RECEIVED 09/23/2016 FLORIDA SUPREME COURT

IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT STATE OF FLORIDA

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2 2 2016
D COURT OF APPEAL
DISTRICT

DARRYL LEWIS DAVIS,
Defendant/Petitioner,

v. **Case No: 5D15-2507**

STATE OF FLORIDA,
Plaintiff/Respondent.
_____/

NOTICE TO INVOKE DISCRETIONARY JURISDICTION

NOTICE IS GIVEN that the Defendant/Petitioner, **DARRYL LEWIS DAVIS** invokes the discretionary jurisdiction of the Supreme Court to review the decision of this court rendered on the 15th day of July, 2016 (Opinion attached) (rehearing/certification denied on August 17, 2016). The decision expressly and directly conflicts with another decision in the Fourth District Court of Appeal.

/s/ Darryl Lewis Davis
DARRYL LEWIS DAVIS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this document was placed in the hands of the Mailroom Personnel at Franklin Correctional Institution for the purpose of mailing to the Office of the Attorney General at 444 Seabreeze Blvd Daytona Beach, Fl. 32114 on this 12th day of September 2016.

TO FRANKLIN CI
FOR MAILING ON
9 / 12 / 16
INMATE INITIALS D.D

/s/ Darryl Lewis Davis
DARRYL LEWIS DAVIS
Franklin Correctional Institution
1760 Highway 67 North
Carrabelle, Florida 32322

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

DARRYL LEWIS DAVIS,

Petitioner,

v. Case No. 5D15-2507

STATE OF FLORIDA,

Respondent.

_____/

Opinion filed July 15, 2016

Petition for Writ of Habeas Corpus, A Case of Original Jurisdiction.

Darryl Lewis Davis, Carrabelle, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Rebecca Rock McGuigan, Assistant Attorney General, Daytona Beach, for Respondent.

PER CURIAM.

Darryl Lewis Davis petitions this court for writ of habeas corpus regarding his convictions and life sentences in two cases. Davis was charged in both cases with robbery with a firearm. Neither the informations nor the evidence presented in Davis's trials alleged that he used any weapon other than a firearm. Separate juries found Davis

guilty of robbery with a deadly weapon but made special findings that he did not possess a firearm during the commission of the crimes.

We hold that it was error to list robbery with a deadly weapon as a lesser-included offense on the verdict forms in these cases. See Growden v. State, 372 So. 2d 930, 931 (Fla. 1979); Stephens v. State, 396 So. 2d 741, 742 (Fla. 5th DCA 1981); Deleon v. State, 66 So. 3d 391, 394-95 (Fla. 2d DCA 2011). Furthermore, the verdicts and special findings were inconsistent. See Starling v. State, 152 So. 3d 868, 868 (Fla. 1st DCA 2014); Nettles v. State, 112 So. 3d 782, 783 (Fla. 1st DCA 2013). Failure to correct Davis's convictions, which resulted in consecutive life sentences, would constitute a manifest injustice.

Accordingly, we grant Davis's petitions for writ of habeas corpus and remand for entry of corrected judgments that adjudicate him guilty of robbery with a weapon and resentencing according to a revised Criminal Punishment Code scoresheet.

PETITIONS GRANTED.

SAWAYA, ORFINGER and EDWARDS, JJ., concur.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

DARRYL LEWIS DAVIS,

Petitioner,

v.

CORRECTED
CASE NO. 5D15-2507

STATE OF FLORIDA,

Respondent.
_____/

DATE: August 17, 2016

BY ORDER OF THE COURT:

ORDERED that Petitioner's Motion for Rehearing, Clarification or Certification, filed July 29, 2016, is denied.

I hereby certify that the foregoing is (a true copy of) the original Court order.

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK

Authorized by: Judges Sawaya, Orfinger, and Edwards

cc:

Office of Attorney General Rebecca Rock McGuigan Darryl Lewis Davis

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

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Petitioner,

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STATE OF FLORIDA,

Respondent.

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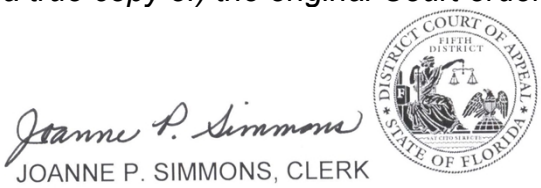

Authorized by: Judges Sawaya, Orfinger, and Edwards

cc:

Office of Attorney General Rebecca Rock McGuigan Darryl Lewis Davis

5DCA CERTIFICATION

I hereby certify that the foregoing is a true and correct copy of the instrument(s) filed in this office.

Witness my hand and official seal this September 23, 2016.

Joanne P. Simmons, Clerk of the Fifth District Court of Appeal.

By: /s/ Patty Hillis

C. ALAN LAWSON
CHIEF JUDGE

THOMAS D. SAWAYA
WILLIAM D. PALMER
RICHARD B. ORFINGER
VINCENT G. TORPY, JR
KERRY I. EVANDER
JAY P. COHEN
WENDY W. BERGER
F. RAND WALLIS
BRIAN D. LAMBERT
JAMES A. EDWARDS
JUDGES

DISTRICT COURT OF APPEAL
FIFTH DISTRICT
300 SOUTH BEACH STREET
DAYTONA BEACH, FLORIDA 32114

JOANNE P. SIMMONS
CLERK

CHARLES R. CRAWFORD
MARSHAL

September 23, 2016

Hon. John A. Tomasino, Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1927

Re: DAVIS
v.
STATE

Appeal No. 5D15-2507
Trial Court No: CR01-13645
Trial Court Judge: Hon Janet C. Thorpe

Dear Hon. Tomasino:

Attached is a certified copy of the Notice invoking the discretionary jurisdiction of the Supreme Court pursuant to Rule 9.120, Florida Rules of Appellate Procedure, along with a copy of this Court's opinion or decision relevant to this case.

☐ The filing fee prescribed by Section 25.241(3), Florida Statutes, was received by this court and will be forwarded.

☐ The filing fee prescribed by Section 25.241(3), Florida Statutes, was not received by this Court.

☐ Petitioner/Appellant has been previously determined insolvent by this Circuit Court or our court.

No filing fee is required because:

☐ Summary Appeal (Rule 9.141)
☐ Unemployment Appeals Commission
☒ Habeas Corpus
☐ Juvenile case
☐ Other _____

If there are any questions regarding this matter, please do not hesitate to contact this Office.

Sincerely,

JOANNE P. SIMMONS, CLERK

By: /s/ Patty Hillis
Deputy Clerk

Attachments
cc: Darryl Lewis Davis Office of the Attorney General