IN THE

SUPREME COURT OF THE UNITED STATES

Joe Frank Dawk
Petitioner
-vs- Case No: 08-6974
State of Florida
Respondent

MOTION FOR REHEARING

Comes Now the Petitioner, Joe Frank Dawk, And moves this Court for Rehearing of its 12 January 2009 denial of his Petition for a Writ of Certiorari, on the basis of the following three intervening circumstances of a substantial or controlling effect.

First, in support of Petitioner's claim that Florida's "10-20-Life" law, Florida Statute 775.087, is unconstitutional in Requiring a 20-year mandatory minimum prison sentence, if a firearm is discharged during an aggravated assault, this Court has now granted certiorari to a similar case, Dean v. United States, No. 08-5274, 14 November 2008. (Case below: U.S. v Dean, 517 F.3d 1224 (C.A.11-GA. 2008).)

In Dean, this Court has Agreed to decide whether a statutory sentencing enhancement for defendants who "discharge" a firearm during a crime of violence applies only to intentional firearm discharges. The Federal law in Dean bumps the sentence from 5-years (possession) to 10-years (discharge); while the Florida law bumps the sentence from 3-years (possession) to 20-years (discharge).

In an aggravated assault, there is no underlying felony at all; the discharge of a firearm (here a warning shot fired in self-defense) being the act which elevates the charge from a misdemeanor simple assault. Here, where a warning shot was fired into a sofa, backed by an 8" concrete wall, to alert the unseen and unknown suspected home-invaders that the Plaintiff was armed, and would defend himself, hearth, and home, against perceived hurricane looters, there was "no evidence that the discharge itself arose out of any act manifesting additional disregard of others' safety," (U.S. v Brown, 449 F.3d 154, 159 (D.C. Cir. 2006)). A warning shot should be socially preferable to taking human life, as Heller, 128 S.Ct 2783 (2008) would seem to indicate, if done in self-defense.

Second, in support of Petitioner's claim that it is unconstitutional for Florida courts to refuse to instruct jurors on the penalties involved (Rule 3.390), as required by Florida Statute 918.10 (1945), Polizzi v. U.S., 549 F. Supp 2 308 (E.D.NY 2008) held that it is an unconstitutional violation of the Sixth Amendment to fail to instruct jurors on the mandatory-minimum sentence at issue; that had jurors known of the harsh sentence involved, that the six jurors could have exercised their historical discretion to convict of a lesser charge, as the ultimate check on the government's power, by the People.

Third, in support of the Plaintiff's claim that Florida's use of only six trial jurors in felony cases is unconstitutional (when considered with the cumulative effect of no grand jury requirement, and the Florida courts' Refusal to instruct jurors on the penalties involved (contrary to Fla. Stat. 918.10 [1975])), the specific intervening circumstance of a substantial effect, even if A not controlling effect, is that the citizens of the United States of America have elected a black man as President. This historic intervening circumstance should persuade this Court to recede from Williams v Florida, 90 S.Ct. 1863 (1970), and find that Florida's use of only six jurors has inherent mathematical racist elements, and that it is now time to stop allowing Florida prosecutors the opportunity to make the same speech that could have been made for the last 124 years:

> "Well, Mr. Black Defendant, we would have just loved to have had a black juror for your trial, but as you can see -- one, two, three, four, five, six -- the jury box is full."

That excuse would not work with 12 jurors. It doesn't matter if there are blacks in the jury pool, if the jury box is full. It's "time for twelve jurors in Florida.

WHEREFORE, this motion for Rehearing should be granted, and the petition for a writ of certiorari be granted.

J. J. DAIAK

6 February 2009 Joe F. Daiak

IN THE

SUPREME COURT OF THE UNITED STATES

Joe Frank Daiak,
Petitioner

vs. Case No: 08-6974

State of Florida
Respondent

CERTIFICATE

I hereby certify that this Motion for Rehearing is restricted to the grounds in Rule 44, to intervening circumstances of a substantial or controlling effect; and that it is presented in good faith, ant not for delay.

PROOF OF SERVICE

I, Joe Frank Daiak, do declare that on this date, 6 February 2009, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR REHEARING on Richard Fishkin; Assistant Attorney General; Concourse Center #4; 3507 E. Frontage Road, #200; Tampa, FLA 33607, by giving it to the hands of an institutional official, in an envelope containing the above document which is properly addressed, and with first-class postage prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 6 February, 2009.

J. J. Daiak

Joe F. Daiak
C00407, Madison C.I.
[illegible] Madison FL 32340