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IN THE SUPREME COURT OF THE UNITED STATES

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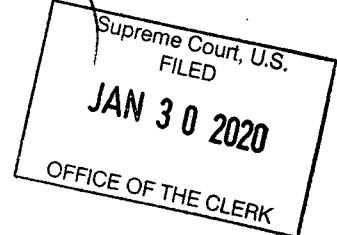
**DAVID DWAYNE BROWN, Pro Se,**  
*Petitioner,*

LFT case no: F63-21018A

v.

**STATE OF FLORIDA,**  
*Respondent(s).*

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ON PETITION FOR A WRIT OF CERTIOARI TO

**DISTRICT COURT OF APPEALS OF FLORIDA, THIRD DISTRICT**  
**(COURT THAT LAST RULED ON MERITS OF MY CASE)**

**PETITION FOR WRIT OF CERTIOARI**

DAVID DWAYNE BROWN DC# 180307  
FLORIDA STATE PRISON F-1209  
P.O. BOX 800  
RAIFORD, FLORIDA 32083

**QUESTION(S) PRESENTED**

1. Whether constitutional right of access to court is violated when State Appellate court does not issue a show cause order as to why pro se litigants should not be barred from filing pro se petitions in its court in the underlying case, before holding pro se petitions are unauthorized and barred?
2. State appellate court refusal to enforce its appellate order in trial court, conflicts with decisions of other state appellate courts who held, "A trial court is 'not authorized to deviate from terms of an appellate court's order,'"

#### List of Parties

All parties appear in the caption of the case on the cover page.

## **TABLE OF AUTHORITIES CITED**

<b>Cases</b>	<b>Page Number</b>
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<i>McGlockling v. State</i> , Case No. # 3D16-2466 (Fla. 3d DCA 10/3/18)	12,13
<i>Mendelson v. Mendelson</i> , 341 So.2d 811 (Fla. 2d DCA 1977)	13
<i>Schlup v. Delo</i> , 513 U.S. 298 (1995)	10
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APPENDIX E - State Appellate Court notice of new case #3D18-25157 October 19<sup>th</sup>, 2018

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APPENDIX G - State Appellate Court order of March 13<sup>th</sup>, 2019

APPENDIX H - State Appellate Court order of April 22<sup>nd</sup>, 2019

APPENDIX I - State of Florida May 1<sup>st</sup>, 2019 response

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APPENDIX K - Pro Se Petition June 5<sup>th</sup>, 2019 for enforcement of Appellate Order of October 29<sup>th</sup>, 2018

**IN THE**  
**SUPREME COURT OF THE UNITED STATES**  
**PETITION FOR WRIT OF CERTIOARI**

Petitioner respectfully prays that a Writ of Certioari issue to review the judgment below.

**OPINIONS BELOW**

**For Cases From State Courts:**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the State Supreme Court appears at Appendix B to the petition and is unpublished.

**JURISDICTION**

**For Cases From State Courts:**

The date on which the highest state court decided my case was June 14<sup>th</sup>, 2019. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date:

November 12<sup>th</sup>, 2019, and a copy of the order denying rehearing appears at Appendix B.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Florida Constitution Article I, §21: The courts shall be open to every person for redress of any injury and justice shall be administered without sale, denial, or delay.

United States Constitutional Amendment XIV: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

### United States Constitution Article III

### Florida Statute Section 944.279

#### **STATEMENT OF THE CASE**

On April 27<sup>th</sup>, 2017, the state trial court of the Eleventh Judicial Circuit in Miami-Dade County, Florida, in case no. F03-21018A, issued a show cause order providing petitioner with notice of the intended sanction preventing further pro se pleadings in the underlying case in its jurisdiction, and afforded him an opportunity to be heard. State v. Spencer, 751 So.2d 47(Fla. 1999). (Appx C). After petitioner's response, trial court on June 20<sup>th</sup>, 2017, issued a order preventing further pro se pleadings in the underlying case # F03-21018A in a trial court jurisdiction. §944.279, Florida Statute (2019). (Appx D). On September 20<sup>th</sup>, 2017, state appellate court in case # 3D17-1685, affirmed

trial court's order. *Brown v. State*, 229 So.3d 415 (Fla. 3d DCA 2017).

On October 19<sup>th</sup>, 2018, petitioner filed pro se petition for writ of Habeas Corpus in state appellate court in case # F03-21018A, asserting actual innocence claim supported by newly discovered evidence.<sup>1</sup> (Appx. E). On October 29<sup>th</sup>, 2018, Florida's Third District Court of Appeals on its own motion in case # 3D18-2157, transferred the Habeas Petition to state trial court with instructions to appoint counsel for Petitioner limited to issues raised in Habeas Petition. Counsel shall within a reasonable time (not to exceed (90) ninety days) adopt or amend the Habeas Petition, so trial court can rule on it. Trial court is to treat Habeas Petition as if it filed in trial court on October 19<sup>th</sup>, 2018. (Appx. F).

<sup>1</sup> Newly discovered evidence was proffered as a “gateway” claim to review a constitutional error that occurred at trial on its merits. *Schlup v. Delo*, 513 U.S. 298 (1995)

On March 13<sup>th</sup>, 2019, state appellate court dismissed pro se motion to order trial court to rule on Habeas Petition within (30) days per order of October 29<sup>th</sup>, 2018, and further vacated the order of October 29<sup>th</sup>, 2018, stricken the pro se motion pursuant to *Brown v. State*, 229 So.3d at 415, and stated, “petitioner did not disclose to the court that he had been barred from filing pro se pleadings by trial court in its jurisdiction in case # F03-21018A. (Appx. G). On April 22<sup>nd</sup>, 2019, state appellate court ordered State of Florida to file a status report in this case, including inquiry whether Petitioner is represented by Court Appointed Counsel in accordance with the order of October 29<sup>th</sup>, 2018. (Appx. H.)

On May 1<sup>st</sup>, 2019, State of Florida responded to the order of April 22<sup>nd</sup>, 2019, stating, 'They reviewed trial court's file and electronic docket for this case. It appears the order of October 29<sup>th</sup>, 2018 was not docketed by the trial court, and no action was taken by trial court on the order of October 29<sup>th</sup>, 2018.' (Appx. I). On May 7<sup>th</sup>, 2019, State of Florida filed a supplemented response to the order of April 22<sup>nd</sup>, 2019, stating, "This case came before Judge Miguel de la O for status. Judge de la O determined petitioner is not presently represented by court appointed counsel. Trial court reviewed its file and docket, and found the order of October 29<sup>th</sup>, 2018, was not received, and took no action in this case." (Appx. J).

On June 5<sup>th</sup>, 2019, petitioner filed pro se petition for enforcement of appellate court's order in state appellate court. (Appx. K). On June 14<sup>th</sup>, 2019, state appellate court held, "pro se petition for ~~enhancement~~<sup>enforcement</sup> of appellate order of October 29<sup>th</sup>, 2018, is unauthorized and barred by its order of March 13<sup>th</sup>, 2019, and opinion in *Brown v. State*, case # 3D17-1685." (App. L). On November 12<sup>th</sup>, 2019, State Supreme Court did not accept jurisdiction for discretionary review, and declined to entertain rehearings. (appx. M).

In Florida, before a court can bar pro se litigants from further pro se pleadings in a particular conviction and sentence, it must issue a show cause order to provide the litigant with notice of the intended sanction, and afford the litigants an opportunity to respond. In re; *Glenn Anderson*, 114 S. Ct. 1606 (1994); *Spencer*, 751 So.2d at 48, §944.279, Fla. Stat. (2019).

Petitioner in this case at hand contends he is being denied his Constitutional Right of Access to the Court because the State appellate court has ruled his pro se petition for enforcement of the Appellate Court's Order of October 29<sup>th</sup>, 2019, is unauthorized and barred by the Appellate Order of March 13<sup>th</sup>, 2019, and opinion in Brown v. State, 229 So.3d at 415. See United States Constitution Art. III; and Amendment XIV.

Prior to the appellate court's order of March 13<sup>th</sup>, 2019, the court never issued a show cause order to petitioner notifying him of the intended ~~action~~<sup>saction</sup> to prevent pro se pleadings, motions, or appeals in its court ~~relation~~<sup>relating</sup> to the conviction and sentence in the underlying case, and afforded petitioner an opportunity to be heard. Rather, the state appellate court relies on the trial court's order that, barred pro se pleadings in the underlying case in its trial court jurisdiction, as an automatic blanket rule to prevent pro se filings in its appellate court jurisdiction in same underlying case. This is error.

In McGlockling v. State, case # 3D16-2466 (Fla. 3d DCA 10/3/18), that state appellate court affirmed the trial court's denial of McGlockling's successive Habeas Petition in L/T case # F00-19296, noting also that the trial court barred him from filing further pro se pleadings in the trial court's jurisdiction in the underlying case. The appellate court, independently issued its own show cause order to *McGlockling* providing him notice and affording him an opportunity to be heard as to why he should not be barred from filing further pro se petitions, motions, and appeals in its court relating to the convictions and sentence in the underlying case, notwithstanding the trial court's order.

Second, the appellate court's dismissal of the pro se motion for enforcement of its appellate order of October 29<sup>th</sup>, 2019 as unauthorized and barred, conflicts with the decisions of other state courts of last resort, who have all agreed that, "A trial court is not authorized to deviate from the terms of an appellate court's instruction's." *Hearns v. State*, 54 So.3d 500, 502 (Fla. 3d DCA 2010); *Akins v. Akins*, 839 So.2d 910, 911 (Fla. 5<sup>th</sup> DCA 2003); *Mendelson v. Mendelson*, 341 So.2d 811, 814 (Fla. 2d DCA 1977); *Berger v. State*, 103 So.2d 628 (Fla. 1958). Petitioner was denied his Constitutional Right to access the court, and have the court review the trial court's deviation from the terms of the appellate court's order of October 29<sup>th</sup>, 2018. Petitioner was denied equal protection of the law which shielded those defendant's in *Hearns, Akins, Mendelson, and Berger* from those trial Court's who deviated from the terms of an Appellate Court instructions, see U.S. Const. Amend. 14.

Petitioner further contends that, the trial court's order barring future pro se pleadings in the underlying case in its court, does not automatically make all pro se pleadings in the same underlying case unauthorized and barred in an appellate court, absent an independent appellate court's order to show cause to a pro se litigant why he or she should not be barred from filing pro se petitions, motions, and appeals in its court, relating to convictions and sentences in the underlying case. See *McGlockling* supra: In Re *Glenn Anderson*, 511 U.S. 364, 114 S. Ct. 1606 (1994).

It is for these reasons, this Honorable Court should intervene now to correct this egregious Constitutional violation in an area of great public concern.

## **REASONS FOR GRANTING THE PETITION**

**[QUESTION 1]** This court should decide whether Constitutional Right of Access to Courts is violated, when state trial courts order barring Pro Se Litigants future pro Se filings in a particular conviction or sentence in its jurisdiction, automatically unauthorizes pro se filings of same convictions or sentences in State Appellate Courts jurisdictions, where no abuse of appellate judiciary process has been found...

**A.** The District Court of Appeals, of Florida, Third District held that petitioners pro se petition for enforcement of this Court's appellate order or decree is hereby stricken as unauthorized and as decree is hereby this Courts' prior order of March 13<sup>th</sup>, 2019, and opinion of September 20<sup>th</sup>, 2017 in case no. 3D17-1685.

**B.** This court has not addressed the question presented in this case but the Florida third District Court of Appeal conflicts with the decisions of other state courts of last resort.

**C.** The Constitutional right at issue are of fundamental importance and the Florida Third District Court of Appeal ruling runs contrary to the text and history of the rights

guaranteed by the Fourteenth Amendment.

**D.** Mr. Brown's case presents an excellent vehicle for the resolution of this important constitutional question.

## **CONCLUSION**

The petition for a Writ of Certioari should be granted.

Respectfully submitted,

Dixie Brown  
Date: January 30<sup>th</sup>, 2020