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ATTORNEY GENERAL
MIAMI OFFICE

IN THE SUPREME COURT OF FLORIDA

IVAN HALL,

Petitioner,
v.

STATE OF FLORIDA,

Respondent.

DOCKETED
JUN 11 2014
ATTORNEY GENERAL

CASE NO. 3D13-2538
L.T. No. 05-30956

FILED

JOHN A. TOMASINO

2014 Jun 30 4:47 pm

CLERK, SUPREME COURT

PETITIONER'S JURISDICTIONAL BRIEF

ON DISCRETIONARY REVIEW FROM THE DISTRICT
COURT OF APPEAL, FOURTH DISTRICT STATE OF
FLORIDA

The opinion appealed is a denial of Petitioner's 3.800(a) Motion To
Correct Illegal Sentence

Submitted by:

Ivan Hall Appellant, DC# 194346
Charlotte Corr. Inst.
33123 Oil Well Road
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Petitioner, pro se

7/2/14

FILED
CLERK DISTRICT COURT OF
APPEAL - THIRD DISTRICT

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STATEMENT OF THE CASE AND FACTS

1. The name and location of the court that entered judgment under attack was: The Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, State of Florida.
2. The date of judgment and conviction was: June 12th, 2009.
3. The Defendant's length of sentence received in case # 05-30956A is 10 yrs., Burglary and Grand Theft; and in case # F08-043419 is 10yrs. Habitual Offender, Grand Theft.
4. Defendant was represented by:
 - (a) Sara A. Yousuf, Public Defender during preliminary hearing; arraignment and plea; trial; and sentencing.
5. Appellant filed his Motion to Correct an Illegal Sentence which is under review by this court.
6. The Post Conviction Court Issued its "Order Denying Defendant's Motion to Correct Illegal Sentence" on September 4, 2014.
7. Appellant filed an timely appeal in the District Court Of Appeal.
8. The Third District Court of Appeals issued its written opinion affirming the Lower Court's denial. (See Appendix A)
9. Petitioner filed a timely notice of appeal with the Third District Court of Appeal for discretionary review by this court.

SUMMARY OF ARGUMENT

In this case, the District Court of Appeal, relying on the Lower Court's reasoning for denial held that *"In exchange for Hall's admissions, Hall and the state agreed to the following sentences in each case[by plea],....Because the sentences imposed were legally permissible sentences that Hall agreed to accept, Hall's motion to correct an illegal sentence was properly denied, and we affirm"*. The decision of the district court cannot be reconciled with the previous decision of this court in *Williams v. State*, 500 So.2d 501, 503 (Fla. 1986), wherein this court held that. *"A trial court cannot impose an illegal sentence pursuant to a plea bargain."* Thus, the petitioner contends that the decision of the district court expressly and directly conflicts with a previous decision of this Court.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and conflicts with a decision of the Florida Supreme Court, its own previous decisions, and 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).

probation and the trial court imposed an agreed upon sentence of five years in state prison on each count to run consecutive..."

As explained below, the decision of the Third District Court conflicts with a decision of this Court, decisions of its own Court, and other districts, which all hold that a trial judge cannot impose an illegal sentence pursuant to a plea bargain. The Petitioner respectfully submits that this Court should grant discretionary review and resolve the conflict by quashing the decision of the District Court.

In Williams v. State 500 So.2d 501, 503, (Fla. 1986) this Court held in a similar case as the instant case before this Court (*Nor are we persuaded that the defendant's "acquiescence" to the conditions imposed by the trial judge makes a difference. A trial court cannot impose an illegal sentence pursuant to a plea bargain*). See Robbins v. State, 413 So.2d 840 (Fla. 3d DCA 1982) (*appellate review is always available where a court has imposed an illegal sentence, even if the judgment and sentence resulted from a guilty plea*); Smith v. State, 358 So.2d 1164 (Fla. 2d DCA 1978) (*appellant may appeal from an illegal sentence even when he has entered a guilty plea*).

The Third District held in Floyd v. State, 868 So.2d 576 (Fla.App. 3 Dist. 2004), relying on Williams, *supra.*, also made similar findings: "*Although it does not make a practical difference, defendant-appellant*

ARGUMENT

THE DECISION IN THIS CASE IS IN EXPRESS AND DIRECT CONFLICT WITH THE DECISION OF THIS COURT'S DECISION IN Williams v. State, 500 So.2d 501, 503 (Fla. 1986), THE THIRD DISTRICT IN Robbins v. State, 413 So. 2d 840 (Fla. 3DCA), Floyd v. State, 868 So. 2d 576 (Fla. 3DCA 2004). and, THE SECOND DISTRICT IN Smith v. State, 358 So. 2d 1164 (Fla. 2DCA 1978)

The District Court of Appeal, relying on the Lower Court's reasoning for denial held that *"In exchange for Hall's admissions, Hall and the state agreed to the following sentences in each case[by plea].....Because the sentences imposed were legally permissible sentences that Hall agreed to accept, Hall's motion to correct an illegal sentence was properly denied, and we affirm"*. (See Appendix A)

The Trial Court erred in denying ground 1 of appellant's Motion to Correct Illegal Sentence filed pursuant to Fla. Rule Crim. Proc. R. 3.800 (a) on the ground that:

" Defendant was sentenced to a total of fifteen years in state prison pursuant to a negotiated plea bargain on both the probation violation case and the new substantive offense. The record of defendant's plea colloquy and the proceedings immediately preceding and following the plea clearly reflect the terms of the plea and the intentions of the parties and the trial court. As to Defendant's probation case, Defendant admitted to his violation of

Floyd is correct in saying that his sentence on count three, aggravated assault exceeds the legal maximum. Aggravated assault is a third degree felony, see § 784.021(1) (a), (2), Fla. Stat. (1997). The fifteen-year sentence imposed on this count pursuant to the plea bargain exceeds the legal maximum and should be reduced to the five-year legal maximum. See also Williams v. State, 500 So.2d 501, 503 (Fla.1986), receded from in part on other grounds, > Quarterman v. State, 527 So.2d 1380, 1382 (Fla.1988)."

It has also been held that trial courts are not permitted to impose illegal sentences, even pursuant to a negotiated plea agreement. See Costin v. State, 46 So.3d 96, 97 (Fla. App. 1 Dist. 2010)

The State argues that Appellant is not entitled to challenge the legality of her sentences because they were entered pursuant to a negotiated plea agreement. This argument is erroneous. Trial courts are not permitted to impose illegal sentences, even pursuant to a negotiated plea agreement. Darling v. State, 886 So.2d 417, 418 (Fla. 1st DCA 2004) (reversing a sentence that exceeded the statutory maximum even though the defendant had agreed to the sentence); Bruno v. State, 837 So.2d 521, 523 (Fla. 1st DCA 2003) (reversing where the defendant's sentence included a type of penalty not authorized by law) Williams v. State, 500 So.2d 501, 503 (Fla.1986) (stating the general proposition) (receded from on other grounds in Quarterman v. State, 527 So.2d 1380, 1382 (Fla.1988)).

As alleged in the Motion To Correct Illegal Sentence, Appellant alleges that the Trial Court failed to properly sentence the Defendant separately for the two separate offenses in case #F0530956 to two separate sentences. In orally pronouncing the Defendant's sentence the Trial Court imposed a general sentence for both counts:

"I find that he did violate his probation in both cases. In case number 0530956, I sentence him to ten years with credit for time served..."

However, Hall's written sentence reflects two separate sentences for each count/offense, to wit.

"for a term of 5.00 years....OTHER PROVISION DESCRIPTION-: Consecutive as to other counts- it is further ordered that the sentence imposed for counts specified shall run as indicated with the sentence set forth in counts specified of this case.- COUNT-2 CONSECUTIVE TO COUNT- 1."

In Dailey v. State, 791 So.2d 586, (Fla. 3rd DCA 2001), the State conceded a similar error. The jury convicted Dailey of both counts in the information. Count 1: Burg. Unoccupied Dwelling and Count 2: Grand Theft, 3rd degree offenses. at sentencing the trial judge orally pronounced Dailey's sentence as follows:

"The court finds the Defendant to be a Habitual Offender. The court's going to sentence him to 15 years... But, Dailey's written sentencing order provided a five year term of incarceration for count 1 and an eighteen year term minimum mandatory sentence for count 2." Id. At.

This Court vacated Dailey's sentence, and reversed and remanded the case to the Trial Court for a new sentencing hearing based on the following rules of law:

"Florida Rules of Criminal Procedure, provides that every sentence or other final disposition of the case shall be pronounced on open court... 'moreover', when a Defendant is convicted of multiple offenses, a Trial Court should impose a separate sentence for each offense." Rogers v. State, 730 So.2d 1026 (Fla. 3rd DCA 1999); Duncan v. State, 706 So.2d 942 (Fla. 2nd DCA 1998).

Because Hall's sentence is illegal where the Trial Court failed to orally pronounce a separate sentence for each count/offense, and the written sentencing order fails to conform to the oral pronouncement, Hall, like Dailey, Supra is entitled to vacation of his sentence and to have a new sentencing hearing on both the Burg. Unoccupied Dwelling and the Grand Theft 3rd degree offenses, count (1) and count (2) of the information respectively.

Appellant is prejudiced in that where the court pronounced a general Ten (10) year sentence for case number F05-30956A in violation of Daily above, it stands to reason that the ten year sentence is for only one of the Third Degree offenses, which it is impossible to tell which one its applied to. The ten year sentence therefore exceeds the statutory maximum of five (5)

years allowed for Third Degree offenses, See this Court's holding in Jordan v. State, 28 So.3d 929 (Fla. App. 3 Dist. 2010)”:

“Sentence of 60 years for second degree murder with a deadly weapon was illegal, where statute provided that the maximum sentence for a life felony was a term of imprisonment not to exceed 40 years.”Darling v. State, 886 So.2d 417, 418 (Fla. 1st DCA 2004) (reversing a sentence that exceeded the statutory maximum even though the defendant had agreed to the sentence);

The Third District Court in Floyd v. State, 868 So.2d 576 (Fla. App. 3 Dist. 2004), relying on Williams, supra., also made similar findings: *“Although it does not make a practical difference, defendant-appellant Floyd is correct in saying that his sentence on count three, aggravated assault exceeds the legal maximum. Aggravated assault is a third degree felony, see § 784.021(1) (a), (2), Fla. Stat. (1997). The fifteen-year sentence imposed on this count pursuant to the plea bargain exceeds the legal maximum and should be reduced to the five-year legal maximum. See also Williams v. State, 500 So.2d 501, 503 (Fla.1986), receded from in part on other grounds, Quartermann v. State, 527 So.2d 1380, 1382 (Fla.1988).”*

The two offenses in case number F05-030956A violates the sequential conviction rule and can't be used as predicate prior convictions.

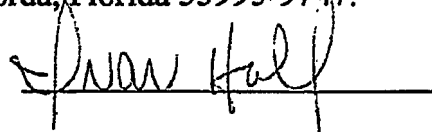
As in Dailey, supra., Defendant is entitled to be present at the resentencing hearing and to be represented by Counsel at the hearing. Id. at.

CONCLUSION

This Court has discretionary jurisdiction to review the decision below, and the court should exercise that jurisdiction to consider the merits of the Petitioner's argument.

UNNOTERIZED OATH §92.525

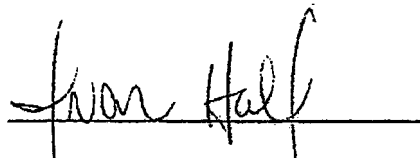
Under penalties of perjury, I, Ivan Hall swear and affirm that all statements in this Jurisdictional Brief are true and complete under §92.525, Florida Statutes (2012). Signed on this 8 day of June 5, 2014 at Charlotte Correctional Institution, Punta Gorda, Florida 33995-9747.

A handwritten signature in cursive script, appearing to read "Ivan Hall", is written over a horizontal line.

Ivan Hall, *pro se*

CERTIFICATE OF COMPLIANCE

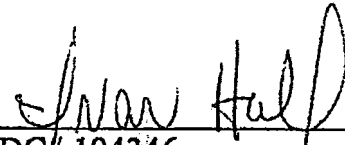
I HEREBY CERTIFY that this brief comports with the font and size requirements of Fla.R.App.P. 9.210(a)(2).

A handwritten signature in cursive script, appearing to read "Ivan Hall", is written over a horizontal line.

Ivan Hall, *pro se*

CERTIFICATE OF SERVICE

I, Ivan Hall, HEREBY CERTIFY, that a true and correct copy of the foregoing Initial Brief has been placed in to the hands of Department of Corrections staff for the express purpose of mailing via U.S. Mail to: Attorney General's Office, 444 Brickell Avenue, Suite 950, 33131, on this 8th day of June 2014.



DC# 194346
Ivan Hall Appellant, *pro se*
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IN THE SUPREME COURT OF FLORIDA

IVAN HALL,
Petitioner,
v.

Case No. 3D13-2538

L.T. No. 05-30956

STATE OF FLORIDA,
Respondent.

PETITIONER'S JURISDICTIONAL BRIEF

APPENDIX OF EXHIBITS COVER

SHEET

Exhibit- A

Third District Court Of Appeal's Written Opinion

Submitted by,

, Ivan Hall # 194346
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Petitioner, pro-se

APPENDIX – A

Third District Court of Appeal

State of Florida

Opinion filed April 30, 2014.

Not final until disposition of timely filed motion for rehearing.

No. 3D13-2538
Lower Tribunal No. 05-30956

Ivan Jovan Hall,
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, Bronwyn C. Miller, Judge.

Ivan Jovan Hall, in proper person.

Pamela Jo Bondi, Attorney General, for appellee.

Before ROTHENBERG, SALTER, and LOGUE, JJ.

ROTHENBERG, J.