

IN THE SUPREME COURT OF FLORIDA

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DAVID I. EPPS,
Appellant/Petitioner,

VS.,

WALTER A. McNEIL, SEC.
FL DEPT. OF CORR. ET. AL
Appellee/Respondent.

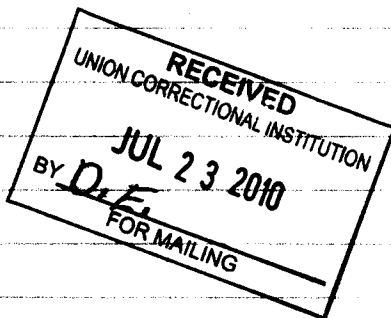
Case no(s): ~~SC10-1315~~ BY ☒

DCA No.: 1009-2433

L.T. 2008-CA-0143

AMENDED JURISDICTIONAL BRIEF

ON REVIEW FROM THE DISTRICT COURT
OF APPEAL, FIRST DISTRICT
STATE OF FLORIDA



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TOPICAL INDEX TO BRIEF

	<u>Pages</u>
STATEMENT OF THE CASE AND FACTS	1, 2-3
SUMMARY OF THE ARGUMENT	3-4
JURISDICTIONAL STATEMENT	4
ARGUMENT	5
ISSUE	
<u>The Decision Of The First DCA In The Present Case Expressly And Directly Conflicts With This Court's Decision In Alachua Regional, 684 So. 2d at 816-17; Because The Petitioner's Illegal Detention Involves A Deprivation of Liberty That Requires Due Process Protection</u>	
CONCLUSION	10
CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITIES

Cases	Pages
<u>Alachua Reg. Juv. Detention v. T.O.</u> , 684 So.2d 814 (Fla. 1996)	4, 7, 8-9
<u>Carter v. State</u> , 786 So.2d 1173 (Fla. 2001)	6
<u>David I. Epps v. Florida Department of Corrections</u> , 35 Fla. L. Weekly D1279 (Fla. 1st DCA June 9, 2010) . . .	3, 6, 9
<u>Iacovone v. State</u> , 639 So. 2d 1108 (Fla. 2d DCA 1994) . . .	6
<u>Jones v. Hechtman</u> , 272 So. 2d 207 (Fla. 4th DCA 1973) . . .	8
<u>Johnson v. State</u> , 568 So. 2d 519 (Fla. 1st DCA 1990) . . .	6
<u>McCrae v. Wainwright</u> , 439 So. 2d 868 (Fla. 1983) . . .	6
<u>State ex rel Scaldeterri v. Sanstrom</u> , 285 So. 2d 409 (Fla. 1973)	8
<u>FLORIDA STATUTES</u>	
Section 79.09, Fla. Stat. (1981)	2
Section 777.04(4), Fla. Stat. (1989)	1
Section 775.087(1), Fla. Stat. (1989)	1, 5
Section 775.082, Fla. Stat. (1989)	1

TABLE OF AUTHORITIES (continued)

Section 944.275 (3)(a)-(4)(b), Fla. Stat. (1989) . . . 2

RULES

Fla. R. App. P. 9.030(a)(2)(A)(iv) 4

CONSTITUTIONAL PROVISIONS

Art. VI, § 3(b)(3) Fla. Const. (1980) 4

Art. I, § 13, Fla. Const. 2

Art. I, § 9, Fla. Const. 9

OTHER AUTHORITIES

Fla. Juv. 2d, Habeas Corpus 384 (1981) 2

STATEMENT OF THE CASE AND FACTS

Petitioner was charged with and convicted through amended information filed on March 27, 1991 with attempted second degree murder reclassified to an "ordinary first degree felony (R 13-14)" §§ 777.04(4), 775.087(1), Fla. Stat. (1989), for which the maximum penalty is 30 years. Id. § 775.082. Petitioner was sentenced December 5, 1991 as a HFO to life with a 15 year minimum mandatory term (R 15), which exceeds the 30 years maximum authorized by law under either sections 775.084 or 775.082.

The sentencing court was given the first opportunity to discover and to correct their own error before and, after the legal sentence that should have been imposed expired approximately in 2002 (R 16-17), which is now resulting in a "manifest injustice." On the date that Petitioner committed the offense, the law provided that he do 65% of his sentence. Including the ($\frac{1}{3}$) 10 year basic gain-time

and the 12 years incentive gain-time credits as provided for in § 944.275 (3)(a) - (4)(b), Fla. Stat. (1989) along with the 19 years that the Petitioner has already served, equal 41 years which is far in excess of the 30 years maximum sentence that the law authorizes for his crime.

Thus, created a circumstance where no remedy other than habeas corpus would be adequate to prevent the Petitioner's continued unlawful detention. § 379.09, Fla. Stat. (1981), guaranteed by Art. I, § 13, Fla. Const. See also Fla. Jur. 2d, Habeas Corpus § 84 (1981). On the basis of the patent, serious fundamental sentencing error (R 1-17), Petitioner filed the petition in the First District Court of Appeal, and amended petition of all which was transferred to Union County Circuit Court (R 20, see R 24-35). The petition seeks an order demanding that the Petitioner to be discharged from custody (R 26). On February 19, 2009, the Circuit Court dismissed the habeas corpus on its own motion without

hearing from the authorities alleged to hold the Petitioner unlawfully and (R 41-42, see R 53-54), a timely motion for Rehearing was denied.

The Petitioner appeals the dismissal of his petition demanding the Florida Department of Corrections to discharge him from custody (R 55-57). However, on June 9, 2010, the First DCA issued an opinion affirming the Circuit Court's dismissal of the Petition for writ of habeas corpus (See Appendix A). A timely Notice to Invoke Discretionary Jurisdiction was filed July 1, 2010. This Amended Jurisdictional Brief is filed pursuant to this Court order dated July 15, 2010.

SUMMARY OF THE ARGUMENT

In David I. Epps v. Florida Department of Corrections, 35 Fla. L. Weekly D1279 (Fla. 1st DCA June 9, 2010), the First DCA ruled that "because the Petition was not filed in the Sentencing Court, the Circuit Court lacked jurisdiction to address his claim on the merits."

Thus, the Petitioner contends that the decision of the DCA expressly and directly conflicts with this Court's decision in *Alachua Reg. Juv. Detention v. T.O.*, 684 So.2d 814, 815 (Fla. 1996) (holding that "when court entertaining habeas corpus petition does not have supervisory or appellate jurisdiction over the court that issued order or other process under challenge, scope of reviewing court's inquiry is limited to whether court that entered order was without jurisdiction to do so or whether order is void or illegal").

JURISDICTIONAL STATEMENT

This Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of this Court or another district court on the same point of law. Art. V, § 3(b)(3) Fla. Const. (1980); Fla. R. App. P. 9.030(a)(2)(A)(iv).

ARGUMENT

The Decision of The First DCA In The Present Case Expressly And Directly Conflicts With This Court's Decision In Alachua Regional, 684 So. 2d at 816-17; Because The Petitioner's Illegal Detention Involves A Deprivation of Liberty That Requires Due Process Protection.

The Petitioner argued below that if life felonies were not authorized to be sentenced under the HFO statute in effect at sentencing, neither were "ordinary first degree felonies" unquestionably because the life felony stem from the "ordinary first degree felony." *Id.* § 775.087(1)(b), Fla. Stat. (1989). To hold otherwise, it would violate the Constitutional guarantee of Due Process and Equal Protection of the law by punishing attempted second degree murder more severely than the completed act at the time the Petitioner committed his offense in October of 1990; and by imposing the same "identical" penalty for attempts as for completion of the crimes after the amendment of

the HFO Statute in 1995. See Section 775.084(4)(b), Fla.

Stat. (1995). See generally Johnson v. State, 568 so. 2d 519 (Fla. 1st DCA 1990); Carter v. State, 786 so. 2d 1173 (Fla. 2001).

In IACOVONE v. State, 639 so. 2d 1108 (Fla. 2d DCA 1994), the

Second DCA ruled that section 784.07 and 775.0825, Fla.

Stat. (1991), violate equal protection by punishing attempted

third degree murder of a law enforcement officer more

harshly than the completed act.

Therefore, since the Petitioner is detained in the Union

County Circuit Court's territorial jurisdiction and raises

a Constitutional guarantee of Due Process issue regard-

ing his detention, the First DCA is the proper court to

rule on his habeas corpus. See McCrae v. Wainwright,

439 so. 2d 868 Fla. 1983) (holding that "the purpose of a

writ of habeas corpus is to inquire into the legality of

prisoner's ^{detention} present"). In David I. Epps v. Florida Depart-

ment of Corrections, 35 Fla. L. weekly D1279 (Fla. 1st

DCA June 9, 2010), the District Court ruled that "Appellant argues that his sentence is illegal and, accordingly, that his Petition for writ of habeas corpus must be granted to correct a manifest injustice." Because the Petition was not filed in the sentencing court, the circuit court lacked jurisdiction to address his claim on the merits. "Accordingly, we affirm the dismissal of Appellant's Petition for writ of habeas corpus, which was without prejudice to his right to seek relief in the sentencing court." Each of the cases cited by the DCA are factually distinguishable from the present case.

In light of these principles set forth in Alachua Reg. Juv. Detention v. T.O., 684 So. 2d 814, 816-17 (Fla. 1996), the First DCA interpreted the term "illegal" to narrowly. Under Alachua Regional, the reviewing court may discharge the detainee if the detention order is "void or illegal," but if the order "is merely defective, irregular, or insuffi-

ent in form or substance." 684 So.2d at 816. A challenge to the form or substance of an order implies that something is lacking the order or that it contains an imperfection or shortcoming. Alachua Regional followed a long line of cases that recognized similar limitations on a circuit Court's habeas review. See, e.g., State ex rel Scaldeferni v. Sanstrom, 285 So.2d 409 (Fla. 1973) (holding that circuit court may entertain habeas corpus proceeding and discharge Petitioner held under an illegal or void order issued by a court over which there is no appellate jurisdiction, but may not review "the legal sufficiency of the order"); Jones v. Heidtman, 272 So.2d 207, 208 (Fla. 4th DCA 1973) (permitting reviewing court without appellate jurisdiction to discharge a person based on illegality of order, but not upon a determination of irregularity, insufficiency in form or substance or for other matters going to the property of order).

Thus, the Petitioner contends that First DCA decision in David I. Epps v. Florida Department of Corrections, 35 Fla. L. Weekly D1279, expressly and directly conflicts with this Court's decision in Alachua Regional. In approving the DCA's determination that the detention order in Alachua Regional was illegal, this Court note that the "District Court did not pass on the sufficiency of the order or any matter going to the propriety of the order." 684 So.2d at 816-17. Even under limited inquiry of Alachua Regional, the reviewing court is "permitted to review the detention order in light of the relevant facts and law." *Id.* at 17. If the challenged detention order was determined to be in violation of the Petitioner's Constitutional guarantee of Due Process, then the order would clearly be "illegal," thereby permitting discharge of the Petitioner. Art. I, § 9, Fla. Const. Art. I, § 2.

In the present case the 30 years sentence that the law authorizes for Petitioner's crime is already served, which

is for any purpose constitutes a significant deprivation of liberty that requires due process protection.

CONCLUSION

This Court has discretionary jurisdiction to review the decision below, and the Court should exercise that jurisdiction to consider the merits of Petitioner argument.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I certify that a copy of this Brief has been furnished to Bill McCollum, Attorney General, PL-01, the Capital Tallahassee, FL 32399-1950, and to DOC General Counsel, 2601 Blair Stone Road, Tallahassee, FL 32399-2500, on this 23rd day of July 2010.

David I. Epps

David I. EPPS, Petitioner

(10)

IN THE SUPREME COURT OF FLORIDA

DAVID I. EPPS,
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VS.,

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WALTER A. MCNEIL, SEC.
FL DEPT. OF CORR. ET. AL
Appellee/Respondent.

INDEX TO APPENDIX

The First District Court's Opinion was rendered
on June 9, 2010, and appears at Appendix "A."

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APPENDIX "A"

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

DAVID I. EPPS,

Appellant,

v.

CASE NO. 1D09-2433

WALTER A. MCNEIL,
SECRETARY, FLORIDA
DEPARTMENT OF
CORRECTIONS,

Appellee.

Opinion filed June 9, 2010.

An appeal from the Circuit Court for Union County.
Frederick D. Smith, Judge.

David I. Epps, pro se, Appellant.

Bill McCollum, Attorney General, and Anne C. Conley, Assist Attorney General,
Tallahassee, for Appellee.

PER CURIAM.

Appellant argues that his sentence is illegal and, accordingly, that his petition for writ of habeas corpus must be granted to correct a manifest injustice. Because the petition was not filed in the sentencing court, the circuit court lacked jurisdiction to address his claim on the merits. See Crockett v. Singletary, 723 So.

APPENDIX "A"

2d 911, 912 (Fla. 1st DCA 1999). Accordingly, we affirm the dismissal of Appellant's petition for writ of habeas corpus, which was without prejudice to his right to seek relief in the sentencing court. See Zuluaga v. State, Department of Corrections, 35 Fla. L. Weekly D676 (Fla. 1st DCA March 25, 2010) (affirming the dismissal of a petition for writ of habeas corpus where the petitioner challenged the legality of his sentence and the circuit court's dismissal was without prejudice to the petitioner's right to seek proper relief in the sentencing court); cf. Davis v. State, 26 So. 3d 647, 650 (Fla. 2d DCA 2010) (reversing and remanding for transfer where the circuit court denied an apparently meritorious petition for writ of habeas corpus without indicating that it could be re-filed in the appropriate court).

AFFIRMED.

WEBSTER, LEWIS, and ROBERTS, JJ., CONCUR..