

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
BIRMINGHAM DIVISION**

**ROBERTO CRUZ,**  
**Petitioner**

v.

**STATE OF ALABAMA,**  
**Respondent**

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**Case Number: CC-2003-5406.62**

**UNOPPOSED AMENDED PETITION FOR RELIEF FROM  
SENTENCE PURSUANT TO RULE 32, ALA. R. CRIM. P.**

Petitioner, Roberto Cruz, by and through undersigned counsel and without opposition from the State, petitions this Court pursuant to Rule 32.1(b) and (c) of the Alabama Rules of Criminal Procedure for relief from his sentence of life without parole and resentence him to a period of time served. The petitioner previously filed this Rule 32 petition for relief and this Court appointed the undersigned to assist him in his request for relief. Mr. Cruz submits the following in support of his petition:

**PROCEDURAL HISTORY**

1. Mr. Cruz is a 71-year-old man who is currently incarcerated in the Department of Corrections (*hereinafter D.O.C.*) serving a life without the possibility of parole sentence for his marijuana trafficking conviction in CC 2003-5406. He has served 15 years, 10 months and 17 days on this matter as of the filing of this amended petition. Mr. Cruz was sentenced on November 4, 2005. His co-defendant, the driver of the car, received a 3-year split sentence but was deported prior to completing his sentence.
2. That the Court was without jurisdiction to impose any life sentence in this matter, particularly life without parole. At the time of his sentencing Mr. Cruz had only one

qualifying prior felony for purposes of sentencing under the Alabama Habitual Felony Offender Sentencing Act. The Court mistakenly held that he three, thus subjecting him to a mandatory life sentence. The Court then used its discretion to order that the sentence be life without the possibility of parole.

3. The Court relied on three felony convictions arising from a Federal multi-count indictment—N.D. GA 1:85-cr-108. Mr. Cruz was convicted of the following felonies stemming from that indictment: one count of possession with the intent to distribute a controlled substance, one count of conspiracy to distribute a controlled substance and one count of carrying a firearm during or in relation to a drug trafficking offense in violation of § 18 U.S.C. 924 (c). None of these convictions qualify for sentencing enhancements under the Alabama Habitual Offender Sentencing Act.
4. First, neither of Mr. Cruz’s felony drug offenses from 1985 count as enhancements because the Habitual Felony Offender Act does not apply to drug convictions prior to October 21, 1987. see *Dobbins v. State*, 716 So. 2d 231 (Ala. Crim. App. 1997).
5. Likewise, Mr. Cruz’s conviction for carrying a firearm during a drug offense does not qualify as an enhancement under the HFOA. “As long as there is a state counterpart for a federal crime, federal offense may be used for purposes of habitual felony offender statute.” *Gwynne v. State*, 499 So. 2d 802 (Ala. Crim. App. 1986). There is no state counterpart felony for carrying a firearm during a drug crime.<sup>1</sup>
6. At the time Mr. Cruz was convicted of the above-styled matter he only had one qualifying felony, a 1994 Federal drug conviction. Pursuant to the HFOA, Mr. Cruz’s sentencing range in this matter should have been 15-99 years. § 13A-5-9(a) (Ala. Code 1975). His sentence

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<sup>1</sup> Alabama does have a firearm enhancement on certain felonies, but there is no standalone statute.

was unlawfully imposed in that this Court did not have jurisdiction to render the judgment and the sentence imposed exceeded the maximum allowed by law. AL. R. Crim.P. 32.1(b) and (c).

7. For the reasons stated above, this Court must vacate the original sentence in this matter.
8. Mr. Cruz has served 15 years, 10 months and 17 days on a non-violent marijuana offense. The State does not oppose the petitioner's request to be resentenced to time served. A time served sentence would comport with Alabama law, unlike his current sentence. The undersigned is not aware of any other state inmate serving life without parole solely for marijuana. The Federal government and numerous states ranging from North Carolina to Texas have capped the maximum sentences for marijuana trafficking. Upon considering Mr. Cruz's age, the amount of time he has served, his non-violent history and the lack of opposition from the State, this Court would be more than justified in sentencing Mr. Cruz to time served and ordering his IMMEDIATE release from the Department of Corrections.
9. Mr. Cruz's grounds for relief are timely as there is no limitations period to a claim that the court was without jurisdiction to render judgment or impose sentence. see AL.R.Crim.Pro. 32.2 (c). "[I]f a court has no jurisdiction, its action is void." *D.H. v. State*, 24 So.3d 1166, 1169 (Ala.Crim.App. 2009), quoting *State v. Johns*, 142 Ala. 61, 38 So. 755, 755 (1905), quoting in turn Church, *Church On Habeas Corpus*, § 245, n. 1. As such, the sentence in CC 2003-5406 is due to be vacated as a matter of law and the petitioner requests that this Court resentence him to a period of time served (15 years, 10 months and 17 days).

Respectfully submitted, this the 5<sup>th</sup> day of May, 2020.

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/s/ Adam Danneman (DAN038)  
Adam Danneman  
Attorney for Petitioner  
Jefferson County Public Defender  
950 22nd Street North, Suite 1000  
Birmingham, AL 35203  
T: (205) 588-4220 F: 866.730.1427  
adanneman@jeffcodefender.org

**CERTIFICATE OF SERVICE**

I hereby certify that on this, the 5<sup>th</sup> day of May, 2020, a true and correct copy of the foregoing Petition was served on the office of the Jefferson County District Attorney's Office via email.

/s/ Adam Danneman (DAN038)  
Adam Danneman