

**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

March 09, 2021

Johnny Ray Bennett
CFRC Main - Inmate Legal Mail
7000 H C KELLEY RD
ORLANDO, FL 32831-2518

Appeal Number: 20-14505-D
Case Style: In re: Johnny Bennett
District Court Docket No: 6:12-cv-01716-GAP-KRS

Enclosed is the clerk's entry of dismissal of your petition for lack of prosecution pursuant to Eleventh Circuit Rule 42-1(b), which is issued as the mandate of this court. See 11th Cir. R. 41-4.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Scott O'Neal, D
Phone #: (404) 335-6189

Enclosure(s)

PRO-8 Ltr Entry of Dismissal Prohibition

Appx: (A1)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14505-D

In re: JOHNNY RAY BENNETT,

Petitioner.

On Petition for Writ of Prohibition to the United States District Court for the
Middle District of Florida

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this petition is hereby
DISMISSED for want of prosecution because the Petitioner Johnny Ray Bennett failed to pay
the filing and docketing fees to the clerk of this court within the time fixed by the rules,
effective March 09, 2021.

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

by: Scott O'Neal, D, Deputy Clerk

FOR THE COURT - BY DIRECTION

Appx: (A1)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14505-D

In re:

JOHNNY RAY BENNETT,

Petitioner.

On Petition for Writ of Prohibition from the
United States District Court for the
Middle District of Florida

ORDER:

Johnny Ray Bennett, a state prisoner proceeding *pro se*, petitions this Court for a writ of prohibition relating to his 28 U.S.C. § 2254 proceedings in the district court, as well as his subsequent appeals to this Court and his petition for a writ of *certiorari* to the Supreme Court. He asks this Court to reopen his § 2254 case, reverse the Supreme Court's denial of *certiorari*, grant him a certificate of appealability ("COA") on whether the district court "was correct in its procedural ruling" that his § 2254 petition was untimely, reverse the district court's denial of his § 2254 petition, and release him from prison. He also moves for leave to proceed *in forma pauperis*. ("IFP").

Bennett seeks to file this prohibition petition IFP pursuant to 28 U.S.C. § 1915(a). Section 1915(a) provides that a United States court may authorize the commencement of any proceeding, without prepayment of fees, by a person who submits an affidavit that includes a statement of assets that he possesses, and indicates that he is unable to pay such fees. This Court,

(AI)

however, may dismiss an action at any time if it determines that the allegation of poverty is untrue or the action or appeal is frivolous. 28 U.S.C. § 1915(e)(2). In this case, even assuming Bennett satisfies § 1915(a)'s poverty requirement, his prohibition petition is frivolous.

Writs of prohibition only should issue if the petitioner shows "exceptional circumstances amounting to a judicial usurpation of power," and the right to relief is "clear and undisputable." *In re Wainwright*, 678 F.2d 951, 953 (11th Cir. 1982) (quotations and citations omitted). Writs of prohibition are not to be used as a substitute for an appeal or to control the decision of the trial court in discretionary matters. *Id.* "[A] writ of mandamus may issue only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *See In re Smith*, 926 F.2d 1027, 1030 (11th Cir. 1991). The First Circuit has recognized that writs of prohibition and mandamus, both authorized under 28 U.S.C. § 1651, are "two sides of the same coin with interchangeable standards." *United States v. Pleau*, 680 F.3d 1, 4 (1st Cir. 2012) (*en banc*) (persuasive authority).

In a civil case, a plaintiff may appeal a district court's judgment by filing a notice of appeal to an appellate court of competent jurisdiction within 30 days of the judgment's entry. 28 U.S.C. § 1291; Fed. R. App. P. 4(a)(1)(A). Section 2254 petitioners must obtain a COA in order to appeal from the denial of a § 2254 petition. 28 U.S.C. § 2253(c); *see also* Rule 11, Rules Governing § 2254 Cases in the U.S. District Courts. The denial of a COA may be the subject of a motion for reconsideration. 11th Cir. R. 22-1(c). A petition for a writ of *certiorari* may be filed with the U.S. Supreme Court within 90 days of entry of a judgment by a U.S. Court of Appeals. S. Ct. R. 13.

Here, Bennett's prohibition petition is frivolous for several reasons. First, to the extent he seeks to challenge the resolution of his § 2254 petition in the district court, he had, and took, the adequate alternative remedy of appealing and seeking a COA in this Court as to his claim of error.

See Wainwright, 678 F.2d at 953; 28 U.S.C. §§ 1291, 2253(c). To the extent he seeks to challenge this Court's denial of his COA motions in appeal numbers 13-10291 and 13-13691, he had available to him the adequate alternative remedies of moving for reconsideration or petitioning the Supreme Court for a writ of *certiorari*. *See* 11th Cir. R. 22-1(c); S. Ct. R. 13. Second, the remaining prohibition relief Bennett appears to seek is not cognizable, as this Court has no jurisdiction in prohibition to order entities outside its jurisdiction to act. *See Smith*, 926 F.2d at 1030; *Pleau*, 680 F.3d at 4. Thus, to the extent he asks this Court to overturn the Supreme Court's denial of his *certiorari* petition or order his prison to release him, it cannot do so. *See Smith*, 926 F.2d at 1030.

Accordingly, Bennett's IFP motion is hereby DENIED, as his prohibition petition is frivolous.

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-14788-F

JOHNNY RAY BENNETT,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

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

ORDER:

Johnny Ray Bennett, a Florida prisoner serving concurrent 35-year sentences after pleading *nolo contendere* in 2000 to sexual battery with a firearm and armed burglary of a dwelling, moves for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP") in order to appeal the denial of his *pro se* motion for relief from judgment under Fed. R. Civ. P. 60(b) following the denial of his 28 U.S.C. § 2254 petition.

As background, the district court dismissed Mr. Bennett's § 2254 petition, which he filed in 2012, as untimely. In March 2014, this Court denied Mr. Bennett a COA and IFP status. In October 2017, over four years after the district court's dismissal of his § 2254 petition, Mr. Bennett filed the instant motion for relief from judgment, pursuant to Fed. R. Civ. P. 60(b)(6). The district court denied the motion, noting that: (1) the motion was filed more than four years

APPX. (A): Order #1.

after the entry of the order of dismissal, and, thus, was not filed within a reasonable time; and
(2) Mr. Bennett failed to provide support for the relief requested.

A COA is required to appeal "the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court." 28 U.S.C. § 2253(c)(1)(A). This includes the denial of a Rule 60(b) motion in a habeas proceeding. *Jackson v. Crosby*, 437 F.3d 1290, 1295 (11th Cir. 2006). In order to obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

No COA is warranted in this appeal because reasonable jurists would not debate the district court's denial of Mr. Bennett's motion, which he filed over four years after the dismissal of his § 2254 petition, as untimely. *See* Fed. R. Civ. P. 60(c)(1) (stating that a motion seeking relief under Rule 60(b)(6) must be filed within a reasonable time). Moreover, the substance of the motion focused exclusively on the underlying merits of the claims that he had attempted to raise in his § 2254 claim and failed entirely to explain how or why the district court's timeliness determination was erroneous or deserving of reconsideration. Therefore, the district court did not abuse its discretion in concluding that his motion was not filed within a reasonable time, and Mr. Bennett's motion for a COA is DENIED. His motion for IFP status is DENIED AS MOOT.


UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-10678-D

IN RE: JOHNNY RAY BENNETT.

Petitioner.

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

Before: WILSON, MARTIN and JULIE CARNES, Circuit Judges.

BY THE COURT:

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

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

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

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

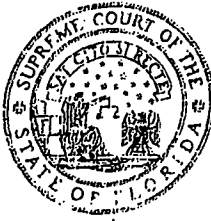
28 U.S.C. § 2244(b)(2). The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that

APPX. (A): Judg. # 2.

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

In his application, Bennett indicates that he wishes to raise one claim in a second or successive § 2254 petition. Bennett asserts that his claim relies upon a new rule of constitutional law. Specifically, Bennett argues that the judgment in his case is void, citing *Taylor v. State*, 818 So. 2d 544 (Fla. 2nd Dist. Ct. App. 2002). However, Bennett’s reliance on a state court’s ruling is misplaced, as it does not meet the statutory requirement for a new rule of constitutional law that was announced by the Supreme Court. *See* 28 U.S.C. § 2244(b)(2)(A).

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



Supreme Court of Florida

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

THOMAS D. HALL
CLERK
TANYA CARROLL
CHIEF DEPUTY CLERK
GREGORY J. PHILO
STAFF ATTORNEY

PHONE NUMBER (850) 488-0125
www.floridasupremecourt.org

ACKNOWLEDGMENT OF NEW CASE

November 30, 2010

RE: JOHNNY RAY BENNETT vs. STATE OF FLORIDA

CASE NUMBER: SC10-2287

Lower Tribunal Case Number(s) : 5D10-3284, 99-34457-CFAES

The Florida Supreme Court has received the following documents reflecting a filing date of 11/18/2010.

Notice to Invoke Discretionary Jurisdiction

Petitioner's Jurisdictional Brief (Received 11/19/2010)

The above pleadings have collectively been treated as a Petition for Writ of Mandamus.

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

FOR GENERAL FILING INFORMATION AND ADMINISTRATIVE ORDER
NO. AOSC04-84, PLEASE VISIT THE CLERK'S OFFICE WEBSITE AT
<http://www.floridasupremecourt.org/clerk/index.shtml>

ab

cc:

JOHNNY BENNETT
HON. BILL MCCOLLUM

Appendix (B): Dec. #1.

Supreme Court of Florida

TUESDAY, JANUARY 25, 2011

CASE NO.: SC10-2287

Lower Tribunal No(s): 5D10-3284,
99-34457-CFAES

JOHNNY RAY BENNETT

vs. STATE OF FLORIDA

Petitioner(s)

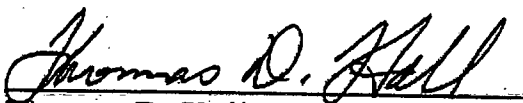
Respondent(s)

Because petitioner has failed to show a clear legal right to the relief requested, he is not entitled to mandamus relief. Accordingly, the petition for writ of mandamus is hereby denied. See Huffman v. State, 813 So. 2d 10, 11 (Fla. 2000).

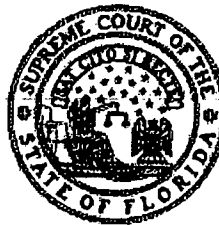
PARIENTE, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

A True Copy

Test:



Thomas D. Hall
Clerk, Supreme Court



ab

Served:

HON. SUSAN WRIGHT, CLERK

~~JOHNNY BENNETT~~

HON. BILL MCCOLLUM

HON. DIANE M. MATOUSEK, CLERK

Appendix (B) Judg. #2.

Supreme Court of Florida

FRIDAY, MARCH 18, 2011

CASE NO.: SC10-2287

Lower Tribunal No(s): 5D10-3284,
99-34457-CFAES

JOHNNY RAY BENNETT

vs. STATE OF FLORIDA

Petitioner(s)

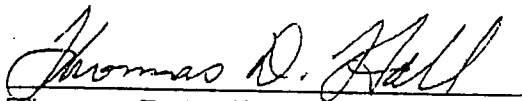
Respondent(s)

Petitioner's Motion for Rehearing is hereby denied.

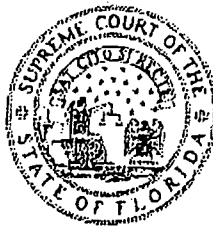
PARIENTE, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

A True Copy

Test:



Thomas D. Hall
Clerk, Supreme Court



kb

Served:

HON. SUSAN WRIGHT, CLERK

JOHNNY BENNETT ✓

HON. PAMELA JO BONDI

HON. DIANE M. MATOUSEK, CLERK

Appendix(B):Jud. #3.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 13-10291-B

JOHNNY BENNETT,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

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

ORDER:

Johnny Bennett's motion for a certificate of appealability, as construed from his notice of appeal, in order to appeal the denial of his motion for post-judgment release, is DENIED because he has failed to make the requisite showing. See 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 1604, 146 L.Ed.2d 542 (2000).

/s/ Gerald B. Tjoflat
UNITED STATES CIRCUIT JUDGE

APPX. (A): Order # 3.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 13-13691-A

JOHNNY RAY BENNETT,

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:

Johnny Ray Bennett moves for a certificate of appealability in order to appeal the dismissal of his 28 U.S.C. § 2254 petition as time-barred. To merit a certificate of appealability, he must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478, 120 S.Ct. 1595, 1600-01, 146 L.Ed.2d 542 (2000).

The record demonstrates that the federal time limitation for Bennett to file his § 2254 petition expired in October 2002, and therefore, the instant § 2254 petition, filed in November 2012, is untimely by over ten years. Bennett argued, in the district court, that his petition is timely based on the Supreme Court's decisions *Martinez v. Ryan*, 566 U.S. ___, 132 S.Ct. 1309, 1318, 182 L.Ed.2d 272 (2012), and *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S.Ct. 2348, 2362-63, 147 L.Ed.2d 435 (2000). His reliance on these cases is misplaced.

Appendix (A): Order # 4.

This Court has specifically held that the rule in *Martinez*, which provides a narrow exception to the procedural default rule for ineffective-trial-counsel claims, does not apply to excuse the filing of a § 2254 petition outside of the one-year time period. See *Arthur v. Thomas*, No. 12-13952, manuscript op. (11th Cir. Jan. 6, 2014). *Appendi* is also inapplicable, as the rule announced in that case is not retroactive, see *McCoy v. United States*, 266 F.3d 1245, 1258 (11th Cir. 2001), and even if it were, Bennett's § 2254 petition was not filed within one year of that decision.

Although Bennett argues for the first time, in his motion for a certificate of appealability, that he is entitled to equitable tolling based on his counsel's ineffectiveness, this argument was not raised in the district court, and therefore, will not be considered by this Court on appeal. Moreover, Bennett has offered only his general assertion that his counsel's performance and communication was prejudicial, with no specifics as to any acts or omissions by counsel, which is insufficient to warrant equitable tolling.

Because Bennett failed to make the requisite showing, his motion for a certificate of appealability is DENIED. His motion for leave to proceed on appeal *in forma pauperis* is DENIED AS MOOT.

/s/ Adalberto Jordan
UNITED STATES CIRCUIT JUDGE

Appendix (A) Order # 4.

CLASSIFICATION ONLY

STATE OF FLORIDA

VS.

JOHNNY BENNETT

B/M DOB: 07-06-67 SS#261-73-0023

IN THE CIRCUIT COURT OF THE SEVENTH
JUDICIAL CIRCUIT, IN AND FOR VOLUSIA
COUNTY, FLORIDA, IN THE YEAR OF OUR
LORD ONE THOUSAND NINE HUNDRED
NINETY-EIGHT

CASE NO. 99-34457-CFAES

INFORMATION

JOHN TANNER, State Attorney for the Seventh Judicial Circuit of the State of Florida and as such prosecuting attorney for this Court, in the name of and by the authority of the State of Florida brings this prosecution and makes the following charge or charges in TWO counts:

COUNT I

CHARGE: ARMED BURGLARY OF A DWELLING, in Violation of 810.02(1)&(2)(b), a First Degree Felony (PUNISHABLE BY LIFE IMPRISONMENT)

SPECIFICATIONS OF CHARGE: In that JOHNNY BENNETT on or about the 27TH day of AUGUST, 1999, at or near VOLUSIA COUNTY, Florida, did then and there unlawfully enter and remain in a certain dwelling, to wit: a dwelling located at 1432 SUNLAND RD, DAYTONA BEACH in the County and State aforesaid, without the consent of the owner or custodian thereof, while harboring the intent to commit the offense of ASSAULT AND/OR BATTERY AND/OR SEXUAL BATTERY within said dwelling and did, in the course of committing said burglary, carry or arm with explosives or a dangerous weapon, to wit: firearm.

COUNT II

CHARGE: SEXUAL BATTERY (VICTIM AGE 12 OR OLDER, ACTUAL/THREATENED USE OF DEADLY WEAPON), in Violation of F.S. 794.011(3), a Life Felony

SPECIFICATIONS OF CHARGE: In that JOHNNY BENNETT, on or about the 27TH day of AUGUST, 1999, within Volusia County, Florida, did then and there unlawfully and without consent thereto by _____, a person twelve (12) years of age or older, to wit: 44 years of age, commit a sexual battery upon _____ RD by: The defendant penetrated the victim's vagina and/or anus and/or mouth with his penis, and in the process thereof did use or threaten to use a deadly weapon, to wit: firearm.

FOR THE STATE ATTORNEY

Filed In Open Court
Seventh Judicial Circuit
Volusia County, Florida

COUNTY OF VOLUSIA)

STATE OF FLORIDA)

Leah Ransbottom

SEP 9 1999

ASSISTANT STATE ATTORNEY
SEVENTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA

BAR NO: 0001589

APPENDIX CC:Indict #1.

Personally appeared before me LEAH RANSBOTTOM, Assistant State Attorney, _____ the Seventh Judicial Circuit the State of Florida, known to me to be the foregoing prosecuting officer, who being duly sworn, says that the allegations set forth in the foregoing information are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged. Subscribed in good faith. Said facts based on testimony of material witnesses.

- ☐ Probation Violator
☐ Community Control Violator
☐ Retrial
☐ Resentence

State of Florida

v.

JOHNNY R. BENNETT

In the Circuit Court, 7th Judicial Circuit
in and for Volusia County, Florida
Division CRIMINAL 41
Case Number 99-34457CFAES

06/05/2000 08:49
Instrument # 2000-095903
Book: 4557
Page: 934

The defendant, being personally before this court represented by Eddie Bell, the attorney of record, and the state represented by Leah Ransbottom, and having

- ☐ been tried and found guilty by jury/by court of the following crime(s)
☐ entered a plea of guilty to the following crime(s)
☒ entered a plea of nolo contendere to the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree of Crime	Case Number	OBTs Number
1	Armed Burglary of a Dwelling <i>with a Firearm sub</i>	810.02(1)&(2) (b)	F1(PBL)	99-34457CFAES	6401021857
2	Sexual Battery <i>with a Firearm sub</i>	794.011(3)	1F	11	11

☒ and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby **ADJUDICATED GUILTY** of the above crime(s)

☒ and having been convicted or found guilty of, or having entered a plea of nolo contendere or guilty, regardless of adjudication, to attempts or offenses relating to sexual battery (ch. 794), lewd and lascivious conduct (ch. 800), or murder (s. 782.04), aggravated battery (s. 784.045), carjacking (s. 812.133), or home invasion robbery (s. 812.135), or any other offense specified in section 943.325, the defendant shall be required to submit blood specimens.











Filed in Open Court
Seventh Judicial Circuit
Volusia County, Florida

☐ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

Defendant **JOHNNY R. BENNETT**

Case Number **99-34457CFAES**

7-2-00

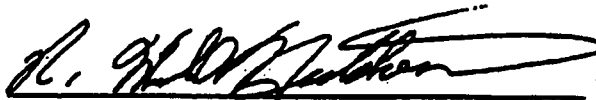
1. Right Thumb 	2. Right Index 	3. Right Middle 	4. Right Ring 	5. Right Little 
6. Left Thumb 	7. Left Index 	8. Left Middle 	9. Left Ring 	10. Left Little 

Fingerprints taken by: Wayne Orsief
Name

Deputy Sheriff
Title

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant **JOHNNY R. BENNETT** and that they were placed thereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in Volusia County, Florida this 22 day of May, 2000



R. MICHAEL HUTCHESON
Circuit Judge

(As to Count 1)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, Eddie Bell, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown

(Check one if applicable.)

- ☐ and the Court having on _____ deferred imposition of sentence until this date
- ☐ and the Court having previously entered a judgment in this case on _____ now resentsences the defendant
- ☐ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

It is The Sentence Of The Court that:

- ☐ The defendant pay a fine of \$ _____, pursuant to section 775.083, Florida Statutes, plus \$ _____ as the 5% surcharge required by section 960.25, Florida Statutes.
- ☒ The defendant is hereby committed to the custody of the Department of Corrections.
- ☐ The defendant is hereby committed to the custody of the Sheriff of Volusia County, Florida.
- ☐ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida statutes.

To Be Imprisoned (Check One; unmarked sections are inapplicable.):

- ☐ For a term of natural life.
- ☒ For a term of 35 years
- ☐ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

- ☐ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.
- ☐ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

Page 1 of 7

APPENDIX (C); Indict. #1.

(As to Count 1)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

- Firearm ☒ It is further ordered that the 10 year minimum imprisonment provisions of section 775.087(2)(a)(1) Florida Statutes, is hereby imposed for the sentence specified in this count.
- 10-20-Life
- Drug Trafficking ☐ It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.
- Controlled Substance Within 1,000 Feet of School ☐ It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(c)1, Florida Statutes, is hereby imposed for the sentence specified in this count.
- Habitual Felony Offender ☐ The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- Habitual Violent Felony Offender ☐ The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
- Law Enforcement Protection Act ☐ It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes.
- Capital Offense ☐ It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.
- Short-Barreled Rifle Shotgun, Machine Gun ☐ It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.
- Continuing Criminal Enterprise ☐ It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in the count.
- Other Provisions:
- Retention of Jurisdiction ☐ The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983).
- Jail Credit ☒ It is further ordered that the defendant shall be allowed a total of 269 days as credit for time incarcerated before imposition of this sentence.

BOOK: 4557
PAGE: 937

Other Provisions, continued:

FOR TIME SERVED IN RESSENTENCING AFTER
VIOLATION OF PROBATION OR COMMUNITY CONTROL

☐ It is further ordered that the defendant be allowed _____ total days time served (Jail Credit) between the original date of arrest and this sentencing. This includes Jail time served from original arrest to release to probation or community control as well as, VOP arrest to resentencing. No duplicate credit shall be given. The Department of Corrections shall compute and apply credit for time served in state prison and unforfeited gain time previously awarded on case/count _____.

(Offenses committed before October 1, 1989)

☐ It is further ordered that the defendant be allowed _____ total days time served (Jail Credit) between the original date of arrest and this sentencing. This includes Jail time served from original arrest to release to probation or community control as well as, VOP arrest to resentencing. No duplicate credit shall be given. The Department of Corrections shall compute and apply credit for time served in state prison and unforfeited gain time previously awarded on case/count _____.

(Offenses committed between October 1, 1989 and December 31, 1993)

☐ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under Section 948.06(7).

☐ The Court allows unforfeited gain time previously awarded on the above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under Section 944.28(1).

☐ It is further ordered that the defendant be allowed _____ total days time served (Jail Credit) between the original date of arrest and this sentencing. This includes Jail time served from original arrest to release to probation or community control as well as, VOP arrest to resentencing. No duplicate credit shall be given. The Department of Corrections shall compute and apply credit for time served in state prison only pursuant to section 921.0017, Florida Statutes, on case/count _____.

(Offenses committed on or after January 1, 1994)

(As to Count 2)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, Eddie Bell, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown

(Check one if applicable.)

- ☐ and the Court having on _____ deferred imposition of sentence until this date
- ☐ and the Court having previously entered a judgment in this case on _____ now resents the defendant
- ☐ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

It is The Sentence Of The Court that:

- ☐ The defendant pay a fine of \$ _____, pursuant to section 775.083, Florida Statutes, plus \$ _____ as the 5% surcharge required by section 960.25, Florida Statutes.
- ☒ The defendant is hereby committed to the custody of the Department of Corrections.
- ☐ The defendant is hereby committed to the custody of the Sheriff of Volusia County, Florida.
- ☐ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida statutes.

To Be Imprisoned (Check One; unmarked sections are inapplicable.):

- ☐ For a term of natural life.
- ☒ For a term of 35 years.
- ☐ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

- ☐ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.
- ☐ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

Page 4 of 7

APPENDIX (C): Indict. #1.

(As to Count 2)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Firearm

10-20-life☒It is further ordered that the *10 year* minimum imprisonment provisions of section 775.087(2)(a)(1) Florida Statutes, is hereby imposed for the sentence specified in this count.

Drug Trafficking

☐

It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Controlled Substance
Within 1,000 Feet of
School☐

It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

Habitual Felony
Offender☐

The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Habitual Violent
Felony Offender☐

The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

Law Enforcement
Protection Act☐

It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes.

Capital Offense

☐

It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.

Short-Barreled Rifle
Shotgun, Machine Gun☐

It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.

Continuing
Criminal Enterprise☐

It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in the count.

Other Provisions:Retention of
Jurisdiction☐

The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983).

Jail Credit

☒It is further ordered that the defendant shall be allowed a total of 269 days as credit for time incarcerated before imposition of this sentence.Page 5 of 7

APPENDIX (C): Indict. # 1.

Other Provisions, continued:

Consecutive/Concurrent
As to Other Counts



It is further ordered that the sentence imposed for this count shall run
(check one) ___ consecutive to ___ ☒ concurrent
with the sentence set forth in count 1 of this case.

Consecutive/Concurrent
As to Other Convictions



It is further ordered that the composite term of all
sentences imposed for the counts specified in this order shall run
(Check one) ___ consecutive to ☒ concurrent with the following:



any active sentence being served.



specific sentences:

In the event the above sentence is to the Department of Corrections, the Sheriff of Volusia County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends:

DONE AND ORDERED in open court at Volusia County, Florida, this 22 day of May, 2000.

R. Michael Hutcherson

R. MICHAEL HUTCHESON

Circuit Judge

Copies To:

Counsel for the state: ___ hand delivery open court
Counsel for the defendant: ___ hand delivery open court

___ U.S. Mail
___ U.S. Mail

☒ interoffice/hand delivery
☒ interoffice/hand delivery

I do certify that a copy hereof has been furnished to counsel for the state and the defendant by the method indicated above, done this 22 day of May, 2000.

DIANE M. MATOUSEK
CLERK OF CIRCUIT COURT

By:

Jane Laurs
Deputy Clerk



Page 7 of 7

APPENDIX (C): Indict. #1.

BOOK: 4557
PAGE: 942
Diane M. Matousek
Volusia County, Clerk of Court

Appendix (C): CPC #2.

(C):CPC,#2.

Appendix (C): CPC, #2.

Appendix (C): CPC, #2.

[Illegible text due to heavy noise and poor scan quality]

[Illegible text due to heavy noise and poor scan quality]

IT IS HEREBY ORDERED AND ADJUDGED that pursuant to § 794.01, Fla. Stat.,
JIMMY BENNETT is found to be a Sexual Predator.
DONE AND ORDERED in Court in Brevard County, Florida, this 27th day of May, 2000.

[Signature]
CLERK OF COURT

CC, STATE ATTORNEY'S OFFICE, LEAH RAMSEY OTTOM
DEFENSE ATTORNEY, EDDIE BELL, PUBLIC DEFENDER'S OFFICE
FILE
DEPARTMENT OF CORRECTIONS

FILED in Court Book
Brevard County Clerk
Court Clerk, Clerk
MAY 27 2000

Appendix (C) Order #3.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOHNNY BENNETT,

Petitioner,

-vs-

SECRETARY, DEPARTMENT
OF CORRECTIONS, et al.,

Respondents.

Case No. 6:12-cv-1716-Orl-31KRS

ORDER

Petitioner initiated this action for habeas corpus relief pursuant to 28 U.S.C. section 2254 (Doc. No. 1). Upon consideration of the petition, the Court ordered Respondents to show cause why the relief sought in the petition should not be granted. Thereafter, Respondents filed a response to the petition for writ of habeas corpus in compliance with this Court's instructions and with the *Rules Governing Section 2254 Cases in the United States District Courts* (Doc. No. 9). Petitioner filed a reply (Doc. No. 13) and an amended reply (Doc. No. 20) to the response.

I. Procedural History

Petitioner was charged by information with one count of armed burglary of a dwelling and one count of sexual battery. Petitioner entered a plea of *nolo contendere* to the charges. On May 22, 2000, the trial court adjudicated Petitioner guilty of the crimes

APPENDIX (D)

and sentenced him to imprisonment for a total term of thirty-five years. Petitioner filed a direct appeal with the Fifth District Court of Appeal, which affirmed *per curiam* on March 6, 2001. The mandate issued on March 26, 2001.

On June 18, 2001, Petitioner filed a motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850,¹ which was denied on August 30, 2001. The state appellate court affirmed *per curiam* on October 16, 2001. The mandate issued on November 2, 2001.

On December 1, 2003, Petitioner filed a motion to correct illegal sentence pursuant to Florida Rule of Criminal Procedure 3.800(a), which was denied. Petitioner did not appeal the denial.

II. Petitioner's Habeas Corpus Petition Is Untimely

Pursuant to 28 U.S.C. § 2244,

(d)(1) A 1-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 of conviction 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

¹References to the filing date of pleadings by Petitioner *pro se* shall be the filing date under the mailbox rule. See *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (under the "mailbox rule," a *pro se* prisoner's motion to vacate, set aside, or correct sentence was filed on the date that he signed, executed, and delivered his petition to prison authorities for mailing). The motion itself does not appear to be dated; however, Respondents note the filing date as June 18, 2001, and Petitioner does not dispute this date.

the United States is removed, if the applicant was prevented from filing 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.

In the present case, the state appellate court entered its *per curiam* affirmance of Petitioner's conviction and sentence on March 6, 2001. Petitioner then had ninety days, or through June 4, 2001, to petition the United States Supreme Court for a writ of certiorari.² Thus, under § 2244(d)(1)(A), the judgment of conviction became final on

²Rule 13 provides as follows:

The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment.

Sup. Ct. R. 13(3).

June 4, 2001, and Petitioner had through June 4, 2002, absent any tolling, to file a federal habeas petition. The instant federal habeas petition was filed on November 9, 2012.

Pursuant to section 2244(d)(2), the one year period is "tolled" for the time during which a *properly filed* state postconviction or collateral proceeding is pending. When Petitioner filed his Rule 3.850 motion on June 18, 2001, 14 days of the one-year period had run. Those proceedings concluded on November 2, 2001, when the state appellate court issued the mandate on appeal from the denial of his Rule 3.850 motion. The one-year period expired 351 days later on October 19, 2002, which fell on a Saturday. Thus, the one-year period actually expired on October 21, 2002, and the instant habeas petition is untimely.

Petitioner's Rule 3.800(a) motion did not toll the statute of limitations because the one-year period expired before Petitioner initiated that action. See *Sibley v. Culliver*, 377 F.3d 1196, 1204 (11th Cir. 2004) (concluding "[a] state court filing after the federal habeas filing deadline does not revive it"); *Webster v. Moore*, 199 F.3d 1256, 1259 (11th Cir. 2000) ("A state-court petition . . . that is filed following the expiration of the limitations period cannot toll that period because there is no period remaining to be tolled.").

Petitioner states the one-year period of limitation should be excused based on the decisions in *Martinez v. Ryan*, 132 S. Ct. 1309 (2012) and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Under section 2244(d)(1)(C), in the event the Supreme Court newly recognizes a constitutional right and makes it retroactively applicable to cases on collateral review, the AEDPA's limitation provision permits filing a petition asserting

such a right for a year after the initial recognition of the right. In the present case, Petitioner's AEDPA start-date is not measured by § 2244(d)(1)(C) because neither *Martinez* nor *Apprendi* is a benchmark on which a constitutional right asserted was initially recognized by the Supreme Court. Moreover, neither case pronounced a new rule held to be retroactive by the Supreme Court. Finally, Petitioner's grounds for relief are not based on a constitutional right that has been newly recognized by the Supreme Court and made retroactively applicable on collateral review. Consequently, Petitioner has not demonstrated that there is any basis upon which to extend the one-year deadline.³ Accordingly, the instant federal habeas corpus petition is untimely, and it is denied.

Any of Petitioner's allegations that attempt to excuse his failure to file the instant petition within the one-year period of limitation and that are not specifically addressed herein have been found to be without merit.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Petition for Writ of Habeas Corpus filed by Johnny Bennett (Doc. No. 1) is **DENIED**, and this case is **DISMISSED WITH PREJUDICE**.
2. The Clerk of the Court shall enter judgment accordingly and is directed to close this case.

³The Court notes that Petitioner does not argue he was prevented from filing his federal petition by State action in violation of the Constitution or laws of the United States, see § 2244(d)(1)(B), or that he could not have discovered, with due diligence, the factual predicate of his claims prior to the date his conviction became final, see § 2244(d)(1)(D).

3. This Court should grant an application for certificate of appealability only if the Petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Petitioner has failed to make a substantial showing of the denial of a constitutional right.³ Accordingly, a Certificate of Appealability is DENIED in this case.

DONE AND ORDERED in Orlando, Florida, this 18th day of July, 2013.


GREGORY A. FRESNELL
UNITED STATES DISTRICT JUDGE

Copies to:
OrlP-27/18
Johnny Bennett
Counsel of Record

³Pursuant to Rule 11 of the *Rules Governing Section 2254 Cases In the United States District Courts*,

The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

JOHNNY BENNETT,

Petitioner,

v.

Case No: 6:12-cv-1716-Orl-31KRS

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

Respondents.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Petition for Writ of Habeas Corpus filed by Johnny Bennett is **DENIED**, and this case is
DISMISSED WITH PREJUDICE.

Date: July 19, 2013

SHERYL L. LOESCH, CLERK

s/l. Cammarota, Deputy Clerk

APPENDIX (D)

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

July 18, 2018

Johnny Ray Bennett
#623036
Marian Correctional Institution
PO Box 158
Lowell, FL 32663-0158

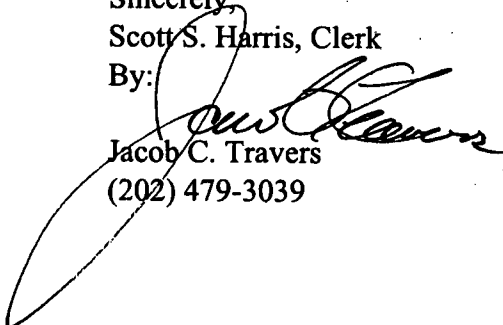
Dear Mr. Bennett:

The papers were received on July 18, 2018. These papers fail to comply with the Rules of this Court and are herewith returned.

You may seek review of a decision only by filing a timely petition for writ of certiorari. The papers you submitted are not construed to be a petition for writ of certiorari. Should you choose to file a petition for writ of certiorari, you must submit the petition within the 90 day time limit allowed under Rule 13 of the Rules of this Court. A Copy of the Rules of this Court and a sample petition for a writ of certiorari are enclosed.

Your case must first be reviewed by a United States court of appeals or by the highest state court in which a decision could be had. 28 USC 1254 and 1257.

Sincerely,
Scott S. Harris, Clerk
By:


Jacob C. Travers
(202) 479-3039

Enclosures

(1) APPX: (E)

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

September 14, 2018

Mr. Johnny Ray Bennett
Prisoner ID #623036
Marion Correctional Institution
P.O. Box 158
Lowell, FL 32663-0158

Re: Johnny Ray Bennett
v. Julie L. Jones, Secretary, Florida Department of Corrections, et
al.
No. 18-5991

Dear Mr. Bennett:

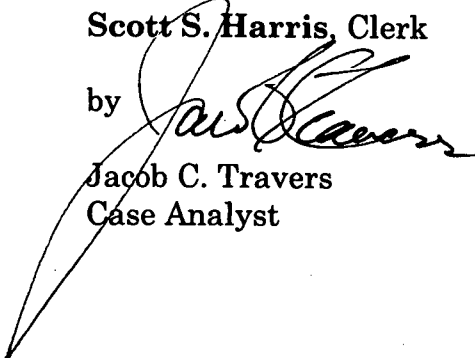
The petition for a writ of certiorari in the above entitled case was filed on May 31, 2018 and placed on the docket September 14, 2018 as No. 18-5991.

A form is enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

Scott S. Harris, Clerk

by


Jacob C. Travers
Case Analyst

Enclosures

-(2)- Appx: (E)

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

November 13, 2018

Mr. Johnny Ray Bennett
Prisoner ID #623036
Everglades Correctional Institution
1599 SW 187th Avenue
Miami, FL 33194

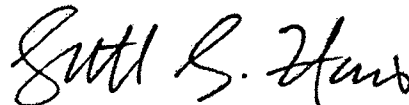
Re: Johnny Ray Bennett
v. Julie L. Jones, Secretary, Florida Department of Corrections, et
al.
No. 18-5991

Dear Mr. Bennett:

The Court today entered the following order in the above-entitled case:


The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

•(3)• Appx: (E)

 Search documents in this case: <input type="text"/> <input type="button" value="Search"/>	
No. 18-5991	
Title:	Johnny Ray Bennett, Petitioner v. Julie L. Jones, Secretary, Florida Department of Corrections, et al.
Docketed:	September 14, 2018
Lower Ct:	United States Court of Appeals for the Eleventh Circuit
Case Numbers:	(17-14788-F)
Decision Date:	March 30, 2018

DATE	PROCEEDINGS AND ORDERS
May 31 2018	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due October 15, 2018) Motion for Leave to Proceed in Forma Pauperis Petition Appendix Proof of Service
Oct 25 2018	DISTRIBUTED for Conference of 11/9/2018.
Nov 13 2018	Petition DENIED.

NAME	ADDRESS	PHONE
Attorneys for Petitioner		
Johnny Ray Bennett	#623036 Everglades Correctional Institution 1599 SW 187th Avenue Miami, FL 33194	
Party name: Johnny Ray Bennett		

(H) AppX: (E)