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IN the SUPREME Court of Florida

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BY \_\_\_\_\_

Kenneth PATTERSON,

SC CASE NO.:

PETITIONER,

CASE NO.: 4D12-2296

v.

State of Florida,

RESPONDENT

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Petitioner's Jurisdictional Brief

On Review from the District Court of Appeal, 4th District  
State of Florida

Kenneth Patterson, Pro se  
Everglades Corri. Inst.  
1599 S.W. 187 AVE.  
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## Statement of Case And Facts

The Petitioner was convicted in 1998 of robbery with a firearm and sentenced to life in prison as a Prison Releasee Reoffender (PRR) and a Habitual Violent Felony Offender (HVFO).

Following this Court's ruling in Grant v. State, 770 So2d 655 (Fla. 2000), the Fourth District Court of Appeal reversed the sentences and remanded for, "... RESENTENCING AS A PRISON RELEASEE REOFFENDER ONLY". Patterson v. State, 860 So2d 528 (Fla. 4th DCA 2003) (Patterson I)

The Petitioner was subsequently returned to the Broward County Courthouse following the mandate from the district court of appeal. At a status report, the trial court, with Petitioner present, stated, "The life term will remain and delete the habitual status." The written sentencing order, however, reflected only a life term without reference to PRR status.

On February 1, 2012, the Petitioner filed a motion to correct illegal sentence pursuant to Fla. R. Crim. Pro. 3.800(a). In the motion he argued that his life term without the PRR designation was illegal because such a sentence exceeded the maximum under the guidelines. The Petitioner cited Akins v. State, 98 So2d 60 (Fla. 2d DCA 2009) and Ashley v. State, 850 So2d 1265 (Fla. 2003) for the proposition that a written sentence must conform to the oral pronouncement which controls.

The trial court denied the motion stating only that the deletion of the MVD without a new sentencing hearing was not illegal.

The Petitioner appealed to the Fourth District Court of Appeal and raised the issue that the trial court erred when it denied the motion on the basis that its actions were in compliance with Patterson I.

The Fourth District found that the trial court was correct and acted consistent with its decision in Patterson I. Thus, it ruled that the failure of the written sentence to indicate that the life term pronounced by the trial court was as a PRR was the result of a scrivener's error and should be corrected on remand. It affirmed the trial court's denial and remanded for correction of the alleged scrivener's error.

It was reasoned further by the district court that petitioner's case was distinguished from the ones he cited and relied on for relief, because upon resentencing the various courts in those cases had discretion to resentence the defendant's as habitual offenders while in petitioner's case resentencing as a PRR was a ministerial duty for the trial court and mandatory since the trial court had to follow the instructions in Patterson I.

CONSEQUENTLY, BASED ON ITS REASONING, A RE-PRONOUNCEMENT OF SENTENCE AT A DE NOVO SENTENCING HEARING WAS UNNECESSARY. IT IMPLICITLY REASONED ALSO THAT THE DECISION IN PATTERSON I NEVER VACATED THE PRR SENTENCE AND THUS, THE TRIAL COURT CORRECTLY "MAINTAINED" THAT SENTENCE FOLLOWING REMAND.

ON MAY 16, 2013, PETITIONER FILED REHEARING ARGUING THAT THE DECISION IN PATTERSON I HAD THE LEGAL EFFECT OF VACATING AND NULLIFYING BOTH THE PRR SENTENCE AND THE HVFD SENTENCE AND THUS, THERE WAS NO PRR SENTENCE TO WHICH THE LOWER COURT'S WRITTEN ORDER COULD BE CONFORMED. THE PETITIONER CITED SMITH V. SMITH, 118 SO 2D 204 (1966) FOR THIS COURT'S DEFINITION OF AND LEGAL EFFECT FROM A "REVERSAL."

THE REHEARING WAS SUMMARILY DENIED ON JUNE 14, 2013.



## Summary of Argument

It was held by the district court that the trial court's denial was affirmed because a REPRONOUNCEMENT AT A DE NOVO SENTENCING HEARING WAS UNNECESSARY. HOWEVER it REMANDED FOR CORRECTION OF THE WRITTEN SENTENCING ORDER TO REFLECT A LIFE TERM AS A PRISON RELEASEE REOFFENDER CONSISTENT WITH THE SENTENCE IT ORDERED THE TRIAL COURT TO IMPOSE WHEN IT REMANDED IN PATTERSON I FOR RESENTENCING.

The decision of the district court CANNOT BE RECONCILED WITH THE PREVIOUS DECISION OF THIS COURT IN ASHLEY v. STATE, 85D 502d 1265 (FLA. 2003) WHERE THIS COURT HELD THAT THE ORAL PRONOUNCEMENT CONTROLS OVER A SUBSEQUENT WRITTEN ORDER.

AND ALSO WITH THE PREVIOUS DECISION OF THIS COURT IN SMITH v. SMITH, 118 502d 204 (FLA. 1960) WHERE THIS COURT HELD THAT "REVERSAL" HAS THE LEGAL EFFECT OF VACATING AND NULLIFYING. THUS, THE PETITIONER CONTENDS THAT THE

decision of the district court EXPRESSLY and DIRECTLY  
conflicts with a previous decision of this Court.

## 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. (1986); Fla. R. App. P. 9.030 (a)(2)(A)(iv).

## Argument

The decision of the district court in this case expressly and directly conflicts with the decision of this Court in Ashley v. State, (Fla. 2003) and Smith v. Smith (Fla. 1960)

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The district court's decision expressly and directly conflicts with this Court's decision in Smith v. Smith 118 So.2d 240 (Fla. 1960) in that it remanded the written sentence to be conformed to the PRR sentence which it "reversed" in Patterson I, thus, not giving the legal effect of "vacating and nullifying" to "reverse" as held in Smith id.

Furthermore, the district court's decision expressly and directly conflicts with this Court's decision in Ashley v. State, 850 So.2d 1265 (Fla. 2003) because it remanded for correction of the written sentence to conform to a PRR sentence that was never orally pronounced after it,

"... REVERSED AND REMANDED FOR RESENTENCING AS A PRISON RELEASEE REOFFENDER ONLY."


This Court should reaffirm the decisions in Ashley and Smith by ACCEPTING discretionary REVIEW AND QUASHING the CONTRARY decision of the district court below.

## CONCLUSION

This Court has discretionary Jurisdiction to Review the decision below. And this Court should exercise that Jurisdiction to consider the merits of Petitioner's Argument.

## Certificate of Service

I hereby Certify that a true and correct copy of the foregoing Jurisdictional brief was given to prison officials for mailing to The Attorney General Office 1515 N. Flagler Dr, Ste. 900, West Palm Beach, Fl. 33401 this 8th day of July, 2013.

  
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