994, 995-96, 998 (Fla 1990) and *Love vs. State*, 286 So.3d 177 (Fla 2019). Aggravated assault with deadly weapon statute didn't change either the nature of the offense created, or even the character or degree of the punishment authorized, making the change to the statute 775.087 a procedural change in law and should have been applied prospectively to defendant pending case. Defendant

Conviction and sentence was after Statute 775.087 amended (July 1, 2016) The trial court and 1st DCA Court rely on misplace case law of either Substive changes Castle vs State, 305 So.2d 794 (Fla 4th DCA 1974) or post conviction motions Sheaffers vs State, 243 So.3d 518, 519 ~~and~~ (Fla 1st DCA 2018) and Wright vs State, 225 So.3d 914, 915 (Fla 1st DCA 2017) Rehearing denied Sept 19, 2017.

Under Florida Rules Criminal Procedure, rehearing motion 3.850(G) ; Cannot be used to reargue the issues factually or legally. As seen in Johnson vs State, 904 So.2d 400, 407 (Fla 2005) (stating "that once a conviction has been upheld on appeal, the state acquires a strong interest in finality"). This illegal sentence resulted in cruel and unusual punishment because it is grossly disproportional to the offense.

TABLE OF AUTHORITIES CITED

CASES

~~Brecht vs Abramson~~, 507 U.S. 619, 633,

PAGE NUMBER

Castle vs State, 305 So 2d 794 (Fla 1st DCA 1974) page 6

Ex parte Pells, 9 So 833, 834 (Fla ¹⁸⁹¹ 2019) page 5

Falcon vs. State, 162 So.3d 954, 960 (Fla 2015) page 8

Johnson vs State, 904 So.2d 400, 407 (Fla 2005) page 6

Love vs State, 286 So.3d 177 (Fla. 2019) page 5

Mathis vs State, 12 So. 681, 683, 687 (Fla 1893) page 5

Sheaffers vs State, 243 So.3d 518, 519 (Fla 1st DCA 2018) page 6

~~Will vs State 162 So.3d 954, 960 (Fla 2015) page 5~~

STATUTES AND RULES

Wright vs State, ~~243 So.225 So.3d 914, 915~~ (Fla 1st DCA rehearing) page

State vs Watts, 558 So 2d 994, 995-96, 998 (Fla 1990) page 5

Statute: 775.087 page # 3, 4, 5, 6

Statute: 784.021 page # 3, 4, 7

rule: 3.850(G) rehearing motion page # 6,

OTHER Constitutional Provisions

Fla. Const. Article I, section 17 page # 7

Fla Const. Article X, Section 9 page # 3,

U.S. Const. Amendment. VII I page # 7

assault Statute 784.021 punishment of up to 5 years.

This sentence is in direct violation with Florida Constitution article I, section 17, and the United States Constitution Eighth Amendment. Also should this be considered

a retroactive application of the law? This change is

constitutional in nature, and constitutes a development

of fundamental significance. Defendants sentence's are

unconstitutional because it is harsher than the maximum

penalty for other defendants who committed or got

convicted of the same crime after July 1, 2016

when the amendment removed F3 aggravated assault from 10-20-Life minimum mandatory prison sentence.

In regard to whether the change involves a development of fundamental significance, the Florida Supreme Court stated, "considerations of fairness and uniformity make

it very difficult to justify depriving a person of his

life in life under circumstances less serious

O acceptable and no longer applied, under process no longer applied to in distinguishable cases." Falcon at 960 (Witt at 925 citation omitted). In order to cure defendants unconstitutional sentences, the amended Version of Section 775.087 Florida Statute must be applied to all defendants cases.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darnell Washington

Date: Aug. - 9- 2020