

**SUPREME COURT OF THE UNITED STATES**

**DAVID DWAYNE BROWN,**  
**Pro se**

CASE NO. \_\_\_\_\_

LEGAL MAIL  
Provided to Florida State Prison on  
2/21/20 for mailing by *DB*

v.

**L/T Case No: F03-21018A**

**MARK S. INCH, ETC.,**  
**FLORIDA DEPT. OF CORRECTIONS**  
**Secretary.**

LEGAL MAIL  
Provided to Florida State Prison on  
3/26/20 for mailing by *DB*

**Appendix in Support of Petition for Writ of Habeas Corpus**

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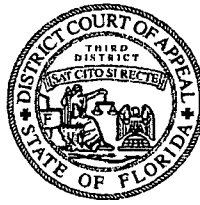
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~~A~~

Appx. A

LESLIE B. ROTHENBERG  
CHIEF JUDGE  
RICHARD J. SUAREZ  
BARBARA LAGOA  
VANCE E. SALTER  
KEVIN EMAS  
IVAN F. FERNANDEZ  
THOMAS LOGUE  
EDWIN A. SCALES, III  
ROBERT J. LUCK  
NORMA S. LINDSEY

JUDGES



**DISTRICT COURT OF APPEAL**

THIRD DISTRICT  
2001 S.W. 117 AVENUE  
MIAMI, FLORIDA 33175-1716

TELEPHONE (305) 229-3200

MARY CAY BLAIR  
CL

VERONICA ANTONIO  
MARE

DEBBIE MCCUFF  
CHIEF DEPUTY CL

Maria E. Miller  
DEPUTY MARS

**ACKNOWLEDGMENT OF NEW CASE**

DATE: October 24, 2018

STYLE: DAVID BROWN, v. THE STATE OF FLORIDA,

3DCA#: 3D18-2157

The Third District Court of Appeal has received the Petition reflecting a filing date of 10/24/18.

The county of origin is Dade.

The lower tribunal case number provided is 03-21018.

Case Type: Habeas Corpus The filing fee is No Fee-Habeas Corpus.

The Third District Court of Appeal's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

Please review and comply with any handouts enclosed with this acknowledgment.

cc:

Office Of Attorney General  
David Dwayne Brown

SS

Appx. B

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA

THIRD DISTRICT

OCTOBER 29, 2018

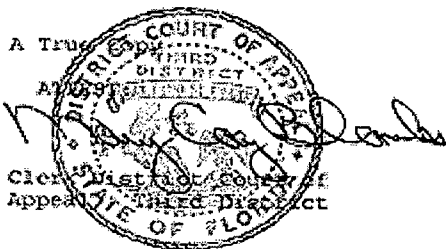
DAVID BROWN,  
Appellant(s)/Petitioner(s),  
vs.  
THE STATE OF FLORIDA,  
Appellee(s)/Respondent(s),

CASE NO.: 3D18-2157

L.T. NO.: 03-21018

On the Court's own motion, this petition is hereby transferred to the Circuit Court of the Eleventh Judicial Circuit for Miami-Dade County, Florida in case no. F03-21018A. The trial court is to appoint counsel for the petitioner, limited to the issues raised in the petition filed here, and treat the petition as if filed in the trial court on October 19, 2018. Appointed counsel shall, within a reasonable time (but not to exceed ninety (90) days), amend or adopt the existing petition so that it may be ruled upon by the trial court.

LAGOA, SALTER and EMAS, JJ., concur.



cc: Office Of Attorney General  
Miami-Dade Clerk

David Dwayne Brown

Hon. Martin Zilber

ns

Appx. C

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA

THIRD DISTRICT

MARCH 13, 2019

DAVID BROWN,  
Appellant(s)/Petitioner(s),  
vs.  
THE STATE OF FLORIDA,  
Appellee(s)/Respondent(s),

CASE NO.: 3D18-2157

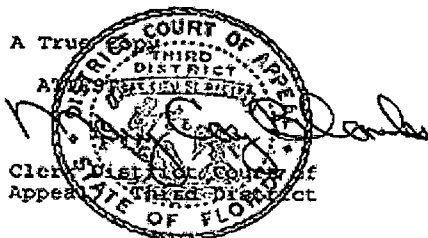
L.T. NO.: 03-21018

The petition to issue an order to the trial court to rule on writ of habeas corpus within thirty (30) days is hereby dismissed pursuant to Logan v. State, 846 So. 2d 472 (Fla. 2003), and this Court's Order of October 29, 2018. Petitioner is advised that the current address of the attorney identified on CJIS for LT number F03-21018A is David O. Markus, Esq., 40 NW 3rd St., PH-1, Miami, FL 33128. The Circuit Court Clerk's letter may have contained an outdated address.

Said petition is hereby stricken pursuant to the opinion in Brown v. State, Case No. 3D17-1685, LT number F03-21018A (Sept. 20, 2017), barring further pro se postconviction pleadings, not disclosed by petitioner to this Court in this case.

The order of October 29, 2018 in this case is vacated.

EMAS, C.J., and SALTER and LOGUE, JJ., concur.



229 5013d 415  
3DCA 2017



cc:

Office Of Attorney General  
Hon. Miguel M. de la O

David Dwayne Brown  
Miami-Dade Clerk

Hon. Martin Zilber

ns

Appx. D

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA

THIRD DISTRICT

APRIL 22, 2019

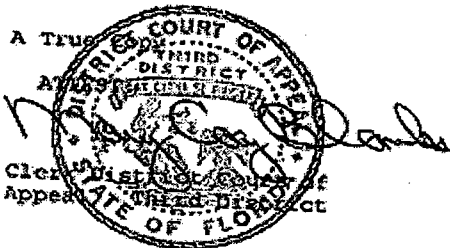
DAVID BROWN,  
Appellant(s)/Petitioner(s),  
vs.  
THE STATE OF FLORIDA,  
Appellee(s)/Respondent(s),

CASE NO.: 3D18-2157

L.T. NO.: 03-21018

The State of Florida is ordered to file a status report in this cause within ten (10) days of the date of this order, including inquiry as to whether petitioner is represented by trial court counsel in accordance with this Court's order of October 29, 2018. The State is advised that, in response to this Court's further order of March 19, 2019, Attorney David O. Markus has disclaimed any representation of petitioner, and has suggested that petitioner's counsel may be David S. Markus.

EMAS, C.J., and SALTER and LOGUE, JJ., concur.



cc: Office Of Attorney General     David Brown

ts

Appx. E

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JANUARY TERM, A.D. 2019

CASE NO. 3D18-2157  
LOWER TRIBUNAL NO. 03-21018A

DAVID DWAYNE BROWN,  
Petitioner,

vs.

**STATUS REPORT**

THE STATE OF FLORIDA,  
Respondent.

---

**RESPONDENT**, the State of Florida, by and through undersigned counsel, hereby files its response to this Honorable Court's April 22, 2019 order directing the State to file a status report:

1. On October 24, 2018, Brown filed a Petition for Habeas Corpus. On October 29, 2018, this Court transferred the matter to the Eleventh Judicial Circuit and ordered that counsel be appointed to address the issues raised in the petition.
2. On March 11, 2019, Petitioner filed with this Court a petition to issue an order directing the trial court to rule on his petition for writ of habeas corpus within thirty days. This Court dismissed the petition pursuant to Logan v. State, 846 2d 472 (Fla. 2003), and the Court's October 29, 2018 order. The order identified David O. Markus as counsel for Petitioner.
3. On April 22, 2019, this Court issued an order directing the State to file a status

report as to who represents Petitioner.

4. The State has reviewed the trial court file and the electronic docket for this case. It does not appear that the October 29, 2018 order of this Court was docketed by the trial court. No action on this order appears to have been taken by the trial court.
5. Attorney David S. Markus had been appointed as counsel for Petitioner on November 20, 2008, however no notice of appearance or acknowledgements have been filed since this Court's October 29, 2018 order. The State has included in it Appendix the trial court docket (App A) and the CJIS electronic docket (App B).
6. The State contacted Assistant State Attorney Robin Peguero and the Office of Judge Miguel de la O regarding the status of Petitioner's representation. Judge de la O's judicial assistant informed that the court has calendared the matter for May 3, 2019.

Respectfully submitted,

ASHLEY MOODY  
Attorney General  
Tallahassee, Florida

s/ Michael W. Mervine  
**Michael W. Mervine**  
Bureau Chief, Criminal Appeals- Miami  
Bar No. 0692131  
Office of the Attorney General

Department of Legal Affairs  
SunTrust International Center  
One SE Third Avenue, Suite 900  
Miami, Florida 33131  
(305) 377-5441  
CrimAppMIA@myfloridalegal.com  
michael.mervine@myfloridalegal.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Status Report was furnished by mail to the Petitioner, **DAVID DWAYNE BROWN, DC # 180307, FLORIDA STATE PRISON, RAIFORD, FLORIDA 32083** this 1<sup>st</sup> day of May, 2019.

s/ Michael W. Mervine  
**Michael W. Mervine**



Appx. F

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JANUARY TERM, A.D. 2019

CASE NO. 3D18-2157  
LOWER TRIBUNAL NO. 03-21018A

DAVID DWAYNE BROWN,  
Petitioner,

vs.

**STATUS REPORT**

THE STATE OF FLORIDA,  
Respondent.

---

**RESPONDENT**, the State of Florida, by and through undersigned counsel, hereby files its supplemental response to this Honorable Court's April 22, 2019 order directing the State to file a status report:

1. On April 22, 2019, this Court issued an order directing the State to file a status report as to who represents Petitioner.
2. On May 7, 2019, Petitioner's case came before Judge Miguel de la O for status. Judge de la O determined that Petitioner was not presently represented by counsel. Further, the trial court reviewed its file and docket and found that the October 29, 2018 order of this Court was not received. The trial court took no further action.

Respectfully submitted,

ASHLEY MOODY  
Attorney General

Tallahassee, Florida

s/ Michael W. Mervine

**Michael W. Mervine**

Bureau Chief, Criminal Appeals- Miami

Bar No. 0692131

Office of the Attorney General

Department of Legal Affairs

SunTrust International Center

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Miami, Florida 33131

(305) 377-5441

CrimAppMIA@myfloridalegal.com

michael.mervine@myfloridalegal.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Supplemental Status Report was furnished by mail to the Petitioner, **DAVID DWAYNE BROWN, DC # 180307, FLORIDA STATE PRISON, RAIFORD, FLORIDA 32083** this 7<sup>th</sup> day of May, 2019.

s/ Michael W. Mervine

**Michael W. Mervine**

Appx. G

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

May 17, 2019

Clerk - Southern District of Florida  
U.S. District Court  
400 N MIAMI AVE  
MIAMI, FL 33128-1810

Appeal Number: 19-11597-K  
Case Style: In re: David Brown  
District Court Docket No: 1:12-cv-21909-RSR

The enclosed order has been entered. No further action will be taken in this matter.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Lee Aaron, K  
Phone #: 404-335-6172

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 19-11597-K

---

IN RE: DAVID BROWN,

Petitioner.

---

Application for Leave to File a Second or Successive  
Habeas Corpus Petition, 28 U.S.C. § 2244(b)

---

Before: MARCUS, BRANCH and GRANT, Circuit Judges.

BY THE COURT:

Pursuant to 28 U.S.C. § 2244(b)(3)(A), David Brown has filed an application seeking an order authorizing the district court to consider a second or successive petition for a writ of habeas corpus. Such authorization may be granted only if:

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2). “The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the

application satisfies the requirements of this subsection.” *Id.* § 2244(b)(3)(C); *see also Jordan v. Sec’y, Dep’t of Corrs.*, 485 F.3d 1351, 1357-58 (11th Cir. 2007) (explaining that this Court’s determination that an applicant has made a *prima facie* showing that the statutory criteria have been met is simply a threshold determination).

In his application, Brown indicates that he wishes to raise three claims in a successive § 2254 petition. First, Brown contends that he has obtained two affidavits from inmates who overheard Brown’s co-defendant, Robinson, state to varying degrees that Brown was innocent and that his accomplice was actually another man whom Brown refers to as “Ahmed Jones.” Brown did not attach copies of these affidavits. He asserts that this evidence, in conjunction with other evidence of his innocence presented at his trial, establishes that no reasonable factfinder would have found him guilty.

Second, Brown argues that he was denied his Sixth Amendment right to the effective assistance of counsel by his trial counsel’s insistence on presenting a claim of self-defense rather than the misidentification defense that Brown wanted to pursue. He contends that the right to insist that counsel refrain from admitting guilt was recently announced as a new rule of constitutional law in *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018) and that it is also supported by the inmates’ affidavits. Third, Brown asserts that his trial counsel misadvised him that if he testified in his own defense, the jury would be advised of his prior felony convictions in order to show similarity and the propensity to commit similar crimes. He contends that this claim also relies on the inmates’ affidavits. ✱

Brown’s proposed first claim relies on newly discovered evidence in so much as he alleges that the affidavits were executed by inmates with state prison identification numbers, which

suggests that the affidavits may not have been executed until after Brown was imprisoned for his convictions. Applying the first prong of § 2244(b)(2)(B), because Brown did not attach the affidavits to his application, it is difficult to gauge whether Brown exercised due diligence in pursuing the information contained in the affidavits, and it is impossible to know whether the affidavits were available when his first § 2254 petition was pending, which is the relevant inquiry. *See In re Boshears*, 110 F.3d 1538, 1540 (11th Cir. 1997).

Applying the second prong of § 2244(b)(2)(B), it is possible that the affidavits, viewed in light of the evidence as a whole, would demonstrate Brown's actual, factual innocence. *See id.* at 1541. Brown states:

DNA evidence presented at trial refuted defendant was the guy who was smoking a cigarette that did this crime, showed DNA was not under victims fingernails, and no serological or biological evidence found in defendant's car. Defendant's fingerprints not found at scene. Medical evidence show defendant was not person who shot victim 2 with A.K. 47, and grabbed the gun.

(App. at 8). Accepting these facts as true, the DNA evidence presented at Brown's trial did not conclusively link him to the charged murders. And the inmates' affidavits, if presented, would suggest that Brown had been framed by his co-defendant, Robinson.) In light of the evidence as a whole, Brown could conceivably show by clear and convincing evidence that no reasonable juror would have convicted him. *See* 28 U.S.C. § 2244(b)(2)(B)(ii). However, without having the affidavits to review, it is impossible to determine whether the new evidence would satisfy the second prong of § 2244(b)(2)(B).

But even if Brown has satisfied all the other statutory criteria under § 2244(b)(2)(B), his first claim fails because he has not shown, or even alleged, that the affidavits establish that a constitutional violation occurred. *See* 28 U.S.C. § 2244(b)(2)(B)(ii). Under § 2244(b)(2)(B)(ii),



a prisoner must allege “both clear and convincing evidence of his actual innocence and another constitutional violation.” *In re Bolin*, 811 F.3d 403, 409 (11th Cir. 2016). Brown has not done so.

Brown’s proposed second claim is grounded in the Sixth Amendment. In *McCoy*, the Supreme Court held that in capital murder cases, a defense attorney who overrides a defendant’s insistence that counsel refrain from admitting the defendant’s guilt violates the defendant’s Sixth Amendment rights. *McCoy*, 138 S. Ct. at 1508-09. While Brown contends that this claim relies on a new constitutional rule of law, as pronounced in *McCoy*, the claim does not meet the standard set forth in § 2244(b)(2)(A) because the Supreme Court has not made this rule retroactive to cases on collateral review.<sup>1</sup> See *Tyler v. Cain*, 533 U.S. 656, 661-66 (2001). Additionally, the rule pronounced in *McCoy* appears to apply only to capital cases, and Brown’s case was not a capital case.

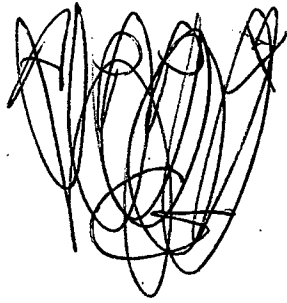
Brown’s proposed third claim essentially raises an ineffective assistance of counsel claim based on his trial counsel’s advice to him about exercising his right to testify. This claim relies neither on newly discovered evidence nor a new rule of constitutional law. See 28 U.S.C. § 2244(b)(2)(A), (B).

Accordingly, because Brown has failed to make a *prima facie* showing of the existence of either of the grounds set forth in § 2244(b)(2), his application for leave to file a second or successive petition is hereby DENIED.

---

<sup>1</sup> Brown also contends that this claim relies on the same newly discovered inmates’ affidavits as his first proposed claim, but it is not clear that the affidavits, which were executed sometime after his trial and bear on the question of his guilt, support a claim that his trial counsel violated his Sixth Amendment rights.

Appx H



App X. H

LEGAL MAIL  
Provided to Florida State Prison on  
6/5/19 for mailing by DB

In The District Court  
of Appeals of Florida  
Third District

David Brown, pro se,  
Petitioner,

case no', 3D18-2157  
4T case no', F03-21018A

v.  
State of Florida, |

Petition for Enforcement of this Court's  
Appellate Order or Decree

Petitioner, David Brown,<sup>1</sup> files his petition for enforcement of this Honorable Court's appellate Order or Decree of October 29, 2018. In support thereof I will show:

1. On October 19, 2018, petitioner filed petition for writ of habeas corpus in this Honorable Court. (Exhibit A).
2. On October 29, 2018, this Honorable Court ~~on~~ the Court's own motion, transferred the petition to the Circuit Court of the Eleventh Judicial Circuit for Miami-Dade County, Florida. The trial court was ordered to appoint counsel for petitioner, limited to the issue(s) raised in the petition, and treat petition as if filed in trial court on October 19, 2018. Appointed counsel was ordered to within a reasonable time (not to exceed (90) ninety days) amend or adopt the existing petition so trial court may rule upon it. (Exhibit B), (order sent to all parties.)

<sup>1</sup> Petitioner brings to this court's attention that he has been barred from filing pro se pleadings in the trial court jurisdiction. see Brown v. State, no: 3D17-1685. But has not received such a ruling from

my [signature]

3. On November 28, 2018, petitioner contacted the Miami-Dade County, Clerk of Courts, the Hon. Harvey Ruvin via U.S. mail, requesting the name and address of the attorney appointed by the trial court in this cause, (exhibit C)
4. On December 20, 2018, the Hon. Harvey Ruvin's office, Deputy Clerk C. Deley, responded to petitioner's November 28, 2018 request, providing the name of the attorney appointed by trial court in this cause, (exhibit D).
5. On March 13, 2019, this Honorable Court, denied petitioner's petition to order the trial court to rule on writ of habeas corpus within thirty (30) days. And provided petitioner with the name and address of trial court appointed counsel identified on CJIS for this cause, (exhibit E). (\*The order show copies sent to all parties involved)
6. On April 22, 2019, state of Florida was ordered to file a status report in this cause within ten (10) days of the court's order, including inquiry as to whether petitioner is represented by trial court appointed counsel in accordance with this court's order of October 29, 2018. (\*Court counsel disclaimed any representation of petitioner). (exhibit F).
7. On May 1, 2019, state of Florida responded to this court's April 22, 2019 order, advising this cause was placed on trial court calendar for May 3, 2019. (Exhibit G). Also, number #4 of this response

This court's jurisdiction.

indicates the State had reviewed the trial court file and the electronic docket for this case, and the appellate court's order of October 29, 2018, was not docketed by the trial court, and trial court took no action on the order. (Exhibit G #4).

8. On May 7, 2019, State of Florida supplemented its response to the appellate court's April 22, 2019 order that petitioner's case came before trial court for status report, and it was determined petitioner is not, presently represented by court counsel, and a review of the file and docket show the appellate court's order of October 29, 2018 was not received, and trial court took no action in the cause, (Exhibit H).

9. On May 17, 2019, petitioner filed notice of Appeal in Third District Court of Appeals, seeking review of trial court's order of May 7, 2019, (Exhibit I).

In Hearns v. State, 54 So.3d 500 (Fla. 3d DCA 2010), the court held, "A trial court is 'not authorized to deviate from the terms of an appellate court's instructions,'" (Id. at 502, (quoting AKins v. AKins, 839 So.2d 910, 911 (Fla. 5th DCA 2003)).

The trial court's refusal to docket this appellate court's order of October 29, 2018, and then to take no action on that order, is obvious deviation from the terms of this appellate court's instructions from its order of October 29, 2018. The trial court's role upon the issuance of the appellate court's

order of October 29, 2018, became purely ministerial, limited to obeying the order. The trial court did not have discretionary power to not docket the appellate court's order of October 29, 2018, and take no action on the order. *Id.* at 502, (quoting Torres v. Jones, 652 So.2d 893, 894 (Fla. 3d DCA 1995)) (A trial court does not have discretionary power to alter or modify the mandate of an appellate court in any way, shape or form).

The trial court's deviation from the appellate court's instructions and terms, deprived petitioner of equal protection of the law and due process of law in violation of Florida and the United States Constitutions.

#### Conclusion

Based on the above facts and arguments, petitioner moves this Honorable court to issue an order that enforces its order of October 29, 2018, to the trial court to appoint counsel in this case, and for counsel to adopt or amend the writ of habeas corpus within thirty (30) days so the trial court may rule upon the petition limited to the issues raised in the petition.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY**, that I placed this document in the hands of  
prison officials at Florida State Prison.

for mailing via U.S. Mail to: Clerk-30CA, 2001 S.W. 117<sup>th</sup>  
PARTIES SERVED  
avenue, Miami, Florida 33175; ATT'Y General, 1 SE  
3<sup>rd</sup> avenue, Ste #900, Miami, Florida 33131

on this 5<sup>th</sup> day of June, 2019  
DAY MONTH YR.

David Brown  
David Brown  
DC# 180307  
Florida State Prison  
P.O. Box 800  
Raiford, FL 32083



Appx I

~~EXHIBIT~~

~~1~~

APPX. I

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA

THIRD DISTRICT

JUNE 14, 2019

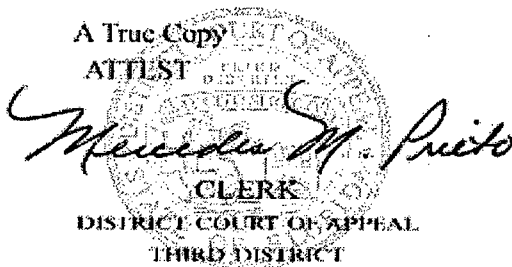
DAVID BROWN,  
Appellant(s)/Petitioner(s),  
vs.  
THE STATE OF FLORIDA,  
Appellee(s)/Respondent(s),

CASE NO.: 3D18-2157

L.T. NO.: 03-21018

Upon consideration, petitioner's pro se "petition for enforcement of this Court's appellate order or decree" is hereby stricken as unauthorized and as barred by this Court's prior order of March 13, 2019 and opinion of September 20, 2017, in Case No. 3D17-1685.

EMAS, C.J., and SALTER and LOGUE, JJ., concur.



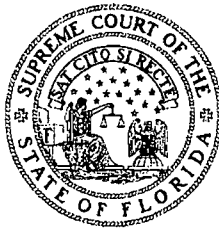
cc: Michael W. Mervine

Office Of Attorney General David Dwayne Brown

la

see back →

Appx. J



# Supreme Court of Florida

Office of the Clerk  
500 South Duval Street  
Tallahassee, Florida 32399-1927

JOHN A. TOMASINO  
CLERK  
MARK CLAYTON  
CHIEF DEPUTY CLERK  
JULIA BREEDING  
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125  
[www.floridasupremecourt.org](http://www.floridasupremecourt.org)

## ACKNOWLEDGMENT OF NEW CASE

September 17, 2019

RE: DAVID DWAYNE BROWN vs. MARK S. INCH, ETC.

CASE NUMBER: SC19-1565

Lower Tribunal Case Number(s): 132003CF0210180001XX

The Florida Supreme Court has received the following documents reflecting a filing date of 9/11/2019.

Petition for Writ of Habeas Corpus

Petition Regarding Time Limitation Periods in Support of Petition for Writ of Habeas Corpus filed Sept. 4, 2019 received 09/09/2019

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause.

tr

cc:

KENNETH SCOTT STEELY  
DAVID DWAYNE BROWN  
MICHAEL W. MERVINE  
HON. HARVEY RUVIN, CLERK

Appx K

authorities, the listing of counsel at the end of the document, or any appendix. The word limits include footnotes. Verbatim quotations required under Rule 14.1(f) and Rule 24.1(f), if set out in the text of a brief rather than in the appendix, are also excluded. For good cause, the Court or a Justice may grant leave to file a document in excess of the word limits, but application for such leave is not favored. An application to exceed word limits shall comply with Rule 22 and must be received by the Clerk at least 15 days before the filing date of the document in question, except in the most extraordinary circumstances.

(e) Every booklet-format document shall have a suitable cover consisting of 65-pound weight paper in the color indicated on the chart in subparagraph 1(g) of this Rule. If a separate appendix to any document is filed, the color of its cover shall be the same as that of the cover of the document it supports. The Clerk will furnish a color chart upon request. Counsel shall ensure that there is adequate contrast between the printing and the color of the cover. A document filed by the United States, or by any other federal party represented by the Solicitor General, shall have a gray cover. A joint appendix, answer to a bill of complaint, motion for leave to intervene, and any other document not listed in subparagraph 1(g) of this Rule shall have a tan cover.

(f) Forty copies of a booklet-format document shall be filed, and one unbound copy of the document on 8 1/2- by 11-inch paper shall also be submitted.

(g) Word limits and cover colors for booklet-format documents are as follows:

Click to view

(h) A document prepared under Rule 33.1 must be accompanied by a certificate signed by the attorney, the unrepresented party, or the preparer of the document stating that the brief complies with the word limitations. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the document. The word-processing system must be set to include footnotes in the word count. The certificate must state the number of words in the document. The certificate shall accompany the document when it is presented to the Clerk for filing and shall be separate from it. If the certificate is signed by a person other than a member of the Bar of this Court, the counsel of record, or the unrepresented party, it must contain a notarized affidavit or declaration in compliance with 28 U. S. C. § 1746.

## 2. 8 1/2- by 11-Inch Paper Format:

(a) The text of every document, including any appendix thereto, expressly permitted by these Rules to be presented to the Court on 8 1/2- by 11-inch paper shall appear double spaced, except for indented quotations, which shall be single spaced, on opaque, unglazed, white paper. The document shall be stapled or bound at the upper left-hand corner. Copies, if required, shall be produced on the same type of paper and shall be legible. The original of any such document (except a motion to dismiss or affirm under Rule 18.6) shall be signed by the party proceeding

# Supreme Court of Florida

THURSDAY, NOVEMBER 21, 2019

CASE NO.: SC19-1565

Lower Tribunal No(s):  
132003CF0210180001XX

DAVID DWAYNE BROWN

vs. MARK S. INCH, ETC.

---

Petitioner(s)

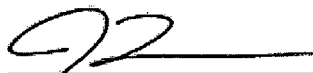
Respondent(s)

Because the Court has determined that relief is not authorized, this case is hereby dismissed. *See Baker v. State*, 878 So. 2d 1236 (Fla. 2004). Any motions or other requests for relief are also denied. No motion for rehearing or reinstatement will be entertained by this Court.

CANADY, C.J., POLSTON, LABARGA, LAGOA, and MUÑIZ, JJ., concur.

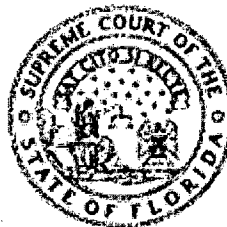
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Test:



John A. Tomasino

Clerk, Supreme Court



db

Served:

KENNETH SCOTT STEELY  
DAVID DWAYNE BROWN  
MICHAEL W. MERVINE  
HON. HARVEY RUVIN, CLERK



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judgment or decision of the Court on the merits shall be made to an individual Justice and presented and served on all other parties as provided by Rule 22. Once denied, such an application may not be renewed.

4. A motion to extend the time to file any document or paper other than those specified in paragraph 3 of this Rule may be presented in the form of a letter to the Clerk setting out specific reasons why an extension of time is justified. The letter shall be served on all other parties as required by Rule 29. The motion may be acted on by the Clerk in the first instance, and any party aggrieved by the Clerk's action may request that the motion be submitted to a Justice or to the Court. The Clerk will report action under this paragraph to the Court as instructed.

### **Rule 33. Document Preparation: Booklet Format; 8 1/2- by 11-Inch Paper Format**

#### **1. Booklet Format:**

(a) Except for a document expressly permitted by these Rules to be submitted on 8 1/2- by 11-inch paper, see, *e. g.*, Rules 21, 22, and 39, every document filed with the Court shall be prepared in a 6 1/8-by 9 1/4-inch booklet format using a standard typesetting process (*e. g.*, hot metal, photocomposition, or computer typesetting) to produce text printed in typographic (as opposed to typewriter) characters. The process used must produce a clear, black image on white paper. The text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(b) The text of every booklet-format document, including any appendix thereto, shall be typeset in a Century family (*e. g.*, Century Expanded, New Century Schoolbook, or Century Schoolbook) 12-point type with 2-point or more leading between lines. Quotations in excess of 50 words shall be indented. The typeface of footnotes shall be 10-point type with 2-point or more leading between lines. The text of the document must appear on both sides of the page.

(c) Every booklet-format document shall be produced on paper that is opaque, unglazed, and not less than 60 pounds in weight, and shall have margins of at least three-fourths of an inch on all sides. The text field, including footnotes, may not exceed 4 1/8 by 7 1/8 inches. The document shall be bound firmly in at least two places along the left margin (saddle stitch or perfect binding preferred) so as to permit easy opening, and no part of the text should be obscured by the binding. Spiral, plastic, metal, or string bindings may not be used. Copies of patent documents, except opinions, may be duplicated in such size as is necessary in a separate appendix.

(d) Every booklet-format document shall comply with the word limits shown on the chart in subparagraph 1(g) of this Rule. The word limits do not include the questions presented, the list of parties and the corporate disclosure statement, the table of contents, the table of cited

# AFFIDAVIT

MAY 9, 2017  
DATE

I, HURLEY LEE BROWN #402730, DO HEREBY SWEAR THAT THE FOLLOWING STATEMENT IS TRUE AND CORRECT AND MADE OF MY OWN FREE WILL, FROM MY OWN PERSONAL KNOWLEDGE.

WHILE HOUSED AT FLORIDA STATE PRISON IN 2017, I HURLEY BROWN WAS IN THE HOLDING CELL AT MEDICAL AND HEARD A INMATE WHO I NEVER SAW BEFORE TELLING ANOTHER INMATE ABOUT THE CASE HE IS IN PRISON FOR, WHEN I HEARD HIM MENTION "DAVID BROWN" I SAID, "EXCUSE ME BUT THE DAVID BROWN YALL TALKING ABOUT IS HE FROM MIAMI?" DO THEY CALL HIM "DABO?" THE INMATE WHO WAS DOING ALL THE TALKING SAID YES, DABO IS HIS CO-DEFENDANT, EVEN THOUGH HE DIDN'T HAVE ANYTHING TO DO WITH THE MURDER'S, BUT HE WOULD HELP DABO, BUT NOT UNTIL HE SEE IF HE COULD GET OUT, IF HE COULDN'T THEN HE'D FREE DABO HE SAID HE FROM MIAMI, I DIDN'T TELL THIS INMATE WHO I FOUND OUT NAME IS "KOJACK" DABO WAS HERE AT THIS PRISON, I TOLD HIM I'M FROM MIAMI AND KNOWS DABO, THEN ENDED THE CONVERSATION, KOJACK WAS 5'6 OR 5'7, AND WEIGHED ABOUT 160 TO 180 LBS, AND VERY DARK SKIN WITH A LOW HAIRCUT, NO BOLD TEETH. I DIDN'T TELL DABO WHERE I CAME BACK ON K-WING EVEN THOUGH I WAS NEXT DOOR TO DABO IN K-1207 - BECAUSE IT SLIPPED MY MIND. I TOLD DABO WHO WAS IN 1208 LATER, I BELIEVED KOJACK WAS TELLING THE TRUTH ABOUT DABO NOT HAVING NOTHING TO DO WITH THE MURDER'S BECAUSE KOJACK SAID HE WASN'T, AND WOULD HELP DABO, I DIDN'T NO NOTHING ABOUT THIS CASE, ONLY THIS BOY SAYING DABO WASN'T INVOLVED, AND DABO ONCE TOLD ME HE IN PRISON FOR A CRIME OF MURDER HE DIDN'T COMMIT. UNDER THE PENALTY OF PERJURY S. 92.525, FLA. STAT., I SUBMIT THIS AFFIDAVIT.

AFFIDANT

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this Rule, whenever service is made by any person not a member of the Bar of this Court and not an attorney appointed to represent a party under the Criminal Justice Act of 1964, see 18 U.S.C. § 3006A(d)(6), or under any other applicable federal statute.

6. Every document, except a joint appendix or amicus curiae brief, filed by or on behalf of a nongovernmental corporation shall contain a corporate disclosure statement identifying the parent corporations and listing any publicly held company that owns 10% or more of the corporation's stock. If there is no parent or publicly held company owning 10% or more of the corporation's stock, a notation to this effect shall be included in the document. If a statement has been included in a document filed earlier in the case, reference may be made to the earlier document (except when the earlier statement appeared in a document prepared under Rule 33.2), and only amendments to the statement to make it current need be included in the document being filed. In addition, whenever there is a material change in the identity of the parent corporation or publicly held companies that own 10% or more of the corporation's stock, counsel shall promptly inform the Clerk by letter and include, within that letter, any amendment needed to make the statement current.

7. In addition to the filing requirements set forth in this Rule, all filers who are represented by counsel must submit documents to the Court's electronic filing system in conformity with the "Guidelines for the Submission of Documents to the Supreme Court's Electronic Filing System" issued by the Clerk.

### **Rule 30. Computation and Extension of Time**

1. In the computation of any period of time prescribed or allowed by these Rules, by order of the Court, or by an applicable statute, the day of the act, event, or default from which the designated period begins to run is not included. The last day of the period shall be included, unless it is a Saturday, Sunday, federal legal holiday listed in 5 U.S.C. § 6103, or day on which the Court building is closed by order of the Court or the Chief Justice, in which event the period shall extend until the end of the next day that is not a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed.

2. Whenever a Justice or the Clerk is empowered by law or these Rules to extend the time to file any document, an application or motion seeking an extension shall be filed within the period sought to be extended. An application to extend the time to file a petition for a writ of certiorari or to file a jurisdictional statement must be filed at least 10 days before the specified final filing date as computed under these Rules; if filed less than 10 days before the final filing date, such application will not be granted except in the most extraordinary circumstances.

3. An application to extend the time to file a petition for a writ of certiorari, to file a jurisdictional statement, to file a reply brief on the merits, or to file a petition for rehearing of any

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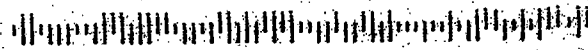
DAVID BROWN

M1109

David D. Brown <sup>DC#</sup> 180307  
Florida State Prison  
2819 NW 228<sup>th</sup> St.  
Raiford, Fla



08/15



## GENERAL AFFIDAVIT

I, Tarann K. Brown #M14318, do hereby swear that the following statement is true and correct and made of my own free will, from my own personal knowledge.

In May of 2017 while at Florida State Prison (FSP) housing unit 1 wing cell # 1209. I was told by Callics Robinson A.K.A. "KO-JACK" who is housed in 1-wing cell # 1104 at recreation about his case. Mr. Robinson described to me the details of how he and a man name "Ahmed Jones" committed murder. he did so in a bragging manner and too seek legal guidance to try to win or beat his case in a matter for me to find him some issues. Mr. Robinson stated, he and Mr. Jones went to a house on 19<sup>th</sup> Avenue and 49<sup>th</sup> street back in 2003 of July and caught the victim off guard. Mr. Robinson bragged how Mr. Jones went in the yard first with a butcher knife with a black handle and blade, and he (Mr. Robinson) waited in the bushes as back up with a shotgun. Mr. Robinson bragged about how when he saw Mr. Jones in a fight with some men inside the yard he fired his shotgun first from the sidewalk, then moved closer into the yard so that he went mistakenly hit Mr. Jones and fired another shot hitting one of the men. Thereafter, he stated Mr. Jones shot the other man with a AK47 while he was running and then shot him in the face. Mr. Robinson stated that they paid a

Please see page 2

Under penalties of perjury, I declare that I have read the forgoing affidavit and the facts stated in it are true and correct in accordance with section 92.525 Florida Statutes

By: Tarann K. Brown  
Affiant Signature

June 12, 2017  
Date

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RIGHT

TKS

TKS

2 of 3

price for robbing him. Mr. Robinson continued to brag on how a person name David Brown was arrested for the murders and how Jones got away. I asked him how he got arrested and he said his grandma seen him with the murder weapon and it was on the news so he turned himself in because he thought a warrant was out for his arrest, and because his grandma was tripping. He also stated that he confessed to being involved in the murders, but then said everything was false. He asked me if I could help get his ~~confession~~ confession thrown out and I told him I'll try but I would need all the paper work and the case number to do the motion. Mr. Robinson gave me case number F03-21018-B and told me that the dude Brown who was lately convicted uses the same case number with the letter "A". Mr. Robinson also said he implimented Brown in place of Jones to protect Jones. He bragged about how he was with Brown when he got pulled over and how he got away while Brown went to jail. Mr. Robinson said he would eventually help Brown get out but not untill he was sure that he had no possible way of getting out of prison. Mr. Robinson clearly stated to me that Brown was not involved in the murders and Jones was his partner in the crime. I believe Mr. Robinson is telling the truth and based on what he says the dude Brown is innocent.



393

and deserves to have someone look into this matter. So in the interest of justice I'm writing this affidavit putting my left and right finger print on it. The wing officer using the case number promised to help find Brown's location to get him this affidavit.

Sincerely,

Jerome K. Brown  
151 Jerome K. Brown  
DC # M14318

Florida State Prison  
Post Office Box 800  
Raiford, FL 32083

LEFT



RIGHT



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5614, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001. When an agency of the United States that is a party is authorized by law to appear before this Court on its own behalf, or when an officer or employee of the United States is a party, the agency, officer, or employee shall be served in addition to the Solicitor General.

(b) In any proceeding in this Court in which the constitutionality of an Act of Congress is drawn into question, and neither the United States nor any federal department, office, agency, officer, or employee is a party, the initial document filed in this Court shall recite that 28 U.S.C. § 2403(a) may apply and shall be served on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001. In such a proceeding from any court of the United States, as defined by 28 U.S.C. § 451, the initial document also shall state whether that court, pursuant to 28 U.S.C. § 2403(a), certified to the Attorney General the fact that the constitutionality of an Act of Congress was drawn into question. See Rule 14.1(e)(v).

(c) In any proceeding in this Court in which the constitutionality of any statute of a State is drawn into question, and neither the State nor any agency, officer, or employee thereof is a party, the initial document filed in this Court shall recite that 28 U.S.C. § 2403(b) may apply and shall be served on the Attorney General of that State. In such a proceeding from any court of the United States, as defined by 28 U.S.C. § 451, the initial document also shall state whether that court, pursuant to 28 U.S.C. § 2403(b), certified to the State Attorney General the fact that the constitutionality of a statute of that State was drawn into question. See Rule 14.1(e)(v).

5. Proof of service, when required by these Rules, shall accompany the document when it is presented to the Clerk for filing and shall be separate from it. Proof of service shall contain, or be accompanied by, a statement that all parties required to be served have been served, together with a list of the names, addresses, and telephone numbers of counsel indicating the name of the party or parties each counsel represents. It is not necessary that service on each party required to be served be made in the same manner or evidenced by the same proof. Proof of service may consist of any one of the following:

(a) an acknowledgment of service, signed by counsel of record for the party served, and bearing the address and telephone number of such counsel;

(b) a certificate of service, reciting the facts and circumstances of service in compliance with the appropriate paragraph or paragraphs of this Rule, and signed by a member of the Bar of this Court representing the party on whose behalf service is made or by an attorney appointed to represent that party under the Criminal Justice Act of 1964, see 18 U.S.C. § 3006A(d)(6), or under any other applicable federal statute; or

(c) a notarized affidavit or declaration in compliance with 28 U.S.C. § 1746, reciting the facts and circumstances of service in accordance with the appropriate paragraph or paragraphs of

FOR THE MIAMI-DADE POLICE DEPARTMENT  
HOMICIDE BUREAU  
MIAMI, MIAMI-DADE COUNTY, FLORIDA

CASE NUMBER 388591-B

INVESTIGATION INTO THE HOMICIDES OF  
ERIC WILLIAMS, B/M/32, AND EDWARD LEON :  
BERNARD, B/M/36, AND THE SHOOTING OF :  
LAWRENCE WADE, B/M/37, WHICH OCCURRED ON :  
MONDAY, JULY 21, 2003, AT APPROXIMATELY :  
12:30 A.M., AT 1985 NW 49 STREET. :  
-----X

SWORN STATEMENT OF COLLIES ROBINSON

Taken before Elizabeth D. Bachelder, Court Reporter and Notary  
Public in and for the State of Florida at Large, at the  
Miami-Dade Police Department Headquarters Complex, 9105 NW 25th  
Street, Miami, Miami-Dade County, Florida, on Wednesday, November  
5th, 2003, commencing at 1:20 a.m. and concluding at 1:33 a.m.

\* \* \* \* \*

APPEARANCES:

MARIA GUNNELLS, DETECTIVE  
MIAMI-DADE POLICE DEPARTMENT  
HOMICIDE BUREAU

ALSO PRESENT:

JOHN BUTCHKO, DETECTIVE  
MIAMI-DADE POLICE DEPARTMENT  
HOMICIDE BUREAU

Thereupon,

COLLIES ROBINSON

having first been duly sworn, was examined and testified upon his oath as follows:

EXAMINATION

BY DETECTIVE GUNNELLS:

Q It is now November 5th, 2003, at 1:20 a.m. For the record, state your full name.

A Collies Jasper Robinson.

Q How old are you?

A Twenty-five.

Q What is your date of birth?

A 9/15/78.

Q And where do you live?

A Homeless.

Q Are you employed?

A No, ma'am.

Q How far did you get in school?

A I got my GED in prison. I went up to the tenth grade in public school.

Q Can you read and write the English language?

A Perfectly.

*CL*

Q Are you presently under the influence of any narcotics, medication or alcoholic beverage?

A Be honest?

Q Yes.

A I --- yeah, I been smoking a joint, I popped a little pill earlier. *First quarter he's under the influence of illegal narc.*

Q How long ago?

A That was earlier in the day.

Q Hours ago? Do you remember the time?

A Yeah. It was about three or four o'clock, because I was riding that for awhile .

Q Okay.

A Nah, later than that -- earlier than that. It was like eleven o'clock. I'm pretty sure about eleven I took it.

Q Eleven in the morning?

A Yeah.

Q Okay.

A I was around there just talking to her, letting her know what's going on.

\* Q Okay. Are you being treated for or suffer from any mental problems?

\* A Yeah. I was in Behavioral Unit South and they had me

on Remeron, Trisedone (phonetic) and Zypreca (phonetic). I was in Behavioral Unit South at Northshore.

Q A Behavior Unit South?

A At Northshore. And I used to take Remeron, Trisedone (phonetic) and Zypreca (phonetic).

Q Those are medications?

A Antidepressants.

Q How long ago?

A And mood stabilize -- mood stabilizers. That was when I was in the village. I was in the village, February.

Q February of this year? Did you stop taking your medication in February?

A I stopped taking my medication when I got kicked out of the village -- well, after I left. I didn't get kicked out.

Q Are you currently taking any medication for that condition?

A No.

Q Okay. Do you recognize this form I presented to you now as being the same constitutional rights form that we went over earlier today?

① \* A That's what I signed, yes, ma'am.

Q Okay. I'm going to go over it with you again. It's

*OR*

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the Metro-Dade Police Department Miranda Warning, okay? It says here: "Before you are asked any questions, you must understand the following rights:

"Number 1. You have the right to remain silent and you go not have to talk to me if you do not wish to do so. You do not have to answer any of my questions. Do you understand that right?"

Can you state where you put your initials?

2 \* A I put in the "yes" block. I placed my initials in the "yes" block.

Q "Number 2. Should you talk to me, anything which you might say may be introduced into evidence in court against you. Do you understand?"

3 \* A Yes.

Q Can you state where you put your initials next to?

4 \* A I put my initials on the "yes" block.

Q "Number 3. If you want a lawyer to be present during questioning, at this time or anytime hereafter, you are entitled to have a lawyer present. Do you understand that right?"

Can you state where you put your initials next to?

cl



5 \* A I put them on the "yes" block. And, yes, I do understand that right.

Q "Number 4. If you cannot afford to pay for a lawyer, one will be provided for you at no cost if you want one. Do you understand that right?"

6 \* A Yes, I do.

Q Can you state where you put your initials next to?

7 \* A I placed them on the "yes" block.

Q "Knowing these rights, are you now willing to answer my questions without having a lawyer present?"

Can you state where you put your initials next to?

8 \* A I placed them on the "yes" block.

Q "This statement is signed of my own free will, without they threats or promises having been made to me."

Can you state these are your initials at the end of that sentence?

9 \* A Yes, I can. Yes, they are.

Q Is this your signature --

10 \* A Yes, it is.

Q -- at the bottom of the form, signed on November 4th, 2003, at 10:05 p.m.?

11 \* A Yes, ma'am.

Q The second form we went over earlier is the Metro-Dade Police Department Consent to Provide Specimen for Investigation and Laboratory Analysis. Did you read this form --

12 \* A Yes, ma'am.

Q -- that states: "I Collies Robinson, hereby freely and voluntarily provide police officers of the Metro-Dade Police Department with a mouth swab specimen for investigative purposes. I fully understand that I have a right to refuse and give said specimen and I also fully understand that said specimen will be analyzed and can be introduced into evidence in court. I have read the above statement and this statement is signed of my own free will without any threats or promises having been made to me."

13 \* A Yes.

Q Can you state -- is this your signature at the bottom of this form?

14 \* A Yes, it is.

Q Signed on November 4th, 2003, at 10:06 p.m.?

15 \* A Yeah.

Start → Q Did there come a time where you met an individual by

CL

the name of David Brown or Davo?

16 A (No response.)

Q Collies? Do you want me to repeat the question?

A No, ma'am. I'm just thinking right now. I'm just thinking right now.

Q Do you have to think about the question that I asked if you knew an individual by the name of Davo?

17 A No. I'm thinking about the fact that my life is gone. Just give me a minute. I'm just --

Q Okay. Let me ask you another question: When you were living at a home, who were you living with?

A My grandmother.

Q And what is her name?

A Ola Mae Anderson.

Q And what is her address?

A 900 NW 63rd Street.

Q Do you know what her phone number is?

A 751 -- 305 is the area code. 751-8005.

Q Okay.

THE WITNESS: Excuse me one second, ma'am. I don't mean to take up your time, but may I speak to you for a minute? I mean, I just want to ask you

something, ask you a question.

DETECTIVE GUNNELLS: You can ask me a question.

THE WITNESS: I just want to pause this right now. I just need to ask you a question.

DETECTIVE BUTCHKO: Well, everything that is said has to be on the record. She has to -- she has to take down everything that is being said by everybody in the room.

DETECTIVE GUNNELLS: I can talk to you after we're done if you still need to speak to me.

18 \* THE WITNESS: Is it any way possible I can withdraw my statement?

DETECTIVE GUNNELLS: You're gonna withdraw this statement?

19 \* THE WITNESS: Yeah, that's what I want to do. I want to withdraw the statement.

DETECTIVE BUTCHKO: Well, is it true that you provided this statement to us the last couple hours about your involvement in the homicide of these two victims?

DETECTIVE GUNNELLS: That we've been speaking

of the homicide of this gentleman, who you've identified as E, who is Eric Rosen Williams, date of birth, 9/6/1970.

20 \* THE WITNESS: That's true that I signed the paper with his picture on it and it's true that I signed the paper with the other shorty picture on it. That is all true. And I know the individual but at the same time the statement that I gave was false and I would like to withdraw my statement on those grounds.

DETECTIVE GUNNELLS: You spoke of this homicide in detail with me earlier today.

\*21 \* THE WITNESS: I, again, say that my statement is false.

DETECTIVE GUNNELLS: You also called the police department earlier --

THE WITNESS: And I said -- because I knew there was a warrant out for me so I wanted to turn myself in.

DETECTIVE GUNNELLS: -- and stated that you were involved in these homicides and provided specific --

CP.

THE WITNESS: No, I stated that -- I stated that I wanted to turn myself in prior to the warrants and it's on the recording that I did say those things.

DETECTIVE GUNNELLS: Right. But we did -- Collies, we did speak about this homicide in detail and your involvement, as well as David Brown's involvement.

\*22\* THE WITNESS: That's a false manner.

DETECTIVE BUTCHKO: Is it true, though, that you gave us details about this homicide that you're now saying is false? Is it true that you provided us with numerous pages of notes during the interview as to your involvement in this case, that you're retracting now? Is that true?

\*23\* THE WITNESS: The statements that I made was false.

DETECTIVE BUTCHKO: Okay. But it is true that you provided a interview to Detective Gunnells?

\*24\* THE WITNESS: The statements I made was false.

DETECTIVE GUNNELLS: But the statements you did make were on your involvement in the homicide



of these two victims, as well as the involvement of David Brown; is that correct?

~~\*\*25\*\*~~ \* THE WITNESS: The statements I made were false. I know no David Brown I know no no one. I just --

DETECTIVE GUNNELLS: Is it true that when David Brown was arrested, you were in the car with him?

26 \* THE WITNESS: I was present at the time he was apprehended.

DETECTIVE GUNNELLS: So you do know him?

~~\*27\*~~ \* THE WITNESS: I know of him.

DETECTIVE GUNNELLS: Is it true that you stated that this homicide was a result of over \$10,000 that was taken from you by these victims?

~~\*28\*~~ \* THE WITNESS: The statement I made was false.

DETECTIVE GUNNELLS: Is it true that you also said that the money was left at the victims' residence while you laid low after you came across this money with David Brown?

~~\*29\*~~ \* THE WITNESS: The statement I made was false.

DETECTIVE BUTCHKO: But did you make those

statements, even though now you're saying now they're false?

\*30\* THE WITNESS: Yes. It was a lie, though.

DETECTIVE GUNNELLS: But you did say those things to me?

\*31\* THE WITNESS: It was a lie. It was a total lie. It was a figmentation. It was a total lie. It's void.

DETECTIVE BUTCHKO: Okay. But what you're saying is a lie, did you provide details of this shooting as it happened during that statement, that you're now saying is false.

\*32\* THE WITNESS: I'm good with words too also, sir, and the statement -- now I'm just going to reply again the statement I made was false. I'm not going --

DETECTIVE GUNNELLS: We're not disputing the fact that you're saying now that the statement you made was false, Collies. What I'm asking you --

\*33\* THE WITNESS: My every answer is going to be my statement is false.

DETECTIVE GUNNELLS: Okay. Because the



questions that I'm asking you would -- the normal reply would be yes or no. Now, what I'm going over is the last hours that we spent going over the details of this homicide.

THE WITNESS: And I feel you on that and I respect that.

DETECTIVE GUNNELLS: Okay.

\*34\*

THE WITNESS: But my statements is false.

Every statement that's on that paper, every statement that's been wrote these past few hours, everything that's been said is false, completely false. It has no truth in it.

DETECTIVE BUTCHKO: Cover those questions at the end of the statement.

DETECTIVE GUNNELLS: Has everything that you've stated been true and correct to the best of your knowledge?

\*35\* A No. Because everything I spoke about was false.

Q Has anybody threatened or coerced you in any way to give this statement?

\*36\* A No. The statement -- like I said, the statement I gave was false but, no, nobody coerced me, nobody threatened

*CR*

me, nobody beat me up, nobody did none of the above, you know.  
I just made up the statement that was false.

DETECTIVE GUNNELLS: Okay.

DETECTIVE BUTCHKO: Next question.

DETECTIVE GUNNELLS: Have you given this  
statement freely and voluntarily?

\* 37 \* THE WITNESS: Yes, but it was false and what I  
did was I was high on drugs and I made a false  
statement.

DETECTIVE GUNNELLS: It is now November 5th,  
2003, at 1:32 a.m.

DETECTIVE BUTCHKO: And also you're saying at  
this stage that you do not want to provide a formal  
statement to us?

THE WITNESS: I would like to provide a formal  
statement as far as my other prior cases --

DETECTIVE BUTCHKO: But on this case.

THE WITNESS: -- that I'm involved with.

DETECTIVE BUTCHKO: But on this case?

\* 38 \* THE WITNESS: This case remain to be seen in a  
courtroom. And every statement I made on that  
paper is false. I was high on the drugs at the

time and that's what transpired.

DETECTIVE GUNNELLS: Can you explain why you would know the details of this homicide?

~~THE WITNESS:~~ THE WITNESS: I'm a psychic.

DETECTIVE GUNNELLS: Okay. Thank you.

(Whereupon, at 1:33 a.m., the sworn statement was concluded.)

\* \* \* \*

CR

IDENTIFICATION STATEMENT

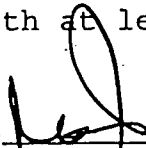
STATE OF FLORIDA            ]  
                                  :   SS  
COUNTY OF MIAMI-DADE    ]

BEFORE ME, the undersigned authority,  
personally appeared MARIA GUNNELLS, who being duly  
sworn says:

1. I am a sworn law enforcement officer  
employed by the Miami-Dade Police Department.

2. I took part in the investigation  
that led to a statement by COLLIES ROBINSON.

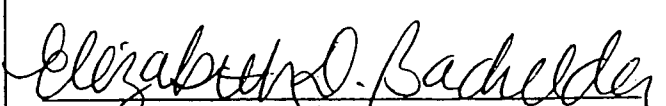
3. I have made an acquaintance with  
COLLIES ROBINSON, derived from the investigation and  
my association with that individual, which establishes the  
individual's identity with at least reasonable certainty.

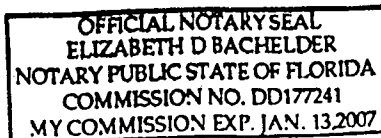
  
\_\_\_\_\_  
MARIA GUNNELLS, Detective  
Miami-Dade Police Department

SWORN TO AND SUBSCRIBED BEFORE ME at Miami,  
Miami-Dade County, Florida, this 5th day of November, 2003, at  
3:45 A.m.

Personally Known [ X ] or, Produced Identification [    ].

Type of Identification Produced: \_\_\_\_\_

  
Elizabeth D. Bachelder  
Notary Public  
State of Florida at Large

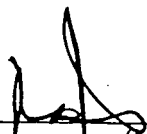


AFFIDAVIT

STATE OF FLORIDA            ]  
                                      :   SS  
COUNTY OF MIAMI-DADE    ]

BEFORE ME, the undersigned authority, duly authorized to administer oaths and take acknowledgements in the State of Florida, personally appeared COLLIES ROBINSON, who after being first duly sworn upon oath, deposes and states that he is the witness in the foregoing statement, pages one (1) to and including sixteen (16), and that he was given the opportunity to make any changes, corrections or deletions; and that said statement is true and correct.


  
\_\_\_\_\_  
COLLIES ROBINSON

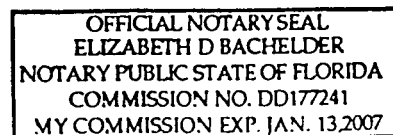
  
\_\_\_\_\_  
(WITNESS)  
\_\_\_\_\_  
(WITNESS)

SWORN TO AND SUBSCRIBED BEFORE ME at Miami,  
Miami-Dade County, Florida, this 5th day of November, 2003, at  
3:46 A.M.

Personally Known [    ] or, Produced Identification [ X ].

Type of Identification Produced: Sworn Identification Statement.

  
\_\_\_\_\_  
ELIZABETH D. BACHELDER  
Notary Public  
State of Florida at Large




CERTIFICATE

STATE OF FLORIDA            ]  
                                  : SS  
COUNTY OF MIAMI-DADE    ]

I, Elizabeth D. Bachelder, Court Reporter and Notary Public duly commissioned and qualified in and for the State of Florida at Large, do hereby certify that the foregoing transcript, pages one (1) to and including sixteen (16), is a true and correct transcription of my stenographic notes of the sworn statement given by COLLIES ROBINSON, at the Miami-Dade Police Department Headquarters Complex, 9105 NW 25th Street, Miami, Miami-Dade County, Florida, on the 5th day of November, 2003, commencing at 1:20 a.m.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Miami, Miami-Dade County, Florida, this 5th day of November, 2003.

OFFICIAL NOTARY SEAL  
ELIZABETH D BACHELDER  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION NO. DD177241  
MY COMMISSION EXP. JAN. 13, 2007

  
Elizabeth D. Bachelder  
Notary Public  
State of Florida at Large

\* \* \* \* \*

Appx ①

essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition.

5. If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition submitted in accordance with Rule 29.2 no more than 60 days after the date of the Clerk's letter will be deemed timely.

### **Rule 15. Briefs in Opposition; Reply Briefs; Supplemental Briefs**

1. A brief in opposition to a petition for a writ of certiorari may be filed by the respondent in any case, but is not mandatory except in a capital case, see Rule 14.1(a), or when ordered by the Court.

2. A brief in opposition should be stated briefly and in plain terms and may not exceed the word or page limitations specified in Rule 33. In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition.

3. Any brief in opposition shall be filed within 30 days after the case is placed on the docket, unless the time is extended by the Court or a Justice, or by the Clerk under Rule 30.4. Forty copies shall be filed, except that a respondent proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the brief in opposition. If the petitioner is proceeding *in forma pauperis*, the respondent shall prepare its brief in opposition, if any, as required by Rule 33.2, and shall file an original and 10 copies of that brief. Whether prepared under Rule 33.1 or Rule 33.2, the brief in opposition shall comply with the requirements of Rule 24 governing a respondent's brief, except that no summary of the argument is required. A brief in opposition may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The brief in opposition shall be served as required by Rule 29.

4. No motion by a respondent to dismiss a petition for a writ of certiorari may be filed. Any objections to the jurisdiction of the Court to grant a petition for a writ of certiorari shall be included in the brief in opposition.



TO Mr. Lawrence Wade #0462905  
2BT METRO WEST 13850 N.W. 41 ST.  
Miami FL, 33178

\*28

POSTAGE VERIFIED  
MIAMI GMF 33152

PAGE 15.

LAWYERS OFFICE OF

MR. SY- GEAR  
1501 N.W. 14ST.  
MIAMI FL, 33125

I LAWRENCE WADE born 12-1-65 I can no longer stand by and watch an innocent man go to prison for ~~life~~ <sup>life</sup> for a crime he didn't do. I'm making this statement on my own free will, and because it is the truth. I've not been offered anything or threatened by David Brown or any one else on his behalf. I'm coming forward to expose the scheme of the metro dade police department who told me on July, 28, 03 while in the Hospital to pick the person who I think in the photo line up was responsible for nearly killing me number #5. Was not the man. In my heart I knew the man I was looking at in the photo was not the man that I saw on July, 21, 03 wrestling with Eric N. Edward the man I saw was very tall over six feet bright skin complexion thin build and wearing a blue dickey uniform. I took a good look at the guy every body else started running then I got shot so I took off running and didn't look back. I do not know who shot me but one thing I am sure of. If Mr. Brown was the man I saw on July, 21, 03 I would of come in and testified against him for being responsible for nearly costing me my life. but he's not the man. I am not going to be apart of a wicked plot by the police or ~~the~~ the state attorney or anybody else to falsely accuse a innocent man. I would testify to this in court as well.

SINCERELY

LAWRENCE WADE



Lawrence Wade

Appx P

5. The Clerk will distribute the petition to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief in opposition is filed, upon the expiration of the time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the petition, brief in opposition, and any reply brief to the Court for its consideration no less than 14 days after the brief in opposition is filed, unless the petitioner expressly waives the 14-day waiting period.

6. Any petitioner may file a reply brief addressed to new points raised in the brief in opposition, but distribution and consideration by the Court under paragraph 5 of this Rule will not be deferred pending its receipt. Forty copies shall be filed, except that petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The reply brief shall be served as required by Rule 29.

7. If a cross-petition for a writ of certiorari has been docketed, distribution of both petitions will be deferred until the cross-petition is due for distribution under this Rule.

8. Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by this Rule. Forty copies shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

#### **Rule 16. Disposition of a Petition for a Writ of Certiorari**

1. After considering the documents distributed under Rule 15, the Court will enter an appropriate order. The order may be a summary disposition on the merits.

2. Whenever the Court grants a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment is to be reviewed. The case then will be scheduled for briefing and oral argument. If the record has not previously been filed in this Court, the Clerk will request the clerk of the court having possession of the record to certify and transmit it. A formal writ will not issue unless specially directed.

3. Whenever the Court denies a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment was sought to be reviewed. The order of denial will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Justice.

USCSRULE

# NARRATIVE CONTINUATION

Drug <input type="checkbox"/> Related <input type="checkbox"/>	MIAMI-DADE POLICE DEPARTMENT		Juvenile In Report <input type="checkbox"/> 1. Original 2. Supplement <b>2</b>
Date of Supplement <b>07/21/03</b>	Agency Report Number <b>388591-B</b>		
Original Date Reported <b>07/21/03</b>	Original Primary Offense Description <b>DECEASED PERSON</b>	Victim # 1 Name <b>WILLIAMS, ERIC</b>	Original NCIC/UCR Code
Original OFF/INC Location <b>1985 N.W. 49 St.</b>	Primary Offense Changed To <b>HOMICIDE</b>	A- Attempted C- Committed	New NCIC/UCR Code <b>RPT 13</b>

stayed there for a short time and left. DAVID BROWN stated that he was driving his car, which is a Honda, gold in color. DAVID BROWN then stated that he went to his girlfriend of two months, by the name of TRACY HOLMES, who lives at 68 Street and N.W. 13 Avenue and provided a home number of (305) 835-0791. He stated that he and TRACY went to TRACY's mother's house in the Opa-Locka area and subsequently responded back to the area of the Edison projects on N.W. 62 Street and 3 Avenue and dropped his girlfriend, TRACY HOLMES, off at approximately 9:15 p.m.

DAVID BROWN stated that he had attempted to contact his sister, ELIZABETH RICKETS, at her home number of (305) 757-3621, but she had already left to go to church. He stated he went home to his apartment after that. DAVID BROWN stated that he arrived at his apartment, at 9:30 p.m., and further stated that he was on probation and had to be home by 10:00 p.m. He stated that night he stayed home and spoke to his neighbor, MR. BELLAMY, who lives in the same apartment complex in Apartment #4. He further stated that his sister, ELIZABETH, came by his apartment at 11:00 p.m. and stayed until approximately 1:30 a.m. with him at his apartment.)

DAVID BROWN stated that the next day, he heard that he had been killed and stated that nobody told him who was responsible, but he knew who the killer was. DAVID BROWN stated that on July 22, 2003, he went by the home, located at 936 N.W. 64 Street, which he identified as being the home of BLACK, who supplied the victims with the cocaine, and overheard several of the black males stating that they took care of the situation with the victims. DAVID BROWN further stated that they were talking about AK-47 rifles, which they refer to as "choppers".

DAVID BROWN further stated that he knew VICTIM ERIC WILLIAMS owned an AK-47, a MAC-10 and an Uzi, which DAVID BROWN stated that he had seen on several occasions while at EDWARD BERNARD's home. DAVID BROWN further stated that he knew VICTIM SHORT lived at the residence located at 1985 N.W. 49 Street and stated that VICTIM "E" lived in a house off of N.W. 123 Street and 9 Avenue. DAVID BROWN stated that he had never gone inside "E's" residence, and that "E" would spend his days at SHORT's house running the narcotics operation from there.

This investigator asked DAVID BROWN to provide the identity of the person he knew to be responsible for the homicides, to which he responded that it would have to be one of the cocaine suppliers, and that they could be found at the residence located at 936 N.W. 64 Street.

Suspect Code	CODE #	Offense Indicator 1 #1 3 Both 2 #2	Residence Type 1 City 3 Florida 2 County 4 Out of State	Citizenship	Drug Indication 1 Yes 8 Unknown 2 No	Alcohol Indication 1 Yes 8 Unknown 2 No
S- Suspect A- Arrestee						
Drug Activity N. N/A P. Possess	S. Sell B. Buy T. Traffic	R. Smuggle D. Deliver E. Use	K. Dispense/ Distribute	M. Manufacture/ Produce/ Cultivate	Z. Other	
Parent Legal Custodian Other						Residence Phone ( )
Address: (Street, Apt. Number) (City) (State) (Zip)						Business Phone ( )
Notified By: (Name)			Date	Time	Juvenile Disposition 1. Handled/Processed Within Dept. and Released	
Released to: (Name)			Relationship		DATE	2. Turned Over to HRS/CYP 3. Incarcerated (County Jail)
Person/Unit Notified			TIME		Related Report Number(s)	
Officer(s) Reporting <b>DETECTIVE M. GUNNELLS/rgf</b>				I.D. Number(s) <b>3065</b>	Locator Code <b>47</b>	Unit <b>3162</b>
Officer Reviewing (if applicable)				I.D. Number	Routed To	Date
Case Status	Clearance Type 1. Arrest 3. Unfounded 2. Exceptional 4. Open Pend		A- Adult J- Juvenile	Date Cleared	Jail Number	Number Arrested
Exception Type 1. Extradition Declined	2. Arrest on Primary Offense Secondary Offense Without Prosecution		3. Death of Offender 4. V/W Refused to Cooperate	5. Prosecution Declined 6. Juvenile / No Custody	OBTS Number	Page <b>25 of 47</b>