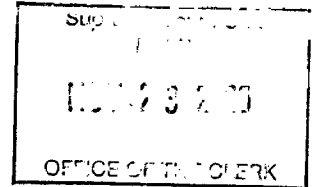


20-6698
No. _____

IN THE

SUPREME COURT OF THE UNITED STATES



RICHARD H. MORRISON - PETITIONER
(Your Name)

vs.

STATE OF FLORIDA - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SECOND DISTRICT COURT OF APPEAL

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

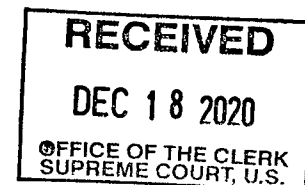
PETITION FOR WRIT OF CERTIORARI

RICHARD H. MORRISON
(Your Name)

DADE CORRECTIONAL INSTITUTION
1900 SW 377TH STREET
FLORIDA CITY, FLORIDA 33034

(Address)

UNKNOWN
(Phone Number)



Legal Mail
Received

NOV 24 2020 RM

Dade C.I.

QUESTION(S) PRESENTED

**DO THE STATE HAVE THE BURDEN, AND THEN THAT BURDEN
SHIFT BACK TO THE DEFENDANT TO CHALLENGE?**

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:

State Habeas Corpus in the Second District of Appeal, State of Florida.

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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 N/A 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☒ is unpublished.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 United States district court appears at Appendix N/A to the petition and is

☐ reported at N/A; 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☒ is unpublished.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 A 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☒ is unpublished.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 N/A court appears at Appendix N/A 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☒ is unpublished.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: _____, 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 None (date) on None (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 October 22, 2020.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: None, 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 an including None (date) on None (date) in Application No. None.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- **Manifest Injustice**
- **Due Process Violation**
- **Fourth Amendment Violation**
- **Fifth Amendment Violation**

STATEMENT OF THE CASE

On 03-26--2003, the Petitioner was sentenced to life as a (PRR) Prison Releasee Reoffender.

On 08-20-2020, the Petitioner Petition for Writ of Habeas Corpus in the Second District Court of Appeal, State of Florida asking for a De Novo Review from a previous Rules of Criminal Procedure 3.800(a) Motion to Correct Illegal Sentence.

REASONS FOR GRANTING THE PETITION

If this petition is not granted the Petitioner's sentence will constantly be an illegal sentence causing a manifest injustice. Also violating Petitioner's due process rights. The Petitioner alleges that the trial court failed to properly prove two or more predicate felonies as required to support the sentence. Riser v. State, 898 So.2d 116 (Fla. 2d DCA 2008) (resentencing offenses as enumerated in Section 775.084 Florida Statutes). The Petitioner is seeking a fair review in the face of justice. After the jury rendered its verdicts finding the Petitioner guilty the trial court immediately proceeded to sentencing. See Trial Transcript as (EXHIBIT). The evidence of prior convictions was not provided to the trial court as proof to requirement enhanced sentence. Morrison v. State, 911 So.2d 111 (Fla. 2d DCA 2005). The State requested that Petitioner Morrison be sentenced as a PRR, however the State did not introduce no evidence to support a finding that the Petitioner qualified for an enhanced sentence. Therefore, the facts in Dean v. State, 199 So.3d 932 (Fla. 4th DCA 2016); and Petitioner's case are similar when it come to the issue of (PRR) enhancement sentencing.

The difference is Dean was remanded for resentencing. In order to impose a Prison Releasee Reoffender (PRR) sentence, the sentencing court must find that a defendant has been released for prison no more than three years before he commits the crime for which the prison releasee reoffender sentence was imposed. Fla. Stat. ch. 775.082(9)(a)(1)(2003). Proof of the release date is an essential requirement for sentencing pursuant to the prison releasee reoffender act. See Sinclair v. State, 853 So.2d 551, 552 (Fla. 1st DCA 2003) (holding competent proof of appellant's released date from prison "essential to the imposition of [a] PRR sentence"). The State had the burden of providing Petitioner's released date based on competent evidence. The Petitioner was on Conditional Release at the time. See King v. State,

509 So.2d 1032, 1033 (Fla. 1st DCA 1991) (holding probation officer's testimony regarding defendant's release date, based on an unauthenticated document.) Department of Corrections computer printout improperly admitted testimony, the evidence is legally insufficient to support the trial court's finding that appellant is an habitual felony offender") In Yisrael II, the Florida Supreme Court holding a Department of Correction's letter alone is insufficient to support sentencing as a prison releasee reoffender. The Second District is in conflict with the Florida Supreme Court's decision. See Morrison v. State, 911 So.2d 111 (Fla. 2d DCA 2005). This former appeal will clearly demonstrate from the face of the record that the imposition of the (PRR) sanction was based upon insufficient evidence. Which is erroneous, incorrect and inconsistent with the law or the facts. The appeal court is clearly conflicting with the decisions of the Florida Supreme Court which is a Manifest Injustice. In Martinez v. State, 211 So.3d 989p 991-92 (Fla. 2017) the Florida Supreme Court observed: Pursuant to the rules of criminal procedure, a court may at any time correct an "illegal sentence" when the pertinent court records demonstrate on their face that a defendant is entitled to relief. Fla. R. Crim. P. 3.800(a)(1); see also Carter v. State, 786 So.2d 1173, 1176 (Fla. 2001) ("[R]ule 3.800(a) vests trial courts with the broad authority to correct an illegal sentence without imposing a time limitation on the ability of defendants to seek relief"). The fact is, all of this time and expense could be avoided if prosecutors were prepared with proper and sufficient evidence of (PRR) status, and if they are not, the trial judges would refuse to impose (PRR) sentencing. It seems so obvious, so fundamental, yet apparently, this has not been the order of things. The following is but a small sampling of appellate cases from each district court's of appeal involving the prosecutors' failure to present the information needed to correct enhanced sentencing that had been imposed. See McNair v. State, 920 So.2d 111 (Fla. 1st DCA 2006); Roger v. State, 944

So.2d 513 (Fla. 4th DCA 2006); Riser v. State, 898 So.2d 116 (Fla. 2d DCA 2005) also Suarez v. State, 808 So.2d 1288 (Fla. 3d DCA 2002). It is permissible for a trial court to take judicial notice of its own files, but the trial judge has to put such evidence in the record of each case when sentencing a defendant as an habitual felony and a prison releasee reoffender. The allegations made by the Petitioner must be accepted as true until refuted conclusively by the record. See Glover v. State, 871 So.2d 1025 (Fla. 1st DCA 2004); Sinclair v. State, 853 So.2d 551 (Fla. 1st DCA 2003); Stabile v. State, 790 So.2d 1235 (Fla. 5th DCA 2001), decision approved, 838 So.2d 557 (Fla. 2003); cf. Boyd v. State, 776 So.2d 317, 318 (Fla. 4th DCA 2001). The State must provide record evidence of the date of the defendant was released from any prison term of supervision imposed for the last felony conviction. The State has the burden of proving by a preponderance of the evidence that the defendant qualifies as a (PRR).

CONCLUSION

For the reason explained above and the facts demonstrated in the cases below Rich v. State, 814 So.2d 1207, 1208 (Fla. 4th DCA 2002) (holding that because resentencing following reversal is a new proceeding, the State must introduce evidence that the defendant qualifies for enhanced sentencing. Mills v. State, 724 So.2d 173, 174 (Fla. 4th DCA 1998) (holding that even though the defendant did not challenge his prior convictions at the original sentencing, law-of-the-case principles do not insulate the State from providing them at resentencing); Baldwin v. State, 700 So.2d 95, 96 (Fla. 2d DCA 1997) (agreeing that because resentencing is a new proceeding, the defendant may challenge the accuracy of prior convictions included on his scoresheet, even though he did not challenge them at the original sentencing).

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard H. Morrison

Richard H. Morrison

Date: 11-23-2020