

PROVIDED TO MAYO CORRECTIONAL INSTITUTION
ON 10/29/21 (DATE) FOR MAILING
JP (STAFF INITIAL) REY (I/M INITIAL)

NO. 21-5010

FILED
OCT 29 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT R. TAYLOR - PETITIONER

V.S.

STATE OF FLORIDA - RESPONDENT(S)
ON PETITION FOR A WRIT OF CERTIORARI TO
FLORIDA FIRST DISTRICT COURT OF APPEAL
MOTION FOR REHEARING - UNDER RULE 44

ROBERT R. TAYLOR
MAYO CORRECTIONAL INSTITUTION - Annex
8784 U.S. HWY 27 WEST
MAYO FL. 32066-3458
"NO" PHONE NUMBER

RECEIVED
NOV - 5 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Ch

1. ALL Parties are listed on the cover page.

Statutes and Rules: Florida Statutes
775.083, 775.083(i), 938.04

Fla. Rule Criminal Procedure 3.800(a),
and 3.850

Florida Constitution Article 11 §1(a)

United States Constitution 14th Amendment

The Petitioner requests that this Court take into consideration that he is not trained in the law.

"Pro se motions are to be liberally construed regardless of how inartfully they are pleaded." *Haines v. Kerner*, 404 U.S. 319 (1972).

With the very limited time to file this Rule 44 Motion, limited access to the Law Library, the Petitioner did his best to limit the claims to the applicable law and the relevant facts.

OATH / VERIFICATION

I hereby certify that the facts stated herein are true and correct to the best of my knowledge and that this motion is filed in good faith with the firm belief it has legal merit.

Robert R. Taylor

Robert R. Taylor P34566
Petitioner / Pro se

1. AFTER A COMPLETE AND THOROUGH REVIEW OF THE MOTIONS FILED IN THIS APPEAL THE PETITIONER ADMITS He Failed To LEGALLY DEFINE IN FLORIDA WHAT CONSTITUTES AN ILLEGAL SENTENCE.

"A sentence that patently falls to comport with statutory or constitutional limitations is by definition illegal". *Martinez v State*, 211 So 3d 989, 991 (Fla. 2017); quoting *Plott v State*, 148 So 3d 90, 94 (Fla. 2014). See also *State v. Mancino*, 714 So 2d 429, 433 (Fla. 1998).

("Rule 3.800(a) provides relief for a narrow category of cases where the punishment imposed is not authorized as a matter of law"). *Galindo v State*, 162 So 3d 283, 284 (Fla. 4th DCA 2015) citing: *Carter v State*, 786 So. 2d 1173, 1178, 1181 (Fla. 2001) and *Judge v. State*, 596 So 2d 73, 77 (Fla. 2nd DCA 1992).

"Recently" in *Earl v. State*, 314 So. 3d 1253, at 1255 (Fla. April 8, 2021) the Fla. Supreme Court Ruled ("A court may at any time correct an illegal sentence.... when it is affirmatively alleged that the court records demonstrate on their face an entitlement to that relief. citing Fla. R. Crim. P. 3.800(a)(1)).

See also *Williams v. State*, 957 So 2d 600, 602 (Fla. 2007) ("We have generally defined an illegal sentence as one that imposes a punishment or penalty that no judge under the entire body of sentencing statutes and laws could impose, under any set of factual circumstances.") See also *Carter v. State*, 786 So 2d 1173, 1176, 1181 (Fla. 2001)

2. **ISSUE ONE** - in this appeal is:
(An illegal sentence due to lack of subject matter jurisdiction)
The legislature set forth the boundaries of the state of Florida in Fla. Const. Art. 11 § 1(a). A sentence that is imposed on "allegations" outside of the constitutional jurisdiction of the state is an illegal sentence. See *Waggy v. State*, 935 So. 2d 571, 573 (Fla. 1st DCA 2006); *Davis v. State*, 998 So 2d 1196 (Fla. 1st DCA 2009); *Sanders v. State*, 77 So. 3d 914, 915 (Fla. 4th DCA 2012); *Mounier v. State*, 178 So 2d 714 (Fla. 1965)

ALL four of these cases were outside of the constitutional jurisdiction of the state and were reversed.

Subject matter jurisdiction is conferred upon a court by constitution or statute, and cannot be created by waiver, acquiescence, or agreement of the parties.

Subject matter jurisdiction "means no more than the power lawfully existing

to hear and determine a cause." See *Malone v. Meres*, 109 So 677, 683, 685, 731 (Fla 1926) ("It concerns the power of the trial court to deal with a class of cases to which a particular case belongs"). See *Allen v. Helms*, 293 So 3d 572 (Fla 1st DCA 2020)

A void judgment is one entered in the absence of the court's jurisdiction over the subject matter or the person. Jurisdiction is the very power of the state to exert the influence of its courts over a criminal defendant and it cannot be waived. See *Mansfield, C. & L., M. Ry. Co. v. Swann*, 111 U.S. 379, at 382 and 384 (1884) and *Polk County v. Sofka*, 702 So 2d 1243 at 1245 (Fla. 1999).

Courts should act when it sees a "lack of jurisdiction" in its courtroom on its own motion.

The Petitioner presented the facts and applicable state and federal law and constitutional provisions to the best of his abilities in every motion filed on this issue. During the state 3.850 proceedings, through counsel, the Petitioner raised in Ground 3 the ineffective counsel claim on trial counsel's complete failure to deal with the vacillating: "Where the accusations were alleged to have occurred", stories.

The post-conviction court judge did not let Ground 3 be properly developed and presented at the state evidentiary hearing, where 'subject matter jurisdiction' and 'false and perjured testimonial issues' along with trial counsel's blatant ineffectiveness could have been addressed years ago. (See App. C pages 29-31 and Exhibit C pgs 89-90)

The trial court in Pensacola (who did not try this case) claims she has read the records and that claims of 'subject matter jurisdiction' should have been raised in a 3,850 motion. They were.

Every time facts or evidence was provided to the State Attorney in this case the "stories" were changed. See in App. H: Exhibit M - Post conviction Counsel's Affidavit Exhibit D - Deposition of Gerald Lagos - excerpts

"A sentence that patently fails to comport with statutory or constitutional limitations is by definition illegal."

The constitutional limitations in the Fla. Const. Art 1 § 1(a) set the boundaries of Florida.

3. ISSUE TWO - in this appeal

In Ground One that was raised in the trial court and on appeal shows the trial court had no statutory authority to impose a fine on Counts One and Two and is contrary to Fla. Statute 775.083 (1) (2007)

See *Lindsey v. Dykes*, 129 Fla. 65, 67, 175 So. 792, 793-794 (1937) ("It is well settled that independent of special statutory authorization, the court has no power to award costs against a defendant on conviction."); *Masters v. State*, 358 So. 2d 1143 (Fla. 1st DCA 1978) ("Recovery and allowance of costs in criminal cases is solely dependent on statutory provisions").

A court must give statutory language its plain and ordinary meaning. *Champagne v. State*, 269 So. 3d 629, 632 (Fla. 2nd DCA 2019); *McCloud v. State*, 260 So. 3d 911, 912, 914 (Fla. 2018); *Holley v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) ("When the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning. Florida courts are without power to construe an unambiguous statute in a way which would extend, modify, or limit its express

terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power. This principle is "not a rule of grammar; it reflects the constitutional obligation of the judiciary to respect the separate powers of the legislature." Stated plainly ("It is not the court's duty or prerogative to modify or shade clearly expressed legislative intent in order to uphold a policy favored by the court.")

See *Jackson v. State*, 983 So.2d 562, at 568 (Fla. 2008) ("Rule 3.800(a) provides yet a fourth avenue for asserting sentencing error... Under this rule a defendant may allege (1) that the sentence imposed is illegal..."); citing *Williams*, *supra* at 602 and *Brooks v. State* 969 So.2d 238, 242 (Fla. 2007) citing 3.800(a) ("Motions to correct sentencing errors under this rule are different from those filed under the others in two material aspects. The good news is that unlike the other motions, these may be raised at any time.")

Under no set of circumstances could any judge impose a fine in a capital case. See Florida Statute 775.083(1)

See *Southern Union Co. v. United States*, 567 U.S. 343, 349-350 (2012) (observing that criminal fines "undeniably" fall within the purview of a "sentence"); Advisory opinion

to the Governor, 288 So. 3d 1070, 1083 (Fla. 2020) (Fines are part of a sentence); *Durant v. State*, 177 So. 3d 995, 999 (Fla. 5th DCA 2015) (A "sentence" may include all or any combination of several components—incarceration, fine, probation, restitution, and costs, both mandatory and discretionary. Indeed, a "sentence" may impose costs as its only punitive component. If any component is "illegal," it is subject to challenge under either rule 3.800(a) or 3.800(b).

"A sentence that patently fails to comport with statutory or constitutional limitations is by definition illegal.

("The failure of a state to abide by its own statutory commands may implicate a liberty interest protected by the 14th Amendment against arbitrary deprivation by a state."

4. ISSUE TWO - Discretionary fines imposed.
(This was raised in the trial court as Ground Two)

The Florida legislature in 775.083 and 938.04 Fla. Statutes set out the requirements to impose fines in criminal cases. A criminal sentence which is imposed in violation of a statutory requirement - and thus is "contrary to, or forbidden by law" - falls within the plain and ordinary meaning of the statute's reference to a sentence... that is illegal.

According to statutory requirements:
"Discretionary costs must be orally pronounced at sentencing because such costs may not be imposed without affording the defendant notice and an opportunity to be heard". *Johnson v State*, 293 So 3d 582 (Fla. 1st DCA 2020); citing *Nix v State*, 84 So 3d 424, 426 (Fla. 1st DCA 2012)

See also *Osterhoudt v State*, 214 So 3d 550 (Fla. 5th DCA 2017)

Very recently in *Ramsey v. State*, Fla (LEXIS 5104) (Fla. 1st DCA, April, 12th, 2021) (No. 1D20-903) - Reversed a case due to "unpronounced Discretionary Fines" citing *Johnson v State*, 293 So 3d 582, 584 (Fla. 1st DCA 2020) and *Nix v State*, 84 So 3d 424, 426 (Fla. 1st DCA 2012)

This case (*Ramsey*) was decided by

one of the same judges the denied the Petitioner the same exact claim, Judge Bilbrey.

See also Rosier v. State, 276 So3d 403 (Fla 1st DCA 2019) A case that was reversed by Judge Winokur for that exact same claim, that he denied the Petitioner.

According to Fla Rule of Crim P 3.800(a) a motion to correct an illegal sentence can be filed at any time. See Earl v State, supra, decided on April 8th, 2021.

5. There is no effective review in Florida district court of Appeal cases.

There are far too many conflicting and disparate results on the same points of law in the Florida District Courts of Appeal.

Decisional uniformity is so important that it is one of only two grounds for en banc review, the other involving cases of exceptional importance, Rule 9.331, Fla. Rule App. P (2018).

The First DCA has no standard for determining what cases are of "exceptional importance" under the en banc rule. (In re Doe 13 A, 136 So. 3d 748, 754 (1st DCA 2014).

The "luck of the draw" on "which 3 members of a panel" in a district court often effect the outcome of an appeal.

With 455 possible different panels in the First DCA the jurisprudential impact that so many different panels have on similar or related cases make the need for intra-court decisional uniformity important. (See Mitchell v. Brogden, 249 So. 3d 781, at 783-786 (Fla. 1st DCA 2018) (Dissent by Makar)

("The largest slice of district courts of appeal caseload results in per curiam affirmed decisions, which escape uniformity review entirely because no written opinion is produced and non-panel members typically are unaware of the issues raised and the basis for their resolution.")

The Fla. Supreme Court is blocked from

reviewing cases which are per curiam affirmed by the district courts of appeal.

With this in mind, because any given case has not been effectively reviewed for uniformity, the writ of certiorary to the U.S.S.C. may be the only review a state court's decision will get.

In the abundance of caution the Petitioner Over-cited both state and federal case law and constitutional provisions and guarantees in every motion filed in this appeal.

The First DCA is so over-burdened with "5,000 cases per year" they do not have the time or resources to review P.C.A. cases. (See State v Petagine, 290 So 3d 1106, 1122-1123 (Fla 1st DCA 2020).

In the Petitioners Initial Brief (App. C) 142 cases were cited in an attempt to bind the Fla. DCA to prior precedent in previous cases in Florida. In App. H at 11. the law of stare decisis was cited and explained in detail. (see pages 5-7, App. H)

With no one to review Florida DCA Per Curiam Affirmed decisions in the state courts the district courts "Do as they please" and violate the 14th Amendment's "equal application of the law" guarantees.

6. NO REAL FISHERMAN GOES OUT ON
A TWENTY FOOT BOAT WHEN THE WIND
IS BLOWING AT 23 MILES AN HOUR
DIRECTLY FROM THE NORTH AND ITS 42°

During the winter it is one cold
front after the other in Pensacola Fla.

THE National Oceanic and Atmospheric
Administration have the National Data
Buoy Project with automatic ocean buoys
to obtain oceanic and atmospheric data.

The buoys record: wave height and
direction, wind speed, wave duration,
water and air temperatures, and direction.

The buoys have reporting capabilities
every 15 minutes and any one with a
computer can access the buoys to
determine the conditions- where it matters,
"in the water".

There were two buoys located
just to the west of Pensacola outside
of Mobile Bay (Alabama).

The Petitioner, like any other avid
fisherman had those two buoys on his
computer and with the touch of a
button had the current water conditions.

According to the accusations of the
complainant (or more likely her father)
her and I spent the night 2 weeks after her
birthday in 2001 (Feb. 2nd or 3rd) in a
boat with a tiny cabin the Petitioner
could not fit in.

With wind speeds at a constant 20 miles an hour or more the waves would have been $4\frac{1}{2}$ feet or more.

Even today, an interested person could get the buoy reports from the archives for all of January and February of 2001. All a person needs is the buoy numbers. See National Archives and Records Administration (NARA)

Before the Petitioner's trial the buoy reports were obtained. Trial counsel did not present them at trial.

Trial counsel attempted to force me into "making a deal" at trial.