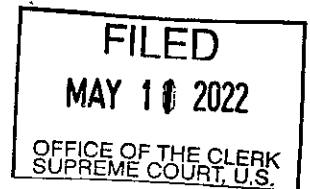


21 - 7923
No. _____

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

SAMEER MUHAMMAD — PETITIONER
(Your Name)

VS.

STATE OF FLORIDA — RESPONDENT

THIRD DISTRICT COURT APPEALS FOR THE STATE OF FLORIDA

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

PETITION FOR A WRIT OF CERTIORARI

SAMEER MUHAMMAD
(Your Name)

SOUTH BAY CORRECTIONAL AND REHABILITATION FACILITY

(Address)

P.O.BOX 7171, SOUTH BAY, FLORIDA 33493
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Question One: **WHETHER THE TRIAL COURT WAS WITHOUT JURISDICTION TO ENTER AN ORDER REINSTATING THE PREVIOUS ORDER VACATING OFFENSE UNDER DOUBLE JEOPARDY PRINCIPLE DESPITE MANDATE FROM DCA; WHERE THE STATE DID NOT APPEAL THE INITIAL ORDER VACATING THE OFFENCE AND THE JUDICIAL LABOR HAS COME TO AN END; THUS VIOLATING APPELLANT'S DUE PROCESS RIGHTS UNDER THE UNITES STATES CONSTITUTION AND ARTICLE 1, SECTION 9, OF THE FLORIDA CONSTITUTION.**

LIST OF PARTIES

[X] 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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MARCH 2022

APPENDIX B ELEVENTH JUDICIAL CIRCUIT.
COURT DENIAL HABEAS CORPUS

APPENDIX C of Rehearing

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☐ is unpublished.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☐ is unpublished.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 **THIRD DISTRICT COURT OF APPEAL**

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the lower court appears at Appendix B to the petition and Rehearing denied Appendix C

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

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 of 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. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

☒ For cases from **state courts**:

The date 3.02.2022 on which the highest state court decided my case _____ copy of that decision appears at Appendix A.

☒ A timely petition of rehearing was thereafter denied on the following date: Sept 1, 2021, and a copy of the order lower court denying rehearing appears at .

☐ An extension of time to file the petition for a writ of certiorari was granted to an including _____ (date) on _____ (date) in Application No. _____.

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

☐ 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 of 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 _____ ☐ copy of that decision appears at Appendix A_____.

☐ A timely petition of rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix C_____.

☐ An extension of time to file the petition for a writ of certiorari was granted to an including _____ (date) on _____ (date) in Application No. ____ ☐ _____.

The jurisdiction of this Court is invoked under 28 U.S.C.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment ; No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except, in cases arising in the land or naval forces, or in the militia, when actual service in the time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, property, without due process of law; nor shall private property be taken for public use, without just compensation

FEDERAL STATUTES

28 U.S.C. § 1251

- (B) The Supreme Court shall have original but not exclusive jurisdiction of
- (2) All controversies between United States and a States.

STATEMENT OF CASE AND FACTS

1. The convictions herein were obtained in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.
2. The Appellant was convicted on October 10, 2008. (R.204 – 205)
3. The length of sentence imposed was a composite 20 year sentence with two 5 year minimum mandatory prison sentences totaling a composite 10 year minimum mandatory with 10-years of probation to follow on counts 2, 3, 4, and 5 (R. 208 – 221).
4. The Appellant was convicted of one count of First degree Organized Fraud; three counts of Second Degree Grand Theft; one count of First Degree Grand

Theft; three counts of Third Degree Uttering a Forgery; five counts of First Degree Fraudulent Use of Personal Identification; and one count of Third Degree Possession of Counterfeit Driver's License.

5. The Appellant proceeded to trial by jury.

6. The Appellant did not testify at trial.

7. The Appellant appealed the jury's guilty findings to the Third District Court of Appeal.

8. On August 31, 2011, the Third District Court of Appeal reversed and vacated the Theft conviction based on double jeopardy grounds. See *Muhammad v. State*, 99 S0. 3d 964 (Fla 3rd DCA 2011)

REASON FOR GRANTING PETITION

WHETHER THE TRIAL COURT WAS WITHOUT JURISDICTION TO ENTER AN ORDER REINSTATING HIS PREVIOUS ORDER VACATING OFFENSE UNDER DOUBLE JEOPARDY PRINCIPLE DESPITE MANDATE FROM DCA; WHERE THE STATED DID NOT APPEAL THE INITIAL ORDER VACATING THE OFFENSE AND THE JUDICIAL LABOR HAD COME TO AN END; THUS VIOLATING APPELLANT'S DUE PROCESS RIGHTS UNDER THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 9, OF THE FLORIDA CONSTITUTION.

ANALYSIS

Double Jeopardy

"The Fifth Amendment to the United States Constitution and article 1, section 9 of the Florida Constitution protects an accused against being twice put in jeopardy for the same offense." *State v. Gaines*, 770 So. 2d 1221, (Fla. 2000) (citing *Thomason v. State*, 620 So. 2d 1234, 1236, (Fla. 1993). In *United States v. Dinitz*, 424 U.S. 600, 96 S. Ct. 1075, 47 L. Ed. 2d 267 (1975), the United States Supreme Court explained the importance of the Double Jeopardy Clause;

The Double Jeopardy Clause of the Fifth Amendment protects a defendant in a criminal proceeding against multiple punishments or repeated prosecutions for the same offense. See *United States v. Wilson*, 420 U.S. 332, 95 S. Ct. 1013, 43 L. Ed. 2d 232 (1975); *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969). Underlying this constitutional safeguard is the belief that "the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing

state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.” *Green v. United States*, 355 U.S. 184, 78 S. Ct. 221, 2 L. Ed. 2d 199, 77 Ohio Law Abs. 202 (1957). *Id.* at 606. Jeopardy attaches when the jury is impaneled and sworn. *See Gaines*, 770 So. 2d at 1225.

Correct Ruling:

Allowing dual convictions to stand and simply withholding the imposition of sentence for one of the offenses is not sufficient to cure a double jeopardy violation, as it is the record of an appellant’s conviction that constitutes a violation of double jeopardy. To cure the double jeopardy problem, one of the convictions must be vacated – the remedy traditionally resorted to by Florida courts. *Heck v. State*, 996 So. 2d 515 (Fla. 4th DCA 2007).

During imposition of sentence at the original sentencing hearing held on December 2, 2008, the State apprised the trial court of a pending double jeopardy violation involving Count one (Organized Fraud) (R. 356). The State advised the Court that the Appellant can be found guilty but that he can’t be sentenced on said count (R.356).

Initially, the State’s position was that the trial court should not impose sentence on Count One (Organized Scheme to Defraud). Noting in pertinent part: (R. 355).

Ms. Jordan: “(t)he state would be electing...defendant by sentenced to counts two through five, in lieu of count one, which is the organized scheme to defraud....and then counts two, three, four and five with separate grand theft. [W]e’re electing he

be to-he be sentenced legally on those counts. [v]erses the count one, this organized fraud.

The Court: meaning. You don't want him sentenced on count one?

Ms. Perikles: he can be found guilty, which he was, but he can't be sentenced on both.

The Court: It's double jeopardy, all right. Anything else? (R. 356)

Subsequently, on December 9, 2008, the Court, at the State's behest, vacated Count One (Organized Fraud). Noting the following:

Ms. Perikles: Judge, I went to legal – (R. 366 lines 6 – 13) and (R. 375 – 378).

The Court: Yes.

Ms Perikles: I didn't really quite get an answer from them. I did my own research and from what I can tell, in all cases, that similar situation has occurred, the appellate court has sent it back to the trial court for them to vacate one count and re-sentence, because we never sentenced him on that count, I guess we would have to vacate that conviction on Count One (R. 366).

The Court: Vacate the conviction on Count One (R. 366 Ln. 14)

The Appellant contends the subsequent appeal following the trial court's order vacating count one is null and void where (1) the trial court's order vacating count one eliminating any double jeopardy violation. *Griffin v. State*, 69 So. 3d 344 (Fla. 4th DCA 2011. (2) The court made the correct ruling. *Heck v. State*, 966 So. 2d. 515 (Fla. 4th DCA 2007). (3) The ruling as a final order following imposition of

sentence, to which judicial labor had to come to an end. *State v. Gaines*, 770 So. 2d. 1221 (Fla. 2004); and (4) the State did not seek a rehearing and/or appeal. Thus, divesting the appellate court of its jurisdiction to hear an appeal (R. 375 – 378).

There Was No Double Jeopardy Violation That Could Have Been Appealed.

Subsequent to the order vacating count one. Petitioner's appellate attorney filed an initial brief arguing a double jeopardy violation. However, what Counsel, the State and the District Court of Appeal may overlooked that the trial court actions vacating count one cured any potential double jeopardy violation. See *Griffin v. State*, 69 So. 3d 344 (Fla. 4th DCA 2011) ("while the normal practice is to vacate the 'lesser included offenses, See *Raines v. State*, 19 So. 3d 341, 332 (Fla. 2d DCA 2009), the trial court's remedy of vacating count III (the greater offense) eliminated any potential double jeopardy issue....," *id. Griffin*, 69 So. 3d at 346; See also *Valdez v. State*, 3 So. 3d 1067, 1069 (Fla. 2009) (stating, "vacating either conviction would resolve the double jeopardy issue"). Thus, there was no double jeopardy violation for the DCA to cure.

Justiciable Controversy

Moreover, no justiciable controversy existed to which Appellant's appellate counsel could have presented to the DCA for purposed of a double jeopardy issue raised by trial counsel. As noted, "[t]he appellate courts have an independent duty to consider [the following] in every case and to dismiss an appeal or petition that does not present a genuine controversy:

action” for purposes of double jeopardy.” *United States v. Scott*, 437 U.S. 82, 96, 57 L. Ed. 2d 65, 98 S. Ct. 2187 (1978) (quoting *United States v. Jorn*, 400 U.S. 470, 478 n.7 27 L.Ed.2d 543 n. 7 91 S. Ct. 547 (1971) id. *Gaines*, 770 So. 2d at 1226.

Thus vacation of count one was a final order for double jeopardy purposes where the trial judge ruling represented a resolution in the Appellant’s favor, correct or not, of some or all of the factual elements of the offense charged (R. 375). Cf. *Scott*, 437 U.S. at 97 (quoting *United States v. Martin Lining Supply Co.*, 430 U.S. 564, 571 (1977).

State Did Not Seek a Rehearing/Appeal

Florida Rule of Appellate Procedure 9.140 (c) (1), identifies the orders that are subject to appeal by the state in a criminal case.

This rule serves as the counterparts to § 927.071, Florida Statute, which define the state right to appeal by enumerating the same kinds of orders.

Here, the State did not utilize their right to appeal the trial court’s orders vacating count one organized fraud. The failure to do so divested the Court of jurisdiction to hear the appeal. *See State v. Mackey*, 271 So. 3d 128 (Fla. 3rd DCA 2019)

Holdings: [1] – Because defendant’s motion was a Fla. R. Crim. P. 3.190(c)(2) pre-trial motion to dismiss the information on double jeopardy grounds, the order expressly barring re-trial on the offenses of attempted first degree premeditated murder and attempted second degree murder on double jeopardy grounds was an appealable order under § 924.07(1)(a), Fla. Stat., and Fla. R. App. P. 9.140 (c)(1)(A). Thus, the State was required to seek appellate review of the order within 15 days of its rendition pursuant to Fla. R. App. P. 9.140(c)(3);

[2] – Because the order was an appealable order and The State did not file its petition within 15 days after The subject order was rendered, the State's petition for a writ of certiorari could not be treated as an appeal pursuant to Fla. R. App. P. 9.140(c)(3) and Fla. R. App. P. 9.040(c). Therefore, the petition had to be dismissed for lack of jurisdiction.

This Court has Authority to Correct an Erroneous Ruling Made By the DCA.

If it appears to a court of competent jurisdiction that a man is being illegally restrained of his liberty, it is the responsibility of the court to brush aside formal technicalities and issue such appropriate orders as will do justice. *Anglin v. Mayo*, 88 So. 2d 918, 919 (Fla. 1956).

The Third District relying on *Pizzo v. State*, 945 So. 2d 1203, 1206 (Fla. 2006), and *Flores v. State*, 945 So. 2d 1026 (Fla. 5th DCA 2007), reverse and remanded Appellant's conviction "[w]ith directions to vacate the [Appellant's] convictions for the lesser included offenses of grand theft and to sentence the [petitioner] on the organized fraud conviction." *Id. Muhammad v. state*, 99So. 3d 964 (Fla. 3rd DCA 2011).

Here, it's fair to assume that the DCA was not aware that the actual conviction for the greater offense, Count One; Organized Fraud, had actually been vacated (R. 375 – 378) as opposed to nolle pros. The DCA opinioned, "[t]he State election to nolle pros the [p]etitioner's organized fraud conviction....is a nullity and shall have no effect on remand." *Id at* 964.

The Appellant contends the DCA directions to remand the case for reinstatement of the organized fraud conviction was not supported by the record or clearly established authority. As noted above, the trial court actually vacated count

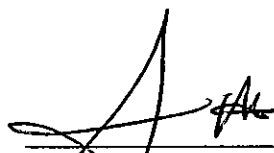
one, therefore, there was no double jeopardy violation, notwithstanding the holdings announced in *Pizzo v. State*, cf. The Florida Supreme Court authority in *Valdez*, *supra*, (“stating vacating “either conviction “would resolve the double jeopardy violation); see also, *Griffin*, *supra*, (“while the normal practice is to vacate the lesser included offenses, *Raines*, *supra*, the trial court’s remedy of vacating III (“the greater offenses) eliminated any potential double jeopardy violation to which correction is warranted.

Moreover, the trial court in *Pizzo*, did not vacate the other offense. “[T]he defendant in *Pizzo*, was convicted “and sentenced” for, among other crimes, one count of organized fraud and six counts of grand theft.” *Id* at 1205. Thus, *a justiciable controversy of double jeopardy was present*.

This adverse factor is the guiding principle to which Florida Courts recognize in their determination of whether reversal is warranted on double jeopardy grounds. See *Heck*, *supra*, (stating, “the trial court sought to avoid the double jeopardy problem by entering judgment for both convictions and withholding imposition of sentence for the attempted felony murder conviction, allowing the dual convictions to stand and simply withholding the imposition of sentence for one offense is not, however sufficient to cure the double jeopardy violation as it is “the record of appellant’s convictions [that] constitutes the violation of double jeopardy”). *Id.* *Heck*, 966 So.2d at 517, citing *Florida v. Sate*, 855 So.2d 109, 111 (Fla. 4th DCA 2003); See also *Donovan v. State*, 572 So.2d 522 (Fla. 5th DCA 1990). In *Donovan*, the Fifth District held that convictions for both grand theft and organized fraud

violate double jeopardy. However, the District Court in *Donovan* remanded for resentencing for the organized fraud conviction "because no sentence" was originally imposed for that crime. *Id.* at 527.

RESPECTFULLY SUBMITTED

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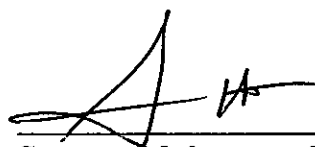
Sameer Muhammad

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the document contains 6,877 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 21, 2022

A handwritten signature in black ink, appearing to be 'Sameer Muhammad', written over a horizontal line.

Sameer Muhammad