

THE FLORIDA SUPREME COURT

MICHAEL CHARLES DESUE,
Petitioner.

CASE NO. SC16-1222

vs.

LT. 87-155, 87-156, 87-157,
87-392, 87-393, 87-400,
87-401, 87-433, 87-434,
87-435; 92-0266 cts 1-3

STATE OF FLORIDA, MRS. JULIE JONES
SECRETARY OF FLORIDA DEPARTMENT OF
CORRECTIONS

RESPONDENTS

FILED
JOHN A. TOMASINO
OCT 14 2016

CLERK, SUPREME COURT

BY

PETITIONER'S RESPONSE TO SUPREME COURT JUSTICES
SEPTEMBER 29, 2016 SHOW CAUSE ORDER

Petitioner, Michael Charles Desue, pro se, files a response to this Court
Justices September 29, 2016 Show cause order, which he address the Court as
follows:

The petitioner asserts he is not incarcerated on case no. (s) 87-155, 87-156, 87-157,
87-392, 87-393, 87-400, 87-401, 87-433, 87-434, 87-435, ten uttering a forged
instruments and has not launched an attack on the convictions and sentences in
this court, but he did seek discretionary review in 2007 in case no. SC07-1224
and in 2006 in case no. SC06-124 citations at Desue v. State, 962 So. 2d 336
(Fla. 2007); Desue v. State, 920 So. 2d 621 (Fla. 2006); See Desue v. State, 917 So. 2d
223 (Fla. 1st DCA. 2007) (opinion sentence is completed).

The petitioner has made an attack that these offenses were used as prior convictions
for HFO purposes argued herein after of this response. Concerning Lower Tribunal case
no. 92-0266 wrongful convictions stands against petitioner for Robbery and Robbery
with a fireArm that the Circuit Court of Bay County and The First DCA does not
want exposed for political purposes that this court should not foreclose on
to prevent issuing petitioner relief. There is hidden motives why the Lower Court
entered void pro se bnc and a sanction unwarranted discussed herein after.

The Bay County Circuit Court on April 24, 2007 under case no. 92-0266 never
specified a sentence as a Habitual offender that the order pertains too because
the court knows the August 5, 1992 Judgment and sentences under case no. 92-0266
ct. 2. Robbery and ct. 3. Robbery with a fireArm is void and fraud, nor did
the pro se sentence HFO order adjudicate a offense title or sentence as

A HFO that it pertained too. Nevertheless, this insufficient order is under case no. 92-0266 that was nolle prosequi for charge of Sale of Cocaine on July 2, 1992 rendering the order null and void, which was erroneously Per Curiam Affirmed when the appellate court panel did not have jurisdiction in *Desue v. State*, 975 So.2d 1136 (Fla. 1st DCA 2008). Supreme Court Justice Polston was on the District Court panel in the appeal. See Appendix A. infra (April 24, 2007 pro se bar order, June 30, 1992 verdict by foreperson Bonnie Blue, July 1, 1992 verdict by foreperson Charles Spencer, July 2, 1992 nolle prosequi order, but see August 5, 1992 Judgment and Sentences order ct. 2 Robbery and ct. 3 Robbery with a firearm).

Moreover, The First DCA October 12, 2012 sanction opinion decision referencing to case no. 92-0266 is null and void, again, because this case number was nolle prosequi on July 2, 1992. In *Desue v. Tucker*, 100 So.3d 151, 152 (Fla. 1st DCA 2012) the panel of judges erroneously asserted, "Desue had been previously pro se barred by a panel of judges on case no. 92-0266 of Brevard County Circuit Court unsupported by a citation reference." Even in the previous appeal before the belated appeal specifically in case no. 1011-4359 shows on January 9, 2012 the panel did not enter a decision pro se barring petitioner. See *Desue v. State*, 79 So.3d 23 (Fla. 1st DCA 2012); See Appendix B. infra (First DCA Oct. 12, 2012 sanction decision).

The Constitution mandates a three panel of District Judges to enter a decision to be a legal pro se bar opinion this was not done prior to the court entering a pro se sanction in *Desue*, 100 So.3d 152. See Article V, sec. 4(A) Fla. Const.; Fla. R. Jud. Admin. 2-210(A)(1). Even Doc General Counsel and former Supreme Court Staff Attorney Mrs. Barbara Debelius informed the Circuit Court *Desue* was entitled to an appeal of his habeas corpus. See Appendix B. infra (August 13, 2012 memorandum and Oct. 12, 2012 opinion by First DCA). The panel would not allow appearance of Mrs. Debelius in the belated appeal proceeding and held the petitioner had violated a previous pro se bar order stricken and the belated appeal as unauthorized was a judicial act of injustice where the Constitution requires a "decision" by a three panel of judges. Even this court said in *Saucer v. State*, 719 So.2d 261, 262 (Fla. 2001) Sec. 944.229 sanctions cannot be applied in a belated appeal proceeding. This court would not accept discretionary review, *Desue v. Crews*, 123 So.3d 557 (Fla. 2013) (on website [Judicial Panel File 4/5/13](#)). *Peltway v. State*, 776 So.2d 930, 931 (Fla. 2000) should not have been applied to issue the show cause, because this court knew a legal pro se bar does not exist

to pursue a pro se bar or even sanctions. In *Pettway supra*, this Court in the opinion referenced to the lower court pro se bar opinion, in this Court September 29, 2016 order "does not reference to any Lower Court pro se bar or Sanction decision, because petitioner in his habeas petition demonstrated the Lower tribunal pro se bar, and District Court pro se sanction under case no. 92-0266 is null and void entered subsequent to the July 2, 1992 nolle prosequi order filed by the state. This court decline jurisdiction when Doc would not file answer-brief on 9/5/16.

Neither of these orders reference to these courts pro se barring or pro se sanctioning petitioner on challenging the convictions and sentences under case no. 92-0266 ct. 2 for Robbery with a 30 years life sentence and ct. 3 for Robbery with a firearm with a life sentence. See Appendix A. *infra* (April 24, 2007 pro se bar) and Appendix B *infra* (Pro se filing Prohibition by First DCA); See *Huffman v. State* 693 So. 2d 570 (Fla. 2nd DCA 1996) (Huffman was not completely pro se barred quoted in *State v. Spencer*, 751 So. 2d 47-49 (Fla. 1999); See *O'Berry v. State*, 40 So. 2d 108 (Fla. 4th DCA 2010).

Nevertheless this own court dismissed the Department of corrections in the habeas corpus process in case no. SC16-720 without prejudice for petitioner to seek relief in the appropriate court. See Appendix C. *infra* (June 16, 2016 order). Where there is no legal pro se bar in the Circuit Court of Bay County existing on June 27, 2016 he filed a 3:50 Habeas Corpus that the clerk clocked-in at 2:41 PM but put an X over the clock-in date and return the postconviction petition to this petitioner, which led him to file the instant habeas corpus for this court to correct the Lower Court manifest injustice of convicting petitioner without having jurisdiction under case no. 92-0266 to tried him for Robbery and Robbery with a firearm in separate trials, and where the Court entered a fraudulent judgment and sentences order under case no. 92-0266 ct. 2 Robbery and ct. 3 Robbery with a firearm to conceal the June 30, 1992 and July 1, 1992 void verdicts. See Appendix C. *infra* (Case no. SC16-720 order & 3:50 Habeas Corpus filed to the Circuit Court); *Baker*, 878 So. 2d pg. 1246 (manifest injustice quoted by Justice Anstead).

This quorum overlooked the separate verdicts under case no. 92-0266 ct. 2 by juror forepersons Bonnie Blue, and Charles Spencer, when the charging information shows the court case no. 92-0266 ct. 1 jurisdiction was charged by the state for an offense of "Sale of cocaine" violation of Sec. 893.13 C.F.S. (1991), that was nolle prosequi by Bay County State Attorney office on July 2, 1992. No jurisdiction exist for the Circuit Court of Bay County to enter adjudications of

guilt, and Judgment of Convictions and sentences for the Robbery and Robbery with a firearm verdicts under case no. 92-0266 as ct. 1. See Appendix A. infra (June 30, 1992 Robbery with a firearm verdict, trial transcripts pages 226-228, July 1, 1992 Robbery verdict, trial transcripts pgs. 1-3, 193-196), but see Appendix A. infra (Aug. 5, 1992 Judgment and sentences and sentence transcripts pgs 11-14).

The Judgment of Conviction order does not comport with the June 30, 1992 and July 1, 1992 separate verdicts. See *Owens v. State*, 86 So.3d 1160 (Fla. 3rd DCA 2010) (Judgment of Conviction shall comport with the verdict).

Bay County Circuit Court, The First DCA, Department of Corrections and now the Florida Supreme Court knows the Judgment of Conviction order cannot be corrected as a ministerial act by entering judgment of conviction separate order under case no. 92-0266 as ct. 1 to conform to these June 30, 1992, and July 1, 1992 separate verdicts, because under case no. 92-0266 ct. 1 was originally and by amendment charged for the offense of State of Cocaine that the state will prosecute on July 2, 1992, which these documents are in the Clerk of Court files. See Appendix D. infra (March 2, 1992 original charging information and April 23, 1992 amended charging information) Appendix A. infra (July 2, 1992 notice prosecute order by State Attorney of Bay County),

If the Judgment of Conviction is vacated will result in a discharge for DeSue, under these circumstances is why Bay County Circuit Court has posed a prose bar to not correct a injustice created by this court itself upon petitioner. See *Fundak v. State*, 362 So.2d 295, 296 (Fla. 1978), Former Justices of this court held,

We hold section 775.021 applies to the situation subjudice requiring a judgment and sentence to be imposed upon each criminal charge and conviction. Therefore judgments of guilt as to both the sale and possession charges are affirm but the case is remanded for the entry of separate judgments and sentences on each conviction

Here there is no jurisdiction under case no. 92-0266 ct. 1 to enter adjudications of guilt for each Robbery and Robbery with a firearm and entry of separate judgments and sentences on each conviction verdicts. In the interest of justice this court cannot let this August 5, 1992 Judgment of Conviction and sentences order to stand that the lower tribunal by hidden motive does not want to correct,

Here under case no. 92-0266 illegal April 23, 1992 Amendment adding ct. 2 Robbery and ct. 3 Robbery with a firearm that was not related to the original ct. 1 Sale of Cocaine charge. The Defense on June 17, 1992 filed a motion for severance on case no(s) 92-0266 Sale of Cocaine, file no. 92-0763 Robbery and file no. 92-0764 Robbery with a firearm the constitution provision to tried felonies in a single trial was defeated, because these Robbery and Robbery with a firearm offenses were not related, when the severance was granted. Nevertheless the state had not filed charging informations on the Robbery file no. 92-0763 nor on the Robbery with a firearm file no. 92-0764, and nor did the state file a motion to consolidate two or more charging informations, because the state had not filed any charging information (prior to the illegal Amended charging information being filed) on these Robbery and Robbery with a firearm offenses. See Fla. R. Crim. P. 3.151(b) (consolidation of two or more informations). Circuit Court Jurisdiction on these offenses of Robbery had never been invoked under Art. 1, Sec. 15 Fla. Const. See Christopher v. State, 397 So. 2d 406 (Fla. 5th DCA 1981) citing Pope v. State, 268 So. 2d 173, 176 (Fla. 2nd DCA 1972) (burden of properly invoking the court jurisdiction is on the state); Appendix D infra (Severance motion and Clerk minutes). In Harper v. State, 43 So. 3d 174, 175 (Fla. 3rd DCA 2010) in a similar situation he was discharged from custody holding,

We therefore vacate the defendant's conviction for fleeing and eluding and discharge the defendant. The defendant is entitled to immediate release.

This court has jurisdiction to vacate the convictions of Bay County Circuit Court for Robbery and Robbery with a firearm that is required by law discharging petitioner from custody by immediate release under Article 1, Sec. 13, Florida Constitution on case no. 92-0266 of Bay County.

This Court ordered petitioner to file a response on Bay County Circuit Court case no(s) 87-155, 87-156, 87-157, 87-392, 87-393, 87-400, 87-401, 87-433, 87-434, and 87-435 ten uttering a forged Instruments why he should not be pro se barred and sanction under Sec. 944.279(1) & 944.09 Florida Statutes in the September 29, 2016 order. The July 7, 2016 Habeas Corpus

did not contest these ten uttering a forged instruments cases to warrant a pro se bar or for sanction.

Petitioner has been denied the right to have his record straightened by the lower tribunal court from a "Successful Appeal with counsel Abel Gomez" that warranted resentencing, and for the court to enter a revocation of probation order for Petit Theft and not for Robbery. See *Desue v. State*, 605 So.2d 933 (Fla. 1st DCA 1992), The Bay County Circuit Court would not comply with the District Court mandate, nor would the First DCA enforce their own mandate. See *Desue v. State*, 917 So.2d 223 (Fla. 1st DCA 2005) discretionary review denied *Desue v. State*, 930 So.2d 621 (Fla. 2006).

These records right today has not been straightened. See *Tucker v. State*, 679 So.2d 1261, 1262 (Fla. 2nd DCA 1996), The Second DCA held,

The trial court did not consider the merits of Tucker's motion, but rather decided that issue was moot, because the two sentences in question has been completed. Although Tucker is no longer in custody for cases under review he is in custody on other charges and is entitled to have the court records accurately reflect the total time he served in prison for two cases in question. Reverse and Remand.

The defendant here is in custody under case no. 92-0266 with written Judgment and sentences as ct. 2 30 years and ct. 3 life in prisons as a habitual offender, which the Uttering a forged instruments were on appeal from the April 16, 1991 Judgment of Conviction entered on case no. (s) 87-155, 87-156, 87-157, 87-392, 87-393, 87-400, 87-401, 87-433, 87-434, 87-435, but were used as prior convictions under Sec. 775.084(1)(a) F.S. that were non-final convictions, which this Judgment of conviction was not nunc. pro tunc¹ by Judge Dedee Costello, because she knew under Sec. 775.021 F.S. (1997) Legislature did not express a intent for multiple convictions in *Carwan v. State* 515 So. 2d 161 (Fla. 1987). Judge Costello entered one Judgment of Conviction with all ten cases on it, when only one conviction could be entered on case no. 87-155 that could be corrected on remands on the *Desue*, 605 So.2d 933 opinion likewise as the *Tucker* supra court explained. In two different ways *Desue* does not qualify as a HFO. See *Frazier v. State*, 452 So.2d 1015 (Fla. 5th DCA 1984).

See Appendix E infra (Notice of Appeal, Certified HFO Findings, Sept. 25, 1992 written opinion & Oct. 14, 1992 mandate).

In *FRAZIER*, 452 So. 2d 1015 the court said

A conviction must be final before it can constitute a prior conviction for the purpose of the habitual offender statute.

The pro se bar was issued to prevent petitioner from obtaining pro se relief on the illegal habituation launched against him, when this order does not order and adjudge an offense title or HFO sentence that petitioner abused judicial process. Under *State v. McBride*, 848 So. 2d 287-291 (Fla. 2004) requires it to be corrected as a matter of law. Its obvious Bay County Circuit Court never evaluated any of petitioner's HFO illegal sentence claims, see *Jordan v. State*, 26 So. 3d 726 (Fla. 1st DCA 2010) (vacating pro se sanction order for filing 3.200(a) motions to correct illegal sentences cannot be classified as successive).

This pro se bar manifest injustice entered on April 24, 2007 with an hidden motive by Bay County Circuit Court which this court has jurisdiction to vacate. See Appendix A. infra (April 24, 2007 pro se HFO sentence bar)

The Lower Courts bar and sanction were used because they know DOC accepted fraudulent commitment papers and Judgment and sentences, where the commitment form designed by DOC reads the above name defendant has been "duly convicted and adjudicated guilty", when DOC does not have an administrative regulation for the clerk to accompany a "Certified jury verdict with the commitment form" to determine if the offender had been "duly convicted", and to authenticate the clerk listed conviction date on the commitment checklist form, and Judgment and sentences order, did allow Deputy James Nelson to pass fraudulent records upon DOC during the reception process. See Appendix A. infra (uniform commitment form and commitment checklist); *Jackson v. State*, 56 So. 3d 65, 67 (Fla. 2nd DCA 2011).

DOC admission procedure allowed them to merely assume and believe the petitioner was duly convicted on 6/30/92 listed by the clerk and adjudicated guilty for Robbery ns. ct. 2 and Robbery with a Firearm ns. ct. 3 under

case no. 92-0266 that does appear

1. The court Reporter did not certify the 6/30/92 trial transcripts and 8/15/92 sentence transcripts. See Appendix A. infra (trial and sentence transcripts).

On the August 5, 1992 Judgment and sentences order, IF DOC had this administrative regulation they would have learned during admission on August 14, 1992 that the 6/30/92 verdict has under case no. 92-0266 ct. 1 a conviction for Robbery with a Firearm which the Judgment and sentences certified under case no. 92-0266 ct. 2 Robbery and ct. 3 Robbery with a firearm did not comport with the verdict, and was fraud. DOC would not have accepted custody of petitioner from Deputy Sheriff James Nelson. This is the hidden motive for the First DCA to sanction petitioner in *DeSue v. Tucker*, 100 So3d 151, 152 stricken his habeas corpus that revealed this flawed admission policy by DOC susceptible to false imprisonment of a person so they are preventing him from pro se litigating this issue in their appellate court, and Circuit Court to redress his injuries of deprivation of his liberty violates Article I, Sec. 9, 21 of Fla. Const., and of the 1st and 14th Amendment to U.S. Constitution. See *Bounds v. Smith*, 430 U.S. 817, 821 97 S.Ct. 1491, 1494 52 L.Ed 72 (1977) (Prisoner's has a Constitution right to access to the court).

This Court said the sanction statute of Florida is not designed to deny a prison of his constitution guarantee right of access to the court of the First Amendment. See *Spencer v. DOC*, 823 So.2d 752, 754 (Fla. 2002). This court did not find the petitioner's habeas corpus to be frivolous. It was dismissed asserting the petitioner seeks the type of relief available in a motion filed pursuant to Florida Rule of Criminal procedure 3.850 in the September 29, 2016 opinion. *Spencer, supra*; Sec. 944.279(c).

There is no penological justifications for petitioner to be in DOC custody in which his First, Eight, and Fourteenth Amendment Constitution protections has been violated including his civil rights where he is currently false imprisoned. Against his will. This court should not pro se bar petitioner access to this court under these extraordinary circumstances nor allow DOC to further punish him with disciplinary actions by a sanction entry by this court.

Justices of this court in the interest of justice should not overlook petitioner's false imprisonment in DOC, and to allow him

to be in their custody when petitioner should not be and especially without having access to this court pro se when he asserts here that he is indigent and cannot retain counsel. His Liberty and Life being in DOC custody would be unprotected to redress his injuries, See *Graham v. Wallingham*, 384 F.2d 367, 368 (6th Cir. 1967) (prison discipline or segregation in arbitrary or capricious manner support civil right violation); See *Morrison v. Lefevre*, 592 F.Supp. 1052, 1071 (S.D.N.Y. 1984) (The narrow range of protected Liberty interests retained by prisoners, however, includes beyond doubt a Constitutional right to access to the court). If the court choose to pro se bar petitioner, which petitioner pray that this court will not, counsel should be retained by this court for this indigent petitioner to have access to the court by constitutional guarantee.

Nevertheless this court did not find the habeas corpus to be frivolous or malicious nor the supplement claim three. Petitioner asserts none of the alleged 26 petitions orders by this court were not found to be frivolous or malicious, which this court merely assert "It appearing that petitioner has abused the judicial process by filing numerous pro se filings that are meritless or not appropriate for this court's review". See 944.279 (1) F.S. (2015) States,

At anytime, and upon its own motion or motion of a party, a court may conduct an inquiry into whether any action or appeal brought is frivolous or malicious - suit, action, claim, proceeding, or appeal in any court of the state or in any Federal Court.

(Art. V Sec. 2 (A) Fla. Const authorize this court to transfer a pleading)

The application of this statute is not warranted in this case especially where petitioner is already false imprisoned under nolle prosequi case no. 92-0266 that the Department has refuse to discharge him for twenty-four (24) years. Further discipline imposed against petitioner by DOC would be barbaric cruel and unusual punishment, because their flawed admission process has been exposed would be retaliatory treatment where a true violation of Sec. 944.279 (1) and 944.09 F.S. has not occurred, see *Wildberger v. Bracknell*, 869 F.2d 1467, 1468 (11th Cir. 1989) (retaliation for filing lawsuit violates both the inmate's right of access to the courts and the inmate's First Amendment right). DOC are being investigated by the Federal Government about unexplain deaths of prisoners published in the Miami Herald.

Case no. 92-0266 of Bay County Circuit Court, two proceedings were erroneously dismissed as unauthorized asserting petitioner had been pro se barred by lower court under Pettway, 776 So. 2d 931, which this court did not reference in their orders to a citation of any pro se bar or sanction by the Bay County Circuit Court or The First District Court of Appeal under case no. 92-0266, because this court knows the April 24, 2007 pro se bar by the Circuit Court, and the October 12, 2012 pro se sanction decision by the First District Court are both null and void being entered subsequent to the July 2, 1992 nolle prosequi order. See *DeSue v. McNeil*, 993 So. 2d 511 (Fla. 2008)² (case no. SC08-718 *inbens corpus*); *DeSue v. Kinsmul*, 129 So. 3d 1067 (Fla. 2013) (mandamus case no. SC12-2454); See Appendix A. *infra* (case no. 92-0266 nolle prosequi order on July 2, 1992 & April 24, 2007 case no. 92-0266 pro se sentence HFO bar); *DeSue*, 100 So. 3d 157 (D12-3662 pro se sanction bar concerning case no. 92-0266 on October 12, 2012).

The prohibitions advised this court that the Lower Courts were acting in excess of their jurisdiction where case no. 92-0266 had been nolle prosequi, but this court would not grant prohibition to correct DeSue's false imprisonment under this case number. *DeSue v. State*, 90 So. 3d 270 (Fla. 2012) (as case no. SC12-266); *DeSue v. State*, 980 So. 2d 488 (Fla. 2008) (as case no. SC07-2233) *DeSue v. State*, 26 So. 3d 1290 (Fla. 2009) (as case no. SC09-1334); *DeSue v. State* 88 So. 3d 148 (Fla. 2012) (as case no. SC12-232). Nevertheless the *Habens Corpus* warned this court of the manifest injustice by the Lower tribunal and by DOC false imprisoning him in *DeSue v. Tucker*, 90 So. 3d 270 (Fla. 2012); (as case no. SC12-128); *DeSue v. Crews*, 143 So. 3d 917 (Fla. 2014) (as case no. SC14-616). Being a pro se litigant the petitioner was not heard by this court, where the Bay County Circuit Court, First DCA, and DOC is in the false imprisonment scheme preventing their judicial acts of Record Fraud from being exposed, and where DOC has a flawed admission policy. See *Harper*, 43 So. 3d 175 discharged; Appendix D *infra* (original charging information and Amended charging information). The instant *habens petition* should not have been dismissed to pursue a pro se bar. See *Santana v. Henry*, 12 So. 3d 843, 848 (Fla. 1st DCA 2009), The Court stated,

The general rule that pleading ought not be dismissed on grounds no party urges has special force when the pleading is a petition for writ of *habens Corpus*. The Scope And flexibility

of the writ - its capacity to reach all manner of illegal detention - its ability to cut through barriers of form and procedural mazes - have always been emphasized and jealously guarded by the courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected. *Harris v. Nelson* 394 U.S. 286, 291 89 S.Ct. 1082, 22 L.Ed. 2d 281 (1969)

This Court knows Bay County Circuit Court, DOC Bureau of Admission, and The First DCA has violated the petitioner's civil rights by false imprisonment him since August 14, 1992, twenty-four years ago, which this Court should administer the initiative and flexibility to correct this miscarriage of justice that has surfaced in petitioner's habeas corpus and Supplement claim three pending before this court. See *Henry v. Santana*, 67 So.3d 1122 (Fla. 2011)

The petitioner has promised this Court he will not seek any civil rights violation lawsuit against any party, all he asks is to be simply discharged at a Habeas Corpus hearing, which this Court has the flexibility to direct Bay County Circuit Court to conduct a hearing under *Harris* 89 S.Ct. 1082, rather than pro se bar petitioner to not allow the lower tribunal judicial acts to surface will not comport with due process.

The Attorney General, and DOC General Counsel has not sought this show cause order to potentially pro se bar the petitioner, because they know they are responsible for the "false imprisonment scheme". This Court under the aforementioned manifest injustice extraordinary circumstances, in the interest of justice should not choose to sanction petitioner without first giving him a warning, if this Court choose not to correct this clear and obvious manifest injustice that involves lower tribunal judges governed by this highest Court of this State. The September 29, 2016 show cause order should be discharged to prevent a injustice again occurring to the indigent petitioner who cannot afford a attorney to protect his constitutional rights allowing him to be handicap and disadvantaged by a "gross false imprisonment scheme". See *Mims v. State*, 994 So. 2d 1233 (Fla. 3rd DCA 2008) (pro se bar is a serious sanction reversed). See also

See *Marshall v. Ferrico Inc.*, 446 U.S. 238, 100 S.Ct. 1610, 1613 64 L.Ed.2d 182 (1980). (Liberty should not be taken away on a erroneous conception of law and facts).

Circuit Court Judge Dedee Costello was a member of the Florida Judiciary Committee, and co-authored the 1988 Florida Criminal Punishment Code guideline sentencing scheme.

This Court implemented this sentencing scheme on a petition filed by Judge Dedee Costello, which was granted Justice Pariente participated in the quorums concurred decision which is the sentencing scheme used currently by this State Circuit Court Judiciary.

Judge Costello was the Judge over the 1987 cases 87-155, 87-156, 87-157 87-392, 87-393, 87-400, 87-401, 87-433, 87-434, 87-435 that entered the April 16, 1991 judgment of conviction and sentence for these 10 uttering a forged instruments that was reversed in *DeSue v. State*, 605 So.2d 933 (Fla. 1st DCA 1992) but she would not conduct resentencing of the petitioner, that would have corrected the record, because these offenses on appeal were used as prior convictions on case no. 92-0266 in the August 5, 1992 sentencing proceedings. See Appendix E-*infra* (April 16, 1991 Judgment of conviction by Judge Dedee Costello); See *Tucker*, 679 So.2d 1262. The District Court of Appeal in which District Judge James Wolf was on the panel would not enforce their mandate in *DeSue* 917 So.2d 223. See *Sparks v. State*, 740 So.2d 33, 36-37 (Fla. 1st DCA 1999) (Judge Costello bins).

Moreover, Judge Dedee Costello entered the August 5, 1992 Judgment of Conviction and sentences under case no. 92-0266 as ct. 2 Robbery and 25 ct. 3 Robbery with a firearm, "that is the product of intrinsic fraud produced by this judge", when there is no multiple counts 2 Robbery and 3 Robbery with a firearm, verdicts to support the entry of this Judgment, which in *State v. Burton*, 314 So.2d 136, 138 (Fla. 1975) only address when a party procures a fraudulent Judgment or order from the Court "not when the court itself produces a judicial act of fraud. See Appendix A-*infra* (Aug. 5, 1992 judgment and sentences order).

Nevertheless, by fraud jurisdiction was invoked through the altered notice of Appeal by Clerk Carolyn Graham under case no. 92-0266 that prevented the jurisdictional issues from being raised where these Robbery offense was under file no. 92-0263, and Robbery with a firearm was under clerk file no. 92-0264 which the State Attorney office never filed charging information under Article I, sec. 15 to invoke circuit Court jurisdiction to tried these

CASES, which on August 20, 1992 the Clerk office received notice of Appeals under file nos. 92-0263 and 92-0264. See Appendix A. infra (Aug. 5, 1992 Judgment of Conviction and sentences entered by Judge Dedee Costello, and August 20, 1992 Altered Notice of Appeal).

The First District Court of Appeal panel Judges James Wolf, Barfield, and Michael Allen Per Curiam Affirmed the Fraudulent Judgment of Conviction and sentences under LT case no. 92-0266 ct. 2 and ct. 3 under First DCA case no. 92-3016 in *DeSue v. State*, 638 So.2d 940 (Fla. 1st DCA May 27, 1994) mandated on June 14, 1992, which Public Defender Glen P. Gifford represented this petitioner on direct appeal who later became clerk for Justice Barbara Pariente of this court. See Appendix A. infra (May 27, 1994 direct appeal opinion and June 14, 1994 mandate).

Judge Michael Overstreet initiated processing of the April 24, 2007 pro se Sentencing MFO bar on case no. 92-0266, and District Court Judges James Wolf, Nikki Clark, and Marshall initiated the pro se sanction concerning case no. 92-0266 of Bay County Circuit Court with the hidden motive to deny petitioner access to the court to not expose the fraudulent Judgment of Conviction and sentences and void verdicts entered without the circuit court having jurisdiction to tried these Robbery and Robbery with a firearm separate offenses under case no. 92-0266 that District Judge Wolf was on the panel on direct appeal that Per Curiam Affirmed them. *DeSue*, 638 So.2d 940; *DeSue*, 100 So.3d 151.

The petitioner was illegally pro se barred and sanction by the Lower tribunals to not expose a injustice done to him by their courts that consist of fraud and a false imprisonment scheme, which this Court has Applied *Pettway*, 776 So.2d 931 when a manifest injustice has occurred that's required to be corrected under *Baker*, 878 So.2d 1246, but this Court has choosen to pursue a pro se bar and possible sanctions under Sec. 944.279(c); and 944.09 F.S. by The Department of Corrections Secretary Julie Jones who has *DeSue* in her custody by false imprisonment when DOC Admisson should have refused to accept custody of petitioner on August 14, 1992. *Jackson*, 56 So.3d 67.

The lower court's judges judicial acts if exposed in petitioner's habeas corpus has been dismissed which this court did not entertain the merits concerning the manifest injustice that required an inquiry by this court, which petitioner was under the impression that this court would correct judicial error when a person has been false imprisoned which the lower courts are refusing to correct posing void, and illegal pro se bar and a sanction to not allow the petitioner who is indigent to be heard pro se. See *Sneed v. Mayo*, 66 So. 2d 865, 869 (Fla. 1953); *Santana*, 12 So. 3d 848; *Henry*, 62 So. 3d 1122.

Nevertheless petitioner apologizes for trying to seek relief from this court but in duress ask for "some due process," if this court decides not to agree that the justice system failed the petitioner in this court requiring immediate discharge likewise as the District Court did for *Harper*, 43 So. 3d 173, 176.

As a matter of law the door of this court should not be closed on petitioner's pro se because the Judgment and Sentences order does not comport with the Verdicts, nevertheless remands is required where the Life Sentence was not oral pronounced to be as a Habitual Offender, but the written judgment of Sentence designate it to be as a HFO. See Appendix A. infra (Aug. 5, 1992 Sentencing transcripts pg. 11-12 & written judgment of Sentence). The petitioner brought this issue before this court in 2001 in *DeSue v. State*, 786 So. 2d 1184 (Fla. 2001) (Case no. SC00-1990) but this court would not consider the merits asserting that the discrepancy between the oral pronouncement of Sentence and written sentencing judgment is cognizable under Fla. R. Crim. P. 3.800(A) motion to correct illegal Sentence which this court wrote later in 2007 in *Williams v. State*, 957 So. 2d 600, 601 (Fla. 2007) which DeSue's pleading with this court in 2001 was correct in case no. SC00-1990 that this court used to enter this show cause order. In 2001 the lower court had not posed pro se bars.

The petitioner at resentencing score out to a recommended sentence of 17 to 23³ years prison, he has served 24 years prison.

This court knows the April 24, 2007 pro se HFO Sentence but saying the Circuit Court and First DCA has evaluated the HFO sentence and found it legal is untrue it's clear the Life sentence was not orally pronounced

to be a Habitual Offender remands is warranted by this court under Williams, 952 So. 2d 601 where this court failed petitioner by oversight in 2001. ⁴ DeSue, 786 So. 2d 1184; See Arline v. State, 39 Fla. L. Weekly 1642 (Fla. 4th DCA 2014)

Not limited where petitioner has shown in page 6 of this response where case nos. 87-155, 87-156, 87-157, 87-392, 87-393, 87-400, 87-401, 87-433, 87-434, and 87-435 could not be used as prior convictions to determine petitioner to be a HFO at Sentencing on case no. 92-0266 under Frazier, 452 So. 2d 1015 holdings. See Appendix E. infra.

This court has jurisdiction to remand this case even in this proceeding for the directed limited purpose to vacate the HFO status and resentence petitioner pursuant to the guidelines will be "some due process". See Porter v. Singletary, 49 F. 3d 1483, 1487-88 (11th Cir. 1995).⁵

Nevertheless from this response sanctions are not warranted under Sec. 944.279(c) and Sec. 944.09 F.S. because even if he is resented he is required to be discharged from DOC custody because the guideline sentence required to be imposed has been completed. This court warned Rivera of possible future sanctions if the prose bar decision is violated. Rivera v. State, 728 So. 2d 1165 (Fla. 1998); Casey v. State, 114 So. 3d 944 (Fla. 2nd DCA 2013).

CONCLUSION

Wherefore petitioner prays for the court to discharge the September 29, 2016 show cause order re-evaluate his habeas corpus and Supplement claim three under the manifest injustice exception as referenced in this response granting the appropriate relief, or remand to the Circuit Court with directions to resentence petitioner as a non-habitual offender pursuant to the sentencing guidelines, and correcting the Judgment of Conviction entering separate Judgments for the Robbery and Robbery with a Firearm if it can. This relief will please DOC secretary Mrs. Julie Jones who has DeSue false imprisoned against his will.

OATH

Under The Penalty of Perjury I petitioner has read this response and understand

its contents, and that all of the facts stated therein are true and correct,

Accord: State v. Shearer 628 So.2d 1102 (Fla. 1992)

EXECUTED ON this 16 day of October, 2016

CERTIFICATE OF SERVICE

I HEREBY DO CERTIFY that the foregoing Response with Appendices A-E has been placed in the hands of a Department of Corrections prison official to be mailed to Supreme Court Clerk John Tomasino, 500 South Duval Street, Tallahassee, FL 32399-1927, Attorney General Pamela Jo Bondi and Assistant Trisha Meggs Pate P.O. of The Capitol, Tallahassee, Florida 32399-1050; Clerk of court Bill Kinsaul P.O. Box 2269 Panama City Florida 32401; Clerk of the First DCA Jon S. Wheeler 2000 Drayton Drive, Tallahassee FL 32399-0950, and to State Attorney of Bay County Glenn Hess P.O. Box 1040 Panama City FL 32402 on this 16 day of October

2016.

PROVIDED TO FRANKLIN CI
FOR MAILING ON

10 | 16 | 16 16.

INMATE INITIALS MD

Michael Charles Desue
MICHAEL CHARLES DESUE 729878
FRANKLIN Correctional Institution
1760 Hwy 67 North
Carrabelle, Florida 32322

3. The Circuit Court eliminating the habitual offender status the court would Resentence Desue under the Recommended Sentencing guidelines of 17 to 22 years state prison calculating his day for day time served of 24 years from the August 5, 1992 Judgment of sentences entry date. Bay County Circuit Court will release him at resentencing without this court entering a prose bar or sanctions in this cause, Doc on the guideline scoresheet recommended 20 years prison, See Appendix A. infra (guideline scoresheet).

4. Desue v. State, 786 So.2d 1184 (Fla. 2001) prior to the Lower Courts entering these illegal, void, and bias prose bar and sanction in 2007 and 2012, 25 of these petitions would not have been filed. Even in Desue v. McNeil, 903 So. 2d 511 (Fla. 2008) (Case sc08-718) Showed this court he had been illegal habitualized that Bay County did not want to correct concerning the Frazier, 452 So.2d 1015. Issue discussed on pages 6-7 of this response would have eliminated 18 petitions from being filed with this court and this now shows cause order. Circuit Court Judge Dedee Costello in 1998 had been recognized by judges and justices of this state could have weighed on this court 2001 decision because she had this court to implement the Florida Criminal punishment Code that she co-authored. Whats interesting the habeas petition case no sc08-718 was caption Desue v. State of Florida, 14 Jud-cir: Court and First DCA, but in the table of cases its listed as Desue v. McNeil when Actions of Bay County Circuit Court of Judge Dedee Costello was being litigated before this court. See Appendix E. infra (Case no. sc08-718 Habeas Corpus Coverpage).

5. Sentencing judge lacked partiality and violated his constitutional rights to a fair and impartial tribunal.

THE FLORIDA SUPREME COURT

MICHAEL CHARLES DESUE,

PETITIONER

CASE NO. SC16-1222

VS.

THE STATE OF FLORIDA AND MRS. JULIE JONES
Secretary of THE Florida Department of
Corrections

Respondents

PROVIDED TO FRANKLIN CI
FOR MAILING ON

10/10/16 *RL*

INMATE INITIALS *MLD*

COVER PAGE OF APPENDIXES

EXHIBITS

Appendix A. Case no. 92-0266 6/30/92 verdict Robbery with a Firearm + trial transcript pgs 226-228, case no 92-0266 7/1/92 verdict for Robbery + trial transcripts page 3, 3, 193-196, July 2, 1992 notice prosecu. order case no 92-0266 Amended, August 5, 1992 Uniform Commitment, Commitment Checklist by Clerk of Court, Commitment Checklist by Deputy Sheriff James Nelson; Aug. 5, 1992 Judgment of conviction and sentences page 1, 1A, 2, 2A, & 3, Aug. 5, 1992 Sentencing transcripts pgs. 1, 2; 3; 11-14; April 24, 2007 pro se sentence HFD bar pgs 1-2 by Circuit Judge Michael Overstreet, Sentencing guideline scoresheet Rule 3.988(c) Aug. 20, 1992 Notice of Appeal, May 27, 1994 Direct Appeal opinion and June 14, 1994 mandate First DCA.

Appendix B. Aug. 13, 2012 memorandum by DDC General Counsel and former Supreme Court Staff Attorney Barbara Debelius, Oct. 12, 2012 First DCA pro se sanction concerning case no. 92-0266.

Appendix C. Supreme Court June 16, 2016 order dismissing habeas corpus without prejudice to seek relief in the Circuit Court case no. SC16-720 LIT case no. 031992CF000266 XXAXMX; 3-850 Habeas Corpus filed on June 27, 2016 to Bay County Circuit Court pages 1-10.

Appendix D March 2, 1992 charging case no. 92-0266 original information State of Cocaine, February 1, 1992 Arrest Affidavit, And February 8, 1992 First Appearance sheet; Capias warrant file no. 92-0763 Robbery, 92-0764 Robbery with a Firearm, April 8, 1992 Robbery Probable Cause Affidavit case file no. 92-0763, April 8, 1992 Robbery with a Firearm Probable Cause Affidavit case file no. 92-0764, April 12, 1992 First Appearance sheet file no(s) 92-0763 and 92-0764 Robbery and Robbery with a Firearm, April 23, 1992 Amended charging information captioning case no(s) 92-0266, 92-0763, 92-0764 pgs 1-2, June 18, 1992 motion to sever case no. 92-0266, and file no(s) 92-0763 and 92-0764; June 29, 1992 Clerk Carolyn Graham minutes "Charges severed"

Appendix E Notice of Appeal on April 16, 1991 Judgment and Sentence case no(s) 87-155, 87-156, 87-157, 87-392, 87-393, 87-400, 87-401, 87-433, 87-434, 87-435; April 16, 1991 Single Judgment of Conviction, August 5, 1992 case no. 92-0266 HKS findings of prior convictions 87-155, 87-156, 87-157, 87-392, 87-393, 87-400, 87-401, 87-433, 87-434, and 87-435, and September 25, 1992 written opinion and October 14, 1992 mandate; Habeas Corpus cover page filed April 4, 2008 to Florida Supreme Court case no. SC08-718.

52.

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA,
Plaintiff,

vs.

CASE NO. 92-0266-H

MICHAEL DESUE,
Defendant.

VERDICT

WE, the jury, find as follows, as to the defendant in this case:
(check only one)

- a. The defendant is guilty of Armed Robbery With a Firearm as charged.
- b. The defendant is guilty of Robbery With a Weapon.
- c. The defendant is guilty of Robbery.
- d. The defendant is guilty of Petit Theft.
- e. The defendant is not guilty.

SO SAY WE ALL.

DATED this 30th day of June, 1992.

Tommy Blue
FOREPERSON

FILED
DATE June 30 TIME 4:16

HAROLD BÄZZEL
CLERK OF CIRCUIT COURT
Carson A. ...

Appendix A

IN THE CIRCUIT COURT, FOURTEENTH
JUDICIAL CIRCUIT, IN AND FOR BAY
COUNTY, FLORIDA.

MICHAEL DESUE,
Defendant/Appellant,

vs. CASE NO.: 92-266H

STATE OF FLORIDA,
Plaintiff/Appellee.

FILED
DEC 23 PM 1:53
CITIZEN COURT REPORTERS & VIDEO

VOLUME II (of II)

Whereupon, the following proceedings came on to be heard before the Hon. Dedee S. Costello, Circuit Court Judge, at the Bay County Courthouse, Panama City, Florida, commencing on the 30th day of June, 1992.

APPEARANCES:

FOR THE STATE:

Hon. Pam Smoak, Assistant
State Attorney, P. O. Box 1040,
Panama City, Fl 32402.

FOR THE DEFENDANT:

Hon. Paul Komarek, Attorney at
Law, P. O. Box 2522, Panama
City, Fl 32402.

REPORTED BY:

SHERRI R. LESSIG
OFFICIAL COURT REPORTER

FILED
DEC 11 11 28 AM '92
CITIZEN COURT REPORTERS & VIDEO

1 THE CLERK: "State of Florida versus Michael
2 DeSue. We the jury find as follows as to the Defendant
3 in this case: The Defendant is guilty of armed robbery
4 with a firearm as charged. So say we all, dated this
5 30th day of June, 1992. Foreperson, Bonnie Blue."

6 THE COURT: Okay, any requests, Mr. Komarek?

7 MR. KOMAREK: Yes, I would request the jury be
8 polled.

9 THE COURT: Madam Clerk, please.

10 (All jurors responded in the affirmative as to
11 their verdict.)

12 THE COURT: File the verdict. Members of the
13 jury, I want to thank you for your time and consideration
14 of this case.

15 I also wish to advise you of some very special
16 privileges enjoyed by jurors.

17 No juror can ever be required to talk about the
18 discussions that occurred in the jury room, except by
19 court order. For many centuries, our society has relied
20 upon juries for consideration of difficult cases. We
21 have recognized for hundreds of years that a jury's
22 deliberations, discussions and votes should remain their
23 private affair as long as they wish it. Therefore, the
24 law gives you a unique privilege not to speak about the
25 jury's work.

1 Although you are at liberty to speak with
2 anyone about your deliberations, you are also at liberty
3 to refuse to speak to anyone. A request may come from
4 those who are simply curious, or from those who might
5 seek to find fault with you. It will be up to you to
6 decide whether to preserve your privacy as a juror.

7 I want to thank you on behalf of myself and the
8 other judges in this circuit because without your
9 willingness to serve we could not conduct the business of
10 the court and we sincerely appreciate your services. If
11 you would take off your juror badges and leave them on
12 the rial in front of you. I would ask the parties to
13 stay here until the jury exists the courtroom.

14 (Jury dismissed at this time.)

15 THE COURT: Mr. DeSue, the jury having tried
16 you and found you guilty as charged, you are adjudged
17 guilty of armed robbery with a firearm. How do you want
18 to do this in terms of sentencing? We have two more
19 trials this week but shall we determine that at the end
20 of the week?

21 MRS. SMOAK: That's fine.

22 THE COURT: Okay, we will take care of that and
23 you're remanded to custody and held without bond on this
24 particular charge.

25 (Proceedings concluded at this time.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF BAY)

I, Sherri R. Lessig, Official Court Reporter, at Panama City, Florida, Fourteenth Judicial Circuit, do hereby certify as follows:

THAT I correctly reported in machine shorthand the foregoing proceedings at the time and place stated in the caption hereof;

THAT I later reduced my machine shorthand notes to typewriting, and that the foregoing pages numbered _____ through _____, both inclusive contain a full, true and correct transcript of the proceedings taken on said occasion;

THAT I am neither of kin nor of counsel to any parties involved in this matter nor in any manner interested in the result thereof;

THIS _____ day of _____, 1992.

SHERRI R. LESSIG

OFFICIAL COURT REPORTER

Appendix

A

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO. 92-0266-H

MICHAEL DESUE,

Defendant.

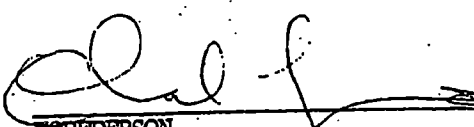
VERDICT

WE, the jury, find as follows, as to the defendant in this case:
(check only one)

- X a. The defendant is guilty of Robbery as charged.
- b. The defendant is guilty of Petit Theft.
- c. The defendant is not guilty.

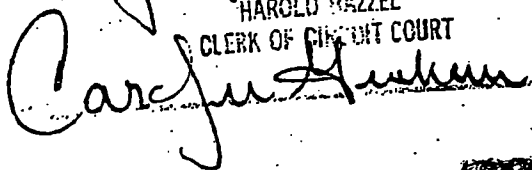
SO SAY WE ALL.

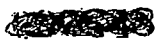
DATED this 1st day of July, 1992.



 FOREPERSON

FILED
 DATE July 1 TIME 3:30 P.M.

HAROLD HAZEL
 CLERK OF CIRCUIT COURT




VOLUME I

A-11509

IN THE CIRCUIT COURT, FOURTEENTH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA, IN AND FOR BAY COUNTY

MICHAEL DESUE,

Defendant/Appellant,

-vs-

CASE NO. 92-266

STATE OF FLORIDA,

92-763

92-764

Plaintiff/Appellee.

RECEIVED
CLERK OF THE COURT
BAY COUNTY, FLORIDA
DEC 14 4 21 PM '92

FILED

THIS CAUSE came on to be heard at Trial
in the above-referenced cause before the Honorable
Dede S. Costello, July 1, 1992, in Panama City,
Bay County, Florida.

RECEIVED
DEC 20 1992
CLERK OF THE COURT
BAY COUNTY, FLORIDA

APPEARANCES

Honorable Pam Smoak, Assistant State Attorney,
P. O. Box 1040, Panama City, FL 32402

Honorable Paul Komarek, Attorney for Defendant Desue,
P. O. Box 2522, Panama City, FL 32402

Marie G. Bazzel
Official Court Reporter
Post Office Box 2174
Panama City, Florida 32402
(904) 769-7601

I N D E X

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1 JULY 1, 1992

2 IN CHAMBERS

3 THE COURT: OK, Mr. Komarek, do you
4 have some preliminary matters we need to take
5 up?

6 MR. KOMAREK: Yes, Your Honor. This is
7 probably repetitious but this is a separate
8 record since we had a severance, the pleading
9 all have the...

10 THE COURT: Excuse me, go ahead.

11 MR. KOMAREK: I don't know what the case
12 numbers on the pleadings reflect but in any
13 event the motions need to apply to all three
14 cases at one time and then there was a severance
15 as you recall. In any event, I just wanted
16 to inform the Court once again that my client
17 has discharged me and since we're having three
18 separate trials now, he's discharged me for
19 all three as I announced yesterday, he's discharged
20 me on this case today, both yesterday and today
21 so he does not wish me to represent him and
22 his grounds are that ineffective assistance
23 of counsel, that I have not prepared sufficiently
24 to try these cases. I also have a motion to
25 continue which the grounds are the same as before

1 THE COURT: Those motions each are denied.
2 Now, anything else pending the return of the
3 verdict?

4 MR. KOMAREK: The defense has nothing else.

5 THE COURT: Any other evidentiary matters,
6 were there any other evidentiary matters that
7 were heard at side bar and not put on the record?
8 Ms. Smoak?

9 MS. SMOAK: No, ma'am.

10 THE COURT: Mr. Komarek?

11 MR. KOMAREK: No.

12 THE COURT: All right. while we're here,
13 what about tomorrow?

14 COURT REPORTER: Is this on the record?

15 THE COURT: No.

16 (Recess)

17 (Upon resuming-In Open Court)

18 THE COURT: Members fo the jury, have you
19 reached a verdict?

20 FOREMAN: Yes, ma'am, we have.

21 THE COURT: Would you hand it to the bailiff,
22 please?

23 THE COURT: Madam Clerk, would you publish
24 the verdict?

25 CLERK: State of Florida v. Michael Desue.

1 Verdict, we the jury find as follows as to the
2 defendant in this case. The defendant is guilty
3 of robbery as charged so say we all, dated the
4 1st day of July, 1992, foreperson...

5 THE COURT: Mr. Spencer.

6 CLERK: Mr. Spencer, Charles Spencer.

7 THE COURT: Any requests?

8 MR. KOMAREK: I would request that the
9 jury be polled, please.

10 THE COURT: OK, Madam Clerk.

11 CLERK: Ms. Jones, is this your verdict?

12 JUROR JONES: Yes.

13 CLERK: Mr. Spender, is this your verdict?

14 JUROR SPENCER: Yes.

15 CLERK: Mr. Goodwin, is this your verdict?

16 JUROR GOODWIN: Yes.

17 CLERK: Ms. Williams, is this your verdict?

18 JUROR WILLIAMS: Yes.

19 CLERK: Ms. Jarmin, is this your verdict?

20 JUROR JARMIN: Yes.

21 CLERK: Ms. Duncan, is this your verdict?

22 JUROR DUNCAN: Yes.


23 THE COURT: The Clerk may file the verdict.
24 Members of the jury, I want to thank you for
25 your jury service and advise you of some special

1 privileges enjoyed by jurors. No juror except
2 by Court order can ever forced to discuss the
3 votes and deliberations that occurred in the
4 jury room. You are at liberty to discuss this
5 matter with anyone you wish. You're also at
6 liberty to refuse to do so. That is your own
7 choice.

8 Your jury service is complete here. I
9 want to thank you on behalf of myself and the
10 other judges in this circuit. Without your
11 willingness to serve, we couldn't conduct the
12 business of the Courts. We do appreciate it.
13 If you would remove your juror badges and place
14 them on the rail in front of you. We will recycle
15 those tomorrow. I do want to thank you and
16 you're excused. You will be getting your checks
17 from the Clerk's office in the mail probably
18 sometime next week.

19 I would ask that everyone remain in the
20 courtroom and seated for just a moment until
21 the jury has had a chance to exit. Thank y'all,
22 you're free to go.

23 Mr. Desue, the jury having tried you and
24 found you guilty of robbery, you are adjudicated
25 guilty of that offense. We can schedule sentencing



1 after tomorrow, if you like. And you'll remain
2 in the custody and held without bond and tomorrow
3 morning at quarter until nine we will resume.
4 Court is in recess.

5 (All proceedings as to this
6 defendant are concluded)

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Exhibit

Appendix

A

OFFICE OF THE STATE ATTORNEY
FOURTEENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR BAY, CALHOUN, GULF, HOLMES, JACKSON AND WASHINGTON COUNTIES

JIM APPLEMAN
STATE ATTORNEY



IN REPLY REFER TO:

P.O. Box 1040
Panama City, FL 32402
(904) 872-4473

July 2, 1992

Honorable Harold Bazzel
Clerk of Circuit Court
Bay County Courthouse
Panama City, FL 32401

RE: STATE OF FLORIDA vs Michael Desue
Charge: Sale of Cocaine Within 200' of Public Housing
Facility (Amended)
Case No. 92-0266H
SA#: 0392F03081

FILED
JUL 2 11 31 AM '92

Dear Mr. Bazzel:

The State of Florida hereby formally announces a Noile Prosequi in the above-referenced case and states as reason the following:

the defendant found guilty by jury to Robbery With Firarm and Robbery. Will receive life sentence as habitual. After conferring with arresting officer, Doug Pierce, decided not to pursue this case since it would not add to sentence defendant received

Please make this letter a part of your files.

Sincerely,

JIM APPLEMAN
STATE ATTORNEY

By: *Pamela J Smoak*
Pamela J Smoak
Assistant State Attorney
Florida Bar # 559709

cc: Warrants -- BCSO
CCA
Officer Doug Pierce, Panama City Police Department

STATE OF FLORIDA

UNIFORM COMMITMENT TO CUSTODY
OF DEPARTMENT OF CORRECTIONS

The Circuit Court of Bay County, in the Spring Term, 1992 in
the case of

State of Florida CASE NO. 92-266 (H)

VS

MICHAEL CHARLES DESUE
Defendant

B 729878

RECEIVED
10 41 11 92

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO THE
SHERIFF OF SAID COUNTY AND THE DEPARTMENT OF CORRECTIONS OF SAID
STATE, GREETING:

The above named defendant having been duly charged with the
offense specified herein in the above styled Court, and he having
been duly convicted and adjudged guilty of and sentenced for said
offense by said Court, as appears from the attached certified
copies of Indictment/Information, Judgment and Sentence, and
Felony Disposition and Sentence Data form which are hereby made
parts hereof;

Now therefore, this is to command you, the said Sheriff, to
take and keep and, within a reasonable time after receiving this
commitment, safely deliver the said defendant; together with any
pertinent Investigation Report prepared in this case, into the
custody of the Department of Corrections, by and through your
Secretary, Regional Directors, Superintendents, and other
officials, to keep and safely imprison the said defendant for the
term of said sentence in the institution in the state
correctional system to which you, the said Department of
Corrections, may cause the said defendant to be conveyed or
thereafter transferred. And these presents shall be your
authority for the same. Herein fail not.

WITNESS the Honorable Dedee S. Costello,
Judge of said Court, as also Harold
Bazzel, Clerk, and the Seal thereof,
this 5th day of August, 1992.

HAROLD BAZZEL, CLERK

By: Carolyn A. [Signature]
Deputy Clerk

Page 1 of ___ Pages

A CERTIFIED TRUE COPY
HAROLD BAZZEL, CLERK
OF THE CIRCUIT COURT

By: [Signature]
Deputy Clerk

Appendix - A

HAROLD BAZZEL

CLERK OF CIRCUIT COURT, BAY COUNTY



P. O. BOX 2269
PANAMA CITY, FLORIDA 32402
(904) 763-9061

EFFECTIVE SEPTEMBER 1, 1990 PURSUANT TO F.S. 944.17

COMMITMENT CHECKLIST

NAME: MICHAEL CHARLES DESUE CASE NO. 92-266

XXX Uniform commitment, judgement, and sentence as well as a certified copy of the indictment or information.

XXX Copy of probable cause affidavit (complaint), or
_____ A probable cause affidavit was not filed.

~~XXXX~~ Copy of sentencing guideline scoresheet, or

XXX Order finding defendant Habitual Offender.

XX Copy of restitution order, or (check one of the following):
_____ Restitution not applicable;
_____ Copy of court's statement as to why restitution was not ordered.

_____ Name and address of victim(s), or
_____ Victim's name and address not available per state attorneys office.

DATE OF PLEA OR CONVICTION 06-30-92
DATE OF SENTENCE 08-05-92
DATE OF VOP PLEA _____
DATE OF VOP SENTENCE _____
DATE OF VOCC PLEA _____
DATE OF VOCC SENTENCE _____

Appendix - A

COMMITMENT CHECKLIST

TO: RECEIVING OFFICER
DEPARTMENT OF CORRECTIONS

REF: NAME: MICHAEL CHARLES DESUE CASE No. 92-266

PURSUANT TO F.S.S. 944.17, THE FOLLOWING DOCUMENTS/REPORTS ARE SUBMITTED ON ABOVE NAMED OFFENDER:

UNIFORM COMMITMENT, JUDGEMENT, AND SENTENCE AS WELL AS A CERTIFIED COPY OF THE INDICTMENT OR INFORMATION.

SHERIFF'S CERTIFICATE AS DESCRIBED IN F.S.S. 921.161

COPY OF PROBABLE CAUSE AFFIDAVIT, OR

A PROBABLE CAUSE AFFIDAVIT WAS NOT FILED.

COPY OF SENTENCING GUIDELINES SCORESHEET

COPY OF RESTITUTION ORDER, OR (CHECK ONE OF THE FOLLOWING):

RESTITUTION NOT APPLICABLE;

COPY OF COURT'S STATEMENT AS TO WHY RESTITUTION WAS NOT ORDERED.

NAME AND ADDRESS OF VICTIM(S), OR

VICTIM(S) NAME AND ADDRESS NOT AVAILABLE PER STATE ATTORNEY'S OFFICE.

PRINTOUT OF CURRENT FCIC/NCIC CRIMINAL HISTORY, OR

PRINTOUT PROVIDED WITH OTHER COMMITMENT DELIVERED WITH OFFENDER THIS DATE.

PRESENTENCE INVESTIGATION REPORT, OR

PRESENTENCE INVESTIGATION REPORT NOT MADE AVAILABLE.

BY: *James R. Nelson*
CPL. JAMES R. NELSON 212
DEPUTY SHERIFF OR AGENT BADGE/ID

RAY
COUNTY
August 14, 1992
DATE

Appendix
1

COMMUNITY CONTROL VIOLATOR
 PROBATION VIOLATOR
(Check if Applicable)

IN THE CIRCUIT COURT, FOURTEENTH
JUDICIAL CIRCUIT, IN AND FOR
BAY COUNTY, FLORIDA

STATE OF FLORIDA

- VS -

DIVISION H

MICHAEL CHARLES DESUE
Defendant

CASE NUMBER 92-266

JUDGMENT

FILED
CLERK
BAY COUNTY
FLORIDA
AUG 5 11 41 AM '92

The Defendant, MICHAEL CHARLES DESUE, being personally before this Court represented by Paul G. Komarek, his attorney of record, and having:

(Check Applicable Provision)

- Been tried and found guilty of the following crime(s)
- Entered a plea of guilty to the following crime(s)
- Entered a plea of nolo contendere to the following crime(s)

| COUNT | CRIME | OFFENSE STATUTE NUMBER(S) | DEGREE OF CRIME | CASE NUMBER |
|------------|-------------------------------|---------------------------|-----------------|---------------|
| <u>III</u> | <u>Robbery With A Firearm</u> | <u>812.13(2)(a)</u> | <u>1FPBL</u> | <u>92-266</u> |
| <u>II</u> | <u>Robbery</u> | <u>812.13(2)(c)</u> | <u>2F</u> | <u>92-266</u> |
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and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

The Defendant is hereby ordered to pay the sum of twenty dollars (\$20.00) pursuant to F.S. 990.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of three dollars (\$3.00) as a court cost pursuant to F.S. 943.25 (4). PLUS \$200.00 PURSUANT TO F.S. 27.3455.

(Check if Applicable)

- The Defendant is ordered to pay an additional sum of two dollars (\$2.00) pursuant to F.S. 943.25 (8). (This provision is optional; not applicable unless checked).
- The Defendant is further ordered to pay a fine in the sum of \$ _____ Pursuant to F.S. 775.0835. (This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as part of a sentence pursuant to F.S. 775.083 are to be recorded on the Sentence page(s).)
- The Court hereby imposes additional court cost in the sum of \$ _____
- The Court has determined the defendant to be indigent and waived costs described in this section as provided in Chapter 27.3455.

Imposition of Sentence Stayed and Withheld. (Check if Applicable)

The Court hereby stays and withholds the imposition of sentence as to count(s) _____ and places the Defendant on Probation/Community Control for a period of _____ under the supervision of the Department of Corrections (conditions of probation/community control set forth in separate order).

Sentence Deferred Until Later Date (Check if Applicable)

The Court hereby defers imposition of sentence until _____ (date)

The Defendant in Open Court was advised of his right to appeal from this judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised to his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

FINGERPRINTS OF DEFENDANT

Fingerprints taken by:

[Signature] #622 BCSO
Name and Title

DONE AND ORDERED in Open Court at Panama City, Bay County, Florida, this 5 TH day of AUGUST, AD., 1992. I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, MICHAEL CHARLES DESUE and that they were placed thereon by said Defendant in my presence in Open Court this date.

[Signature]
CIRCUIT JUDGE
Dedee S. Costello

Defendant MICHAEL CHARLES DESUE
Case Number 92-266

SENTENCE

(As to Count III)

The Defendant, being personally before this Court, accompanied by his attorney, Paul G. Komarek, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law; and no cause being shown,

- and the Court having on _____ deferred imposition of sentence until this date. (date)
- and the Court having placed the Defendant on probation/community control and having subsequently revoked the Defendant's probation/community control by separate order entered herein,

(Check EITHER provision if applicable)

IT IS THE SENTENCE OF THE LAW that;

- The Defendant pay a fine of \$ _____, plus \$ _____ as the 5% surcharge required by F.S. 960.25.
 - ~~XXXX~~ The Defendant is hereby committed to the custody of the Department of Corrections
 - The Defendant is hereby committed to the custody of the Sheriff of _____ County, Florida (Name of local corrections authority to be inserted at printing, if other than Sheriff)
- To be imprisoned (check one; unmarked sections are inapplicable)
- For a term of Natural Life
 - For a term of Life
 - For an indeterminate period of 6 months to _____ years,

- Followed by a period of NO on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.
- However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

If "split" sentence complete EITHER of these two paragraphs

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Firearm - 3 year mandatory minimum

- It is further ordered that the 3 year minimum provisions of F.S. 775.087 (2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.

Drug Trafficking mandatory minimum

- It is further ordered that the _____ year minimum provisions of F.S. 893.135(1)(X) are hereby imposed for the sentence specified in this count.

Retention of Jurisdiction

- The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

Habitual Offender

- The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084 (4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Jail Credit

~~XXXX~~ it is further ordered that the Defendant shall be allowed a total of 120 days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

Consecutive/Concurrent

It is further ordered that the sentence imposed for this count shall run consecutive to concurrent with (check one) the sentence set forth in count _____ above.

Defendant MICHAEL CHARLES DESUE
Case Number 92-266

SENTENCE

(As to Count II)

The Defendant, being personally before this Court, accompanied by his attorney, Paul G. Komarek, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown,

- and the Court having on _____ deferred imposition of sentence until this date. (date)
- and the Court having placed the Defendant on probation/community control and having subsequently revoked the Defendant's probation/community control by separate order entered herein,

(Check EITHER provision if applicable)

IT IS THE SENTENCE OF THE LAW that;

- The Defendant pay a fine of \$ _____, plus \$ _____ as the 5% surcharge required by F.S. 960.25.
 - ~~XXXX~~ The Defendant is hereby committed to the custody of the Department of Corrections
 - The Defendant is hereby committed to the custody of the Sheriff* of _____ County, Florida (Name of local corrections authority to be inserted at printing, if other than Sheriff)
- To be imprisoned (check one; unmarked sections are inapplicable)
- For a term of Natural Life
 - For a term of 30 years
 - For an indeterminate period of 6 months to _____ years.

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If "split" sentence complete EITHER of these two paragraphs

- Followed by a period of NO on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.
- However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

- Firearm - 3 year mandatory minimum*
- Drug Trafficking mandatory minimum*
- Retention of Jurisdiction*
- Habitual Offender*
- Jail Credit*
- Consecutive/Concurrent*

- It is further ordered that the 3 year minimum provisions of F.S. 775.087 (2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.
- It is further ordered that the _____ year minimum provisions of F.S. 893.135(1)(X) are hereby imposed for the sentence specified in this count.
- The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
- The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084 (4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- ~~XXXX~~ It is further ordered that the Defendant shall be allowed a total of 120 days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):
It is further ordered that the sentence imposed for this count shall run consecutive to concurrent with (check one) the sentence set forth in count _____ above.

Defendant MICHAEL CHARLES DESUE

Case Number 92-266

Consecutive/Concurrent
(As to other convictions)

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run

consecutive to concurrent with (check one) the following:

Any active sentence being served.

Specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of Bay County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

The Defendant in Open Court was advised of his right to appeal from this sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

In imposing the above sentence, the Court further recommends/orders _____

DONE AND ORDERED in Open Court at Panama City, Bay County, Florida, this 05 TH day of AUGUST A.D., 19 92

Dedee S. Costello
CIRCUIT JUDGE
Dedee S. Costello

A CERTIFIED TRUE COPY
HAROLD BAZZEL, CLERK
OF THE CIRCUIT COURT
By Harold Bazzel
Deputy Clerk

Page _____ of _____ Pages

APPENDIX-A

FILED

92 DEC 23 PM 1:53

JON S. WILSON
CLERK, DISTRICT COURT OF APPEALS
FIRST DISTRICT

IN THE CIRCUIT COURT, FOURTEENTH
JUDICIAL CIRCUIT, IN AND FOR BAY
COUNTY, FLORIDA.

MICHAEL DESUE,
Defendant/Appellant,

vs.

CASE NO.: 92-266H

STATE OF FLORIDA,
Plaintiff/Appellee.

HAROLD S. SWEET
CLERK, CIRCUIT COURT
BAY COUNTY, FLORIDA

Dec 9 2 54 PM '92

FILED

Whereupon, the following proceedings came on to be heard before the Hon. Dedee S. Costello, Circuit Court Judge, at the Bay County Courthouse, Panama City, Florida, commencing on the 5th day of August, 1992.

APPEARANCES:

FOR THE STATE:

Hon. Alton Paulk, Assistant
State Attorney, P. O. Box 1040,
Panama City, Fl 32402.

FOR THE DEFENDANT:

Hon. Paul Komarek, Attorney at
Law, P. O. Box 2522, Panama
City, Fl 32402.

REPORTED BY:

SHERRI R. LESSIG
OFFICIAL COURT REPORTER

PROCEEDINGS

1
2 August 5, 1992

3 THE COURT: Now, Mr. Komarek, where are we on
4 this matter? We have some pending motions to take care
5 of before we proceed to sentencing?

6 MR. KOMAREK: Judge, we have just, you may
7 recall, that on my client's behalf I moved to disqualify
8 yourself and you previously denied that motion and I
9 advised on more than one occasion--but I'm doing it on
10 the record--he has discharged me and that was--the
11 sentencing has been, I think this is the third episode of
12 the sentencing. I don't--I wasn't there at the last
13 episode and my partner stood in for me but I think that's
14 already been taken care of for the record.

15 THE COURT: All right.

16 MR. KOMAREK: I know my client wants to appeal
17 and has filed it and I think that was premature. We had
18 covered the Guideline Scoresheet I think the last time
19 and the Defense indicated that was correct as far as
20 priors. My client has had an opportunity to review that.

21 Where I think that leaves us is you're ready to
22 sentence him and the State's ready to move to attempt to
23 habitualize him and I'm prepared to cover the motions for
24 rehearing on the two trials that we have had.

25 THE COURT: Motion for new trial, you mean?

1 THE COURT: State have any other comments?

2 MR. PAULK: No, Your Honor.

3 THE COURT: Then, Mr. DeSue, in Case Number 92-
4 266, you're adjudicated guilty of robbery. You are
5 committed to the custody of the Department of Corrections
6 to serve a term of 30 years as a habitual offender.

7 Let me make sure I have the jail time credit.
8 Is 84 days right?

9 THE DEFENDANT: I have more.

10 THE COURT: I'm sure it's more than that.

11 MR. KOMAREK: I figured it, Judge, and I won't
12 swear to this on a stack of bibles but I refigured it and
13 I think it's 120 days until today's date.

14 THE COURT: Sounds closer. That's from the
15 2nd, I mean, excuse me...

16 MR. KOMAREK: From 4-8-92.

17 THE COURT: 2-8, wasn't it? Was it February or
18 April you arrested him?

19 MR. PAULK: It's on the Presentence
20 Investigation.

21 (Off record discussion)

22 THE COURT: State have any objection to 120?

23 MR. PAULK: No.

24 THE COURT: Now, is there restitution? Make
25 sure we get that straight. \$80 cash on that case. I

1 think they were both \$80, weren't they?

2 MR. KOMAREK: I believe so, Judge.

3 THE COURT: Allegedly taken. Do you have any
4 objection to that amount?

5 MR. KOMAREK: No. I think that's what the
6 testimony was.

7 THE COURT: Do you have any objection to the
8 judgment for restitution?

9 MR. PAULK: I really don't think there's any
10 objection that he could make because it's mandatory by
11 statute you enter an order of restitution.

12 THE COURT: I will ask him anyway.

13 MR. KOMAREK: The testimony that I heard, as I
14 recall, is that it was \$80.

15 THE COURT: Okay, I'm going to enter a judgment
16 for \$80 on behalf--on Count II on, for Jason Benard which
17 is just a civil judgment. It will not effect your gain
18 time or anything of that sort.

19 Count III, robbery with a firearm, you're
20 adjudicated guilty. Committed to the custody of
21 Department of Corrections to serve a term of life
22 imprisonment with 120 days credit against that sentence.
23 That sentence would be concurrent with the sentence just
24 imposed upon you. \$80 restitution in that case involving
25 Robert Bozeman.

1 You have a right to appeal this judgment and
2 sentence. You must do so by filing your notice within 30
3 days of today with the Clerk's Office. If you want a
4 lawyer and can't afford to hire one, a lawyer will be
5 appointed for you at no charge. You will need to be
6 fingerprinted.

7 **THE DEFENDANT:** I want to appeal it right now.

8 (Proceedings concluded at this time.)

1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)

3 COUNTY OF BAY)

4 I, Sherri R. Lessig, Official Court Reporter, at
5 Panama City, Florida, Fourteenth Judicial Circuit, do
6 hereby certify as follows:7 THAT I correctly reported in machine shorthand the
8 foregoing proceedings at the time and place stated in the
9 caption hereof;10 THAT I later reduced my machine shorthand notes to
11 typewriting, and that the foregoing pages numbered
12 _____ through _____, both inclusive contain a full, true and
13 correct transcript of the proceedings taken on said
14 occasion;15 THAT I am neither of kin nor of counsel to any
16 parties involved in this matter nor in any manner
17 interested in the result thereof;

18 THIS _____ day of _____, 1992.

19
20 _____
21 SHERRI R. LESSIG

22 OFFICIAL COURT REPORTER

APP - A

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

MICHAEL DESUE,
Plaintiff/Appellant, 'CORRECT CASE NO. 92-00266-CFA

vs.

CASE NO. ~~92-763~~
Consolidated to
92-266

STATE OF FLORIDA,
Defendant/Appellee.

FILED
AUG 23 4 21 PM '92


NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Michael Desue,
Defendant/Appellant, appeals to the District Court of Appeal,
First District of the State of Florida, pursuant to Rule
~~9.030(b)~~, Florida Rules of Appellate Procedure, the final order
of judgment and sentence rendered on the 5th day of August, 1992.

I HEREBY CERTIFY that a copy of the foregoing Notice of
Appeal has been served upon the State Attorney of the Fourteenth
Judicial Circuit, by and through the Honorable Pamela J. Smoak,
Assistant State Attorney, Fourteenth Judicial Circuit, P. O. Box
1040, Panama City, Florida; Honorable Bob Butterworth, Attorney
General, State of Florida, The Capitol, Tallahassee, Florida
32301; Honorable Virgil Q. Mayo, Public Defender, Fourteenth
Judicial Circuit, P. O. Box 499, Blountstown, Florida 32424; by
U.S. Mail, this 20th day of August, 1992.

DANIEL & KOMAREK, Chartered

BY


PAUL G. KOMAREK
Florida Bar No. 0189057
P. O. Box 2522
Panama City, FL 32402
(904) 763-6565
ATTORNEY FOR DEFENDANT

POSTED
TN

000035

W Appendix - A

92-3017

MICHAEL DESUE,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED
CASE NO. 92-3016

Docketed
6-2-94
Florida Attorney
General *AB*

Opinion filed May 27, 1994.

An appeal from the Circuit Court for Bay County.
Judge Dedee Costello.

92-60266-CFA
Nancy A. Daniels, Public Defender, and Glen P. Gifford, Assistant
Public Defender, Tallahassee, for Appellant.

Robert A. Butterworth, Attorney General, and Amelia L. Beisner,
Assistant Attorney General, Tallahassee, for Appellee.

RECEIVED

MAY 31 1994

Criminal Appeals
Dept. of Legal Affairs

RECEIVED

MAY 27 1994

DEPT. OF LEGAL AFFAIRS
Division of General Legal Services

PER CURIAM.

AFFIRMED.

BARFIELD, ALLEN, and WOLF, JJ., CONCUR

Exhibit C

MANDATE

Appendix

A

From

DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

To the Honorable, the Judges of the Circuit Court for Bay County
WHEREAS, in that certain cause filed in this Court styled: _____

STATE OF FLORIDA

vs.

MICHAEL CHARLES DESUE

Case No. 92-3016

Your Case No. 92-266

RECEIVED

JUN 15 1994

Criminal Appeals
Dept. of Legal Affairs

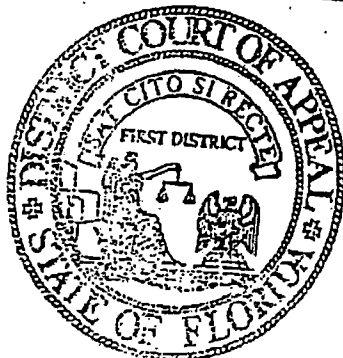
The attached opinion was rendered on May 27, 1994

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion,
the rules of this Court and the laws of the State of Florida.

WITNESS the Honorable E. Earle Zehmer

Chief Judge of the District Court of Appeal of Florida, First District and the Seal of said

court at Tallahassee, the Capitol, on this
14th day of June, 1994



Jim A. Wheeler
Clerk, District Court of Appeal of Florida,
First District

Received
6-16-94
Florida Attorney General
RB

000426

Appendix - A

IN THE CIRCUIT COURT OF THE ~~FIFTEENTH~~ **FIFTEENTH** JUDICIAL CIRCUIT
IN AND FOR BAY COUNTY, FLORIDA

2007 APR 25 P 3 39

STATE OF FLORIDA,

Plaintiff,

HAROLD BAZZEL
CLERK OF CIRCUIT COURT
BAY COUNTY, FLORIDA

v.

Case No.: 92-0266

MICHAEL CHARLES DESUE,

Defendant.

ORDER BARRING FURTHER PRO SE FILINGS IN THIS CASE

THIS MATTER is before the Court on its Order to Show Cause, dated March 27, 2007, in which the Court directed the Defendant to show cause within twenty (20) days as to why he should not be barred from submitting further pro se pleadings in this case. Defendant has continuously challenged his habitual felony offender (HFO) sentence since his 1992 sentencing. The Court's Order to Show Cause was issued after Defendant filed yet another pro se motion challenging his HFO sentence on yet another ground that had been raised in a prior motion, and after the Court had previously warned Defendant against filing successive or frivolous motions challenging his HFO sentence.

As the Court noted in its previous orders, both this Court and the First District Court of Appeal have repeatedly evaluated Defendant's claims that his HFO sentence is illegal and have repeatedly found that Defendant was properly habitualized. Any citizen, including a citizen attacking his or her conviction, abuses the right to pro se access by filing repetitious and frivolous pleadings, thereby diminishing the ability of the courts to devote their finite resources to the consideration of legitimate claims. *State v. Spencer*, 751 So.2d 47 (Fla. 1999). In its Order to Show Cause, this Court listed the numerous motions Defendant has filed in this case challenging his HFO sentence which the Court had found to be successive or without merit, the orders denying those motions, and the First DCA orders summarily affirming. (See attached Order to Show Cause and attachments).

Defendant's response to the Order to Show Cause does not provide good cause as to why he should not be barred from submitting any further pro se pleadings in this case. Defendant's complaint that the undersigned judge and the prior judge assigned to the case should have granted his request to recuse themselves from the case is without merit. The fact that a judge has ruled adversely to a party in the past does not constitute a legally sufficient ground for a motion to disqualify. See *Thompson v. State*, 759 So.2d 650, 659 (Fla. 2000). The remainder of Defendant's response fails to convince the Court that prohibiting Defendant from filing further pro se pleadings is unwarranted in this case.

Therefore, it is:

ORDERED AND ADJUDGED that that the Clerk's Office is directed to refuse to accept for filing in this Court any further pleadings, motions, petitions, or other papers relating to case number 92-0266 unless they are filed by a member in good standing of The Florida Bar.

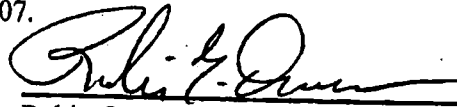
DONE AND ORDERED in chambers, Bay County, Florida, this 24 day of April 2007.



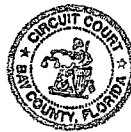
**HONORABLE MICHAEL C. OVERSTREET,
CIRCUIT JUDGE**

Attachment: Order to Show Cause, with attachments

I HEREBY CERTIFY that a true and exact copy of the foregoing has been provided by U.S. Mail to Michael Charles DeSue, DC# 729878, Calhoun C.I., 19562 SE Institution Drive, Blountstown, FL 32424-5156, this 25 day of April 2007.



Robin Owens, Judicial Assistant



A CERTIFIED TRUE COPY
BILL KINSAUL CLERK
OF THE CIRCUIT COURT

By Stu Reed
Deputy Clerk

Rule 3.988(j)
SENTENCING GUIDELINES SCORESHEET

1. Primary Docket Number 92-266
2. Additional Docket Numbers N/A
3. OBTS Number 0054968996
4. Category: 1 2 X 3 4 5 6 7 8 9
5. Name (Last Name First) DESUE, MICHAEL C.
6. Date of Birth 08/06/85
7. Sex: M F
8. Race: B O Other
9. Violation Prob CC
10. County BAY
11. Judge at Sentencing DEDEE S. COSTELLO
12. Date of Offense 04/02/92
13. Date of Sentence
14. Plea Trial
15. DOC Number 728878

OFFICE USE ONLY

I. PRIMARY OFFENSE AT CONVICTION

Table with columns: Counts, Degree, Statute, Description. Row 1: 1, 1st, 812.13(1)(a), ROBBERY WITH A FIREARM

II. ADDITIONAL OFFENSES AT CONVICTION

Table with columns: Counts, Fel/Misd, Degree, Statute, Description. Row 1: 1, F, 1st, 812.13(1)(a), ROBBERY

(Continue on Separate Page)

III. A. PRIOR RECORD

Table with columns: Counts, Fel/Misd, Degree, Statute, Description. Rows: 10, F, 3, 831.02, UTTERING A FORGED INSTRUMENT; 19, M, 1, 832.03(3)(b), WORTHLESS CHECKS; 6, M, 1, 812.014(2)(c), PETTY THEFT

(Continue on Separate Page)

III. B. SAME CATEGORY PRIORS (categories 3, 5 and 6 only)

III. C. PRIOR DUI CONVICTIONS (category 1 only)

IV. LEGAL STATUS AT TIME OF OFFENSE
X (1) no restrictions (2) legal constraint

V. VICTIM INJURY

Table with columns: Number of Scoreable Victim Injuries, Degree of Injury. Row 1: 0, none or no contact

TOTAL POINTS 312

RECOMMENDED SENTENCE 30 years incarceration (17 - 22)

PERMITTED SENTENCE 12 - 37 years incarceration

TOTAL SENTENCE IMPOSED

REASONS FOR DEPARTURE

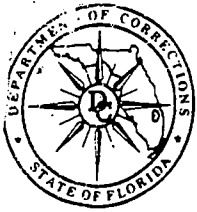
JUDGE DEDEE S. COSTELLO PREPARER PETER D. THOMAS, CPS II, P&P

OFFICE USE ONLY

T.S. C.C. Prob.
S.P. C.J. B.F.

A CERTIFIED TRUE COPY
HAROLD BAZZEL, CLERK
OF THE CIRCUIT COURT

Deputy Clerk



FLORIDA
DEPARTMENT of
CORRECTIONS

Appendix

B

Governor
Rick Scott

Secretary
Kenneth S. Tucker

An Equal Opportunity Employer

501 S. Calhoun St. • Tallahassee, FL 32399-2500

<http://www.dc.state.fl.us>

August 13, 2012

The Honorable Circuit Judge
ALLEN REGISTER
Calhoun County Courthouse
20859 Central Ave E
Blountstown, FL 32424-2263

Re: Michael Charles DeSue, DOC# 729878 v. Parker/FDOC
Calhoun County Case No. 10-330 CA

Dear Judge Allen:

This inmate has filed a petition for belated appeal in the First District. He asserts that he never got a copy of the order dismissing his petition that you signed and had to ask for a copy from the clerk of court. This resulted in his missing the deadline for his appeal. In reviewing my file, I do not have a copy of the order dismissing the petition either. It seems to me that perhaps a mix up occurred somewhere along the line and the orders were not sent out. I have included a Revised Order that I am asking you to sign. With this, I believe the inmate could file his appeal and the petition for belated appeal could be dismissed as moot.

I have enclosed the customary pre-addressed, postage-paid envelopes for mailing copies of the Court's order to the parties.

Thank you for your time and consideration.

Sincerely,

Barbara Debelius
Assistant General Counsel

Enclosures: Response & Motion, Proposed Order, 3 Envelopes
cc:

Michael Charles DeSue, DOC# 729878
Calhoun Correctional Institution
19562 S.E. Institution Drive
Blountstown, FL 32424-9700

than nominal alimony, the court declined to make a finding as to the amount of Appellant's need. Thus, we reverse and remand for the trial court to make the necessary findings. *See Gergen v. Gergen*, 48 So. 3d 148, 150 (Fla. 1st DCA 2010) (holding it was error to defer on awarding or denying permanent periodic alimony on ground husband did not have present ability to pay).

AFFIRMED in part, REVERSED in part, and REMANDED with instructions. (PADOVANO, THOMAS, and CLARK, JJ., CONCUR.)

* * *

TIMOTHY E. WHITE, Petitioner, v. STATE OF FLORIDA, Respondent. 1st District. Case No. 1D12-2002. Opinion filed October 12, 2012. Petition for Writ of Certiorari—original jurisdiction. Counsel: Timothy E. White, pro se, Petitioner. Pamela Jo Bondi, Attorney General, Joshua R. Heller, Assistant Attorney General, Tallahassee, for Respondent.

(PER CURIAM.) DENIED. Petitioner has not shown that the trial court's order causes a type of injury that is remediable by certiorari. *See Dairyland Ins. Co. v. McKenzie*, 251 So. 2d 887, 888 (Fla. 1st DCA 1971). In particular, the harm alleged by Petitioner could be corrected by other means, i.e., filing with the trial court a new motion for issuance of subpoenas that includes the names of the witnesses whom he seeks to subpoena. (BENTON, C.J., THOMAS and ROWE, JJ., CONCUR.)

* * *

Criminal law—Pro se filings—Prohibition.

MICHAEL CHARLES DESUE, Petitioner, v. KENNETH S. TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS and CALHOUN CORRECTIONAL INSTITUTION, WARDEN, Respondents. 1st District. Case No. 1D12-3662. Opinion filed October 12, 2012. Petition for Belated Appeal—Original Jurisdiction. Counsel: Michael Desue, pro se, Petitioner. No appearance for Respondents.

(PER CURIAM.) Petitioner was previously sanctioned by a panel of judges of this court which included a prohibition against any future pro se pleadings concerning Bay County Circuit Court case number 92-0266. Petitioner was warned that any violation of the sanction order could result in referral to the appropriate institution for disciplinary procedures as provided in section 944.279, Florida Statutes. *See Fla. R. App. P. 9.410.*

This pro se petition seeks belated appeal of a circuit court order which denied a petition for writ of habeas corpus concerning Bay County Circuit Court case number 92-0266. Because this pro se filing is a violation of this court's prior sanction order, the petition seeking belated appeal is stricken as unauthorized.

Based on this court's prior sanction order, petitioner was directed to show cause why further sanctions should not be imposed. *See State v. Spencer*, 751 So. 2d 47, 48 (Fla. 1999) (recognizing the potential for abuse of the right to pro se access to the courts but declaring "it is important for courts to first provide notice and an opportunity to respond before preventing that litigant from bringing further attacks on his or her conviction and sentence"); *Butler v. State*, 953 So. 2d 12, 13 (Fla. 5th DCA 2007) (requiring a *Spencer* order before barring either future pro se pleadings or imposing other sanctions). Petitioner's response to the show cause order does not provide a legal basis to prohibit the imposition of sanctions.

As such, because petitioner's continued pro se filings have become an abuse of the legal process, we hold that he is barred from any future pro se filings in this court. The Clerk of the Court is directed not to accept any future filings from Michael Charles DeSue unless they are filed by a member in good standing with The Florida Bar. In addition, a certified copy of this opinion shall be provided to the Florida Department of Corrections to be forwarded to the appropriate institution or facility for disciplinary procedures pursuant to the rules of the department as provided in section 944.279, Florida Statutes.

(WOLF, CLARK, and MARSTILLER, JJ., CONCUR.)

* * *

Administrative law—Attorney's fees—Jurisdiction—Administrative law judge did not err in concluding that he lacked jurisdiction to adjudicate motion for attorney's fees and costs filed pursuant to section 120.595(1) after ALJ closed cases and relinquished jurisdiction to Florida Commission on Human Relations where there were no pending motions for attorney's fees when the cases were voluntarily dismissed, the files closed, and jurisdiction relinquished

TOWN OF DAVIE, Appellant, v. MONICA SANTANA, Appellee. 1st District. Case No. 1D11-5696. TOWN OF DAVIE, Appellant, v. LARRY PASKO, Appellee. Case No. 1D11-5697. TOWN OF DAVIE, Appellant, v. ROBERTA QUINONES, Appellee. Case No. 1D11-5698. Opinion filed October 12, 2012. An appeal from an order of the Division of Administrative Hearings. John G. Van Laningham, Judge. Counsel: Joan Carlos Wizel, Onier Llopiz, Stephanie Pidermann, and Jason B. Trauth of Lydecker Diaz, Miami, for Appellant. Christopher McShane and Kansas R. Gooden of Boyd & Jenerette, PA, Jacksonville, and George Franklin and Erik Nelson of Nelson & Franklin, PLLC, Miami Beach, for Appellee.

(PER CURIAM.) These appeals, which were consolidated for briefing purposes, are hereby consolidated for opinion purposes as well. Appellant, the Town of Davie, contends that the administrative law judge ("ALJ") erred in concluding that he lacked jurisdiction to adjudicate Appellant's motion for attorney's fees and costs filed pursuant to section 120.595(1), Florida Statutes, after he closed the cases and relinquished jurisdiction to the Florida Commission on Human Relations. We reject this argument along with Appellant's contention that the ALJ's ruling deprived it of its substantive right to attorney's fees and costs without due process.

As the ALJ noted in his order denying Appellant's motion to reopen the cases, there were no pending motions for attorney's fees when Appellees voluntarily dismissed their cases and when the ALJ closed the files and relinquished jurisdiction. *Cf. G.E.L. Corp. v. Dep't of Envtl. Prot.*, 875 So. 2d 1257, 1263 (Fla. 5th DCA 2004) (holding that an ALJ has jurisdiction to award fees under section 120.595(1) when a petition has been dismissed but noting that the motion for fees was filed prior to the voluntary dismissal). Appellant's argument that it had no basis to file a motion for fees prior to the voluntary dismissals is refuted by its assertions below and on appeal that Appellees engaged in conduct prior to the voluntary dismissals that was intended to harass and cause unnecessary delay. *See* § 120.595(1)(b), Fla. Stat. (2011) (providing that an ALJ may award attorney's fees to the prevailing party if he or she determines that the nonprevailing party participated in the proceeding for an improper purpose).

Accordingly, we AFFIRM. (DAVIS, VAN NORTWICK, and ROWE, JJ., CONCUR.)

* * *

JANIS ANN BENBOW, Appellant, v. STATE OF FLORIDA, Appellee. 1st District. Case No. 1D11-6318. Opinion filed October 12, 2012. An appeal from the Circuit Court for Santa Rosa County. David Rimmer, Judge. Counsel: Nancy A. Daniels, Public Defender, and Steven L. Seliger, Assistant Public Defender, Tallahassee, for Appellant. Pamela Jo Bondi, Attorney General, and Angela R. Hensel, Assistant Attorney General, Tallahassee, for Appellee.

(PER CURIAM.) Appellant pled no contest to several felony drug offenses and was sentenced to 18 months in prison. On appeal, she challenges the constitutionality of section 893.101, Florida Statutes (2009), based on the reasoning in *Shelton v. Secretary, Department of Corrections*, 802 F. Supp. 2d 1289 (M.D. Fla. 2011). That decision was recently reversed on appeal, *see Shelton v. Secretary, Department of Corrections*, ___ F. 3d ___, 2012 WL 3641008 (11th Cir. Aug. 24, 2012) [23 Fla. L. Weekly Fed. C1469a], and the Florida Supreme Court expressly upheld the constitutionality of section 893.101 in *State v. Adkins*, 37 Fla. L. Weekly S449 (Fla. July 12, 2012). Accordingly, we reject Appellant's constitutional challenge and affirm her convictions and sentences.

Appendix C

Supreme Court of Florida

THURSDAY, JUNE 16, 2016

CASE NO.: SC16-720
Lower Tribunal No(s):
031992CF000266XXAXMX

MICHAEL CHARLES DESUE vs. JULIE L. JONES, ETC.

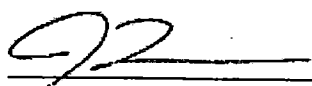
Petitioner(s)

Respondent(s)

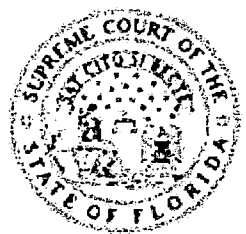
The petitioner has filed a petition for writ of habeas corpus with the Court. To the extent the petitioner seeks the type of relief available in a motion filed pursuant to Florida Rule of Criminal Procedure 3.850, the petition is dismissed as unauthorized. See Baker v. State, 878 So. 2d 1236 (Fla. 2004). To the extent the petitioner challenges the actions of the Department of Corrections, the petition is dismissed without prejudice to seek relief in the appropriate circuit court. Any motions or other requests for relief are also denied. No rehearing will be entertained by this Court.

PARIENTE, LEWIS, QUINCE, CANADY, and POLSTON, JJ., concur.

A True Copy
Test:



John A. Tomasino
Clerk, Supreme Court



two
Served:

KENNETH SCOTT STEELY
MICHAEL CHARLES DESUE
TRISHA MEGGS PATE
HON. BILL KINSAUL, CLERK

Appendix - C

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
STATE OF FLORIDA IN AND FOR BAY COUNTY

MICHAEL CHARLES DeSUE,

Plaintiff/Petitioner

Case No. 92-0266 cts 1-3

Supreme Court Case No. SC16-720

vs.

THE STATE OF FLORIDA,

Respondent

PETITION FOR WRIT OF HABEAS CORPUS IS FILED
FROM THE SUPREME COURT'S JUNE 16, 2016 ORDER
ON CASE NO. SC16-720

Petitioner, Michael Charles DeSue, pro se, files a Petition for Writ of Habeas Corpus to this Circuit Court pursuant to Fla. R. Crim. P. 3.850 by the Supreme Court's June 16, 2016 order on case no. SC16-720 served on Clerk Bill Kinsaul. The clerk shall file this pro se petition with the court and not return it to petitioner. See Appendix A. infra (Supreme Court order).

JURISDICTION INVOKED

This Circuit Court has exclusive jurisdiction to entertain and grant relief to a habeas corpus petitioner who has been false imprisoned by a miscarriage of justice, where he was never adjudicated guilty or sentenced on the jury's verdicts, because the Circuit Court knew they were void being entered "without jurisdiction", and the Clerk of Court fabricated the commitment papers delivered by the Sheriff Deputy upon the Department of Corrections on August 14, 1992. See Article 1 Sec. 13.

The Department of Corrections on August 14, 1992. See Article 1 Sec. 13. See *Santana v. Henry*, 12 So.3d 843 (Fla. 1st DCA 2009); *Henry v. Santana*, 62 So.3d 1122 (Fla. 2011); *Harris v. Nelson*, 394 U.S. 286, 291 89 S.Ct. 1082 22 L.Ed. 2d (1969) (authorize discharge hearing); *T.D. v. K.D.* 747 So.2d 456, 457 N2 (Fla. 4th DCA 1999), quoting *MARINA San Pablo Place Spe LLC v. VCP-San Pablo Ltd*, 92 So.3d 320, 321 (Fla. 1st DCA 2012); *Jamison v. State*, 447 So.2d 892, 895 (Fla. 4th DCA 1983) decision approve 455 So.3d 380 (Fla. 1984).

DIRECTIONS TO THE CLERK AND DOC GENERAL COUNSEL

FILED
JUL 22 2016
BAY COUNTY FLORIDA
COURT CLERK
WILL KINSAUL

The Supreme Court authorized petitioner to file a 3-850 Versing the State of Florida in Bay County Circuit Court on June 16, 2016 Attached as Appendix A. infra (Supreme Court June 16, 2016 order) on his pro se. habeas corpus. Pursuant to Sec. 28.211, 28.222(1) (2) and 28.13 Fla. Stat. Annotated the Clerk Bill Kinsaul shall file this petition with the court once clocked in records of the clerk's office

This Court, DOC General Counsel, Second Judicial Circuit Court, First District Court of Appeal, and the Supreme Court knows case no. 92-0266 was nolle prosequi by Bay County States Attorney office on July 2, 1992, the subsequent entered pro se bars on April 24, 2007, January 21, 2015, and on October 12, 2012 by the First District Court are void orders as a matter of the law that has been illegal employed to not correct a miscarriage of justice done to Mr. Michael DeSue, resulting in DOC writing DeSue a bogus disciplinary report on March 23, 2015 by guidance of this Court pending in DeSue v. DOC case no. 2015-CA-1422 in Leon County Circuit Court. See Appendix A. infra (July 2, 1992 nolle prosequi order).

NATURE OF RELIEF SOUGHT

The petitioner seeks the relief of a "Scheduled discharge hearing" to be conducted in Bay County Circuit Court where he was intentionally false imprisoned by this Court with efforts of Clerk Deputy Carolyn Graham. Counsel should be appointed to the indigent petitioner upon scheduling the hearing.

TIMELINESS OF THE PETITION

The petitioner asserts the Jury verdict by foreperson Bonnie Blue entered without jurisdiction under case no. 92-0266 ct. 1 for Robbery with a firearm is void, and the jury verdict by foreperson Charles Spencer entered without jurisdiction under case no. 92-0266 ct. 2 for Robbery is void, court lacked of subject matter jurisdiction. can be raised at anytime outside Fla. R. Crim. P 3-850 two years period of time limitation. See Waggy v. State, 935 So. 2d 571, 573 (Fla. 1st DCA 2008); State v. Burton, 214 So. 2d 136-138 (Fla. 1975)

Case no. 92-0266 ct. 1 was charged by the State on a unrelated sale of cocaine charges on March 2, 1992 charges 20

April 23, 1992 from a alleged February 1, 1992 incident.

STATEMENT OF FACTS

On February 1, 1992 an arrest affidavit was filed by Panama City Police Narcotic Agent Paul Pierce alleging in violation of Sec. 893.13 F.S. (1991) that Mr. Desue sold him cocaine.

Furthermore, on February 8, 1992 Policeman Agent Pierce arrested the petitioner Desue and he was taken to First Appearance before County Court Judge Glenn Hess who gave Mr. Desue a \$5,000.00 Bond. On March 2, 1992 under case no. 92-0266 ct. 1 the state filed formal charges charging Mr. Desue with the offense of Sale of Cocaine, Article 1 sec. 15 Fla. Const.

Desue on March 3, 1992 posted bond and was released from Bay County Jail on the Cocaine charge. See Appendix B, infra.

On April 9, 1992 County Judge Glenn Hess entered Capias arrest warrants on case no. 92-0763 warrant #168-92 for Robbery, and case no. 92-0764 warrant #169-92 for Robbery with a firearm. These illegal warrants were issued when the State Attorney office had not filed formal charges on these offenses as required under Fla. R. Crim. P. 3.131 (c). See Appendix B, infra.

The State Attorney office filed a Amended charging information on April 23, 1992 captioning case no. (s) 92-0266, 92-0763, & 92-0764 to make it seem as tho their office had filed charging informations on case no(s) 92-0763 and 92-0764 to make it seem like a legal consolidation had been made under case no. 92-0266 listing the Robbery as ct. 2 and Robbery with a firearm as ct. 3, when the state had never filed a motion to consolidate to the court under Fla. R. Crim. P. 3.151 (B) because the state knew these Robbery offenses were not related to the charge of Sale of Cocaine offense. Appendix B, infra.

Defense Counsel filed a motion for Severance of these cases 92-0266, 92-0763, and 92-0764, which the Robbery trial was set for July 1, 1992, Robbery with a firearm for June 30, 1992, and Sale of Cocaine for July 2, 1992. Appendix C, infra.

Moreover, where original charging informations had not been filed on case no. 92-0763 Robbery offense, and on case no. 92-0764 Robbery

with a firearm offense. On the Robbery with a Firearm Verdict on June 30, 1992 the Court fabricated subject matter jurisdiction under case no. 92-0266. Appendix D. infra (Verdict/Trial transcripts pgs. 226-228)¹.

Moreover, on the Robbery verdict on July 1, 1992 the Court fabricated subject matter jurisdiction under case no. 92-0266. Appendix E. infra (Verdict/Trial transcripts pgs. 193-196)

Clerk Carolyn Graham entered these June 30, 1992 and July 1, 1992 verdicts into the Clerk records.

On August 5, 1992 Judge Castello did not enter a adjudication of guilt and sentence on the Robbery with a Firearm June 30, 1992 verdict under case no. 92-0266 ct. 1, and did not enter a adjudication of guilt and sentence on the Robbery July 1, 1992 verdict under case no. 92-0266 ct. 1, because she knew the Court did not have subject matter jurisdiction under nolle prosequi case no. 92-0266 ct. 1.

Judge Castello intentionally entered a written judgment of Conviction and Sentences Single order listing the Robbery under Case no. 92-0266 as ct. 2 with a 30 years habitual offender sentence, and as ct. 3 Robbery with a firearm with a imposed Life habitual offender sentence, when a multiple counts 2 and 3 verdict under case no. 92-0266 does not exist. The Court-Reporter Sherril Lessig would not certify the sentencing transcripts to be true and correct because she knew being the Court-Reporter on June 30, 1992 the petitioner had not been tried for Robbery as ct. 2 and

4.

1. The Court Reporter Sherril Lessig did not certify the trial transcripts on 6/30/92 to be true and correct because she knew the verdict entered under case no. 92-0266 ct. 1 was void...

Robbery with a firearm as ct. 3, See Appendix F, infra (Judgment and sentences on August 5, 1992 & the Sentencing transcripts). And the trial in itself under case no. 92-0266 was conducted without court having jurisdiction. Moreover, Clerk Carolyn Graham knew two separate verdicts on 6/30/92 and 7/1/92 had been entered under case no. 92-0266 by different juries, on different offenses that she entered into record. she also knew the August 5, 1992 Judgment and sentences detention order was void and illegal under case no. 92-0266 as ct. 2 and ct. 3, when Clerk Carolyn Graham prepared the Uniform Commitment form and Commitment Checklist, she listed nolte prosequi case no. 92-0266 on them, and omits references to ct. 2 and ct. 3, because she knows a multiple counts 2 and 3 verdict does not exist See Appendix F, infra (Uniform Commitment and Commitment Checklist by Clerk Carolyn Graham).

Moreover, Clerk GRAHAM knew DOC under Sec. 944.17(4) F.S. (1991) required for her to list the conviction date on the Clerk Commitment Checklist, which she listed as 6/30/92, but she knew DOC under sec. 944.17(5)(A) "did not require an authentication document to be produced at admissions and reception of the prisoner." Clerk Graham intentionally omits putting the July 1, 1992 verdict as a conviction date, with the listed 6/30/92 date, because DOC would have figured out that the single August 5, 1992 Judgment and sentences detention order under case no. 92-0266 as: ct. 2 Robbery and as ct. 3 Robbery with a firearm was void and illegal and would have refused to accept custody of him on August 14, 1992 where two separate Judgment and sentence were required. Rather by the Circuit Court Clerk deception (trickery). Knowing DOC admission policy is susceptible to false imprisoning a person, DOC believed and assumed by the Clerk listed conviction date on the Commitment Checklist of 6/30/92, that Mr. Desue was convicted by a single jury on a multiple counts 2 and 3 verdict under case no. 92-0266 on 6/30/92 to "accept custody of him", which is why the Supreme Court dismissed The Department of Correction as party, for petitioner without prejudice to seek relief from this court pro se on June 16, 2016, in the order under case no. 5C16-720. See Appendix A, infra

On February 14, 2015, the petitioner moved to have Judge James Fensom disqualified from case no. 92-0266 which he did not rule on the motion for disqualification within 30 days its considered granted.

GROUND ONE

BAY COUNTY CIRCUIT COURT DID NOT ADJUDICATE PETITIONER GUILTY AND SENTENCE HIM ON THE JUNE 30, 1992 CASE NO. 92-0266 CT. 1 JURY VERDICT, AND ON THE JULY 1, 1992 CASE NO. 92-0266 CT. 1 JURY VERDICT FOR ROBBERY BECAUSE THESE SEPARATE VERDICTS ARE VOID WHERE THEY WERE ENTERED WITHOUT THE COURT HAVING SUBJECT MATTER JURISDICTION TO TRIED PETITIONER, SO THE COURT FABRICATED THE CERTIFIED AUGUST 5, 1992 JUDGMENT OF CONVICTION AND SENTENCES AS CT. 2 ROBBERY AND AS CT. 3 ROBBERY WITH A FIREARM UNDER CASE NO. 92-0266 TO FALSE IMPRISONMENT HIM BY COMMITMENT PAPERS DECEPTION TO MAKE DOC BELIEVE IT WAS LEGAL AND ENFORCEABLE TO ACCEPT CUSTODY OF HIM FROM BAY COUNTY DEPUTY SHERIFF JAMES NELSON.

The Supreme Court is giving this court the opportunity to correct its own manifest injustice by "false imprisoning Mr. Desue in the Department of Corrections" from the Supreme Court's June 16, 2016 order. See Appendix A-infra. In *Jannason v. State*, 447 So. 2d 892, 895 (Fla. 4th DCA 1983). The Court held, approved by The Supreme Court, 455 So. 2d 380 (Fla. 1984),

If it appears to the court of competent jurisdiction that a man is being illegally restrained of his liberty it is the responsibility of the court to brush aside formal technicalities and issue such appropriate order as will do just justice.

Bay County Circuit Court entered a void and illegal judgment of conviction and sentences certified upon The Department of Corrections by the clerk to false imprisonment the petitioner that "violates due process." See *Stang v. State*, 24 So. 3d 566, 569 (Fla. 2d DCA 2009). The Court held,

As a practical matter [i]f the challenged detention order [is] determined to be a violation of the petitioner's constitutional guarantee of due process then the order would be illegal, and not merely, defective, irregular, or insufficient in form or substance.

The State Attorney office of Bay County of Mr. Jim Appleman on March 2, 1992 under case no. 92-0266 ct 1 case jurisdiction did formally charge Mr. DeSue for a violation of sec. 893.13 F.S. (1991) with the offense of Sale of Cocaine, which the state amended adding two additional none related offenses on April 23, 1992 as ct. 2 Robbery and as ct. 3 Robbery with a FIREARM.

These offenses were severed returning the Cocaine offense to its original charging case jurisdiction under case no. 92-0266 ct 1, where the state had not filed formal charges on the CAPTUS WARRANTS these offenses of Robbery with a FIREARM returned to the CLERK file no. 92-0764, and the Robbery returned to clerk of court case file no. 92-0763, which there was no jurisdiction, even the First Appearance Judge on April 12, 1992 could not circle on the form that he found probable cause to detain Mr. DeSue. See Appendix B. infra (April 12, 1992 First Appearance sheet). Circuit Court jurisdiction on these Robbery and Robbery with a FIREARM offenses had not been invoked under Article 1 sec. 15 Florida Constitution to tried Mr. DeSue,

The only jurisdiction this Circuit Court had to tried the petitioner under case no. 92-0266 ct. 1 was for the offense of Sale of Cocaine that the state filed a nolle prosequi order on July 2, 1992. See Appendix A. infra (July 2, 1992 nolle prosequi order).

There was Absolutely no jurisdiction for this court to tried the Robbery with a FIREARM under case no. 92-0266 ct. 1 and the unrelated Robbery under case no. 92-0266 ct. 1 that appears on the June 30, 1992 Robbery with a FIREARM verdict and on the July 1, 1992 Robbery verdict is the reason why Bay County Court did not enter ambiguous Judgment of convictions under case no. 92-0266 ct 1 for the Robbery and Robbery with a FIREARM, and the Court on August 5, 1992 did not enter adjudication of guilt and sentence orders on these verdicts under case no. 92-0266 ct 1, because it would be null and void on each verdict. See *Waggy v. State*, 935 So. 2d 571, 573 (Fla. 1st DCA 2008) (LACK OF SUBJECT MATTER.

jurisdiction can be raised at anytime); See also *T.D. v. K.D.*, 747 So. 2d 456, 457 n.2 (Fla. 4th DCA 1999); *Marrino San Pablo Pince Spe LLC v. VCP - San Pablo Ltd*, 92- So. 3d 320, 321 (Fla. 1st DCA 2012); See Appendix B. *infra* (Arrest Affidavit for Sale of Cocaine, First Appearance Sheet and March 2 1992 original charging information).

The April 23, 1992 Amended information was void and illegal, because the State never moved the court by filing a motion to consolidate these cases under *FLA. R. CRIM. P. 3.151 (B)*, because these Robbery and Robbery with a firearm offenses were not related to the original charge of Sale of Cocaine. Nevertheless, the state never filed two or more charging informations on the Robbery under file no. 92-0763, and Robbery with a firearm under clerk file no. 92-0764. See Appendix B. *infra*. (Arrest Affidavits on April 8, 1992, Capias Warrants and April 12, 1992 First Appearance Sheets).

The Court-Reporter Sherri Lessig knew these proceedings on 6/30/92. Robbery with a firearm trial and August 5, 1992 Sentencing of the petitioner DeSue "was without the court having jurisdiction", so Mrs Lessig would not certify her transcripts to be true and correct, because she knew they were not. See Appendix D & F. (Trial transcripts pgs. 226-228. Sentencing pgs. 11-14) *infra*.

The Court on August 5, 1992 fabricated the Judgment and Sentences under case no. 92-0266 as ct. 2 Robbery with a 30 years prison Sentence and as ct 2 Robbery with a firearm with a Life in prison Sentence, when the jury under case no. 92-0266 as ct. 2 and as ct. 3 did not enter a multiple counts single verdict to support the entry of the August 5, 1992 Judgment and sentences that shall comport to the conviction verdict. See *Owens v. State*, 86 So. 3d 1160 (Fla. 3rd DCA 2012). See Appendix F. *infra*

The Court and Clerk Carolyn Graham knew the State Attorney office on July 2, 1992 had nolle prosequi case no. 92-0264 but by a void Judgment and Sentences entered order on August 5, 1992, and deception in the Commitment papers by Clerk Carolyn Graham, which she used nolle process case no. 92-0266 on the "Uniform Commitment Form and Commitment Checklist, and put 6/30/92 as conviction date omitting 7/1/92 as a

believe on 6/30/92 that a single jury tried and convicted petitioner on these offenses by a multiple count 2 and 3 verdict as reflected on the Judgment and Sentences under case no. 92-0266 ct. 3 Robbery with a firearm, with a life sentence and Robbery as ct. 2 with a 30 years prison sentence that Clerk Carolyn Graham by Record Fraud certified this document to be true and correct caused DOC to false imprisonment him under Sec. 944.17(5)(A) F.S. (1991); State v. Burton, 314 So. 2d 136, 138 (Fla. 1975); See Fla. R. Civ. P. 1.540.

This manifest injustice shall be corrected by this court that committed this act. See Lago v. State, 975 So. 2d 613, 614 (Fla. 3rd DCA 2008); Santana, 12 So. 3d 843, 848; Henry, 62 So. 3d 1122; Harris 394 U.S. At 291. A fraudulent Judgment can be vacated by the court at any time under Burton, supra.

CONCLUSION

The petitioner prays for this court to take immediate action to correct Mr. Michael Desue's false imprisonment. The petitioner promised the Supreme Court at the discharge hearing he will waive his rights to civil suit.

CERTIFICATE AND OATH

Under The Penalties of Perjury I certify, pursuant to 3.850(A) Fla. R. Crim. P.; that I: a) have read the foregoing motion or that it has been read to me and the facts stated in it are true and correct; b) understand English and the motion contents; the motion is filed in good faith and with a reasonable belief that it is timely, has potential merit, and does not duplicate previous motions that have been disposed of by the court; or if I do not understand English the contents were read to me by N/A whose address is listed below and the certification of an accurate and complete translation is shown below

CERTIFICATION OF AN ACCURATE AND COMPLETE TRANSLATION

I CERTIFY that a complete and accurate translation of this motion was provided to the defendant in this case on this 22 day of June 2016.

Michael Charles Desue
MICHAEL CHARLES DESUE #79878

CERTIFICATE OF SERVICE

I HEREBY DO CERTIFY that this foregoing writ of Habeas Corpus with Appendixes A-F has been placed in the hands of a Department of Corrections prison official to be mailed to, Clerk of Court Bill Kinsaul, P.O. Box 2269 Panama City, Florida 32302, and to General Counsel of The Department of Corrections. Mr. Kenneth Scott Steely, 501 South Calhoun Street, Tallahassee, Florida 32399-2500 on this day 22nd June, 2016

Michael Charles Desue ^{DC# 729878}
MICHAEL CHARLES DESUE ^{DC# 729878}
FRANKLIN CORRECTIONAL INSTITUTION
1760 Hwy 67 North
CARRABELLE, Florida 32322

PROVIDED TO FRANKLIN C:
FOR MAILING ON

6/22/16 KA

INMATE INITIALS MD

10.

EXHIBITS INFRA (ATTACHED)

Appendix A. infra Supreme Court order on CASE NO SC16-720 & Bay County Stat Attorney write prosecu order on case no. 92-0266

Appendix B. infra Coenine Arrest Aff./First Appearance sheet, March 2, 1992 original copy. Info, April 2, 1992 Probate Cause Aff. case no. 92-0764, April 9, 1992 Capias warrant, case no. 92-0763 Probate Cause Aff. April 9, 1992 Capias warrant; April 23, 1992 Amended Information

Appendix C. infra Motion for Severance case no(s) 92-0266; file no(s) 92-0263, 92-0769

Appendix D. infra Vol II trial transcripts portions pgs 226-228 Court-Reporter Sherril Lessig & Jury's 6/30/92 verdict foreperson Bonnie Blue, Clerk Carolyn Graham

Appendix E. infra July 1, 1992 trial transcripts pgs 193-197 Court-Reporter Marie Bazzel & Jury's 7/1/92 verdict foreperson Charles Spencer Clerk Carolyn Graham

Appendix F. infra August 5, 1992 sentencing transcripts Court-Reporter Sherril Lessig, Clerk Carolyn Graham, & written Judgment and sentences August 5, 1992, Uniform Commitment form & commitment checklist under sec. 944.17 F.S. prepared by Clerk Carolyn Graham

Appendix - D

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA,
Plaintiff,

INFORMATION CHARGING:
SALE OR DELIVERY OF A CONTROLLED SUBSTANCE WITHIN 200' OF A PUBLIC HOUSING FACILITY

vs.

FLORIDA STATUTE: 893.13

MICHAEL DESUE,
Defendant.

CASE NO. 92-0266-H

RECEIVED
MAR 3 12 PM '92
CLERK OF CIRCUIT COURT
BAY COUNTY FLORIDA
CG

PAMELA J. SMOAK, Assistant State Attorney for the Fourteenth Judicial Circuit of the State of Florida, prosecuting in the name of and by the authority of the State of Florida, in the County of Bay, under oath, informs the Court that

MICHAEL DESUE, on or about the 1st day of February, 1992, in the County and State aforesaid, did unlawfully sell or deliver, or possess with intent to sell or deliver a controlled substance, to-wit: cocaine, within 200' of a public housing facility, located at 1722 West 17th Street, Building-D, Panama City, FL, in violation of Section 893.13, Florida Statutes.

PAMELA J. SMOAK, Assistant State Attorney for the Fourteenth Judicial Circuit of Florida, under oath, states that the allegations set forth in this INFORMATION are based on facts that have been sworn to as true, under oath, by material witness(es), and which, if true, would constitute the offense(s) therein charged, and that this INFORMATION is filed in good faith.

The foregoing instrument was acknowledged before me by Pamela Smeak, who is personally known to me, and who did take an oath this 2nd day of March, 1992.

Pamela J. Smeak
PAMELA J. SMOAK
Assistant State Attorney
P.O. Box 1040
Panama City, FL 32402
(904) 872-4473
FL Bar #: 559709

Barbara M. Chase
BARBARA M. CHASE, Notary Public
Commission #CC127430

App - D
PROBATION CAUSE AFFIDAVIT / ARREST / NOTICE TO APPEAR

92-266H

ADMINISTRATIVE

OBYS Number: 01004968990
 Agency OR Number: 030100
 Agency Name: PANAMA CITY P.D.
 Charge Type: Felony
 Location of Arrest: 1722 W. 17th St. P.C. FL
 Date of Arrest: 020892
 Time of Arrest: 0005
 Location of Offense: 1722 W. 17th St. Panama City, FL
 Domestic Violence: Yes No
 Arresting Officer & I.D. #: Pierce #20

DEFENDANT

Name (Last, First, Middle): Deane, Michael C.
 Race: W - White
 Sex: M
 Date of Birth or Age: 0181016613
 Height: 69"
 Weight: 200
 Eye Color: brown
 Hair Color: black
 Complexion: clear
 Build: medium
 Local Address: 1802 Flowers Ave. Panama City, FL
 Social Security Number: 264-57-2784
 Place of Birth: MAY CO FL
 Citizenship: U.S.

CHARGE

Charge Description: Sale of Controlled Substance
 Activity: S
 Drug Type: C
 Amount/Unit: 1 - Crack Rock
 Statute Violation Number: 89.13
 State Attorney Number: 1113

PROBABLE CAUSE STATEMENT

The undersigned certifies and swears that he/she has just and reasonable grounds to believe and does believe that the above named Defendant committed the following violation of law on the 1st day of February 1992 at 11:17 AM in Panama City, Bay County, Florida, specifically 1722 W. 17th St. "Bldg. d". The above named defendant did approach your affiant and sell a suspected crack cocaine rock for twenty dollars. Your affiant was working in an undercover capacity investigating narcotics activity in the area of 1722 W. 17th St. A field test showed a positive reaction to the presence of cocaine. One to the above stated facts this affiant believes the defendant is in violation of F.S. 89.13 to wit sale of controlled substance.

NOTICE TO APPEAR

Mandatory Appearance: Court
 Signature of Defendant/Juvenile and Parent or Custodian: [Signature]
 Date: Feb 92

App. D

92/1113

STATE OF FLORIDA

Vs.

Michael Charles Desue

C. S# 0004968990
IN THE COUNTY COURT

IN AND FOR BAY COUNTY

FIRST APPEARANCE
RCrP 3.130, 3.131

92-266H

You, Michael Charles Desue, having been arrested on 2-8-92, are informed that a complaint has been made charging you with the below listed offenses and a copy of the charging document(s) is now provided to you. You have a right to remain silent, and if you do not remain silent anything you say may be used as evidence against you in Court. You have a right to be represented by a lawyer, and if you want one and cannot afford to hire one, a lawyer will be appointed for you at no cost to you. You have a right to communicate with your lawyer, family or friends, and if you desire to do so reasonable means will be provided for you to do so. If formal charges are not filed against you within 21 days of your arrest, you will then have the right to demand a hearing to determine whether there is probable cause to detain you on any felony charge that remains against you. You may give up the right to be represented by a lawyer at this first appearance hearing and still insist upon the right to legal representation at future proceedings.

I have read or had explained to me my rights outlined above and I acknowledge receipt of a copy of this form. I (am) (am not) able to hire a lawyer and I (do) (do not) want a lawyer appointed for me at this time.

(Counsel for defendant present at first appearance)

Michael P. Desue
(Defendant)

| CHARGE | Date/Time | County/Circuit | Bond |
|------------------------|----------------------|----------------|----------------|
| <u>Sale of Cocaine</u> | <u>2-8-92 1:30PM</u> | <u>CIRCUIT</u> | <u>5000.00</u> |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

POSTED
TN

All Circuit and County Court appearances will be at the date and time indicated above in the Bay County Courthouse, Panama City, Florida.

The foregoing was voluntarily and knowledgeably signed in my presence after full explanation of the defendant's rights. Having examined the necessary proof at a non-adversary probable cause hearing, I find probable cause (does)(does not) exist for detaining the defendant pending further proceedings.

The following conditions of bail are always applicable: (1) Do not contact the victim in any manner except through proper pre-trial discovery; (2) Do not violate the law.

2-8-92
Date

Thomas White
(Judge)

McConnell Prtg. Co.

54

000443

58

Appendix D

with 168-92 (92-763 H)
issued 4-9-92

Received this Warrant this 9th day of
April, A.D. 1992 and executed
it on the 11th day of April
A. D. 1992 by arresting the within named
Michael DeSue
and having him now before the Court, to be
dealt with according to law, this _____ day of
_____, A. D. 19_____

In County Court
Bay County, State of Florida

STATE OF FLORIDA
VS.

Michael DeSue
B/M; 08/06/65; 5'11"; 180 Lbs; Brown Eyes
Black Hair
1802 Flowers Avenue, Panama City, FL

WARRANT

Robbery - 812.13

PCPD Case #1439.92
Det. Sam Slay, #38 PCPD

RECEIVED
'92 APR 9 AM 3 05
BAY CO SHERIFF'S OFFICE
BAY COUNTY, FL.

FILED
APR 13 11 53 AM '92
CLERK OF COURT
BAY COUNTY, FL.

POSTED
TN

Cory M. Funnell
Sheriff
[Signature]
Deputy Sheriff

McC. Prtg.

BCSO ACT # 92-016131

000449

APPENDIX-D

74073323

W# 169-92 72-764 H
issued 4-9-92

Received this Warrant this 9th day of April, A.D. 1992 and executed it on the 11th day of April, A. D. 1992 by arresting the within named Michael Desue and having him now before the Court, to be dealt with according to-law, this day of , A. D. 19.

In County Court
Bay County, State of Florida

STATE OF FLORIDA

VS.

Michael Desue
1802 Flower Avenue
Panama City, Florida

Black male, 08/06/65, 5'11", 180 lbs.
Brown eyes, black hair, med. build

WARRANT

812.13 Armed Robbery

P.C.P.D. Case: 7048.92 (Winterman)

RECEIVED

9 AM 3 05

BAY CO SHERIFF'S OFFICE
BAY COUNTY, FL.

Guy M. Tunnel

'92 APR

Sheriff

[Signature]

Deputy Sheriff

McJ. Prtg.

APR 11 11 53 AM '92
CLERK OF COUNTY COURT
BAY COUNTY, FLORIDA

POSTED
TN

BCSO ACT # 92-016131

000450

Appendix - D

168-92 issued 4-9-96
92-763H

PROBABLE CAUSE AFFIDAVIT / ARREST / NOTICE TO APPEAR

Agency ORI Number: FLO 030100 Agency Name: PANAMA CITY P.D. Agency Report Number: 14391921

Change Type: Check as many as apply: 1. Felony, 2. Traffic Felony, 3. Misdemeanor, 4. Traffic Misdemeanor, 5. License, 6. Other

Location of Arrest (Include Name of Business): 17th Street and Fairy Avenue

Date of Arrest: 01/20/92 Time of Arrest: 11:00 AM

Name (Last, First, Middle): Desue, Michael

Sex: M Date of Birth or Age: 01/81/01 Height: 5'11" Weight: 180 Eye Color: Brown Hair Color: Black Complexion: Med Build: Med

Local Address (Street, Apt Number): 1802 Flower Avenue, Panama City, Florida 32405

Business Address (Name, Street): Unknown

Driver's License State/Number: Unknown Social Security Number: Unknown

Place of Birth: Panama City, FL Citizenship: U.S.

Charge Description: Robbery

Activity: PC

Statute Violation Number: 8112113

State Attorney Number: 0

County: 0

Order of Arrest: 0

On the 20th day of January "92" 2222 AM X PM Jason Grenard reported that a black male shoved a sharp object in his stomach and demanded money. Mr. Grenard handed the subject \$80.00 in cash. The defendant was given a ride from the Panama City Mall to 17th Street and Fairy Avenue in Panama City, Bay County, Florida where the incident occurred. Through further investigation the defendant was developed as a suspect. On 04/08/92 Mr. Grenard positively identified the defendant from a photographic line up, as being the subject that robbed him.

POSTED

Signature of Defendant/Juvenile and Parent or Custodian: [Signature]

Signature of Officer: [Signature]

Signature of Notary Public: [Signature]

Appendix - D

169-92

Issued 4-9-92

PROBABLE CAUSE AFFIDAVIT / ARREST / NOTICE TO APPEAR

Agency Report Number: 7 0 4 8 9 2
 Agency Name: PANAMA CITY P.D.
 Charge Type: 1. Misdemeanor, 2. Traffic Misdemeanor, 3. Ordinance, 4. Other
 Location of Arrest: Panama City, Florida
 Date of Arrest: 04/02/92
 Arresting Officer & I.D. #

Defendant Name: Desue, Michael
 Race: White, Sex: M, Date of Birth: 08/06/65, Height: 5'11", Weight: 180, Eye Color: Brown, Hair Color: Black, Complexion: Med., Build: Med.
 Local Address: 1802 Flower Avenue, Panama City, Florida, 32405
 Business Address: Unknown
 Driver's License: Unknown, Social Security Number: Unknown, Place of Birth: Panama City, Fl., Citizenship: U.S.

Juvenile Information:
 Name of Parent or Custodian: Unknown
 Address: Unknown
 Notified By: Unknown, Date: Unknown, Time: Unknown
 Released to: Unknown, Relationship: Unknown, Date: Unknown, Time: Unknown

Charge Description: Armed Robbery
 Counts: 1
 Statute Violation Number: 811.12(1) 13
 State Attorney Number: 1113
 Court Number: 1113
 PC: Capes, AC, SW, FW, PW, Juv, PU, Citation, Date Issued, Writ, AR, Domestic Viol. Inq., Order of Arrest

The undersigned certifies and swears that he/she has just and reasonable grounds to believe and does believe that the above named Defendant committed the following violation of law:
 On the 2nd day of April, 1992 at 5:30 A.M. X P.M. At 1527 Lincoln Avenue, located in Panama City, Bay County, Florida the listed defendant pulled a dark automatic pistol on the victim Robert Bozeman demanding his money, he then took \$80.00 cash from Mr. Bozeman and fled the area. The defendant was developed as a suspect and was positively identified from a photo line up as being the person who had robbed Mr. Bozeman at gun point. Because of the listed facts your affiant has reason to believe and does believe that the above listed defendant is in violation of Florida State Statute 812.13 to wit armed robbery.

POSTED TN

Notice to Appear:
 Signature of Defendant/Juvenile and Parent or Custodian: [Signature]
 Signature of Affiant: [Signature]
 Date: 04/02/92
 Bond Charge: [Blank]

Administrative:
 Holding for Other Agency: [Blank]
 Returnable Court Date: [Blank]
 Release Date: [Blank]
 Releasing Officer: [Signature]
 Officer's Complaint Number: #34

3058

087 7004973134

STATE OF FLORIDA
Vs.

Appendix: D

IN THE COUNTY COURT
IN AND FOR BAY COUNTY

Michael Charles Desue

✓ 92-763H
✓ 92-764H

FIRST APPEARANCE
RCrP 3.130, 3.131

You, Michael Charles Desue, having been arrested on 041292, are informed that a complaint has been made charging you with the below listed offenses and a copy of the charging document(s) is now provided to you. You have a right to remain silent, and if you do not remain silent anything you say may be used as evidence against you in Court. You have a right to be represented by a lawyer, and if you want one and cannot afford to hire one, a lawyer will be appointed for you at no cost to you. You have a right to communicate with your lawyer, family or friends, and if you desire to do so reasonable means will be provided for you to do so. If formal charges are not filed against you within 21 days of your arrest, you will then have the right to demand a hearing to determine whether there is probable cause to detain you on any felony charge that remains against you. You may give up the right to be represented by a lawyer at this first appearance hearing and still insist upon the right to legal representation at future proceedings.

I have read or had explained to me my rights outlined above and I acknowledge receipt of a copy of this form. I (am) (am not) able to hire a lawyer and I (do) (do not) want a lawyer appointed for me at this time.

(Counsel for defendant present at first appearance)

Michael C. Desue
(Defendant)

| CHARGE | Date/Time | County/Circuit | Bond |
|----------------------|-------------------|----------------|------------------|
| <u>ARMED Robbery</u> | <u>MAY 13, 92</u> | <u>Circuit</u> | <u>30,000.00</u> |
| <u>Robbery</u> | <u>@ 9:30 AM</u> | <u>Circuit</u> | <u>25,000.00</u> |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

POSTED
TN

All Circuit and County Court appearances will be at the date and time indicated above in the Bay County Courthouse, Panama City, Florida.

The foregoing was voluntarily and knowledgeably signed in my presence after full explanation of the defendant's rights. Having examined the necessary proof at a non-adversary probable cause hearing, I find probable cause (does) (does not) exist for detaining the defendant pending further proceedings.

The following conditions of bail are always applicable: (1) Do not contact the victim in any manner except through proper pre-trial discovery; (2) Do not violate the law.

April 12, 1992
Date

[Signature]
Judge

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA,

Plaintiff,

vs.

MICHAEL DESUE,

Defendant.

AMENDED INFORMATION CHARGING:

COUNT I: SALE OF CONTROLLED SUBSTANCE
WITHIN 200' OF PUBLIC HOUSING
COUNT II: ROBBERY
COUNT III: ROBBERY WITH A FIREARM

FLORIDA STATUTE: 893.13; 812.13; 775.087

CASE NO. 92-0266H; 92-0763H; 92-0764H

PAMELA J. SMOAK, Assistant State Attorney for the Fourteenth
Judicial Circuit of the State of Florida, prosecuting in the name of and by
the authority of the State of Florida, in the County of Bay, under oath,
informs the Court that

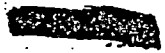
POSTED

COUNT I
MICHAEL DESUE, on or about the 1st day of February, 1992, in the
County and State aforesaid, did unlawfully sell or deliver, or
possess with intent to sell or deliver a controlled substance,
to-wit: cocaine, within 200' of a public housing facility,
located at 1722 West 17th Street, Building D, Panama City, FL, in
violation of Section 893.13, Florida Statutes.

COUNT II
MICHAEL DESUE, on or about the 20th day of January, 1992, in the
County and State aforesaid, did unlawfully by force, violence,
assault or putting in fear, take certain property, to-wit: cash,
the property of Jason Grenard as owner or custodian, in violation
of Section 812.13, Florida Statutes.

COUNT III
MICHAEL DESUE, on or about the 2nd day of April, 1992, in the
County and State aforesaid, did unlawfully by force, violence,
assault or putting in fear, take certain property, to-wit: cash,
the property of Robert Bozeman as owner or custodian, from the
person or custody of Robert Bozeman and in the course of
committing said Robbery, carried a firearm, in violation of
Sections 812.13 and 775.087, Florida Statutes.

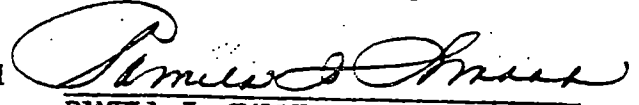
PAMELA J. SMOAK, Assistant State Attorney for the Fourteenth
Judicial Circuit of Florida, under oath, states that the allegations set forth



in this INFORMATION are based on facts that have been sworn to as true, under oath, by material witness(es), and which, if true, would constitute the offense(s) therein charged, and that this INFORMATION is filed in good faith.

The foregoing instrument was acknowledged before me by Pamela Smoak, who is personally known to me, and who did take an oath this 23rd day of April, 1992.

Barbara G. Chase
BARBARA G. CHASE, Notary Public
Commission #CC127430



PAMELA J. SMOAK
Assistant State Attorney
P.O. Box 1040
Panama City, FL 32402
(904)872-4473
FL Bar #: 559709

Appendix-D

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA

-vs-

CASE NO. 92-764 92-763
92-266

MICHAEL DESUE

POSTED
GG

MOTION TO SEVER

The Defendant, Michael Desue, through his undersigned attorney and pursuant to Florida Rule of Criminal Procedure 3.152, requests the Court to enter an order severing the offenses herein for the purposes of trial; and, as grounds therefor, would show to the Court that:

1. This motion is to supplement the ore tenus motion made by counsel at the pretrial conference held June 3, 1992.
2. The charges pending against the Defendant are not related in any way.
3. The charges pending against the Defendant are alleged to have occurred on different days, with different alleged victims, and with different methods of operation.
4. A severance of the charges for trial is necessary to promote a fair determination of the Defendant's guilt or innocence on each offense.
5. It would be grossly prejudicial for the Defendant to be tried at the same time, before the same jury, on all the pending charges.

WHEREFORE, the Defendant prays that the Court will enter an order severing the offenses charged against the Defendant for the purpose of trial.

I HEREBY CERTIFY that a copy hereof has been delivered by hand to Pamela J. Smoak, Assistant State Attorney, P. O. Box 1040, Panama City, Florida, on this 18th day of June, 1992.

DANIEL & KOMAREK, Chartered

BY 

PAUL G. KOMAREK
Florida Bar No. 0189057
P. O. Box 2522
Panama City, FL 32402
(904)763-6565
ATTORNEY FOR DEFENDANT

000021

CIRCUIT COURT MINUTES

DATE JUNE 29, 1992

TIME 09:00 A.M.

PRESIDING JUDGE DEEDEE S. COSTELLO

CLERK PRESENT CAROLYN GRAHAM

COURT REPORTER SUSAN/DILTZ/EDWARDS/BAZZEL/

STATE OF FLORIDA

ATTORNEYS:

VS

CASE NO. 92-266

STATE: PAM SMOAK

MAICHAEL DESUE

DEFENSE: PAUL KOMAREK

CHARGE: I. Thursday SALE OR DELIVERY OF SUBSTANCE WITH IN 200 FT OF PROJECT: COUNT II: Wednesday ROBBERY
COUNT: III: ROBBERY WITH A FIREARM - Wednesday Ct. III Wednesday 9:00

Charges severed
First Trial - Armed Robbery Ct. III Thursday
June 29, 1992

11:30 Court is called to order and 14 prospective jurors are called and sworn. and Pam Smoak for the State Begins Vidio.

11:50 Defense Begins Vidio - Paul Komarek

#186 Albert Kennel #196 Michael Cassa

#187 Jimmy Nanks #198 Kenny Corley

#190 Ralph Crompton #199 Bonnie Blue

#198 Jimmy Santol #200 James Nechols

#193 Elizabeth Bowers #203 MacBee Infinger

#194 Bee Raffield #205 Dennis Lomaris

#195 Sheryl Qualls #230 Scott Zingard

12:10 Six Jurors are selected to try the case
Thursday at 9:00. No alternate

Court in recess until 9:00 A.M. Thursday

A.M. 8:30 For Motions

Appendix E

5/8/91

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA

-vs-

MICHAEL CHARLES DESUE

| | | |
|----------|--------------------|---------|
| CASE NO. | 87-400✓ | 87-401✓ |
| | 87-433✓ | 87-434✓ |
| | 87-435✓ | 87-393✓ |
| | 87-155✓ | 87-156✓ |
| | 87-157✓ | 87-392✓ |
| | 89-7463 | |

NOTICE OF APPEAL

NOTICE IS GIVEN that Defendant/Appellant, Michael Charles Desue, appeals to the District Court of Appeal, First District of the State of Florida, pursuant to Rule 9.140(D), Florida Rules of Appellate Procedure, the final order of judgment and sentence rendered on the 16th day of April, 1991.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Pamela J. Smoak, Assistant State Attorney, P. O. Box 1040, Panama City, Florida, and Honorable Robert A. Butterworth, Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32399-1050, this 30th day of April, 1991.

DANIEL & KOMAREK, CHARLES

[Signature]

PAUL G. KOMAREK
 FLORIDA BAR NUMBER 0189957
 Post Office Box 2522
 Panama City, Florida 32302
 (904)763-6565
 ATTORNEY FOR DEFENDANT/APPELLANT

HAND
MAILED
CLERK
CIRCUIT COURT
BAY COUNTY, FLORIDA

MAY 8 8 01 PM '91

FILED

000023

POSTED
RG

36'

PROBATION VIOL (Check if App)

** OFFICIAL RECORDS ** BK 1316 PG 339

APPENDIX E

4/17/91 CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT, IN AND FOR BAY COUNTY, FLORIDA

STATE OF FLORIDA

DIVISION H CASE NUMBER 87-155 87-156 87-1 87-392 87-393 87-4 87-401 87-401 87-4 87-435

-vs-

FILE# 91-14370 BAY COUNTY, FLORIDA

MICHAEL DESUE Defendant

JUDGMENT

The Defendant, MICHAEL DESUE

Court represented by PAUL KOMAREK

FILED 2001 JUN 10 A 8:59 HONORABLE CLERK OF COURT BAY COUNTY, FLORIDA Being personally before this, his attorney of record, and having:

(Check Applicable Provision)

- Been tried and found guilty of the following crime(s)
Entered a plea of guilty to the following crime(s)
Entered a plea of nolo contendere to the following crime(s)

Table with columns: COUNT, CRIME, OFFENSE STATUTE NUMBER(S), DEGREE OF CRIME, CASE NUMBER. Contains 10 rows of charges for 'UTTERING A FORGED INSTRUMENT'.

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

The Defendant is hereby ordered to pay the sum of dollars (\$) pursuant to F.S. 960.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of dollars (\$) as a court cost pursuant to F.S. 943.25(4) and \$200.00 pursuant to F.S. 27.3455.

- The Defendant is ordered to pay an additional sum of two dollars (\$2.00) pursuant to F.S. 943.25(8). (This provision is optional; not applicable unless checked).

(Check if Applicable)

- The Defendant is further ordered to pay a fine in the sum of \$ pursuant to F.S. 775.0835.

000515

Imposition of Sentence
Stayed and Withheld
(Check if Applicable)

The Court hereby stays and withholds the imposition of sentence as to count(s) _____
and places the Defendant on probation for a period of _____
under the supervision of the Department of Corrections (conditions of probation set forth in
separate order.)

Sentence Deferred
Until Later Date
(Check if Applicable)

The Court hereby defers imposition of sentence until _____
(date)

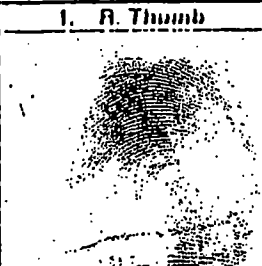
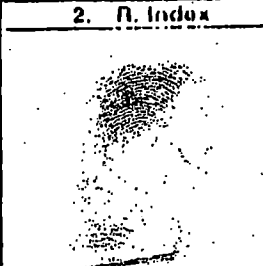
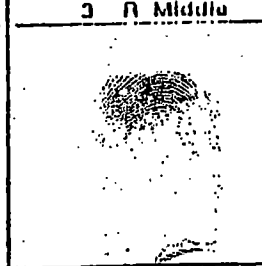
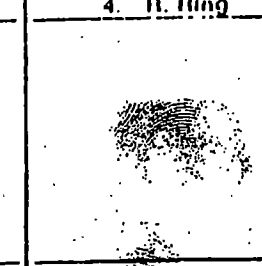
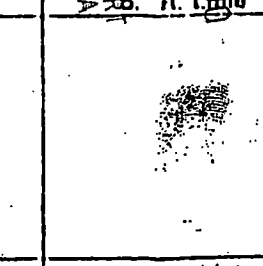
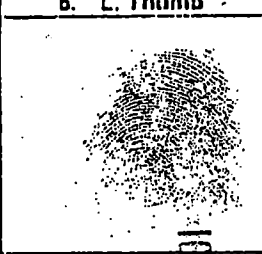
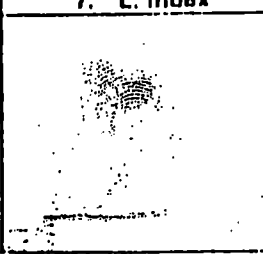
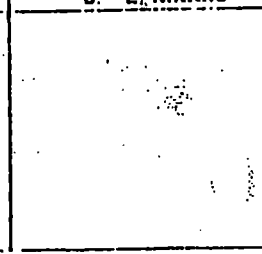
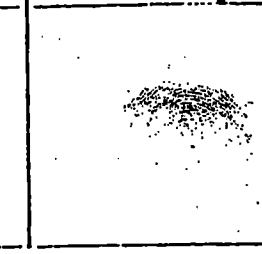
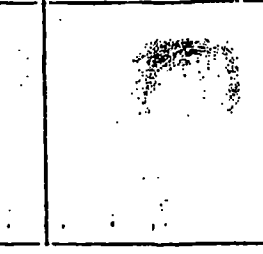
The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appeal with the
Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The
Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing
of indigency.

DONE AND ORDERED in Open Court at PANAMA CITY BAY County, Florida, this 16 TH day
of APRIL A.D., 1991

Robert D. Farrow
JUDGE

CLERK OF DISTRICT COURT
HAROLD J. BAZZEL
PANAMA CITY, FLORIDA
APR 16 9 09 AM '91
FILED

FINGERPRINTS OF DEFENDANT

| | | | | |
|--|---|---|--|---|
| 1. R. Thumb | 2. R. Index | 3. R. Middle | 4. R. Ring | 5. R. Little |
|  |  |  |  |  |
| 6. L. Thumb | 7. L. Index | 8. L. Middle | 9. L. Ring | 10. L. Little |
|  |  |  |  |  |

Fingerprints taken by:
Robert D. Farrow 413 4/16/91
Name and Title

DONE AND ORDERED in Open Court at PANAMA CITY BAY County, Florida, this 16 TH day
of APRIL A.D., 1991. I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of
the Defendant, MICHAEL DESUE and that they were placed thereon by said Defendant in my
presence in Open Court this date.

APPENDIX - E

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA,
Plaintiff,

-vs-

CASE NO.: 92-0266-H

MICHAEL CHARLES DESUE,
Defendant.

CLERK OF THE COURT
BAY COUNTY, FLORIDA

JUL 5 2 49 PM '92

FILED

ORDER DETERMINING HABITUAL FELONY OFFENDER

THIS CAUSE having come before the Court upon written notice to determine whether or not the defendant, MICHAEL CHARLES DESUE, is a habitual felony offender as defined in Florida Statutes, 775.084, and the Court having heard the evidence and testimony presented by the parties, finds that:

1. The defendant has previously been convicted of two (2) or more felonies, to-wit:
 - Bay County, Florida, Case No. 87-435, Uttering a Forged Instrument;
 - Bay County, Florida, Case No. 87-434, Uttering a Forged Instrument;
 - Bay County, Florida, Case No. 87-433, Uttering a Forged Instrument;
 - Bay County, Florida, Case No. 87-401, Uttering a Forged Instrument;
 - Bay County, Florida, Case No. 87-400, Uttering a Forged Instrument;
 - Bay County, Florida, Case No. 87-393, Uttering a Forged Instrument;

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Bay County, Florida, Case No. 87-392, Uttering a Forged Instrument;

Bay County, Florida, Case No. 87-157, Uttering a Forged Instrument;

Bay County, Florida, Case No. 87-156, Uttering a Forged Instrument;

Bay County, Florida, Case No. 87-155, Uttering a Forged Instrument;

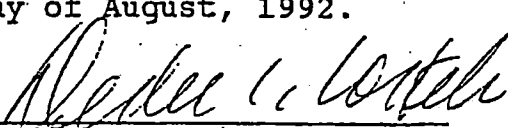
2. The felonies for which the defendant is to be sentenced in this case were committed within five (5) years of the date of the conviction of the above prior felonies.

3. The defendant has not received a pardon for any of the prior qualified felonies.

4. The prior qualified felonies have not been set aside in any post-conviction proceeding. It is therefore

ORDERED AND ADJUDGED that the defendant, MICHAEL CHARLES DESUE, be, and is hereby determined to be a habitual felony offender, and shall be sentenced to the enhanced penalties as set forth in Florida Statutes, 775.084(4)(a).

DONE AND ORDERED within the Fourteenth Judicial Circuit of the State of Florida, this 5 day of August, 1992.


DEEDE S. COSTELLO
Circuit Judge

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Copy furnished to:

Pamela J. Smoak
Assistant State Attorney

Paul G. Komarek
Attorney for defendant

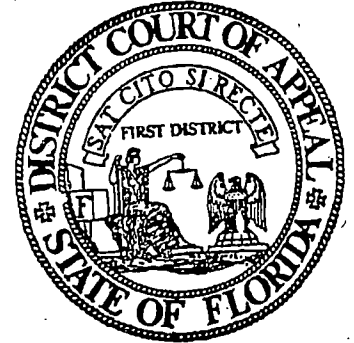
25. 11. 27. 2. 200

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

MICHAEL CHARLES DESUE,)
Appellant,)
vs.)
STATE OF FLORIDA,)
Appellee.)

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED:

CASE NO. 91-1640



Opinion filed September 25, 1992.

An Appeal from the Circuit Court for Bay County.
Dedee Costello, Judge.

Nancy A. Daniels, Public Defender; Abel Gomez, Assistant Public
Defender, for Appellant.

Robert A. Butterworth, Attorney General; Amelia L. Beisner,
Assistant Attorney General, for Appellee.

ERVIN, J.

Appellant, Michael Charles Desue, appeals his judgment and
sentence imposed following violation of probation, contending
that the trial court erred in (1) refusing to determine whether
procedures used to identify him were unnecessarily suggestive
(2) using a multiplier to calculate legal constraint points on

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I CERTIFY THE ABOVE
TO BE A TRUE COPY
Karen Roberts
CLERK DISTRICT COURT OF
APPEAL, FIRST DISTRICT

appellant's guideline scoresheet, (3) failing to credit appellant with jail and prison time previously served, and (4) entering a written revocation order that did not conform to its oral pronouncement. We affirm issue 1, reverse in part issues 2, 3, and 4, and remand for resentencing.

In 1987, the trial court sentenced Desue to five years' probation for ten convictions of uttering a forged instrument. His probation was revoked in 1988 and again in July 1989. On September 9, 1989, Desue's probation officer filed a third affidavit of violation, alleging that Desue had violated a condition of probation by committing armed robbery and petit theft. At the violation hearing, Desue objected to the in-court identification of him by the victim as being tainted by impermissibly suggestive procedures. Desue claims on appeal that the trial court refused to consider his objection. We cannot agree. Contrary to appellant's contention, the trial court stated that any showing of suggestiveness of the procedures would go to the weight of the evidence rather than its admissibility, and thereafter permitted full direct and cross-examination on this issue. We conclude that the court, as trier of fact, had sufficient evidence before it to determine whether the identification of Desue was reliable. Cf. United States v. Smith, 571 F.2d 370, 373 n.3 (7th Cir. 1978) (because defendant had opportunity to present evidence regarding lineup, trial judge was able to determine whether evidence was sufficient to support a finding of violation of probation).

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As to issue 2, Desue's guideline scoresheet indicates his primary offense at conviction was "UTTERING FORGED INSTRUMENT (10 cases)." Accordingly, six points for the legal constraint category were multiplied by ten, resulting in 60 points for legal constraint. We conclude that the trial court erred in applying a multiplier to appellant's original ten offenses. Fla. R. Crim. P. 3.701(d)(6) ("Legal status points are to be assessed only once whether there are one or more offenses at conviction."); Jennings v. State, 595 So.2d 251, 253 (Fla. 1st DCA 1992) ("prohibition against multiplying legal status points by the number of offenses at conviction is . . . applicable to the number of legal constraints reflected in the prior record"). See also Flowers v. State, 586 So.2d 1058 (Fla. 1991) (error to multiply defendant's legal constraint points by five, representing the five offenses committed while the defendant was on probation).

Desue received a guideline score of 146 points, which resulted in a recommended range of seven to nine years' incarceration, and a permitted range of 5-1/2 to 12 years. The court sentenced him to 12 years in prison. The legal constraint error reduces Desue's total score four cells from 146 to 90, producing a recommended range of 3-1/2 to 4-1/2 years and a permitted range of 2-1/2 to 5-1/2 years. The state argues that the use of the multiplier was, under the circumstances, harmless error, as the court had the discretion to increase appellant's sentence three cells, thereby resulting in the same sentence, because his probation had been revoked three successive times.

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See Williams v. State, 594 So.2d 273 (Fla. 1992) (when there are successive violations of probation, the sentences may be enhanced one cell or guideline range for each violation). Although the lower court did have such option, the court did not employ a three-cell bump-up at sentencing; therefore, it would be speculative for us to assume that it would have done so had appellant's scoresheet been correctly scored in the amount of 90 points. Sellers v. State, 578 So.2d 339 (Fla. 1st DCA), decision approved, 586 So.2d 340 (Fla. 1991); Deparvine v. State, 17 F.L.W. D1965 (Fla. 1st DCA Aug. 18, 1992). We therefore remand for resentencing based on a properly calculated scoresheet.

Desue next claims he was not given credit for two previous periods of jail time: 78 days that he served prior to the first order of revocation, and 95 days served before the second order of revocation. The state concedes that he was not credited for the 95 days; thus, it agrees he is entitled to this additional credit. The remaining 78-day period for which appellant contends his sentence was not credited, however, was already calculated as time served within the 30-month prison sentence Desue received for his first probation violation in 1988, so Desue will be credited with that time when he receives credit for the 30 months served.

Desue further claims, however, that the trial court erred in failing to state the precise amount of days he was entitled to receive as a result of the 30-month sentence by permitting the Department of Corrections (DOC) to make such calculation after

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sentencing.¹ Desue claims that the court, rather than DOC, should be required to make the determination. We disagree. Although we consider it preferable for a trial court to require the department's calculation of time served to be included in the presentence investigation report, so that such amount can be stated in the sentencing order, we do not consider it error for a court, as here, to simply award a defendant with time served and thereafter permit the department to make such calculation. See Wilson v. State, 17 F.L.W. D1827 (Fla. 5th DCA July 31, 1992); Rice v. State, 563 So.2d 210 (Fla. 5th DCA 1990); Shelby v. State, 554 So.2d 24 (Fla. 2d DCA 1989); Hampton v. State, 421 So.2d 775 (Fla. 5th DCA 1982).

In regard to Desue's final argument, the state concedes that the trial court erred by failing to make the written order conform to its oral pronouncement that Desue violated probation by committing petit theft and not armed robbery. The lower court is directed to correct the order on remand.

AFFIRMED IN PART, REVERSED IN PART, and REMANDED for resentencing.

MINER and WOLF, JJ., CONCUR.

¹The sentencing order provides: "DEFENDANT MAY RECEIVE ANY DOC PREVIOUSLY SERVED ALLOWED BY DOC."

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APP. E

THE SUPREME COURT OF FLORIDA

MICHAEL CHARLES DeSUE,
petitioner

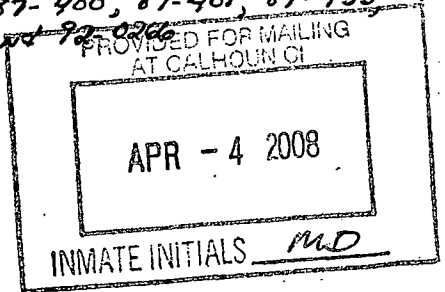
SC0 CASE NO: SC08-718

LT. CASE NO(S) 87-155, 87-156, 87-157, 87-391,
87-393, 87-400, 87-401, 87-433, 87-43
87-435 AND ~~92-0266~~

v.

STATE OF FLORIDA, 14th Jud.
Cir. Court, and FIRST DCA,

Respondent's



WRIT FOR HABEAS CORPUS

Petitioner, Michael Charles DeSue, pro se, pursuant to Fla. R. App. P. 9.180 he moves The Supreme Court to grant him habeas Corpus on this cases. Petitioner respectfully submits as follows to the Court.

JURISDICTION

Under Fla. R. App. P. 9.100, and 9.030 (3) this Honorable Court has exclusive jurisdiction to issue a writ for Habeas Corpus where Lower tribunal Court's has manifested injustice to petitioner to deny him access to the Court to correct illegal HFD sentences under Fla. R. Crim. P. 3.800(A) contrary to this court holdings in State v. McBride, 848 So.2d 287-292 (Fla. 2003), which such denial of access to the Court violates petitioner Fourteenth Amendment Rights to the U.S. Constitution and under Sec. 9 of Art. I of Florida Const., that is keeping petitioner illegally restrained in State prison on illegal HFD sentences that Lower tribunal refuses to correct impose on case no. 92-0266 Cts. II and III, when the law dictates petitioner's current sentences as an HFD are illegal that must be corrected. Porter v. Singletary, 49 F.3d 1483, 1487 (11th Cir. 1995); Marshall v. Terrico Inc., 446 U.S. 238 (1980); Adams v. State, 32 FLW D 78-79 (Fla. 3rd DCA 2007); Baker v. State, 878 So.2d 1236, 1244 (Fla. 2004); Jamison v. State, 447 So.2d 892, 895 (Fla. 4th DCA 1983), Art. V Fla. Const.

NATURE OF RELIEF SOUGHT

Petitioner seeks relief of vacating case no. 92-0266 sentences as a habitual felony offender of 30 years Ct. II and life imprisonment on Count III remanding for trial Court to resentence petitioner under the 1992 sentencing guidelines non-habitual offender