

DEC 1, 2020

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DEMETRIUS CALHOUN,
V.
PETITIONER,

CASE NO.: 20-5723

FLORIDA DEPARTMENT
OF CORRECTIONS,
RESPONDENT.

MOTION FOR REHEARING

RECEIVED

DEC 23 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

THE PETITIONER, DEMETRIUS CALHOUN, RESPECTFULLY MOVES FOR REHEARING PURSUANT TO SUPREME COURT, RULE 44 ON GROUNDS THAT AN INTERVENING CIRCUMSTANCE OF A SUBSTANTIAL AND CONTROLLING EFFECT HAS BEEN OVERLOOKED, AND SUBSTANTIAL GROUND(S) NOT PREVIOUSLY PRESENTED, IF NOT CORRECTED WILL CONTINUE TO WORK A MANIFEST INJUSTICE AND MISCARRIAGE OF JUSTICE IN DIRECT CONFLICT THE FEDERAL CONSTITUTION. IN SUPPORT OF THE MOTION, THE PETITIONER STATES:

1. THIS COURT DENIED THE PETITIONER'S PETITION FOR A WRIT OF CERTIORARI ON NOVEMBER 16, 2020 PURSUANT AN UNELABORATED DECISION, WITHOUT OPINION OR EXPLANATION OR THAT MERELY CITES TO ANY AUTHORITY. AS SUCH, MR. CALHOUN HAS BEEN DENIED JUSTICE IN SEEKING REDRESS OF HIS INJURY, WHERE HIS CONVICTIONS AND SENTENCES ARE UNLAWFUL. SEE CLEGG V. WAINWRIGHT, 372 U.S. 335, 63 S. CT. 792, 9 L. ED. 2D 799 (1963).

2. THIS COURT HAS OVERLOOKED THE FACT THAT THE LOWER FEDERAL AND STATE COURTS MISINTERPRETATION OF THE LAW AS ITS INTERPRETED BY THIS COURT AS IT APPLIED TO THE FACTS OF MR. CALHOUN'S CASE Citing: U.S. CONSTITUTION AMENDMENTS FOUR, FIVE, SIX AND FOURTEETH, BRITTON V. UNITED STATES, 391 U.S. 123, 88 S. CT. 1620, 20 L. ED. 2D 467 (1967), CRANFORD V. WASHINGTON, 541 U.S. 36 (2004), BARBER V. PAGE, 390 U.S. 719, 88 S. CT. 1318, 20 L. ED. 2D 255 (1968), CICLO V. UNITED STATES, 405 U.S. 150, 92 S. CT. 763, 31 L. ED. 2D 104 (1972), UNITED STATES V. BAILEY, 473 U.S. 667, 690, 150 S. CT. 3375, 87 L. ED. 2D 481 (1985), MOONEY V. HOLLOMAN, 294 U.S. 103, 112, 55 S. CT. 340, 342, 79 L. ED. 791 (1935), NADUE V. ILLINOIS, 360 U.S. 264, 79 S. CT. 1173, 3 L. ED. 2D 1217 (1959), UNITED STATES V. ADAMS, 427 U.S. 97, 103, 49 L. ED. 2D 342, 96 S. CT. 2392 (1976), BERGER V. UNITED STATES, 295 U.S. 78, 55 S. CT. 629, 79 L. ED. 1314 (1935), NONNELLY V. UNITED STATES, 94 S. CT. 41 (1971) (1974), FRANKS V. DELAWARE, 439 U.S. 168, 98 S. CT. 41 (1978), BRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S. CT. 2052, 80 L. ED. 2D 674 (1984) AND SIMON V. McPHEE, 529 U.S. 473, 478 (2000) ARE IN DIRECT CONFLICT WITH EACH OF THE DECISIONS. UNDER FEDERAL LAW AND THE U.S. CONSTITUTION PETITIONER IS ENTITLED TO THE SAME RELIEF AS THOSE SAME INTENTION SITUATED PETITIONERS HAVE BEEN REPORTED RELIEF ON LAW AND FACTS, AND THEREFORE THE STARE DECISIS DOCTRINE APPLY TO MR. CALHOUN'S CASE. IRWIN V. DEPT. OF VETERAN AFFAIRS, 498 U.S. 89, 100 D. 3, 111 S. CT. 453, 460 D. 3, 112 L. ED. 2D 435 (1990).

GROUND ONE

TRIAL COURT COMMITTED FUNDAMENTAL ERROR BY ILLEGALLY IMPOSING A LIFE SENTENCE FOR ROBBERY WHERE THE INFORMATION FAILED TO CHARGE PETITIONER WITH THE REQUIRED ELEMENTS OF SUBSECTION (2)(a) OF THE ROBBERY STATUTE § 812.13 F.S. RENDERING THE TRIAL COURT'S RECLASSIFICATION AND ENHANCEMENT, UNDER F.S. § 775.087 OF COUNTS ONE AND FOUR ILLEGAL.

PETITIONER CONTENDS THAT THE RECLASSIFICATION OF HIS OFFENSE CHARGE IS ILLEGAL IN COUNT ONE (1) AND FOUR (4). HOWEVER, IN BOTH COUNTS OF THE CHARGING INFORMATION IT ONLY MADE REFERENCE TO F.S. 812.13 (2)(a) BUT SOLELY TRACKED THE STATUTORY LANGUAGE OF § 812.13 F.S. WITH NO MENTION OF REQUIRED ELEMENTS OF SUBSECTION (2)(a) WHICH ARE "ESSENTIAL FACTS" TO ROBBERY WITH A FIREARM. THE INFORMATION'S COUNT ONE AND FOUR FAIL TO CHARGE, THAT DURING THE COMMISSION OF THE OFFENSE PETITIONER CARRIED, DISPLAYED, THREATENED TO USE, USED OR ATTEMPTED TO USE A WEAPON OR A FIREARM. WHAT FURTHER MAKES THIS RECLASSIFICATION OF DEGREE OF FELONY ILLEGAL IS THE JURY FAILED TO MAKE THE REQUIRED FINDING ON ITS VERDICT FORM THAT MR. CALHOUN WAS GUILTY OF COMMITTING ROBBERY WHILE HE CARRIED, DISPLAYED, THREATENED TO USE, USED OR ATTEMPTED TO USE A WEAPON OR FIREARM IN COMMISSION OF THE OFFENSE. [SEE EXHIBIT A, C]. NEITHER A JURY'S FINDING, NOR INCLUSION OF THE APPROPRIATE STATUTE NUMBER IN THE INFORMATION CAN CURE THIS FATAL DEFECT. DAVIS V. STATE, 884 SO. 2d 1058, 1060-61 (FLA. 2d DCA 2004). THUS, THE JURY'S FINDING UNDER SECTION 775.087 WAS INSUFFICIENT FOR RECLASSIFICATION. EVEN IF, THE CHARGING DOCUMENT WOULD HAVE CORRECTLY CHARGED MR. CALHOUN WITH ROBBERY WITH A FIREARM UNDER F.S. § 812.13 (2)(a), IN WHICH PETITIONER ASSURES IT DID NOT, RECLASSIFICATION OF COUNT ONE AND COUNT FOUR IS STILL ILLEGAL PURSUANT TO SECTION 775.087 (1) BECAUSE ITS PRECEDENT WHERE, THE USE OF A FIREARM IS AN ESSENTIAL ELEMENT OF THE OFFENSE OF ROBBERY WITH A FIREARM. SEE RYAN V. STATE, 949 SO. 2d 288, 289 (FLA. 1st DCA 2007).

AN INFORMATION SHALL BE A PLAIN, CONCISE AND DEFINITE WRITTEN STATEMENT OF THE "ESSENTIAL FACTS" CONSTITUTING THE OFFENSE CHARGE. FLORIDA RULE OF CRIMINAL PROCEDURE 3.140(d) STATES IN PART:

"REQUIREMENTS THAT THE 'ESSENTIAL FACTS' OF CHARGED OFFENSE BE ALLEGED IS ALMOST ALWAYS SATISFIED BY ALLEGATIONS WHICH SIMPLY TRACK THE LANGUAGE OF CRIMINAL STATUTE PURSUANT TO WHICH THE DEFENDANT IS BEING CHARGED, BUT WHEN STATUTORY LANGUAGE IS TRACKED EACH ELEMENT OF THE CRIME MUST BE ALLEGED."

SECTION 6:115 OF FLORIDA SENTENCING MANDATES IN ORDER TO IMPOSE THE MINIMUM MANDATORY SENTENCE THE STATE MUST ALLEG IN THE INFORMATION THAT THE DEFENDANT DID ACTUALLY POSSESSED A FIREARM OR DESTRUCTIVE DEVICE, AND TO RECLASSIFY THE LEVEL OF OFFENSE THE DEFENDANT CARRIED, DISPLAYED, THREATENED TO USE, USED OR ATTEMPTED TO USE A WEAPON OR FIREARM OR DESTRUCTIVE DEVICE IN THE UNDERLYING OFFENSE. GREEN V. STATE, 18 SO. 3d 656 (FLA. 2ND DCA 2009). THE JURY MUST MAKE A FACTUAL FINDING CONCERNING THESE GROUNDS.

ALTHOUGH, THE JURY MADE A FINDING THAT MR. CALHOUN ACTUALLY POSSESSED A FIREARM IN COMMISSION OF THE ROBBERIES. THE TRIAL COURT VIOLATED PETITIONER'S RIGHT TO DUE PROCESS BY USING THE JURY'S VERDICT SPECIAL FINDING THAT HE ACTUALLY POSSESSED A FIREARM, WHEN THE INFORMATION DID NOT CHARGE THAT HE ACTUALLY POSSESSED A FIREARM IN COMMISSION OF THE ROBBERIES, TO RECLASSIFY THE DEGREE OF FELONY AS WELL AS TO ENHANCE MR. CALHOUN'S SENTENCE UNDER SECTION § 775.087(2)(a) AS MANDATED BY SECTION 6:115 FLORIDA SENTENCING. GREEN, SUPRA. [SEE EXHIBIT A; 1]. SENTENCING TRANSCRIPT PG. 5. THE TRIAL COURT STATED:

THE COURT: I WANT TO CLARIFY AGAIN WHAT MY SENTENCE WAS OK?

COUNT ONE DEALS WITH ARMED ROBBERY WITH POSSESSION OF A FIREARM; THE SENTENCE WAS LIFE IN THE STATE - MANDATORY LIFE IN THE STATE PRISON WITH A TEN-YEAR MINIMUM MANDATORY FOR ACTUAL POSSESSION OF A FIREARM.

THERE IS A SIGNIFICANT DIFFERENCE IN THE WAY SECTION § 812.13(2)(a) AND SECTIONS § 775.087(1), § 775.087(2)(a) AND § 775.087(3) TREAT THE USE OF A FIREARM "A FINDING THAT A DEFENDANT "CARRIED" A FIREARM UNDER § 812.13(2)(a) RECLASSIFIES A ROBBERY INTO A HIGHER DEGREE INCREASING THE POTENTIAL OF PUNISHMENT, ON THE OTHERHAND, SECTION § 775.087(2)(a) SUBJECTS A DEFENDANT CONVICTED OF ROBBERY TO A TERM OF (10) TEN YEARS MINIMUM MANDATORY THE STATUTE APPLICATION IS PRECIPITATED ON THE DEFENDANT BEING CHARGED IN THE INFORMATION WITH "ACTUAL" POSSESSION.

TRIAL COURT'S RECLASSIFICATION OF DEGREE OF FELONY AND IMPOSITION OF (10) TEN-YEAR MINIMUM MANDATORIES IN COUNTS ONE AND FOUR ARE ILLEGAL, AND CANNOT STAND AS THE CHARGING INFORMATION FAILS TO CHARGE MR. CALHOUN WITH COMMITTING THE OFFENSE WITH A FIREARM BY CLEARLY ALLEGING THAT HE CARRIED, DISPLAYED, THREATENED TO USE, USED OR ATTEMPTED TO USE A FIREARM IN THE COURSE OF THE CRIME CHARGED. [SEE JURY'S VERDICT FORM, EXHIBIT C]. THE INFORMATION ALSO FAILED TO CHARGE PETITIONER WITH ACTUAL POSSESSION OF A FIREARM REMAINING ENHANCEMENT UNDER SECTION § 775.087(2) ILLEGAL. SEE BURNHAM V. STATE, 213 SO. 3d 927 (FLA. 4TH DCA 2017); BRANIFF V. STATE, 128 SO. 3d 87 (FLA. 1ST DCA 2013). NOR DID THE INFORMATION LIST THE SPECIFIC

SUBSECTION WHICH THE STATE RELIES ON UNDER SECTION § 775.087 [SEE EXHIBIT A]

TO PURSUE AN ENHANCED MANDATORY SENTENCE AS THE 10-20-LIFE STATUTE PRESCRIBES, THE STATE MUST ALLEGES THE GROUNDS FOR ENHANCEMENT IN THE CHARGING DOCUMENT, AND THE JURY MUST MAKE FACTUAL FINDINGS REGARDING THOSE GROUNDS. LANE V. STATE, 996 SO. 2d 226, 227 (FLA. 4TH DCA 2008). THE STATE'S FAILURE TO ALLEGES GROUNDS FOR ENHANCEMENT IN THE CHARGING DOCUMENT CANNOT BE CURED BY A JURY'S FACTUAL FINDINGS. REITER V. STATE, 935 SO. 2d 1181, 1183 (FLA. 4TH DCA 2002). THE STATE CANNOT ALSO RELY ON GROUNDS ALLEGED IN ONE COUNT TO SUPPORT AN ENHANCED MANDATORY SENTENCE ON ANOTHER COUNT. BRYANT V. STATE, 744 SO. 2d 1225, 1226 (FLA. 4TH DCA 1999). FINALLY, IF THE STATE WISHES TO GIVE NOTICE OF AN ENHANCEMENT BY REFERENCE TO A STATUTE IN THE CHARGING DOCUMENT, THE STATE MUST REFER TO THE SPECIFIC SUBSECTION WHICH SUBJECTS THE DEFENDANT TO THE ENHANCED SENTENCE. IMON V. STATE, 932 SO. 2d 518, 520 (FLA. 4TH DCA 2006) (QUOTING BRENDAME, SUPRA).

THE PROCESS IS VIOLATED, WHERE ONE IS CONVICTED OF A CRIME WHERE THE INDICTMENT OR INFORMATION WHOLLY OMTIS TO ALLEGES ONE OR MORE OF THE ESSENTIAL ELEMENTS OF THE CRIME. EWALDER V. STATE, 766 SO. 2d 243 (FLA. 4TH DCA 2000). WHERE THE INFORMATION FAILED TO CHARGE MR. CALHOUN WITH "ACTIVE" POSSESSION OF A FIREARM, DID NOT ALLEGES THAT HE "CARRIED, DISPLAYED, THREATENED TO USE, USED OR ATTEMPTED TO USE A FIREARM IN COMMISSION OF THE ROBBERIES AND THE JURY FAILED TO MAKE A FACTUAL FINDING CONCERNING THAT GROUND. ACCORDINGLY, PETITIONER CAN ONLY BE CONVICTED OF ROBBERY AS CHARGED IN THE INFORMATION BECAUSE IT FAILED TO ALLEGES THE ESSENTIAL ELEMENTS OF THE OFFENSE; NAMELY, ROBBERY WITH A FIREARM P.S. 812.13(2)(a). [SEE EXHIBIT A]. SEE JACKSON V. STATE, 952 SO. 2d 941 (FLA. 4TH DCA 2006) (QUOTING MC BRIDEAN V. STATE, 398 SO. 2d 244, 246-48 (FLA. 5TH DCA 1980)).

THEREFORE, BASED ON THE ABOVE MENTIONED AND AUTHORITIES CITED, MR. CALHOUN AVERES THAT THE LIFE SENTENCES IMPOSED IN COUNTS ONE AND FOUR MUST BE VACATED, AND HE BE RESENTENCED TO NO MORE THAN THE STATUTORY MAXIMUM OF FIFTEEN (15) YEARS PURSUANT TO FLORIDA STATUTE § 775.082(9)(a)(3)(c). SEE GREEN V. MCNEIL, 995 SO. 2d 1178, 1179 (FLA. 4TH DCA 2008).

GROUND TWO

TRIAL COURT COMMITTED FUNDAMENTAL ERROR BY ILLEGALLY IMPOSING A FIFTEEN (15) YEAR SENTENCE ON COUNTS FIVE AND SIX FOR CONSPIRACY TO COMMIT ROBBERY WITH A WEAPON. THE CHARGING INFORMATION FAILED TO CHARGE REQUIRED ELEMENTS OF SECTION 812.13(2)(b) AND ALSO FAILED TO CITE SPECIFIC SUBSECTION UNDER SECTION 775.087 WHICH SUBJECT PETITIONER TO THE ILLEGAL RECLASSIFICATION OF OFFENSE.

TRIAL COURT VIOLATED MR. CALHOUN'S RIGHT TO DUE PROCESS BY RECLASSIFYING LEVEL OF OFFENSE IN COUNTS FIVE AND SIX WHERE THE INFORMATION FAILED TO REFERENCE THE SPECIFIC SUBSECTION UNDER § 775.087 WHICH SUBJECTS PETITIONER TO RECLASSIFICATION. THE CHARGING DOCUMENT WAS ALSO VOID THE STATUTORY LANGUAGE THAT TRACKS THE OFFENSE CHARGED UNDER F.S. § 812.13(2)(b) BY DETAILING ALL THE REQUIRED ELEMENTS THAT WOULD BE CONSTITUTIONAL OFFENSE CHARGED. [SEE EXHIBIT A]

AN INFORMATION SHALL BE A PLAIN, CONCISE AND DEFINITE WRITTEN STATEMENT OF THE "ESSENTIAL FACTS" CONSTITUTING THE OFFENSE CHARGED. PETITIONER'S INFORMATION IS VOID THE FOLLOWING STATUTORY LANGUAGE REQUIRED TO CONSTITUTE ROBBERY WITH A WEAPON. F.S. § 812.13(2)(b) READS IN PART:

IF IN THE COURSE OF COMMITTING THE ROBBERY THE OFFENDER CARRIED A WEAPON THEN THE ROBBERY IS A FIRST DEGREE FELONY.

THE INFORMATION SOLELY CITES SECTION § 775.087 F.S. WITH NO SPECIFIC SUBSECTION THE STATE WAS REFERENCING TO. SEE BIGDAINE V. STATE, 213 SO. 3d 927 (FLA. 4TH DCA 2017).

FLORIDA SENTENCING § 6:115 PROHIBITS RECLASSIFICATION UNDER SECTION § 775.087(1) WHEN A DEFENDANT IS CHARGED WITH AN OFFENSE FOR WHICH A FIREARM IS AN "ESSENTIAL ELEMENT" OF THE OFFENSE. RECLASSIFICATION IS IMPROPER UNDER SECTION § 775.087(1) BECAUSE ARMED ROBBERY IS A FELONY IN WHICH THE USE OF A WEAPON IS THE ESSENTIAL ELEMENT. RITH V. STATE, 949 SO. 2d 288, 289 (FLA. 1ST DCA 2007); FRANK V. STATE, 997 SO. 2d 424, 426 (FLA. 2d DCA 2008). THE LANGUAGE OF RECLASSIFICATION IN SECTION § 775.087(1) AND "ACTUAL POSSESSION" LANGUAGE OF MINIMUM MANDATORY SENTENCING IN SECTION § 775.087(2)(a) ARE NOT INTERCHANGEABLE, ACTUAL POSSESSION MUST BE CHARGED IN THE INFORMATION TO PROVE AND CANNOT BE CURED BY A JURY'S FACTUAL FINDINGS ON ITS VERDICT FORM.

THIS COURT IS REQUIRED TO EXCLUDE ANY RECLASSIFICATION OR ENHANCEMENT BASED ON JURY'S FACTUAL FINDINGS OF "ACTUAL POSSESSION OF A FIREARM." AS RECLASSIFICATION IS ILLEGAL UNDER SECTION § 775.087 FOR ANY OFFENSE WHICH REQUIRES THAT A FIREARM BE AN ESSENTIAL ELEMENT OF THE CHARGED OFFENSE. MR. CALHOUN WAS CHARGED WITH ROBBERY WITH A WEAPON § 812.13(2)(b). THE JURY'S FINDINGS OF "ACTUAL POSSESSION OF A FIREARM" IS INCONSISTENT WITH THE CHARGED OFFENSE. [SEE EXHIBIT A, C]

PURSUANT TO SECTION § 777.04 F.S. PETITIONER'S CONSPIRACY TO COMMIT ROBBERY CONVICTIONS AS TO COUNTS FIVE AND SIX IS SECOND DEGREE FELONY AND IS REQUIRED BY STATUTE TO BE RECLASSIFIED ONE DEGREE TO A THIRD DEGREE FELONY. JURY'S VERDICT IN COUNTS FIVE AND SIX, REFLECTS A FINDING OF GUILTY FOR CONSPIRING TO COMMIT ROBBERY, THE FINDING THAT MR. CALHOUN ACTUALLY POSSESSED A FIREARM AS TO THE OFFENSE CHARGED IN THE INFORMATION WAS INSUFFICIENT TO CURE SUCH DEFECTS. BASED ON THAT FACT AND OTHER AUTHORITIES PETITIONER RECLASSIFICATION OF COUNTS FIVE AND SIX TO A FIRST DEGREE FELONY IS ILLEGAL AND CANNOT STAND.

GROUND THREE

TRIAL COURT ERRED IN CONVICTING PETITIONER AND SENTENCING HIM IN COUNTS TWO AND THREE POSSESSION OF A FIREARM BY A CONVICTED FELON AS IT VIOLATES THE BAR AGAINST DOUBLE JEOPARDY.

IN THIS INSTANT CASE AT BAR, PETITIONER WAS CHARGED WITH [ARMED] ROBBERY AND POSSESSION OF A FIREARM BY A CONVICTED FELON FOR THE CRIMINAL EPISODE OCCURRED ON MAY 15, 2010. THEN ALSO CHARGED WITH [ARMED] ROBBERY AND POSSESSION OF A FIREARM BY A CONVICTED FELON FOR THE CRIMINAL EPISODE OCCURRED ON MAY 17, 2010. [SEE EXHIBIT A]

MR. CALHOUN CONTENDS THAT HIS SENTENCES AND CONVICTIONS IN COUNTS TWO AND THREE ARE POTENTIALLY ILLEGAL AS IT VIOLATES THE BAR AGAINST DOUBLE JEOPARDY BECAUSE WHEN A ROBBERY CONVICTION IS ENHANCED, NOT TO A FIREARM BEING USED DURING COMMISSION OF THAT ROBBERY, A DEFENDANT CANNOT BE ADJUDICATED GUILTY OF BOTH ROBBERY WITH A FIREARM AND POSSESSION OF THAT FIREARM IN COMMISSION OF THE SAME ROBBERY.¹ DORSETT V. STATE, 973 SO. 2D 424 (FLA. 3D DCA 2004). THE LAW IS WELL-SETTLED THAT A STATE, CANNOT, CONSISTENT WITH DOUBLE JEOPARDY PRINCIPLES, CHARGE, CONVICT AND SENTENCE A DEFENDANT FOR TWO OFFENSES FOR THE SINGLE ACT OF POSSESSION OF ONE WEAPON. STATE V. SEARN, 645 SO. 2D 417 (FLA. 1994) ("A DEFENDANT CANNOT BE CONVICTED AND SENTENCED FOR TWO CRIMES INVOLVING A FIREARM THAT ARISE OUT OF THE SAME CRIMINAL EPISODE"). THE THIRD DISTRICT COURT OF APPEALS HELD IN FRANKE URBAN MARIE V. STATE, 947 SO. 2D 484 (FLA. 3D DCA 2006) THAT, "A TRIAL COURT VIOLATES DOUBLE JEOPARDY PRINCIPLES WHEN IT CONVICTED AND SENTENCED DEFENDANT TO BOTH [ARMED] BURGLARY AND CARRYING A CONCEALED FIREARM AS THEY BOTH INVOLVED A FIREARM ARISING OUT OF THE SAME CRIMINAL CONDUCT." ALSO SEE DORSETT, SUPRA.

HERE, PETITIONER ALLEGES THAT WHERE HE WAS CONVICTED OF [ARMED] ROBBERY IN BOTH EPISODES AND SENTENCES ENHANCED, NOT TO USE OF THE FIREARM, THE DOUBLE JEOPARDY CLAUSE BARS BOTH A CONVICTION AND SENTENCE FOR THE CRIME OF POSSESSION OF A FIREARM BY A CONVICTED FELON. "WHEN A DEFENDANT IS CONVICTED OF A FELONY IN WHICH THE CONVICTION IS ENHANCED, NOT TO USE OF A FIREARM, THE DOUBLE JEOPARDY CLAUSE BARS BOTH A CONVICTION AND SENTENCE FOR THE CRIME OF POSSESSION OF A FIREARM DURING COMMISSION OF A FELONY." MENDOZA V. STATE, 941 SO. 2D 523 (FLA. 3D DCA 2006) (QUOTING CLEVELAND V. STATE, 587 SO. 2D 1145 (FLA. 1991)). SINCE MR. CALHOUN'S [ARMED] ROBBERY CONVICTIONS WERE ENHANCED BECAUSE THE USE OF THE FIREARM IN COMMITTING THE [ARMED] ROBBERY DURING BOTH EPISODES, THE SINGLE ACT INVOLVING THE USE OF THE SAME FIREARM IN COMMISSION OF THE [ARMED] ROBBERIES CANNOT FORM THE BASIS OF A SEPARATE CONVICTION AND SENTENCE FOR POSSESSION OF A FIREARM BY A CONVICTED FELON. CLEVELAND, 587 SO. 2D AT 1145. IN DORSETT, SUPRA. THE STATE CONCEDES IT WAS TRIAL ERROR TO CONVICT DEFENDANT

¹ ARMED ROBBERY, AS CONTRASTED WITH MERE ROBBERY, IS, AS DEFINED IN SECTION 8 812.13(2)(a), FLORIDA STATUTES, A CONTINUING OFFENSE.

FOR POSSESSION OF A FIREARM DURING COMMISSION OF THE SAME ROBBERY.

WHEREFORE, UNDER THESE FACTS AND CIRCUMSTANCES, PETITIONER HAS DEMONSTRATED THROUGH PERSONAL LAW HIS CONVICTIONS AND SENTENCES IN COUNTS TWO AND THREE ARE ILLEGAL AS THEY VIOLATE DOUBLE JEOPARDY, WHICH REQUIRE THAT THEY BE VACATED.

THIS COURT MAY EXERCISE ITS SUPERVISORY POWER TO CHANGE "THE LAW OF THE CASE" AT ANY TIME BEFORE IT LOSES JURISDICTION OF A CAUSE AND WILL NEVER HESITATE TO DO SO IF IT BECOMES CONVINCED THAT IT ORIGINAL PRONOUNCEMENT OF THE LAW WAS ERRONEOUS AND SUCH RULING RESULTED IN A MANIFEST INJUSTICE. IN SUCH A SITUATION A COURT OF JUSTICE SHOULD NEVER ADOPT A PERTINACIOUS ATTITUDE.

PETITIONER CITES THE FOLLOWING CASES LAPO V. STATE, 975 SO. 2d 613, 614 (FLA. 3d DCA 2008); STRADWELL V. HENDRICK, 177 SO. 2d 1 (FLA. 1965); PEPPERS V. UNITED STATES, 131 S. CT. 1929.

IN THE INSTANT CASE, IT IS READILY APPARENT THAT THE SYSTEM HAS FAILED MR. CALHOUN. HE IS NOW SERVING TWO CONSECUTIVE LIFE TERMS WITHIN THE DEPARTMENT OF CORRECTIONS AS A RESULT OF THIS INJUSTICE IN VIOLATION OF DUE PROCESS SAFEGUARDED BY THE U.S. CONSTITUTION'S 14TH AMENDMENT.

WHEREFORE, THE PETITIONER RESPECTFULLY MOVES THE COURT FOR AN ORDER GRANTING A REHEARING PURSUANT TO SUPREME COURT, RULE 44.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING PETITION HAS BEEN PLACED IN THE HANDS OF MAILROOM OFFICIALS AT JACKSON CORRECTIONAL INSTITUTION FOR MAILING BY U.S. MAIL TO: THE CLERK AND THIS HONORABLE COURT ON THIS DAY OF DECEMBER, 2020.

CERTIFICATION OF COUNSEL

I HEREBY CERTIFY THAT THIS PETITION FOR REHEARING IS PRESENTED IN GOOD FAITH AND NOT FOR
DELAY, AND THE PETITION COMPLIES WITH SUPREME COURT RULE 44 TO THE BEST OF MY ABILITY AS A PRO SE
LITIGANT.

RESPECTFULLY SUBMITTED,

DEMETRIUS CAHOUN, L51314
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**Additional material
from this filing is
available in the
Clerk's Office.**