IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC13-1346
DCA NO.: 1D13-1681

ARRINGTON R. WELLS
Petitioner

v.

STATE OF FLORIDA
Respondent

ON REVIEW FROM THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

PETITIONER'S JURISDICTIONAL BRIEF

Dated: July 31, 2013

Arrington R. Wells
Wakulla Annex
110 Melaleuca Drive
Crawfordville, Florida 32327

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STATEMENT OF THE CASE AND FACTS

On May 22, 2000 Mr. Wells was sentenced as a "Prison Release Reoffender" to thirty (30) years for robbery with a weapon in case no.: 97-CF-3660. (Exhibit A). The State used Mr. Wells release from the Department of Corrections (DOC) on April 26, 1995 in case no.: 91-CF-22126 as the qualifying release to sentence him under the PRR Statute. (See Exhibit A). Mr. Wells was actually released for the substantive offense on March 10, 1992 to control release. (Exhibit B, pg. 3).

After his March 10, 1992 release Mr. Wells was violated in March 1993 and served eighteen (18) months in D.O.C.. (Exhibit B, pg 2, par. 3). Mr. Wells was then released to Control Release in November 1993. (Exhibit B, pg 4). Mr. Wells control release was violated via warrant on May 11, 1994. (Exhibit B, pg. 5). As a result of this revocation on technical violations Mr. Wells was released from detention in April 1995.

The PRR statute requires Mr. Wells to have been released from a State correctional facility within three (3) years, *following incarceration for an offense for which the sentence is punishable by more than one (1) year in this State*. Mr. Wells release on April 26, 1995 in case no.: 91-CF-22126 is not from incarceration for an offense, but for violating the technical terms of conditional release.

This April 1995 "release" can not, as a matter of law, sustain the imposition of an enhanced sentence under the PRR statute as it is from a temporary detention.

Due to a bar placed on Mr. Wells by the trial court, he filed his Petition to Invoke All Writs Jurisdiction with the First DCA in order to correct his illegal sentence and present this manifest injustice. The First DCA dismissed his petition on May 9, 2013 pursuant to *Baker v. State*, 878 So.2d 1236 (Fla. 2004); and *Pettway v. State*, 776 So.2d 930 (Fla. 2000).

Mr. Wells moves this Honorable Court to exercise its inherent power and authority and grant him discretionary review and address the merits of his claim.

SUMMARY OF THE ARGUMENT

Mr. Wells is serving an enhanced sentence under the PRR statute. The release date used to qualify Mr. Wells as a PRR and enhance his sentence was from a temporary detention. This enhancement was illegal and thus Mr. Wells is serving a truly illegal sentence.

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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)*.

ARGUMENT

THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN *GIBSON V. STATE*, 944 SO.2D 426 (FLA. 4TH DCA 2006) (*GIBSON I*); *GIBSON V. STATE*, 967 SO.2D 410 (FLA. 4TH DCA 2007) (*GIBSON II*); *GIBSON V. STATE*, 38 SO.3D 234 (FLA. 4TH DCA 2010) (*GIBSON III*); AND *WENCEL V. STATE*, 915 SO.2D 1270 (FLA. 4TH DCA 2005).

The First District Court of Appeal has erroneously denied Mr. Wells Petition To Invoke All Writs Jurisdiction citing to *Baker v. State*, 878 So.2d 1236 (Fla. 2004); and *Pettway v. State*, 776 So.2d 930 (Fla. 2000) as support. In doing so they have created a "*manifest injustice*" and a denial of due process in that pursuant to *Gibson I, II, and III;* and *Wencel v. State*, 915 So.2d 1270 (Fla. 4th DCA 2005) Mr. Wells is serving a truly illegal sentence.

This court should now consider the record on appeal and the argument herein, and allow Mr. Wells to file an initial brief by accepting discretionary review and quashing the contrary decision of the First DCA.

Gibson argued pursuant to Fla.R.Crim.P. *3.800(a)* that he did not qualify as a Prison Release Reoffender (PRR) because he did not commit the crime within three (3) years of being "*released from a State correctional facility*" as provided in the PRR statute § *775.082*, Florida Statutes.

Moreover, in *Gibson,* as here, the State used documents from the Department of Corrections (D.O.C.) to show that *Gibson's* last release date was within three (3) years of the current charge in order to enhance his sentence as a PRR. However, the documents used only showed that *Gibson's* last release was from temporary detention, and therefore they could not use that release date to qualify *Gibson* as a PRR.

For the purpose of the PRR statute the word *"release"* is defined to mean *"only actual release from a State prison sentence"*, and not the *"physical release from a State prison facility."* *Cassista v. State,* 57 So.3d 265 (Fla. 5th DCA 2011); citing *Brinson v. State,* 851 So.2d 815 (Fla. 2d DCA 2003) *(Applying the rule of lenity and concluding that "release" as used in the PRR statute means actual release from a state prison sentence, not release from temporary confinement that happens to be in a state prison); Wencel,* 915 So.2d 1270.

Next, Mr. Wells challenges the trial court's order barring him from filing future pro se motions. However, none of Mr. Wells previous motions ever raised this issue, and can now be raised in a *3.800(a)* motion. Rule *3.800(a)* allows a court to correct an illegal sentence *"at any time."* Florida courts have held, and this court has agreed, that the phrase *"at any time"* allows Defendants to file successive motions under rule *3.800, State v. McBride,* 848 So.2d 287 (Fla. 2003).

This court has held that the doctrine of res judicata, law of the case, nor collateral estoppel will prevent a Defendant from filing successive pro se motions where a clear manifest injustice has occurred. *McBride,* 848 So.2d 287. The First DCA in denying Mr. Wells petition has allowed a clear manifest injustice to continue by allowing Mr. Wells to continue to serve a truly illegal sentence.

Mr. Wells sought the petition to challenge his continued detention of thirty (30) years. Although Mr. Wells has filed multiple other pleadings, none of which have raised this issue, this is one of those cases where a manifest injustice has occurred, which must be remedied by a resentencing of Mr. Wells. *Prince v. State,* 98 So.3d 768 (Fla. 4th DCA 2012).

The *Prince* court quoted, *"where...the court finds that a manifest injustice has occurred, it is the responsibility of the court to correct the injustice if it can." Prince,* 98 So.3d 768; *Adams v. State,* 957 So.2d 1183, 1186(Fla. 3d DCA 2006); See also *Jamason v. State,* 447 So.2d 892, 895 (Fla. 4th DCA 1983) (quoting *Anglin v. Mayo,* 88 So.2d 918, 919 (Fla. 1956)) *("If it appears to a court of competent jurisdiction that a man is being illegally restrained of his liberty, it is the responsibility of the court to brush aside formal technicalities and issue such appropriate orders as will do justice.").*

Here, the First DCA just brushed aside Mr. Wells petition, relying on *Baker* and *Pettaway* to deny his petition, instead of ruling on the merits of his claim. Mr. Wells now seeks this Honorable Court to exercise its inherent power and authority to grant him discretionary review and grant him his relief sought.

As stated, Mr. Wells has not previously raised this claim as to his illegal sentence. However, because of the severity of his sentence due to the misapplication of the PRR statute, this case fits squarely within the "manifest injustice" exception set forth in *McBride*. *Benjamin v. State,* 20 So.3d 945 (Fla. 3d DCA 2009); See also *State v. Sigler,* 967 So.2d 835, 840 (Fla. 2007) *(Stating that an illegal conviction falls within the concept of manifest injustice)*.

As evidenced by the exhibits attached hereto and the authority cited herein Mr. Wells received an enhancement to his sentence that cannot stand. The documentation used to determine the date of Mr. Wells last release from prison to enhance his sentence supports his claim. Mr. Wells now asks this court to take judicial notice of the documents from the Parole Commission attached here and address the merits of his claim.

Finally, although this claim has not been raised by Mr. Wells in prior post-conviction motions, he is now barred to raise it through a *3.800(a)* in the trial court in order to correct his sentence. The First DCA apparently overlooked the

fundamentally defective release date used to enhance Mr. Wells as a PRR and resulting conviction and sentence. Mr. Wells should have been granted relief when he first raised this issue in his petition to the First DCA.

The relief Mr. Wells is seeking may be conferred in the exercise of this court's inherent authority. Here, Mr. Wells is serving a sentence as a PRR which was wrongfully entered. The circumstances of this case present the *"extraordinary circumstances"* constituting *manifest injustice. Lawton v. State,* 731 So.2d 60, 61 (Fla. 2d DCA 1999) *(concluding illegal sentence was fundamental error that needed to be corrected because the result was a manifest injustice to the Defendant).*

Here, the record discloses facts supporting Mr. Wells claim that he would have received a sentence significantly less than the thirty (30) years he received absent the misapplication of the enhancement as a PRR. Mr. Wells has not received equal treatment under the law, and does not have an adequate remedy under *3.800(a)* due to the bar. It would be a manifest injustice to deny Mr. Wells the same relief afforded to *Gibson* and *Wencel* who are identically situated.

CONCLUSION

This Court has discretionary jurisdiction to review the decision of the First DCA as stated herein, and the court should exercise that jurisdiction to consider the merits of Mr. Wells argument.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing "Jurisdictional Brief" has been furnished to the Attorney General, Pamela Jo Bondi, The Capitol, PL-01, Tallahassee, Florida 32399 by U.S. mail this 31 day of July, 2013.

Arrington R. Wells

CERTIFICATION OF FONT REQUIREMENT

I HEREBY CERTIFY that the above Jurisdictional Brief has been submitted in Courier New 12-point font and complies with the font requirements of Rule *9.210(a)(2)* of the Florida Rules Appellate Procedure.

Arrington R. Wells