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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-258

VIRGIL LEE HARRIS,

Petitioner,

-vs.-

THE STATE OF FLORIDA,

Respondent.

REPLY BRIEF OF PETITIONER ON THE MERITS

ON DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES

STATUTES

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INTRODUCTION

Petitioner, Virgil Harris, was the appellee in the district court of appeal and the defendant in the circuit court. Respondent, the State of Florida, was the appellant in the district court of appeal, and the prosecution in the circuit court. In this brief, the symbol "R" will be used to designate the record on appeal, and "RB" will designate the Respondent's brief on the merits.

ARGUMENT

THE THIRD DISCTRICT COURT OF APPEAL LACKED JURISDICTION TO HEAR THE STATE'S APPEAL BECAUSE THE SENTENCE IMPOSED BY THE CIRCUIT COURT WAS NOT ILLEGAL.

In their answer brief Respondent makes two arguments: first, that the state could appeal the order granting Mr. Harris's 3.800 motion because it was "faulty;" and second, that the state may appeal orders granting 3.800 motions because they are civil collateral remedies (RB. 4-9). This reply will address each argument in turn.

The Circuit Court Order

The Respondent concedes in their answer brief that "the state did not appeal the Rule 3.800(a) order because it was an illegal sentence but because the Rule 3.800(a) order was faulty" (RB. 8). However, the state has no ability to appeal a "faulty" order granting a 3.800 motion. § 924.07, Fla. Stat. (2013); § 924.071, Fla. Stat. (2013). The state may only appeal a sentence "on the grounds that it is illegal," or if it below the criminal guidelines. *Id.* The exhaustive list statutory list of orders appealable by the state listed in section 924.07 does not contain a provision for the appeal of a "faulty" order granting a 3.800(a) motion to correct sentence. Respondent does not cite a single case demonstrating that the state may appeal such an order.

Given that Mr. Harris did not receive a sentence below guidelines, the only possible ground the state could have asserted for an appeal was that the "faulty" 3.800 order actually resulted in an illegal sentence, which would then itself be appealable. However, as extensively argued in the initial brief and as established in *State v. McMahon*, 94 So. 3d 468, 472 (Fla. 2012), the sentence ultimately imposed in this case was not illegal. Indeed, Respondent implicitly concedes as much in stating that the state's appeal was *not* based upon an illegal sentence (RB. 8).

The Respondent spends the majority of their brief explaining why, in their view, the court's ruling on the 3.800 motion was erroneous (RB. 4-8). This analysis is irrelevant. Why the rule was "faulty" does not matter because a "faulty" ruling, standing on its own, is simply not appealable by the state. A "faulty" ruling only becomes appealable if it actually results an illegal sentence. Thus the question for this Court remains whether the *sentence actually imposed was illegal*. Because a "faulty" order granting a 3.800 motion is not itself a ground to appeal, and because the sentence in this case was not illegal, this Court should reverse this case and dismiss the state's appeal.

Collateral Civil Review

Respondent next argues that the state may actually appeal all orders granting a 3.800 motion, because a motion to correct sentence is a form of civil collateral

review (RB. 8-9). In support of this novel theory, Respondent cited *State v. White,* 470 So. 2d 1377 (Fla. 1985), and *Saucer v. State,* 779 So. 2d 261 (Fla. 2001). This argument fails because the Respondent incorrectly characterized the holdings of those cases.

Neither *White* nor *Saucer* stand for the proposition claimed by Respondent. Contrary to Respondent's assertion, *White* holds that an order granting a *3.850* motion for habeas corpus relief is appealable by the state. *State v. White,* 470 So. 2d 1377 (Fla. 1985). This point is thoroughly uncontroversial as both section 924.07 and rule 3.850 state that the prosecution may appeal an order granting habeas relief. Indeed, the holding in *White* explicitly recognized the *statutory* right of the state to appeal an order granting a *3.850* motion. *Id.* Because no such statutory right exists for 3.800 motions, the holding of *White* is inapplicable in this case. Ultimately, *White* never mentioned nor contemplated 3.800 motions, and there remains no case nor statute that allows the state to appeal an order granting a 3.800 motion that does not result in an illegal sentence.

Likewise, *Saucer* exclusively considers *3.850* motions for habeas corpus relief, and makes no mention of 3.800 motions. In *Saucer,* this Court held that a motion is ultimately defined by its subject matter, and that while a 3.850 motion might be technically considered a "civil" action, it is fundamentally "criminal" in nature. *Saucer v. State,* 779 So. 2d 261 (Fla. 2001). As such this Court held that a

defendant could not be subjected to *civil* penalties for filing a frivolous 3.850 motion. *Id.* Like *White, Saucer* does not address 3.800 motions whatsoever, and does not support the state's claim. Thus, Respondent has not cited a single case that actually stands for the proposition that a 3.800 is a civil remedy.

Indeed, *Saucer* resoundingly refutes Respondent's position. Respondent has urged this Court to use civil appellate rules in deciding this case (RB. 8-9). However, *Saucer* holds that motions challenging a conviction or sentence are fundamentally "criminal" in nature and rejected the use of civil rules. Thus, this Court should reject Respondent's novel request to employ civil rules of appellate procedure.

In conclusion, because the sentence ultimately imposed in this case was not illegal, this Court should reverse the decision of the Third District Court of Appeal and dismiss the state's appeal.

CONCLUSION

Based upon the foregoing facts, authorities and arguments, petitioner respectfully requests this Court to quash the decision of the Third District Court of Appeal, and dismiss the state's appeal.

Respectfully submitted,

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CERTIFICATE OF FONT

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times New Roman.

/s/ James Moody
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed to CrimAppMIA@MyFloridaLegal.com and Jill.Kramer@MyFloridaLegal.com the Office of the Attorney General at this 10th day of November, 2014 Undersigned counsel hereby designates, pursuant to Rule 2.516, the following e-mail addresses for the purpose of service of all documents required to be served pursuant to Rule 2.516 in this proceeding: AppellateDefender@pdmiami.com (primary E-Mail Address); jmoody@pdmiami.com (Secondary E-Mail Address).

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