No. 20-6393

IN THE
SUPREME COURT OF THE UNITED STATES

TODD HUGHES — PETITIONER

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Second District Court of Appeals, State of Florida
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Todd Hughes DC#166098
Suwannee Correctional Institution Annex
5964 U.S. Hwy 90
Live Oak, Fla. 32060

ORIGINAL

QUESTION(S) PRESENTED

Did the Florida Second District Court of Appeal and the Florida Sixth Judicial Circuit violate the Petitioner's and like situated inmates, rights under the Eighth and Fourteenth Amendments to the U.S. Constitution, cruel and unusual punishment and due process, respectively, when deciding the Petitioner's post- conviction motion claiming that his designation as a sexual predator is illegal.

LIST OF PARTIES

[X] 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:

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INDEX TO APPENDICES

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[ ] is unpublished.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[ ] is unpublished.

[X] 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,
[X] is unpublished.

The opinion of the Sixth Judicial Circuit court appears at Appendix _____B____to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.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. _____ .

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

[X] For cases from **state courts**:

The date on which the highest state court decided my case was July 31, 2020. A copy of that decision appears at Appendix ___A___.

[ ] A timely petition for rehearing was thereafter denied 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._____ .

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment 8: Cruel and Unusual Punishment

United States Constitution, Amendment 14: Due process

Florida Constitution, Article I, section 9: Due process

Florida Statutes: §794.011(3)(Sexual battery 12 years of age or older), (1997); §787.01(a)(3)(Kidnapping), (1997); §784.045(Aggravated battery), (1997); §777.011(Principal in first degree), (1997); §777.04(Attempts, solicitation, and conspiracy), (1997).

STATEMENT OF THE CASE

Procedural History:

On September 1, 1998, by amended information the Petitioner was charged with: Count One – Sexual battery in violation of section 794.011(3)/777.011, Fla. Stat. (1997), a life felony; Count Two – Kidnapping in violation of section 787.01(a)(3)/777.011, Fla. Stat. (1997), a first-degree felony punishable by life; Count Three – Attempted sexual battery in violation of sections 794.011(3)/777.04/777.011, Fla. Stat. (1997), a second-degree felony; and Count Four – Aggravated battery in violation of section 784.045/777.011, Fla. Stat. (1997), a second-degree felony. (App. C; Amended Information)

Petitioner entered a plea of no contest on September 8, 2000 and was sentenced in accordance with the plea agreement to concurrent terms of twenty-five years imprisonment for counts one and two, and to concurrent terms of fifteen years imprisonment for counts three and four, concurrent with count one. Petitioner was also designated a sexual predator. (App. D; Judgment of Conviction and Sentence)

Petitioner's timely appeal was dismissed on April 24, 2002, for failing to comply with court order. *Hughes v. State*, 818 So.2d 511 (Fla. 2D DCA 2002).

Petitioner filed several motions for postconviction relief which were unsuccessful.

On January 25, 2006, Petitioner filed a motion to correct illegal sentence

claiming his sentences were illegal due to the inclusion of victim injury, sexual penetration, and sexual contact points. Petitioner asserted the points were erroneously placed on his scoresheet without a specific finding by a jury or by his own admission and cited to *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004), to support his argument.

On February 23, 2006, the court denied the motion based on the fact that the victim injury points did not increase the sentences imposed beyond their statutory maximum as defined by *Apprendi*.

On Appeal, the Second District affirmed the denial of the motion and certified conflict with *Isaac v. State*, 911 So.2d 813 (Fla. 1st DCA 2005). *Hughes v. State*, 933 So.2d 1285 (Fla. 2D DCA 2006), *review denied*, 974 So.2d 386 (Fla. 2008).

On September 6, 2016, the Petitioner filed a Motion to Correct Illegal Sentence pursuant to Fla. R. Crim. P. 3.800(a), challenging his designation as a sexual predator claiming that the court should have applied the Florida Statutes that were in effect on the date of his sentencing on September 8, 2000, rather than the statutes in effect on the date of the crime. The Court denied the motion citing to *Vonador v. State*, 857 So.2d 323, 324 (Fla. 2D DCA 2003) [(" it is axiomatic that a criminal sentence is governed by the laws in effect at the time of the offense")]

A timely appeal was taken and *per curium* affirmed by the Second DCA on August 2, 2017. *Hughes v. State*, 2017 Fla. App. LEXIS 10938; Case No. 2D16-

4617 (Table).

On February 10, 2020, the Petitioner filed a Motion to Correct Illegal Sentence pursuant to Fl. R. Crim. P. 3.800(a), asserting that his designation as a sexual predator is illegal. Said motion denied on the merits by the Honorable Chris Helinger, Circuit Judge of the Sixth Judicial Circuit on February 27, 2020.

A timely appeal was taken to the Second DCA and *per curiam* affirmed on July 31, 2020.

This Petition then ensued.

Facts The Petitioner Relies Upon:

On September 1, 1998, the Petitioner was charged by Amended Information for an incident which occurred on November 14 and 15, 1997. (App. C; Amended Information).

In 1997, the Petitioner was the owner of two separate houses at 1726 and 1726½ Second Ave N., St. Petersburg, FL. Mr. Hughes co-defendants, John Woods and Eric Anderson, rented rooms in 1726, the front house. Mr Dean Goddard, the victim, resided in 1726½, the rear house with David Wasson the primary tenant.

On the night of November 14/15, 1997, Mr. Wasson asked Mr. Goddard to vacate the premises due to non-payment of rent. In assistance of this eviction, Mr. Wasson and Mr. Woods assaulted Mr. Goddard and attempted to throw Mr. Goddard out a second story window.

The Petitioner attempted to quell the situation and evict Mr. Goddard by removing him to the ground floor. After a scuffle with Mr. Goddard the police arrive and state that because Mr. Goddard has possessions and has resided on the premises, he cannot be evicted in this manner and escorted Mr. Goddard back to his room on the second floor.

At this time the Petitioner left the premises and returned 30 minutes later with his girlfriend, Connie Alderman, and continued indulging in alcohol with the tenants.

Believing that he had justification, due to his alcohol consumption and police involvement, Mr. Goddard demanded everyone vacate the premises and attempted to slam the door in Mr. Woods face dislodging a full length mirror which struck Mr. Woods bodily.

At this point everything escalated. Mr. Woods and Mr. Anderson pummeled Mr. Goddard within the bedroom. The Petitioner, in another attempt to quell the situation, then restrained Mr. Goddard by sitting him in a chair and holding his arms. When Mr. Woods dropped his pants, the Petitioner released Mr. Goddard and exited the room to stand with his girlfriend in the doorway.

At this point the Petitioner's co-defendant's, Mr. Woods and Mr. Anderson proceeded to beat Mr. Goddard unmercifully. This is when the sex offense occurred.

The Petitioner's girlfriend, Connie Alderman, described the situation under

oath at Mr. Woods trial:

> Q. [Ms. Rivellini, ASA[1]] Okay. What did you start to see happen?
>
> A. [Connie Alderman] Well, they started beating up on him.
>
> Q. When you say "they", who are you referring to?
>
> A. Eric [Anderson] and John [Woods].
>
> Q. What is Todd [Hughes] doing?
>
> A. He was standing in the doorway with me.
>
> Q. Is Todd saying anything?
>
> A. No, not that I remember.
>
> Q. And when you say beating on, what did you actually see take place by John?
>
> A. Well, they had all beat on the guy and hit him, but John was the one that had committed the sexual acts.

(Appendix F; John Woods Trial Transcripts; pg 258, lns 9-22)

> Q. Okay. And where was Todd when this was going on?
>
> A. He was in the doorway with me.
>
> Q. At any time did you see Todd direct John to do any of this stuff?
>
> A. No.

(Appendix F; John Woods Trial Transcripts; pg 259, lns 20-25)

During the incident Mr. Wasson was asleep in bed. At this time he was awoken and proceeded to clear the premises. The next day the police became involved.

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[1]Ms. Kimberly Rivellini, ASA, 5100 144th Ave. N., Clearwater, Florida 34620

REASONS FOR GRANTING THE PETITION

A. Mr. Hughes asserts that the "offender", as used in §775.21(4)(c), Fla. Stat. (1997), is the actual perpetrator of the offense and not a principal. By requiring the Petitioner to register as a sexual predator, the court has violated his constitutional rights against cruel and unusual punishment and due process, violations of the United States Constitution, Amendments 8 and 14.

In the case at bar, we have four people, two vicariously, participating in a sexual assault. The statute does not allow for a vicarious designation for the Petitioner because of the actions of his co-defendants. The statute clearly is meant to protect the public from the actual "offender" and not from a "principal offender".

If the state had charged the Petitioner with the commission of the actual sexual felony, then the statute would apply, and the Petitioner could be designated a Sexual Predator with all the requirements attached. Yet as it stands, the Petitioner was charged under "Chapter 794.011(3) / 777.011", Fla. Stat. (1997) as a principal, §777.011, not as the actual perpetrator.

Mr. Hughes asserts that the "offender", as used in §775.21(4)(c), Fla. Stat. (1997), is the actual perpetrator of the offense and not a principal. A principal is defined as:

> Whoever commits any criminal offense against the state,

> whether felony or misdemeanor, or aids, abets, counsels, hires, or otherwise procures such offense to be committed, and such offense is committed or is attempted to be committed, is a principal in the first degree and may be charged, convicted, and punished as such, whether he or she is or is not actually or constructively present at the commission of such offense.

§777.011, Fla. Stat. (1997)

The Legislative Intent, defined under §775.21(3)(a), Fla. Stat. (1997) states that "[r]epeat sex offenders, sex offenders who use physical violence, and sex offenders who prey on children are sexual predators who present an extreme threat to the public safety." The word "offender" clearly means the actual perpetrator of the crime not a non-participant who has been charged, convicted, and sentenced under the principal theory of guilt. *See State v. Dugan*, 685 So. 2d 1210, 1212 (Fla. 1996) (stating that if "the language of the statute is clear and unambiguous, a court must derive legislative intent from the words used without involving rules of construction or speculating as to what the legislature intended.") In addition, when a statute encroaches on fundamental constitutional rights, the statute also must be narrowly tailored to achieve the state's purpose. *Id.* (citing *In re Forfeiture of 1969 Piper Navajo*, 592 So.2d 233, 235 (Fla. 1992); 10A Fla. Jur.2d *Constitutional Law* §485 (2003)).

The legislative purpose of §775.21, (1997), The Florida Sexual Predators Act, is unambiguously clear: "It is the purpose of the Legislature that, upon the court's

written finding that an *offender* is a sexual predator, in order to protect the public it is necessary that the sexual predator be registered with the department and that the community and the public be notified of the sexual predator's presence." §775.21(d), Fla. Stat. (1997). (emphasis added).

The sexual battery chapter of the Florida Statutes, 1997, defines offender under §794.011(1)(d), as: "Offender means a person accused of a sexual offense in violation of a provision of this chapter." In addition, §794.011(3) states that "[a] person *who commits* sexual battery upon a person 12 years of age or older, . . . " (emphasis added).

Again, "offender" is defined as the actual perpetrator of the sex offense, and not a non-participant as defined under the principal statute.

In the case at bar, we have four people, two vicariously, participating in a sexual assault. The statute does not allow for a vicarious designation for the Petitioner because of the actions of his co-defendants. The statute clearly is meant to protect the public from the actual "offender" and not from a "principal offender".

If the state had charged the Petitioner with the commission of the actual sexual felony, then the statute would apply, and the Petitioner could be designated a Sexual Predator with all the requirements attached. Yet as it stands, the Petitioner was charged under "Chapter 794.011(3) / 777.011", as a principal, not as the actual perpetrator. *See State v. Rodriguez*, 602 So.2d 1270, 1271 (Fla. 1992) (The statute,

by its terms, does not allow for vicarious enhancement of defendant's sentence because of the action of his co-defendant.) (App. C; Amended Information; Count One – Sexual battery, a life felony "contrary to Chapter 794.011(3) / 777.011, Florida Statutes" (1997) (emphasis added)).

In *Rodriquez*, The Florida Supreme Court held that "section 775.087(1) does not, by its terms, allow for vicarious enhancement because of the action of a co-defendant." *Id.* at 1271. There, the trial court had reclassified Rodriquez's attempted first-degree murder conviction based on his co-defendant's use of a firearm during the offense. *Id.* The Supreme Court found this was error, holding that the plain language of the statute, section 775.087(1), required proof that "the defendant," not his co-defendant, possessed a firearm. *Id.* at 1272; §775.087(1), Fla. Stat. Because Rodriquez had not personally used the weapon, the Court affirmed the holding of the Third District Court of Appeal, which required the enhancement to be stricken, the charge of conviction to be reduced, and the defendant to be resentenced. *Id.*; *see also Campbell v. State*, 935 So.2d 614 (Fla. 3D DCA 2006) (offense cannot be reclassified under section 775.087(1) for use of a weapon without evidence that defendant, rather than his co-defendant, had personal possession of the weapon during the commission of the felony); *Alusma v. State*, 939 So.2d 1081 (Fla. 4th DCA 2006) (same); *Blanc v. State,* 899 So.2d 455 (Fla. 4th DCA 2005) (same).

This logic also applies to the Sexual Predator Act premised on the offender's

commission of an enumerated act: "Repeat sex offenders, sex offenders who use physical violence, and sex offenders who prey on children". §775.21(3)(a), Fla. Stat. (1997). In this statute, the word "offender' has a plain meaning: the perpetrator who commits the substantive criminal offense enumerated above. Therefore, the Florida Supreme Court's holding in *Rodriquez*, that "section 775.087(1) does not, by its terms, allow for vicarious enhancement because of the action of a codefendant" applies equally to the designation under the Sexual Predator Act. *Id.*

In addition, if the Legislature had intended for a principal offender to be designated as a sexual predator, they would have so stated in the statute. *See Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976) ("Hence, where a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned." (citing *Ideal Farms Drainage Dist. v. Certain Lands*, 19 So. 2d 234 (Fla. 1944))).

Furthermore, in order to enforce and apply the provisions of the Act, the trial court must render written findings based on statutory criteria to determine whether a person being sentenced for a designated criminal offense qualifies as a sexual predator. Thus this judicial function requires the trial court to uphold the declared public policy of the Legislature by acting as a fact-finder to determine whether the statutory criteria exist to designate an individual as a sexual predator and render a written order to that effect. *Kelly v. State*, 795 So.2d 135, 138 (Fla. 5th DCA 2001).

In *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Blakely v. Washington*, 542 U.S. 296 (2004), this Court has determined that any factual determination that enhances a defendant's sentence must be determined by a jury and not solely by the sentencing judge.

Mr. Hughes was standing in the hallway with his girlfriend and did not participate in any sexual abuse performed by his co-defendants. Mr. Hughes girlfriend, who was standing next to Mr. Hughes in the hallway, was never charged with any crime.(See Facts the Petitioner Relies Upon, *supra*).

Petitioner, as well as likely situated inmates, do not have the statutory criteria to meet this requirement. Mr. Hughes was convicted under the statutory principal theory and does not qualify as the "offender" under §775.21, which is required under *Kelly,* and Amendments 8 and 14 of the U.S. Constitution and similar state and Federal requirements.

B. Mr. Hughes, and likely situated inmates, were convicted under §777.011, the principal statute, which allows the state to charge and convict a non-participant for the crime of the actual offender or perpetrator.

Where a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned. *See* U.S. Const., Amend's 8 and 14.

Mr. Hughes was convicted of ss. 794.011(3) / 777.011, Fla. Stat. (1997), a charge not *specifically* enumerated under section 775.21.

If the legislature had intended for the provisions of that subsection to apply also to those persons, like the Petitioner, who were convicted of sexual battery as a principal, then it would have been a simple matter to state it plainly in the statute.

Mr. Hughes was convicted under §777.011, the principal statute, which allows the state to charge and convict a non-participant for the crime of the actual offender or perpetrator.

Mr. Hughes was charged by amended information with Count One: Sexual battery, a life felony "contrary to Chapter 794.011(3) / 777.011, Florida Statutes" (1997); and Count Three: Attempted sexual battery "contrary to Chapter 794.011(3)/777.04/777.011, Florida Statutes" (1997) (emphasis added). The state could only bring these charges by using the principal statute, §777.011, as Mr. Hughes was a non-participant in the actual crime under §794.011(3), as stated by his girlfriend under oath, *supra*, and by the prosecutor, Erik R. Matheney. (App. G; Letter from prosecutor containing exhibits A and B; Synopsis of case[2] and handwritten notes, respectively.)

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[2] "We want to No Info the Sex Batt for TODD HUGHES: Given the testimony of the victim, who cannot say that TODD HUGHES participated in the actual Sexual Battery and only remembers two people being present." (App. D; State's SYNOPSIS of case, last paragraph under RECOMMENDATION)

Where a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned. *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976) (citing *Ideal Farms Drainage Dist. v. Certain Lands*, 19 So. 2d 234 (Fla. 1944)); See also, U.S. Constitution, Amendments 8 and 14

Fla. Stat. §775.21(4)(c) 1., states that in order to be designated a sexual predator, "[t]he felony meets the criteria of former ss. 775.22(2) and 775.23(2), *specifically*, the felony is: a. a capital, life, or first degree felony violation of chapter 794 . . . " (emphasis added). Mr. Hughes was convicted of ss. 794.011(3) / 777.011, a charge not *specifically* enumerated under 775.21. *See State v. Weeks*, 202 So. 3d 1, 7 (Fla. 2016) ("[W]e are without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications.") (citations and internal quotation marks omitted); *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984).

In *Zopf v. Singletary*, 686 So. 2d 680 (Fla. 1st DCA 1996), the Court held :

> If the legislature had intended for the provisions of that subsection [section 794.011(7), Florida Statutes (1993)] to apply also to those persons, like the Petitioner, who were convicted of attempted sexual battery, then it would have been a simple matter to state it plainly in the statute. Where

> a statute specifically enumerates those persons to be covered, ordinarily the statute will be construed as excluding from its operation all those other persons not expressly mentioned.

Id. at 681-82; (citing *Desisto College, Inc. v. Town of Howey-in-the-Hills*, 706 F. Supp. 1479, 1495 (M.D. Fla.), *aff'd*, 888 F.2d 766 (11th Cir. 1989) and *Ideal Farms Drainage Dist. v. Certain Lands*, 154 Fla. 554, 19 So. 2d 234, 239 (Fla. 1944)).

The same logic applies to section 775.21, The Florida Sexual Predators Act. If the legislature had intended for the provisions of subsection (4)(c) to apply also to those persons, like the Petitioner, who were convicted of sexual battery as a principal, then it would have been a simple matter to state it plainly in the statute.

Mr. Hughes was not specifically convicted of a violation of chapter 794, but was convicted under a modified version using 777.011 which was not specifically enumerated in the designation statute.

CONCLUSION

Given that the State Courts have extended the provisions of §775.21(4)(c), Fla. Stat. (1997), to include non-participating principals, the provisions of the 8th Amendment to the U.S. Constitution, cruel and unusual punishment, have been

violated.

In addition, the due process provisions of the 14th Amendment have also been violated when the state court failed to follow *Apprendi* and *Blakely, supra*, by deciding factual issues outside the venue of the jury. These important issues, designating a non-participating principal to the sexual act as a sexual predator for lief constitutes cruel and unusual punishment not only for the Petitioner, but for all likely situated convictions.

Respectfully submitted,

Todd Hughes, DC #166098
Suwannee Correctional Institution Annex
5964 U.S. Hwy 90
Live Oak, Fla. 32060