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IN THE SUPREME COURT
OF FLORIDA.

RENE VENTURA

PETITIONER

VS.

CASE No: 2D11-4443

STATE OF FLORIDA

RESPONDANT.

PETITIONERS JURISDICTIONAL BRIEF.

/s/ RENE VENTURA.

HAMILTON C.I. M/U

10650 S.W. 46 ST

JASPER, FL 32652.

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STATEMENT OF THE CASE AND FACTS:

ON JANUARY, 18 2013, A PANEL OF THE SECOND DISTRICT COURT OF APPEAL ISSUED A PCA, AFFIRMING PETITIONER'S CONVICTIONS FOR THE REASONS SET BELOW, SHOWS THAT THE "PCA" IS IN ~~WICH~~ DIRECT CONFLICT IN WICH IS NOW DEPRIVING HIM OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW, AFFIRMING PETITIONER'S SENTENCE OF LIFE FOR LEWD MOLESTATION AND 15 YEARS FOR LEWD TOUCHING. THE ORDER ISSUED BY THE SECOND DISTRICT, A RE/HEARING WAS FILED, POINTING OUT THE CONFLICT, WICH WAS DENIED ON MAY, 17 2013.

A MANDATE WAS ISSUED ON JUNE 5, 2013.

AT SENTENCING, DEFENSE COUNSEL POINT OUT THAT PETITIONER HAD A COLLEGE DEGREE, HAD TO COME TO AMERICA FROM GUATEMALA AND OBTAINED CITIZENSHIP, HAD BOUGHT A HOME AND WAS RAISING A FAMILY WITH TWO MINOR CHILDREN, AND HAD NO PRIOR RECORD. PETITIONER APOLOGIZED TO THE CHILD AND HER MOTHER. HE THEN STATED HE FORGAVE "HER" FOR THE HARM SHE HAD DONE TO HIM. THE TRIAL COURT IMMEDIATELY BEGAN QUESTIONING PETITIONER AS TO WHOM HE WAS FORGIVING. WHEN HE SAID TO THE MOTHER, THE COURT ASKED WHAT HARM SHE HAD CAUSE HIM. "PETITIONER SAID HE HAD NOT DONE ANYTHING WRONG. HE PROTESTED HIS INNOCENCE. WHEN HE STATED THERE WERE NO DNA, NO PHYSICAL EVIDENCE, NO BROKEN BONES, NO BRUISES, NO INJURIES AT ALL TO THE GIRL", THE TRIAL COURT SAID "SEE, THAT WERE YOU ARE WRONG THERE IS EMOTIONAL TRAUMA THAT YOU CAUSED TO THE GIRL". PETITIONER CONTINUED PROCLAIM HIS INNOCENCE, AND SPOKE OF THE NUMEROUS HELPFUL THINGS HE DID IN THE COMMUNITY.

THE TRIAL COURT THEN SAID:

"YOU KNOW WHAT I'M GOING TO TAKE INTO CONSIDERATION IS EXACTLY WHAT YOU HAVE TOLD ME TODAY. AND YOU IMPRESSED UPON ME A COUPLE OF THINGS:

YOU ARE IN COMPLETE DENIAL. YOU HAVE ABSOLUTELY NO REMORSE WHATSOEVER. YOU ARE A SEXUAL PREDATOR. YOU ARE A DANGER NOT ONLY TO THIS CHILD THAT YOU SEXUALLY ABUSED AND YOU BATTERED, BUT YOU ARE A DANGER TO EVERY SINGLE CHILD IN THIS COUNTRY, ANYONE THAT YOU BECOME INVOLVED WITH, IN CONTACT WITH, YOU ARE AN ABSOLUTE DANGER TO THEM. YOU ARE A SICK, TWISTED, PERVERTED INDIVIDUAL. YOU ABSOLUTELY HAVE NO RIGHTS WHATSOEVER TO TAKE ADVANTAGE OF THIS EIGHT-YEAR OLD GIRL OR ANY OTHER GIRL, AND I'M GOING TO MAKE IT SURE THAT YOU DO NOT TOUCH ANOTHER GIRL FOR AS LONG AS YOU BREATHE THIS AIR." IT THEN SENTENCED PETITIONER TO THE STATUTORY MAXIMUM: LIFE IN PRISON ON COUNT ONE, AND A CONSECUTIVE 15 YEAR ON COUNT TWO.

"THIS ERROR WAS PREJUDICIAL IS MADE CLEAR BECAUSE THE JUDGE'S COMMENTS WERE MADE JUST BEFORE HE SENTENCED THE PETITIONER."

I. SUMMARY OF THE ARGUMENT:

THE SECOND DISTRICT COURT OF APPEALS DECISION, IN THIS CASE "THE P.C.A." EXPRESSLY AND DIRECTLY DEPRIVES PETITIONER OF DUE PROCESS 14. U.S.C.A., AS IT DIRECTLY CONFLICTS WITH OTHERS COURTS DECISIONS AND, FLORIDA SUPREME COURT. AT SENTENCING PETITIONER PROTESTED HIS INNOCENCE AND WAS NOT REMORSEFUL. THE TRIAL COURT IMPROPERLY CONSIDERED THIS PREJUDICIAL MATTERS, AND GAVE PETITIONER THE MAXIMUM SENTENCES, COURT RELY ON IMPROPER AND UNCONSTITUTIONAL FACTORS, IN VIOLATION OF PETITIONER STATE AND FEDERAL CONSTITUTIONAL RIGHTS. AMENDMENTS, V, XIV, AND ARTICLE I, § 9, FLA CONSTITUTION.

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. ARTICLE V § 3(6) 3 FLORIDA CONSTITUTION. FLA. R. APP. P. 9.030(a)(2)(A)(IV).

ARGUMENT:

THE P.C.A. OPINION OF THE SECOND DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THE OTHERS DISTRICT COURTS AND THIS COURT, IN HOLTON V. STATE, 573 SO.2d 284, 292 (FLA. 1990), THIS COURT INTERPRETED AND HELD THAT CONSIDERATION OF IMPROPER EVIDENCE, OR BASING ONE'S SENTENCE ON IMPROPER REASON IS VIOLATION OF DUE PROCESS, AND CAN LEAD TO VACATION OF SENTENCE AND REMAND FOR RESENTENCING. CERTIFIED DENIED, 500 U.S. 960 (1991). HOLTON V. STATE, 573 SO.2d 284, 292 (FLA. 1990). A TRIAL COURT VIOLATES DUE PROCESS BY USING PROTESTATION OF INNOCENCE AGAINST A DEFENDANT. U.S. C.A. 5, 14, CONSTITUTION AMENDMENTS; AND ARTICLE I, § 9, FLA. CONSTITUTION; WILLIAMS V. STATE, 89 SO.3d 304 (FLA. 1ST DCA 2012) (FUNDAMENTAL ERROR TO CONSIDER FACT DEFENDANT MAINTAINS INNOCENCE IN IMPOSING SENTENCE); GREEN V. STATE, 84 SO.3d 1169 (FLA 3D DCA 2012) (RESENTENCING IS REQUIRED EVEN IF IMPROPER CONSIDERATION OF LACK OF REMORSE IS ONLY ONE OF SEVERAL FACTORS THE COURT CONSIDERED IN IMPOSING SENTENCE); SMITH V. STATE, 62 SO.2d 698 (FLA. 2D DCA 2011) (FUNDAMENTAL ERROR WHERE TRIAL COURT CONSIDERED ASSERTIONS OF INNOCENCE AND REFUSAL TO ACCEPT RESPONSIBILITY IN IMPOSING SENTENCE);

JACKSON V. STATE, 39 SO.3d 427 (FLA. 1ST DCA 2010) (CONSIDERATION OF DEFENDANT'S CLAIM OF INNOCENCE IN FASHIONING SENTENCE WAS FUNDAMENTAL ERROR); BROWN V. STATE, 27 SO.3d 181 (FLA. 2D DCA 2010) (CONSIDERATION OF LACK OF REMORSE AND PROTESTATION OF INNOCENCE WAS FUNDAMENTAL ERROR); JILES V. STATE, 18 SO.3d 1216 (FLA. 5TH DCA 2009) (IMPROPER TO CONSIDER THAT DEFENDANT MAINTAINED HIS INNOCENCE AT TRIAL); HANNUM V. STATE, 13 SO.3d 132 (FLA. 2D DCA 2009) (CONSIDERATION AT SENTENCING OF DEFENDANT'S PROTESTATION OF INNOCENCE AND REFUSAL TO TAKE RESPONSIBILITY WAS FUNDAMENTAL ERROR); BRACERO V. STATE, 10 SO.3d 664 (FLA. 2D DCA 2009) (CONSIDERATION OF LACK OF REMORSE AND ASSERTIONS OF INNOCENCE RESULTED IN FUNDAMENTAL ERROR AT SENTENCE), U.S.C.A. CONST. AMEND. 14.

THE PANEL DECISION IS CONTRARY TO THE COURTS DECISIONS IN SMITH, BROWN, HANNUM, AND BRACERO, THAT A CONSIDERATION BY THE FULL COURT IS NECESSARY TO MAINTAIN UNIFORMITY OF DECISIONS IN THIS COURT, BECAUSE THE DECISION OF THIS COURT DOES DIRECTLY AND EXPRESSLY CONFLICTS WITH THE DECISIONS CITED ABOVE THAT WERE ISSUED BY THE SUPREME COURT OF FLORIDA AND THE FIRST, THIRD, AND FIFTH DISTRICT COURTS OF APPEAL ON THIS ISSUE.

PETITIONER RESPECTFULLY SUBMITS THAT THIS COURT SHOULD EXERCISE DISCRETIONARY REVIEW AND RESOLVE THE CONFLICT BY QUASHING THE DECISION OF THE DISTRICT COURT.

THIS CORRECTLY INTERPRETED HOLTON AND OTHERS DISTRICTS INTERPRETED THE SAME ON THE SAME ISSUE, AND THEREFORE THIS COURT SHOULD ACCEPT AND EXERCISE JURISDICTION.

CONCLUSION:

THIS COURT HAS JURISDICTIONARY REVIEW JURISDICTION TO REVIEW THIS CASE. AND THE COURT SHOULD EXERCISE THAT JURISDICTION TO CONSIDER AND ACCEPT ON THE MERITS OF PETITIONERS ARGUMENT.

CERTIFICATE OF SERVICE:

I HEREBY CERTIFY, THAT I HAVE FURNISHED A TRUE, CORRECT, AND COMPLETE COPY OF THIS BRIEF IN THE HANDS OF THE MAIL PERSON REPRESENTATIVE FOR THE DEPT OF CORRECTIONS. PROOF OF SERVICE AND MAILED ON THIS 15 DAY OF JULY, 2013, TO;

FLORIDA SUPREME COURT,
500 S. DUVAL ST,
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