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SID J. WHITE
AUG 23 1993
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

MICHAEL BEDFORD
APPELLANT

V.

CASE # 81-896

STATE OF FLORIDA, ETAL
APPELLEE

PETITION FOR WRIT OF CERTIORARI
AND/OR REVIEW

[AMENDED BRIEF OF JURISDICTION]

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

SUBMITTED BY APPELLANT, IN PRO SE:

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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 LIKE 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(a) 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. (HEREIN AFTER 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 S 775.082 (1), AS APPLIED TO THE TRIAL COURT'S SENTENCE IMPOSED ON COUNT II, KIDNAPPING, S 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 30 YEARS OR WHEN 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, + 5. 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 KIDNAPING 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 KIDNAPING 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 KIDNAPING 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)

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING "AMENDED BRIEF OF JURISDICTION" HAS BEEN SERVED ON THIS 18th DAY OF AUGUST, 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
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Sworn to and Subscribed to before me this 19th day of August, 1993.

George D Hall

GEORGE D. HALL
Notary Public, State of Florida
My Comm. expires Dec. 27, 1996
Comm. No. CC 248210