IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

November 04, 2020

CASE NO.: 2D17-1429
L.T. No.: 16-08234-CF

DAVID ARMONDO BUTLER	v.	STATE OF FLORIDA
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's "motion for recall of mandate and motion for belated order to compel trial court to file written orders of denial on all pre-trial, trial and post-trial motions and order directing lower clerk to supplement record on appeal therewith" is stricken as unauthorized.

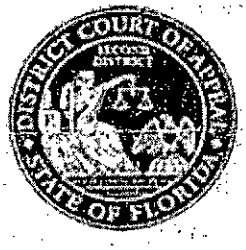
I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

ATTORNEY GENERAL, TAMPA
DAVID ARMONDO BUTLER
DONNA S. KOCH, A.A.G.
KEN BURKE, CLERK

ks

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk



APPENDIX A

Supreme Court of Florida

FRIDAY, MARCH 19, 2021

CASE NO.: SC21-68
Lower Tribunal No(s).:
2D17-1429;
522016CF008234000APC

DAVID ARMANDO BUTLER vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

To the extent Petitioner seeks mandamus relief, the petition is hereby dismissed as unauthorized. *See Mathews v. Crews*, 132 So. 3d 776 (Fla. 2014). To the extent Petitioner seeks a writ of habeas corpus, the petition is denied pursuant to *Denson v. State*, 775 So. 2d 288, 289 (Fla. 2000), and *Breedlove v. Singletary*, 595 So. 2d 8, 10 (Fla. 1992). To the extent Petitioner asks this Court to exercise its all writs jurisdiction, the petition is dismissed for lack of jurisdiction pursuant to *Williams v. State*, 913 So. 2d 541 (Fla. 2005), and *St. Paul Title Insurance Corp. v. Davis*, 392 So. 2d 1304 (Fla. 1980). Any motions or other requests for relief are hereby denied. No motion for rehearing or reinstatement will be entertained by this Court.

POLSTON, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

db
Served:

C. SUZANNE BECHARD
DAVID ARMANDO BUTLER
HON. MARY BETH KUENZEL, CLERK
HON. KEN BURKE, CLERK

APPENDIX B

IN THE SUPREME COURT OF FLORIDA

DAVID ARMANDO BUTLER,
Petitioner,

v.

Case No. _____
DCA No. 2D17-1429
L.T. No. 16-08234-CF

STATE OF FLORIDA
Respondent.

_____/

PETITION FOR WRIT OF MANDAMUS OR ALTERNATIVELY ALL WRITS

COMES NOW, David A. Butler, Petitioner, pro-se, pursuant to Florida Rules of Appellant Procedure 9.030(a)(3) and 9.100, and respectfully petitions this Honorable Court for its issuance of a writ of mandamus or alternatively all writs. In support hereof, Petitioner states and alleges as follows:

JURISDICTIONAL STATEMENT

Article V § § 3 (b) (7), of the Florida Constitution, which is codified in Fla. R. App. P. 9.030 (a) (3) provides in pertinent part, "Supreme Court may issue writs of ... mandamus .... habeas corpus and all writs necessary to the complete exercise of its jurisdiction."

Ap. C

PROCEDURAL HISTORY OF THE CASE[1]

1. On January 17, 2017, Petitioner was convicted by a jury of Aggravated Battery on a Detainee, before the Honorable Philip J. Federico, Circuit Court Judge, Sixth Judicial Circuit Court, in and for Pinellas County, Florida, in case no. 16-08232-CF.

2. On March 6, 2017, Petitioner was sentenced to 30 years State Prison as an Habitual Felony Offender and Prison Release Reoffender.

3. Petitioner pursued a direct appeal to the Second District Court of Appeal, Case No. 2D17-1429. On October 23, 2019, the appeal was per curiam affirmed. Butler v. State, 287 So. 3D 530 (Fla. 2D DCA 2019).

4. Thenafter, on August 6, 2020, Petitioner filed a Motion for Recall of Mandate and Motion for Belated Order to Compel Trial Court to file Written Orders of Denial on All Pre-trial and Post-trial Motions and Order Directing Lower Clerk to Supplement Record on Appeal therewith. (Exhibit A).

5. On November 4, 2020, the Second District struck the motion as unauthorized. (Exhibit B).

FACTUAL BASIS FOR RELIEF

6. On August 6, 2020, Petitioner filed the instant motion forming the basis for this petition.

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1 FN1. This Court is requested to take judicial notice of the Sixth Judicial Circuit Court in and for Pinellas County, Florida, files and records in Case NO. 16-08234-CF.

7. Therein, he contended that he had been deprived of meaningful appellate review of many of the issues he had urged as a basis for reversal, because the Trial Court did not enter formal written orders of denial with respect to the appealed orders.

8. He further contended, that both trial and appellate counsel, rendered ineffective assistance of counsel, in violation of Butler's rights under the Sixth Amendment to the United States Constitution, in not undertaking efforts to ensure that the record on appeal provided the necessary written orders consistent with the trial court's oral pronouncements.

9. Butler also contended, that the district court had deprived him of procedural due process, in violation of his rights under the State and Federal Due Process of Law Clauses, in not complying with Fla. R. App. P. 9.200 (f) (2), which provides that "no proceeding shall be determined, because of an incomplete record, until an opportunity to supplement the record has been given" because it did not give him an opportunity to supplement the record with the pertinent written orders, so that it could reach the merits on the issues appealed.

10. On November 4, 2020, the Second District, instead of reaching the merits on the question of whether Butler has been unconstitutionally deprived of his legitimate and meaningful appellate rights, struck the motion as unauthorized.

11. The instant now ensues.

NATURE OF RELIEF SOUGHT

Petitioner seeks this Court's issuance of a writ of mandamus directed towards compelling the Second District Court of Appeal to properly accept and rule on the merits of his motion, which has been stricken.

Alternatively, Petitioner contends, that the appellate court's failure to have reached the merits of the issues he raised on appeal, solely on the basis of the trial court's failure to have rendered formal written orders consistent with its orally pronounced orders, unconstitutionally deprived him of his legitimate and meaningful appellate rights, rendering his present confinement illegal warranting this Court's issuance of a writ of habeas corpus.

Or this Court should exercise its all writs jurisdiction to grant any and all relief it deems just and proper.

MEMORANDUM OF LAW

Article V, § 4 (b)(1), of the Florida Constitution, provides Butler with the State right to appeal the trial court's final order. Leonard v. State, 760 So. 2D 114 (Fla. 2000). In Re: Amendment to the Florida Rules of Appellate Procedure, 696 So. 2D 1103 (Fla. 1996), this Court concluded, that the legislature may place reasonable conditions on the right to appeal a final order "so long as they do not thwart the litigants' legitimate appellate rights." Of necessity, the Florida Judiciary, equally cannot place conditions on

the right to appeal a final order that thwarts a litigant's legitimate appellate rights. Yet, this is exactly what has occurred to Butler's legitimate appellate rights sub judice.

In *Evitts v. Lucey*, 469 U.S. 387, 391 (1985), the U.S. Supreme Court stated:

> "Respondent has for the past seven years unsuccessfully pursued every avenue open to him in an effort to obtain a ruling on the merits of his appeal and to prove that his conviction was unlawful.
>
> ... the issue we must decide is whether the state courts dismissal of the appeal, despite the ineffective assistance of respondent's counsel on appeal, violates the Due Process Clause of the Fourteenth Amendment.
>
> ... We have held that the Fourteenth Amendment guarantees a criminal defendant pursuing a first appeal as of right certain minimum safeguards necessary to make that appeal adequate and effective....
>
> ... If a state has created appellate courts as an integral part of the ... system for finally adjudicating the guilt or innocence of a defendant... the procedures used in deciding appeals must comport with the demands of the Due Process... Clauses of the Constitution."

at 392.

Judge Federico, whether intentionally or inadvertently, insulated, the correctness of his oral orders from reversal on appeal, by simply not formally entering written orders consistent with his oral pronouncements. The effect of which thwarted Butler's legitimate appellate rights. Greg v. State, 643 So. 2D 106 (Fla. 1st DCA 1994) (oral orders are not appealable because they are not rendered.)

Had the Second District reached the merits of all the issues Butler raised on

appeal with emphasis on the issue of whether Judge Federico was correct in denying Butler statutory immunity, the court would have been constrained to reverse and remand with directions to grant Butler's motion to dismiss with prejudice.[2]

Butler contends that this unwary procedural trap, unconstitutionally deprived him of a merit-based appeal determining whether or not his conviction and sentence is consistent with State and Federal constitutional principles. Ross v. Moffitt, 417 U.S. 600 (1974).

This is clearly inconsistent with the constitutional mandate guaranteeing Butler a meaningful and legitimate appellate determination of the correctness of the trial court's judgments, rendering his appellate right meaningless; and violative of State and Federal Due Process of Law Principles.[3]

> "The constitutional mandate is addressed to the action of the State in not obtaining a criminal conviction through a procedure that fails to meet the standards of due process of law."

at 396.

> "The right to appeal would be unique among state actions if it could be withdrawn without consideration of applicable due process norms."

at 400.

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2 Butler would suggest that this Court call for appropriate State and Federal investigations into whether Judge Federico routinely does not enter formal written order in cases involving pro-se defendants, in order to deprive hem of legitimate appellate review.

3 It could very well be the case, that the Second District should pass upon this due process question, requiring a transfer of this cause.

> "In short, when a State opts to act in a field where its actions has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution – and, in particular, in accord with the Due Process Clause."

at 401.

The Second District's, disregard of this Court's directive embodied, in Fla. R. App. P. 9.200 (f) (2) is equally violative of notions of fair play required by the State and Federal Due Process Clauses. Van Fuquay v. State, 386 So. 2D 1314 (Fla. 5th DCA 1980); Owens v. State, 579 So. 2D 311 (Fla. 1st DCA 1991). It should have sua sponte afforded Butler an opportunity to have supplemented the appellate record with written denial orders, so it could have proper jurisdiction to review on the merits, the issues appealed.

This Court's all writs jurisdiction confers upon this Court, the necessary authority to remedy the district court's effective denial of a legitimate and meaningful appeal to Butler.

This Court, and the Second District, are constitutionally obligated under the Due Process Clause of the Fourteenth Amendment to brush aside all technical niceties and grant Butler the relief needed for him to receive a fair, adequate, effective and legitimate direct appeal with a ruling on the merits. Fay v. Noia, 372 U.S. 391 (1963).

With respect to the order under review, the Second District has effectively determined that Butler has no remedy under law in which to cure his unconstitutional

denial of a legitimate appeal. This is so, because Florida Courts are enjoined by Article V, § 2 (a), of the Florida Constitution and Fla. R. App. P. 9.040 (c) to treat the cause as if the proper remedy had been sought. Skinner v. Skinner, 561 So. 2D 260, 262 (Fla. 1990); Caverly v. State, 436 So. 2D 191 (Fla. 2D DCA 1983). Such is what occurred in Raulerson v. State, 724 So. 2D 641 (Fla. 4th DCA 1999), wherein a motion to recall mandate was treated as a habeas corpus petitioner and relief granted.

Consequently, the failure of the Second District to have treated Butler's present motion as though the proper remedy had been sought, but instead, striking it as unauthorized, necessarily means the courts has determined no remedy under law exists to cure this manifest injustice.

Butler respectfully contends such a determination is clearly erroneous. For one, the failure of the trial court to have entered formal written denial orders, given that had it done so, the appellate court would have been compelled to rever se, itself, is a fundamental error. It is an appellate court's unrenunciable duty to correct fundamental error even if it is not raised. Hendricks v. State, 34 So. 3D 819 (Fla. 1st DCA 2010); I.A. v. H.H., 710 So. 2D 162, 165 (Fla. 2D DCA 1998).

Secondly, Butler in no way waived his rights to a meaningful and legitimate appeal. Fairery v. Tucker, 561 U.S. 924, 132 S. Ct. 2218, 183 L. Ed. 2D 653 (2012). But briefed the issues during this direct appeal, not knowing written orders were required.

Thirdly, the failure of the district court to have reached the merits of the issues

Butler raised during his direct appeal, solely on the basis of lack of written order, is arbitrary. The written transcript clearly reflects the trial court's order. Evitts, at 404 (noting "it also violated due process principles because it decided the appeal in a way that was arbitrary with respect to the issues involved.").

Hence, a written order serves no legitimate basis to further the district court's scope of review under Fla. R. App. P. 9.140 (i). But, only served as a procedural means whereby the trial court was unlawfully able to insulate his rulings from, and deprive Butler of a merit-based, appellate review. It is shocking that Florida appellate courts permit a criminal appellant to be deprived of a decision on the merits, based solely on the failure of the trial court to have filed a formal written order, whether intentionally or inadvertently.

Lastly, it renders Butler's appeal a sham. Monroe v. Davis, 712 F. 3d 1106, 114 (7th Cir. 2013) ("A State Court's process that amounts to a sham would not constitute a full and fair hearing even though the petitioner had his day in court on the claim.")

In conclusion, Butler is lawfully entitled to a fair, legitimate and meaningful appeal. Something he has not received. The district court's reliance on the arbitrary rule in question, puts its right to avoid granting the relief, even a cursory review of the transcript of the Stand Your Ground hearing, shows Butler is entitled to, over Butler's substantive rights to immunity and appellate review.

This Court has the all writs jurisdiction over this controversy to direct the Second District to properly exercise its original jurisdiction and rule on the merits of Butler's motion under review. Or to fashion an equitable remedy.

WHEREFORE, Petitioner prays this Honorable Court grant such relief as it deems just and proper.

Respectfully submitted,

/s/_____
David A. Butler, *pro se*

MOTION FOR APPOINTMENT OF COUNSEL

COMES NOW, David A. Butler, Petitioner, pro-se, and respectfully moves this Honorable Court for an appointment of counsel. In support hereof, Petitioner states as follows:

To the extent Butler contends he has been deprived of his State Constitutional right to a legitimate and meaningful direct appeal, he should be afforded an appointment of counsel to assist him in obtaining appropriate relief.

Respectfully submitted,

/s/_____
David A. Butler, *pro se*

OATH

UNDER PENALTY OF PERJURY, I swear that the facts contained in the petition are true and correct.

Executed this _____ day of _____, 20___.

/s/_____
David A. Butler

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been placed into the hands of prison officials at Gulf Correctional Institution for pre-paid First Class U.S. mailing to: Second District Court of Appeal, P.O.Box 327, Lakeland, FL 33802, and the Office of the Attorney General, Concourse Center #4, 3507 E. Frontage Road, Suite 200, Tampa, FL 33607, on this __ day, November, 2020.

/s/_____
David A. Butler
DC# 112034
Gulf Correctional Institution
500 Ike Steele Road
Wewahitchka, Florida 32465

APPENDIX

EXHIBIT A

Motion for Recall of Mandate and Motion for belated Order to Compel Trial Court to file Written Orders of Denial on all Pre-trial and Post-trial Motions and Order Directing Lower Clerk to Supplement Record on Appeal Therewith;

EXHIBIT B

November 4, 2020, Order of Second District Court of Appeal Striking Motion as unauthorized.

IN THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

DAVID ARMANDO BUTLER,
Appellant / Petitioner,

vs. Case No. 2D17-1429

STATE OF FLORIDA,
Appellee / Respondent.

MOTION FOR RECALL OF MANDATE AND MOTION FOR ORDER TO COMPEL TRIAL COURT TO FILE WRITTEN ORDERS OF DENIAL ON ALL PRE-TRIAL AND POST-TRIAL MOTIONS AND ORDER DIRECTING LOWER CLERK TO SUPPLEMENT RECORD ON APPEAL THEREWITH

COMES NOW Appellant / Petitioner, David A. Butler, pro se, and respectfully moves this Honorable Court for an Order Recalling Mandate; a Belated Order to Compel Trial Court to File Written Orders of Denial on All Pre-Trial, Trial and Post-Trial Motions; and Order Directing Lower Clerk to Supplement Record On Appeal Therewith. In support hereof, the following is stated:

On October 23, 2019, this Court entered its order per curiam affirming Butler's direct appeal. This Court issued its mandate on December 27, 2019.

Butler respectfully puts forth that both Regional Counsel Christie Pardo and appellate counsel Assistant Public Defender Robert D. Rosen rendered constitutionally ineffective assistance in failing to ensure that Judge Federico filed formal written denial orders and including these orders in the Record On Appeal.' Sparre V. State, 289 So.3d, 839 (Fla. 2019). Also Roe V. Flores-Ortega, 528 U.S. 470, 477,

120 S.Ct. 1029, 145 L. Ed. 2d 985 (2000) ("... ineffective for failing to file a notice of appeal.").

FN1. Regional and Appellate Counsels also should have ensured that formal written orders granting Butler's and the State's Motions in Limine respectively.

In the Statement of Judicial Acts to Be Reviewed, Regional Counsel states among other matters, all rulings on pre-trial motions. (R 266).[2]

FN2. Butler adopts and incorporates herein, in their entirety, the matters set forth therein; and ask this Court to take judicial notice of the Record on Appeal.

However, Regional Counsel did not make any effort to have Judge Federico enter any formal written orders with respect to his rulings on the respective motions. This Court lacks jurisdiction to review oral orders of the trial court, when such orders are not reduced to writing. State v. Smith, 557 So. 2d 904 (Fla. 1st DCA 1990). They are not appealable. State v. Sullivan, 640 So. 2d 77 (Fla. 2nd DCA 1994).

Both Sullivan and State v. Bolich, 512 So. 2d 960 n.1, (Fla. 2nd DCA 1987), establishes trial counsel's ineffectiveness. This Court held,

"If a trial court fails or refuses to enter a written order that is needed for appeal, counsel has the remedy of filing a motion or petition for writ of mandamus with this Court to compel the trial court to enter such an order."

Assistant Public Defender Robert D. Rosen was also ineffective. He could and should have moved this Court pursuant to Florida Rules of Appellate Procedure 9.200 (e) and 9.600 (a), to relinquish jurisdiction to the trial court to reduce its respective oral orders to writing. Escobar v. State, 189 So. 3d 1029 (Fla. 4th DCA 2016) (rule 9.600 (a) allows the trial court to complete ministerial task before the transmission of the record. To reduce its oral pronouncements to writing.); Sparre, supra ("... it is appellate counsel's duty to ensure that the

record on appeal is complete ....").

Hence, this Court's decision per curiam affirming Butler's direct appeal could not have been merit based. Greg V. State, 643 So. 2d 106 (Fla. 1st DCA 1994) (Oral orders are not appealable because they are not rendered.). But rests on an egregious procedural default sprung on Butler by his appointed counsels.

In Appellant's Pro se Initial Brief, he raised numerous meritorious issues.[3]

FN3. Butler adopts and incorporates herein, in their entirety, all the matters and arguments set forth in Butler's pro se Initial Brief; and request this Honorable Court to take judicial notice of same.

For instance, in Issue IV, Appellant alleged the trial court deprived him of an impartial tribunal because at the January 6, 2017, stand your ground hearing, Judge Federico unconstitutionally entered the fray during the State's cross-examination and elicited admissions from Butler in effort to assist the state in fulfilling their obligation to have authenticated their video evidence, although, "there is no evidentiary burden on person seeking stand your ground immunity." Jefferson V. State, 264 So. 3d 1019, 1027, (Fla. 2nd DCA 2018). And Judge Federico duped Mr. Butler into re-viewing the video with Detective Brady whom purportedly falsely claimed Butler had identified himself and the victim on the video. However, the absence of a formal written denial order with respect to the trial judge's oral pronouncement effectively rendered the judge's partiality in these regards harmless errors, and/or unreviewable.

Likewise, at the January 17, 2017, jury trial, Judge Federico again departed from his neutral position and suggested to the prosecutor to move to motion in limine precluding Butler from testifying before the jury that their DVD video evidence had been doctored and/or edited removing the violent acts Mr. Chapman had done towards Butler which caused Butler

to reasonably believe he was lawfully justified using the force he did in self-defense.

However, neither of Butler's appointed undertook any effort to have Judge Federico render formal written orders granting the State's motion thereby foreclosing any appellate review of this issue.

In Issue VI, Butler contended the trial court erred in denying his motion to dismiss based on statutory immunity. The State failed to properly authenticate the DVD evidence they solely relied on. And Deputy Brady's testimony was based on inadmissible testimonial hearsay.

The trial court orally granted Butler's motion in limine precluding the deputies from testifying as to any statements to them by the alleged victim. But because appointed counsels did not ensure that Judge Federico formally entered written orders granting Butler's motion in limine and denying his motion to dismiss based on statutory immunity this Court did not review this issue.

Appellant's VII, VIII, XII, XIII and XV, all bear the same procedural infirmity by virtue of Judge Federico's failure to have entered any formal written orders denying and/or granting the respective motions which formed the basis for these appellate issues.

Moreover, Appellant's right to due process of law under the Fourteenth Amendment to the United State's Constitution was violated by this Court's failure to sua sponte have afforded Butler an opportunity to have properly supplemented the record with the essential written orders. Florida Rule of Appellate Procedure 9.200(F)(2); Owens v. State, 579 So. 2d 311 (Fla. 1st DCA 1991); Van Fuquay v. State, 386 So. 2d 1314 (Fla. 5th DCA 1980).

Consequently, for these reasons, Butler respectfully puts forth he is entitled to a belated opportunity to supplement the record on appeal with the required written orders; an

order directing the trial court to enter formal orders: a. January 6, 2017, order denying motion to dismiss based on statutory immunity; b. January 6, 2017, order granting Defendant's motion in limine; c. January 6, 2017, order directing state to have Deputy Brady show the Defendant State's DVDs; d. January 17, 2017, order denying Defendant's third motion to disqualify; e. January 17, 2017, order granting State's motions in limine; f. January 17, 2017, order denying deadly force and special instruction on deadly force jury instructions; g. January 17, 2017, orders denying defense motion and renewed motion for judgment of acquittal; and h. March 6, 2017, order denying motion to discharge counsel; i. November 9, 2016, order denying motion for renewed Nelson hearing.[4]

FN4. Regional Counsel Pardo also rendered ineffective assistance, in failing to obtain a ruling on Butler's January 11, 2017, motion for rehearing, prior to filing the Notice of Appeal, on the face of the record.

Butler also requests an appointment of competent counsel and a proper review of his issues this Court did not have jurisdiction over by virtue of the lack of written orders.

Respectfully submitted,

David A. Butler, pro se

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been served by U.S. Mail to the Office of the Attorney General, Tampa, FL 33607, this _____.

David A. Butler
112034, CI-111L
Gulf C.I.
Wewahitchka, FL 32465

OATH

Under the penalty of perjury, I swear that the foregoing facts and matters are true and correct.

David A. Butler, pro se

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

November 04, 2020

CASE NO.: 2D17-1429
L.T. No.: 16-08234-CF

DAVID ARMONDO BUTLER v. STATE OF FLORIDA

Appellant / Petitioner(s), Appellee / Respondent(s).

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Served:

ATTORNEY GENERAL, TAMPA
DAVID ARMONDO BUTLER

DONNA S. KOCH, A.A.G.
KEN BURKE, CLERK

ks

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

APPENDIX A