No. 24-6883

IN THE
SUPREME COURT OF THE UNITED STATES

KENNETH K. NEWSOME – PETITIONER

v.

STATE OF FLORIDA – RESPONDENT.

United State Court of Appeal for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON THE MERITS OF YOUR CASE)

APPEAL NUMBER: 21-12870

PETITION FOR WRIT OF CERTIORARI

Kenneth K. Newsome, DC# 281589
Tomoka Correctional Institution
3950 Tiger Bay Road
Daytona Beach, Florida 32124
Petitioner, Pro 'Se

QUESTION(S) PRESENTED

WHETHER A PERSON'S RIGHT TO BE "PRESUMED INNOCENT UNTIL PROVEN GUILTY ACCORDING TO LAW" AS DECLARED BY ARTICLE 14.2 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLIICAL RIGHTS IS DENIED BY CONCLUSORY ASSERTIONS OF HIS GUILT BEFORE HIS TRIAL THÅT HE "DID" UNLAWFUL ACTS.

WHETHER THE RIGHT TO NOT "BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB;" AS GUARANTEED BY THE U.S. CONSTITUTION'S FIFTH AMENDMENT. AND ARTICLE 14.7 OF THE I.C,C.P.R. IS DENIED BY RELYING ON PAST OFFENSES TO CONVICT AND SENTENCE FOR A SIMILAR CRIME.

WHETHER "LIFE" IMPRISONMENT REQUIRING THE "INDEFINITE IMPRISONMENT" FORBIDDEN BY FLORIDA CONSTITUTION ARTICLE I, SECTION 17 VIOLATES SECTION 9 "DUE PROCESS" AND U.S. CONSTITUTION AMENDMENTS V AND XIV "DUE PROCESS" AND "EQUAL PROTECTION OF THE LAWS," AND I.C,C.P.R. ARTICLES 8 AND 10 PROHIBITION AGAINST "INSTITUTIONS SIMILAR TO SLAVERY" AND THE RIGHT TO "SOCIAL REHABILITATION" PURSUANT TO THE U.N. 1956 PROCLAMATION OF HUMAN RIGHTS..

WHETHER A PERSON'S RIGHT TO BE "PRESUMED INNOCENT UNTIL PROVED GUILTY ACCORDING. TO LAW" AS DECLARED BY ARTICLE 14.2 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (I.C,C.P.R.) IS DENIED BY CONCLUSORY ASSERTIONS OF HIS GUILT BEFORE HIS TRIAL THAT HE "DID" UNLAWFUL ACTS.

LIST OF PARTIES

[**X**] 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 if all parties to the proceeding in the court whose judgment is the subject of this petition as follows:

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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

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix **A** to the petition and is

[ ] reported at _____; or,

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

[X] unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,

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

[ ] unpublished.

[ ] For cases from **state courts**:

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

[ ] reported at _____; or,

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

[ ] unpublished.

The opinion of the court appears at Appendix ____ to the petition and is

[ ] reported at _____; or,

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

[ ] unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was **February 15, 2024** (See Motion to Treat the Petition as Timely Filed)

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: **February 15, 2024**, and a copy of the order denying rehearing appears at Appendix **1A-2**.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. ____A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was. A copy of that decision appears at Appendix _____.

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

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a) for review by the Honorable Clarence Thomas as the Associate Justice allotted to the U.S. Circuit Court of Appeals for the Eleventh Circuit from which this case arises, according to rules 20.4 (b) and 22.3 of this Court; and the ruling in *Ex Parte Yarbough*, 110 U.S. 651 (1884); and the International Covenant on Civil and Political Rights, Treaty No, 999 U,T.S 171 3-23-1976, Article 2, Section 3 of which requires that:

> "Each State party to the present Covenant undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;" (Appendix B-1)

Article III, section 2 of the U. S. Constitution extends judicial power to "Treaties made, or which shall be made...", because "Treaties must be enforced," *Crow Nation v. United-States* 81 S.Ct. 238 (1935); *Fellows v. Blacksmith*, 9 S.Ct. 525 (1857). (The University Press of Florida 1993) at 48 :

> "Florida's first postwar state government was not nearly so enlightened and generous toward the blacks as were the Freedmen's Bureau and the northern churches, After the inauguration of Gov, David S. Walker in January 1866, the legislature passed harsh and discriminatory laws directed against blacks. Emphasizing such crimes as rape, insurrection, and vagrancy, these so called Black Codes represented an attempt by former slave owners to re-institute the slave system in Fact if not in law,"

and at 50:

> "The new leaders eager to keep the Freedmen 'in their place,' created an all-white unity that would place Florida squarely in the Democratic South then Forming... And now under the Democrats, blacks would begin to lose the effective exercise of such rights as they had left, including that of suffrage, The theory of white supremacy would permeate statutory, even constitutional, law. Hooded riders, such as the Ku Klux Klan members, would spread intimidation and violence in black districts. By 1887 a series of Jim Crow laws enacted by the legislature would ensure that the state's blacks would be subjugated to a status suggestive of social if not complete legal and physical bondage."

and according to Charlton W. Tebeau, *A History of Florida* (University of Miami Press 1981) at 244:

> "David S, Walker, who had been a slaveholder and a Whig, had served in both houses of the General Assembly and on the state Supreme Court. In his inaugural address ... he acknowledged that some statute relating to Freedmen's affairs must be enacted but suffrage for them would not approve... Governor Marvin had appointed to the interim committee on Freedmen's affairs the North Florida

> ex- slaveholders... They prefaced their report to the General Assembly with a characterization of slavery as a benevolent institution, and the happiest and best ever designed for a laboring population. The only evil they saw was inadequately regulated sex and marital life.
>
> ...The General Assembly chose to follow the lead of the committee... Assuming that there would be a great increase in crime to deal with, much of it consisting of offenses that would have been taken care of by slave masters under the old regime, they created a system of county criminal courts... Particularly objectable were laws regarding vagrancy; these were so broadly defined as to cover idleness of any kind. A convicted vagrant could be placed in the pillory, whipped, imprisoned, or hired out."

The primacy of Florida's Constitution was upheld by the federal courts, as in *Catron vs. City St. Petersburg*, 658 F. 3d 1260, 1270 (11th Cir 2011), by ruling that a city's trespass ordinance is illegal because it violates the right to interstate travel that is protected by Article I, § 2 of the Florida Constitution.

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STATEMENT OF THE CASE

1. On August 3, 2015 Petitioner was sentenced to to consecutive terms of: Life for Attempted First Degree Murder (count 1); Forty (40) years for Kidnapping (count 2); Forty (40) years for Armed Robbery (count 3).

2. On December 6, 2023 the Eleventh Circuit Court of Appeals denied Certificate of Appealability. Motion for Reconsideration was denied on February 15, 2024.

REASONS FOR GRANTING A WRIT OF CERTIORARI

WHETHER A PERSON'S RIGHT TO BE "PRESUMED INNOCENT UNTIL PROVEN GUILTY ACCORDING TO LAW" AS DECLARED BY ARTICLE 14.2 OFTHE INTERNATIONAL COVENANT ON CIVIL AND POLIICAL RIGHTS IS DENIED BY CONCLUSORY ASSERTIONS OF HIS GUILT BÉFORE HIS TRIAL THÅT HE "DID" UNLAWFUL ACTS.

Article 14.2 of the I.C.C.P.R. (Appendix B-3) declares that "Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law," which the "Judges in every State shall be bound by" according to Article VI, section two of the U.S. Constitution. This Court explained in *U.S. v. Butler,* 279 U.S. 116 (1929), the duty of every court:

> "The judicial branch has only one duty, to law the Article of the Constitution which is involved beside the statute which is challenged and to decide whether the latter squares with the former."

The elimination of a presumption of innocence by Florida Statutes section 923.03 that shifts to accused persons the burden of proving their innocence conflicts with the U.S. Constitution (Art. VI, sec. 2) requirement that the judges in every State "shall be bound" Art. 14.2 of the I.C.C.P.R., which declares the right to be "presumed innocent until proved guilty according to law." That statute is also illegal by never being adopted by Florida's Supreme Court, as required by Florida Constitution Article V, sec. 2(a), before being used in a criminal proceeding. That statute presumed the Petitioner's guilty before his trial by using the word "did" in all three counts in his Information (Appendix C-1), which were "conclusory assertions of guilt" according to *Kelly v. Curtis,* 21 F.3d 1544, 1555 (11th Cir. 1994); and *Garmon v. Lumpkin County, GA,* 878 F 2d 1406, 1408 (11th Cir. 1989) families who receive telephone calls from slaves. Insult is added to injury by charging slaves a sales tax on canteen purchases. Having no vote or voice in their master's decision-making, salves are taxed without any representation. Over 98% of Florida's slaves must solicit money from their families to pay the exorbitant prison canteen prices, because less than 2% (under two thousand) of Florida's salves are paid for performing labor, either as canteen operators at $50 per month or in PRIDE prison factories at 25¢ per hour. Florida's prison rules, Fla. Administrative Code rule 33-601.314, sections 9-13 and 9-16, force labor from prisoners (for no pay) by authorizing physical punishments for refusing to work or for performing insufficient work, and force slaves to remain in poverty by rules 33-210.101(9), (11)(l)4., and 33-602.207(1), (2), (5), that authorize physical punishments under rule 33-

601.314, section 9-6, for engaging in any capitalism or bartering. Physical punishments include longer imprisonment, and sensory deprivation in a disciplinary confinement cell that is kept hot in summers and cold during winters. Just as Florida's laws 160 years ago authorized imprisoning, whipping, or hanging any person who teaches a slave or negro how to read anything, even a Bible, because learning that skill would enable a slave or negro to read the laws that protect him/her, Florida keeps today's slaves too poor to hire an attorney. See *McDonald v. City of Chicago,* 561 U.S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894, 962 (2010); *United States v. Rhodes,* 27 F.Cas. 785 (Cir. Court D. Kentucky 1866) 1866 U.S. App. LEXIS 330, 339;

> WHETHER THE RIGHT TO NOT "BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB;" AS GUARANTEED BY THE U.S. CONSTITUTION'S FIFTH AMENDMENT AND ARTICLE 14.7 OF THE I.C,C.P.R. IS DENIED BY RELYING ON PAST OFFENSES TO CONVICT AND SENTENCE FOR A SIMILAR CRIME.

Lacking any evidence to connect the Petitioner to the kidnapping and robbery of a taxi cab driver and passenger other than a fingerprint he left on the door of the cab when he stopped his bicycle beside the cab to look in it, and because neither the driver nor passenger could identify the Petitioner at his trial, the State relied on his past criminal record as sufficient evidence to show his propensity for committing the kidnapping and robbery. That was treated as double jeopardy in *State v. Vasquez,* 419 So. 2d 1088, 1090 (Fla. 1982); and in *Davis v. State,* 397 So. 2d 1005 (Fla. 1st DCA 1981), because the prohibition against double jeopardy is fundamental, *Benton v. Maryland,* 89 S. Ct. 2056, 2063 (1969); *Ashe v. Swenson,* 90 S. Ct. 1189, 1194 (1970); and *Allen v. McCurry,* 101 S. Ct. 411 (1980), which is why Article 14.7 of the I.C.C.P.R. prohibits it too:

> "No one shall be held guilty or liable to be punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country." (Appendix B-4).

This Court ruled in *Tot v. U.S,* 63 S. Ct. 1241, 1245 (1983) that requiring a defendant to prove his innocence by his own testimony is an unfair burden of proof. In the instant case, the Petitioner's defense was limited to his own testimony because the State impeached his alibi witness, Reverend Dallas Duncan, for having a criminal record before becoming rehabilitated and then loaning twenty dollars when the Petitioner visited his

home at the same time when the kidnapping and robbery occurred several miles away.

> "Slavery and involuntary servitude actually remain lawful 'as a punishment for crime whereof the party shall have been duly convicted.' In other words, according to this so-called punishment clause, ... there's nothing in the 13th Amendment to ensure you can't be considered a slave of the state. The punishment clause was taken directly from the Northwest Ordinance of 1787. ... Soon, the clause was being used to reinstitute slavery under another guise. ... [S]lavery is an abomination. Not just because it compels labor, but because it denies the full dignity and value of the enslaved person. ... But slavery-labor that dehumanizes one person for the profit of another-has no place in prisons or in the Constitution. We need a national dialog about amending the 13th Amendment.
>
> Jim Liske, *Yep, Slavery is Still Legal*,
> USA TODAY p. 6A (August 14, 2014) (Exhibit C).

The Florida governments' executive branch (state attorney) prosecuted the Petitioner and its judiciary sentenced him to life imprisonment that its legislative branch authorized by enacting a law (Florida Statutes section 775.082), and its executive branch is enforcing that penal statute through its Department of Corrections which the legislative branch established by a law (Florida Statutes section 944.09, but which agency is not named in Florida's Constitution) to maintain custody, control, and care of him for an indefinite term of imprisonment according to its Florida Administrative Code rule 33-603.402(1)(A)5.:

> "If serving a sentence with no definite term, that is, a life sentence ..."
>
> (See Exhibit F attached hereto).

Just as that administrative law requires Florida's prison wardens and staff to execute the Defendant's life imprisonment sentence as "a sentence with no definite term," that same reasoning requires Florida's Supreme Court and all District Courts of Appeal to prohibit sentencing courts from retaining jurisdiction over one-third of a life imprisonment sentence, because "a life span is immeasurable," "life is an indeterminate sentence," and "a life sentence has no known termination point," therefore a one-third portion of an unknown amount of time is just as indefinite as the entire unknown amount. A few of those

rulings are: *Echols v. State,* 484 So. 2d 568, 574 (Fla. 1985); *State v. Mobley,* 481 So. 2d 481 (Fla. 1986); *Wainwright v. State,* 704 So. 2d 511, 515 (Fla. 1997); *Frazier v. State,* 488 So. 2d 166, 168 (Fla. 1st DCA 1986); *Arnett v. State,* 591 So. 2d 1014 (Fla. 1st DCA 1991); *Williams v. State,* 868 So. 2d 1234 (Fla. 1st DCA 2004); *Willis v. State,* 447 So. 2d 283 (Fla. 2nd DCA 1983); *Cordera-Pena v. State,* 421 So. 2d 661 (Fla. 3rd DCA 1982); *Woodson v. State,* 439 So. 2d 976, 977 (Fla. 3rd DCA 1983); *Cook v. State,* 481 So. 2d 1285, 1286 (Fla. 4th DCA 1986); *King v. State,* 594 So. 2d 858 (Fla. 4th DCA 1992); *Kosek v. State,* 448 So. 2d 57, 58 (Fla. 5th DCA 1984); and *Viera v. State,* 698 So. 2d 918, 919 (Fla. 5th DCA 1997), to name a few of the decisions defining a "life imprisonment" as too "indefinite" to determine how long a third is for the retention of jurisdiction by a sentencing court.

In *Gibson v. Florida Legislative Investigation Committee,* 108 So. 2d 729, 740 (Fla. 1958), the Florida Supreme Court recognized the limitation of its power, because "a court has no power to tamper with [the constitution]. If a change is made the people will have to make it." the Florida Supreme Court recognized the Legislature's limitation, *Sebring Airport Authority v. McIntyre,* 783 So. 2d 238, 244 (Fla. 2001), the "touchstone against which the Legislature's enactments are to be judicially measured" is the constitution itself, rather than "common usage."

The provisions of Florida's Constitution cannot be altered, contracted, or enlarged by legislative enactment, *Holmer v. State,* 28 So. 2d 586 (Fla. 1947), because a fundamental rule of law is that the legislature may not by indirect action do that which it is prohibited by the Constitution to do by direct action, *State ex rel. Powell v. Leon County,* 182 So. 639 (Fla. 1938). When a statute is determined to violate organic law, that statute is rendered inoperative by the dominant force of the Constitution, *Williams v. Dannellon,* 169 So. 631 (Fla. 1936). In 1936, Florida Statute section 775.082 would have been "rendered inoperative" by Florida Constitution Article I, section 17's forbidding of "indefinite imprisonment," which shows that the administration of justice in Florida is regressing. In *Ex parte Siebold et al.,* 100 U.S. 371 (1880), the Court explained at 376-377:

> "The Massachusetts Constitution of 1780 is illustrative of the understanding that the people's authority could trump the state legislature's."

Florida's Constitution begins with the declaration in Article I, section 1:

> "All political power is inherent in the people."

Florida's Supreme Court emphasized the authority of its Constitution in *Armstrong v. Harris,* 773 So. 2d 7 (Fla. 2000) at 21:

> "It is significant that our Constitution thus commences by specifying those things which the state government must not do, before specifying things that it may do."

That court's caveat followed a recitation of its Constitution, at 17:
"Excessive punishments. - - - ... indefinite imprisonment, ... are forbidden. Art. I, § 17, Fla. Const. . . .

> The Court in *Traylor v. State,* 596 So. 2d 957, 962 (Fla. 1992) explained that our system of constitutional government in Florida is grounded on a principle of 'robust individualism' and that our state constitutional rights thus provide greater freedom from government intrusion into the lives of citizens than do their federal counterparts: ... 'In short: the federal constitution ... represents the floor for basic freedoms; the state constitution, the ceiling.'"

Florida's voters established a "ceiling" of punishment that limits all sentences of imprisonment to a "fixed period with a time of commencement and termination," which is how Florida's highest courts interpreted that amendment and repeatedly ruled from 1887 to 1977 that "indefinite imprisonment shall not be allowed," as was reported at: *Sheriff Holland v. State,* 1 So. 521, 526 (Fla. 1887); *Ex Parte Lott Bryant,* 4 So. 854, 855 (Fla. 1888); *Ex Parte Peacock,* 6 So. 473, 479 (Fla. 1889); *Ex Parte William Pells,* 9 So. 833, 835 (Fla. 1891); *Roberts v. State,* 11 So. 536, 537 (Fla. 1892); *Bueno v. State,* 23 So. 862, 865 (Fla. 1898); *Wallace v. State,* 26 So. 713, 725 (Fla. 1899) *State ex rel. Grebstein v. Lehman,* 128 So. 811 (Fla. 1930); *State ex rel. Trezevant v. McLeod,* 170 So. 735 (Fla. 1937); *State ex rel. Bearden v. Pearson,* 182 So. 233 (Fla. 1938); *Ex Parte Koons,* 4 So. 2d 852 (Fla. 1941); *Avery v. Sinclair,* 15 So. 2d 846 (Fla. 1943); *Satterfield v. Satterfield,* 39 So. 2d 72 (Fla. 1949); *Carnley v. Cochran,* 118 So. 2d 629, 631 (Fla. 1960); *Local Lodge Number 1248 v. St. Regis Paper Co.,* 125 So. 2d 337, 342 (Fla. 1960); *State ex rel. Byrd v. Anderson,* 168 So. 2d 554, 555 (Fla. 1st DCA 1964); *Bush v. State,* 319 So. 2d 126 (Fla. 2nd DCA 1975); and *Adirim v. Miami,* 348 So. 2d 1226, 1227 (Fla. 3rd DCA 1977).

In 1977 the Florida Legislature's Constitution Revision Commission tried, but failed to amend Florida's Constitution to authorize an exception to the forbidding of "indefinite imprisonment" by Article I, section 17, for the worst crime - "murders which are heinous, cruel or atrocious." (See Exhibit C). That was two years after Florida's Supreme Court ruled in *Dorminey v. State,* 314 So. 2d 134, 136 (Fla. 1975); and again in *Owens v. State,*

316 So. 2d 537, 538 (Fla. 1975) that a life imprisonment sentence pursuant to Fla. Statutes section 775.082 is not unconstitutional, and does not usurp executive power because parole is available under Art. IV, § 8(c), but parole is rarely granted, which is why hundreds of men and women are still imprisoned decades after their parole dates were "suspended," just as before 1885, sheriffs and prison/work camp wardens released only those re-enslaved prisoners who are too old or physically disabled to perform sufficient labor. The life enslavement of men and women has been judicially imposed and approved to continue slavery through "indefinite imprisonment" even though that violates Florida's Constitution. Florida's Supreme Court explained in *Murray v. State,* 9 Fla. 246 (Fla. 1860) at 251:

> "Experience has proved what theory would have demonstrated, that masters and slaves cannot be governed by the same laws. So different in position, in rights, in duties, they cannot be the subjects of a common system of laws. *Neal v. Farmer,* 9 Ge. 599;"

In *Alvarez v. State,* 358 So. 2d 10, 12 (Fla. 1978), the Florida Supreme Court determined that a sentence of imprisonment for a large number (125) of years is not unconstitutionally vague, because "mortality and life expectancy are irrelevant to limitations on the terms of incarceration set by the Legislature for criminal misconduct." That court used a triple-negative phrase to obfuscate the constitutional prohibition against "indefinite imprisonment," by inferring that some additional condition(s) of punishment must be imposed to violate the prohibition against an imprisonment that is indefinite, because,

> "Although no person can predict the maximum length of time which can be served by a prisoner under a sentence of life, this in itself does not render a life sentence impermissibly indefinite." (emphasis added).

That ruling did not identify which (or if all) of the other "excessive punishments" listed in Article I, section 17 must be included with "indefinite imprisonment" to render that punishment "forbidden." A comma (,) separates each one of those "excessive punishments" that are "forbidden":

> "Excessive fines, cruel and unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden."

Which one must be imposed along with "indefinite imprisonment" to be a "forbidden" punishment? Or must all of them accompany "indefinite imprisonment"? The constitutional prohibition does not state how many or whether all of the listed punishments must be combined to become "forbidden," which would render permissible each individually imposed punishment, such as "cruel and unusual punishment," or "attainder," etc.

Recognizing the court's majority opinion in *Alvarez* at 12 as self-contradicting triple-negative gobbledygook, Chief Justice Arthur J. England Jr. and Justice Joseph A. Boyd Jr. joined to dissent and stated the obvious, at 14:

> "Moreover, if the net effect of a penal statute is an indefinite term of imprisonment, the law is at odds with Article I, section 17 of the Florida Constitution."

The logic and support for the Constitution in that dissent should have been relied on in that court's review of an indefinite imprisonment challenge presented 27 years later, in *Ratliff v. State,* 914 So. 2d 938 (Fla. 2005). Instead, at 940 that court quoted the ludicrous mumbo-jumbo presented earlier as its majority opinion in *Alvarez, supra,* and pushed the envelope of absurdity even further in its defiance of reality:

> "There is nothing indefinite about such a [life imprisonment] sentence."

That opinion is a blatant lie according to every prison warden and correctional officer who must by law enforce life imprisonment as "a sentence with no definite term" (Fla. Admin. Code rule 33-603.402, Exhibit F) and by the prisoners and their families who experience a life imprisonment sentence as endless enslavement based on a ruling that is a much more wicked and unconstitutional fraud than that court's ruling in *Weaver v. Graham,* 376 So. 2d 855 (Fla. 1979) that "gain time allowance is an act of grace rather than a vested right," which the U.S. Supreme Court reversed in *Weaver v. Graham,* 101 S. Ct. 960, 967 (1981). Florida's Supreme Court ruling in *Ratliff, supra,* is more unconstitutional than was its ruling in *Weaver, supra,* where the right to earn gain time is a secondary law by being vested by the legislature's enactment of a statue, while the right to not be punished with "indefinite imprisonment" is constitutionally guaranteed, by being declared "forbidden" as the primary law enacted by the citizens of Florida 139 years ago in a State-wide vote. "The legislature, having the general power to enact statutes, may give them such effect as it chooses to prescribe, so long as constitutional guaranties are not violated." (quoting 48A Fla. Jur. 2D § 90) A guarantee has been clearly violated. "A definiteness which requires so much subtlety to expound is hardly definite," *State v. Wershow,* 343 So. 2d 605, 608 (Fla. 1977).

"Words and meanings beyond the literal language may not be entertained nor may vagueness become a reason for broadening a penal statute," *Cabal v. State,* 678 So. 2d 315, 318 (Fla. 1976). Changing the meaning of "indefinite" because it is a constitutionally "forbidden" term of "imprisonment" shows that Florida's courts have changed the meaning of words, like the fairy tale character Humpty Dumpty, whose big-headed arrogance unbalanced him and caused his fatal fall from a wall.

> "'When I use a word,' Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean—neither more nor less.' 'The question is,' said Alice, 'whether you can make words mean so many different things.' 'The question is,' said Humpty Dumpty, 'which is to be master—that's all.'
>
> * * *
>
> 'That's a great deal to make one word mean,' Alice said in a thoughtful tone.
> 'When I make a word do a lot of work like that,' said Humpty Dumpty, 'I always pay it extra.'
> 'Oh!' said Alice. She was much too puzzled to make any other remark.
> 'Ah, you should see 'em come round me of a Saturday night,' Humpty Dumpty went on, wagging his head gravely from side to side: 'For to get their wages, you know.'"

Lewis Carroll, *Alice's Adventures in Wonderland & Through the Looking Glass* 169 (Bantam Classic Ed. 1981).

For over 30 years Florida provided those serving "life" imprisonment sentences with monthly gain-time award notices that showed a "CURRENT TENTATIVE RELEASE DATE" of "99/98/999" (Exhibit D), which violated federal laws and court rulings that require all federal and state government agencies to measure the passage of time by using only the Gregorian calendar (which began on 10/15/1582 and that King George III ordered the American Colonies to begin using in 1752), pursuant to Title 26 United States Code § 1602, § 2502, § 2504, § 311, § 3121, § 4981, § 4982, § 6013, 29 U.S.C. § 1306; 42 U.S.C. § 412, § 413, § 430; and 45 U.S.C. § 463; and the decisions in *Okanogan Indians v. U.S.*, 49 S.Ct. 463 (1929); *U.S. v. Cleveland Indians Baseball Team,* 121 S.Ct. 1433 (2001); *Peters v. U.S.*, 94 F. 127, 134 (9th Cir. 1899); *Fogel v. Commissioner,* 203 F.2d 347 (5th Cir. 1953); *Lagandaon v. Ashcroft,* 383 F.3d 983, 985 (9th Cir. 2004); and *Bacon v. State,* 22 Fla. 46 (1886), to name a few that require a calendar with only 12 months that each have less than 32 days. In July of 2020 the State ceased using the imaginary year of "9999"

that has "99" months and "98" days in that 99th month. In *Peters, supra,* the Ninth Circuit explained at 134:

> "In *Engleman v. State* [2 Ind. 91, 93] the court said: 'It is a fact, historically known, that Christian nations have generally adopted the Gregorian calendar, numbering the years from the birth of Christ. This is a Christian state, and has adopted the same, and when a year is mentioned in our legislative or judicial proceedings, and no mention is made of the Jewish, Mahometan, or other system of reckoning time, all understand the Christian calendar to be used."

In *Lagandaon v. Ashcroft,* 383 F.3d 983 (9th Cir. 2004), that court further explained a 985:

> "How long is a year? We are not the first to confront this question. See e.g., British Calendar Act, 1751, 24 Ge. 2 c.23 (Eng.) (adopting the Gregorian calendar); Pope Gregory XIII, Inter Gravissimas (1582), reprinted in VIII BULLARUM DIPLOMATUM ET PRIVILEGIORUM SANTORUM ROMANPONTIFICUM 386 (Sebastiano Franco & Henrico Dalmazzo, eds. 1863), *translation available at* (declaring the modern, or Gregorian, calendar, in which years begin January 1 and end December 31). Following our august predecessors, we hold that a year, other than a leap year, is 365 days."

Intentionally abrogating their own State Constitution's Declaration of Rights, Florida's criminal courts violated it thousands of times for many decades by imposing indefinite "life" imprisonment sentences instead of prison sentences limited to "30 years" pursuant to Fla. Statutes § § 775.082(3)(b) for "a felony of the first degree, before October 1, 1983," according to *Miller v. State,* 460 So. 2d 373, 374 (Fla. 1984); *Rucker v. State,* 553 So. 2d 212, 213 (Fla. 4th DCA 1989); *Mills v. state,* 642 So. 2d 15, 17 (Fla. 4th DCA 1994); *White v. State,* 644 So. 2d 174 (Fla. 3rd DCA 1994); and *Dunbar v. State,* 35 Fla. L. Weekly D989a (Fla. 5th DCA 4-30-2010); and limited to "40 years for a felony of the first degree" committed on or after October 1, 1983, and if a firearm is used in the crime, pursuant to § § 775.082(3)(a) and according to *State v. Whitehead,* 472 So. 2d 730 (Fla. 1985); *White v. State,* 589 So. 2d 1014 (Fla. 2nd DCA 1991); *Greenhalgh v. State,* 582 So. 2d 107 (Fla. 2nd DCA 1991); *Spencer v. State,* 611 So. 2d 16 (Fla. 3rd DCA 1992); *Crabtree v. State,* 624

So. 2d 743, 744 (Fla. 5th DCA 1993); *Patterson v. State,* 633 So. 2d 573, 574 n.1 (Fla. 2nd DCA 1994); *State v. Marsh,* 642 So. 2d 120 (Fla. 2nd DCA 1994); *Munro v. State,* 662 So. 2d 1345 (Fla. 2nd DCA 1995); *Kellar v. State,* 712 So. 2d 1133 (Fla. 1st DCA 1998); *Redd v. State,* 738 So. 2d 978 (Fla. 5th DCA 1999); and *Ferguson v. State,* 804 So. 2d 411 (Fla. 4th DCA 2001). In *Holston v. Florida Parole and Probation Commission,* 394 So. 2d 1110, 1111 (Fla. 1st DCA 1981), the court stated the obvious: "life' is not an objective 'date.'" About 550 A.D., Flavius Magnus Aurelius Cassidorus explained:

> "If we learn the hours by it, if we calculate the courses of the moon, if we take note of the time lapsed in the recurring year, we will be taught by numbers and preserved from confusing. Remove the computus [time reckoning] from the world, and everything is given over to blind ignorance. It is impossible to distinguish from other living creatures anyone who does not understand how to quantify."
>
> David Ewing Duncan, *Calendar* 68 (Avon 1998)

Admitting "blind ignorance" by presenting that it "does not understand how to quantify," Florida now provides a "CURRENT TENTATIVE RELEASE DATE" of "NOT APPLICABLE" (Exhibit E), that is likewise unconstitutional because every sentence of imprisonment "should be for a fixed period of time with a time of termination," *Sheriff Holland v. State, supra* (see p. 13 herein).

"Indefinite" and "indeterminate" are synonyms that mean the same: no known limit, according to -

Black's Law Dictionary 10th Ed. p. 889 (Thomson Reuters 2014):

> "indeterminate sentencing. (1941) The practice of not imposing a definite term of confinement, but instead prescribing a range for the minimum and maximum term, leaving the precise term to be fixed in some other way, usually based on the prisoner's conduct and apparent rehabilitation while incarcerated. - Also termed *indefinite sentencing.*"

Black's Law Dictionary 6th Edition page 949 (1991):

> "Indeterminate (indefinite) sentence... A completely indeterminate sentence has a minimum of one day and a maximum of natural life."

Ballantine's Law Dictionary Third Edition:

> "indefinite imprisonment: The punishment of imprisonment prescribed by a sentence for crime, the term of which is fixed or rendered calculable by neither the sentence nor statute. Authority: American Jurisprudence 2nd, Criminal Law § 534."

Webster's Third New International Dictionary (1990):

> "indefinite: of a nature that is not or cannot be clearly determined; having no fixed limits; indeterminate in extent or amount."

Random House College Thesaurus (1992):

> "indefinite: unspecified, no fixed limit, indeterminate, unknown, inexact, illimitable, measureless, limitless, unsettled, uncertain, vague."

By recognizing that "a sentence of imprisonment for a term of years is a definite sentence" in *Ellis v. State,* 406 So. 2d 76 (Fla. 2nd DCA 1981), Florida's appellate courts admit the opposite is true, that a sentence of imprisonment for no "term of years" is not "a definite sentence," which was plainly stated in *Roberts v. State,* 821 So. 2d 1144 (Fla. 3rd DCA 2002) at 1145:

> "[A] life sentence is indefinite, making one-third indeterminable. Appellee State of Florida concedes to this argument and we agree."

In *United States v. Milner,* 688 Fed. Appx. 854 (11th Cir. 2017), the court agreed with that reasoning, at 855:

> "Milner's lifespan is indefinite, so subtracting his eight-month prison sentence is a practical impossibility."

Because that which is indefinite is equivalent to the whole (*indefinitum aequipollet universali*), the ancient Romans did not try to measure a portion of the indefinite, and so too Florida's modern courts do not retain jurisdiction over one-third of a life imprisonment sentence. Not even the Supreme Court can measure the Petitioner's term of imprisonment to determine when it will end, other than to state the obvious which applies to all incarcerations – that it will end when he becomes a corpse, because only live human beings are confined in prison/jail cells. In *United States v. Buide-Gomez,* 744 F.2d 781

(11th Cir. 1984), that court announced at 784:

> "At the outset, this court recognizes that indefinite and uncertain criminal sentences are illegal."

In *Smallwood v. United States,* 386 F.2d 175 (5th Cir. 1967) that same court earlier enunciated a standard for testing the validity of a criminal sentence, at 176:

> "... a sentence in a criminal case should be clear and definite ... and be so complete as to need no construction of a court to ascertain its import."

A typical example of the tortuous attempts by Florida's trial judges to describe a life imprisonment sentence is attached hereto as Appendix Exhibit H in which then-Chief Judge Thomas J. Kennon Jr. of the Third Judicial Circuit explained in *State v. McKinney,* case no. 79-14CF (Fla. 3rd Jud. Cir. 1979):

> "The Defendant was sentenced to a definite period of time, his natural lifetime. While that period of time is indeterminate, it is not indefinite. A life sentence shall end at a definite time, then end of the natural life of the Defendant."
>
> (See Exhibit H).

In *Tinsley v. Anderson,* 171 U.S. 101, 43 L. Ed 91 (1898), appellant's counsel argued at 94:

> "In effect, the appellant was sentenced to an indefinite imprisonment. An order of that character was beyond the power of the court to make."

This Court agreed with that argument by ruling in *Kiyemba v. Obama,* 130 S.Ct. 1235 (2010) that not even a President's executive order can keep a person imprisoned indefinitely.

About 250 years ago Thomas Paine noticed an obvious truth that is often ignored today:

> "A long habit of not thinking a thing wrong gives it a superficial appearance of being right."

Florida's Supreme Court recognized that truth 46 years ago in *Dorfman v. State,* 351 So. 2d 954 (Fla. 1977), when ruling that general sentences are illegal because they fail to specify a definite term of imprisonment for each offense. That court held at 956:

> "We will not accept the notion that trial judges should be allowed to impose general sentences simply because they have always done so."

and explained at 957:

> "The evil of a general sentence, however, inheres in the uncertainty that its inscrutability creates, ..."

This Court should practice what is routinely preached to juries from Florida Standard Jury Instruction 2.09:

> "Even if you do not like the laws that must be applied, you must use them. For over two centuries we have agreed to a constitution and to live by the law. No one of us has the right to violate rules we all share."

Therefore Florida's courts also cannot exceed the maximum sentence authorized by the citizens of Florida as expressed in the Florida Constitution's Declaration of Rights, which is limited to, by forbidding anything beyond a sentence of definite imprisonment. Construing that amendment to allow only imprisonment that is 'definite' reduces that right to needless and useless because no warden would allow prisoners to enter and exit prisons whenever they please and thereby eliminate the purpose of 'custody.' Common sense should make obvious that a prisoner's death is the 'definite' termination of <u>any</u> sentence of imprisonment that remains unserved, because wardens are prohibited by law from keeping custody of corpses. Therefore the only logical definition of "indefinite imprisonment" is imprisonment for an <u>unknown</u> period of time, which was and still is "forbidden" by Florida's organic primary law. When the law and common sense are in conflict the law must yield, *Langdon v. State,* 947 So. 2d 460 (Fla. 3rd DCA 2006).

Florida's "life imprisonment" sentence statute, section 775.082, is in <u>direct</u> <u>conflict</u> with the Florida Constitution's Declaration of Rights that unequivocally forbids the "indefinite imprisonment" the Respondent's prison rule defines the Petitioner's "life sentence" as. "It is beyond the power of the Legislature to enact a statute that would defeat the purpose of the constitutional provision." *State ex rel. Jones v. Wiseheart,* 245 So. 2d 849, 852 (Fla. 1971); *Leonard v. Franklin,* 93 So. 688, 690 (Fla. 1922); *State ex rel. Murphy v. Barnes,* 3 So. 433 (Fla. 1888). In *Wollschlaeger v. Governor,* 848 F.3d 1293 (11th Cir. 2017), that court explained at 1317:

> "When a statute is 'susceptible' to an interpretation that avoids constitutional difficulties, that is the

> reading we must adopt. See *S. Utah Mines & Smelters v. Beaver County,* 262 U.S. 325, 331, 43 S.Ct. 577, 67 L. Ed. 1004 (1923)."

Florida Statutes section 775.082 and § 782.04(2) cannot be interpreted in any manner that "avoids constitutional difficulties" with the Declaration of Rights that forbids "indefinite imprisonment" without any discretionary exception. See *Ellard v. Alabama Board of Pardons and Paroles,* 824 F.2d 937 (11th Cir. 1987) at 943:

> "Contrary to the state's contentions, words and form do matter. Indeed, they are the essence of a substantive liberty interest created by state law. ... The due process clause, in short, prohibits the states from negating by their actions rights that they have conferred by their words."

and at 945:

> "It is now well established that when a liberty interest arises out of state law, the substantive and procedural protections to be accorded that interest is a question of federal law."

That ruling relied on the Court's decision in *Bearden v. Georgia,* 103 S.Ct. 2064, 2069 (1983). In *Hewitt v. Helms,* 103 S.Ct. 864 (1983), this Court held at 868-869:

> "Liberty interests protected by the Fourteenth Amendment arise from two sources-the Due Process Clause itself and the laws of the States. *Meachum v. Fano,* 96 S.Ct. 2532, 2537-2540, ... (1976)."

That was followed in *Walter v. Deeds,* 50 F.3d 670 (9th Cir. 1995) and explained at 673:

> "Therefore, when a state has provided a specific method for determining whether a certain sentence shall be imposed 'it is not correct to say that the defendant's interest' in having that method adhered to 'is merely a matter of state procedural law.'"

That followed the Court's holding in *Vitek v. Jones,* 100 S.Ct. 1254 (1980) at 1261:

> "Once a State has granted prisoners a liberty interest, we held that due proOcess protections are necessary 'to insure that the state-created right is

not arbitrarily abrogated.' [*Wolff v. McDonnell*] 94 S.Ct. [2963] at 2975."

Therefore, because every sentence of imprisonment must have a "time of commencement and termination," *Wallace v. State, supra,* there is error if no one knows when Petitioner's two 40-year sentences of imprisonment (Exhibit) will begin or end, because they are consecutive to his indefinite imprisonment sentence of life.

CONCLUSION

WHEREFORE, this Court should vacate the Petitioner's conviction for merely searching an abandoned taxi cab, and his excessive punishment of life imprisonment that violates the right declared by the Florida Constitution and International Declaration of Civil and Political Rights (U.N. Treaty 999 U.T.S. 171) to not be subjected to "indefinite imprisonment" or "institutions similar to slavery" that require "involuntary servitude."

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Date: 3-19-25