

21-7489

No. _____

MAR 23 2022

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Supreme Court, U.S.
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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

RAUL VASQUEZ

— PETITIONER

(Your Name)

vs.

STATE OF FLORIDA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SECOND DISTRICT COURT OF APPEAL, STATE OF FLORIDA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Raul Vasquez, DC# T08246

(Your Name)

U.C.I., P.O. Box 1000

(Address)

Raiford, Florida 32083

(City, State, Zip Code)

N/A

(Phone Number)

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. IS THE REFUSAL OF THE SUPREME COURT OF THE STATE OF FLORIDA, BY DECLINING TO ADDRESS THE CERTIFIED CONFLICT BETWEEN PETITIONER'S SECOND DISTRICT COURT OF APPEAL OF FLORIDA AND TWO OF ITS SISTER DISTRICT COURTS OF APPEAL THE THIRD AND FIFTH; THAT TRIAL COURT'S LACK OF JURISDICTION IS NOT AN EXCEPTION TO OVERCOME FLORIDA RULE OF CRIMINAL PROCEDURE RULE 3.850(b) TWO-YEAR LIMITATION TO FILE A 3.850 MOTION, VIOLATE PETITIONER'S UNITED STATES CONSTITUTION OF AMERICA AMENDMENTS 5th AND 14th AMENDMENTS, PROCEDURAL AND SUBSTANTIAL RIGHTS, THE RIGHT NOT TO BE TRIED TWICE FOR THE SAME OFFENSE, NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW, AND NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES.

2. PETITIONER IS NOT CHALLENGING 3.850(b) TWO-YEAR LIMITATION ITSELF, BUT ASKING, WHY NOT ALLOW THE LACK OF TRIAL COURT JURISDICTION AS DESCRIBED BY THE HIGHEST COURT OF FLORIDA TO BE ADDED AS "AN EXCEPTION" TO OVERCOME THE TWO-YEAR LIMITATION TO FILE A 3.850 MOTION.

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:

RELATED CASES

Manfield, C. & L.M. Ry. Co. Vs. Swan, 111 U.S. 379, 38 L. Ed. 462, 4 Sup. Ct. Rep 510, 15 C.J. p. 852, Sec. 171 (1884); "...[t]his court will, where no motion is made by either party, on its own motion, reverse a judgment for want of jurisdiction, not only in cases where it is shown negatively that jurisdiction does not exist, but even when it does not appear affirmatively that it does exist."

Also See, *West 132 Feet Vs. City of Orlando*, 80 Fla. 233, 239, 86 So. 197, 198-199 (1920); "...Courts are bound to take notice of

the limits of their authority and if want of jurisdiction appears at any stage of the proceedings, original or appellate, the court should notice the defect and enter an appropriate order. *Citing, Mansfield, C. & L. M. Ry. Co. v. Swan*, 111 U.S. 379, L. Ed. 462, 4 Sup. Ct. Rep. 510, 15 C.J. p. 952, Sec. 171. (1884)."

Also, See *Polk County v. Sofia*, 686 So. 2d 580; 702 So. 2d 1243; 1997 Fla. LEXIS 1354; 22 Fla. L. Weekly S. 529 (Fla. 1997). "...It is true, as the parties' state, that this conclusion 'will result in a waste of judicial resources.' However, 'courts are bound to take notice of the limits of their authority and if want of jurisdiction appears at any stage of the proceedings, original or appellate, the court should notice the defect and enter an appropriate order.' *West 132 Feet v. City of Orlando*, 80 Fla. 233, 239, 86 So. 197, 198-99 (1920). This is because the limits of a court's jurisdiction are of 'primary concern', requiring the court to address the issue 'sua sponte when any doubt exists.' *Maples v. Wilson*, 122 So. 2d 249, 251 (Fla. 1st DCA 1960). Thus, while the resulting 'waste of judicial resources' is regrettable, in the absence of jurisdiction, it is unavoidable."

Also, See *Lambert v. Barrett*, 157 U.S. 697, 15 S. Ct. 722, 39 L. Ed. 865 (1895). "...Federal courts follow substantive law of state as declared by highest court of state."

Also, See *Park Bank v. Remsen*, 158 U.S. 337, 15 S. Ct. 891, 39 L. Ed. 1008 (1895). "...Rulings of highest state court as to liability under penal statute of such state were controlling in federal courts."

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Procedural requirements for the movant
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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 _____ 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 state trial 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 January 19th 2022.
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

The Constitution Rights of the Constitution of
The United States of America Amendment V.
Right of the Accused;

(a person may not be tried twice for the same offense
(double jeopardy))

See *Benton v. Maryland*, 89 S.Ct. 2056, 23 L.Ed. 2d 707, 395 U.S. 784 (1969)... "The double jeopardy prohibition of the Fifth Amendment represents a fundamental ideal in our constitutional heritage, and it applies to the state through the 14th Amendment."

(nor be deprived of life, liberty, or property without due process of law (proper legal procedure))

See *Powe v. Alabama*, 287 U.S. 45, 53 S.Ct. 55, L.Ed. 158 (1932)... "It never has been doubted by this court, or any other so far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and that they together with a legally competent tribunal having jurisdiction of the case, constitute basic elements of the constitutional requirements of due process of law. The words of Webster so often quoted, that by 'the law of the land' is intended 'a law which hears before it condemns,' have been repeated in varying forms of expression in a multitude of decisions."

(The Constitution Rights of the Constitution of
The United States of America Amendment XIV.

(No state shall make or enforce any law which shall
abridge the privileges or immunities of citizens of

the United States.)

See *Giaccio v. State of Pennsylvania*, 382 U.S. 399, 402, 403, 15 L.Ed.2d 447, 86 S.Ct. 518 (1966). "both liberty and property are specifically protected by the Fourteenth Amendment against any state deprivation which does not meet the standards of due process, and this protection is not to be avoided by the simple label a State chooses to fasten upon its conduct or its statute." "It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case." "Certainly one of the basic purposes of the Due Process Clause has always been to protect a person against having the Government impose burdens upon him except in accordance with the valid laws of the land. Implicit in this constitutional safeguard is the premise that the law must be one that carries an understandable meaning with legal standards that courts must enforce."

Also See *Hamilton v. University of California*, 293 U.S. 245, 79 L.Ed. 343, 55 S.Ct. 197 (1934). "The 'privileges and immunities' protected by the Fourteenth Amendment to the Federal Constitution are only those that belong to citizens of the United States as distinguished from citizens of the state - those that arise from the Constitution and laws of the United States as contrasted with those that spring from other sources."

Rules of Decision Act, 28 U.S.C.A. Sec. 1652 - State laws of Decision. The laws of the state are only to be regarded as rules of decision in the courts of the United States where the constitution, treaties, or statutes of the United States have otherwise provided

and when the latter speaks they are controlling.

Also, See 28 U.S.C.A. § 1652-K, 246.- Criminal offenses and proceedings. Predecessor of 28 U.S.C.A. § 1652 did not apply in trial of criminal offenses against United States. *United States v. Reid*, 53 U.S. 361, 13 L.Ed. 1023 (1852); overruled in part, *Rosen v. United States*, 245 U.S. 467, 38 S.Ct. 148, 62 L.Ed. 406 (1918); *Funk v. United States*, 290 U.S. 371, 54 S.Ct. 212, 78 L.Ed. 369 (1933).

Also, See *Funk* at 290 U.S. 385, it cites the following; ...
"The supreme court of Connecticut in *Beardsley v. Hartford*, 50 Conn. 529, 541, 542, 47 Am. Rep. 677, after quoting the maxim of the common law, *cessante ratione legis, cessat ipsa lex*, said:
"This means that no law can survive the reasons on which it is founded. It needs no statute to change it; it abrogates itself. If the reasons on which a law rests are overborne by opposing reasons, which in the progress of society gain a controlling force, the old law, though still good as an abstract principle, and good in its application to some circumstances, must cease to apply as a controlling principle to the new circumstances."

Article V, sec. 3(b) Florida Constitution, which uses the word "may", which means that the Supreme Court right to involve jurisdiction is not mandatory.

STATEMENT OF THE CASE

An information was filed on July 18th, 1997, that the Petitioner's offenses occurred between the 3rd day of April, 1992 and the 31st day of January, 1997, three days before Petitioner and State accepted the Plea Agreement on July 21st 1997.

The Petitioner plead to a lesser-included Attempted Capital Sexual Battery (2-counts) and Lewd and Lascivious (1-count). He was sentenced to 15-years incarceration plus 5 years probation on July 21st, 1997, under the 1994 guidelines.

When Petitioner arrived at Florida Department of Corrections, Reception Center, he was advised that 1995 and not 1994 guidelines apply.

Petitioner filed a 3.850 motion to enforce plea agreement stating 1992 guidelines apply, because of the dates on the information filed on July 18th, 1997, and in the alternative-withdrawal of plea claiming Ineffective Assistance of Counsel. All Petitioner wanted was the most lenient gain time per information filed on July 18th, 1997. Petitioner's offense straddled 3 different guidelines, 1992, 1994, 1995 guidelines. He filed this motion in 1997.

The trial court denied Petitioner's motion in 1998 stating it was Florida's D.O.C. duty to award gain-time; the court ruled Petitioner was not entitled to relief on his claim of Ineffective Assistance of Counsel, but in fact the Petitioner did plea to pre-1994 guidelines.

Petitioner appealed to the Second DCA of Florida and it remanded the case back to the lower court, to only address Petitioner's claim of Ineffective Assistance of Counsel. Nowhere did the Second DCA mandate grant the lower court jurisdiction to rule on the withdrawal of Petitioner's plea.

A hearing was held on October 19th, 1998. The State misstated the dates of offenses to the trial court stating there were no offenses before 1994, even though the Certified Information states the offenses started in 1992. Petitioner orally asked to withdraw his plea claiming Ineffective Assistance of Counsel. The State stated, Petitioner's remedy if he wishes to go ahead with withdrawal of his plea and begin a new trial that he should be sent back up the road and let him file a motion. The case was transferred to the original trial court Judge. No ruling was made.

Another hearing was held on October 20th, 1998, again the State states the Petitioner would like to file a Motion to withdraw his plea claiming Ineffective Assistance of Counsel. Also, the Public Defender stated the Petitioner had a number of allegations against the Public Defender's Office, but is not a real motion.

Because the State misstating the start of the offenses, the trial court allowed the Petitioner's Oral Motion to be granted; because, the State was not able to enforce the plea negotiations that apparently he agreed to on the record. Petitioner never spoke nor was he ever spoken to at this supposedly evidentiary hearing, a violation of due process.

Petitioner went to trial in February of 1999 and was convicted of Capital Sexual Battery 1 Count and 2 counts of Lewd and Lascivious Act. He was sentenced to Life on Count 1 and 7 years on Count 3 and 4 on March 3rd, 1999, he was acquitted of Count 2.

Petitioner filed one 3.800(a) motion and one 3.850 and then an addendum motion for postconviction relief in this motion in ground 16 he stated - Defendant involuntarily and unknowingly withdrew his plea on October 20th, 1998. The Court found it was unable to conclusively refute this ground 16 and ordered the Office of the State Attorney to respond to ground 16.

Petitioner filed a second addendum motion for postconviction relief and the trial court stated in Note 1 - Although Defendant's pro se 2nd Motion to Addendum Motion For Postconviction Relief was untimely filed pursuant to Florida Rule of Criminal Procedure 3.850, on June 30, 2003, the Court inadvertently allowed Defendant to file said 2nd Motion and allowed Defendant's counsel Mr. Christopher Watson to adopt said 2nd Motion. Consequently, this Court will address Defendant's 2nd Motion on the merits. This Note is important and Petitioner will comment on this latter in this petition.

An evidentiary hearing was held in 2003 on ground 16 and grounds 9, 10, 11, 13, 14 and 24. At this hearing the State stated that for ground 16, there was no federal or state rules that say a judge must address the Defendant personally and have Defendant affirm or withdraw his plea. Petitioner asserts that there is Florida case law on this.

STATEMENT OF THE CASE

There is federal case law that trial court must personally address the defendant and ask defendant to personally accept or withdraw his plea at a plea agreement hearing.

In 2004, the trial court denied grounds 9, 10, 11, 13, 14, and 24; but, granted relief on ground 16, because Petitioner never was spoken to nor did he speak at the hearing on October 20th, 1998. There was no evidence that Trial Court personally addressed Petitioner to affirm or withdraw his plea.

The trial court overturned Petitioner's judgment of guilty on Count 1, 3, and 4 and his sentences of life on Count 1 and 7 years for Counts 3 and 4, and reinstated Petitioner's original plea agreement of 15 years incarceration, followed by 5 years probation.

The State appealed the trial court's ruling.

In 2006, the Second DCA reversed the trial court's ruling and remanded the trial court to reinstate the judgment of guilty on Counts 1, 3, and 4 and Petitioner's sentence of life on Count 1 and 7 years on Counts 3 and 4.

Petitioner appealed the Second DCA's rulings to the Supreme Court of Florida; but the the high court refused to invoke jurisdiction citing Article V, sec. 3(b) Florida Constitution.

Petitioner filed a Federal Habeas Corpus motion in 2006 and was denied relief.

Petitioner filed a C.O.A. to the 11th Circuit, Atlanta but

was denied. Petitioner spent 2½ years in the federal courts.

Petitioner has filed numerous motions since 2009 and most have been denied as time-barred.

In January of 2018, while researching case law at U.C.I. Law Library, Petitioner came across a Supreme Court of Florida precedent leading case, that came into effect on January 1st, 1997.

In *Boins v. State*, 672 So. 2d 30 (Fla. 1996), the Supreme Court of Florida gave directions that resulted in the promulgation of Florida Rule of Criminal Procedure Rule 3.170(L), which allowed a defendant 30 days after sentencing to file a Motion To Withdraw Plea. That 30-day period is "jurisdictional," and a court has no authority to hear a Motion to Withdraw Plea filed outside that time period... and limits a defendant to file a Motion to Vacate Judgment and sentence under Rule 3.890. See *Garford v. State*, 783 So. 2d 1191 (Fla 1st DCA 2001).

The Highest Court in Florida the Supreme Court held in *Griffin v. State*, 114 So. 3d 890, 897 (Florida 2013). "Florida Rule of Criminal Procedure 3.170(L) permits a 'defendant who pleads guilty or nolo contendere without expressly reserving the right to appeal a legally dispositive issue[to] file a motion to withdraw the plea within thirty days after rendition of the sentence, but only upon the grounds specified in Florida Rule of Appellate Procedure 9.140(b)(2)(A)(i)-(e)'. These grounds include an involuntary plea. However, once sentence has been imposed, a defendant must demonstrate a manifest injustice... in order to withdraw a plea."

Petitioner asserts that the trial court lacked jurisdiction to rule on Petitioner's oral motion to withdraw plea.

STATEMENT OF THE CASE

The case underlying this petition is about the State of Florida's lower trial court's refusal to rule on Petitioner's claim that the lower trial court lacked jurisdiction to rule on Petitioner's oral motion to withdraw his plea on October 20th 1998; because of Florida's Rule of Criminal Procedure Rule 3.850(b) which states a defendant has two-years to file a 3.850 motion any motion filed after the two years will be denied. See APPENDIX B-Decision of State trial Court and Attachments.

For over 2 decades the Supreme Court of Florida has declined to address this issue, that trial court's lack of jurisdiction is an exception to Florida Rule of Criminal Procedure Rule 3.850(b) and can overcome the two-year limitation to file a 3.850 motion, mostly by stating it has the right to decline jurisdiction, citing Article V, Section 3(b), Florida Constitution.

In 2010, the Petitioner's Second DCA of Florida certified conflict with three (3) sister DCA's, the Third, Fourth, and Fifth in *Carboja v. State*, 28 So.3d 187, 189 (Fla. 2d DCA 2010); "... We recognize that other courts have held that the two-year time limitation in rule 3.850(b) is inapplicable to a motion alleging that the circuit court lacked jurisdiction to enter the defendant's judgment or sentence. See, e.g., *Gunn v. State*, 947 So. 2d 551 (Fla. 4th DCA 2006); *Brown v. State*, 917 So. 2d at 273; *Harris v. State*, 854 So. 2d 703 (Fla. 3d DCA 2003); *Harrell v. State*, 721 So. 2d 1185 (Fla. 5th DCA 1998). See Note 2 (2 We knowlege that our decision conflicts with these cases and accordingly certify conflict.) We do not find these cases persuasive because they do not explain why they apparently concluded that the two-year limit in rule 3.850 did not extinguish the defendant's right to raise the issue of the

circuit court's jurisdiction. While we are well aware of the body of law that holds that the court's jurisdiction may be challenged at any time, we have found nothing that suggests we can ignore the two-year limit contained in rule 3.850."

According to Florida Criminal Practice and Procedure Vol. 22 Edition 2021, by Michael Ufferman, Chapter 21, Postconviction Procedures § 2183 - Rule 3.850 - Procedural requirements for the movant, Pages 891-892 it asserts:

"Thus, the two-year time period begins to run when the conviction and sentence first become 'final', and a motion must be 'filed' within the two-year period following the date on which the case becomes final. However, there at least eight recognized exceptions to this general time limitation.... Fifth, a rule 3.850 motion challenging the trial court's jurisdiction to enter the judgment under attack may be filed at any time." See Note 18 (18, See, e.g., *Harris v. State*, 854 So.2d 703 (Fla.3d DCA 2003); *Harrell v. State*, 721 So. 2d 1185 (Fla.5th DCA 1998). It should be noted that when the Florida Supreme Court had the opportunity to disagree with decisions such as *Harris* and *Harrell* it declined to do so. *Corbajal v. State*, 75 So.3d 258 (Fla. 2011).

In *Bonner v. Willis*, 2011 U.S. Dist. LEXIS 21396 (S.D. Fla., Jan. 10, 2011), the court mistakenly assumed that the issue "the absence of jurisdiction of trial court may be raised at any time" was resolved in the decision in *Corbajal v. State*, 28 So.3d 187, 189 (Fla.2d DCA 2010). The S.D. Florida court stated at {2011 U.S. Dist. T3}..." While this raises a fascinating issue of

Florida state law, the Court need not resolve this state law question because two Florida courts have already done so in Mr. Bonner's case."

If the Federal Courts must follow the substantive law of the state as declared by the highest court of the state; how can the Federal Court use the ruling of the highest court of Florida if it has none on this "fascinating issue"; because, the Supreme Court of Florida declines for over two (2) decades to address this "fascinating issue"; "that the lack of trial court's jurisdiction can be challenged at any time"; and, it's declining for eleven (11) years to address a "certified" court conflict of public importance between sister district courts of appeal.

This "fascinating issue" was not resolved by the highest court of Florida and is now in "Limbo". The Supreme Court of Florida ten (10) months after the S.D. Florida Bonner ruling in *Carbajal v. State*, 75 So.3d 258, 259 (Fla. November 3rd, 2011) declined to address the certified conflict. So, the Bonner ruling is mistaken by ruling the 'fascinating issue'; lack of trial court's jurisdiction can be challenged at any time was not resolved.

The Petitioner asserts that because the trial court lacked jurisdiction on October 20th, 1998 as described by the highest court of Florida, his plea agreement was still legal and he was tried twice for the same offense on February 23^d, 1999, a violation of the 5th and 14th Amendments of the U.S.C.A., and because the courts of Florida will not rule on this "fascinating issue", trial court's lack of jurisdiction can be challenged at any time; violates Petitioner's 5th and 14th Amendments of U.S.C.A. - nor shall any person be deprived of life, liberty, or property without due process of law.

Also, the Supreme Court of Florida's refusal to address this "fascinating issue" violates Petitioner's 14th Amendment of the U.S.C.A. right - no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the law.

Petitioner is not challenging the Florida Rule of Criminal Procedure Rule 3.850(b) itself; but asserts that the lack of trial court's jurisdiction can be challenged at any time, as described by the highest court of Florida, be added to the exceptions to overcome the two-year limitation to file a 3.850 motion.

REASONS FOR GRANTING THE PETITION

The questions presented are one of extraordinary national importance; that, the highest Court of Florida will not further analyze.

This Court has repeatedly recognized the importance to the public at large of resolving questions of court's lack of jurisdiction as far back as 1884. See *Mansfield V. Swan* above.

The highest court of Florida, its Supreme Court also has recognized this "fascinating issue", questions of court's lack of jurisdiction as far back as 1920. See *West 132 Feet V. City of Orlando* above, and as recently as 1994, See *Polk County V. SoRka* above.

The sole point to this Petition is the refusal of the State of Florida's highest court, its Supreme Court to address this "fascinating issue", trial court's lack of jurisdiction can be an exception to the two-year limitation in Rule 3.850(b) to file a 3.850 motion.

The Supreme Court of Florida declining to address this "fascinating issue", violates Petitioner's procedural and substantive rights as implemented in the U.S.C.A, Amendments 5th and 14th.

The right not to be tried twice for the same offense. Trial court lacked jurisdiction to grant Petitioner's oral motion to withdraw plea. See Appendix C, Case progress report which states "Def's oral motion to withdraw plea granted".

REASONS FOR GRANTING THE PETITION

See Note 1.

Petitioner filed his First 3.850 Motion in December of 1997.

The trial court lacked jurisdiction to rule on Petitioner's oral motion to withdraw plea on October 20th, 1998; because the Supreme Court of Florida implemented a new rule; that the courts lack jurisdiction to rule on a motion to withdraw plea agreement after 30 days of rendition of sentence, this came in to effect on January 1st, 1997.

Petitioner suffered prejudice, because he went to trial on February 23rd, 1999 and was convicted of the same offenses a violation of double jeopardy.

See *State V. Johnson*, 483 So. 2d 420 (Fla. 1986) (The United States Supreme Court holds that the right not to be twice placed in jeopardy is "fundamental" and that the primary purpose of the double jeopardy clause is to prevent a trial from taking place at all,

But see also, *Jupin V. State*, 664 So. 2d 1031 (Fla. 2nd DCA 1995) at 1032. "It erred when it set aside the previously accepted plea. By reinstating Jupin's not guilty plea and proceeding with a trial, the lower court violated the prohibition against

Note 1. There is no such as an oral 3.850 motion, federal or state; also, Petitioner was never spoken to nor did he speak at the October 20th, 1998 hearing.

double jeopardy."... Because the court erred when it set aside Jupin's no contest plea, we hold that the plea is still in effect."

Petitioner asserts that *Johnson V. State*, and/or *Jupin V. State*, should apply to him. Either his judgment and sentence be overturned, and that he can not be ever convicted for his offenses. Or, that his plea is still in effect and must be released.

Also, since court lacked jurisdiction all proceedings are null and void. See *Old Field V. Pueblo De Bahia Loro, S.A.*, 558 F.3d 1210 C.A.11 (Fla) 2009.

The Supreme Court of Florida is violating Petitioner's right to due process of law. Because the Petitioner has the right to be heard.

What Due Process (proper legal procedure) is required an individual in a proceeding against him can vary from case to case. However, it guarantee's at a "Minimum" the right to be heard. *Zimmerman V. Burch*, 110 S.Ct. 975 (1991).

This "Fundamental Instrument" in this country which sets out the basic rights each and every person is entitled to is the "United States Constitution".

This monumental document, hard fought for by our Forefathers, against tranny was established to ensure "Justice" to all in matters regarding Life, Liberty, and Property and to ensure that fairness in all proceedings thereof was properly accorded.

That is why to this day the most important aspect guaranteed

by the Constitution is the Right to Due Process (proper legal procedure) embodied in the Fifth and Fourteenth Amendments:

(No person **shall** be ... deprived of Life, Liberty, and Property, without Due Process of Law). United States Code Annotated Constitution Amendment V.

(Nor **shall** any State deprive any person of Life, Liberty, and Property, without Due Process of Law). United States Code Annotated Constitution Amendment XIV.

There is that insurance that the One seeking Justice can present his side of the facts fully against the Opposition against him. I wish to exercise my right to have those considering the facts here to be able to make a fair, informed, and just decision in the cause before them.

A decision reached with anything less would be contrary to the Purpose and Intent of the Constitution, and the Petitioner feels that a fair determination of the cause is warranted.

Because the Supreme Court of Florida will not address the trial court's lack of jurisdiction is an exception to the two-year limitation in Rule 3.850(b), the Petitioner asserts his right to be heard violates his right to due process of law.

The Supreme Court of Florida is also violating Petitioner's 14th Amendment - (No state **shall** make or enforce any law which **shall** abridge the privileges or immunities of citizens of the United States ... nor deny to any person within its jurisdiction the equal protection of the law).

REASONS TO GRANT THE PETITION

According to *Giaccio*; above, it held... "It is established that a law fails to meet the requirements of the Due Process Clause if its is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case."

The Petitioner's Second DCA is not only in conflict with its sister DCA's the Third and Fifth; but, also its sister DCA, the Fourth DCA. In *Gunn v. State*, 947 So.2d 551 (Fla 4th DCA 2006), it held; "...We agree with the defendant that a trial court should review the merits of a postconviction motion, even if untimely, which raises a jurisdictional issue". In *Cerbajal* 75 So.2d at 260, the Supreme Court did not disapprove *Gunn*.

Another sister DCA the First DCA held in *State v. Booker*, 497 So.2d 957 (Fla. 1st DCA 1986)... "Since the question of whether a court has subject matter jurisdiction involves a claim of fundamental error which can be raised at any time."

Also, in *C.W. v. State*, 637 So.2d 28 (Fla 2^d DCA 1994), which different judges made the ruling have long retried, this 2^d DCA held; "... It is axiomatic that failure to raise a jurisdictional issue is fundamental error and may be raised at any time." This, of course, had to do with a 3.800(b) time limit issue, but a 3.800 motion is considered a Postconviction issue.

According to this Court's ruling in *Giaccio*, the
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Petitioner asserts that Florida's 3.850(b) rule is so vague that the Petitioner and who knows how many other inmates in the Second DCA, have thought that a court's jurisdiction overcomes the two-year limitation in Rule 3.850(b).

Even, the Second DCA's majority sister DCA's had a different interruption then the Second DCA's "fascinating issue" that the trial court's lack of jurisdiction is an exception to the two-year limitation in Rule 3.850(b).

The majority's contrary interruption should prevail over the Second DCA's certified conflict.

The second point which can resolve this "fascinating issue", is for the Supreme Court of Florida, is to add trial court lack of jurisdiction to the exceptions to the two-year limitation, as discribed by the highest court of Florida.

The Supreme Court of Florida amended 3.170 and added (1) that the trial court lacked jurisdiction to rule on a motion to withdraw plea after 30-days of rendition of sentence, this procedure is jurisdictional. See Amendments to the Florida Rules of Criminal Procedure, 685 So.2d 1253, 1257 (Fla. 1996). This ruling should precede the ruling in The Florida Bar Re Amendment to Rules of Criminal Procedure (Rule 3.850) 460 So.2d 907 (Fla. 1984)... "This rule shall become effective January 1st, 1985, at 12:01 A.M. The two year time limitation begins to run when the judgment and sentence become final." By adding trial court lack of jurisdiction to the exception list.

Let us not forget that Mr. Michael Ufferman a noted law expert interprets that lack of trial courts jurisdiction is an exception to the two-year limitation in Rule 3.850(b) in his most used law book Fla. Crim. Prac and Pro. Vol. 22 Page 891.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Raul Josequez

Date: March 23, 2022