

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN HENRY MASSIE, Jr, Petitioner

vs.

STATE OF FLORIDA, Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIFTH DISTRICT COURT OF APPEAL OF FLORIDA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITIONER FOR WRIT OF CERTIORARI

John Henry Massie, Jr.
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QUESTIONS PRESENTED

WHETHER THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROHIBITS STATE COURTS FROM MAINTAINING A CONVICTION AND SENTENCE WHEN A DOUBLE JEOPARDY VIOLATION IS PATENTLY CLEAR ON THE FACE OF THE RECORD, AND ACKNOWLEDGED BY THE COURT DURING TRIAL?

LIST OF PARTIES

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

[] All parties do not appear in the caption of the case on the cover page.

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

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION	10

INDEX TO APPENDICES

APPENDIX A – Order of the Fifth District Court of Appeal affirming the Circuit Court's Order
APPENDIX B – Circuit Court's Order Dismissing Petitioner for Writ of Habeas Corpus
APPENDIX C – Circuit Court's Order Denying Motion to Alter or Amend Judgment
APPENDIX D – Charging Information
APPENDIX E – Judgment and Sentence; Guidelines Scoresheet

TABLE OF CITED AUTHORITIES

CASES

PAGE NO.

<u>Alabama v. Smith</u> , 490 U.S. 794 (1989)	7
<u>Ball v. United States</u> , 470 U.S. 856 (1985)	8, 9
<u>Blockburger v. United States</u> , 284 U.S. 299 (1932)	7
<u>Brown v. Ohio</u> , 432 U.S. 161 (1977)	8
<u>Iannell v. United States</u> , 420 U.S. 770 (1975)	7
<u>Illinois v. Vitale</u> , 447 U.S. 410 (1980)	7
<u>Jones v. Thomas</u> , 491 U.S. 376 (1989)	7
<u>Missouri v. Hunter</u> , 459 U.S. 359 (1983)	8
<u>North Carolina v. Pearce</u> , 395 U.S. 711 (1967)	7
<u>Rutledge v. United States</u> , 517 U.S. 292 (1996)	8
<u>Saavedra v. State</u> , 576 So.2d 953 (Fla. 1 st DCA 1991), approved, 622 So.2d 952 (Fla. 1993)	8
<u>Williams v. Singletary</u> , 78 F.3d 1510 (11 th Cir. 1996)	7

UNITED STATES CONSTITUTION

Fifth amendment	Passim
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FLORIDA STATUTES

§ 775.021(4)(A), (1985)	7
§ 794.001(g), (1985)	7

FLORIDA STANDARD JURY INSTRUCTION

11.2, § 2, (1986)	7
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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

☐ For cases from federal courts

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts:**

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the 9th Judicial Circuit Court of Florida, court appears at Appendix "B" to the petition and

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

[] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

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

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____ and a copy of the order denying rehearing appears at Appendix _____.

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

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

[✓] For cases from state courts:

The date on which the highest state court decided my case was August 22, 2017. A copy of that decision appears at Appendix A.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution:

No person shall be held to answer for a Capital, or otherwise infamous crime, unless on presentment or indictment of Grand Jury, except in cases arising in the land or Naval Forces, or in the Militia, when in actual Service in time of War or Public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

1. Petitioner was charged in Orange County, Florida Case No.: CR86-3285/B by Information filed June 9, 1986, with tow (2) Counts of Kidnapping (Counts 1 &2); One (1) Count of Aggravated Assault with a deadly weapon (Count 3); and Twelve (12) Counts of Sexual Battery (Counts 4-15).

2. Count 4-15 of the charging Information were vague and failed to apprise Petitioner of the essential facts of the crimes (how Sexual Battery was committed), and Petitioner filed a Motion for Statement of Particulars on July 11, 1986.

3. On November 6, 1986, the State of Florida filed an Amended Information, which was merely a duplicate of the original charging Information (Appendix D).

4. Counts 4-15 of the Amended Information fail to alleged the essential element of "Oral, anal or vaginal penetration by, or union with, the Sexual organ of Petitioner or the anal or vaginal penetration of another by any other object."

5. On November 7, 1986, Petitioner filed a Motion to Dismiss the Amended Information alleging:

"The Information is vague and fails to apprise the Defendant with the essential facts of the crime he is alleged to have committed, in violation of Defendant's Constitutional Rights to Due Process of Law."

6. The Trial Court denied Petitioner's Motion to Dismiss on November 7, 1986.

7. Petitioner's Information (Appendix D) alleges in Counts 4-15 that:

"... Ronald Lavoisia Johnson and John Henry Massie, on the 20th day of May, 1986 ... did, in violation of Florida Statutes § 794.011 (3), and § 794.023 commit a Sexual Battery upon (victim), a person twelve (12) years of age or older, without the consent of said (victim), and in the process thereof used or threatened to use a deadly weapon or used actual physical force likely to cause serious personal injury, during the same transaction or episode more than one person committed an act of Sexual

Battery upon (victim).”

8. Petitioner proceeded to jury trial,, and after the close of the State's case the Court noted (Jury Trial Transcript Pp. 461-62):

“The Court: On your Counts, you didn't put on your Information you didn't put which Count goes to which act.

The State: That's correct.

The Court: The Jury is going to have a problem. You've got all these acts numbered, but you didn't tell them when, where and how as to each act.

The State: You mean the Information?

The Court: Yeah. In the verdict forms either.

The State: Right.”

9. Petitioner was subsequently sentenced to life imprisonment on all twelve (12)

10. Without the essential element of “Oral, anal or vaginal penetration by, or union with, the Sexual organ of Petitioner or the anal or vaginal penetration of another by any other object” in Counts 4-15, there is absolutely no distinction between each of the Counts, other than the fact that there were two (2) victims.

11. Lacking the distinction of the aforesaid essential element Counts 4-8, 15, 16 are identical and fail to allege an element the others do not. Likewise, Cont 9-14 are identical and fail to allege an element the others do not.

12. Absent a distinctive element Counts 4-8, 15, 16 and Count 9-14 violate the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

13. Petitioner filed a Petition for Writ of Habeas Corpus in the Ninth Judicial Circuit Court, Orange County, Florida, challenging the above double jeopardy

violation.

14. The Circuit Court dismissed the petition for Writ of Habeas Corpus on July 27, 2016 (Appendix B).

15. Petitioner filed a Motion to Alter or Amend Judgment, which was denied on January 12, 2017 (Appendix C).

16. Petitioner appealed the dismissal of his petition for Writ of Habeas Corpus to the Fifth District Court of Appeal of Florida, who affirmed, per curiam, without opinion on August 22, 2017 (Appendix A).

17. Although the Trial Court acknowledged the double jeopardy violation at the close of the State's case at Trial, nothing was done to remedy this Constitutional violation.

18. Petitioner remains convicted of Count 4-15 and is sentenced to 12 Life sentences, in violation of double jeopardy, and this Honorable Court should afford Petitioner relief to correct this manifest injustice.

19. Eliminating these erroneous convictions the State of Florida cannot/could not otherwise sentence Petitioner to Life imprisonment, and Petitioner is therefore illegally and unconstitutionally confined and detained by virtue of the double jeopardy violation, contrary to the Fifth Amendment to the United States Constitution.

REASON FOR GRANTING PETITION

The Fifth Amendment's Double Jeopardy Clause guarantees that "No person shall ... be subject for the same offense to be twice put in jeopardy for life or limb ..." This guarantees against a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense. See: **Jones v. Thomas**, 491 U.S. 376, 380-81 (1989); **North Carolina v. Pearce**, 395 U.S. 711, 717 (1967), overruled on other grounds, **Alabama v. Smith**, 490 U.S. 794 (1989). Relevant to this case is the prohibition of multiple punishments for the same offense.

Petitioner's charging Information has two groups of Sexual Battery charges: A) Count 4-8, 15, 16 on One Victim; and B) Counts 9-14 on the other victim. With the exception of the victim's names Counts 4-16 are identical and fail to allege the essential element "Oral, anal or vaginal penetration by, or union with, the Sexual organ of Petitioner or the anal or vaginal penetration of another by any other object." See: **Florida Standard Jury Instruction** 11.2 § 2 (1987); § 794.011(g), **Florida Statutes** (1984). This essential element was necessary to provide distinction for each Count, as noted by the Trial Court at the close of the State's case, to avoid a double jeopardy violation.

Although congress is at liberty to authorize multiple convictions for a single act or transaction, **Williams v. Singletary**, 78 F.3d 1510, 1512 (11th Cir. 1996), each of the convictions must be separate and requires proof of an element the other does not. **Blockburger v. United States**, 284 U.S. 299 (1932)(codified in § 775.021(4)(a), **Florida Statutes** (1985)). And when reviewing a double jeopardy claim the Court's analysis focuses on the proof necessary to establish each offense, not the actual evidence presented at Trial. **Illinois v. Vitale**, 447 U.S. 410, 416 (1980); **Iannell v. United States**, 420 U.S. 770, 785 n. 17 (1975).

While the fact that the same victim can be sexually battered in the same manner more than once in a criminal episode, by the same defendant, and does not conclusively prohibit multiple punishments, distinctions in character and type, as well as spatial and temporal aspects, are equally important in determining whether multiple punishments are appropriate. Saavedra v. State, 576 So.2d 953, 956-57 (Fla. 1st DCA 1991), approved, 622 So.2d 952 (Fla. 1993).

As in abundantly clear from Petitioner's charging document; Count 4-15 lack any distinction in character, type of spatial and temporal aspects, unequivocally implicating a double jeopardy violation, and is evidence that the Court exceeded its legislative authorization by imposing multiple punishments for the same offense. This is exactly the type of violation the Double Jeopardy Clause is designed to prohibit. Missouri v. Hunter, 459 U.S. 359, 366 (1983), accord Brown v. Ohio, 432 U.S. 161 (1977).

Furthermore, the fact that Petitioner's charging document fails to allege that Petitioner committed any act, whatsoever, constituting the crime of Sexual Battery, raises serious questions of whether he should be convicted of any sexual offense, much less 12 identical Counts.

As an additional factor, even though all of Petitioner's sentences were ordered to be served concurrently, the unconstitutional mutiplictous convictions carry serious direct and collateral consequences that cannot be ignored. The erroneous convictions of Count 5-8 and 10-15 were included in Petitioner's Sentencing Guidelines Scoresheet elevating his maximum sentence exposure from 27 years to life, prejudiced his request for Commutation of Sentence from Florida's Clemency Board, may be used to impeach Petitioner's credibility and certainly carries the social stigma accompanying any criminal conviction. Rutledge v. United States, 517 U.S. 292, 302 (1996)(citing Ball v. United States, 470 U.S. 856, 865 (1985)), where this Court concluded that where the petitioner has suffered a double

jeopardy violation, the only remedy would be to vacate the unlawful convictions and re-sentence him with a proper Guidelines Scoresheet. **Ball**, 470 U.S. at 864.

Moreover, during Trial the Court acknowledged the double jeopardy violation when addressing the State Attorney at the close of the State's case "... you didn't put on your information you didn't put which (Sexual Battery) Count goes to which act." "The jury is going to have a problem ... you didn't tell them when, where, and how as to each act." (12 Counts), in the Information and the verdict forms.

Even though the double jeopardy violation is patently clear in this case, the State Courts refused to compel the State to file a Bill of Particulars, refused to dismiss the Amended Information (which contains 12 double jeopardy violation, refused to dismiss the Counts at Trial, refused to grant relief on Appeal, refuses to grant Post Conviction relief, and continues to allow Petitioner's convictions and life sentences stand; in violation of the Fifth Amendment to the United States Constitution.

To allow Petitioner's convictions and sentences to allow his continued unconstitutional detention would made a mockery of the Constitution and the Justice System, and therefore, this Court should grant certiorari.

CONCLUSION

The petition for a Writ of certiorari should be granted.

Respectfully submitted,

/s/ _____
John Henry Massie, Jr.

Date: October, ___, 2017.

CERTIFICATE OF COMPLIANCE

No.

JOHN HENRY MASSIE, Jr.
Petitioner(s)

v.

STATE OF FLORIDA,
Respondent(s)

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 2189 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 13th, 2017.

/s/ John H. Massie, Jr.