24-7118

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

Enrique Diaz,

Petitioner,

v.

State of Florida,

Respondent.

_____/

On Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District

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PETITION FOR WRIT OF CERTIORARI

Enrique Diaz # 065599
Liberty Correctional Institution
11064 N.W. Dempsey Barron Rd.
Bristol, Fl., 32321-2622

March 13, 2025

QUESTION PRESENTED FOR REVIEW

WHETHER THE THIRD DISTRICT'S DECISION DISALLOWING DIAZ'S USE OF THE GREAT WRIT OF HABEAS CORPUS TO PRESENT VALID AND UNBARRED CLAIMS VIOLATES DIAZ'S RIGHT TO ACCESS TO THE COURT WHERE IT IS THE ONLY VEHICLE THROUGH WHICH DIAZ CAN INVOKE THE THIRD DISTRICT'S JURISDICTION TO SEEK REVIEW OF ITS OWN NULL AND VOID OPINION WHICH: 1) REINSTATED AN 8-YEAR-OLD APPEAL/MANDATE; 2) PURPORTEDLY CONFERRED JURISDICTION IT ITSELF DID NOT HAVE TO A TRIAL COURT IT ORDERED TO MITIGATE DIAZ'S LEGAL 8 YEAR OLD 22 YEAR SENTENCE TO LIFE; 3) ORDERED SPECIFIC PERFORMANCE THAT: A) IMPOSED AN ILLEGAL SENTENCE WHICH VIOLATED THE DIRECT AND EXPRESS TERMS OF THE PLEA AGREEMENT; AND B) SNUBBED THE FACT THAT DIAZ WAS ALREADY IRREPARABLY PREJUDICED BY THE 8 YEAR BREACH OF THE PLEA AGREEMENT, CONTRARY TO THE FIRST, FIFTH AND FOURTEENTH AMENDMENT'S TO THE U.S. CONSTITUTION.

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OPINION BELOW

The opinion of the District Court of Appeal of Florida, Third District dismissing Diaz's petition for writ of habeas corpus, as an improper vehicle, is attached as **Appendix A** and has yet to be reported in the Southern Reporter 3d. Diaz's motion for extension of time to file for rehearing was denied on January 16, 2025 as unauthorized, and is attached as **Appendix B.**

JURISDICTIONAL STATEMENT

Diaz's petition for writ of habeas corpus was dismissed by the District Court of Appeal of Florida, Third District (Appendix A). That dismissal constitutes[1] a final determination of the case by the highest-level court having jurisdiction in the State of Florida. Therefore, this Court has jurisdiction to entertain this petition pursuant to 28 U.S.C.§ 1257 (a).

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1 Petitioner received and signed for the opinion on January 3, 2025, sixteen days after the opinion was issued and one (1) day after the time frame for a Motion for Rehearing had expired. Although petitioner explained this in his petitioner's Motion for Extension of Time and his belief that the court misapprehended relevant facts the court erroneously struck the motion as unauthorized. **Appendix C.**

APPLICABLE CONSTITUTIONAL PROVISIONS

The First Amendment of the United States Constitution provides, in part, that "congress shall make no law... prohibiting or abridging... the right of the people... to petition the Government for a redress of grievances."

The Fifth Amendment of the United States Constitution provides, in pertinent parts, that "No person...shall...be subject for the same offense to be twice put in jeopardy of life or limb...nor be deprived of life, liberty or property, without due process of law."

The Fourteenth Amendment of the United States Constitution provides, in pertinent part, that, "nor shall any state deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE AND FACTS

I. PROCEDURAL HISTORY:

Forty-two (42) years ago petitioner (Diaz) was charged with several armed robberies by information's filed in the Eleventh Judicial Circuit (Miami-Dade County) of Florida, in case number: 83-8906, 83-8907, 83-8908, 83-8909, 83-8910, 83-8973, 83-8974, 83-9060, and 83-9246.

II. THE JURY TRIALS:

On November 16, 1983 Diaz proceeded to jury trial in case number 83-8974 before Thomas E. Scott, Circuit Judge and was found guilty as charged of armed robbery. On November 17, 1983. Judge Scott sentenced Diaz to twenty-two (22) years in state prison under the new 1983 Sentence Guidelines, meaning Diaz was not eligible for parole.

In February of 1984 Diaz proceeded to jury trial in case number 83-8906 before Thomas E. Scott and was found guilty of armed robbery and was sentenced to forty (40) years in state prison, to run consecutive to the 22 years already imposed. This sentence was not pursuant to the 1983 Sentence Guidelines, meaning Diaz was eligible for parole on this sentence.

III. THE COURT PROFFERED PLEA AND NEGOTIATION:

On March 7, 1984 Diaz appeared before Judge Scott for the next jury trial. However, at the outset, Judge Scott, *sua sponte*, proffered a plea bargain to Diaz. After first stating that "obviously, if we try more cases, I'll give you consecutive sentences", he proposed that Diaz plead guilty to the remaining charges in exchange for seven (7) concurrent life sentences, but consecutive to the already imposed 40-year sentence. Because Diaz insisted that he would only accept the plea proffer if he would be parole eligible on all sentences the court proposed to have Diaz's attorney file a motion to mitigate. Finally, the court demanded that Diaz dismiss his two direct appeals that were pending on the jury trials.

> **THE COURT:** If he wants to, because he wants to maintain the total parole, come back and there is no legal basis why I should not do it, Motion to Mitigate and a change of sentence by agreement or agreement by the court, vacate the sentence and give him concurrent life on six armed robberies, a consecutive 40 years, retention, I'll agree.

March 7, 1984, Sentence Transcript (S/T) at page 4 attached as **Appendix D.** After objection by the State to the "mitigation" and a

lengthy sidebar the court sought to protect Diaz's rights by solemnly promising him that the entire plea agreement would be void absent the mitigation:

> **THE COURT**: For some reason legally, if the State comes up with vacating the sentence and imposing a concurrent life sentence is illegal, the whole thing is off. I don't want to sandbag (sic) him. If that's legal and I can do it, I have no problem with what I've outlined. (S/T at 6).

The court continued to elaborate on the proposed plea making it absolutely clear that Diaz was pleading guilty so he'd be parole eligible on all sentences:

> **THE COURT**: You understand..., you'll be doing the concurrent sentences and will be eligible for parole? (S/T at 23-24)
>
> **THE COURT**: Do you feel as though it is my understanding that, basically, you want to get parole eligible? (S/T at 26)
>
> **THE COURT**: So, even though you elected, formally, to go under the new law for the 22 years under the Guidelines, since that time you've gone to Lake Butler, discussed it with the inmates, and you have your lawyer, and you now believe the best possible way of getting out now or in the future is with the Parole Commission?
>
> **THE DEFENDANT**: Yes, sir.

> **THE COURT**: For that reason, you agreed to all the sentences and made election to go under the old parole law, right?
>
> **THE DEFENDANT**: Yes, sir.
>
> **THE COURT**: The Court made that determination (Emphasis added) (S/T at 36).

Thereupon the court sentenced Diaz to multiple life sentences and set the mitigation for March 14, 1984 (S/T at 37). However, Diaz was shipped out to prison prior to the 14th, shortly thereafter Diaz telephoned defense counsel who assured Diaz that he had filed the motion to mitigate and that he no longer had the 22-year sentence, During the next 5 years in prison Diaz believed that he was parole eligible and he litigated to compel the Parole Commission to interview him. After petitioning for mandamus the Parole Commission had an examiner provide Diaz with an Initial Interview only to then void the interview:

> Void interview of 6-28-89. Inmate now serving 22-year Guidelines Sentence (83-8974) with an expiration date of 5-7-99, to be followed by **consecutive** parole eligible life sentence. (Emphasis added)

Thus, not only wasn't Diaz parole eligible as the terms of the plea required but the sentence was consecutive, creating a breach of the plea agreement.

IV. THE RULE 3.850 POSTCONVICTION MOTION:

On May 15, 1990 Diaz filed a postconviction based upon the clear breach of the terms of the plea bargain seeking to withdraw his guilty pleas and proceed to jury trial, arguing:

> I.
>
> DEFENDANT'S GUILTY PLEAS WERE NOT KNOWINGLY, INTELLIGENTLY ENTERED WHERE HE WAS INDUCED TO PLEAD GUILTY BASED UPON: A) THE COURT AND DEFENSE COUNSEL'S FALSE ASSURANCES THAT HIS 22-YEAR SENTENCE WOULD BE VACATED AND HE WOULD BE RESENTENCED TO A NON-GUIDELINES SENTENCE, MAKING HIM IMMEDIATELY PAROLE ELIGIBLE ON ALL SENTENCES; AND B) THE COURT AND DEFENSE COUNSEL'S MISREPRESENTATION THAT ALL CONCURRENT SENTENCES WOULD BE TREATED CONCURRENTLY BY THE PAROLE COMMISSION, AND HE WOULD BE PAROLED WITHIN 7 TO 10 YEARS, CONTRARY TO THE 5TH AND 14TH AMENDMENTS.
>
> II.
>
> DEFENDANT WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

WHEN: A) COUNSEL INDUCED DEFENDANT TO PLEAD GUILTY BASED UPON HIS ASSURANCE THAT HE WOULD FILE THE REQUIRED MOTION TO VACATE THE PRIOR 22-YEAR SENTENCE AND THEN FAILED TO DO SO; AND, B) COUNSEL COERCED HIM TO PLEAD GUILTY THROUGH MATERIAL MISREPRESENTATIONS REGARDING DEFENDANT'S PAROLE ELIGIBILITY AND THE AMOUNT OF TIME HE WOULD SERVE, CONTRARY TO THE 6TH AND 14TH AMENDMENTS.

III.

THE TRIAL COURT IMPROPERLY RETAINED JURISDICTION OVER ONE HALF (1/2) OF DEFENDANT'S 40 YEAR SENTENCE WHERE THE APPLICABLE STATUTE ONLY ALLOWED RETENTION FOR ONE THIRD (1/3) OF THE SENTENCE.

The trial court[2] summarily denied the motion on June 21, 1990 and the District Court of Appeal of Florida, Third District affirmed.

V. THE FIRST HABEAS CORPUS:

Following the Third District's affirmance of the denial of the Rule 3.850 motion Diaz immediately filed a habeas corpus directly to the

2 By this time the plea bargain judge had been appointed to the U. S. District Court.

Third District which was assigned case number 90-2540. This petition raised the exact same three (3) issues raised in the 3.850 motion.

The Third District exercised its habeas corpus jurisdiction and on June 23, 1992 issued an opinion which "granted in part" and denied in part the habeas corpus petition, The opinion reported at *Diaz v. State*, 601 So. 2d 564, 1992 Fla. App. 7635 (Fla. Dist. Ct. App. 3d Dist., June 23 1992) attached as **Appendix E**, states in its entirety:

> "The petition for writ of habeas corpus is denied, in part, and granted in part. The petitioner's request that this court reverse his judgements(sic) of conviction and sentences in circuit court case no's 83-8907, 83-8908, 83-8910, 83-8973, 83-9060 and 83-9256[3], and remand the case to the trial court to permit him to withdraw his guilty pleas and proceed to trial in those cases is hereby denied.
> In order to comply with the terms of the plea agreement entered into by the parties on March 7, 1984, the petition for habeas corpus is granted in part. Accordingly, we reinstate the appeal in the Third District Court of Appeal Case No. 84-226, and *sua sponte* dismiss it.
> The Public Defender is directed to immediately file a motion to mitigate the 22-year sentence entered in Circuit Court Case No. 83-8974, as required by the plea agreement entered into by the defendant on March 7, 1984. Further the trial

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3 Case numbers 83-8906, 83-8909, 83-8974 were left out and 83-9246 was erroneously listed as 83-9256

> court is directed to grant the motion to mitigate and sentence the defendant to life imprisonment, not under the sentencing guide lines, concurrent with the other life sentences imposed on the defendant. According to the dictates of rule 3.800, Rules of Criminal Procedure, the trial court has sixty days from the date of this order to enter its written order correcting the defendant's sentence. Hubbart, Cope and Goderich, JJ., concur."

Because the *sua sponte* appointed counsel did not furnish Diaz with a copy of this opinion until long after the 15 days for rehearing had expired, Diaz was unable to advise the court of the jurisdictional and constitutional problems inherent in its opinion.

VI. THE "MITIGATION" HEARING:

On August 21, 1992, against Diaz's will and over his strenuous objections and despite his repudiating and disavowing the motion to mitigate, his legal 22-year sentence was increased to life under the artifice of a mitigation. Diaz was irrelevant.

VII. THE SECOND AND SUBSEQUENT HABEAS CORPUS PETITIONS:

Immediately after the "mitigation" Diaz availed himself of every available remedy (e.g., Rule 3.850 postconviction motion and rule 3.800 motion to correct illegal sentence) all of which were summarily denied

by the trial court and affirmed P.C.A by the Third District. In the 33 years since the "mitigation" Diaz has filed the same issues as those raised in the May 17, 2024 habeas corpus from which the instant petition for writ of certiorari stems, at least 30 times. Never once in any of those proceedings has the court, nor the state in any response, even asserted that: 1) The Third District had jurisdiction to reinstate an appeal that became final 8 years earlier; 2) The Third District had jurisdiction to confer jurisdiction to the trial court; 3) the mitigation procedure was legal; 4) the August 21, 1992 life sentence was legal; or 5) that the August 21, 1992 life sentence did not violate the terms of the plea agreement all over again.

The May 17, 2024 petition for writ of habeas corpus, attached hereto as **Appendix F**, presented issues that only the Third District could address since the Third District created them and they would be improper before a lower court.[4] The only vehicle through which Diaz can invoke the Third District's jurisdiction is a petition for writ of habeas corpus.

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4 This completely ignores that because of the Third District's June 23, 1992 Opinion there was no direct appeal or other procedure through which Diaz could raise the issues.

The December 18, 2024 opinion of the Third District finding that habeas corpus is not a proper vehicle and the Third District's striking of the motion for extension of time to motion for rehearing as "unauthorized" are final orders not reviewable by the Florida Supreme Court. Thus, petitioner's claims are both preserved and exhausted. Diaz now respectfully seeks a writ of certiorari for the reasons set forth below.

REASONS FOR GRANTING THE PETITION

DUE TO THE FACT THAT THE UNDERLYING ISSUES RAISED BY DIAZ WERE CREATED ENTIRELY BY THE THIRD DISTRICT, THE HIGHEST LEVEL OF APPEALS COURT, HE HAS NO LEGAL REMEDY WITH ANY OTHER FLORIDA COURT AND THE THIRD DISTRICT'S OPINION UNDER REVIEW, WHICH PROHIBITS DIAZ FROM USING HABEAS CORPUS TO CHALLENGE THE UNCONTROVERTED ILLEGALITY OF HIS FORTY-TWO YEAR CONFINEMENT UNCONSTITUTIONALLY SUSPENDS THE WRIT OF HABEAS CORPUS AND VIOLATES DIAZ'S RIGHT TO ACCESS TO THE COURT

It is axiomatic that a criminal defendant has a constitutionally protected right to access to the court so that he may obtain review of the actions taken against him. Diaz has spent 33 years challenging the validity and the results of the Third District's June 23, 1992 opinion. Because the Florida Supreme Court does not have certiorari jurisdiction

the Third District is the highest court and Diaz's only direct access to it is via a petition for writ of habeas corpus.

It is also understood that the great writ of habeas corpus is available, not only to determine points of jurisdiction and constitutional questions; but *whenever else resort it is necessary to prevent a complete miscarriage of justice." Sunal v. Large,* 332 U.S. 174, 187-188, 91 L.Ed 1982 (1947). Even Florida law acknowledges that the primary objective of the great writ is to determine the legality of restraint under which a person is held. *T.O. v. Alachua Reg'l Juvenile Det. Ctr.,* 668 So. 2d 243, 244 (Fla. 1st DCA 1996).

In *Henry v. Santana*, 62 So. 3d 1122, 1126 (Fla. 2011) described the great writ as follows:

> [H]istorically, habeas corpus is a high prerogative writ. It is as old as the common law itself and is an integral part of our own democratic process. The procedure for the granting of this particular writ is not to be circumscribed by hard and fast rules or technicalities which often accompany our consideration of other processes. If it appears to a court of competent jurisdiction that a man is being illegally restrained of his liberty, it is the responsibility of the court to brash, aside formal technicalities and issue such appropriate orders as will do justice. In habeas corpus, "the niceties of the procedure are not anywhere near as

> important as the determination of the ultimate question as to the legality of the restraint.

Because of the bizarre procedural history of this 42 year old case where the Third District, in a habeas proceeding, *sua sponte* appointed Diaz a public defender, ordered the public defender "to immediately file a motion to mitigate the 22 year sentence" and "directed [the trial court] to grant this motion to mitigate and sentence the defendant to life imprisonment" Diaz has no recourse via the common postconviction remedies available to criminal defendants in Florida which are initiated at the trial level. That is because the sentence was mandated by the Third District and a lower court cannot overrule a higher court.

Under Florida law and procedure, the Third District has habeas corpus jurisdiction pursuant to Article V, section (b)(3), Florida Constitution and Rule 9.030(b)(3), Florida Rules of Appellate Procedure and throughout the years Diaz has relentlessly filed habeas corpus petitions challenging its June 23, 1992 opinion as null and void. Dozens of times, in a matter of 3-5 days, once within 24 hours, the Third District has without explanation denied each petition. Now, on December 18, 2024, for the first time, the Third District issued an

opinion dismissing the petition and stating that habeas relief is not available for matters that could have and should have been raised on direct appeal[5], or for matters that have already been ruled on through another appellate procedure. Thus, the Third District has foreclosed Diaz's only remedy which denies him access to the court and defeats the primary purpose of the great writ which is to provide relief from illegal restraint and it shields its June 23, 1992 Opinion from challenge despite it being contrary to commanding law and entered without jurisdiction making it null and void.

On June 23, 1992 the Third District, in a habeas corpus proceeding, entered an opinion where it attempted to rectify and specifically perform an 8-year-old plea agreement. To achieve this attempt, it employed the novel procedure of reinstating an 8-year-old appeal that didn't even exist (see Appendix D at p. 13 fn. 4) and then immediately dismissing it.[6] This alone rendered the entire June 23,

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5 This completely ignores that because of the Third District's June 23, 1992 Opinion there was no direct appeal or other procedure through which Diaz could raise the issues.

6 This theoretically restarted the 60 day "clock" under Rule 3.800 ©, Florida Rules of Criminal Procedure which permits the filing of a motion to mitigate within 60 days from the termination of the direct appeal.

1992 Opinion null and void because an appellate court loses jurisdiction of its mandate at the end of the term in which it was issued. *Lovett v. State*, 11 So. 2d 176 (Fla. 1892). An appellate court has authority to recall a mandate and reclaim jurisdiction over a case only during the term in which the mandate was issued. *Chapman v. St. Stephens Protestant Episcopal Church,* 105 Fla. 683, 138 So. 2d 630 (1932). See: *Westberry v. Copeland Sausage,* 397 So. 2d 1018 (Fla. 1st DCA 1981), at 1019:

> All things must have an end, even a district court's power to recall its mandate is limited to the term during which it issued... because the recall of the mandate by the district court was after the term in which the mandate issued; the court was without jurisdiction. Its actions are thus void.

State v. Bell, 992 So. 2d 95 (Fla. 2008), at 98 ("An appellate court's power to recall its mandate is limited to the term during which it was issued.") Even the Third District *enbanc* acknowledged its lack of jurisdiction to recall the mandate of a case where the issuing term had passed, *accord, Joseph* v. *State*, 447 So.2d 243 (Fla. 3rd DCA 1983) (*en banc*).

The decision in DCA case 84-226 was issued in 1984 when Diaz failed to file his initial brief. Thus, the Third District had no jurisdiction to open, reinstate or recall it on June 23, 1992, some 8 years/terms later. Diaz respectfully submits that it simply had no jurisdiction or authority to reinstate the appeal and was thus unable to restart the 60-day "clock" of Rule 3.800(C) making the June 23, 1992 opinion null and void.

Diaz submits that because the Third District had no jurisdiction to reinstate the 8-year-old appeal it logically follows that its opinion was void *ab initio* and failed to confer jurisdiction on the trial court. This is especially true where the reinstatement and immediate dismissal of the appeal was designed solely to restart the 60 day "clock" thus purportedly allowing the trial court to "mitigate" the 22-year sentence to life. Consequently, the trial court had no jurisdiction either. Moreover, Rule 3.800 itself does not confer jurisdiction upon a court to increase a legal sentence:

> It should be noted that R.Crim.P. 3.800 permits the reduction of a sentence within a limited period of time but the rule does not purport to give the court authority to increase a sentence. Once appellant began to serve his sentence, the

> court had no authority to resentence him to a longer prison term.

Katz v. State, 335 So. 2d 608 (Fla. 2nd DCA 1976) at 609. In fact, "There is no provision in the rules of criminal procedure for the subsequent enhancement of a legal sentence." *Royal v. State*, 389 So.2d 698 (Fla. 2nd DCA 1980) at 699.

The Third Districts jurisdictionally flawed maneuvers were a desperate attempt[7] to resuscitate a plea agreement that was unenforceable as a matter of law and because of the plea bargain judge's solemn promise and assurance to Diaz that if vacating the 22-year sentence and imposing life was illegal "the whole thing is off." The Third Districts ordering specific performance was blatantly unconstitutional and contrary to the terms of the plea agreement. First because there existed no procedure to increase Diaz's sentence to life. Second because the Third District's having nefariously done it anyways rendered the sentence illegal. And third because Diaz's, record clear and court determined, inducement to plead guilty was to become

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7 In his 1990 habeas corpus petition to the Third District the only relief sought by Diaz was the vacature of all his guilty pleas.

immediately parole eligibility for 8 years. Those lost 8 years of parole eligibility and advancement during which he could have been paroled or any parole date would have been shortened on a yearly basis can never be replaced. Diaz gave up all his constitutional rights to a full jury trial on each charge (and waived direct appeals in the two jury trials) in exchange for total parole eligibility that he didn't get. The Third District's alleged belated specific performance did not un-ring the bell. The prejudice was self-evident and fundamental fairness and principles of due process required that Diaz be returned to the *status quo ante.* The Third District's decision is contrary to this Honorable Court's holding in *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495 (1971) and its progeny and the issue of the breached plea agreement is circumscribed by at least five salient facts: 1) The 1984 plea bargain was breached for eight (8) years; 2) Diaz was irreparably prejudice by the 8 year breach; 3) The Third District's "solution" violated Florida law and resulted in Diaz being sentenced illegally and unconstitutionally; 4) A defendant cannot plead guilty to an illegal sentence, even as part of a plea agreement; and 5) The Third District's "solution" of "mitigating" Diaz's 22 year sentence to life constituted on entirely new breach of the

plea bargain. The only correct remedy was and is to vacate the pleas entirely (which were structured on a flawed, faulty premise to begin with and return Diaz to the *status quo ante*.

An examination of the March 7, 1984 plea colloquy makes clear that Judge Scott himself had second thoughts about the legality of his proposed novel procedure which is contrary to a wealth of case law on the subject. It's evident that the procedure was illegal; the plea bargain was doomed from the beginning, it was fatally flawed, and void ab initio.

The Third District's desperate attempt to resuscitate the plea agreement was ill-fated because it was stillborn to begin with, D.O.A. Because Judge Scott promise that "the whole thing is off" if the "mitigation" turned out to be illegal, this aspect of the plea bargain was breached in 1992 when the Third District ordered the belated "mitigation." The "curing" of one breach created an entirely new breach. This is fact.

Once a breach of a plea has been established a reviewing court has two options: 1) to order specific performance of the original terms, or 2) to vacate the plea entirely and return the parties to the *status quo ante*.

Here the Third District chose option 1 when it should have chosen option 2. Supreme Court Justice Douglass, in his concurrence in *Santobello, supra,* noted that due process considerations would dictate whether the state is ordered to perform specific performance or whether to allow the defendant to withdraw his guilty plea and start anew:

> Where the "plea bargain" is not kept by the prosecutor, the sentence must be vacated and the state court will decide in light of the circumstances of each case whether due process requires (a) that there be specific performance of the plea bargain or (b) that the defendant be given the option to go to trial on the original charges. One alternative may do justice in one case, and the other in a different case. In choosing a remedy, however, a court ought to accord a defendant's preference considerable, if not controlling, weight inasmuch as the fundamental rights flouted by a prosecutor's breach of a plea bargain are those of the defendant, not of the state.

Id., 404 U.S. at.267, 92 S.Ct at 501. Justices Marshall, Brennan and Stewart, in concurring in part and dissenting in part, further believed that the defendant in that case:

> Must be permitted to withdraw his guilty plea. This is the relief petitioner requested, and, on the facts set out by the majority, it is a form of relief to which he is entitled.

Id., 404 U.S. at.267, 92 S.Ct at 501. Diaz submits that the plea at bar was and remains unenforceable and that the specific performance ordered by the Third District which required it to carry out unauthorized judicial maneuvers, engage in artifice and which imposed an illegal and blatantly unconstitutional sentence does not comport with due process and thus the only alternative is withdrawal of the guilty pleas. This is especially so given the caveat the judge built into the plea that if it was illegal "the whole thing is off." If there is to be specific performance it should be of "the whole thing is off" and not specific performance of a clearly illegal and unconstitutional "mitigation" the Third District ordered.

Diaz has now been imprisoned for 42 years as a result of the Third District June 23, 1992, opinion which it simply failed to think out.[8] And now, without review from this Honorable Court, Diaz would be denied from any further challenge to these Kafkaesque judicial actions that

8 Because the Third District appointed Diaz an attorney Diaz was not served with a copy of the June 23, 1992 opinion. He only received a copy of the along with the court-ordered motion to Mitigate, long after the time within which to file for rehearing had expired thus Diaz was deprived of the opportunity to advise the court of the legal problems inherent in the ordered specific performance, a subject that was never briefed as Diaz never sought specific performance.

have never been alleged to be legal. Never once has the Third District not the State of Florida in any response even claimed that the Third District had jurisdiction or that Diaz's sentence is legal.

CONCLUSION

For the foregoing reasons, petitioner Enrique Diaz respectfully prays that a writ of certiorari issue to review the facially erroneous judgments and opinions of the Third District denying Diaz the correct remedy and his constitutional right to challenge it.

Dated: March, 13 2025

Respectfully Submitted,

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