No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re: WILLIAM L. WHIPPLE - PETITIONER

vs.

RESPONDENT(S)

APPENDIX TO:
PETITION FOR WRIT OF CERTIORARI TO

APPENDIX A Order Denying Mandamus Petition, 11th Circuit

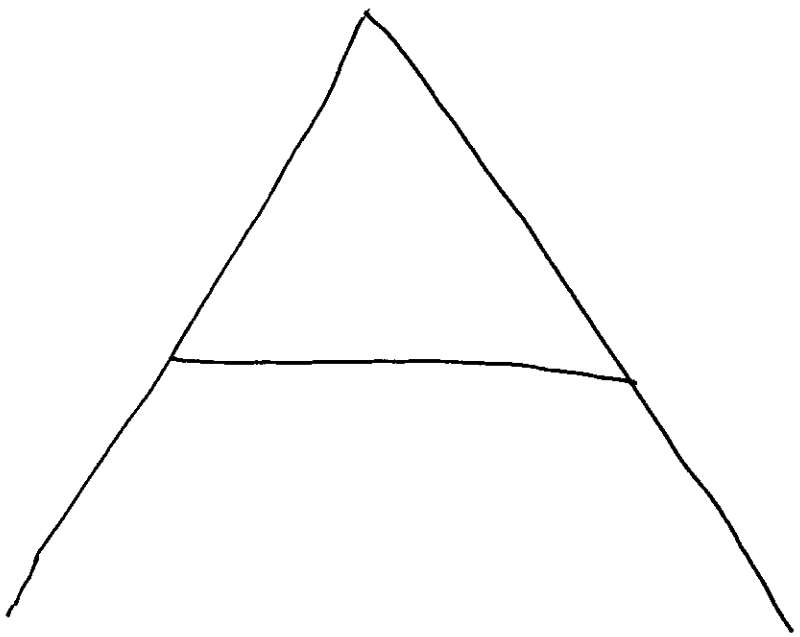
APPENDIX B Order Denying COA 60(b) Motion

APPENDIX C Order Denying § 2254 Habeas Corpus

APPENDIX D Order Denying State Habeas Corpus, 3rd DCA

APPENDIX E Order Denying State Habeas Corpus, 1st DCA

APPENDIX



IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-13846-F

In re: WILLIAM L. WHIPPLE,

Petitioner.

On Petition for Writ of Mandamus from the United States District Court for the Southern District of Florida

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ORDER:

William Whipple, a Florida prisoner proceeding *pro se*, has filed a petition for writ of mandamus arising out of his 28 U.S.C. § 2254 petition for habeas corpus, filed in the U.S. District Court for the Southern District of Florida in 2014. In his mandamus petition, Whipple asks this Court to direct the district court to make a *de novo* determination of his § 2254 petition in light of objections he filed to a magistrate judge's report and recommendation, to vacate the order dismissing his § 2254 petition, and to void the district court's order denying his motion to expand the record. Whipple seeks to file this mandamus petition *in forma pauperis* ("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, 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). Assuming, without deciding, that

Whipple has satisfied § 1915(a)'s poverty requirement, his mandamus petition is nevertheless frivolous, and his IFP motion is due to be denied.

Mandamus is available only in drastic situations when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion. *United States v. Shalhoub*, 855 F.3d 1255, 1259 (11th Cir. 2017); *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997). Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. *Jackson*, 130 F.3d at 1004. The petitioner has the burden of showing that he has no other avenue of relief, and that his right to relief is clear and indisputable. *Mallard v. United States Dist. Court*, 490 U.S. 296, 309 (1989). When an alternative remedy exists, even if it is unlikely to provide relief, mandamus relief is not proper. *See Lifestar Ambulance Svc., Inc. v. United States*, 365 F.3d 1293, 1298 (11th Cir. 2004).

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." *Shalhoub*, 855 F.3d at 1263 (quotation marks omitted).

This Court has jurisdiction to review an appeal from a final judgment. 28 U.S.C. § 1291. An appeal from a final judgment brings up for review all preceding non-final orders. *Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1229 (11th Cir. 2020).

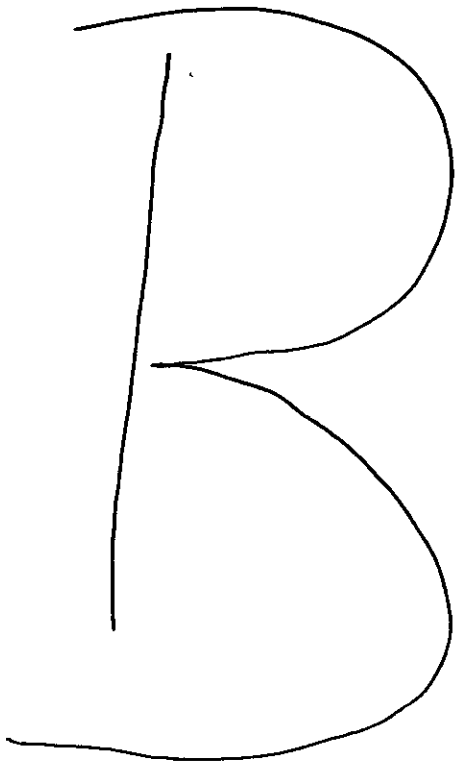
Here, Whipple is not entitled to mandamus relief because he had, and exercised, the adequate alternative remedies of challenging the district court's orders dismissing his § 2254 petition and motion to expand the record, through a motion to reconsider in the district court and an appeal to this Court. *Shalhoub*, 855 F.3d at 1259. Whether or not Whipple succeeded in his challenges to the district court's orders does not impact the analysis of whether they were adequate alternative remedies for mandamus purposes. *See Lifestar*, 365 F.3d at 1298.

To the extent that Whipple seeks action by this Court to vacate or void the district court's orders, that relief is not cognizable in mandamus because he does not ask this Court to order an inferior court to act but asks this Court to act itself. *See Shalhoub*, 855 F.3d at 1263.

Accordingly, Whipple's IFP motion is hereby **DENIED**, as his mandamus petition is frivolous.

/s/ Barbara Lagoa
UNITED STATES CIRCUIT JUDGE

APPENIX



IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-16581-E

WILLIAM L. WHIPPLE,

Petitioner-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

ORDER:

William L. Whipple is a Florida prisoner currently serving two concurrent life sentences following his 1999 jury convictions for first-degree murder and robbery with a firearm. In 2014, Whipple filed a federal habeas petition, pursuant to 28 U.S.C. § 2254, raising the following claims for relief:

(1) the trial court committed a *Giglio*[1] violation by making an unreasonable determination of the facts in light of the evidence presented at trial;

---

[1] *Giglio v. United States*, 405 U.S. 150 (1972).

(2) his appellate counsel failed to argue that his trial counsel rendered ineffective assistance; and

(3) his appellate counsel failed to argue that he was denied the right to self-representation.

In explaining why the one-year statute of limitations contained in 28 U.S.C. § 2244(d) did not bar his petition, Whipple stated that: (1) he qualified for an exception under § 2244(d)(1) because he was actually innocent; and (2) failure to review his petition would result in a fundamental miscarriage of justice because he was denied his right to represent himself.

After the State responded, a magistrate judge issued a report and recommendation ("R&R"), on March 19, 2015, recommending that the district court dismiss Whipple's petition as untimely. The magistrate judge concluded that Whipple's § 2254 petition was filed outside the one-year limitations period, and Whipple was not entitled to equitable tolling. The magistrate judge also ordered that objections to the R&R were due "within fourteen days of receipt of a copy of the report." The magistrate judge then set the due date for objections as April 6, 2015, 14 days after the R&R was issued. On April 13, 2015, the district court ultimately adopted the R&R, dismissed Whipple's petition as untimely, and denied him a COA.

Whipple filed objections to the R&R on April 10, 2015, which were received by the district court on April 15, 2015. Whipple asserted that he had not

received the R&R until March 30, 2015, and therefore, his objections were timely. In his objections, Whipple again argued that he was actually innocent and had shown cause and prejudice to overcome any procedural default. Whipple further asserted that the R&R had overlooked a portion of the record of his state habeas proceedings, and these state court records would show that he had not procedurally defaulted his claims. In addition to his objections, Whipple filed a motion to expand the record, and an appendix containing various state court records. The district court summarily denied Whipple's motion to expand the record. However, because Whipple's objections were not filed by April 6, 2015, they were not received by the district court until after the order dismissing Whipple's § 2254 petition had been entered, and they were never directly addressed by the district court.

After denying Whipple's motion to expand the record, the district court denied Whipple leave to proceed IFP on appeal, and again denied a COA. This Court later denied Whipple a COA, finding that he had not shown that the district court's dismissal of his § 2254 petition as untimely was erroneous. This Court also denied Whipple's motion for reconsideration of its order denying a COA.

However, while Whipple's appeal was pending, in July 2015, Whipple filed a motion in the district court, seeking reconsideration of the district court's order denying him a COA and IFP status to appeal the denial of his § 2254 petition.

Whipple asserted that, because the district court dismissed his § 2254 petition without considering his objections to the R&R, he "was never afford an opportunity to seek COA in the district court[.]" Whipple then asserted that he was entitled to a COA. On July 9, 2015, the district court summarily denied Whipple's motion for reconsideration.

In September 2016, Whipple filed the instant motions for leave to amend his prior motion for reconsideration and an amended motion for reconsideration. In his amended motion for reconsideration, Whipple argued that the district court had erred in not construing his prior motion for reconsideration as a Fed. R. Civ. P. 60(b) motion. Further, Whipple argued that he was entitled to relief under Rule 60(b)(4) for a void judgment because: (1) the district court had jurisdiction and should have reached the merits of his petition; (2) he qualified for equitable tolling; and (3) the district court violated his due process rights by, *inter alia*, not considering his objections to the R&R. Whipple also argued that he was entitled to relief under Rule 60(b)(3) because the State fraudulently concealed records of his state habeas proceedings. Finally, Whipple asserted that he was denied equal access to the court because "unprecedented and prejudicial limitations were executed."

The district court summarily denied Whipple's motions to amend his prior motion for reconsideration and his amended motion for reconsideration. The

district court later denied Whipple a COA and IFP status. Whipple now seeks a COA and IFP status in this Court. Whipple has also filed supplemental authority to his motion for a COA, based on *Buck v. Davis*, 137 S. Ct. 759 (2017) (holding that, at the COA stage, an appellate court must only answer the threshold question of whether jurists of reason could disagree with the district court's resolution of the constitutional claims or could conclude that the issues are adequate to deserve further encouragement, and the court must not sidestep the COA process by first deciding the merits of an appeal and justifying its denial of a COA based on an adjudication on the merits).

DISCUSSION:

This Court has held that petitioners must obtain a COA in order to appeal "any denial of a Rule 60(b) motion for relief from a judgment in a § 2254 or [28 U.S.C.] § 2255 proceeding." *Gonzalez v. Sec'y for Dep't of Corr.*, 366 F.3d 1253, 1263 (11th Cir. 2004) (*en banc*). In order to obtain a COA, a § 2254 petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To merit a COA, a petitioner 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 (2000). This Court limits its examination at the COA stage to a threshold inquiry into the underlying merit of the claims and asks

only whether the district court's decision was debatable. *Buck*, 137 S. Ct. at 774. The appeal of a Rule 60(b) motion is limited to a determination of whether the district court abused its discretion in denying the motion. *Rice v. Ford Motor Co.*, 88 F.3d 914, 918-19 (11th Cir. 1996).

Rule 60(b) allows a party to seek relief or reopen his case based upon the following limited circumstances: (1) mistake or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been discharged; and (6) "any other reason that justifies relief." Fed. R. Civ. P. 60(b). To qualify for relief under Rule 60(b)(6), the moving party must demonstrate that the circumstances are "sufficiently extraordinary" to warrant relief. *Cano v. Baker*, 435 F.3d 1337, 1342 (11th Cir. 2006) (quotation omitted). The appellant's burden on appeal from the denial of a Rule 60(b) motion is heavy, as the appellant must demonstrate a justification so compelling that it required the district court to vacate its order. *Id.*

Here, reasonable jurists would not debate whether the district court abused its discretion in denying Whipple's motion to amend and amended motion for reconsideration. As an initial matter, although Whipple frames the current motions as attempts to amend his initial motion for reconsideration, filed in July 2015, the record indicates that his July 2015 motion, and the instant amended motion, raised entirely different issues, and challenged different orders of the district court. In his

July 2015 motion for reconsideration, Whipple challenged the district court's order denying a COA and IFP status for his appeal of the dismissal of his § 2254 petition. Whipple requested that the district court grant him a COA and IFP status. However, in the instant amended motion for reconsideration, Whipple challenged the district court's order dismissing his § 2254 petition as untimely. Accordingly, although Whipple asserted that his instant filings were an attempt to amend his prior motion for reconsideration, it appears that the instant filings are more properly characterized as a new motion for reconsideration, pursuant to Rule 60(b).

Regardless, the district court did not abuse its discretion in denying Whipple's amended motion for reconsideration. In his motion, Whipple sought to re-argue the timeliness and equitable tolling issues, which he had previously addressed in his initial § 2254 petition. Although Whipple attempts to frame these arguments as indications that the judgment dismissing his § 2254 petition was void, such arguments actually indicate only that Whipple disagrees with the district court's judgment. However, disagreement about the resolution of these issues does not render the judgment dismissing Whipple's § 2254 petition void.

Additionally, to the extent that Whipple asserted that the judgment was void because the district court violated his due process rights in failing to consider his objections to the R&R, it appears debatable whether Whipple's objections were timely filed. Although the docket indicates that objections to the R&R were due

on April 6, 2015, 14 days after the R&R was issued, the text of the R&R stated that objections were due 14 days after a copy of the R&R was received. Thus, assuming, as Whipple claims, that he received the R&R on March 30, 2015, his objections, filed on April 10, 2016, were timely filed within 14 days of receipt of the R&R.

Nonetheless, even if Whipple's objections to the R&R were timely filed, his objections primarily reargued the issues raised in his § 2254 petition, and did not substantially alter or add to his prior arguments. Whipple did argue, in his objections, that the magistrate judge had failed to include portions of his state court record in the R&R; however, Whipple did not indicate how such records would affect the analysis as to the timeliness of his petition. Instead, Whipple argued that such records would support his arguments that his claims were not procedurally barred. However, procedural bar was not the ground on which the magistrate judge recommended that Whipple's § 2254 petition be dismissed, and this argument was irrelevant to the timeliness analysis. Accordingly, it does not appear that Whipple's objections to the R&R contained any arguments that would have altered the outcome of his § 2254 proceeding.

Further, to the extent that Whipple asserted that the district court's judgment was based on fraud, because the State had fraudulently withheld state court records, Whipple does not specify which state court records the State withheld or

how such records would have altered the outcome of the case. Assuming that Whipple was again referring to the state court records that he discussed in his objections to the R&R, Whipple never asserted that these records would alter the outcome of the timeliness analysis, on which his § 2254 petition was dismissed. Accordingly, even assuming that the State fraudulently withheld state court records, Whipple has not shown that he was entitled to vacatur of the judgment dismissing his § 2254 petition as time-barred.

Finally, to the extent that Whipple asserted in his amended motion for reconsideration that he was denied access to the courts, his argument is vague and conclusory. Whipple stated only that "unprecedented and prejudicial limitations were executed," but did not specify what limitations he was referencing or how they affected the proceeding. Accordingly, Whipple has not shown that he was denied access to courts in a manner that warranted vacatur of the judgment dismissing his § 2254 petition.

CONCLUSION:

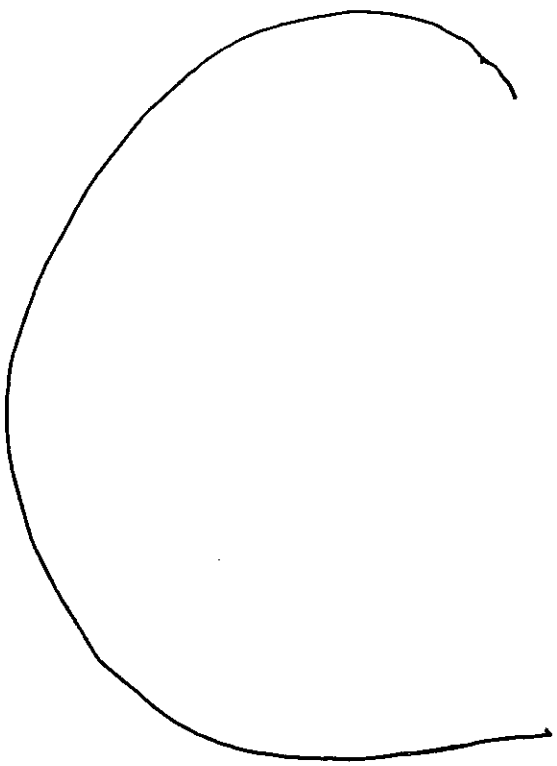
Because Whipple has not shown that the district court was required to vacate its order under Rule 60(b)(3), (4), and has not shown any extraordinary circumstances that warrant relief under Rule 60(b)(6), reasonable jurists would not debate whether the district court abused its discretion in denying Whipple's Rule

60(b) motion. Therefore, Whipple's motion for a COA is DENIED and IFP status is DENIED as moot.

Julie Carnes
UNITED STATES CIRCUIT JUDGE

Received on 11-15-17

APPENDIX



28 U.S.C. §2244(d)(1)-(2). It is further recommended that no certificate of appealability issue.

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

SIGNED this 19th day of March, 2015.

UNITED STATES MAGISTRATE JUDGE

cc: William L. Whipple, Pro Se
DC# 816787
Taylor Correctional Institution-Annex
8629 Hampton Springs Road
Perry, FL 32348

Jill Diane Kramer, AAG
Attorney General Office
Department of Legal Affairs
444 Brickell Avenue
Suite 650
Miami, FL 33131

Received
3-30-15
Taylor C.I.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 14-21536-CIV-MORENO

WILLIAM L. WHIPPLE,

Petitioner,

vs.

JULIE JONES,

Respondent.

_____/

ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATION AND DISMISSING CASE AS UNTIMELY

THE MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge for a Report and Recommendation on the Petitioner's Writ for Habeas Corpus **(D.E. No. 1)**, filed on **April 29, 2014**. The Magistrate Judge filed a Report and Recommendation **(D.E. No. 11)** on **March 20, 2015**. The Court has reviewed the entire file and record. The Court has made a *de novo* review of the issues and notes that no objections to the Magistrate Judge's Report and Recommendation were filed and the time for doing so has now passed. Being otherwise fully advised in the premises, it is

ADJUDGED that United States Magistrate Judge Patrick A. White's Report and Recommendation **(D.E. No. 11)** on **March 20, 2015** is **AFFIRMED** and **ADOPTED**. Accordingly, it is

ADJUDGED that the petition is DISMISSED as untimely pursuant to 28 U.S.C. § 2244(d)(1)-(2) and the Court DENIES a certificate of appealability consistent with Magistrate Judge White's Report and Recommendation.

DONE AND ORDERED in Chambers at Miami, Florida, this 13 day of April, 2015.

FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:
United States Magistrate Judge Patrick A. White
Counsel of Record

William L. Whipple, *pro se*
DC#816787
Taylor Correctional Institution-Annex
8629 Hampton Springs Road
Perry, Florida 32348

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 14-21536-CIV-MORENO

WILLIAM L. WHIPPLE,

Petitioner,

vs.

JULIE JONES,

Respondent.
_____/

FINAL JUDGMENT

PURSUANT to Fed. R. Civ. P. 58 and 54, and in accordance with the Court's denial of the Petitioner's Writ of Habeas Corpus **(D.E. No. 1)**, filed on **April 29, 2014**, final judgment is entered in favor of Respondent.

ADJUDGED that all pending motions in this case are DENIED as moot in light of this Court's Order Adopting the Magistrate's Report and Recommendation.

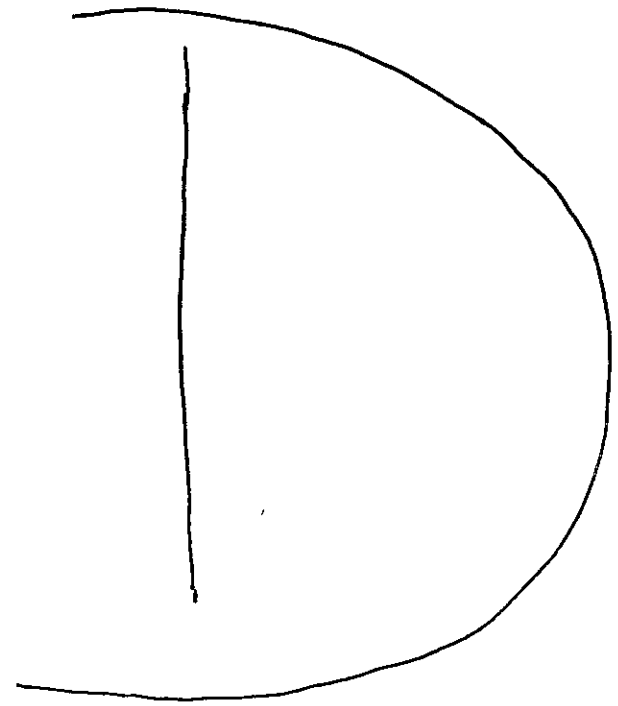
DONE AND ORDERED in Chambers at Miami, Florida, this 13 day of April, 2015.

FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:

Counsel of Record

APPENIX



Third District Court of Appeal

State of Florida, January Term, A.D. 2013

Opinion filed March 20, 2013.
Not final until disposition of timely filed motion for rehearing.

No. 3D13-45
Lower Tribunal No. 93-40908

William L. Whipple,
Petitioner,

vs.

The State of Florida,
Respondent.

A case of original jurisdiction – Habeas Corpus.

William L. Whipple, in proper person.

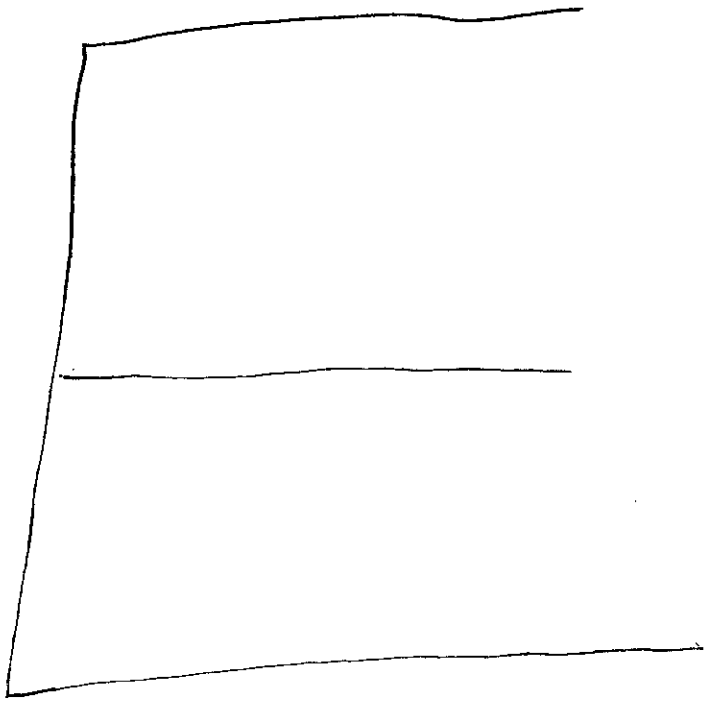
Pamela Jo Bondi, Attorney General, for respondent.

Before SHEPHERD, SALTER, and FERNANDEZ, JJ.

On Order to Show Cause

PER CURIAM.

APPENDIX



IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND DISPOSITION THEREOF IF FILED.

CASE NO. 1D04-3496

WILLIAM L. WHIPPLE,

Appellant,

v.

JAMES V. CROSBY, JR.,
Secretary, Department of Corrections,

Appellee.

Opinion filed May 11, 2005.

An appeal from an order of the Circuit Court for Calhoun County.
Hentz McClellan, Judge.

William L. Whipple, pro se, appellant.

Charlie Crist, Attorney General, and Anne C. Conley, Assistant Attorney General, Tallahassee, for appellee.

PER CURIAM.

AFFIRMED.

BROWNING, POLSTON and HAWKES, JJ., concur.