No. 24-6050

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

LOLITA BARTHEL — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

CIRCUIT COURT OF HILLSBOROUGH COUNTY, FLORIDA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LOLITA BARTHEL
(Your Name)

(Address)

(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED:

1. Under the Eighth Amendment and the Equal Protection Clause, Are juvenile offenders entitled to a review of his or her sentence if they are serving consecutive sentences and "in custody under any one of them" as was established in Peyton v Rowe, 391 US 54 20 L Ed 2d 426, 88 S Ct 1549 (1968) ?

2. Under the sixth amendment the trial court violated the petitioner's constitutional rights, where a sentence written order does not conform to the court's oral pronouncement of judgment and sentence, and the latter prevails ?

3. Under fourteenth amendment, Is it unconstitutional to find a juvenile offender "not amenable to rehabilitation or supervision" where the judge alone found the existence of an aggravating circumstance as an element of a separate and aggravated offense, when that juvenile has a sentence review that is for the reason of proving her rehabilitation ?

4. Under the Fifth Amendment, Is It unconstitutional to question a juvenile without given them the option to leave the interview at anytime or permission to call a parent and which the coerced Post-arrest silence was used by prosecutor as evidence of guilt ?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All the parties do not appear in the caption of the case on the cover page. A list of all the parties to the proceeding in the court whose judgment is the subject of this petition is as follows:.

- State of Florida, Office of the Attorney General 444 Seabreeze Blvd. Daytona Beach Fl. 32812

- Solicitor General of United States, Room 5616, Department of Justice, 950 Pennsylvania Av. N.W. Washington D.C. 20530-0001.

RELATED CASES

Barthel v Florida, Supreme Court of Florida Case No. SC2024-1304; District Court of Florida case No. 2D2023-2803; L.T. Case No. 291995CF011397000CHC.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR 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 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.

[X] 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,
[x] is unpublished.

The opinion of the DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA____ court appears at Appendix __B___to the petition and is

[ ] Reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] 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. s. 1254(1).

[X] For cases from State courts:

The date on which the Supreme Court of Florida decided my case was September 9, 2024

[x] 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. s. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Courts ⊏ 775 - adherence to decision

United States Supreme Court decisions remain binding precedent until the Supreme Court sees fit to reconsider them, regardless of whether subsequent cases have raised doubts about the decisions' continuing vitality.

Habeas Corpus ⊏ 41 - requisite of "custody"

A prisoner serving consecutive sentences is "in custody" under any one of them.

Criminal Law ⊏ 77 - cruel and unusual punishment - states

The Federal Constitution's Eighth Amendment provision that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted is applicable to the states through the Fourteenth Amendment

Constitutional Law ⊏ 318 - equal protection - classification - state interest - standard of review

Where individuals in a group affected by a law have distinguishing characteristics relevant to interests the state has the authority to implement, courts are reluctant to closely scrutinize legislative choices as to whether, how, and to what extent those interests should be pursued, and in such cases the equal protection clause requires only a rational means to serve a legitimate end.

Constitutional Law ⊏ 316 - equal protection - arbitrary or irrational classification

Under the equal protection clause, a state may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational; furthermore, some objectives, such as a bare desire to harm a politically unpopular group, are not legitimate state interests.

Factfinding - Aggravating Circumstances

The Sixth Amendment protects a defendant's right to an impartial jury.... Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional. (Sotomayor, J., joined by Roberts, Ch. J., and Scalia, Kennedy, Thomas, Ginsburg, and Kagan, JJ.)

Constitutional Law ⊏ 839.5 - due process - cross-examination of defendants - post-arrest silence

The due process clause of the Fourteenth Amendment is violated where a state prosecutor seeks to impeach, at ...trial, the defendants' exculpatory story as to a frame by narcotics agents, told for the first time at the trial, by cross-examining them as to their post-arrest silence after receiving the warnings required by Miranda v Arizona, 384 US 436, 16 L Ed 2d 694, 86 S Ct 1602, 10 ALR3d 974.

STATEMENT OF THE CASE

Comes Now, the petitioner Lolita Barthel, respectfully invoke the jurisdiction of this honorable court under S.C. Rule 10(c) and Rule 14, since that the State of Florida's Court of last resort has decided an important question of federal law that has not been, but should be settled by this court, and has decided an important federal question in a way that conflicts with relevant decisions of this court. The 28 U.S.C. s. 2403(b) may apply and shall be served in the Attorney General of the State of Florida whether the constitutionality of the State Statute, is drawn into question.

The appellant argued that her combined consecutive life-sentence for three counts, violates the prohibition against cruel and unusual punishment (as a Condition of the Sentence) which was not found by the oral pronouncement of her sentence on the trial court, because it constitutes the functional equivalent of a life in prison without possibility of review for juvenile offenders, which was held to be unconstitutional in Graham v. Florida, 130 S. Ct. 2011, 176 L. Ed. 2D 825 (2010). Under the Equal Protection Clause, The trial Court decision departed of the Supreme Court precedent as it was established in Peyton v Rowe, 391 US 54 20 L Ed 2d 426, 88 S Ct 1549 (1968) which was held:

> "a prisoner serving consecutive sentences is "in custody" under any one of them...For purposes of determining parole eligibility, ...treats the aggregate time imposed by consecutive sentences as "the term of imprisonment"...prisoners not only for service of the sentence which administratively each is said to be currently serving, but for service of the subsequent ones as well... is in custody within the meaning of the statute under each of the consecutive sentences for the service of which (she) was committed, and (she) is presently entitled to test the constitutionality of any such sentence... attacking a sentence which she is scheduled to serve in the future." Peyton v Rowe, 391 US 54 20 L Ed 2d 426, 88 S Ct 1549 (1968).

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situated should be treated alike. Plyler v Doe, 457 US 202, 216, 72 L Ed 2d 786, 102 S Ct 2382 (1982) The Florida Courts, excluding to juvenile with a consecutive sentence, and entitled to test the constitutionality of any such sentence, violated the equal protection clause of the Fourteenth Amendment, while that a "Federal Habeas prisoner for purposes of determining parole eligibility " was treated better than she was treated.

Ground No. 1.-

Under the Eighth Amendment and the Equal Protection Clause, The juvenile offenders are entitled to a review of his or her sentence if they are serving consecutive sentences and "in custody under any one of them" as was established in Peyton v Rowe, 391 US 54 20 L Ed 2d 426, 88 S Ct 1549 (1968).

Statements of the facts:

Lolita Barthel was convicted of first-degree murder and other crimes in Hillsborough County Circuit Court, case No. 95-CF-011397-C on December 19, 1996. She was sentenced to life imprisonment for the murder conviction and for her convictions for armed burglary of a dwelling with battery and armed robbery. Barthel sought resentencing under Miller v. Alabama, 132 S. Ct. 2455, 183 L. Ed. 2d 407(2012). The Trial court denied her motion, opining that Miller did not apply retroactively to cases that were final before it was decided.

On May, 15, 2015, the Florida Second District Court of Appeal, reversed the circuit court's order and remanded with directions that it conduct a resentencing proceeding for Barthel's homicide conviction, applying the principles of chapter 2014-220, Laws of Florida. See Case No. Lolita Barthel v. State, 163 So. 3d 1224; 2015 Fla. App. LEXIS 7241 (2nd Dca 2015).

The trial court held a new sentencing hearing in July 1, 2019, and the sentence was amended on February 27, 2020. The trial court's ruling addressed Barthel's sentence for the homicide conviction, which she was resentenced to life imprisonment and for other non-homicide crimes, also to life imprisonment, and was ordered:

- "Defendant is entitled to review of her sentence on count one after (15)years in accordance with Section 921.1402(2)(c), and after Twenty (20) years on counts Two and Three in accordance with section 921.1402(2)(d)"

On September 10, 2019 During the re-sentencing hearing the Court found that the petitioner was "A person who did not actually kill, intend to kill, or attempt to kill the victim", as follow:

- " There was no specific finding in the verdict for the jury to let us know that they found

that she was the actual shooter. So I simply could not make that conclusion... They may have – probably would have made that finding. But they did not and, so, therefore, I couldn't go the other route that the State asked me to go".(See Transcripts Re-sentencing pg 4- L6).

On October 26, 2023, The Florida Dpt. of Corrections, submitted a letter pursuant section, 921.1402(3) Fla. Stat., where the petitioner was informed that: "you may be entitled to petition the court for review". Section 921.1402(3), Fla. Stat. places the requirement to notify a defendant of a her eligibility for a sentence review on the Department of Corrections".

On December 8, 2023, it was rendered by the trial court which was ordered: "Because Defendant has only served, at most, four years of the sentences in the instant case, she is not currently eligible for a sentence review". The trial court denied Defendant's Application for Judicial Review in the case No. 95-CF-011397-C, after more than 25 years "in custody" of the Florida Dpt. of Corrections, in violation of appellant's VIII Amendment Right guaranteed by the United States Constitution, The decision was "contrary to" a clear decision as established by the Supreme Court in Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2D 407 (2012). The District Court affirmed the decision of the trial court and the Florida Supreme Court denied judicial review in jurisdictional grounds, which here, under the equal protection clause, a juvenile offender serving a consecutive sentence in State prison was denied the same rights to review their sentence that a Federal Habeas Prisoner for purposes of determining parole eligibility, as determined by the Supreme Court of the United States in Peyton v Rowe, 391 US 54 20 L Ed 2d 426, 88 S Ct 1549 (1968).

Assignment of Error:

I.- Violation of the petitioner's Eighth Amendments right:

U.S. Const. amend. VIII forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders, even for juveniles convicted of homicide crimes. And "Federal Constitution's Eighth Amendment held to forbid sentencing scheme that mandated life in prison without possibility of parole for juvenile offenders" Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2D 407 (2012). Miller, 567 U.S. at 470, barred a mandatory sentence of life in prison

without parole. Here, the Trial court violated the petitioner's Eighth Amendments right, which forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. "The Federal Constitution's Eighth Amendment provision that... nor cruel and unusual punishments inflicted is applicable to the states through the Fourteenth Amendment" Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2D 1(2005).

> The Section 921.1402(2)(a) Florida Statute, establish: "A juvenile offender sentenced under s. 775.082(1)(b)1. is entitled to a review of his or her sentence after 25 years.

The Section 921.1402(6)(d) Florida Statute, establish: "When determining if it is appropriate to modify the juvenile offender's sentence, the court shall consider any factor it deems appropriate, including all of the following:

(d) "Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person"

The statutory word, "shall" consider any factors", should be considered by this court in this review, "As used in a statute or rule, the word "shall" is mandatory in nature, which this honorable court should find that the statute established mandatory conditions to review the sentence imposed.

The Statute did not established the "custody" or "concurrent or consecutive" requirement, which under the statutory words "shall consider any factor" as determined by the Section 921.1402(2)(a) Florida Statute; which included: "is entitled to a review of his or her sentence after 15 years. 921.1402, Fla. Stat." without any limitation to the status of the sentence imposed. Here, apply the Supreme Court decision in Peyton v Rowe, 391 US 54 20 L Ed 2d 426, 88 S Ct 1549 (1968), which was established that: "a prisoner serving consecutive sentences is "in custody" under any one of them". This "disproportionate result" of the petitioner's State review, involved an unreasonable application of, clearly established Federal law. "Miller's prohibition on mandatory life without parole for juvenile offenders was substantive and applied retroactively... states could remedy Miller violations by permitting juvenile homicide offenders to be considered for parole" Montgomery v. Louisiana, 577 U.S. 190, 136 S. Ct. 718, 732-33, 193 L. Ed. 2D 599 (2006). Here, Petitioner has identified a case

applying this disproportionality principle to a similar context, addressing a sentence of similar length to her, being also a case addressing disparities arising from subsequent changes in sentencing law.

The trial court reached the opposite conclusion of the U.S. Supreme Court on an indistinguishable set of facts, here despite of 29 years in "Custody". Here, "The prisoner, although (sentence) was in the "custody" of the members of the parole Board... because the (sentencing) order imposed conditions which significantly confined the prisoner and restrained her freedom; and the (trial) Court did not lose jurisdiction of the case...since the members of the parole board were within the court's jurisdiction." Jones v Cunningham, 371 US 236, 9 L Ed 2d 285, 83 S Ct 373, 92 ALR2d 675 (1963). If, however, the Constitution establishes a rule and requires that the rule have retroactive application, then a state court's refusal to give the rule retroactive effect is reviewable by this Court. Cf. Griffith v. Kentucky, 479 U.S. 314, 328, 107 S. Ct. 708, 93 L. Ed. 2D 649 (1987) (holding that on direct review, a new constitutional rule must be applied retroactively ``to all cases, state or federal"). States may not disregard a controlling, constitutional command in their own courts. See Martin v. Hunter's Lessee, 14 U.S. 304, 1 Wheat. 304, 340-341, 344, 4 L. Ed. 97 (1816); see also Yates v. Aiken, 484 U.S. 211, 218, 108 S. Ct. 534, 98 L. Ed. 2D 546 (1988) (when a State has not ``placed any limit on the issues that it will entertain in collateral proceedings . . . it has a duty to grant the relief that federal law requires")....Under the Supremacy Clause of the Constitution, state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the Constitution. If a state collateral proceeding is open to a claim controlled by federal law, the state court ``has a duty to grant the relief that federal law requires." Yates, 484 U.S., at 218, 108 S. Ct. 534, 98 L. Ed. 2d 546. Where state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge." Montgomery v. Louisiana, 577 U.S. 190, 136 S. Ct. 718, 732-33, 193 L. Ed. 2D 599 (2006). Which, if the state collateral proceeding is open to a claim controlled by federal law, here the Supreme Court decision in Peyton v Rowe, 391 US 54 20 L Ed 2d 426, 88 S Ct 1549 (1968).

II.- Violation of the petitioner's Sixth Amendments right:

The U.S. Supreme Court held that the Sixth Amendment provides defendants with the right to have

a jury find those facts beyond a reasonable doubt. "under the due process clause of the Federal Constitution's Fifth Amendment and under the notice and jury trial guarantees of the Constitution's Sixth Amendment, any fact (other than prior conviction) that increased the maximum penalty for a crime had to be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt" Jones v United States (1999) 526 US 227, 143 L Ed 2d 311, 119 S Ct 1215.

Here, The appropriate remedy for juveniles whose sentences are unconstitutional under Miller was to re-sentence them in conformance with ch. 2014-220, Laws of Florida. Ch. 2014-220 has been enacted to bring Florida juvenile sentencing law into compliance with U.S. Supreme Court Eighth Amendment, U.S. Const. amend. VIII, jurisprudence. It amends ⊏ 775.082(1), Fla. Stat. (2016). Here, the petitioner was resentenced and the trial court did not allow review of her sentence after 25 years. When a trial court breaks this rule by making a decision constitutionally reserved to a jury (and commits Alleyne error), it is the job of a reviewing court to decide whether the resulting violation of the defendant's right to a fair trial was harmful.

> Under State Law, the Section 775.082(1), Florida Statutes (2018), provides in pertinent part:
> (b)(2). "A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life... A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).⊏ 775.082(1), Fla. Stat. (emphases added).
>
> Section 921.1402, Florida Statutes, states, in pertinent part:
> (c) A juvenile offender sentenced to a term of more than 15 years under s. 775.082(1)(b)(2). ... is entitled to a review of his or her sentence after 15 years.⊏ 921.1402, Fla. Stat. (2018).

Under this court precedent in Alleyne v. United States, 570 U.S. 99, 114, 133 S. Ct. 2151, 186 L. Ed. 2D 314 (2013) "that defendant used a firearm during and in relation to a crime of violence, but not that the firearm was brandished... it was an element of the offense, which had to be found by the jury beyond a reasonable doubt.... the sentence violated defendant's Sixth Amendment rights"

The trial court applying this disproportionality principle to a similar context resentenced to the petitioner upon a finding that:

- " There was no specific finding in the verdict for the jury to let us know that they found that she was the actual shooter. So I simply could not make that conclusion... They may have – probably would have made that finding. But they did not and, so, therefore, I couldn't go the other route that the State asked me to go".(See Transcripts Re-sentencing pg 4- L6).

These statutes' Sixth Amendment implications were recently examined and the state's highest court answered a certified question and held that Alleyne required a jury to make the factual finding under 775.082(1)(b), Fla. Stat. (2016) ". (Alleyne v. United States, 133 s. Ct. 2151, 186 l. Ed. 2d 314 (2013), require the jury and not the trial court to make the factual finding under section 775.082(1)(b), Florida Statutes (2016), as to whether a juvenile offender actually killed, intended to kill, or attempted to kill the victim). Common sense dictated that a juvenile who is sentenced at the age of eighteen and who is not eligible for parole until after he is expected to die does not have a "meaningful" or, as the Supreme Court also described, "realistic" opportunity of release.

"A finding of disproportionality in sentence necessarily assumes that those being compared are similarly situated, A well-founded claim of disparity assumes that apples are being compared to apples....Where 15-year-old defendant was tried as an adult, found guilty of first-degree murder, and sentenced to life imprisonment, the trial court erred in denying his application for sentence modification pursuant to Fla. R. Crim. P. 3.802(b)...review was inconsistent with ⊏ 921.1402, Fla. Stat.; The trial court's consideration of improper factors at sentencing denies the defendant of due process and constitutes fundamental error. Over the past decade, the United States Supreme Court has issued a line of decisions establishing the legal principle that juveniles 'are constitutionally different from adults for purposes of sentencing. In response to these decisions, the Florida legislature enact[ed] juvenile sentencing legislation to remedy the federal constitutional infirmities in Florida's juvenile sentencing laws. Among these enactments was section 921.1402, which "provides that a juvenile offender who was sentenced under section 775.082 is 'entitled to a review of his or her sentence after 25 years. (quoting ⊏ 921.1402(2)(a)).

III.- No prisoner can exist half free on parole and half imprisoned:

The petitioner also, contends the manner of computation (and Execution) of her sentence violates the principles of Brumit v. Wainwright, 290 So.2d 39 (Fla.1974), The Florida Supreme Court held: "We reiterate: the petitioner is entitled to pay his debt to society in one stretch, not in bits and pieces, and he cannot at the same time be imprisoned and on parole. To paraphrase President Lincoln, no man can exist half free on parole and half imprisoned", and Voulo v. Wainwright, 290 So.2d 58 (Fla.1974). These cases hold that "the Commission is prohibited from delaying the effective date of a (Review) until the completion of the new sentence for the offense causing the revocation. They require that the first sentence imposed must be the first served. The petitioner further contends she is entitled to a re-computation of her release date in a manner that allows both sentences to be served concurrently". But "When the application of a federal statute is involved, the decision of the state trial court as to an underlying issue of state law is not controlling" Commissioner v. Bosch, 387 U.S. 456, 465, 87 S. Ct. 1776, 18 L. Ed. 2D 886 (1967).

WHEREFORE, this Honorable court should find as a matter of rights, that under the eighth amendment and the equal protection clause, juvenile offenders are entitled to a review of his or her sentence if they are serving consecutive sentences and they are "in custody under any one of them" as was established in Peyton v Rowe, 391 us 54 20 l ed 2d 426, 88 s ct 1549 (1968).

Ground No. 2.-

UNDER THE SIXTH AMENDMENT THE TRIAL COURT VIOLATED THE PETITIONER'S CONSTITUTIONAL RIGHTS, WHERE A SENTENCE WRITTEN ORDER DOES NOT CONFORM TO THE COURT'S ORAL PRONOUNCEMENT OF JUDGMENT AND SENTENCE, AND THE LATTER PREVAILS.

Statements of facts:

(1) On December 19, 1996, The court orally announced this sentence, as follows:

> "Those sentences to run concurrent or at the same time or consecutive or after the sentence previously imposed by this court in that case or cases." (See Trial Transcripts Page 487 L. 20).

(2) On December 19, 1996, The written sentence does not comport with the court's oral pronouncement of sentence, which was written as follow:

> "Other provision, Continued: Consecutive... XX Specific Sentences: 95-11398" (See Order)

(3) On September 10, 2019, The defendant was resentenced and the oral pronouncement of the sentence ordered as follow:

> "I Sentence Miss Barthel to life imprisonment on Count One, Two and Three concurrently to with each other. And the sentence on Counts Four and Seven , which remained the same but consecutively to the sentence in case No. 95-CF-001398". The petitioner presents evidence that, the oral pronouncement of the re-sentence, did not order that the Counts One, Two and Three run consecutively. (See Re-sentence transcripts, page 5, L-13).

(4) On February 25, 2020, The resentencing court changed the oral pronouncement of the re-sentence rendered on September 10, 2019 and adopted and incorporated the written sentence rendered on December 19, 1996, and established as re-sentence:

> "Defendant is hereby sentenced to life imprisonment on counts One, Two and Three, concurrently with each other and the sentence in the count Fourth and Seven, but consecutively to the sentence in case 95-CF-011398."

(5) On February 25, 2020, upon Court order was found as follows:

"Finally, with regards to Defendant's contention that the sentencing documents must be corrected to show that **(she) already served 25 years in prison**, the Court agrees and finds Defendant is entitled to have an amended judgment and sentence prepared to reflect her entitlement to all prior prison credit".

(6) On February 25, 2020, upon Court noted as footnote, as follows:

"The Court notes Defendant was not entitled to resentencing on counts four and Five. Further, the sentences on counts four and five **have already expired.**"

Here, the petitioner should demonstrate that those sentences run concurrently with each other (see appendices attached). Petitioner contended the trial court's written sentence did not comport with the oral pronouncement.

Assignment of Error:

This Supreme Court had established: that "To call upon the accused, or upon the court, to pick out and put together, from such a confused and ambiguous sentence, enough to make out a sufficient charge... would be inconsistent with the settled rules of criminal pleading" Batchelor v. United States, 156 U.S. 426, 39 L. Ed. 478, 15 S. Ct. 446 (1895) (which the judgment was Reversed).

I.- Violation of the Sixth Amendment.

"A sentence in violation of the Sixth Amendment constitutes error that is plain. Moreover, according to Circuit Court's precedent, a sentence enhancement based on judge-found facts under a mandatory guidelines system necessarily affects a defendant's substantial rights. Circuit Court's precedent dictates that any sentencing error that results in the imposition of a more severe sentence than is supported by the jury verdict, and thus violates the Sixth Amendment, automatically diminishes the integrity and reputation of the judicial system and automatically prejudiced individual whose Sixth Amendment rights were violated" United States v. Austin, 133 Fed. Appx. 271, 2005 U.S. App. LEXIS 9802 (6th Cir.), cert. denied, 546 U.S. 922, 126 S. Ct. 307, 163 L. Ed. 2d 265, 2005 U.S. LEXIS 7117 (2005). "Where a written order does not conform to the court's oral pronouncement of judgment and sentence, the latter prevails" Tory v. State, 686 So. 2D 689 (Fla. 4th DCA1996).

This court should find that the State-court did not followed the oral pronouncement of the sentence. Here the oral pronouncement is ambiguous and does not provide a guide in which to reconcile the oral pronouncement with the written order(s), which the petitioner should demonstrate that the those sentences run concurrently with each other. "Any ambiguity or situations in which... language is susceptible to differing constructions must be resolved in favor of a person charged with an offense" State v. Byars, 823 So. 2d 740, 742 (Fla. 2002).

"Indeed, our system of jurisprudence is founded on a belief that everyone must be given sufficient

notice of those matters that may result in a deprivation of life, liberty, or property." Perkins, 576 So. 2d at 1312; see also United States v. Santos, 553 U.S. 507, 514, 128 S. Ct. 2020, 170 L. Ed. 2D 912 (2008) (plurality opinion) ("Under a long line of our decisions, the tie must go to the defendant. The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them."); State v. Winters, 346 So. 2d 991, 993 (Fla. 1977). Which The Sentence imposed should be interpreted in favor of the defendant as "concurrent".

As such, "This sentence is invalid...the written sentence did not comport with the trial court's oral pronouncement of sentence" Swiggum v. State, 843 So. 2d 1041; Fla. App. LEXIS 6740 (Fla. 2nd DCA 2003). Generally, when the trial court's written order is inconsistent with its oral pronouncement, the oral pronouncement prevails. Cunningham v. State, 818 So. 2d 685, 686 (Fla. 2d DCA2002). "A court's oral pronouncement of sentence controls over the written document. See, e.g., State v. Jones, 753 So.2d 1276, 1277 (Fla. 2000); State v. Williams, 712 So.2d 762 (Fla. 1998). Where a sentence that is pronounced orally and unambiguously conflicts with the written order of judgment, the oral pronouncement controls. United States v. Ridgeway, 319 F.3d 1313, 1315 (11th Cir. 2003).

II.- Violation of Double Jeopardy Clause Claim:

"Because the oral pronouncement of sentencing controls. To hold otherwise does serious harm to the double jeopardy principles which have guided our courts for centuries...Once a sentence has been imposed and the person begins to serve the sentence, that sentence may not be increased without running afoul of double jeopardy principles. See, e.g., Lippman v. State, 633 So.2d 1061(Fla. 1994); Clark v. State, 579 So.2d 109(Fla. 1991). To do so is a clear violation of the Double Jeopardy Clause, which prohibits multiple punishments for the same offense. See State v. Wilson, 680 So.2d 411, 413 (Fla. 1996).

" The Fifth Amendment guarantee against double jeopardy is enforceable against the states through the Fourteenth Amendment... the guarantee against double jeopardy consists of three separate constitutional protections: "It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072,

23 L. Ed. 2D 656 (1969).

Here, the Trial Court brought petitioner back to court and resentenced her on February 27, 2020 to a more onerous sentence (as "consecutive") after she had begun serving the original sentence. "The trial court's actions violated petitioner's constitutional right against double jeopardy. "Florida's sentencing procedures prevent subsequent imposition of new terms to a previously announced sentence." Ashley v. State, 850 So. 2d 1265; Fla. LEXIS 13 (Fl. 2003).

As the Florida Supreme Court concluded in State v. Johnson, 483 So. 2d 420, 423 (Fla. 1986), "the failure to timely raise a double jeopardy claim does not, in and of itself, serve as a waiver of the claim." "A double jeopardy claim may be raised in a post-conviction relief proceeding. 483 So. 2d at 422-23; see also, e.g., Hudson v. Louisiana, 450 U.S. 40, 101 S. Ct. 970, 67 L. Ed. 2D 30 (1981) (double jeopardy claim not waived even though not raised until federal habeas corpus proceedings were filed at the conclusion of all appeals)...Once a sentence has been imposed and the person begins to serve the sentence, that sentence may not be increased without running afoul of double jeopardy principles. See, e.g., Lippman v. State, 633 So.2d 1061 (Fla. 1994).

WHEREFORE, This honorable court should find as a matter of right, that the Trial Court departed of the oral pronouncements of the sentence imposed, being it a clear violation of the Double Jeopardy Clause. The trial court also should to conform to the court's oral pronouncements of the sentence, since that the court did orally announce this sentence as "concurrent". Which the petitioner as a juvenile offender sentenced under s. 775.082(1)(b), was entitled to a review of her sentence after 15 and 25 years in custody.

Ground No. 3.-

Under fourteenth amendment, it is unconstitutional to find a juvenile offender "not amenable to rehabilitation or supervision" where the judge alone found the existence of an aggravating circumstance as an element of a separate and aggravated offense, when that juvenile had a sentence review that is for the reason of proving her rehabilitation.

Statement of Facts:

(a) Sentence as juvenile offender upon the Case No.95-CF-011398-C:

On November 12, 1996 the appellant was sentenced to Life in Prison as juvenile offender by a non-capital crime upon the Case No.95-CF-011398-C, the judge alone to find the existence of an aggravating circumstance as an element of a separate, and aggravated offense that may increase a defendant's sentence were written in the sentence score-sheet, as follow:

- "Defendant is not amenable to rehabilitation or supervision, as evidence by an escalating pattern of criminal conduct as described in s. 921.001(8)."
- "Primary Offense is scored at level 7 or higher and the defendant has been convicted of one or more offense that scored, or would have scored, at an offense level 8 or higher.

On November 12, 1996, the appellant was sentenced based on a Prior Record, as **"Grand Theft"** and **"various"**, which the appellant never had been convicted, which the trial court erred finding aggravating circumstances. The defendant has not been convicted of one or more offense that scored, or would have scored, at an offense level 8 or higher and a conviction was not present at the time of the first sentence as a "prior record", in the case No. 95-CF-011398-C.

On November 12, 1996, the trial court did not provide written reasons for departure from sentencing guidelines as required by Fla. R. Crim. P. 3.701(d)(11). the trial court violated defendant's due process rights by considering a subsequent arrest without conviction during sentencing for the primary offense. In this case, a prejudice was established by the violation of appellant's XIV Amendment Right guarantee by the United States Constitution, because the appellant had not a prior sentence and had not been arrested by a "Various crime".

On October 25 2013, The appellant was resentenced by the trial Court, the court adopted and incorporated by reference the same "aggravating circumstances" previously imposed in the sentence

imposed on November 12, 1996. Defendant had not been convicted of two or more felonies within the requisite time period and that those convictions and had been pardoned or set aside, any and all prior Juvenile records as stated in the sentencing guideline of the case No. Case No.95-CF-011398-C. The Court changed her sentence to 40 years in prison, which she has already served.

(b) Sentence as juvenile offender upon the Case No.95-CF-011397-C:

Petitioner originally began serving her sentence as a life sentence in the Case No.95-CF-011397-C which was incorporated the error of the first sentence in the Case No.95-CF-011398-C. On December 19, 1996, The lower courts erred in considering petitioner's prior convictions as a reason for departing from the guidelines because in doing so, the lower courts were counting the convictions twice. The judge alone to find the existence of an aggravating circumstance and found again, as follow:

- "Defendant is not amenable to rehabilitation or supervision, as evidence by an escalating pattern of criminal conduct as described in s. 921.001(8)."

On May 15, 2015, the Florida Second District Court of Appeal, Reversed and remanded with directions "that it conduct a resentencing proceeding for Barthel's homicide conviction, applying the principles of chapter 2014-220, Laws of Florida" because that sentence became illegal when the Supreme Court issued Graham and the Petitioner successfully sought relief. However, her sentence was unconstitutional not because of the length of her sentence, but because it did not provide her a meaningful opportunity for early release based on maturation and rehabilitation. See LOLITA BARTHEL v. STATE OF FLORIDA 163 So. 3D 1224, Fla. App. LEXIS 7241; 40 Fla. L. Weekly D 1139 (Fla. 2ND Dca 2015).

On February 25, 2020 The Trial court corrected the sentence errors in the Case No. Case No.95-CF-011397-C and upon "Written finding for Departure Sentence", the judge alone to find the existence of an aggravating circumstance and imposed a re-sentence that incorporate and adopt the first sentence on the Case No.95-CF-011398-C, which was also incorporate the error, as an element of a separate, aggravated offense that may increase a defendant's sentence written in the sentence score-sheet, the Trial Court ordered as follows:

"Ordinarily, Defendant would be entitled to a guidelines sentence on Counts Two and Three.

However after, hearing the testimony, evidence and argument presented at the resentencing hearing and reviewing the trial transcript and court file, the court reiterates its finding that an upward departure sentence on counts two and three is appropriate. In making this finding , the court hereby adopts the order rendered by the original sentencing court justifying the upward departure sentence." (See Written finding for Departure Sentence's order filed, Feb. 25,2020).

On February 25, 2020, the petitioner also was resentenced. The trial court found in the resentencing hearing, as follows:

(1) "There was no specific finding in the verdict for the jury to let us know that they found that she was the actual shooter. So. I simply could not make that conclusion" (See Re-sentencing transcripts Pag. 4, L-6).

(2) "I have read the testimony of the co-defendants who testified. And I think it was very compelling testimony, and the had the jury been given that opportunity , they may have – probably would have made that finding. But they did not and so, therefore, I couldn't go the other route that the State had asked me to go." (See Re-sentencing transcripts Pag. 4, L11).

Assignment of Error:

"Under Florida law, the maximum sentence a capital felony may receive on the basis of a conviction alone is life imprisonment... Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional. (Sotomayor, J., joined by Roberts, Ch. J., and Scalia, Kennedy, Thomas, Ginsburg, and Kagan, JJ.), Hurst v. State, 577 U.S. 92; 136 S. Ct. 616; 193 L. Ed. 2D 504 (2016). It "was a substantive decision that applied retroactively to a prisoner's case on collateral review...as it affected the reach of the underlying statute rather than the judicial procedures by which the statute was applied" Welch v. United States, 578 U.S. 120, 136 S. Ct. 1257, 1264, 194 L. Ed. 2D 387 (2016).

And the Suspension Clause-as demonstrated by Bailey, 516 U.S. 137, and Bousley, 523 U.S. 614-requires that this retroactivity applies with equal force to cases on collateral review. Indeed, the Supreme Court has explained that "[a] conviction or sentence imposed in violation of a substantive rule

is not just erroneous but contrary to law and, as a result, void." Montgomery v. Louisiana, 577 U.S. 190, 136 S. Ct. 718, 731, 193 L. Ed. 2D 599 (2016).

"Typically the statutory aggravating circumstances which are present must outweigh mitigating factors... a statutory mitigating circumstance (as here, is) that the defendant was an accomplice in a capital felony committed by another person and (her) participation was relatively minor" Enmund v. Florida, 458 U.S. 782, 102 S. Ct. 3368, 73 L. Ed. 2D 1140 (1982) (felony murder where defendant did not kill, attempt to kill, or intend to kill).

"None of the written reasons advanced by the trial court for the departure sentence are permissible... a trial court's written finding that a guideline sentence was inadequate punishment due to defendant's criminal history was also an improper reason to depart" See Scott v. State,508 So. 2D 335 (Fla. 1987). "Reasons that were ambiguous, unclear, and already factored into defendant's original sentencing decision, was not harmless error.... the trial court's reliance on three impermissible reasons for departing from the sentencing guidelines... thereby constituting reversible error and not harmless error." Burch v. State, 462 So. 2D 54 (Fla. 1st DCA), approved on other grounds, 476 So. 2D 663 (Fla. 1985).

"It is unconstitutional to remove from the jury the assessment of facts that alter the congressionally prescribed range of penalties to which a defendant is exposed...any fact (other than prior conviction) that increased the maximum penalty for a crime had to be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt" Jones v United States, 526 US 227, 143 L Ed 2d 311, 119 S Ct 1215 (1999).

I.- A sentence in violation of the Sixth Amendment constitutes error that is plain:

The trial court erred finding a juvenile offender by a non-capital crime upon the Case No.95-CF-011398-C, "not amenable to rehabilitation" when the judge alone to find the existence of an aggravating circumstance, "Because the trial court did not provide written reasons for departure from sentencing guidelines as required by Fla. R. Crim. P. 3.701(d)(11). The Florida supreme court found that although the trial court appeared to have given petitioner's sentence thoughtful consideration, the trial court did not actually write out reasons for departure as required by the sentencing guidelines" Barbera v. State, 505 So.2d 413 (Fla. 1987), and it also receded from Pope v. State, 561 So. 2D 554

(Fla. 1990)) (reversing and remanding for resentencing "[b]ecause the sentences imposed in this case amounted to departure sentences without written reasons"). "Because Ch. 921, Fla. Stat., was unambiguous and specifically stated that prior arrests and convictions, not subsequent arrests and their related charges, were appropriate sentencing considerations, the trial court violated defendant's due process rights by considering a subsequent arrest without conviction during sentencing for the primary offense" Norvil v. State, 191 So. 3D 406 (Fla. 2016).

The petitioner was resentenced on February 25, 2020 which apply retroactively to Petitioner's case, the decision in Hurst v. State, 577 U.S. 92, 136 S. Ct. 616, 193 L. Ed. 2d 504(Fla. 2016), which the trial court erred finding: "'Defendant is not amenable to rehabilitation or supervision" as a written reasons for departure from sentencing guidelines, rendering an ambiguous and contradictory order.

"The trial court departed from the presumptive guidelines sentence...the lower courts erred in considering petitioner's prior convictions as a reason for departing from the guidelines because in doing so, the lower courts were counting the convictions twice. By counting the convictions twice, the lower courts were ruling contrary to the spirit and intent of the guidelines" Hendrix v. State, 475 So. 2D 1218 (Fla. 1985) which Prejudice the subsequent proceedings. The court should did not agree with this holding, however, because the clear directives of Fla. Stat. ch. 921.001(4)(a) held that the guidelines were applicable to all felonies, with certain exceptions not applicable to the case at hand, thus precluding any such departure. Moreover, ch. 775.084 could not remain viable as a reason for departure in light of another previous decision by the court. Whitehead v. State, 500 So. 2D 544 (Fla. 1986). This U.S. Supreme Court also held: "resentencing on the same charge to be a violation of the double jeopardy clause of the U.S. Constitution," citing Ex Parte Lange, 85 U.S. 163, 21 L. Ed. 872 (1874), United States v. Benz, 282 U.S. 304, 51 S. Ct. 113, 75 L. Ed. 354 (1931).

Under Florida Law, a juvenile offender sentenced under s. 775.082(1)(b)(2). "A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c)". (3.) The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(a) or (c). Also The Section 921.1402(2)(c) Fla. Stat., established that: (c) A juvenile offender sentenced to a term of more than 15 years under s. 775.082(1)(b)2., s. 775.082(3)(a)5.b., or s. 775.082(3)(b)2.b. is entitled to a review of his or her sentence after 15 years.

Which "a sentence in violation of the Sixth Amendment constitutes error that is plain. United States v. Austin, 133 Fed. Appx. 271, 2005 U.S. App. LEXIS 9802 (6th Cir.), cert. denied, 546 U.S. 922, 126 S. Ct. 307, 163 L. Ed. 2d 265, 2005 U.S. LEXIS 7117 (2005). "Jeopardy had attached and the court was without power to modify the sentence" Troupe v. Rowe, 283 So.2d 857 (Fla. 1973). When a finding of fact alters the legally prescribed punishment so as to aggravate it, the fact necessarily forms a constituent part of a new offense and must be submitted to the jury....The trial court committed harmful Alleyne error" State vs. Manago, 375 So. 3d 190; 2023 Fla. LEXIS 1769 (Fla. 2023) and a "Fundamental error may be raised at any time" Hamm v State, 380 so2d 1101(Fl. 2nd DCA) rev den. 383 s02d 1203 (Fl 1980).

II.- The cumulative error doctrine applies:

"The cumulative error doctrine provides that an aggregation of non-reversible errors (i.e., plain errors failing to necessitate reversal and harmless errors) can yield a denial of the constitutional right to a fair trial, which calls for reversal." United States v. Capers, 708 F.3d 1286, 1299 (11th Cir. 2013). "Because the trial court did not make findings to justify an upward departure from the guidelines sentence and the court could not conclude from the record that the trial court would have done so but for its reliance on the improper scoresheet" Sampson v. State, 343 So. 3d 1241(3rd Dca 2022) And if the petitioner is "in the custody of (Warden of the Florida Department of Correction), under an illegal sentence pronounced on (her)... the petitioner, may be discharged from custody" Ex Parte Lange, 85 U.S. 163, 21 L. Ed. 872 (1874).

WHEREFORE, This honorable Court should find that by counting the convictions twice, the petitioner's sentence does not provide her an opportunity to obtain early release based on a demonstration of maturity and rehabilitation before the expiration of the imposed term. The lower courts erred when the judge alone to find the existence of an aggravating circumstance. It is unconstitutional as an enhancement to find a juvenile offender not amendable to rehabilitation when that juvenile had a sentencing review that is for the reason of proving rehabilitation, under the unique circumstances of the case, the relief requested would be granted.

Ground 4.-

Under the Fifth Amendment, It is unconstitutional to question a juvenile without given them the option to leave the interview at anytime or permission to call a parent and which the coerced Post-arrest silence was used by prosecution as evidence of guilt.

Statements of Facts:

On October 14 1996 and September 23 1996, the petitioner was called to testify, prior to this indictment, in criminal proceedings. The prosecution used the coerced post-arrest silence, as follow:

(1) TRIAL TRANSCRIPTS STATEMENTS OF THE DETECTIVE ROBERT BOSS:

Q: "She had previously been interviewed by your department on August the 23rd?"

A: "Yes" (See TT pag 82, L15).

Q: "Okay, on the way to the police station, did you and the detective Fulmer take any particular route?

A: "We also drove past there and Mrs. Menendez's house... to see what kind of reaction there would be from the defendant" (TT page 74, L-5).

(2) TRIAL TRANSCRIPTS STATEMENTS PROSECUTION'S CLOSING ARGUMENTS:
"You see, that didn't happen so she didn't testify to it Common sense" (TT pg 332-L 23)

(3) TRIAL TRANSCRIPTS STATEMENTS JURY INSTRUCTIONS:
"Not take the stand to give testimony during the trial" (TT pag 369-L22

(4) JURY INSTRUCTION "DEFENDANT NOT TESTYING"

Assignment of Error:

The 5th Amendment here involved reads: ``No person . . . shall be compelled in any criminal case to be a witness against himself." Here, "The Fourteenth Amendment makes the Fifth Amendment privilege against self-incrimination applicable to the states" Bram v United States, 168 US 532, 543-544 [42 L ed 568, 573, 574, 18 S Ct 183]. And where "the individual's first confession had been coerced; the admission at a state criminal trial, in violation of the Fourteenth Amendment's due process clause, of a defendant's involuntary confession is subject to harmless-error analysis; and the admission of the individual's first confession was not harmless under the particular circumstances" Arizona v Fulminante, 499 US 279, 113 L Ed 2d 302, 111 S Ct 1246 (1991).

I.- The conviction was obtained in violation of the safeguards mandated by the Miranda.

"The constitutional privilege against self-incrimination protects a state witness against incrimination under federal as well as state law... A grant of immunity under any statute must be coextensive with that protection under the Fifth Amendment. Murphy v. Waterfront Comm., 378 U.S. 52, 78, 12 L. Ed. 2d 678, 84 S. Ct. 1594 (1968). See New Jersey v. Portash, 440 U.S. 450, 59 L. Ed. 2d 501, 99 S. Ct. 1292 (1979). Thus, a promise of use immunity is binding and the State is "prohibited from making any such use of compelled testimony and its fruits." Murphy, 378 U.S. at 79. (Emphasis supplied). [A] state witness may not be compelled to give testimony which may be incriminating...unless the compelled testimony and its fruits cannot be used in any manner...in connection with a criminal prosecution against him" Kastigar v. United States, 406 U.S. 441, 453, 32 L. Ed. 2d 212, 92 S. Ct. 1653 (1972).

Under Florida law, "absolute immunity must be afforded to any act occurring during the course of a judicial proceeding, regardless of whether the act involves a defamatory statement or other tortuous behavior ... so long as the act has some relation to the proceeding." Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co., 639 So. 2d 606 (Fla. 1994). See also Florida Evergreen Foliage v. E.I. DuPont De Nemours and Co., 470 F.3d 1036, 1042 (11th Cir. 2006) (same). The privilege applies to statutory actions as well. Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole, 950 So. 2d 380, 381 (Fla. 2007). On August 23, 1996, the appellant was called to testify by the Office of the Statewide Prosecution, and "that immunity extends whether the investigation is by a state attorney or the OSP" Grant v. State, 832 So.2d 770 (Fla. 5th DCA2002), cert. denied, 538 U.S. 980, 123 S. Ct. 1808, 155 L. Ed. 2d 670 (U.S. 2003).

Section 914.04 automatically grants use immunity to one who testifies under the circumstances delineated therein. The statute provides that immunity is granted when a person is called before "any court having felony trial jurisdiction, grand jury, or state attorney upon investigation, or trial . . . .914.04, Fla. Stat (1995). "By its very plain meaning, the statute is self-executing. The statute automatically grants use ...immunity to one who testifies under the circumstances it delineates. There is no requirement that a person must invoke the privilege against self-incrimination in order to be granted immunity." Jenny v. State, 447 So. 2d 1351(Fla. 1984).

Here the Co-defendant, Quontesha Worlds testified and it later is discovered that (the crime was executed) by the Co-defendant Quontesha Worlds, which the statute provides the witness with complete immunity from prosecution for the robbery concerning which (she) testified, under the Equal Protection Clause, the petitioner is entitle to the same relief as ordered in, State ex rel. Hough v. Popper, Fla.1973, 287 So.2d 282.

- According to Prosecution's Statements during the Closing Arguments:
- "The temple Terrace Police picked up on the 23rd, and they got nothing on her they just learned about her name that day, and this woman is so smart and so conniving she confesses she confesses she puts herself right there in that house " (See TT, Pa 331, L10) Regarding to Statement gave by the Co-Defendant Quontesha Worlds.

The petitioner having been seized in an unconstitutional search, executed in her High School, was compelled to provide testimony at the age of 17 years without the presence of a Lawyer or a adult. From these interview, The petitioner as juvenile requests her parents during the interview, treat the request the same as one for legal counsel, where the petitioner as a juvenile was not read her Miranda warnings for non-custodial interview, since that the interview was to take place after the petitioner was taken from the school and coerced to present testimony in front of the victim's house, and as a child she was not free to leave. Acting on the police's advice, the investigators told her that she did not need to contact Petitioner's parents before the interview. Rather, Petitioner indicated that she would contact them. After her arrest, petitioner was not given warnings in line with Miranda v Arizona, 384 US 436, 467-473, 16 L Ed 2d 694, 86 S Ct 1602 (1966)

The petitioner alleged a "viable claims under Fifth Amendment where police officer seized child without probable cause and then allegedly coerced incriminating statements that were later used against child in criminal proceeding; upon the "use of coerced statements at trial was not necessary for child to assert claim for violation of his rights under Fifth Amendment. Stoot v. City of Everett, 582 F.3d 910, 2009 U.S. App. LEXIS 20862 (9th Cir. 2009), cert. denied, 559 U.S. 1057, 130 S. Ct. 2343, 176 L. Ed. 2d 577, 2010 U.S. LEXIS 3013 (2010). Even, "Juvenile defendant' s Fifth Amendment rights were violated because (she) was (17), (she) was summoned to principal's office and questioned by officer from sheriff's department regarding serious allegations...(she) was not told that (she) was free to leave, and someone in defendant's position would not have believed that (she) was at liberty to terminate interrogation and leave; defendant was in custody for purposes of Miranda protections. State v. C.H. (In

re C.H.), 277 Neb. 565, 763 N.W.2d 708, 2009 Neb. LEXIS 58 (Neb. 2009). "Just as adult defendants following indictment may not waive their Miranda rights absent counsel,...at every critical stage of proceedings juveniles may not waive their Miranda rights except in presence of and after consultation with counsel. State ex rel. P.M.P., 200 N.J. 166, 975 A.2d 441, 2009 N.J. LEXIS 811 (N.J. 2009). "Restriction on the exercise of federal... jurisdiction does not extend to a state prisoner's claim that his or her conviction rests on statements obtained in violation of the safeguards mandated by the Miranda decision" Withrow v. Williams, 507 U.S. 680, 692, 113 S. Ct. 1745, 123 L. Ed. 2D 407 (1993).

"Whether a person be compelled to supply evidence against himself by word of mouth...tending to incriminate him...In either case such person is compelled to be an unwilling witness against himself in a criminal proceeding...In either case the constitutional guarantee against one's being compelled to give evidence against himself is violated. Gouled v. United States, 255 U.S. 298, 41 S. Ct. 261, 265, 65 L. Ed. 647....a person from whom such evidence had been obtained was not to be tried or punished on an information predicated on such evidence, and that prohibition restrained the trial court from an excess exercise of jurisdiction....evidence before the grand jury in a criminal case (See Case No. 95-CF-011398-C) had been illegally obtained" STATE ex rel. BYER et al. v. WILLARD54 So. 2d 179 (FL.1951).

II.- The defendant not to testify or to remain silent is constitutional error

'Fifth Amendment, also forbids comment by prosecution on accused's silence that such silence is evidence of guilt; hence, state may not validly apply to state criminal prosecution state constitutional provision that in any criminal case, whether defendant testifies or not, his failure to explain or to deny by his testimony any evidence or facts in case against him may be commented upon by counsel, and may be considered by court or jury. Griffin v. California, 380 U.S. 609, 85 S. Ct. 1229, 14 L. Ed. 2d 106, 5 Ohio Misc. 127, 1965 U.S. LEXIS 1346, reh'g denied, 381 U.S. 957, 85 S. Ct. 1797, 14 L. Ed. 2d 730, 1965 U.S. LEXIS 1026 (1965). "It was held that the error could not be labeled harmless in view of the facts that the prosecutor's comment was extensive, (upon Jury Instructions) that an inference of guilt from silence was stressed to the jury as a basis of conviction, and that there was evidence which could have supported acquittal...Due process is violated by prosecutor's comment, in state criminal trial, on accused's failure to testify. Anderson v. Nelson, 390 U.S. 523, 88 S. Ct. 1133, 20 L. Ed. 2D

81(1968). "Both direct and indirect comments as to accused silence which undermine his Fifth Amendment rights will invalidate conviction" United States v. Garcia, 655 F.2d 59, 1981 U.S. App. LEXIS 17984 (5th Cir. 1981).

Under State Law, "Any comment, direct or indirect, by anyone at trial on the right of the defendant not to testify or to remain silent is constitutional error and should be avoided...Florida has long followed a per se reversal rule when a prosecutor comments on a defendant's failure to testify. Gordon v. State, 104 So.2d 524(Fla. 1958); Trafficante v. State, 92 So.2d 811(Fla. 1957); Way v. State, 67 So.2d 321(Fla. 1953); Rowe v. State, 87 Fla. 17, 98 So. 613(1924) 491 So. 2d 1129, 1138 (Fla. 1986). "Florida law prohibits any comment to be made, directly or indirectly, upon the failure of the defendant to testify... Even if the trial judge had stopped the state attorney and told the jury not to consider the failure of the defendants to testify, it would not have cured the error." Trafficante v. State, 92 So.2d 811 (Fla.1957).

Here, "The use of the defendants' post-arrest silence in the manner described above violated due process.... Post-arrest silence following such warnings is insolubly ambiguous; moreover, it would be fundamentally unfair to allow an arrestee's silence to be used to impeach an explanation subsequently given at trial after he had been impliedly assured, by the Miranda warnings that silence would carry no penalty."Doyle v Ohio (1976) 426 US 10, 49 L Ed 2d 91, 96 S Ct 2240, under such a rule, the continuous and repeated references in the instant case to the defendants' failure to testify and to the inferences which could be drawn there from did not constitute harmless error" Chapman v. California, 386 U. S. 18, 87 S. Ct. 824, 17 L. Ed. 2D 705.

The Trail Court had not Jurisdiction to Imposed a Judgment or Sentence in the Above-Styled Cause., because "a claim of immunity was of a fundamental nature and could be raised post-conviction....and immunity precludes the exercise of a court's jurisdiction over a person granted immunity", Meek v State, 566 So. 2d 1318 (Fl. 4th Dca 1990). "The judgment of conviction is void for failure of the trial court to afford to the defendant the safeguards guaranteed under the Federal Constitution. Betts v. Brady and Wade v. Mayo, supra; Uveges v. Com. of Pennsylvania, 335 U.S. 437, 69 S. Ct. 184, 93 L. Ed. 127, and also is Void, because the court acted without jurisdiction, "It has further been held that the jurisdiction of a court to render a judgment depends upon the due observance

of the constitutional rights of the accused." Sneed v. Mayo, Fla.1953, 66 So.2d 865, which this claims should be raised at any time. "Jurisdictional Issues is a Fundamental error and may be raised at any Time" CW v State, 637 So2d 2829 (Fl 2nd Dca 1994) Page v State, 376 S02d 901 904 (Fla 2nd Dca 1979) Wesley v State, 373 So2d 1093, 1094 (Fla 3rd Dca 1979).

WHEREFORE, This Honorable Court should find also that petitioner's constitutional rights to the due process were violated, and the trial Court erred denying Defendant's Motion for Review the Sentence Imposed in the Case No. 95-CF-011397-C, Under the fourteenth and fifth Amendment, which was unconstitutional to question a juvenile without given them the option to leave the interview at anytime or permission to call a parent and which the coerced Post-arrest silence was used by prosecutor as evidence of guilt.

Ground 5.-

Under the Sixth Amendment, the petitioner was denied an effective assistance of counsel in her resentencing hearing, which the counsel designated did not alleged the aggravating circumstance, as unconstitutional and in violation of Sixth Amendment right for obtaining witnesses in her favor.

Statements of Facts:

On August 25, 2004, The Second District court of Appeal of Florida, Reversed and remanded the petitioner's case, See Barthel v. State, 882 So. 2d 1054; 2004 Fla. App. LEXIS 12513; 29 Fla. L. Weekly D 1952 Case No. 2D03-1625, and held: "appellant was entitled to the benefit of the controlling law in effect at the time of appeal... that her trial counsel provided ineffective assistance because he did not call a potential alibi witness to testify at trial". In remand The trial Court denied the petitioner's claim and her post-conviction motion.

On February 25, 2020 The Trial court corrected the sentence errors in the Case No. Case No.95-CF-011397-C and upon "Written finding for Departure Sentence", the judge alone to find the existence of an aggravating circumstance, which adopted the previous sentencing errors, according to the following statements the petitioner was deprived of argue the prejudice caused by the Violation of Sixth Amendment right for obtaining witnesses in her favor, according to:

(1) TRIAL TRANSCRIPTS STATEMENTS PROSECUTION'S CLOSING ARGUMENTS:

"This woman is so smart and so conniving she confesses she confesses" (See TT, Pa 331, L10) Regarding to Statement given by the Co-Defendant Quontesha Worlds.
"Ms. Bowman pick out this person as having the gun". (TT pag 332- L,7). The trial did not allow Ms Bowman testify...which was a sustained objection:
Q: "This is Ms Bowman's Testimony, I guess?"
A: " I'm inclined to sustain the objection Let's shut it down"(TT pag. 235,L 15)
"The other thing they never brought up with all these statements is whether or not the defendant got the gun from Chris Ellis Well, number one, who cares? She said before that Chris gave it to her" (TT pag 334, L20)..."She 's telling you the absolute truth" (TT pag 333, L13)

(2) TRIAL TRANSCRIPTS STATE'S WITNESS, BETTY TIMMONS:

"The police came and talked to you...and tried to link your case with another case? A: Yes , sir" (TT. Pag. 227-L,2)"... "the person that was holding the gun was a male? A: Yes, sir, at the beginning" (TT. Pag 226 -L.3)

(3) TRIAL TRANSCRIPTS STATE'S WITNESS, ANNIE COCHRAN:

"You could identify anyone? A: That's what I said, I couldn't identify anybody. (TT.234, L13)...

Did One of them have a weapon? A: Yes, ma'am, one of them did (TT. Pag 233-L21)

(4) TRIAL TRANSCRIPTS STATE'S WITNESS, EFRAIN CUEVAS:
Quontesha Worlds... Q:"She began telling Chris where to go? A: "Yes"
"Quontesha told Chris to drive" (TT. Pa. 241, L-18).

According to State's witnesses testimony, the State did not prove the elements of the crime, the the petitioner was a person who actually kill, intend to kill, or attempt to kill the victim. and according to trial court order:

> " There was no specific finding in the verdict for the jury to let us know that they found that she was the actual shooter. So I simply could not make that conclusion... They may have – probably would have made that finding. But they did not and, so. Therefore, I couldn't go the other route that the State asked me to go".(See Transcripts Re-sentencing pag. 4- L6).

CAUSE:

I.- Failure to allege the aggravating circumstance, as unconstitutional:

Some objective factor external to the defense impeded petitioner's efforts to comply with the State's procedural rule. Counsel's ineffectiveness in failing properly to preserve a claim for state-court review will suffice as cause, since that "Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional." Hurst v. State, 577 U.S. 92; 136 S. Ct. 616; 193 L. Ed. 2D 504 (2016). The petitioner was denied an effective assistance of counsel in her resentencing hearing, which the counsel designated did not allege the aggravating circumstance, as unconstitutional. In Ex parte Siebold, 100 U.S. 371, 25 L. Ed. 717(1880), the Court addressed why substantive rules must have retroactive effect regardless of when the defendant's conviction became final. At the time of that decision and held:

> "A conviction under an unconstitutional law is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But . . . if the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes." Id., at 376-377, 25 L. Ed. 717.

Here, during the resentencing hearing, the "attorney simply failed to recognize a valid defense, in which instance ineffective assistance may have been provided...(under) the application of a facially unconstitutional statute as established is fundamental error....Fundamental error may be raised at any time, including in a motion for post-conviction relief." Bell v. State, 585 So. 2d 1125; 1991 Fla. App. LEXIS 9058 (Fla. 2nd Dca 1991).

II.- Violation of Sixth Amendment right for obtaining witnesses in her favor:

During the resentencing hearing, the "attorney simply failed to recognize a valid defense since that, "It was held that an accused's Sixth Amendment right to have compulsory process for obtaining witnesses in his favor was so fundamental that it could be considered incorporated in the due process clause of the Fourteenth Amendment" Washington v. Texas, 388 U.S. 14, 22, 87 S. Ct. 1920, 18 L. Ed. 2D 1019 (1967). Here, the petitioner was prejudice, as follow:

PREJUDICE:

(1) The petitioner was deprived of allege a Void judgment and sentence imposed where the Trial Court lacked Jurisdiction in Violation of The V and XIV Amendment and Due Process Clause of the United States and Art 1 Section 9 of the Florida Constitution. The Trial Court had not Jurisdiction to Imposed a Judgment or Sentence in the Above-Styled Cause., because "a claim of immunity was of a fundamental nature and could be raised post-conviction....and immunity precludes the exercise of a court's jurisdiction over a person granted immunity", Meek v State, 566 So. 2d 1318 (Fl. 4th Dca 1990) and being it an "unavailability of a legal basis for a claim" at time, which should be raised at any time. "Jurisdictional Issues is a Fundamental error and may be raised at any time" CW v State, 637 So2d 2829 (Fl 2nd Dca 1994) Page v State,-376 S02d 901 904 (Fla 2nd Dca 1979) Wesley v State, 373 So2d 1093, 1094 (Fla 3rd Dca 1979), which should be alleged under The F.R.C.P 3.850(3) provisions.

(2) Reasonable Jurors could debate facts that petitioner alleged cognizable violation Due Process Clause, because the evidence was used to establish bad character or propensity of the accused:

- According to State witness and Victim, Betty Timmons' testimony:
- Q: At some point in the time Mrs Timmons...The police came and talked to you...and tried to link your case with another case?
- A: Yes , sir, ...(TT. Pag. 227-L,2)

"Evidence of a police officer's encounter with defendant near a location in which prior robberies had occurred was improperly admitted under Fla. Stat. 90.404(2)(a) in defendant's trial for strong arm robbery and burglary with assault as... the State offered the officer's testimony to place defendant at the scene and to connect (her) with the (gun), (3) the erroneous admission was presumed prejudicial, (4) the State argued that the evidence was the "clincher", and (5) the error was not harmless beyond a reasonable doubt." Valley v. State, 860 So.2d 464, 2003 Fla. App. LEXIS 16186 (Fla. 4th DCA2003).

(3) Reasonable Jurors could debate facts that petitioner alleged cognizable violation Due Process Clause, because the evidence used did not establish factual finding in the identification of the defendant:

- According to the Victim and State witness, Betty Timmons' testimony:
- Q: And you did think that the person that was holding the gun was a male?
- A: Yes, sir, at the beginning (TT. Pag 226 -L.3)
- Q: Do you recall the police coming to your residence and showing a photo-pk before they showed you other ones?
- A: They never told me names that went with those pictures (TT,228 L,13)

- According to the Victim and State witness, Annie Cochran's testimony:
- Q: Later did you tell the police you Could Identify anyone?
- A: That's what I said, I couldn't identify anybody. (TT.234, L13)

A Harmful error occurred during closing arguments, the State told the jury that if it was not sure that it was (the appellant) in the photograph, it should "listen to Ms. Cohran" In addition, the State argued, "Ms. Timmons knows that's her." "Since identification was the contested focus of the trial, we cannot say that the error was harmless beyond a reasonable doubt". See Goodwin v. State, 751 So. 2d 537, 542 (Fla. 1999).

(4) Reasonable Jurors could debate facts that petitioner alleged cognizable violation Due Process Clause, because the evidence used did not establish factual finding that the defendant have a weapon:

- According to State witness and Victim, Annie Cochran's testimony:
- Q: Did One of them have a weapon?
- A: Yes, ma'am, one of them did (TT. Pag 233-L21)

- According to prosecution's Closing Arguments, The Co-defendant had the gun:
- "The other thing they never brought up with all these statements is whether or not the defendant got the gun from Chris Ellis Well, number one, who cares? She said before that Chris gave it to her" (TT pag 334, L20)
- "She 's telling you the absolute truth" (TT pag 333, L13)

- According to Detective and State Witness Robert Boss's Statements:
- Q: "Okay, the gun that was recovered with the assistance of Mr. Ellis, what was done with that gun?
- A: "The Gun was sent off to Florida Department Law enforcement labs for Processing."

The prosecutor repeated several times that the victim was telling the truth, which was highly prejudicial because the proof against appellant rested entirely on the victim's testimony and similar fact

evidence.... Thus, (the appellant) has stated a facially sufficient claim which requires the trial court to either attach portions of the record conclusively refuting the claim, or hold an evidentiary hearing" See, e.g., Webb v. State, 757 So. 2d 608 (Fla. 5th DCA2000).

"With regard to identity, we find it difficult to imagine circumstances under which identity could be any more genuinely disputed than it was here. We have recently rejected the trial court's rationale that identity was not disputed simply because the victim identified the movant at trial. See Zollman v. State, 820 So. 2d 1059, 27 Fla. L. Weekly D1579 (Fla. 2d DCA July 10, 2002). "Similar fact evidence of other crimes, wrongs, or acts...is inadmissible when the evidence is relevant solely to prove bad character or propensity. 90.404(2)(a) (emphasis added). See e.g., Fed. R. Evid. 04(b)...Furthermore, if "comments in closing argument are intended to and do inject elements of emotion and fear into the jury's deliberations, a prosecutor has ventured far outside the scope of proper argument." Garron v. State, 528 So. 2d 353, 359 (Fla. 1988).

"A jury is entitled to draw a vast range of reasonable inferences from evidence, but may not base a verdict on mere speculation....We indicated in dicta, however, that we would also have reversed based on the prosecutor's repeated references in closing argument to alleged "eye contact" between the two co-defendants--which we characterized as "phantom evidence" that was not "adduced at trial." United States v. Teffera, 300 U.S. App. D.C. 23, 985 F.2d 1082 (D.C. Cir. 1993), as follow:

- According to prosecution's Closing Arguments, false evidence was presented to jury:
- "Ms. Bowman pick out this person as having the gun". (TT pag 332- L,7)
- The trial did not allowed to Ms Bowman testify...which was a sustained objection:
- Q: "This is Ms Bowman's Testimony, I guess?"
- A: " I'm inclined to sustain the objection Let's shut it down"(TT pag. 235,L 15).

The petitioner "had an absolute right to full and fair cross-examination, that is when new matters are introduced during closing arguments, denying recross effectively denies the opposing party the right to any cross examination on the new matter and, thus, violates the confrontation clause, "where testimonial evidence was at issue, the Sixth Amendment demanded unavailability and a prior opportunity for cross-examination; and the state's admission of the (Ms. Bowman)'s testimonial statement against the accused, despite the fact that she had had no opportunity to cross-examine her, alone was sufficient to make out a violation of the Sixth Amendment" Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2D 177 (2004)

Ground 6

Under the Fourteenth Amendment, The suppression and manipulation by the prosecution of evidence favorable to and requested by an accused violates due process where the evidence was material either to guilt or to punishment

Statements of Facts:

At the accused's state trial, the prosecution's suppression-before and at the accused's state trial on a charge of murder committed in the course of robbery and after defense counsel's request to allow her examination of the extrajudicial statements of her accomplice-of a statement of the accomplice admitting that the latter committed the actual homicide, violated the petitioners due process as guarantee by the fourteenth Amendment, according to:

(1) TRIAL TRANSCRIPTS STATEMENTS OF THE DETECTIVE ROBERT BOSS:

"Lieutenant Mishler found out that Mrs. Menendez cleaned the rug. So Lieutenant Mishler did impound the rug and he took all the lint from the dryer"

"The gun that was recovered with the assistance of Mr. Ellis"

(2) TRIAL TRANSCRIPTS STATEMENTS STATE WITNESS EXPERT GARY MC CULLOUNG:

Q: "Okay , And with respect to all of those submissions, gun, house, car, receipts from the mall, isn't true that my client, Lolita Barthel fingerprints appear on zero, none of them?

A: "That's correct" (See pag 146, L21)

(3) TRIAL TRANSCRIPTS STATEMENT STATE WITNESS EXPERT THEODORE YESHION:

"There was fingernail scrapings that were performed and hair analysis" (See TT. Pag. 72 L-11).

(4) AFFIDAVIT FOR ARREST WARRANT'S STATEMENT:

"On October 2 1995, that the senior analyst Theodore Yeshion submitted a lab report"

Assignment of Error:

1.

"The prosecution's suppression of the accomplice's confession violated the due process clause of the Fourteenth Amendment...The suppression by the prosecution of evidence favorable to and requested by an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution...The due process clause of the Fourteenth Amendment is violated by the prosecution's suppression-before and at the accused's state trial on a charge of murder committed in the course of robbery and after defense counsel's request to allow him examination of the extrajudicial statements of his accomplice-of a statement of the

accomplice admitting that the latter committed the actual homicide" Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2D 215(1963), as follow:

(1) The accomplice admitting that the latter committed the actual homicide

- According to Prosecution's Statements during the Closing Arguments:
- "she confesses she confesses she puts herself right there in that house " (See TT, Pa 331, L10) Regarding to Statement gave by the Co-Defendant Quontesha Worlds.

(2) The DNA testing will mitigate the sentence received by the movant for that crime, as follow:

- The prosecution concealed: "a lab report that indicated that tissue was present on the victims finger nail" (see arrest warrant attach). Upon, State witness expert's testimony: "There was fingernail scrapings that were performed and hair analysis" (See TT. Pag. 72 L-11).
- The prosecution knew: on October 2 1995, that the senior analyst Theodore Yeshion had submitted a lab report to the prosecution, which was not disclosed to the defense.
- The evidence was Material: "Prosecution's undisclosed statements alone suffice to undermine confidence in Appellant's conviction, we have no need to consider his arguments that the other undisclosed evidence also requires reversal under Brady" Smith v. Cain 565 U.S. 132SCT627, 181 LED2D 571 2012).

A reasonable probability existed: "There is a reasonable probability that the appellant would have been acquitted had DNA evidence demonstrated that the hair was not her" Knighten v. State, 829 So.2d 249, 2002 Fla. App. LEXIS 12836 (Fla. 2nd DCA2002). "There was a reasonable probability that defendant would have been acquitted had the DNA evidence demonstrated that the (victims finger nail) found...was inconsistent with her DNA.

The petitioner should be entitled to relief under rule 3.853, to show "how the DNA testing requested by the motion will exonerate the movant of the crime for which the movant was sentenced." In re Amendment to Florida Rules of Criminal Procedure Creating Rule 3.853 (DNA Testing), 807 So. 2d 633, 636 (Fla. 2001), where:

(a) The prosecution knew: "on October 2 1995, that the senior analyst Theodore Yeshion submitted a lab report" (see arrest warrant attach).

(b) The prosecution gave false statements to the jury during the Closing arguments: "She never said she was standing in the garage" (TT pag. 336- L,10) which are false according to the State's

witness's statement gave by the Co-Defendant Quontesha Worlds: "We went in through the garage " (TT pag, 181, L22).

(c) The prosecution concealed: "a lab report that indicated that tissue was present on the victims finger nail" according to the search warrant for arrest affidavit executed on December 8, 1995 by detective W.E. Fulmer. And according to statements of the detective Robert Boss, the evidence was manipulated:

> "Lieutenant Mishler found out that Mrs. Menendez cleaned the rug. So Lieutenant Mishler did impound the rug and he took all the lint from the dryer"

(d) The DNA testing will mitigate the sentence received by the movant for that crime; because According to Prosecution's Statements during the Closing Arguments: "she confesses she confesses she puts herself ringt there in that house " (See TT, Pag 331, L10). Regarding to Statement gave by the Co-Defendant Quontesha Worlds.

Moreover, Section 925.11(1)(b), Florida Statutes, establish: "A petition for postsentencing DNA testing under paragraph (a) may be filed or considered at any time following the date that the judgment and sentence in the case becomes final." And where, "had DNA evidence been available at time of his trial, there was a reasonable probability that he would have been acquitted; therefore the trial court erred in denying his motion (depriving review) for post conviction DNA testing brought pursuant to Fla. R. Crim. P. 3.853. Which the Trial Court decision, departed of a clearly precedent rendered by the United States Supreme Court, as it was held in Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2D 215(1963).

WHEREFORE, This Honorable Court should find also that petitioner's constitutional rights to the due process were violated, and the trial Court erred denying Defendant's Motion for Review the Sentence Imposed in the Case No. 95-CF-011397-C, where the suppression and manipulation by the prosecution of evidence favorable to and requested by an accused violates due process where the evidence was material either to guilt or to punishment.

REASONS FOR GRANTING THE WRIT

The petitioner Lolita Barthel, respectfully prays that a writ of certiorari issue to review the judgment entered by the State Courts, where the trial court's consideration of improper factors at sentencing denied the defendant of due process and constituted fundamental error. Petitioner's new sentences of life in prison with review after 15 years for the offenses of first-degree murder and armed robbery committed when she was 17 years old were improper because the petitioner argued, that her combined consecutive life-sentence violates the prohibition against cruel and unusual punishment which was not found by the oral pronouncement of her sentence. Which Florida Courts, excluding to juvenile with a consecutive sentence, that had been entitled to test the constitutionality of any such sentence, violated the equal protection clause of the Fourteenth Amendment.

The State Courts, would afford someone like Petitioner, who submits that she has evolved from a troubled, misguided youth to a model member of the prison community, being now a Mentor and teacher for the incarcerated female population, the opportunity to demonstrate the truth of Miller's central intuition, that children who commit even heinous crimes are capable of change; since that the aggravated circumstances as being abused sexually by her own step-father, and where the petitioner lacked at time of the protection required by each child of her age, was obliged by the State to return to the home of her predators, after that the custody was returned to her mother when her mother was released of imprisonment, which the petitioner used the bad and criminal friends as escape of her home's conflicts. Now the petitioner has evolved from a troubled, misguided youth to a model member of the prison community.

Miller adopts a new substantive rule that applies retroactively on collateral review to people condemned as juveniles to die in prison, and which two contradictory decisions were rendered. The first decision, The Florida Dpt. of Correction, submitted a letter pursuant section, 921.1402(3) Fla. Stat., where the petitioner was informed that was "you may be entitled to petition the court for review". Section 921.1402(3), Fla. Stat. places the requirement to notify a defendant of a his eligibility for a sentence review on the Department of Corrections".

And Second decision was rendered by the trial court on December 8, 2023 which was ordered: "Because Defendant has only served, at most, four years of the sentences in the instant case, she is not currently eligible for a sentence review"

Pursuant to section 921.1402(6), "[u]pon receiving an application from an eligible juvenile offender, the court of original sentencing jurisdiction shall hold a sentence review hearing to determine whether the juvenile offender's sentence should be modified." A court conducting a sentence review hearing "shall consider any factor it deems appropriate," and the statute enumerates nine specific factors for consideration. See generally ⊏ 921.1402(6) (providing that "the court shall consider any factor it deems appropriate, including all of the following" and then listing nine specific factors.

"A finding of "disproportionality" in sentence necessarily assumes that those being compared are similarly situated, since that the"Children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, they are less deserving of the most severe punishments" Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2D 407 (2012), "Juveniles were more vulnerable or susceptible to negative influences and outside pressures, including peer pressure, than were adults.... for a greater possibility existed that a minor's character deficiencies would be reformed." Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2D 1 (2005). In light of Peyton v Rowe, 391 US 54 20 L Ed 2d 426, 88 S Ct 1549 (1968) and other Supreme Court precedent as Jones v Cunningham, 371 US 236, 9 L Ed 2d 285, 83 S Ct 373, 92 ALR2d 675 (1963), This Court should conclude that Under the Eighth Amendment and the Equal Protection Clause, a juvenile offenders are entitled to a review of his or her sentence if they are serving consecutive sentences and "in custody under any one of them", since that the Eighth Amendment will not tolerate prison sentences that lack a review mechanism for evaluating this special class of offenders for demonstrable maturity and reform in the future because any term of imprisonment for a juvenile is qualitatively different than a comparable period of incarceration is for an adult. "Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender.... This reality cannot be ignored."); Roper, 543 U.S. at 553, 125 S. Ct. 1183 ("Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment." (citing Stanford, 492 U.S. at 395, 109 S. Ct. 2969).

The petitioner argued, that her combined consecutive life-sentence violates the prohibition against cruel and unusual punishment which was not found by the oral pronouncement of her sentence. Which Florida Courts, excluding to juvenile with a consecutive sentence, that had been entitled to test the constitutionality of any such sentence, violated the equal protection clause of the Fourteenth Amendment.

WHEREFORE, The petitioner Lolita Barthel, respectfully prays that a writ of certiorari issue to review the judgment entered by the State Courts, and find as a matter of law and of rights that:

(1) Under the equal protection clause, a juvenile offenders serving a consecutive sentence in State prison have the same rights to review their sentence that a Federal Habeas Prisoner as determined by the Supreme Court of the United States in Peyton v Rowe, 391 US 54 20 L Ed 2d 426, 88 S Ct 1549 (1968).

(2) Is unconstitutional as an enhancement to find a juvenile offender not amendable to rehabilitation when that juvenile has a sentencing review that is for the reason of proving rehabilitation.

(3) Is unconstitutional to question a juvenile without given them the option to leave the interview at anytime or permission to call a parent which the coerced Post-arrest silence was used to procure a conviction of crime, which the State-court of last resort's decision, should be reverse.

(4) Any and all the appropriate relief that this honorable court deem just and proper.

CONCLUSION

This petition for a Writ of Certiorari, should be granted.

Respectfully Submitted,

Lolita Barthel

LOLITA BARTHEL
DC# T01421