IN THE SUPREME COURT
STATE OF FLORIDA

CASE NUMBER: SC13-1321
APPEAL CASE NO:3D12-1577
LOWER TRIB. NO: 74-4391

JOHNNY LEE JONES, PRO.SE.
PETITIONER
VS.
THE STATE OF FLORIDA
RESPONDENT
_____/

BRIEF OF JURISDICTION

ADDRESS OF THE PETITIONER
JOHNNY LEE JONES
DOC#028029 E3-111L

BLACKWATER RIVER CORR.FACILITY

5914 JEFF ATES ROAD

MILTON, FLORIDA 32583

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STATEMENT OF THE CASE AND FACTS

The petitioner was charged by indictment with the offense of the premeditated murder of a white 17-year-old male in the Dade County Jail on 1-27-71. The petitioner was an 18-year-old Black male. He was tried and convicted by a 12-person all white jury on 7-9-71, with a recommendation of mercy and was sentenced by the Hon. Gene Williams to imprisonment for the rest of his natural life.

Several months after his trial it was discovered that the Dade County, Florida, Jury Commissioner at the time of the petitioners trial, Mr. Joseph D'Apiece, had been utilizing a method of selection of the eligible voters in Dade County,Florida for jury lists that the Florida Supreme Court found to be racially discriminatory and violative of constitutional Due Process. At that time, the petitioner did seek post-conviction relief pursuant to Rule 1(Fla. R.Crim.P.),but was denied solely on the ground of the petitioners alleged failure to comply with the "Procedural Rule" which mandated that "challenges to the jury be made prior to the jury being sworn in and failure to make such a timely challenge would result in a waiver of the right to do so. An appeal was taken in which the DCA upheld the lower courts' decision of denial. (see appendix).

In 2011, the petitioner again sought review of his case on this ground and others pursuant to the laws of equity, on the claim that the conviction/sentence in this case was illegal, as it was a direct result of a jury that had been illegally and unconstitutionally empanelled and the imprisonment was also violative of the United States Constitutions' prohibition against slavery or involuntary servitude unless a citizen had been "duly" convicted.

The lower tribunal denied the motion as being time barred and successive, and further entered in its order of denial the fact that the defendant had audacity to argue that the 3rd DCA decision in the original appeal on this issue was incorrect.

A timely appeal was taken to the Third District Appeals Court, which entered a Per Curiam Affirmed order of denial without issuance of an opinion. The appellant sought a rehearing and requested a written opinion but was denied.

This petition seeking Discretionary review from this Hon. Court follows. If the court accepts jurisdiction, it will hold within its' authority and judicial power to correct a manifest injustice that has been a malingering pus of racial pedantry for over 40 years. The petitioner has attached an appendix containing the appropriate poprtions of the record in his possession.

ARGUMENT

The purpose of this petition is simplistic in its legal nature. The petitioner was convicted by a racial-discriminatory jury, specifically selected by the jury commissioner of Ddade County,Florida in a manner that this Supreme court deemed to be illegal and unconconstitutional.see **State v. Silva**, 259 So.2d 153 (Fla. 1972)(also see appendix).

Upon rendering its' decision in Silva,supra, the court also held that by going to trial before a jury without any objections,a defendant waived all irregularities in the drawing,summoning and empanelling of such jurors pursuant to the Florida Rules of Criminal Procedure 3.300.

The petitioner argues that such a procedural rule could not override or defeat a constitutional right. In Jones v. State, 276 So.2d 83 (Fla. 3d DCA 1973), the appeal court affirmed in its finding that " the jury was selected in the process of

which the defendant did not exercise all of the available "**PEREMPTORY CHALLENGES**", and that "**BY GOING TO TRIAL BEFORE A JURY WITHOUT ANY OBJECTIONS, A DEFENDANT WAIVES ALL IRREGULARITIES IN DRAWING,SUMMONING AND EMPANELLING OF SUCH JURORS".**

Neither of the courts at that time disagreed with the defendant Jones that his conviction and sentence derived from a jury that had been initially empanelled for voire dire by a selection system deemed illegal and unconstitutional, but instead relied solely upon the procedural rule 3.300.as a waiver to justify denial of relief. Yet, the argument is proffered that a states' procedural rule cannot supersede a constitutional guaranteed right or entitlement. Further argument is made that a substantive constitutional right cannot be surrendered or waived unless it has been **"intelligently and knowingly done so"**.See: Johnson v. Zerbst,58 S.Ct.1019 (1938) and Sctoneckloth –v-Bustamonte, 93 S.Ct.2041 (1973). The defendant was not advised at the time by the court nor his attorney that he had the right to make a challenge as to the empanelment of the jury being seated to decide his guilt or innocence and its legality. The question remains unanswered ..."If a defendant is not advised of a right or a rule, then how can it be deemed that he has made a competent decision as to whether or not he should make a challenge or waive a right?.

This Hon. Court has jurisdiction to hear and decide this case as it involves not only an issue of great public importance, that of a racially discriminatory jury selection system which violated the defendants guaranteed rights under both the United States and the State of Florida Constitutional Rights to a fair and impartial trial by jury, and equal protection and Due Process of the law. There is no doubt that the Grand Jury which indicted the defendant and the jury which convicted him

were constituted in a manner that was and still is strictly prohibited by the United States and the Florida Constitutions . Such impact on the defendants trial is unascertainable , thus consequently, an indictment and or conviction rendered by such tribunals must be set aside. It was written that "when a jury selection plan, whatever it is, operates in such a way as to result in the complete and continued exclusion of any representation at all from a large group of Blacks or any other racial group, indictments and verdicts returned against them by juries thus selected cannot stand. See: **Seals v. Wilman**,304 F.2d 53 (5th Cir.1962).

The United States Supreme Court has been adamant in its' decisions that "**A CONVICTION CANNOT STAND IFI IT IS BASED UPON AN INDICTMENT OF A GRAND JURY OR THE VERDICT OF A PETIT JURY FROM WHICH NEGROES WERE EXCLUDED BY REASON OF THEIR RACE.** See: **Strauder-v-West Virginia**, 59 S.Ct. 536 (1939) and **Alexander v. Louisiana**, 92 S.Ct. 1221(1972).

The accumulation of this petitioners argument is that the jury which convicted him and the grand jury that indicted him, were selected and empanelled by a system that excluded not only Blacks, but also members of other minorities and even members of certain professions such as clergymen, nurses, etc. and such a system as employed at that time was without doubt constitutionally infirm and the conviction and sentence in this case is invalid. If the State can correct an injustice by placing Ku Klux Klansman on trial 45 years after hanging a man, surely this court can correct a manifested injustice. The fact that he has been "unduly" convicted violates the 13th amendments' prohibition against slavery and involuntary in servitude.

This Hon. Court has authority to review and decide this case on its merits because it is of an unconstitutional injustice, which has festered for over 40 years. The facts clearly substantiate necessity for this courts review.

CONCLUSION

The petitioner Johnny Lee Jones hereof prays that this hon. Court will grant the relief sought by accepting Jurisdiction for Discretionary Review of this particular case.

Respectfully Submitted,

S/ Johnny L. Jones

Johnny Lee Jones # 028029

Blackwater River Corr. Facility

5914 Jeff Ates Road

Milton, Florida 32583

CERTIFICATE OF SERVICE

I, Johnny L. Jones, hereby certify that a true and correct copy of the foregoing Juridictional Brief was forwarded by U. S. Mail to: Office of the Attorney General,Dept of Legal Affairs, The Capitol, PL-01, Tallahassee, Fl.32399 on this 12th day of August 2013.

CERTIFICATE OF COMPLIANCE

I hereby certify that this document was generated by computer using Microsoft Word with Times New Roman-14 point font in compliance with Fla. R. App. 9.210 (a)(2).

Respectfully Submitted,

S/ Johnny L. Jones

APPENDIX ATTACHMENTS

STATE of Florida, Plaintiff, v. George SILVA, Defendant

Supreme Court of Florida

259 So 2d 153259 So. 2d 153; 1972 Fla LEXIS 39421972 Fla. LEXIS 3942

No. 42051

February 22, 1972

Counsel Robert L. Shevin, Atty. Gen., and Reeves Bowen, Asst. Atty. Gen., Richard E. Gerstein, State's Atty., and William Tunkey, Asst. State's Atty., for Plaintiff.

Joel Hirschhorn, Miami, for Defendant.

Judges: Adkins, Justice. Roberts, C.J., and Carlton, McCain and Boyd, JJ., concur. Ervin, J., concurs in part and dissents in part with opinion. Dekle, J., dissents in part and concurs in part with opinion. CASE SUMMARYPROCEDURAL POSTURE: Defendant sought to dismiss his indictment, (Florida) or alternatively to exclude the jury panel, pursuant to Fla. R. Crim. P 3.300, Fla. Stat. ch. 40.01(1), (3), and Fla. Stat. ch. 97.041. Defendant, who was charged with rape, claimed the jury commission violated his constitutional rights under the due process and equal protection clauses of U.S. Const. amend. V, by using jury cards upon which the race of the prospective juror was listed.A jury selection process of selecting from index cards that displayed the race of the prospective jurors violated the due process and equal protection clauses of the U.S. Const. amends. V and VI.OVERVIEW: Defendant was charged with rape, in violation of Fla. Stat. ch. 794.01. He entered a plea of not guilty. Subsequent to arraignment of this cause and prior to trial, defendant's motion to dismiss or in the alternative to exclude the jury panel was filed pursuant to Fla. R. Crim. P 3.300, Fla. Stat. ch. 40.01(1), (3), and Fla. Stat. ch. 97.041. Subsequently, the motion to dismiss the Indictment or in the alternative to exclude the entire jury panel was amended. The Dade County jury commissioners made personal selections of jurors from index cards that displayed the race of the prospective juror. The trial court invalidated that jury panel, and certified questions to the Florida Supreme Court. That court held that the present Dade County jury selection process violated the due process and equal protection clauses U.S. Const. amends. V and VI; that Fla. Stat. ch. 40.01(1) was constitutional; and that ch. 40.01(1) was not an unlawful delegation of authority to the jury commissioner in and for Dade County, Florida.OUTCOME: The Florida Supreme Court answered the questions certified by the trial court in defendant's motion challenging his jury panel in a case of criminal rape as follows: Fla. Stat. ch. 40.01(1) was constitutional; and ch. 40.01(1) was not an unlawful delegation of authority to the jury commissioner in and for Dade County. The jury selection process violated the due process and equal protection clauses of the U.S. Const. amends. V and VI.LexisNexis Headnotes

Criminal Law & Procedure > Appeals > Reviewability > Certified QuestionsA question or proposition certified directly to the Florida Supreme Court by a circuit court must be one which, if decided by the circuit court, would be reviewable on direct appeal from that court to this court. If this cause proceeded to final judgment the trial court would, by necessity, pass upon the validity of a state statute or construe a controlling provision of the United States Constitution. An appeal would then lie to this court. Fla. Const. art. V, § 4(2).

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General Overview

Criminal Law & Procedure > Postconviction Proceedings > Arrest of Judgment

Criminal Law & Procedure > Postconviction Proceedings > Motions for New TrialA challenge to the panel, or challenge to the array, is used to question the selection or drawing of prospective jurors. Such a challenge must be made and decided before any independent juror is examined, unless otherwise ordered by the court. Fla. R. Crim. P. 3.300, 33. Such an objection comes too late after verdict and has no place in a motion for new trial or in arrest of judgment. By going to trial before a jury without any objections, a defendant waives all irregularity in the drawing, summoning and impaneling of such jurors.

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General Overview

Constitutional Law > Equal Protection > Scope of Protection

Governments > Courts > Court PersonnelThe United States Supreme Court has held that it is not legally permissible for jury commissioners to place purposely on a jury list the names of white persons and black persons in proportion to the population in the community.

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General OverviewJurymen should be selected as individuals, on the basis of individual qualifications, and not as members of a race.

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General OverviewLest the Florida Supreme Court's discussion be misinterpreted the court hastens to explain that the court does not in anywise hold that any sex, race or identifiable segment of our population is entitled to proportionate representation on jury lists or juries. The Supreme Court of the United States has repeatedly held that proportioned class representation is not required. Quite to the contrary, that Court has held that selection of jury lists on a basis of proportional representation is invalid. While selection from classes or groups on such a basis does guarantee representation, at the same time it imposes a limitation on the number from each class or group. This is prohibited.

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General Overview

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Impartial JuryFairness in the selection of a jury does not require proportional representation of races. Thus, a lack of proportional representation of races on a jury does not constitute discrimination. On the other hand, while proportional representation of races on a jury is not a constitutional requisite, proportional racial limitation is prohibited.

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General OverviewThe tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. This does not mean, however, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community, for such complete representation would frequently be impossible. But it does mean that prospective jurors must be selected at random by the proper selecting officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. Selection from classes or groups on a proportion basis guarantees representation, but at the same time places a limitation on the number from each class or group. This is forbidden.

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General Overview

Civil Procedure > Trials > Jury Trials > Jurors > General Overview

Civil Procedure > Trials > Jury Trials > Jurors > Selection > General OverviewThe designation of a prospective juror as being black or white does not, in itself, invalidate the jury selection. However, by using such designation, the state is saddled with the burden of showing that there was no racial discrimination in the selection of the prospective veniremen, in the event no blacks are selected as prospective jurors or only a token number consistently appear on the panel.

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General Overview

Constitutional Law > Elections, Terms & Voting > Voting AgeThe U.S. Const. amend XXVI provides that the right of citizens eighteen years of age or over to vote shall not be denied or abridged by the United States or by any state on account of age. This amendment has no bearing on eligibility of persons for jury service.

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General OverviewSee Fla. Stat. ch. 40.01(1).

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General Overview

Civil Procedure > Trials > Jury Trials > Jurors > General OverviewThe right to vote and the privilege and qualification to serve as a juror are not correlative or necessarily coexistent. Thus, while electors and jurors may have some requirements in common, a person may be a qualified elector and yet not be a qualified juror, and vice versa.

Governments > Legislation > EnactmentIn the absence of any constitutional provision on the subject, and as long as the essential requisites of trial by jury are preserved, the qualifications of jurors are matters of legislative control, and, in the exercise of its control, the legislature may restrict, abridge, deny or enlarge the right and duty of jury service.

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General Overview

Civil Rights Law > Voting Rights > Gender & Sex Discrimination

Constitutional Law > Elections, Terms & Voting > General OverviewThe Supreme Court of the United States, in discussing U.S. Const. amend. XIV, said: the Court does not say that, within the limits from which it is not excluded by the Amendment, a state may not prescribe the qualifications of its jurors, and in so doing make discriminations. It may confine the selection to males, to freeholders, to citizens, to persons within certain ages, or to persons having educational qualifications. The court does not believe the U.S. Const. amend. XIV was ever intended to prohibit this. Looking at its history, it is clear it had no such purpose. Its aim was against discrimination because of race or color. As the Court has said more than once, its design was to protect an emancipated race, and to strike down all possible legal discriminations against those who belong to it.

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General OverviewThe United States Supreme Court recognized the right of the state to confine the jury selection to citizens, to persons meeting specified qualifications of age and educational attainment, and to those possessing good intelligence, sound judgment, and fair character.

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General OverviewSee Fla. Stat. ch. 40.01(3).

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General Overview

Governments > Courts > Court Personnel

Governments > Legislation > VaguenessThe Florida Supreme Court holds that Fla. Stat. ch. 40.01(3) is constitutional and is neither vague nor an unlawful delegation of authority to the jury commissioners.

Criminal Law & Procedure > Juries & Jurors > Challenges to Jury Venire > Equal Protection Challenges > General Overview

Constitutional Law > Elections, Terms & Voting > Voting AgeAs the U.S. Const. amend. XXVI only granted voting rights to those eighteen years of age or older. This did not affect the right of the state to prescribe qualifications for state jurors, and limit jury service to those twenty-one years of age or older.Opinion

Opinion by: ADKINS Opinion

{259 So. 2d 155} In accordance with Rule 4.6, Florida Appellate Rules, 32 F.S.A., the Honorable Milton A. Friedman, one of the Judges of the Circuit Court for Dade County, Eleventh Judicial Circuit of Florida, has certified to this Court for instruction the questions of law set forth below. The pertinent portion of the Certificate reads as follows:

STATEMENT OF FACTS

"The defendant Silva, has been charged by Indictment with the offense of rape pursuant to Florida Statute 794.01 to which charge the defendant has entered his plea of not guilty. Prior to arraignment, the defendant Silva, with leave of the Trial Court, reserved the right subsequent to arraignment to file Motions to Dismiss the Indictment. Subsequent to arraignment of this cause and prior to trial, said motion to dismiss or in the alternative to exclude the jury panel was filed pursuant to FRCrP 3.300, F.S. § 40.01(1), (3), and F.S. § 97.041. Subsequently, the said motion to dismiss the Indictment or in the alternative to exclude the entire jury panel was amended. The Trial Court requested memoranda of law from both parties and subsequently perused said memoranda, heard oral argument of counsel for the State and counsel for the Defendant, and pursuant to a stipulation between counsel for the State and counsel for the Defendant, examined the depositions of both Dade County Jury Commissioners, Thomas Lummus, Esq., (taken in the Eleventh Judicial Circuit {259 So. 2d 156} Court Case, Criminal #2844, State of Florida v. Kelsey Bethel) and Joseph D'Apice (taken in the Eleventh Judicial Circuit Court Case, Criminal #2866, State of Florida vs. George Silva), which said depositions are attached hereto for the record on certification.

"The Trial Court made the following findings of fact in regards to the certified questions of law:

FINDINGS OF FACT

"1. The defendant, George Silva, duly and properly presented this Challenge to the Jury Venire list and jury panel pursuant to FRCrP 3.300, and F.S. 40.01(1), (3); and F.S. 97.041.

"2. Since at least 1966, with the appointment of Attorney Thomas Lummus as Dade County Jury Commissioner, a quota system has been employed in connection with the selection of jury lists in Dade County to either exclude or include a certain fixed percentage 15% to 19%) of the qualified black citizens of Dade County who are registered voters. Also, an attempt to keep the number of qualified women the same as qualified men has been made.

"3. Since at least April, 1971, with the appointment of Mr. Joseph D'Apice as Dade County Jury Commissioner, an even more selective, arbitrary and discriminatory method of compiling monthly jury lists in Dade County has been in use whereby a prospective juror's race, religion, sex, national origin and economic status has been subject to scrutiny by this Jury Commissioner.

"4. The findings in Paragraphs two and three are based primarily on the respective depositions of both Attorney Lummus and Mr. D'Apice which were admitted into evidence by stipulation of the attorneys for the State and the Defendant; in addition the Court takes notice of the remarks of Mr. D'Apice to both the newspapers and television reporters with respect to his method of selecting names for the jury lists.

"5. The specific sworn statements of the said Jury Commissioners which are the basis for the finding of deliberate, arbitrary and improper jury list selection are found in the transcript of the hearing on the Amended Motion at pages 23 to 30. (which is attached hereto for the record on certification and which is incorporated by reference in these findings of fact)

"6. The jury list for the month of March, 1972, was drawn by a scrutinized and systematic method and not at random.

"7. The jury commissioners select prospective jurors and compile the monthly jury list from a list of those eligible to vote, who have registered to vote in Dade County, Florida.

"8. The names of all those persons between the ages of eighteen and twenty (at the time of voter registration), are systematically excluded from the master list of those who have registered to vote and who are otherwise qualified to serve as jurors.

"9. Similarly, the names of all those persons engaged in certain occupations, such as doctors, registered nurses, and religious leaders, are systematically excluded from the master list of prospective jurors.

"10. Finally, the Court finds that no single person is able to select prospective jurors out of a list in excess of 500,000 people on the basis of his own knowledge of the prospective juror's integrity, intelligence, good character and sound judgment.

"Subsequently the Court entered the following orders pertaining to the certified questions of law:

"1. That the ruling on whether the jury venire is tainted, is deferred pending certification to and adjudication by the Florida Supreme Court.

"2. That the ruling on whether 18, 19 and 20 year old registered voters should be permitted to serve on juries is deferred {259 So. 2d 157} pending certification and adjudication by the Florida Supreme Court.

"3. That the ruling on whether F.S. § 40.01(3) is constitutional, is deferred pending certification to and adjudication by the Florida Supreme Court.

"CERTIFIED QUESTIONS OF LAW

"1. Whether the manner in which jury panels are presently selected and constituted in Dade County, Florida, as set out in the statement of facts (see above) and in the order of the Trial Judge (which is attached hereto for the record on certification) violated the due process and the equal protection clauses of the United States Constitution, Amendment Five, as made applicable to the states by the Fourteenth Amendment of the United States Constitution and Article I, Section 9 of the Florida Constitution, and/or whether the manner in which jury panels are presently selected and constituted in Dade County, Florida, as set out in the statement of facts (see above) and in the order of the Trial Judge (which is attached hereto for the record on certification) violates the Sixth Amendment of the United States Constitution as made applicable to the states by the Fourteenth Amendment and Article I, Section 16 of the Florida Constitution wherein it is provided that an accused in a criminal prosecution shall have the right to a speedy and public trial by impartial jury.

"2. Whether Florida Statutes § 40.01(1), dealing with the qualifications of jurors, wherein only persons of the age of 21 years or older are qualified to act as jurors, is constitutional in light of the Twenty-Sixth Amendment of the United States Constitution wherein it is provided that 'the right of citizens of the United States who are 18 years of age or older to vote shall not be denied or abridged by the United States or by any State on account of age.'

"3. Whether F.S. § 40.01(3), dealing with the qualifications of jurors, wherein it is stated that: 'In the selection of jury lists, only such persons as the selecting officers know, and have reason to believe are law-abiding citizens of approved integrity, who are of good character, sound judgment and intelligence . . .' is void for vagueness, and impossible to be carried out, and/or in violation of the due process of law clauses of the Fifth and Fourteenth Amendments of the United States Constitution and the Florida Constitution on the ground that said F.S. 40.01(3), is an unlawful delegation of authority to the Jury Commissioner in and for Dade County, Florida, since it is conceded by counsel for the State and counsel for the Defendant that in Dade County, Florida, there are approximately 522,000 registered voters."

The order of the trial judge referred to in the first certified question contains the following:

"2. Since at least 1966, with the appointment of Attorney Thomas Lummus as Dade County Jury Commissioner, a quota system has been employed in connection with the selection of jury lists in Dade County to either exclude or include a certain fixed percentage (15% to 19%) of the qualified Black citizens of Dade County who are registered voters; and an attempt to keep the number of qualified women, the same as qualified men has been made.

"3. Since at least April, 1971, with the appointment of Mr. Joseph D'Apice as Dade County Jury Commissioner, an even more selective, arbitrary and discriminatory method of compiling monthly jury lists in Dade County has been in use whereby a prospective juror's race, religion, sex, national origin, economic status and political affiliation has been subject to scrutiny by this Jury Commissioner.

"4. The findings in Paragraphs two and three are based primarily on the respective depositions of both Attorney Lummus and Mr. D'Apice which were admitted into evidence by stipulation of the attorneys for the State and the Defendant; in addition the Court takes notice of the remarks of Mr. D'Apice to both the newspapers {259 So. 2d 158} and television reporters with respect to his method of selecting names for the jury lists.

"5. . . . It is sufficient to say that the Court finds there has been willful, deliberate, arbitrary (albeit well intentioned) and systematic exclusion, or inclusion, of the following identifiable and cognizable groups: race, color, sex, religion, occupation, political affiliation, and national origin."

A question or proposition certified directly to this Court by a Circuit Court must be one which, if decided by the Circuit Court, would be reviewable on direct appeal from that Court to this Court. See Jaworski v. City of Opa-Locka, 149 So.2d 33 (Fla.1963). If this cause proceeded to final judgment the trial court would, by necessity, pass upon the validity of a state statute or construe a controlling provision of the United States Constitution. An appeal would then lie to this Court. Fla.Const., art. V, § 4(2), F.S.A. We have jurisdiction and may answer the questions certified by the trial judge.

At the outset, we recognize that the Dade County jury commissioners exercised their best judgment in making personal selections of jurors after serious thought. In their faithful effort to administer the law fairly and impartially, they selected jurors from a cross-section of the community. Their zealous efforts to abide by the law, however, resulted in a violation of rules and principles established by the United States Supreme Court. Proportional racial limitation has been forbidden by that Court. We will, of course, follow the mandate of our highest Court.

Although we are required to hold that there were arbitrary exclusions in the selection of the jurors, those who have been convicted can receive no comfort from this decision. A challenge to the panel, or challenge to the array, is used to question the selection or drawing of prospective jurors. Such a challenge must be made and decided before any independent juror is examined, unless otherwise ordered by the Court. FRCrP Rule 3.300, 33 F.S.A. Such an objection comes too late after verdict and has no place in a motion for new trial or in arrest of judgment. By going to trial before a jury without any objections, a defendant waives all irregularity in the drawing, summoning and impaneling of such jurors. Green v. State, 60 Fla. 22, 53 So. 610 (1910); Lake v. State, 100 Fla. 386, 129 So. 833 (1930); 14 F.L.P., Jury, § 111; 20 Fla.Jur., Juries, § 68.

In answer to the first question, the United States Supreme Court has held that it is not legally permissible for jury commissioners to place purposely on a jury list the names of white persons and black persons in proportion to the population in the community. We reluctantly follow the mandate of that Court and answer the first question in the affirmative.

A similar question was involved in Shepherd v. State, 341 U.S. 50, 71 S. Ct. 549, 95 L. Ed. 740 (1951), in which the decision of this Court, Shepherd v. State, 46 So.2d 880 (Fla.1950), was reversed without opinion on the authority of Cassell v. Texas, 339 U.S. 282, 70 S. Ct. 629, 94 L. Ed. 839 (1950). Although the United States Supreme Court delivered no opinion in the Shepherd case, the summary on page 740 of 95 L. Ed. states:

"In a PER CURIAM opinion the Supreme Court reversed a state court conviction of Negroes upon the sole ground that the method of selecting the grand jury discriminated against the Negro race."

The type of discrimination involved in the Shepherd case was stated in the brief of counsel for petitioners as follows (page 741 of 95 L. Ed.):

"Petitioners were denied the guaranties of the Fourteenth Amendment in that the jury was chosen in furtherance of an admitted policy of selecting jurors according {259 So. 2d 159} to a system of purposeful racial proportionate representation which limited the numbers of Negroes serving on juries because of their race. See Cassell v. Texas, 339 U.S. 282, 94 L. Ed. 839, 70 S. Ct. 629; . . ."

The method of selecting jurors was described in the opinion of this Court (Shepherd v. State, 46 So.2d 880, 884) as follows:

"The Supervisor of Registration testified that Lake County had 14,182 voters. His record disclosed 13,380 white voters and 802 colored voters. Frank E. Owens, Chairman of the Board of County Commissions of Lake County,

Florida, testified that he and other members of the Board prepared the list of jurors during January, 1949, and in so doing selected and placed on the jury list the names of white and colored persons. The names were taken from the voters registration list of Lake County in proportion to the number of white and colored persons whose names were on the voters registration books. The rule as testified about had been observed in Lake County for many years."

The only condemnation of proportional representation of races on a jury list in Cassell v. Texas, supra, occurs in the following remarks in the opinion of Mr. Justice Reed, concurred in by the Chief Justice, Mr. Justice Black and Mr. Justice Clark:

"Jurymen should be selected as individuals, on the basis of individual qualifications, and not as members of a race. "We have recently written why proportional representation of races on a jury is not a constitutional requisite. Succinctly stated, our reason was that the Constitution requires only a fair jury selected without regard to race. Obviously the number of races and nationalities appearing in the ancestry of our citizens would make it impossible to meet a requirement of proportional representation. Similarly, since there can be no exclusion of Negroes as a race and no discrimination because of color, proportional limitation is not permissible. That conclusion is compelled by the United States Code, title 18, § 243, based on § 4 of the Civil Rights Act of 1875. While the language of the section directs attention to the right to serve as a juror, its command has long been recognized also to assure rights to an accused. Prohibiting racial disqualification of Negroes for jury service, this congressional enactment under the Fourteenth Amendment, § 5, has been consistently sustained and its violation held to deny a proper trial to a Negro accused. Proportional racial limitation is therefore forbidden. An accused is entitled to have charges against him considered by a jury in the selection of which there has been neither inclusion nor exclusion because of race." [Cassell v. Texas, 339 U.S. 282, 70 S. Ct. 629, 94 L. Ed. 839, 847]

When the United States Supreme Court cited Cassell v. Texas, supra, as the sole authority for reversing this Court in Shepherd v. State, supra, which was clearly a case of proportional representation of races, the only reasonable conclusion is that the United States Supreme Court was referring to Mr. Justice Reed's above-quoted remarks.

In Porter v. State, 160 So.2d 104 (Fla.1964), we said:

"Lest our discussion above be misinterpreted we hasten to explain that we do not in anywise hold that any sex, race or identifiable segment of our population is entitled to proportionate representation on jury lists or juries. The Supreme Court of the United States has repeatedly held that proportioned class representation is not required . . . . Quite to the contrary, that court has held that selection of jury lists on a basis of proportional representation is invalid. {259 So. 2d 160} While selection from classes or groups on such a basis does guarantee representation, at the same time it imposes a limitation on the number from each class or group. This is prohibited . . . ." (p. 109)

The following appeared in 47 Am.Jur.2d, Jury, § 175, p. 767:

"Fairness in the selection of a jury does not require proportional representation of races. Thus, a lack of proportional representation of races on a jury does not constitute discrimination. On the other hand, while proportional representation of races on a jury is not a constitutional requisite, proportional racial limitation is prohibited."

The tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. This does not mean, however, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community, for such complete representation would frequently be impossible. But it does mean that prospective jurors must be selected at random by the proper selecting officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. See Thiel v. Southern Pacific Co., 328 U.S. 217, 66 S. Ct. 984, 90 L. Ed. 1181 (1945). Selection from classes or groups on a proportion basis guarantees representation, but at the same time places a limitation on the number from each class or group. This is forbidden.

The choice of the means by which unlawful distinctions and discriminations are to be avoided rests largely in the sound discretion of the selecting officers. This discretion, of course, must be guided by the mandates of the Supreme Court of the United States. Proportional limitation by race, sex, or creed is prohibited.

Petitioner questions the validity of the procedure in using jury selection index cards containing a notation designating the prospective juror as being black or white, and contends that this in itself is prima facia proof of discrimination under the ruling of the United States Supreme Court in Avery v. Georgia, 345 U.S. 559, 73 S. Ct. 891, 97 L. Ed. 1244 (1952). In the Avery case, a negro was convicted in a state court on a charge of rape. In selecting jurors, the drawings were made from a box containing white tickets bearing the names of white veniremen and colored tickets bearing the names of black veniremen. Although the Judge who picked out the tickets denied any discrimination, not a single black was in the panel, though many were available. The Supreme Court of the United States reversed the conviction holding that defendant had made a sufficient showing of discrimination in the organization of the particular panel involved. The decision rested on the ground that the use of separately colored tickets constituted prima facie evidence of discrimination. This presumption, coupled with the absence of any blacks on the panel, established a prima facie case which placed the burden on the State to dispel the prima facie case of discrimination. This the State failed to do.

The designation of a prospective juror as being black or white does not, in itself, invalidate the jury selection. However, by using such designation, the State is saddled with the burden of showing that there was no racial discrimination in the selection of the prospective veniremen, in the event no blacks are selected as prospective jurors or only a token number consistently appear on the panel.

Of course, this problem would be completely erased if Dade County would use its electronic data processing equipment in {259 So. 2d 161} the random jury selection process. See Report of Judicial Council of Florida (17th Report, 1972), p. 32.

We turn to the second question, which is answered in the affirmative. The Twenty-Sixth Amendment to the United States Constitution provides that the right of citizens eighteen years of age or over to vote shall not be denied or abridged by the United States or by any state on account of age. This amendment has no bearing on eligibility of persons for jury service.

Fla.Stat. § 40.01(1), F.S.A., provides that jurors shall be taken from the male and female persons over the age of twenty-one years, who are citizens of the State and who have resided in the State for one year and in their respective counties for six months, and who are fully qualified electors of their respective county. Since the Twenty-Sixth Amendment to the United States Constitution says nothing about jury service, the State is free to require that jurors be over twenty-one years of age, as each state has the power to establish the qualifications for jurors to serve in its courts. 47 Am.Jur.2d, Jury, § 96, p. 707.

The following appears in 47 Am.Jur.2d, Jury, § 102, p. 711:

"The right to vote and the privilege and qualification to serve as a juror are not correlative or necessarily coexistent. Thus, while electors and jurors may have some requirements in common, a person may be a qualified elector and yet not be a qualified juror, and vice versa."

50 C.J.S. Juries § 134, pp. 861-862, contains the following:

"In the absence of any constitutional provision on the subject, and as long as the essential requisites of trial by jury are preserved, the qualifications of jurors are matters of legislative control, and, in the exercise of its control, the legislature may restrict, abridge, deny or enlarge the right and duty of jury service."

In Hall v. State, 136 Fla. 644, 187 So. 392 (1939), a female defendant attacked the competency of the jury panel because only the names of male persons had been selected. In rejecting the defendant's contentions, this Court said:

"In Strauder v. West Virginia, 100 U.S. 303, 310, 25 L. Ed. 664, the Supreme Court of the United States, in discussing the Fourteenth Amendment, said: 'We do not say that, within the limits from which it is not excluded by the Amendment, a State may not prescribe the qualifications of its jurors, and in so doing make discriminations. It may confine the selection to males, to freeholders, to citizens, to persons within certain ages, or to persons having educational qualifications. We do not believe the 14th Amendment was ever intended to prohibit this. Looking at its history, it is clear it had no such purpose. Its aim was against discrimination because of race or color. As we have said more than once, its design was to protect an emancipated race, and to strike down all possible legal discriminations against those who belong to it.'" (p. 400) The Nineteenth Amendment to the United States

Constitution conferred upon women the right to vote, just as the recently adopted amendment confers that right on persons eighteen years old or older. When the Nineteenth Amendment was adopted, the statutes of Florida limited jury service to males only. In Hall v. State, supra, this Court rejected the idea that the Nineteenth Amendment invalidated the statutory prescription that only males were eligible for jury service, saying:

"Current discussion touching the adoption of the Nineteenth Amendment related exclusively to the franchise. The words of that amendment by express {259 So. 2d 162} terms dealt solely with prohibiting any denial or abridgment of the right to vote based upon sex. ". . . "It follows that Sections 4443 and 4444, Compiled General Laws of Florida, 1927, derived from an act adopted in 1893, which impose jury duty upon male citizens only, remain as valid statutes now as they were before the Nineteenth Amendment to the Federal Constitution was adopted. The legislature still has the power to prescribe the qualifications of jurors, and to impose this burden upon men alone if it sees fit so to do." (p. 401)

In Carter v. Jury Commission of Greene County, 396 U.S. 320, 90 S. Ct. 518, 24 L. Ed. 2d 549 (1970), quoted extensively in our discussion of the third question, the Court recognized the right of the State to confine the jury selection to citizens, to persons meeting specified qualifications of age and educational attainment, and to those possessing good intelligence, sound judgment, and fair character. See also Hoyt v. Florida, 368 U.S. 57, 82 S. Ct. 159, 7 L. Ed. 2d 118 (1961).

We now consider the third question, which must be answered in the negative. The statute under attack reads as follows:

" Fla. Stat. § 40.01(3), F.S.A. "In the selection of jury lists only such persons as the selecting officers know, or have reason to believe, are law abiding citizens of approved integrity, good character, sound judgment and intelligence, and who are not physically or mentally infirm, shall be selected for jury duty."

In Carter v. Jury Commission of Greene County, supra, the Court considered an Alabama statute quite similar to the Florida statute now under attack. The Alabama jury commission was charged with the duty of selecting prospective veniremen and preparing a jury roll and jury box containing the names of all qualified, nonexempt citizens in the county who are "generally reputed to be honest and intelligent and are esteemed in the community for their integrity, good character and sound judgment." This particular statute was Ala.Code, Tit. 30, § 21. In sustaining the statute, the Court said:

"Specifically, the charge is that § 21 leaves the commissioners free to give effect to their belief that Negroes are generally inferior to white people and so less likely to measure up to the statutory requirements; to the commissioners' fear that white people in the community will suffer if Negroes are accorded the opportunity to exercise the power of their majority; and to the commissioners' preference for Negroes who tend not to assert their right to legal and social equality. The appellants say the injunctive relief granted by the District Court is inadequate, because the history of jury selection in Greene County demonstrates a practice of discrimination persisting despite the federal court's prior grant of declaratory relief. Moreover, so long as § 21 remains the law, it is argued, Negro citizens throughout Alabama will be obliged to attack the jury-selection process on a county-by-county basis, thereby imposing a heavy burden on already congested court dockets and delaying the day that Alabama will be free of discriminatory jury selection. "While there is force in what the appellants say, we cannot agree that § 21 is irredeemably invalid on its face. It has long been accepted that the Constitution does not forbid the States to prescribe relevant qualifications for their jurors. The States remain free to confine the selection to citizens, to persons meeting specified qualifications of age and educational attainment, and to those possessing good intelligence, sound judgment, and fair character. 'Our duty to protect the federal constitutional rights of all does not mean we must or should impose on states our conception of the proper source of jury lists, so long as the source {259 So. 2d 163} reasonably reflects a cross-section of the population suitable in character and intelligence for that civic duty.' "Statutory provisions such as those found in § 21 are not peculiar to Alabama, or to any particular region of the country. Nearly every State requires that its jurors be citizens of the United States, residents of the locality, of a specified minimum age, and able to understand English. Many of the States require that jurors be of 'good character' or the like; some, that they be 'intelligent' or 'well informed.' "Provisions of similar breadth have been challenged here and sustained before. In Franklin v. South Carolina [218 U.S. 161, 30 S. Ct. 640, 54 L. Ed. 980], the Court rejected a similar attack upon a jury-selection statute alleged by the plaintiff in error to have conferred arbitrary power upon the jury commissioners. The pertinent law there provided that the commissioners should 'prepare a list of such qualified electors under the provisions of the constitution, between the ages of twenty-one and

sixty-five years, and of good moral character, of their respective counties as they may deem otherwise well qualified to serve as jurors, being persons of sound judgment and free from all legal exceptions, which list shall include not less than one from every three of such qualified electors . . . .' In upholding the validity of these standards, the Court said:

"'We do not think there is anything in this provision of the statute having the effect to deny rights secured by the Federal Constitution. . . . There is nothing in this statute which discriminates against individuals on account of race or color or previous condition, or which subjects such persons to any other or different treatment than other electors who may be qualified to serve as jurors. The statute simply provides for an exercise of judgment in attempting to secure competent jurors of proper qualifications.'"Again, in Smith v. Texas, we dealt with a statute leaving a wide range of choice to the commissioners. Yet we expressly upheld the validity of the law. The statutory scheme was not in itself unfair; it was 'capable of being carried out with no racial discrimination whatsoever.' "No less can be said of the statutory standards attacked in the present case." (Text pp. 331-335, 90 S. Ct. p. 524).

Carter v. Jury Commission of Greene County, supra, is dispositive of this question. We hold that Fla.Stat. § 40.01(3), F.S.A., is constitutional and is neither vague nor an unlawful delegation of authority to the jury commissioners.

We summarize as follows:

The Supreme Court of the United States has mandated that proportional limitation in the selection of prospective jurors is not permissible and we must follow this mandate in declaring the selection procedure of the Dade County Jury Commission improper and illegal. In other words, prospective jurors must be selected at random by the proper selecting officials without systematic and intentional exclusion of any economic, social, religious, racial, political, or geographical group. While selection from classes or groups on the basis of proportional representation may guarantee representation to each group, at the same time it imposes a limitation on the number from each class or group.

If a prospective juror is labeled as being black or white in the jury selection index cards, there may arise a presumption of racial discrimination in the event no blacks are selected or only a token number consistently appear on the panel. The use of electronic data processing equipment in the random jury selection would completely eliminate this problem.

{259 So. 2d 164} Also, jury service is limited to those twenty-one years of age or older, as the Twenty-Sixth Amendment of the United States Constitution only granted voting rights to those eighteen years of age or older. This did not affect the right of the State to prescribe qualifications for State jurors, and limit jury service to those twenty-one years of age or older.

Fla.Stat. § 40.01(3), F.S.A., is constitutional. After the random selection of jury lists the selecting officers should list for jury service only such persons as they know, and have reason to believe, are law-abiding citizens of approved integrity, good character, sound judgment, and intelligence.

The decision invalidating the present Dade County jury panel gives no relief to those who have gone to trial without questioning the selection of the jurors by an appropriate challenge to the panel.

We suggest that the Legislature and this Court collaborate in a speedy effort to establish appropriate guidelines by statute and rules of this Court for the selection of prospective jurors. Dedicated citizens serving as jury commissioners and county commissioners, burdened with the responsibility of selecting the prospective jurors, should not be charged with the further responsibility of reading and digesting the many court decisions delineating the constitutional requirements.

For the reasons above stated, the certified questions are answered as follows:

The first question is answered in the affirmative.

The second question is answered in the affirmative.

The third question is answered in the negative.

It is so ordered.

ROBERTS, C.J., and CARLTON, McCAIN and BOYD, JJ., concur.

ERVIN, J., concurs in part and dissents in part with opinion.

DEKLE, J., dissents in part and concurs in part with opinion. Concur

Concur by: ERVIN (In Part); DEKLE (In Part) Dissent

Dissent by: ERVIN (In Part); DEKLE (In Part)

ERVIN, Justice (concurring in part and dissenting in part):

I concur in all of the excellent opinion of Justice Adkins insofar as he holds no discrimination may be effected against minorities or particular groups by proportional selection of prospective jurors. See my dissenting opinion in State v. Demetree, (Fla.) 213 So.2d 709, 713. However, I have grave doubts and dissent insofar as the opinion indicates state restrictions can be provided insofar as the age of jurors is concerned who have reached legal majority.

DEKLE, Justice (dissenting in part and concurring in part):

I respectfully dissent as to question one. An improved more equally balanced jury venire is a strange basis for its disqualification. We lose our perspective in our eager efforts for equality.

I concur in the remainder of the able opinion.

Johnnie Lee JONES, Appellant, v. The STATE of Florida, Appellee

Court of Appeal of Florida, Third District

276 So 2d 83276 So. 2d 83; 1973 Fla App LEXIS 68631973 Fla. App. LEXIS 6863

No. 72-1393

April 17, 1973

Counsel Johnnie Lee Jones, in pro. per.

Robert L. Shevin, Atty. Gen., and Arnold R. Ginsberg, Asst. Atty. Gen., for Appellee.

Judges: Barkdull, C.J., and Pearson and Charles Carroll, JJ. CASE SUMMARYPROCEDURAL POSTURE: Appellant sought review of an order of a Florida trial court, which denied appellant's post-appeal motion to vacate his conviction and sentence for first-degree murder.Denial of appellant's post-appeal motion to vacate his conviction and sentence was proper because appellant waived his objection to the jury panel by failing to raise the objection at his trial.OVERVIEW: Appellant was convicted of and sentenced for first-degree murder. Appellant filed a post-appeal motion to vacate the conviction and sentence, arguing that the jury panel from which the trial jury was selected was illegal. The trial court denied the motion, concluding that appellant waived the objection pursuant to Fla. R. Crim. P. 3.300 because he did not object to the panel at his trial. The court affirmed, concluding that the findings of the trial court were fully substantiated by the record and the law.OUTCOME: The court affirmed the denial of appellant's post-appeal motion to vacate his conviction and sentence for first-degree murder because appellant waived his objection to the jury panel by failing to raise the objection at his trial.LexisNexis HeadnotesOpinion

Opinion by: PER CURIAM Opinion

{276 So. 2d 84} The appellant was indicted for first degree murder and tried before a jury. At the trial, appellant was represented by a court-appointed attorney. Appellant was found guilty with recommendation of mercy and was sentenced to life imprisonment.

Appellant was sentenced on July 9, 1971. He immediately began filing a series of motions claiming violation of constitutional rights. On October 30, 1972, appellant filed the motion to vacate judgment and sentence with which we are here concerned. The motion was considered by the trial court and denied. The trial court found:

* * * "Defendant was tried, convicted and sentenced by this Court. He appealed and the trial court was affirmed. His Motions are based upon the allegation and ground that the jury panel from which the trial jury was selected was illegal. Petitioner has asked for a testamentary hearing on this question. "The Court has examined the court file and finds that no appropriate challenge to the panel was made by the Defendant. Accordingly, the jury was selected in the process of which Defendant did not exercise all of the available peremptory challenges. "It is the finding of the Court that by going to trial before a jury without any objections, a defendant waives all irregularities in drawing, summoning and empaneling of such jurors. 33 F.S.A. Rules of Criminal Procedure 3.300. State vs. Silva [Fla.] 259 So.2nd 153; . . .". * * *

Appellant has appealed and we have reviewed the record in the light of the arguments presented on appeal. We hold that the findings of the trial court are fully substantiated by the record and the law.

Affirmed. 276 So. 2d 68::POWER-GLADE CO. v. HIESTAND::April 17, 1973

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
THIRD DISTRICT

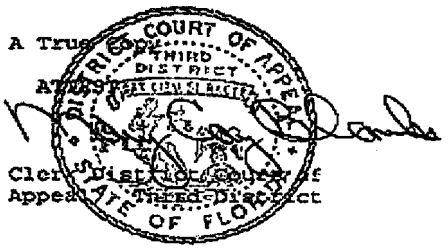
This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

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

WITNESS the Honorable Linda Ann Wells, Chief Judge of the District Court of Appeal of the State of Florida, Third District, and seal of the said Court at Miami, Florida on this day.

DATE: June 21, 2013
CASE NO.: 12-1577
COUNTY OF ORIGIN: Dade
T.C. CASE NO.: 74-4391

STYLE: **JOHNNY LEE JONES,** **v.** **THE STATE OF FLORIDA,**



ORIGINAL TO: Harvey Ruvin

cc: Office Of Attorney General Johnny L. Jones

la

Third District Court of Appeal

State of Florida, January Term, A.D. 2013

Opinion filed April 24, 2013.
Not final until disposition of timely filed motion for rehearing.

No. 3D12-1577
Lower Tribunal No. 74-4391

Johnny Lee Jones,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Thomas J. Rebull, Judge.

Johnny Lee Jones, in proper person.

Pamela Jo Bondi, Attorney General, for appellee.

Before WELLS, C.J., and SHEPHERD and SUAREZ, JJ.

PER CURIAM.

Affirmed.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO.: F-74-4391
JUDGE REBULL
SECTION 19

STATE OF FLORIDA,
Plaintiff,

vs.

JOHNNY LEE JONES,
Defendant,
_____/

ORDER DENYING PETITION TO VACATE ILLEGAL SENTENCE

This case came before me on Mr. Jones's Petition Vacate Illegal Sentence. His Petition has an oath dated February 10, 2011 and a clerk of court stamp of November 8, 2011. I have reviewed the Petition. I hereby deny it.

Mr. Jones's Petition is time barred. While the Petition is titled as one to "vacate illegal sentence," no arguments set forth in the Petition claim that Mr. Jones's sentence is one which exceeds the limits provided by law. All of the arguments are an attack on the judgment itself.

Mr. Jones's judgment and sentence became final in this case no later than 1973. *See Jones v. State*, 276 So. 2d 83 (Fla. 3d DCA 1973). As a result, this Petition is time barred, and it does not and can not allege any of the exceptions set forth in Fla. R. Crim. Pro. 3.850(b).

I am also denying Mr. Jones's Petition as successive. *See* Fla. R. Crim. Pro. 3.850(f). All of Mr. Jones's arguments in the Petition arise out of challenges to the racial makeup of the jury summoning and jury selection process. As reflected in the opinion in *Jones v. State*, 276 So. 2d 83 (Fla. 3d DCA 1973), this Petition fails to allege new or different grounds for relief and the prior determinations were on the merits.

Lastly, I am denying Mr. Jones's Petition under the law of the case. The "law of the case doctrine is viable in those post-conviction proceedings wherein a defendant requests review of a specific claim of error which has been already raised and decided by an appellate court." *Raley v. State,* 675 So.2d 170, 173 (Fla. 5th DCA 1996).

In this Petition, not only does Mr. Jones request review of a claim of error which has already been raised and decided by the court of appeal in the cited *Jones* opinion, he goes on to argue that the Third District Court of Appeal was wrong. *See* Petition at p.15. For this additional reason, I am denying the Petition.

For all of these reasons, it is hereby **ORDERED AND ADJUDGED** that the Defendant's Petition to Vacate Illegal Sentence, is hereby **DENIED**.

The Clerk of Court is directed to forward a copy of this order to Johnny Lee Jones, #028029, Jackson Correctional Institution, 5563 10th Street, Malone, Florida 32445.

The Defendant, Johnny Lee Jones, is hereby notified that he has the right to appeal this order to the Third District Court of Appeal within thirty (30) days of the signing and filing of this order.

In the event that the defendant takes an appeal of this order, the Clerk of this Court is hereby ordered to transport, as part of this order, to the appellate court the following:

1. Defendant's Petition to Vacate Illegal Sentence; and
2. this Order.

DONE AND ORDERED in Miami-Dade County, Florida, this 9th day of APRIL, 2012.

THOMAS J. REBULL
CIRCUIT COURT JUDGE

cc: Suzanne Von Paulus, Assistant State Attorney
Johnny Lee Jones

I CERTIFY that a copy of the foregoing was mailed to the MOVANT, Johnny L Jones, by mail this _____ day of APR 17 2012, 20__

Deputy Clerk