

20-7575

NO.:

Appeal Number: 19-0243-7

IN THE
SUPREME COURT OF THE UNITED STATES

In re, IVORY LEE ROBINSON,

VS.

MARK INCH, Secretary, Florida Department of
Corrections, Respondent(s).

ORIGINAL

FILED

MAR 16 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

RULE 20(1) ON A PETITION FOR AN EXTRAORDINARY WRIT TO:

MARK INCH, Secretary, Florida Department of Corrections

PETITION FOR WRIT OF HABEAS CORPUS

IVORY LEE ROBINSON, DC# 022383

OKEECHOBEE CORRECTIONAL INSTITUTIONAL
MAIN UNIT

3420 N.E. 168th STREET
OKEECHOBEE, FLORIDA, 34972
"PRO SE"

1 of 33

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Ground/Issues Resolved

Ground Includes Issues (1), (2) and (3):

PETITIONER HE IS IN CUSTODY IN VIOLATION
OF THE CONSTITUTION AND LAWS OF THE UNITED STATES,
U.S.C.A. CONST. AMEND. 5, 6, AND 14.

ISSUE (1):

Petitioner he is in custody unlawful from a
judgment and conviction that was rendered on an
"Attempt-Crime" not charged by the charging
information. The judgment and conviction thereon, it
is a violation of the Petitioner's rights to due process
and equal protection of the law, U.S.C.A. Const Amend
5, and 14.

ISSUE (2):

Petitioner he is in custody unlawful from the
state trial courts enhancement of his Attempted
Second-Degree murder conviction by jury, from a
second-degree felony, to a first-degree felony, that
because the jury did not find the defendant...
"Actually" possessed a firearm. The enhancement
is a violation of his rights to due process and
the equal protection of the law, U.S.C.A. Const.
Amend 5, 6 and 14.

Issue(3):

Petitioner he is in custody unlawful. The mandatory minimum of 25 years imposed on Count (1), (Attempted Second-Degree Murder with a Firearm) is illegal because the jury did not find that Petitioner caused death or Great bodily harm. The mandatory sentence is a violation of his rights to due process, and the Equal Protection of the law, U.S.C. A. Const. Amend 5, 6, and 14.

TABLE OF CONTENTS

PAGE NUMBER(S)

TABLE OF CONTENTS.....	4
TABLE OF AUTHORITIES.....	5-6
LIST OF PARTIES.....	7
OPINION BELOW.....	8
JURISDICTION.....	9-10
CONSTITUTION AND STATUTORY PROVISIONS INVOLVED.....	11-12
STATEMENTS OF THE CASE AND FACTS.....	12-17
PETITION FOR AN EXTRAORDINARY WRIT.....	18-19
EXHAUSTED AVAILABLE REMEDIES.....	19-22
REASON FOR GRANTING THE WRIT.....	23-31
CONCLUSION.....	31
PROOF OF SERVICE.....	32-33

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER(S)
<i>Allenye v. United States</i>, 570- -U.S. S.ct. 99, 107-08 (2013).....	10, 28
<i>Apprendi v. New Jersey</i>, 530- -U.S. 446, 120 S.ct. 2348, 147 L.ed. 435 (2000).....	10, 26, 28
<i>Boyd v. U.S.</i>, 754- -F.ed 1298, 1302 (11th Cir. 2016).....	24
<i>Brecht v. Abrahamson</i>, 507- -U.S. 619, 629-30 (1993).....	18, 19, 24
<i>Byrd v. U.S.</i>, 269- -F.3d. 585, 585-86 (6th Cir. 2001).....	29
<i>Cole v. Arkansas</i>, 333- -U.S. 196, 1201, 60 S.ct. 574, 577, 92 L.ed. 644 (1948).....	10, 18, 25
<i>Cooper v. Woodford</i>, 358- -F.3d. 1117, 1118 (9th Cir. 2004).....	29
<i>Fry v. Piller</i>, 551- -U.S. 112, 119-20 (2007).....	24
<i>Hill v. Turpin</i>, 135- -F.3d 1411, 1419 (11th Cir. 1998).....	29

CASES TABLE OF AUTHORITIES LITED PAGE NUMBER(S)

Hill v. U.S., 821- -F.3d. 560, 562 (7th Cir. 2016).....	29
Jackson v. Virginia, 443- -U.S. 307, 332 U.S. 99 S.Ct. 2781, 2796, 61 L.Ed.2d 560 (1979).....	10, 18, 25
Johnson v. United States, 544 U.S.- 295, 125 S.Ct. 1571, 161 L.Ed.2d 542 (2005).....	24
Medberry v. Crosby, 357- -F.3d. 1049 (CoA. 11 (Fla) 2003).....	28, 29
Triestman v. U.S., 124- -F.3d. 361, 367 (2d Cir. 1997).....	29
U.S. v. Cotton, 535-U.S. S.Ct. 625, 630 (2002).....	9, 10, 29
U.S. v. Glick, 142- -F.3d. 520, 523 (2d Cir. 1998).....	18
U.S. v. Henry, 288- -F.3d. 657, 660 (5th Cir. 2002).....	18
U.S. v. Rosa-Ortiz, 348- -F.3d. 33, 36 (1st Cir. 2003).....	10, 18

LIST OF PARTIES

All parties that do not appear in the caption of the case on the cover page:

Honorable, ASHLEY MOODY, A.G. at: The office of the Attorney General, The Capitol, PL-01, TALLAHASSEE, FLORIDA. - Zip 32399-1050.

A list of all parties to the proceeding in the courts whose judgment is the subject of this is as follows:

Appendix-C, The Judgment of the United States Court of Appeal for the Eleventh Circuit.

Appendix-A, The Judgment of the United States District Court for the Northern District of Florida, Gainesville Division.

Appendix-B, The Judgments of the State trial court for the Eighth Judicial Circuit; And: The Judgments of the State Court of Appeals.

IN THE

Supreme Court of the United States

Petition for writ of habeas corpus

Petitioner respectfully prays that a writ of habeas corpus issue to review the judgment below.

Offitious Below

[] for cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is [] is unpublished

The opinion of the state district court appears at Appendix B to the petition and is [] is unpublished

JURISDICTION

THIS IS an action invoking the Supreme Court of the United States original jurisdiction, pursuant to Supreme Court's Rule 17. (1); This rule applies only to an action invoking the courts original jurisdiction under Article III of the Constitution of the United States. See also 28 U.S.C. § 1251 and 28 U.S.C. Const. Amdt. 11. A petition for an extraordinary writ in aid of the Court's appellate jurisdiction shall be filed as provided in Rule 20. Further, the Court's jurisdiction is invoked:

For 28 U.S.C. § 2241(a): Writ of habeas corpus may be granted by the Supreme Court, any Justice thereof, in writ 2241(c)(3): He is in custody in violation of the Constitution or laws or treaties of the United States;

Pursuant to 28 U.S.C. § 2254(a): The Supreme Court, a Justice thereof, shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. and;

For 28 U.S.C. § 2243: A Court, Justice or Judge, entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

Therefore this Court also has subject matter jurisdiction, on this petition subject as a matter of law;

/s/ U.S. V. Cotton, 535 U.S. 625, 430 (2002) (subject matter — 9 of 33

— Jurisdiction Never forfeited or waived; defects in Jurisdiction require Correction regardless of whether error raised in district Court; e.g., U.S. v. Rosa-ortiz, 348 F.3d. 33, 36, (1st Cir, 2003) (Jurisdiction Challenge to indictment because it failed to state an offense proscribed by federal law may be raised at any time).

Per *Loh v. Arkansas*, 333 U.S. 196, 120, 68 S.Ct. 514, 517, 92 L.Ed. 644 (1948) ("Due Process prohibits an individual from being convicted of an uncharged crime"), (Same) *Jackson v. Virginia*, 443 U.S. 307, 332, 99 S.Ct. 2781, 2796 N. 5, 61 L.Ed. 2d 540 (1979) ("A conviction upon a charge not made or upon a charge not tried is a denial of due process, U.S.C.A. Const. Amend. 14"). And:

Pursuant to *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L. Ed. 435 (2000): "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt"; *Alleyne v. United States*, 133 U.S. S.Ct. 2151, at [N-1] Citing "Apprendi" because the mandatory minimum sentences increases the penalty for a crime, any fact that increases the mandatory minimum is a "element" that "must" be submitted to the jury and found by the jury beyond a reasonable doubt. U.S.C.A. Const. Amend. 6.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

1. The Constitution of the United States, U.S.C.A. Const. Amend. 6. "Guarantees Criminal defendant the right to a Speedy and Public trial by Jury, also Guarantees them the right to be informed of the Charges.
2. The Constitution of the United States, U.S.C.A. Const. Amend. 14. This amendment also Prohibits the states from depriving any person of "Liberty" without Due Process of law, "etc.", and Guarantees all persons "Equal Protection" of the Laws.
3. Article III of the Constitution of the United States, this Article applies only to an action invoking the Court's Original Jurisdiction.
4. 28 U.S.C. § 2241(c)(3), He is in custody in Violation of the Constitution or laws or treaties of the United States.
5. 28 U.S.C. § 2254(a), The Supreme Court, a Justice thereof, a Circuit Judge, or a district Court shall entertain an application for a writ of habeas Corpus in behalf of a person in custody pursuant to to Judgment of a State Court only on the ground that he is in custody in Violation of the Constitution or laws or treaties of the United States.

6. 28 U.S.C. § 2243, a Court, Justice, or Judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the Respondant to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

STATEMENT OF THE CASE

PETITIONER, IVORY LEE ROBINSON, Pro Se, ("Petitioner" below, referred to herein as In re, Robinson or Petitioner") was sentenced to a term of 25 years mandatory minimum and a term of 3 years minimum mandatory to run concurrently with the 25 year mandatory minimum sentence, after being convicted by a jury of Attempted Second Degree Murder, Possession of a firearm by Convicted Felon.

In re, Robinson appealed his conviction (through Counsel) to the Florida First District Court of Appeal, which (per curiam affirmed) his conviction without written opinion on Direct Appeal on November 16, 2004 in Case No. 1D03-4314. Robinson v. State, 888 So.2d 25 Fla. 1st DCA, 2004. The Court's Mandate issued December 2, 2004.

ON January 29, 2018, Petitioner filed a fourth Petition for writ of habeas corpus in the U.S. District Court assigned Case No.: 18-cv-20-MW/LAS, Challenging (his) 2003 Alachua County Circuit Court Judgment and Mandatory minimum—Sentence entered Under Case No.: 01-2002-CF-002039-A.

ON December 20, 2018, The U.S. District Court's Magistrate Judge issued (his) report and recommendation deciding that this federal habeas petition challenging the Judgment of Alachua County Circuit Court Case No.: 01-2002-CF-002039-A, is Successive and should be dismissed.

Conclusion

For the reasons stated above, this petition is an unauthorized second or successive petition. Therefore, this court does not have jurisdiction to consider it and it should be dismissed.

ON February 1, 2019. The U.S. District Court Judge issued an order accepting Magistrate Judge's Report and Recommendation stating the Report and Recommendation is accepted and adopted over the Petitioner objection, as this Court's opinion. The Clerk shall enter judgment stating, Respondent's Motion to dismiss, is Granted, the Petition for writ of habeas Corpus is DISMISSED. "etc." In Case No.: 1:18 CV-20-MW/LAS.

ON March 12, 2019. An Appeal was taken, Appeal Number: 19-10545 D. ON May 22, 2019. The Appeal was Dismissed.

ON June 10, 2019. The Petitioner filed his motion in the Court of Appeals, an application to file a second or successive Habeas Petition. Appeal Court's Case No.: 19-12243-F,

ON December 21, 2019. The Petitioner received an acknowledgement that the Court had on July 10, 2019, entered an order DISMISSED to his Motion/Application for leave to file a Second or successive Motion. The Court stated ("Lack Jurisdiction") "etc," and No further action will be taken in this matter. Appeal Court's Case No. 19-12243-7.

ON or about January 6, 2020. The Petitioner file a motion requesting the Court of Appeal to decide on it's own to rehear this case, because the underlying facts giving raise to his petition claims they did not exist at the conclusion of his initial 2254 Petition and that the Claims raised in his Second and third Petition for writ of habeas corpus, was not adjudicated on their Merits

ON July 29, 2020. The Court of Appeals response to the above motion factual basis was none, but Stated that an application to file a Second or successive Habeas Petition or Motion to Vacate was filed in this Court on June 10, 2019,

An order was issued on your application on July 10, 2019, "etc." Therefore, No action will be taken.

STATEMENT OF THE FACTS TRIAL

As To Ground/Claim (1):

1. ON July 28, 2003. The office of the state Attorney for the Eighth Judicial Circuit, Prosecuting for the State of Florida, filed in open Court an Amended Information, Under Oath, Alleged by Information, In Pertinent Parts: —

— That IVORY LEE ROBINSON, in Alachua County, Florida, on or about May 26, 2002, "unlawfully and by an act imminently dangerous to another, and evincing a depraved mind regardless of human life, but without a premeditated design to effect the death of any particular person, in violation of Section 782.04(2), Florida Statutes." appears at Appendix D Pgs 1-2)

2. In re, Robinson assert that the State Prosecuting Amended Information "did not" under oath, allege that IVORY LEE ROBINSON, in Alachua County, Florida, on or about May 26, 2002, "unlawfully intentionall committed an act which would have resulted in the death of WILLIAM FRANK MABREY except that someone prevented IVORY LEE ROBINSON from Killing WILLIAM FRANK MABREY or he failed, "Nor" does Information allege or charge that In re, Robinson with in violation of Section 777.04(1), Florida Statutes," appears at Appendix D Pgs 1-2)

3. In re, Robinson assert that the State Trial Court's Standard Jury Instruction reflects, F.S. 777.04(1), (ATTEMPTED SECOND DEGREE MURDER):

Before you can find the defendant guilty of an Attempt Second Degree murder, the State must prove the following two elements beyond a reasonable doubt:

1. IVORY LEE ROBINSON intentionally committed an act which would have resulted in the death of WILLIAM—

-FRANK MARRY except that someone prevented Ivory Lee ROBINSON from killing WILLIAM FRANK MARRY or he failed.

2. The act was imminently dangerous to another and demonstrating a depraved mind without regard for human life. Appears at Appendix D pg 3).

4. In re, Robinson assert that the jury's verdict, "ase the jury, find as follows as to the defendant Ivory Lee ROBINSON in this case:

As to Count-one):

The defendant is guilty of Attempted Second Degree murder, as charged in count (1) of the Information. (Emphasis added):

The jury's conviction was made on an attempt offense, not charged by the states Amended Information. Appears at Appendix D pg 4).

5. In re, Robinson assert as to Count (1), that the State trial court Amended judgment alleges in pertinent parts:

The defendant Ivory Lee ROBINSON, been tried and found guilty by jury of the following crime(s) Count (1), Crime-Attempt murder in the Second Degree while armed with a firearm, -offense Statute Numbers) 772.04/782.04(2), Degree of Crime 1st Degree. (Emphasis added):

The trial court's Amended judgment was entered on an offense statute Number 772.04, not alleged in the state prosecuting Attorney's charging Amended Information. Appears at Appendix D pg 4).

6. The Petitioner asserts that, as to this Petitioner's "second and third" claims hereof, the jury's Verdict form reflects that the... jury found that the defendant "possessed" and discharged a firearm, and by the discharge of said firearm caused injury to another person. appears at Appendix D Pg-4). Accordingly:

7. As to the Petitioner's Second-Ground/Claim. The state lower courts judges finding from the Preponderance of the evidence the Statutory required, that the Defendant, "actually" possessed a firearm, violated his rights to a fair trial by jury. appears at Appendix B Pg 6),

8. As to the Petitioner's third-Ground/Claim. The state lower courts judges finding from the Preponderance of the evidence the Statutory required, that the Defendant, "he caused Great bodily harm" to another person, violated his rights to a fair trial by jury. appears at Appendix B Pg 6).

9. As to the Petitioner's third-Ground/Claim. The state Court of Appeals judges finding from the Preponderance of the evidence the Statutory required, that the Appellant, "he caused Great bodily harm" to another person, and affirm the trial court's denial of defendant's Rule 3.800(a) motion, was a denial of the Petitioner's rights to due-process of law, and fair proceedings under the law. appears at Appendix B Pgs 9-23)

Pursuant to Rule 20(1). Procedure on a Petition for an Extraordinary writ:

To justify the granting of the writ in this case, it would be to "Cure" a "Miscarriage of justice," where the Petitioner here, he is in Custody in Violation of the Constitution and laws of the United States, U.S.C.A. Const. Amend. 5, 6, and 14. a denial of due Process of law, and Equal Protection of the law, U.S.C.A. Const. Amend. 14. This writ will be in aid of the Court's appellate Jurisdiction, as proscribed by Federal and state laws, because the Petitioner is being "unlawful-detained." In accordingly:

See, e.g., U.S. v. Rosa Ortiz, 348 F.3d 33, 36 (1st Cir. 2003) (Jurisdiction Challenge to Indictment because it failed to state an offense proscribed by federal law may be raised at any time); e.g., U.S. v. Glick, 142 F.3d 520, 523 (2d Cir. 1998), U.S. v. Henry, 298 F.3d 657, 660 (5th Cir. 2002) (Same) State v. Gray, 435 So.2d 816, 818 (Fla. 1983). Also, Cole v. Arkansas, 333 U.S. 196 (1948) (In Pertinent-Part: The Fourteenth-Amendment Prohibition on Convictions for Uncharged Crime. (Same) Jackson v. Virginia, 443 U.S. 307 (1979).

See > Brecht v. Abrahamson, 507 U.S. 619, 623, 629-30 (1993),
(In Pertinent-Part: ("Habeas relief is automatically granted-

[F-11]....(Indictment and Information)-"Complete failure of accusatory instrument to charge crime is a defect that can be raised at anytime, before trial, after trial, on appeal or by habeas corpus." State v. Gray, 435 So.2d 816, 818 (Fla. 1983), (Citing Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.ed. 1093 (1940), DeJonge v. Oregon, 299 U.S. 353, 57 S.Ct. 255, 81 L.ed. 278 (1937).

-for "structural defect". The violations hereby in this instant case, they rises to the level of a "fundamental-defect" which inherently resulted in a complete "misarrangement of justice." That "exceptional circumstances" should without a doubt, warrant the exercise of the courts discretionary powers to grant this petition for a writ, a writ of habeas corpus here, because the U.S. Court of Appeal, the Court of last-resort judgment affirm that, "adequate relief cannot be obtained in any other form or from any other court," as to the petition here subjects matter.

Pursuant to Rule 2a-1(a) Requirements:

1. As to 28 U.S.C. §§ 2241 and 2242. Doing the filing of the previous sections 2241(a)(3)/2251(a) and 2243, petition for writ of habeas corpus relief, the application/petition was made to the district court of the district in which the application was held, and the district the judgment were rendered, when the application/petition were filed.

2. The relief sought is from the judgments of the state courts, here, the petition set-out specifically how and where the petitioner he has exhausted available remedies in the state courts, and otherwise comes within the provision of 28 U.S.C. § 2254(b):

As to this petition's first-ground/claim, the claim it has an extensive procedure-history:

On August 26, 2009, Petitioner filed a Pro se Petition for Writ of Habeas Corpus in the state Circuit Court Case No.: 012002 CF002039A, which the Court construed as a Motion for Postconviction Relief. The Court dismissed the Petition as facially insufficient and granted Petitioner leave to file a facially sufficient motion pursuant to Rule 3.850, Florida Rule of Criminal Procedure. Petitioner then filed a Pro se 3.850 Motion to Vacate and Set Aside Judgment/Conviction and Sentence, etc. on September 24, 2009 (Per mailbox rule), which the Court denied on October 2, 2009.

Petitioner appealed the Court's ruling to the state First District Court of Appeals in Case No. 1D09-5348. Robinson v. State, 29 So.3d 1123 (Fla. 1st DCA, 2010). (Rehearing denied).

On March 26, 2010, Petitioner filed a Notice to Invoke Discretionary Jurisdiction of the Florida Supreme Court in Case No. SC10-486.

Petitioner filed (Per mailbox rule) a Pro se Petition for Writ of Habeas Corpus in Florida Supreme Court, in Case No. SC10-85, Robinson v. McNeil, 28 So.3d 45 (Fla. 2010). (Rehearing denied)

Petitioner filed (Per mailbox rule) a Pro se "Petition for the Great Writ of Habeas Corpus Relief" in the Florida Supreme Court, Robinson v. McNeil, 42 So.3d 234 (Fla. 2010).

On July 10, 2014, Petitioner filed a "Complaint/Petition for Writ of Habeas Corpus Relief/Redress pursuant to a Manifest Injustice and a Denial of Due Process in a Criminal—

-Proceeding" in the State Circuit Court's Case No. 01-2002-
-CF-002039-A.

The Petitioner appealed the Circuit Court's ruling to the 1st DCA. in Case No. 1D14-3798. Robinson v. State, 163 So. 3d 343 (Fla. 1st DCA. 2014), "Rehearing denied."

On January 30, 2015, The Petitioner filed (Per mailbox rule) a Petition for Writ of Habeas Corpus in the (1st. DCA. in Case No. 1D15-0547. Robinson v. State, 160 So. 3d 494 (Fla. 1st DCA. 2015), "Rehearing denied."

On April 23, 2015, The Petitioner filed (Per mailbox rule) a Pro se Notice to Invoke Discretionary Jurisdiction of the Florida Supreme Court, in Case No. SC15-803. Robinson v. State, 192 So. 3d 41 (Fla. 2015). "Review Declined."

On December 22, 2015, The Petitioner filed (Per mailbox rule) a Pro se Petition for Writ of Habeas Corpus in the Florida Supreme Court, in Case No. SC16-14, Robinson v. Jones, 2016 WL 698537 at 1 (Fla. 2016) Review Declined and Petition denied. (Continue Next Page)

[F-N]... STATE OF FLORIDA, Petitioner, VS. ARTHUR FLORIDA, Respondent, Supreme Court, 894 So. 2d 1941, 2005 Fla. Lexis 2165; 30 FL. L. Weekly, 5165 No. SC03-1318). To apply section 775.021(4), we must determine the elements of two offenses. The crime of attempted second-degree murder is codified in section 777.04(1), Florida Statutes (2004) which defines attempt and section 782.04(2), Florida Statutes (2004) "etc."

(EXHAUSTION OF CLAIMS (2) and (3)):

On March 16, 2016. The Petitioner filed (per mailbox rule) a motion 3.800(a), Florida Rules of Criminal Procedure, to Correct Illegal Enhancement and Mandatory Minimum Sentencing, in state circuit court's case No. 01-2002 CF-002039-A. "Rehearing denied."

The Petitioner appealed circuit court's ruling in the above case number, to the 1st DCA. in case No. 1D16-1988. Robinson v. State, 215 So.3d 1262 (Fla. 1st DCA, 2017). "Rehearing denied."

The Petitioner sought discretionary review in state's Supreme Court case No. SC17-982, of 1st DCA's case No. 1D16-1988, written opinion. Robinson v. State, 2017 WL 4684623 at Fla. 2017. "Rehearing denied."

[F-N]... Section 775.087, Florida Statutes (2003) 10-20-life, Provisions: Section 775.087(2)(a)(1), Fla. Stat. the defendant during the commission of the offense "actually" possessed a firearm, shall be sentenced to a minimum term of imprisonment 10 years, and discharge the firearm section 775.087(2)(a)(2), Fla. Stat. 20 years minimum sentence; and in the course section 775.087(2)(a)(3), Fla. Stat. discharged a firearm, caused "death or Great bodily harm," 25 years minimum sentence.

To justify the granting of a writ of habeas corpus in this instant case, to do such, it will "cure" the "miscarriage of justice" that has occurred, where in prior proceedings as to this Petitioner's Constitutional Violation raised herein, in which shows that by "one way or another" the Petitioner he has been denied his rights to due process of the law, to fair procedure and proceedings in the Federal and state courts judiciary systems.

The procedural history of the case and the ground and claims raised in the prior courts procedural and proceedings shows that "exceptional circumstances" of a "miscarriage of justice" thereto, "arrant the exercise of the courts discretionary powers to grant a writ of habeas corpus in this case, because the cases procedural history also manifests on the ground and claims raised, that adequate relief cannot be obtained in any other form or from any other court.

Moreover, a rare case, like this case are normally resolve by the lower courts showing conclusively by trial courts record with a ruling on the merits of the claims raised of no entitlement to relief or release thereto, that did not happen here.

However, should this Court (de novo) reveal this

Petitioner's Constitutional Violation asserted with a determination on the claims raised herein on the merits, due to the de novo review, and a finding on the facts of this case, even though this type of writ is rarely granted by the court, it is most likely than, not likely, the court will grant the Petitioner writ of habeas corpus relief and release, based upon this Petitioner's meritorious ground and claims thereto, on the

integrity of the proceeding as to warrant... habeas relief even absent a substantial influence on the verdict, 507 U.S. at 638 n.9, Brecht v. Abrahamson, 507 U.S. 619, 629-30 (1993); Fry v. Miller, 551 U.S. 112, 119-20 (2007) (citing "Brecht's"); see Boyd v. U.S., 754 F.3d 1298, 1302 (11th Cir. 2014) "fourth petition not excessive, because factual basis of petition did not exist at conclusion of first motion and second and third motions not resolved on merits." (Disposition, Reversed and Remanded, Boyd; citing:

Johnson v. United States, 574 U.S. 295, 125 S.Ct. 1574, 161 L.Ed.2d 542 (2005). (6 Stewart's, 646 F.3d at 858, also Reversed and held that because (2014 U.S. App. LEXIS 9) the factual basis for Stewart's claim did not exist before his proceedings on his initial 2255 motion concluded, (inter alia).

Here, the Boyd's circumstances is on point in similarity with petitioner's circumstances, his fourth petition not excessive because factual basis of petition did not exist at conclusion of first motion and second and third motions not resolved on merits.

Due to this petitions substantive-defect claims, (that Cole factor due process prohibits an individual from being convicted of an uncharged crime) and (that Appellate factor were not submitted to and found by the jury) is properly raised by petition for writ of habeas corpus, and the allegations that is made herein, the claims they are governed by sufficient laws and the authorities of 28 U.S.C. § 2241(c)(3), 2254(a), and 2243, plus, U.S.C.A. Const. Amend. 5, 6, and 14 "There can

As to this Petition Ground/Claim-ONE(1):

The Petitioner contends that by His Jury's Conviction of Attempted Second-Degree murder was made on an the (Attempted-offense) not made in the state charging document, the amended information, the state trial court did not have jurisdiction to render its judgment under section 777.04, Florida Statutes (Attempt-Crime) for Attempted Second-Degree murder, because the Petitioner's conviction of the Uncharged (attempt-Crime) is a denial of his rights to due Process of the law, U.S.C.A. Const. Amend. 5 and 14, See:

Cole v. Arkansas, 333 U.S. 196, 1201, 68 S. ct. 514, 517, 92 L. ed 644 (1948) ("Due Process prohibits an individual from being convicted of an Uncharged crime") also see, Jackson v. Virginia, 443 U.S. 307, 332, 99 S. ct. 2781, 2796 N. 5, 61 L. ed 2d 560 (1979) ("A conviction upon a charge not made or upon a charge not tried is a denial of due-Process, U.S.C.A. Const. Amend. 14.

As to this Petition Ground/Claim-Two(2):

The Petitioner contends that after his Jury's Conviction of Attempted Second-Degree murder, and he possessed and discharged a firearm and by the discharge of said firearm caused injury to another person. However, where the State Court Judge found from the preponderance of the evidence pursuant to Section 775.082, Fla Stat (2002),-

- the statutes statutory required, Petitioner "Actually" Possessed the firearm in order to trigger the enhancement of his (Attempted Second-Degree Murder) from the Jury's (Second-Degree Felony Conviction) to a first-degree felony, Violated his SIXTH - Amendment rights to trial by Jury, that's because Pursuant to Florida Statutes - 10-20-25 to life, Mandatory Minimum Enhancement Provisions of Section 775.087(2)(1), Fla. Stat. (2002) provides that the statutory fact "Actually" Possessed the firearm, "must be" Submitted to the Jury and found beyond a reasonable doubt by his Jury, rather, than by the Judge.

The Judges finding he "Actually" Possessed the firearm from the Preponderance of the Evidence, also Violated this Court's holdings in Apprendi v. New Jersey, 530 U.S. at 466, 490 (2000); "Other than the fact of a prior Conviction, any fact that increases the Penalty for a Crime beyond the Prescribed Statutory maximum must be Submitted to a Jury, and Proved beyond a reasonable doubt."

Accordingly, this Ground/Claim is... Meritorious, Per se.

As to this Petition Ground/Claim three(3):

The Petitioner contends that, Pursuant to the State of Florida, 10-20-25 to life, Mandatory Minimum Sentencing Provision under Section 775.087(2)(a)(3), Florida Statutes, (2002). This section under Florida's statutes 10-20-25 to life, Provisions is predicated on the followings:

"Pursuant to sections 775.087(2)(a)(3), Fla. Stat.(2002)-10-20-25 to life, Mandatory Minimum Sentencing Provisions, the statutes it is Predicated upon, during the course of the Commission of the felony Such Person discharge a "firearm or destructive device" as defined in section 790.001 and, as the result of the discharge, "death or great bodily harm" was inflicted upon any Person, the convicted Person shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in Prison."

However, as to the above essentials, the Petitioner's Mandatory Minimum enhanced Sentence of 25 years imprisonment. The state trial Court's imposition of 25 years imprisonment, the Sentence Violated the Petitioner's SIXTH- Amendment rights to trial by a jury, because the state trial Court imposed the enhanced Mandatory minimum sentence thereof, under section 775.087(2)(a)(3), Fla. Stat.(2002), "without the statutory required "essential elements" of "death or great bodily harm" being submitted to the Petitioner's jury and found beyond a reasonable doubt by his jury; instead, "... injury... was submitted to the jury and found by the jury."

However, by the lower state Courts Judges, finding from the Perponderance's of the evidence the "fact" that "could have" or "may have" supported State trial Court's enhanced 25 years Mandatory Minimum Sentencing under section 775.087(2)(a)(3), Fla. Stat.(2002), "but on the other-

hand, the enhancement exceeds the maximum sentence for the petitioners (Attempted Second-Degree Murder) conviction, in which the statutory maximum penalty for (his) Second-Degree felony, is 15 years, under section 775.082, Florida statutes, 2002).

Therefore, the petitioner minimum sentence of 25 years, mandatory violated also, *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) and *Alleyne v. United States*, 133 U.S. 5. et. 2151, at [11-1] citing "Apprendi" "because the mandatory minimum sentences increases the penalty for a crime," any "fact that increases the mandatory minimum is a 'element' that 'must' be submitted to the jury and found by the jury beyond a reasonable doubt. U.S.C.A. Const. Amend. 6.

Accordingly, the Court of Appeals, as to the above "exceptional circumstances" showing a "miscarriage of justice in this case by the state courts rulings herein, the Court had jurisdiction by law, to grant the district court authorization, authorizing the district court to entertain the petitioners fourth-petition for writ of habeas corpus allegations on the merits, due to petitioners "exceptional circumstances" and "saving-clauses" such claims may be raised at any time.

Therefore, see, *Medberry v. Crosby*, 357 F.3d 1049 (CoA), 11 Fla. 2003 (In pertinent part: "Among the significant additions were new statutes of limitation in both §§ 2254 and 2255, bars on filing second or successive petitions, provisions curtailing review of state court factual determination, and restrictions on evidentiary hearing in-

-Federal Court. See Pub.L. No. 104-132, §§ 101, 104-106, 110 Stat. 1214, 1217-21 (1990) (amending 28 U.S.C. §§ 1214, 1215 and 2255) AEDPA did not, however, amend §§ 2241(c), 2254(a) or 2255(1).

IT appears from the above last paragraphs on this Petition for writ of habeas corpus subject, that the Court of Appeal was not barred by the "AEDPA restrictions," or "2241, or 2254 limitations" The Court of Appeal had subject matter jurisdiction under 2241(c) and 2254(a) to have entertained this Petition's "first, second and third" claims raised, rather than "use lack jurisdiction" to entertain the claims raised, as was alleged by the Court of Appeal.

Accordingly, as to this Court's Precedent, U.S. v. Cotton, 535 U.S. 630 (2002) (subject matter jurisdiction never forfeited or waived, defects in jurisdiction require correction regardless of whether error raised in district Court); "among other authorities pointed-out, as well by a Second Motion to the Court of Appeal on the same subject matters"

See, e.g., Hill v. U.S., 821 F.3d 562, 562 (7th Cir. 2016) (Court of Appeal deciding on its own to rehear denial of application to file second or successive motion); *Tristman v. U.S.*, 124 F.3d (ad Cir. 1997) (same); *In re Byrd*, 209 F.3d 585, 585-86 (6th Cir. 2001) (en banc) (same); *Cofer v. Woodford*, 398 F.3d 117, 118 (9th Cir. 2001) (en banc) (same). (Nevertheless):

See, *Hill v. Turfin*, 135 F.3d 1411, 1419 (11th Cir. 1998) (However, the Court recognized that "in an unusual case, a deliberate and especially egregious [trial] error...might so infect the-

be No question of the Court's Jurisdiction to granting a writ, a writ of habeas Corpus in a very rare case, such as this, that manifest that the Petitioner he is in Custody in Violation of the Constitution and laws of the United States, and that adequate relief cannot be obtained in any other form or from any other Court. "Even though this writ is rarely granted" by the "Great Court" it should be granted, if for nothing but to uphold lower Courts' integrity," "Per se."

THE BOTTOM-LINES HEREIN

By the lower Courts Proceedings in this case, it is established by the case Procedure history, that by one way or another, whether it is or was illegal or just plain out-right Malice Conduct:

As to the Petitioner being blocked or either hindered by arbitrary rulings, opinions, decisions, orders, and decrees rendered in all prior Proceedings concerning his... for causes... allegations, if that is not so, it is yet to be shown, there's... no Malice intents... to deny the Petitioner/In re, Robinson of his... guaranteed rights to due Process of the law, U.S.C.A. Const. Amend. 6, and 14.
(Continued Next Page).

[F-N]... When there is a discrepancy between the heading and the body of an information as to the offense charge. "The offense described in the body is the one with which the defendant is charged. *Troyer v. State*, 460 So. 2d 530, 531 (Fla. 2d DCA. 1992)

[F.N]... Fla. R. Crim. P. 3.140(e), Incorporation by reference, "Allegations made in one count shall not be incorporated by reference in another count."

Pursuant to 28 U.S.C. § 2243, should the Court issue an order directing the Respondent's to show cause with an answer to this Petitioner's allegations made herein, as to why the writ should not be granted.

The Court should also give the Respondent's "two" options in this matter, ... one(1) - to argue law, and two(2) to admit that on the face of the trial Court records, it do not show that the Petitioner was not and is not now entitled to writ of habeas corpus relief, "but" relief was not granted, with an explanation as to "why," the revelation may encompass further reasons to justify the granting of a writ of habeas corpus in this case. Aliterby, the Petitioner, a writ of habeas corpus it self, "nor" the ground/claims raised herein - they are not barred by procedure defaults, such as, untimely - limitations, res judicate or collateral estoppel, the cause here is recognized by law, may be raised at any time by a Petitioner for writ of habeas corpus relief, (per se).

CONCLUSION

Based on the foregoing, even though this Pleading may not be as artfully as Pleading could be drafted by lawyers, it is respectfully requested that this Great Court do not "deny or dismiss" this action based on such. See *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 595, 30 L.Ed. 652 (1972) held - It is settled law that the allegations of such Complaint, "however in artfully Pleading are held to less stringent standard than formal Pleadings drafted by lawyers... see also, *Malin v. Paulsen*, 627 F.2d 83, 86 (CA-7, 1980) *Franch v. [499 U.S. 107] Heyne*, 517 F.2d 994, 996 (CA-7, 1976). Dated: 3/16/2021

Respectfully submitted

/s/ ~~Alvory Lee Robinson~~ ~~De# 0123883~~