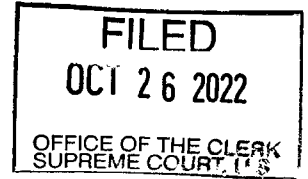


22-5969

ORIGINAL

No.: \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_



THOMAS DEPTULA — PETITIONER

vs.

STATE OF FLORIDA — RESPONDENT(S).

\_\_\_\_\_  
ON PETITION FOR WRIT OF CERTIORARI TO  
THE SECOND DISTRICT COURT OF APPEAL FLORIDA  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI

PROVIDED TO DESOTO C. I.  
ON 10/26/22 FOR MAILING  
INMATE INITIALS TD  
OFFICER INITIALS AK

Thomas Deptula  
Thomas Deptula  
DC# Y38811  
Desoto Correctional Institution Annex  
13617 South East Highway 70  
Arcadia, Florida 34266-7800

## **QUESTIONS PRESENTED**

WHETHER THE FLORIDA SECOND DISTRICT COURT OF APPEAL ERRED BY DENYING THE PETITIONER'S INITIAL BRIEF'S REQUEST FOR THE REMOVAL OF THE SEXUAL PREDATOR DESIGNATION IN EXPRESS OR DIRECT CONFLICT WITH TORRES V. O'QUINN, 612 F.3D 237 (4<sup>TH</sup> CIR. 2010) AND CHESSER V. STATE, 148 SO.3D 497 (FLA. 2<sup>ND</sup> DCA 2007) IN VIOLATION OF THE PETITIONER'S FOURTEENTH AMENDMENT RIGHTS?

### **LIST OF PARTIES**

- [✓] All parties appear in the caption of the case on the cover.
- [ ] All parties **do not** appear in the caption of the case on the cover. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

N/A

### **RELATED CASES**

Chesser v. State, 148 So.3d 497 (Fla. 2<sup>nd</sup> DCA 2007)

Torres v. O'Quinn, 612 F.3d 237 (4<sup>th</sup> Cir. 2010)

## **TABLE OF CONTENTS**

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	5
REASONS FOR GRANTING THE WRIT.....	7
CONCLUSION.....	15

## **INDEX TO APPENDICES**

APPENDIX A: ORDER DESIGNATING PETITIONER AS A SEXUAL PREDATOR	
APPENDIX B: RULE 3.800(A) MOTION TO CORRECT ILLEGAL SENTENCE	
APPENDIX C: STATE’S RESPONSE	
APPENDIX D: RULE 3.800(A) MOTION TO CORRECT ILLEGAL SENTENCE	
APPENDIX E: REQUEST FOR A STATUS HEARING AND ORDER DENYING RULE 3.800(A) MOTION	
APPENDIX F: NOTICE OF APPEAL AND ACKNOWLEDGEMENT OF NEW CASE NUMBER	
APPENDIX G: PETITIONER’S INITIAL BRIEF	
APPENDIX H: PCA ORDER ON INITIAL BRIEF	
APPENDIX I: MOTION FOR REHEARING	
APPENDIX J: ORDER DENYING MOTION FOR REHEARING	
APPENDIX K: MANDATE	
APPENDIX L: SENTENCING HEARING	

## TABLE OF AUTHORITIES CITED

CASES .....	PAGE NUMBER
Chesser v. State, 148 So.3d 497 (Fla. 2 <sup>nd</sup> DCA 2007) .....	ii, 8, 9, 10
Dotexamdr, Pllc v. Hartford Underwriters Ins, Co, Lexis 145713 (2 <sup>nd</sup> Cir. 2021) .....	9
FoP v. City Of Miami, 243 So.3d 894 (Fla. 2018) .....	11
State v. Perrella, 736 So.2d 94 (Fla. 4 <sup>th</sup> DCA 1999) .....	9
State v. Robinson, 873 So.2d 1205 (Fla. 2004) .....	7
Torres v. O’Quinn, 612 F.3d 237 (4 <sup>th</sup> Cir. 2010) .....	ii, 8, 9
U.S. v. Maxwell, 285 F.3d 336, 341 (4 <sup>th</sup> Cir. 2002) .....	9
U.S. Paul Davis, 424 U.S. 693, 701, 47 L.Ed.2d 405, 96 S.Ct. 1155 (1976) .....	7
Wade v. State, 751 So.2d 669 (Fla. 2 <sup>nd</sup> DCA 2000) .....	9, 10
STATUTES AND RULES	
§ 775. 021(1) Florida statutes .....	11
§ 775.21 Florida statutes.....	8, 9
§ 775.21(3)(a) / (d)(e)(1-3) Florida statutes.....	11, 12
§ 775.21(4)(a) Florida statutes.....	10
§ 775.21(4)(a)(1) Florida Statutes.....	11, 13
§ 775.21(4)(a)(1)(a) / (b) Florida statutes.....	5, 8, 9, 10, 11
§ 943.0435 Florida statutes.....	5
3.800(a) Florida Rule of Criminal Procedure .....	5
OTHER	
Florida Constitution	
art. 1, § 9 .....	11

United States Constitution

Fourteenth Amendment .....7, 11

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari is issued to review the judgment below.

**OPINIONS BELOW**

☐ For case 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

☐ For case from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix H to the petition and is

☐ reported at \_\_\_\_\_; or,

☒ has been designated for publication but is not yet reported; or,

☐ is unpublished

## JURISDICTION

☐ For case 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 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 case from **state courts**:

The date on which the highest state court decided my case was July 27, 2022. A copy of that decision appears at Appendix H.

☐ no petition for rehearing was timely filed in my case.

☐ A timely petitioner for rehearing was thereafter denied on the following date: August 10, 2022, and a copy of the order denying rehearing appears at Appendix J.

☐ An extension of time to file the petition for writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_A\_\_\_\_.

☒ has been designated for publication but is not yet reported; or,

☐ is unpublished

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



## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **United States Constitution, Fourteenth Amendment**

... nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **Florida Constitution, Article 1 § 9**

No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

### **Florida Statutes 775.011(1) Rules of Construction**

(1) The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.

### **Florida Statutes 775.21. The Florida Sexual Predators Act**

- (3)(a) — Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety.
- (3)(d) — ... The designation of a person as a sexual predator is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.
- (3)(e)(1) — Requiring sexual predators ... to have special conditions of supervision ....
- (3)(e)(2) — Requiring sexual predators to register ....
- (3)(e)(3) — Requiring community and public notification ....
- (4)(a)(1)(a)/(b)

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a “sexual predator” under subsection (5), ...

#### **1. The felony is:**

a. A capital, life, or first degree felony violation, or any attempt thereof, of s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim’s parent, or of chapter 794, s. 800.04,

or s. 847.0145, or a violation of a similar law of another jurisdiction;  
or

b. Any felony violation, or any attempt thereof, of s. 787.01, s. 787.02, or s. 787.025, where the victim is a minor and the defendant is not the victim's parent; chapter 794, excluding s. 794.011(10) and 794.0235; s. 796.03; s. 800.04; s. 825.1025(2)(b); s. 827.071; or 847.0145; or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 787.01, s. 778.02, or s. 787.025, where the victim is a minor and the defendant is not the victim's parent; s. s. 794.011(2), (3), (4), (5), or (8); s. 794.05; s. 796.03; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, or s. 847.0145; or a violation of a similar law of another jurisdiction;

## **STATEMENT OF THE CASE**

1. On March 14, 2007, the Petitioner was charged with two counts of sexual battery on a child victim less than twelve in violation of Florida Statute § 794.011(2)(a).
2. On October 1, 2008, the Petitioner pled nolo contendere to two counts of a lesser included offense of attempted sexual battery on a child less than twelve in violation of s. 794.011(2)(a). The Petitioner was sentenced to twenty years on each count to run concurrent with each other. (Appendix L). The trial court also filed an order declaring the Petitioner a sexual predator on both counts. (Appendix A)
3. On March 25, 2021, the Petitioner filed a Rule 3.800(a) motion challenging the sexual predator designation pursuant to § 943.0435, Florida Statute. (Appendix B)
4. On July 21, 2021, the state submitted a response confirming that the Petitioner was not designated under section 943.0435 but statute 775.21. (Appendix C)
5. On October 18, 2021, the petitioner filed a second motion to correct illegal sentence challenging the sexual predator designation in violation of Florida Statute 775.21(4)(a)(1)(b) and to void the initial 3.800(a) motion that had yet to be ruled upon. (Appendix D)
6. On January 24, 2022, the Petitioner filed a request for a status hearing that was denied on February 24, 2022. An order denying the Petitioner's motions was filed on February 25, 2022. (Appendix E)

7. On March 29, 2022, a Notice of Appeal was filed with an acknowledgement of a new case number issued on March 31, 2022. (Appendix F)
8. On April 20, 2022, the Petitioner filed an Appellant's Initial Brief. (Appendix G)
9. On July 27, 2022, the Second District Court of Appeal Per Curiam Affirmed its denial of the Petitioner's brief. (Appendix H)
10. On August 3, 2022, the Petitioner filed a timely Motion for Rehearing (Appendix I) that was denied on August 10, 2022. (Appendix J)
11. On August 29, 2022, the Second District Court of Appeal issued its mandate. (Appendix K)

## **REASONS FOR GRANTING THE PETITION**

The Petitioner, Thomas Deptula, firmly avers that the Second District Court of Appeal rendered its decision without considering the merits of the points raised as to why he should not be declared a sexual predator. The Supreme Court of the United States, in *Paul v. Davis*, 424 U.S. 693, 701, 47 L.Ed.2d 405, 96 S.Ct. 1155 (1976), and the Florida Supreme Court, in *State v. Robinson*, 873 So.2d 1205 (Fla. 2004) reviewed if one's constitutional due process protections under the Fourteenth Amendment were violated by a sexual predator designation. A "stigma-plus test" was developed and in using it, the Florida Supreme Court held that the Act was unconstitutional as applied in *Robinson*. Those courts considered the procedural defaults of the statute; however, the Petitioner's arguments surround the constitutionality of the procedural and substantive due process of Florida's Sexual Predator Act. Since different portions of the Act allows for the Petitioner to be designated as a sexual predator at the same time, it is unclear as to which subsection the Petitioner actually falls under. The Second District Court of Appeal has conflicted with itself in how it construes the language of the Act and has erroneously and without legal basis denied the Petitioner's request for the removal of the sexual predator designation

## ARGUMENT ONE

WHETHER THE FLORIDA SECOND DISTRICT COURT OF APPEAL ERRED BY DENYING THE PETITIONER'S INITIAL BRIEF'S REQUEST FOR THE REMOVAL OF THE SEXUAL PREDATOR DESIGNATION IN EXPRESS OR DIRECT CONFLICT WITH TORRES V. O'QUINN, 612 F.3D 237 (4<sup>TH</sup> CIR. 2010) AND CHESSEY V. STATE, 148 SO.3D 497 (FLA. 2<sup>ND</sup> DCA 2007) IN VIOLATION OF THE PETITIONER'S FOURTEENTH AMENDMENT RIGHTS?

The Petitioner, Thomas Deptula, strongly states that the Second District Court of Appeal erred by denying the Petitioner's Initial Brief request for the removal of the sexual predator designation in express or direct conflict with Torres v. O'Quinn, 612 F.3D 237 (4<sup>th</sup> CIR. 2010) and Chessy v. State, 148 So.3d 497 (Fla. 2<sup>nd</sup> DCA 2007), in violation of the Petitioner's Fourteenth Amendment rights. Subsection (4) of the Florida Sexual Predator Act details the criterias that must be met in order to designate an offender as a sexual predator. Florida Statute § 775.21(4)(a)(1)(a) (2007) states in pertinent part:

“A capital, life, or first degree felony violation, or any attempt thereof, of ... or a violation of a similar law of another jurisdiction; or” (Emphasis added)

and § 775.21(4)(a)(1)(b) (2007) states in pertinent part:

“...**Any felony violation**, or any attempt thereof, of ...or a violation of a similar law of another jurisdiction, **and** the offender has previously been convicted of or found to have committed, ... or a violation of a similar law of another jurisdiction.” (Emphasis added)

In the above-mentioned subsections, legislative intent associated with the words “A” and “Any” is very clear. In context, “A” refers to a single and particular

felony whereas “**Any**” means a single felony from a quantity of many felonies, which makes it unambiguous that “**Any felony**” would encompass **all felonies**. To further understand legislative intent on the definition for “**any**”, the courts in *Chesser v. State*, 148 So.3d 497 (Fla. 2<sup>nd</sup> DCA 2007) , *Wade v. State*, 751 So.2d 669 (Fla. 2<sup>nd</sup> DCA 2000); and *State v. Perrella*, 736 So.2d 94 (Fla. 4<sup>th</sup> DCA 1999), all concluded that “**any**” means “**all**”. As well, from a federal point of view, the courts in *Dotexamdr, PLLC v. Hartford Underwriters Ins, Co*, Lexis 145713 (2<sup>nd</sup> Cir. 2021); *Torres v. O’Quinn*, 612 F.3d 237 (4<sup>th</sup> Cir. 2010) ; and *U.S. v. Maxwell*, 285 F.3d 336, 341 (4<sup>th</sup> Cir. 2002) held that “when used as a function word to indicate the maximum or whole of a number or quantity ... the word ‘**any**’ means ‘**all**’” (Emphasis added) In the same, all law dictionaries define the word “**any**” as some; one out of many; unmeasured or unlimited in amount, number, or extent; **each one of all**; and **all**. Therefore, from a legal perspective, any professionally, practicing attorney and any reasonable person would conclude that the word “**Any**”, as used in Florida’s Sexual Predators Act, s. 775.21(4)(a)(1)(b) means **all**.

In the case at hand, the Petitioner was declared a sexual predator pursuant to § 775.21, Florida Statutes (2007) without clarification of which subsection he was designated under. (Appendix A) The Petitioner appealed to the courts, arguing that he does not qualify for the designation because he does not meet all of the criterias under § 775.21(4)(a)(1)(b), F.S.A, which states that a defendant has a conviction of a current, enumerated offense **and** the offender has a previous conviction of one of the enumerated offenses. From the face of the record, it is shown that the Petitioner is

a first time offender; therefore, he does not meet both prongs outlined in § 775.21(4)(a)(1)(b). The lower court argued that the Petitioner's first degree felony conviction does not fall under the previously stated subsection. (Appendix E). in the same, the Florida's Second District Court of Appeal (2<sup>nd</sup> DCA) per curiam affirmed the lower court's decision (Appendix H) in direct or express conflict with its own ruling in *Chesser v. State*, 148 So.3d 497 (Fla. 2<sup>nd</sup> DCA 2007) , as it pertains to legislative intent for the definition of the word "any".

Although the circumstances surrounding the *Chesser* case dealt with how to determine the amount of prosecuting units, its main issue was understanding legislative intent with the usage of the word "**any**" in order to make that determination. The *Chesser* court concluded that "**any**" meant "**all**" as it has previously done in *Wade v. State*, 751 So.2d 669 (Fla. 2<sup>nd</sup> DCA 2000) . Legislative intent pertaining to the usage of the word "**any**" was applied to the Florida statutes used in those cases and the Second District Court of Appeal erroneously violated the Petitioner's due process rights by not doing the same in this instant case. Had it done so the Second DCA would have yielded the same conclusion that legislative intent in Florida Statute § 775.21(4)(a)(1)(b), where the words "[**a**ny felony violation" are used, means **all** **felony violations** and it would not have denied the Petitioner's "Appellant's Initial Brief". Since Florida's Second District Court of Appeal conflicted with itself, Florida Statute 775.21(4)(a) becomes ambiguous because it is not clear which subsection an offender would fall under for designation



as sexual predator. Nowhere in § 775.21(3)(d)(e) does the Florida legislature addresses the ambiguity.

The Petitioner further argues that failure to address the merits of the case and apply the “a/any” test for interpreting legislative intent has rendered Florida’s Sexual Predator Act partly unconstitutional due to the ambiguity created. The language in 775.21(4)(a)(1)(a) is exactly the same as that in s. 775.21(4)(a)(1)(b), with the exceptions that subsection (1)(a) identifies specific felonies; “A capital, life, or first degree felony violation” whereas subsection (1)(b) states “any felony violation” and requires the previous conviction of an enumerated offense. “Any felony violation” **encompasses** a “capital, life, or first degree felony”; therefore, 775.21(4)(a)(1)(a) F.S.A. is subsumed in its entirety by 775.21(4)(a)(1)(b), F.S.A.. The unreasonable and arbitrary inclusion of s. 775.21(4)(a)(1)(a) encroaches on the Petitioner’s constitutional rights under the Fourteenth Amendment and Art. 1, § 9 of the Florida Constitution. See *FoP v. City of Miami*, 243 So.3d 894 (Fla. 2018). The vagueness created by Florida’s legislature in using language that places an offender of a capital, life, or first-degree felony into both sections of the criteria section of 775.21(4)(a)(1) F.S.A., lacks constitutional due process protections. Had the Second District Court of Appeal not directly conflicted with itself in defining the word “**any**”, a thorough, legal analysis of the Petitioner’s merits would have been conducted and the rule of lenity under 775.021(1) Florida Statutes, would have been properly applied for the removal of the sexual predator designation. Also, the

Petitioner would not be prejudiced by the stigma and the life hindering requirements that come with the classification.

To further render Florida's Sexual Predator Act unconstitutional, Florida Statute 775.21 lacks due process in actually determining if an offender meets the legal definition of a "sexual predator"

To further clarify Florida's legislative intent on defining a sexual predator, § 775.21(3)(a), F.S.A., clearly states:

**"Repeat** sexual offenders; sexual offenders who **use physical violence**, and sexual offenders who **prey** on children are sexual predators who **present an extreme threat** to the public safety." (Emphasis added).

As well, Black's Law Dictionary (11<sup>th</sup> Ed.) defines a sexual predator as,

"Someone **who has committed many** violent sexual acts **or** who has a **propensity for committing** violent sexual acts." (Emphasis added).

Also, Florida's legislature uses the term "sexually dangerous" synonymously with "sexual predator" and it is defined as,

**"having serious difficulty in refraining from sexually violent conduct or child molestation.** (Emphasis added)

Florida's legislature is unambiguous is stating that a sexual predator is someone who **repeats** sexual offenses, commit **physically violent** offenses of a sexual nature, **or preys** on children; however, there are no legal due process procedures in place to verify if an offender has met any of those criterias. As outlined in s. 775.21(4), Florida's legislature only requires that a defendant is adjudicated guilty

of an enumerated offense and this lacks the procedural protection of the Due Process Clause.

In the case at hand, the Petitioner was never proven to be an offender who has **many convictions** of a sexual nature. The face of the record shows that the Petitioner is a **first time** offender and that this is the **only time** he has been convicted of any offense. In the same, prima facie, there is **no evidence** in this case to confirm that the Petitioner committed **any physical violence** upon the child victim. And, although this instant case involves a child victim, during the sentencing hearing (Appendix L), the state presented no certified or notarized documentation which concluded that the Petitioner preys on children. From Florida's legislature intent and Black's Law definition, the state provided absolutely nothing to support that the Petitioner has committed many violent sexual acts or has the propensity for committing violent sexual acts. As well, the state failed to evince that the Petitioner has a serious difficulty in restraining from sexually violent conduct or child molestation. Only requiring the violation of an enumerated offense under § 775.21(4)(a)(1), Florida Statute, is a violation of the Fourteenth Amendment because it lacks procedures for proving that the Petitioner is a sexual predator and an extreme threat to public safety pursuant to legislative intent **and** the legal definition for a sexual predator.

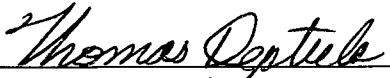
Had the Second District Court of Appeal actually considered the merits of the Petitioner's argument, it would have seen the unconstitutionality in Florida's Sexual Predator Act (§ 775.21) and would not have erroneously denied the

Petitioner's Initial Brief without first raising a question of great public concern. As well, Petitioner would not be egregiously prejudiced by the sexual predator designation.

## CONCLUSION

Based on the foregoing legal and factual arguments, the petition for a writ of certiorari should *be granted*.

Respectfully submitted,

  
\_\_\_\_\_  
Thomas Deptula, Petitioner  
DC# Y38811  
Desoto C. I. Annex  
13617 South East Highway 70  
Arcadia, Florida 34266-7800

Date: *October 26, 2022*