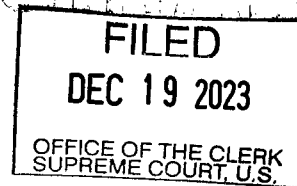


IN THE UNITED STATES SUPREME COURT



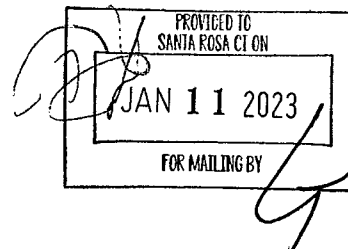
ROBERT L. DAVIS
Petitioner

V.

Case NO. 22-5698

JULIAN HOLT, et. al.,
Respondents,

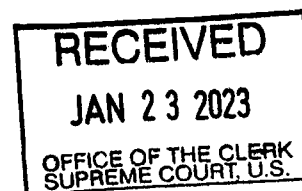
11th Cir. NO. 21-14393-J



MOTION FOR REHEARING

Petitioner, Pro Se, Robert L. Davis, of the above styled cause, here Files Motion For Rehearing, Pursuant, to Rule 44. The Petitioner here Files this Motion In GOOD FAITH, and not to unnecessarily delay a Peaceful, and Final resolution of the case.

Robert L. Davis
Robert L. Davis #652400
Santa Rosa Correction Institution
5850 E. Milton Road
Milton, FL 32583-7914



JURISDICTION STATEMENT

The Petitioner exhausted criminal appeals From state-court to the Supreme Court of The United States. And was denied relief on this clear 'Frye' issue. The Petitioner then timely Filed this civil complaint in The United States Middle District Court of Florida, (APPX.2 - Exh. F). The District Court dismissed the complaint on November 18th, 2021, (APPX.#2, Exh. F), alleging that I Failed to state a claim, (Doc.#9). A timely APPEal was Filed on December 17th, 2021, (Doc#11). And the Eleventh Circuit dismissed the APPEal as Frivolous on July 22nd, 2022, (APPX.A). Where Petition For Writ OF Certiorari was timely Filed 57-days later on September 16th, 2022. Where Petitioner Comes Timely (26). Where this Honorable Court has Jurisdiction, Pursuant, to Article III, Section 1, of The United States Constitution.

CITATIONS OF AUTHORITY

	<u>Page</u>
<u>Ashcroft V. Iqbal, 556 U.S. 662 (2009)</u>	14, 15
<u>Bobby V. Van Hook, 558 U.S. 4 (2009)</u>	11.
<u>Boddie V. Connecticut, 401 U.S. 371 (1971)</u>	13, 14.
<u>Holt V. Crist, 233 F. APP'X 900 (11th Cir. 2006)</u>	6.
<u>LaFler V. Cooper, 566 U.S. 156 (2012)</u>	11.
<u>Lujan V. Defenders of Wildlife, 504 U.S. 555</u>	7.
<u>Polk County V. Dodson, 454 U.S. 312 (1981)</u>	6.8.
5th Amend. U.S. Const.	9.
6th Amend. U.S. Const.	8.
28 U.S.C. § 1343	5.
28 U.S.C. § 1915	7.
42 U.S.C. § 1983	5.

STATEMENT OF THE CASE

This is a bonified 'Frye' case. Where the transcripts Prove that Petitioner, Davis's assistant Public Defender lied during a Nelson Hearing. Where that ly Forced Petitioner to accept a sentence that was 9 to 10-months longer. Than what the Prosecutor originally offered, and the judge encourage the assistant Public Defender to Finalize (Dist. Ct. Doc. # 1, 8).

The Petitioner Filed a civil Complaint on July 8th, 2021, and Amended the Complaint on July 30th, 2021, (Dist. Ct. Doc. # 3, 8). The Petitioner's Amended civil suit was Filed, Pursuant, to the 7th Amendment, and Article III, Section 2, of the United States constitution. Petitioner also listed 28 U.S.C. § 1343, on Page # 3 of the complaint. The Statement of Claim is as follows;

" On May 12th, 2014, Counsel, AKA Jane Dowe, lied to Nelson Hearing judge. When the judge question Jane Dowe, on Wether she discouraged Plaintiff From excepting the 24-months mag-nanimous sentence during the Febrary 12th, 2014, court Proceeding. Counsel, Jane Dowe, stated, " I conveyed that offer to Defendant. He told me, he did not want to accept it. . . . So that is what I told the judge, that he wished to reject the offer. . . . "

The Febrary 12th, 2014, transcript of court case # 2013-CF-01745, and 2013-CF-18157, will show that counsel AKA Jane Dowe, did not tell Judge, Timmerman, this lie. " (Dist. Ct. Doc. # 8, Pg. 4). See also, Robert L. Davis V. Julian Jones, District Court NO: 8:2016-CV-1155 PF.

Below the Statement of Claim is the Injury which States;

"Nelson Hearing judge believed Counsel, AKA Jane Dowe's lie, and as a result the judge refuse to give Plaintiff another attorney, and or allow Plaintiff to receive the original magnanimous 25-months Plea Offer. Where Plaintiff was Forced to accept a sentence that was 8-months greater than the original Plea Offer. . . * Plaintiff is 61-years old and is in imminent serious Physical danger do to the coronavirus epidemic in Prison."

Below the Injury on Page 5. Plaintiff, Petitioner wrote the Relief Sought. But the District Court, Middle District of Florida. Entered a order dismissing the case "For Failing to state a claim under 42 U.S.C. § 1983." (APPx, D). Even while the Petitioner's complaint was not Filed, Pursuant, to 42 U.S.C. § 1983. The District court then enters contradictory rulings on Amended Complaint. One ruling states, "... leave to amend would be Futile " (APPx, D, Pg. 2). The other states, " Plaintiff's motion to amend his complaint (Doc. 3) is Granted . . . (APPx, D, Pg. 2). The District Court also denied the Petitioner to appeal the case in Forma Pauperis, stating, "There are no non-frivolous issues to raise on appeal" (APPx, C).

The Petitioner moved the Eleventh Circuit to Proceed on Appeal in Forma Pauperis. And the Eleventh Circuit Court of Appeals, denied leave to Proceed. And dismissed the case as being Frivolous, (APPx, A), Without elucidating a reason it believed it was Frivolous.

ISSUE ONE

The District Court Denied Petitioner Due Process To Be Heard By Dismissing The Civil Suit Under 42 U.S.C. § 1983

The Petitioner Filed a Motion to Amend Civil Suit (Dist. Ct. Doc. 3). And a Amended Civil suit on July 30th, 2021, (Dist. Ct. Doc. # 3). A Second notation OF the Filed Amended civil suit was noted on October 18th, 2021, (Dist. Ct. Doc # 8). APProximately 30-days thereafter the District Court on November 18th, 2021, . The court alleges that the Petitioner "Failed to state a claim under 42 U.S.C. § 1983, (APPx. D)". The Amended Civil suit clearly noted jurisdiction under the 7th Amendment, and 28 U.S.C. § 1343.

28 U.S.C. § 1343 gives jurisdiction to litigants who were deprived OF rights, and or Privileges by "any conspiracy mentioned in section 1985 OF Title 42". Petitioner's counsel, Jane Dowe, conspired with Julian Holt, another assistant Public Defender, and a judge. In order to be allowed to Fashion representation and lies that Prevented this Petitioner From receiving the magnanimous 24-months sentence. The Petitioner was Prejudice by the District Court's altering the civil suit to 42 U.S.C. § 1983. For the element OF conspiracy is not an element For

42 U.S.C. § 1983, And the cases the court used to support the dismissal Case; Holt V. Crist, 233 F. App'x 900 (11th Cir. 2007), and Polk County V. Dodson, 454 U.S. 312 (1981). Do not relate to the elements of a claim concerning conspiracy, and on a Nelson Hearing Proceeding.

Where the District Court denied the Petitioner Due Process to be heard on his 28 U.S.C. § 1343 civil suit claim.

QUESTION ONE

Can A District Court Force A Prisoner To File A 42 U.S.C. § 1983 Form When The Prisoner Chose To File A Different Applicable Civil Suit Form?

PLAIN ERROR ISSUE

The Petitioner says a Plain Error Issue is tied to the District Court's ruling, and handling of this case. Where the Petitioner says he was denied Due Process. The Due Process denial here related to the court's handling of Petitioner's Privilege to Proceed In Forma Pauperis. And the Right to access to the courts.

The Petitioner Filed a Complaint, and Motion to Proceed In Forma Pauperis, on July 8th, 2021, (Dist. Ct. Doc #1,2). The Court denied Motion to Proceed In Forma Pauperis. And directed Petitioner to File a Consent Form in (30) days, on August 8th, 2021, (Dist. Ct. Doc. #4).

* The Sixth Amendment Right to counsel must be safeguarded, and Trustworthy For Defendants, and court Officials. Lies terminates the Right to counsel.

The Petitioner complied to the order on September 20th, 2021, timely, (Dist. Ct. Doc# 5). And the court allowed the Magistrate judge to Grant the Petitioner Permission to Proceed in Forma Pauperis on October 14th, 2021, (Dist. Ct. Doc# 7). The court reviewed the civil complaint on August 23rd 2021, and October 18th, 2021, (Doc # 4, 7). And did not Find the claim to be

Frivolous, Malicious, and or Failed to state a claim where relief could be granted. As 28 U.S.C. § 1915 requires the court to do before allowing the Petitioner to Proceed in Forma Pauperis.

The (PLRA), and 28 U.S.C. § 1915 direct courts to make a review of the civil suit. To determine whether the Complaint "Fails to state a claim" where relief could be granted, before allowing the litigant to Proceed in Forma Pauperis. Once

the Petitioner was allowed to Proceed in Forma Pauperis. The civil complaint has Passed Preliminary dismissals, and is declared to have standing under Title III. See Lujan V.

Defenders of Wildlife, 504 U.S. 555 ()

Where the District Court's dismissal For Failing to state a claim after (3) in Forma Pauperis reviews is Plain Error.

ISSUE TWO

A Public Defender's Harmful Action During Nelson Hearing Is NOT Action of Representing A Defendant And Therefore Relevant In Civil Complaints

In this civil complaint, the Petitioner's Statement of Claim. Explained that his assistant Public Defender lied during a Nelson hearing. The District Court dismissed the complaint under Supreme Court President. Which held that a Public Defender action during representing a Defendant. Is not operating "under Color of State law..." "... because they are not state actors..." (APPX, D). See Polk County V. Dodson, 454 U.S. 312, at, 325 (1981). And we can likely say the Eleventh Circuit Court of Appeals Followed the District Court's ruling (APPX, A). The question here is, is a Public Defender representing the Defendant, Petitioner during a Nelson Hearing. The Petitioner says no. Because at a Nelson Hearing the Public Defender challenged, and reviewed by the court. On whether he or she has been Providing the Professional assistance of Counsel as mandated by the 6th Amendment to the United States Constitution. The Defendant's Counsel was appointed to represent, is now

the Public Defender's accuser. And the Public Defender is Forced to represent herself against allegations of being incompetent, and or unProfessional. It would be unfair to leave the Public Defender with representing the Defendant at the same-time she or he must represent self. Fortunately, our U. S. Constitution does not allow such unfair situation to exist in our judiciary. For 5th Amendment to the U. S. Const.

States, " . . . nor shall any Person be . . . Compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or Property without due Process of law; . . . "

A Nelson hearing is an Administrative Proceedings, but it can turn into a criminal, and or civil liability case at any time. Where the Public Defender has to be on guard of what is said, and or how it is said. The 6th Amendment to the United States Constitution also shows why an accused Public Defender must be allowed to Fully represent herself, and or have representation at a Nelson hearing. For the 6th Amendment gives the Nelson Hearing Counsel the right to confront her accuser, and have representation of counsel. And in Washington V. Stricklin, this court held that the 6th Amendment to counsel allows a Person to Represent themselves, as —

Respondent, Jane Dowe, did at the Nelson Hearing. These Facts demonstrate that Respondent, Jane Dowe, was not representing Petitioner, Davis, during the Nelson Hearing. For there is no Provision, and or law that allows the Public Defender to represent two (2) different people at the same time. Where the District Court, and the Eleventh Circuit Courts order dismissing this case for, "Failing to state a claim, and Frivolous". Is not supported by the Facts, and or the law, and should not have been dismissed. Where this case should have been scheduled for jury trial.

* This is a case where the Petitioner had no arguments with his Public Defender, Jane Dowe. No had Petitioner done any negative act to Respondent, Jane Dowe, during her representing Petitioner in State-Court. Respondent, Dowe, did tell Petitioner that he has a history for Pushing For a Sentence he wanted. And that was not liked by Respondent, Jane Dowe. So counsel, Jane Dowe, lied to the Nelson Hearing judge. That she conveyed the 24-month Plea offer to me. And, "He told me, he did not want to accept it. . . So that is what I told the judge, that he wished to reject the offer. . ." In order to prevent Petitioner from receiving the 24-months Sentence. For the U.S. Middle District of Florida has the Habeas Corpus record that shows that Respondent, Jane Dowe, did not tell judge, Timmerman, this during the February 12th, 2014, Plea Offer Proceeding, of State-court case # 2013-CF-01745, and 2013-CF-18157. Proving Jane Dowe lied.

The transcripts will show that Judge Timmerman made three attempts to get Respondent, Dowe, to take a time-out to resolve the case with a plea agreement today. And on all three attempts Jane Dowe refused to do so. But instead requested a trial date. So this Petitioner could lose out on the magnanimous 24-months plea offer. And at no time did Respondent, Jane Dowe, tell Judge Timmerman that Petitioner, Davis, did not want to accept the plea offer. I have very little access to case law from the law library. But this Supreme Court has fully held in 'Frye'. That if a counsel's action, and or advice cause a Defendant to lose a favorable sentence for a longer sentence. The Defendant has been denied effective assistance of counsel. See Lafler v. Cooper, 566 U.S. 156, [1] (2012).

The "Frye" and "Lafler v. Cooper", case gave notice to Respondents before the February 12th, 2014, proceeding occurred. That their action, and or inaction is a violation of the Petitioner's 6th and 14th Amendment Rights to the United States Constitution.

Bobby V. Van Hook, 558 U.S. 4 (2009)
at 9, [2] [W]hile states are free to impose whatever specific rules they see fit to ensure that criminal defendants are well represented. We have held that the Federal Constitution imposes one general requirement; that counsel make objectively reasonable choices."

The District Court's reason for dismissing this case does not apply to the facts and circumstances of this case. Because the assistant Public Defender's harmful actions against the Petitioner, did not accrue while representing the Petitioner. The Petitioner's complaint therefore has standing to proceed.

QUESTION TWO

Is A Nelson Hearing A Neutral Zone That Allows A Person To Sue His Public Defender Who Extended His Sentence By Lying ?

ISSUE THREE

The Circuit Court of Appeal's Dismissal Without Reason Denied The Petitioner Due Process To An Appeal

The District Court dismissed the Petitioner's complaint on November 18th, 2021, . And the Petitioner filed a timely Notice of Appeal on December 17th, 2021, (Dist. Ct. Doc. 9, 11). The District Court dismissed the complaint, alleging the Petitioner "Failed to state a claim" (Doc. # 9). And on January 13th, 2022, the District Court denied the Petitioner to Appeal in Forma Pauperis. Alleging "There are no non-frivolous issues to raise on appeal (APPX. C). But because the District court still charged the Petitioner the full Filing Fee for an appeal (APPX. C). The Eleventh Circuit Court

OF APPEALS allowed the Petitioner to Appeal the case. Then dismissed the appeal alleging its Frivolous, without reason (APPx - A). The Petitioner says, because the Eleventh Circuit did not elucidate a reason for alleging the appeal is Frivolous. The court denied Petitioner Due Process to an appeal. The main Purpose for an appeal. Is to have another court review the lower court's handling of the case. But the Eleventh Circuit's order clearly shows that they did not review the case. But instead, relied on the District Court's order denying Petitioner to Appeal in Forma Pauperis (APPx.A). Because on February 4th, 2022, the Petitioner Filed, "Appellant's Motion To Show That This Appeal Is Sought In Good Faith (Exh. H)". Fact Four (4) of the Motion, and Page three (3), elucidates why the Nelson Hearing issue makes the claim Plausible. The Motion clearly elucidates that the claim is not Frivolous (Exh. H, Pg. 3-4). But the circuit court declined to give the Petitioner Due Process on review.

Boddie V. Connecticut, et.al, 401 U.S. 371 (1971)

at 374, [2] "At its core, the right to due Process reflects a Fundamental value in our American Constitutional system. Our understanding of the value is the basis upon which we resolved this case."

at 377, [3] "... First, that due Process requires, at a minimum, that, persons Force to settle their claims of right and duty through the judicial Process must be given a meaningful -

opportunity to be heard.

at 440, "... the judicial Proceeding becomes the only effective means of resolving the dispute at hand and denial of a ... Full access to that Process raises grave Problems For its legitimacy."

The Petitioner was not allowed the Full access to judicial Process on this appeal. The Petitioner remembers that this court recognized, That when a Privilege is given, as the Privilege to an appeal is given in this case, That Privilege (Appeal), is Protected by the United States Constitution.

In Ashcroft V. Iqbal, the Supreme Court address, dismissals, collateral-order doctrine, and how appeals courts must address issues that turn on an issue of law, Ashcroft, 556 U.S. at 673, [3].

Ashcroft V. Iqbal, 556 U.S. 662 (2009)

[2] "... Congress has vested the courts of appeals with jurisdiction of appeals from all final decisions of the district courts of the United States, 28 U.S.C. § 1291."

at 678, [10] "... to state a claim to relief that is Plausible on its Face. A claim has Facial Plausibility when the Plaintiff Pleads Factual content that allows the court to draw the reasonable inference that the defendant is liable For the misconduct alleged."

The Supreme Court in Ashcroft, sent the case back to the Circuit Court of Appeals. To decide whether 'Iqbal' should be permitted to amend claim to be Plausible. This Petitioner already amended the claim in the circuit court. By Presenting the Nelson Hearing Factual issue in, "Motion To Show That This Appeal Is Sought In Good Faith"; (Exh. H).

QUESTION # TWO

Is A Nelson Hearing A Neutral Zone That Allows A Person To Sue His Public Defender Who Extended His Sentence By Lying ?

CONCLUSION

The Petitioner Respectfully ask this court to Answer the Question concerning 6th Amendment damage during a Nelson Hearing, And or Send The Case back to The Eleventh Circuit.

Robert L. Davis
Respectfully Submitted
Robert L. Davis # 652400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished by PrePaid U.S. mail to ; Julian Holt, at, Public Defender's Office, P.O. Box 172911, Tampa, FL 33601, on this 11th day of January, 2023.

Robert L. Davis
Robert L. Davis # 652400
Santa Rosa Correction Institution
5850 E. Milton Road
Milton, FL 32583-7914

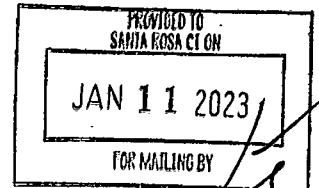
IN THE SUPREME COURT OF THE UNITED STATES

ROBERT L. DAVIS
Petitioner,

V.

Case NO. 22-5698

JULIAN HOLT, et. al.,
Respondents,



APPENDIX # 2

Exhibits

- 1.) Exh. F. - District Court Docket Sheet.
- 2.) Exh. G. - Response From the state-court When the Petitioner requested the legal name of Jane Dowe, assistant Public Defender.
- 3.) Exh. H. - Motion To show That This Appeal Is Sought In Good Faith, Filed in Eleventh Circuit Court OF APPEALS.

Robert L. Davis

Robert L. Davis # 652400
Santa Rosa Correction Institution
5850 E. Milton Road
Milton, FL 32583-7914

APPEAL, CLOSED, TpaP-2

U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:21-cv-01628-MSS-SPF

APP. NO. 21-14393-J

Davis v. Holt et al
Assigned to: Judge Mary S. Scriven
Referred to: Magistrate Judge Sean P. Flynn
Cause: 42:1983 Civil Rights Act

Date Filed: 07/08/2021
Date Terminated: 11/19/2021
Jury Demand: None
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff**Robert L. Davis**

represented by **Robert L. Davis**
652400
Graceville Correctional Facility
5168 Ezell Rd.
Graceville, FL 32440
PRO SE

V.

Defendant

Julian Holt
Public Defender

Defendant

Jane Dowe
Assistant Public Defender

Exh. F

Date Filed	#	Page	Docket Text
07/08/2021	<u>1</u>		COMPLAINT against Jane Dowe, Julian Holt filed by Robert L. Davis. (Attachments: # <u>1</u> Mailing Envelope)(LD) (Entered: 07/08/2021)
07/08/2021	<u>2</u>		MOTION to Proceed In Forma Pauperis by Robert L. Davis. (LD) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 07/08/2021)
07/30/2021	<u>3</u>		MOTION to Amend <u>1</u> Complaint by Robert L. Davis. (Attachments: # <u>1</u> Mailing Envelope)(LD) (Entered: 08/02/2021)
08/23/2021	<u>4</u>		ORDER denying without prejudice <u>2</u> Motion to Proceed In Forma Pauperis. Within THIRTY (30) DAYS from the date of this order, Davis shall either pay the filing fee or file a fully completed "Prisoner Consent Form and Financial Certificate". Signed by Judge Mary S. Scriven on 8/23/2021. (KMG) (Entered: 08/23/2021)
09/20/2021	<u>5</u>		MOTION to Proceed In Forma Pauperis / PRISONER consent form and financial certificate by Robert L. Davis. (Attachments: # <u>1</u> Mailing Envelope)(LD) Modified on 10/14/2021 (JNB). (Entered: 09/22/2021)

09/29/2021	<u>6</u>	NOTICE of change of address by Robert L. Davis (Attachments: # <u>1</u> Mailing Envelope)(LD) (Entered: 09/29/2021)
10/14/2021	<u>7</u>	ORDER granting <u>5</u> Motion to Proceed In Forma Pauperis. Signed by Magistrate Judge Sean P. Flynn on 10/14/2021. (Flynn, Sean) (Entered: 10/14/2021)
10/18/2021	<u>8</u>	AMENDED COMPLAINT against Jane Dowe, Julian Holt filed by Robert L. Davis. (Attachments: # <u>1</u> Mailing Envelope)(LD) (Entered: 10/20/2021)
11/18/2021	<u>9</u>	ORDER granting <u>3</u> Motion to Amend Complaint to the extent that the <u>8</u> amended complaint is accepted as filed. This case is DISMISSED without prejudice for failure to state a claim. See 28 U.S.C. § 1915A(b)(1). The Clerk of Court is directed to enter judgment accordingly, terminate any pending motions, and CLOSE this case. Signed by Judge Mary S. Scriven on 11/18/2021. (KMG) (Entered: 11/18/2021)
11/19/2021	<u>10</u>	JUDGMENT in favor of Jane Dowe, Julian Holt against Robert L. Davis. (Signed by Deputy Clerk) (LD) (Entered: 11/19/2021)
12/17/2021	<u>11</u>	NOTICE OF APPEAL as to <u>9</u> Order on Motion to Amend / Correct / Modify / Supplement by Jane Dowe. Filing fee not paid. (Attachments: # <u>1</u> Mailing Envelope)(LD) (Entered: 12/17/2021)

EXH. F1

**IN THE CIRCUIT/COUNTY COURT OF THE THIRTEENTH JUDICIAL CIRCUIT, IN
AND FOR HILLSBOROUGH COUNTY, FLORIDA
NOTICE OF UNPAID BALANCE**

STATE OF FLORIDA
vs
DAVIS, ROBERT LESLIE

8/23/2021
Division: Trial 2

TO: Case Number: 13-CF-018157-A
DAVIS, ROBERT LESLIE
ROBERT L. DAVIS #652400
LAKE CORRECTIONAL INSTITUTION
19225 U.S. HIGHWAY 27
CLERMONT FL 34715

Exh. G

Current Balance Due: 665.00
Pay By Date: 11/21/2021

Florida Statute 28.246(6) mandates the Clerk of Court pursue the collection of any fees, service charges, fines, court costs, or other fees, which remain unpaid for 90 days or more. The above outstanding balance must be paid by the due date or the Clerk will pursue collections through Florida Statute 322.245(5) (a) and/or Florida Statute 28.246(6).

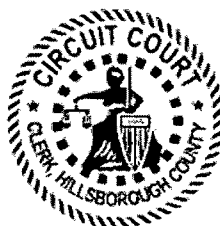
Florida Statute 322.245(5) (a) authorizes the Clerk of Court to notify the Department of Highway Safety Motor Vehicles (DHSMV) of your failure to pay financial obligations related to criminal offenses, which will result in the suspension of your driver's license. Florida Statute 28.246(6), authorizes unpaid balances to be referred to a collection agent and liens be placed against your property. This will add additional penalties of up to 40% of the amount owed along with additional fees and interest. You may enroll in a structured payment plan with the Clerk of Court prior to your case being referred to a collection agent.

Online Payments by Credit Card (24/7):	hover.hillsclerk.com
Phone Payments by Credit Card (24/7):	813-276-8100
AMSCOT Payment by Cash:	https://www.amscot.com/hillsborough-county-clerk-of-court.aspx
Mail Check or Money Order	Clerk of Circuit Court & Comptroller – P.O. Box 3360 Tampa FL 33601
In Person Payments: (Mon-Fri 9 am – 4 pm)	Edgecomb Courthouse – 800 E. Twiggs St Rm 101 Tampa 33602 Plant City Courthouse – 301 N. Michigan Ave Rm 1071 Plant City 33563
Credit Cards Accepted:	Visa, MasterCard, Discover, American Express (Government Issued Photo ID matching name on Credit Card required)

CINDY STUART
CLERK OF THE CIRCUIT COURT

13-CF-018157-A, 8/23/2021 2:16:04 AM

Cindy Stuart
CINDY STUART CLERK



IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ROBERT L. DAVIS
Appellant,

Case NO: 21-14393-J

V.

Dist. Ct. NO: 8:21-CV-01628-MSS-SPI

JULIAN HOLT, et al,
Appellee,

Exh. H

APPELLANT'S MOTION TO SHOW THAT THIS
APPEAL IS SOUGHT IN GOOD FAITH

Appellant, Pro Se, Robert L. Davis, here Files Motion To show That This Appeal Is Sought In Good Faith. The District Court dismissed the appellant's civil suit, and motion to appeal in Forma Purperis, alleging the suit is Frivolous, and not appealed in good Faith. The District Court's dismissal and denial to appeal in Forma Purperis is not based on Facts and laws concerning circumstances of the case. And as Facts, and laws will herefore show:

- 1.) The District Court dismissed a 28 U.S.C. § 1343 civil suit under a 42 U.S.C. § 1983 civil suit review.
- 2.) 42 U.S.C. § 1983 review does not apply to the civil suit review of 28 U.S.C. § 1343.

3.) A Public Defender can be sued under the conspiracy statute of 28 U.S.C. § 1343.

4.) But assuming that a Public Defender cannot be sued under 42 U.S.C. § 1983, the incident in which the claim is filed occurred when the Public Defender was not representing Appellant, as the incident occurred during an Administration Proceeding (Nelson Hearing), where the Public Defender was defending herself against Appellant's incompetent counsel complaint, and during Nelson Hearings the Public Defender, and any and all such attorneys are in a neutral zone.

Appellant's Filed Amended Complaint list 28 U.S.C. § 1343, as being filed under this statute giving the court jurisdiction (Doc #8, Pg. 3). The statement of Claim states, his counsel (Assistant Public Defender) lied to the Nelson Hearing judge, who was a different judge from the judge at the initial Plea Offer. That counsel conveyed the Plea Offer to Appellant, but Appellant told her he didn't want the offer. And that is what she told the judge at the Plea Offer Proceeding (Doc. #8, Pg. 4). The Nelson hearing judge said he believed the Public Defender's statement, that this is what took place. And as a result, Appellant was given the option of going to trial on two burglary charges in which the Prosecutor possessed evidence of Appellant's blood DNA found at the scene of the burglary. Or Appellant could except a Plea deal that was none months longer than the initial Plea Offer. For the Appellant notified the court, he wanted to accept.

The District Court reviewed Appellant's 28 U.S.C. § 1334 suit, under 42 U.S.C. § 1983 (Doc. #9, Pg. 1). And dismissed the civil suit Pursuant, to 42 U.S.C. § 1983 'Color of State law' doctrine.

As the U.S. Supreme Court held that Public Defenders are not under 'color of State law' doctrine for claims of action associated with representing an indigent defendant, citing Polk County V. Dodson, 454 U.S. 312, at 325 (1981). But the court recognized that Public Defenders action fall under color of State law when performing administrative and investigative functions, "Dodson", 425 U.S. at 325 [1C]. For a Nelson Hearing in which Appellant's Public Defender intentionally lied to harm Appellant from receiving a manumunus sentence, is an Administrative Proceeding. A Public Defender whose action and or inaction is being reviewed by a judge in a Nelson Hearing. Is not representing the Defendant who makes an ineffective assistance of counsel complaint. For that Public Defender is in a neutral zone, representing him and or herself. The Administrative Judicial Proceedings of a Nelson Hearing are properly presented and reviewable under 42 U.S.C. § 1983. But Appellant's civil suit was amended pursuant to 28 U.S.C. § 1343 (Doc. #8, Pg. 3). As Appellant's Public Defender conspired with another assistant Public Defender to deny Appellant due process, and his 6th Amendment to effective assistance of counsel, pursuant to the United States Constitution.

28 U.S.C. § 1343 Civil Rights and Elective Franchise
(a) "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any Person:

(1) "To recover damages for injury to his Person or Property, or because of the deprivation of any right or Privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42";

The right to counsel is a 'vested right', that cannot be impaired or taken away without the Person's consent."

Because Appellant's Public Defender, and assistant Public Defender, (AKA) Jane Dow's action Falls under action that is Administrative, and in the neutral zone of a counsel representation, the Appellant's civil suit is not Frivolous, but is a valid stated claim under 42 U.S.C § 1983, and 28 U.S.C. § 1343.

Robert L. Davis
Respectfully Submitted
Robert L. Davis #652400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished by Prepaid U.S. mail to; Public Defender, Julian Holt, at, P.O. BOX 172910, Tampa, FL. 33601, on this 4th, day of February, 2022.

Robert L. Davis
Robert L. Davis #652400
Graceville Correction Facility
5168 Ezell Road
Graceville, FL 32440