No. 22-6020

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN M. ESPOSITO – PETITIONER

vs.

STATE OF FLORIDA – RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

SECOND DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

JOHN M. ESPOSITO
OKEECHOBEE CORRECTIONAL INSTITUTION
3420 N.E. 168th STREET
OKEECHOBEE, FLORIDA, 34972

QUESTION(S) PRESENTED

IS THE STATE OF FLORIDA VIOLATING THE UNITED STATES CONSTITUTION BY PROSECUTING AND CONVICTING U.S. CITIZENS UNDER § 794.011, FLORIDA STATUTES, A VOID AB INITIO STATUTE?

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

None

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OTHER

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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 Twentieth Judicial Circuit 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☒ is unpublished.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 **state courts:**

The date on which highest state court decided my case was June 1, 2022. A copy of that decision appears at Appendix C .

☒ A timely petition for rehearing was thereafter denied on the following date: August 1, 2022, and a copy of the order denying rehearing appears at Appendix D.

☐ 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. §1257(a),

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th Amendment, United States Constitution: "... Nor be deprived of life, liberty, or property, without due process of law..."

14th Amendment, United States Constitution: "All persons born ... in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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."

Art. I, s. 2, Florida Constitution: "All natural persons ... are equal before the law and have Inalienable rights, among which are the right to enjoy and Defend life and Liberty, to pursue happiness ..."

Art. I, s. 9, Florida Constitution: "No person shall be deprived of life, liberty, or property without due process of law..."

Art. I, s. 16(a), Florida Constitution: "In all criminal prosecutions the accused shall ... be furnished a copy of the charges ..."

Art. I, s. 18, Florida Constitution: "No administrative agency ... shall impose a sentence of imprisonment, nor shall it impose a penalty except as provided by law."

Art. I, s. 21, Florida Constitution: "The courts shall be open to every person for redress of any injury ..."

Art. II, s. 6, Florida Constitution: "... In exercising these powers, the legislature may depart from other requirements of this Constitution, but only to the extent necessary to meet the emergency."

Art. III, s. 1, Florida Constitution: "The legislative power of the State shall be vested in a Legislature of the State of Florida ..."

Art. III, s. 6, Florida Constitution: "... No law shall be revised or amended by reference to its title only. Laws to revise or amend shall be set out in full the revised or amended act, section, subsection or paragraph of a subsection ..."

Art. X, s. 10, Florida Constitution: "The term "felony" as used herein and in the laws of this State shall mean any criminal offense that is punishable under the laws of this State..."

STATEMENT OF THE CASE

This is an actual and legal innocence claim.

Mr. Esposito IS actually innocent. He did not commit the alleged crime. He has only been accused, with no evidence. When Justice Kavanaugh was nominated for the Supreme Court, and he was being accused of sexual improprieties, Mr. Esposito believes it was President Trump who said, it is a shame someone's life can be ruined over a mere accusation with no evidence. This is what happened to Mr. Esposito.

In the State's original Information sworn to on September 30, 2003, the State charged Mr. Esposito with sexual activity, contrary to *s. 794.011 (8) (b), Florida Statutes*. The State then filed an "amended" Information, which was sworn to on March 17, 2004, where the State again charged Mr. Esposito with sexual activity pursuant to *s. 794.011 (8) (b), Florida Statutes,* and added Count II, child abuse, pursuant to *s. 827.03 (1) (a)*. Mr. Esposito was ultimately acquitted of Count II during trial.

The State then filed a "2nd amended" Information, sworn to on May 13, 2004, which was a duplicate of their amended Information sworn to on March 17, 2004. The State then filed a "3rd amended" Information, sworn to on October 28, 2004, charging Mr. Esposito in Counts 1, 3, 4, 5, and 6 with sexual activity pursuant to *s. 794.011 (8) (b)*, and also charged Mr. Esposito in Count 7 with sexual battery pursuant to *s. 794.011 (5), Florida Statues.*

A jury trial commenced on the State's "3rd amended" Information. After trial, the jury returned a verdict of guilty on Counts 1, 3, 4, 5, 6, and 7.

After a direct appeal, in which the 2nd DCA denied and refused to give an opinion, Mr. Esposito filed a Petition for Writ of Habeas Corpus with the Twentieth Judicial Circuit Court, Charlotte County, which was denied with an opinion.

Mr. Esposito appealed to the 2nd DCA, who again denied the appeal and refused to give an opinion; however, they cited case law to try to support their denial.

Mr. Esposito filed a Motion for Rehearing, which again was denied without an opinion. This Petition follows.

REASONS FOR GRANTING THE PETITION

Here, the trial court lacked subject matter jurisdiction to prosecute and/or convict Mr. Esposito under a constitutionally invalid and void statute, which renders his conviction, judgment, and sentence void, creates a manifest injustice if allowed to stand, and [renders] Mr. Esposito legally innocent.

Mr. Esposito avers his argument as articulated herein demonstrates a prima facie case to find *s. 794, Florida Statutes* to be *"void ab initio,"* as opposed to merely voidable. All parts of the act, as published within *s. 794* of the *1974 Supplements to Florida Statutes 1973,* including all subsequent repealers, are void, due to never having any real or actual legal effect. *See Amos v. Mosely,* 74 Fla. 555, 77 So. 619 (Fla. 1917).

A presumption of prejudice to Mr. Esposito's Federal due process rights is evidenced herein, where *s. 794, Florida Statutes,* as enacted by *74-121, Laws of Florida,* has never been a valid statute since its effective date of October 1, 1974. In fact, it has never been published as enacted by the Florida Legislature within the *1974 Supplement to Florida Statutes 1973 (See Exhibits "A" and "B" of the original Habeas Corpus at Appendix "F."),* and cannot withstand a federal due process analysis, leaving it *void ab initio* from its inception, not merely voidable. Thus, Mr. Esposito's conviction is based upon an unconstitutional statute, an invalid law, is an absolute nullity of law, and subject to collateral attack.

Moreover, where the enactment of *Chapter 74-121, Laws of Florida,* has never been a valid law, Mr. Esposito is *"actually & legally innocent"* of the charge(s) against him, based upon *s. 794, Florida Statutes,* which does not legally exist in this State. Thus, a *"structural defect" of a Constitutional magnitude has occurred which would be a Constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.* This raises a federal due process violation, under which, the presumption of prejudice automatically attaches, and shifts the burden of proof upon the State to prove such error did not contribute to the Verdict.

Here, Mr. Esposito is entitled to have his conviction, judgment, and sentence under *s. 794, Florida Statutes,* vacated and set aside as being void for lack of jurisdiction and being an unconstitutional statute, which constitutes fundamental error that demands redress. *See Lawrence v. State,* 918 So.2d 368 (Fla. 3rd DCA 2005) (*"An unconstitutional statute is deemed void from the time of its enactment."*).

This case is governed by the precept that when a court acts "*without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void." Malone v. Meres,* 91 Fla. 709, 109 So. 677 (Fla. 1926); *Elliot v. Pierson,* 1 Peters (U.S.) 328, text 340.

"A judgment that is absolutely null and void, mere brutem fulmen, can be set aside and stricken from the record on Motion ***'at any time,'*** *and may be collaterally assailed..." Malone, supra, at 682. (Emphasis supplied). See also Young v. State,* 439 So.2d 306 (Fla. 5th DCA 1983).

The history of *s. 794, Florida Statutes,* will show the lack of jurisdiction, and is as follows:

The 1974 Legislative *Chapter 74-121, Laws of Florida,* repealed the present sections (chapters) of *794* and *800, Florida Statutes, except s. 794.05, s. 800.02, s. 800.03 and s. 800.04,* while *"creating" (chapters) s. 794, Florida Statutes;* providing definition; establishing degrees

of *"Involuntary Sexual Battery,"* providing penalties; and providing an effective date of October 1, 1974. *See Exhibit "A." of the original Habeas Corpus at Appendix "F," Chapter 74-121, laws of Florida 1974).*

In reviewing the foregoing objectively, it is readily apparent several disparities arise when comparing the enacted law *(Exhibit "A" of the original Habeas Corpus at Appendix "F"),* and the statute derived from it, as it appeared in the *1974 Supplement to Florida Statutes 1973 (See Exhibit "B" of the original Habeas Corpus at Appendix "F").* When the Statutory Revision Service created and enacted the chapter of *s. 794* that appeared in the Florida Statutes, without submitting a *"Reviser's Bill"* for adoption by the Legislature, it appeared as *"Sexual Battery,"* and yet, it was enacted by the Legislature as *"Involuntary Sexual Battery."*

When the Legislature repealed *s. 794,* they created *s. 794.011* and *794.021,* while adopting *s. 794.05 when the enacted law published (See Exhibit "A" of the original Habeas Corpus at Appendix "F"); s. 794.011(2)(3) and (4)* were entirely different in wording, content, and meaning. Additionally, *s. 794.011(4)(a) – (f)* never appeared in the *Laws of Florida* prior to being published as a statute. Moreover, *s. 794.011(6)* was omitted from the *1974 Supplement to Florida Statues 1973* entirely. *(See Exhibit "B" of the original Habeas Corpus at Appendix "F").*

To further demonstrate the flaws within *Chapter 794;* when the Legislature enacted *s. 794,* they expressly created *s. 794.021, "Involuntary Sexual Battery,"* which contained *Four (4) section and six (6) subsections.* Yet, as it appeared in the *1974 Supplement to Florida Statutes 1973 (See Exhibit "B" of the original Habeas Corpus at Appendix "F"), s. 794.021* contained only *one (1) section,* with the title. *"Ignorance or belief as to victim's age is no defense (NEW)."* Mysteriously, *s. 794.02 "common laws presumption relating to age abolished," s. 794.022*

"Rules of Evidence," as well as *s. 794.03 "Unlawful to publish or broadcast information identifying sexual offense victim,"* appeared in the *1974 Supplement to Florida Statutes 1973 (Compare Exhibits "A" and "B" of the original Habeas Corpus at Appendix "F").*

It is well settled under Florida law that, *"in order for the statutory law to be amended it is necessary that the law amended be enacted by the Legislature, either by expressly enacting the Cumulative Supplement in which it is contained in toto or by a separate specific enactment of the amendment itself." Foley v. State,* 50 So.2d 179, 183 (Fla. 1951). Clearly, the law enacted by the Legislature is not the same one that appears within the *1974 Supplement to Florida Statutes 1973.* Thus, *"the question of the constitutionality of a statute is a question of law for the courts." See Dept. of Revenue v. Fla. Home Builders Assn.,* 564 So.2d 173 (Fla. 1St DCA 1990); *Olmstead v. United States,* 277 U.S. 438, 485, 72 L. Ed 944, (1928) *("Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent, teacher. For good or for ill, it teachers the whole people by its example. Crime is contagious. It the government becomes a law breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means – to declare that the government may commit crimes in order to secure the conviction of a private criminal – would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.").*

If, in fact, the Legislature intended to adopt the wording and supplemental sections and subsections included and deleted as they appear in the *1974 Supplement to Florida Statutes 1973,* the Legislature did not do so. While having amended and revised the statute numerous

times through the subsequent years, the fact remains, the Legislature has failed to adopt *Chapter 794* as it appears in the *1974 Supplement to Florida Statutes 1973*. This is in direct violation of *Art. III, s. 6, of the Florida Constitution* which provides:

> *... No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection...*

In the 1977 published edition of *Florida Statutes, s. 776.08, s. 782.04,* and *s. 800.04* deleted the word *"Involuntary "* from them. At the end of these sections, an *"Editors Note"* was found, stating: *"Note. – Bracketed language substituted by the editor's for "involuntary sexual battery" to conform to the terminology of s. 794.011." (See Exhibit "C" of the original Habeas Corpus at Appendix "F").* Once again, the Statutory Revision Service redrafted the clear intent of the Legislature by arbitrarily rewriting those subsections, contrary to the Florida Constitution. As stated by the Florida Supreme Court in *Foley, supra,* and *Jones v. Christina,* 184 So.2d 181, 184 (Fla. 1966):

> *The statutory revision power given to the attorney general was intended only for the purification of the statutory law; and not to make changes in the substantive law without express legislative action.*

In 1979, *Chapter 79.400, s. 289, s. 290, and s. 291, Laws of Florida,* the Statutory Revision Service, through a *"Reviser's Bill,"* submitted to the Legislature for adoption, the action they had *"already taken 2 years earlier,"* where they deleted the word *"Involuntary"* from *s. 776.08, 782.04(1)(a), (3)* and *(4)* and *800.04* in the published *Florida Statutes (1977). Chapter* 11.242(1), *Florida Statues,* states in part:

> *...Any revision, either complete, partial, or topical, prepared for submission to the Legislature shall be accompanied by revision and history notes relating to the same, showing the changes made and therein and the reasons for such recommended change.*

Furthermore, the reviser's note at the end of each amendment reads as aforementioned.

In *Chapter 84-86, s. 2 and 3, Laws of Florida, s. 794.012* and *s. 794.013, Florida Statutes,* were created. When the amended *Chapter 794* appeared published in the *1984 Supplement to Florida Statutes 1983, Chapter 794* did not appear as amended by the Legislature, *and* s. *794.011* was reworded and contained substantial changes to *s. 794.012 and s. 794.013,* which never appeared in the *1984 Supplement to Florida Statutes 1983,* yet, interesting enough, was enacted by the Legislature, and *s. 794.041* magically appeared published, but was never created or enacted by the Legislature.

Several more times throughout the years *(1989, 1990, 1991, 1992, etc.)* the Legislature made amendments to *Chapter 794,* but at no time has *Chapter 794* been properly enacted pursuant to *Art. III, s. 6, of the Florida Constitution.* Akin to this case *Shuman v. State,* 358 So.2d 1333 (Fla. 1978), where the Florida Supreme Court found that the Statutory Revision Division made *"substantive"* changes in *s. 3, Chapter 76-287, Laws of Florida,* as embodied in *s. 57.091, Florida Statutes (Supp. 1976),* was without force or effect because *s. 57.091* has not been adopted by the Legislature. *See Jones and Foley, supra. See also McCulley Ford, Inc. v. Calvin,* 308 So.2d 189 (Fla. 1st DCA 1974).

In *Shuman, supra,* the *"substantive"* changes referred to by the court were the Statutory Revision Service's deletion of the conjunctive word *"and,"* as well as *inserting a comma* between *"criminal prosecutions"* and *"State prisoners."* The Statutory Revision Service's publication of the statutes of the State of Florida, as revised and consolidated, is adopted biennially by the Legislature, by *Chapter 77-266, Laws of Florida.* The 1977 Legislative adoption of the statutes of 1975, to be published under the title: *"Florida Statutes 1977"* states: *"All laws enacted at or prior to the 1975 Legislature session not contained in Florida Statutes*

1977 were repealed." The enrolled act, *s. 3, Chapter 76-287,* stands as the official primary law, as enacted by the Legislature. *See s. 11.242(5)(c), Florida Statutes; McCulley Ford, Inc., supra.*

Art. III, s. 1, of the Florida Constitution states in relevant part: *"The Legislative power of the State shall be vested in a Legislature of the State of Florida..."* This authority embraces both *"the power to enact laws"* and the *"power to decide what the law shall be." See Chiles v. A,B,C,D,E, & F.,* 589 So.2d 260, 264 (Fla. 1991). Nowhere, within this Constitutional provision, does it empower the Statutory Revision Division of the Attorney General's office to enact, or declare, what the law shall be.

The term, *"Legislative power,"* as used in *Art. III, s. 1, of the Florida Constitution,* most particularly embraces statutes defining criminal offenses, and the field of criminal law. The concept of separation of powers is directly linked to the Constitutional guarantee of due process. Thus, the Florida Supreme Court has held: *"Criminal statutes must be strictly construed according to their letter, and that this rule of strict construction emanates from Art. 1, s. 9, and Art. II, s. 3, of the Florida Constitution." Jeffries v. State*, 610 So.2d 440, 441 (Fla. 1992).

In the creation of *Chapter 794, Florida Statutes, in Chapter 74-121, Laws of Florida,* the Legislature made it abundantly clear as to their intent. One has only to look at its title: *"An Act relating to involuntary sexual battery."*

The Florida Supreme Court also holds: *"penal statutes must be strictly construed in favor of the accused where there is doubt as to their meaning and must be sufficiently explicit so that men of common intelligence may ascertain whether a contemplated act is within or without the law, and so that the ordinary man may determine what conduct is proscribed by the statute." State v. Winters,* 346 So.2d 991 (Fla. 1997) *citing Brock v. Hardie,* 114 Fla. 670, 154 So. 690 (Fla. 1934); *Franklin v. State, (Joyce),* 257 So.2d 21 (Fla. 1971); *State v. Liopis,* 257 So.2d 17

(Fla. 1971) ; *State v. Dinsmore,* 308 So.2d 32 (Fla. 1975); and *State v. Wershow, et. al.,* 343 So.2d 605 (Fla. 1977).

Next, the *Federal Constitution, Art. I, s. 1,* provides: *"all legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." The Florida Constitution, Art. III, s. 1,* provides: *"the Florida Constitution, Art. III, s. 1,* provides: *"the legislative power of the State shall be vested in a Legislature of the State of Florida, consisting of a Senate composed of one Senator elected from each senatorial district and a House of Representatives composed of one member elected from each representative district."*

Differing from the Federal Constitution is this particular, the State Constitution does not grant particular law making power to the Legislative body. The State Constitution merely imposes specified limitations upon the general law making power of the State that is vested in the Legislature, and those limitations forbids the passage of statutes of the nature herein considered.

The State Legislature has plenary lawmaking power, subject only to the limitations imposed by the *State* and *Federal Constitutions*, and may enact any statutes that are not forbidden by such *Constitutions*. The *State Constitution* expressly provides for the enactment of Statutes to take effect after their passage and approval, and after the final adjournment of the session of the legislature at which they are enacted. Statutes that do not violate the *Constitutions(s)* are the law of the land, and should be made effective as such. Otherwise, the Legislature, as a lawmaking power, would not be the co-ordinate department of government.

To date, the State Legislature has never properly enacted *Chapter 794* pursuant to the provisions set forth in *Art. III, s. 6, of the Florida Constitution.* In *Shuman, supra,* the court held:

"...the statutory revision division had no authority to effect such a substantive change in section 3, Chapter 76-287; "citing Jones, Foley, and McCully, supra. Shuman, supra, also held: "... the statutory revision division in revising the enrolled act, Section 3, Chapter 76-287, Laws of Florida, 4 which was subsequently published as section 57.091, Florida Statutes (Supp. 1976), altered the clear intent of the legislature expressed in the enrolled act." Thus, the *Shuman* court held this substantive change was *"without force or effect." See Jones, Foley, and McCulley, supra.*

In *State ex rel. Blalock, et al. v. Lee,* 1 So.2d 193, 194 (Fla. 1941), an en banc court held: *"We next come to the question whether or not Chapter 16125, supra, was a valid general law at the time of its becoming effective. If it was not a valid law then, it never became a valid law. See Neisel v. Moran,* 80 *Fla. 98, 85 So. 346."*

Moreover, *"It is a fundamental rule of statutory construction that Legislative intent is the polestar by which the court must be guided, and this intent must be given effect even though it may contradict the strict letter of the statute." State v. Webb,* 398 So.2d 820, 824 (Fla. 1981).

In the published edition of *Florida Statutes (1977), s. 800.04* appeared changed as to the word *"Involuntary,"* which was deleted from this section, and all the previous statutes, sections, and subsections aforementioned regarding the *Florida Statutes (1977).* At the end of *s. 800.04,* as at the end of the aforementioned 1977 Statutes, an *"Editor's Note"* is found stating: *(Note. – Bracketed language substituted by the editor's for 'involuntary sexual battery' to conform to the terminology of s. 794.011.")* (Emphasis supplied). Therefore, the Statutory Revision Service once again redrafted the clear intent of the Legislature by rewriting these sections arbitrarily and contrary to the *Florida Constitution,* and as such, cannot be upheld by the courts per *Foley, Shuman, and Jones, supra.*

Accordingly, *"for a statute to be held unconstitutional it must be shown to be contrary to expressed or necessarily implied prohibitions found in the State or Federal Constitutions."* *Ronald v. Ryan,* 26 So.2d 339, 340 (Fla. 1946) citing *State v. Pearson,* 153 Fla. 314, 14 So.2d 565 (Fla. 1943); and *Taylor v. Dorsey,* 155 Fla. 305, 19 So.2d 876 (Fla. 1944) (and cases there cited). Further, *"a penal statute declared unconstitutional is operative from the time of its enactment, not only and simply from the time of the court's decision."* *Garcia v. State,* 651 So.2d 1300 (Fla. 2nd DCA 1995) citing *Martinez v. Scanlan,* 582 So.2d 2d 1167, 1174 (Fla. 1991). *See also Garcia v. Carmar,* 629 So.2d 117 (Fla. 1993) citing *Martinez, supra, and Russo v. State,* 270 So.2d 428 (Fla. 4th DCA 1972) *citing State ex rel. Nuveen v. Greer,* 88 Fla. 249, 102 So. 739 (Fla. 1924); *and Amos v. Matthews*, 99 Fla. 1, 126 So.308 (Fla. 1930). (Emphasis supplied).

In *American Trucking Associations, Inc. et al. v. Smith,* 496 U.S. 167, 110 S. Ct. 2323, 110 L. Ed 2d 148 (1990), Justice Scalia's concurring opinion stated:

> *To hold a governmental act to be unconstitutional is not to announce that we forbid it, but that the Constitution forbids it; and when, as in this case, the constitutionality of a state statute is placed in issue, the question in not whether some decision of ours "applies" in the way that the law applies; the question is whether the Constitution, as interpreted in that decision, invalidates the statute. Since the Constitution does not change from year to year; since it does not conform to our decision, but our decisions are supposed to conform to it...*

Therefore, it only stands to reason that *"the unconstitutionality of a statute may not be overlooked or excused for reasons of convenience. While a court cannot resolve disputes in a vacuum, the* "realities," *as the City calls them, of the situation cannot justify acceptance of that which is clearly unconstitutional."* *City of Tallahassee v. Public Employees Relations Commission,* 410 So.2d 487, 490 (Fla. 1981).

Moreover, in *Amos,* 74 Fla. 555, 77 So. 619, supra, the court held:

> *In testing the question whether an act of the Legislature was passed in conformity to the requirements of the Constitution, the journals of the House of the Legislature will be examined; and if the journals furnish conclusive evidence that any bill was not passed in a constitutional manner, it cannot be recognized as a law. (Emphasis supplied).*

Thus, the questions before this court are two-fold:

> *1. Does the law as enacted by the 1974 Legislature appear in the 1974 Supplement to the Florida Statutes 1973? (Exhibit "A" and "B" of the original Habeas Corpus at Appendix "F"). and*
>
> *2. Is an un-enacted law a violation of State and/or Federal Constitutions?*

The answer to the second question can be found in *State ex rel. Blalock, supra,* where they stated: *"If it was not a valid law then, it never became a valid law."* In other words, *Chapter 794* was unlawfully and illegally enacted by the reviser's service, and thus, *void ab initio,* as opposed to being merely voidable. *All* parts of the act are *void,* because of the defective enactment never having any actual effect, including its repealers. *Amos,* 74 Fla. 555, 77 So. 619.

Accordingly, based upon the foregoing sworn factual claims, probative documentary evidence, and cited controlling authorities herein, it is readily apparent the first question before this court, as stated above, should be answered in the negative, and the second question before this court, as stated above, in the affirmative. It is apparent *Chapter 794, Florida Statutes,* has never been a valid statute since its effective date of October 1, 1974, and has never been published as such in the 1974 Supplement to Florida Statutes 1973, pursuant to the foregoing.

Also, *s. 794.041, Florida Statutes,* has never been a valid statute, as it magically appeared published in the *1984 Supplement to Florida Statutes 1983,* and was never adopted. Further, *s. 800.04, Florida Statutes,* was invalidated in 1981, and all done by the Statutory Revision Service, in violation of *s. 11.242, Florida Statutes; Art. I, sections 2,9,16,18 and 21; Art. II, s. 6,*

Art. X, s. 10, of the Florida Constitution.

Stated differently, there is a presumption of prejudice to Mr. Esposito's federal due process rights, as *Chapter 794, Florida Statutes,* has never been a valid statute since October 1, 1974, and has never been published as such as stated above. Therefore, it is a statute that cannot withstand a federal due process analysis, and is thereby *void.* Thus, a conviction, such as the one here in Mr. Esposito's case, that is not based on a valid law, has never become a valid law, is an absolute nullity, and is subject to collateral attack.

A violation of due process of law occurred here in Mr. Esposito's case, as due process requires that all elements of a crime must be proven beyond a reasonable doubt before criminally convicting a person. *Jackson v. Virginia,* 443 U.S. 307, 316, 99 S. Ct. 2781 (1979) *citing In re Winship,* 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed 2d 368 (1970), and, therefore, demonstrates a colorable showing of Mr. Esposito's factual and legal innocence. *See McClusky v. Zant,* 111 S. Ct. 1454, 1470 (1991).

Simply put, in light of all the evidence of sworn factual claims, probative documentary evidence attached, and controlling authorities cited herein, it is more likely than not, that no reasonable juror would have convicted Mr. Esposito based upon a statute that is not a valid law, has never become a valid law, who is factually and legally innocent, and, most importantly, the court never had jurisdiction to proceed.

"All the evidence" means just that; because *"actual innocence"* means *"factual innocence,"* not mere legal insufficiency, this court is *"not limited to the existing record,"* but can consider *"any admissible evidence"* to determine whether a reasonable juror would have convicted Mr. Esposito. *Bousley v. U.S.,* 523 U.S. 614, 623, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998) *citing Schlup v. Delo,* 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 808 (1995); *and Murray v.*

Carrier, 477 U.S. 478, 496, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986).

In *State v. Sykes,* 434 So.2d 325, 328 (Fla. (1983), the Florida Supreme Court stated:

> *...One cannot be punished based on a judgment of guilt of a purported crime when the "offense" in question does not exist. Stated differently, it is a fundamental matter of due process that the State may only punish one who has committed an offense; and an "offense" is an act clearly prohibited by the lawful authority of the State, providing notice through published law....Only by legislative authority may a criminal offense be defined.*

In applying these principles to Mr. Esposito's claim of lack of jurisdiction, due to lack of statutory authority, and the void judgment entered as a result, the Florida Supreme Court has long held as stated in *Henderson v. State,* 20 So.2d 649 (Fla. 1945):

> *...We are convinced that due process of law contemplates trial in a criminal case by a fair jury, with full evidence and correct charges or instructions to the jury as to the law. Of these elements of fundamental safeguard, an accused may not be deprived either by statute or rule of court. See Lawson v. State, 125 Fla. 335, 169 So. 739, and cases there cited.*

In *Lawson, supra,* the court stated:

> *...an error incorporated into a charge given to a trial jury in a criminal case that deprives the accused of the benefit of a reasonable doubt as to any essential and material element necessary to be proved to establish his alleged guilt, cannot be disregarded as "harmless error" under our harmless error statute....*

See also *Henderson, supra,* at 490, that it is a denial of due process to take from the jury its obligation to determine every element of the charged offense.

Accord, as shown herein, actual innocence is demonstrated if it is more likely than not, that no reasonable juror would have convicted Mr. Esposito, based upon a charge *that is not a valid law, and never becomes a valid law,* as demonstrated herein. Under the law in Florida, Mr. Esposito is guilty of nothing, as the alleged statutory authority utilized to obtain and maintain his

convictions is simply and completely *void ab initio*. Thus, Mr. Esposito's conviction, which is based upon an invalid statute (law), which has never became a valid law, is therefore a nullity at law.

Accordingly, Mr. Esposito has demonstrated his *"actual innocence,"* herein, based upon the evaluation of *"all the evidence,"* sworn factual claims, probative documentary evidence attached, and the cited controlling authorities herein. All said evidence sustains Mr. Esposito's claims, that no reasonable juror would have convicted him upon a statutory charge that did not, and does not, exist, that *is not a valid law, and has never become a valid law.* It was, and is, a fundamental matter of federal due process that the State may only punish one who has committed an offense; and an *"offense"* is an act clearly prohibited by the lawful authority of the State, providing notice through published laws. *See Sykes, supra.*

Here, the evaluation of *"all the evidence,"* is more indicative than not, that the judgment of guilt is based upon a purported crime and/or offense, that does not exist. No reasonable juror would have convicted Mr. Esposito based upon an offense that *is not a valid law*. Mr. Esposito's conviction, therefore, must be vacated, as a *prima facie* case has been made demonstrating that relief should be granted, and/or an evidentiary hearing may be required to secure Mr. Esposito's due process guarantees under both the *State* and *Federal Constitutions*, in order to reduce any and all disputes concerning Mr. Esposito's claims that: *1. Chapter 794, Florida Statutes, has never been a valid Statute since its initial effective date of October 1, 1974, which does not give the court's jurisdiction, simply put, "it was never a valid law and never became a valid law;" and 2. He is actually innocent of the alleged charge, as his conviction is based upon Chapter 794, Florida Statutes, which does not exist as a matter of law. See Dougherty v. Wainwright,* 491 F. Supp. 1317 (M.D. Fla. 1980).

Moreover, at the very least, as Mr. Esposito has advanced a basis for relief, this court should grant his Petition for Writ of Certiorari, as there are literally thousands of people affected in the past by this *void statute,* and the State continues to prosecute under this. Mr. Esposito has advanced a Constitutional error, *"a structural error"* or *"defect,"* of such a serious magnitude, as to raise a federal due process violation, and the presumption of prejudice which automatically attaches, and, therefore, shifting the burden upon the State to prove the error did not contribute to the verdict. Thus, this is a *Constitutional error of the first magnitude and not amount of showing of want of prejudice would cure it.*

Accordingly, as a result of the foregoing, the trial court lacked subject matter jurisdiction, had no viable statutory authority to either charge or convict Mr. Esposito under any of the foregoing statutes, or *Chapter 794* as a whole, and the conviction, judgment, and sentence entered against him is absolutely *null and void,* should be vacated, set aside, and stricken from the record.

Further, the Fifth District Court of Appeal in *Harrell, supra,* found lack of jurisdiction cannot be cured by consent of the parties or waived by entry of a guilty plea. Lack of jurisdiction has been held to constitute a fundamental error that operates as a narrow exception to the general prohibition contained in *Rule 3.850(a).* To be a fundamental error, the error must be one which amounts to a denial of due process. *Willie v. State,* 600 So.2d 479, 484 (Fla. 1st DCA 1992); *See also Sochor v. State,* 580 So.2d 575 (Fla. 1991); *Ray v. State,* 403 So.2d 956 (Fla. 1981).

In *Sochor, supra,* the Florida Supreme Court held that fundamental error occurs in cases: *"where a jurisdictional issue appears or where the interests of justice presents a compelling demand for its application." citing Ray, supra.* A fundamental error may be raised for the first time at any point including in a post-conviction proceeding. *See Bell v. State,* 585 So.2d 1125

(Fla. 2nd DCA 1991). *Johnson v. State,* 460 So.2d 954 (Fla. 5th DCA 1984). Lack of subject matter jurisdiction has been held to constitute fundamental error. *See Booker, supra.*

In *Lawrence, supra,* the court stated:

> *An unconstitutional statute is deemed void from the time of its enactment. Bell v. State, 585 So.2d 1125, 1127 (Fla. 2nd DCA 1991). Further, application of a facially unconstitutional statute is fundamental error which may be raised at any time. Id. at 1126-27. Trushin v. State, 425 So.2d 1126, 1129-30 (Fla. 1983); Williams v. State, 651 So.2d 1291 (Fla. 2nd DCA 1995); Heflin v. State, 595 So.2d 1018 (Fla. 2nd DCA 1992).*

It is Mr. Esposito's uncontested assertion the Reviser's Service never submitted a *"Reviser's Bill"* for adoption by the 1974 Legislature prior to the publication of the *1974 Supplement to Florida Statutes 1973,* nor can the Florida courts attach a certified to be true and correct copy of that *"Basic Public Record"* in the form of the *"Reviser's Bill"* as submitted to, and adopted by the 1974 Legislature, conclusively refuting this assertion. This, of course, is part of the ministerial duties set forth for the courts.

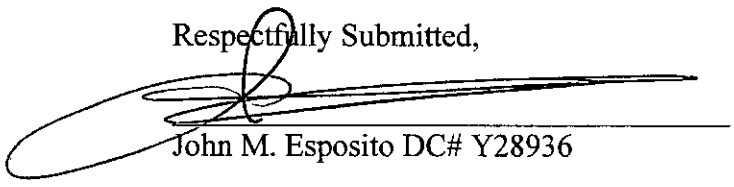
Accordingly, Mr. Esposito stands punished for a non-existent offense, which a duly empanelled Legislature body never enacted, or adopted, into law in the State of Florida. *See Shuman, Foley, and Jones, supra.*

Lastly, the published versions of *Chapter 794 and 800, Florida Statutes,* have never been Constitutionally enacted, have never possessed legal force or effect, and were *"void ab initio,"* and remain *"void"* to date. Mr. Esposito's assertions are conclusively supported by the sworn factual probative documentary evidence attached to this Petition as part of the original Habeas Corpus located in Appendix "F"

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully Submitted,



John M. Esposito DC# Y28936

Date: October 25, 2022