

ORIGINAL

No. 20-7637

FILED

MAR 15 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

Derrick G. James, DC#536293 — PETITIONER  
(Your Name)

vs.

State of Florida et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Derrick G. James, DC No.: 536293  
(Your Name)

Columbia C.I. Annex, Faith Based Program, 216 S.E. Corr. Way  
(Address)

Lake City, FL 32025  
(City, State, Zip Code)

(Phone Number)

**QUESTION(S) PRESENTED**

Can A State Corrections Arbitrarily Change A Defendant's Prison Sentence  
Nearly Two Decades Later, Even After Having Initially Structured Said Court  
Imposed Sentence; And, If So, Does Such Clears The Way Of And/Or To An  
Exception Of A Fifth Amendment Double Jeopardy Violation?

## **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:

Derrick G. James v. State of Florida, First DCA No.: 1D19-2660, Judgment December 10, 2020.  
State of Florida v. Derrick G. James, L.T. No.: 2018-CA2108; CA01820, Second Circuit

## **RELATED CASES**

Derrick G. James v. FLDOL.... Several Grievances; Responses and Appeals were filed.

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### OTHER

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 is unpublished.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 is unpublished.

**[ ] 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,  
 is unpublished.

The opinion of the Florida DOC and Second 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,  
 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. \_\_\_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 December 10, 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. \_\_\_A\_\_\_\_\_.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

First Amendment Right to file grievances  
Fifth Amendment, Double Jeopardy Clause  
Fourteenth Amendment, Due Process Rights

## STATEMENT OF THE CASE

In October of 1998, Petitioner was sentenced to three years and six months in prison on an unrelated case. In December of 1998, Petitioner was sentenced to another twenty years in prison to be served consecutive to the three years and six month sentence. All cases are unrelated to each other. In 1999, Petitioner was found guilty of one count of unoccupied burglary and one count of grand theft. During sentencing the Prosecutor requested "specifically" that the Court sentence the Defendant consecutively to "both" sentences that Petitioner was serving at that time. The State Trial Court then asked Petitioner if he wished to be heard in which Petitioner stated yes. "On numerous occasions Petitioner's sole plea was for the Court to sentence Petitioner to It's imposed sentence concurrent to the active twenty year sentence and not consecutive to such." Petitioner's Attorney then spoke, thus informing the Judge to be mindful that Petitioner did not enter the apartment of the victim, but only stuck his arm through an opened window to steal jewelry from off of a dresser. Following the requests and statements of everyone and all above listed individuals the Court then pronounced It's sentence. The Court's exact words were:

...etc. the defendant is hereby ordered to be committed to the custody of Department of Corrections to serve a term of imprisonment of thirty years with credit for all time served. Said sentence shall be consecutive to any active sentence currently being served by this defendant. Sentencing hearing attached.

In November of 2001, Petitioner was transported to prison and was initially sent to the South Florida Reception Center in Miami. Soon thereafter, Petitioner was interviewed by a Classification Officer, who informed Petitioner that he had been sentenced to a thirty year consecutive sentence by Judge James Cohn, but the Judge was not specific as to which sentence the thirty year sentence was to run consecutive to. Petitioner was further informed that since the Court did not do such then they, i.e., Classification Dept, had the authority to structure said sentence, and since the three years six months, i.e., 3 1/2, was handed down before the twenty years sentence the right thing to do was to run the thirty years consecutive to the three and a half years and concurrent to the 20 year sentence. Petitioner was also provided with a printout by Classification to show what his total prison sentence was, which was 33 YRS 6 MOS 0 DAYS. Classification printout attached, which also revealed a tentative release date of the year 2031. For over numerous years Petitioner's initially structured Court imposed sentence remained the same. Month after month, Petitioner was earning gain time of ten days, which in turn, had then reduced his release date by years. In March of 2018, Petitioner forwarded an Inmate Request Form to Martin C.I. Classification Dept, requesting that Petitioner be awarded

one third off and twenty days of monthly gain time on the 3½ years sentence, which was a 1994 case. The response that Petitioner received back from Classification was non satisfactory to Petitioner, so a grievance and an appeal was taken/filed in May of 2018. Several additional grievances and appeals were filed in June and July 2018, after having received unsatisfactory responses. Then, in August of 2018, Petitioner received a Memo from The FDOC stating, that they had now restructured Petitioner's sentence by "now" also running the 30 year prison sentence consecutive to the 20 year prison sentence also, and not just only to the 3½ years sentence. Now, the 33 years and six month prison sentence had turned to a 53 years and six month prison sentence. See attached Memo. Petitioner was retaliated for exercising his 1st Amend.

Petitioner immediately filed an appeal.

The claims were double jeopardy as well as vindictiveness. Petitioner also asserted fundamental fairness and lenity. All grievances and appeals were denied. Petitioner then turned to the State's Lower Tribunal Court, i.e., Second Circuit. The issues raised and argued were the same as raised to the FDOC. Petitioner argued that the Lower Tribunal Court that sentenced Petitioner in 1999, did not adhere to the State's request to sentence Petitioner to a 30 year sentence consecutive to both, i.e., 20 and 3½ years sentences, but did adhere to the plea of Petitioner to not sentence him consecutively to the 20 year sentence. And, even the the Lower Tribunal Court did impose a consecutive sentence the Court did not state which sentence the 30 years was to run consecutive too. Petitioner also stated and pointed out that the words and statement used by the Court supported Petitioner's claim, where the Court stated, "consecutive to" any active sentence "currently being served by this defendant." Petitioner argued that these words, i.e., any and sentence, are singular and not plural ones, and the entire phrase is a singular phrase and not a plural one. Petitioner also pointed out that the Court never used the words nor phrase or phrases of: consecutive to both active sentences [or] consecutive to each or every active sentence, nor did the Court state consecutive to all active sentences. Petitioner also argued that Double Jeopardy attaches because FDOC initially took it upon themselves to structure Petitioner's initial sentence as they saw fit and could not now change Petitioner's sentence nearly two decades later and that said sentence, 33 years and six months, was now a binding sentence. The Lower Tribunal Court denied relief. Petitioner appealed to the First District Court of Appeals.

The appeal was by way of a Certiorari. The same issues and argument was raised which were: Double Jeopardy; Fundamental Fairness; Due Process, Fourteenth Amendment and Lenity. Petitioner also added as an Appendix the Lower Tribunal Court's sentencing order, where the Court did not list no case nor cases that the 30 year sentence was to run consecutive too. See also sentencing order, attached. The State of FL filed a response. Certiorari later denied.

## REASONS FOR GRANTING THE PETITION

The issue before this Honorable Court is one of Great Public Importance and should be decided due to the possibility of having a present and/or future effect upon hundreds of thousands of State Prisoners eventually.

The Florida Supreme Court and all five of Florida's State Appeals Court all steadfastly agree that oral pronouncement rules and is controlling over written pronouncement and/or an order.<sup>1</sup> The difference here, and issue, before before this Honorable Court, is that both, i.e., oral and written pronouncement are one in the same and corroborates one another.<sup>2</sup> The State Trial Court clearly used the word "any," which means one or the other. When used in a sentence or as an example the word "any" means one or either. As an example if someone were to say, "any" cat or dog will be fine. One pet is clearly what the subject number is about. If someone were to say, all or every or each or both will be fine, then it's clear that more than one animal is being talked about. See also the State Trial Court's Written Order, where the State Court did not write in neither sentence or sentences that Petitioner was to serve consecutive to the 30 year sentence. There were and are two sentencing choices that the State Court had, which were: ....etc.

30 years/consecutive to [or] 30 years concurrent with (check one) the following:

Any active sentence being served.

Specific sentences: \_\_\_\_\_

Petitioner brings to the attention of and points out to this Honorable Court that wording or language stated on the written sentencing order informs the Judge to (check one) of the followings: The State Trial Court did not check the wording that states Specific sentences, which clearly means multiple. Infact, the opposite was check, which meant then and means still, one. Then there's the word "sentence," which means one also. The State Trial Court did not orally state: Consecutive to both active sentences currently being served by this defendant, or, all active sentences, or, every active sentence, or each active sentence.

Petitioner has a constitutional right to be equally treated as others whom are equally situated as Petitioner, and, the State Courts have an obligation to not only follow its or their own rules, laws and/or procedures, they have a duty to apply them equally.<sup>1</sup> See Ashley v. State, 850 So.2d 1265 (Fla. 2003); State v. Wilson, 680 So.2d 411, 413 (Fla. 1996); Lippman v. State, 633 So.2d 1061 (Fla. 1994); Driver

v. State, 710 So.2d 652,653 (Fla. 2d DCA 1998); Evans v. State, 675 So.2d 1012(Fla. 4th DCA 1996) and Justice v. State, 658 So.2d 1028,1035-36 (Fla. 5th DCA 1995).

The second reason as to why this Honorable Court should hear this case, is because of its complex issues which are interextricably intertwined. It is well understood that "no State Dept. of Correction" has the authority to arbitrarily change a sentence that has been imposed by a Court, i.e., Judge. But does one has the right to choose "a" sentence to apply another seperate sentence consecutive to, if a Court, i.e., Judge, failed to choose? And if a State Dept. of Corrections does infact do so, is it not then a Double Jeopardy violation if it later changes said initial sentence that it applied?

Petitioner strongly believes that a Double Jeopardy violation has occurred, and that he was not sentenced to 30 years consecutively to both sentences of 3 1/2 and 20 years. And that once FL DOC structured Petitioner's sentence in 2001, then it could not change such nearly twenty years later. The initial sentence is binding, and must not allowed to be changed, by this Honorable US Supreme Court.

The double jeopardy clause of the Federal Constitution's Fifth Amendment provides that no person may be twice put in jeopardy for the same offence.

Granting this Petition would be appropriate, due to the State Courts reasonings and decisions having been made in contrast of and to well established Federal law. Inwhich, resulted in a decision that was based upon and/or on an unreasonable determination of the facts in light of the evidence presented in the State Courts.

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<sup>2</sup> In The State of Florida oral pronouncement is controlling. See Fla. R. Crim. P. 3.700(b).

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Derrick G. James, DC No.: 536293

Date: January 4, 2021