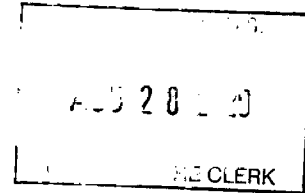


20-5700

ORIGINAL

No. _____

IN THE



SUPREME COURT OF THE UNITED STATES

Antonio Moss — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

District court of Appeal, For the Fourth District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Antonio Moss #184594
(Your Name)
Okaloosa correctional Institution
3189 Colonel Greg Malloy Road
(Address)

Crestview, Florida. 32539
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- ① Whether a defendant is denied due process and Equal protection of law by the lower tribunal's failure to address a defendant's scoresheet error that was apparent on the face of the record.

Especially, when such error has resulted in a defendant serving a sentence much greater than the sentence that would have been required absent such error.

- ② Whether the state court's failure to address a defendant's meritorious claim resulted in a miscarriage of justice and a manifest injustice if not corrected.

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

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TABLE OF AUTHORITIES CITED

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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 _____ 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☐ is unpublished.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☐ is unpublished.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 _____ 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 Fourth District court of Appeals court 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.

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 June 19, 2020.
A copy of that decision appears at Appendix C .

☒ A timely petition for rehearing was thereafter denied on the following date: May 29, 2020, and a copy of the order denying rehearing appears at Appendix B .

☐ 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Const. Amend. 14, Const. Art. 1, § 2.

STATEMENT OF THE CASE

The Petitioner, Antonio Moss with three co-defendants, was charged through indictment on April 7, 1988, with committing the following offenses: Count one - First degree Felony murder; Count two - Attempted armed Robbery; Count three - Armed Robbery; Count four - Attempted armed Robbery; Count five - Armed Robbery; and Count six - Armed Robbery. After a Jury trial, the Petitioner was convicted as charged and a PSI was ordered before Sentencing.

On December 15, 1988, the trial court sentenced the Petitioner as followed: Life with no possibility for parole for 25 years for Count one. Five concurrent 17 years sentence for counts two-six, to run consecutive to the sentence imposed in Count one.

Petitioner appealed his conviction and sentence. The Fourth District court of appeal, summarily affirmed, without opinion. See: Moss v. State, 551 So. 2d 474 (Fla. 4th DCA 1989).

On July 23, 2019, the Petitioner filed a pro se motion for correction of illegal sentence, pursuant to Florida Rule of Criminal Procedure 3.800(a) asserting that his guideline scoresheet utilized to calculate the sentencing range and sentence for counts two-six was improperly calculated, resulting in an illegal sentence. Petitioner presented the following claims in support:

(1) The two prior convictions listed on his scoresheet were erroneously scored, one was scored as a life degree felony and one as a first degree PBH felony, when in fact, one was a second degree felony (Robbery) and the other was a third degree felony (Aggravated Assault with weapon/no intent).

(2) The two additional offenses at conviction were erroneously scored as first degree felonies rather than second degree felonies (Attempted armed Robbery).

(3) Both prior convictions listed on his scoresheet were improperly utilized because they were more than three years old pursuant to Rule 3.701(d)(5)(G).

(4) That he should have received concurrent sentences for

STATEMENT OF THE CASE (continue)

Counts one- six (Appendix-E).

The lower court denied Petitioner relief on January 14, 2020 (See, Appendix-D). Petitioner appealed the decision and argued that the lower court's failure to review the entire written record, pre-sentence investigation report, etc, of the circuit court for determination of whether the Petitioner's assertions of an improperly calculated scoresheet were true before denying relief and for failing to attach portions of the record refuting the Petitioner's claims as required by law, denied him due process of law, constituting reversible error (Appendix-F).

A timely motion for rehearing and request for written opinion was filed by Petitioner on May 4, 2020 (Appendix-G). Which was both affirmed by the Fourth District Court of Appeal without opinion (see Appendix-A and Appendix-B).

Petitioner now seeks a writ of Certiorari from this Court on the two important questions presented in this case.

REASONS FOR GRANTING THE PETITION

(1) The state courts failure to correct the illegal sentence that the Petitioner is currently serving is a miscarriage of Justice that would result in a manifest injustice if not corrected.

The guideline scoresheet utilized to calculate the Petitioner's Sentencing range and sentence, was improperly calculated, resulting in the Petitioner receiving an illegal sentence. The state courts decision not to grant relief to the Petitioner by correcting his illegal sentence, is in conflict with the decisions of other state courts and an apparent deviation from prior precedent.

It is well-established principle of law, that an erroneous classification and calculation of a prisoner's prior convictions on his/her sentencing guideline scoresheet constitute as a facially sufficient claim that is cognizable in a Rule 3.800(a) motion because the error could be corrected based on record evidence. SEE: Merchant v. State, 509 So. 2d 1101 (Fla. 1987); State v. Mancino, 714 So. 2d 429 (Fla. 1998); Atwood v. State, 765 So. 2d 242 (Fla. 1st DCA 2000); Lewis v. State, 719 So. 2d 924 (Fla. 1st DCA 1998); McCullough v. State, 777 So. 2d 1091 (Fla. 2nd DCA 2001); Baldwin v. State, 679 So. 2d 1193 (Fla. 1st DCA 1996); Johnson v. State, 702 So. 2d 247 (Fla. 4th DCA 1997); and Owens v. State, 667 So. 2d 905 (Fla. 4th DCA 1996).

Under Florida Rules of Criminal Procedure 3.800(a), Scoresheet based sentencing errors can be corrected under this Rule, but the errors need to be capable of resolution by the record and not an evidentiary hearing. This reference to the record refers to the entire written record available in the circuit court, not just on the face of the scoresheet or the limited record on appeal. Atwood v. State, *Id.*

All Florida courts are in agreement that an erroneous classification and calculation on a defendant's guideline scoresheet must be corrected, even if a review of the entire written record is required. SEE: Merchant v. State, *Id.*; Carter v. State, 688 So. 2d 976 (Fla. 1st DCA 1997); Atwood v. State, *Id.*;

Continuing:

Lewis v. State, Id.; McCullough v. State, Id.

By its Decision in Denying the Petitioner relief, the Fourth District court of Appeal deviated from prior precedent where they were also in agreement and concurred with the other District courts concerning the same asserted claims as the Petitioner's claims. SEE: Hernandez v. State, 698 So. 2d 906 (Fla. 4th DCA 1997) (reversed error in classification of prior conviction); Russell v. State, 782 So. 2d 992 (Fla. 4th DCA 2001) (reversed error in improperly scored convictions); Thomas v. State, 637 So. 2d 368 (Fla. 4th DCA 1994) (trial court erroneously scored conviction which occurred more than three years prior to the present offense); Johnson v. State, Id. (reversed and remanded); and Owens v. State, Id. (reversed and remanded).

These authorities have all affirmatively demonstrated that an erroneous classification and calculation of a prior conviction on a prisoner's sentencing guideline scoresheet is a facially sufficient claim that is cognizable in a Rule 3.800(a) motion because the error could be corrected based on record evidence. These authorities have also affirmatively demonstrated that the "record", includes the review of the entire written record in the circuit court, arrest reports, pre-sentence investigation reports, etc.

Thus, these authorities have all affirmatively demonstrated an entitlement to relief addressing the same assertions as the Petitioner in his claims in previous cases, yet the Fourth District Court of Appeals has denied the Petitioner the same relief sought, as in previous cases adjudicated by them on the same assertions in their claims as the Petitioner. To continue to deny the Petitioner the same relief, is to deny him his due process Right under the 14th Amendment of the constitution for Equal Protection. If not corrected, the Petitioner will be left with serving an illegal sentence resulting in a manifest injustice.

CONTINUING:

Therefore, under the extraordinary circumstances of the present case, the Petitioner believes that if this Honorable Court answer the two questions presented and grant certiorari, it would significantly assist the state court's in cases involving substantially the same or similar circumstances which could lead to unfair results and a manifest injustice for prisoners intently seeking to correct their illegal sentences from a result of erroneous classification and calculation of their prior records on their sentencing guideline scoresheets on a Rule 3.800(a) motion

CONCLUSION

For the foregoing reasons, this court should grant the writ of certiorari in this case, appoint counsel for Petitioner to represent him, and order full briefing.
The petition for a writ of certiorari should be granted.

Respectfully submitted,

Antonio Moss

Date: August 28, 2020