

23-6325

No. 23A159

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

FILED

SEP 12 2023

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

James Earl Downs (in propria personae/prose) - Petitioner

VS.

RICHARD D. DIXON, SECRETARY FLORIDA  
DEPARTMENT OF CORRECTIONS; STATE OF FLORIDA - RESPONDENT(S)

ON A PETITION FOR A WRIT OF CERTIORARI TO  
TENTH JUDICIAL CIRCUIT, HIGHLANDS, CO.; SECOND DISTRICT COURT OF APPEALS  
SIXTH DISTRICT COURT OF APPEAL (FLA.); FLA. SUPREME COURT (\*see Attached)  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Earl Downs #762100  
c/o HARDEE CORRECTIONAL INST.  
6901 STATE ROAD 62  
BOWLING GREEN, FLORIDA 33834

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QUESTIONS PRESENTED  
GROUND ONE

1.) UNDER THE UNITED STATES CONSTITUTION'S (4), (6), (8) & 14 AMENDMENT(S) CAN THE CLAIMS BEING PRESENTED HEREIN DETERMINE WHETHER OR NOT MANIFEST INJUSTICE BE DETERMINED IN THE LOWER AND APPELLATE COURT(S), WHEREAS, AN ILLEGALLY INVALID REASON FOR DEPARTURE FROM THE GUIDELINES' RECOMMENDATION BE UPHOLD IN ITS PROVISIONS BASED SOLELY UPON FLORIDA'S HABITUAL OFFENDER STATUTE 775.084(4)(a)(1)(1993), A STATUTE THAT EXPLICITLY CONFLICTS WITH FLORIDA STATUTE 921.001(4)(a), PROMULGATED UNDER FLORIDA RULES OF CRIMINAL PROCEDURE SENTENCING GUIDELINES 3.701(b)(6), (d)(8), (10), (11), (12), WHEREAS THE LANGUAGE OF FLA. STAT. 921.001(4)(a) THEREIN EXPLICITLY AND UNAMBIGUOUSLY THAT FLORIDA'S PROVISIONAL SANCTIONS OF 775.084(4)(a)(1) HABITUAL OFFENDER STATUTE IS NOT A VALID REASON FOR DEPARTURE FROM THE GUIDELINES' RECOMMENDATION MERIT REVERSAL AND REMAND FOR RESENTENCING??

see for review: TRIAL TRANSCRIPT(S) Exhibit(S) "(A)" jury instructions, lines (20-22); Ex. "(C)" jury verdict form; Ex. "(H)" (order on motion to correct sentence in comparison to 921.001(4)(a) Florida Statute, in comparison to Ex. "(J)" sentencing guideline scoresheet (Reason for departure from guidelines' recommendation); Ex. "(B)" polling of jury's verdict of guilt for ROBBERY ONLY [as instructed in Ex. "(A)"]; Laws of Florida Chapter 75-116 and 75-298 in comparison to: BURDICK v. STATE, 594 So. 2d 267 (Fla. 1992); BROWN v. STATE, 530 So. 2d 51 (Fla. 1988); Early v. State, 516 So. 2d, 24 (Fla. 3<sup>rd</sup> DCA 1987); WHITEHEAD v. STATE, 498 So. 2d 863 (Fla 1986); Ex(s). "(D)" Second AMENDED INFORMATION, & Ex(s). "(B-B1)" in comparison to Ex(s). "(A)" jury instructions and jury's verdict [Ex. "(H)" & "(H-1)"] and the jury's verdict in comparison to STEPHENS v. STATE, 974 So. 2d 455 (Fla. App. 2d DCA 2008); Shavers v. State, 86 So 3d 1218 (Fla. 2d DCA 2012); NETTLES v. STATE, 112 So. 3d 782 (Fla. 1<sup>st</sup> DCA 2013); Hicks v. STATE, 411 So. 2d 1025, (Fla. 2d DCA 1982). see also: Cappalo, 932 So. 2d 91 334.

2.) WHETHER OR NOT PETITIONER'S (8TH) AMENDMENT UNITED STATES CONSTITUTIONAL RIGHT TO A GUARANTEED PROPORTIONALITY OF SENTENCE HAS BEEN VIOLATED PURSUANT TO 14<sup>th</sup> (U.S CONSTITUTION) AMENDMENT'S EQUAL PROTECTION LAW AND THE PROVISION(S) OF THE AMENDED LAWS AND RULES BEING CITED HEREIN. WHEREAS WHEN REASON FOR DEPARTING FROM THE GUIDELINES' RECOMMENDATION IS NOT GIVEN ON 3.988 SENTENCING SCORESHEET PURSUANT TO THE PROVISIONS HELD AND IMPLEMENTED UNDER FLORIDA RULES OF CRIM. PROCEDURES 3.701(b)(6), (d), (8), (10), (11), (12), AND FLORIDA STATUTE 921.001 (4) (a) TO WHICH STATES THEREIN THAT: "HABITUAL OFFENDER SANCTIONS CANNOT BE USED AS A REASON TO DEPART FROM THE GUIDELINES' RECOMMENDATION"? (See: Ex. (H)) ORDER WHERE RECORDS REFLECT JUDGE, AT SENTENCING, BASED AN INVALID REASON FOR DEPARTING FROM THE GUIDELINES' RECOMMENDATION. See also: Ex. (J) (pg. 498) TRIAL TRANSCRIPTS; *Burdick v. State*, 594 So.2d 267 (Fla. 1992); *Brown v. State*, 530 So. 2d, 51 (Fla. 1988); *Whitehead v. State*, 498 So. 2d 863 (Fla. 1986); *Early v. State* 516 So. 2d 24 (Fla 3<sup>rd</sup> DCA 1987); sentencing guideline scoresheet Ex. (J) Note: NO REASON BY TRIAL COURT GIVEN ON Sentencing Scoresheet (3.988) in comparison to Exhibit (H) - (H-1) afore-mentioned herein Whereas Trial Court Judge, in His order (Ex. (H-1)) based his reason for departing from the guidelines on Petitioner being sentenced under the Fla. Statute 775.084(4)(a)(1)(1993) to which the Florida Supreme Court held that Habitual OFFENDER sanctions is an invalid reason to depart from the guidelines' recommendation; see also Florida Stat. ch. 921.001(4)(a); (5) and 924.06(1)(e)(1985); *WHITFIELD v. STATE*, 487 So. 2d 1045 (Fla. 1986); Florida Rules of Criminal Procedure 3.701(b)(6), (d)(8)(10)(11)(12); see also: *Dixon v. State*, 823 So. 2d 792 (Fla 2d DCA 2001) And (51 So 3d 450); *Vega v. STATE* 900 So. 2d 572 (Fla 2d DCA 2004); *Weaver v. State*, 957 So. 2d at 588-89 (quoting *Delva*, 575 So. 2d 643-45 (Fla 1991))

see also: *Whitfield v. State*, 487 So.2d 1045 (Fla. 1986) departure from sentencing guidelines in Rule 3.701 (F.R.C.P.) without a clear and convincing reason for departure. (see also: *Walker v. State*, 462 So.2d 452 (Fla 1985); *State v. Snow*, 462 So.2d 455 (Fla 1988); *State v. Rhoden*, 448 So.2d 1013, 1016 (Fla 1984); *State v. Mobley*, 481 So.2d 481 (Fla 1986); Fla. Statute 921.001 (3) and 924.06 (1) (e) Fla. Stat. (1983); *State v. Jackson*, 478 So.2d 1054 (Fla. 1985) cases involve the mandatory duty of the trial court to make affirmative findings on the record, which were not made. (quoting *Senior v. State*, 502 So.2d 1360 (Fla 5th DCA 1987); *State v. Chaplin*, 490 So.2d 52 (Fla. 1986) narrows the *with dictum* by stating: "The impact of the error was such that the trial court departed from the guideline rule in Rule 3.701 without making the mandatorily clear and convincing reasons for departure." (NOTE: Review in comparison to Ex. (J) sentencing scoresheet negating mandatory reason for departure in comparison to Ex. ~~(H-H)~~) "order on motion to which gives an invalid reason for departing from the guidelines' recommendation pursuant to Fla. Statute 921.001 (4) (a), in this instant case, the records reflect an act of manifest injustice incurring based upon the language of the law to which states explicitly and unambiguously that Fla. Statute 775.084 (4) (a) (1) (1993) is an invalid reason to depart from the guidelines' recommendation. (see *Bryant v. State*, 148 So. 3d 1251, (Fla 2014), 93 So 3d 381 (Fla. 2d DCA 2012); *Goldberg v. State*, 76 So 3d 1072 (Fla. 5th DCA 2011); *Shull v. Dugger*, 515 So. 2d 748 (Fla. 1987); *Patten v. State*, 531 So. 2d 203 (Fla. 2d DCA 1988).

3.) PURSUANT TO THE FLORIDA RULES OF CRIMINAL PROCEDURE 3.620(1) THE CERTIFIED QUESTION IS WHETHER OR NOT SENTENCING JUDGE VIOLATED PETITIONER'S CONSTITUTIONAL DUE PROCESS RIGHT(S) TO A FAIR AND IMPARTIAL HEARING BY SETTING IMPERMISSABLY AS A SEVENTH JUROR BY USURPING THE JURY'S VERDICT FINDINGS OF GUILT FOR THE LESSER OFFENSES (AS INSTRUCTED), AND TOTALLY DISREGARDING ITS OWN INSTRUCTIONS

CHARGED TO THE JURY, IN ITS PROVISIONS, AND RENDERING AN ADJUDICATION OF GUILT "AS CHARGED" THAT IS NOT IN CONFORMANCE WITH THE JURY'S VERDICT? DOES THIS MERIT REVERSAL AND RESENTENCING IN ACCORDANCE (i.e. CONFORMITY) TO THE JURY'S VERDICT OF GUILT, AND THE INSTRUCTIONS PROVIDED BY TRIAL COURT TO WHICH THE JURY BASED IT'S VERDICT FINDINGS? see: TRIAL TRANSCRIPT(S) pg. 431 EX"(A)" "EX"(B)" & "(B-1)" pg(s). (447-48) jury polling in comparison to EX"(E)" Judges adjudication of guilt usurping Jury's for its findings of guilt for the lesser offense (as instructed) pg(s). (447-448) lines (22-25) on pg. 447 (T/T) & pg 448 "(B)-(1)" lines "(1-19)".; see also: EX"(C)" pg(491) Trial Transcripts Jury verdict form), in comparison to Exhibit "(E)" pg 468) T/T lines "(15-19)" in comparison to trial court provisional jury instructions marked as EX"(A)" (trial transcripts) pg. 431, lines (20-22); IN REVIEW of: MOORE V. STATE, 496 So 2d 255 (Fla 5th DCA 1986) (STRONG EMPHASIS); RICHARDSON V. STATE, 7 So.3d 549 (Fla 5th DCA 2009); MASHBURN V. STATE, 745 So. 2d 453 (Fla 5th DCA 1999); Wilson V. State, 566 So 2d 36 (Fla 4 DCA 1990); Perkins V. Mayo, 92 So 2d 641 (Fla 1957); Holloman V. STATE, 140 Fla. 59, 191 So 36; Lewis V. State, 154 Fla 825, 19 So 2d 199; Sneed V. Mayo, Fla 66 So 2d 865; Brown V. Stuckey, 749 So 2d 490 (Fla. 1999); Cloud V. Fallis, 110 So 2d 669 (Fla 1959); Laskey V. Smith, 239 So. 2d 13 (Fla. 1970) [trial judge should refrain from acting as an additional juror]; Webb V. State, 997 So 2d 469; Jalmes V. State, 51 So 3d 445 (Fla 2010), 19 So 3d 347 (Fla. 2d D.C.A. 2009) (in order to convict Petitioner of "Armed" Robbery the jury was required to find that Petitioner carried used or threatened to use a firearm, an essential element in the charging information), in comparison to Trial transcript(s) herein presented as Exhibits. see EX"(A)" pg 431 (jury inst.); Jury verdict and verdict form respectively marked as EX(s). "(B)" & "(B-1)" (pgs. 447-48) respectively of Trial Transcripts, in comparative review to EX. "(D)" pg (480) second Amended Info showing who carried used or threaten to use a firearm, in comparative review of EX(s). "(C)" verdict form

McCoy v. State, 40 Fla. 80 2d 70 (Fla. 3d DCA 1995) under Criminal Law and Procedure > Verdicts > General Overview ("whereas the Supreme Court of Florida held that the act of 1895 Chapter 4392 entitled "An act in relation to crimes and criminal procedure," which proscribes that in all criminal prosecutions in the State of Florida that is hereafter begun in Florida if the defendant be found guilty of an offense lesser in degree but included within the offense charged within the indictment or information such verdict SHALL NOT BE SET ASIDE BY THE COURTS upon the ground that such verdict is contrary to the evidence, if the evidence produced in such case would have supported a finding, or if such court would have sustained a verdict of guilty of the greater offense is merely declaratory." (quoted from McCoy supra rule.) see Also Florida R. Stat. 2380-2384, to which rule (10) under 4392 acts of 1895 providing that herein which is quoted in the McCoy rule. Also see McPhee v. State, 657 So. 2d 70 (Fla. 3d DCA 1995) to which the Third D.C.A. ruled that in order to conform to the jury's verdict, McPhee's written judgment should be amended to conform, in indication, to the jury's verdict. See Trial Transcript(s) Exhibits (A) "lines (20-22) pg 431; Ex. (B) pg 447 lines (20-25) & Ex. (B-1) pg 448 lines (1-19) jury polling as to their verdict findings for "robbery" only"); See Also in comparison for review to this instant case, NETTLES v. STATE, 112 So. 3d 782 (Fla. 1st DCA 2013); Holloman v. State, 145 Fla. 59140 Fla. 59; 191 So. 36191, So. 36 (Fla. 1939); Hicks v. State, 411 So. 2d 1025, (Fla. 2d DCA 1982), see also Lawson v. State, 470 So. 2d 109 (Fla. 4th DCA 1985) (judgment must conform to jury verdict.); Webb v. State, 997 So. 2d 469 (Fla. 2d DCA 2008); Moore v. State, 496 So. 2d 255 (Fla. 5th DCA 1986); SHIVERS v. STATE, 86 So. 3d 1218 (Fla. 2d DCA 2012); Saintelus v. State, 823 So. 2d 177 (Fla. 4th DCA 2004); Yates v. United States, 354 U.S. 298, 312, 77 S. Ct. 1064, 1 L. Ed. 2d 1356 (1957), overruled on other grounds by Burks v. United States 437 U.S. 1, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978); U.S. v. Spellissy, 438 Fed. App'x 780, 782-83 (11th Cir. 2011). Hedgepeth v. Pulido, 555 U.S. 57, 61, 129 S. Ct. 530, 172 L. Ed. 2d 388 (2008); Williams v. State, 492 So. 2d 1308 (Fla. 1986)

4.) IS A NATURAL LIFE SENTENCE PERMISSIVE OR MANDATORY PURSUANT TO HABITUAL OFFENDER STATUTE 775.084(4)(a)(1) (1993), IN COMPARISON TO REVISION OF THE LANGUAGE IN F.S. 775.084(2022) (changing "SHALL" to "MAY" AS LEGISLATURE INTENDED WHEN THE LAW WAS MANDATED ?? see: Florida Law(s) Chapter 75-116 and 75-298; Burdick v. State, 594 So. 2d 267 (Fla. 1992); Brown v. State, 530 So. 2d 51 (Fla. 1988); Whitehead v. State, 498 So. 2d 863 (Fla. 1986); Early v. State, 516 So. 2d 34 (Fla. 3d DCA 1987); Apprendi v. New Jersey, 530 U.S. 466 (2000); Blakely v. Washington, 542 U.S. 303-04; GALINDEZ v. STATE, 955 So. 2d at 524; Platt v. State, 148 So. 3d 96 (Fla. 2014); see also: Trial Transcript(s) Ex. "(K-1)" lines (21-23) pg (463) and Ex. "(K-2)" (pg 464) lines (23-25) trial transcripts showing the guidelines' recommendation of (9-12) years and a permitted range of (7-17) years (see also) sentencing guideline scoresheet 3.988(5) marked as Ex. "(J)" (pg 493), in review of Recommended Sentence and Permitted Sentence as compared to Total sentence (i.e. Life), and Reasons for departure from the guidelines' recommendation, in review of Fla Rules of Crim. P. 3.701(b)(6), (d)(8)(10)(11)(12) & Fla. Stat. 921.001(4)(a) wherein the law states in it's provision that Florida Statute 775.084(4)(a)(1) (1993) that the habitual offender sanction(s) IS NOT A VALID REASON TO DEPART FROM THE GUIDELINES' RECOMMENDATION! (strong emphasis) in comparative review of Fla. Law(s) ch. 75-116 and 75-298 characterizing a Natural Life Sentence as a departure from the guidelines' recommendation (see also Burdick supra. rule). ~~sanction~~ under Fla Stat 775.084(4)(a)(1); see also; EX "(N)" pg 500 of Trial Transcripts showing what reason(s) lower court used to depart from the guidelines' recommendation, in comparison also to the ORDER ON MOTION FOR CORRECTION OF SENTENCE (see: EX(S) "H-H1") signed by Justice David Langford (Circuit Judge) admitting to the imposition of an excessive sentence that exceeded the guidelines' recommendation based solely on habitual offender sanctions 775.084(4)(a)(1) (1993)

To which Fla. Stat. 921.001(4)(a) states that habitual offender CANNOT BE USED AS A REASON TO DEPART FROM THE GUIDELINES' RECOMMENDATION DOES THIS MERIT MANIFEST INJUSTICE?? Whereas the question herein presents that the courts MUST (i.e. SHALL) GIVE A REASON (VALID) for departing from the guidelines' recommendation see Fla R. Cr. P. 3.701(b)(6)(d)(8)(10)(11) sentencing guidelines. And IN REVIEW OF THE LAW(S) IN COMPARISON TO THE Reflecting of the record(s) herein, This Merits Manifest Injustice as Petitioner is being unlawfully detained within the Florida Dept. of Corr., and his Constitutional Rights to life and liberty and equal protection are being unjustly violated. see: Clines v. STATE, 912 So 2d 550. (Fla 2005) (quoting Clines rule; "The plain meaning of statutory language is the first consideration of statutory construction. Sometimes it is also the final one. When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no ~~occasion~~ occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning. All parts of a statute "must" be read together (strong emphasis) in order to achieve a consistent whole. When possible, an Appellate court MUST give full effect to all statutory provisions and construe related Statutory provisions in harmony with one another.

The Florida Legislature orders prosecutors to pursue the most severe sanction authorized NOT THE MOST SEVERE SANCTION POSSIBLE." (emphatically strong emphasis) (in comparison with Clines rule, see Fla. Stat. 921.001(4)(a); Clines v. State, 912 So. 2d 553, 890 So. 2d 1114, 1114 (Fla. 2005) in comparative review to Ex(c). "H and H-1)" where Trial Court Judge David J Langford stated in his order that "Petitioner was sentenced as a habitual Felony AND a career criminal. Thereby violating the Clines rule, Fla. Stat 775.021 rule of lenity and petitioner's Constitutional due process right(s) to equal protection of the law. see U.S. Const. Amend. (14) and U.S. CA Amend. 8 (guaranteed proportionality of sentence & equal protection of Const. Rights.



5.) FLORIDA LAW[S] 75-116, AND 75-298 CHARACTERIZES A NATURAL LIFE SENTENCE AS A DEPARTURE PURSUANT TO 775.084(4)(a)(i) FLORIDA'S HABITUAL OFFENDER STATUTE SANCTIONS, DOES THE UNITED STATES CONSTITUTION (8th) AMENDMENT GUARANTEED PROPORTIONALITY OF SENTENCE MERIT MANIFEST INJUSTICE AND PURSUANT TO THE UNITED STATES CONSTITUTION FOURTEENTH AMENDMENT ON EQUAL PROTECTION? WHEREAS, AN OFFENDER'S PRESUMPTIVE GUIDELINES' RECOMMENDATION BEING DENIED BASED SOLELY AND EXPLICITLY ON OFFENDER BEING SENTENCED OUTSIDE THE GUIDELINES' RECOMMENDATION PURSUANT TO FLORIDA STATUTE 775.084(4)(a) IS NOT A VALID REASON TO DEPART FROM THE GUIDELINES' RECOMMENDATION?? see; EXHIBIT(S) [H and H-1], EX.(S) (K-K2) pg(s) 462-64, trial transcripts; NOTE: EX. (S) (H and H-1) order of Motion to Correct Sentence signed by Justice David J. Langford Basing his reason for departing from the guidelines' recommendation solely on an invalid reason for departing from the guidelines' recommended sentence without giving a valid reason for departure. Thus being in violation of Florida Rules of Criminal Procedure 3.701(b)(6)(d)(8)(10)(11)(12) sentencing guidelines (see also: EX(s) sentencing scoresheet 3.988 where reason for departing from the guidelines' recommendation sentence of (9-12) (NINE TO TWELVE) years is NOT GIVEN; see also; USCA Amend (8) (guaranteed proportionality of sentence); USCA Amend (14) "Equal Protection of lawful rights"; WHITEHEAD v STATE, 498 So 2d 863 (Fla. 1986); Brown v. State, 530 So. 2d 51 (Fla. 1988); PRINCE v. STATE, 98 So. 3d 768 (Fla. 4th DCA 2012); Burdick v. State, 594 So 2d 267 (Fla 1992); WINTERS v. STATE, 522 So 2d 816 (Fla 1988); Wilson v. State 509 So 2d 991 (Fla 1st DCA 1987); 75-298 characterizing a natural life sentence as a departure; Early v. State, 516 So 2d 24 (Fla. 3d DCA 1987); Hendrix v. State, 475 So 2d, 1218 (Fla. 1985); Smith v State, 503 So 2d 457 (Fla. 2d DCA 1993); LAWS OF FLORIDA CHAPTER(S) 75-116 and 75-298 characterizing a natural life sentence pursuant to Habitual Offender

Sanctions 775.084(4)(a) (1983) Florida Statute as a departure; *Burdick v. State*, 584 So 2d 1035, 1039 (Fla 1st DCA 1991); Florida Statute 921.001(4)(a); The Constitution and Punishment 56 Stan. L. Rev. 1049, 1058 (2004); *Stephens v. State*, 924 So 2d 455 (Fla App 2d DCA 2008); *Hall v. State*, 511 So 2d 1038 (Fla 1st DCA 1987); *Carawan v. State*, 515 So 2d 161 (Fla. 1987); see: *U. S. v. Marquez*, 506 F2d 620 (2nd Cir 1974); *U.S. v. Bergman*, 836 F.2d 1220 (9th Cir 1988); Florida R. Crim. P. 3.701(b)(6)(d)(8)(10)(11); Fla Stat. 921.001(4)(a); *Williams v. State*, 500 So. 2d 501 (Fla 1986) "where trial judge (court) held under section 921.001(4)(a) Florida Statutes and Fla. R. Crim. P. 3.701(d)(11), a trial judge is obligated to sentence within the guidelines unless he gives a clear reason for departure." See Ex. (H) & (H-1) of judge's order stating reason for departing from the guidelines' recommendation (albeit invalid) in comparison to Fla Stat. 921.001(4)(a) stating therein that Fla. Stat. 775.084(4)(a)(i) (habitual offender sanctions cannot be used as a reason to depart from the guidelines' recommendation) in comparison to Florida Rules of Crim Pro. 3.701(d)(11) stating therein that the guidelines, once departed by trial court judge, must be given a valid reason for departing from the guidelines' recommendation. (See also for review Ex. (J) "sentencing guideline scoresheet where on scoresheet NO "Reason for Departure" is given by trial court judge at sentencing, whereas in comparative review of order (EX. (H) & (H-1)) signed by circuit court justice delineating his reason for departing from the guidelines' recommendation, in review of section 921.001(4)(a) Fla. Statute stating where the Habitual Offender Sanction(s) pursuant to the afore-cited Statute (921.001) where Florida Supreme Ct. held that the habitual offender sanctions cannot be used as a reason to depart from the guidelines' recommendation. see also: *GILL v. State*, 886 So 2d 988 (Fla 2d DCA 2004); *Skull*, 515 So 2d at 750;

QUESTIONS PRESENTED  
GROUND TWO

1.) PURSUANT TO FLORIDA RULES CRIMINAL PROCEDURE 3.620, (606 So. 2d 227(1)), DOES IT MERIT GROUNDS FOR A CONSTITUTIONAL VIOLATION OF AN OFFENDER'S CONSTITUTIONAL DUE PROCESS RIGHTS TO EQUAL PROTECTION OF THE LAW WHEN TRIAL JUDGE'S ADJUDICATION OF GUILT IS NOT IN CONFORMANCE WITH THE JURY'S VERDICT, NOR IS IT IN CONFORMANCE WITHIN THE PROVISIONAL INSTRUCTION(S) CHARGED TO THE JURY IN THE JURY INSTRUCTIONS AS IMPLEMENTED BY THE LAW[S] OF THE STATE AND UNITED STATES CONSTITUTION(S), PURSUANT TO THE UNITED STATES CONST. AMENDMENTS (6<sup>th</sup>) and (14<sup>th</sup>) AMENDMENTS? see for comparative review: EX. "(A)" jury instructions Trial Transcript page (431) lines (20-22), EX. (A-1) lines (4-16) pg. 429; EX. (B) pg. 447 line(s) (22-25), and EX. (B1) (pg. 448) line(s) (1-19) Trial Transcripts (jury polling) (Jury's verdict in comparison to trial court's jury instruction(s) in provision to the jury) see also: EX. "(C)" pg 491 verdict form in comparison to EX. "(A1)" lines (10 & 11) & (19-21), and EX. "(A)" lines (20-22) pg 431 Trial Transcripts, and Exhibit "(D)" pg. 480 Trial Transcript in comparison to jury instructions on pg 431 (EX. "A" emphasis on lines 20-22 and EX. (s) ("B") and "(B1)" of TRIAL TRANSCRIPTS pages 447 and 448. see also: Williams v. State, 511 So. 2d 1017, 1019, (FLA 2<sup>d</sup> DCA 1987); FLETCHER V. STATE, 866 So. 2d 113, (FLA 3<sup>d</sup> DCA 2004); Starkes v. State, 438 So. 2d 1004 (FLA. 2<sup>d</sup> DCA 1983); Hicks v. State, 411 So 2d 1025 (FLA. 2d DCA 1982); Platt v. State, 86 So. 3d 516 (FLA 2d DCA 2012); SHAVERS V. STATE, 86 So 3d 1218 (FLA. 2d DCA 2012); Blakely v. Washington, 542 U.S. at 303; Boardman, 69 So 3d 367, 369 (FLA 2d DCA 2011); Fla. Const. Law(s) § 840.3, 848(5a), (5b) & Const. Law 848 § (6a), (6b) MCPHEE V. STATE, 657 So2d 70, (FLA 3d DCA 1995); Saint R. lus v State, 823 So. 2d 177, (FLA 4<sup>th</sup> DCA 2002); NETTLES V. STATE, 112 So 3d 782 (FLA 1<sup>st</sup> DCA 2013) (emphatically strong emphasis); Holloman v. STATE, 145 Fla. 59140 Fla. 59; 191 So. 36191, So 36 (FLA. 1939);

2.) PURSUANT TO FLORIDA RULES OF CRIMINAL PROCEDURE 3.620(C), DOES THE JURY'S ORAL PRONOUNCEMENT AND POLLING AS TO THEIR AGREEMENT IN THEIR DELIBERATIONAL FINDINGS OF GUILT FOR ROBBERY ONLY AFTER A WEIGHING AND PREPONDERANCE OF ALL EVIDENCE AND THEORIES PRESENTED AT TRIAL, CONCLUDED GUILT FINDINGS FOR THE LESSER INCLUDED OFFENSE OF TWO CRIMES CLOSELY RELATED UNDER THE SAME STATUTE, SUPERCEDE OR OVERULES THE ORAL PRONOUNCEMENT OF ABJUDICATION OF GUILT "AS CHARGED" BY TRIAL COURT SENTENCING JUDGE, WHEN THE JUDGE'S ABJUDICATION OF GUILT IS NOT IN CONFORMANCE (strong emphasis) WITH JURY'S VERDICT FINDINGS FOR LESSER OFFENSE AS INSTRUCTED, MERIT MANIFEST INJUSTICE AND CONSTITUTE A VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHT(S) (U.S.) TO EQUAL PROTECTION?

See: Trial Transcripts EX.(A), McCoy v. State, 40 Fla 80 ad 70 (Fla 3d DCA 1995);

Fla. Crim. Law § 7. > verdicts > General Overview, Fla. S. Ct. act of 1895 Chapter 4392 in relation to being found guilty of a lesser offense, Fla. R. STAT(2380-2384);

sect. (10) under 4392 acts of 1895, James v. State, 51 803d 445 (Fla 9010) 19 50 3d 347 (Fla DCA ad. 2009); Holloman v. State, 191 80 36191 80.36 (1939 Fla; 140 Fla

59140 Fla 59); Chapter 4392, Acts 1895 Section 8415 C.G. L of Florida; Lakey v. Smith, 239 803d 13 (Fla. 1970); Hills v. State, 994 803d 412 (Fla. 3d DCA 2008);

Fla Statute 924.34 (2010) (conformity to jury's verdict); see also EX.(B-8) pg (447-448) of TRIAL Transcripts (polling of jury to their verdict for ROBBERY ONLY); EX.(C) "

of Trial Transcripts pg (491) Verdict form; EX.(A) " jury instructions. in comparison to jury's Verdict on pages (B) and (B-1) respectively of Transcripts Exhibits.

See also: Thornhill v. Alabama, 310 United States 88, 96, 60 S. Ct. 736, 84 L. Ed. 1093 (1940) "It is a fundamental of due process that a defendant man NOT been charged by the state.

Conviction on a charge not made would be sheer denial of due process." Price v. State, 995 So. 2d 401, 404 (Fla. 2008). There is a denial of due process when there is a conviction on a charge not made in the information or indictment; see: Cole v. Arkansas, 333

U.S. 196, 201, 68 S. Ct. 514, 92 L. Ed. (51 80, 3d 449 5 644 (1948); Brown 124 So 2d 484

3) PURSUANT TO FLORIDA RULES OF CRIMINAL PROCEDURE 3.620(1) THE CERTIFIED QUESTION IS WHETHER OR NOT SENTENCING JUDGE VIOLATED PETITIONER'S CONSTITUTIONAL DUE PROCESS RIGHT(S) TO A FAIR AND IMPARTIAL HEARING BY SITTING IMPERMISSABLY AS A 7TH JUROR BY USURPING THE JURY'S VERDICT FINDINGS OF GUILT FOR THE LESSER OFFENSE (as instructed) AND TOTALLY DISREGARDING ITS OWN INSTRUCTIONS CHARGED IN PROVISION TO THE JURY, AND RENDERING AN ADJUDICATION OF "GUILTY AS CHARGED" THAT IS NOT IN CONFORMANCE WITH THE JURY'S VERDICT? DOES THIS MERIT MANIFEST INJUSTICE OF PETITIONER'S CONSTITUTIONAL DUE PROCESS RIGHTS TO WHICH MERITS REVERSAL AND RESENTENCING IN ACCORDANCE (i.e. conformity) TO THE JURY'S VERDICT OF GUILT AND THE INSTRUCTIONS TO WHICH THE JURY BASED ITS FINDINGS? see: EX. (A) "Jury INSTRUCTIONS, EX. (A-1) pg 429 lines (10-21) (emphasis on line 21) of lesser included offense of robbery charged to jury in trial court instructions; see also EX (B) (pg 447 and (B) pg 448) of jury's verdict as to their findings and polling of jury as to the findings of their verdict, in comparison to EX. (C) (pg 491 of transcript) jury verdict form reflecting Petitioner as being guilty for "Robbery" only, see also EX (E) (pg 468) lines (15-19) strong emphasis on lines (17-19) (NOTE: REVIEW in comparison line "19" of EX. (E)" in comparison to EX. (A) of T/T (pg 430) lines (20-22) of jury instructions) T/T; see: NETTLES V. STATE 112 So.3d 782 (Fla. 1st DCA 2013); see also: Hicks v. State, 411 So. 2d (Fla. 2d DCA 1982); Plasencia v. State, 902 So. 2d 805 (Fla. 2d DCA 2004), 170 So.3d 865 (Fla. 2d DCA 2015) (in relation to Apprendi and Blakely (supra) rule); Williams v. State, 511 So.2d 1017, 1019 (Fla. 2d DCA 1987); Moore v. State, 496 So. 2d 253 (Fla. 5th DCA 1986) (strong emphasis); See also: EX (B-B1) "jury polling as to their verdict (pg. 447/48) findings of guilt as to what degree in comparison to jury instructions marked respectively as EX (A) (pg 431 lines 20-22) trial transcripts) strong emphasis

4.) IS IT MANIFEST INJUSTICE TO USE A GENERAL VERDICT FORM, WITH SPECIAL INTERROGATORIES ON GENERAL VERDICT FORM, FOR A CRIME TO CONSTITUTE AN ADJUDICATION OF "GUILTY AS CHARGED," WHEN GENERAL VERDICT IS AMBIGUOUS AS TO THE JURY'S FINDINGS, BUT REFLECTS OBEYANCE OF JURY'S (i.e. "fact finders") FINDINGS FOR LESSER INCLUDED OFFENSE (as instructed) WHEN THE VERDICT FORM REFLECTS GUILTY FINDINGS FOR "ROBBERY ONLY," A GENERALIZED VERSION OF THE CRIM AND NOT THE GREATER IN THE CHARGING INFORMATION? see MOORE v. STATE, 496 So 2d 253 (Fla. 5<sup>th</sup> DCA 1986); WILLIAMS v. STATE, 511 So 2d 1017, 1019 (Fla. 2<sup>d</sup> DCA 1987); FLETCHER v. STATE, 866 So 2d 113 (Fla. 3<sup>rd</sup> DCA 2004) [Judgment must conform to jury's verdict]; SAINTELUIS v. STATE, 823 So 2d 177 (Fla. 4<sup>th</sup> DCA 2002); HICKS v. STATE, 411 So 2d 1025 (Fla. 2<sup>d</sup> DCA 1982); PLOTT v. STATE, 86 So 3d 516 (Fla. 2<sup>d</sup> DCA 2012); MCPHEE v. STATE, 657 So 2d (Fla. 3<sup>d</sup> DCA 1995); MCCOY v. STATE, 40 Fla So 2d 70 (Fla. 3<sup>rd</sup> DCA 1998); JAIMES v. STATE, 51 So 3d 445 (Fla. 2010) (19 So 3d 347 (Fla. 2<sup>d</sup> DCA 2009) where Florida Supreme Ct. held that; "in order to convict of Armed Robbery the jury was required to find that Petitioner Carried used or threatened to use a firearm. (Note: Compare this rule to EX. (A) "T/T lines (20-22) in review of pg (431) the instructions in this instant case see also EX (B-61) pg(s) 447-48 Trial Transcript; EX. (C) " jury verdict form (T/T) see also EX (A-1) T/T pg 429 lines 10-21 strong emphasis on (L. 21) in comparative review EX (C) pg 491 verdict form in comparative review to MCCOY (supra) rule under Crim. L. P. > VERDICTS > General Overview. Whereas: "The Supreme Ct. of Florida has stated that the act of 1895 Chapter 4392 entitled: An act in relation to crimes and criminal procedure, which prescribes that in all criminal prosecutions in the State of Florida that is hereinafter begun in Florida: "if the defendant be found guilty of an offense lesser in degree but included within the offense charged within the indictment or information such verdict shall not be set aside by the court(s) upon grounds

that such verdict is contrary to the evidence, if evidence produced in such case would have supported a finding, or if such court would have sustained a verdict of guilty of the greater offense is merely declaratory." (quoted from McCoy; see also Florida Statute Rule 2380-2384 to which Section/ rule (10) under 4392 acts of 1895, providing "that in all criminal prosecutions hereafter begun in the state if the ~~defendant~~ be found guilty of a lesser offense lesser in degree, but included within the offense charged in the indictment or information

Such verdict SHALL NOT BE SET ASIDE BY THE COURT upon the ground that such verdict is contrary to the evidence. If the evidence produced in such case would have ~~supported~~ a finding, or, if such court would have sustained a verdict of guilty of the greater offense murder in the third degree will be sustained even in the absence of such statute." see also in comparative review the Jaimes (*supra*) rule, and McPhee (657 So 2d 70 (Fla 3d DCA 1995), Cochran v. State 999 So 2d 490 (Fla 2d DCA 2005); see: Constitutional Law § 840.3, 841, 848 (5a), (5b) that therein states "under the process due to the clause of the Fed. Const.'s Fourteenth Amendment, a jury determination that a criminal defendant is guilty beyond a reasonable doubt of every element of the crime charged is required among other procedural protections - in order (1) To provide concrete substance for the presumption of innocence and (2) to reduce the risk of erroneously imposing a loss of liberty and the stigma of conviction; moreover, if a defendant faces punishment beyond that provided by the statute when an offense is committed under certain circumstances but not others so that both the loss of liberty and the stigma attaching to the offense are heightened - then the defendant should not, at the moment that the state is put to proof those circumstances, be deprived of protections that have until that point attached." (strong emphasis) in comparative review to Petitioner's verdict form (Ex. (C)), Jury's verdict of guilt for robbery only (Ex. B-B1); in comparative

review of (EX. (B-1)) T/T pg. 448 lines 1-19 polling of jury as to their verdict, as compared to EX. (E) pg. 468 of Trial Transcript lines 15-19 (strong emphasis on line(s) 17-19) where jury's finding that Petitioner did not carry the firearm. (NOTE See EX. (A) jury inst (pg 431) lines 20-22 in comparison to Constitutional Law herein afore cited. See also Young v. State 43 So 3d 876 (Fla 5th DCA 2010); Laskey v. Smith 239 So 3d 13 (Fla 1970); Florida Statute 924.34 (2010) (conformity to verdict); Fla. Crim. Law ~~§ 1144~~ 1144 (conformity to verdict); The implications of an "implied acquittal" are the results of a verdict convicting a defendant on a lesser included offense rendered by a jury charged to consider both greater and lesser included offense rendered by a jury charged to consider both greater and lesser offenses. (see: C. F. Price v. Georgia, 398 U.S. 323, 329, 26 LEd 2d 300 90 S. Ct 1757 (1970); see also Green v. U.S 355 45, at 191, 26 Ed. 2d 199, 78 S. Ct. 221, 77 Ohio L Abs 207, 61 ALR 2d 119). See U.S. Const. Amend (14) equal protection of due process, and U.S. Const. (8th) Amendment guarantees right to a proportionality of sentence. See also Bryan + (supra); Moore v. STATE, 496 So 2d 255 (Fla 5th DCA 1986) to which held that "a verdict which is not in conformance with the jury VERDICT is defective." in comparison to EX. (A) pg. (431) trial transcript.

5.) DOES IT MERIT MANIFEST INJUSTICE OF A PERSON'S CONSTITUTIONAL DUE PROCESS RIGHT(S), AND RIGHT TO EQUAL PROTECTION TO BE PUT ON TRIAL FOR A CRIME, AND THE JURY'S PAROON OF ACQUITTAL IS GUILTY FOR THE LESSER OFFENSE (INCLUDED) AS OPPOSED TO THE CRIME CHARGED, AND THE JUDGE, AT SENTENCING PROCEEDINGS, ADJUDGES GUILT "AS CHARGED" WHEN THE JURY'S VERDICT DOES NOT REFLECT THE JURY'S VERDICT AS BEING GUILTY "AS CHARGED" IN THE JURY'S VERDICT FINDING, NOR DOES THE (AMENDED) INFORMATION REFLECT GUILT OF BEING "ARMED WITH A FIREARM" TO WHICH REFLECTS THE JURY'S FINDINGS (as instructed) BUT FOR A LESSER INCLUDED OFFENSE OF THE CRIME CHARGED AS INSTRUCTED?? NOTE: REVIEW EX. (D) Amended INFORMATION



Also review comparative research Cert. Quest. #4 in referal to the Exhibits therein reflecting Question(s) of Public Importance meriting manifest injustice. see also Ex(A) "jury instructions lines (20-22) pg 431; Ex. (c) pg. 491; see also Ex(s). (B-B-1)" of T/T pg 447-48 jury verdict and polling of jury as to their verdict findings orally pronounced at trial.

6.) IS IT MANIFEST INJUSTICE PURSUANT TO FLORIDA RULES OF CRIMINAL PROCEDURE 3.610(c), (d), WHEN THE RECORD REFLECTS THAT PETITIONER'S EQUAL PROTECTION RIGHTS TO THIS RULE PURSUANT TO THE U.S. CONSTITUTION'S FOURTEENTH AMENOMENT ON EQUAL PROTECTION AND OTHER DUE PROCESS RIGHT(S) HAS BEEN VIOLATED WHEN JURY'S VERDICT REFLECTS ITS FINDINGS FOR A LESSER INCLUDED OFFENSE AS TO THE CRIME CHARGED, BEING IN CONFORMITY WITH PROVISIONS CHARGED TO THE JURY BY TRIAL COURT JUDGE IN THE JURY INSTRUCTIONS CHARGED TO THE JURY??

see Ex(A) pg( ) lines( ) - ( ) Trial Transcript jury instructions; in comparative review to Ex.( ) provision of Lesser included offenses, in review to Ex( ) pg( ) - Ex( ) pg( ) of Trial Transcripts and Ex( ) jury verdict form, in comparative review to MOORE V. STATE, 496 So. 2d 255 (Fla. 5th DCA 1986) (strong emphasis) where the fifth DCA held that "a verdict which is not in conformance with the jury Instructions is defective."

## RELATED CASES

- Holmes v. State 502 So.2d 1302 (Fla. 1st DCA 1987)
- \* IN RE RULES OF CRIMINAL PROCEDURES (SENTENCING GUIDELINES), 439 So.2d 848 (Fla. 1983)
- Jaimes v. State, 51 So.3d 445 (Fla. 2010)
- \* MOORE v. State, 496 So.2d 255 (Fla. 5th DCA 1986)
- \* Placencia v. State, 170 So.3d 865 (Fla. 2d DCA 2015)
- \* PLOTT v. State, 148 So.3d 90, (Fla. 2014)
- Prince v. State, 98 So.3d 768 (Fla. 4th DCA 2012)
- Pulido v. Hedgepeth, 555 U.S. 57, 61, 129 S. Ct 530 172 L. Ed. 2d
- Saintleus v. State, 823 So.2d 177 (Fla. 4th DCA 2002)
- State v. Rodriguez, 602 So.2d 1270 (Fla. 1992)
- SHIVERS v. STATE, 823 So.3d 1218 (Fla. 2d DCA 2012)
- SHULL v. Dugger, 515 So.2d 748 (FLA. 1987)
- UNITED STATES Constitution Amendment(s), (6), (8), (4), (14)
- UNITED STATES v. PIERCE, 409 F.3d, 228, 234 (4th Cir. 2005)
- UNITED STATES v. ROBERTS, 915 F.2d, 889, 891 (4th Cir. 1990)
- WEAVER v. STATE, 957 So.2d 589; cf. Sanders v. State, 959 So.2d 1232, 1234 (Fla. 2d DCA 2007)
- \* WEBB v. STATE, 997 So.2d 469 (Fla. 2d DCA 2008)
- \* WHITEHEAD v. STATE, 498 So.2d 865 (Fla. 1986), 884 So.2d 139, 140 (Fla. 2d DCA 2004)
- \* WILLIAMS v. State, 242 So.3d 280 (Fla. 2018)
- \* WILLIAMS v. STATE, 492 So.2d 1308 (FLA. 1986)
- \* WITT v. State, 387 So.2d 922 (Fla.), BASS v. State, 478 So.2d 461 (Fla. 1st DCA 1986)
- \* Cuthbert v. State, 459 So.2d 1098, 1100 (Fla. 1st DCA 1984)
- Williams v. State, 511 So.2d 1017, 1019 (Fla. 2d DCA 1987)
- 75-116 and 75-298 Laws of Florida Chapters (Characterization of provisions of departure)
- Stephens v. Crosby UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA TAMPA FLA. DIVISION 2005 U.S. DIST. LEXIS 15056, CASE No. 8:03-CV-997-T-24-MAP
- Stephens v. State 761 So.2d 1240 (Fla. Dist. Ct. App. 2d Dist., 2000), (2005 U.S. Dist. 2000)
- Placencia v. State, 902 So.2d 805 (Fla. 2d DCA 2004), 170 So.3d 865 (Fla. 2d DCA 2015)
- (In Relation to Apprendi (supra) and Blakely rule)

## LIST OF PARTIES

☒ All parties appear in the caption on the cover page.

☐ All parties do not appear in the caption on the case of the cover page

A list of all parties to the proceeding in the court whose judgement is the subject of this petition as follows:

## RELATED CASES

- (Strong Emphasis) \* **NETTLES v. STATE**, 112 So. 3d 782 (Fla. 1st DCA 2013)  
APPENDIX v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 403 (2004),  
542 U.S. at 303; Boardman v. State, 69 So. 3d 367, 369 (Fla. 2d DCA 2011) (Noting same)  
Barnes v. State, 779 So. 2d 366 (Fla. 2nd DCA 2000)  
Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004)
- \* Brown v. State, 530 So. 2d 51 (Fla. 1988)
- \* Burdick v. State, 594 So. 2d 267 (Fla. 1992)
- \* § Constitutional Law 848 (6)(a), (6)(b); 840.3; 841; 848 (5)(a), (5)(b)
- Dixon v. State, 823 So. 2d 792 (Fla. 2d DCA 2001)  
Early v. State, 516 So. 2d 24 (Fla. 3rd DCA 1987)  
Ewing v. State of California, 538 U.S. 11, 23, 123 S. Ct. 1179, 155 L. Ed. 2d 108 (2003)
- Florida Rules of Crim. Procedure 3.701(b)(6), (d)(8), (10), (11); Fla. R. Crim. P. (3.988)
- Florida Statute 775.084(4)(a)(1) (1993) in comparison to Rev. of (2022) Statute (shall to may)
- Florida Statute 921.001(4)(a)
- Foister v. State, 510 So. 2d 371 (Fla. 1st DCA 1987)
- Hall v. State, 511 So. 2d 1038 (Fla. 1st DCA 1987)
- Harmelin v. Michigan, 501 U.S. 957, 1001, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991)
- Holloman v. State, 140 Fla. 59/46 Fla. 59, 191 So. 36/91 So. 36, (Fla. 1939)
- \* Hicks v. State, 411 So. 2d 1025 (Fla. 2d DCA 1982)

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## INDEX TO APPENDICES

APPENDIX "A"

APPENDIX B

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 N/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 United States district court appears at Appendix N/A 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 \_\_\_\_\_ 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 Sixth D.C.A.; Second D.C.A. court appears at Appendix \_\_\_\_\_ to the petition and is No opinion or clarification given  
see Response of Florida S.Ct. in relation to Dist. Ct. of App. Review  
☐ 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. 23 A 159.

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 \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☒ A timely petition for rehearing was thereafter denied on the following date: N/A (petition untimely), and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_. (Motion for Re-hearing/Clarification Stricken as being untimely, Motion Attached as Exhibit)

☒ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. 23 A 159. (NOTE: APPLICATION No. Given BY WASHINGTON SUPREME COURT. Extension of TIME BY SAME)

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

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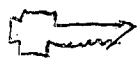
# STATUTE AND RULES

## CASES

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fla. Stat. 775.084(4)(a)(1) (1993 & 2022) in comparison change "shall" (1993) to "MAY" (2022)  
Fla. Stat. 921.001(4)(a) & 921.001 in general  
Laws of Florida Chapter 75-116 and 75-288  
Fla. Statute 926.06 (11) (e) (1983)  
Fla. R. Cr. P. 3.620(1)  
Fla. Crim. L. and P. act 1895 ch. 4392  
Fla R. Stat 2380-2384  
Fla. R. Cr. P. 3.701(d)(11)  
Const. on Punishment Stan L. Rev 1049-1058  
Fla Stat 924.34  
Fla. Crim. Law  1144 (conformance to jury verdict)  
Fla. Stat. 775.021 Rule of lenity  
Fla Const. Law(s) § 840.3, 848(5a)(5b)  
Const. Law(Fla) 848(6a)(6b)  
Florida R. Crim. P. 3.701(d)(11) sentencing guidelines  
U.S. Constitution Amend(s) (4)(6)(8)(14)  
Fla Stat. 812.13 Robbery wherein actual possession MUST be proven of firearm  
to constitute Armed Robbery with a firearm pg 1163-64 jury instructions.

OTHER: Second Amended Information (Trial transcripts) shows actual possession of FIA, see Trial Transcript pg ( ) for comparative review to jury instructions as to what constitutes being "Armed"

## STATEMENT OF THE CASE

Petitioner herein cites manifest injustice to his being unlawfully adjudged guilty of "Armed" Robbery when the jury's verdict and polling of jury as to their findings does NOT reflect guilt "as charged." Petitioner herein petitions to this court review of the certified Questions presented herein. Petitioner asks of this Court to review also in comparison that which is enclosed as Exhibits, and cites manifest injustice as he's being unlawfully incarcerated for a term of natural life habitual offender sanctions, when His scoresheet reflects a guidelines' recommendation of 9-12 years, with a permitted range of 7-17 years. Judge, at sentencing proceedings, admits using an invalid reason to depart from the guidelines' recommendation and sentenced Petitioner to a natural life sentence pursuant to 775.084 (4)(a)(1)(1993). under Fla. Stat. 921.001(4)(a) this is an invalid reason for departing from the guidelines recommendation. And F. R. Cr. P. 3.701 (d)(ii) states that the court MUST Give a reason for departing from the guidelines' recommendation on sentencing scoresheet to which trial court failed to comply doing. Petitioner presents herein trial court's response to his Motion to correct an illegal <sup>sentence</sup> basing its reason for departing from the guidelines recommendation of (9-12) years with a permitted range of (7-17) years solely on an invalid reason of Petitioner being sentenced as a Habitual Offender pursuant to 775.084 (4)(a)(1)(1993). And in the lower court's reply in denying Petitioner's motion, trial court sentencing judge admits that Petitioner's sentence exceeds the guidelines' recommendation, and based his reason for departing from the guidelines' recommendation solely on an invalid reason of Fla. Statute 775.084 (4)(a)(1), to which Fla Statute states therein that habitual offender sanctions cannot be used as a reason to depart from the guidelines' recommendation.

## STATEMENT OF THE CASE

Petitioner further points out for this High Court's review that at trial proceedings, the records and exhibits herein reflects an incurrance of manifest injustice is balatantly prevalent in this instant case. Whereas, the records reflect the jury's verdict is for Robbery only, in conformance with the instructions provided to the "fact finders" (i.e the jury) whereas the records reflect trial court judge, in its provisional instruction(s) to the jury, stated therein that "if you find that Petitioner (i.e defendant) James Earl Downs did the crime, but did not personally carry use or threaten to use a firearm, then you should find him guilty of "ROBBERY ONLY." Upon deliberation the jury returned a verdict of guilty for the crime of "Robbery" where in the course of the Robbery a firearm was carried used or threatened to be used, but jury's verdict also reflects that Petitioner (i.e defendant) "DID NOT" carry use or threaten to use a firearm." Thus being in conformance with trial court's provisional instruction(s), and reflecting the jury's findings in their verdict for "Robbery" as opposed to "Armed Robbery" as charged. And the polling of the jury confirms their findings of guilt for "robbery" as opposed to "armed robbery" (as charged). Petitioner emphatically iterates that an incurrance of manifest injustice is prevalent as His Constitutional due process right(s) have been violated, as well as the implemented laws in the state of Florida. Petitioner humbly asks of this court for its view of the questions herein, and let the records attached speak for itself in presentation of the case herein, and asks of this court for a comparative review, and let the record speak for itself in relation to the language of the law(s) and case(s) ruled on and held by the Florida District Courts, and the Florida supreme Court that's herein cited. As well as the Federal Courts in the Appendié Blakely rule. Herein, Petitioner's statement of the Case is to let the record(s) speak for themselves.

## REASONS FOR GRANTING THE PETITION

In order to prevent an further incurrance of manifest injustice, Petitioner herein iterates that the records and exhibits herein attached that Petitioner's Constitutional right(s) to life and liberty, a guaranteed proportionality of sentence and equal protection right(s) have been infringed upon by the lower Courts. And the record(s) reflect herein as such. Upon review of that which is attached, in conformance with the implemented laws and cases cited herein, This Petition Writ of Certiorari shows that reversal and remanding for resentencing would conform to the findings of the jury, and Petitioner be sentence in conformity to the guidelines' recommendation Or Permitted sentence on sentencing scoresheet 3.988, and a reflection of what the jury herein reflects in it's verdict merits granting of this Petition. Petitioner asks of this High Court it's discretionary review to prevent manifest injustice in further depriving him of life and liberty. Review attached Reason herein.

## REASON FOR GRANTING PETITION

### GROUND TWO

Petitioner herein contends de novo that his United States Constitutional right(s) to life and liberty as well as his Constitutional right to equal protection of the implemented laws, rules and policies of the Florida and United States Constitution(s) have been violated thus depriving the Petitioner his Constitutional 6th, 8th, & 14th Amendment rights under the United States Constitutional provision(s) of the law(s) implemented therein. Thus meriting a miscarriage of justice as Petitioner is being illegally detained within the Florida Department of Corrections for a term of natural life after being adjudged guilty "as charged" for the crime of "armed" robbery - firearm (812.13-no degree) when the jury's verdict does not reflect it's findings of guilt was for "armed robbery" (as charged), but for Robbery only, the lesser included offense as to the crime of Armed Robbery for which Petitioner was charged. Along with the charge of possession of a firearm by a convicted felon to which was later dismissed (i.e. nolle prosequere). Petitioner herein asserts that the records herein will reflect that the judge sat impermissibly as a seventh juror by totally disregarding it's own jury instructions (EX. (A-A)) charged to the jury, and Adjudging Petitioner guilty of a crime not in conformance to jury's verdict findings of "robbery" only. [see EX. (S). (B) & (C) verdict form] Jury was then polled individually in order to conclusively sustain the findings of their verdict of Robbery only as opposed to "Armed Robbery" adjudication by trial court judge, see EX. (B-1) Trial Transcript(s) to which each juror answered in affirmation as to their findings of guilt (as orally pronounced at trial) was: "We the jury hereby find the defendant James Earl Downs, Guilty of Robbery [see EX. (C)]". We further find that in the course of the Robbery a firearm was carried used or threatened to be used. We further find that James Earl Downs Did NOT (strong emphasis for review) personally carry, use, or threaten to use a firearm. So say we all" see also EX. (C) of T/T Petitioner also wishes to point out to this High Court for review, the jury instructions, charged in it's provisions, to the jury in relation to the jury's finding of guilt for robbery only. see EX. (A)" In which trial court

judge charged to the jury in the colloquy as such: [see Ex.(A) ] lines 20-22]

"If you find the defendant carried no firearm or weapon in the course of committing the robbery, but did commit the robbery, you should find him guilty of ONLY ROBBERY. (emphatically expressed) Whereas the record will reflect herein that Petitioner was accused of "robbery with a firearm" (i.e Armed robbery-Firearm) see Ex. "(A-1)" whereas the lesser crimes indicated in trial transcript was for robbery with a deadly weapon, robbery with a weapon, robbery or petit theft. To which the jury's verdict is also indicated as to their findings in the attached transcripts [see Ex. "(B)" & "(B-1)"] and in the polling as to their findings of guilt as orally pronounced in trial proceedings for ROBBERY only as opposed to Armed Robbery with a firearm - although both fall up under Florida Statute 812.13, and are related in stature, the two are distinct in degree. Thereupon Petitioner presents to this High Court for review questions of certified public importance in relation to the violation(s) of Petitioner's Constitutional due process rights, and the language of the law to be interpreted in order to alleviate further incurrence of Manifest Injustice against Petitioner as His constitutional rights has been violated to which resulted in His illegal detention in the Florida Department of Corrections for a term of natural life based on an invalid departure from the guidelines recommendation (see: bond-1), and an improper adjudication of guilt that's not in conformance with that of the jury's verdict in its findings. Thereupon Petitioner presents these certified questions as such:

1.) PURSUANT TO THE UNITED STATES 6th AMENDMENT OF THE U.S. CONST., AND FLORIDA'S RULES OF CRIMINAL PROCEDURE 3.620(606 So. 2d 227) (1), DOES IT MERIT GROUNDS FOR A VIOLATION OF A PERSON'S CONSTITUTIONAL DUE PROCESS RIGHT, AND RIGHT TO EQUAL PROTECTION OF THE LAW WHEN TRIAL JUDGE ADJUDICATION OF GUILT IS NOT IN CONFORMANCE WITH THE JURY'S VERDICT FINDINGS, NOR IS IT IN CONFORMANCE WITHIN THE PROVISIONAL INSTRUCTIONS CHARGED TO THE JURY IN THE JURY INSTRUCTIONS AS IMPLEMENTED BY THE LAWS OF THE STATE AND UNITED STATES CONSTITUTIONS PURSUANT TO THE UNITED STATES CONSTITUTION SIXTH AND 14th AMENDMENTS??



Petitioner asserts for this High Court review in light of the Certified Question posed herein.

Petitioner iterates emphatically his "legal innocence" for the crime of "Armed Robbery" as adjudged by the trial court judge at sentencing proceeding(s) can be determined by the verdict of guilt for robbery only [as instructed] Ex. (A)"] by the "fact finders" (i.e. the jury). As the Florida Supreme Court stated in the McCoy (supra) rule, 40 Fla. So. 2d 70 (Fla. 3 DCA 1995) under Criminal Law and Procedure > verdicts > General Overview, "The Supreme Court of Florida has stated that the act of 1895 Chapter 4392 entitled "An act in relation to crimes and criminal procedure which proscribes that in all criminal prosecutions in the state of Florida that is hereafter begun in Florida" if the defendant be found guilty of an offense lesser in degree but included within the offense charged within the indictment or information such verdict SHALL NOT BE SET ASIDE BY THE COURTS on the ground that such verdict is contrary to the evidence, if the evidence produced in such case would have supported a finding, or if such court would have sustained a verdict of guilty of the greater offense is merely declaratory." (quoted from McCoy supra rule. see also: Fla. R. Stat. 2380-2384) To which section/rule (10) under 4392, acts of 1895 providing that: in all criminal prosecutions hereinafter begun in this state if the offender be found guilty of a lesser offense lesser in degree, but included within the offense charged in the information or indictment, "SUCH VERDICT SHALL NOT BE SET ASIDE BY THE COURT upon the ground that such verdict is contrary to the evidence, if evidence produced in such case would have supported a finding, or if such court would have sustained a verdict of guilty of the greater offense," a conviction for murder in the second degree will be sustained even in the absence of such a statute. see McCoy v. State, 40 Fla So. 2d 70 (Fla 3d DCA 1995)

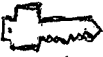
In this instant case Petitioner points out that the record reflect herein, as in the Jaimes rule (51 So 3d 445 (Fla. 2010), 19 So. 3d 347 (Fla Dist Ct App. 2d 2009) that: "in order to convict offender of "Armed Robbery" the jury was required to find that Petitioner did in fact carried, used, or threatened to use a firearm" an essential element in the charging information. To which the record(s)

herein this instant case (see Ex. (B-81)) the jury determined that Petitioner did not carry use or threaten to use a firearm, an essential element to constitute the statutory definition of Florida Statute § 812.13 (2)(a) Armed Robbery with a firearm. Therefore trial court(s) judge pernicious act of sitting as a seventh juror and adjudging Petitioner to be guilty of a crime not in conformance with the jury's verdict is in violation of Petitioner's Constitutional to a fair and impartial hearing. See; *Laskey v. Smith*, 239 So. 2d 13 (Fla. 1970) ~~AND~~ Petitioner's Constitutional Right(s) to equal protection whereas trial court judge abused the discretion of the law by adjudging Petitioner to be guilty of a crime (i.e. Armed Robbery) that is not in conformance with the jury's verdict (i.e. Robbery), or the provisions of the charging jury instructions (see: Ex. (A)). Petitioner directs this High Court's attention also to the Holloman rule (146 So. 361 91 So. 36, 1939 Fla.; 140 Fla 59 140 Fla 59) whereas the Florida Supreme Court held that reversal and remanding was necessary because as the defendant was tried for murder (2nd degree) the jury returned a verdict of manslaughter a lesser included offense. The trial court adjudged the defendant guilty of murder in the second degree. The court reversed the judgement for second degree murder to manslaughter because the court's judgement had to conform to the jury's verdict.

In this instant case Petitioner points out to this High Court the similarities in this case in its premise as in the Holloman rule. Whereas Petitioner herein was tried for the crime of "Armed Robbery-Firearm (§ 812.13 no degree F.S.). The jury returned a verdict of guilt for robbery as opposed to Armed Robbery (as charged), in which robbery was a lesser included offense. Jury further determined that Petitioner did not carry use or threaten to use a firearm, thus their findings of guilt for Robbery only. At sentencing the judge adjudicated the Petitioner guilty of "Armed Robbery" which was in error and not conformance with the jury's verdict to which violated Petitioner's Constitutional due process rights. Whereas the Supreme Court (Fla.) held that: "In all criminal prosecutions hereafter begun in this State, if the defendant be found <sup>or</sup> guilty of an offense lesser in degree, but included in the indictment <sup>or</sup> information, such verdict SHALL NOT BE SET ASIDE BY THE COURT upon the ground that

such verdict is contrary to the weight of the evidence, if the evidence produced in such case would have supported a finding, or if such court would have sustained a verdict of guilty of the greater offense." see Chapter 4392, Acts 1895, Section 8415 C.G.L of Florida. see also: Moore v. State 496 So2d 255 (Fla 5th DCA 1986) In view of this statute this Court (Fla. S. Ct.) has repeatedly held that "where the defendant where the defendant is convicted of a lesser included offense included within the higher offense charged in the indictment information, the verdict will not be set aside as contrary to the evidence, if the evidence would have supported a conviction of the greater offense." (quoted from Holloman v. State 140 Fla 59140 Fla. 59; 191 So 36191 So.36; (Fla. 1939). As the records heretofore reflects in this instant case Petitioner's Adjudication of guilt is not in conformance with the findings and pulling of the jury's verdict (see EX "(B & B-1)" or the instructions charge to the jury which reflects the jury's verdict see Ex. (A: A1) in it's propriety and special interrogatory of the mitigating factor that jury determined that Petitioner did not carry use or threaten to use a firearm thus meriting jury's verdict of guilt for Robbery only as opposed to Armed Robbery - firearm, for which trial court erred in adjudication of guilt for a crime not in conformance with that of the jury's verdict.

In conclusion Petitioner's Adjudication of guilt for the crime of Armed Robbery with a firearm simply was not found by a trier of fact (i.e jury's verdict), and the law is clearly established that a written judgement MUST CONFORM TO THAT OF THE JURIES' VERDICT!! (strong emphasis) see Holloman v. State, 145 Fla. 59140 Fla. 191 So. 36 (1939); Perkins v. Mayo, 92 So 2d 641, 643 (Fla. 1957); Brown v. Estate of Stuckey, 249 So 2d 490, 497 (Fla. 1999) NETTLES v. STATE 112 So. 3d 782; 2013 1st DCA (my case Exactly) Underly Premise); Lawson v. State, 470 So 2d 109 (Fla 4th DCA 1985); MCPHEE v. State 657 So 2d 70 (Fla 3d DCA 1995); Plott v. State, 86 So. 3d 516 (Fla 2nd DCA 2012); Saintheus v. State, 823 So 2d 177 (Fla 4th DCA 2002); wherein the Florida Supreme Court reminds us that: "the role of a trial judge is not to substitute his or her own verdict for that of the jury." See Laskey v. Smith 239 So3d 13 (Fla 1970) "nor can the trial court infer or assume interpretation of the jury's verdict." see: Hills v. State 994 So. 2d 412 (Fla. App. 3d DCA 2008); Fla. Statute 924.34 (2010) conformity pg ( ) of ( )

of verdict ); Florida Crim. Law  1144 Conformity to verdict) The implications of an "implied acquittal" are the results of a verdict convicting a defendant on a lesser included offenses. See: C.f. Price v. Georgia 398 U.S. 323, 329, 26 LE d 2d 306, 90 S.Ct. 1757 (1970); See also: Green v. U.S. 355 U.S. at 191, 26 Ed 2d 199, 78 S. Ct. 221, 77 Ohio L Abs 202, 61 ALR 2d 119.

In Moore rule (496 So 2d 255) the Fifth D.C.A held that: "Alternatively, a verdict which is not in conformance with the jury instructions is defective." Petitioner herein asserts that all questions posed herein this Writ can be held in review by this High Court and answered in the Judicial Notice Motion of Cases cited therein, along with Petitioners Motions and Exhibits and other entreaties to the Lower and State Supreme Court(s).

2.) IS IT A MISARRIAGE OF JUSTICE TO USE A GENERAL VERDICT FORM WITH SPECIAL INTERROGATORIES ON GENERAL VERDICT FOR A CRIME TO CONSTITUTE AN ADJUDICATION OF GUILTY "AS CHARGED", WHEN VERDICT IS AMBIGUOUS AS TO THE JURY'S FINDINGS, BUT REFLECTS OBEYANCE OF JURY'S FINDING FOR LESSER INCLUDED OFFENSE (AS INSTRUCTED), WHEN THE VERDICT FORM REFLECTS GUILTY VERDICT FOR ROBBERY ONLY A GENERALIZED VERSION OF THE CHARGE AND NOT THE GREATER OFFENSE IN THE CHARGING INFORMATION ??

Petitioner asserts herein, that as in the MC CLOUD rule (208 So.3d 668), Petitioner's verdict form (see Ex. (C)) upon review, more closely, the record will reflect that the verdict form more closely resemble general verdict forms accompanied by a special interrogatory as to whether or not petitioner merely possessed firearm, for the purpose of impose a minimum mandatory charge, or reclassification of crime from a second degree to a first degree felony. See 11B Fla. Pl. & Pr. Forms 95:88 Petitioner contends that verdict form that was presented in it's provisional capacity, reflects explicitly and unambiguously that the jury found Petitioner guilty of Robbery only, (see (EX B) & EX. (B-1)) jury polling confirming their verdict rendered orally in open court. Petitioner further asserts for this High Court's review the Florida Second D.C.A where the D.C.A held that by limiting the jury's options, the use of a firearm became an essential element of the crime charged. The jury verdict form was so limited so that if trial court

was to have convicted Petitioner at all of Armed Robbery, pursuant to the statutory definition of § 812.13 (no degree), the verdict form would also allow the rendered verdict to be forced upon the verdict to give a general verdict of guilt while forcing the jury at the same time to also find use of a firearm. But the jury's express and unambiguous proclamation in their verdict also gave the findings that at no time did Petitioner carry use or threaten to use a firearm, thus the jury's findings of guilt for "robbery" only nullifies adjudication of guilt for the crime of armed robbery. Thereby trial court erred in not allowing the fact finders (i.e. jury) verdict to stand how it was orally pronounced. By jury's standards of explicitly standing that Petitioner did not carry use or threaten to use a firearm - to which was the essential element as described in charging Second information clearly negates Petitioner being "armed," because the jury's verdict reflects his innocence of being "Armed" thereby The Constitution Law pursuant to West F.S.A. § 2473, states therein that "Florida Courts are without power to construe an unambiguous statute in a way which would extend, modify or limit its express terms or its reasonable and obvious implications, and to do so would be an abrogation of legislative power." W.S.A. statute § 205 also states "when construing a statute, all statutes should be read together to provide the whole legislative intent. The Perry rule states therein where the First District Court of Appeal held that: "(Crim. Law § 809 Special jury instructions must not be misleading or confusing." (Quoted from Perry v. State, 10 So 3d 695 (Fla App 1st DCA 2009). In the Fla Jun 2d Trial § 316 (XII verdict) (c) Special Verdict findings states: Trial courts must ensure the verdict form addresses all claims and cross claims equally and does not give undue weight to any one claim or defense; generally, VERDICT FORMS should parallel the court's instruction on law and not give undue prominence to any single issue in the case. Petitioner herein has posed Questions (certified) of Public Importance because the question(s) posed show conclusively that Petitioner's constitutional right(s) have not been equally protected and merits reversal for resentencing with all credit for time served, and petitioner's immediate release be immediately imminent. Whereas Petitioner's 14th Amendment right(s) to life & liberty, and his 8th amendment right pursuant to the U.S Constitution

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James Earl Downs (*in propria persona*) pro se litigant

Date: \_\_\_\_\_