NO: _____

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE "PRO SE" KAZI BOWLES PETITIONER

VS.

FLORIDA DEPT. OF CORRECTION
ATTORNEY GENERAL, STATE OF FLORIDA RESPONDENT(S)
"ET AL."

APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-12720-G

KAZI BOWLES,

Petitioner-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Mr. Kazi Bowles[1] is a Florida prisoner serving a 25-year sentence for attempted murder. He is required to serve a mandatory minimum of ten years of that sentence, before he is eligible for parole. He seeks a certificate of appealability ("COA"), and leave to proceed *in forma pauperis* ("IFP"), to appeal the denial of his Fed. R. Civ. P. 60(b) motion for reconsideration, filed in his successive 28 U.S.C. § 2254 habeas proceedings.

As background, in February 2008, Mr. Bowles filed a federal habeas corpus petition, pursuant to 28 U.S.C. § 2254, raising several claims for relief, including a claim that the trial court imposed a vindictive sentence. In that petition, Mr. Bowles noted that he had been

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[1] Mr. Bowles alternatively refers to himself as "Bowleg" and "Bowles." Additionally, court orders vary in how they spell his last name. However, as the district court referred to him as "Bowles," this name will be used for consistency.

resentenced in 2005. It was denied on the merits, and, thereafter, in 2013, Mr. Bowles filed a motion for relief from judgment, under Fed. R. Civ. P. 60(b), which the district court construed as a second § 2254 habeas petition, and dismissed for a lack of jurisdiction because it was second or successive.

In May 2016, Mr. Bowles filed an unauthorized successive § 2254 habeas corpus petition arguing that the 10-year mandatory minimum aspect of his sentence, under the "10-20-life" sentencing scheme, was improperly applied to his case because he did not meet the requirement of being a criminal known to use a firearm. Specifically, Mr. Bowles argued that he did not have a prior history of using firearms to commit violent offenses. Mr. Bowles also asserted that the prosecutor's representations at his original sentencing hearing resulted in the sentencing court being under the mistaken impression that it was required to sentence him to 20 years' imprisonment. Mr. Bowles acknowledged that his original sentence was reduced in 2005, after he successfully challenged his mandatory minimum 20-year sentence in state court, but his revised sentence was still improper. In support of his habeas petition, Mr. Bowles provided a copy of the November 2005 order, granting his Fla. R. Crim. P. 3.000 motion and determining that the 20-year mandatory sentence was improper.

A magistrate judge issued a report and recommendation ("R&R"), recommending that Mr. Bowles's § 2254 petition be dismissed for a lack of jurisdiction. The magistrate judge determined that Mr. Bowles had filed a federal habeas petition in February of 2008, which was denied on the merits, and he had not obtained permission from this Court to file a second or successive habeas petition.

Mr. Bowles objected, asserting that his petition was not successive because he was raising, for the first time, his resentencing claim, and because his petition stemmed from a new

judgment, it could not be successive. In November of 2016, over Mr. Bowles's objections, the district court adopted the R&R and dismissed the petition for a lack of jurisdiction. The district court specifically determined that, although the state court entered an order correcting Mr. Bowles's sentence in July 2010,[2] that order was not a new judgment because it did not alter the 2002 sentence. Instead, the order merely clarified how Mr. Bowles should receive credit for time-served. Furthermore, Mr. Bowles had filed a habeas petition in 2013, after the new order. Accordingly, it dismissed his petition for a lack of jurisdiction and, in the same order, denied a COA.

Thereafter, in January of 2017, Mr. Bowles filed a motion for reconsideration under Fed. R. Civ. P. 60(b), arguing that it was improper for the district court to rely on the 2010 order, as it was not part of his habeas petition. Rather, his petition relied on the resentencing order from 2005. He appeared to concede that the 2010 order was not a new judgment. Mr. Bowles also argued that his 2013 habeas petition would not render his current filing second or successive because that petition attacked his "old" judgment, and, as it was deemed successive, it would not impact his current petition.

The district court denied Mr. Bowles's motion in an endorsed order, determining that his state court judgment was entered before he filed his previous habeas petitions. The district court denied IFP status and a COA on appeal.

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[2] Mr. Bowles did not rely on a July 2010 sentencing order in the instant petition. Rather, the district court appears to have gone outside the district court record to find this order. Regardless, a review of the district court record, and an independent review of the state court record, shows that a state court altered Mr. Bowles's sentence in July of 2010, and this alteration was separate and distinct from the 2005 amendment. Further, a review of the state court docket shows that, in July of 2010, Mr. Bowles's judgment was corrected, to clarify how he would receive credit for time-served. This order did not otherwise alter his sentence.

Mr. Bowles now seeks and COA and IFP status on appeal. In his motion for a COA, Mr. Bowles reasserts his argument that his 2005 resentencing allowed him to file another habeas petition. He contends that the district court erred by going outside of the record to determine that it lacked jurisdiction. Mr. Bowles also moves to expand his claim to include claims for (1) fraud on the court, as the prosecutor persuaded the judge to improperly sentence him to a 20-year mandatory minimum in his original sentencing hearing; and (2) vindictive sentencing because he insisted on going to trial and rejected a plea agreement with a substantially lower sentence. Mr. Bowles asserts that the court could always consider a claim for fraud on the court.

DISCUSSION:

As an initial matter, this Court only has jurisdiction to consider the appeal of Mr. Bowles's motion for reconsideration, as it was filed in January of 2017, more than 30 days after the district court dismissed his § 2254 petition. Accordingly, it did not qualify as a tolling motion. *Cf.* Fed. R. App. P. 4(a)(4) (explaining that a Rule 60 motion must be filed within 28 days of the judgment to qualify as a tolling motion).

Mr. Bowles does not require a COA to proceed on appeal. Generally, a COA is required to appeal a final order in a proceeding under § 2254. *See* 28 U.S.C. § 2253(c)(1)(A). Furthermore, an appeal from the denial of a Rule 60(b) motion generally requires a COA. *See Gonzalez v. Sec'y for Dep't of Corr.*, 366 F.3d 1253, 1264 (11th Cir. 2004) (*en banc*), *aff'd on other grounds sub nom. Gonzalez v. Crosby*, 545 U.S. 524 (2005) (requiring a COA to appeal from the denial of a Rule 60(b) motion).

However, this Court has held that the dismissal of a successive habeas petition for lack of subject-matter jurisdiction does not constitute a "final order in a habeas corpus proceeding" for purposes of § 2253(c). *Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004). Instead,

this Court may review that dismissal under 28 U.S.C. § 1291. *See Hubbard*, 379 F.3d at 1247. Based on the reasoning outlined in *Hubbard*, Mr. Bowles does not require a COA to proceed.

While Mr. Bowles is not required to obtain a COA, because he seeks leave to proceed IFP on appeal, the appeal from the judgment is subject to a frivolity determination.[3] *See* 28 U.S.C. § 1915(e)(2)(B); *Pace v. Evans*, 709 F.2d 1428, 1429 (11th Cir. 1983). An action is frivolous if it is without arguable merit either in law or fact. *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).

Before a prisoner may file a second or successive habeas petition, he first must obtain an order from the court of appeals authorizing the district court to consider the motion. 28 U.S.C. § 2244(b)(3)(A). Without authorization, the district court lacks jurisdiction to consider a second or successive motion to vacate. *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003). This Court has recognized that "the phrase 'second or successive' is not self-defining and does not refer to all habeas applications filed second or successively in time." *Stewart v. United States*, 646 F.3d 856, 859 (11th Cir. 2011) (citing *Panetti v. Quarterman*, 551 U.S. 930, 943-44 (2007)). This Court has determined that a small subset of claims, which do not ripen until after the conclusion of an initial habeas proceeding, "must not be categorized as successive." *Id.* at 862-63.

This Court reviews the denial of a Rule 60(b) motion for an abuse of discretion. *See Cano v. Baker*, 435 F.3d 1337, 1341 (11th Cir. 2006). In order to show that the district court abused its discretion in denying a Rule 60(b) motion, the appellant "must demonstrate a justification so compelling that the district court was required to vacate its order." *Id.* at 1342 (quotation and alteration omitted).

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[3] A review of Mr. Bowles's motion for IFP status shows that he is indigent.

The district court did not abuse its discretion in denying Mr. Bowles's Rule 60(b) motion. Mr. Bowles's Rule 60(b) motion argued that the court erred in relying on a 2010 order, to determine that his petition was successive. Mr. Bowles further argued that his petition was not successive because he was resentenced in 2005, and it was the first time that he was raising a claim related to his resentencing.

// However, Mr. Bowles's original habeas petition was filed after he was resentenced in 2005, and, therefore, it was based on his 2005 judgment. Furthermore, his current claims were available in 2008, when he originally filed his federal habeas petition. Accordingly, he has not shown that his petition falls into the small subset of claims that must not be categorized as successive. Moreover, although Mr. Bowles argues on appeal that the court erred by looking outside of the record to determine that it lacked jurisdiction, the court was permitted to take judicial notice of court records. *See United States v. Rey*, 811 F.2d 1453, 1457 n.5 (11th Cir. 1987). Thus, as Mr. Bowles has not obtained authorization from this Court to file a second or successive habeas petition, the district court correctly dismissed his § 2254 petition as successive and did not abuse its discretion in denying his Rule 60(b) motion.

Finally, to the extent that Mr. Bowles attempts to raise new arguments—including his arguments that the state committed fraud and that his sentence was vindictive—on appeal, this Court will not consider those arguments as they were not clearly presented to the district court as grounds for relief. *See Walker v. Jones*, 10 F.3d 1569, 1572 (11th Cir. 1994) (stating that an argument "not raised in the district court and raised for the first time in an appeal will not be considered by this court" (quotation omitted)).

Accordingly, his motion for a COA is DENIED AS UNNECESSARY and his motion for IFP status is DENIED, as any appeal would be frivolous.

UNITED STATES CIRCUIT JUDGE

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-21697-CIV-LENARD/WHITE

KAZI BOWLES,
A.K.A. KAZI BOWLEG

Petitioner,

v.

JULIE L. JONES,

Respondent.
_____/

ORDER ADOPTING REPORT OF MAGISTRATE JUDGE (D.E. 6), DISMISSING BOWLES' § 2254 PETITION (D.E. 1), DENYING CERTIFICATE OF APPEALABILITY AND CLOSING CASE

THIS CAUSE is before the Court on the Report and Recommendation of Magistrate Judge Patrick White (the "Report"), issued on May 19, 2016. (D.E. 6.) Judge White recommends that the Court dismiss Kazi Bowles' ("Bowles") § 2254 Petition for lack of jurisdiction. Id.

In his Report, Judge White found that: (1) Bowles was convicted of attempted first-degree murder and sentenced to twenty-five years imprisonment on March 15, 2001; (2) Bowles was resentenced to twenty-five years imprisonment on June 3, 2002; (3) Bowles filed his first § 2254 petition in federal court on February 25, 2008, see 08-cv-20528-HUCK; (4) Judge Huck denied Bowles' first petition on December 9, 2008; (5) Bowles filed a second § 2254 petition on October 30, 2013, see 13-cv-23946-GRAHAM; and (6) Judge Graham dismissed Bowles' second petition on December 6, 2013. (D.E.

filed a § 2254 petition in 2013, seeking vacatur of his conviction and sentence. Accordingly, his current Petition would still be second or successive.

Therefore, having conducted a de novo review of the Report, record and Petitioner's objections, it is hereby **ORDERED AND ADJUDGED** that:

1. The Report and Recommendation of the Magistrate Judge (D.E. 6) issued on May 19, 2016, is **ADOPTED** as modified by this Order;
2. Kazi Bowles' objections (D.E. 10) are **OVERRULED**;
3. Kazi Bowles' § 2254 Petition (D.E. 1), filed on May 13, 2016, is **DISMISSED** as second or successive;
4. A certificate of appealability **SHALL NOT ISSUE**; and
5. This case is now **CLOSED**.

DONE AND ORDERED in Chambers at Miami, Florida this 14th day of November, 2016.

JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-CV-21697-LENARD
MAGISTRATE JUDGE P.A. WHITE

KAZI BOWLES,[1] :

Petitioner, :

v. : REPORT OF MAGISTRATE JUDGE

JULIE L. JONES, :

Respondent. :

I. Introduction

Kazi Bowles, who is presently confined at the Everglades Correctional Institution in Miami, Florida, has filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 attacking his conviction and sentence in case number F00-2011 entered in the Eleventh Judicial Circuit Court for Miami-Dade County.[2]

This cause has been referred to the undersigned for consideration and report pursuant to Administrative Order 2003-19.

[1] The Petitioner's name appears as Kazi Bowles as well as Kazi Bowleg in this Court's and the Florida courts' records.

[2] A petitioner cannot proceed with a petition for a writ of habeas corpus in this Court unless he has either paid the $5.00 filing fee or qualified to proceed *in forma pauperis* ("IFP"). See Rule 3(a), Rules Governing Section 2254 Cases. The Petitioner has filed a motion to proceed IFP but has not provided the six-month account statement from his institution. The Court would ordinarily provide petitioner with the opportunity to satisfy the filing fee requirement. However, because the instant petition is being dismissed *sua sponte* for the reasons discussed in this Report, this Court determines that in the interest of judicial economy petitioner will not be afforded additional time to comply with the filing fee requirements. See Dionne v. Suffolk County Sheriff Dep't., 2012 WL 3492018 (D.Mass 2012).

The Court has before it the for consideration the petition for writ of habeas corpus and supporting memorandum (DE# 1, 4), this Court's file in case number 08-CV-20528-HUCK, and the electronic docket sheets from the Miami-Dade County Circuit Court, the Third District Court of Appeal, and the Florida Supreme Court.[3] No order to show cause has been issued because, on the face of the petition, it is evident that the petitioner is entitled to no relief. See Rule 4(b), Rules Governing Section 2254 Proceedings ("If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.").

II. Procedural History[4]

A jury found the Petitioner guilty of attempted first-degree murder and he was sentenced to twenty-five years' imprisonment with a twenty-five year minimum mandatory in Florida case number F00-2011. (App. A at 14-15); see (08-20528 DE# 25 at 2-3). The Third District Court of Appeal affirmed his conviction but remanded for resentencing because the sentence did not comport with the trial court's oral pronouncement. Bowleg v. State, 813 So. 2d 291 (Fla. 3d DCA 2002) (3D01-1036); (App. B). The trial court reimposed a twenty-five year sentence but reduced the minimum mandatory to twenty years. (App. A at 13); see (08-20528 DE# 25 at 3).

The Petitioner instituted unsuccessful post-conviction proceedings in the Florida courts. See (App. A at 11-12); (App. D);

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[3] The Florida courts' relevant records have been made part of the record by separate order and will be referred to in this Report as "App." A through R.

[4] A more exhaustive procedural history along with citations to the relevant Florida court records may be located in the Report entered in case number 08-CV-20528-HUCK, docket entry 25.

Bowles v. State, 901 So. 2d 129 (Fla. 3d DCA 2005) (3D04-2495); see also (App. C, E).

He then filed a Rule 3.800 motion to correct an illegal sentence that the trial court granted in part, and his minimum mandatory sentence was reduced to ten years on February 21, 2006. (App. A at 9); see (08-20528 DE# 25 at 5). The Third District Court of Appeal *per curiam* affirmed on March 14, 2007. Bowles v. State, 951 So. 2d 846 (Fla. 3d DCA 2007) (3D06-739); (App. F).

On February 21, 2008, the Petitioner filed his first Section 2254 petition for writ of habeas corpus, case number 08-CV-290528-HUCK. It was denied on the merits on December 9, 2008, and the Eleventh Circuit denied the Petitioner's motion for a certificate of appealability on May 20, 2009, case number 09-10295.

The Petitioner filed a second Section 2254 motion to vacate on October 24, 2014, case number 13-CV-23926-GRAHAM. It was dismissed as successive on December 6, 2013.

Meanwhile, the Petitioner's collateral attacks on his conviction and sentence in the Florida courts continued. See (App. A at 2-8); (App. H-Q). The trial court finally prohibited him from filing further *pro se* collateral attacks on his conviction and sentence on June 22, 2015. (App. A at 2). The Third District *per curiam* affirmed. Bowles v. State, 2015 WL 7007798 (Fla. 3d DCA Nov. 12, 2015)(3D15-1426); (App. R).

The Petitioner filed the instant Section 2254 habeas petition, his third, on May 9, 2016.

III. Discussion

The Antiterrorism and Effective Death Penalty Act ("AEDPA") requires that:

> Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

28 U.S.C. § 2244(b)(3)(A).

A three-judge panel of the court of appeals may authorize a second or successive application only if it presents a claim not previously raised that either: (a) relies on a new retroactive rule of constitutional law that was previously unavailable; or (b) for which the factual predicate could not have been previously discovered through the use of due diligence and the facts underlying the claim would establish by clear and convincing evidence that no reasonable fact finder would have found the petitioner guilty but for the constitutional error. 28 U.S.C. § 2244(b)(2)(A), (B)(I)-(ii); 2244(b)(3)(B). If a petitioner files a second or successive habeas petition without first seeking permission from the appellate court, however, the District Court is "without jurisdiction to entertain it." Burton v. Stewart, 549 U.S. 147, 153 (2007).

Because the Petitioner has previously filed a Section 2254 petition that was denied on the merits and he has not obtained permission from the Eleventh Circuit pursuant to Section 2244(b), this Court is without jurisdiction to consider the instant successive Section 2254 petition.

If the Petitioner intends to pursue this case, he should forthwith apply to the United States Eleventh Circuit Court of Appeals for the authorization required by Section 2244(b)(3)(A). The petitioner will be provided with a form to apply for such authorization with this report. Under the circumstances of this case it does not appear that either a direct transfer of the case to the Court of Appeals pursuant to Section 1631 or a stay of the present case would be appropriate. See generally Guenther v. Holt, 173 F.3d 1328 (11th Cir. 1999).

IV. Certificate of Appealability

A State prisoner must obtain a certificate of appealability before appealing the denial of his federal habeas petition. 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability may issue only when the petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard is met when "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Further, as noted by the United States Supreme Court:

> When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, ... a certificate of appealability should issue only when the prisoner shows both that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Jimenez v. Quarterman, 555 U.S. 113, 118 n. 3 (2009).

The Petitioner has filed the instant successive federal habeas petition without first obtaining permission from the Eleventh Circuit Court of Appeals. Therefore, a certificate of appealability is not warranted. If there is an objection to this recommendation by either party, that party may bring this argument to the attention of the District Judge in objections to this report.

V. Conclusion

Based upon the foregoing, it is recommended that this petition for writ of habeas corpus be dismissed, a certificate of appealability not be issued, and this case be closed.

Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report.

SIGNED this 19th day of May, 2016.

UNITED STATES MAGISTRATE JUDGE

(ENCLOSURE)

cc: Kazi Bowles
M23610
Everglades Correctional Institution
Inmate Mail/Parcels
1599 SW 187th Avenue
Miami, FL 33194
PRO SE

Office of the Attorney General
Miami, FL

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-12720-G

KAZI BOWLES,

Petitioner-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

Before MARTIN and JILL PRYOR, Circuit Judges.

BY THE COURT:

Kazi Bowles has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's January 12, 2018, order, denying his motion for a certificate of appealability as unnecessary, and denying leave to proceed *in forma pauperis*, from the denial of his Fed. R. Civ. P. 60(b) motion. Bowles has also moved to supplement the record. Upon review, Bowles's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief. His motion to supplement the record is DENIED AS UNNECESSARY because the records he asks this Court to consider have already been considered.

APPENDIX E

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☑ No

(7) Result: DENIED

(8) Date of result (if you know): SEPTEMBER 14TH 2007

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion? YES

(1) First petition: ☑ Yes ☐ No

(2) Second petition: ☑ Yes ☐ No

(3) Third petition: ☑ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

I APPEALED ALL POST-CONVICTION

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: THE STATE COURTS VIOLATED DEFENDANTS 5TH, 6TH AND 14TH AMENDMENT RIGHTS TO A FAIR JURY TRIAL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE STATE COURTS VIOLATED THE DEFENDANTS 5TH 6TH AND 14TH AMENDMENT RIGHTS TO A FAIR JURY TRIAL BY NOT HAVING THE WORDS ACTUAL POSSESSION IN DEFENDANTS INFORMATION AND NOT ALLOWING THE JURY TO MAKE A SPECIAL FINDING THAT DEFENDANT ACTUALLY POSSESSED A FIREARM AS REQUIRED.

(b) If you did not exhaust your state remedies on Ground One, explain why:

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

THIS ISSUE WAS PRESENTED ON A 3.800(A) MOTION AND WAS APPEALED TO THE D.C.A.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☑ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 3.800(A)

Name and location of the court where the motion or petition was filed:

11TH JUDICIAL CIRCUIT COURT

Docket or case number (if you know): F00-2011

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☑ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☑ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☑ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

3RD. DISTRICT COURT OF APPEAL

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

P.C.A.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FAILURE TO RELATE PLEA IN VIOLATION OF DEFENDANTS 6TH AND 14TH AMENDMENT

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE DEFENDANT'S TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE WHEN SHE FAILED TO RELATE A FAVORABLE 5 YEAR PLEA OFFER FOR THE ATTEMPTED MURDER CASE IN VIOLATION OF DEFENDANT'S SIXTH AND FOURTEENTH AMENDMENTS

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☑ No

(2) If you did not raise this issue in your direct appeal, explain why:

BECAUSE THIS ISSUE WAS NOT OBJECTED AND PRESERVED FOR APPELATE REVIEW

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☑ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 3.850 POST CONVICTION MOTION

Name and location of the court where the motion or petition was filed:

11TH JUDICIAL CIRCUIT COURT (MIAMI)

Docket or case number (if you know):

Date of the court's decision:

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Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☑ No

(4) Did you appeal from the denial of your motion or petition? ☑ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☑ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

3RD DISTRICT COURT OF APPEAL

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

P.C.A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two

GROUND THREE: TRIAL COURT IMPOSED A PRESUMPTION OF VINDICTIVE SENTENCE

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

TRIAL COURT IMPOSED A PRESUMPTION OF VINDICTIVE SENTENCE IN VIOLATION OF DEFENDANTS 8TH AND 14TH AMENDMENT RIGHTS AND FURTHER DENIED HIM ALL RIGHTS UNDER THE DUE PROCESS CLAUSE

(b) If you did not exhaust your state remedies on Ground Three, explain why?

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☑ No

(2) If you did not raise this issue in your direct appeal, explain why:

THIS ISSUE WAS NOT RAISED ON DIRECT APPEAL IT WAS RAISED ON A 3.850 POST-CONVICTION MOTION

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☑ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 3.850

Name and location of the court where the motion or petition was filed:

~~11TH CIRCUIT COURT~~ 11TH JUDICIAL CIRCUIT COURT (MIAMI)

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

DENIED / WITH ALL ISSUES IN THE MOTION BEING ADDRESSED

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☑ No

(4) Did you appeal from the denial of your motion or petition? ☑ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☑ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

3RD DISTRICT COURT OF APPEAL

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

P.C.A.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR: FUNDAMENTAL ERROR INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DIRECTING VERDICT FOR THE STATE IN VIOLATION OF THE CONSTITUTION

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL WHEN COUNSEL FAILED TO OBJECT AND PRESERVE FOR APPELLATE REVIEW, TRIAL COURTS REMARK DIRECTING VERDICT FOR THE STATE IN VIOLATION OF 6TH AND 14TH AMENDMENT OF U.S. CONSTITUTION

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☑ No

(2) If you did not raise this issue in your direct appeal, explain why:

THIS ISSUE WAS RAISED ON MY 3.850 POST CONVICTION MOTION

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☑ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 3.850

AO 241
(Rev. 12/04)

Name and location of the court where the motion or petition was filed:

11TH JUDICIAL CIRCUT COURT (MIAMI)

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

DENIED

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☑ No

(4) Did you appeal from the denial of your motion or petition? ☑ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☑ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

3RD DISTRICT COURT OF APPEAL

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

P.C.A.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

GROUND 5

THE DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL WHEN COUNSEL FAILED TO INFORM DEFENDANT OF THE APPLICABILITY OF 85% PERCENT GAIN-TIME CONSEQUENCES IN VIOLATION OF DEFENDANTS SIX AND 14TH AMENDMENTS OF U.S. CONSTITUTION

THIS GROUND WAS RAISED ON PLAINTIFF 3.850 MOTION FOR POST-CONVICTION RELIEF IN THE 11TH JUDICIAL CIRCUIT COURT AND APPEALED TO THE 3RD D.C.A. THIS ISSUE WAS DENIED ON THE MERITS AND P.C.A IN THE 3RD D.C.A.

GROUND 6

THE TRIAL COURT ERRORED IN FAILING TO ALLOW THE DEFENSE TO IMPEACH THE VICTIM WITH THE TYPE OF PRIOR CONVICTION HE HAD SINCE THE VICTIM'S DENIAL HAD BEARING ON PLAINTIFF'S DEFENSE IN VIOLATION OF PLAINTIFF'S 5TH AND 14TH AMENDMENT OF U.S. CONSTITUTION

THIS GROUND WAS OBJECTED TO IN THE TRIAL COURT AND RAISED ON PLAINTIFF'S DIRECT APPEAL, AND IT WAS DENIED IN THE 3RD. D.C.A.

GROUND 7

TRIAL COURT COMMITTED FUNDAMENTAL ERROR BY FAILING TO GIVE REQUIRED JURY INSTRUCTIONS ON DEFINITION OF EXCUSABLE AND JUSTIFIABLE ATTEMPTED HOMICIDE IN VIOLATION OF PLAINTIFFS 14TH AMENDMENTS DUE PROCESS RIGHTS

THIS GROUND WAS RAISED ON PLAINTIFF'S 3.850 MOTION FOR POST CONVICTION RELIEF IN THE ELEVENTH JUDICIAL CIRCUIT COURT AND APPEALED TO THE 3RD DISTRICT COURT OF APPEAL. THIS ISSUE WAS DENIED ON THE MERITS IN THE TRIAL COURT AND P.C.A. IN THE 3RD DISTRICT COURT OF APPEAL.

APPENDIX F

STATEMENT OF THE FACTS

On febrcary 28, 2001 the appellant after being found guiltu of the offense of Attempted first dearee murder appeared for sentencing before the trial court. The state's position was to have a sentence of (30) years with (20) minimum mandatory imposed. Trial counsel Ms Ribero-Ayala argued that the court take certain mitigation circumstances into consideration and impose a sentence of (10) years. The court while contemplating mitigating from the 10-20 Life was interrupted by the state. The court then politely admonished the state not to try to tell the court what to do. The state then misrepresented the law on the minimum mandatory sentencing by stating more or less the jury found the appellant guilty and from the information It says he shot the victim and he thinks the law requires various (20) years minimum mandatory. This misrepresentation induced the trial court to abandon any mitigation circumstances below the (20) years minimum mandatory by determining such sentence must be imposed and upon such inducement impose an overall sentence of (25) years imprisonment with a (20) year minimum mandatory.

Mr. Fikru an attorney well informed of florida law on minimum mandatory sentencing knew that the jury's finding contained on the verdict form not the allegations in the information determine the punishment to be imposed. The misrepresentation was material as to how less the court court impose sentence. Mr. Fikru only made the misrepresentation with the intent that the court impose sentencing no less than the twenty (20) years minimum mandatory.

The petitioner with no significant prior record was injured as a result of the court relying on the misrepresentation due to the court abandoning any miligation circumstationes.

Several years later in 2005 the petitioner filed a rule 3.800(a) motion which was granted and the reviewing substitution judge whom subsequently reduced the petitioners (20) year minimum mandatory to (10) year minimum mandatory consistent with the jury's verdict form fully supports the fact of Mr. Fikru's fradulent practice on the court and should not be relied upon to protect the overall imposition of twenty-five(25) years which should be vacated and the petitioner should be remanded back to the lower court for a new sentencing hearing with full mitigation discretion as was originally contemplated by the trial court.

Incomplete motions sent to show exhaustion

The petitioner states that in his exhibits the motions that are attached are incomplete, the petitioner states that only the first page of the motion were sent to this federal court to show the court that this claim was exhausted in the lower court, to view the initial motion please see or contact the clerk of courts, send the whole motions would of cause petitioners motion for relief to amount to over(100) pages.

ARGUMENT

That the petitioner is presently incarcerated in violation of the 5th and 14th amendment of the constitution secures through article I section IX of the florida constitution by serving a sentence that was induced by fraud upon the court in violation of his due process rights to a fair sentencing proceeding.

In the instant case the petitioner asserts that his constitutional rights in his sentencing state court hearing was held unconstitutionally because the prosecutor Mr. David Fikro intentionally committed fraud upon the court to get the trial court to give the petitioner an increased upward sentence.

The dialogue that occured between the trial court the prosecutor and defense counsel at the start of the sentencing hearing shows the state's opening argument explaining the circumstances of the petitioner's case. The state prosecutor in arguing for his particular sentence that he would like imposed intentionally committed fraud upon the court by persuading the judge to sentence the petitioner to a minimum mandatory (20) year sentence. In arguing for this (20) year minimum mandatory, the state used false information that was not applicable to the petitioner's sentencing hearing for the purpose of intentionally causing the court to abandon mitigation and impose a harsher sentence. the petitioner's due process rights to a fair sentencing hearing has been violated because of the fraud

committed upon the court. The petitioner would like the court to see the unreliable information that was said by the prosecutor to intentionally persuade the court.

See exhibit of sentencing transcripts page 5 Line 19-25 and page 6 Line 1-3

State prosecutor

"In addition your honor the defendant qualifies under the ten-twenty life statue. He did fire a weapon and the weapon did strike and cause injury to the individual in this case, Lionell Scott. Based on that he does qualify and the state will highly recommend to the court at a minimum he should get the (20) years minimum mandatory that is required by the legislature. I don't believe there is any mitigation circumstances that would cause the court to deviate from it."

The petitioner states that this statement made by the prosecutor is incorrect as to it's applicability to the petitioners sentencing hearing. Why? I'll tell you why. In the petitioner's case a verdict form was drafted up by the prosecutor and the petitioner was found guilty of attempted murder with a firearm which only calls for a minimum mandatory (10) year sentence based on the 10-20-life Law for possession of a firearm. The petitioner state that this statement made by the prosecutor against the petitioner was false as it was incorrectly applied to the petitioners sentencing hearing, unreliable, improper, erroneous and violated petitioners due process rights.

Supporting Case Law:

See Lee v. Smith 710 F.Supp 931 (SD NY 1989)

"A defendant challenging information used in his sentencing must show 1.) that the information is false or unreliable and 2.) that the sentencing judge relied at least in part, on this information. Where the court does not rely on the challenge information the sentence will be affirmed."

v. Liantu 616 F.2d 321 (2010)

"In determing whether a defendant's due process rights were violated by prosecutors closing argument appellate court considers 1. whether remarks were in fact improper and 2.) if so whether improper remarks so prejudice defendant's substantial rights that defendant was denied a fair trial."

v. Darbu 744 F.2d 1508 [Ca. 11 (Fla) 1984]

"Sentences based on erroneous and material information or assumptions violate due process and new sentencing hearing is required where trial court has relied on such information or assumptions."

v. Studnicka 777 F.2d 652 [Ca. 11 (Fla.) 1985]

"A defendant does of course have a right to" at least minimum safeguards to insure that the sentencing courts does not rely on erroneous factual information when assessing sentence. United States v. Espinoza 481 F.2d 563, 555 (5th Cir 1973)

US v. Hollenbeck 932 F.Supp 57 (ND NY 1996)

"The weight of the authority endorse the thery that a petitioner who can demonstrate that the court relied on material false information at sentencing is entitled to collateral relief. See ea. Del piano v. United States 575 F.2d 1060 1067 3rd Cir. 1978 holding that upon proff that misinformation or improper data was considered at sentencing the process may be reexamed the sentence vacated and a new sentencing orded."

Pruett v. Norris 959 F.Supp 1088 (Ed. Ark 1997)

"Some comments so infect the trial with unfairness as to make the resulting sentence a denial of due process." Miller v. Lockhart 65 F.3d 676 (8th Cir. 1995)

These cases support petitioners argument that his due process rights to a fair sentencing hearing has been violated because of the prosecutors fraud upon the court. At the start of the sentencing hearing the trial court states to the clerk of the court in the presence of the attorneys both defense and state:

See Sentencing hearing exhibit page 3

THE COURT: We are here on Kazi Bowleg, case number F00-2011 where Mr. Bowleg was convicted by a jury of attempted first degree murder.

Do you have the verdict form?

The clerk: Yes

THE COURT: I have review as I am sure both of you have.

This dialog shows that the verdict form that has been completed by the jury that is checked mark Guilty as Charged with a firearm is present. For the prosecutor to know that according to "with a firearm only calls for a minimum mandatory sentence of 10 years under the 10-20 Life law and still ask for a (20) year minimum mandatory that isn't applicable according to the petitioners case is "Egregious and/or Extraordinary Misconduct on the part of the prosecutor.

The prosecutor's sole reason for requesting a (20) year minimum mandatory for what he states is the law was to influence the courts decision in not giving the petitioner a mitigated sentence as he (trial court) was originally contemplating. In Galaldo v. US 394 Fed. Appx. 670 11th Cir 2010.

it states:

"Further the movant must show an "unconscionable plan or scheme" to improperly influence the courts decision."

In the petitioners sentencing hearing the prosecutor was influencing the trial courts decision when he committed fraud on the court by way of decieving the judge to not mitigate by this non applicable statement that he made.

The prosecutor in committing this fraud on the court directed this statement at the judge which caused the judge to abandon mitigation, the influence exercted upon the trial court by the prosecutor was improper

And the integrity of the trial court to function impartially was directly impugned.

See supporting case law:

Bulloch v. United States 763 F.2d 1115 (1985)

"[3] Fraud on the court (other than fraud as to jurisdiction) is fraud which is directed to the judicial machinery itself and is not fraud between parties or fraudulent documents, false statements or perjury. It has been held that allegations of nondisclosure in pretrial discovery will not support an action for fraud on the court. HK Porter Co., Inc. v. Goodyear Tire & Rubber Co. 536 F.2d 1115 6th Cir. It is thus fraud where the court or a member is corrupted or influenced is attempted or where the judge has not performed his judicial functions of the court have been directly corrupted."

See supporting case law:

R.C. by Alabama Disabilities Advocacy Program v. Nachman MD Ala. 1997 969 F. Supp 682

"It is well settled that "fraud upon the court" should embrace only that species of fraud which does or attempts to subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjuding cases that are presented for adjudication and relief should be denied in the absent of such conduct. Fraud upon the court is thus, "typically confined to the most egregious cases, such as bribery of a judge or juror, or improper influence exerted on the court by an ~~officer~~ attorney in which the integrity of the court and its ability to function impartially is directly impunged.

In the state's argument to the trial court he (the prosecutor) initially persuades the trial court to sentence the petitioner to the (20) years minimum mandatory on (3) occasions, but on his (4th) attempt whiles the trial court considers mitigation by stating: See sentencing transcripts page 8 line 14-16

The court: "what do I have to do, If I was to mitigate from the 10-20-Life. I. dont believe I do."

He (the prosecutor) was admonished by the trial court where as the trial court told him (the prosecutor) that his actions were inappropiate. On four different occassions the prosecutor pushed for a unlawful sentence which he did ultimately get threw his improper influence exerted upon the court that caused the judge to abandon mitigation. This was and still is a violation of the petitioners due process rights.

Several years after petitioner's sentencing hearing and on March 20, 2005 the petitioner submitted to the lower trial court a 3.800(a) motion to correct an illegal sentence. See exhibit in exhibits. This motion had to be filed as a result of the prosecutor's fraud upon the court practices. During the petitioner's sentencing hearing where as the prosecutor was askin for a (30) year sentence with a (20) year minimum mandatory. The (20) year minimum mandatory which the prosecutor did eventually get imposed was reversed and remanded back to the trial court for an imposition of (10) years minimum mandatory consistant with the jurys verdict form. See exhibit of court order granting in part petitioners motion to correct illegal sentence.

In the petitioner's case the petitioner can show by clear and convincing evidence that the prosecutor has committed a fraud upon the court. In the case law of James v. US (NY 2009) 603 F.Supp. 2d 472 it states:

"To obtain relief from judgment based on fraud on the court a petitioner must prove the existance of fraud by clear and convincing evidence."

The petitioner's 3800(a) motion which was granted is evidence of the ~~petitioner~~ prosecutors fraud upon the court, had the prosecutor properly mention the verdict form which calls for a mandatory (10) year sentence under the 10-20-life law then the trial court would have given the petitioner a lesser sentence than the (25) years that the petitioner received as the court was considering mitigation. The intentions of the prosecutor only was to influence the court to not mitigate below the (20) year minimum mandatory.

Although the petitioner did go back before a different judge to be resentenced this resentencing did not involve full sentencing discretion it was only to lower the minimum mandatory of (20) years down to (10) years minimum mandatory which still did not correct the defect in the petitioners sentencing proceedings. It is now clear that the sentencing process as well as the trial itself must satisfy the requirements of the due process clause. Even though the defendant has no substantive rights to a particular sentence within the range authorized by statute. . . The petitioner has a legitimate interest in the character of the procedure which leads to the imposition of sentencing even if he may have no right to object

to a particular result of the sentencing process. Gardner v. Florida 430 US 349 358 97 S.ct 1197 1204-1205 51 L.Ed 2d 393 (1977).

In Mullins v. State 997 So.2d 443,445 Fla. 3rd. DCA 2008 The Court observed:

"A defendant will receive a new sentencing hearing if the sentencing involves additional consideration or sentencing discretion Not if the act to be done is ministeral in nature, such as striking an improper portion of the sentence. Griffen v. State 517 So.2d 681 Fla. 1987 McGowah v State 876 So.2d 26 Fla. 1st DCA 2004 Although striking the vident career criminal act here the entire sentence of 15 years must be vacated, and mullins must be resentenced with an entire new written sentence. Tublin v. State 965 So.2d 354 Fla. 4th DCA. 2007: State v. Arduengo 609 So.2d 651 (Fla. 2nd DCA 1992) This new written sentence will involve sentencing discretion and as such requires a new hearing." Id at 445.

The fact that the petitioner went back to court to have the improper (20) year minimum mandatory lowered to (10) years minimum mandatory that the prosecutor fraudently asked for supports the petitioners argument that the prosecutor committed fraud upon the court by clear and convincing evidence.

In the case law of Carter v. Anderson 585 F.3d 1005 Ohio 2009 6th Cir. it states that there are Five elements that have to be satisfied in order for a petitioner to prevail on a fraud upon the court claim.

Carter v. Anderson states:

[4] "Demaniuk defines fraud on the court as conduct 1) On the part of an officer of the court; 2) that is directed to the judicial machinery machinery itself; 3) is intentionally false willfully blind to the truth, or is in reckless disregard for the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court. Demaniuk v. Petrosky 10 F.3d 338, 348 (6th Cir. 1993) Carter has the burden of proven the existance of fraud on the court by clear and convincing evidence!"

In the petitioner's case (sentencing hearing) fraud upon the court was committed by the prosecutor Mr. David Fikre, He is an officer of the court and his conduct of intentionally influencing the court improperly was egregrious. 1st element has been satisfied. And element #2 under Demjanjuk: is directed to the judicial machinery itself; The state prosecutor asked for a unlawful sentence of the trial court to be imposed on the petitioner. he directed his scheme or plan to the judge in hopes that he would get an increse sentence and this cause the judge to abandon mitigation, his wishes were granted. And element 3) is intentionally false willfully blind to the truth or is in reckless disregard for the truth; In proving this third element the petitioner states that the prosecutor intentionally persuaded the trial court to impose a (20) year minimum mandatory sentence on (4) four attemps using false statements; these statements were not applicable or appropiate to the petitioners case.

The fact that he constructed a verdict form that has on it an interrogatory of with a firearm that calls for a (10) year minimum mandatory and he the prosecutor knowing it, shows

that he was willfully blind to the truth he never mentions the verdict form at all throughout the sentencing proceedings because he knows that it would initial a conversation about the appropriate minimum mandatory to be imposed (10) years mm and would allow the trial court to impose a sentence lower than the sentence that was impose, He intentially doesnt mention the verdict form. And element #4); is a positive avertment or a concealment when one is under a duty to disclose. By the prosecutor not mentioning the verdict form which would of bought about a (10) year minimum mandatory, this is a positive avertment or a concealment when one is under a duty to disclose the truth. He (the prosecutor) intentionally and improperly influence the court's decision with "correct information causing the court to impose an upward sentence and abandon mitigation below the (20) year minimum mandatory, this is a positive avertment.

And element 5); deceives the court, Mr. Fikru an attorney well informed of Florida law on minimum mandatory sentencing knew that the jury's finding contained on the verdict form and not allegations in the information determine the punishment to be imposed See State v. Tripp 642 So 2d 728, 730 (Fla. 1994)

> "Observing that the special verdict form - not allegations in an information - indicates a penalty increasing fact;"

On page of the sentencing transcripts Mr. Fikru is misleading or deceiving the trial court when he states that

page 8 Line 23,24,25 and page 9 Line 1

Mr. Fikru: "The jury having found him guilty and from the information, it says he shot Mr. Scott, I think the law requires Various 20 twenty years minimum mandatory judge".

When Mr. Fikru makes this statement he's totally incorrect as its not applicable to the petitioner's case, he's deceiving the court, misleading the court to improperly abandon mitigation and impose and improper illegal sentence which was imposed. The petitioner has shown how Mr. Fikru has deceived the court just for the purpose of the imposition of an increase sentence. This entire conduct of Mr. Fikru during sentencing towards the petitioner and in the trial court is fraud upon the court. Mr. Fikru's conduct is and caused a defect in the integrity of the proceedings.

This court should find based upon the Sworn to allegations in the petitioner's motion for relief from judgme with exhibits relied upon that a prima facia showing has been demonstrated and that the fraud upon the court was in fact a manifest injustice deserving of no protection.

This defect in the petitioners proceedings has prevented the petitioner from obtaining the benefit of his defense (to have a lower sentence imposed as the judge was conside mitigation.)

The petitioner has demonstrated the points of law to prevail on a fraud upon the court claim apperrant from th face of the record, the fact that the resentencing was only fo the sole purpose of striking the improper minimum mandat does not cure the defect, the petitioner was denied due p because the prosecutor threw his actions cause the court not to impose a lesser sentence (mitigate) as the judge truing to, this denied the petitioner of a fair sentencing hearing.

Relief Sough

Wherefore the petitioner request that this court finds that fraud upon the court was committed against the petitione in his sentencing hearing and reverse and remand the petitioner's case back to the lower court for a full new sentencing hearing with full sentencing discretion as the lower court was moving to impose a lesser sentence, but did not because of the prosecutor's improper influence.

APPENDIX G

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,
vs.

KAZI BOWLEG
Defendant.

Case No. F002011
Section No. 12
Judge Stacy D. Glick

ORDER PROHIBITING DEFENDANT FROM FILING ANY FURTHER PRO SE MOTIONS ATTACKNG HIS CONVICTIONS AND/OR SENTENCES

THIS MATTER having come before this Court as a result of an Order to Show Cause issued on March 20, 2015, against the defendant, KAZI BOWLEG, and the defendant filing his response which this Court finds to be insufficient to show cause why this Court should not enter any such Order, hereby makes the foregoing findings:

1. On January 29, 2001 a jury convicted the defendant of Attempted First Degree Murder and was subsequently sentenced on February 28, 2001 to twenty-five (25) years in state prison with a twenty (20) year minimum mandatory.
2. The defendant was appealed this sentence and on November 16, 2005 he was resentenced to twenty-five (25) years in state prison with a ten (10) year minimum mandatory.
3. Subsequently, the defendant filed numerous post-conviction motions challenging his conviction and sentence.
4. This court reviewed the defendant's filing, and on March 20, 2015 this court denied the defendant's motion finding it to not only be time barred, moot, successive, and without merit, but also to be frivolous and an abuse of the legal process. At that time, this court issued an: "Order to show cause why this court should not enter an order declaring the defendant's motion to be successive, without merit, and an abuse of the legal process **and** have said order forwarded to the Federal Bureau of Prisons for Disciplinary Procedures; **and** order to show cause by defendant should not be prohibited from filing any further motions attacking his convictions and/or sentences."
5. This court gave the defendant 30 days to respond.
6. ~~On~~ May 15, 2015, the defendant filed his response.

7. This court reviewed the defendant's response and found it insufficient as it laid forth claims which were non-meritorious, and an abuse of legal process.

This court now incorporates the findings made by this court on March 20, 2015, and finds the defendant has not shown good cause, and as such this Court directs the Clerk of the Circuit Court for the Eleventh Judicial Circuit to refuse to accept any such papers relating to the above ~~circuit court~~ case number unless they have been reviewed and signed by an attorney who is a duly licensed member of The Florida Bar in good standing. In addition such further and unauthorized pro se filings by the defendant will subject him to appropriate sanctions. See State v. Spencer, 751 So.2d 47 (Fla. 1999).

This court now forwards a copy of this order to the Federal Bureau of Prisons for Disciplinary Procedures.

The Clerk of this Court is hereby ordered to send a copy of this order to the Defendant, KAZI BOWLEG, #.M23610, Everglades Correctional Institution, 1599 S.W. 187th Avenue, Miami, FL 33194.

The defendant, KAZI BOWLEG, #.M23610, Everglades Correctional Institution, 1599 S.W. 187th Avenue, Miami, FL 33194, is hereby notified that he has the right to appeal this order to the District Court of Appeal of Florida, Third District within thirty (30) days of the signing and filing of this order.

In the event that the defendant takes an appeal of this order, the Clerk of this Court is hereby ordered to transport, as part of this order, to the appellate court the following:

1. The defendant's February 04, 2015 filing.
2. The defendant's response to this Court's Order to Show Cause on March 20, 2015.
3. This Order.
4. Copies of **All** of the defendant's previous post-conviction filings under cases F002011, the State's responses, and the corresponding orders denying the motions.
5. The court docket pertaining to cases F002011.
6. The attached listing of the appellate court docket pertaining to cases F002011.

DONE AND ORDERED at Miami, Miami-Dade County, Florida, this the 4th day of June, 2015.

STACY D. GLICK
CIRCUIT JUDGE

I CERTIFY that a copy of this order has been furnished to the MOVANT, Kazi Bouleg by mail this 4th day of June 20 15.

CIRCUIT AND COUNTY COURTS CLERK DADE COUNTY, FLORIDA IN GOD WE TRUST

STATE OF FLORIDA, COUNTY OF DADE
I HEREBY CERTIFY that the foregoing is a true and correct copy of the original on file in this office
JUN - 9 2015 AD 20
HARVEY RUVIN, CLERK of Circuit and County Courts
Deputy Clerk

CIRCUIT AND COUNTY COURTS CLERK DADE COUNTY, FLORIDA IN GOD WE TRUST

Order prohibiting Defendant Kazi Bouleg from filing any further pro se Motions Attacking his convictions and/or sentences.