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IN THE

SUPREME COURT OF THE UNITED STATES

In Re Christopher Vigliotti – PETITIONER

ON PETITION FOR A WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS FOR CORRECTION OF UNCONSTITUTIONAL AND/OR ILLEGAL DETAINMENT OF PETITIONER

Christopher Vigliotti, DC# W14827
35 Apalachee Drive – East Unit
Sneads, FL 32460-4166

No. ______________

IN THE

SUPREME COURT OF THE UNITED STATES

Christopher Vigliotti – PETITIONER

vs.

State of Florida; Ron DeSantis, Gov. – RESPONDENT(S)

/s/ [signature] DC# W14827 4-27-23
Christopher Vigliotti, DC# W14827
Apalachee Correctional Institution
35 Apalachee Drive – East Unit
Sneads, FL 32460-4166

QUESTION(S) PRESENTED

Petitioner humbly calls upon this Court to test the legality of his present 15 year state prison sentence which stemmed from violating probation, a probation that followed a different state prison sentence. All of which came from one (1) criminal scheme, for which the State has now created three (3) sentences for.

Petitioner will hereby prove beyond any doubt that there is no statutory authority to add a sentence term of 14 years probation, following a statutory legal sentence of 6 years state prison, DOC, at the time of Petitioner's original sentence.

Thereby, rendering such probation void, and also rendering it as a multiple punishment. Thereby, rendering his "present 15 year state prison DOC sentence void" as it is a re-sentence for violating said void probation. This is in violation of U.S.C.A. 5, and 14, and Fla. Const., Art. 1. Sec. 9.

The Petitioner will hereby prove to this court in extreme detail, and by every angle, that beyond any doubt; "his present 15 year sentence is voidable", "**as it should never have been**", his present sentence is stemmed from violating a probation, **"that had no statutory authority"**, to be placed against him in the first place, thereby, **rendering such probation void**.

Furthermore, the Petitioner will prove to this court that the Florida Supreme Court used an "unreasonable application" and also "contrary to" U.S. Supreme Court ruling's in North Carolina v. Pearce, 395 U.S. 711, 89 S. Ct. 2012, 23 L. Ed. 2D 656 (1969), and Roberts v. U.S., 64 S. Ct. 113 (1943) (which were discussing the Probation Act of Congress.)

Furthermore, Petitioner will prove to this court, that it has been illegal to apply such a combined sentencing scheme of probation following a state prison sentence with "no withholding or suspending of part of sentence to allow for the probation" since 1995.

For over 25 years now, the state simply refuses to accept that the foundation for their combined sentencing scheme is "**based on bad case law**", that there is **no statutory authority for it**. Which is in direct violation of Petitioner's U.S. Constitutional rights for Due Process, and for multiple punishments. U.S.C.A. 5, and 14. Enforceable in Florida under Fla. Const. Art. 1, Sec. 9.

Petitioner also calls upon the laws of what is "orally pronounced in court by the judge", bound his 6 year state prison sentence, and that this sentence, was the only statutory legal sentence; at the time of his original sentence, for one criminal event.

That since this sentence was served in full, and he was released from state prison (DOC), Thereby, this sentence is finished and closed.

There can be no alterations, no time added, nor can this sentence be erased and re-sentenced over it, "as if it never was there", as U.S. Constitutional Laws for double jeopardy forbid such action. U.S.C.A. 14, and Art. 1, Sec. 9 of Fla. Constitution.

Furthermore, when Petitioner was originally sentenced, the court called upon the state's "Ms. Smith" (the Prosecutor), to "outline the plea agreement in the case". Where the state called for 6 years in state prison.

> Ms. Smith: "Your Honor, in exchange for guilty pleas to all of the counts as charged, the state is going to recommend a downward departure sentence of six years in prison, the Department of Corrections." (see attached exhibit 1, pg. 5) *sentence #1

Then the state proceeds to add a sentence term of probation, of which by statutory law of § 921.187, and by rule 3.790, and by even the statutory law for the "only" legal split sentence in Florida § 984.012, is illegal to add such probation, following a state prison sentence. Therefore, this probation was void from birth.

> Court (Ms. Smith – Prosecutor): "Followed by fourteen years of probation" (see exhibit 1, pg. 5)
>
> *effectively creating sentence #2 as the only way this could be,

would be straight probation, yet still no Statutory Authority.

So when Judge Jack Cook, orally pronounced sentence upon Petitioner, the 6 year prison sentence was bound by double jeopardy, as it was the only statutory legal sentence.

Furthermore, Petitioner cannot give authority to the court by way of plea bargain, to an illegally added sentence term of probation. (See Chapter "Petitioner did not waive his right to challenge his sentence by agreeing to a negotiated plea" page 35-36.)

Judge's oral sentencing as follows:

> The court: "All right Mr. Vigliotti, this court will then adjudicate you guilty as charged, will sentence you to six years in the Department of Corrections on each count, those sentences to run concurrent with one another, to be followed by fourteen years of probation on each count also running concurrent with one another. (see exhibit 1, pg. 10), (*furthermore on page 3, the court states how this is "all one scheme".)

Finally, when this probation was violated, the state took the Petitioner's 6 year state prison sentence <u>and erased it, as if it never happened, and then illegally re-sentenced him for his present 15 year state prison sentence for violating the void probation</u>. Changing the recorded Court docket in the beginning of the docket. Thereby, again committing multiple sentence #3, for the same, singular criminal scheme. Adding a

separate case for probation following County Jail, which was from a different case, yet they made the case # match this case #. (See attached Exhibit 2).

Yet, the state rests their belief in case law, from the 80's and early 90's, thinking they were justified in their actions and completely ignoring the clear and simple fact that their case law has been "bad law" since the statutes' Amendment in 1995.

Furthermore, neither the legislature nor the Florida Supreme Court, has ever revisited this issue in a way to make a combined sentence of this nature legal; for probation to follow a state prison sentence, to be considered one sentence.

LIST OF PARTIES

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:

Ron DeSantis, Gov., State of Florida

RELATED CASES

See Table of Citations attached within as part of petition

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STATUTES AND RULES:

U.S.C.A. 14, Art. I Sec. 9 Fla. Const..PASSIM
Fla. Statute 921.187...PASSIM

STATEMENT OF THE CASE

Satisfaction of Rule 20.4(A)

This cause of action is against the State of Florida and D.O.C., and ultimate authority resides with the Governor, Ron DeSantis. As a result of Ron DeSantis, Governor, being the Respondent in this case, the U.S. Supreme Court has original jurisdiction, thus establishing it as the proper venue

Article III, Section 2, Clause 2 of the U.S. Constitution, grants the U.S. Supreme Court "Original Jurisdiction" over all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party.

When the Court has original jurisdiction over a case, it means that a party may commence litigation in the Supreme Court in the first instance rather than reaching the high court on appeal from a state court or an inferior federal court.

Petitioner humbly calls upon this Court to test the legality of his present 15 year state prison sentence which stemmed from violating probation, a probation that followed a different state prison sentence. All of

which came from one (1) criminal scheme, for which the State has now created three (3) sentences for.

Petitioner will hereby prove beyond any doubt that there is no statutory authority to add a sentence term of 14 years probation, following a statutory legal sentence of 6 years state prison, DOC, at the time of Petitioner's original sentence.

Thereby, rendering such probation void, and also rendering it as a multiple punishment. Thereby, rendering his "present 15 year state prison DOC sentence void" as it is a re-sentence for violating said void probation. This is in violation of U.S.C.A. 5, and 14, and Fla. Const., Art. 1. Sec. 9. The Petitioner will hereby prove to this court in extreme detail, and by every angle, that beyond any doubt; "his present 15 year sentence is voidable", "**as it should never have been**", his present sentence is stemmed from violating a probation, **"that had no statutory authority"**, to be placed against him in the first place, thereby, **rendering such probation void**.

Furthermore, the Petitioner will prove to this court that the Florida Supreme Court used an "unreasonable application" and also "contrary to" U.S. Supreme Court ruling's in North Carolina v. Pearce, 395 U.S. 711, 89

S. Ct. 2012, 23 L. Ed. 2D 656 (1969), and Roberts v. U.S., 64 S. Ct. 113 (1943) (which were discussing the Probation Act of Congress.)

Furthermore, Petitioner will prove to this court, that it has been illegal to apply such a combined sentencing scheme of probation following a state prison sentence with "no withholding or suspending of part of sentence to allow for the probation" since 1995.

For over 25 years now, the state simply refuses to accept that the foundation for their combined sentencing scheme is "**based on bad case law**", that there is **no statutory authority for it**. Which is in direct violation of Petitioner's U.S. Constitutional rights for Due Process, and for multiple punishments. U.S.C.A. 5, and 14. Enforceable in Florida under Fla. Const. Art. 1, Sec. 9.

Petitioner also calls upon the laws of what is "orally pronounced in court by the judge", bound his 6 year state prison sentence, and that this sentence, was the only statutory legal sentence; at the time of his original sentence, for one criminal event.

That since this sentence was served in full, and he was released from state prison (DOC), Thereby, this sentence is finished and closed.

There can be no alterations, no time added, nor can this sentence be erased and re-sentenced over it, "as if it never was there", as U.S. Constitutional Laws for double jeopardy forbid such action. U.S.C.A. 14, and Art. 1, Sec. 9 of Fla. Constitution.

Furthermore, when Petitioner was originally sentenced, the court called upon the state's "Ms. Smith" (the Prosecutor), to "outline the plea agreement in the case". Where the state called for 6 years in state prison.

> Ms. Smith: "Your Honor, in exchange for guilty pleas to all of the counts as charged, the state is going to recommend a downward departure sentence of six years in prison, the Department of Corrections." (see attached exhibit 1, pg. 5) *sentence #1

Then the state proceeds to add a sentence term of probation, of which by statutory law of § 921.187, and by rule 3.790, and by even the statutory law for the "only" legal split sentence in Florida § 984.012, is illegal to add such probation, following a state prison sentence. Therefore, this probation was void from birth.

> Court (Ms. Smith – Prosecutor): "Followed by fourteen years of probation" (see exhibit 1, pg. 5)
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So when Judge Jack Cook, orally pronounced sentence upon Petitioner, the 6 year prison sentence was bound by double jeopardy, as it was the only statutory legal sentence.

Furthermore, Petitioner cannot give authority to the court by way of plea bargain, to an illegally added sentence term of probation. (See Chapter "Petitioner did not waive his right to challenge his sentence by agreeing to a negotiated plea" page 35-36.)

Judge's oral sentencing as follows:

> The court: "All right Mr. Vigliotti, this court will then adjudicate you guilty as charged, will sentence you to six years in the Department of Corrections on each count, those sentences to run concurrent with one another, to be followed by fourteen years of probation on each count also running concurrent with one another. (see exhibit 1, pg. 10), (*furthermore on page 3, the court states how this is "all one scheme".)

Finally, when this probation was violated, the state took the Petitioner's 6 year state prison sentence <u>and erased it, as if it never happened, and then illegally re-sentenced him for his present 15 year state prison sentence for violating the void probation</u>. Changing the recorded Court docket in the beginning of the docket. Thereby, again committing multiple sentence #3, for the same, singular criminal scheme. Adding a separate case for probation following County Jail, which was from a

different case, yet they made the case # match this case #. (See attached Exhibit 2).

Yet, the state rests their belief in case law, from the 80's and early 90's, thinking they were justified in their actions and completely ignoring the clear and simple fact that their case law has been “bad law” since the statutes' Amendment in 1995.

Furthermore, neither the legislature nor the Florida Supreme Court, has ever revisited this issue in a way to make a combined sentence of this nature legal; for probation to follow a state prison sentence, to be considered one sentence.

REASONS FOR GRANTING THE PETITION

PART 1 OF ARGUMENT

Petitioner's original sentence is what the state is calling a "probationary split-sentence". This sentencing scenario came from a Florida Supreme Court's ruling in Poore v. State, 531 So. 2d 161 (Fla. 1988). Which was, "a period of incarceration, none of which was suspended or withheld, followed by a period of probation."

This type of sentence was further explained for Statutory Authority in Glass v. State, 574 So. 2d 1099, 1102 (Fla. 1991), where the Fla. Supreme Court lists Fla. Stat. § 921.187(1)(g)(1989), for such authority.

Then a few years later, this statutory authority was revoked by legislature amending it in F.S. § 921.187 Ch. 95-184, laws of Florida § 25. Thereby rendering this statute "no longer", "susceptible to the interpretation that authorizes a probationary split-sentence." As stated for such authority in Glass, 574 at 1102 (Fla. 1991). So what gave authority in "1991", then in "1995" to present date today, this statutory authority was revoked.

The original version of the statute addressed in Glass, was provided in part by:

> Fla. Stat. § 921.187(1)(g) (1989), read as:
> 1. The following alternatives for the disposition of criminal cases shall be used in a manner which will best serve the needs of society, which will punish criminal offenders, and which will provide the opportunity for rehabilitation.
>
> A court may:
>
> (g) Impose a split sentence whereby the offender is to be placed on probation upon completion of any specified period of such sentence, which period may include a term of years or less. § 921.187(1)(g), Fla. Stat. (1989).

However, in the amended version of Fla. Stat. § 921.187, after (1995), changed this to add part "(a)", so the statute reads as follows:

> 2. The alternatives provided in this section for the disposition of criminal cases shall be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation.
>
> *(a) If the offender does not receive a state prison sentence, the court may: (1) impose a split sentence whereby the offender is to be placed on probation upon completion of any specified period of such sentence, which period may include a term of years or less. Fla. Stat. § 921.187 (2001) (emphasis added)[1]

1 This statute was again amended in 2010 by Ch. 2010-113, laws of Florida, to move "(a)" as a separate provision and moved it into the Body Ending of subsection "(1)". Ch. 2012-113 laws of Fla. § 7. The pertinent section allowing for split sentences involving incarceration followed by probation still applies today, but ONLY when the "offender does not receive a state prison sentence." Fla. Stat. § 921.187 (2019)

Thus, the provision of what was formally subsection (1)(g) in (1991), therefore, in (2001) plainly applies to an offender who does not receive a state prison sentence. There was, and still is, this similar provision for people who receive state prison sentences today.

LEGISLATIVE INTENT

"In construing and applying a duly enacted statute, the valid legislative intent is the guiding star." State v. Atlantic Coast Line R.R. Co., 47 So. 969, 984 (Fla. 1908). In order to "discern legislative intent", the appellate court "looks first to the plain and obvious meaning of the statutes text." Smith v. State, 204 So. 3d 18, 21 (Fla. 2016) (quoting W. Fla. Reg'l Med. Ctr. V. See, 79 So. 2d 1,9 (Fla. 2012).

If the statute is "clear and unambiguous", then the court does not look beyond the plain language or employ the rules of construction to determine legislative intent – it simply applies the law. Gaulden v. State, 195 So. 3d 1123, 1125 (Fla. 2016) (quoting Borden v. E-Eur. Ins. Co., 921 So. 2d 578, 595 (Fla. 2007)).

The statute plainly and unambiguously shows that the legislature only authorized)(a period of confinement, non of which is suspended or withheld, followed by a period of probation), to be as one sentence, (IE: The probationary split sentence), "for offenders who do not receive a state prison sanction", for the part of the sentence that is prior to the probation Fla. Stat. § 921.187(1)(a)(1) (2001).

STATUTORY CONSTRUCTION

Even if this court does apply the cannons of statutory construction, the only correct conclusion is that there is no statutory authorization for a "singular sentence" that "First sends and offender to state prison, DOC, then followed by probation." Such as the one petitioner originally received

"It is the general rule, in construing statutes, "that the construction is favored which gives effect to every clause and every part of the statute, thus producing a consistent and harmonious whole. A construction which would leave without effect any part of the language used should be rejected, if an interpretation can be found which will give it effect." Goode v. Sate, 39 So. 461, 463 (Fla. 1905)

"The doctrine of in pari materia is a principles of statutory construction that required that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the legislature's intent." Fla. Dep't of State v. Martin, 916 So. 2d 763, 768 (Fla. 2005).

Similarly, related statutory provisions must be read together to achieve a consistent whole and... where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in

harmony with one another." Heart of Adoption, Inc. V. J.A., 963 So. 2d 189, 199 (Fla. 2007) (quoting Woodham v. Blue Cross & Blue Shield, Inc., So. 2d 891, 898 (Fla. 2002)).

Consistent with its plain language, the other sub-parts of section 921.187 (1)(a)(2001), enumerate other types of sentencing dispositions that can be for "years or less", and thereby, "given in lieu of a state prison sentence", e.g., a fine, imprisonment in county jail, public service, or court ordered Drug Rehabilitation Center for 1-3 years. Fla. Stat. § 921.187 (1)(a) (4),(7),(10) (2001).With these options only available if the offender does not receive a state prison sentence.

This shows that legislature's addition of the "(a) if the offender does not receive a state prison sentence", qualifier was meaningful and harmonious.

Therefore, it is 'no longer' the case that the pertinent part of section 921.187 is "susceptible to the interpretation", that it authorizes a probationary split sentence," Glass, 574 So. 2d at 1102, when the person receives a state prison sentence first, "followed by probation". Which was stated within Glass (supra), where the Court was looking for Statutory Authority.

Additionally, another sentencing alternative under Fla. Stat. 921.187, that "no longer" can be susceptible to interpretation, is section 921.187 (1) (a)3, which references Fla. Stat. § 948.01, providing that one of the sentencing alternatives is "probation with or without an adjudication of guilt, pursuant to § 948.01." Fla. Stat. § 921.187(1)(a)(3) (2001). Likewise, this sentencing alternative is "only" available for offenders who "does noT receive a state prison sentence." As described next § 948.01 (1)(a)3, can only be applied to an offender who is put directly on supervision-probation. (e.g. Straight probation. Only sentence term. No incarceration in state prison.)

FLORIDA STATUTE § 984.01 DOES NOT PROVIDE STATUTORY AUTHORIZATION

Section 948.01 is entitled "when court may place defendant on probation or into community control." (2001) the language from this section is from where the Florida Supreme Court in Jones v. State, 327 So. 2d 18 at 24 (1976) first concluded in err,. That a trial court could impose probation following a prison sentence.

In Jones (1976) the Florida Supreme Court was discussing § 948.01 F.S. (1974), the predecessor of section § 948.01 (6), Fla. Stat. (2001), which ultimately became section § 948.012(1) (2001) e.g. "today's true split sentence".

The Florida Supreme Court fixed this error in Villery v. Florida Parole and Probation Commission, 396 So. 2d 1107 (Fla. 1980), with the court receding from part (1) of the holding in Jones, that a court may only impose as a condition or probation incarceration up to one year. Id. At 1110 (e.g. County Jail Only)

The next main Florida Supreme Court case came along approximately seven years later where the state lower court and Florida Supreme Court came together and once again tried to create a legal way to

sentence an offender to state prison, with yet again, putting probation following said prison sentence.

In this next section, Petitioner will prove to this court how the Florida Supreme Court and the State lower court used a manipulation of U.S. Supreme Court Case rulings and used a Fla. 5th DCA case, that was called back under en-banc hearing. In order to create such a sentencing scheme of adding probation following a state prison sentence. Regardless of the overwhelming statutes, rules, and case law that for almost 60 years of jurisprudence is against such sentencing scheme.

PART 2 OF ARGUMENT

The Petitioner cites, Williams v. Taylor, 592 U.S. 362, 120 S. Ct. 1495, 146 L. Ed. 2D 389 (2000).

In sum, Williams, set 2 conditions, that if "either" of the conditions is met, then the writ can be granted. They are as follows:

This case sets the U.S Supreme Courts, "Standard of Review", for a USC § 2254 (A), of title 28, for a writ of Habeas Corpus, when an offenders custody is in violation of the constitution, or, law of the United States. They are as follows:

- a.) "Was contrary to ...clearly established federal law as determined by the Supreme Court of the United States ."
- b.) "Involved an unreasonable application of... clearly established federal laws as determined by the Supreme Court of the United States."

The "Florida Supreme Court" made rulings in the following cases from using a lower Appellate Court's ruling that violated both points raised in Williams.

The state has taken the position that the original trial court "did not" impose a "split" sentence or a sentence pursuant to Fla. Stat. § 948.012.

That the sentence was given to Petitioner was one of the five sentencing options outlined within Poore v. State, 531 So. 2d 161, called a "probationary split sentence".

When Petitioner's 3.800(a) post conviction motion, was ruled on by the 15th judicial circuit, "**prior to the violation of probation hearing**", the court agreed with the state, that Petitioners sentence was indeed a "probationary split sentence", as per "Poore v. State, and that Glass v. State, 574 So. 2d 1099, 1102 (Fla. 1991) gave the statutory authority for the sentence. (see exhibit 2)

What the Judicial Circuit Court overlooked, was that the petitioner already proved to the court that Glass became "bad law" by the amendment to Fla. Stat. 921.187.

Now on how the probationary split sentence came to be we need to first visit the cases that the Supreme Court in Poore used to base their decision. Then we can see the error.

Before the Florida Supreme Court rendered its decision in Poore, the Florida District Court of Appeal decided Wayne v. State, 513 So. 2d 689 (Fla. 5th DCA 1987), involving a period of incarceration, none of which was suspended, followed by a period of probation. Specifically, the Defendant

was sentenced to thirty months incarceration followed by two and one half years of probation. Wayne, 513 So. 2d at 690.

Upon violation of the probation Wayne, was re-sentenced to four years of incarceration. Id.

The 5th DCA "vacated the sentence", relying on its own decision in Poore, reasoning that because there was no suspended period of confinement left to be served, as there had been in Poore, the Defendant could not constitutionally be sentenced a second time to further incarceration for the same offense, merely because he had "violated probation appended to a lawful sentence." Wayne, 513 So. 2d 691. The Wayne decision rendered the probation a nullity, because the judge had no power to impose a penalty for its violation. Id.

However, the 5th DCA then issued an en banc decision in Franklin v. State, 526 So. 2d 159 (Fla. 5th DCA 1988).

From here on, the Petitioner agrees that the 5th DCA should never have made the following decisions, as they are clearly in error.

Within Franklin, the en banc court determined that the holding in Wayne, that it was double jeopardy violation and the probation was a

nullity, and was, "in conflict with established precedent and logic." Franklin, 526 So. 2d at 161.

The en banc Court explained that in State v. Payne, 404 So. 2d 1055 (Fla. 1981), the Florida Supreme Court decision that; 'where a Defendants own actions in violating probation have triggered a re-sentencing, the Defendant may be subject to any sentence which might have originally been imposed."

The Petitioner would like to raise to the attention of this U.S. Supreme Court, that the Florida Supreme Court in Payne violated the standards of Review, "two conditions", outlined within Williams (supra), when they used North Carolina v. Pearce, 395 U.S. 711 L. Ed. 656, 89 S. Ct. 2072 (1969), to justify and support their decision.

Petitioner would like to point out that "no where" within North Carolina v. Pearce, (supra), does it agree with the way Florida Supreme Court in Payne, is using the U.S. Supreme Court's decision, to support their decision.

On the contrary, North Carolina v. Pearce, principles can "only" be applied after "reconviction", and after a completely new trial.

The Pearce case, revolved around that the Defendant's "criminal conviction has been set aside and a new trial ordered" Id. "To what extent does the Constitution limit the imposition of a harsher sentence after conviction upon retrial."Id.

The Pearce case involved him winning a "collateral attack" upon his original "conviction", then going to a "new trial". Of course Pearce can be sentenced either lighter or harsher upon his new conviction, plus had he won his "new trial", he could've left court that very day as a "free man". There is no double jeopardy, as his original "sentence and conviction" was vacated from his "post-conviction proceeding". Id.

Furthermore, the Pearce case, "rests ultimately upon the premise that the original conviction has, at the Defendant's behest, been wholly nullified and the slate wiped clean..." Id. At 395 U.S. at 721.

Finally within the very wording of "part B"of the court's opinion, Justice Stewart explains that:

> "in the first place, we deal here, not with increase in existing sentences, but with the imposition of wholly new sentences after wholly new trials." Id. At 722-723.

As we can clearly see, there is no possible way the U.S. Supreme Court decision even remotely support Florida's Supreme Court decision in Payne. Actually Payne is contrary to Pearce as stated above.

Without first wholly nullifying the original sentence, (in Petitioner 's 6 year State Prison sentence) by an appellate action, or, by post-conviction motion – collaterally attacking his conviction – initiated by Petitioner, then as per Pearce (supra) there can be no re-sentencing. As double jeopardy prevents such action. U.S.C.A. 14

Henceforth, this makes the "entire concept" of sentencing an offender to a legal state prison sentence, then following such sentence with adding an illegal sentence term of probation, to be a complete and blatant violation of U.S. Constitutional rights, as this clearly creates multiple punishments and double jeopardy violations...U.S.C.A. 5 and 14; Fla. Const. Art. 1, Sec.9.

WHEN REVIEWING STATUTES FOR PARI MATERIA, FLA.R.CRIM.P. 3.790

When considering Pari Materia, even the very wording within Fla.R.Crim.P. 3.790, points out in the very first paragraph that this long standing rule, with case law dating back many years before the Florida Supreme Court ruling in Payne, Franklin, and Poore, clearly does not harmonize with that court's decision in such. So I ask, "where was the long standing principles and logic behind the court's decision?" as stated in Franklin v. State, 526 so. 2d at 161 (supra).

FLA. R. CRIM. P. 3.790 QUOTES:

> "the pronouncement and imposition of a sentence of imprisonment shall not be made upon a defendant who is placed on probation regardless of whether he is adjudicated guilty."

Even when reviewing through Fla. Stat. 948.01(6) (2001) it clearly states:

> "the court shall stay and withhold the imposition of the remainder of the sentence imposed upon the Defendant" Fla. Stat. 948.01(6) (2001) (emphasis added)

Based on its plain and ordinary meaning, the word "shall" in a statute usually has a mandatory connotation. See Steinbrecher v. Better Constr. Co., 587 So. 2d 492, 494 (Fla. 1st DCA 1991).

If the trial courts were not required to stay and withhold the remainder of the "imposed sentence" when imposing a split-sentence, then it would render that language of the statute "meaningless".

Courts should not construe a statute so as to render any term meaningless. See Palm Beach County Canvassing Bd. V. Harris, 772 So. 2d 1273 (Fla. 2000).

As section 775.021, Fla. Stat., Provides, when a statue is susceptible of differing constructions, "it shall be construed most favorably to the accused." Fla. Stat. § 775.021 (2001).

The construction of 948.01 (6) that is most favorable to Petitioner, is for the split sentence to follow the exact wording, which is to withhold a portion of the imposed sentence for the term of probation.

Only in this way, will there be only 'one' sentence, for 'one' criminal scheme, even after violating the term of probation, and then the offender 'only' goes back to prison for the 'withheld' portion of the 'same original' sentence.

Therefore, in order for Petitioner's original sentence to have been imposed in a statutorily correct way, the State Court should've sentenced

him to 20 years, withhold 14 years for probation, then the remaining 6 years for state prison, DOC.

But, "they did not do this" as they wanted to utilize Fla. Stat. 948.06(1), so they could re-sentence a violator up to the max the sentence carried, Upon violating of said probation and, as you can see, it is just plainly illegal to do so.

Henceforth, when a statute referencing the word 'sentence' it is clear that the statutes mentioned within this writ are referring to the sentenced that is pronounced upon the offender.

This here would also comply with the exact wording of Fla. Stat. 948.01(2) 'when a Defendant is placed on probation, the court 'must' stay and withhold the imposition of a sentence.

Only when all of the above statutes are read in Pari Materia, they 'all' only work in harmony, when part of the total sentence is withheld for probation.

Therefore, in Petitioner's case, his original sentence is/was 'not' in harmony with the above statutes, even for a true split sentence of 948.012 Fla. Stat., as that statute requires the same withheld portion of sentence.

Henceforth, there is "no statutory authority" to 'add a term sentence of probation to a legal stat prison sentence', and try to call it as a whole, 'only one sentence', therefore, rendering such added probation to be void, for it should have never have been pronounced against the Petitioner in the first place. As such added probation clearly equates to a multiple sentence scenario. Violating U.S.C.A. 14.

Probation, when used in this manner is indeed it's own sentence, side and separate from petitioners sentence to state prison.

This is explained in full in next chapter.

PART 3 OF ARGUMENT

PROBATION IS CONSIDERED A SENTENCE

Fla. Stat. 948.01 (2), exactly words how probation can be pronounced upon an offender, as it clearly describes how to do so, and in this way there is 'no sentence' to state prison. So when an offender violates probation, "then" and "only" then, does Fla. Stat. 948.06(1) apply. Which then allows the court to 'sentence' an offender/violator up to the max and of course subject to the guidelines.

"Probation is considered a sentence in those instances when drawing distinction between the two concepts will result in a more severe punishment." See Lippman v. State, 633 So. 2d 1061 (Fla. 1994) (holding that probation is a sentence for purposes of double jeopardy protection against multiple punishment). Like for instance, the Petitioner's case at bar.

Larson v. State, 572 So. 2d 1368, 1370 (Fla. 1991)(construing probation as a sentence for purposes of appellate or post-conviction review.); State v. Bolyea, 520 So. 2d 562 (Fla. 1988). (court-ordered probation constitutes "custody under sentence" for purpose of seeking post-conviction relief.)

A trial court thus is not authorized to impose a sentence of probation that follows a state prison sentence, and try to call it one sentence, as the Petitioner has clearly pointed out above, such added probation sentence lacks statutory authority. "A Defendant's sentence must be authorized by statute; without a statute allowing such punishment, the sentence is unauthorized." Butler v. State, 412 So. 2d 917,918 Florida 5th DCA 1982). (citing Speller v. State, 305 So. 2d 231 (Fla. 2nd DCA 1974), which held a sentence "at hard labor" was unauthorized after repeal of Fla. Stat. § 922.05(2)). It is therefore error to impose such sentence that is not authorized by statute. Id.

FLA.R.CRIM.P. 3.986 'DOES NOT' AUTHORIZE PROBATION TO FOLLOW A STATE PRISON SENTENCE

Fla.R.Crim.P. 3.986, was amended in (1981) to allow the judge on the sentencing (cookie cutter) form, a provision to mark off for a split sentence. In re: Fla.R.Crim.P., See 408 So. 3d 207 (Fla. 1981).

Even though the Poore court discussed this rule as support for their decision,this rule does not provide an 'independent basis' to authorize a sentence where probation follows a state prison sentence. It needs to be based on the sentencing statutes.

This rule cannot serve as the only basis to authorize a sentence of probation to follow a state prison sentence, because it presents a separation of powers issue.

When a statute confers a substantive right, a conflicting procedural rule is invalid, as violation of separation of powers under Article 2, section 3 of the Florida Constitution, because a rule of procedure cannot enact substantive law. See In re: Amendments to Fla.R.Crim.P., 682 So. 2d 105, 106 (Fla. 1996). Rejecting a proposed amendment allowing trial courts to determine a qualifying party's entitlement of attorney's fees under offer of judgment statutes because “we must respect the legislative prerogative to enact substantive law”

The provision of criminal penalties and of limitations upon the applications of such penalties is a matter of predominantly substantive law and as such, is a matter properly addressed by the legislature. Smith v. State, 537 So. 2d 986 (Fla. 1989).

Therefore, without statutory support as enacted by legislature, rule 3.986 does not by itself, provide authority for a sentence of probation to legally follow a sentence of state prison, for this to be one sentence.

PETITIONER DID NOT WAIVE HIS RIGHT TO CHALLENGE HIS SENTENCE BY AGREEING TO A NEGOTIATED PLEA

Petitioner is still entitled to relief even though the sentence at issue was the product of a negotiated plea. McDuffie v. State, 946 So. 2d 99, 100 (Fla. 2nd DCA 2006) (a trial court cannot impose an illegal sentence even pursuant to a plea bargain." (quoting Furguson v. State, 804 So. 2d 411 (Fla. 4th DCA 2001)).

An "illegal sentence" is one that imposes a punishment or penalty that no judge under the entire body of sentence statutes and laws could impose under any set of factual circumstance. Carter v. State,786 So. 2d 1173, 1181 (Fla. 2001).

Petitioner humbly states that the probation sentence that followed his state prison sentence was illegal and void.

An illegal sentencing error is fundamental. Cook v. State,533 So. 2d 1292,1294 (Fla. 1st DCA 1989); Dowel v. State, 500 So. 2d 594, 595 (Fla. 1st DCA 1986).

A Defendant may not, either through a plea agreement or acquiescence, confer authority on a court to impose an illegal sentence. Larson v. State, 572 So. 2d 1368, 1371 (Fla. 1991); Williams v. State, So. 2d 501,503 (Fla. 1988); Fuller v. State, 587 So. 2d 887, 889 (Fla. 1st DCA

1991), quashed on other ground, 595 So. 2d 20 (Fla. 1992); Poppell v. State, 509 So. 2d 340, 390 (Fla. 1st DCA 1987); Bernard v. State, 571 So. 2d 560,561 (Fla. 5th DCA 1990).

STARE DECISIS

"Stare Decisis provides stability to the law and to the society governed by that law. Yet Stare Decisis does not command blind allegiance to precedent. Perpetuating a error in legal thinking under the guise of Stare Decisis serves no one well and only undermines, the integrity and credibility of the court." State v. Poole, no. 5c18-245,2020 WL 370392, at 14 (Fla. Jan 23, 2020) (Internal quotations and citations omitted)

The court has explained that Stare Decisis yields, "upon a significant change in circumstances after the adoption of the legal rule, or when there has been an error in legal analysis." Dorsey v. State, 868 So. 2d 1192, 1199 (Fla. 2003).

Petitioner humbly states that in this case at bar, both factors above have occurred. There was an error in the legal analysis in the decisions within cases Payne, Franklin, and Poore:; and there has been a statutory change after these decisions of the statute that the court cited in support of their decision. See Ch. 95-184, laws of Florida § 25 (amending § 921.187, Fla. Stat.)

A PARTY'S GOOD FAITH EFFORTS TO CHANGE EXISTING LAW DOES NOT RENDER AN ACTION FRIVOLOUS

Counsel may make good faith arguments for an "extension, modification, or reversal of existing law." R. Regulating Fla. Bar 4-3.1; see also Williamson v. State, 45 So. 3d 14, 16 n. (Fla. 1st DCA 2012) (explaining that when case law is adverse to an argument being raised, an attorney should acknowledge the adverse law and explain that the issue being raised to preserve it for purposes of subsequent review.

"[A] party's good faith efforts to change existing law do not render an action frivolous." Carnival Leisure Indus. V. Holzman, 660 So. 2d 410,412 (Fla. 4th DCA 1995).

CONCLUSION

In Conclusion, Petitioner prays that he has made a clear and concise case to this U. S. Supreme Court, that his present sentence is illegal and thereby warranting his emergency release from Apalachee C.I., D.O.C., for which Governor Ron DeSantis has ultimate power, jurisdiction, and authority over.

Henceforth this petition for writ of habeas corpus should be granted.

No. ______________

IN THE

SUPREME COURT OF THE UNITED STATES

Christopher Vigliotti – PETITIONER

vs.

State of Florida; Ron DeSantis, Gov. – RESPONDENT(S)

PROOF OF SERVICE

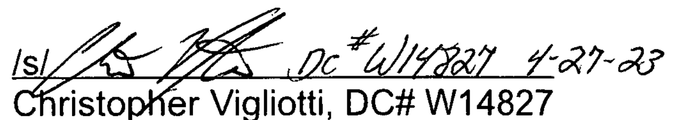
I, Christopher Vigliotti, do swear or declare that on this 27 day of April, 2023, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF HABEAS CORPUS on each party to the above prpceeding or that party's counsel, and on every other person required to be served, by putting envelopes containing the above documents in the hands of Apalachee C.I. Officials for mailing by way of first-class postage, prepaid, U.S. Mail.

The names and addresses of those served are as follows:

Ron DeSantis, Governor, State of Florida
The Capitol, PL-01
Tallahassee, FL 32399

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

Executed on this 27 day of April, 2023.



/s/ Christopher Vigliotti, DC# W14827