

No. 21-6204

ORIGINAL

Supreme Court, U.S.
FILED

OCT 27 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Antonio A. Tankes — PETITIONER
(Your Name)

vs.

Attorney General — RESPONDENT(S)
State of Florida
ON PETITION FOR A WRIT OF CERTIORARI TO

District Court of Appeal of The State of Florida 4th District.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Antonio A. Tankes DC# B02208
(Your Name)

1760 Hwy 67
(Address)

Carrabelle, FL 32322
(City, State, Zip Code)

N/A
(Phone Number)

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SUPREME COURT, U.S.

Question Presented

Based on Judge J. Warner's dissent, the Petitioner Present to this honorable court, Should the Petitioner be Prohibited From Filing Pro se Pleadings in Case Number 50-2004-CF-004059 Even if the trial Court Failed to address the issue Properly which Violated the Petitioner's 14th Amendment of the United States Constitution?

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:

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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.

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☐ is unpublished.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☐ is unpublished.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:**

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☒ is unpublished.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 N/A court appears at Appendix N/A 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☐ is unpublished.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 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. 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 Oct. 6, 2021. A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied 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. A N/A.

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

Constitutional and Statutory Provision Involved

The Constitutional Provision that this Case involved is a 14th Amendment Violation of the United States Constitution. The trial Court and the highest State Court in the State of Florida 4th District Court of Appeal Failed to apply Due Process and Equal Protection of the law.

Statement of the Case

On September 28, 2018, the Petitioner Filed a 3.800(L), Motion to Correct Illegal Sentence, In The Circuit Court of The Fifteenth Judicial Circuit In And For Palm Beach County, Florida.

The motion Consisted of, his Current Sentence For Violation of Probation of 40 Years in Florida Doc Followed by 20 Years Probation is illegal because the trial Court "lacked Jurisdiction" When it mitigated his lawful 6 Years Youthful Offender Sentence to 4 years in Florida Doc Followed by 2 Years Community Control outside the 60 day Window Period that is govern by Rule 3.800(L).

On January 4, 2019, the trial Court denied Petitioner's 3.800(L)

In the aforementioned denial, the trial Court stated that the Petitioner is Warned that Continued meritless attacks on his Judgement and Sentence, which have already included multiple motions For Post-conviction Relief and Motions to Correct Sentence will be met With Rule to Show Cause and imposition of Sanctions including Possible loss of gain-time

The Petitioner appealed the trial Court's order to the 4th DCA in the State of Florida which Affirmed on September 27, 2018

On or about November 26, 2019, Petitioner Provided to Prison Officials For mailing a Petition For Writ of Habeas Corpus. On November 26, 2019 the Third Judicial Circuit in and For Madison County Filed an order Transferring Petition For Writ of Habeas Corpus

On January 13, 2020, the trial court in the Fifteenth Judicial Circuit For Palm Beach County Filed an order Treating Defendant's Petition For Writ of Habeas Corpus as a Motion To Correct illegal Sentence dismissing the motion as successive. On January 31, 2020, Petitioner Provided to Prison Officials For mailing a Motion For Rehearing of Order Treating Petitioner's Petition For Writ of Habeas Corpus as a Motion to Correct illegal Sentence and dismissing the motion as successive.

According to Fla. R. Crim. P. 3.800(b) **2B**, Petitioner Filed a Notice of Appeal to the 4th District Court of Appeal in the State of Florida.

On May 4, 2020, the 4th District Court of Appeal dismissed Petitioner's appeal as untimely.

On June 22, 2020, Petitioner Provided to Prison Officials For mailing a Motion to Correct Illegal Sentence. On September 8, 2020, the State Filed State's Response to Petitioner's Motion to Correct Illegal Sentence, Pursuant to Florida Rule of Criminal Procedure 3.800(a). On September 15, 2020, Petitioner Provided to Prison Officials For mailing Petitioner's Reply to State's Response to Petitioner's Motion to Correct Illegal Sentence Pursuant to Fla. R. Crim. P. 3.800(a) and Fla. R. App. P. 9.100(k).

On September 30, 2020, the trial court Filed an order Denying Petitioner's motion to Correct illegal Sentence with an order to Show Cause why Sanctions Should not be imposed Pursuant to State, v. Spencer, 751 So. 2d 47 (Fla. 1999).

On October 9, 2020, Petitioner Provided to Prison Officials For mailing Petitioner's Response to Order to Show Cause Why Petitioner Should not be Prohibited From Filing Pro se Filings in Case No: 56-2004-CF-004059.

On January 11, 2021, the trial Court Filed an order Prohibiting Petitioner From Filing Pro se Pleadings, Motions, or Petitions.

On January 25, 2021, Petitioner Provided to Prison Officials For mailing a Notice of Appeal.

On October 6, 2021, Petitioner Received a Per Curiam Affirmed with a dissent From Judge J. Warner From the District Court of Appeal of the State of Florida, Fourth (4th) District

Reasons For granting the Petition

The Petitioner contends that the order prohibiting him from filing Prose Pleadings in Case number 50-2004-CF-004059 was issued in bad faith. The Florida Supreme Court established the right of Courts to bar litigants from filing Prose Pleadings if a defendant has abused the Judicial Process by filing Frivolous Pleadings. See: *Rivera v. State*, 728 So. 2d 1165 (Fla. 1998).

Prohibiting a defendant from filing Prose Pleadings is a serious sanction and must be reviewed carefully. The Petitioner presented a claim to the lower court as to the legality of his sentence. According to Fla. R. Crim. P. 3.800(c) it states in pertinent part: Reduction and modification: A Court may reduce or modify to include any of the provisions of Chapter 948, Fla. Statute, a legal sentence imposed by it, sua sponte, or upon motion filed, within 60 days after the imposition.

On August 19, 2004, the Petitioner was sentenced to 6 years in Florida DOC under the Youthful Offender Statute 958.04(2)(d) Fla. Thus, according to Fla. Stat. 3.800(c), the trial court could have mitigated the Petitioner's sentence on or before October 18, 2004.

Instead, Petitioner filed an untimely 3.800(c) 2 and a half years later alleging that his sentence is illegal which was improper. See: Fla. Statute 958.04(2)(d) and *Lampkins v. State*, 798 So. 2d 883-85 (Fla. 4th DCA 2001).

On February 14, 2007, the trial court issued an order mitigating/correcting the Petitioner's sentence. See Appendix C. When the trial court mitigated/corrected the Petitioner's sentence to 4 years in Florida DOC followed by 2 years probation the trial court erred because it was without jurisdiction to grant a motion

to mitigate Sentence as it must be done within 60 days of the Sentence's imposition or of an appellate mandate affirming the Sentence on direct appeal.

Even assuming, arguendo, that the Purpose of the Court's order was to Correct Petitioner's lawful Youthful Offender Sentence, this was also improper because Petitioner's original Sentence was not illegal. See: Appendix D. In the State of Florida, a Youthful Offender can be Sentenced to a Period of 6 years incarceration in State Prison unless the trial Court decides to impose a "Split Sentence" between State Prison and Probation/Community Control. See: Fla. Statute 958.04(2)(C), (D) and Lampkins, Supra.

Since Petitioner did not receive a "Split Sentence", his original Youthful Offender Sentence was "legal" and there was no basis or Jurisdiction For the Court to mitigate/Correct the Petitioner's original Sentence 29 months later after the original Plea was entered.

The trial Court denied the Petitioner's 3.800(a), Stating, "The Court had Jurisdiction to Correct an illegal Sentence at any time". See: Appendix E. This was improper because the Petitioner was Properly Sentenced to 6 yrs. in Florida Doc under the Youthful Offender Statute.

In a recent denial of an unrelated issue, Judge Sherri L. Collins Conceded of the Court's error of mitigating the Petitioner's Sentence after the 60 days Window Period expired. See: Appendix F.

The Petitioner Was Released From Florida Doc on Nov. 16, 2007. On October 1, 2008, an Affidavit of Violation Was Filed alleging Several new law Violation: Attempted First-Degree Murder, Robbery w/a Firearm, Aggravated Assault w/a deadly Weapon, and Battery. On May 4, 2012, he Was Found not guilty by a Jury on all Charges.

After Prevailing at trial, a VOP hearing Was Conducted and on Jan. 25, 2013, the trial Court Found Petitioner in Violation of Probation and Sentenced him to 40 years in Florida Doc Followed by 20 years Probation. However, because the trial Court did not have Jurisdiction to mitigate Petitioner's original Sentence to 4 years in Florida Doc Followed by 2 years Probation, his Current Sentence is illegal.

In Solomon v. State, 341 So.2d 537, ^(Fla) it States in Pertinent Part:

"Since the Change in the Sentence which Placed defendant on Probation Was Void, it Follows that - the Probation Revocation and its Corresponding Sentence of Five (5) years imprisonment Was also Void. In turn, this makes the Plea bargain Entered at the Probation Revocation hearing a nullity".

Solomon's and the instant Petitioner's Case is one and the Same. This is So because it is Natural to Say that one event is the Outcome or Consequence of another When the Former Sentence Would not have Occurred but For the unlawful mitigation.

When the trial Court mitigated Petitioner's Sentence 29 months later to 4 years in Florida Doc Followed by 2 years Probation, this was Void From the inception because the 60 days Window Period had already expired on October 18, 2004. Therefore, the Probation Revocation and its Corresponding Sentence of 40 years in Florida Doc Followed by 20 years Probation was also Void.

It is Well established that When Probation is being served illegally, a Circuit Court has no Jurisdiction to Revoke the Probation and Resentence a defendant. See: Manning v. State, 961 So. 2d 1135-37 (Fla. 2nd DCA 2007).

Every District Court of Appeal in the State of Florida, including the Fourth (4) DCA, acknowledged that once the 60 days time limit expires, the Court lacks Jurisdiction to Consider a 3.800(c) motion to mitigate. See: Fla. R. Crim. P. 3.800(c), Fox v. State, 166 So. 3d 894-96 (Fla. 4th DCA 2015), Colvin v. State, 63 So. 3d 889-90 (Fla. 5th DCA 2011), Rybolt v. State, 25 So. 3d 682-83 (Fla. 2nd DCA 2010).

Nevertheless, the order mitigating Petitioner's Sentence was a legal nullity because the Court did not have Jurisdiction to enter it. Nor could Petitioner's untimely 3.800(c) motion serve to invoke the Court's Jurisdiction by Waiver of Request. A defendant cannot confer Jurisdiction on the trial Court by Waiver, acquiescence, estoppel, or Consent". See: Golden v. State, 84 So. 3d 396-98 (Fla. 1st DCA 2012) and Wolfson v. State, 437 So. 2d 174 (Fla.).

When the trial Court denied this Claim unlawfully, this deprived the Petitioner of his 14th Amendment Right. The trial Court and the highest State Court Violated Due Process Clause by Prohibiting the Petitioner From Filing Pro se Pleadings in Case No: 50-2004-CF-004059.

Fla. R. Crim. P. 3.800(a) allows For the Filing of multiple motions, and [a] Rule 3.800(a) motion Cannot be Classified as a Successive unless it raised a Claim that has Previously been addressed on "its merits." see: Jordan v. State, 36 So.3d 796 (Fla. 1st DCA 2010).

The Same exact Claim that the Petitioner Filed has been brought Fourth in each District Court of Appeal in the State of Florida, including the 4th DCA and each Case Was Reversed and Remanded. However, that the trial Court denied the Petitioner of the Same relief For the Same exact issue is a denial of Due Process. Thus, based on Judge J. Warner's dissent, may this honorable Court Reverse the 4th DCA ruling.

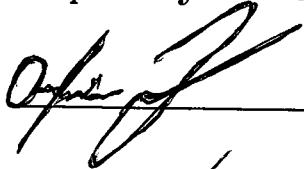
However, this issue was Filed approximately before the trial Court Prohibited the Petitioner From Filing Pro se Pleadings in Case No: 50-2004-CF-004059. IF ruled upon Properly, the Petitioner Would have been discharged From Florida Doc. Consequently, the Petitioner is now Prohibited From Filing Pro se Pleadings in which this Violates the Petitioner 14th Amendment of the United States Constitution.

Nevertheless, according to the law in the State of Florida, if a Claim has not been Reviewed and Rejected upon its merits, a defendant Could ReSubmit the Claim in order to Receive the appropriate ruling, in which the Petitioner Requests.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10/27/21