

SUPREME COURT OF FLORIDA
TALLAHASSEE

JOHN GARLAND SHULL,
PETITIONER,

VS.

RICHARD L. DUGGER
SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS.

SEP 14 1987

CLERK OF THE COURT

By CASE NO. BR-329

71,162

PETITION FOR WRIT OF HABEAS CORPUS

Rec'd

COMES NOW THE DEFENDANT/PETITIONER, JOHN GARLAND SHULL, PRO SE, AND WOULD ASK THIS COURT TO HONOR HIS PETITION FOR WRIT OF HABEAS CORPUS, AND IN SUPPORT OF WOULD AVER THE FOLLOWING:

1. THE NAME OF THE COURT WHICH ENTERED THE JUDGMENT WAS THE FOURTEENTH JUDICIAL CIRCUIT IN AND FOR BAY COUNTY FLORIDA.
2. THE DATE OF SENTENCE WAS DECEMBER 31, 1984.
3. THE LENGTH OF THE SENTENCE WAS TEN (10) YEARS. THE DEFENDANT/PETITIONER WAS SENTENCED AS AN HABITUAL OFFENDER.
4. THE SENTENCING JUDGE WAS THE HONORABLE N. RUSSELL BOWER.
5. THE OFFENSE AT BAR WAS GRAND THEFT.
6. THE DEFENDANT/PETITIONER'S PLEA WAS GUILTY.
7. THERE WAS NO TRIAL.
8. THE DEFENDANT/PETITIONER APPEALED THE JUDGMENT OF SENTENCE.
9. THE JUDGMENT OF SENTENCE WAS APPEALED TO THE FIRST DISTRICT COURT OF APPEAL, TALLAHASSEE, FLORIDA.
10. UPON DENIAL OF HIS APPEAL DEFENDANT/PETITIONER FILED 3.850 POST-CONVICTION RELIEF MOTION, WHICH WAS ALSO DENIED.
11. ON JANUARY 15, 1987 THE DEFENDANT/PETITIONER FILED A TIMELY APPEAL OF THE 3.850 MOTION.
12. ON AUGUST 30, THE DEFENDANT RECEIVED NOTICE FROM THE FIRST DISTRICT COURT OF APPEAL THAT HIS 3.850 MOTION HAD BEEN GRANTED AND THAT THE DECISION OF THE TRIAL COURT WAS AN ILLEGAL SENTENCE AND MUST BE REVERSED AND REMANDED FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THEIR DECISION IN HALL VS STATE 12 FLW 1901 (FLA. 1ST DCA Aug. 5, 1987).
(PLEASE SEE APPENDIX)
13. THE DEF/PETITIONER'S OFFENSES WERE ALL THIRD (3RD) DEGREE FELONIES AND ALL FELL INTO CATEGORY SIX (6) OF THE SENTENCING GUIDELINES. HE RECEIVED THIRTEEN (13) POINTS FOR THE INSTANT OFFENSE AND THIRTY (30) POINTS FOR SIX (6) PRIOR FELONIES.

GROUNDS FOR RELIEF

- A) THE TRIAL COURT ERRED BY USING THE HABITUAL OFFENDER STATUS OF THE DEFENDANT TO DEPART FROM THE RECOMMENDED GUIDELINE SENTENCE.

The Supreme Court recently ruled that the Habitual Offender status of a Defendant could not be used to depart from the recommended guideline sentence, as the prior convictions of the Defendant which are used to Habitualize him are already figured into the guideline sentence.

If the trial court were to enhance the sentence of the Defendant they could only do so with written reason for that enhancement.

Given the trial courts written reason(s) for departure are valid, the maximum sentence allowed in the case at bar is five (5) years, as the Grand Theft was the one and only charge and is a third degree felony.

- B) THE DEFENDANT/PETITIONER CONTENDS THAT HE HAS SERVED THE ENTIRE SENTENCE AND SHOULD BE RELEASED FROM CUSTODY OF THE FLORIDA DEPARTMENT OF CORRECTIONS IMMEDIATELY.

The Defendant/Petitioner would aver that he has served some forty-two (42) months on this sentence and with the statutory, incentive, and good time has served the equivalent of a seven and one half (7½) year sentence.

Even if the trial court were to find written reason for departure and to hypothesize that those reasons were valid, it would only allow them to sentence the Defendant/Petitioner to a maximum of five (5) years incarceration, which the Def/Petitioner has already served. Hence the Def/Petitioner is being illegally held.

In certain instances one could argue the detention of the Def/Petitioner stating that expediency would be ideal, but due to the courts backlog of cases it has not been able to render the immediate relief the Def/Petitioner demands and deserves.

The Def/Petitioner feels that he has suffered enough as his illegal detention is just the icing on the cake of disappointment which the Def/Petitioner has suffered because of his ordeal.

WHEREFORE, the Def/Petitioner prays this Honorable Court grant his Petition for Writ of Habeas Corpus and that he be immediately released from the custody of the Florida Department of Corrections.

The Def/Petitioner promises his availability for any further court proceedings and any further cooperation needed.

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING PETITION FOR WRIT OF HABEAS CORPUS HAS BEEN SENT BY U.S. MAIL TO THE OFFICE OF THE ATTORNEY GENERAL, THE CAPITOL, TALLAHASSEE, FLORIDA. 32301, ON THIS THE 11 DAY OF September, 1987.

John Garland Shull
JOHN GARLAND SHULL
DOC #096206
RECEPTION & MEDICAL CTR.
P.O. BOX 628
LAKE BUTLER, FL. 32054

NOTARY PUBLIC CERTIFICATE

STATE OF FLORIDA]

COUNTY OF UNION] SS

SWORN AND SUBSCRIBED BEFORE ME THIS 11 DAY OF September, 1987.

[SEAL]

[Faint circular notary seal]

Robert C. H. [Signature]
NOTARY PUBLIC STATE OF FLORIDA