

20-7786

IN THE
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.

Supreme Court, U.S.
FILED
FEB 19 2021
OFFICE OF THE CLERK

OBIDIAH McCASKILL, JR – PETITIONER

vs.

**MARK S. INCH, SECRETARY
FLORIDA DEPT. OR CORRECTIONS – RESPONDENT(S)**

ON PETITION FOR A WRIT OF CERTIORARI TO

THE DISTRICT COURT OF APPEAL FIRST DISTRICT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

**OBADIAH MCCASKILL, JR.
MADISON CORRECTIONAL INSTITUTIONAL
MADISON, FL. 32340**

QUESTION(S) PRESENTED

Petitioner, Obidiah McCaskill, Jr. request review of Florida Statutes and case law that have deprived Petitioner of his liberty and been deprived of a fair hearing which violates Petitioner's 14th Amendment . The Supervised Release Statutes is unconstitutional because it violates the right to trial under the Fifth and Sixth Amendment. 1988 Supplement to Florida Statutes 1987 clearly states S. 775.084.4(d)(e) see *Appendix "E"* F.S. 775.084 1988 Supplement to Florida Statutes 1987. There is also a conflict in Florida Statutes 944.275(2)(c) (1995) and 944.275(2)(c) 1988 Supplement to Florida Statutes1987 they both have different language. That is a conflict in statutes. The Trial court failed to consider the issues that was raised in which the trial court erred in failing to address. The trial court was required to address the issues that was brought before them, Florida's Conditional Release Supervision Release Statutes is unconstitutional See *Hayman v. United States Court of Appeals for the Tenth Circuit*, 869 F.3d 1153; 2017 U.S. App. Lexis 16747 Petitioner has been denied due process in which he is guaranteed by the Constitution. See Statement of Case for Support.

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 the 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 Supreme Court of Florida. A copy of that decision appears at Appendix "I".

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).

TABLE OF CONTENTS

| | <u>PAGE</u> |
|--|-------------|
| JURISDICTION | 1 |
| OPINION BELOW | 2 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 3.4 |
| STATEMENT OF THE CASE..... | 7 |
| REASONS FOR GRANTING THE WRIT..... | 10 |
| CONCLUSION | 13 |

INDEX TO APPENDICES

| | |
|------------|---|
| APPENDIX A | LOWER COURT DENIAL |
| APPENDIX B | PETITION for Writ of Certiorari |
| APPENDIX C | First District Court of Appeal Opinion |
| APPENDIX D | Motion for Rehearing and DCA Denial |
| APPENDIX E | F.S. 775.084 1988 Supplement to Florida Statutes 1987 |
| APPENDIX F | Gain-Time Sheet |
| APPENDIX G | Sentence Sheet |
| APPENDIX H | Sentence Transcript |
| APPENDIX I | Supreme Court of Florida Dismissal |

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

PAGE

| | |
|--|-------|
| 14 th Amendment Due Process | 6, 10 |
| Supremacy Clause Article 6 Clause 2 | 11 |
| Fifth and Sixth Amendment | 6 |
| 18 U.S.C.S § 3583(e)(3), (k) | 8, 9 |
| United States v. Haymen, 139 S.Ct. 2369 (2019) | 6, 8 |

STATUTORY PROVISIONS INVOLVED

| | |
|---|----|
| 1. Fleming v. State, 697 So.2d 1322 (Fla. 5 th DCA (1997) | 7 |
| 2. 1988 Supplement to Florida Statutes 1987 F.S. 775.084(4)(d); (4)(e) | 11 |
| 3. F.S. 944.275(2)(c) (1995)..... | 9 |
| 4. F.S. 944.275(2)(c) 1988 Supplement to Florida Statutes 1987..... | 9 |
| 5. F.S. 947. 1988 Supplement to Florida Statutes 1987..... | 11 |
| 6. F.S. § 775.08; (2) (1988)..... | 9 |
| 7. F.S. 921.001 1988 Supplement to Florida Statutes 1987..... | 11 |
| 8. Crockett v. State, 206 So.3d 742, 745 (Fla. 1 st DCA 2016)..... | 10 |
| 9. Niles v. State, 1290 So.3d 658 663 (Fla. 1 st DCA 2013)..... | 10 |
| 10.Brown v. State, 124 So.2d 481, 484 (Fla. 1960)..... | 10 |

11.Knarich v. State, 932 So.2d 257 (Fla. 2nd DCA 2005)..... 12

OTHER

Florida Sentencing Edition 2017; 2D18 § 1:91..... 12

LIST OF ALL PARTIES

Mark S. Inch, Secretary Florida Dept. of Corrections
Attorney General's Office

HISTORY OF ALL COURTS

1. Order denying Petition for Writ of Habeas Corpus on October 30, 2019, based on *Fleming v. State*, 697 So.2d 1322 (Fla.5th DCA (1997)).
2. Petition for Writ of Certiorari Per Curiam September 15, 2020, First District Court of Appeal.
3. Motion For Rehearing or Written Opinion denied October 5, 2020.
4. Emergency Petition For Writ of Habeas Corpus dismissed Supreme Court of Florida, January 6, 2021.

STATEMENT OF CASE

The lower Court denied Petitioner Emergency Petition for Writ of Habeas Corpus on 10-30-19 *Appendix "A"*, stated that Petitioner has not demonstrated that he is not entitled to immediate release based on *Fleming v. State*, 697 So.2d 1322 (Fla. 5th DCA 1997) (Holding that the Appellant was not entitled to credit for time served while on Conditional Release Supervision. Petitioner appeal was stricken and was ordered to file Writ of Certiorari. Petitioner filed Writ of Certiorari to the District Court of Appeal First District of Florida on 12-13-19 *Appendix "B"*. On February 10, 2020 District Court of Appeal, First District issued Respondent a Show Cause why the Petitioner for Writ of Certiorari should not be granted. Petitioner Reply to Respondent's response for Writ of Certiorari on February 24, 2020. On September 15, 2020 the First District Court of Appeal rendered a decision Per Curiam Petitioner's Writ of Certiorari in denying on the merits, in which there is no opinion to determine the merits in this case because Petitioner merits was over looked *Appendix "C"*. The merits that was set forth the lower court was not in accordance to the statutes in which the lower court relied on, is in conflict with it's own statutes. That lead to a fundamental error by the lower court which makes that decision a reversible error because Florida Commission on Offender Review Conditional Release Supervision Release Statute is

unconstitutional. Based on the fact Petitioner was denied due process, Petitioner filed for rehearing on 9-24-20 see *Appendix* "D" and denied on 10-5-20.

The District Court of Appeal, First District abuses its discretion when it relies on an incorrect conclusion of law or a clearly erroneous finding of fact. A finding of fact is clearly erroneous if it is without factual support in the record or if, after reviewing all of the evidence, the Appellant Court is left with the definite and firm conviction that a mistake has been made, see *United States v. Hayman*, 139 S.Ct. 2369 (2019) where in the may modify or revoke the term or conditions of supervised release. 18 U.S.C.S. § 3583(e). Most revocations are governed by § 3583(e)(3), which provides that the court, if it finds by a preponderance of the evidence that the Defendant violated a condition of Supervised Release, may revoke a term of Supervised Released authorized by statute for the offense that resulted in such term of Supervised Released without credit for time previously served on Post-Release Supervision except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than five years in prison if the offense that resulted in the term of Supervised Release is a Class a felony, more than three years in prison if such offense is it Class B felony, more than two years in prison if such offense is a Class C or D felony, or more than one year in any other case. § 3583(e)(3). Again, the maximum terms of reimprisonment authorized by the statutes for violations of the conditions

of Supervised Released are limited based on the severity of the defendant's original crime of conviction, not the conduct that resulted in the revocation § 3583(e)(3). Petitioner denied all violations in that he did not drive his vehicle while under the influence nor did he drive himself out of the county without permission.

A DUI is a civil infraction that does not give rise to be violated see F.S. 775.08(2) (1988) states term "misdemeanor" shall not mean a conviction for any non-criminal traffic violation of an provision of Chapter 316 or any municipal or county ordinance. The term "non-criminal violation" shall mean any offense that is punishable under the laws of (Florida) this state, or that would be punishable if committed in this state, by no other penalty than a fine, forfeiture, or other civil penalty. Furthermore, 18 U.S.C.S. § 3583(k) is unconstitutional because it increases the mandatory minimum penalty to which a defendant may be subjected, and does so based on facts not found by the jury. According to Apprendi and Alleyne, any fact that, by law, increases the penalty for a crime is an element that must be submitted to the jury and found beyond a reasonable doubt. This includes any fact that increases either the mandatory minimum or the statutory maximum. In this case petitioner's crime was committed October 22, 1988 and in accordance to 1988 supplement to Florida Statutes 944.275(2)(c) is in conflict with 944.275(2)(C) 1995 they both carry different language one say you can't take all gain-time and the other one say that they can which amounts to a conflict.

REASON FOR GRANTING THE PETITION

The lower court's order is erroneous and requires reversal. Generally the determination of whether a defendant's constitutional right has been violated presents a mixed question of law and fact. *Crockett v. State*, 206 So.3d 742, 745 (Fla. 1st DCA 2016) (quoting, *Niles v. State*, 1290 So.3d 658, 663 (Fla. 1st DCA 2013). “We review the trial court’s factual findings under the competent Substantial Evidence Review and its legal conclusions *de novo*.” *Id.* Additionally, in *F.B. v. State*, 852 So.2d 226 (Fla. 2003), the court explained the doctrine of fundamental error as follows: The sole exception to the contemporaneous object applies where the error is fundamental, *Id.* we have stated that “in order to of such fundamental nature as to justify a reversal in the absence of timely objection the error must reach down into the validity of the trial itself, to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.” *Brown v. State*, 124 So.2d 481, 484 (Fla. 1960) (holding that the alleged error “did not permeate or saturate the trial with such basic invalidity as to lead to a reversal regardless of a timely objection”). In this case we see the ruling of the First District Court of Appeal in *Crockett v. State* and *Nile v. State* where they reviewed the trial court’s factual findings under competent substantial evidence. The First DCA per curiam opinion denies petitioner of a fair hearing in which violates petitioner 14th Amendment. Based on the facts in accordance to provision of 775.084 set the

precedent of the guideline to Petitioner's sentence that are set forth. See F.S. § 775.08(4)(a) based on the term of years, F.S. § 775.084 1988 supplement to Florida Statutes 1987 (4)(d) states that a sentence imposed under this section shall not be increased after such imposition, in (4)(e) states that a sentence imposed under this section shall not be subject to the provisions of S. 921.001, The Provisions of Chapter 947 shall not be applied to such person. A defendant sentence under this section shall not be eligible for gain time granted by the Department of Corrections except that the Department may grant up to 20 days of incentive gain-time each month as provided for in § 944.275(4)(b) See *Appendix "E"* S. 775.084 1988 supplement to Florida Statutes 1987, and *Appendix "F"* shows Tentative Release Date is beyond 30 years, also *Appendix "G"* sentence sheet that shows the sentence of law, and the special provisions. The lower court ignored all issues that Petitioner raised (1) respondent cannot implement rules and statutes wherein it causes them to violate Ex Post Facto Law that states any laws, statutes, rules implemented by any state, commonwealth, territory, or possession of the United States, that goes against, abridges the laws of the United States Constitution and/or Congress, the laws of the Executive Legislature and Supremacy Clause of Article 6 Clause 2 "Shall be deemed" Ex Post Facto Laws" that do violates Petitioner's civil and constitutional rights. Respondent's actions has cause a Manifest Injustice wherein

the validity and construction of any person who Interfere with the true administration of justice actually create a Manifest Injustice.

Petitioner's gain-time sheet shows that Petitioner Tentative Release Date is 2-5-2023 which is wrong Respondent added four years to petitioner's sentence when Petitioner had less than 36 months left on his 30 year sentence See *Appendix F* Gain-time sheet. See *Appendix H* sentencing transcript showing the oral pronouncement of sentence. Petitioner argue that Respondent violates the single subject ruling Section 6 laws in that "every law shall embrace but one subject shall briefly express in the title." "No law shall be revised or amended by reference to its title only, laws to revise or amend shall set out in full the revised or amended act, section, sub section, or paragraph of a subject." The enacting clause of every law shall read: Be it enacted by the Legislature of the State of Florida, in which there is no enacting clause to authorize Respondent to increase Petitioner sentence. Based upon Florida Sentencing Edition 2017 and 2D18 §1:91 pronouncement of a sentence states that the pronouncement by the court of the penalty imposed upon the Defendant, that is the sentence, does not occur until the pronouncement is final. The pronouncement is final, at the earliest, when the sentencing hearing comes to an end. At least until that moment arrives, the trial court has jurisdiction to modify, vacate, correct, and change, amend, alter, or vary, increase or decrease, any earlier, in effect inchoate pronouncement. See Knarich v. State, 932 So.2d 257 (2nd DCA

2005) Time of offense if the court is trying to compare a 1983 offense to a crime that was proscribed in Florida Law in 1983. The description of that crime is located in that version of the Florida Statutes that proscribe conduct occurring in 1983. The District Court abuses its discretion when it relies on an incorrect conclusion of law is clearly a erroneous finding of fact.

CONCLUSION

Based on the above argument and citation to the authority set forth Petitioner request that this Honorable Court grant Emergency Writ of Habeas Corpus to prevent this continued manifest injustice.

Respectfully Submitted,
Donald Marshall, Jr.
4-2-21
Date

Appendix - A

Appendix – A

Appendix - A