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A-1

**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

February 25, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-13459-DD
Case Style: Anthony Wint v. State of Florida Palm Beach, et al
District Court Docket No: 9:17-cv-80631-KAM

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Bradly Wallace Holland, DD/lt
Phone #: 404-335-6181

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13459-DD

ANTHONY O. WINT, JR.,
by and through his next friend,
ORAL WINT,

Petitioner - Appellant,

versus

STATE OF FLORIDA PALM BEACH SHERIFF,
STATE OF FLORIDA'S FIFTEENTH JUDICIAL CIRCUIT,
FLORIDA DEPARTMENT OF CORRECTIONS,
STATE OF FLORIDA OFFICE OF PUBLIC DEFENDER,

Respondents - Appellees.

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

Before MARTIN, ROSENBAUM, and GRANT, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Anthony O. Wint, Jr. is DENIED.

ORD-41

A-2

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13459
Non-Argument Calendar

D.C. Docket No. 9:17-cv-80631-KAM

ANTHONY O. WINT,
by and through his next friend,
ORAL WINT,

Petitioner-Appellant,

versus

STATE OF FLORIDA PALM BEACH SHERIFF,
STATE OF FLORIDA'S FIFTEENTH JUDICIAL CIRCUIT,
FLORIDA DEPARTMENT OF CORRECTIONS,
STATE OF FLORIDA OFFICE OF PUBLIC DEFENDER,

Respondents-Appellees.

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

(January 21, 2021)

Before MARTIN, ROSENBAUM, and GRANT, Circuit Judges.

PER CURIAM:

Oral Wint, acting as “next friend” of his son, Anthony Wint, is trying to challenge the constitutionality of his son’s Florida convictions for home invasion robbery, aggravated battery, and false imprisonment. Proceeding *pro se*, he attempted to initiate a new case in federal court by filing a “Request for Certificate of Appealability.”¹ Generally a certificate of appealability is issued to authorize an appeal of a final order in a habeas proceeding—and here no habeas petition had yet been filed in the district court for Wint’s case. *See* 28 U.S.C. § 2253(c). The “request” was referred to a magistrate judge. On May 22, 2017, the magistrate judge ordered “the Petitioner” to refile the pleading and comply with the following orders: (1) “expressly” notify the court whether he agreed to recharacterize his pleading as a § 2254 habeas petition or whether he wanted to withdraw his pleading; (2) if he did want to proceed with the habeas petition, file a petition “clearly specifying the criminal convictions under attack and concisely stating his issues and supporting facts on the form provided to him” in the order; and (3) if the petition were refiled by a “next friend,” a stated basis for that next friend designation, including providing a reason that the petitioner was unable to proceed for himself.

Oral responded by filing a “Request to Reclassify Document from Habeas Corpus to Next Friend Styled Request for Certificate of Appealability,” explaining

¹ Though Appellant proceeded *pro se* before the district court, he is represented on appeal.

that his initial filing was clearly intended to be a request for a certificate of appealability and he was uncertain how his filing was docketed as a habeas corpus petition. Oral's new filing made no attempt to comply with the magistrate judge's order. The magistrate judge issued a report and recommendation, suggesting that the district court dismiss the case without prejudice under Federal Rule of Civil Procedure 41(b) because Oral failed to comply with a court order. The district court adopted the report and recommendation and dismissed the case without prejudice.

Oral, still claiming to proceed as Anthony's next friend, appealed.² Because we find that the district court did not abuse its discretion in dismissing this case without prejudice, we will affirm.

I.

We review the dismissal of a complaint for failure to comply with a court order for abuse of discretion. *Equity Lifestyle Props., Inc. v. Fla. Mowing & Landscape Serv., Inc.*, 556 F.3d 1232, 1240 n.14 (11th Cir. 2009). In applying an abuse of discretion standard, we will affirm unless the district court applied the wrong legal standard or made a clear error of judgment. *Maiz v. Virani*, 253 F.3d 641, 662 (11th Cir. 2001).

II.

² Before considering whether the dismissal was appropriate, we remanded to the district court for the limited purpose of determining whether Oral should be permitted to proceed as next friend. The district court determined Oral's next friend status was appropriate for "pursuing a writ of habeas corpus" before the district court.

We begin by clearing up a fundamental misunderstanding in Appellant’s initial brief. Appellant’s brief argues that the district court erred by “addressing other issues after it determined that Oral Wint failed to demonstrate ‘next friend’ status” and that the district court’s later finding that Oral established next friend standing has cured any defect with the district court’s jurisdiction. Both of these arguments are premised on the notion that the district court dismissed because it determined that Oral lacked standing to act as Anthony’s next friend. That, though, was not the basis for the dismissal. Instead, the district court’s order was clear: the case was “DISMISSED WITHOUT PREJUDICE for non-compliance with the Court’s May 22, 2017 Order.” The district court could not, then, have erred as Appellant suggests by addressing other issues after it determined Oral lacked standing—it never made a jurisdictional determination in the first place. Nor could the district court’s later determination that Oral has standing rectify his non-compliance with the district court’s order.

Appellant tries to make an about-face in his reply brief by arguing for the first time that the district court erred in “deciding other issues *before resolving* Article III standing.” But that argument comes too late. Our court will not “address an argument advanced by an appellant for the first time in a reply brief.” *Big Top Koolers, Inc. v. Circus-Man Snacks, Inc.*, 528 F.3d 839, 844 (11th Cir. 2008). Since Appellant’s initial brief identifies no error in the order, we conclude that the district court did not abuse its discretion dismissing under Rule 41(b).

That leaves us with one remaining argument on appeal. Appellant claims that the district court erred by allowing Oral, a non-attorney, to represent Anthony

before the district court. Though Oral may have been able to stand in Anthony’s place as a plaintiff or petitioner, Appellant claims Oral could not proceed without legal counsel.

This Circuit, though, has not firmly settled if and when a next friend may proceed *pro se*. True, in certain types of litigation, we have held that a next friend cannot represent the plaintiff in a *pro se* capacity. *See, e.g., Devine v. Indian River Cnty. Sch. Bd.*, 121 F.3d 576, 581 (11th Cir. 1997) (“IDEA allows parents to sue in their children’s stead, but does not authorize them to act as counsel in such a lawsuit.”). But this proposition is less settled in other contexts, such as for habeas petitions. For instance, we have previously recognized that when a petitioner is *not* qualified as a “next friend,” he “may not participate in the unauthorized practice of law by preparing legal papers, filing petitions and briefs, and generally acting as an attorney in violation of state and federal provisions governing the unauthorized practice of law.” *Weber v. Garza*, 570 F.2d 511, 514 (5th Cir. 1978).

But even assuming that Oral could not represent Anthony below, that would be a basis for affirming the district court’s order, not reversing it. *Harris v. United Auto. Ins. Grp., Inc.*, 579 F.3d 1227, 1232 (11th Cir. 2009) (noting that we “may affirm the district court’s judgment on any ground that appears in the record, whether or not that ground was relied upon or even considered by the court below” (quotation omitted)). Ordinarily, if a party is represented by a non-attorney, a court may dismiss without prejudice. *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1386 (11th Cir. 1985) (affirming dismissal for lack of proper representation); *Memon v. Allied Domecq QSR*, 385 F.3d 871, 874 (5th Cir. 2004) (noting that most

district courts warn the party of the need for counsel before dismissal, *or* dismiss without prejudice, allowing the party to refile with counsel). And that is precisely what the district court did here. Appellant cites no authority from this Circuit to suggest that the district court was required to do anything more in response to Oral's allegedly inappropriate representation.

Because the district court did not abuse its discretion in dismissing without prejudice—either for failure to comply with a court order or for lack of proper representation—the district court's dismissal is AFFIRMED.

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
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January 21, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-13459-DD
Case Style: Anthony Wint v. State of Florida Palm Beach, et al
District Court Docket No: 9:17-cv-80631-KAM

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. Information and training materials related to electronic filing, are available at www.ca11.uscourts.gov. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Pursuant to Fed.R.App.P. 39, costs taxed against the appellant.

Please use the most recent version of the Bill of Costs form available on the court's website at www.ca11.uscourts.gov.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Bradly Wallace Holland, DD at 404-335-6181.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna H. Clark
Phone #: 404-335-6151

OPIN-1A Issuance of Opinion With Costs

A-3

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 17-CIV-80631-MARRA

ANTHONY O. WINT, JR.,

Petitioner,

v.

**STATE OF FLORIDA PALM BEACH
SHERIFF et al.,**

Respondents.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
AND APPOINTING ORAL WINT, FATHER OF PETITIONER, AS NEXT FRIEND**

THIS CAUSE is before the Court on order of limited remand from the Eleventh Circuit Court of Appeals, with directions for this Court to make relevant findings concerning whether Oral Wint should be permitted to proceed in this matter as next friend on behalf of the Petitioner [DE 25]. This matter was previously referred to Magistrate Judge Lisette Reid for proposed findings and a recommended disposition.

On June 27, 2019, Magistrate Judge Reid filed a Report and Recommendation recommending that the Petitioner's father, Oral Wint, be permitted to proceed in this matter as next friend for Anthony Wint in pursuing a Section 2254 petition [DE 35]. Neither party has filed objection to this Report and Recommendation.

After carefully reviewing the Magistrate Judge's Report and Recommendation, the Court finds the Magistrate Judge's findings and recommendations to be sound and well-reasoned and accordingly adopts them here in full.

It is therefore **ORDERED** and **ADJUDGED**:

1. Magistrate Judge Lisette Reid's Report and Recommendation [DE 35] is **APPROVED AND ADOPTED** in full.
2. Oral Wint is appointed a "next friend" of the Petitioner, Anthony O. Wint, for purposes of pursuing a writ of habeas corpus before this Court. As such, Oral Wint shall act in the best interest of the Petitioner in directing the habeas corpus proceedings before this Court.
3. The Federal Public Defender for the Southern District of Florida is appointed as counsel for the Petitioner. The Respondents are directed to allow counsel access to Petitioner.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida this 19th day of August, 2019.



KENNETH A. MARRA
United States District Judge

Copies furnished to:

Magistrate Judge Lisette Reid
All counsel

A-4

Aug 13, 2018

STEVEN M. LARIMORE
CLERK U.S. DISTRICT CT.
S.D. OF FLA, MIAMI

**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

August 13, 2018

Steven M. Larimore
U.S. District Court
400 N MIAMI AVE
MIAMI, FL 33128-1810

Appeal Number: 17-13459-J
Case Style: Anthony Wint v. State of Florida Palm Beach, et al
District Court Docket No: 9:17-cv-80631-KAM

LIMITED REMAND

Enclosed is a copy of an order remanding the referenced appeal for further proceedings.
JURISDICTION OF THIS APPEAL IS BEING RETAINED BY THE ELEVENTH CIRCUIT.

This case will be held in abeyance and monitored in the Eleventh Circuit pending disposition of remand proceedings in your court.

Upon completion of remand proceedings, please promptly send a copy of the ORDER ON REMAND to this court.

Counsel for the appellant is directed to file monthly status reports on the 15th of each month regarding the status of the limited remand in the United States District Court.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Davina C. Burney-Smith, J(dhh)
Phone #: (404) 335-6183

CLK-3 DC Letter with Ltd Remand order

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13459-J

ANTHONY O. WINT, JR.,

Petitioner - Appellant,

versus

STATE OF FLORIDA PALM BEACH SHERIFF,
STATE OF FLORIDA'S FIFTEENTH JUDICIAL CIRCUIT,
FLORIDA DEPARTMENT OF CORRECTIONS,
STATE OF FLORIDA OFFICE OF PUBLIC DEFENDER,

Respondents - Appellees.

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

Before: WILSON and ROSENBAUM, Circuit Judges.

BY THE COURT:

Before the Court is Appellant's "Motion to Permit Oral Wint to Proceed as Next Friend By Petitioner/Appellant Anthony Wint." The Court REMANDS to the district court on a limited basis to make the relevant findings concerning whether Oral Wint should be permitted to proceed as next friend. This appeal is STAYED pending the limited remand. Counsel for Appellant is DIRECTED to file with this Court monthly status reports, on the fifteenth of each month, regarding the status of the limited remand in the district court.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 17-80631-CIV-MARRA/WHITE

ANTHONY O. WINT, JR.,

Petitioner,

v.

JULIE L. JONES,

Respondent.

/

ORDER AFFIRMING AND APPROVING REPORT AND RECOMMENDATION

This cause is before the Court upon the Request for Certificate of Appealability filed *pro se* by Petitioner's father as "next friend" for his allegedly mentally ill son, Anthony G. Wint, Jr. [DE 1]. This submission was docketed on May 11, 2017 as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This Petition was referred to Magistrate Judge Patrick A. White for consideration and report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Rules 8 and 10 of the Rules Governing Section 2254 Cases in the United States District Courts.

On May 22, 2017, Magistrate Judge White issued an Order advising Petitioner that before his submission could be considered by the Court, on or before June 5, 2017, he needed to file a pleading with the Court expressly notifying the Court whether he agrees to the re-characterization of his pleading as a Section 2254 habeas petition or whether he withdraws the pleading rather than have it re-characterized as a Section 2254 petition. [DE 5]. This Order advised Petitioner how to file an "Amended Section 2254 Petition" and included the relevant form for his ease of use. *Id.*

Rather than follow the instructions set forth in Magistrate White's Order, on June 6, 2017, Petitioner submitted a Motion to Reclassify Document from Habeas Corpus to Next Friend Styled Request for Certificate of Appealability by Anthony O. Wint, Jr. [DE 8]. On June 9, he filed a Motion for Certificate of Appealability by Anthony O. Wint, Jr. [DE 9]. On June 13, 2017, he filed a Letter to the Court re Request for Certificate of Appealability from Oral Wint [DE 10], and a Letter to the Court re Request for Certificate of Appealability from Oral Wint [DE 11].

Magistrate Judge White entered a Report of Magistrate Judge on June 16, 2017 [DE 12] in which he recommends that the Request for Certificate of Appealability [DE 1], the Motion to Reclassify Document from Habeas Corpus to Next Friend Styled Request for Certificate of Appealability [DE 8], and the Motion for Certificate of Appealability [DE 9] be dismissed without prejudice for non-compliance with the Court's May 22, 2017 Order [*Id.* at 3].

Petitioner was given fourteen days from receipt of a copy of the Magistrate's Report to object to it. On July 10, 2017, Petitioner filed a Notice of Filing of Motion to Include Next Friend Petitioner in all Mailings, Motion, Orders and Correspondences by Oral Wint [DE 13], and a Notice of Filing to Request to Reclassify Document from Habeas Corpus to Next Friend Styled Request for Certificate of Appealability by Oral Wint [DE 14]. Again, rather than comply with Magistrate Judge White's instructions, Petitioner indicates his confusion over how his petition came to be called a Habeas Corpus since his intent is for it to be a "Request for Certificate of Appealability." [DE 14 at 2].

The Court, having conducted a *de novo* review of the entire file and record herein, agrees with the conclusion of the Magistrate Judge. Accordingly, it is hereby **ORDERED AND**

ADJUDGED that the Report of Magistrate Judge [DE 12] be, and the same is, **AFFIRMED** **AND APPROVED** in its entirety. The Request for Certificate of Appealability [DE 1], the Motion to Reclassify Document from Habeas Corpus to Next Friend Styled Request for Certificate of Appealability [DE 8], and the Motion for Certificate of Appealability [DE 9] shall be **DISMISSED WITHOUT PREJUDICE** for non-compliance with the Court's May 22, 2017 Order. Petitioner's Motion to Include Next Friend Petitioner in all Mailings, Motion, Orders and Correspondences by Oral Wint [DE 13] is **DENIED AS MOOT**, and his Notice of Filing to Request to Reclassify Document from Habeas Corpus to Next Friend Styled Request for Certificate of Appealability by Oral Wint [DE 14] is **DENIED** for the same reasons set forth in Magistrate Judge White's Report of Magistrate Judge.

The Court notes that this dismissal is without prejudice. Should Petitioner choose to return to this Court in the future with a Section 2254 habeas petition that satisfies the procedural requirements set forth in the Magistrate Judge's May 22, 2017 Order, it will be subject to all applicable timeliness and procedural requirements.

The Clerk shall **CLOSE** this case.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida this 16th day of July, 2017.



KENNETH A. MARRA
United States District Judge

A-6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-CV-80631-MARRA
MAGISTRATE JUDGE P.A. WHITE

ANTHONY O. WINT, JR., :
Petitioner, :
v. : REPORT RE DISMISSAL
JULIE L. JONES, : FOR NON-COMPLIANCE
Respondent. :

The Petitioner's father, Oral A. Wint, filed a *pro se* "Request for Certificate of Appealability" that has been docketed as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, as "next friend" for his allegedly mentally unstable son, Anthony O. Wint, Jr. (DE# 1). The pleading challenges the constitutionality of Anthony's conviction and sentence for home invasion robbery with a firearm or deadly weapon, aggravated battery with a deadly weapon, and false imprisonment in Palm Beach County case number 09-7177.

On May 22, 2017, the undersigned issued an Order advising Oral that the pleading is in the nature of a Section 2254 habeas petition, and informing him of the consequences of recharacterization pursuant to Castro v. United States, 540 U.S. 375 (2003), the procedural requirements for filing a Section 2254 petition, and the required showings for proceeding as "next friend" on Anthony's behalf. (DE# 5); see also (DE# 4) (order of instructions). The undersigned ordered Oral to file, on or before June 5, 2017, a pleading expressly notifying this Court whether he agrees to the recharacterization under Castro and, if so, to file an "Amended Section 2254 Petition" clearly specifying the criminal convictions under attack, concisely stating his issues and

supporting facts on a verified Section 2254 form, and clearly setting forth the basis for his "next friend" status. Id. at 3-4. The undersigned cautioned Oral that his failure to comply would likely result in dismissal of this case without further consideration. Id. at 4.

Oral has failed to comply with the Court's order. Rather than informing the Court about his wishes with regard to recharacterization and filing an Amended Section 2254 Petition, he filed a "Request to Reclassify Document from Habeas Corpus to Next Friend Styled Request for Certificate of Appealability," and "Request for Certificate of Appealability." (DE# 8, 9). He again seeks habeas-type relief yet insists that he is proceeding under Section 2253¹ rather than under Section 2254, failed to use the Section 2254 form that the Court provided, failed to verify the pleading, and purports to seek relief on behalf of Anthony as a "next friend" without setting forth a clear basis for his next friend status. Id.

Because Oral has failed to comply with the Castro order, file an Amended Section 2254 Petition, comply with Section 2254 procedures, or set forth a clear basis for next friend status, the undersigned recommends that this action be dismissed without prejudice. See Fed. R. Civ. P. 41(b); Equity Lifestyle Props., Inc. v. Fla. Mowing & Landscape Serv., Inc., 556 F.3d 1232, 1241 (11th Cir. 2009) (noting that "[a] district court need not tolerate defiance of reasonable orders"); see, e.g., Muhammad v. Bethel, 430 Fed. Appx. 750 (11th Cir. 2011) (affirming *sua sponte* dismissal of

¹ Section 2253 sets forth the procedure for seeking appeal from a final federal habeas order and provides no independent basis for relief. See 28 U.S.C. § 2253(a) ("In a habeas proceeding or a proceeding under Section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held").

pro se litigant's Section 1983 suit for failing to comply with the district court's order to file double-spaced, concise, amended complaint following a warning that non-compliance with the order would result in dismissal); Niebla v. McNeil, 2008 WL 2477659 (N.D. Fla. June 17, 2008) (dismissing Section 2254 petition without prejudice after petitioner failed to comply with an order requiring an amended petition).

Should the Petitioner choose to return to this Court in the future with another Section 2254 habeas petition, it will be subject to all applicable timeliness and procedural requirements.²

It is therefore recommended that the "Request for Certificate of Appealability" (DE # 1), "Request to Reclassify Document from Habeas Corpus to Next Friend Styled Request for Certificate of Appealability" (DE# 8), and "Request fo Certificate of Appealability" (DE# 9), be DISMISSED WITHOUT PREJUDICE for non-compliance with the Court's order, (DE # 5).

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

DONE and ORDERED this ____ day of May, 2017.

² A one-year statute of limitations applies to federal habeas petitions filed by state prisoners. 28 U.S.C. § 2244(d)(1). This period usually begins to run when the judgment becomes final after direct appeal or when the time to seek review has expired. Id. The period is tolled while properly filed applications for state post-conviction or collateral relief are pending with respect to the pertinent judgment or claim. 28 U.S.C. § 2244(d)(2). However, the statute is not tolled by a prior federal habeas petition. See Duncan v. Walker, 533 U.S. 167 (2001) (federal habeas petition is not an "application for State post-conviction or other collateral review" under Section 2244(d)(2)); see also Nyland v. Moore, 216 F.3d 1264 (11th Cir. 2000) (holding that the filing date of a second Section 2254 application does not relate back to the filing of an earlier, timely petition which is dismissed prior to resolution on the merits). Any future petition must be timely filed within the applicable one-year statute of limitations. Failure to do so will result in dismissal with prejudice.



UNITED STATES MAGISTRATE JUDGE

cc: Anthony O Wint, Jr.
W40809
Lake Correctional Institution
Inmate Mail/Parcels
19225 US Highway 27
Clermont, FL 34715-9025
PRO SE

Office of the Attorney General
Miami, FL

**Petition for Relief From a Conviction or Sentence
By a Person in State Custody**

(Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus)

Instructions

1. To use this form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence. This form is your petition for relief.
2. You may also use this form to challenge a state judgment that imposed a sentence to be served in the future, but you must fill in the name of the state where the judgment was entered. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file a motion under 28 U.S.C. § 2255 in the federal court that entered the judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. You must pay a fee of \$5. If the fee is paid, your petition will be filed. If you cannot pay the fee, you may ask to proceed in forma pauperis (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you. If your account exceeds \$ _____, you must pay the filing fee.
7. In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court (either in the same state or in different states), you must file a separate petition.
8. When you have completed the form, send the original and _____ copies to the Clerk of the United States District Court at this address:

Clerk, United States District Court for
Address
City, State Zip Code

9. **CAUTION: You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.**
10. **CAPITAL CASES: If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.**

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court	District:
Name (under which you were convicted):	
Docket or Case No.:	
Place of Confinement :	Prisoner No.:
Petitioner (include the name under which you were convicted)	Respondent (authorized person having custody of petitioner)
v.	
The Attorney General of the State of	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

(b) Criminal docket or case number (if you know):

2. (a) Date of the judgment of conviction (if you know):

(b) Date of sentencing:

3. Length of sentence:

4. In this case, were you convicted on more than one count or of more than one crime? Yes No

5. Identify all crimes of which you were convicted and sentenced in this case:

6. (a) What was your plea? (Check one)

<input type="checkbox"/> (1)	Not guilty	<input type="checkbox"/> (3)	Nolo contendere (no contest)
<input type="checkbox"/> (2)	Guilty	<input type="checkbox"/> (4)	Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following:

(a) Name of court:

(b) Docket or case number (if you know):

(c) Result:

(d) Date of result (if you know):

(e) Citation to the case (if you know):

(f) Grounds raised:

(g) Did you seek further review by a higher state court? Yes No

If yes, answer the following:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Result:

(4) Date of result (if you know):

(5) Citation to the case (if you know):

(6) Grounds raised:

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

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

Yes No

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):
- (4) Nature of the proceeding:
- (5) Grounds raised:

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

Yes No

(7) Result:

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

- (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):
- (4) Nature of the proceeding:
- (5) Grounds raised:

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

Yes No

(7) Result:

(8) Date of result (if you know):

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

(1) First petition: Yes No

(2) Second petition: Yes No

(3) Third petition: Yes No

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

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

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

GROUND ONE:

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

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

(c) Direct Appeal of Ground One:

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

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

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?
 Yes No

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

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

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

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

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

Docket or case number (if you know):

Date of the court's decision:

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

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

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

GROUND TWO:

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

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

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

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No
(2) If you did not raise this issue in your direct appeal, explain why:

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

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

Yes No

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

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

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

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

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

Docket or case number (if you know):

Date of the court's decision:

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

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

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

GROUND THREE:

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

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

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

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

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

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

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?
 Yes No

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

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

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

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

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

Docket or case number (if you know):

Date of the court's decision:

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

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

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

GROUND FOUR:

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

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

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

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

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

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

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

Yes No

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

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

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

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

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

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

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

Docket or case number (if you know):

Date of the court's decision:

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

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

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

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea:

(c) At trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on _____ (date).

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

A-7

FILED BY	<i>[Signature]</i>	D.C.
JUN 09 2017		
STEVEN M. CARMICHAEL		
CLERK U.S. DIST. CT.		
S.D. OF FLA. - W.P.B.		

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH

CIRCUIT

Appeal No. 17-cv-80631
FL FOURTH DCA Case Number: 4D12-121

ANTHONY WINT

Petitioner

v

STATE OF FLORIDA

Respondent

REQUEST FOR CERTIFICATE OF APPEALABILITY

Oral Wint : Next Friend/Father
115-65 230th Street
Cambria heights, NY 11411
(347) 526-5946
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ANTHONY WINT, PETITIONER v STATE OF FLORIDA, RESPONDENT

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT (CIP)

Pursuant to Eleventh Circuit Rule 26.1-1(a), I HEREBY CERTIFY that the following named persons are parties interested in the outcome of this case:

Anthony Wint v. State of Florida/Appeal No: 17-cv-80631

- 1) Hon. John S. Kastrenakes – Florida’s 15th Judicial Circuit
- 2) Ric Bradshaw – Palm Beach County Sheriff
- 3) Yvette Farnsworth-Baker - Attorney
- 4) Paulette Burdick - Mayor, Palm Beach County
- 5) Verdenia C. Baker – Palm Beach County Administrator
- 6) Emily Ross-Booker - Attorney
- 7) Joe Maryuma - Attorney
- 8) Paul Petillo - Attorney
- 9) Julie Jones – Florida Department of Corrections (FDOC)
- 10) Lester Fernandez – Inspector General FDOC

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STATEMENT OF THE CASE

The father of Anthony Olan Wint, Mr. O. Anthony Wint is filing a “Next Friend” petition by requesting a Certificate of Appealability (COA).

Under 28 U.S.C. § 2242, an application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief is intended or by someone acting in his behalf. Pursuant to Ford v. Haley, 195 F. 3d 603, 624 (11th Cir. 1999); see also Francis v. Warden, FCC Coleman-USP, 246 Fed. App’x 621,622 (11th Cir. 2007).

Due to the fact that Anthony Wint’s Constitutional rights have been violated, this “Next Friend” Petitioner is acting on the behalf of Anthony Wint. This Motion serves to reclassify all previously submitted documents to U.S. District Court Case # 17-cv-80631, from a writ of habeas corpus to a “Request for Certificate of Appealability”, pursuant to 28 U.S.C. § 2253.

Because Anthony Wint is incarcerated and does not have direct access to the court to file a habeas corpus petition; although, Anthony Wint is unable to litigate his

own cause due to mental illness; although, the state, prior to, during and is still currently treating Anthony Wint for mental illness, the Fl. Fourth DCA denied Anthony Wint's Habeas Corpus petition, [Exhibit #3]. This is a clear violation of precedent set by, Jonas H. Whitmore, Individually and as Next Friend of Ronald Gene Simmons, Petitioner V. Arkansas 495 U.S. 149, 163–64, 110 S. Ct. 1717, 1727, 109 L. Ed. 2d 135, 150 (1990)

(c) Whitmore's alternative argument that he has standing as Simmons' "next friend" is also rejected. The scope of any federal "next friend" standing doctrine, assuming that one exists absent congressional authorization, is no broader than the "next friend" standing permitted under the federal habeas corpus statute. Thus, one necessary condition is a showing by the proposed "next friend" that the real party in interest is unable to litigate his own cause due to mental incapacity, lack of access to court, or other similar disability.

The standing of "Next Friend" applies here in that Anthony Wint's mental condition, his lack of understanding and his lack of access to the Court due to his mental capacity to understand the nuances, of not only his reality but also the process of filing a habeas corpus.

As such, Anthony Wint claims a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Pagan v. United States*, 353 F.3d 1343, 1346 (11th Cir.2003).

In determining whether to grant a COA, the Court of Appeals "look[s] to the District Court's application of AEDPA to petitioner's constitutional claims and ask[s] whether that resolution was debatable amongst jurists of reason." *Miller-El v. Cockrell*, 537 U.S. 322, 336, 123 S.Ct. 1029, 1039, 154 L.Ed.2d 931 (2003). Anthony Olan Wint is requesting a certificate of appealability ("COA") from the denial of a renewed request for relief from two separate judgments, pursuant to Florida State Statute 3.800., which were filed in the Fifteenth Judicial Circuit of Florida. The Public Defender of Palm Beach's Office was asked on several occasions to raise Anthony Wint's mental condition at trial and upon Direct Appeal. The Public Defender's office was asked to file a 3.850 Motion to set aside sentencing due to Anthony Wint's inability to understand the trial the legal proceedings and the rulings against him. The Public Defender's office totally ignored any suggestion to mention Anthony Wint's mental condition and instead only filed the first 3.800 (b)(1) Motion to correct sentencing, in October 2011, The Direct Appeal in 2012 and the 3.800 (c) Motion to correct sentencing in October 2014. The trial court of the Fifteenth Judicial Circuit of Florida entered Orders summarily denying the first 3.800 (b)(1) Motion to correct sentencing, in

October 201, the Direct Appeal in 2012 and the 3.800 (c) Motion to correct sentencing on November 5, 2014.

In October 2015, there was a habeas corpus filed under the “next friend” status by Anthony Wint’s family in the Florida Supreme Court Case #15-1934, which triggered Fl. Fourth DCA Case #4D15-3962, challenging Anthony Wint’s prior and original judgment of conviction and sentence on constitutional and other grounds.

It is because of these past denials by state court, that Anthony Wint respectfully files a combined notice of appeal and request for certificate of appealability in the United States District Court on April 24, 2017.

CASE HISTORY

In June 2009, a grand jury charged Anthony Wint, a juvenile, in a multi-defendant indictment with Home Invasion Robbery 812.135; Sexual Battery 794.011(3); Kidnapping a child under 13 years old 787.01, and; Battery Felony Battery 784.03. The case involved several persons who were arrested in connection with the charges. One defendant, Nelson Baptiste was identified by witnesses and took a plea bargain of 30 years. Anthony Wint was never offered a plea bargain and went to trial. Anthony Wint was never identified by any

witness. Anthony Wint did not match DNA samples. Anthony Wint's finger prints were never matched at the scene. Anthony Wint, up until the onset of his mental illness, maintained his innocence. Only the testimony of Nelson Baptiste convicted Anthony Wint. The state used a government informant who bartered his compliance with the court to gain leniency.

Anthony Wint proceeded to dual-trial with a co-defendant in July 2011, was convicted on different charges from that which he was indicted, and was sentenced to consecutive terms of 45 years imprisonment on all counts of the new charges.

When Anthony Wint, went to trial he was saddled with even more charges from the prosecutor. Therefore, Anthony Wint was convicted on the following charges cited in Counts 1, 2 and 3:

- 1) Home Invasion Robbery 812.135; Possession or Use of Weapon Aggravated Battery 775.087(1); Principal in First Degree 777.011.
- 2) Possession or Use of Weapon Aggravated Battery 775.087(2)(c)1; Principal in First Degree 777.011; Aggravated Battery 784.045(1) There appear to be more charges in Count #2, however these charges are illegible (could not clearly read charge due to indistinguishable penmanship). This poses an issue. There was no clarity in the issuing of the new charges, because there

was no procedure that led to these illegible charges and convictions. These new charges were subject to interpretation and were never clearly defined or explained to the jury. Thus, further restricting the rights of Anthony Wint

3) False Imprisonment of a Child under age 13, aggravating circumstances 787.02; Possession or Use of Weapon Aggravated Battery 775.087(1); Principal in First Degree 777.011, (There were no 13 year olds presented at the alleged crime scene or at the trial or among the witness or among the alleged victims or at any time during any of the proceedings that was connected to this case. Ms. Reyes, the victim of Mr. Baptiste (co-defendant), was 17 years old, which was the same age as Anthony Wint on May 13, 2009)

The charges that the court convicted Anthony Wint were weakly tied to indictments against Anthony Wint. There was never a trial for these charges, only that the trial judge saw fit to illegally stack the charges to add years to an already illegal proceeding. The trial counsel, Ms. Yvette Farnsworth-Baker, did not object to Anthony Wint being convicted on these new and mysterious charges brought into play by error of the court. This can only mean one out of two things, either that Ms. Farnsworth-Baker could not have been paying attention or that she

intentionally watched the court railroad her client. Either way Ms. Farnsworth-Baker proved ineffective to protect the constitutional rights of Anthony Wint. Both trial counsel and appellate counsel should have argued that Anthony Wint was convicted of uncharged crimes, where there were no indictment or formal charges through legal procedure.

Even if these new and mysterious charges were legal and had they been properly charged to Anthony Wint in accordance with Florida law and in compliance with federal law and the Constitution of the United States, Anthony Wint's trial counsel did not recommend plea bargain for any of the new charges or the old charges (Due to mental illness, Anthony Wint could not understand the charges and therefore could not choose between a plea bargain and trial). Instead, Ms. Farsworth-Baker decided to go forward with a trial that she clearly was not prepared to undertake.

Anthony was incapable of testifying at trial but prior to the onset of mental illness, had always asserted both his actual and legal innocence. The trial evidence established could not prove otherwise. The trial court sentenced Anthony Wint to 30 years in prison on Count I, followed by 7.5 years on Count II, followed by 7.5 years on Count III.

After Anthony Wint was convicted, his trial attorneys (Palm Beach Public Defender) represented him on direct appeal. Palm Beach Public Defender's primary arguments on appeal were that the trial court erred in determining that the State didn't commit a discovery violation upon Defense Counsel's notice that the State never provided a better address for Isaiah Diaz (key witness). And that the trial court failed to conduct an adequate Richardson inquiry before reaching conclusion. Public Defender of Palm Beach also challenged the admission of testimony given at irregular makeshift deposition of Isaiah Diaz because it was rushed due to the fact that the Sheriff concealed Diaz' address and would not turn it over to Defense. The arresting officer Detective Turner, who authored the police report as well as the supplementary report that led to Anthony Wint's indictment by the Grand Jury, was never interviewed, deposed, confronted or cross-examined by Anthony Wint's Counsel. This is a clear violation of the "Confrontation Clause" guaranteed by the Sixth Amendment, *United States v. Baptista-Rodriguez*, 17 F. 3rd 1354, 1370 (11th Cir. 1994).

Though Appellate attorney, from Palm Beach Public Defender uncovered many obvious errors of the trial court and of the trial attorney, the Appellate attorney failed to evoke Anthony Wint's mental condition or his ability to understand the trial.

The trial judge was not sure due to Anthony Wint's noticeably odd demeanor that led to the trial judge, to ask the trial attorney, "is your client alright?"

As in *Dusky v. United States*, 362 U.S. 402, 403, 80 S. Ct. 788, 4 L.Ed.2d 824 (1960), the Supreme Court ruled that there were "doubts ambiguity" However, this was not the case with Anthony Wint, as the trial attorney answered "yes, he is fine" This is despite the fact that the trial attorney sought to file a court petition in April 2011, to have Anthony Wint institutionalized as a threat to himself or others because of a psychotic episode. Along with the failure to evoke upon the court Anthony Wint's mental condition, the Appellate attorney from Palm Beach Public Defender also failed to show the illegal "stacking" of charges against Anthony Wint. The Palm Beach Public Defender failed to recognize that their client Anthony Wint was charged, and sentenced without proper and required indictments or it's legal equivalence to an indictment for some of these very charges that included, False Imprisonment of a Child under age 13, aggravating circumstances 787.02; Possession or Use of Weapon Aggravated Battery 775.087(1); Principal in First Degree 777.011, (There were no 13 year olds presented at the alleged crime scene or at the trial or among the witness or among the alleged victims or at any time during any of the proceedings that was

connected to this case. Ms. Reyes, the victim of Mr. Baptiste (co-defendant), was 17 years old, which was the same age as Anthony Wint in May 2009.

The Appellate attorney, Palm Beach Public Defender, overlooked this glaring court error and made this statement instead, that can be found on page #21 of Anthony Wint's Direct Appeal; "The jury found Wint guilty as charged on all four counts (RI 160-163; TXI 1500-1502). The trial court adjudicated him guilty on Counts 1-111 and dismissed Count IV (RI 165; TXI 1511-1512). It sentenced Wint to 30 years in prison on Count I, followed by 7.5 years on Count II, followed by 7.5 years on Count III (RI 180-182; TXI 1553-1554). Defense Counsel filed a 3.800(b)(1) motion to correct sentencing error (RII 197-200). The trial court denied the motion (RII 208-215). Wint then filed a timely Notice of Appeal (RII 216)."

The Appellate Attorney, Palm Beach Public Defender also turned a blind eye to the numerous violations of Anthony Wint's Constitutional rights by the trial court.

In addition, to reiterate, the trial counsel was certainly deficient because she should have objected at the very least to preserve Anthony Wint's right to appeal.

The appellate counsel, Ms. Ross-Booker, who is with the same agency (Palm Beach County Public Defender's office) that represented Anthony Wint at trial, had no incentive to appeal on grounds of Ineffective Counseling Assistance, since

it was not in the best interest of the Palm Beach County Public Defender's Office.

Ms. Ross-Baker should have seen and studied the sentencing document recorded with the Palm Beach Clerk because the recording took place on August 9, 2011, prior to the appellate case being assigned to her. Unlike co-defendant, Nelson Baptiste, Anthony Wint was not aware of the charges being stacked against him or that he was placed in "Double Jeopardy" see 4D14-4100 Nelson Baptiste V. State of Florida. The Double Jeopardy charges that were removed by the state of Florida from co-defendant Nelson Baptiste, for more than two years, are still among Anthony Wint's arrest and conviction charges. Although Double Jeopardy has been removed from the charges of which Nelson Baptiste was convicted, the Public Defender office of Palm Beach have yet to successfully do the same for Anthony Wint.

According to, 4D14-4100 Nelson Baptiste V. State of Florida, "Failure to raise a valid double jeopardy claim on direct appeal can constitute ineffective assistance of appellate counsel. *Perri v. State*, 154 So. 3d 1204, 1205 (Fla. 2d DCA 2015). A double jeopardy violation is a fundamental error that can be raised for the first time on appeal despite the lack of preservation. *Latos v. State*, 39 So. 3d 511, 513 (Fla. 4th DCA 2010). An open plea does not waive the error where the double jeopardy violation is clear from the face of the record and

where there is no express waiver. *See id.* at 514–15 (citing *Labovick v. State*, 958 So. 2d 1065, 1067 (Fla. 4th DCA 2007))".

Even with the benefit of this knowledge that Nelson Baptiste's Double Jeopardy charges are corrected, and his sentence was reduced because Baptiste was placed in Double Jeopardy, Palm Beach Public Defender refused to act on Anthony Wint's behalf. Surely, Palm Beach Public Defender realized that acting would shine the light back on the horrendous legal counseling received by Anthony Wint during trial. To save their own reputation Palm Beach Public Defender placed Anthony Wint in greater peril by not acting on his behalf to file a 3.850 to set aside the October 25, 2011 illegal sentencing and seek a new trial. Palm Beach Public Defender provided Ineffective Counseling at trial and also on Direct Appeal, denying him protection of "due process" as guaranteed under the Fifth Amendment of the Constitution.

With respect to this Court, Anthony Wint timely files a Pro Se Habeas motion, styled as "Next Friend" by his father, Oral A. Wint. This is due to Anthony Wint's inability to understand his current situation or his rights, thus the inability to act on his own behalf.

Pursuant to 28 USC subsection §2254, and; the Bill of Rights of The United States Constitution Anthony Wint files this combined notice of appeal and request for Certificate of Appealability.

As disclosed within the "Statement Of The Case" section: "In October 2015, there was a Habeas Corpus filed under the "next friend" status by Anthony Wint's family in the Florida Supreme Court Case #15-1934, which triggered Fl. Fourth DCA Case #4D15-3962, challenging Anthony Wint's prior and original judgment of conviction and sentence on constitutional and other grounds". The State Supreme Court for unknown reasons, exercised its power to change Anthony Wint's Pro Se Habeas Corpus motion, without a hearing as to why the change should be made or consent from Anthony Wint. In this case, since Anthony Wint's mental deficiencies are present, the "Next Friend" litigant, Oral Wint has filed this COA.

Another reason that this notice and request for COA is submitted to District Court is specifically because of the language used by the Florida Supreme Court to justify its re-routing of Anthony Wint's Habeas Corpus motion. The Florida Court states:

” The Florida Supreme Court has received the following documents reflecting a filing date of 10/20/2015.

Notice of Appeal

The above listed notice has been treated as a Notice to Invoke Discretionary Jurisdiction..

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

Pursuant to 28 U.S.C. § 2254(e)(2). (1), this notice and request for COA is submitted because when a habeas petitioner has failed to fully develop the factual bases of his claims in state court, he is precluded from further factual development in federal court unless (1) his claims rely on a new rule of constitutional law or factual predicate previously undiscoverable through the exercise of due diligence, and (2) he establishes by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found him guilty. It is the Understanding of the family of Anthony Wint that if it were not for the repeated constitutional violations by the trial attorney, prosecutorial misconduct and errors of the trial court Anthony Wint would have received a fair trial and would not have

been convicted of the charges for which he has been illegally sentenced. The following must be determined.

(1) that Anthony Wint received ineffective assistance of counsel, who failed to argue at trial and on appeal that Anthony Wint's Constitutional rights were violated.

(2) that Anthony Wint received ineffective assistance of counsel, who failed to argue on appeal that the trial court is obligated to conduct a sanitary hearing if there is doubt of competence to stand trial, therefore denying Anthony Wint of his Sixth Amendment protection to a fair trial.

(3) that Anthony Wint received ineffective assistance of counsel, who failed to argue on appeal that the court committed a constitutional violation by stacking charges and failing to correct illegal sentencing, therefore failing to protect Anthony Wint's Sixth Amendment rights.

(4) that Anthony Wint received ineffective assistance of counsel, who failed to argue on appeal that the State's attorney committed prosecutorial misconduct by misrepresenting Anthony Wint's car as blue when the car is indeed gray, as registered with the State of Florida Motor vehicle, and by making the jury highly-prejudicial, by using improper and unsubstantiated remarks in closing argument; This violates Ethics as well as Anthony Wint's Sixth Amendment right to be tried by an impartial jury.

(5) that the State of Florida violated Anthony Wint's Fifth Amendment protection of due process by not preserving the transcripts of the deposition of Isaiah Diaz and Sixth Amendment protection to confront and call witnesses such as Detective Turner, the arresting officer. The concealment of Isaiah Diaz by the Palm Beach Sheriff prevented access to a key witness.

(6) that the State of Florida violated Anthony Wint's Fifth Amendment protection of due process. Although Anthony Wint was not aware of the charges being stacked against him or that he was placed in "Double Jeopardy" see 4D14-4100 Nelson Baptiste V. State of Florida, Counsel was ineffective in protecting his Fifth and Sixth Amendment rights.

(7) that the State of Florida appointed attorneys at trial and Direct Appeal was ineffective and failed to evoke or address Anthony Wint's mental condition or his inability to understand the trial or any of the proceedings held against him.

(8) that the State of Florida failed to protect Anthony Wint's Fifth Amendment right of due process and Eighth Amendment protection against cruel and unusual punishment by failing to physically and mentally protect

him while in custody of the state due to retaliation by various state and local employees. This retaliation comes from Anthony Wint and his family complaining of unfair applications of rules and regulations.

ARGUMENT AND AUTHORITIES

I. PRELIMINARY CONSIDERATIONS APPLICABLE TO ISSUANCE OF A COA.

THE STANDARDS

In order to obtain a COA a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Pagan v. United States*, 353 F.3d 1343, 1346 (11th Cir.2003). In determining whether to grant a COA, the Court of Appeals "look[s] to the District Court's application of AEDPA to petitioner's constitutional claims and ask[s] whether that resolution was debatable amongst jurists of reason." *Miller-El v. Cockrell*, 537 U.S. 322, 336, 123 S.Ct. 1029, 1039, 154 L.Ed.2d 931 (2003).

Miller-El explained what is required. As mandated by federal statute, a prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253. Before an appeal may be entertained, a prisoner who was denied habeas relief in the district court must first

seek and obtain a COA from a circuit justice or judge. This is a jurisdictional prerequisite because the COA statute mandates that "[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals

...." § 2253(c)(1). As a result, until a COA has been issued federal courts of appeal lack jurisdiction to rule on the merits of appeals from habeas petitioners.

A COA will issue only if the requirements of § 2253 have been satisfied. "The COA statute establishes procedural rules and requires a threshold inquiry into whether the circuit court may entertain an appeal." *Slack v. McDaniel*, 529 U.S. 473, 482, 120 S.Ct. 1595 (2000); *Hohn v. United States*, 524 U.S. 236, 248, 118 S.Ct. 1969 (1998). Section 2253(c) permits the issuance of a COA only where a petitioner has made a "substantial showing of the denial of a constitutional right." In *Slack*, *supra*, at 483, 120 S.Ct. 1595, the Court recognized that Congress codified the prior judicial certificate of probable cause ("CPC") standard, announced in *Barefoot v. Estelle*, 463 U.S. 880, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983), for determining what constitutes the requisite showing.

Under the controlling standard, a petitioner must "show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were

'adequate to deserve encouragement to proceed further.'" 529 U.S., at 484, 120

S.Ct. 1595 (quoting

Barefoot, supra, at 893, n. 4, 103 S.Ct. 3383).

The COA determination under§ 2253(c) requires an overview of the claims in the habeas petition and a general assessment of their merits. This Court is required to look to the Fourth DCA's handling of Anthony Wint's Habeas Corpus petition and the affects to Anthony Wint's constitutional rights.

**II. WHETHER A CERTIFICATE OF APPEALABILITY
SHOULD ISSUE TO REVIEW THE FAILURE OF THE TRIAL COURT
TO CONDUCT A SANITY HEARING**

The State concedes that the conviction of an accused person while he is legally incompetent violates due process, *Bishop v. United States*, 350 U.S. 961, 76 S.Ct. 440, 100 L.Ed. 835 (1956), and that state procedures must be adequate to protect this right. However, the state of Florida ignored precedent set in *Bishop v. United States* and proceeded with the prosecution of the charges against Anthony Wint.

As in *Tiller V. Esposito*, 911 F.2d 575 (11th Cir. 1990) Courts must focus on three factors in determining whether the trial court violated the defendant's procedural due process rights by failing to hold *sua sponte* a competency hearing: (1) Evidence of the defendant's irrational behavior; (2) the defendant's demeanor at

trial; and (3) prior medical opinion regarding the defendant's competence to stand trial”

Ms. Farnsworth-Baker sat next to Anthony Wint for the five day trial, watching him sleeping and showing indifference while facing many years in prison. Ms. Farnsworth-Baker at that point, on behalf of her client should have moved to petition the court to hold a competency hearing. *James v. Singletary*, 957 F.2d 1562, Eleventh Circuit (1992)

Anthony Wint's mental illness of which he displayed symptoms prior to the trial, throughout the trial and after the trial, of which his counsel and the trial court was fully aware, was a clear violation of *Bishop v. United States*, 350 U.S. 961 as well as Florida State Statute 916.12,. The trial court, by having even the slightest doubt of the competence of Anthony Wint or after receiving conflicting reports from several experts, should have halted the court proceedings to protect Anthony Wint's Constitutional right of due process. Instead the trial judge asked the defense attorney's opinion. Judge John S. Kastrenakas, asked defense attorney Yvette Farnsworth-Baker, “was her client able to stand trial”? The defense attorney Ms. Baker said “yes”. This was highly irregular and without legal precedent.

Florida § 916.12, Fla. Stat.; Fla. R. Crim. P. 3.211(a) Anthony Wint had no factual, understanding of the procedures against him. The statute states:

(1) A person is incompetent to stand trial within the meaning of this chapter if the person does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the person has no rational, as well as factual, understanding of the proceedings against her or him.

In Dusky v. United States, 362 U.S. 402, 403, 80 S. Ct. 788, 4 L.Ed.2d 824 (1960)

"In view of the doubts and ambiguities regarding the legal significance of the psychiatric testimony in this case and the resulting difficulties of retrospectively determining the petitioner's competency as of more than a year ago, we reverse the judgment of the Court of Appeals affirming the judgment of conviction, and remand the case to the District Court for a new hearing to ascertain petitioner's present competency to stand trial, and for a new trial if petitioner is found competent".

As in Dusky v. The United States the Supreme Court ruled that there were "doubts ambiguity" and as such the trial judge should not have proceeded without clearing up the discrepancy between the two experts that the court appointed to evaluate Anthony Wint. Furthermore, the Psychologist hired by the defense attorney furnished the court with a report casting further doubt on Anthony Wint's mental ability to understand the proceedings against him. The fact that the trial judge asked the unqualified opinion of the ineffective trial counsel, shows the uncertainty of Anthony Wint's competence to stand trial. Not knowing or not being certain that Anthony Wint was competent to stand trial, yet proceeding at the expense of the accused can be considered to be cruel and unusual punishment. For Judge John S. Kastrenakas of Florida's Fifteenth Judicial Circuit in Palm Beach County and the state of Florida to pursue punishment against someone who did not understand the reason that they were being punished. In addition, for the state to place

Anthony Wint in a mental health facility, where the state recommended mental health treatment for Anthony Wint is cruel. This in itself is judicial abuse, unethical and immoral to treat the same individual for mental illness that the state ruled is competent to stand trial. Again, this is a clear violation of Anthony Wint's Sixth Amendment right because the court did not ensure that the accused was informed of the charges against him and that he understood the charges. This also is a violation of Anthony Wint's Eighth Amendment protection against cruel and unusual punishment on a mentally ill defendant because the court ignored his Sixth Amendment right to reach its goal of a harsh sentence of 45 years.

III. WHETHER A CERTIFICATE OF APPEALABILITY SHOULD ISSUE TO REVIEW THE FAILURE OF THE TRIAL COURT TO VACATE SENTENCE ON THE GROUND OF ANTHONY WINT BEING COMPETANT TO STAND TRIAL

At trial, Anthony Wint was again deprived of due process of law under the Fifth Amendment by the trial court's failure to afford him a hearing on his mental health condition, The trial court, ignored the findings that were presented in one or both of the two court appointed psychological evaluation; and may have interpreted clinical psychologist Stephen Alexander's statements of court room behavior incorrectly. The trial court based a ruling of competency on the misinterpreted evaluation. The ruling did not consider item 5 or the "Display Appropriate Courtroom Behavior" section of clinical psychologist Stephen

Alexander's 1/19/11 psychological evaluation [Exhibit #5a]. The trial judge acted inappropriately. With even the slightest doubt the trial judge should have removed all doubt and adhere to *Bishop v. United States*, 350 U.S. 961 (1956). "In view of evidence raising a doubt on the competence issue, the court was required to impanel a jury and conduct a sanity hearing, and could not rely in lieu thereof on respondent's demeanor at trial or on the stipulated medical testimony." There was no "sanity hearing" ordered and or conducted by the trial court. This is a violation to precedent set by the United Supreme Court in the *Bishop* decision of 1956. Ms. Farnsworth-Baker failed to evoke *Bishop v. United States*, 350 U.S. 961 as well as Florida State Statute 916.12 due to the mental health condition of Anthony Wint. The trial court denied Anthony Wint of due process by failing sua sponte to hold a competency hearing, *James V. Singletary*, 957 F.2d 1562, 1571 (11th Cir. 1992)

IV. WHETHER A CERTIFICATE OF APPEALABILITY SHOULD ISSUE TO REVIEW THE FAILURE OF THE TRIAL COURT FOR FAILURE TO INSTRUCT THE JURY ON HOW TO PROCEED WHEN THE STATE IDENTIFIED ANTHONY WINT'S CAR AS BLUE WHEN IN FACT IT WAS GREY

The prosecutor offered to the court no "proof of fact" to justify the addition of any additional charges. The trial judge allowed the prosecutor to make claims without providing factual evidence. The prosecutor's misstatements of the evidence during the closing argument were obvious to laypersons in the courtroom but somehow escaped the attention of the trial counsel and the trial judge.

Prosecutorial misstatements include the prosecutor stating the color of Anthony Wint's car as blue, when in fact Anthony Wint's car was gray as is documented on his Florida Registration at the Palm Beach County Clerk's office. This is information that is handily ready to be accessed and readily available to the prosecutor. Even so, the prosecutor showed the jury a picture of a dark colored car that was either blue or black but certainly not gray. As the prosecutor showed jurors pictures of a dark blue car on the monitor he pointed to the dark blue or black car saying this is Anthony Wint's car. At that juncture, the trial counsel Ms. Farnsworth-Baker should have challenged the prosecutors claim that the car being shown is not the car that was searched by the police and all of the tainted evidence should have been thrown out.

V. WHETHER A CERTIFICATE OF APPEALABILITY SHOULD ISSUE TO REVIEW THE FAILURE OF THE TRIAL COUNSEL TO PRESERVE TRANSCRIPTS OF DEPOSITION OF KEY WITNESS ISIAH DIAZ

After Anthony Wint was convicted, his trial attorneys (Palm Beach Public Defender) represented him on direct appeal. Palm Beach Public Defender's primary arguments on appeal were that the trial court erred in determining that the State didn't commit a discovery violation upon Defense Counsel's notice that the State never provided a better address for Isaiah Diaz (key witness). And that the trial court failed to conduct an adequate Richardson inquiry before reaching conclusion. Public Defender of Palm Beach also challenged the admission of testimony given at irregular

makeshift deposition of Isaiah Diaz because it was rushed due to the fact that the Sheriff concealed Diaz' address and would not turn it over to Defense. Isaiah Diaz was only deposed one day after the state brought him to court to present him as a witness. In addition, there were no transcripts of the Diaz deposition and so there is no proof of it ever occurring because there is no written record of said deposition. The Public Defender of Palm Beach, asserted a fatal variance between the alleged deposition and lack of proof of deposition, asserted errors in jury instructions on such irregular procedure, and asserted sentencing guideline errors. This however was not enough on the part of the Public Defender. The arresting officer Detective Turner, who authored the police report as well as the supplementary report that led to Anthony Wint's indictment by the Grand Jury, was never interviewed, deposed, confronted or cross-examined by Anthony Wint's Counsel. This is a clear violation of the "Confrontation Clause" guaranteed by the Sixth Amendment, *United States v. Baptista-Rodriguez*, 17 F. 3rd 1354, 1370 (11th Cir. 1994).

VI. WHETHER A CERTIFICATE OF APPEALABILITY SHOULD ISSUE TO REVIEW THE FAILURE OF THE TRIAL AND APPELLATE ATTORNEY TO PROVIDE EFFECTIVE COUNSELING PLACING ANTHONY WINT IN AND LEAVING HIM, TO DATE, IN DOUBLE JEOPARDY

Unlike co-defendant, Nelson Baptiste, Anthony Wint was not aware of the charges being stacked against him or that he was placed in "Double Jeopardy" see 4D14-4100 Nelson Baptiste V. State of Florida. The Double Jeopardy charges that were removed from co-defendant Nelson Baptiste, for more than two years, are

still among Anthony Wint's arrest and conviction charges. Although Double Jeopardy has been removed from the charges of which Nelson Baptiste was convicted, the Public Defender office of Palm Beach have yet to successfully do the same for Anthony Wint.

According to, 4D14-4100 Nelson Baptiste V. State of Florida, "Failure to raise a valid double jeopardy claim on direct appeal can constitute ineffective assistance of appellate counsel. *Perri v. State*, 154 So. 3d 1204, 1205 (Fla. 2d DCA 2015). A double jeopardy violation is a fundamental error that can be raised for the first time on appeal despite the lack of preservation. *Latos v. State*, 39 So. 3d 511, 513 (Fla. 4th DCA 2010). An open plea does not waive the error where the double jeopardy violation is clear from the face of the record and where there is no express waiver. See *id.* at 514–15 (citing *Labovick v. State*, 958 So. 2d 1065, 1067 (Fla. 4th DCA 2007))".

Even with the benefit of the knowledge that Nelson Baptiste, Anthony Wint's co-defendant, sentence was reduced because Baptiste was placed in Double Jeopardy, Palm Beach Public Defender refused to act. Surely, Palm Beach Public Defender realized that acting would shine the light back on the horrendous Counseling received by Anthony Wint during trial. To save their own reputation Palm Beach Public Defender placed Anthony Wint in greater peril by not acting on his behalf to file a 3.850 to set aside the October 25, 2011 illegal sentencing and seek a new

trial. Palm Beach Public Defender provided Ineffective Counseling at trial and also on Direct Appeal, denying him protection of “due process” as guaranteed under the Fifth Amendment of the Constitution.

VII. WHETHER A CERTIFICATE OF APPEALABILITY SHOULD ISSUE TO REVIEW THE STATE OF FLORIDA DECLARING ANTHONY WINT COMPETANT TO STAND TRIAL YET TREATING HIM FOR MENTAL ILLNESS WHILE IN CUSTODY FOR THE PAST SIX YEARS

Though Appellate attorney, from Palm Beach Public Defender uncovered many obvious errors of the trial court and of the trial attorney, the Appellate attorney failed to evoke Anthony Wint's mental condition or his ability to understand the trial.

The trial judge was not sure due to Anthony Wint's noticeably odd demeanor that led to the trial judge, to ask the trial attorney, “is your client alright”?

As in *Dusky v. United States*, 362 U.S. 402, 403, 80 S. Ct. 788, 4 L.Ed.2d 824 (1960), the Supreme Court ruled that there were “doubts ambiguity” However, this was not the case as the trial attorney answered “yes, he is fine” even though the trial attorney sought to file a court petition in April 2011, to have Anthony Wint institutionalized as a threat to himself or others because of a psychotic episode.

Furthermore, the Psychologist hired by the defense attorney furnished the court with a report casting further doubt on Anthony Wint's mental ability to understand the proceedings against him. The fact that the trial judge asked the unqualified

opinion of the ineffective trial counsel, shows the uncertainty of Anthony Wint's competence to stand trial. Not knowing or not being certain that Anthony Wint was competent to stand trial, yet proceeding at the expense of the accused can be considered to be cruel and unusual punishment. For Judge John S. Kastrenakas of Florida's Fifteenth Judicial Circuit in Palm Beach County and the state of Florida to pursue punishment against someone who did not understand the reason that they were being punished. In addition, for the state to place Anthony Wint in a mental health facility, where the state recommended mental health treatment for Anthony Wint is cruel. This in itself is judicial abuse, unethical and immoral to treat the same individual for mental illness that the state ruled is competent to stand trial. Again, this is a clear violation of Anthony Wint's Sixth Amendment right because the court did not ensure that the accused was informed of the charges against him and that he understood the charges. This also is a violation of Anthony Wint's Eighth Amendment right because the court ignored his Sixth Amendment right to reach its goal of a harsh sentence of 45 years.

VIII. WHETHER A CERTIFICATE OF APPEALABILITY SHOULD ISSUE TO REVIEW THE FAILURE OF THE STATE OF FLORIDA TO PROTECT ANTHONY WINT FROM MENTAL AND PHYSICAL ABUSE WHILE IN CUSTODY DUE TO RETALIATION

The State of Florida violated Anthony Wint's Fifth Amendment right of due process by and Eighth Amendment protection by failing to physically and mentally protect him while in custody because of retaliation by various state and local employees.

There have also been several documented incidents that Anthony Wint is physically and mentally abused by staff at Florida Department of Corrections (FDOC). He has been assaulted by staff on several, separate occasions, then punished for complaining about the punishment, without application of Florida's Administrative Rule #33, which requires a hearing prior to punishment.

Administrative Rule #33 is a necessary and mandated legal procedure for FDOC employees and a violation of Anthony Wint's Fifth Amendment rights. There is a current investigation by the Florida Inspector General because a Lieutenant within the FDOC has been physically abusing Anthony Wint causing marks and bruises on his body. There was an attempted cover-up by the medical staff at Dade Correctional Institution as well as at the FDOC Medical Headquarters in Tallahassee, Florida. These wanton acts are also clear violations of Anthony Wint's protection from cruel and unusual punishment guaranteed by the Eighth Amendment and the United States Constitution.

Therefore, Anthony Wint respectfully submits that he has made a substantial showing of the denial of a constitutional right as to the above issue and is entitled to the issuance of a certificate of appealability on the issue.

CONCLUSION

Based on the foregoing, Petitioner Anthony Wint respectfully submits that he has made a substantial showing of the denial of his constitutional rights as to the above issues and is entitled to the issuance of a certificate of appealability as to those issues.

**ORAL WINT
NEXT FRIEND/FATHER**

ORAL WINT
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York 11411
(347) 526-5946 Telephone
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished to Pamela Bondi, Attorney General, Office of Attorney General, State of Florida The Capitol PL-01, Tallahassee, FL 32399-1050, by United States Postal Service, Certified Mail, postage prepaid, this 9th day of June, 2017.

Oral A. Wint

A-8

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2014

ANTHONY OLAN WINT, JR.,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D12-121

[July 17, 2014]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; John S. Kastrenakes, Judge; L.T. Case No. 2009CF007177CMB.

Carey Haughwout, Public Defender, and Emily Ross-Booker, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Melynda L. Melear, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

GROSS, GERBER and CONNER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.