**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT**

**IN AND FOR ORANGE COUNTY, FLORIDA**

**KEN PURDY,**

 **Plaintiff, Case No.: 1995-CF-006887-A-O**

**vs.**

**STATE OF FLORIDA,**

**ORANGE COUNTY JAIL,**

**JEFF ASHTON, individually and in his**

**Official Capacity as State Attorney.**

 **Defendant.**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/**

**WRIT OF HABEAS CORPUS FOR IMMEDIATE RELEASE OF KEN PURDY**

**COMES NOW** Defendant, KENNETH PURDY, by and through undersigned counsel, and files this request for judicial notice pursuant to Chapter 79, Florida Statutes. In support, Mr. Purdy states:

1. On December 18, 2015, this Court entered an order re-sentencing Mr. Purdy to an effective term of 29 years on Count I, Felony Murder, and Count II, Carjacking.
2. During the resentencing of Mr. Purdy, the Court provided Mr. Purdy with essentially 20 years credit for time served.
3. Although the Court did not review the issue of Gain Time, when the Florida Department of Corrections (“DOC”), re-calculated Mr. Purdy’s sentence using Gain Time, it decided that Mr. Purdy served over 65% of his sentence, using the 29 year total sentencing term.
4. Based on the calculation of the Florida Department of Corrections, Mr. Purdy had effectively served more than his 29 year total sentence when gain time was provided to Mr. Purdy. As a result on Monday, December 21, 2015, Mr. Purdy was released from the DOC as having served more time than the 20 year total sentence announced by the Court. Between December 21, 2015 and December 23, 2015, Mr. Purdy committed no crimes, violations of probation or law violations while released from the custody of the Department of Corrections.
5. Between December 21, 2015, and Wednesday, December 23, 2015, the State Attorney, Jeff Ashton, by and through, Terri Mill Uvall, or her associate attorneys, learned about Mr. Purdy’s release, and unilaterally contact the DOC as well as the Orange County Sherriff’s Office (“OSCO”), in order, and for the purposes of having Mr. Purdy brought back to the custody of DOC in order to serve additional time on his original sentence, stemming from a 1995 conviction as a juvenile.
6. The Office of Jeff Ashton, contacted the DOC as well as the arresting agency, the OSCO, demanding that Mr. Purdy be detained as his sentence was not fully served and that he “had an additional 9 years” to serve on his original sentence as a juvenile defendant.
7. As a result of the actions of the OSCO, State Attorney, Jeff Ashton, and his associates, Mr. Purdy was arrested, and immediately taken to the Orange County Jail to serve a 9 year sentence.
8. ***Mr. Purdy was arrested without a warrant***, as no new law violation had occurred during the pendency of his release from custody.
9. The party, defendants, Jeff Ashton, and related agencies detained Mr. Purdy without a due process hearing or Court Order from the sentencing Court, the Honorable. Mark Bleckman.
10. Mr. Purdy now files this Writ demanding immediate release, based on a violation of his State Constitutional rights retained under the Florida Constitution, and as guaranteed by the Fourteenth Amendment of the United States Constitution.
11. **Writ of Habeas Corpus: Mr. Purdy’s Arrest and Detention is Void For Violation of Separation of Powers**
12. Mr. Purdy now files this Writ under Chapter 79, Florida Statutes for a violation of his due process rights guaranteed under the Florida Constitution.
13. Chapter 79.01, Florida Statutes states:

Application and writ.—When any person detained in custody, whether charged with a criminal offense or not, applies to the Supreme Court or any justice thereof, or to any district court of appeal or any judge thereof or to any circuit judge for a writ of habeas corpus and shows by affidavit or evidence probable cause to believe that he or she is detained without lawful authority, the court, justice, or judge to whom such application is made shall grant the writ forthwith, against the person in whose custody the applicant is detained and returnable immediately before any of the courts, justices, or judges as the writ directs

1. Mr. Purdy states that when the State Attorney, Jeff Ashton, or his associates, contacted the OSCO, and DOC, they collectively, and individually, within the powers granted to them under the Florida Constitution, violated the express provisions of the Florida Constitution providing for separation of powers.
2. The power of the Office of the State Attorney, usurped, commandeered, and unilaterally overtook the providence of the Executive when it effectively altered Mr. Purdy’s release and freedom without seeking the sanction of this Court or a Court Order by the Honorable Judge Bleckman, defining the parameters by the opinion and whim of State Attorney Jeff Ashton, and his associate State Attorneys.
3. While released from the DOC, Mr. Purdy committed to violations of probation or new law violations. In addition to usurping the power of the Executive, Mr. Purdy argues that the State Attorney Jeff Ashton and his associate State Attorneys redefined the nature of crime and punishment in Florida and commandeered the power of the legislature when it created a *defacto* crime out of thin air, having Mr. Purdy arrested based on only an interpretation of the judicial order which transpired on Friday, December 18, 2015.
4. Article III of the Constitution states that “[t]he legislative power of the state shall be vested in a legislature of the State of Florida.” Art. III, § 1, Florida Constitution. This grant of power embraces both “the power to enact laws” and the power “to declare what the law shall be.” Chiles v. Children A, B, C, D, E, & F,589 So.2d 260, 264 (Fla.1991). Any attempted redelegation violates the Constitution. *Id*.
5. In this case, neither the Executive nor Legislative Branches of Government defined a crime which Mr. Purdy violated by his release from the DOC. In addition, neither the Executive or Legislative Branches delegated this express authority to the Office of the State Attorney, and Jeff Ashton, or his associate State Attorneys under Chapter 27, Florida Statutes, which comprises the basis of power for all State Attorneys in Florida.
6. The nondelegation doctrine arising from article II, section 3 is directly at issue because “the **power** to create crimes and punishments in derogation of the common law inheres solely in the democratic processes of the legislative branch.” Perkins v. State, 576 So.2d 1310, 1312 (Fla.1991) (emphasis added).
7. Likewise, due process is implicated because article I, section 9 requires that a criminal statute reasonably apprise persons of those acts that are prohibited; and the failure to do so constitutes a due process violation. Perkins.
8. Here, the State created an interpretation of the Sentencing Order of this Court, convinced that OSCO, and DOC, that Mr. Purdy either committed a new crime, or, was not “absolved” of his alleged prior crimes stemming from a juvenile conviction in 1995, and had Mr. Purdy, re-arrested based on some unknown, arbitrary, capricious power of government that was either not delegated by the people of the State of Florida, including Mr. Purdy.
9. Separation of powers is violated in the attempt to give administrative agency power to define a crime. Art. 2, § 3, Florida Constitution.
10. The Florida Constitution expressly provides for the separation of powers, stating: the powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein. Art. II, § 3, Florida Constitution.
11. The prohibition contained in the second sentence of Article II, section 3 of the Florida Constitution could not be plainer, as Florida cases clearly have held and stated without exception that Florida's Constitution absolutely requires a “strict” separation of powers. Cases on this point are numerous, but an examination of a leading decision will suffice. In *Askew v. Cross Key Waterways,* 372 So.2d 913, 924 (Fla.1978), the Florida Supreme Court stated:

Article II, Section 3, Florida Constitution, contrary to the Constitution[ ] of the United States ... does by its second sentence \*992contain an express limitation upon the exercise by a member of one branch of any powers appertaining to either of the other branches of government

[…]

[The nondelegation doctrine] represents a recognition of the express limitation contained in the second sentence of Article II, Section 3 of our Constitution. Under the fundamental document adopted and several times ratified by the citizens of this State, the legislature is not free to redelegate to an administrative body so much of its lawmaking power as it may deem expedient. *Id*.

1. The prohibition contained in the second sentence of Article II, section 3 of the Florida Constitution could not be plainer, as Florida cases clearly have held and stated without exception that Florida's Constitution absolutely requires a “strict” separation of powers. Cases on this point are numerous, but an examination of a leading decision will suffice. *Askew v. Cross Key Waterways,* 372 So.2d 913, 924 (Fla.1978).
2. Mr. Purdy contends that the State Attorney Jeff Ashton, has no authority to effectuate a warrantless arrest, or define a crime in violation of the separation of powers. Nor does he possess the authority of the Executive to unilaterally determine the length of an incarcerated persons sentence, such as Mr. Purdy.
3. Based on his rights guaranteed under the Florida Constitution, as well as the incorporation of his due process rights guaranteed under the Fourteenth Amendment to the United States Constitution, Mr. Purdy demands immediate release by the Honorable Judge Bleckman.

**WHEREFORE**, the Defendant, Kenneth Purdy, respectfully requests this Court take release Mr. Purdy from arrest and the custody of the Orange County Jail or Department of Corrections, pending a full due process hearing provided by this Court.

DATED this \_\_ day of December, 2015.

Respectfully submitted,

/s/ Matthew R. McLain

Matthew R. McLain, Esquire
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*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically via the Florida Courts eFiling Portal to opposing counsel this 17th day of December, 2015.

/s/ Matthew R. McLain

Matthew R. McLain, Esquire