No. 22-7109

IN THE

SUPREME COURT OF THE UNITED STATES

In re FREDDIE A. LAND, PETITIONER,

vs.

STATE ATTORNEY, et al., RESPONDENTS.

PETITION FOR REHEARING

FREDDIE A. LAND, Pro se
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DC # O-R15055

Petitioner received this Courts' Order April 28,2023, denying his motion for leave to proceed in forma pauperis and dismissing his writ of habeas corpus citing Rule 39.8. It appears from the Rule this Court concluded the writ was frivolous i.e., lacking a legal basis or legal merit. Petitioner prays this Court simply overlooked and or misconstrued the claim which is on the face of the record and proceeds in good faith in submitting this petition for rehearing.

An assistant state attorney for the sixth circuit filed an information alleging that on October 5,1996, Petitioner violated § 794.011(2)(a) Fla.Stats. This statute states, "A person 18 years of age or older who commits sexual battery upon... a person less than 12 years of age commits a capital felony, punishable as provided in ss.775.082 and 921.141." (Fla.Stats.1995). See also Mills v. Moore, page 8 in habeas corpus, "Both sections 775.082 and 921.141 clearly refer to a capital felony." Florida only has five felony levels and the key word in this statute is "capital," Floridas highest felony, which Blacks Law 10th ed. defined, "capital- punishable by execution; involving the death penalty."

As Petitioner stated in his habeas corpus, page 7-8, this Court and the Florida supreme court have held the sentence of death for sexual battery violates the U.S. Const. Amend. VIII and XIV. Therefore § 794.011(2)(a) cannot be defined capital. See also Kennedy v. Louisiana, 128 S.Ct. 2641 (2008). This statute cannot be called a capital felony, capital offense, a capital crime, and Floridas supreme court has already held its not a capital case. Therefore Petitioner demands, as does thousands of other defendant, pursuant to due process of law, to know what level felony this is so that he can be sentenced lawfully.

Note: there was no rape, injury, or death in this case. Petitioner was found guilty from the stepdaughters testimony, by a six-person jury.

When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning. McLaughlin v. State, 721 So.2d 1170 (Fla. 1998). The above statute is plain and unambiguous. It is not the duty of the state courts to rewrite this statute in any form. Overstreet v. State, 629 So.2d 125 (Fla.1983); Art. III § 1, Fla. Const. (Any attempted redelegation violates the Constitution. The term "legislative power" as used in Article III most particularly embraces statutes defining criminal offenses). Furthermore, the courts cannot add words to statutes that were not placed there by the legislature. Hays v. State, 750 So.2d 1 (Fla.1999).

Petitioner has a right pursuant to the Due Process Clause to know what felony he allegedly violated and the punishment he faces from the felony before a court can lawfully take his liberties. This statute was defined capital, but Florida's supreme court has held § 794.011(2)(a) is not a capital offense or a capital case, therefore Petitioner cannot be sentenced to a capital punishment, pursuant to Amend. V and XIV U.S. Constitution.

Petitioner cannot challenge this statute due to the fact that Florida statutes are not subject to challenge under Article III § 6, Fla. Const., because this Constitutional provision only applies to laws not statutes. See Grapeland Heights Civic Assn. v. The City of Miami, 267 So.2d 321, 324 (Fla. 1972). Therefore, Petitioner prays this honorable Court will take judicial notice of § 794.011(2)(a) and determine whether a court can lawfully acquire jurisdiction has it is written. See Maddox v. State, 760 So.2d 89 (Fla. 2000) . . . facially unconstitutional statute creates no subject matter jurisdiction pursuant to which a court may convict an accused. . . .

Petitioner also claimed in his habeas corpus (page 6) that his sixth Amendment right to "trial by an impartial jury" was violated by the sixth circuit when that court impaneled a six-person jury over this serious charge. Now Petitioner is aware of Williams v. Florida, where this Court held six-person juries are constitutionally permissible.[2] Surely this honorable Court did not mean a six-person jury would be constitutional when a man faced death by imprisonment.

The honorable Justice Gorsuch of this Court just held that a defendant . . . is entitled to a twelve-person jury before he may be constitutionally convicted under the Sixth Amendment and that the prior precedent of Williams was wrongly decided. Khorrami v. Arizona, 214 L.Ed.2d 224 (11,7,2022). This Court also held in Ramos v. Louisiana, 206 L.Ed.2d 583 (2020), As Blackstone explained, no person could be found guilty of a serious crime unless "the truth of every accusation . . . should . . . be confirmed by the unanimous suffarge of twelve of his equals and neighbors, indifferently chosen, and superior to all suspicion." A "Verdict, taken from elevan, was no verdict" at all . . . a defendant enjoys a "constitutionall right to demand that his liberty should not be taken from him except by . . . the unanimous verdict of a jury of twelve persons."

This Court should also be aware that when the Williams decision was handed down a defendant sentenced to life was eligible for parole. Now, when a defendant is sentenced to life he or she is imprisoned until death. Surely something of this magnitude should not be left to the decision of six-people. Also in support of the above cases the Williams Court held, "the jury referred to in the Amendment was a jury constituted, as it was at common law, of twelve persons, neither more nor less. Arguably unnecessary for the result, this announcement was supported simply by referring to the

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[2] 90 S.Ct. 1893 (1970).

Magna Carta,..."

See also judge Makar's opinion in Phillips v. State, 316 So.3d 779 (Fla. 1st DCA 2021), "Williams ... was a jurisprudential dark horse." And, "the issue of jury size under the Sixth Amendment may be ripe for re-evaluation.

This Court stated Petitioner is entitled to a twelve-person jury before he may be constitutionally convicted under the Sixth Amendment. The Court also held that Petitioner has a constitutional right to demand that his liberty should not be taken from him except by a jury of twelve persons. As the record demonstrates Petitioner was denied this right. If this Courts' words apply to Petitioner then his right to trial by an impartial jury was violated and this violation caused him to be sentenced to die in prison.

At the time of this alleged crime the statute Petitioner supposedly violated was labeled capital with the punishment found in the capital sentencing scheme. The State supreme court held while the statute is a capital felony it's not a capital offense or a capital case. Petitioner submits that § 794.011(2)(a) is constitutionally defective as written and the trial court was without jurisdiction.

Petitioner submits this Petition for Rehearing in good faith and not to delay, and prays for consideration of this Court changing it's previous position and granting Petitioners' "Great Writ of Liberty." If this Court still decides Petitioners' claims are frivolous then it is all to clear that Petitioner never had any rights in the first place, and he has waisted his time and money trying to find relief that was never there.

Respectfully

Freddie A. Land

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