

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RUSSELL L. YATES — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

RUSSELL YATES #474446
(Your Name)

GRACEVILLE C.F. 5168 SELL RD.
(Address)

GRACEVILLE, FL 32440
(City, State, Zip Code)

(Phone Number)

i

QUESTION(S) PRESENTED

MR. YATES ALLEGED THAT HIS SENTENCE WAS VACATED AND REMANDED FOR RESENTENCING, ALL PORTIONS OF THE ORIGINAL SENTENCE WERE A NULLITY, SO THAT THE ORDER OF RESTITUTION HAD TO BE ORALLY PRONOUNCED AGAIN. HE ARGUES THAT THIS WAS NOT DONE AT THE JUNE 26, 2000, RESENTENCING HEARING, OR WITHIN 60 DAYS THEREAFTER, AND THEREFORE, THE ORDER OF RESTITUTION IS "A MOOT POINT AND NULL AND VOID AND SHOULD BE DELETED FROM THE CLERK'S RECORD AS TO BEING ACTIVE."

THE FIFTH DISTRICT COURT OF APPEAL, IN YATES V. STATE, 755 SO. 2d 202 (FLA. 5th DCA 2000), HELD THAT "IN LIGHT OF THE SUPREME COURT'S DECISION IN STATE V. THOMPSON, 750 SO. 2d 643 (FLA 1999) DEFENDANT MUST BE RESENTENCED. SENTENCE VACATED AND REMANDED."

THE NINTH JUDICIAL CIRCUIT FOR OSCEOLA COUNTY, FLORIDA FOUND THAT THE FIFTH DISTRICT'S OPINION IN YATES DID NOT INVALIDATE THE ORDER OF RESTITUTION ENTERED ON SEPTEMBER 13, 1996, WHICH REMAINS IN FULL FORCE AND EFFECT. ON APPEAL, THE FIFTH DISTRICT PER CURIAM. AFFIRMED. THE CASE THUS PRESENTS THE FOLLOWING QUESTION.

DID THE FIFTH DISTRICT COURT OF APPEAL ERR IN DEFERRING TO THE TRIAL COURT FINDING THAT THE FIFTH DISTRICT'S OPINION IN YATES DID NOT INVALIDATE THE ORDER OF RESTITUTION ENTERED ON SEPTEMBER 13, 1996 WHEN THAT FINDING WAS FOUNDED UPON FLAWED THEORY OF LAW, AND MISREPRESENTATION OF FLORIDA STATUTES, RULES OF COURT AND CASE LAW?

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.....	8

INDEX TO APPENDICES

APPENDIX A	ORDER DENYING REHEARING
APPENDIX B	MOTION FOR REHEARING
APPENDIX C	OPINION
APPENDIX D	INITIAL BRIEF WITH EXHIBITS
APPENDIX E	ORDER DENYING MOTION TO CORRECT SENTENCE
APPENDIX F	MOTION TO CORRECT SENTENCE WITH EXHIBITS EXHIBIT A BEING OPINION BY GRIFFIN, "DEFENDANT MUST BE RESENTENCED."

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

<u>CATTON V. STATE</u> , 619 SO. 2d 495 (FLA. 1 st DCA 1993)	5
<u>CUNNINGHAM V. STATE</u> , 838 SO. 2d 627 (FLA. 5 th DCA 2003)	4
<u>EVANS V. STATE</u> , 909 SO. 2d 424, 426 (FLA. 5 th DCA 2005)	4
<u>HITCHCOCK V. SECY</u> , 2012 U.S. DIST. LEXIS 134486 (11 th CIR. FLA. SEPT. 20, 2012)	6
<u>JENKINS V. STATE</u> , 816 SO. 2d 780 (FLA. 5 th DCA 2002)	4
<u>JUSTICE V. STATE</u> , 674 SO. 2d 123, 125 (FLA. 1996)	6
<u>LAWRENCE V. STATE</u> , 785 SO. 2d 728 (FLA. 5 th DCA 2001)	4
<u>SELWYN V. STATE</u> , 903 SO. 2d 361, 362 (FLA. 2 nd DCA 2005)	4
<u>STATE V. NAVIS</u> , 753 SO. 2d 1284 (FLA. 2000)	6
<u>STATE V. JONES</u> , 753 SO. 2d 1276 (FLA. 2000)	6
<u>STATE V. WILLIAMS</u> , 753 SO. 2d 1284 (FLA. 2000)	6
<u>STATE V. HISCOX</u> , 677 SO. 2d 682 (FLA. 2 nd DCA 1996)	6

STATUTES AND RULES

FLA. R. CRIM. P. 3.800(a)	4
FLA. R. CRIM. P. 3.800(b)	4, 5
FLA. STAT. § 775.089(1)(a)	5
SECTION 775.084(1)(b)(3)	5

OTHER N/A

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: N/A

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 & C 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 CIRCUIT COURT, NINTH JUDICIAL court appears at Appendix E 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: N/A

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 AUG. 15 2017.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: October 5, 2017, and a copy of the order denying rehearing appears at Appendix A.

☐ 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

CONSTITUTION OF THE UNITED STATES
AMENDMENT XIV ADOPTED (1868)
SECTION 1.

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.

THE FOURTEENTH AMENDMENT FORBIDS THE STATES FROM DEPRIVING ANY PERSON OF DUE PROCESS OR EQUAL PROTECTION OF LAW.

WHAT CONSTITUTES DUE PROCESS OF LAW VARIES FROM SITUATION TO SITUATION, BUT THE CORE OF THE IDEA IS THAT A PERSON SHOULD ALWAYS HAVE NOTICE AND A REAL CHANCE TO PRESENT HIS OR HER SIDE IN A LEGAL DISPUTE.

WHEN A DEFENDANT IS RESENTENCED, THE SENTENCING HEARING IS 'DE NOVO' AND PROCEEDINGS MUST BE A 'CLEAN SLATE' ON ALL ISSUES BEARING IN THE PROPER SENTENCE, (SEE GALINDEZ V. STATE, 955 SO. 2d 517, 525 (FLA. 2007)) AND THE DEFENDANT IS CONSTITUTIONALLY DUE THE FULL ARRAY OF HIS DUE PROCESS RIGHTS.

STATEMENT OF THE CASE

THE PETITIONER ATTESTS THE LOWER COURTS ORDER OF DENIAL WAS FOUNDED UPON A FLAWED THEORY OF LAW, AND A MISINTERPRETATION OF FLORIDA STATUTES, RULES OF COURT AND CASE LAW.

FOR THE SAKE OF THIS COURTS TIME AND RESOURCES THE PETITIONER ADOPTS THE "PROCEDURAL HISTORY" AS STATED IN THE LOWER TRIBUNALS ORDER DENYING MOTION TO CORRECT ILLEGAL SENTENCE (FOUND IN APPENDIX D II), EXCEPT THAT HE ACTUALLY FILED A 3.800 (a), NOT (b).

ARGUMENT

PETITIONER CHALLENGED HIS ENTIRE SENTENCE AS BEING ILLEGAL AND THE FIFTH DISTRICT ORDERED RESENTENCING.

A RESENTENCING HEARING IS 'NE NOVO' AND THE PETITIONER IS CONSTITUTIONALLY DUE THE FULL ARRAY OF HIS DUE PROCESS RIGHTS. SEE EVANS V. STATE, 909 SO. 2d 424, 426 (FLA. 5th NCA 2005), JENKINS V. STATE, 816 SO. 2d 780 (FLA. 5th NCA), LAWRENCE V. STATE, 785 SO. 2d 528 (FLA. 5th NCA 2001).

RESTITUTION NOT ORALLY PRONOUNCED AT RESENTENCING MUST BE ADDED WITHIN 60 DAYS. SEE CUNNINGHAM V. STATE, 838 SO. 2d 627 (FLA. 5th NCA 2003), SELWYN V. STATE, 903 SO. 2d 361, 362 (FLA. 2nd NCA 2005).

AT THE SENTENCING HEARING HELD ON JUNE 26, 2000 BEFORE THE HONORABLE RONALD A. LEGENDRE, THE COURT ASKED: "AGGRAVATIONS? RECOMMENDATIONS OF SENTENCING, RESTITUTION AND ANY WITNESSES?" (SEE APPENDIX D, 16, LINE 17 & 18) AFTER POSING THESE QUESTIONS, THE STATE HAD AN OPPORTUNITY TO RENEW THE PORTION OF THE SENTENCE DEALING WITH "RESTITUTION", BUT FAILED TO DO SO. THE RESTITUTION WAS NOT SOUGHT BY THE STATE, NOR DID HIS HONOR, JUDGE LEGENDRE ORALLY PRONOUNCE RESTITUTION. THE PETITIONER ALSO WOULD POINT OUT THE BOTTOM LOWER RIGHT SIDE SECTION OF THE SENTENCING ORDER FROM JUNE 26, 2000, WHICH NOTES "NUN PRO TUNC" TO THE DATE OF THE HEARING; NOT THE DATE OF THE ORIGINAL SENTENCE. (SEE APPENDIX F, 11) THIS FURTHER SUPPORTS THE PETITIONER'S POSITION THAT RESTITUTION WAS NOT ORALLY PRONOUNCED, NOR PART OF THE WRITTEN SENTENCING ORDER.

THE PETITIONER ATTESTS THE LOWER COURT SEEKS TO ENFORCE A NON ENFORCEABLE PORTION OF THE ORIGINAL SENTENCE CONTRARY TO FLORIDA STATUTES. WHEN A TRIAL COURT ORDER IMPOSING RESTITUTION UNDER FLA. STAT. § 775.089(1)(a), OUTSIDE THE 60-DAY PERIOD FOR MODIFICATION PROVIDED BY FLA. R. CRIM. P. 3.800(b), THE TRIAL COURT LOSES JURISDICTION TO MODIFY A SENTENCE IMPOSED WITHOUT RESTITUTION REQUIREMENT. THE LOWER TRIBUNAL IN THE INSTANT CAUSE FAILED TO MAKE THE SPECIFIC FINDINGS REQUIRED BY SECTION 775.084 (1)(b) 3 AND 4, FLORIDA STATUTES. AS WAS HELD IN CRITTON V. STATE, 619 SO. 2d 495 (FLA. 1ST DCA 1993), ANY ATTEMPT TO AN ORDER OF

RESTITUTION MUST BE VACATED. SEE ALSO HITCHCOCK V. SEC'T, 2012 U.S. DIST. LEXIS 134486 (11th CIR. FLA., SEPT. 20, 2012)

WHERE AN ORAL PRONOUNCEMENT IS MADE, AS IN THE INSTANT CAUSE, THE ORAL PRONOUNCEMENT CONTROLS. STATE V. DAVIS, 753 SO. 2d 1284 (FLA. 2000); STATE V. WILLIAMS, 753 SO. 2d 1284 (FLA. 2000); STATE V. JONES, 753 SO. 2d 1276 (FLA. 2000) (CITING TO JUSTICE V. STATE, 674 SO. 2d 123, 125 (FLA. 1996) FOR THE PROPOSITION THAT "WHERE THERE IS A JUDICIAL POLICY THAT THE ORAL PRONOUNCEMENT OF SANCTIONS SHOULD PREVAIL OVER ANY SUBSEQUENT ORDER TO THE CONTRARY.")

THE LOWER TRIBUNAL, AFTER THE 60-DAY REQUIREMENT, LOST ITS JURISDICTIONAL AUTHORITY TO IMPOSE RESTITUTION. STATE V. HISCOX, 677 SO. 2d 682 (FLA. 2d DCA 1996). THE PETITIONER IS ABSOLVED FROM THE LOWER COURTS BELIEF THAT THE RESTITUTION PORTION OF THE ORIGINAL SENTENCE IS IN EFFECT AND SEEKS AN ORDER FROM THIS HONORABLE COURT REFLECTING THIS LEGAL FACT.

REASONS FOR GRANTING THE PETITION

THE DISTRICT COURT'S AUGUST 15th 2017 OPINION DIRECTLY AND EXPRESSLY CONFLICTS WITH JUSTICE, CUNNINGHAM, SELWYN, SUPRA. PETITIONER MOVES THIS COURT TO CERTIFY CONFLICT.

A LEGITIMATE BASIS FOR SUPREME COURT REVIEW IS WARRANTED BY THE DISTRICT COURT'S APPARENT DECISION TO "PART COMPANY", SUB SILENCIO, WITH THE ABOVE MENTIONED CASES. THIS COURT HAS JURISDICTION.

THE PETITIONER WOULD ALSO LIKE THE RECORD TO REFLECT THAT THE ALLEGED VICTIM HAS RECENTLY DECEASED MAY 4th, 2017, BUT BEFORE SHE PASSED, SHE CAME FORWARD WITH A SWORN AFFIDAVIT STATING THAT THE ALLEGATIONS WERE NOT TRUE. THE COURT WOULD NOT ACCEPT HER PLEA BECAUSE SHE WAS FRIENDS WITH PETITIONERS FAMILY.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Russell L. Yates

Date: January 24th, 2018