

Supreme Court of Florida

TUESDAY, APRIL 6, 2021

CASE NO.: SC21-319

Lower Tribunal No(s).:

062005CF014414A88810;

062004CF010827A88810

CHARLENE ROSA

vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)

The petition for writ of mandamus is hereby dismissed because this Court generally will not consider the repetitive petitions of persons who have abused the judicial processes of the lower courts such that they have been barred from filing certain actions there. *See Pettway v. State*, 776 So. 2d 930, 931 (Fla. 2000). No motion for rehearing or reinstatement will be entertained by this Court.

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

A True Copy

Test:

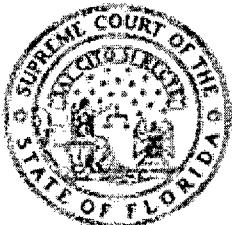


John A. Tomasino
Clerk, Supreme Court

ks

Served:

CELIA TERENZIO
CHARLENE ROSA
HON. BRENDA D. FORMAN, CLERK



Appendix A

Supreme Court of Florida

FRIDAY, MARCH 26, 2021

CASE NO.: SC21-319

Lower Tribunal No(s).:

062005CF014414A88810;

062004CF010827A88810

CHARLENE ROSA

vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)

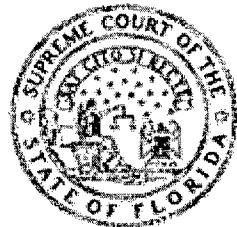
The order of this Court dated March 25, 2021, granting Petitioner's motion to amend is hereby vacated.

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Test:



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Clerk, Supreme Court



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CHARLENE ROSA

Appendix B

Supreme Court of Florida

THURSDAY, MARCH 25, 2021

CASE NO.: SC21-319

Lower Tribunal No(s).:

062005CF014414A88810;

— 062004CF010827A88810

CHARLENE ROSA

vs. STATE OF FLORIDA

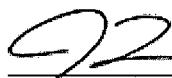
Petitioner(s)

Respondent(s)

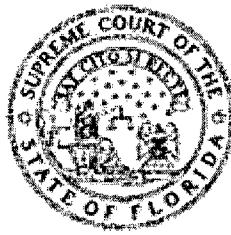
Petitioner's motion to amend petition for mandamus is hereby granted and the amended petition was filed with this Court on March 24, 2021.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court

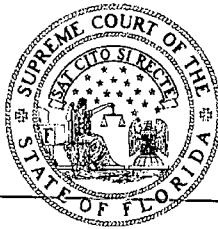


ks

Served:

CELIA TERENZIO
CHARLENE ROSA

Appendix C



Supreme Court of Florida

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

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

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

ACKNOWLEDGMENT OF NEW CASE

March 3, 2021

RE: CHARLENE ROSA vs. STATE OF FLORIDA

CASE NUMBER: SC21-319

Lower Tribunal Case Number(s): 062005CF014414A88810;
062004CF010827A88810

The Florida Supreme Court has received the following documents reflecting a filing date of 1/19/2021.

Writ of Supervisory Control

The above listed writ has 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.

tr

cc:

CELIA TERENZIO
CHARLENE ROSA
HON. BRENDA D. FORMAN, CLERK

Appendix D

Subject:Activity in Case 0:21-cv-61478-RNS Rosa v. Levenson Order Dismissing Case
This is an automatic e-mail message generated by the CM/ECF system.

Please DO NOT RESPOND to this e-mail because the mail box is unattended.

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court
Southern District of Florida

Notice of Electronic Filing

The following transaction was entered on 7/26/2021 12:39 PM EDT and filed on 7/26/2021

Case Name: Rosa v. Levenson

Case Number: 0:21-cv-61478-RNS

Filer:

WARNING: CASE CLOSED on 07/26/2021

Document Number: 4

Docket Text:

ORDER DISMISSING CASE. The Court dismisses the Petition (ECF No. [1]) for lack of jurisdiction. The Clerk shall close this case and mail a copy of this order to the Petitioner. All pending motions are denied as moot. Signed by Judge Robert N. Scola, Jr on 7/26/2021.

<I>See attached document for full details.</I> (daa)

0:21-cv-61478-RNS Notice has been electronically mailed to:

0:21-cv-61478-RNS Notice has not been delivered electronically to those listed below and will be provided by other means. For further assistance, please contact our Help Desk at 1-888-318-2260.:

Charlene Walker Rosa
L06814
Lowell Annex
Inmate Mail/Parcels
11120 NW Gainesville Road
Ocala, FL 34482

Service list page 1 only

Appendix E

U.S. District Court - Southern District of Florida

Charlene Walker Rosa L06814
Lowell Annex
Inmate Mail/Parcels
11120 NW Gainesville Road
Ocala, FL 34482

Case: 0:21-cv-61478-RNS #4 4 pages Mon Jul 26 12:51:36 2021

IMPORTANT: REDACTION REQUIREMENTS AND PRIVACY POLICY

Note: This is NOT a request for information.

Do NOT include personal identifiers in documents filed with the Court, unless specifically permitted by the rules or Court Order. If you MUST include personal identifiers, ONLY include the limited information noted below:

- Social Security number: last four digits only
- Taxpayer ID number: last four digits only
- Financial Account Numbers: last four digits only
- Date of Birth: year only
- Minor's name: initials only
- Home Address: city and state only (for criminal cases only).

Attorneys and parties are responsible for redacting (removing) personal identifiers from filings. The Clerk's Office does not check filings for personal information.

Any personal information included in filings will be accessible to the public over the internet via PACER.

For additional information, refer to Fed. R. Civ. P. 5.2 and Fed. R. Crim. P. 49.1. Also see the CM/ECF Administrative Procedures located on the Court's website www.flsd.uscourts.gov.

IMPORTANT: REQUIREMENT TO MAINTAIN CURRENT MAILING ADDRESS AND CONTACT INFORMATION

Pursuant to Administrative Order 2005-38, parties appearing pro se and counsel appearing pro hac vice must file, in each pending case, a notice of change of mailing address or contact information whenever such a change occurs. If court notices sent via the U.S. mail are returned as undeliverable TWICE in a case, notices will no longer be sent to that party until a current mailing address is provided.

IMPORTANT: ADDITIONAL TIME TO RESPOND FOR NON-ELECTRONIC SERVICE

Additional days to respond may be available to parties serviced by non-electronic means. See Fed.R.Civ.P.6(d), Fed.R.Crim.P.45(c) and Local Rule 7.1(c)(1)(A). Parties are advised that the response deadlines automatically calculated in CM/ECF do NOT account for and may NOT be accurate when service is by mail. Parties may NOT rely on response times calculated in CM/ECF, which are only a general guide, and must calculate response deadlines themselves.

See reverse side

United States District Court
for the
Southern District of Florida

Charlene Walker Rosa, Petitioner)
v.)
)
) Civil Action No. 21-61478-Scola
Jeffrey Levenson, Respondent.)

Order Dismissing Case

The Petitioner, a state prisoner, has filed a purported Petition for Writ of Mandamus ("Petition"). ECF No. 1. As discussed below, the Court construes the Petition as a petition for writ of habeas corpus under 28 U.S.C. § 2254 and dismisses it as successive.

The Petition alleges several constitutional defects in Broward County Case Number 04-10827CF10A. These include: ineffective assistance of counsel; "wrongful conviction" based on false evidence and prosecutorial misconduct; equal protection and due process violations; and judicial bias. (See, e.g., *id.* at 1-4, 10-13). Because, despite its label, the Petition clearly reflects an attempt to challenge the constitutionality of said conviction, the Court construes it as a § 2254 petition. See § 2254(a); see also *United States v. Jordan*, 915 F.2d 622, 624-25 (11th Cir. 1990) ("Federal courts have long recognized that they have an obligation to look behind the label of a motion filed by a *pro se* inmate . . .").

The Petitioner previously filed a § 2254 petition challenging said conviction that the Court dismissed on the merits and for which the Eleventh Circuit denied a certificate of appealability. *Rosa v. State of Florida et al.*, No. 16-cv-62332-Bloom (S.D. Fla. 2016), ECF Nos. 67, 78, 96.

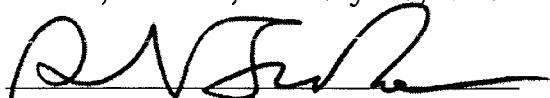
"Before a second or successive [§ 2254 petition] is filed in the district court, the [petitioner] shall move in the appropriate court of appeals for an order authorizing the district court to consider the [petition]." 28 U.S.C. § 2244(b)(3)(A). Without authorization from the appropriate court of appeals, a "[d]istrict [c]ourt [is] without jurisdiction to entertain" a "second or successive" petition challenging [the inmate's] custody[.]" *Burton v. Stewart*, 549 U.S. 147, 157 (2007). "[S]econd or successive status only attaches to a judgment on the merits." *Boyd v. United States*, 754 F.3d 1298, 1302 (11th Cir. 2014) (citations omitted). "[D]ismissal of a habeas corpus petition as procedurally defaulted constitutes, as a matter of law, an adjudication on the merits for the purposes of § 2244(b)(3)(A)'s second or successive petition requirements." *Johnson v.*

Alabama, No. 1:12-CV-1030-TMH, 2013 WL 776251, at *1 (M.D. Ala. Jan. 16, 2013) (citations omitted), *report and recommendation adopted*, 2013 WL 775382 (M.D. Ala. Feb. 28, 2013).

Here, the Court dismissed the Petitioner's prior petition on the merits and she has not obtained the necessary authorization from the Eleventh Circuit. Furthermore, she attacks the same conviction that she attacked in her prior petition. Thus, the Court lacks jurisdiction over the Petition.¹

Accordingly, the Court **dismisses** the Petition (ECF No. 1) for lack of jurisdiction. The Clerk shall **close** this case and **mail a copy** of this order to the Petitioner. All pending motions are **denied as moot**.

Done and ordered, in chambers, in Miami, Florida, on July 26, 2021.



Robert N. Scola, Jr.

United States District Judge

¹ Because the Petition is rambling and conclusory and presumably untimely, neither a direct transfer to the Eleventh Circuit under 28 U.S.C. § 1631 nor a stay is proper. *Cf. Guenther v. Holt*, 173 F.3d 1328, 1330-31 (11th Cir. 1999).

Subject:Activity in Case 0:21-cv-61441-WPD Rosa v. Levenson Clerks Notice to Filer re:
Electronic Case

This is an automatic e-mail message generated by the CM/ECF system.

Please DO NOT RESPOND to this e-mail because the mail box is unattended.

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits
attorneys of record and parties in a case (including pro se litigants) to receive one
free electronic copy of all documents filed electronically, if receipt is required by law or
directed by the filer. PACER access fees apply to all other users. To avoid later
charges, download a copy of each document during this first viewing. However, if the referenced
document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court
Southern District of Florida

Notice of Electronic Filing

The following transaction was entered on 7/16/2021 12:59 PM EDT and filed
on 7/16/2021

Case Name: Rosa v. Levenson

Case Number: 0:21-cv-61441-WPD

Filer:

WARNING: CASE CLOSED on 07/16/2021

Document Number: 13

13(No document attached)

Docket Text:

Clerks Notice to Filer re: Electronic
Case. Case administratively closed - Case opened in error
color=red>No further entries will be made on this case. (mrl)

Appendix
Exhibit C
F

U.S. District Court - Southern District of Florida

Charlene Rosa
Lowell Annex
Inmate Mail/Parcels
11120 NW Gainesville Road
Ocala, FL 34482

Case: 0:21-cv-61441-WPD #13 2 pages Fri Jul 16 13:22:03 2021

IMPORTANT: REDACTION REQUIREMENTS AND PRIVACY POLICY

Note: This is NOT a request for information.

Do NOT include personal identifiers in documents filed with the Court, unless specifically permitted by the rules or Court Order. If you MUST include personal identifiers, ONLY include the limited information noted below:

- Social Security number: last four digits only
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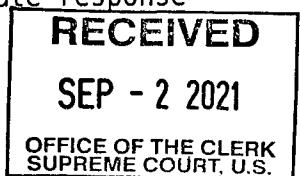
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See reverse side



U.S. District Court - Southern District of Florida

Charlene Rosa
Lowell Annex
Inmate Mail/Parcels
11120 NW Gainesville Road
Ocala, FL 34482

Case: 0:21-cv-61441-WPD #2 2 pages Thu Jul 15 16:51:47 2021

IMPORTANT: REDACTION REQUIREMENTS AND PRIVACY POLICY

Note: This is NOT a request for information.

Do NOT include personal identifiers in documents filed with the Court, unless specifically permitted by the rules or Court Order. If you MUST include personal identifiers, ONLY include the limited information noted below:

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- Date of Birth: year only
- Minor's name: initials only
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See reverse side

Subject:Activity in Case 0:21-cv-61441-WPD Rosa v. Levenson Clerk's Notice of Judge Assignment

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U.S. District Court

Southern District of Florida

Notice of Electronic Filing

The following transaction was entered on 7/15/2021 4:29 PM EDT and filed on 7/13/2021

Case Name: Rosa v. Levenson

Case Number: 0:21-cv-61441-WPD

Filer:

Document Number: 2

2 (No document attached)

Docket Text:

Clerks Notice of Judge Assignment to
Judge William P. Dimitrouleas and Magistrate Judge Lurana S. Snow.
(ebz)

Appendix (a)
~~Exhibit~~ F.