

No. 22-6727

IN THE
SUPREME COURT OF THE UNITED STATES

PROVIDED TO
SUMTER CORRECTIONAL INSTITUTION
DATE 1-31-23
OFFICER INITIALS AS KB

KENNETH BALDWIN
Petitioner

Vs.

SECRETARY, FLORIDA
DEPARTMENT OF CORRECTION
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES OF APPEALS FOR THE
ELEVENTH CIRCUIT, NO. 21-12829-CC

PETITION FOR WRIT OF CERTIORARI

Kenneth Baldwin #Y01245
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Petitioner is Pro-Se

QUESTION(S) PRESENTED

The first question presented is one who's being illegally detained pursuant to October 15, 2012 resentencing which authorize custody on new judgment from a State Court that failed to comport with the oral pronouncement of the custody. So does this constitute the actual new judgment under 28 USC § 2244(d)(1)(A) and Supreme Court case law?

The second question presented is the legality of multiple judgment under October 15, 2012 resentencing by the State Court entering a new judgment of conviction and sentence and treating the original judgment of conviction and sentence on the same offense in one case to be run concurrent to each judgment. So does this constitute violation of double jeopardy clause of the United States Constitution.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 and Petitioner proceeds as Pro se an states that the following trial judges, attorneys, persons associations of persons, partnership or corporation have an interest in the outcome of this case:

1. Altenbernd, Hon. Christopher W., Florida 2DCA
2. Benoit-Knox, Laurie, Assistant Attorney General
3. Blue, Hon. Jhon R., Florida 2DCA
4. Bondi, Hon. Pamela Jo, Former Attorney General of Florida
5. Buchanan, Hon. Laurie E., Circuit Court Judge (19th Judicial Cir.)
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15. Dimmig II, Hon. Howard L., PD (10th Judicial Circuit)
16. Duryea, Hon. Jhon E., Court Judge (20th Judicial Circuit)
17. Ellis, Hon. Cynthia A., Circuit Court Judge
18. Feinberg, Daniel P., Assistant State Attorney
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21. Fulmer, Hon. Carolyn K., Florida 2DCA
22. Green, Hon. Oliver L., Florida 2DCA
23. Gross, Hon., Florida 4DCA
24. Hawthorne, Hon. Amy, Circuit Court Judge
25. Kelly, Hon. Patricia J., Florida 2DCA
26. Kirshy, Russell T., Assistant State Attorney

27. Koclanes, Peter, Assistant Attorney General
28. Kyle, Hon. Keith R., Circuit Court Judge
29. LaRose, Hon. Edward C., Florida 2DCA
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31. Mason, Hon. Donald H., Circuit Court Judge
32. Moorman, Hon. James Marion, PD Tenth Judicial Circuit
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42. Silberman, Hon. Morris, Florida 2DCA
43. Sleet, Hon. Daniel H., Florida 2DCA
44. Steele, Hon. John E., Senior U.S. District Judge
45. Stephan, Jessica, Assistant Attorney General
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47. Taylor, Cerese Crawford, Assistant Attorney General
48. Thompson, Nicholas R., Hon Circuit Court Judge
49. Villanti, Hon. Craig C., Florida 2DCA
50. Wells, Sheron, Assistant General Counsel for FDOC
51. Whatley, Hon. James W., Florida 2DCA
52. Luck, Hon. Georgia (11th Circuit Court Judge)
53. Brasher, Hon., Georgia (11th Circuit Court Judge)
54. Edmondson, Hon., Georgia (11th Circuit Court Judge)

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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 for the Eleventh Circuit appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court Middle District appears at Appendix E to the petition and reported at *Baldwin v. Secy. Fla. Dept. of Corr.*, 2021 U.S. DIST. LEXIS 106156 Decided on June 7, 2021.

JURISDICTION

The Petitioner jurisdiction is invoke base on the law, the Habeas Corpus under Judicial Act of Feb. 5, 1867 provided that “several courts of the United States ... shall have power to grant writ of habeas corpus in all case where any person may be restrained of his or her liberty in violation of the Constitution, or any treaty or law of the United States. *See Ex parte McCordle*, 6 Wall. 318, 325-326, 18 L. Ed. 816 (1868). *See also Ex parte Lange*, 85 U.S. (18 Wall) 163, 21 L. Ed. 872 (1874).

For case from Federal Court:

The date on which the United States Court of Appeals for the Eleventh Circuit decide my case on August 1, 2022.

A timely petition for rehearing was denied by the United States Court of Appeals for the Eleventh Circuit on the following dates: November 17, 2022 and the issuing Mandate to judgment on November 28, 2022, and a copy of the order deny rehearing appears at Appendix B, C and D.

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

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Mr. Baldwin a Florida prisoner appeals the District Court dismissal without prejudice of his habeas petition filed pursuant to 28 USC § 2254 as successive under 28 USC § 2244(b) and the Eleventh Circuit per curiam affirmed Mr. Baldwin § 2254 petition without addressing the merits of the jurisdictional custody that must comport with oral pronouncement of the new judgment entered is not second or successive within the meaning of § 2244(b). Citing 2018 U.S. DIST LEXIS 166264 *Shipman v. Secy. Fla. Dept. of Corr.* recommendation was for the trial court to correct written judgment to comport with oral pronouncement of the commitment. *See Maharaji v. Secy. Fla. Dept. of Corr.*, 304 F.3d 1345 (11th Cir. 2002) Under 28 USC 2244(d)(1)(A) In the context of Federal habeas petition, the statute of limitation run from the date of the state court resentencing and not the date of the original judgment. *See Deal v. United States*, 549 U.S. 149, 113 S. Ct. at 1993 (1993) Judgment of conviction shall set forth the plea the verdict or finding and adjudication and sentence under Rule 32(b)(1) of Federal Rules of Criminal Procedure includes both the adjudication of guilt and sentence. A petitioner is permitted to challenge multiple judgments in single petition under Rule 2(d) of the rule governing section 2254 case in the United States District Court.

Mr. Baldwin petition for Writ of Certiorari has compelling reason base on Eleventh Circuit Court of Appeals on the same important matter; has decide an

important federal question in a way that conflict with Eleventh Circuit and Supreme Court case. *Magwood v. Patterson*, 561 U.S. 320, 332-33 (2010) and held that “the phrase second or successive must be interpreted with respect to the judgment challenged.” The Court ruled that “Where … there is a new judgment intervening between two habeas petitions, an application challenging the resulting new judgment is not second or successive.” *Id.* at 341. Put more simply, the existence of a new judgment is dispositive. *Id.* at 338. And the judgment is what authorizes the prisoner’s confinement. *Id.* at 332. *Patterson v. Fla. Secy. Dept. of Corr.*, 849 F.3d 1321 (11th Cir. 2017); *Insignores v. Fla. Dept. of Corr.*, 755 F.3d 1273 (11th Cir. 2014); *see also Monge v. California*, 524 U.S. 721 at 734, 118 S. Ct. 2246 (1998). That multiple conviction occurred on the same day and there was no evidence that the conviction occurred at separate sentencing proceeding. *United States v. Watkins*, 147 F.3d 1294 (11th Cir. 1998) When prisoner collaterally attacks a portion of a judgment he is reopening the entire judgment and cannot selectively craft the entire manner in which the court corrects that judgment.

Mr. Baldwin petition for extraordinary writ is legality of being illegally detained base on October 15, 2012 resentencing where unreasonable application of the state court constitutional requirement of due process was violated. Citing *Trotter v. State*, 825 So. 2d 362 (Fla. 2002) A resentencing pursuant to *Heggs* is

de novo sentencing proceeding that must comport with constitutional requirement.

A *Heggs* resentencing entitles the defendant to de novo sentencing hearing with the full array of due process. *See also State v. Collins*, 985 So. 2d 985 (Fla. 2008); *Heggs v. State*, 759 So. 2d 620 (Fla. 2000); and review Appendix H.

Mr. Baldwin sentence was unconstitutional base on later ruling in *Thompson v. State*, 708 So. 2d 315 (Fla. 1999) where a life felony cannot be sentence under Habitual Violent Felony offender and Appendix G shows the defendant original written sentencing order adjudicated maximum term of life imprisonment on count one and count two which indicated he was sentence on both offense as Habitual Violent felony offender under section 775.084(4)(b) F.S.. Citing *State v. Jones*, 753 So. 2d 1276 (Fla. 2000); *Ashley v. State*, 850 So. 2d 1265 (Fla. 2003); and *Atkins v. State*, 69 So. 3d 261 (Fla. 2011).

Mr. Baldwin Appendix G and H shows he being illegally detained because of October 15, 2012 resentencing by the State Court must still comport with the oral pronouncement of count one to be concurrent sentence to count two which rendered final judgment in case 96-316-CF. Under Florida law there was constitutional requirement under due process of the state court that must reimpose the Habitual Violent felony offender and the state court failed to do so make the sentence on count one a nullity base on case law. Citing *Davis v. State*, 227 So. 3d 137 (Fla. 4th DCA 2017); *Rich v. State*, 814 So. 2d 1207 (Fla. 4th DCA 2002) and

Maybin v. State, 884 So. 2d 1174 (Fla. 2d DCA 2004) Once a sentence has already been served, even if it is an illegal sentence or an invalid sentence, trial court loses jurisdiction and violates double jeopardy clause by reasserting jurisdiction and resentence the defendant to increase sentence.

STATEMENT OF THE CASE

Petitioner Appendix F shows he was charged by way of Information on March 20, 1996 that charge count one first degree burglary with assault or battery as punishable by life § 810.02(2)(a); count two first degree Sexual Battery with Great force life felony § 794.011(3) and Count three third degree battery on person 65 or older § 784.08(2). Mr. Baldwin information shows count one burglary subsumed the charge of count two sexual battery into the statutory elements to show the intent to commit an offense and in the course of committing said burglary. Therefore, the offense cannot be separately punished for each count pursuant to § 775.021(4)(b)(2) F.S. *See William v. Singletary*, 78 F.3d 1510 (11th Cir. 1996).

Petitioner Appendix G shows November 16, 1998 original written order of final judgment and sentence on count one and count two as Habitual Violent felony offender § 775.084(4)(b) for term of life imprisonment to be concurrent to count three 10 years in Charlotte County case 96-316-CF.

The Appendix G shows oral sentencing transcripts page 96 of November 16, 1998 oral pronouncement Amend to reflect count three to be concurrent sentence to count one and count two. Therefore, the original sentencing was never oral pronounce on count one to be concurrent to count two.

Petitioner Appendix H oral sentencing transcripts shows resentencing of October 15, 2012 vacate his original maximum term of life imprisonment was on both offense as Habitual Violent felony offender. Mr. Baldwin new judgment and sentence adjudicated count two guilty only and sentence Mr. Baldwin to the *Heggs*-sentencing guideline scoresheet that scored all counts to 179.5 months rendered his conviction and sentence to be expired on October 15, 2012 in Charlotte County Case 96-316-CF.

Mr. Baldwin October 15, 2012 Appendix H page 24 of oral sentencing transcripts shows the oral judgment and sentence failed to comport with the oral pronouncement at resentencing and the new judgment must be corrected to reflect count one to be concurrent to the sentence on count two in which would terminate the sentence on October 15, 2012 in Charlotte County Case 96-316-CF.

The October 15, 2012 resentence did in fact change the whole sentence when pronounce it concurrent.

REASONS FOR GRANTING THE PETITION

Mr. Baldwin a Florida prisoner brings this Question of Law to the United States Supreme Court attention to one who is illegally detained on new judgment that authorize confinement does not become final in a judgment until it comport with the oral pronouncement and statute of limitation under 28 USC 2244 does not begin to run or expire from October 15, 2012 case of 96-316CF is compelling reasons for granting his petition on the following:

Mr. Baldwin a Florida prisoner is pro se and proceeds in certiorari or extraordinary writ from Eleventh Circuit Court of Appeals that per curiam affirmed his habeas corpus petition filed pursuant to 28 USC 2254 as second or successive under 28 USC 2244(b). The Eleventh Circuit panel rendered a judgment without addressing the merits of his timely filed consideration for Enbanc or Rehearing in Appendix B shows the issue was on the new judgment that failed to comport with the oral pronouncement which authorize confinement and constitutes the actual new judgment under *Magwood v. Patterson*, 561 U.S. 320, 332-33 (2010).

So the Petitioner Appendix G shows the original November 16, 1998 judgment, standing alone, no longer accounts for the authority of the Florida Department of Corrections to detain and exert control over Mr. Baldwin. Instead as the state admits in Appendix H of oral sentencing transcripts page 24 states in

pertinent part: The only one that seem to reference a count is the actual sentence of Department of Corrections sentencing him to life and then --.

Now one must look to the original judgment of Appendix G, together with Appendix H that shows the October 15, 2012 resentencing order vacated his original maximum term of life imprisonment that does indicate on Appendix G which shows both offense as Habitual Violent felony offender under 775.084(4)(b). In order to determine Mr. Baldwin present and legally authorize sentence. *See Magwood*, 561 U.S. at 332 (A § 2254 petitioner is applying for something: His petition seeks invalidation (in whole or in part) of the judgment authorizing the prisoner confinement.) *Cf.* B. Garner, Garner's Dictionary of Legal Usage 495 (3d Ed 2011) (defining an American judgment as "the final decisive act of a court in defining the rights of the parties") Because this is Mr. Baldwin first § 2254 petition challenging this new judgment, relies on *Magwood* decision of law that it is not "second or successive under § 2244(b).

The state court order of resentencing Mr. Baldwin on October 15, 2012 did in fact change the original orally pronounce sentence shows in Appendix G page 96 of November 16, 1998 reflects count three to be concurrent sentence to count one and count two in case 96-316-CF.

The October 15, 2012 order was to vacate the Habitual Violent felony offender on count two only. The issue is November 16, 1998 states clearly in the

Appendix G page 95 and 96 of the oral pronouncement of count one and count two and adjudicated both offense as Habitual Violent felony offender for maximum term of life imprisonment under 775.084(4)(b) F.S. Citing *State v. Jones*, 753 So. 2d 1276 (Fla. 2000); *Ashley v. State*, 850 So. 2d 1265 (Fla. 2003); and *Atkins v. State*, 69 So. 3d 261 (Fla. 2011).

Now on October 15, 2012 the state court order of resentencing did vacate the adjudication of Mr. Baldwin original Habitual Violent felony offender sentence of life imprisonment on both offense rendered count one sentence a nullity under Florida case law. Citing *Davis v. State*, 227 So. 3d 137 (Fla. 4th DCA 2017); *Rich v. State*, 814 So. 2d 1207 (Fla. 4th DCA 2002) and *Ashley v. State*, 850 So. 2d 1265 (Fla. 2003).

The way Secretary Department of Corrections has Mr. Baldwin being illegally detained is the October 15, 2012 new judgment of conviction and sentence that adjudicated count two only and impose the *Heggs*-sentencing guideline that scored all counts to a total of 179.5 months rendered the underlying conviction and sentence to be expired on October 15, 2012 in case 96-316-CF. *See Trotter v. State*, 825 So. 2d 362 (Fla. 2002).

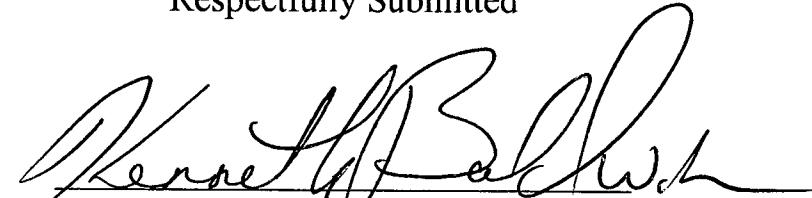
The new judgment in Appendix H run concurrent to the original judgment in Appendix G which has Mr. Baldwin held illegally by Secy. Fla. Dept. of Corr. in Case 96-316-CF.

So the question of law is why am I still in custody of the original judgment of November 16, 1998 when it been vacated and resentenced to a new judgment? Citing *United States v. Benz*, 282 U.S. 304, 51 S. Ct. 113, 75 L. Ed. 354 (1931).

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted



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Date: February 31 2023.