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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Fourth Judicial Circuit, In and for Duval County, Florida, and the Appellee in the District Court of Appeal, First District, Respondent was the prosecution and Appellee in the lower courts. The parties will be referred to as they appear before this court.

STATEMENT OF THE CASE AND FACTS

Petitioner entered a plea of guilty to the reduced charge of second degree murder, and was sentenced to One-Hundred-Twenty(120) years, with the court retaining jurisdiction over one third of the sentence on August 4, 1981.

Petitioner filed a Motion to Correct An Illegal Sentence. Alleging that the trial court Failed To Consider Statutory Criteria Pertaining To Suitability Or Unsuitability Of Adult Sanctions To Protect Defendant's Right Which Legislature Gave To Juveniles.

Trial Court denied Petitioner Motion To Correct An Illegal Sentence, by concluding that Petitioner was ineligible for classification as a youthful offender because he was convicted of a life felony.

On Appeal, Respondent argued that Petitioner sentence was authorized by statute, and therefore Petitioner cannot raise his claims in a Rule 3.800 motion. The District Court of Appeal, First District, concluded that the record does not indicate that Petitioner used a firearm in the commission of the crime, or that this first degree felony should be reclassified as a life felony on any other basis. The District Court also concluded that this sentence is well in excess of the maximum allowed if sentence had been pronounced under 958.04, the youthful offender statute.

In light of this Court recent decision in Davis-v-State, 20 Fla. L. Weekly S362(Fla. July 20, 1995), that whether Petitioner should have been considered for sentencing as a youthful offender is not cognizable on a Rule 3.800 motion or otherwise collaterally.

But, the Court determine that the matter is not entirely free from doubt, and certified the question as a matter of great public importance.

WHETHER THE TRIAL COURT'S FAILURE TO CONSIDER
A DEFENDANT FOR CLASSIFICATION AS A YOUTHFUL
OFFENDER IS COGNIZABLE UNDER RULE 3.800(A),
FLORIDA RULES OF CRIMINAL PROCEDURE.

After the First District Court of Appeal filed its opinion.
Petitioner filed his Notice To Invoke Discretionary Jurisdiction
on October 2, 1995.

This jurisdiction brief follows.

SUMMARY OF ARGUMENT

Petitioner sentence is illegal where it exceeds the statutory maximum prescribed by law under 958.04(2), Florida Statute.

Rule 3.800(a), Florida Rules of Criminal Procedure, provides a collateral attack on sentences that is not authorized by law.

Trial Court failed to consider and sentence Petitioner as a youthful offender, pursuant to 958.04, Fla. Stat. Thus, the One Hundred-Twenty(120) years sentence have exceeded the maximum, for a youthful offender.

Petitioner sentence should be vacated, for Petitioner to be considered as a youthful offender.

ARGUMENT

Petitioner was charged with First Degree Murder, but pled guilty to a reduced charge of Second Degree Murder § 782.04(2), Florida Statute(Supp. 1980).

At the time Petitioner offense, the requirement of section 958.04(1), Florida Statute(Supp. 1980); mandates Petitioner to be considered and sentence as a youthful offender. This Court stated in State-v-Goodson, 403 So. 2d 1337,1339(Fla. 1981), that if a person meets the eligibility requirement in subsection (1), the trial court "shall: classify that person as ayouthful offender. Cf. State-v-Rhoden, 448 so. 2d 1013(Fla. 1984), held that in a case involving mandatory application of the sentencing provisions of section 39.111 (6), that the juvenile justice statutory scheme, as adopted by the Florida Legislature, grants to juveniles the right to be treated differently from adults.

The Second District Court of Appeal, held that even though a defendant was indicted for first degree murder and not literally "tranfered" for prosecution from juvenile division, where he was 16 years old at time he entered plea of guiltly to second degree murder, and had not previously been classified as youthful offender, defendant meet criteria of statute for classification as youthful offender. see Stancil-v-State, 405 So. 2d 426(Fla. 2d DCA 1981).

Petitioner sentence is illegal where it exceeded the statutory maximum prescribed by law under 958.04(2), 958.05(2), Florida Statute, Which falls in the narrow calss of cases, in which the sentence imposed can be described as truly illegal.

Thus, Rule 3.800(A), Florida Rules Criminal Procedure is the appropriate Motion to file to correct an illegal sentence.

Where the trial court have failed to consider a Defendant for classification as a youthful offender.

Because if Petitioner was considered and ~~sentence~~ as a youthful offender, it would exceed the maximum prescribed by 958.04, Fla. Stat., this Court should accept jurisdiction pursuant to Article V, § 3(b)(3), Florida Constitution, and order briefs on the merits from both parties.

CONCLUSION

This Court should accept jurisdiction pursuant to Article V, § 3(b)(3), Florida Constitution, and order briefs on the merits from both parties.

OATH

I declare under penalty of perjury that the foregoing Petitioner Brief on Jurisdiction, and the facts stated in it are true and correct. This 25th day of October 1995.

Respectfully requested

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by U.S. Mail to Thomas Falkinburg, Assistant Attorney General, The Capitol, Tallahassee, Florida, 32399-1050. This 25th day of October 1995.

Charles W. Lee
Charles W. Lee #074483

Petitioer, pro se