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CLERK, SUPREME COURT

IN the Supreme Court of Florida

Anderson Lormeus,

vs.

S.Ct., case No. # SC09-1144

DCA, case No. # 4D08-3033

State of Florida,

Petitioner's Jurisdictional Brief

ON Review from the District Court of Appeal, 4<sup>th</sup>  
District, state of Florida

Anderson Lormeus

Anderson Lormeus, prose

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### Statement of the case and facts

In September 2005 petitioner filed a motion to correct an illegal sentence arguing that sentence and judgment document(s) (official court record) indicated that the reduced offense for which petitioner plead was a third degree felony and that the ten (10) year sentence that was imposed exceeded the statutory maximum for a third degree felony.

On October 18<sup>th</sup>, 2005 the motion to correct an illegal sentence was heard and granted and the ten (10) year sentence was vacated and court sentenced petitioner to five (5) years.

On October 20<sup>th</sup>, 2005 the trial court vacated the October 18<sup>th</sup>, 2005 order granting motion to correct an illegal sentence and reimposed the original ten (10) year sentence. [NOTE] No appeal was taken in this matter.

In May 2008 petitioner filed a Rule 3.800 (a) Motion arguing that once the court had reduced the original ten (10) year sentence to five (5) years and then court vacated legal five (5) year sentence and reinstated the original ten (10) year sentence on October 20<sup>th</sup>, 2005 it violated the double jeopardy clause of the United States constitution.

On June 9<sup>th</sup>, 2008 the trial court denied the May 2008 Rule 3.800 (a) Motion and thereafter petitioner appealed the denial to the 4<sup>th</sup> DCA.

ON April 8<sup>th</sup>, 2009 the 4<sup>th</sup> DCA issued an adverse written opinion holding "that double jeopardy does not prevent a court from granting the states timely motion to rehear an order granting a rule 3.800(a) motion that was based on false or incomplete information."

Within fifteen (15) days of the April 8<sup>th</sup>, 2009 adverse opinion petitioner filed a motion for rehearing stating that there is no precedent to support the courts interpretation of 3.800 (b)(1)(B). shortly thereafter the motion for rehearing was denied.

### Summary of the Argument

IN this case the 4<sup>th</sup> DCA held that double jeopardy does not prevent a court from granting the state's timely motion to rehear an order granting a rule 3.800(a) motion that was based on false or incomplete information. The court failed to take into consideration that it was the lower tribunal's misconception as to the degree of felony petitioner was sentenced for, where petitioner and court, relied upon an official court document which indicated that reduced offense for which petitioner plead was a third degree felony. The decision of the 4<sup>th</sup> DCA cannot stand in light of the previous decision of the 1<sup>st</sup> DCA in Spear vs. State, 632 So.2d 201 (Fla. App. 1<sup>st</sup> DCA 1994) where that court stated, "Double jeopardy precludes a court from resentencing a defendant to a greater term because of it's own misconception about the sentencing guidelines or the states error in calcu-

lating the scoresheet."

### Jurisdictional statement

The Florida supreme court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the supreme court or another district court of appeal on the same point of law. Art. V, § 3 (b) (3) Fla. const. (2008); Fla. R. App. P. 9.030 (a) (2) (A) (iv).

### Argument

The decision of the District court of appeal in this case expressly and directly conflicts with the decision of the 1<sup>st</sup> DCA in Spear vs. State, 632 So.2d 201 (Fla. App. 1<sup>st</sup> DCA 1994).

The District court of appeal has interpreted Goene vs. State, 577 So.2d 1306 (Fla. 1991) to allow the lower tribunal to impose a greater term of incarceration upon a defendant, after he has begun to serve sentence, based on alleged deception of the court by petitioner, where it was the courts own misconception as to degree of felony (sentencing guideline) petitioner plead to. As explained below, the decision of the district court conflicts with a decision of the 1<sup>st</sup> DCA which held that "Double jeopardy precludes a court from resentencing a defendant to a greater term because of its own misconception about the sentencing guidelines or

the state's error in calculating the scoresheet,"  
Spear vs. State, 632 So.2d 201 (Fla. App. 1<sup>st</sup> DCA 1994).

The petitioner respectfully submits that this court should grant discretionary review and resolve the conflict by quashing the decision of the district court.

IN the decision of the district court, reported as Hormeus vs. State, \_\_\_\_ So.3d \_\_\_\_ (Fla. App. 4<sup>th</sup> Dct 2009) opinion filed April 8<sup>th</sup>, 2009 (Appendix "A"), The district court has expressly held that even though it was the misconception of the trial court as to what degree felony (sentencing guideline) petitioner plead to the court could impose a greater term of incarceration without violating double jeopardy.

The 4<sup>th</sup> District court's decision is in direct conflict with the decision of the first DCA in Spear vs. State, 632 So.2d 201 (Fla. App. 1<sup>st</sup> DCA 1994), wherein the court expressly stated that:

"Double jeopardy precludes a court from re-sentencing a defendant to a greater term because of its own misconception about the sentencing guidelines or the state's error in calculating the scoresheet."

id., at 805.

The 1<sup>st</sup> DCA has correctly interpreted the Double jeopardy clause as it relates to the instant case in Spear, id., and this court should reaffirm that

interpretation by accepting discretionary review and quashing the contrary decision of the 4<sup>th</sup> DCA below.

As an aside, with the above being true, that it was the trial courts own misconception and not any intentional deception by petitioner. The state's motion for rehearing under 3.800 (b)(4)(B) was unauthorized as claim did not benefit the defendant or correct a scrivener's error. Duncan vs. State, 901 So.2d 955 (Fla. App. 5<sup>th</sup> DCA 2005).

### Conclusion

This court has discretionary jurisdiction to review the decision below, and the court should exercise that jurisdiction to consider the merits of the petitioner's argument.



Certificate of Service

I HEREBY CERTIFY, that a true and correct copy of the foregoing document has been furnished via U.S. Mail to: Clerk of court, Supreme court of Florida, Supreme court Bldg., 500 S. Duval St., Tallahassee, FL. 32399-1925 and Attorney General of Florida, The Capitol, Tallahassee, FL. 32399-1050 this 12<sup>th</sup> day of JULY, 2009.

This certificate of service is legally sufficient to establish the date of filing of this document pursuant to Thompson vs. State, 761 So.2d 324 (Fla. 2000).

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