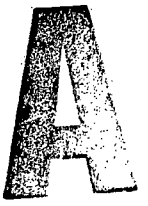


CASE NUMBER 05-5371
DIVISION H

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR THE COUNTY OF HILLSBOROUGH, STATE OF FLORIDA

TAMPA DISTRICT

MAR 18 2005
_____, Fall Term, 2004

STATE OF FLORIDA

V.

CARLOS RASHARDE ANDERSON

DIRECT
INFORMATION FOR:

COUNT ONE
SEXUAL BATTERY
(DEADLY WEAPON OR
FORCE CAUSING INJURY)
F.S. 794.011 (3)

COUNT TWO
SEXUAL BATTERY
(DEADLY WEAPON OR
FORCE CAUSING INJURY)
F.S. 794.011 (3)

COUNT THREE
SEXUAL BATTERY
(DEADLY WEAPON OR
FORCE CAUSING INJURY)
F.S. 794.011 (3)

COUNT FOUR
ARMED BURGLARY OF A DWELLING
WITH ASSAULT OR BATTERY
F.S.
810.02(1)(b)(2)(a)/775.087(1)(a)

FILED
CLERK OF CIRCUIT COURT
2005 MAR 18 PM 2:21
HILLSBOROUGH COUNTY, FLORIDA
CIRCUIT CRIMINAL

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, MARK A. OBER, STATE ATTORNEY OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR THE COUNTY OF HILLSBOROUGH, CHARGES THAT:

COUNT ONE

CARLOS RASHARDE ANDERSON, on or about the 13th day of December, 2004, in the County of Hillsborough and State of Florida, did unlawfully and feloniously commit sexual battery upon [redacted] a person twelve (12) years of age or older, without the consent of the said [redacted] by penetration of and/or union with

000013

Appendix - A

the vagina of [redacted] by the penis of CARLOS RASHARDE ANDERSON and in the process thereof used or threatened to use a deadly weapon, to-wit: a knife, or used actual physical force likely to cause serious personal injury.

COUNT TWO

CARLOS RASHARDE ANDERSON, on or about the 13th day of December, 2004, in the County of Hillsborough and State of Florida, did unlawfully and feloniously commit sexual battery upon [redacted] a person twelve (12) years of age or older, without the consent of the said [redacted], by penetration of and/or union with the anus of [redacted] by the penis of CARLOS RASHARDE ANDERSON and in the process thereof used or threatened to use a deadly weapon, to-wit: a knife, or used actual physical force likely to cause serious personal injury.

COUNT THREE

CARLOS RASHARDE ANDERSON, on or about the 13th day of December, 2004, in the County of Hillsborough and State of Florida, did unlawfully and feloniously commit sexual battery upon [redacted] a person twelve (12) years of age or older, without the consent of the said [redacted] by the penetration of and/or union with the mouth of [redacted] by the penis of CARLOS RASHARDE ANDERSON and in the process thereof used or threatened to use a deadly weapon, to-wit: a knife, or used actual physical force likely to cause serious personal injury.

COUNT FOUR

CARLOS RASHARDE ANDERSON, on the 13th day of December, 2004 in the County of Hillsborough and State of Florida, did unlawfully enter or remain in a certain dwelling, the property of [redacted], with the intent to commit an offense therein, and in the course of committing the offense, the said CARLOS RASHARDE ANDERSON did make an assault or battery on [redacted], and did carry, display, use, threaten to use, or attempt to use, a weapon or firearm, to-

Appendix - A

wit: a knife. Contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Florida.

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Personally appeared before me the undersigned Assistant State Attorney of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, who, being first duly sworn, says that these allegations as set forth in the foregoing INFORMATION are based upon facts that have been sworn to as true by the material witness or witnesses for the offense and which, if true, would constitute the offense therein charged, and that the prosecution is being instituted in good faith.

Assistant State Attorney of the
Thirteenth Judicial Circuit in and
For Hillsborough County, Florida

Florida Bar # 0168583

Sworn to and subscribed before me at Tampa, Florida

This 18th day of March, 2005

Deborah Sue Davison
Signature Notary Public - State of Florida

Deborah Sue Davison
MY COMMISSION # DD289374 EXPIRES
February 10, 2008
BONDED THRU TROY FAIN INSURANCE INC.

Print, Type or Stamp Commissioned Name of Notary
And Date Commission Expires

Personally known ✓ or Produced Identification ____

N/A
Type of Identification Produced

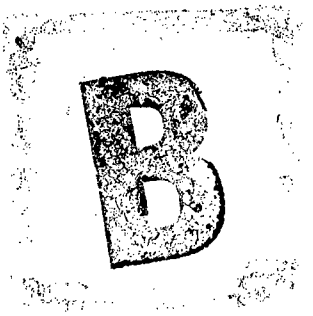
March 18, 2005
CAROLLE L. HOOPER/svs

Parent
2005-016002/2005-CJ-001991-D001 ANDERSON, CARLOS

Include
N/A

Consolidate
N/A

Appendix-A


B

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA

CASE NO.: 05-CF-005371

VS.

DIVISION: H

CARLOS ANDERSON

FILED
MAR 01 '07
Clerk of the Circuit Court

VERDICT FORM

We, the jury, find as follows, as to Count I of the charge: (check only one as to this count)

✓ A. The defendant is guilty of Sexual Battery (Deadly Weapon or Force Causing Injury), as charged.

DSM
B. The defendant is guilty of Sexual Battery (No Deadly Weapon or Force Causing Injury), a lesser included offense.

____ C. The defendant is guilty of Battery, a lesser included offense.

____ D. The defendant is not guilty.

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We, the jury, find as follows as to Count II of the charge: (check only one as to this count)

✓ A. The defendant is guilty of Sexual Battery (Deadly Weapon or Force Causing Injury), as charged.

____ B. The defendant is guilty of Sexual Battery (No Deadly Weapon or Force Causing Injury), a lesser included offense.

____ C. The defendant is guilty of Battery, a lesser included offense.

____ D. The defendant is not guilty.

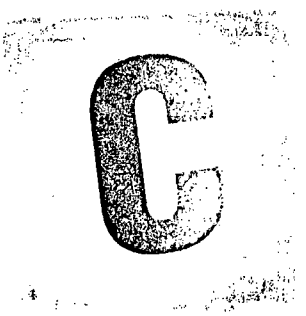
We, the jury, find as follows as to Count III of the charge: (check only one as to this count)

✓ A. The defendant is guilty of Sexual Battery (Deadly Weapon or Force Causing Injury), as charged.

____ B. The defendant is guilty of Sexual Battery (No Deadly Weapon or Force Causing Injury), a lesser included offense.

____ C. The defendant is guilty of Battery, a lesser included offense.

____ D. The defendant is not guilty.



IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs. 05-CF-005371A

CARLOS ANDERSON,
Defendant :
_____:

MOTION TO CORRECT SENTENCING ERROR

COMES NOW, Defendant, CARLOS ANDERSON, by and through undersigned counsel, to Correct Sentencing Error, in accordance with Florida Rule of Criminal Procedure 3.800(b)(2). The Defendant states the following in support of his motion:

1. Mr. Anderson, a juvenile, was convicted of three counts of sexual battery (deadly weapon or force causing injury) in violation of section 794.011(3), Florida Statutes (2004) and one count of armed burglary of a dwelling with assault or battery, in violation of section 810.02(1)(b)(2)(a), Florida Statutes (2004). Mr. Anderson was originally sentenced in 2007 to life without parole on all counts. This Court recently resentenced Mr. Anderson pursuant to Graham v. Florida, 560 U.S. 48 (2010) and Horsley v. State, 160 So. 3d 393 (Fla. 2015).

2. Once again this Court sentenced the Defendant to a life sentence on all counts. (See Appendix A and B) This Court did make oral and written findings allowing for the defendant's judicial review after 20 years. (See Appendix B and C)

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3. This motion raises several sentencing errors. First, Mr. Anderson was sentenced following the Miller v. Alabama, 132 S. Ct. 2455 (2012) decision wherein the United States Supreme Court forbade mandatory life without parole sentences for juvenile offenders. Mandatory life without parole sentences children "pos[e] too great a risk of disproportionate punishment." Id. at 2469. Mr. Anderson was also resentenced after the Supreme Court decided Montgomery v. Louisiana, 136 S. Ct. 718 (2016). In Montgomery, the United States Supreme Court held Miller announced a new substantive rule which requires retroactive effect. "The hearing does not replace but rather gives effect to Miller's substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." Landrum v. State, 192 So. 3d 459, 464 (Fla. 2016)(emphasis in original).

But Montgomery also clarified Miller. In Montgomery, the Court explained that Miller "did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of the 'distinctive attributes of youth.'" Id. at 734. A court who sentences a child to a lifetime in prison even after considering the child's age still violates the Eighth Amendment for a juvenile whose crime reflects "'unfortunate yet transient immaturity.'" Id. The Supreme Court further explained, "[b]ecause Miller determined that sentencing a child to life without parole is excessive for all but " 'the rare juvenile offender whose crime reflects irreparable

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corruption,'" it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status"- that is, juvenile offenders whose crimes reflect the transient immaturity of youth." Id. Miller barred life without parole for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility. Id. The Supreme Court explained:

> Miller drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption. The fact that life without parole could be a proportionate sentence for the latter kind of juvenile offender does not mean that all other children imprisoned under a disproportionate sentence have not suffered the deprivation of a substantive right.

Id. Even though the sentencing court is not required to make a formal finding between children whose crimes reflect transient immaturity and those crimes which reflect irreparable corruption, [courts] are not free to sentence a child whose crime reflects transient immaturity to life without parole. Id. at 735. This Court also did not make specific findings on the record that all relevant factors have been reviewed and considered by the court prior to imposing a sentence of life imprisonment. See Fla. R. Crim. P. 3.781(c).

In this case, this Court sentenced Mr. Anderson to life without parole, however, his crimes are ones which reflect transient immaturity and not irreparable corruption. Because Montgomery holds that a life without parole sentence violates the Eighth Amendment as it is disproportionate, this Court must resentence Mr. Anderson in light of Montgomery. Moreover, "[t]he

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requirement that sentencing courts give due weight to evidence that Miller deemed constitutionally significant before determining that the most severe punishment possible for juvenile offenders is appropriate; and that under Miller, sentencing juvenile offenders to life imprisonment must be 'rare' and 'uncommon.'" Landrum, 192 So. 3d at 460. State courts are bound to follow U.S. Supreme Court precedent in matters pertaining to interpretation of Constitutional rights. Miami Home Milk Producers Ass'n v. Milk Control Bd., 169 So. 541, 544 (Fla. 1936).

4. Second, the Defendant was resentenced under section 775.082(3)(c). Section 775.082(3)(c) states:

> Notwithstanding paragraphs (a) and (b), a person convicted of an offense that is not included in s. 782.04 but that is an offense that is a life felony or is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, or an offense that was reclassified as a life felony or an offense punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 20 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(d).

(emphasis added). The Defendant requests this Court declare this statute unconstitutional on its face because the statute allows for a juvenile convicted of nonhomicide crimes to be sentenced to life sentences. Miller and Montgomery emphasize that a life sentence must be "rare" and "uncommon" for juveniles convicted of homicides. A life sentence for a juvenile convicted of a

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nonhomicide should be even rarer and more uncommon. This statute is unconstitutional because it violates the "precept of justice that punishment for crime should be graduated and proportioned to [the] offense." Graham v. Florida, 560 U.S. 48, 50 (2010). And this remains true even though there are judicial review(s) available. The statute is also unconstitutional as applied to Mr. Anderson because he received four life sentences for four nonhomicide convictions.

5. Separate from the constitutional arguments above, Mr. Anderson requests this Court amend the judgment and sentence to reflect his actual sentence of life. Specifically, the new judgment and sentence form used by the county only shows the Defendant's sentence as "Min. Not Applicable, Max. Life" The sentencing error is the failure to explicitly state what sentence the trial court imposed. See Long v. State, 41 Fla. L. Weekly D1986 *1 (Fla. 2d DCA Aug. 26, 2016) ("[T]he written sentences provide that no minimum is applicable and that the maximum is life, or five years, respectively. But the written sentences do not explicitly state what sentence the trial court imposed."); see also Carlton v. State, 86 So. 3d 1194 (Fla. 2d DCA 2012)(recognizing that the written sentence must be corrected to comport with the oral pronouncement when they are inconsistent).

6. Mr. Anderson also requests this Court specify the amount of jail credit he is entitled to as required by section 921.161, Florida Statutes (2016). See Long v. State, 41 Fla. L. Weekly D1986 (Fla. 2d DCA Aug. 26, 2016)("At resentencing, the trial court announced that Long was to be awarded credit for any

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time to which he was legally entitled. Each written sentence states only that the defendant is to receive jail credit but does not specify the amount."). Like Long, the Defendant's judgment and sentence does not specify the amount of jail credit he is receiving. (See Appendix B) Mr. Anderson requests an amended judgment and sentence to reflect the specific jail credit.

7. Mr. Anderson should also be resentenced because he is entitled to an updated presentence investigation report. Florida Rule of Criminal Procedure 3.710(a) states, in pertinent part:

> In all cases in which the court has discretion as to what sentence may be imposed, the court may refer the case to the Department of Corrections for investigation and recommendation. No sentence or sentences other than probation shall be imposed on any defendant found guilty of a first felony offense or found guilty of a felony while under the age of 18 years, until after such investigation had first been made and the recommendations of the Department of Corrections received and considered by the sentencing judge.

Section 985.565(3)(a), Florida Statutes (2015), also requires that the trial court consider comments prepared by the Department of Juvenile Justice:

> At the sentencing hearing the court shall receive and consider a presentence investigation report by the Department of Corrections regarding the suitability of the offender for disposition as an adult or as a juvenile. The presentence investigation report must include a comments section prepared by the Department of Juvenile Justice, with its recommendations as to disposition. This report requirement may be waived by the offender.

The Second District has held that an updated PSI is not required for a resentencing. Lee v. State, 130 So. 3d 707 (Fla. 2d DCA 2013). However, in Albarracin v. State, 112 So. 3d 574, 574-575 (Fla. 4th DCA 2013) the Fourth District has held that the

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failure to consider a mandatory PSI constitutes reversible error: "However, we vacate the sentence and remand with instructions to order a presentence investigation report (PSI) before resentencing appellant." The Fourth District also found the failure to consider a mandatory presentence investigation report is a sentencing error which can be preserved by filing a rule 3.800(b) motion. Id. at 574 n. 1. See also Hernandez v. State, 137 So. 2d 542 (Fla. 4th DCA 2014). Notably, Lee is currently pending at the Florida Supreme Court in case number SC14-416.

Resentencings are de novo in nature. See State v. Fleming, 61 So. 3d 399, 408 (Fla. 2011)("[T]his Court has long held that where a sentence has been reversed or vacated, the resentencings in all criminal proceedings... are de novo in nature."). Moreover, Florida Rule of Criminal Procedure 3.781 titled "Sentencing Hearing to Consider the Imposition of a Life Sentence for Juvenile Offenders" was recently enacted. The rule states, in pertinent part:

> (b) Procedure; Evidentiary Hearing. After an examination of guilt for an offense ... and after the examination of any presentence reports, the sentencing court shall order a sentencing hearing to be held.

Because resentencings are de novo in nature and Rule 3.781 references presentence "reports" in plural meaning more than one report is contemplated, an updated PSI was required before resentencing Mr. Anderson.

WHEREFORE, Mr. Anderson respectfully requests this Court grant this motion. Specifically, the defendant requests this Court resentence him since his four life sentences are

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disproportionate under Miller and Montgomery; Mr. Anderson's crimes reflect transient immaturity and not irreparable corruption. The Defendant also requests this Court declare § 775.082(3)(c) unconstitutional on its face and as applied to the Defendant; and amend the judgment and sentence to explicitly state what sentence the trial court imposed; amend the judgment and sentence to explicitly state the amount of jail credit he is entitled to; and resentence him with an updated PSI.

CERTIFICATE OF SERVICE

I certify that a copy has been emailed to Pamela Jo Bondi CrimAppTPA@myfloridalegal.com; the Honorable Chet A. Tharpe, 801 E. Twiggs Street, Room 330 Tampa, Florida 33602; Rita Peters, Assistant State Attorney, County Courthouse Annex, Tampa, Florida 33602, and Dana Herce, Assistant Public Defender, 700 E. Twiggs Street, Tampa, Florida 33602 on this 10th day of November, 2016.

Respectfully submitted,

Maureen E. Surber

HOWARD L. "REX" DIMMIG, II
Public Defender
Judicial Circuit
863) 534-4200

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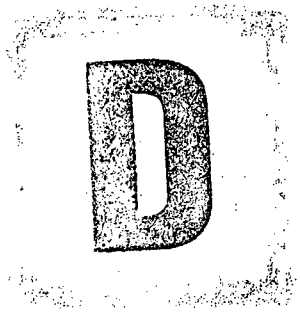
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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

CARLOS RESHARDE ANDERSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D16-2071

Opinion filed June 20, 2018.

Appeal from the Circuit Court for Hillsborough County; Chet A. Tharpe, Judge.

Howard L. Dimmig, II, Public Defender, and Maureen E. Surber, Assistant Public Defender, Bartow, for Appellant.

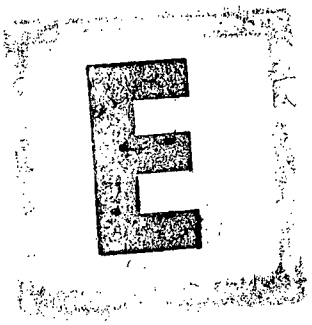
Pamela Jo Bondi, Attorney General, Tallahassee, and Brandon R. Christian, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed.

LaROSE, C.J., and BADALAMENTI and ROTHSTEIN-YOUAKIM, JJ., Concur.

Appendix- D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IN THE DISTRICT COURT OF APPEAL STATE OF FLORIDA
SECOND DISTRICT

CARLOS RESHARDE ANDERSON,
Petitioner,
vs.
STATE OF FLORIDA
Respondent

CASE NO.:
IN RE: 2016-2071

PETITION TO RECALL MANDATE
or in the alternative
PETITION FOR WRIT OF HABEAS CORPUS

Petitioner files this Petition pursuant to the authority of Rule 9.030(b)(3), and Rule 9.100(a) of Fla. R. App. P.

MANIFEST INJUSTICE

The Petition is further submitted to have the Court correct a manifest injustice with respect to the doctrines of res judicata, law-of-the-case, and/or stare decisis

BASIS FOR RECALLING THE MANDATE &
ISSUING THE WRIT

The PER CURIAM - Affirmed issued by this Court on June 20, 2018 (Appendix-A), followed by the Mandate issued on August 13, 2018 (Appendix-B) violated the

decision of the Florida Supreme Court in Lawton v. State, 181 So.3d 452 (Fla. 2015), mandating that non-homicide juvenile defendants cannot be exposed to life sentences per the mandate of Graham v. Florida, 130 S.Ct. 2011 (2010).

STATEMENT OF THE CASE

Petitioner was charged by information with four counts of non-homicide crimes.[1] At the time of these offenses, which occurred on December 13, 2004, and during a single criminal episode, Petitioner was sixteen (16) years old. Petitioner was a first time offender with no prior criminal history — neither arrests nor imprisonment.

The case proceeded to trial and Petitioner was found guilty by jury and was adjudicated by the court on all counts. (Appendix-D). Petitioner was subsequently sentenced to four terms of life imprisonment on each of the non-homicide offenses (Appendix-E)

ARGUMENT(S)

The argument here has been succinctly established and settled by the Florida Supreme Court in Lawton v. State, 181 So.3d 452 (Fla. 2015) which reiterates the **absolute bar** that a nonhomicide juvenile defendant can under no circumstances receive a life sentence. The Lawton Court inter-

[1] Three counts of sexual battery and one count of armed burglary.

CERTIFICATE OF SERVICE

I CERTIFY a true copy of the Petition To Recall The Mandate of in the alternative Petition ~~For~~ Writ of Habeas Corpus has been served on the Assistant Attorney General Office, Concourse Center #4, 3507 E. Frontage Rd, Tampa, FL 33607, by way of U.S. Mail on this 15 day of May 2019.

C. Anderson

Carlos Resharde Anderson T54612
Jackson C.I
5563 - 10th Street
Malone, FL 32445

IN THE
SUPREME COURT
STATE OF FLORIDA

CARLOS RESHARDE ANDERSON, CASE NO _____
Petitioner,
vs.
STATE OF FLORIDA,
Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

JURISDICTION

This Petition is filed under the authorities of Article I, Section 13, and Article V, Section 3(b)(9) of the Florida Constitution.

SUPREME COURT JUDICIAL AUTHORITY

In Anglin v. Mayo, 88 So.2d 918, 919 (Fla. 1956), this Court concluded that: If it appears to a Court of competent jurisdiction that a man is being illegally restrained of his liberty, it is the responsibility of the Court to brush aside formal technicalities and issue such appropriate orders as will do justice.

MANIFEST INJUSTICE

As in Anglin v. Mayo, id. this Court is called upon to correct a "manifest injustice" with re-

On June 20, 2018, after filing a timely notice of appeal, the Second DCA PER CURIAM - Affirmed, and the Mandate was issued on August 13, 2018. (Appendix-D).

On May 15, 2019, Petitioner filed a Petition To Recall The Mandate or alternatively Petition For Writ of Habeas Corpus. (Appendix-E). The district court denied the Petition on June 12, 2019 (Appendix-F).

ISSUE PRESENTED

Petitioner is serving an illegal number of life sentences that violate the Eighth Amendment of the U.S. Constitution and violate the mandate in Graham v. Florida, Supra which categorically bars imposition of life sentences on juvenile defendants whose convictions rest on non-homicide convictions.

Petitioner has properly and appropriately exhausted his way through each tier of state courts and this Court is his last State Court to correct the manifest injustice here.

ARGUMENT

Petitioner was a 16 year old juvenile defendant at the time of these non-homicide offenses, and had no prior criminal history of arrests or convictions.

Petitioner is the constitutional beneficiary of newly enacted laws under Chapter 2014-220

CERTIFICATE OF SERVICE

I CERTIFY a true copy of the Petition For Writ of Habeas Corpus has been served on the Assistant Attorney General Office, Concourse Center #4, 3605 E. Frontage Rd., Ste 200, Tampa, FL 33607 by way of U.S. Mail on this ___ day of June 2019.

C. Anderson

Carlos R. Anderson T54612
Jackson C.I.
5563 - 10th Street
Malone, FL 32445

Supreme Court of Florida

TUESDAY, FEBRUARY 18, 2020

CASE NO.: SC19-1103
Lower Tribunal No(s).:
292005CF005371000AHC

CARLOS ANDERSON vs. MARK S. INCH, ETC.

Petitioner(s) Respondent(s)

The petition for writ of habeas corpus is hereby denied as successive. *See Jenkins v. Wainwright*, 322 So. 2d 477, 478 (Fla. 1975) (declaring that once a petitioner seeks relief in a particular court by means of a petition for extraordinary writ, he has picked his forum and is not entitled to a second or third opportunity for the same relief by the same writ in a different court). No rehearing will be entertained by this Court.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, and MUÑIZ, JJ., concur.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

db
Served:

KENNETH SCOTT STEELY
KIERSTEN E. JENSEN
CARLOS ANDERSON
DAVID A. ROWLAND
C. SUZANNE BECHARD
HON. PAT FRANK, CLERK

G