

IN THE SUPREME COURT OF FLORIDA

66447

STATE OF FLORIDA

PETITIONER

VS.

CECIL B. STACEY

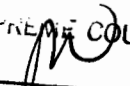
RESPONDENT

FILED

S'D J. WHITE

FEB 15 1985

CLERK, SUPREME COURT

By 
Chief Deputy Clerk

RESPONDENT'S REPLY TO PETITIONER BRIEF

CECIL B. STACEY PRO SE
P.O. BOX. 221 3T-2
RAIFORD, FLORIDA 32083

TOPICAL INDEX

	<u>PAGE</u>
STATEMENT OF THE CASE AND FACTS	1
STATEMENT OF JURISDICTION	2
ISSUE ON BEFORE THE COURT	3
CONCLUSION	6
CERTIFICATE OF SERVICE	6

AUTHORITIES CITED

CASES

<u>KIOUAC V. STATE</u> , (1979) Fla. App. D2) 371 So.2d 201	- 4 -
<u>MARTI V. STATE</u> , (1964, Fla. D3) 163 So.2d 506.	4 -
<u>MCNAMRA V. STATE</u> , 1975, (Fla. App. D3) 324 So.2d 702, Cert. den. (Fla.) 337 So.2d 809.	- 5 -
REDDICK V. STATE, 190 So.2d 340 (Fla. 2st. DCA 1966)	- 3 -
YOUNG V. STATE, 1965, (Fla. App. D2) 179 So.2d 345.	- 4 -
STACEY V. STATE, 421 So.2d 824, 825 (Fla. 1st. DCA 1982)	- 2 -

RULES

FLA. R. CRIM. P. 3.850	3-4-5
CONSTITUTION AMENDMENTS FOURTEENTH & DUE PROCESS CLAUSE & EQUAL PROTECTION	- 3-4-5
28 FLA. JUR.	- 4 & 5 -
<i>Criminal Procedure Rule No. 1, F.S.A ch 924 Appendix.</i>	3-

STATEMENT OF FACTS

On July 13, 1981 a member of the Public Defenders office was appointed to represent the Respondent in this cause, and on August 13, 1981 Respondent was tried before the Circuit Court of Bay County Florida for the 1978 robbery of the Value Oil Company on Panama City Beach and was found guilty as charged.

On approximately October 5, 1981, Respondent was sentenced to the term of 99 years with the Court retaining jurisdiction over the first one-third of his sentence pursuant to Florida Statutes §947.16 (3) (Supp. 1978).

Respondent perfected an appeal to the First District Court of Appeals at which time Court appointed Counsel filed an Anders brief, and Respondent filed a pro se brief and the cause was affirmed. Stacey v. State, 421 So.2d 824, 825 (Fla. 1st. DCA 1982).

Subsequently, Respondent filed a motion for Post-conviction Relief 3.850 which was technically deficient. A second motion was filed raising as grounds for relief - (1) The trial court erred in retaining jurisdiction over the first one-third of Respondents' sentence due to the fact that Florida Statutes §947.16 (3) (Supp. 1978), was not in effect at the time of his offense. And (2)- Ineffective assistance of trial counsel.

The trial Court denied respondents' motion for Post-Conviction Relief and the cause was appealed to the First District Court of Appeals which reversed and remanded the cause for an evidentiary hearing .

Therefore, Petitioner filed in the lower Court its Notice to Invoke Discretionary Jurisdiction.

JURISDICTION OF THIS COURT

THE JURISDICTION OF THIS COURT IS INVOKED TO FLORIDA

CONSTITUTION, ARTICLE, 1, SECTION 13; ARTICLE 5, SECTION 3 (b) (9); FLORIDA STATUTE 7901 (1981) AND FLORIDA RULES OF APPELLATE PROCEDURE 9.030 (a) (3). AND ALSO ARTICLE SECTION 3(b) (3) , FLORIDA CONSTITUTION

ISSUE ON APPEAL
AND AUTHORITIES

The lower Court's reversal of the trial court's order denying post-conviction relief under Fla. R. Crim. P. 3.850 and remanded the cause for an evidentiary hearing should not place the burden on the respondent due to the fact that court appointed counsel fail to object to ex post facto application of the retention statute, due to the fact that respondent is not a lawyer, and he was placed totally on the mercy of the Bay County Circuit Court at the time for his sentencing.

The petitioner in this cause is alleging that even thou the retention was illegal and was not even in effect at the time of respondent's charge, and just because respondent is not a train lawyer, the illegal retention should still be a part of respondent's sentence.

The Authorities quoted herein by the petitioner pertain to the mitigating factors which is not the argument of the respondent in this cause. The Respondent argues that his Fundamental Rights, Due Process and Equal Protection Rights were violated by the Circuit Court of Bay County Florida, that one-third jurisdiction was illegally retained by the Circuit Court of Bay County in violation of his Fourteenth Amendment to the Constitution of the United States, and the State of Florida. The Court held in - REDDICK V. STATE, 190 So.2d 340 (Fla. 2st DCA 1966) - Post-Conviction Relief rule was originally enacted to failitate the handling of post-conviction claims and provide procedure facilities available to State prisoners who might have belatedly acquired rights not which were not recognized at the time of their conviction. Criminal procedure Rule No. 1, F.S.A. ch 924
Appendix.

A Fundamental error of Constitutional dimension may be collaterally attacked. Thus, where a prisoner contends that his original sentence was unconstitutional, a rule 3.850 motion is the proper procedure for seeking and evidentiary hearing on whether or not the sentence was imposed in violation of the Constitution or the laws of the United States or of the State of Florida - 28 Fla. Jur. 2d 585. On motion under 3.850, defendant's are entitled to have his sentence corrected. KIROUAC V. STATE, (1979) Fla. App. D2) 371 So.2d 201.

Respondent asserts that he is entitled to equal protection, and his Fundamental Rights have been violated by the Circuit Court of Bay County Florida, and respondent is entitled to these rights that are offered to him through the Constitution of the United States and the State of Florida. SEE- MARTI V. STATE, (1964, Fla. D3) 163 So.2d 506. ALSO- YOUNG V. STATE, 1965, (Fla. App. D2) 179 So.2d 345.

If the court finds that (1)- the judgment was rendered without jurisdiction, or (2)- the sentence imposed was not arthorized by law or was otherwise open to collateral attack, or (3)- that has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment valnerable to collateral attack, the court must vacate and set the judgment aside, and must discharge the prisoner, or resentence him, or grant a new trial, or correct the sentence, as may appear appropriate. A hearing on a motion for post-conviction relief under the rule reaches only the question of whether the petitioner has been afforded every right of due process of law. - 28 Fla. Jur. 2d 585.


In this cause, the equal and Fundamental rights of the respondent has been violated, and said error was not harmless, and this cause and violation should be corrected by the State.

However, if a Court is allowed to sentence a defendant outside of the guidelines that are constitutioned by the laws of the state of Florida, then what are the laws and rules set forth for? = what are the Courts for? a person could go before the Court with a minor charge and be sentenced to the electric chair for his criminal minor charge. But the Constitution of the United States and the State of Florida protects a defendant from these violations, and he is assured of the right to a fair and impartial trial under the due process and equal protection clause of the Fourteenth Amendment to the Constitution of the United States and the laws of the State of Florida. In McNAMRA V. STATE, 1975, (Fla. App. D3) 324 So.2d 702, Cert. den. (Fla.) 337 SO.2d 809.- Relief from improper judgment or imposition of sentence is available only when the judgment was rendered without jurisdiction or the sentence imposed was not authorized by law or was otherwise open to collateral attack, or the Court, imposing judgmentt and sentence, infringed or denied defendant's Constitutional Rights. And in this cause, the defendant has been denied his Constitutional Rights that was assured to him by the State of Florida and the Constitution of the United States. It is held at 28 Fla. 2d 584. - The Test for granting relief under the rule is whether or not the petitioner was deprived of the substance of a fair trial. Thus, a petitioner who shows that he was denied due process may collaterally attack his conviction under the rule. However, if the Courts were allowed to sentence a person under their own rules, then what are the rules set forth for? the Constitution of the State of Florida and the United States protects a person against such violations as set forth in petitioners reply.

CONCLUSION

Based up on the foregoing argument and the authorities cited herein, respondent asserts that the one-third retention was in violation of his Constitutional Rights, and the Bay County Circuit Court did violate respondent's Fundamental Rights by with-holding jurisdiction over the first one-third of respondent's sentence. And this Court should affirm the order from the first District Court of Appeal, and Respondent be granted a hearing in this cause.

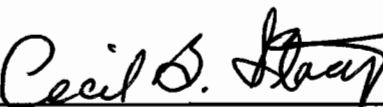
Respectfully submitted
Cecil B. Stacey
Respondent Pro se.



Cecil B. Stacey pro se
P.O. Box. 221 3V-2
Raiford, Florida 32083

CERTIFICATED OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forward to Jim Smith, Attorney General for the State of Florida, The Capital, TALLAHASSEE, FLORIDA 32301, this 10th day of February, 1985.



CECIL B. STACEY #080178
P.O. Box. 221 3T-2
Raiford, Florida 32083