From : DARREL HARVEY, ID: 503334
To : Myra Harvey, CustomerID: 21407227
Date : 6/25/2020 6:47:16 PM EST, Letter ID: 862193704
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THE SUPREME COURT
STATE OF FLORIDA

DARREL DEON HARVEY
Petitioner

Case No:
LT Case : 2017 CF 526
First DCA : 1D18-2729

v

C. ATKINS
WARDEN OF GADSDEN REENTRY CENTER
Respondent

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

Pursuant to Rule 9.100(a), Darrel D. Harvey petitions the court for a writ of habeas corpus directed to the Respondent(s), C. Atkins, as warden of Gadsden Reentry Center and shows the court as follows:

I. BASIS FOR INVOKING JURISDICTION

This Court has jurisdiction to issue a writ of habeas corpus under Article V, Section 3(b)(9) of the Florida Constitution and as restated in Rule 9.030(a)(3) of the Florida Rules of Appellate Procedure.

STATEMENT OF FACTS

Petitioner Darrel Deon Harvey was arrested as part of an organized online law enforcement sting - Operation Cupid's Arrow. Petitioner was charged with traveling to meet a minor (Count I), soliciting a child using a computer (Count II), and tampering with physical evidence (Count III). Petitioner moved to dismiss the case due to various defects in the Information. In a Second Motion to Dismiss (filed October 30, 2017) and the Amended Motion to Dismiss (filed January 10, 2018) petitioner detailed how the charging document was constitutionally insufficient (Exhibit B). The petitioner's counsel argued that the language used in the Information (as to Count I) omitted the essential elements stated in the statute and that the State was attempting to alter what was proscribed as criminal conduct within the language of the statute. The Amended Second Motion to Dismiss highlighted the difference between final clause of the statutory language (as

to Count I) and the addition of "or another person believed to be a child" to the final clause of the statute as being a violation of petitioner's due process by the prosecutor.

On January 30, 2018 petitioner's counsel filed a motion to deem facts of the above mentioned motions as admitted according to the Rule which states that all factual matters alleged in a motion to dismiss shall be considered admitted unless specifically denied by the State in a traverse. Counsel's motion was denied.

The two motions proceeded to hearing on January 31, 2018 where petitioner's counsel orally argued that the State's omission of the statutory language from the charging document prejudiced the petitioner by failing to place him on notice of what acts he allegedly solicited a minor to commit. Counsel also argued the addition to the language to the statute was unlawful. The trial court found no prejudice to petitioner in the charging language and denied both motions. Despite petitioner's counsel stating in open court "I would note that there is no traverse that the State has filed on this." Both motions were denied without a traverse, demur, or an Amended Information being filed. On February 13, 2018 without an arraignment the State amended the Information that was previously ruled as nonprejudicial to the petitioner. The language of Count I remained unchanged, vague, and defective.

The first attempt at trial took place in March of 2018. On the morning of trial, petitioner's attorney renewed the earlier motion to dismiss related to the charging document. The renewed motion was denied. The trial ended with a mistrial.

The case proceeded to trial in May of 2018. After the State rested petitioner's attorney's made a Motion for Judgement of Acquittal as to all counts. Counsel additionally filed a written Motion for Judgement of Acquittal. As to the tampering with evidence count, petitioner relied on the authority of Costanzo v. State, 152 So. 3d 737 (Fla. 4th DCA 2014). The motion was denied. The Motion for Judgement of Acquittal additionally raised the language used in the charging document. The motion was denied as to that argument as well.

Petitioner's counsel presented its case. The parties broke for recess. A charge conference was held. Petitioner's counsel asked for modified jury instructions matching the language of the charging document

and the definition of other unlawful sexual conduct. The modified version adjusted for the missing elements required to be inserted by this Court's standard instructions 11.17(c). That request was denied. The trial court insisted on using the standard instructions. Petitioner's counsel also requested special instructions as to the tampering with evidence count. That request was also denied.

Petitioner chose not to testify. Counsel rested. The State called rebuttal witnesses. Petitioner's counsel renewed his Motion for Judgement of Acquittal and his objections to jury instructions.The jury was instructed. The jury returned guilty verdicts to all three counts.

Following trial, Petitioner filed a Renewed Motion for Judgement of Acquittal. In this motion, petitioner argued double jeopardy as to Count I and II. He also attached and incorporated his earlier, written Motion for Judgement of Acquittal in which he argued for an acquittal of the tampering with evidence charge based on Costanzo v. State, 152 So. 3d 737 (Fla 4th DCA) and argued the language of the charging document alleging the petitioner had traveled with the intent to engage in other unlawful sexual conduct. Counsel also filed a Motion for New Trial. Both motions were summarily denied.

Petitioner proceeded to sentencing. The State dismissed Count II. The trial court imposed a three-year prison sentence. On June 26, 2018 petitioner was transferred from county jail to the Florida Department of Corrections. A timely Notice of Appeal was filed on June 28, 2018 (Exhibit A)

While incarcerated petitioner filed inmate grievances challenging the validity of the interpretation of the charging document upon which he was convicted and its relationship to departmental rules. The grievance process led to two civil petitions (1D19-0707 and SC19-1423) challenging the collateral civil consequences of the department's interpretation of the defective information and its departmental rules. The First District Court of Appeal dismissed petitioner's petition without prejudice for the civil issue to be addressed in the lower tribunal. Petitioner filed two administrative petitions for review in the lower tribunal per the 1st DCA opinion. All petitions including the one submitted to this Court were dismissed (Exhibit D, E, F) due to petitioner's direct appeal pending and Section II(c)(7)(b), of the Supreme Court Manual of Internal Operating Procedures.

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As June 27, 2020 petitioner has not received a final decision on his direct appeal nor a written reason as to the cause of the delay. In accordance to Article 1, section 16(b)10(b) of the Florida Constitution petitioner direct appeal must be declared completed without a decision. Petitioner should now be allowed to file a petition before this Court for redress to this constitutional issue.

NATURE OF RELIEF

Accept petitioner's request to discharge appellate counsel this allowing petitioner to proceed pro se. In addition, petitioner prays that this Court grants petitioner all the relief to which he may be entitled in this proceeding due to a manifest of injustice, including an immediate dismissal of all charges.

ARGUMENT

The argument made herein applies only to Count I of the Amended Information. Count II was dismissed and is not pending before this Court.

Case law is clear that "a conviction on a charge not made by the indictment or information is a denial of due process." State v. Gray, 435 So. 2d 816, 818 (Fla. 1983). Such a defect "can be raised at anytime -- before trial, after trial, on appeal, or by habeas corpus." Id

The Amended Information filed against petitioner accused petitioner of some unspecified conduct charged as other unlawful sexual conduct (Exhibit B). This phrase that has not been defined as an offense, has not been codified by the Florida Legislature as a felony, and has not been interpreted by this Court as unlawful. Instead of reciting the exact language of § 847.0135(4)(a) or using language of equivalent import the State opted for a nonspecific charge on a theory it was of equivalent import. The State in essence created its own customized charge. This customized charge included both material omission and material addition that were not within the terms of the statute nor 11.17(c) jury instructions. Petitioner brought these issues to both the State and court's attention pretrial, during trial, after trial, post conviction, by habeas corpus, and direct appeal (Exhibit D, E, F). Neither the State, the trial court, nor the appellate court has ever taken action.

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THE OMISSION

The State's Amended Information omitted the three proscribed chapters from the body of the charge that were essential elements of the Traveling to Meet a Minor statute § 847.0135(4)(a) and this Court's jury instructions. (claiming reliance on 11.17(c) instructions that was adopted in 2009 [6 So. 3d 574] and amended in 2013 [122 So. 3d 263] and 2015 [163 So. 3d 478].) The omitted elements are referenced twice within the instruction where it states: [(insert violation of chapter 794, 800, or 827 as alleged in the charging document)]. (Exhibit C) The State could have attempted prosecuting petitioner for communicating with the intent to engage in any illegal act described within chapter 794, relating to sexual battery, chapter 800, relating to lewdness and indecent exposure, or chapter 827, relating to child abuse as required by the instructions, but the State, instead, omitted these essential elements from the body of the charge and thereby any theory of prosecution against the specific sections they contained.

The State's persistent reliance on a duplicitous theory that petitioner had communicated with a child for the purpose of some unspecified conduct allowed the jurors to retroactively decide whether they believed that the conduct presented in evidence as other unlawful sexual conduct was illegal. "Other" commonly refers to "one of two or more," and "unlawful" refers to "against the law." See The American Heritage Dictionary Second College Edition (defining "other" to mean "Being or designating the remaining ones of several" and " unlawful" to mean "not lawful illegal"). Additionally its these referenced chapters containing multiple sections outlining various ways to violate the chapters that were omitted. The Amended Information did not clearly cite any particular section containing the specifically charged "other unlawful sexual conduct" that would have alerted petitioner to the nature of his violation. While disjunctive or alternative allegations are approved method of pleading, duplicity is not. In Fountain v. State, 623 So. 2d 572 (Fla. 1st DCA 1993) see also James v. State, 706 So. 2d 64 (Fla. 5th DCA 1998) and Howell v. State, 45 So. 3d 71 (Fla. 4th DCA 2010), where the court defined duplicity as "the charging of multiple offenses in a single count of an indictment or information." The charging of multiple offenses in one count is prohibited because of the potential results.

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The definition of sexual conduct itself contains multiple ways to violate various statutes. In this case the absence of citing a specific section from a referenced chapter makes it impossible to determine which specific violation of law supports the petitioner's conviction. Under Fountain, a pleading that charges multiple offenses in a single count is fundamentally defective and may be attacked at any time. Petitioner was tried without having been informed as to what specific law his communication allegedly violated. As stated in the persuasive, sister court holding from Georgia: the catchall language was placed in the statute to require the State to allege and prove that the petitioner's conduct violated a specific criminal law. Wetzel v. State, 779 S.E. 2d 263, 268 (Ga 2015).

THE ADDITION

The State's charging document added the prospect of solicitation with a believed child when the statutory language only allows a conviction only for the solicitation of an actual child. In Lee v. State, 258 So. 3d 1297 (Fla. 2018) this Court footnotes stated:

"Shelley involved violations of section 847.0135(3)(b) and (4)(b), Florida Statutes (2011), which criminalize solicitation of "a parent, legal guardian, or custodian of a child or person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child" in specific acts or sexual conduct, whereas this case involves violations of Section 847.0135(3)(a) and (4)(a), which criminalize solicitation of "a child or another person believed by the person to be a child." Thus, the only difference between the subsection is who the defendant believes he or she is soliciting."

Petitioner respectfully challenges this interpretation. This Court and other courts continue to apply the Blockburger "same element" test for crimes prosecuted under § 847.0135(3)(a) and § 847.0135(4)(a) after the decision in State v. Shelley, 176 So. 3d 914 (Fla. 2015), yet courts fail to recognize that, unlike (3)(b) and (4)(b), (3)(a) contains an element that (4)(a) does not. §847.013(3)(a)'s final clause contains the phrase "or another person believed by the person to be a child" which was intentionally omitted from in the final clause in (4)(a). Petitioner wishes to call this Court's attention to this specific phraseology because the State needed to customized its charge against petitioner, to include a believed child, in order to prosecute. Petitioner's counsel challenged this modification and his motion was denied without a traverse. Petitioner, by this petition, is again restating that had the legislature intended to broaden the scope and application of (4)(a)

to include a "believed child," it could have easily done so by including "or another person believed by the person to be a child" in the final clause of (4)(a) as it had done in (3)(a). The legislature declined to do so, and, in its absence, the plain reading of the statute compels this Court to rule that the statutory construction of the final phrase in (4)(a) is indeed favorable to the petitioner which required the State to prove the solicitation of an actual child not a believed one. The State failed to do so therefore petitioner should be immediately discharged.

Consider the following example. Suppose a parent reviewed their minor child's smartphone and observes that a suspect had solicited their minor child for sex. The parent then shares the conversation with law enforcement and an officer assumes the role of the minor child. The suspect continues to communicate with the officer believing he's communicating with the minor and again solicits the illegal act. The conversation leads to an invitation to meet. The suspect travels to meet the person he believes is a minor at the agreed upon location and is arrested. Has he not committed the two offenses necessary to meet the requirements of §847.0135(4)(a)? Yes: one for the original solicitation of an actual minor child for sex discovered by the parent (the first solicitation of an actual child, and one where he did not travel) and one for traveling to meet the minor or believed minor after the second solicitation with the officer. In this situation, the first offense turned on the fact the suspect had engaged in unlawful sexual conduct with an actual child, and the second offense turned on the second solicitation in which the suspect travelled to meet the child or another person he believed to be a child for [redacted] sex. This scenario is contrary to §847.0135(4)(a)

This example details the intent of §847.0135(4)(a) and incorporates every word written within the statutue. The absence of the language in the final clause shows how the legislature never intended for (4)(a) to be a sentence enhancement of (3)(a) when the original solicitation did involved communication with law enforcement and not an actual child. Lawyers for clients whose convictions were a result of a police sting continue to fail to acknowledge this vital deficiency, one that now requires an interpretation by this Court. No court has ever had to address the "intendment" of (4)(a)'s final clause, and by this petition petitioner affirmatively wishes to discharge his appellate counsel and proceed pro se to have access to this Court to remedy.

In 2007 the legislature significantly amended §847.0135(3)(a). They removed the language referencing prohibited conduct "i.e relating to sexual battery, lewdness, or child abuse", and substituted that language by appending the statute with the clause "or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child." In addition to modifying (3)(a) the legislature enacted the "Traveling to Meet a Minor" statute, 847.0135(4)(a), which incorporated some of the language used in (3)(a). The new statute initially mirrors the language of (3)(a) for the purpose of traveling, but the

legislature made critical changes in the language regarding the initial solicition in (4)(a). They began by replacing the word "commit" with "engage in," the word "any" with "other," and finally they restricted the final clause to only include an actual child by removing "or with another person believed by the person to be a child " to read "or to otherwise engage in other unlawful conduct with a child." It's the petitioner's belief that the legislature intentionally distinguished these two statutes by specifically limiting its prohibition to communications with the intent to solicit or lure a child or believed child "to commit" an illegal act in §847.0135(3)(a) as a third degree felony, and elected to enhanced the penalty to a second degree felony in §847.0135(4)(a), if and only if, the accused purpose for traveling met the criteria in (3)(a) after the solicition a real child.

In addition to the above mentioned requirement that there must be an actual child. Petitioner also believes the purpose of the final clause was to allow the State to cite what specific law, involving sexual conduct, that was violated and referenced by the preceding chapters. Petitioner's belief can be supported by the plain reading of the statute which uses parallel language to identify a specific chapter violated, followed by "otherwise" defined as "in other respect" (The American Heritage Dictionary Second College Edition), and the verbal phrase "to engage" that follows "or otherwise" which parallels the verbal phrase "to engage" that precedes the proscribed chapters. Then "to engage" is [redacted] followed by the word "other" which is defined as "being or designating the remaining ones of several" Id and used in conjunction with the type of conduct that is prohibited. Hence the final clause requires the citing of a specific section violation involving sexual conduct from the previously referenced chapters violated.

The State, courts, defense counsels, and appellate attorneys have all consistently ignored the purpose of the phrase "or otherwise to engage in other" written in §847.0135(4)(a). Instead these words or this phrase has been treated as mere surplusage. Even though this Court vowed to avoid interpreting statutes in a manner that renders any portion of them as surplusage or meaningless. See Perkins v. State, 576 So. 2d 1310, 1314 (Fla. 1991) "[W]e also have held that criminal statutes must be strictly construed according to their letter, and that the rule of construction emanates from article I, section 9 and article II, section 3 of the Florida

Constitution." Id 1312-1314. Accordingly the omission of "or otherwise to engage in other" from this Court's Standard Jury Instructions [redacted] violates the Constitution because these words or this phrase is not meaningless.The 11.17(c) Traveling to Meet a Minor §847.0135(4)(a) instructions state:

To prove the crime of Traveling to Meet a Minor, the State must prove the following two elements beyond reasonable doubt:

1. (Defendant) used a[n] [computer online service] [Internet Service] [local bulletin board service] [device capable of data storage or transmission] to [seduce] [solicit] [lure] [entice] [attempt to [seduce] [solicit] [lure] [entice]] a [child] [person believed by the defendant to be a child] to engage in [(insert illegal act in chapter 794, 800, or 827 as alleged in the charging document)] [unlawful sexual conduct].

2. (Defendant) then [traveled] [attempted to travel] [caused another to travel] [attempted to cause another to travel] [within this state] [from this state] for the purpose of [(insert illegal act in chapter 794, 800, or 827 as alleged in the charging document)] [unlawful sexual conduct] with a [child] [person believed by the defendant to be a child].

No where in these instructions is there a recitation of the words or phrase "or otherwise engage in other." In fact, with the absence of this phrase, one could arguably challenge that these instructions are nonsensical because not all "illegal acts" in chapters 794, 800, and 827 are distinct sex acts. In addition the use of the word "or" was used to specify the type of conduct made illegal in the previously referenced chapters. Validated by "or" being defined as "a synonymous or equivalent expression." Id. In this statute "or" is used to narrowly tailor the statute to avoid First Amendment issues. Otherwise the statute could be held to violate the First Amendment because it would be broader than necessary to achieve its intended purpose. See People v. Foley, 731 N.E. 2d 123 at 128.

For example code section 827.03(1) Simple Child Abuse is an illegal act in chapter 827. Under the plain reading of the standard jury instructions one could lawfully be prosecuted under §847.0135(4)(a) if he traveled to meet a minor after enticing a child to hit his or her sibling, child abuse. Would a jury not then question the purpose for the inclusion of other unlawful sexual conduct? Because, as in this example, the phrase is not synonymous with simple child abuse. Hence nonsensical because instructing the jury to chose between simple child abuse "or" unlawful sexual conduct would not make sense. Unlawful sexual conduct, in this case, would be an uncharged crime. Likewise a charge under [redacted] section 800.02 Unnatural and Lascivious Act, normally, a second degree misdemeanor, could be broadened to a second degree felony under §847.0135(4)(a) by simply involving the use of an electronic device. The statute in relationship with the current jury instructions is too broad. Petitioner believes the jury instructions should read as follows:

To prove the crime of Traveling to Meet a Minor, the State must prove the following two elements beyond reasonable doubt:

1. (Defendant) used a[n] [computer online service] [Internet Service] [local bulletin board service] [device capable of data storage or transmission] to [seduce] [solicit] [lure] [entice] [attempt to [seduce] [solicit] [lure] [entice]] a [child] [person believed by the defendant to be a child] to engage in any illegal act in (insert chapter(s) alleged in the charging document), or otherwise to engage in [(insert section and title involving sexual conduct as alleged in the charging document)] with (victim) a child.

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2. (Defendant) then [traveled] [attempted to travel] [caused another to travel] [attempted to cause another to travel] [within this state] [from this state] for the purpose of engaging in any illegal act in (insert chapter(s) alleged in the charging document), or otherwise to engage in [(insert section and title involving sexual conduct as alleged in the charging document)] with (victim) or (person believed by the defendant to be a child).

In support of this argument petitioner turns to a similar statute and judicial decision by The Supreme Court of

Georgia, a sister State. In Wetzel v. State, 779 S.E. 2d 263 (Ga. 2015) the Court ruled that:

"[The parties] now agree, and we now hold, that in saying that a person violates OCGA § 16-12-100.2(d)(1) by using an electronic device to seduce, etc. a child in order "to engage in any conduct that by its nature is an unlawful sexual offense against a child," the General Assembly was requiring the State to allege and prove that the defendant's conduct violated another specific criminal law"

The primary difference in construction between the Georgia statute and the Florida statute is written in the

body. The Georgia statute contains enumerated offenses whereas the Florida statute only contain proscribed

chapters. Therefore the Georgia ruling requiring "the State to allege and prove that the defendant's conduct

violated another specific criminal law" is logical, but the body of the Florida statute does not contain any

enumerated offenses therefore the logical conclusion would mean the final clause requires the State to cite an

enumerated offense from the referenced chapters it intended to prove a defendant's conduct violated.

Petitioner has been arguing he's being illegally detained due to numerous constitutional violations. Starting

with a insufficient charging document (Exhibit B). The Amended Information charged that:

On February 12, 2017, did unlawfully and knowingly travel any distance within, this State, for the purpose of engaging in an illegal act described in chapter 794, chapter 800, or chapter 827, Florida Statutes, or to otherwise engage in other unlawful sexual conduct with a child or a person believed to be a child, after using a computer online service, internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or attempt to do so, a child or another person believed to be a child, to engage in or to otherwise engage in other unlawful sexual conduct with a child or another person believed to be a child, contrary to Section 847.0135(4)(a), Florida Statutes

This was the language the trial court confirmed and used for petitioner's trial and conviction. The jurors were then

instructed that:

To prove the crime of Traveling to Meet a Minor, the State must prove the following two elements beyond reasonable doubt:

1. Darrell Harvey used a computer on-line service, Internet Service, local bulletin board service, or any other device capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a person believed by the defendant to be a child to engage in unlawful sexual conduct.

2. Darrel Harvey then traveled within this state for the purpose of unlawful sexual conduct with a person believed by the defendant to be a child.

Incorporating the language from above with this Courts 11.17(c) Traveling to Meet a Minor §847.0135(4)(a)

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standard instructions reflect a [redacted] constitutional issue. [( )] represents the omission of elements [redacted] and equates to a nonexistent crime. The jury was instructed that the State must prove the following two elements beyond all reasonable doubt:

1. (Darrell Harvey) used a [computer online service] [Internet Service] [local bulletin board service] [device capable of data storage or transmission] to [seduce] [solicit] [lure] [entice] [attempt to [seduce] [solicit] [lure] [entice]] a [person believed by the defendant to be a child] to engage in [( )] [unlawful sexual conduct].

2. (Darrell Harvey) then [traveled] [within this state] [from this state] for the purpose of [( )] [unlawful sexual conduct] with a [person believed by the defendant to be a child].

No matter how reprehensible or detestable courts may feel about the nature of this type of crime, courts were not given the authority to alter the legislature's intent by devising jury instructions that denies due process of law. Petitioner is being illegally detained for engaging in [( )], literally nothing, nonexistent, Based on this Court removal of portions of the legislature's language in its standard jury instructions. Missing language treated as surplusage that deprived petitioner his due process right to be judged by a fully informed jury. This Court's instructions allowed the trial judge to simply ingnore the charging deficiency that was absent of a crime, resulting in [unlawful sexual conduct] serving as the default element in the instructions. Petitioner then was convicted for unlawful sexual conduct which, by its own definition, contains multiple ways to violate the law. Unlawful acts which unequivocally meets the definition of the duplicity not allowed in Fountain v. State, 623 So. 2d 572 (Fla. 1st DCA 1993). Moreover, even if "or otherwise engage in other" had been included in the standard instructions, jurors would have had to choose between "to engage in" (a nonexistent offense), or "to otherwise engage in" other (unlawful sexual conduct) which, as I explained earlier is a nonsensical choice. Even more so nonsensical, if [( )] were replaced with an actual violation, i.e. sexual battery, because sexual battery by definition is sexual conduct. Therefore to engage in (sexual battery) "or" to otherwise to engage in (other unlawful sexual conduct) would equate to the latter being a misnomer. Petitioner's counsel submitted special instruction in an attempt to correct this deficiency, the submission was denied. In addition, the omission of [child] from the first element broadened the scope of the legislatures intent by allowing a prosecution based on a believed child which results in prejudice to any defendant. Therefore, juries are not

being fully informed according to the strict Rules of Construction which, at a minimum, is a denial of due process. A misled jury should not have been allowed to convict petitioner for a nonexistent crime (count I) nor convict him for tampering with evidence of a nonexistent crime (count III). As stated in Achin v. State, 436 So. 2d 30 (Fla. 1982). "[O]ne may never be convicted of a non-existent crime."

During its prosecution and after the State continues to deny petitioner the constitutional protections guaranteed by the Florida Constitution. Article I, section 9 (regarding a challenge to the insufficient charging document and the modifications to the statute), article I, section 16 (challenging the omitted elements), article II, section 3 (regarding a challenge to the jury instructions), article 1, section 16(b)10(b) (regarding the time limitation of direct appeal), article I, sections 13 and 21 (regarding petitioner's civil petitions), and article I, section 9 (relating to a fair trial), all [redacted] denied without any written opinions or case law supporting why. These summarily denials went well beyond procedural due process. Petitioner's unlawful detainment is due to this Court's jury instructions and has been extended by the use of Section II(c)(7)(b) of this Court's manual. Petitioner first request for post conviction relief which addressed the defective information was in February of 2019. Petitioner now prays for this Court to address this continued manifest of injustice, issue a writ returnable immediately, halt any pending prosecutions involving § 847.0135(4)(a) and reverse any previous convictions charged under § 847.0135(4)(a) where the existence of an "actual child" was not proven. FRCP 3.140(d)(1) requires this reversal because this error or omission in fact misled defendants to their prejudice.

Petitioner's interpretation of the first element, restated below, intelligently uses the statute's exact words. Therefore this Court is under an obligation to construe this in the manner most favorable to the petitioner. See 775.021(1), Florida Constitution.

Florida Statute 775.021(1) is founded on the principles of fairness and justice, that a person is entitled to clear notice of what acts are proscribed and therefore given the benefit of the doubt when a criminal statute is ambiguous. Applying the rule that criminal statutes must be strictly construed, nothing not clearly and intelligently described in a statute's very words shall be considered within it terms. Earnest v. State, 351 So 2d

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357 (Fla1977) (citations omitted)

1. (Defendant) used a[n] [computer online service] [Internet Service] [local bulletin board service] [device capable of data storage or transmission] to [seduce] [solicit] [lure] [entice] [attempt to [seduce] [solicit] [lure] [entice]] a [child] [person believed by the defendant to be a child] to engage in any illegal act in (insert chapter(s) alleged in the charging document), or otherwise to engage in [(insert section and title involving sexual conduct as alleged in the charging document)] with (victim) a child.

Maybe the Legislature intentionally omitted the belived child from the language of § 847.0135(4)(a) to prevent

(4)(a) from being abused by law enforcement when used in reverse sting operations. An example of such

an abuse was demonstrated during petitioner's Second Amended Motion to Dismiss hearing on 1/31/18

when the petitioner's counsel addressed the court about the additional language used in the information (R:280):

COURT: What about the argument in regards to -- that the count should not contain this additional language, unlawful sexual conduct with a child or another person believed to be a child?

PROSECUTOR: Judge, I'm sorry. I don't have my statute book down here with me. Clearly, for us to be able to use the statute for these type of laws, we're not talking about children being used. We're talking about adults posing as children.

Obviously the Legislature gave the State and law enforcement some leeway with charging under 847.0135(3)(a)

and its use in proactive investigations and reverse sting operations, and felt even if law enforcement needed a

person to travel during their "sting" prosecutions should be limited to § 847.0135(3)(a), a third degree

felony, when it began and ended with an officer posing as child. Then charge under § 847.0135(4)(a), a second

degree felony, ~~only~~ for their reactive investigations that began with the unlawful communications with an

actual child. This analysis above in conjunction with a de no vo review of the Amended Information (Exhibit B)

and the Standard Jury Instruction 11.17(c) (Exhibit C) should be favorable enough to require this Court to issue

an immediate reversal of petitioner's conviction. Petitioner has been unjustly detained for over 768 days without

the due process of law that requires loss of liberty. Emergency relief in this case is essential. Every additional day

incarcerated matters. Petitioner has been denied the familial right to see his own children (Exhibit E), denied any

ability for prison work release due his custody level (Exhibit F), and now, after two years of waiting, failure of the

First DCA to meet their constitutional requirements regarding completion of his direct appeal. Direct appeals are

not to be indefinite. Petitioner had previously attempted to use the collateral consequences of the defective

information to obtain relief (Exhibits D, E, F), but the all courts, including this one (SC19-1423), refused to cure. Time has now expired. Nothing can be considered pending, therefore petitioner wishes now to be heard by this Court.

From : DARREL HARVEY, ID: 503334
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Date : 6/25/2020 6:47:12 PM EST, Letter ID: 862193662
Location : 144
Housing : C2131S

[Exhibit A] Notice of Appeal

[Exhibit B] Amended Information

[Exhibit C] 11.17(c) Standard Jury Instructions

[Exhibit D] Response from habeas corpus case no.1D19-0707 by First DCA

[Exhibit E] Response from petition for review case 19000 746 CAA by Gadsden Courty Circuit Court

[Exhibit F] Response from petition for review case 2019 CA 1102 by Leon Courty Circuit Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this petition was furnished to Gadsden Reentry Center Officials for U.S. Mailing to the Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, Ashley Moody, Attorney General, PL01 the Capital, Tallahassee, Florida 32399, hand delievered to C. Atkins, Warden, Gadsden Reentry Center, 540 Opportunity Lane, Havana, Florida 32333, and ACLU of Florida, 4343 West Flagler Street #400, Miami, Florida 33134 on this 29 th day of June, 2020

/s/ _____
Darrel Deon Harvey, pro se DC# 503334
Gadsden Reentry Center
540 Opportunity Lane
Havana, Florida 32333

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this petition complies with the font requirements of Rule 9.100 of the Florida Rules of Appellate Procedure to the best of Petitioner's ability as in inmate incarcerated in the Florida Department of Corrections.

/s/ _____
Darrel Deon Harvey, pro se DC# 503334
Gadsden Reentry Center
540 Opportunity Lane
Havana, Florida 32333

PROVIDED FOR MAILING
AT GADSDEN RE-ENTRY CENTER
JUN 29 2020
OFFICER INITIALS _____
INMATE INITIALS _____