

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 19-14269-C

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KEITH L. CALVIN,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

---

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

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Before: NEWSOM and LAGOA, Circuit Judges.

BY THE COURT:

Keith Calvin has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's January 30, 2020, order denying him a certificate of appealability ("COA") as unnecessary to appeal the district court's order denying his Fed. R. Civ. P. 60(b)(4) motion for reconsideration of its order dismissing for lack of jurisdiction his unauthorized successive 28 U.S.C. § 2254 petition, and leave to proceed on appeal *in forma pauperis*. Upon review, Calvin's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

**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)

March 16, 2020

Keith L. Calvin  
Union CI - Inmate Legal Mail  
PO BOX 1000  
RAIFORD, FL 32083

Appeal Number: 19-14269-C  
Case Style: Keith Calvin v. Secretary, Department of Corr., et al  
District Court Docket No: 5:15-cv-00030-MSS-PRL

**This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at [www.pacer.gov](http://www.pacer.gov). Information and training materials related to electronic filing, are available at [www.ca11.uscourts.gov](http://www.ca11.uscourts.gov).**

The enclosed order has been ENTERED.

Pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, this appeal will be dismissed by the clerk without further notice unless you pay to the DISTRICT COURT clerk the docketing and filing fees, with notice to this office.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Walter Pollard, C  
Phone #: (404) 335-6186

MOT-2 Notice of Court Action

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

---

No. 19-14269-C

---

KEITH L. CALVIN,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

---

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

---

ORDER:

Keith Calvin, a Florida prisoner serving a life sentence for second-degree murder, seeks a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP"), in the appeal of the district court's denial of his Fed. R. Civ. P. 60(b)(4) motion, for reconsideration of the district court's order dismissing as impermissibly second or successive a 2015 28 U.S.C. § 2254 petition. In his Rule 60(b)(4) motion, Calvin argued that his 2015 § 2254 petition was not an unauthorized second or successive habeas petition, as it related to a new judgment, because a state post-conviction motion, which was pending during the resolution of his original 2011 § 2254 petition, corrected his sentence in 2014. He also reasserted that the state trial court lacked jurisdiction to convict him because he was prosecuted outside of the statute of limitations.

As an initial matter, Calvin does not require a COA to appeal, and his motion for a COA is, therefore, DENIED AS UNNECESSARY. *See generally Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004). However, while Calvin 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. *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).

Calvin's appeal is without arguable merit because he cannot show that the district court lacked jurisdiction to adjudicate his habeas petition. Calvin's arguments are predicated on the same claim—that the state court lacked jurisdiction when it originally convicted him—that this Court previously found was without merit. Moreover, this Court previously rejected his prior attempt to use a Rule 60(b)(4) motion as a substitute for an appeal, and, here, Calvin attempted to remediate the deficiencies this Court found in his prior arguments, albeit unsuccessfully. Calvin cannot show that his 2015 § 2254 petition was based on a new judgment, as the 2014 state post-conviction motion that he relied upon for his assertion did not amend his conviction or sentence. Accordingly, the district court did not err in denying his motion for reconsideration, and his IFP motion is DENIED.

/s/ Kevin C. Newsom  
UNITED STATES CIRCUIT JUDGE

**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)

January 30, 2020

Keith L. Calvin  
Union CI - Inmate Legal Mail  
PO BOX 1000  
RAIFORD, FL 32083

Appeal Number: 19-14269-C  
Case Style: Keith Calvin v. Secretary, Department of Corr., et al  
District Court Docket No: 5:15-cv-00030-MSS-PRL

**This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.**

The enclosed order has been ENTERED.

Pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, this appeal will be dismissed by the clerk without further notice unless you pay to the DISTRICT COURT clerk the docketing and filing fees, with notice to this office.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Walter Pollard, C  
Phone #: (404) 335-6186

MOT-2 Notice of Court Action

**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 18, 2020

Clerk - Middle District of Florida  
U.S. District Court  
207 NW 2ND ST  
OCALA, FL 34475

Appeal Number: 19-14269-C  
Case Style: Keith Calvin v. Secretary, Department of Corr., et al  
District Court Docket No: 5:15-cv-00030-MSS-PRL

The enclosed copy of the Clerk's Entry of Dismissal for failure to prosecute in the above referenced appeal is issued as the mandate of this court. See 11th Cir. R. 41-4.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Walter Pollard, C  
Phone #: (404) 335-6186

Enclosure(s)

DIS-2 Letter and Entry of Dismissal

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 19-14269-C

---

KEITH L. CALVIN,

Petitioner - Appellant,

versus

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

Respondents - Appellees.

---

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

---

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Keith L. Calvin has failed to pay the filing and docketing fees to the district court within the time fixed by the rules., effective May 18, 2020.

DAVID J. SMITH  
Clerk of Court of the United States Court  
of Appeals for the Eleventh Circuit

by: Walter Pollard, C, Deputy Clerk

FOR THE COURT - BY DIRECTION

		(Entered: 06/15/2018)
03/04/2019	<u>29</u>	MOTION for relief from judgment re <u>15</u> Order on motion to stay by Keith L. Calvin. (LMF) (Entered: 03/06/2019)
03/04/2019	<u>30</u>	MOTION for leave to proceed in forma pauperis/affidavit of indigency by Keith L. Calvin. (LMF) Motions referred to Magistrate Judge Philip R. Lammens. (Entered: 03/06/2019)
09/24/2019	<u>31</u>	<b>ENDORSED ORDER</b> denying <u>29</u> Motion for relief from judgment re <u>15</u> Order on motion to stay by Keith L. Calvin. This matter has been heard before this Court and proceeded to appeal before the Eleventh Circuit. That appeal was dismissed for want of prosecution, and the time to appeal has expired. Thus, the previous judgment in this case, denying the issuance of the Writ of Habeas Corpus is FINAL. Consequently, this Court DENIES the relief sought here. Signed by Judge Mary S. Scriven on 9/24/2019. (MLH) Modified on 9/24/2019 (MLH). (Entered: 09/24/2019)
09/24/2019	<u>32</u>	<b>ENDORSED ORDER</b> denying <u>30</u> Motion for leave to proceed in forma pauperis as moot. Signed by Judge Mary S. Scriven on 9/24/2019. (MLH) (Entered: 09/24/2019)
10/17/2019	<u>33</u>	NOTICE OF APPEAL as to 31 Endorsed Order on motion for relief from judgment and Motion to appeal in forma pauperis by Keith L. Calvin. Filing fee not paid. Originally filed at USCA on 10/17/19 and received in Ocala division on 10/21/19. (LMF) (Entered: 10/21/2019)
10/17/2019	<u>34</u>	MOTION for certificate of appealability by Keith L. Calvin. (Originally filed at USCA on 10/17/19 and received in Ocala division on 10/21/19) (LMF) (Entered: 10/21/2019)
10/18/2019	<u>35</u>	Amended MOTION for Leave to Appeal in forma pauperis with Affidavit by Keith L. Calvin. (Originally filed USCA on 10/18/19 and received in Ocala division on 10/21/19) (LMF) (Entered: 10/21/2019)
10/28/2019	<u>36</u>	<b>ORDER</b> denying <u>34</u> Motion for Certificate of Appealability; denying <u>35</u> Motion for Leave to Appeal in forma pauperis. Signed by Judge Mary S. Scriven on 10/28/2019. (SER) (Entered: 10/28/2019)
10/28/2019	<u>37</u>	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, docket sheet, order/judgment being appealed, and motion, if applicable to USCA re <u>33</u> Notice of appeal. (LAB) (Entered: 10/28/2019)
11/01/2019		ACKNOWLEDGMENT by USCA of receiving Notice of Appeal on 10/30/19 re <u>33</u> Notice of appeal. USCA number: 19-14269-C. (LMF) (Entered: 11/01/2019)
02/03/2020	<u>38</u>	USCA ORDER as to <u>33</u> Notice of appeal filed by Keith L. Calvin. Appellant's Motion for a certificate of appealability is denied as unnecessary and his motion to proceed IFP on appeal is denied. EOD: 1/30/2020; USCA number: 19-14269-C. (LMF) (Entered: 02/03/2020)
03/19/2020	<u>39</u>	USCA ORDER. Appellant's motion for reconsideration of a single judge's order is denied, re <u>33</u> Notice of appeal filed by Keith L. Calvin. EOD: 3/16/2020; USCA number: 19-14269-C. (LAB) (Entered: 03/19/2020)

Exh B

Filed:

October 1<sup>th</sup> 2008.

Decided: April 12<sup>nd</sup> 2014.

See Exh. C

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
IN AND FOR MARION COUNTY FLORIDA

STATE OF FLORIDA.

Plaintiff:

v.

Case No: 04-536-CF-A-W

KEITH L CALVIN,

Defendant.

MOTION TO CORRECT SENTENCING ERROR

COMES Now, The Defendant Keith L Calvin pro se  
pursuant to Rule 3.800(c) Florida Rule of Criminal Procedure  
and respectfully moves this Honorable Court to Correct  
defendants Sentencing error on the face of the records as  
resons and/or Support thereof, The Defendant Would aver  
as follows.

1. On the 12<sup>th</sup> day of September, 2006 This Honorable  
Court Sentenced the Defendant as follows:

2. Defendant asserts that Sentencing document  
Imposed is illegal and Incorrect due to the following resons:  
On September 12, 2006 The Court pronounced at Sentencing  
Hearing, See Volume II, Page: 60 and 61, also Attached as  
Exhibit B. See Pages, 23, 60-61.

The Court Cited: He could not reclassify the degree of defendant's  
First Degree Felony pursuant to State v. Lipp 642 So. 2d 728 Fla.  
1994

## Exh B

And Burdick v. State 594 So.2d 267 (La 1992), Specifically indicates that a Second degree Murder is a First degree Felony punishable by term of years not exceeding life imprisonment under the Habitual Felony Offender statute.

The Court, Also We discussed the Verdict Form made No specific finding of the use of a Weapon or Firearm by the defendant and therefore, pursuant to State v. Tripp, If there is No Jury finding and there is No... See Exh A R 343 defendants jury finding, I am Not authorized to reclassify the nature of the First degree Felony to a Life Felony, Which Is What We Agreed. Thats because this is a Pre 1995 Incident; Life Felony's do not fall under the enhancement Statute. So based upon the foregoing, I Sentence the defendant as a Habitual Violent Felony Offender See: Exh B 1-3 pg's to Life in prison, Minimum Mandatory fifteen years.

Moreover there is a discrepancy between this Oral pronouncement On page 60 and 61 at Sentencing hearing of Volume II on the 12<sup>th</sup> date of September 2006 and the Written Judgment, It cites as Count 1 Murder In the Second degree 782-04(2)-F LIFE. Then the defendant is hereby adjudicated Guilty of the above crime See Exh C, R-457, Also Uniform Commitment to Custody of Department of Corrections, Dated also September 12, 2006 Cites: Most Serious offence: Life Felony. This document also Contains Conflicting data, Additional Provisions Defendant Is Adjudicated a habitual Violent Felony Offender Pursuant to 775-084 F.S. See Exh D, R-456

Both of these Court documents are in direct Conflict With Sentencing Oral Pronouncement by the Court and both records R-457 and R-456 Should cite as "First Degree Felony" 782-04(2) / 775-084 F.S. 1991

The Offence Charged did occur September, 1992. In Support of

# Exh "B"

The Listed Exhibits are attached.

Sanchez v. State 647 So.2d 975 (Fla 5<sup>th</sup> DCA 1994)

If an illegal sentence is brought to the Courts attention, it should be corrected even if it is unlikely to effect the amount of time defendant will be incarcerated.

Ashley v. State 850 So.2d 1265, 1268-69 (Fla 2003)

We have determined that a written sentence that conflicts with the oral pronouncement of sentence imposed in open court is an illegal sentence. Indeed we have restricted the authority of a trial court to enter a conflicting written sentence in this manner.

State v. Jones 753 So.2d 1276, 1277 n2 (Fla 2000)

Accordingly, no court has the authority to enter such a sentence, since the oral pronouncement controls and constitutes the legal sentence imposed. For this reason, we agree with the decisions of the First, Second, Third and Fifth District Courts of Appeals.

Also see Williams v. State 957 So.2d 600 (Fla 2007)

Our Supreme Court noted in Williams, that a court's oral pronouncement of a sentence controls over the written sentence document.

England v. State 879 So.2d 660 (Fla 5<sup>th</sup> DCA 2004); Pittman v. State 859 So.2d 555 (Fla 5<sup>th</sup> DCA 2003); Thomas v. State 778 So.2d 429 (Fla 5<sup>th</sup> DCA 2001) and Millon v. State 939 So.2d 198 (Fla 5<sup>th</sup> DCA 2006)

For these reasons the defendant brings before this honorable court this motion pursuant to Rule 3.800(a) Fla Rule of Crim P to correct the scrivener's error upon Judgment and Uniform Commitment to Custody of Department of Corrections Record in the good faith.

Exh "B"

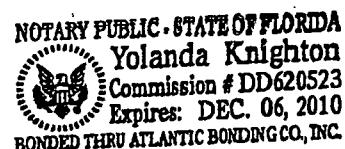
CERTIFICATE OF SERVICE

I, KEITH L CALVIN HEREBY CERTIFY that the Original and Correct Copy of the foregoing documents has been placed in the hands of an institutional official for mailing to be furnished and forwarded by prepaid First Class U.S. Mail delivery on this 7<sup>th</sup> day of October 2008 to the following: Brad King, Office of State Attorney, 19 N.W. Pine Avenue, Ocala, Florida 34478

131  
Keith L. Calvin, pro se  
KEITH L CALVIN #626305  
Wakulla Faith Based Care Inc  
110 Metalcena Drive  
Crawfordville, Fla 32327  
Dorm # F2-222 L

Under PENALTIES OF PERJURY, I declare that I have read the foregoing documents of Motion 3.800(a) Fla. Crim. p. and that the facts stated herein are true and correct. Executed on this 7<sup>th</sup> day of October 2008

NOTARY



*Yolanda Knighton*

Pursuant to the "mail box rule" under the authority of Hargrave v. State, 591 So. 2d 614 Fla 1992 and Adams v. State 173 F.3d 1339 (11<sup>th</sup> Cir. 1999), a pro se prisoners legal documents are deemed filed on the date he delivers such to prison authority for mailing. Accord, Thompson v. State, 761 So. 2d 324 (Fla 2000)

Exh C

IN THE CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT,  
IN AND FOR MARION COUNTY, FLORIDA

STATE OF FLORIDA,  
Plaintiff,  
vs.

CASE NO.: 04-536-CF-A-W

KEITH L. CALVIN,  
Defendant.

ORDER ON DEFENDANT'S MOTION TO CORRECT SENTENCING ERROR

On Monday, March 31, 2014, this Court received a document from the Fifth District Court of Appeal titled "Acknowledgment of New Case" pertaining to its case number 5D14-1057, Keith L. Calvin v. State of Florida that a Mandamus Petition had been filed by the Defendant. A copy of the acknowledgment of the new case is attached. The undersigned, who presided over the Defendant's murder trial and has addressed the numerous, unsuccessful post conviction motions filed by this Defendant, since 2007, having never been advised by either the Clerk of Court or the Defendant that any pending motion had been unresolved, obtained a copy of the Defendant's Petition for Writ of Mandamus. There is a date stamp from the Clerk of the Circuit Court indicating that the Clerk of this Court "stamped in" this document on March 18, 2014. The Petition for Writ of Mandamus makes reference to this Court having under consideration for over 4-1/2 years a Rule 3.800(a) Motion. Being unaware of the same, this Court reviewed this entire file (6 volumes) and located a document titled Motion to Correct Sentencing Error, dated October 7, 2008, filed by this pro se Defendant.

In his 2008 Motion, the Defendant argues that there is a "scriveners error" in the Judgment and Sentence because the written Judgment is not consistent with the oral pronouncement by this Court. For the reasons set forth below, this issue is now moot.

# Exh C

Attached to this Order is a copy of the March 23, 2009 letter to sent by the Clerk of the Court to the Defendant, regarding this case, sending him a "complimentary copy of the corrected Judgment/Sentence filed in your case." The attached copy of the corrected Judgment and Sentence is consistent with the relief the Defendant was seeking in his October 7, 2008 Rule 3.800(a) Motion. Contrary to the Defendant's apparent position in his Petition for Writ of Mandamus, Defendant was not required to be brought back to court for "sentencing" when he was merely requesting that a corrected Judgment and Sentence be entered consistent with the oral pronounced sentence he states he already received. It also is neither a "false document" nor a "fraud from the court". This Court has no recollection from 5 years ago the circumstances surrounding the entry of the corrected Judgment.

This Court would also point out that subsequent to the Defendant receiving the copy of the corrected Judgment and Sentence more than 5 years ago, he has continued to file post conviction motions (which have all been addressed) in which the corrected Judgment and Sentence has been addressed. Particularly, this Court has entered an Order in October, 2010 denying the Defendant's Motion to Correct Sentence brought pursuant to Rule 3.800(a)<sup>1</sup> regarding a violation of the statute of limitations. In 2013, Defendant filed an Amended Petition for Writ of Habeas Corpus-Manifest Injustice contending that he is being unlawfully detained because the statute of limitations had expired. The Fifth District Court of Appeal has recently affirmed, per curiam, this Court's Order denying the Defendant's Petition for Writ of Habeas of Corpus - Manifest Injustice, as amended. See Calvin v. State, No. 5D13-1457, 2014 WL 88061 (Fla. 5<sup>th</sup> DCA 2014).

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<sup>1</sup>The Order denying this Motion was affirmed by the 5<sup>th</sup> DCA. Calvin v. State, 58 So.3d 273 (Fla. 5<sup>th</sup> DCA 2011). (Table).

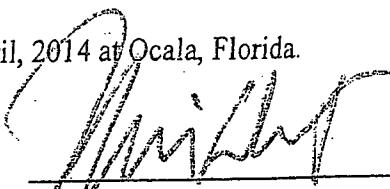
Exh C

Based upon the foregoing, it is

**ORDERED:**

1. The Defendant, having received the corrected Judgment and Sentence more than 5 years ago which, per the pending 2008 Motion to Correct Sentencing Error, is consistent with the relief requested in the Motion, the Court concludes that the Motion is now moot.<sup>2</sup>

ORDERED on this 2<sup>nd</sup> day of April, 2014 at Ocala, Florida.



BRIAN D. LAMBERT

Circuit Judge

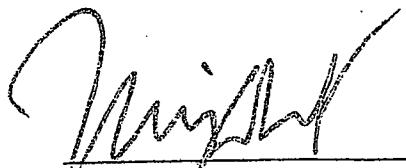
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. and/or inter-office mail to the following on this 2<sup>nd</sup> day of April, 2014:

Office of the State Attorney  
(via inter-office mail)

Keith L. Calvin (DC# 626305)  
Dorm #F2-2102  
C/o Union Correctional Institution  
7819 NW 228<sup>th</sup> Street  
Raiford, FL 32026

State of Florida - Office of the Attorney General  
444 Seabreeze Boulevard, Fifth Floor  
Daytona Beach, FL 32118  
Case Number 5D14-1057



Judicial Assistant

<sup>2</sup>Attached to this Order is a copy of the April 30, 2013 Order entered by this Court, without attachments, pursuant to State v. Spencer, 751 So.2d 47 (Fla. 1999) barring this Defendant from any further pro se filings pertaining to the Judgment and Sentence rendered in this case. This Order is not applicable to the unresolved 2008 Motion at issue.

Exh C

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

KEITH L. CALVIN,  
Petitioner,

vs.

CASE NO.: 5D14-1057

STATE OF FLORIDA,  
Respondent.

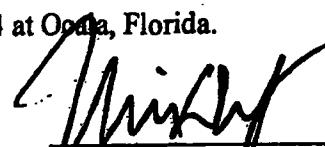
**RESPONSE OF JUDGE BRIAN D. LAMBERT**

On Monday, March 31, 2014, the Fifth District Court of Appeal issued an Order directing that the undersigned respond to the Petition for Writ of Mandamus filed by the Petitioner.

*§ 2244(a)(2)*  
In response, the undersigned advises that on April 2, 2014, the undersigned entered an Order on the *(FLA.R. CRIM. P. 3.800(a))* Motion to Correct Sentencing Error which is the subject of the Petition for Writ of Mandamus. A copy of this Order is attached and is incorporated by reference into this response.

Briefly, the undersigned was never advised by the Petitioner that his Motion was pending despite having filed subsequent post conviction motions which the undersigned addressed. Second, in late March, 2009, the Petitioner was sent a corrected and amended Judgment and Sentence which was amended consistent with the relief the Petitioner requested in his motion. See attached!

Dated this 10<sup>th</sup> day of April, 2014 at Ocala, Florida.

  
BRIAN D. LAMBERT  
Circuit Judge  
110 NW First Avenue  
Ocala, FL 34475  
Tel.: (352) 401-6785  
Fax: (352) 401-7881

2014 APR 14 PM 2:21  
OFFICE OF THE ATTORNEY  
GENERAL  
DAYTONA BEACH, FLORIDA

RECEIVED

RECEIVED

APR 14 2014

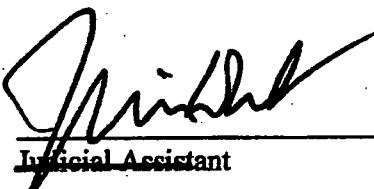
Exh C

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. mail to the following on this 10<sup>th</sup> day of April, 2014:

Keith L. Calvin (DC# 626305)  
Dorm #F2-2102  
C/o Union Correctional Institution  
7819 NW 228<sup>th</sup> Street  
Raiford, FL 32026

State of Florida - Office of the Attorney General  
444 Seabreeze Boulevard, Fifth Floor  
Daytona Beach, FL 32118



Jennifer  
Judicial Assistant

Court Order Denial of Original § 2254 Habeas Corpus

Case 5:11-cv-00462-JSM KL Document 22 Filed 08/15/12 Page 1 of 14 PageID 227

Exhibit D

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

KEITH L. CALVIN,

Petitioner,

v.

CASE NO: 5:11-CV-462-Oc-30PRL

SECRETARY, DEPARTMENT OF  
CORRECTIONS and FLORIDA  
ATTORNEY GENERAL,

Respondents.

2012 AUG 15 PM 2:45  
THE ATTORNEY GENERAL  
DAYTONA BEACH, FLORIDA

**ORDER**

Petitioner, Keith L. Calvin, an inmate in the Florida penal system proceeding *pro se*, brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Dkt. #1). The Court has considered the petition, Respondents' Response (Dkt. #14) and Calvin's Reply (Dkt. #20). Upon review, the Court determines that the petition is due to be dismissed as time barred. Had it not been time barred, it would have failed either on the merits or for procedural default.

**BACKGROUND**

The facts contained in this background section are taken from Calvin's Motion to Dismiss and subsequent brief on direct appeal. On September 25, 1992, Calvin brought 20 year old Gladys Mosley to the Monroe Regional Medical Center in Ocala, Florida, with gun shot wounds to her neck and forearm. He said the two of them had been walking down State

10  
EFC  
08/15/12  
8/16/12  
(14)