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IN THE SUPREME COURT OF FLORIDA

Anthony A. Stuart,
Appellant,

vs.

Case No. : 96-208

State of Florida,
Appellee.

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL

PETITIONER'S REPLY BRIEF

Anthony A. Stuart
DC# T06549
Appellant Pro Se
Washington C.I.
4455 Sam Mitchell Dr.
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IN THE SUPREME COURT OF FLORIDA

Anthony A. Stuart,
Appellant,

vs.

Case No.: 96-208

State Of Florida,
Appellee.

CERTIFICATE OF FONT AND TYPE SIZE

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TABLE OD CONTENTS

	<u>Page No.</u>
TABLE OF CONTENTS -----	i
TABLE OF AUTHORITIES -----	ii
ARGUMENT -----	1 - 4
WHETHER THE TRIAL COURT IMPOSED AN ILLEGAL SENTENCE AND THAT THE DISTRICT COURT HAD JURISDICTION TO REVIEW	
CONCLUSION -----	4
CERTIFICATE OF SERVICE -----	4

TABLE OF AUTHORITIES

<u>Cases Cited</u>	<u>Page No.</u>
<u>Castor v. State,</u> 365 So.2d 701 (Fla. 1978) -----	3
<u>Davis v. State,</u> 661 So.2d 1193 (Fla. 1995) -----	2
<u>Reynolds V. State,</u> 429 So.2d 1331 (Fla. DCA 1983) -----	2
<u>Robinson v. State,</u> 373 So.2d 898 (Fla. 1979) -----	2
<u>Sanford v. Rubin,</u> 237 So.2d 134 (Fla. 1970) -----	2
<u>Sochor v. State,</u> 580 So.2d 595 (Fla. 1981) -----	2
 <u>Other Authorities</u>	
Amendment XIV <u>U.S. Constitution</u> -----	4
§924.06, <u>Florida Statutes</u> (Amended)(1998) -----	1,2,3,4,
West's <u>Guide to American Law, "Constitutional Law."</u> Volumn 3, pg. 203, 204 (2nd Ed. 1993) -----	4

**WHETHER THE TRIAL COURT IMPOSED AN
ILLEGAL SENTENCE AND THAT THE DISTRICT
COURT HAD JURISDICTION TO REVIEW**

In response to the State of Florida's position, the petitioner submits at least two points. First, the Statute as cited by the Petitioner is clear on its face, i.e., §924.26 (1998)(amended), Florida Statute, and that statute specifically authorizes an appeal from an illegal sentence.

The State does not, and cannot say that the Petitioner received a legal sentence, and that he is entitled to no relief. The State's position is that Petitioner cannot appeal directly after imposition of the illegal sentence to the district court of appeal to reverse the sentence as being illegal. Respondent believes Petitioner must file a collateral motion to correct the sentence in the trial court first, and that the appellate court lacks jurisdiction otherwise.

The Respondent finally states that, "there is no denial of fundamental due process in requiring that the defendant use trial court remedies readily available to them in raising claims of a sentencing error.

(Respondent's Brief at Pg. 11)

Respondent is missing the point, notwithstanding the Statute, §924.06 (F.S.). Petitioner can and is permitted by "fundamental" and "Constitutional Law" to appeal an "illegal sentence," even if the sentence was imposed via a guilty or nolo contendere plea. Robinson vs. State, 373 So.2d 898, 902 (Fla. 1979).

There is an exclusive and limited class of issues which occur contemporaneously with the entry of the plea that may be the proper subject of an appeal. To our knowledge there would include only the following:

(1) the subject matter jurisdiction, (2) the illegality of the sentence, (3) voluntary and intelligent character of the plea.

"An Illegal sentence is one that can be addressed at any time." Davis v. State, 661 So.2d 1193, 1196 (Fla. 1995), and is fundamental error. Cf. Reynolds v. State, 429 So.2d 1331, 1333 (Fla. 5th DCA 1983) or in this aspect Constitutional error, because it is the Petitioner's Constitutional right to due process via §924.06 F.S. that is being denied him. Sochor v. State, 580 So.2d 595, 601 (Fla. 1991) "Fundamental error occurs in cases, when error amounts to a denial of due process...fundamental error is error which goes to the foundation of the case." Citing Sanford v. Rubin, 237 So.2d 134 (Fla. 1970);

Castor v. State, 365 So.2d 701 (Fla. 1978).¹

As Petitioner mentioned in the Initial Brief, §924.06 (Amended)(1998) Fla. Stat. provides clearly that Petitioner may appeal,"(d), A sentence on the grounds that it is illegal." Id. To say otherwise would literally overrule centuries of constitutional law and outright deny fundamental Due Process. Respondent's proposed interpretation and restrictions of appeal for even an illegal sentence is contumacious to the Constitution per se.

¹ When stating fundamental error, this is premised upon errors based on constitutional rights and protections. Thus, fundamental error is constitutional error. The concept of the constitution is imbedded in a long tradition that a constitution represents a higher law and is an expression of the permanent will of the people, binding upon all governmental entities. According to this view, the people are the ultimate source of all political power, and they exercise their authority by adopting a constitution. Legislative laws (statute must be consistent with the provisions of higher law of the constitution. Implicit in this concept is the distinction between the state as a political society and government as its agent. Thus, statute law is distinct from constitutional law, and in cases where they conflict, the higher law of the constitution prevails. In other words, statutory law is law, but it is subordinate to the higher law of the constitution. West's "Guide to American Law" Constitutional Law, Volume 3, Pg. 203, 204 (2d Ed. 1993).

The District Court had jurisdiction to review the illegal sentence in accord with Due process of Law. (Amendment XIV, U.S. Constitution), and §924.06 Fla. Statute).

CONCLUSION

The Appellant request this Court to reverse Appellant's conviction(s) as to any or all counts, or to vacate the Appellant's sentence as to any or all counts, and to remand for further proceedings.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing has been sent by First Class U.S. Mail to: Robert S. Krauss, Ass't Att'y General-Chief Appeal Division; Ronald Napoliaton, Ass't Att'y General, 2002 N. Lois Avenue, Dept. of Legal Affairs, Tampa, Florida 33607-2366 this 29th day of January, 2000.

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