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CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

MICHAEL BEDFORD
APPELLANT

V.

STATE OF FLORIDA, ET AL
APPELLEE

CASE# 81,896

PETITION FOR WRIT OF CERTIORARI
AND/OR REVIEW

INITIAL BRIEF OF APPELLANT

NATURE AND PREFERENCE AND
JURISDICTION: RULE 9.120 (d)
FLORIDA RULES OF APPELLATE PROCEDURE

SUBMITTED BY APPELLANT, IN PRO SE:

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CITATIONS OF AUTHORITY

STATEMENT OF JURISDICTION

THE DISCRETIONARY JURISDICTION OF THE SUPREME COURT OF FLORIDA MAY BE SOUGHT TO REVIEW: A DECISION OF THE DISTRICT COURT OF APPEAL THAT: EXPRESSLY OR DIRECTLY CONFLICTS WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR OF THE SUPREME COURT OF FLORIDA ON THE SAME QUESTION OF LAW.

IN THE CASE AT BAR, THE FOURTH DISTRICT COURT OF APPEAL'S DECISION OF MAY 12, 1993, CONFLICTS WITH THE LAWS OF THE STATE OF FLORIDA, WHEN IT AFFIRMED THE DENIAL OF APPELLANT'S RULE 3.800(a), FLA. R. CRIM. P. MOTION, WHICH IN FACT MADE LEGAL THE IMPOSITION OF THE CAPITAL SENTENCE OF LIFE IMPRISONMENT ADDING THE SPECIAL PROVISION THAT APPELLANT MUST SERVE NO LESS THAN TWENTY-FIVE (25) YEARS BEFORE BEING ELIGIBLE FOR PAROLE, §775.082(1)" FOR THE CRIME OF KIDNAPPING, §787.01, F.S., A FIRST DEGREE FELONY. AN ENHANCEMENT OF THE PENALTY FOR THAT CRIME WHICH IS IN EXCESS OF THE MAXIMUM PUNISHMENT AUTHORIZED BY THE LAWS OF THE STATE OF FLORIDA.

STATEMENT OF THE ISSUE

APPELLANT CONTENDS THAT THE TRIAL COURT'S IMPOSITION OF A TERM OF A NATURAL LIFE SENTENCE WITH THE SPECIAL PROVISION THAT THE "APPELLANT SHALL SERVE NO LESS THAN TWENTY-FIVE (25) YEARS IN ACCORD WITH THE PROVISIONS OF FLORIDA STATUTE §775.082(1)" AS APPLIED TO THE TRIAL COURT'S SENTENCE ON COUNT II, KIDNAPPING, F.S. 787.01. A FIRST DEGREE FELONY, IS AN ILLEGAL SENTENCE DUE TO THE FACT THAT IT IS IN EXCESS OF THE MAXIMUM PUNISHMENT AUTHORIZED BY LAW.

STATEMENT OF THE CASE

ON JANUARY 27, 1987, THE BROWARD COUNTY GRAND JURY RENDERED, BY INDICTMENT, THE FOLLOWING CHARGES AGAINST THE APPELLANT, AND CO-DEFENDANT V. WALSH:

COUNT I, FIRST DEGREE PREMEDITATED MURDER, § 782.04, F.S.

COUNT II, KIDNAPPING, § 787.01, F.S.

ON NOVEMBER 22, 1988, APPELLANT WAS FOUND GUILTY ON BOTH COUNTS AND AFTER AN ADVISORY HEARING, THE JURY RECOMMENDED A TERM OF LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE FOR 25 YEARS FOR THE CHARGE OF FIRST DEGREE MURDER AS STATED IN COUNT I.

ON JANUARY 20, 1989, THE 17th JUDICIAL CIRCUIT COURT IMPOSED THE DEATH PENALTY ON COUNT I, AND A NATURAL LIFE SENTENCE ON COUNT II. APPELLANT APPEALED

ON OCTOBER 10, 1991, THE FLORIDA SUPREME COURT UPHELD THE CONVICTIONS AND SENTENCE IMPOSED ON THE KIDNAPPING CHARGE, COUNT II, BUT REVERSED THE DEATH PENALTY IMPOSED ON COUNT I, ORDERING APPELLANT TO BE RESENTENCED ON COUNT I TO A LIFE SENTENCE WITHOUT POSSIBILITY OF PAROLE FOR 25 YEARS, § 775.082 (1), (A. EX A, Pg 1-4)

ON FEBRUARY 27, 1992, THE TRIAL COURT RESENTENCED APPELLANT TO A TERM OF LIFE IMPRISONMENT, PURSUANT TO § 775.082 (1), AS IS PROPER FOR A CONVICTION OF FIRST DEGREE MURDER AS CHARGED PER COUNT I. BUT, THE HONORABLE JUDGE MEL GROSSMAN, ALSO IMPOSED THE SENTENCE OF A TERM OF LIFE IMPRISONMENT, (WITHOUT POSSIBILITY OF PAROLE FOR 25 YEARS, AS PER § 775.082(1)) FOR THE CRIME OF KIDNAPPING, § 787.01, F.S. COUNT II, WHICH IS A FIRST DEGREE FELONY PUNISHABLE BY A TERM OF IMPRISONMENT FOR LIFE, OR A TERM OF IMPRISONMENT NOT EXCEEDING FOURTY (40) YEARS AS PER § 775.082 (3)(a).

ON JUNE 10, 1992, APPELLANT FILED A MOTION TO CORRECT AN ILLEGAL SENTENCE PURSUANT TO RULE 3.800 (a) FLA. R. CRIM. P.

ON AUGUST 3, 1992, THE 17th JUDICIAL CIRCUIT COURT DENIED APPELLANT'S RULE 3.800(a) MOTION AND APPELLANT FILED A TIMELY APPEAL. (A. EX F, PG 14).

ON MAY 12, 1993, THE FOURTH DISTRICT COURT OF APPEAL, CITING LAW OF THE CASE, AFFIRMED THE DENIAL OF APPELLANT'S RULE 3.800(c) MOTION, (A. EX K, PG 61) WHICH IN FACT IMPOSED AND MADE LEGAL THE CAPITAL SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE FOR TWENTY-FIVE (25) YEARS FOR THE CRIME OF KIDNAPPING, §787.01, F.S. A FIRST DEGREE FELONY. APPELLANT FILED A TIMELY PETITION FOR WRIT OF CERTIORARI, AT BAR.

STATEMENT OF THE FACTS

ON JANUARY 2, 1988, APPELLANT, ALONG WITH CO-DEFENDANT V. WALSH, KIDNAPPED MS. DEBORAH L. HERDMAN, A 24 YEAR OLD WOMAN. (HEREINAFTER VICTIM). V. WALSH BOUND AND GAGGED THE VICTIM WITH DUCT TAPE IN THE BACK OF A LIMOSINE DRIVEN BY WALSH. THE VICTIM WAS IN THE REAR OF THE LIMOSINE WITH THE APPELLANT, BOUND AND IMPRISONED, WAS DRIVEN TO A REMOTE AND UNPOPULATED AREA OF BROWARD COUNTY, WHERE THE VICTIM DIED OF ASPHYXIA. THE VICTIM'S NUDE BODY WAS FOUND BESIDE A DUMPSTER BEHIND A SHOPPING CENTER THE FOLLOWING DAY.

SUMMARY OF THE ARGUMENT

NOW THE ARGUMENT BEFORE THIS COURT CONSISTS OF TWO ISSUES WHICH THE APPELLANT PASSED ALONG FOR RESOLUTION. FIRST ARGUMENT BEING: AFTER IMPOSING A NATURAL LIFE SENTENCE, DOES THE ADDED SPECIAL PROVISION "THAT THE APPELLANT SHALL SERVE NO LESS THAN TWENTY-FIVE (25) YEARS IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE §775.082 (1), AS APPLIED TO THE TRIAL COURT'S SENTENCE IMPOSED ON COUNT II, KIDNAPPING, §787.01, A FIRST DEGREE FELONY BY STATUTE CONSTITUTE AN ILLEGAL SENTENCE DUE TO THE FACT THAT IT IS IN EXCESS OF THE STATUTORY MAXIMUM PUNISHMENT AUTHORIZE BY LAW FOR THE OFFENSE CHARGED. AND THE SECOND ARGUMENT BEING: DOES THE GENERAL RULE THAT ALL POINTS OF LAW WHICH HAVE BEEN ADJUDICATED BECOME THE 'LAW OF THE CASE' EVEN THOUGH A FUNDAMENTAL SENTENCING ERROR IS DISCOVERED?

ISSUE AND ARGUMENT I

DOES THE TRIAL COURT'S IMPOSITION OF A TERM OF A NATURAL LIFE SENTENCE" WITH THE SPECIAL PROVISION THAT APPELLANT SERVE NO LESS THAN 25 YEARS" AS APPLIED TO THE COURT'S SENTENCE ON COUNT II, KIDNAPPING, § 787.01, A FIRST DEGREE FELONY CONSTITUTE AN ILLEGAL SENTENCE DUE TO THE FACT THAT IT IS IN EXCESS OF THE MAXIMUM PUNISHMENT AUTHORIZED BY FLORIDA LAW.

ON JANUARY 27, 1988, THE BROWARD COUNTY GRAND JURY CHARGED BY INDICTMENT THE APPELLANT, AND CO-DEFENDANT V. WALSH, WITH THE FOLLOWING CRIMES: COUNT I, FIRST DEGREE PREMEDITATED MURDER, F.S. 782.04; AND COUNT II, KIDNAPPING, F.S. 787.01 AND 777.011.

THE ISSUE AT BAR DEALS EXCLUSIVELY WITH COUNT II OF THAT INDICTMENT. APPELLANT WAS CHARGED, TRIED, AND FOUND GUILTY OF KIDNAPPING THE VICTIM, A 24 YEAR OLD WOMAN ON JANUARY 2, 1988.

FLORIDA STATUTE § 787.01, (1)(a)(2), KIDNAPPING STATES THAT A PERSON WHO KIDNAPS A PERSON IS GUILTY OF A FELONY OF THE 'FIRST DEGREE', AND PUNISHABLE BY IMPRISONMENT FOR A TERM OF YEARS NOT EXCEEDING LIFE OR AS PROVIDED IN § 775.082, F.S.

F.S. § 775.082 (3)(b) STATES THAT "... A PERSON WHO HAS BEEN CONVICTED OF ANY OTHER DESIGNATED FELONY MAY BE PUNISHED AS FOLLOWS: (b) FOR A FELONY OF THE 'FIRST DEGREE' BY A TERM OF IMPRISONMENT NOT EXCEEDING 40 YEARS OR WHERE SPECIFICALLY PROVIDED BY STATUTE, BY IMPRISONMENT FOR A TERM OF YEARS NOT EXCEEDING LIFE IMPRISONMENT.

IT IS APPELLANT'S CONTENTION THAT (1) THE TRIAL COURT'S FACTORING OF THE CRIME OF KIDNAPPING, § 787.01, F.S. AS A 'LIFE FELONY' IS AN ILLEGAL ENHANCEMENT OF THE CRIME CHARGED. THE COURT WILL PLEASE NOTE THAT THE FACT THAT A PERSON COMMITS THE OFFENSE OF KIDNAPPING OF A CHILD UNDER THE AGE OF 13 ... WOULD BE GUILTY OF A 'LIFE FELONY' UNDER 787.01 (3)(a) 1, 2, 3, & 4. IN THE CASE AT BAR, THE VICTIM WAS 24 YEARS OLD AND THUS THE IMPOSITION OF A 'LIFE FELONY' IS AN INAPPROPRIATE AND ILLEGAL ENHANCEMENT.

THE SECOND PART OF THE ISSUE DEALS WITH THE TRIAL COURT'S IMPOSITION OF THE NATURAL LIFE SENTENCE WITH THE SPECIAL PROVISION THAT APPELLANT SHALL SERVE NO LESS THAN 25 YEARS IN ACCORDANCE WITH THE PROVISIONS OF F.S. 775.082(1)

IF THIS HONORABLE COURT WILL PLEASE TAKE NOTICE OF THE FACT THAT REGARDLESS OF WHETHER THE CORRECT PENALTY DESIGNATION FOR THE CRIME OF KIDNAPPING IS A FIRST DEGREE, OR A LIFE FELONY, THE MAXIMUM AUTHORIZED SENTENCE IS LIFE IN PRISON. APPELLANT CONTENDS THAT THE TRIAL COURT'S ENHANCEMENT OF THE PENALTY FOR KIDNAPPING FROM A FIRST DEGREE/LIFE FELONY TO THE PENALTY APPLICABLE TO A CAPITAL FELONY UNDER 775.082(1) CONSTITUTES AN ILLEGAL ENHANCEMENT OF THAT PENALTY FOR THE CRIME OF KIDNAPPING AS AUTHORIZED BY FLORIDA LAW, THUS RENDERING THAT SENTENCE CONSTITUTIONALLY INFIRM,

THE COURTS HAVE HELD THAT "WHERE SENTENCING ERROR CAN CAUSE OR REQUIRE DEFENDANT TO BE INCARCERATED OR RESTRAINED FOR A GREATER LENGTH OF TIME THAN PROVIDED BY LAW, SENTENCING ERROR IS FUNDAMENTAL AND ENDURES, AND DEFENDANT IS ENTITLED TO RELIEF IN ANY AND EVERY MANNER POSSIBLE, I.E. ON DIRECT APPEAL ALTHOUGH NOT FIRST PRESENTED TO TRIAL COURT, BY POST CONVICTION RELIEF, OR BY EXTRAORDINARY REMEDY; AS TO SUCH FUNDAMENTAL SENTENCING ERROR DEFENDANT'S ENTITLED TO RELIEF UNDER ALTERNATIVE REMEDY NOTWITHSTANDING THAT HE COULD HAVE, BUT DID NOT RAISE ERROR ON APPEAL. REYNOLDS V. STATE, 429 So.2d 1331 (FLA 5DCA 1983); JUDGE V. STATE, 596 So.2d 73, 77 (FLA 2DCA 1991) (en banc) rev. dend, 613 So.2d 5 (FLA 1992); ANDERSON V. STATE, 584 So.2d 1127 (FLA 4DCA 1991); PINELLAS V. STATE, 599 So.2d 272 (FLA 5 DCA 1992). "... WHERE A DEFENDANT HAS BEEN FOUND GUILTY OF AN OFFENCE UPON A LEGALLY SUFFICIENT CHARGE, AND THE SENTENCE IMPOSED IS NOT AUTHORIZED BY LAW, OR IS CONTRARY TO LAW, AND THE DEFENDANT SEEKS A DISCHARGE FROM CUSTODY IN HABEAS CORPUS PROCEEDING, HE MAY BE REMANDED FOR A LEGAL AND PROPER SENTENCE." BLACKWELDER V. MORRIS, 89 FLA 87, 103 So 124 (1925); COLLINGSWORTH V. MAYO, 77 So.2d 843 (FLA 1955); AND JOHNSON V. STATE, 81 FLA 783, 89 So 114 (1921)

APPELLANT ACKNOWLEDGES THAT ALTHOUGH THE SENTENCE OF NATURAL LIFE IS WITHIN THE STATUTORY LIMITS GIVEN FOR EITHER A FIRST DEGREE AND/OR LIFE FELONY KIDNAPPING, § 787.01, F.S. THE IMPOSITION OF THE PROVISION REQUIRING THE APPELLANT TO SERVE A SPECIFIC SET PERIOD OF TIME BEFORE BEING ELIGIBLE FOR PAROLE CONSTITUTES AN ILLEGAL SENTENCE AND RENDERS THAT SENTENCE CONSTITUTIONALLY INFIRM.

THE COURTS HAVE HELD THAT A "MOTION TO CORRECT SENTENCE MAY BE USED ONLY TO CORRECT ILLEGAL SENTENCE GIVEN WITHOUT STATUTORY AUTHORITY." SIMMONS V. STATE, 579 So 2d 874 (FLA 1DCA 1991). THE APPELLANT AVERS THAT THE FLORIDA LEGISLATURE INTENDED THAT THE CRIME OF KIDNAPING, § 787.01, F.S. (COMMITTED AFTER 1983,) BE PUNISHED BY A TERM OF IMPRISONMENT FOR LIFE, OR A TERM OF IMPRISONMENT NOT TO EXCEED FORTY (40) YEARS. THE COURTS HAVE LONG HELD THAT "WHERE THE LANGUAGE OF A STATUTE IS PLAIN AND DOES NOT LEAD TO ABSURD OR IMPRACTICABLE RESULTS, THERE IS NO OCCASION OR EXCUSE FOR JUDICIAL CONSTRUCTION;' THE LANGUAGE MUST BE ACCEPTED BY THE COURTS AS THE SOLE EVIDENCE OF THE ULTIMATE LEGISLATIVE INTENT, AND THE COURTS HAVE NO FUNCTION BUT TO APPLY AND ENFORCE THE STATUTE ACCORDINGLY.' CAMINETTI V. UNITED STATES, 242 US 470, 37 SCT 192 (1916).

"WE KNOW OF NO CIRCUMSTANCES UNDER THE LAW OF THIS STATE WHICH WOULD EVER AUTHORIZE A TRIAL COURT TO SENTENCE A DEFENDANT TO A TERM OF IMPRISONMENT IN EXCESS OF THE STATUTORY MAXIMUM SET FOR THE CRIME FOR WHICH THE DEFENDANT STANDS CONVICTED." SUCH AN ERROR IS FUNDAMENTAL AND JURISDICTIONAL IN NATURE AND CAN NEVER BE CONSIDERED IRRELEVANT, MOOT, OR HARMLESS, BUTLER V. STATE, 343 So 2d 93 (FLA 3DCA 1977); WILLIAMS V. STATE, 280 So 2d 518 (FLA 3DCA 1973); LAWSON V. STATE, 400 So 2d 1053 (FLA 2DCA 1981); GONZALEZ V. STATE 392 So 2d 334 (FLA 3DCA 1981),

THE HONORABLE J. ANSTEAD, DISTRICT COURT OF APPEALS JUDGE, FOURTH DISTRICT, IN HIS DISSENTING OPINION IN THE CASE AT BAR, CORRECTLY NOTED THAT "THIS STATE HAS PROVIDED A SPECIFIC RULE OF CRIMINAL PROCEDURE, RULE 3.800 WHICH

PERMITS A DEFENDANT TO SEEK RELIEF FROM AN ILLEGAL SENTENCE. THIS RULE AFFORDS A DEFENDANT WHO RECEIVES A SENTENCE THAT EXCEEDS THE MAXIMUM PROVIDED BY LAW THE FUNDAMENTAL RIGHT TO REQUEST AT ANY TIME A SENTENCE THAT FITS WITHIN THE CONFINES OF THE LAW. (CITATIONS OMITTED.) THUS AN ATTACK ON AN ILLEGAL SENTENCE CAN BE RAISED FOR THE FIRST TIME IN A RULE 3.800 MOTION, EVEN AFTER AN AFFIRMANCE OF THE JUDGMENT AND SENTENCE ON DIRECT APPEAL. (CITATIONS OMITTED). SINCE ILLEGAL SENTENCES CAN BE CORRECTED AT ANY TIME, THE DOCTRINE OF THE LAW OF THE CASE IS INAPPLICABLE." (A. EX. K, PG 63). [SEE ALSO; HARMON V. STATE, 547 So 2d 1027 (FLA 1 DCA 1989); YOUNG V. STATE, 503 So 2d 1360 (FLA 1 DCA 1987); STRAZZULA V. HENDRICK, 177 So 2d 1, 4 (FLA 1965),

CONCLUSION

IT HAS BEEN WELL ESTABLISHED THAT "AN ILLEGAL SENTENCE CAN BE CORRECTED WITHOUT CONTEMPORANEOUS OBJECTION," TROTT V. STATE, 579 So.2d 807 (FLA 5DCA 1991); AND THAT A "... CHALLENGE TO [AN] ILLEGAL SENTENCE MAY BE BROUGHT AT ANY TIME." OSPINA V. STATE, 579 So.2d 810 (FLA 5DCA 1991). THE APPELLANT AVERS THAT ON FEBRUARY 27, 1992, THE TRIAL COURT DEVIATED FROM AND EXCEEDED THE STATUTORY LIMITS SET BY LAW, WHEN THE COURT SENTENCED APPELLANT TO A TERM IN PRISON FOR NATURAL LIFE AND FURTHER ORDERED THAT APPELLANT "SHALL SERVE NO LESS THAN TWENTY-FIVE (25) YEARS IN ACCORDANCE WITH THE PROVISIONS OF F.S. 775.082(1). IN EFFECT, THE TRIAL COURT REMADE THE CRIME OF KIDNAPPING INTO A CAPITOL FELONY AND SENTENCED ACCORDINGLY.

THUS DOES APPELLANT RESPECTFULLY SUBMIT THAT THIS COURT ISSUE A WRIT OF CERTIORARI QUASHING THE LOWER COURT'S ORDER AFFIRMING THE DENIAL OF APPELLANT'S MOTION TO CORRECT SENTENCE VIA FLA.R.CRIM.P. RULE 3.800,(a), AND ORDER THAT APPELLANT BE RESENTENCED TO A TERM OF IMPRISONMENT THAT FITS WITHIN THE CONFINES OF THE LAWS OF THIS STATE.

RESPECTFULLY SUBMITTED

Michael Bedford

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SWORN AND SUBSCRIBED
BEFORE ME THIS 16th
DAY OF NOVEMBER, 1993

Walter L Sloan

NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires July 4, 1994

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING "AMENDED BRIEF OF JURISDICTION" HAS BEEN SERVED ON THIS 16 DAY OF NOVEMBER, 1993, BY UNITED STATES MAIL, TO THE FOLLOWING OFFICES:

1. OFFICE OF THE CLERK
THE SUPREME COURT OF FLORIDA
SUPREME COURT BUILDING
TALLAHASSEE, FL 32399-1927

(AND)

2. MR JAMES CARNEY, ASST. ATTORNEY GENERAL
THIRD FLOOR
1655 PALM BEACH LAKES BLVD.
WEST PALM BEACH, FL 33401-2299

Michael Bedford

MICHAEL BEDFORD, 028348
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P.O. BOX 747
STARKE, FL 32091

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
JANUARY TERM 1993

MICHAEL BEDFORD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 92-2609.

L.T. CASE NO. 88-424 CF10B.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

Opinion filed May 12, 1993

Appeal of order denying rule 3.800(a) motion from the Circuit Court for Broward County; Mel Grossman, Judge.

Michael Bedford, Starke, pro se appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and James J. Carney, Assistant Attorney General, West Palm Beach, for appellee.

OWEN, WILLIAM C., JR., Associate Judge.

Appellant's death sentence for first degree murder was vacated, Bedford v. State, 589 So. 2d 245 (Fla. 1991), cert. denied, __U.S.__, 112 S.Ct. 1773, 118 L.Ed 2d 432 (1992), and upon remand he was resentenced on the murder count and on the separate kidnapping count. He asserts here, on appeal from denial of a motion under 3.800, Rules of Criminal Procedure, that the consecutive life sentence which he received on the separate count of kidnapping was illegal because the court, as it did in resentencing on the murder conviction, imposed a sentence

EXHIBIT NO. K

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"without possibility of parole for twenty-five years". We affirm under the doctrine of law of the case.

Upon conviction appellant was sentenced to death on the murder count and sentenced to a consecutive life sentence "without possibility of parole" on the kidnapping count. The supreme court affirmed the convictions on both counts as well as the sentence for kidnapping. Bedford v. State, 589 So. 2d 245 (Fla. 1991), cert. denied. The court explicitly recognized that the sentence imposed upon appellant for the kidnapping count was a consecutive life sentence without possibility of parole. Id. 249. Because the validity of the sentence which appellant received on the kidnapping count has been approved by the supreme court we are not at liberty to disturb it.

While it is true that the sentence on the kidnapping count approved by the supreme court was for a consecutive life sentence without possibility of parole, whereas the sentence ultimately imposed by the trial court upon resentencing was for a consecutive life sentence without possibility of parole for twenty-five years, the modification is one which benefits rather than harms appellant.

Affirmed.

HERSEY, J., concurs.
ANSTEAD, J., dissents with opinion.

ANSTEAD, J., dissenting.

Because our criminal justice system does not permit a defendant to serve a sentence that exceeds the maximum penalty permissible under our laws, appellant's Rule 3.800 motion should have been granted and his sentence corrected. As Judge Cowart of the fifth district has recognized:

> All persons in prison under a sentence for the commission of a crime are there because the judicial system declared they did not follow and obey the law but, to the contrary, they did an illegal act. Certainly in imposing the sanctions of the law upon a defendant for illegal conduct the judicial system itself must follow and obey the law and not impose an illegal sentence, and, when one is discovered, the system should willingly remedy it. The purpose of all criminal justice rules, practices and procedures is to secure the just determination of every case in accordance with the substantive law. While imperfect, our criminal justice system must provide a remedy to one in confinement under an illegal sentence. There is no better objective than to seek to do justice to an imprisoned person.

Hayes v. State, 598 So. 2d 135, 138 (Fla. 5th DCA 1992).

In addition to the traditional remedy of habeas corpus, this state has provided a specific rule of criminal procedure, Rule 3.800, which permits a defendant to seek relief from an illegal sentence. This rule affords a defendant who receives a sentence that exceeds the maximum provided by law the fundamental right to request at any time a sentence that fits within the confines of the law. See Judge v. State, 596 So. 2d 73, 77 (Fla. 2d DCA 1991)(en banc)(discussing purpose of rule), rev. denied, 613 So. 2d 5 (Fla. 1992). Thus, an attack on an illegal sentence can be raised for the first time in a Rule 3.800 motion, even

after an affirmance of the judgment and sentence on direct appeal. See id.; Anderson v. State, 584 So. 2d 1127 (Fla. 4th DCA 1991); Pinellas v. State, 599 So. 2d 272 (Fla. 5th DCA 1992).

Here, appellant did not challenge any of the mandatory provisions of his kidnapping sentence in the supreme court. Moreover, and perhaps more importantly, there is simply no legal basis for the provision of appellant's kidnapping sentence that it be served "without possibility of parole for twenty-five years." Hence, the supreme court's affirmance of appellant's life sentence could not have rested on this ground, nor can it be viewed as an approval of that aspect of the sentence. Since illegal sentences can be corrected at any time, even after an affirmance of the judgment and sentence on direct appeal, the doctrine of law of the case is inapplicable. Yet, the effect of our holding here is that no relief is available under Rule 3.800 where there has been a prior appeal resulting in an affirmance of a sentence, even though the sentence, or the alleged illegal aspect thereof, was not challenged on appeal. This holding emasculates the purpose and usefulness of Rule 3.800.