

20-7454 ORIGINAL
No. _____

FLSC No.: SC20-729

FILED

AUG 24 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Delwyn Manuel — PETITIONER
(Your Name)

vs.

Mark S. Inch, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Florida / Second District Ct. of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Delwyn Manuel
(Your Name)

110 Melanuca Dr. Crawfordville FL 32327
(Address)

Wakulla Correctional Inst. M/4
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether PETITIONER IS ENTITLED TO BE RESENTENCED TO 30 YEARS THE MAXIMUM PUNISHMENT ALLOWED UNDER THE STATUTE 794.011 PRIOR TO THE NEW PROVISION AND PENALTY OF THE STATUTE 794.01(8)(b) THAT TOOK EFFECT ON 10-1-14. WHEREAS THE PETITIONER WAS CHARGED BY FELONY INFORMATION FOR ACTS COMMITTED NOVEMBER 3, 2012 AND MAY 17, 2016 AND A LIFE SENTENCE IS A DUE PROCESS VIOLATION ENTITLING A RESENTENCE TO 30 YEARS AS A MATTER OF LAW.

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APPENDIX A	<i>Decision of the State Court of Appeals, (Second DCA);</i>
APPENDIX B	<i>Decision of the State Trial Court, (Tenth Circuit); (Judgment-B.3)</i>
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APPENDIX H	<i>Pending Writ of habeas Corpus up for Certiorari review of Manifest injustice under Article 6, § (2); See also, Appendix H, page #. 5, 8, 12, 15, 21, and - 25.</i>
APPENDIX I	<i>Petition For <u>"ALL WRITS ACT"</u> relevant to Cited Cases.</i>

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NOTICE: > In Re: To ALL WRITS ACT; see Appendix I.(1)-(13);
*> Record on Appellate Review;

TABLE OF AUTHORITIES CITED

State Cases:

CASES: The Following Citations relates to The All-Writs Act " PAGE NUMBER

<u>Acker v. State</u> , 787 So. 2d 77 (Fla. 2d DCA 2001),	12
<u>Booker v. State</u> , 503 So. 2d 888-89 (Fla. 1987),	8
<u>Burrell v. State</u> , 606 So. 2d 628 (Fla. 2d DCA 1992),	10
<u>Carter v. State</u> , 786 So. 2d 1173, 1180 (Fla. 2001),	7
<u>Denson v. State</u> , 775 So. 2d 288, 290 (Fla. 2000),	10
<u>Figueras v. State</u> , 84 So. 3d 1158 (Fla. 2d DCA 2012),	(Caption)
<u>Porter v. State</u> , 626 So. 2d 286 (Fla. 2d DCA 1993),	12
<u>West v. State</u> , 823 So. 2d 174 (Fla. 2d DCA 2002),	13
<u>Whalen v. State</u> , 895 So. 2d 1222 (Fla. 2d DCA 2005),	13
<u>State v. Burton</u> , 314 So. 2d 136, 138 (Fla. 1975),	7.

STATUTES AND RULES:

Fla. Stat. ch. 794.011(8)(a),	4
Fla. Stat. ch 794.011(8)(b),	4
Fla. Stat. ch 794.011(?) (?),	5
Florida Rules of Crim. P.:	
Rule 3.850,	3
Rule 3.800(a)),	7
Fla. R. App. P.:	
Rule 9.141(b)(2),	1
Rule 9.120,	2
Rule 9.120,	9
U.S. Sup. Ct. Rule 10,	(Caption).

OTHER:

<u>Article I, § 9, Florida Constitution</u> ,	8.
<u>Constitutional Amendments Violated under The 4th, 5th, 6th and 14th,</u> <u>Amendments to the United States Constitution,</u>	3;
<u>Unaffiliated (Written Findings), see Appendix B. (1) Unauthorized,</u> <u>see Appendix I, and H. (entirely); denied, Absent due process of law,</u> <u>lack of Authority At appendix B. (5), unsigned Commitment papers.</u>	

TABLE OF AUTHORITIES CONTINUATION

Federal - Cases;

CASES: > In re: of "ALL WRITS ACT; Appendix I. (3)(H);	PAGE NO:
<u>Breedlove v. Singletary</u> , 595 So. 2d 8, 10 (Fla. 2000),	10
<u>Brown v. Allen</u> , 344 U.S. 449 n. 3 (1953),	11
<u>Coleman v. Maxwell</u> , 351 F. 2d 285, 286 (CA 6, 1965),	11
<u>Fay v. Noia</u> , 372 U.S. 391, 438 (1963),	11
<u>Hooper v. Wainwright</u> , 168 So. 2d 769, 770-71 (Fla. 2d DCA 1964),	11
<u>Miller v. Singletary</u> , 958 F. Supp. 572 (M.D. Fla. 2d DCA 2001),	12
<u>Roberts v. LaVallee</u> , 389 U.S. 40, 42-43 (1967),	11
<u>Rose v. Clark</u> , 478 U.S. 570, 577-78, 106 S. Ct. 3101, 3105-06, 92 L. Ed. 2d 160 (1986),	14
<u>Sullivan v. Louisiana</u> , 508 U.S. 275, 282, 113 S. Ct. 2078, 2088, 124 L. Ed. 2d 182 (1993),	14
<u>Strazzula v. Hendrick</u> , 177 So. 2d 1, 4 (Fla. 1965),	4
<u>U.S. v. Agurs</u> , 427 U.S. 97, 103-04, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976),	(Caption)
<u>U.S. v. Cronin</u> , 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 567 (1984),	12
<u>Vasquez v. Hillery</u> , 474 U.S. 254, 263-64, 106 S. Ct. 617, 623, 88 L. Ed. 2d 598 (1986).	

ISSUE ONE: Here, this Court should conclude that a Manifest injustice has occurred under "Structural error," warranting an immediate resolution upon the direct conflict before this Honorable Court, in violation of Petitioner's 4th, 5th, 6th, and 14th Amendment rights, see Writ of Certiorari Petition, 3.

See Also, Appendix H, habeas Corpus; pages 1-25 For review.

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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;
Notice, > AS No State orders were establish or Allow for Federal review.*

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: DCA was last result to Florida Supreme Ct.

The opinion of the highest state court to review the merits appears at Appendix C-1 to the petition and is

☒ reported at CASE No. 2D20-307 And SC20-729; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Florida Supreme court appears at Appendix D-1 to the petition and is

☒ reported at 775 So.2d 288, 290/595 So.2d 810 (Fla. 1992) 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 N/A.

☐ 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/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 July 22, 2020.
A copy of that decision appears at Appendix C-1.

☒ A timely petition for rehearing was thereafter denied on the following date: April 3, 2020, and a copy of the order denying rehearing appears at Appendix E-(6).

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Florida Rules of Court:	Page No:
Rule 3.850 - Postconviction	3,
Rule 3.800(a),	7,
Rule 10 et seq. Sup. Ct.	11.
Florida Rules of Appellate Procedure:	Page No:
Rule 9.100(a),	(Caption)
Rule 9.030(a),(2)(A),	(Caption)
Rule 9.141(b)(2),	1,
Rule 9.120,	2,
Rule 9.120,	9.

Florida's > Constitutional Amendments Violated: Page No:

Constitutional Amendments: 4th, 5th, 6th, and 14th:	3;
<u>4th Amendment:</u> For the DNA Warrant Alteration Formed by the Statute's degree. From Ch. 794.011(8)(a), a 3rd-degree Felony; to a First-degree under Fla. Stat. ch. 794.011(8)(b), see Appendix G. (1); Contrary to the Order of the Court Appendix F. (1), application for Search Warrant; to obtain DNA from Petitioner, unchanged by State, see Appendix E (1). State's Charging "information", which fails to charge specific-section to direct the punishment, reference at G. Appendix, A (b)(3).	
<u>5th Amendment:</u> Double jeopardy attaches to any increment of a Charged Statute after the Fact;	
<u>6th Amendment:</u> Petitioner had a Constitutional right to Confront any Charged Offense under the 6th Amendment's Confrontation Clause, Violated here absent due review on "Structural error";	
<u>14th Amendment:</u> Petitioner's Due process Rights to a Fair and impartial trial was violated under Article I, section 9, Fla. Const.,	
	8.

STATEMENT OF THE CASE

1. On February 19, 2020 Petitioner Filed a Followup Petition of his pending Rule 3B00(a) and 3.850 Postconviction Motion disclosing Multiple Issues and Arguments under "Structural error defects" in the trial Court Mechanism and the Charging document, Citing Figueras v. State, 84 So. 3d 1158 (Fla. 2d DCA 2012); under a "Manifest injustice", (quoting Adams v. State, 957 So. 2d 1183 (Fla. 3d DCA 2006), Among other Cases in support of preventing a "Manifest Miscarriage of justice" and Cited Strazzula v. Hendrick, 177 So. 2d 1, 4 (Fla. 1965),
2. The trial Court erred by imposing a Sentence of (Natural Life) upon a "Second-degree" Charged offense; Petitioner's Claims are Meritorious and Could have been Corrected without an evidentiary hearing from the Face of the record. "The Sentence exceeding Statutory Maximum" is (Fundamental error); which resulted in a Condemned Conviction on the illegal Sentence, see Attached Petition for Writ of Certiorari seeking review of State Court Actions denying due review on State level and Fraud on the Court for the increasement of the Charged Statute's degree after the Order of the Court had been "issued," etc. in support as follows:
3. On January 27, 2020, Petitioner received an Acknowledgment of new Case from the Second District Court of Appeals pursuant to Rule 9.141 (b)(2), no optional brief was Filed; but the Court issued a "Sua Sponte" denial on Petitioner's pending habeas Corpus Writ demanding review and release if proved as Stated in the Facts under a "Manifest injustice exception" which is thoroughly litigated in the habeas Corpus Writ Filed in the Second District Court of Appeals, see Attached Certiorari and Habeas Corpus Writ under Exhibit F.(1); H(6)-(31); And Appendix I.(1)(28).

REASONS FOR GRANTING THE PETITION

4. The record of this Case reveals a Clear "Manifest injustice" under Malicious prosecution, such which Merits a "Great Public Importance"; denial of due process under State Court review for the Conviction entered as a (Natural Life Sentence) for a second-degree Charge as a First under Sexual Battery, Vic. 12-17, Familial or Custodial Authority, see Exhibit appendix B (1), which is not a (1 DEG FEL, PBD) (Level-9) under the order of the Court issued for the Warrant under Fla. Stat. ch. 794.011(8)(a), which was altered to a First-degree under Fla. Stat. ch. 794.011(8)(b) as a PBL. Which State omits to alleged the specific Section of the Statute's subsection to know the punishment and the penalty to impose; thus, there was no State Court Challenges Allowed in the State Courts! "denying due process of law," and the "equal protection of the law," totally discriminated Against the petitioner who now seeks review by Certiorari of this Court to Correct the injustice that binds him unlawfully and illegal against his Free Will of Choice by unlawful force, and a forcible Will is not a Free Will of Choice; etc. -> (Granting this review).

Note That:

5. Even if Mr. Manuel had a First-degree Felony he Could not have received a "Natural Life Sentence" because of the 'Age'; he Could only had received 30-years because this was not a Capital Case under 12-years of Age; therefore this Court should Order Corrections for these Manifest Structural errors by Reverse and Remand for a legal Sentence of (15-year) for the Second-degree offense

CONCLUSION

6. > The petition for a writ of certiorari should be granted.

This Be So Prayed;

Respectfully submitted,

Delwyn P. Manuel

Date: August 24, 2020

Date: reFiled, November 16, 2020.