

11/13/24
Date
Provided to Madison C.I. on
for mailing by Initials
Legal Mail

24-5998

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
NOV 12 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

CARLOS TONYO CABRERA
Petitioner

v.

STATE OF FLORIDA
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

CARLOS TONYO CABRERA
DC # 489131
Madison Correctional Institution
382 S.W. MCI Way
Madison, FL 32340-4430

PETITIONER

RECEIVED
NOV 20 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- I. WHETHER A COURT OF COMPETENT JURISDICTION VIOLATED PETITIONER'S DUE PROCESS RIGHT WHEN IT IMPOSED LIFE SENTENCES BASED ON AN ERRONEOUS SCORESHEET THAT INCLUDED PRIOR RECORD POINTS SUBSTANTIATED SOLELY BY A PROSECUTOR'S ORAL HEARSAY PROFFER OF PRIOR CONVICTIONS, THAT DID NOT EXIST AS A MATTER OF LAW BECAUSE THEY HAD BEEN VACATED AND REPLACED WITH BLANK JUDGMENTS LACKING ANY INFORMATION AS TO THE OFFENSES OF CONVICTION?
- II. WHETHER A STATE COURT OF COMPETENT JURISDICTION VIOLATED PETITIONER'S PROCEDURAL DUE PROCESS BY REFUSING TO RESOLVE A PROPERLY RAISED FACIALLY SUFFICIENT CLAIM ALLEGING AN ILLEGAL SENTENCE THAT IS EVIDENT FROM THE FACE OF THE RECORD?

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:

NOTICE OF RELATED CASES

There are no related cases pending resolution before any state or federal court.

TABLE OF CONTENTS

QUESTION(S) PRESENTED	2
LIST OF PARTIES	3
NOTICE OF RELATED CASES	3
INDEX TO APPENDICES	5
TABLE OF AUTHORITIES.....	6
OPINIONS BELOW	7
JURISDICTION	8
CONSTITUTIONAL AND STATUTORY PROVISIONS.....	9
STATEMENT OF THE CASE AND FACTS	10
REASON FOR GRANTING THE PETITION	12
I. WHETHER A COURT OF COMPETENT JURISDICTION VIOLATED PETITIONER’S DUE PROCESS RIGHT WHEN IT IMPOSED LIFE SENTENCES BASED ON AN ERRONEOUS SCORESHEET THAT INCLUDED PRIOR RECORD POINTS SUBSTANTIATED SOLELY BY A PROSECUTOR’S ORAL HEARSAY PROFFER OF PRIOR CONVICTIONS, THAT DID NOT EXIST AS A MATTER OF LAW BECAUSE THEY HAD BEEN VACATED AND REPLACED WITH BLANK JUDGMENTS LACKING ANY INFORMATION AS TO THE OFFENSES OF CONVICTION?	12
II. WHETHER A STATE COURT OF COMPETENT JURISDICTION VIOLATED PETITIONER’S PROCEDURAL DUE PROCESS BY REFUSING TO RESOLVE A PROPERLY RAISED FACIALLY SUFFICIENT CLAIM ALLEGING AN ILLEGAL SENTENCE THAT IS EVIDENT FROM THE FACE OF THE RECORD?	14
CONCLUSION	18
PROOF OF SERVICE	19

INDEX TO APPENDICES

- APPENDIX A** Order denying Petition for Writ of Habeas Corpus entered on August 14, 2024, by the Florida Supreme Court.
- APPENDIX B** Petition for Writ of Habeas Corpus filed in the Florida Supreme Court.
- APPENDIX C** Exhibits in support of Petition for Writ of Certiorari.

TABLE OF AUTHORITIES

Cases

<i>Breedlove v. Singletary</i> , 595 So.2d 8, 10 (Fla. 1992)	16
<i>Denson v. State</i> , 775 So.2d 288, 290 (Fla. 2000).....	16
<i>Roberts v. United States</i> , 445 U.S. 552, 556, 100 S.Ct. 1358, 63 L.Ed.2d 622 (1980)	13
<i>State v. Anderson</i> , 905 So.2d 111, 114, n. 4.3 (Fla. 2003).....	13
<i>United States v. Ghertler</i> , 605 F.3d 1256, 1269 (11 th Cir. 2010).....	13

Statutes

28 U.S.C § 1254(1)	8
28 U.S.C. § 1257	8

Rules

3.800(a) Fla.Crim.P.	10, 15, 16
3.988(c) Fla.R.Crim.P.	17
9.030 Fla.R.App.P.	11, 16
9.100 Fla.R.Crim.P.	11, 16
Supreme Court Rule 29	19

Constitutional Provisions

Amendment V, U.S. Constitution	9
Amendment XIV, U.S. Constitution	9

**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 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 not yet reported; or,

☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the state postconviction 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.

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._____.

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. August 14, 2024
A copy of that highest state that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing and Mandate appears at Appendix _____.

☐ An extension of time to file the petition for writ of certiorari was granted to and including_____(date) on _____(date) in Application No._____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the U.S. Constitution – Prohibits “a person from being... *deprived of life, liberty, or property, without due process of law.*” Amendment V, U.S. Constitution (emphasis added).

The Fourteenth Amendment to the U.S. Constitution – Section 1 provides in pertinent part that “no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*” Amendment XIV, U.S. Constitution (emphasis added).

STATEMENT OF THE CASE AND FACTS

The Petitioner is currently incarcerated serving five concurrent life sentences which were imposed solely based upon a prosecutor's erroneous oral representation of prior convictions, causing the addition of 613 "prior record" points to the Sentencing Guidelines Scoresheet, where those convictions no longer existed as a matter of law because they had been vacated by a court of competent jurisdiction, and there is no evidence of them.

Petitioner's claim in State courts has been ignored despite Petitioner's repeated efforts to obtain relief from his illegal departure sentence.

The facts underpinning Petitioner's case are simple, and involve a claim of scoresheet error evident from the face of the record.

The Constitutional issue before this Court involves a violation of Petitioner's Due Process under the Fifth, and Fourteenth Amendments to the U.S. Constitution.

Specifically, Petitioner is unlawfully detained pursuant to a illegal departure sentence involving five concurrent life sentences that were imposed solely based on the total points erroneously calculated in a Sentencing Guidelines Scoresheet. The erroneous calculation involved the addition, by the State, of 613 "prior record" points from convictions that had been vacated and replaced with "blank judgments" lacking any information regarding the convictions.

As such, adding 613 "prior record" points in the scoresheet was improper because the prior convictions in question did not exist as a matter of law. Absent the unsupported 613 points, a properly calculated scoresheet provided a maximum permitted range of seven (7) years. The sentencing court accepted the State prosecutor's oral hearsay proffer of prior convictions, and an unsubstantiated representation to the court asserting that "certified judgments" of the prior convictions had been entered in the record, when in fact those judgments were blank.

Petitioner's procedural due process has also been violated by Florida State Courts (Trial, Appeal, and the Supreme Court).

The State trial court refused to address and adjudicate a properly and timely filed claim of scoresheet error that was raised by Petitioner under Fla.R.Crim.P. 3.800(a), which allows such claims to be raised, and for courts to correct illegal sentences "at any time." In refusing to address and adjudicate Petitioner's claim on the merits, the trial court twice dismissed

Petitioner's motion citing procedural pleading deficiencies, admitting that it could not reach the merits of the claim until such deficiencies were cured. Then, when Petitioner cured the pleading deficiencies, the trial court dismissed the third motion as successive because the claim had previously been raised and resolved on the merits. The record conclusively refuted the trial court's erroneous conclusion.

The State Appellate court entered a one-page unelaborated affirmance lacking any merits analysis of the issue briefed by Petitioner on appeal, which again, was supported by the record before the appellate court. The order of the appellate court was not appealable to the Florida Supreme Court because it was decided through an unelaborated "per curiam affirmance." See Fla.R.App.P. 9.030.

Finally, Petitioner filed a State habeas petition invoking the Florida Supreme Court's Original "all-writs" jurisdiction under Fla.R.Crim.P. 9.100. Petitioner provided facts, argument and legal authority supporting his claim of scoresheet error leading to his unlawful confinement under an illegal sentence. The court summarily denied the claim citing decisional law that was distinguishable and inapplicable to Petitioner's case, and prohibited Petitioner from filing for any rehearing or reconsideration alerting the court of its misapprehension of Petitioner's claim.

Consequently, Petitioner comes to this Court seeking resolution as to whether, based on the facts provided herein, and below, his Due Process rights have been violated and require the relief he has been seeking throughout his tortured litigation history on this issue.

REASON FOR GRANTING THE PETITION

I. WHETHER A COURT OF COMPETENT JURISDICTION VIOLATED PETITIONER'S DUE PROCESS RIGHT WHEN IT IMPOSED LIFE SENTENCES BASED ON AN ERRONEOUS SCORESHEET THAT INCLUDED PRIOR RECORD POINTS SUBSTANTIATED SOLELY BY A PROSECUTOR'S ORAL HEARSAY PROFFER OF PRIOR CONVICTIONS, THAT DID NOT EXIST AS A MATTER OF LAW BECAUSE THEY HAD BEEN VACATED AND REPLACED WITH BLANK JUDGMENTS LACKING ANY INFORMATION AS TO THE OFFENSES OF CONVICTION?

On November 1, 2010, Petitioner was resentenced at a *de novo* resentencing proceeding on Florida criminal case numbers 90-CF-15153, 90-CF-15790, 90-CF-15851, 90-CF-15852, 90-CF-15853, 90-CF-16344, 90-CF-16405, AND 90-CF-16406.

The focus of the instant petition are the five concurrent life sentences imposed on case numbers 90-CF-15153, 90-CF-15852, 90-CF-15853, 90-CF-16405, AND 90-CF-16406, based on an erroneous sentencing scoresheet.

Petitioner asserts that his sentences are illegal under Florida law because the convictions underpinning the prior record points added to a guidelines sentencing scoresheet did not exist as a matter of law, because they had been vacated on October 31, 1989, and replaced by blank judgments that lack any information as to the offenses of conviction (Appx. C, Exhibit-A).

Petitioner's Due Process was violated by the state sentencing court on two occasions. First, on June 3, 1991, the state sentencing court accepted the prosecutor's hearsay proffer of prior convictions stating: "*I have certified copies for the court that would go in the - - in the record....*" (Appx. C, Exhibit-B (Sentencing Transcript, pp. 5-6)).

Next, on November 1, 2010, the state sentencing court once again accepted the state's oral proffer of Petitioner's prior convictions, purportedly entered on October 31, 1989, and referenced 12 of the 13 convictions that had actually been vacated on that date. These were orally read into the record by the State without any documentary proof of these convictions. As shown herein, the only documents that existed at the time were "Blank Judgments" with no information as to the offenses of conviction. As such, all those 13 convictions did not exist as a matter of law. (See Appx. C, Exhibit-A & Exhibit-C).

At the November 1, 2010, *de novo* resentencing, the State prepared a sentencing guideline scoresheet, and included a total of 613 “prior record” points based, solely, upon its oral proffer to the court of the Judgments that had been vacated on October 31, 1989, which had been replaced with blank judgments that contained no information about any convictions, and thus, could not be relied upon as competent substantial evidence of prior convictions. (Appx. C, Exhibit-D).

As Petitioner has demonstrated herein through Appendix Exhibits, the so-called “certified copies” of Judgments dated October 31, 1989, lacked any evidence of prior convictions. Therefore, those blank judgments could not be relied upon as competent evidence of prior convictions to support the addition of 613 prior record points to the scoresheet and force the judge to impose life sentences.

“A defendant has a due process right... not to be sentenced based on false or unreliable Information.” *United States v. Gherler*, 605 F.3d 1256, 1269 (11th Cir. 2010). See also *Roberts v. United States*, 445 U.S. 552, 556, 100 S.Ct. 1358, 63 L.Ed.2d 622 (1980) (we have... sustained due process objections to sentences imposed on the basis of misinformation of constitutional magnitude).

In Florida, “a sentence calculation error [is] deemed harmful if it [falls] outside the recommended range,” and “[s]uch error [is] deemed a defacto departure sentence” that “is therefore illegal.” *State v. Anderson*, 905 So.2d 111, 114, n. 4.3 (Fla. 2003).

In Petitioner’s case, the state sentencing court’s blind reliance upon the guideline scoresheet prepared by the Prosecutor, that included 613 unsupported prior record points, constituted the type of “false and unreliable information” that was not substantiated by any valid judgment on record. Therefore relying upon such information violated Petitioner’s due process by causing him to be sentenced to five concurrent life sentences. A properly calculated scoresheet only supported the imposition of a maximum sentence of seven (7) years. (Appx. C, Exhibit-D (Properly Calculated Scoresheet)).

The proper remedy to correct the Due Process violation outlined herein is to resentence Petitioner under a properly calculated scoresheet.

II. WHETHER A STATE COURT OF COMPETENT JURISDICTION VIOLATED PETITIONER'S PROCEDURAL DUE PROCESS BY REFUSING TO RESOLVE A PROPERLY RAISED FACIALLY SUFFICIENT CLAIM ALLEGING AN ILLEGAL SENTENCE THAT IS EVIDENT FROM THE FACE OF THE RECORD?

As a preliminary factual matter, Petitioner did not discover the "Blank Judgments" rendering his prior convictions non-existent as a matter of law until 2021. After repeated attempts at obtaining certified copies of the judgments, he had to file a petition for Writ of Mandamus compelling the Clerk of the state trial court to produce certified copies of the judgments. (Appx. C, Exhibit-A).

Petitioner first filed a Motion to Clarify seeking additional Information on the "Blank Judgments." The state trial court entered an order directing the state to respond to four (4) questions:

- (1) Whether the Blank Judgments were legal?
- (2) Whether there was any record of a plea entered by [Petitioner] on October 31, 1989, underlying the Blank Judgments?
- (3) Whether there was a transcript of the proceeding held on October 31, 1989? and
- (4) Whether there was a copy of the transcript?

Appx. C, Exhibit-F (Order entered on July 1, 2021).

On August 23, 2021, the State filed a response in which it conceded that:

- (1) The "Blank Judgments" were legally sufficient, but confirmed that they were blank.
- (2) There was no record proper of a plea in the court file. Only a note indicating a guilty plea without more.
- (3) The State was unable to locate any transcript of the relevant proceeding, or a copy of that transcript from October 31, 1989.

Appx. C, Exhibit-G (State Response filed on August 23, 2021).

Relying upon the State's Response admitting the existence of legally sufficient Blank Judgments, and the absence of any additional record documents shedding light upon the offenses in the "Blank Judgments," Petitioner sought to correct his illegal sentences. The trial court

denied relief citing Petitioner's delay in raising the claim. Which under Rule 3.800(a), can be raised "at any time."

The state trial court's denial of relief based upon what can only be characterized as a variation of the "Laches" doctrine, was inapplicable to Petitioner's "Illegal Sentence" in a criminal case. On April 28, 2022, Petitioner properly filed Fla.R.Crim.P. 3.800(a) motion to correct illegal sentence claiming a sentencing scoresheet error. Rule 3.800(a) motion/claims can be raised "at any time." *Id.* The State trial court entered an Order on June 2, 2022, "dismissing" the motion based on a "pleading deficiency" involving Petitioner's failure to "*affirmatively allege that the predicate prior convictions do not exist as a matter of law.*" As such, the state court failed to address the merits of Petitioner's claim in dismissing his first motion.

On July 6, 2022, Petitioner filed a "second" Rule 3.800(a) motion raising the same claim as before but this time, he "affirmatively alleged that the predicate prior convictions do not exist as a matter of law," thus curing the pleading deficiency previously identified by the court as the basis for its dismissal without reaching the merits of the claim. On March 10, 2023, the State trial court again rejected Petitioner's claim, only now based on different pleading deficiencies, and *specifically found that "it [could not] address the merits of [Petitioner's] assertions that including these prior convictions on his scoresheet was improper."* *Id.* Additionally, the court engaged in a "harmless error" analysis which did not apply to Petitioner because his sentences were imposed under the sentencing guidelines due to the offense dates predating the Florida Criminal Punishment code that was enacted in October 1, 1998.

Finally, on April 17, 2023, Petitioner filed his "third" Rule 3.800(a) motion raising the same claim (not previously addressed on the merits), and cured the second set of pleading deficiencies identified by the trial court in its second denial of relief based on procedural pleading deficiencies, where the court admitted to not addressing the merits of the claim.

In a clearly erroneous decision, on August 8, 2023, the trial court entered a "third" Order "dismissing" Petitioner's "third" Rule 3.800(a) motion, and cited, as its basis for dismissal: (1) That [Petitioner's] claim and argument was the same or substantially the same as the one raised in his previous Rule 3.800(a) motions; (2) That it had adequately addressed and disposed of the claim and argument in its previous orders dated June 2, 2022, and March 10, 2023; and (3) That the motion was therefore dismissed as successive. *Id.*

A simple reading of the procedural history of Petitioner's Rule 3.800(a) motions conclusively refutes the State court findings and conclusions of law for dismissing the "third" and last Rule 3.800(a) motion that was filed by Petitioner at the State trial court level.

Convinced that the State appellate court of last resort would see through the trial court's obvious refusal to address Petitioner's claim on the merits, after he had cured the multiple pleading deficiencies identified by the trial court, Petitioner sought collateral postconviction review of the dismissal of his "third" Rule 3.800(a) motion.

Proceeding under appeal case number 2D2023-1948, in Florida's Second District Court of Appeal, Petitioner expected a reversal of the lower court's dismissal. That, however, never occurred. He was surprised to receive an unelaborated "*per curiam* affirmance" of the lower court's dismissal, which under Fla.R.App.P. 9.030, prevents Petitioner from seeking discretionary review in the Florida Supreme Court.

In a last-ditch attempt at obtaining relief in State courts from what, by all measures, is a simple claim of "scoresheet error," Petitioner filed a Petition for Writ of Habeas Corpus under Florida Supreme Court's original Jurisdiction authorized under Fla.R.App.P. 9.100, 9.030. In his Petition, Petitioner articulated the facts underlying his claim, and provided a convincing legal argument supported by well-settled decisional law. The Petition proceeded under case no. SC2024-0966 (Appx. B).

On August 14, 2024, the Florida Supreme Court denied the Petition for Writ of Habeas Corpus, misconstruing it as a "*second appeal*" or an attempt to "*litigate or relitigate issues that were or could have been raised on direct appeal or in prior postconviction proceedings.*" In its Order, the Florida Supreme Court cited two cases (*Denson v. State*, 775 So.2d 288, 290 (Fla. 2000) and *Breedlove v. Singletary*, 595 So.2d 8, 10 (Fla. 1992)). Neither was similar to Petitioner's.

In *Denson*, the issue involved the courts not reaching the merits of the claim, however, the Supreme Court made an actual finding that the claim had been decided on the merits. In *Breedlove*, (a death penalty case), the issue involved ineffective assistance of counsel. The Supreme Court found that Petitioner's state habeas petition claim involved a guilt phase ineffective assistance claim that Petitioner was improperly attempting to relitigate when had already, or could have raised it on direct appeal. (Appx. A).

The Florida Supreme Court's decision expressly prohibited any motion for Rehearing or Reconsideration. As such, Petitioner was precluded from demonstrating to the Court its misapprehension of his claim:

THAT HE PROPERLY RAISED A CLAIM OF ILLEGAL SENTENCE; THE STATE COURT ADMITTEDLY REFUSED TO ADDRESS THE CLAIM ON THE MERITS, TWICE, AND DISMISS PETITIONER'S MOTIONS BASED ON PROCEDURAL PLEADING DEFICIENCIES. WHEN THOSE DEFICIENCIES WERE CURED, IT DISMISSED THE THIRD MOTION AS SUCCESSIVE BASED ON AN ERRONEOUS CONCLUSION THAT THE CLAIM HAD BEEN PREVIOUSLY RAISED AND ADJUDICATED ON THE MERITS.

The State Appellate court of last resort simply ignored the record and briefing submitted by Petitioner, and *per curiam* affirmed the lower court's erroneous decision, which was conclusively refuted by the record.

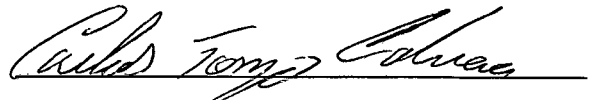
The facts underpinning Petitioner's claim to the Florida Supreme Court were both factually and legally distinguishable from those in *Denson*, and *Breedlove*. However, Petitioner was left with no recourse, in violation of his procedural due process under the Fourteenth Amendment to the U.S. Constitution.

Petitioner believes in good faith that the proper remedy herein involves remanding the matter to the State courts with instructions to adjudicate Petitioner's claim on the merits and provide the relief requested – Resentencing under a correctly calculated Sentencing Guidelines Scoresheet (Fla.R.Crim.P. 3.988(c)).

CONCLUSION

WHEREFORE, based on the foregoing facts, argument and authority, the Petitioner requests that this Honorable Court grant the instant Petition for Writ of Certiorari and resolve the Constitutional questions presented above.

Respectfully submitted,

A handwritten signature in cursive script, reading "Carlos Tonyo Cabrera", written over a horizontal line.

Carlos Tonyo Cabrera
DC # 489131
Madison Correctional Institution
382 SW MCI Way
Madison, FL 32340-4430

PETITIONER