

17-7454
No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JAN 04 2018

OFFICE OF THE CLERK

ROBERT NEAL THOMAS MOORE — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE FIFTH DISTRICT COURT OF APPEALS FOR FLORIDA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ROBERT NEAL THOMAS MOORE

(Your Name)

WAKULLA CORRECTIONAL INST.

110 MELALEUCA DRIVE

(Address)

CRAWFORDVILLE, FL. 32327

(City, State, Zip Code)

INMATE NO.: U32584

LEGAL MAIL
Provided to
Wakulla CI

JAN 04 2018

FOR MAILING

[Signature]

QUESTION(S) PRESENTED

1. WHETHER THE STATE OF FLORIDA CAN USE THE SAME RECLASSIFICATION STATUTE AND SUBSECTION (F.S. § 775.087(1)) WITH THE SAME ELEMENT/WEAPON, IN MULTIPLE OFFENSES THAT OCCURRED IN A SINGLE CRIMINAL EPISODE, WITH ONE VICTIM INJURY AND SENTENCE CONSECUTIVELY TO FURTHER LENGTHEN THE OVERALL SENTENCE WITHOUT IT CONSTITUTING AN ILLEGAL SENTENCE AND VIOLATING A PERSON'S 5th and 14th U.S.C.A. RIGHTS?

OR

2. ONCE MULTIPLE OFFENSES HAVE BEEN RECLASSIFIED PURSUANT TO THE SAME STATUTE AND SUBSECTION (§ 775.087(1)), BASED ON "ONE": WEAPON, VICTIM INJURY AND EPISODE, DOES IT CONSTITUTE AN ILLEGAL SENTENCE WHEN THE SENTENCES ARE IMPOSED CONSECUTIVELY, TO FURTHER LENGTHEN THE OVERALL SENTENCE?

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	3-4
STATEMENT OF THE CASE	5-7
REASONS FOR GRANTING THE WRIT	8-9
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A	<i>Decision of State Court of Appeals</i>
APPENDIX B	<i>Order of State Court of Appeals Denying Rehearing</i>
APPENDIX C	<i>Decision of State Trial Court</i>
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Almendares v. State</u> , 916 so.2d 29 (Fla. 2nd DCA 2005)	5
<u>Diaz v. State</u> , 527 so.2d 300 (Fla. 2nd DCA 1998)	8
<u>Hale v. State</u> , 630 so.2d 521 (Fla. 1984)	6
<u>Harris v. State</u> , 939 so.2d 1094 (Fla. 5 th DCA 2006)	5
<u>Jackson v. State</u> , 659 so.2d 1060 (Fla. 1995)	5
<u>Maxwell v. State</u> , 803 so.2d 815 (Fla. 5 th DCA 2001)	7
<u>Merrell v. State</u> , 841 so.2d 677 (Fla. 3rd DCA 2003)	8
<u>Murray v. State</u> , 890 so.2d 451 (Fla. 2nd DCA 2004)	5
<u>Schooner v. State</u> , 176 so.3d 944 (Fla. 5 th DCA 2015)	8
<u>State v. Moore</u> , 19 so.3d 408 (Fla. 5 th DCA 2009)	6, 7, 8
<u>State v. Brown</u> , 476 so.2d 660 (Fla. 1995)	6
<u>Traylor v. State</u> , 785 so.2d 1179 (Fla. 2000)	6

STATUTES AND RULES

Fla. STATUTE § 725.087(1) 5, 6, 7, 8, 9

United States Constitutional Amendments

5th U.S.C.A. 8
 14th U.S.C.A. 8

OTHER

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 State Trial Court court appears at Appendix C to the petition and is

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

JURISDICTION

☐ For cases from **federal courts**:

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

☐ No petition for rehearing was timely filed in my case.

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

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ 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 9-7-17.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: October 11, 2017, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

United States Constitutional Amendment 5 provides, in pertinent part: No person shall be held to answer for a Capital, or otherwise infamous crime, unless on a presentment or indictment of a 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.

United States Constitutional Amendment 14 provides, in pertinent part: All persons born or naturalized in the United States, and subject to the Jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its Jurisdiction the equal protection of the laws.

STATUTORY PROVISION INVOLVED

Florida Statute, section 775.087(1), provides in pertinent part:
775.087. Possession or use of weapon; aggravated battery;
felony reclassification; minimum sentence

(1) Unless otherwise provided by law, whenever a person is charged with a felony, except a felony in which the use of a weapon or firearm is an essential element, and during the commission of such felony the defendant carries, displays, uses, threatens to use, or attempts to use any weapon or firearm, or during the commission of such felony the defendant commits an aggravated battery, the felony for which the person is charged shall be reclassified as follows:

(a) In the case of a felony of the first degree, to a life felony.

(b) In the case of a felony of the second degree, to a felony of the first degree.

(c) In the case of a felony of the third degree, to a felony of the second degree.

STATEMENT OF THE CASE

The facts of this case are undisputed by all parties, the Petitioner was charged by Information for attempted first degree murder and "during the commission" of that Second degree aggravated battery causing bodily harm. (R.p. 201). The Jury returned a verdict of guilty on Second degree attempted murder and "during the commission" of that Second degree aggravated battery, (R.p. 203) causing bodily harm. The Jury returned with a special finding that a weapon was used, to wit.: a shoe. Ultimately, pursuant to Florida Statute § 775.087(1), the trial Court Reclassified both offenses to first degree felonies based on one Statute, weapon, victim injury and episode. The Petitioner was then sentenced to two consecutive 30 yr. sentences, for a total of 60 years imprisonment.

On May 2, 2017, the Petitioner filed his 5th 3.800(a) Motion to correct illegal sentence, in it he argued that his sentences are improper because they should be imposed concurrently or the Original (45) year sentence should be re-imposed. Petitioner cited and relied on the decisions in cases like Almendares v. State, 916 so.2d 29 (Fla. 4th DCA 2005); Murray v. State, 890 so.2d 451 (Fla. 2nd DCA 2004); Harris v. State, 939 so.2d 1094 (Fla. 5th DCA 2006); Jackson v. State, 659 so.2d 1060 (Fla. 1995); and etc. to support his contentions that his consecutive sentences are presently illegal, and constitute a manifest injustice.

On May 15, 2017, the Postconviction court came back with their 5th different counter response and issued an Order denying the Petitioner relief, asserting that the Double Jeopardy decision in State v. Moore, 19 so. 2d 408, 410 (Fla. 5th DCA 2009) refutes his improper consecutive sentencing argument. See attached APPENDIX (C), for a copy of said court Order.

Petitioner asserts that State v. Moore, supra. is misplaced because it deals with whether dual reclassifications with one episode and weapon pursuant to 775.087(1) violates Double Jeopardy. State v. Moore, supra. does not deal with concurrent & consecutive sentencing

Petitioner points this court to a common misconception to this argument, to support his claim that a sentence doesn't have to violate Double Jeopardy in order for it to be illegal. See Hale v. State, 630 so. 2d 521-525 (Fla. 1984).

Moreover, legislature intent clearly did not intend for the element in F.S. § 775.087(1) to be used multiple times with offenses that already contain the same element, because not only does the Statute itself forbid it (See statutory language of F.S. 775.087(1), on page 4 herein) So does the Florida Supreme Court. See State v. Brown, 476 so. 2d 660 (Fla. 1995). Nor, can 775.087(1) even be used to enhance a crime and sentence consecutively where the weapon was already taken into account in the underlying offense. See, Traylor v. State, 785 so. 2d 1179, 1180-81 (Fla. 2000)...

In conclusion, as it sits now, the Petitioner is being threatened with being barred from filing postconviction Motions in all the State Courts (See Appendix (A) and (C)), the trial Court order denying relief is their 5th different counter argument which the Petitioner has over-come, but has been per curiam affirmed by the State Appellate Court. (See attached Appendix (A) and (B)).

The trial court's contentions for denying relief to the Petitioner is that the cases he's cited to support his argument on illegal sentencing all deal with enhancement provisions and not reclassification provisions. (See Appendix (C)). But what the trial court is failing to see is State v. Moore, supra. was built on cases using enhancement provisions to support its decisions of double jeopardy. State v. Moore, supra. does not deal with sentencing after multiple reclassifications has been applied to a case and the Florida State Courts are knocking down cases with this erroneous reasoning, making this a question of national importance. The cases that the Petitioner cites are more on point with law and common sense, however, both sides are without any supporting authority to solve this exact problem.

① The very same 5th District Court of Appeals and others do consider the reclassification statute § 775.087(1) an enhancement statute because it enhances the potential Sentence rather than create a new substantive offense. See, Maxwell v. State, 803 so.2d 815 (Fla. 5th DCA 2001)

REASONS FOR GRANTING THE PETITION

It is of National importance for the U.S. Supreme Court to decide the questions involved because the Florida State Courts are using State v. Moore, 19 so.3d 408, 410 (Fla. 5th DCA 2009) to stack reclassified offenses on other defendant's and deny them relief, under F.S. § 775.087(1). The Petitioner knows of 3 cases alone, where at the trial court level in other circuits, the State is using this case to deny relief in postconviction Motions and the District Court of Appeals under the direction of Pamela Jo Bondi, are not correcting the issue at hand. It is to a point now, that the Petitioner will be sanctioned from filing postconviction Motions in the State Courts for life, for trying to correct this.

This is obviously a manifest miscarriage of Justice that needs to be corrected by the U.S. Supreme Court before it goes any farther. To allow U.S. citizens to be sanctioned from filing in the Courts without reason on manifest injustices and to allow multiple punishments to take place for the same conduct is a violation of the 5th and 14th U.S.C.A.

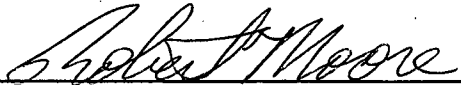
② And where there is a reasonable basis for concluding that the legislature did not intend multiple punishments, the rule of lenity contained in F.S. § 775.021(1), and common law, requires that the Courts find that multiple punishments are impermissible. See, Diaz v. State, 527 So.2d 300, 302-303 (Fla. 2d DCA 1998); Merrell v. State, 841 So.2d 677 (Fla. 3rd DCA 2003); and Schooner v. State, 176 so.3d 944 (Fla. 5th DCA 2015).

The Questions herein, are not complex and with the reading of the Statute and applicable case law the State Court should have found the Stacking of Reclassified Offenses under the same statute & subsection, based on one criminal episode, victim injury and weapon is already questionable conduct, but then to sentence consecutively is improper & impermissible. Petitioner asks this court, once multiple offenses have been reclassified pursuant to the same statute & subsection (F.S. § 775.087(1)), based on "One": weapon, victim injury and episode, does it constitute an illegal sentence when the sentences are run consecutively.

CONCLUSION

The petition for a writ of certiorari should be granted.
It is so prayed.

Respectfully submitted,


ROBERT NEAL THOMAS MOORE

Date: January 4, 2018