

PROVIDED TO HAMILTON C.I. ON

FOR MAILING

IN THE SUPREME COURT OF FLORIDA – STATE OF FLORIDA

SAMUEL LEE GREEN II,
(Petitioner/Petitioner)

v.

L.T. CASE NO: 2004CF-004392-01 XX
DCA CASE NO: 2D13-377
SUPREME COURT CASE NO: _____

STATE OF FLORIDA,
10th JUDICIAL CIRCUIT COURT
SECOND DISTRICT COURT OF APPEAL
_____ /

PETITIONER'S JURISDICTIONAL BRIEF

ON REVIEW FROM THE DISTRICT COURT OF
APPEAL, SECOND DISTRICT STATE OF FLORIDA

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CLERK SUPREME COURT

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STATEMENT OF CASE AND FACTS

On December 19, 2012, the 10th Judicial Court denied Petitioner his fundamental due process right to be resentenced to a second degree sentencing guise that is clearly established within the construction of Florida State Provision Laws of 812.13(2)(c) and 775.087(1) for Petitioner's charged and convicted offense of "Robbery with a Firearm". Where the jury found that Petitioner did not carry a firearm during the robbery. (*See Exhibit A page 44 Appendix attached*)

On December 5, 2012, Petitioner petitioned the 10th Judicial Court pro se by way of 3.800(a) Illegal Sentence Petition to correct his illegal life sentence. (*See Exhibit A pgs. 13-42 Appendix attached*)

Petitioner laid facts to the Circuit Court that in: In Criminal Case # CF04-004392-XX Green is charged by information with "Robbery with a Firearm". Where it was alleged that Green did carry the firearm to-wit: Commit a robbery in violations of Florida Statutes 812.13 and 775.087. (*See Exhibit A page 30 Appendix attached*)

The jury rendered a verdict that Green is guilty of "Robbery with a Firearm" and further found that during the course of the robbery Petitioner did not carry a firearm. (*See Exhibit A page 37 Appendix attached*)

Petitioner also laid facts that the Court, not the jury adjudicated Petitioner guilty as a principle to the crime. (*See Exhibit A pgs 40-42 Appendix attached*)

Petitioner clearly explained to the Circuit Court that his sentence has been illegally reclassified to a life sentence and it is illegal, as defined in Petitioner's charges as to Florida Robbery Section 812.13(2)(c) which mandates:

“If in the course of committing the robbery the offender carried no firearm then the robbery is a felony of the second degree punishable as provided in 775.082, 775.083 or 775.084.” (See Exhibit A page 70 Appendix attached)

And the Circuit Court did not apply the settled law rules correctly as constructed in Greens 10-20-Life charge of Florida Statute 775.087(1), which mandates:

“That a second degree felony be reclassified as a first degree felony punishable by life when: [During commission of such felony the defendant carries, displays, uses, threatens to use or attempts to use any weapons or firearms...” (See Exhibit A page 71-72 Appendix attached)

Because the jury determined an actual finding that Petitioner did not possess or carry the firearm during the robbery. (See Exhibit A page 37 Appendix attached)

Petitioner explained that even though he was determined guilty as a principle to the Robbery with a Firearm as a co-perpetrator, it is well established law by our Florida Supreme Court opinion in State v. Rodriguez, 602 So. 2d 1270 (Fla. 1992) expressing that:

“The Supreme Court explicitly rejected the idea that a defendant could be subject to reclassification under subsection 775.087 as a principle as the Florida Supreme Court rejected the State’s contention that Rodriguez’s sentence should be based on the conduct of the co-defendant.” (See Exhibit A page 79 Appendix attached)

Also Petitioner laid facts that relevant established law in the case of Juarez v. State, 65 So. 3d 110 (4th DCA 2011) concluded recent established law based on (Rodriguez, supra) that:

“When a defendant is charged with a felony involving the use of a firearm, a defendant’s sentence can not be enhanced under subsection 775.087, without evidence

establishing that defendant had personal possession of the weapon or firearm during commission of a felony.” (See Exhibit A page 77 Appendix attached)

Petitioner displayed rule to show the Court that on the face of the record Petitioner had been given a 1st degree life sentence reclassification that is unauthorized by the construction intent of established law because Petitioner was charged under 812.13 and 775.087 and no firearm was found to be carried by Petitioner and designation as a principle participate is not an excuse for reclassification to a life sentence. (See Exhibit A pgs 13-42 Appendix attached)

Petitioner’s petition and rehearing was denied by the Circuit Court with a “Rubber Stamp” signature on December 19, 2012 and January 15, 2013 as Petitioner thus petitioned the Circuit Court on January 3, 2013, where the lower court failed to apply the essential construction of law in conformity to Petitioner’s claim again in rehearing efforts to correct the fundamental error of the Circuit Court. (See Exhibit A page 44 and page 89 Appendix attached). Petitioner petitioned the Second District Court for appeal on two issues and one certified question in DCA Case No. 2D13-377. (See Exhibit A pages A1-102 Appendix attached). Where Issue One of the appeal was:

“Whether Circuit Court departed from clear established principle of law by not correcting Green’s illegal sentence reclassification which is now a manifest injustice and has violated Green’s due process rights to equal protection of the law.” (See Exhibit A page A9-A21 Appendix attached)

And Issue Two of the appeal was:

“Whether the Circuit Court afforded proper signed denial orders.” (See Exhibit A pages A22-A23 Appendix attached)

And the proposed question to the District Court asked to be certified was:

“Can persons charged with robbery with a firearm under Florida Statute 812.13 and 775.087 who are found guilty of that charge of robbery with a firearm as a principle, but who does not actually possess the weapon be reclassified on their sentencing portion from a second degree sentencing to a first degree sentencing due to a co-perpetrator’s possession of the weapon?” (See Exhibit A page A19 Appendix attached)

On May 22, 2013, the Second District Court denied Petitioner’s appeal by way of opinioned cited case authority. (See Exhibit B page 104 Appendix attached)

On June 6, 2013, approximately 15 days from date of denial Petitioner submitted his Certification of a Written Opinion Motion (Seeking an express written opinion to explain the conflicting Florida Supreme Court case cite denial) (See Exhibit C page 106 Appendix attached)

On June 6, 2013, approximately 15 days from date of denial Petitioner submitted his Clarification Motion. (Seeking clarification of the conflicting case denial cite of the District Court) (See Exhibit D page 110 Appendix attached)

On June 6, 2013, approximately 15 days from date of denial Petitioner submitted his Rehearing Motion. (Alerting District Court of the conflict of the denial cited case authority of the Florida Supreme Court) (See Exhibit E page 122 Appendix attached)

On June 7, 2013, Petitioner submitted his Motion to Stay of Mandate, where the timely filed Rehearing, Clarification, and Certification motions should have tolled the issuance of a mandate until further review and decision of the motions which would have been a timely filling for Motion to Stay. (See Exhibit F page 148 Appendix attached)

On June 7, 2013, the Second District Court issued a mandate that was premature because the Second District did not receive the timely filed Motion for Rehearing to toll the rehearing time. (See Exhibit G page 152 Appendix attached)

As such on June 14, 2013, Petitioner filed his "Motion to Recall or Withdraw Mandate". Explaining to the Court that the mandate was issued prematurely because Petitioner did file his rehearing motions timely but they were not received by the Clerk on the 7th day of June. (See Exhibit H page 154 Appendix attached)

On June 21, 2013, Petitioner filed his "Notice to Invoke Discretionary Review" to the Second District Court of Appeal. (See Exhibit I page 206 Appendix attached)

Lastly, in compliance to the rule Petitioner files his "Jurisdictional Brief" to the Supreme Court within 10 days after filing his Notice to Invoke Jurisdiction, despite receiving any rulings on his previous filed motions in order to secure his right to timely filings in case the District Court does not comply with the Rehearing Motions, Motion to Recall or Withdraw Mandate, etc.

SUMMARY OF THE ARGUMENT

The 10th Judicial Court and Second District Court of Appeal are relying on a "Principle Theory" of guilt to justify the illegal reclassification and enhancement of Petitioner's sentence from what should be a second degree sentencing to a first degree life sentence where Petitioner was charged with Florida Statute 775.087 in a felony involving the use of a firearm and Petitioner's evidence at trial coupled with the jury's special finding that Petitioner did not carry the firearm during the overt act involving a co-defendant that did carry the firearm.

The Second District Court's opinioned denial case cite reasoning to the (1971) Florida Supreme Court case of Roby v. State, 246 So. 2d 566, establishing a point of law that a person can be found guilty of a crime as a principle where the evidence at trial establishing such is contrary to and in conflict with Petitioner's standing argument support case cite to Florida Supreme Court case of Rodriguez v. State, 602 So. 2d 270 (Fla. 1992), where the Florida Supreme Court rejects the idea that a persons sentence can be enhanced or reclassified during an overt act in a crime involving the use of a firearm, despite that person being adjudicated guilty as a principle.

JURISDICTIONAL STATEMENTS

The Florida Supreme Court has a lawful basis for asserting discretionary jurisdiction to review a decision of a District Court of Appeals that expressly and directly conflicts with another decision. The District Court decision under review must contain a citation effectively establishing a point of law upon which decision rests. Fla. R. App. P. 9.030; 9.100; 9.120; Fla. Const. Article I Section 2; Article I Section 9; Article V § 3(b)(3) and United States Constitutional Amendment 1, 5, and 14.

ARGUMENT

"The decision of the District Court of Appeal cited in this case expressly and directly conflicts with the decision of this Court (Florida Supreme Court) in Rodriguez v. State, 602 So. 2d 270 (Fla. 1992)."

On May 22, 2013, the Second District Court of Appeal cited to the (1971) Florida Supreme Court case of Roby v. State, 246 So. 2d 566, which was used as the District Court's response opinion denial citation bases in DCA Case No. 2D13-377. (See Exhibit B page 104 Appendix attached)

The Florida Supreme Court holding in (Roby, supra) is contrary to and in conflict with the Florida Supreme Court case of Rodriguez v. State, 602 So. 2d 1270 (Fla. 1992), because in (Roby, supra) the high court seemingly established a point of law that:

“A person can be found guilty of a crime as a principle where the evidence at trial establishes such.” (See Exhibit J pages 226-229 Appendix attached)

The Florida Supreme Court holding on this point of law is contrary to and conflicts with the established holding on a point of law in (Rodriguez, supra) that:

“The Florida Supreme Court rejects the idea that a persons sentence can be enhanced or reclassified during an overt act in a crime involving the use of a firearm, despite that person being adjudicated guilty as a principle.” (See Exhibit A page 79 Appendix attached)

As these are two rulings of the Florida Supreme Court, a conflict has been created because the state courts are repeatedly enhancing and reclassifying persons sentences to 1st (first) degree punishment sentences based on “Principle Theories” disregarding persons found guilty of crimes involving the use of firearms and those persons found not to have actually possess the firearm but a co-perpetrator did posses the firearm during the overt act.

Directly departing from the established principle points of law in (Rodriguez, supra) because in (Rodriguez, supra) it was established that:

“Section 775.087(1) does not by its terms allow for vicarious enhancement because of the action of a co-defendant because without evidence establishing that a defendant having personal possession of the weapon during commission of the felony.” (See Exhibit A page 79 Appendix attached)

The Second District Court's reliance on (Roby, supra) was a case opinion of law decided in (1971). (Rodriguez, supra) was a case opinion of law decided in (1992). If the Florida Supreme Court is saying that a person charged with 775.087 has to be sentenced to a 1st degree sentence for not having a firearm because his co-defendant had a firearm and just because the law of "Principles" as disguised in the case of (Roby, supra) dictates that persons must receive the same sentence as his co-defendant no matter who actually possessed the firearm or not, directly conflicts and is contrary to the established law of (Rodriguez, supra).

Petitioner's charge is a similar image of (Rodriguez, supra) only that Petitioner was charged with Robbery with a Firearm and Rodriguez was charged with Attempted First Degree Murder. Both felonies of which involve the use of a firearm. Both felonies charged Florida Statute 775.087. Both felonies involved a co-defendant actually possessing the firearm and Petitioner's and Rodriguez's evidence established that they did not carry the firearm. Both felonies revolve on the State Prosecutor relying on the "Principle Theory" of guilt as an excuse to sentence Petitioner to a 1st degree sentence, when Petitioner could not receive no more than a 15 year mandatory sentence under P.R.R., just as Rodriguez.

Due to Petitioner's unusual circumstances this case warrants the Florida Supreme Court to exercise its discretion to accept the case for review where there is a need for clarification between the established law of (Rodriguez, supra) and (Roby, supra) concerning sentencing persons who do not actually possess the firearm but the co-perpetrator (co-defendant) does. Additionally, where the person is charged with 775.087

due process would require this application of clarification to be resolved despite Petitioner's sentence being final because there is a great public importance urging uniformity to construe the two opinioned holdings by the Florida Supreme Court, where Petitioner is being prejudicially harmed by the District Court's reliance on cited Florida Supreme Court authority holding that is contrary to (Rodriguez, supra). Therefore, resulting in a complete manifest injustice and denial of Petitioner's protected guarantee due process rights to equal protection of the law and to be treated alike.

Petitioner asks in good faith and prayerfully that this Court (Florida Supreme Court) quash the contrary decision of the Second District Court below of the 21 year old cited case holding of (Roby, supra) and reaffirm the correct interpretation of the law as opinioned in (Rodriguez, supra) pertaining to sentencing person in Robbery with a Firearm cases as this Court correctly interpreted in (1992). Also, asking in good faith this Court deem any justice to Petitioner's situation that this Court sees that has not been corrected as Petitioner has no other available remedies or Court to petition his illegal injustice concerning violation of his Constitutional rights to the U.S. Const. 5th, 6th, and 14th Amendment and also Fla. Const. I, 2; I, 9.

CONCLUSION

To prevent a manifest injustice this Court has discretionary jurisdiction to review the decision below due to the Second District Court's opinioned case cite denial being in conflict and total contrary in holdings of the Florida Supreme Court law, as the merits of Petitioner's argument is that of a Constitutional violation that is highly affected by the Florida Supreme Court's two contrary rulings. Also, Petitioner is seeking relief for this

Court to certify by law on a question passed by the Second District Court to be of great public importance of how persons with Robbery with a Firearm cases involving co-defendants who possess the firearm and are charged with 775.087 are to be sentenced?

CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief has been furnished to:

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Done and Ordered on JUNE Month of 25TH Day of 2013.

UNNOTARIZED OATH

Under penalties of perjury I declare that I have read the foregoing Jurisdictional Brief and the facts stated in it are true and correct.


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