IN THE SUPREME COURT OF FLORIDA

EDDIE JOE RICHARDSON,
Defendant/Petitioner,

v.

STATE OF FLORIDA,
Plaintiff/Respondent.
_____/

SC12-165

Case No: 5D11-3377
L. T. No: 1989-CF-010618
1989-CF-010710
1989-CF-010711

PETITIONER'S JURISDICTIONAL BRIEF

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT, STATE OF FLORIDA

Eddie Joe Richardson
Petitioner, *pro se*
FDOC #071018
Okaloosa Correctional Institution
3189 Colonel Greg Malloy Road
Crestview, Florida 32539-6708

CERTIFICATE OF INTERESTED PERSONS

Honorable Richard B. Orfinger, Chief Judge of the District Court of Appeal, State of Florida, Fifth District.

Honorable Pamela Jo Bondi, Attorney General, Tallahassee, and Wesley Heidt, Asst. Attorney General, Daytona Beach, Appellate Counsel for Appellee, State of Florida.

Honorable Morgan Reinman, Judge, Eighteenth Judicial Circuit Court of Florida.

Eddie Joe Richardson, Appellant, *pro se*, Crestview, Florida, Okaloosa Correctional Institution.

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STATEMENT OF THE CASE AND FACTS

On January 18, 1990, Petitioner was sentenced to life imprisonment for three counts of Robbery with a firearm under the provisions of the Habitual Felony Offender Statute §775.084, Fla. Stat. (1989).

In the two decades subsequent to his sentencing, Petitioner filed and argued several motions and petitions seeking relief or remedy from a life sentence without parole, as any rational person might be expected to file, given the hopelessness of a lifetime of incarceration.

On July 22, 2011, Petitioner filed a Petition for Writ of Habeas Corpus to Correct a Manifest Injustice, in the Circuit Court of the Eighteenth Judicial Circuit. Petitioner was aware that Rule 3.800 relief was unavailable to him due to the potentially successive nature of his claim, and therefore filed a petition for writ of habeas corpus under the manifest injustice exception to collateral estoppel and law of the case doctrine.

Nonetheless, the circuit court treated the Petition as a motion to correct sentence pursuant to Rule 3.800(a), and stated the Petition was "improperly styled as a petition for writ of habeas corpus" in its Order Denying Defendant's Motion to Correct Sentence issued September 8, 2011.

Petitioner Richardson appealed that denial to the Fifth District Court of Appeal, and the Circuit Court's Order denying Petitioner's motion was affirmed by

the Fifth District with an Opinion filed December 23, 2011, and Mandate issued January 17, 2012. Petitioner then filed a Notice to Invoke Discretionary Jurisdiction January 20, 2012.

SUMMARY OF ARGUMENT

The decision of the Fifth District Court of Appeal in this case expressly and directly conflicts with the decision of the Fourth District Court of Appeal in *Johnson v. State*, 9 So. 3d 640, (4th DCA 2009).

Unequal treatment in the application of Florida Law that substantially affects a Petitioner's liberty violates the constitutional principal of treating similarly situated defendants equally, and has resulted in a manifest injustice in violation of Article I of the Florida Constitution.

The Opinion filed December 23, 2011, states "This is Richardson's fourteenth *pro se* appearance before this Court, *and he presents in his appeal a non-meritorious claim* that was already adjudicated adversely to him".

The opinion that Richardson's claim is a "non-meritorious claim" directly and expressly conflicts with the Fourth District's holding in *Johnson, id*, where that court found the exact same claim in identical circumstances to be meritorious. In that case, the Fourth District held that fundamental error occurred in connection with the imposition of Johnson's life sentence, and the petition was granted.

There has been an unequal application of Florida law, in that the decisions of these two district courts of appeal conflict. Such conflict implicates a broad legal issue, and is deserving of resolution by the Supreme Court of Florida.

ARGUMENT

The details of each case, demonstrating the absolute absence of any relevant factual differences between the two, will be reserved for the brief on the merits. This brief will be limited solely to the issue of jurisdiction. Jurisdiction will be advocated, and conflict will be demonstrated.

The Fourth District found that Johnson's claim had merit, Richardson's claim is profoundly identical to Johnson's, therefore Richardson's claim also has merit. The opinion of the Fifth District finding Richardson's claim "non-meritorious" conflicts with the opinion of the Fourth District in Johnson.

Pursuant to Art. V Sec. 3 (b)(3) of the Florida Constitution, this court has subject matter jurisdiction to entertain a Petition for review of a district Court of appeal decision issued with an opinion, if conflict can be demonstrated from that opinion.

This important legal issue transcends the rights of the immediate parties, and the Supreme Court has the authority as the highest court of the state to resolve conflicts created by the district courts of appeal.

The Fifth District has addressed in their Opinion the legal principles applied as a basis for their decision, those principals being 1) that Petitioner Richardson presents in his appeal a non-meritorious claim, and 2) that claim was already adjudicated adversely to him.

This decision and the decision of the Fourth District in *Johnson, id*, are irreconcilable. *See, Aravena v. Miami-Dade County*, 928 So. 2d 1163 (Fla. 2006).

The Fourth District in Johnson reached the opposite result on controlling facts which, if not virtually identical, strongly dictated a conflict of decisions that warrant accepting jurisdiction. *See, Crossley v. State*, 596 So. 2d 447 (Fla. 1992).

The virtually identical controlling facts common to both Petitioner Richardson's case and the *Johnson case, id*, are as follows:

1. Both Johnson and Richardson were convicted of armed robbery and both received life sentences as habitual felony offenders.

2. Both defendants filed motions related to the sentencing court's misimpression that the HFO Statute *required* the court to impose a life sentence rather than a term of years, and that the sentencing courts were under the misimpression that the defendants would be eligible for parole despite having received life sentences.

3. Both defendant's above described motions were denied, and subsequent attempts to show fundamental error in connection with the imposition

of the life sentences were denied as successive.

4. Johnson then appealed to the Supreme Court by filing an all writs petition, which was transferred by this court for consideration as a motion to correct illegal sentence. The Seventeenth Circuit Court denied that motion as successive, Johnson appealed, and the Fourth District held that fundamental error had occurred in connection with the imposition of the sentence. Johnson's petition was granted with instructions.

5. Richardson now appeals to the Supreme Court by filing this Jurisdictional Brief, and alleges the exact same controlling facts apply to his sentencing, as those facts in *Johnson, id*, and that the trial court erred by sentencing him to a natural life sentence as an HFO, under the misconception that a life sentence was *required* under Fla. Stat. 774.084 (b)(1), (1989).

As a result, a fundamental sentencing error causing a manifest injustice has occurred, as was the case in *Johnson, id.*

The trial Court's comments in Petitioner's case, at both plea hearing and sentencing hearing, show that the Court in several instances, erroneously concluded that it was *required* to sentence Petitioner for his commission of first degree felonies to terms of life with a minimum service of 15 years:

Page 5, lines 11-15, of Plea Hearing transcript:

Court: "I earlier had conversation with you in which I indicated that I would treat you as a habitual violent felony offender, WHICH WOULD REQUIRE LIFE, which would require a term of fifteen years service, and then – that's what the statute says."

Page 7, lines 18-22, of Sentencing Hearing transcript:

Court: "You know, it says operation by law, it says what the – it says what is operation by law, it doesn't require the judge – DOES NOT REQUIRE THE JUDGE OTHER THAN GIVE LIFE, and then its up to them to police the law.

Plainly, clearly, and unequivocally, the trial Court believed it was *required* to give life.

Petitioner's circumstances are extremely similar to that of the defendants in *Guy v. State*, 632 So. 2d 1085, (5th DCA 1994), *Stephens v. State*, 974 So. 2d 455, (2nd DCA 2008), and *Johnson v. State*, 9 So. 3d 640, (4th DCA 2009), all of whom were granted relief.

The trial Court committed a fundamental sentencing error when it stated, several times, that it was *required* to sentence the Petitioner to life under the habitual statute.

Other similarly situated defendants in identical circumstances have been granted relief:

Guy v. State, 632 So. 2d 1085 (5th DCA 1994);
Stephens v. State, 974 So. 2d 455 (2nd DCA 2008);
Johnson v. State, 9 So. 3d 640 (4th DCA 2009);
All of which are predicated on
Burdick v. State, 594 So. 2d 267 (Fla. 1992).

To prevent a manifest injustice and a denial of due process, the court in *Stephens, id.* held that relief may be afforded even to a petitioner raising a successive claim (*citing State v. McBride*, 848 So. 2d 287, 291 (Fla. 2003)).

This issue of illegality was the same circumstance and claim found to *have merit* by the Fourth District in Johnson. Johnson had raised this issue in three separate attempts, all of which were rejected. Finally the Fourth District admitted *the court had failed to perceive that a fundamental sentencing error had occurred. Johnson v. State*, 9 So. 2d 640, 641 (4th DCA 2009).

The court in Johnson also failed to perceive that with an HFO life sentence Johnson would not be eligible for parole. Petitioner Richardson's Plea Hearing transcript demonstrates the same misperception.

As further evidence the trial Court did not fully comprehend Section 775.084 of the Florida Statutes, the trial Court's own words indicate that Court failed to perceive that with an HVFO life sentence, Petitioner would not be eligible for parole:

Page 8, lines 10-14 of Plea Hearing transcript:

Court: ". . .and then I will sentence you as habitual violent felony offender, based upon my review of the past, as opposed to habitual felony offender, and you will receive life imprisonment, WHICH MEANS FIFTEEN YEARS."

Page 8, lines 21-23 of Plea Hearing transcript:

Court: "And I will not order consecutive probation. YOU WILL SERVE YOUR TIME AND OUT, ALL RIGHT, SIR?"

As in *Johnson*, *Stephens*, and *Guy*, *id*, the trial Court was also under the impression that because Richardson was convicted of a first degree felony, an HFO Sentence would *require* the Court to impose life rather than a term of years. This is incorrect.

The error in Petitioner's sentence is clear on the face of the Plea and Sentencing transcripts, and as such, is a serious departure from the law and it would be fundamentally unfair for the error to go uncorrected.

The Opinion of the Fifth District issued December 23, 2011, further conflicts with the decision in *Johnson, id*, in that the Fifth District cites the fact Richardson's claim "*was already adjudicated adversely to him*" to affirm the lower court's ruling.

Johnson's exact same claim had *also* been previously "adjudicated adversely to him", and application of a procedural bar by the Fifth District under law of the

case doctrine to preclude successive review of a claim, which was raised by Richardson and erroneously denied, has created a manifest injustice and a denial of due process that can be determined from the face of the record.

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. (1980); Fla. R. App. P. 9.030 (a)(2)(A)(iv).

CONCLUSION

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

Respectfully submitted,

Eddie Joe Richardson
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I placed a true and correct copy of this document in the hands of Florida Department of Corrections Officials for mailing by U.S. Mail to: Office of the Attorney General, Wesley Heidt, Assistant Attorney General, 444 Seabreeze Blvd., Suite 500, Daytona Beach, Florida 32118, on this 27th day of January 2012.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

Eddie J. Richardson

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