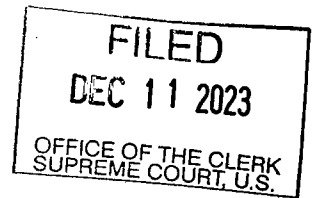


23-6323
No. _____

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Ryan F. Duncan — PETITIONER
(Your Name)

vs.

State of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth District Court of Appeal, State of Florida
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ryan F. Duncan Dc# J31997
(Your Name)

Jefferson Ct., 1050 Big Joe Rd.
(Address)

Monticello, FL. 32344
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Does a trial court deprive a criminal defendant of due process when accepting a guilty plea without informing them about a mandatory term of parole as a required part of an enhanced sentence?
2. Does constructive notice, via published law, of a mandatory consequence suffice due process?

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

Duncan v. Florida Commission on Offender Review, case no. 2022-CA-1005
Florida Second Judicial Circuit Court, Leon county. Judgment entered on September 21, 2022.

Duncan v. Florida Commission on Offender Review, case no. 1D22-3407
Florida First District Court of Appeal. Judgment entered on September 20, 2023

Duncan v. State, 169 So.3d 1165 (Fla. 1st DCA 2015) (appellate court's affirmance of trial court's summary denial of Mr. Duncan's initial postconviction motion on January 30, 2015).

Duncan v. State, 227 So.3d 568 (Fla. 1st DCA 2017) (appellate court's affirmance of trial court's summary dismissal of Mr. Duncan's successive postconviction motion on January 30, 2017).

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	9
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A - State's Notice of Intent to Classify Defendant a habitual offender

APPENDIX B - Plea of Guilty form

APPENDIX C - Change of Plea Hearing Transcripts

APPENDIX D - Sentencing Transcripts

APPENDIX E - Judgment and Sentence Case No. 2010-CF-8276

APPENDIX F - June 10, 2020 letter from Florida Commission on Offender Review

Appendix G- Petitioner's Amended Rule 3.850 Motion for Postconviction Relief

Appendix H- Order dismissing postconviction motion

Appendix I- Initial Brief on Appeal

Appendix J- Decision of Fifth District Court of Appeal, State of Florida

Appendix K- Florida Statutes:

1.) 775.084

2.) 947.1405

3.) 944.291

Table of Cited Authorities

Cases:	Pages:
<i>Bozza v. United States</i> , 330 U.S. 160 (1947)	12
<i>Cheek v. United States</i> , 498 U.S. 192 (1991)	14
<i>Dept. of Corrections v. Williams</i> , 901 So.2d 169 (Fla. 2 ^d DCA 2005)	5
<i>Dusenberry v. United States</i> , 534 U.S. 161 (2002)	13
<i>Gusow v. State</i> , 6 So.3d 699 (Fla. 4 th DCA 2009)	7
<i>Hampton v. State</i> , 217 So.3d 1096 (Fla. 5 th DCA 2017)	10, 15
<i>Johnson v. United States</i> , 576 U.S. 591 (2015)	15
<i>Jones v. Flowers</i> , 547 U.S. 220 (2006)	13, 15
<i>Lane v. Williams</i> , 455 U.S. 624 (1982)	9, 12, 14
<i>Mullane v. Central Hanover B&T Co.</i> , 339 U.S. 306 (1950)	7, 10, 12-14
<i>Oyler v. Boles</i> , 368 U.S. 448 (1968)	10-11
<i>Tulsa Collection Services v. Pope</i> , 485 U.S. 478 (1988)	7, 13
<i>United Student Aid Funds, Inc. v. Espinosa</i> , 559 U.S. 260 (2010)	13
<i>Walker v. City of Hutchinson</i> , 352 U.S. 112 (1956)	10

Constitutional Provisions:

U.S. Constitution, Article III section 2	9
U.S. Constitution, 14 th Amendment Due Process Clause	8-9, 12-13, 15
U.S. Constitution, 14 th Amendment Privileges or Immunities Clause	6

Statutes:

28 U.S.C. § 2244(d)	15
Florida Statutes -	
775.084	4-5, 15
812.13(2)(c)	4
944.28(1)	11
944.291(1)	5, 10, 15
947.1405	5-6, 10-11, 15
948.0436	5

(Continued on Next Page)

Table of Cited Authorities
(cont'd)

Rules of the Court:

Pages:

Federal Rules of Criminal Procedure -

Rule 11 10

Rule 11(b)(1)(H) 10

Rule 11(h) 11

Florida Rules of Criminal Procedure -

Rule 3.172(c) 10, 13, 15

Rule 3.172(j) 11

Rule 3.850 9, 15

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 I 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 Fourth Judicial Circuit Court, Oval county court appears at Appendix G 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 **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 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 was September 12, 2023.
A copy of that decision appears at Appendix I.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14th Amendment, U.S. Constitution;

Section 1:

"No state shall ... deprive any person of life, liberty, or property, without due process of law"

Florida Statutes:

Section 775.084(4) - See Appendix K1

Section 947.1405 - See Appendix K2

Section 944.291(2) - See Appendix K3

Florida Rules of Criminal Procedure:

Rule 3.172(c): Determination of Voluntariness - Except when a defendant is not present for a plea pursuant to the provisions of rule 3.180(d), the trial judge must, when determining voluntariness, place the defendant under oath, address the defendant personally, and determine on the record that he or she understands:

(1.) Nature of the Charge - The nature of the charge to which the plea is offered, the maximum possible penalty, and any mandatory minimum penalty provided by law.

(7.) Terms of Plea Agreement - The complete terms of any plea agreement, including specifically all obligations the defendant will incur as a result.

STATEMENT OF THE CASE

In August 2010, Petitioner Ryan F. Duncan was arrested for and charged with one count of unarmed robbery^① in case no. 2010-CF-8276, along with a violation of probation ("VOP") in case no. 2003-CF-12281^②. The State filed its notice to have him classified as a habitual felony offender (HFO)^③ and sentenced to an extended term of imprisonment of 30 years. See Appendix A. Mr. Duncan was initially offered a plea deal of 20 years, followed by an offer of 18 years.

After consulting with his attorney, Gregory Messore, Petitioner turned down the State's offer. Instead, he opted to enter an open guilty plea to both cases. His decision was based in-part on not having a substantial prison score (100.5 months), no prior prison terms, and his counsel's legal advice that he was not subject to post-prison supervision (unless ordered by the court) since he had no prior prison sentences.

On January 19, 2011, Petitioner entered a guilty plea before Florida's Fourth Judicial Circuit Court in Jacksonville, Florida. Before accepting his guilty plea, the trial court advised him of the rights he would be waiving, as well as potential collateral consequences of his guilty plea - such as deportation and involuntary civil commitment. The court also informed him that, if he is adjudicated an HFO, he could be sentenced up to 30 years. During this hearing, however, there was no mentioning that if he is sentenced as an HFO that he will be required to complete conditional release supervision (i.e. mandatory parole), or that the Florida Commission on Offender Review ("Commission" or "FCOR") can and will impose additional sanctions as part of his supervision. See Appendix B & C.

Sentencing was imposed on March 10, 2011. During this proceeding, Petitioner's counsel and the court were of the

① Fla. Stat. 812.13(2)(c), a 2nd degree felony punishable of up to 15 years.

② This case has since expired and is not at issue here.

③ Fla. Stat. 775.084(4)(a).

opinion that after prison, he would only be subjected to those requirements previously imposed^④. See Appendix D pgs. 15-17. The prosecutor did not object or correct the court or defense counsel's misconception about Mr. Duncan's post-prison status in regards to relevant state laws that govern HFOs^⑤. The court proceeded to impose an extended term of imprisonment of 20 years as an HFO. *Id.* pg. 18. He did not appeal^⑥.

Upon his reception into Florida Department of Corrections (FDC), Petitioner was interviewed by a classification specialist. She informed him of his maximum release date (April 11, 2030) and his earliest release date (April 11, 2027). There was, however, no indication given that any early release date would only be under supervision, or that it will come with additional sanctions to the court's judgment. Mr. Duncan had similar interviews with other classification officers everytime he had been transferred to a new institution, as well as each annual review. And each time, there was no notice given that he was subject to conditional release supervision^⑦.

In 2020, an inmate law clerk informed Petitioner that his HFO status may subject him to conditional release supervision. Upon learning about this possibility, Mr. Duncan wrote the Commission

④ Pursuant to his 2006 plea in case no. 2003-CF-12281, Petitioner is subject to registration requirements under Fla. Stat. 948.0436.

⑤ See e.g. 944.291(2) and 775.084(4)(j) Fla. Stats. Appx. K1,3

⑥ Mr. Duncan did, however, file two state postconviction motions (2013 and 2015), neither of which raised conditional release supervision as an issue as it was an unknown issue at that time. Neither motion was successful.

⑦ This lack of notice by FDC is notable given its substantial role in the implementation and execution of this mandatory supervision. See Fla. Stat. 944.291(2) and 947.1405(5); Appx. K2,3. See also Dept. of Corr. v. Williams, 901 So.2d 169, 170 (Fla. 2^d DCA 2005).

for clarification about his eligibility for supervision. On June 10, 2020, the Commission replied that since he qualified for supervision under 947.1405 (2)(b), he will be required to participate in the program. Appx. F. This letter was the first time that the state government gave the Petitioner notice that he will have post-prison supervision.

On June 8, 2022, Mr. Duncan filed a petition for a writ of prohibition against the Commission in Florida's Second Judicial Circuit Court^⑧. He argued that the imposition of certain terms and conditions for supervised release would violate his double jeopardy rights by making his sentence more onerous than originally imposed, as well as deprive him the equal protection of the law. Mr. Duncan raised his claim under the 14th Amendment's Privileges or Immunities clause rather than the Due Process clause because there was no notice given during court proceedings and he was not challenging the judgment which the Commission relies upon to impose the additional sanctions. For further discussion of this issue, please see Mr. Duncan's companion petition: Duncan v. Florida Commission on Offender Review, on certiorari review from Florida's First District Court of Appeal.

On June 10, 2022, Petitioner filed a successive postconviction motion with the sentencing court. He subsequently amended the motion^⑨. The crux of the motion was on the lack of notice of a mandatory consequence of pleading to HFO sanctions. Specifically, he raised one claim of ineffective assistance of counsel regarding his attorney's affirmative misadvice^⑩, and one claim of denial of due process^⑪ of law. These arguments were raised in context to the

⑧ Leon county case no. 2022-CA-1005

⑨ Appendix G. The motion was held in abeyance until his other case was resolved which occurred on September 21, 2022.

⑩ In the amended motion, this claim had four sub-claims: two involving plea negotiations, and two involving the sentencing phase. Appx. G pgs. 6-11

⑪ This claim was divided between two sub-claims: one of court error, and the other as a state error by the prosecutor. Appx. G pgs 11-14

Federal Constitution, especially as it pertains to notice.⁽¹²⁾

On January 4, 2023, the state postconviction court dismissed Petitioner's motion as untimely. The court rejected his arguments because conditional release:

" ... is an application of long-standing statutory law... that falls into the category of collateral consequences of a plea... [a]nd like other collateral consequences, [he] could identify the legal impact of his plea at the time of entry."

Appx. H pg. 2 (internal quotations and citations omitted). The court continued on:

" 'Although no one can know all the law, all persons are charged with constructive knowledge of the law... the time for filing a postconviction motion should not be held open until a defendant has 'actual notice' regarding counsel's bad advice about the law. Such a policy crushes the concept of finality and opens plea bargains to attack many years after the entry of a plea.'"

Id. pg. 2-3 (quoting Gusaw v. State, 6 So.3d 699, 705 (Fla. 4th DCA 2009)). Notably, the court did not directly address Petitioner's due process claim.

Mr. Duncan took a timely appeal to Florida's Fifth District Court of Appeal, case no. 5D23-0827. He specifically argued in Point Three that constructive notice of a mandatory punishment

(12) Petitioner relied upon this Court's holdings in Mullane v. Central Hanover B&T Co., 339 U.S. 306 (1950) and Tulsa Collection Services v. Pope, 445 U.S. 478 (1980) as support for his notice argument.

via published law does not suffice the 14th Amendment's Due Process clause as the method fails to provide fair notice prior to the supervision becoming mandatory, and denied him his only meaningful opportunity to raise his objections⁽¹³⁾ (i.e. at sentencing). Appx. I. pgs. 20-27.

On September 12, 2023, the appellate court per curiam affirmed the postconviction court's decision. Appx. I.

⁽¹³⁾ Mr. Duncan's objections are based on his problematic history with supervision. As such, he would have offered an alternative sentencing scheme for the court to consider. This would have included running the two cases consecutively in lieu of the HFO classification, thereby removing his only eligibility for conditional release supervision.

REASONS FOR GRANTING THE PETITION

I. This Court had previously granted certiorari review in lane v. Williams, 455 U.S. 624 (1982) to consider whether a criminal defendant is deprived of due process when the trial court failed to inform him of a mandatory parole term before accepting his guilty plea, but the issue became moot before the Court could answer this constitutional question. Mr. Duncan's case suffices the controversy requirement under Article III of the U.S. Constitution as his mandatory parole term will begin in 2027 when he is released from prison.

Petitioner urges this Court to grant certiorari review to address the constitutional question left unresolved by the Court in lane. Especially so, given that Mr. Duncan's case is factually similar to those circumstances found in lane albeit with two distinctions. ⁽¹⁴⁾

First, Petitioner discovered the issue prior to being released ⁽¹⁵⁾ but after the time period for raising such a challenge - unlike the respondents in lane. Thus, he moved two state courts for two different remedies before the mandatory parole term becomes effective. Second, unlike the federal district court in lane, the state courts here refused to provide any remedy - equitable or at law - to address Mr. Duncan's complaints. More specifically, the state postconviction court declined to set aside Petitioner's HFO judgment so as to give him an "opportunity to plead anew ... [including] negotiat[ing] a different plea bargain properly armed with the information that any [HFO] sentence [he] receive[s] would include" conditional release supervision. lane, 455 U.S. at 630.

Mr. Duncan further urges this Court to grant his petition to consider the due process question in context to this Court's

⁽¹⁴⁾ He will be released on April 11, 2027.

⁽¹⁵⁾ Under state law, he had 2 years from the date that his conviction and sentence became final to timely file a postconviction motion to raise such a challenge (had he known about it). Fla. R. Crim. P. 3.852(b).

decisions regarding notice.

In Mullane, this Court explained that:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated ... to apprise interested parties ... and afford them an opportunity to present their objections.

Id., 339 U.S. at 314. This Court has found that the degree of "notice required will vary with circumstances and conditions." Walker v. City of Hutchinson, 352 U.S. 112, 115 (1956).

The prosecution's intent to have Petitioner sentenced to an enhanced punishment is one of those "circumstances and conditions" that varied the notice required. See e.g., Oyler v. Boles, 368 U.S. 448 (1968). Additionally, "Florida law requires notice of the reasonable or direct consequences of habitualization prior to entering a plea." Hampton v. State, 217 So. 3d 1096, 1099 (Fla. 5th DCA 2017). And under Florida Rules of Criminal Procedure 3.172(c)(7), a court shall inform the defendant of the mandatory obligations he will incur as a result of their guilty plea.⁽¹⁶⁾ For HFOs, conditional release supervision is a direct and mandatory consequence. Accord Fla. Stats. 944.291(2) and 947.1405(2)(b).¹

Petitioner questions whether this Court's Oyler decision entitled him to notice of core aspects of an enhanced sentence that impacts his liberty, or is it limited to the incarcerative portion only.

⁽¹⁶⁾ Similar to Fla. R. Crim. P. 3.172(c) is rule 11 of the Federal Rules of Criminal Procedure regarding a federal court's acceptance of a defendant's guilty plea. Notably, rule 11(b)(1)(H) provides that a court must inform a defendant of the possibility of a term of supervised release.

Mr. Duncan asserts that the notice Oyler proscribes should apply to the entire enhanced sentence that affects a defendant's liberty - both in and out of prison. Particularly so, where (1) the law mandates supervision as a component to the enhancement; (2) the Commission can impose any condition⁽¹⁷⁾ in addition to the original sentence; (3) the offender cannot refuse to participate in the supervision⁽¹⁸⁾; and (4) failure to complete the supervision can result in the extension⁽¹⁹⁾ of an already enhanced sentence beyond what a court imposed (i.e. Petitioner's 20 year sentence turns into a 23 year punishment - or more).

The lack of notice negatively affected Petitioner's substantive rights⁽²⁰⁾, and caused him to suffer prejudice⁽²¹⁾ then - and again in the future. He was deprived of critical information that was essential to intelligently consider the State's offer of 18 years, or the ramifications of entering an open guilty plea to HFO

(17) See Fla. Stat. 947.1405 (6)

(18) For example, if the Commission were to set terms & conditions that Mr. Duncan knows he cannot abide by, he is not permitted to refuse his release and remain in prison to finish his sentence.

(19) The failure to complete the terms & conditions (including payment for the supervision) prior to the end of supervision will result in a violation, subject to revocation proceedings. When the Commission does revoke an offender's release, it has absolute discretion over whether to grant credit for time spent on supervision, and is not limited by the nature of the violation (i.e. technical violation of the terms & conditions or a new charge). With the revocation of their release, FDC will also revoke the previously accrued gain-time. See Fla. Stat. 944.28(1). Thus, the offender's sentence can be extended beyond what the court actually imposed.

(20) See Fed. R. Crim. P. 11(h)

(21) See Fla. R. Crim. P. 3.172(j)

sanctions. The omission further hindered Petitioner's opportunity to raise any meaningful objections or alternative sentencing schemes in lieu of an extended prison term and mandatory supervision. Nothing can be more evident of this error than the discussion between the sentencing court and defense counsel regarding Mr. Duncan's post-prison status. Appx. D pg. 15-17. Specifically, he would only have his sex-offender registration requirements to deal with after incarceration. *Id.* Given these circumstances, the state court was concerned about the Petitioner's status after prison, and acted accordingly by imposing a lengthier sentence based on a fundamental misconception of the law.

Mr. Duncan recognizes that "sentencing should ~~not~~ be a game in which a wrong move by the judge means immunity for the prisoner". Bozza v. United States, 330 U.S. 160, 166-67 (1947). But this same logic should cut the other way as well. That is, a judgment should not retain the same degree of finality when the government fails to provide a timely and adequate notice of a mandatory penalty⁽²⁶⁾, especially when such an omission constitutes a denial of due process. Accord Mullane, *supra*. Nothing could be more fundamentally unfair for the Petitioner, for the state court dismiss his postconviction motion as untimely because it would allegedly "crush the concept of finality" when the government - which failed to give notice of the penalty - will alter that allegedly "final" sentence.

For these reasons, this Court should accept jurisdiction and resolve the question left open in Leine: Does the failure to inform a defendant about a mandatory parole term deprive him of due process?

⁽²⁶⁾ Beyond the court proceedings, FDC and the Commission - as the agencies responsible for enforcing the penalty - could have served notice upon Mr. Duncan when he entered Florida's prison system.

II. Florida's reliance on constructive notice via published law of a mandatory consequence is contrary to this Court's precedents involving notice and due process, and should be rejected.

Petitioner pleads for this Court to grant his petition because the State of Florida unreasonably relies upon constructive notice to dismiss his due process claims, and that reliance is contrary to this Court's holdings on notice and due process including Mullane, Tulsa Collection Services, United Student Aid Funds, Inc. v. Espinosa,⁽²³⁾ and Jones v. Flowers,⁽²⁴⁾ *supras*.

While "due process does not require actual notice"⁽²⁵⁾, but "when notice is a person's due, [the] process which is a mere gesture is not due process". Mullane, 339 U.S. at 315. Thus, the "constitutional validity of [the] chosen method" is whether "it is ... reasonably certain to inform those affected". *Id.* Florida provides rules 3.172(c)(1) and (7) of its criminal procedure to give notice to defendant's entering a guilty plea of "any mandatory minimum penalty provided by law", as well as "all obligations the defendant will incur as a result". *Id.* Yet, no such notice was given at plea or sentencing. See Appx. C & D.

In Jones v. Flowers, *supra*, this Court addressed the issue of whether "due process requires the government to do something more" when "it learns that its attempt at notice has failed". *Id.*, 547 U.S. at 227. By filing his recent postconviction motion, Mr. Duncan was raising his claim that the court had failed to give adequate notice of the mandatory obligation that is conditional release supervision - a penalty provided by law - when he entered his guilty plea, or at sentencing when the court imposed HFO sanctions. Rather than correcting the error; either allowing him to recapture

(23) 559 U.S. 260 (2010)

(24) 547 U.S. 220 (2006)

(25) Dusenberry v. United States, 534 U.S. 161, 170 (2002)

the 18 year plea offer or negotiate a different plea bargain armed with the knowledge that any HFO sentence would include conditional release supervision a la hane⁽²⁶⁾; the state court dismissed the motion as time barred under the concept that the Petitioner had constructive notice of the mandatory supervision because it is a "long-standing statutory law". Appx. H pg. 2.

Publication of a law is usually adequate enough to place the general public on notice as to the conduct the law seeks to regulate or punish. Thus, "[t]he general rule [is] that ignorance of the law... is no defense to criminal prosecution". Cheek v. United States, 498 U.S. 192, 199 (1991). But a general rule must give way to "circumstances and conditions" that make it untenable, such as having a good-faith misunderstanding of the law.⁽²⁷⁾ As the Cheek Court observed:

The proliferation of statutes and regulations has sometimes made it difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed by law.

Id., 498 U.S. at 199-200. This is why notice is fundamental to due process; and in order for it to be adequate, it must convey the necessary information to the party affected. Mullane, 339 U.S. at 313-14. Further, the notice must also afford the affected party an opportunity to present their objections. Id.

⁽²⁶⁾ See hane, 455 U.S. at 630.

⁽²⁷⁾ Petitioner asserts that he had a good-faith misunderstanding of the law based on the entirety of the proceedings and notices provided, and not just on his attorney's (erroneous) legal advice. It is not unreasonable for an average citizen, untrained in the law, to rely upon the legal expertise of two professional lawyers and a judge on matters beyond his comprehension. To hold otherwise is to invite citizenry distrust of the judicial system as a whole.

Constructive notice via published law of a mandatory consequence is not a constitutionally viable form of notice. First, it is not an active method of notice. Thus, the government cannot be ensured that a defendant has the necessary information to raise any meaningful objections in a timely manner. Accord *Jones*, 547 U.S. at 227. Court proceedings aside, the government via FDC and the Commission, as the enforcers of conditional release supervision, only provide notice of the supervision near the end of the offender's incarceration,⁽²⁸⁾ and as such, is outside the time period for seeking relief in state or federal courts. See e.g. Fla. R. Crim. P. 3.650(b), and 28 USC § 2244(d).

Second, constructive notice is a mere gesture of the notice due to a defendant facing HFO sanctions. See *Hampton*, 217 So.3d at 1099 see also Fla. R. Crim. P. 3.172(c)(1)(7). Especially given that conditional release is a mandatory penalty for HFOs as provided by law, Fla. Stat. 775.084(4)(j); 944.291(2), and 947.1405(a)(b).

Finally, constructive notice is both a vague and standardless method that it invites arbitrary determination as to when the affected party became or becomes aware of the penalty, or when it became effective (i.e. the proceeding that imposes it). See e.g. *Johnson v. United States*, 576 U.S. 591, 595-96 (2015).

For these reasons, this Court should grant certiorari to determine whether constructive notice of a mandatory penalty via published law suffices the notice requirement of the 14th Amendment's Due Process clause.

(28) The process for implementing the terms & conditions of release begins between 180 days (Fla. Stat. 947.1405(5)) and 90 days (Fla. Stat. 944.291(2)) prior to release. There is no set time frame for when the terms are to be provided to the offender prior to his release.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Ryan F. Duncan

Date: 11 December 2023