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**SEE  
APPENDIX 4  
THAT  
CONTAINS  
EXHIBITS 1, 2, 3  
AND 4**

# **APPENDIX EXHIBIT 1**

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JUN 14 2024

Dade C.I. 

UNITED STATES COURT OF APPEAL  
FOR THE ELEVENTH CIRCUIT

Case No.: 24-10477-G

Dist. Ct. No.: 1:23-cv-24808-KMW

SAMUEL RIVERA,  
Petitioner/Appellant,

v.

STATE OF FLORIDA,  
Respondent/Appellee.

APPELLANT'S INITIAL BRIEF

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On Appeal from the United States District Court,  
Southern District of Florida to the United States  
Court of Appeal for the Eleventh Circuit for  
The Review in the Merits under Title 28 U.S.C.  
§ 2241(a), (c)(3)

---

Samuel Rivera, DC# 180695  
Dade Correctional Institution  
19000 SW 377<sup>th</sup> Street  
Florida City, Florida 33034

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

August 08, 2024

Samuel Rivera  
Dade CI - Inmate Legal Mail  
19000 SW 377TH ST  
S UNIT  
FLORIDA CITY, FL 33034-6409

Appeal Number: 24-10477-G  
Case Style: Samuel Rivera v. State of Florida  
District Court Docket No: 1:23-cv-24808-KMW

**NO ACTION / DEFICIENCY NOTICE**

Notice that no action will be taken on Motion for In forma pauperis filed by Appellant Samuel Rivera.

Reason(s) no action being taken on filing(s): The deficiencies that caused this case to be dismissed have not been remedied..

**No deadlines will be extended** as a result of your deficient filing.

**ACTION REQUIRED**

For motions for reconsideration or petitions for rehearing that are not permitted, no action is required or permitted. Your filing will not be considered.

For mistaken filings, to have your document considered, **you must file the document in the correct court.**

For all other deficiencies, to have your document considered, you **must refile the entire document** after all the deficiencies identified above have been corrected and you **must include** any required items identified above **along with** the refiled document. No action will be taken if you only provide the missing items without refileing your entire document.

IN AUG. 21, 2024 THE APPELLANT'S REFILED THE ENTIRE  
INITIAL BRIEF WITH ALL THE MISSING ITEMS FOR THE  
COURT TO RULE AND THE MERITS!!

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

For rules and forms visit  
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December 03, 2024

Samuel Rivera  
Dade CI - Inmate Legal Mail  
19000 SW 377TH ST  
S UNIT  
FLORIDA CITY, FL 33034-6409

Appeal Number: 24-10477-G  
Case Style: Samuel Rivera v. State of Florida  
District Court Docket No: 1:23-cv-24808-KMW

This appeal is closed.

Clerk's Office Phone Numbers

General Information: 404-335-6100  
Case Administration: 404-335-6135  
CM/ECF Help Desk: 404-335-6125

Attorney Admissions: 404-335-6122  
Capital Cases: 404-335-6200  
Cases Set for Oral Argument: 404-335-6141

MP-1

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

For rules and forms visit  
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February 20, 2025

Samuel Rivera  
Dade CI - Inmate Legal Mail  
19000 SW 377TH ST.  
S UNIT  
FLORIDA CITY, FL 33034-6409

Appeal Number: 24-10477-G  
Case Style: Samuel Rivera v. State of Florida  
District Court Docket No: 1:23-cv-24808-KMW

**NO ACTION / DEFICIENCY NOTICE**

Notice of receipt: Inquiry as to Appellant Samuel Rivera. NO ACTION WILL BE TAKEN This case is closed.

**No deadlines will be extended** as a result of your deficient filing.

**ACTION REQUIRED**

For motions for reconsideration or petitions for rehearing that are not permitted, no action is required or permitted. Your filing will not be considered.

For mistaken filings, to have your document considered, **you must file the document in the correct court.**

For all other deficiencies, to have your document considered, you **must refile the entire document** after all the deficiencies identified above have been corrected and you **must include** any required items identified above **along with** the refiled document. No action will be taken if you only provide the missing items without refile your entire document.

Please note that any filing submitted out of time must be accompanied by an appropriate motion, *i.e.*, a motion to file out of time, a motion to reinstate if the case has been dismissed, and/or a motion to recall the mandate if the mandate has issued.

Clerk's Office Phone Numbers

General Information: 404-335-6100

Case Administration: 404-335-6135

CM/ECF Help Desk: 404-335-6125

Attorney Admissions: 404-335-6122

Capital Cases: 404-335-6200

Cases Set for Oral Argument: 404-335-6141

Notice No Action Taken

# **APPENDIX**

## **EXHIBIT 2**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Legal Mail  
Received  
DEC 13 2023  
Dade C.I. 52

SAMUEL RIVERA,  
Petitioner,

v.

Case No.: 1:23-CV-24808-KMW

STATE OF FLORIDA,  
Respondent.

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PETITION FOR WRIT OF HABEAS CORPUS  
UNDER 28 U.S.C. §2241(3)

Petitioner Samuel Rivera, pro se pursuant to Title 28 U.S.C §2241(a)(3) Federal 'District Court has the authority to issue its writ of habeas corpus for a claim petitioner is being held in custody "in violation of the United States Constitution or Laws or Treaties of the United States." The Petitioner asserts a cause of action under the general federal habeas corpus statute (28 U.S.C. 2241(3)).

The Petitioner being held in custody in violation of the Fifth Amendment of the United States Constitution and "judgment of acquittal" granted by the trial court and all charge in the judgment the verdict of not guilty reduced dismissal of the case. This proceeding will show the Petitioner being held in custody in violation of Title 28 U.S.C. §2241(3).

CLOSED,HABEAS,WM

**U.S. District Court**  
**Southern District of Florida (Miami)**  
**CIVIL DOCKET FOR CASE #: 1:23-cv-24808-KMW**  
**Internal Use Only**

Samuel Rivera v. State of Florida  
Assigned to: Judge Kathleen M. Williams  
Cause: 28:2241 Petition for Writ of Habeas Corpus (Federal)

Date Filed: 12/19/2023  
Date Terminated: 01/03/2024  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus  
(General)  
Jurisdiction: Federal Question

**Plaintiff**

**Samuel Rivera**  
*also known as*  
Tony El Enfermo

represented by **Samuel Rivera**  
180695  
Dade Correctional Institution  
Inmate Mail/Parcels  
19000 SW 377th Street  
Florida City, FL 33034  
PRO SE

V.

**Defendant**

**State of Florida**

represented by **Noticing 2241/Bivens US Attorney**  
Email: usafls-2255@usdoj.gov  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
12/19/2023	<u>1</u>	APPLICATION/PETITION (Complaint) for Writ of Habeas Corpus pursuant to 28 U.S.C. 2241. Filing fee \$ 5.00 (Filing fee not paid/IFP Motion not filed), filed by Samuel Rivera. (Attachments: # <u>1</u> Exhibit 1 - 4, # <u>2</u> Exhibit Inmate Trust Fund Request to Withdraw)(kma) (Entered: 12/19/2023)
12/19/2023	2	Judge Assignment to Judge Kathleen M. Williams (kma) (Entered: 12/19/2023)
12/29/2023	<u>3</u>	Clerks Notice of Receipt of Filing Fee received on 12/29/2023 in the amount of \$ 5.00, receipt number FLS280376. (jes) (Entered: 12/29/2023)
01/03/2024	<u>4</u>	ORDER OF DISMISSAL, Closing Case. No certificate of appealability shall issue. Signed by Judge Kathleen M. Williams on 1/2/2024. <i>See attached document for full details.</i> (Attachments: # <u>1</u> Application for Leave to File a Second or Successive Habeas Corpus Petition) (nwn) (Entered: 01/03/2024)

01/03/2024	<u>5</u>	CLERK'S NOTICE of Compliance. Copy of DE <u>4</u> Order Dismissing/Closing Case, and Application for Leave to File a Second or Successive Habeas Corpus Petition 28 U.S.C. § 2244(b) by a Prisoner in State Custody form mailed to Samuel Rivera. (nwn) (Entered: 01/03/2024)
01/22/2024	<u>6</u>	Petitioner File Extraordinary Writ of Error Pursuant to 28 U.S.C 1651(1) 2023 in Objection to the Honorable Federal Judge Order for Dismissal the Petitioner for Writ of Habeas Corpus Pursuant to Title 28 U.S.C 2241(a)(3) 2023 re <u>4</u> Order Dismissing/Closing Case, by Samuel Rivera. (Attachments: # <u>1</u> Appendix)(nwn) (Entered: 01/22/2024)
01/25/2024	<u>7</u>	ORDER re <u>6</u> Petitioner's § 1651 Petition is DISMISSED for lack of jurisdiction. No certificate of appealability shall issue. Case Closed. Signed by Judge Kathleen M. Williams on 1/25/2024. <i>See attached document for full details.</i> (cds) (Entered: 01/25/2024)
02/02/2024	<u>8</u>	NOTICE of Inquiry by Samuel Rivera re <u>6</u> Response/Reply (Other). (Copy of the Docket Sheet Mailed). (nwn) (Entered: 02/02/2024)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 23-24808-CV-WILLIAMS

SAMUEL RIVERA,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

---

ORDER OF DISMISSAL

**THIS MATTER** is before the Court on the fifth *pro se* Petition for Writ of Habeas Corpus (DE 1)<sup>1</sup> ("**Fifth Petition**") brought pursuant to 28 U.S.C. § 2241 by Petitioner Samuel Rivera. Petitioner challenges the constitutionality of his convictions for first degree murder and robbery with a gun or deadly weapon and resulting life sentence entered in the Miami-Dade County Circuit Court, Case No. F85-25037. (*Id.* at 2.) Because Petitioner challenges a state court judgment, the Court properly treats the Fifth Petition as one brought pursuant to 28 U.S.C. § 2254.<sup>2</sup> For the following reasons, this Fifth Petition is **DISMISSED**.

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<sup>1</sup> The Court uses the pagination generated by the Case Management/Electronic Case Files Systems ("**CM/ECF**"), which appears on all court filings. Citations to the docket in this proceeding are designated "DE."

<sup>2</sup> It is well established that courts may "look behind the label of a motion filed by a *pro se* inmate and determine whether the motion is, in effect, cognizable under a . . . statutory framework." See *United States v. Jordan*, 915 F.2d 622, 624-25 (11th Cir. 1990); see also *Castro v. United States*, 540 U.S. 375, 381-82 (2003). Because Petitioner challenges his state court judgment, the proper means to seek relief is by writ of habeas corpus pursuant to 28 U.S.C. § 2254 and not a § 2241 petition. See *Johnson v. Warden, Ga. Diagnostic & Classification Prison*, 805 F.3d 1317, 1323 (11th Cir. 2015) (finding "[a] state prisoner cannot evade the procedural requirements of § 2254 by characterizing his filing as a

## I. BACKGROUND

### A. State Criminal Proceedings

Petitioner was previously convicted of first-degree murder and armed robbery and sentenced to life imprisonment on the murder conviction and 134 years in prison as to the armed robbery conviction. On June 21, 1988, the appellate court *per curiam* affirmed the convictions, but on the State's concession of error, reversed the armed robbery sentence with directions that the trial court impose a sentence within the range of the recommended guideline. See *Rivera v. State*, No. 87-650, 526 So. 2d 1046, 1046 (Fla. 3d DCA June 21, 1988). On June 13, 1989, pursuant to the appellate court's mandate, the trial court entered an Order correcting the sentence and imposing a 20-year term of imprisonment as to the armed robbery conviction.<sup>3</sup>

Review of the on-line trial court docket confirms Petitioner filed numerous *pro se* post-conviction challenges to his convictions and sentences. On March 22, 2022, the Florida Supreme Court entered an Order prohibiting Petitioner from filing further *pro se* pleadings "[b]ased on Rivera's extensive history of filing *pro se* petitions and requests for

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§ 2241 petition") (citing *Thomas v. Crosby*, 371 F.3d 782, 787 (11th Cir. 2004) (finding that "[i]f the terms of § 2254 apply to a state habeas petitioner . . . then we must apply its requirements to him")); see also *Medberry v. Crosby*, 351 F.3d 1049, 1060–61 (11th Cir. 2003) ("[a] state prisoner seeking post-conviction relief from a federal court has but one remedy: an application for a writ of habeas corpus.") (citation omitted). The appropriate manner for Petitioner, in custody pursuant to a state-court judgment, is to challenge the state court judgment by filing a federal habeas corpus petition under 28 U.S.C. § 2254. See *Medberry*, 351 F.3d at 1062. Consequently, the Court has construed Petitioner's filing as a Section 2254 Petition.

<sup>3</sup> The Court takes judicial notice of its own records and the on-line records of the state trial and appellate courts. See Fed. R. Evid. 201; *Nguyen v. United States*, 556 F.3d 1244, 1259 n.7 (11th Cir. 2009) (quoting *United States v. Glover*, 179 F.3d 1300, 1302 n.5 (11th Cir. 1999) ("A court may take judicial notice of its own records and the records of inferior courts.") (citation omitted)).

relief that were meritless or otherwise inappropriate for this Court's review . . . ." *Rivera v. Dixon*, 336 So. 3d 244, 245 (Fla. 3d DCA 2022).

### **B. Federal Habeas Corpus Proceedings**

In 1994, Petitioner filed a first § 2254 petition ("**First Petition**") attacking the same convictions and sentences he attacks here. See *Rivera v. Sistrunk, et al.*, No. 1:94-cv-02087-JAL (S.D. Fla. 1994), (RDE 1; RDE 22) ("**Rivera I**" and citations to the docket in *Rivera I* are designated "RDE"). On August 27, 1996, the First Petition was denied on the merits. (RDE 27.) On January 21, 1999, the appellate court affirmed the denial and issued its mandate. (RDE 37.)

Between 2009 and 2020, Petitioner filed an additional three federal habeas corpus petitions attacking the same state court judgment, all of which were dismissed for lack of jurisdiction because Petitioner had not obtained permission from the Eleventh Circuit Court of Appeals prior to filing the successive petitions. See *Rivera v. McNeil*, No. 1:09-cv-22643-PCH (S.D. Fla. 2009); *Rivera v. Fla. Dep't of Corr.*, No. 1:11-cv-20688-CMA (S.D. Fla. 2011); and *Rivera v. Brennan, et al.*, No. 1:20-cv-22082-KMW (S.D. Fla. 2020).<sup>4</sup>

On December 13, 2023, Petitioner filed this Fifth Petition. (DE 1.)

## **II. DISCUSSION**

Federal law states that "before a petitioner may file a second or successive [Section] 2254 habeas petition, the petitioner first must obtain an order from [the relevant appellate court] authorizing the district court to consider the petition." *Osbourne v. Sec'y, Fla. Dep't of Corr.*, 968 F.3d 1261, 1264 (11th Cir. 2020) (citing 28 U.S.C.

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<sup>4</sup> Petitioner filed the 2020 case under § 1983, but the Court properly construed it as a § 2254 petition. (DE 22.)

§ 2244(b)(3)(A)). Without such authorization, “the district court lacks jurisdiction to consider a second or successive habeas petition.” *Osbourne*, 968 F.3d at 1264 (citing *Farris v. United States*, 333 F. 3d 1211, 1216 (11th Cir. 2003)). “[T]he bar on second or successive petitions ordinarily prevents a[n] [inmate] from twice contesting the judgment authorizing [their] confinement.” *Patterson v. Sec’y, Fla. Dep’t of Corr.*, 849 F.3d 1321, 1325 (11th Cir. 2017) (citing *Burton v. Stewart*, 549 U.S. 147, 153 (2007)).

Here, the First Petition, the subsequent three petitions, and this latest Fifth Petition “contest[] the [same] judgment authorizing [Petitioner’s] confinement.” *Patterson*, 849 F.3d at 1325 (citation omitted). Consequently, the Fifth Petition constitutes a successive petition for writ of habeas corpus and the Court lacks jurisdiction to consider it without authorization from the Eleventh Circuit Court of Appeals (“**Eleventh Circuit**”). Further, it does not appear that Petitioner has obtained such an authorization.<sup>5</sup> Therefore, the Court lacks jurisdiction to consider the Fifth Petition and must dismiss this action. See *Jeremiah v. Terry*, 322 F. App’x 322, 844–45 (11th Cir. 2009) (affirming dismissal for lack of jurisdiction of successive § 2254 petition raising newly discovered facts claim where petitioner failed to seek permission from appellate court before filing second petition) (relying on 28 U.S.C. § 2244(b)(3)(A)).

---

<sup>5</sup> Construed liberally, Petitioner suggests that the state trial court’s order barring him from future *pro se* filings has prevented him from pursuing his constitutional challenge to his convictions, essentially alleging a denial of access to courts. (DE 1 at 27–28.) However, a denial of access to courts claim is not cognizable in a Section 2254 proceeding and is more properly brought in a civil rights action pursuant to 42 U.S.C. § 1983. See e.g., *Cruitt v. Ala.*, 647 F. App’x 909, 910 (11th Cir. 2016) (pleading raising an access to courts claim is cognizable under Section 1983); accord *Martin v. Wainwright*, 526 F.2d 938, 939 (5th Cir. 1976).

### III. CERTIFICATE OF APPEALABILITY

The Court cannot issue a certificate of appealability, as it lacks jurisdiction to consider the instant Eighth Petition. *Williams v. Chatman*, 510 F.3d 1290, 1295 (11th Cir. 2007) (citation omitted). However, the Court advises that "a certificate is unnecessary to permit [the Eleventh Circuit] to review the [] [C]ourt's order of dismissal[.]. . ." *Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004). Therefore, no certificate of appealability shall issue.

### IV. CONCLUSION

In light of the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. Petitioner's Fifth Petition for Writ of Habeas Corpus (DE 1) is **DISMISSED**.
2. No certificate of appealability shall issue.
3. The Clerk is directed to **TRANSMIT** to Petitioner a copy of this Order together with an "Application for Leave to File a Second or Successive Habeas Corpus Petition 28 U.S.C. § 2244(b) by a Prisoner in State Custody" that he may use to seek an order from the Eleventh Circuit, authorizing the Court to consider a second or successive federal habeas corpus petition.
4. All pending motions are **DENIED AS MOOT**, and all hearings and deadlines are **CANCELED**.
5. The Clerk is directed to **CLOSE** this case.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 2nd day of January, 2024.

  
KATHLEEN M. WILLIAMS  
UNITED STATES DISTRICT JUDGE



**Copies furnished to:**

**Samuel Rivera, *Pro Se***

DC#180695

South Florida Reception Center-South Unit

Inmate Mail/Parcels

13910 NW 41st Street

Doral, FL 33178

**Florida Attorney General**

Noticing 2254 State Attorney General

Email: [FedCourtFilings@oag.state.fl.us](mailto:FedCourtFilings@oag.state.fl.us)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 23-24808-CV-WILLIAMS

SAMUEL RIVERA,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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ORDER

**THIS MATTER** is before the Court on the petition for writ of error coram nobis (DE 6)<sup>1</sup> ("**§ 1651 Petition**") brought pursuant to 28 U.S.C. § 1651 by Petitioner Samuel Rivera ("**Petitioner**"), a prisoner in custody pursuant to a state court judgment of the Miami-Dade County Circuit Court in *State v. Rivera*, No. F85-25037 (11th Jud. Cir. 1985). Petitioner seeks an Order from the Court directing that he be released from custody on the basis that his state court judgment is unconstitutional. (*Id.* at 13.) For the following reasons, the § 1651 Petition is **DISMISSED**.

**I. BACKGROUND**

In 1994, Petitioner filed a first petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 ("**First Petition**") attacking the same convictions and sentences he attacks here. See *Rivera v. Sistrunk, et al.*, No. 1:94-cv-02087-JAL (S.D. Fla. 1994), (RDE 1; RDE 22) ("**Rivera I**" and citations to the docket in *Rivera I* are designated "**RDE**"). On

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<sup>1</sup> The Court uses the pagination generated by the Case Management/Electronic Case Files Systems ("**CM/ECF**"), which appears on all court filings. Citations to the docket in this proceeding are designated "DE."

August 27, 1996, the First Petition was denied on the merits. (RDE 27.) On January 21, 1999, the appellate court affirmed the denial and issued its mandate. (RDE 37.) Between 2009 and 2020, Petitioner filed an additional three federal habeas corpus petitions attacking the same state court judgment, all of which were dismissed for lack of jurisdiction because Petitioner had not obtained permission from the Eleventh Circuit Court of Appeals prior to filing the successive petitions. See *Rivera v. McNeil*, No. 1:09-cv-22643-PCH (S.D. Fla. 2009); *Rivera v. Fla. Dep't of Corr.*, No. 1:11-cv-20688-CMA (S.D. Fla. 2011); and *Rivera v. Brennan, et al.*, No. 1:20-cv-22082-KMW (S.D. Fla. 2020).<sup>2</sup> On December 13, 2023, Petitioner filed a Fifth Petition. (DE 1.) The Fifth Petition also challenged the same state court judgment that was the subject of his prior § 2254 petitions. (*Id.*) On January 3, 2024, the Court entered an Order dismissing the Fifth Petition for lack of jurisdiction as an unauthorized successive filing. (DE 4.) Petitioner did not appeal the Court's Order of dismissal. Instead, Petitioner has filed the § 1651 Petition presently before the Court for consideration.<sup>3</sup>

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<sup>2</sup> Petitioner filed the 2020 case under § 1983, but the Court properly construed it as a § 2254 petition. (DE 22.)

<sup>3</sup> It is well established that courts may "look behind the label of a motion filed by a *pro se* inmate and determine whether the motion is, in effect, cognizable under a . . . statutory framework." See *United States v. Jordan*, 915 F.2d 622, 624-25 (11th Cir. 1990); see also *Castro v. United States*, 540 U.S. 375, 381-82 (2003). Because Petitioner challenges his state court judgment, the proper means to seek relief is by writ of habeas corpus pursuant to 28 U.S.C. § 2254 and not a § 2241 petition. See *Johnson v. Warden, Ga. Diagnostic & Classification Prison*, 805 F.3d 1317, 1323 (11th Cir. 2015) (finding "[a] state prisoner cannot evade the procedural requirements of § 2254 by characterizing his filing as a § 2241 petition") (citing *Thomas v. Crosby*, 371 F.3d 782, 787 (11th Cir. 2004) (finding that "[i]f the terms of § 2254 apply to a state habeas petitioner . . . then we must apply its requirements to him")); see also *Medberry v. Crosby*, 351 F.3d 1049, 1060-61 (11th Cir. 2003) ("[a] state prisoner seeking post-conviction relief from a federal court has but one remedy: an application for a writ of habeas corpus.") (citation omitted). For the reasons set forth in this Order, the appropriate manner for Petitioner to challenge the state court

## II. DISCUSSION

In his § 1651 Petition, the Petitioner seeks an Order from the Court requiring his immediate release from custody because his state court judgment is unconstitutional. (DE 6 at 13.) Petitioner claims the Court erred in dismissing his Fifth Petition as an unauthorized successive filing because § 2254 and § 2244 are unconstitutional, and, therefore, he may proceed with the § 1651 Petition. (*Id.* at 4, 10.)

Petitioner is not entitled to relief under § 1651. Because Petitioner remains in state custody, coram nobis relief is unavailable to him. See *United States v. Garcia*, 181 F.3d 1274, 127–75 (11th Cir. 1999) (citing *United States v. Brown*, 117 F.3d 471, 475 (11th Cir. 1997) (finding if defendant was “in custody” pursuant to a federal judgment when he filed his appeal, then the statutory remedies of 28 U.S.C. § 2255 were available to him and coram nobis relief was unavailable as a matter of law). Further, the writ of error coram nobis is an extraordinary writ, limited to cases in which “[n]o statutory remedy is available or adequate.” *Brown*, 117 F.3d at 474–75 (quoting *Lowery v. United States*, 956 F.2d 227, 228–29 (11th Cir.1992) (citations and internal quotation marks omitted). Coram nobis relief may not be granted here because relief is cognizable under § 2254 regardless of whether the § 2254 petition would succeed. See e.g. *United States v. Holt*, 417 F.3d 1172, 1175 (11th Cir. 2005). Finally, § 1651 may not be used to circumvent the restriction on second or successive federal habeas corpus filings. See *Morales v. Fla. Dep’t of Corr.*, 346 F. Appx. 539, 540–41 (11th Cir. 2009).

To challenge his state court judgment, Petitioner may seek authorization from the Eleventh Circuit Court of Appeals to consider a second or successive § 2254 petition.

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judgment is by filing a federal habeas corpus petition under 28 U.S.C. § 2254 after obtaining permission to do so from the appellate court. See *Medberry*, 351 F.3d at 1062.

See 28 U.S.C. §§ 2244(b)(3)(A) & 2255(h). Consequently, Petitioner is not entitled to relief on his § 1651 Petition.

### III. CERTIFICATE OF APPEALABILITY

The Court cannot issue a certificate of appealability, as it lacks jurisdiction to consider the instant Petition. *Williams v. Chatman*, 510 F.3d 1290, 1295 (11th Cir. 2007) (citation omitted). However, the Court advises that "a certificate is unnecessary to permit [the Eleventh Circuit] to review the [] [C]ourt's order of dismissal[.]. . ." *Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004). Therefore, no certificate of appealability shall issue.

### IV. CONCLUSION

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

1. Petitioner's § 1651 Petition (DE 6) is **DISMISSED for lack of jurisdiction**.
2. No certificate of appealability shall issue.
3. All pending motions are **DENIED AS MOOT**, and all hearings and deadlines are **CANCELED**.
4. The Clerk is directed to **CLOSE** this case.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 25th day of January, 2024.

  
KATHLEEN M. WILLIAMS  
UNITED STATES DISTRICT JUDGE

**Copies furnished to:****Samuel Rivera, *Pro Se***

DC#180695

South Florida Reception Center-South Unit

Inmate Mail/Parcels

13910 NW 41st Street

Doral, FL 33178

**Florida Attorney General**

Noticing 2254 State Attorney General

Email: [FedCourtFilings@oag.state.fl.us](mailto:FedCourtFilings@oag.state.fl.us)

# **APPENDIX**

## **EXHIBIT 3**

The Judge Victoria R. Bernnan Order Imposing  
Sanction in Void Judgment and Judgment of  
Acquittal Grant by the Trial Court Judge is  
Violation of the United States Constitution  
Amendment 5<sup>th</sup> And Florida Constitution Article I,  
Section 9; and Violation of Florida Constitution  
Article II, Section 5(B) of the Oath



Samuel Rivera-180695  
South Florida Reception Center  
South Unit--F2-115  
13910 N.W. 41<sup>st</sup> Street  
Doral, Florida 33178-3014

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN  
FOR MAILING  
INMATE'S INITIALS

STATE OF FLORIDA,  
*Plaintif*

CASE NO. F85-25037  
Section No. 10  
Judge Brennan

vs.

SAMUEL RIVERA  
*Defendant*

CLERK OF CIRCUIT COURT  
MIAMI-DADE COUNTY, FL  
CLERK'S OFFICE  
CLERK'S OFFICE

2012 FEB 21 PM 4:09

FILED FOR RECORD

**ORDER IMPOSING SANCTIONS**

THIS CAUSE has come on to be heard in light of the court's finding, on November 8, 2012, that the defendant's fifth motion for post-conviction relief was frivolous. On that date, the court advised the defendant that he had 30 days to show cause why this court should not order the Clerk of Court to reject any future pleadings by him, unless said pleadings are filed by an attorney licensed in the State of Florida. *Duncan v. State*, 728 So.2d 1237 (Fla. 3<sup>rd</sup> DCA 1999). The court also ordered the defendant to show cause why this finding of frivolousness should not be forwarded to the Department of Corrections for any additional sanctions it sees fit to impose.

On November 27, 2012, the clerk of court received the defendant's Motion to Rule and Hear in which, once again, the defendant asked this court to correct his sentence. This motion was denied on December 20, 2012. Also on December 20, 2012, this court was made aware of another of the defendant's motions, entitled Motion for Leave to Amend Motion to Correct Illegal Sentence, which was likewise denied.

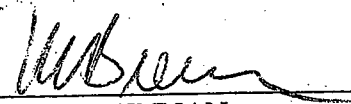
On December 14, 2012, this court received the defendant's Motion for Rehearing and Emergency Relief, filed by the defendant in response to this court's order of the defendant to show cause why sanctions should not be imposed upon him by the filing of his frivolous and fifth motion for post-conviction relief. The court reviewed this motion and not only finds no basis in it to withhold sanctions, sadly see the defendant raising again the same issues he has raised in prior motions. It is very clear that this defendant has no respect for our system of justice, and is steadfastly ready to abuse it any time he wishes.

Consequently, this court hereby ORDERS and directs the Clerk of Court to reject any future pleadings by this defendant, unless said pleadings are filed by an attorney licensed in the State of

Florida. The court further ORDERS and directs the Clerk of Court to forward a copy of this Order, and this court's Order Denying Post-Conviction Relief, signed November 8, 2012, to the Warden of the Gulf Correctional Institution – Annex, 699 Ike Steele Road, Wewahitchka, FL 32465, for any

disciplinary actions the Florida Department of Corrections might want to take in light of the defendant's abuse of judicial process, as outlined in this court's Order Denying Post-Conviction Relief, signed November 8, 2012.

DONE and ORDERED in Miami-Dade County, Florida, this 21st day of December, 2012.

  
VICTORIA R. BRENNAN  
CIRCUIT COURT JUDGE

CC: Defendant  
Court file  
Wardern, Gulf Correctional Institution - Annex

*Copie's For defendant*

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

JUDGE: TANYA BRINKLEY  
CASE NO.: F85-25037

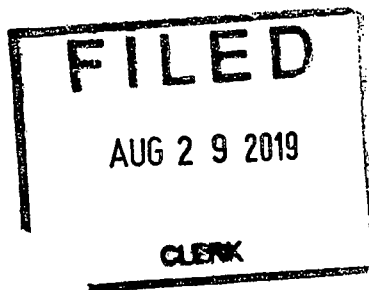
STATE OF FLORIDA,

Plaintiff,

v.

SAMUEL RIVERA,

Defendant.



**ORDER DENYING DEFENDANT'S WRIT OF HABEAS CORPUS**

THIS CAUSE came before the Court on Defendant, SAMUEL RIVERA, Petition for Writ of Mandamus, filed on March 4, 2019 ("Motion"), and an Order Deeming Petition as Writ of Habeas Corpus and Transferring Re-Designated Petition was entered on March 13, 2019. The Court having reviewed the Motion, the court file, and being otherwise fully advised in the premises, it is **ORDERED AND ADJUDGED** that Defendant's Writ of Habeas Corpus is hereby **DENIED** for the reasons set forth herein.

1. This motion is successive, without merit, and illegally filed.
2. Defendant filed this motion pro se, and failed to comply with the court order directing "that the Defendant shall not file any further post convictions relief actions without being signed by an active attorney licensed by the Florida Bar"
3. This requirement was imposed on Defendant in Rivera v. State, 3D16-1007 (3DCA 2017), where the Court held: "Rivera has not demonstrated good cause to justify further pro se filings of appeals, petitioner, motions, por other proceedings with this Court, we direct the Clerk of the Third District Court of Appeal to refuse to accept from Rivera further pro se filings related to circuit court case number 85-25037; provided, however, that the Clerk may accept filings related to

case number 85-25037 if such filings have been reviewed and signed by an attorney who is a licensed member of the Florida Bar in good standing. Any such further and unauthorized pro se filings by Rivera will subject him to sanctions, including the issuance of written findings forwarded to the Florida Department of Corrections for consideration by it for disciplinary action, pursuant to section 944.279(1) of the Florida Statutes."

4. This order was entered by the Third District Court of Appeal, after the Order Imposing Sanctions was entered on December 21, 2012 by Judge Victoria Brennan, setting forth that the Defendant filed five prior frivolous motions for post-conviction relief.

### CONCLUSION

The clerk of court shall mail a certified copy of this order to the defendant: SAMUEL RIVERA, DC# 180695, South Florida Reception Center, 13910 NW 41<sup>st</sup> Street, Doral, Florida 33178. The Defendant, SAMUEL RIVERA, is hereby notified that he has the right to appeal this Order to the Third District Court of Appeal within thirty (30) days of the signing and filing of this Order.

In the event that the Defendant takes an appeal of this Order, the Clerk of this Court is hereby ordered to transport, as part of this Order, to the appellate court the following documents with all of their attachments:

- i. Defendant's Motion; and
- ii. This Order.


**DONE AND ORDERED** in Chambers in Miami-Dade County, Florida, on August 29, 2019.

  
TANYA BRINKLEY  
CIRCUIT COURT JUDGE

Copies furnished to:

Samuel Rivera, DC#180695 South Florida Reception Center, 13910 NW 41<sup>st</sup> Street, Doral, Florida 33178

Elvia Medina Marcus, Assistant State Attorney

STATE OF FLORIDA, COUNTY OF DADE  
I HEREBY CERTIFY that the foregoing is a true and correct copy of the original on file in this office  
AUG 30 2019 AD 20  
HARVEY RUVIN, CLERK of Circuit and County Courts  
Deputy Clerk 



# **Third District Court of Appeal**

## **State of Florida**

Opinion filed September 6, 2017.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D16-1007  
Lower Tribunal No. 85-25037

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**Samuel Rivera,**  
Appellant,

---

vs.

**The State of Florida,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Victoria R. Brennan, Judge.

Samuel Rivera, in proper person.

Pamela Jo Bondi, Attorney General, and Sandra Lipman, Assistant Attorney General, for appellee.

Before ROTHENBERG, C.J., and SCALES and LUCK, JJ.

PER CURIAM.

On July 5, 2017, this Court issued an order granting the State of Florida's motion to dismiss Appellant Samuel Rivera's "Notice for Belated Appeal Nunc Pro Tunc Motion," which had sought to advance Rivera's continuing and repetitive efforts to overturn his 1987 convictions for first degree murder and armed robbery. Contained within the Court's order was an order to show cause why Rivera should not be prohibited from filing with this Court any pro se appeals, petitions, motions, or other proceedings related to his criminal sentencing in circuit court case number 85-25037.

Rivera's August 4, 2017 response to our show cause order introduces no new ~~argument or information for our consideration. We conclude that Rivera has not~~ demonstrated good cause to justify further pleadings with this Court, absent the participation of an attorney to represent him.

The access to courts provision of the Florida Constitution – Article I, section 21 – provides an avenue for an incarcerated person in Florida to challenge the legal basis of his or her incarceration; however, this constitutional right may be forfeited if that person abuses the judicial process. Jimenez v. State, 196 So. 3d 499, 501 (Fla. 3d DCA 2016). Our responsibility is to balance the incarcerated person's right to access to courts with the need of this Court to devote its finite resources to legitimate appeals and petitions. State v. Spencer, 751 So. 2d 47, 48 (Fla. 1999). Accordingly, after notice in the form of an order to show cause and an opportunity for the

incarcerated person to respond, a court may prevent further filings. Id.; see also Whipple v. State, 112 So. 3d 540 (Fla. 3d DCA 2013).

Because we conclude that Rivera has not demonstrated good cause to justify further pro se filings of appeals, petitions, motions, or other proceedings with this Court, we direct the Clerk of the Third District Court of Appeal to refuse to accept from Rivera further pro se filings related to circuit court case number 85-25037; provided, however, that the Clerk may accept filings related to case number 85-25037 if such filings have been reviewed and signed by an attorney who is a licensed member of the Florida Bar in good standing.

---

~~Any such further and unauthorized pro se filings by Rivera will subject him~~  
to sanctions, including the issuance of written findings forwarded to the Florida Department of Corrections for consideration by it for disciplinary action, pursuant to section 944.279(1) of the Florida Statutes.

Order issued.

## HEARING INFORMATION

LOG # 463-220428

-----

DC#: 180695	INMATE NAME: RIVERA, SAMUEL	G2112L INFRACTION
VIOLATION CODE: 0932	TITLE: FILE FRIVOLOUS/MALIC	DATE: 07/08/2022
FACILITY CODE: 463	NAME: DADE C.I.	TIME: 14.45

-----

TEAM FINDINGS AND ACTION DATE: 07/21/2022, AT: 14.13

INMATE OFFERED STAFF ASSISTANCE: DECLINED

INMATE PLEA: NOT GUILTY FINDINGS: GUILTY

INMATE PRESENT: YES

## POSTPONEMENT:

## BASIS FOR DECISION:

INMATE PLED NOT GUILY. THE TEAM FINDS THE INMATE GUILTY OF 9-32 IN ACCORDANCE WITH SECTION 944.279(1), F.S., IS FOUND BY THE COURT TO HAVE BROUGHT A FRIVOLOUS SUIT, ACTION, CLAIM, PROCEEDING OR APPEAL IN ANY COURT BASED ON THE INVESTIGATION, THE AVAILABLE WITNESS STATEMENTS AND EVIDENCE, AND THE STATEMENT OF FACT WRITTEN BY MR. W. BOWENS WHICH STATES THAT ON 7/8/2022 HE WAS NOTIFIED BY THE FDC BUREAU OF CLASSIFICATION MANAGEMENT THAT THE DEPARTMENT HAD RECIEVED A NOTICE ISSUED BY THE FLORIDA SUPREME COURT STATING THAT INMATE'S MOST RECENT PETITION TO SAID COURT WAS DEEMED FRIVOLOUS AND THAT INMATE SHOULD BE SANCTIONED BY THE DEPARTMENT. ALL EVIDENCE DISPOSED OF IN ACCORDANCE TO DEPARTMENT POLICY AND PROCEDURE.

## HEARING DELAY COMMENTS:

HEARING DELAYED PENDING AVAILABILITY OF DISCIPLINARY TEAM  
FOR COMPLETION OF DR HEARING.

## ACTIONS TAKEN:

DISCIPLINARY CONFINEMENT: 0000; AC CREDIT DAYS: 000; ADJUSTED DC DAYS: 000

DC PROBATION DAYS SET: 0000;

VERBAL REPRIMAND 0; PROBATION DAYS SET: 0 ;

RESTITUTION: \$.00; INDIV.REVIEW/COUNSEL?: Y; CONFISCATE CONTRABAND?: N

TEAM CHAIRMAN: MJC36 - MENDEZ, J.

TEAM MEMBERS: DW08 - DURANDISSE, WOODLY



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DC#: 180695	INMATE NAME: RIVERA, SAMUEL	INFRACTION
VIOLATION CODE: 0932	TITLE: FILE FRIVOLOUS/MALIC	DATE: 07/08/22
FACILITY CODE: 463	NAME: DADE C.I.	TIME: 14:45

-----

OF THE CHARGES AGAINST YOU AND YOU MAY REQUEST STAFF ASSISTANCE. DURING THE INVESTIGATION YOU SHOULD MAKE KNOWN ANY WITNESSES TO THE INVESTIGATING OFFICER. THE TESTIMONY OF WITNESSES SHALL BE PRESENTED BY WRITTEN STATEMENTS. SEE RULE 33-601.307(3) FOR COMPLETE INFORMATION REGARDING WITNESSES. YOU WILL HAVE THE OPPORTUNITY TO MAKE A STATEMENT IN WRITING REGARDING THE CHARGE AND TO PROVIDE INFORMATION RELATING TO THE INVESTIGATION.

-----

DELIVERY OF CHARGES:

A COPY OF THE CHARGES WILL BE PROVIDED TO YOU AT LEAST 24 HOURS PRIOR TO THE CONVENING OF THE DISCIPLINARY HEARING UNLESS YOU WAIVE THE WAITING PERIOD. THE HEARING MAY BEGIN ANY TIME AFTER THE 24 HOUR PERIOD UNLESS YOU SIGN THE WAIVER.

-----

DISCIPLINARY HEARING:

THE DECISION WILL BE MADE IN ADVANCE WHETHER THE HEARING WILL BE CONDUCTED BY THE DISCIPLINARY TEAM OR THE HEARING OFFICER. YOU MAY REQUEST A HEARING BY THE FULL DISCIPLINARY TEAM RATHER THAN THE HEARING OFFICER. YOU WILL APPEAR IN PERSON BEFORE THE DISCIPLINARY TEAM/HEARING OFFICER UNLESS YOU WAIVE THIS APPEARANCE BY SIGNING A WAIVER FORM. YOU WILL BE ADVISED OF THE CHARGES PLACED AGAINST YOU AND THE RANGE OF PENALTY IF FOUND GUILTY. YOU MAY REQUEST STAFF ASSISTANCE. THE CHAIRPERSON/HEARING OFFICER WILL READ THE STATEMENT AND ASK YOU FOR YOUR PLEA. A GUILTY PLEA REQUIRES NO FURTHER STATEMENT; HOWEVER, YOU MAY MAKE A STATEMENT FOR THE TEAM/HEARING OFFICER TO CONSIDER. A NO CONTEST PLEA WILL BE TREATED AS A GUILTY PLEA. A REFUSAL TO ENTER A PLEA WILL BE TREATED AS A NOT GUILTY PLEA. IF YOU ENTER A NOT GUILTY PLEA, YOU WILL BE ALLOWED TO MAKE A STATEMENT ON YOUR OWN BEHALF, PRESENT EVIDENCE AND REQUEST STAFF OR INMATE WITNESSES AS DEEMED APPROPRIATE BY THE TEAM/HEARING OFFICER. AFTER THE TEAM/HEARING OFFICER HAS MADE A DECISION, YOU WILL BE ADVISED VERBALLY AND IN WRITING AS TO THE DECISION AND THE EVIDENCE RELIED UPON IN MAKING THAT DECISION. IF YOU ARE FOUND GUILTY, YOU WILL BE ADVISED VERBALLY AND IN WRITING AS TO THE RECOMMENDED PENALTY.

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APPEAL:

IF YOU ARE FOUND GUILTY, YOU MAY APPEAL THIS DECISION BY FILING A FORMAL GRIEVANCE WITH THE WARDEN OF YOUR FACILITY WITHIN 15 DAYS OF THE RECEIPT OF WRITTEN NOTICE OF THE TEAM/HEARING OFFICERS DECISION. FOR INFORMATION REGARDING THE RULES ON DISCIPLINE, REFER TO: 33-601, F. A. C.

DC#: 18J695 INMATE NAME: RIVERA, SAMUEL INFRACTION  
VIOLATION CODE: 0932 TITLE: FILE FRIVOLOUS/MALIC DATE: 07/08/22  
FACILITY CODE: 463 NAME: DADE C.I. TIME: 14:45

## I. STATEMENT OF FACTS

ON JULY 8TH, 2022 AT APPROXIMATELY 1445 HRS, I, MR. W. BOWENS RECEIVED COMMUNICATIONS FROM THE BUREAU OF CLASSIFICATION MANAGEMENT THAT A NOTICE ISSUED BY CLERK JOHN TOMASINO OF THE SUPREME COURT OF FLORIDA WHICH ADVISES THAT INMATE RIVERA, SAMUEL DC#180695 HAS FAILED TO SHOW JUST CAUSE AS TO WHY SANCTIONS SHOULD NOT BE IMPOSED. INMATE RIVERA HAS AN EXTENSIVE HISTORY OF FILING MERITLESS PRO SE PETITIONS AND RELIEF THAT HAVE BEEN FOUND TO BE INAPPROPRIATE. INMATE RIVERA'S HABEAS PETITION FILED IN THIS CASE HAS BEEN FOUND TO BE FRIVOLOUS PROCEEDING BROUGHT BEFORE THE COURT BY AN INMATE OF THE STATE. INMATE RIVERA, SAMUEL DC#180695 IS IN DIRECT VIOLATION OF RULES OF PROHIBITED CONDUCT 9-32: IN ACCORDANCE WITH SECTION 944.279(1), F.S., IS FOUND BY A COURT TO HAVE BROUGHT A FRIVOLOUS OR MALICIOUS SUIT, ACTION, CLAIM, PROCEEDING OR APPEAL IN ANY COURT, OR TO HAVE BROUGHT A FRIVOLOUS OR MALICIOUS COLLATERAL CRIMINAL PROCEEDING OR IS FOUND BY THE COURT TO HAVE KNOWINGLY OR WITH RECKLESS DISREGARD FOR THE TRUTH BROUGHT FALSE INFORMATION OR EVIDENCE BEFORE THE COURT. INMATE RIVERA WILL REMAIN IN GENERAL POPULATION PENDING THE DISPOSITION OF THIS REPORT.

REPORT WRITTEN: 07/08/22, AT 15:10

BY: BWE05 - BOWENS, WILLIE

II. INMATE NOTIFICATION OF CHARGES: DATE DELIVERED: 7/11/22 AT 17:06A

NO HEARING SHALL COMMENCE PRIOR TO 24 HOURS OF DELIVERY OF CHARGES EXCEPT WHEN THE INMATE'S RELEASE DATE DOES NOT ALLOW TIME FOR SUCH NOTICE OR THE INMATE WAIVES THE 24 HOUR PERIOD AS AUTHORIZED IN RULE 33-601, FLORIDA ADMINISTRATIVE CODE.

DELIVERED BY : AD10 JA

## NOTICE TO INMATE:

AS AN INMATE BEING CHARGED WITH A VIOLATION OF THE RULES OF PROHIBITED CONDUCT, YOU ARE ADVISED THE FOLLOWING:

## INVESTIGATION:

AN IMPARTIAL INVESTIGATION WILL BE CONDUCTED ON THIS DISCIPLINARY REPORT. DURING THE INVESTIGATION OF THE DISCIPLINARY REPORT, YOU WILL BE ADVISED

**APPENDIX**

**EXHIBIT 4**

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN  
AND FOR DADE COUNTY, FLORIDA.

CRIMINAL DIVISION

CASE NO: 85-25037

THE STATE OF FLORIDA,

Plaintiff,

- vs -

SAMUEL RIVERA,  
A/K/A "TONY EL ENFERMO",

Defendant.

The above-entitled cause came on for JURY  
TRIAL before the HONORABLE ELLEN J. MORPHONIOS, Judge  
of the above-styled Court, at the Metropolitan Justice  
Building, 1351 Northwest 12th Street, Miami, Florida,  
on Thursday, February 26, 1987, commencing at approxi-  
mately 10:30 A.M., pursuant to Notice.



1 APPEARANCES: 2

2 MICHAEL BAND, ESQ.,  
3 JOE VAUGHN, ESQ.,  
4 Assistant State Attorneys,  
5 State Attorney's Office,  
6 On behalf of the Plaintiff.

7 LEONARD BAER, ESQ.,  
8 742 Northwest 12th Avenue,  
9 Miami, Florida,  
10 On behalf of the Defendant.  
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**SEE EXHIBIT "1"**

The Petitioner, Samuel Rivera, was indicted by the grand jury by the State of Florida and Dade County, Florida as a single person. There is no other person being charged or indicted in this crime by the grand jury on October 15, 1985 with the murder of John Burgos.

The Petitioner was indicted by the grand jury in the body of the indictment the instrument of Count I in an attempt to perpetrate robbery, kill and murder John Burgos with a firearm to wit: A machine gun in violation of Florida Statutes 782.04, 775.087 and 777.011.

**COUNT II**

The Petitioner was indicted in the body of the indictment the instrument of Count II in the course of committing said robbery carried a firearm to with: a machine gun in violation of 812.13 and 777.011 of Florida Statutes.

**COUNT III**

The Petitioner he was indicted by the grand jury in the body of the indictment the instrument of Count III. The Petitioner did unlawfully and feloniously display a certain firearm to wit: a machine gun, while at said time and place the defendant was committing a felony to wit: murder and/or robbery as provided by 782.04 and or 812.13 Florida Statutes, the possession and display of said firearm as aforesaid being in violation of 790.07 and 777.011 Florida Statutes.

The State prosecutor accusation under Florida Statue under § 777.011 against the Petitioner for principal theory aids and abets in the indictment and Count 1, 2 and 3. See the trial court (TR. Page 190, lines 1-23). This charge represents infamous crime because no other person being arrested or charged or indicted by the grand jury. There is no other name presented in the indictment by the grand jury. This is violation of the Fifth Amendment.

The Petitioner being sent to prison for an infamous crime for crime not presented in the indictment by the grand jury. Now as required by the Fifth Amendment of the United States Constitution. The Petitioner is entitled to be discharged. See the Petitioner indictment no other person being indicted. (See Exhibit "3" Tr. Page 9, lines 3-7; Tr. Page 59, lines 1-25; and Tr. Page 149, lines 7.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

SPRING TERM, 1985

STATE OF FLORIDA

vs.

INDICTMENT

SAMUEL RIVERA,  
also known as  
"TONY EL ENFERMO",

DEFENDANT.

- I. FIRST DEGREE MURDER  
II. ARMED ROBBERY  
III. USE OF FIREARM IN THE  
COMMISSION OF A FELONY

85-25037

08

A.P.

*Heater*

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Dade, upon their oaths, present that on or about the 3rd day of November, 1984, within the County of Dade, State of Florida, SAMUEL RIVERA, also known as, "TONY EL ENFERMO", did, unlawfully and feloniously, from a premeditated design to effect the death of a human being, or while engaged in the perpetration of, or in an attempt to perpetrate Robbery, kill and murder JOHN BURGOS, a human being by shooting the said JOHN BURGOS with a firearm, to wit: A machine gun, in violation of Florida Statutes 782.04, 775.087 and 777.011, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT II

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Dade, upon their oaths, present that on or about the 3rd day of November, 1984, within the County of Dade, State of Florida, SAMUEL RIVERA, also known as, "TONY EL ENFERMO", did, unlawfully by force, violence, assault or putting in fear, take certain property, to wit: Jewelry, the property of JOHN BURGOS as owner or custodian, from the person or custody of JOHN BURGOS said property being the subject of larceny and of the



value of more than one hundred dollars (\$100.00) with the intent to permanently deprive JOHN BURGOS of the said property, and in the course of committing said Robbery, carried a firearm to wit: A machine gun in violation of Florida Statutes 812.13 and 777.011, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT III

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Dade, upon their oaths, present that on or about the 3rd day of November, 1984, within the County of Dade, State of Florida, SAMUEL RIVERA, also known as, "TONY EL ENFERMO", did, unlawfully and feloniously display a certain firearm, to wit: A machine gun, while at said time and place the defendant was committing a felony, to wit: Murder and/or robbery as provided by 782.04 and/or 812.13 Florida Statutes, the possession and display of said firearm as aforesaid, being in violation of 790.07 and 777.011 Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

Thelma Johnson Owens  
THELMA JOHNSON OWENS,  
ACTING FOREPERSON OF THE GRAND JURY

SPRING TERM, 1985

NO.

CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRCUIT OF FLORIDA  
IN AND FOR DADE COUNTY

STATE OF FLORIDA

vs.

→ SAMUEL RIVERA,  
also known as  
"TONY EL ENFERNO",

DEFENDANT.

→ INDICTMENT

- I. FIRST DEGREE MURDER
- II. ROBBERY
- III. USE OF FIREARM IN  
THE COMMISSION OF A FELONY  
Julio Roberto Rivera  
HELEN JOHNSON OWENS, ACTING  
FOREPERSON OF THE GRAND JURY

→ I HEREBY CERTIFY that I have  
advised the Grand Jury, as  
authorized by law, on the  
attached indictment.

Katherine F. Rundle  
→ KATHERINE F. RUNDLE  
CHIEF ASSISTANT STATE ATTORNEY

Presented and filed in Open  
Court, in the presence of the  
Grand Jury, this 15th day of  
October, 1985.

RICHARD P. BRINER  
CLERK, CIRCUIT COURT

BY: D. Briner  
Deputy Clerk



**SEE EXHIBIT "2"**

The Petitioner being acquitted by the trial court judge as set on the body of the indictment the instrument of the charge of Count III. The Petitioner he was acquitted he was found not guilty for committing a felony to wit: Murder and/or Robbery as provided by 782.04 and 812.13 Florida Statutes. And the possession and display of said firearm as aforesaid, being in violation of 790.02, and 777.011, Florida Statutes (1985).

After the Petitioner being accused of committing murder, robbery, possession of firearm, and principal theory aids and abets. The Petitioner has been acquitted by the trial court judge. No one can afterward any accusation against the Petitioner for the same crime or offense. The court could take no other action than to order the Petitioner discharged. The Petitioner, when the verdict of acquittal was final by the trial court judge.

The allegations made in the indictment on Count I, murder with firearm, shall not be incorporated by reference in Count III, for violation of Florida Statutes 782.04, and 775.087.

The allegations made in the indictment on the body of the indictment on Count II, robbery with a firearm shall not be incorporated by reference in Count III, for violation of Florida Statutes 812.13.

Since Count III contained in the same statutes Count I and II, are directly in conflict with Count III. Count I and II cannot be brought into harmony by any rule of construction. The construction of said Counts I and II from Count III. The provision latest in position will prevail "after the Petitioner has been acquitted by the trial court judge set in Count III, of the murder, robbery, firearm and principal theory aids and abets no one can afterward accuse to the Petitioner for the same offense and the contradictory provision of Count I and II, cancel the chares in the body of the indictment Count I and II and these two counts are void.

"It is another of the general exception that the Petitioner cannot be accused who has formerly been accused and adjudged of the same crime. On Count I and II. In the same indictment the trial court judge granted the judgement of acquittal on Count III. In order to determine what congress meant in the language and the judgment of acquittal used in the act under consideration. "No person for the same offense shall be twice put in jeopardy of punishment."

**FILED**

FEB 26 1987

RICHARD P. BRINKER  
CLERK

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

Case Numbered 85-25037

THE STATE OF FLORIDA

Versus

JUDGMENT OF ACQUITTAL

SAMUEL RIVERA

also known as

"TONY EL ENFERMO"

IT APPEARING UNTO THE COURT that you,

SAMUEL RIVERA also known as "TONY EL ENFERMO"

have been found not guilty ~~by the Court sitting without a jury~~  
of the offense of -

USE OF FIREARM IN THE COMMISSION OF A FELONY as set forth in Count Three  
of the Information

IT IS THEREUPON THE JUDGMENT of the law and it is hereby adjudged  
that you are and stand acquitted of the offense as above set forth and

IT IS THEREFORE ORDERED AND ADJUDGED that you are hereby dis-  
charged in the above styled cause and your sureties exonerated.

DONE AND ORDERED in open Court at Miami, Dade County, Florida this  
26th day of FEBRUARY A. D., 19 87.

  
ELLEN J. MORPHONIOS

Judge

**RECORDED**

MAR 30 1987

RICHARD P. BRINKER  
CLERK

RE 13218PC3165

CIRCUIT 110

PATRICE

**SEE EXHIBIT "3"**

**THE TRIAL COURT TRANSCRIPTS (PAGE 66, LINES 5-8):**

The Court judge knew that Count III was no longer a part of the indictment and to continue the Petitioner's case on trial was a violation of the Fifth and Fourteenth Amendment of the United States Constitution.

The trial court judge knew that she did not have jurisdiction to continue the Petitioner's case after the judgment of acquittal on Count III and to continuing to receive a verdict on Counts I and II should result in a void judgment. (See Page 190, lines 4, 8 and 23).

The trial court judge requested to hear about Count III. The judge stated: Absent of hearing anything more than that, it is down the tubes. The Court judge granted as to Count III a Judgment of Acquittal and exonerated Petitioner from Count III - the Murder, Robbery, Firearm and Principal Theory under Florida Statutes § 782.04; § 812.13; § 790.07; and § 777.011 by finding Petitioner not guilty of the charges in the indictment. (See Page 191, 192, 193).

The trial court judge and the State prosecutor invited Constitutional Law of the Fifth Amendment of the United States Constitution by granting the Judgment of acquittal and all the charges inside the body of the indictment on Count III. Committed Constitutional violation of the declaration of Article V of the Amendment of the Constitution "afterwards the judgment of acquittal by denying Count I and II. Separate these charges - murder and robbery - from the same Count III.

When the Petitioner was acquitted, the court could not make any changes to the indictment. When the indictment was filed with the court, it could not make any changes to the body of the instrument by order of the court or by the prosecuting attorney, without a resubmission of the case to the grand jury.

Upon an indictment so charged the court can proceed no farther because there is nothing in the language of the Constitution which the Petitioner can "be held to answer". A trial on such indictment is void. There is nothing to try. According to principles long settled in this court, the Petitioner, who stands sentenced to the penitentiary on such trial, is entitled to discharge by writ of habeas corpus. See: *Ex Parte Bain*, 121 U.S. 1, 1-14, 30 L.Ed. 849, 7 S.Ct. 781 (1876) where the court held: The general doctrine that the indictment is sufficient if it follows the words of the statute creating and defining the offense. Count III of the Petitioner's indictment is the same as in Count I and II, which the Petitioner was acquitted. In *United States v. Reese*, 23 L.Ed. 563, 92 U.S. 214, 232-234 (1876).

For the record, "See Tr. Page 191, lines 21-25; Tr. Page 192, lines 1-2; Now See Tr. Page 9, lines 3-7; and Tr. Page 70, lines 1-22." "Counts (1) (2) and (3) that was read to the jury".

working with yesterday, let me express my appreciation for your coming in and assisting the Court.

✓ We have today the case of the State of Florida versus Samuel Rivera. Mr. Rivera is charged in an Indictment with First Degree Murder, Armed Robbery, and the Use of a Firearm in the Commission of a Felony.

I explained to you yesterday that this is the stage of the trial called the voir dire. It comes from two French words which mean to speak the truth.

As I explained to you, this is the only time the attorneys will have an opportunity to actually ask you questions.

Both sides have agreed on a maximum questioning time of thirty minutes per side, so we will finish in time for you to all have lunch, which will be at approximately 1:00 o'clock.

If you are selected, it is estimated that the case will last three days, at which time, once the case is over, if you are selected, you will be excused from further jury services.

As I explained to you, the attorneys in asking those questions and the Court in asking those questions do not intend to pry into your background for any personal reason or selfish reason, or anything



1 fully, on behalf of Samuel Rivera, the De-  
2 fense would rest at this time.

3 MR. BAND: We'd rest as well, Your  
4 Honor.

5 THE COURT: How about you all stepping  
6 into the jury room for just a few minutes.

7 (Thereupon, the jury retired from the  
8 courtroom and the following proceedings  
9 were had:)

10 THE COURT: Okay.

11 Motions?

12 [ MR. BAER: Judge, I have two motions  
13 to make in regard to Mr. Rivera.

14 On behalf of Mr. Rivera, Defense  
15 having rested, no evidence being submitted  
16 before the Court and jury as to Count I  
17 and II, the Defense would respectfully  
18 move for judgment of acquittal. I don't  
19 believe there has been any corroborating  
20 evidence brought before this Court or jury  
21 as to Count I and II; no corroboration as  
22 to robbery. There has been no confirma-  
23 tion to robbery. There is no way they can  
24 prove a felony murder theory. There is  
25 nothing to substantiate any of the facts



1 of having the Indictment sent back to the  
2 jury.

3 THE COURT: Only if they ask for it.  
4 And I've never had them ask for it.

5 MR. BAER: In the event they do,  
6 Count III is no longer a part of the In-  
7 dictment.

8 THE COURT: I know that.

9 MR. BAER: There is no copy here, so  
10 that would have to be changed.

11 THE COURT: Not until it happens it  
12 won't.

13 MR. BAER: Judge, I would ask that  
14 the Indictment --

15 They have a right to see the Indict-  
16 ment. I would ask the Indictment be brought  
17 back to the jury.

18 THE COURT: If they ask for it, they  
19 will be given it.

20 MR. BAER: So my objection is denied?

21 THE COURT: Yes, overruled.

22 How many minutes do you want for  
23 closing; maximum of forty-five.

24 Let's go.

25 MR. BAER: The other thing is the



1           The Grand Jurors of the State of  
2           Florida, duly called, impaneled and sworn  
3           to inquire and true presentment make in  
4           and for the body of the County of Dade,  
5           upon their oaths, present that on or about  
6           the 3rd of November, 1984, within the  
7           County of Dade, State of Florida, Samuel  
8           Rivera, also known as Tony, did unlawfully  
9           and feloniously, from a premeditated design  
10          to effect the death of a human being, or  
11          while engaged in the perpetration of, or in  
12          an attempt to perpetrate robbery, kill and  
13          murder John Burgos, a human being by  
14          shooting the said John Burgos with a fire-  
15          arm, to-wit: a machine gun, in violation of  
16          Florida Statutes, to the evil example of  
17          all others in like cases offending and  
18          against the peace and dignity of the State  
19          of Florida."

20               That's Count I, the first degree  
21          murder charge.

22               Count II is the armed robbery charge.

23               I wanted to just read Count I to you  
24               because it's important. It said, "John  
25               Burgos, a human being;" a human being. It



1 doesn't say, "John Burgos, a drug dealer."

2 It doesn't say, "John Burgos, car thief."

3 It says, "John Burgos, a human being."

4 And whether or not you like the vic-  
5 tim in this case, it really doesn't matter.  
6 That's what we discussed on Voir Dire. He  
7 was a human being, and he died. That's  
8 why we're here. Whether you like him or  
9 do not like him; whether you like his  
10 friends or don't like his friends, it's  
11 not really very important.

12 At the start of this case, both  
13 lawyers, Mr. Vaughn and Mr. Baer, gave their  
14 opening statements as to what they believe  
15 what the evidence will show. Mr. Vaughn  
16 laid out the case of the State of Florida.  
17 He told you the case was about friends and  
18 about their problems, and how they thought  
19 to rid themselves of those problems. And  
20 he went into a little more detail about the  
21 case.

22 "Mr. Baer, in his opening, said there  
23 was no physical evidence, and for the most  
24 part that is correct. We've never suggested,  
25 at any time, that he was in the house. He



1        never went inside that house. So obviously,  
2        there would be no physical evidence." There  
3        was no need to present to you the projectiles  
4        found in the house, or casings, or finger-  
5        print records. He never went into the house.  
6        So there is no need for that.

7                He suggested to you, in his opening,  
8        Mr. Baer did, that there is problems with  
9        the police officers, or with police in their  
10       investigation. I'm suggesting to you that  
11       his suggestion of dirty cops is a red herring,  
12       trying to cloud the issues. But the things  
13       I was most curious about, in his opening,  
14       he never mentioned the alibi. Not once  
15       till the defendant put on his case was an  
16       alibi mentioned. "He never mentioned he had  
17       three witnesses who could put the defendant  
18       in a different vicinity, away from the scene  
19       of the crime." He never mentioned Marlene  
20       (phonetic) who testified yesterday. He  
21       never mentioned Ricky Crespo, and he never  
22       mentioned Iliana Carter, the ~~and~~ wife of  
23       this defendant. He never mentioned it.  
24       Kind of a surprise, I guess.

25                The trial then began, witnesses were



1 Q Extensive?

2 A Absolutely.

3 Q Do you know whose fingerprints were  
4 found?

5 A None to your client.

6 Q I am sorry?

7 A None to your client.

8 Q I see. Were Mr. Burgos' found?

9 A I believe they were in eliminations.

10 Q By the way, what is an elimination?

11 A Elimination print is what you take from  
12 people that have reason to be on a premises and  
13 whose prints you will expect to find.

14 Q I see.

15 Let me ask you a question just because  
16 it just came to mind.

17 When you go into a crime scene, what  
18 do you do to handle evidence? What does the  
19 other officer do? How do you handle evidence?

20 A In reality we don't handle evidence.

21 Q What is the reason for that?

22 A We let the ID technician do it.

23 Q I see. In other words, you kind of  
24 walk in sterile, you don't touch anything,  
25 you don't want to contaminate anything?



1           ➤ A       No estimate of time, sir, that I recall.

2           Q       So we don't know?

3           A       Well, from the body, sir, I mean you  
4       can rely on other departments, other agencies or  
5       witnesses or perhaps neighbors of when something  
6       may have occurred.

7       ➔ Q       There's no witnesses.

8           A       Well, you know, it is between the  
9       time frame listed or at least that's an estimate  
10      given. If there was something critical, a  
11      specific time--

12          Q       How do we know that?

13          A       Well, no, I am just saying if there  
14      is some specific time that you have to have,  
15      like say 7:30 versus 6:30, I don't know if a  
16      doctor can really help you all that much.

17          Q       Well, what about a period of four or  
18      five hours?

19          A       Well, again, the estimate from a  
20      body, just speaking as a professional forensic  
21      pathologist, it can't pinpoint it all that  
22      accurate, say within a matter of four, five  
23      hours, something of that sort. So just the  
24      field in general cannot--is not that accurate.

25          Q       Let me understand something about the



1 MR. BAER: I don't recall that he did.  
2 I don't recall that.

3 And as to Count 3, this is a count --

4 [THE COURT: Let me hear about Count 3.]

5 MR. BAND: It is my understanding it  
6 could be on a principal theory.

7 MR. BAER: No.

8 THE COURT: Absent of hearing anything  
9 more than that, it is down the tubes.

10 MR. BAER: You anticipated my argument.

11 MR. VAUGHN: That is all we have,

12 Michael.

13 THE COURT: He didn't have the firearm.

14 MR. BAER: That is correct.

15 MR. BAND: His partner -- I believe he  
16 can be sentenced for it.

17 There isn't any mandatory in the  
18 possession of the firearm on the commission of  
19 the offense.

20 MR. VAUGHN: You are correct.

21 MR. BAND: I think he can be charged  
22 with it as a principal.

23 [THE COURT: Granted as to Count 3.]

24 MR. BAER: Thank you.

25 THE COURT: As to Count 1, 2 -- 1 and 2





1 are denied.

2 MR. BAER: I will reinstate any motions  
3 I previously made. I had a motion for mistrial.  
4 I am going to withholdon that.

5 THE COURT: Whatever.

6 MR. BAER: Okay.

7 THE COURT: Okay. Ready to go?

8 MR. VAUGHN: Do you want us to make a  
9 formal announcement?

10 → THE COURT: Want me to tell them --  
11 you want him to announce he rests in front of the  
12 jury and me to tell them I DV'd Count 3.

13 MR. BAER: You can do that, yes.

14 THE COURT: Okay.

15 MR. VAUGHN: I prefer you not tell them. ←

16 THE COURT: It had to go somewhere.

17 MR. BAER: That is right. I would ask --

18 THE COURT: Because you started out with  
19 it.

20 MR. BAND: I don't know that --

21 [ THE COURT: And the indictment was read  
22 to them, too.

23 MR. VAUGHN: The indictment, those  
24 counts were never read. The only count read was  
25 the first-degree murder count. They were never



1 told that there was a Count 3, or a Count 2 for  
2 that matter.

3 MR. BAER: I would ask the Court instruct  
4 that Count 3 has been dismissed by this Court.

5 THE COURT: Well, I think I am going to  
6 tell them I denied as to Count 1 and granted as  
7 to Count 3.

8 MR. BAER: But that is not announced  
9 on the record. That is not announced in front  
10 of the jury.

11 MR. BAND: I don't think any of it is  
12 announced, the denials or whatever.

13 MR. BAER: I can comment on that in terms  
14 of closing argument. I can make comment we started  
15 out with three counts. This is the indictment  
16 and one count has already been dismissed, but  
17 you can't announce to the jury that you have not  
18 granted my motion to dismiss Counts 1 and 2.

19 THE COURT: Sure I can.

20 MR. BAER: Judge, please, you would be  
21 inviting error. I think the State would concur.

22 MR. VAUGHN: I prefer that you not tell  
23 them that.

24 MR. BAND: I don't think you can make  
25 any comment.

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1 THE COURT: Oh, yes I can.

2 MR. BAER: You can do whatever you like.

3 MR. VAUGHN: We prefer that you not tell  
4 them that it has been denied.

5 MR. BAER: I think you are inviting error.

6 THE COURT: Well, you are the one  
7 asking me to tell them about three.

8 MR. BAER: As to Count 3.

9 THE COURT: But if I tell them about  
10 3, 1 and 2 --

11 MR. BAER: Then I will be allowed to  
12 comment in closing?

13 THE COURT: Of course you are going to  
14 be allowed to comment.

15 MR. BAER: I would ask the Court to  
16 refrain from saying anything as to Count 1 and 2.  
17 I will withdraw my request.

18 THE COURT: Okay. That solves it.

19 (Open court.)

20 MR. VAUGHN: Your Honor, at this time  
21 the State of Florida respectfully rests its case.

22 MR. BAER: Judge, at this time the  
23 defense would be calling as its first witness  
24 Marlene Graham.

25 Miss Graham, why don't you come forward



**SEE EXHIBIT "4"**

(See Tr. Page 131-132 and Tr. Page 154, lines 1-14).

The trial court judge after pronouncing the judgment of acquittal in the Petitioner's case on the body of the indictment set on Count III. The trial court judge continued the Petitioner's case to trial on Count I and II. Under the charge the Petitioner he was acquitted on Count III.

The trial court judge instructed the jury in violation of double jeopardy clause after judgment of acquittal with the same charges the court granted the acquittal.

The jury found the Petitioner guilty the charge in the instrument on Count III. The murder, robbery, firearm, and principal theory as a charge in the indictment. (See the Petitioner's Judgment and Sentence).

The judge sentenced the Petitioner for the first-degree murder with firearm and robbery with a firearm, to wit: a machine gun, in violation of Florida Statutes § 782.04; § 812.13; § 790.07; § 775.087 and 777.011, after the Petitioner had been acquitted and exonerated of these charges. In *Brown v. Davenport*, 142 S.Ct. 1510, 1532-1534, 212 L.Ed.2d 463 2022 U.S. LEXIS 42-43 (2022) the United States Supreme Court holding that: the granted relief to a convicted prisoner after finding a violation of double jeopardy clause. The Court explained that it was carrying out a "sacred {212 L.Ed.2d 488} duty" in declaring that the prisoner was being held "without authority, and that he should therefore be discharged."

### **ATTENTION BEFORE YOU READ THIS JURY INSTRUCTION**

The Petitioner's jury instruction, by the trial court, to the jury represented a miscarriage of justice and malicious accusation without no probable cause - which is in violation of the Fourth Amendment of the U.S. Constitution.

The Petitioner was indicted an accused of perpetrating a robbery and the killing of John Burgos. The Petitioner was not charged as a principal or as an aider and abettor. There was/is no other person, arrested, charged or indicted by the grand jury as a codefendant for the robbery or the murder of John Burgos and therefore, the Petitioner cannot be charged under the principal theory.

The jury instruction by the trial court judge in regards to lesser included offense of second degree murder and manslaughter, represent a violation of the Fifth and Fourteenth Amendment of the U.S. Constitution because the Fifth Amendment jurisdictional - indictment cannot be used for lesser included offense charges to the jury instruction. The Petitioner can only be tried upon the indictment as found by the grand jury under oath.

The Petitioner's jury instruction which were given to the jury under information instruction and not under the indictment as request under the Fifth Amendment because lesser included charges is not indictment this instruction is information.

The trial court judge's jury instruction under lesser included offense charges deprived the Petitioner life, liberty, or property without due process of

constitutional laws. That being required an indictment as necessary to due process of law in *Ex Parte Bain*, 7 S.Ct. 781, 30 L.Ed 849, 121 U.S. 1, 4-12 (1887).

The trial court judge jury instruction decision is a great difference between the indictment constitutional laws and information law according to Florida Constitution Article I, section 15(a). Also ...

In the general jury instruction in Florida Criminal Laws and Rules 2013, 2, Instructions during trial 2.1 Preliminary Instruction. To determine if the State has proved its accusation beyond a reasonable doubt against the Petitioner) the jury verdict must be based solely on the evidence, and lack in evidence, and the law.

The [information] [indictment] in the jury verdict Petitioner's case is not evidence and is not to be considered by you and this jury verdict the indictment as any proof the Petitioner are guilty of these charges.

The appeal court of the Eleventh Circuit must apply the constitutional laws and the facts the Petitioner never being proof the conviction beyond a reasonable doubt by the State attorney, the court or the jury.

The Petitioner holding that this court of appeal must review this jury instruction under the United States Constitution Amendment VII. That fact tried by the jury, shall be otherwise re-examined in any court of the United States then according to rules and the constitution of the Fifth Amendment.

1 THE COURT: All right.

2 Thank you, ladies and gentlemen, for the attentio  
3 which you've paid during this trial.

4 Now, please pay attention to the instructions  
5 which the court is about to give you.

6 In this case, the defendant is charged as follows  
7 In the name and by the authority of the State of Florida  
8 { The grand jurors of the State of Florida, duly  
9 called, impaneled and sworn to inquire and true present-  
10 ment make in and for the body of the County of Dade,  
11 upon their oaths, present that on or about the 3rd day  
12 of November, 1984, within the County of Dade, State of  
13 Florida, Samuel Rivera, also known as "Tony," did  
14 unlawfully and feloniously, from a premeditated design  
15 to effect the death of a human being, or while engaged  
16 in the perpetration, or in an attempt to perpetrate  
17 robbery, kill and murder John Burgos, a human being, by  
18 shooting the said John Burgos with a firearm, to wit:  
19 A machine gun, in violation of Florida statutes 782.04,  
20 775.087 and 777.011, to the evil example of all others  
21 in like cases offending and against the peace and digni-  
22 ty of the State of Florida.

23 And in count II it is alleged that the grand  
24 jurors of the State of Florida duly called, impaneled  
25 and sworn to inquire and true presentment make in and

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1 for the body of the County of Dade, upon their oaths,  
2 present that on or about the 3rd day of November, 1984,  
3 within the County of Dade, State of Florida. Samuel  
4 Rivera, also known as "Tony," did, unlawfully, by force,  
5 violence, assault or putting in fear, take certain pro-  
6 perty, to wit: Jewelry, the property of John Burgos  
7 as owner or custodian, from the person or custody of  
8 John Burgos said property being the subject of larceny  
9 and of the value of more than \$100 with the intent to  
10 permanently deprive John Burgos of the said property,  
11 and in the course of committing said robbery, carried  
12 a firearm, to wit: A machine gun in violation of Florida  
13 statutes 812.13 and 777.011, to the evil example of all  
14 others in like cases offending and against the peace  
15 and dignity of the State of Florida.

16 In considering the evidence, you should consider  
17 the possibility that although the evidence may not con-  
18 vince you that the defendant committed the main crime of  
19 which he is accused, there may be evidence that he  
20 committed other acts that would constitute a lesser  
21 included crime. Therefore, if you decide that the main  
22 accusation has not been proven beyond a reasonable doubt,  
23 you will next need to decide if the defendant is guilty  
24 of any lesser included crime. The lesser included  
25 crimes indicated in the definition of first degree

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1           versus Samuel Rivera, also known as "Tony."

2           Verdict: We, the jury, at Miami, Dade County,  
3           Florida, this 26th day of February A.D., 1987, find the  
4           defendant, Samuel Rivera, also known as "Tony," as to  
5           first degree murder as charged in the indictment, count  
6           I, guilty.

7           So say we all, H. Ernst, Jr., foreman.

8           State of Florida versus Samuel Rivera, also known  
9           as "Tony."

10          Verdict: We, the jury, at Miami, Dade County,  
11          Florida, this 26th day of February A.D., 1987, find  
12          the defendant, Samuel Rivera, also known as "Tony,"  
13          as to robbery, as charged in the indictment, count II,  
14          with a firearm, guilty.

15          So say we all, H. Ernst, Jr., foreman.

16          Ladies and gentlemen of the jury, you've heard  
17          me read this verdict, if this is your verdict, please  
18          answer by saying yes as I call your name. If this is  
19          not your verdict, please answer by saying no.

20          Margarita Palacio.

21          MS. PALACIO: Yes.

22          THE CLERK: Elizabeth Gutierrez.

23          MS. GUTIERREZ: Yes.

24          THE CLERK: Lisette Sanchez.

25          MS. SANCHEZ: Yes.

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☐ PROBATION VIOLATOR  
(Check if Applicable)

1504  
IN THE CIRCUIT COURT ELEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
DADE COUNTY, FLORIDA

CRIMINAL DIVISION

STATE OF FLORIDA

CASE NUMBER 85-25037

—vs—  
SAMUEL RIVERA  
also known as  
"TONY EL ENFERMO"  
Defendant

RECORDED  
MAR 30 1987  
RICHARD P. BRINKER  
CLERK

FILED  
FEB 26 1987  
RICHARD P. BRINKER  
CLERK

## JUDGMENT

The Defendant, being personally before this Court represented by L. Baer

his attorney of record, and having:

(Check Applicable  
Provision)

- ☒ Been tried and found guilty of the following crime(s)  
☐ Entered a plea of guilty to the following crime(s)  
☐ Entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME
1	FIRST DEGREE MURDER WITH A FIREARM, to-wit: a MACHINE GUN	782.04 & 775.087 775.011	CAPITAL
2	ROBBERY WITH A FIREARM, to-wit: a MACHINE GUN	812.13 & 777.011	1F

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

.....

Check if  
Applicable

- ☒ The Defendant is hereby ordered to pay the sum of two hundred dollars (\$200.00) pursuant to F.S. 27.3455. (Local Government Criminal Justice Trust Fund).
- ☒ The Defendant is hereby ordered to pay the sum of twenty dollars (\$20.00) pursuant to F.S. 960.20 (Crimes Compensation Trust Fund).
- ☒ The Defendant is further ordered to pay the sum of three dollars (\$3.00) as a court cost pursuant to F.S. 943.25(4).
- ☒ The Defendant is ordered to pay an additional sum of two dollars (\$2.00) pursuant to F.S. 943.25(4). (This provision is optional; not applicable unless checked).
- ☐ The Defendant is further ordered to pay a fine in the sum of \$ \_\_\_\_\_ pursuant to F.S. 775.0835. (This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as part of the sentence pursuant to F.S. 775.083 are to be recorded on the Sentence page(s)).
- ☐ The Court hereby imposes additional court costs in the sum of \$ \_\_\_\_\_

PATRICE  
Clerk of the Court

Page 1 of 5

REC 1321842880

Defendant RIVERA, SAMUEL  
 Case Number RS-25037

Imposition of Sentence  
 Stayed and Withheld  
 (Check if Applicable)

Sentence Deferred  
 Until Later Date  
 (Check if Applicable)

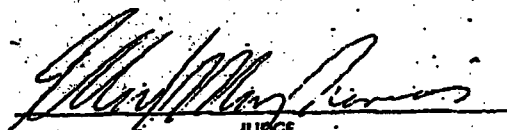
☐ The Court hereby stays and withholds the imposition of sentence as to count(s) \_\_\_\_\_ and places the Defendant on probation/Community Control for a period of \_\_\_\_\_ under the supervision of the Department of Corrections (conditions of probation/community control set forth in separate order.)

☐ The Court hereby defers imposition of sentence until \_\_\_\_\_ (date)





☐ The Court hereby suspends the entry of sentence as to Count(s) \_\_\_\_\_

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

DONE AND ORDERED in Open Court at Miami, Dade County, Florida, this 26th day of FEBRUARY  
 A.D., 19 87

  
 JUDGE  
 ELLEN J. MORPHONIOS

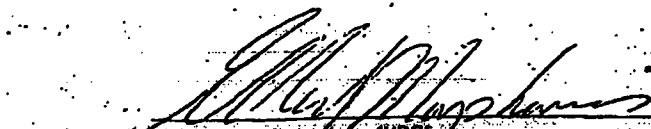
# FINGERPRINTS OF DEFENDANT

Left four fingers taken simultaneously	Left thumb	Right thumb	Right four fingers taken simultaneously
			

Fingerprints taken by:

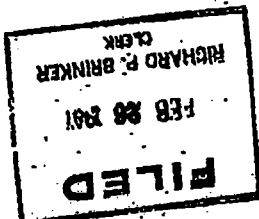
  
 Name and Title

I HEREBY CERTIFY that the above and foregoing fingerprints are those of the Defendant, and that they were placed hereon by said Defendant in my presence in Open Court at Miami, Dade County, Florida, this 26th day of FEBRUARY, 19 87.

  
 JUDGE  
 ELLEN J. MORPHONIOS

REC-13218PC2881

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY



Defendant SAMUEL RIVERA  
Case Number 85-25037

SENTENCE

The Defendant, being personally before this Court, accompanied by his attorney, L. BERT  
(As to Court)

and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown,

☐ and the Court having on \_\_\_\_\_ (date) deferred imposition of sentence until this date.  
☐ and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE COURT that:  
☐ The Defendant pay a fine of \$ \_\_\_\_\_, plus \$ \_\_\_\_\_ as the 5% surcharge required by F.S. 960.25.  
☒ The Defendant is hereby committed to the custody of the Department of Corrections  
☐ The Defendant is hereby committed to the custody of the Sheriff of DADE County, Florida

To be imprisoned (check one; unmarked sections are inapplicable)  
☒ For a term of Natural Life  
☐ For a term of \_\_\_\_\_ years.

☐ For an indeterminate period of 6 months to \_\_\_\_\_ years.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:  
☐ It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.  
☐ It is further ordered that the \_\_\_\_\_ year minimum provisions of F.S. 893.135(1) ( ) are hereby imposed for the sentence specified in this count.  
☐ The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of \_\_\_\_\_. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.  
☐ The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the Court are set forth in a separate order or stated on the record in open court.  
☐ It is further ordered that the Defendant shall be allowed a total of \_\_\_\_\_ days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflect the following periods of incarceration (optional):  
☐ It is further ordered that the Defendant shall be allowed a total of \_\_\_\_\_ days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflect the following periods of incarceration (optional):

Capital — 25 year mandatory minimum  
Consecutive/Concurrent

☒ It is further ordered that the 25 year minimum provisions of F.S. 775.082(1) are hereby imposed for the sentence specified in this count.  
☐ It is further ordered that the entry of sentence be suspended.  
☐ It is further ordered that the sentence imposed for this count shall run ☐ consecutive to ☐ concurrent with (check one) the sentence set forth in count \_\_\_\_\_ above.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

Defendant SAMUEL RIVERA

Case Number 85-25037

## SENTENCE

(As to Count 2)

The Defendant, being personally before this Court, accompanied by his attorney, L. Baer,  
and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity  
to be heard and to offer matters in mitigation of sentence; and to show cause why he should not be sentenced as provided by law,  
and no cause being shown,

- ☐ and the Court having on \_\_\_\_\_ (date) deferred imposition of sentence  
until this date.
- (Check either provision  
if applicable) ☐ and the Court having placed the Defendant on probation and having subsequently revoked the  
Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE COURT that:

- ☐ The Defendant pay a fine of \$ \_\_\_\_\_, plus \$ \_\_\_\_\_ as the 5% surcharge required by F.S. 960.25.  
☒ The Defendant is hereby committed to the custody of the Department of Corrections  
☐ The Defendant is hereby committed to the custody of the Sheriff of DADE County, Florida

To be imprisoned (check one; unmarked sections are inapplicable)

- ☐ For a term of Natural Life  
☒ For a term of ONE HUNDRED AND THIRTY FOUR (134) YEARS

- ☐ For an indeterminate period of 6 months to \_\_\_\_\_ years.

### SPECIAL PROVISIONS

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

→ **Firearm — 3 year  
mandatory minimum**

**Drug Trafficking —  
mandatory minimum**

**Retention of  
jurisdiction**

**Habitual Offender**

**Jail Credit**

**Capital — 25 year  
mandatory minimum**

**Consecutive/Concurrent**

- ☒ It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed  
for the sentence specified in this count, as the Defendant possessed a firearm.
- ☐ It is further ordered that the \_\_\_\_\_ year minimum provisions  
of F.S. 893.135(1) ( ) ( ) are hereby imposed for the sentence specified in this count.
- ☐ The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any  
Parole Commission release order for the period of \_\_\_\_\_. The requi-  
site findings by the Court are set forth in a separate order or stated on the record in open court.
- ☐ The Defendant is adjudged a habitual offender and has been sentenced to an extended term in  
this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by  
the court are set forth in a separate order or stated on the record in open court.
- ☒ It is further ordered that the Defendant shall be allowed a total of 155 days  
credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit  
reflects the following periods of incarceration (optional):

- ☐ It is further ordered that the 25 year minimum provisions of F.S. 775.082(1) are hereby imposed  
for the sentence specified in this count.

- ☐ It is further ordered that the entry of sentence be suspended.

- It is further ordered that the sentence imposed for this count shall run ☒ consecutive to  
☐ concurrent with (check one) the sentence set forth in count \_\_\_\_\_ above.

Defendant SAMUEL RIVERACase Number 85-25037Consecutive/Concurrent  
(As to other convictions)It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run ☐ consecutive to ☐ concurrent with (check one) the following:☐ Any active sentence being served.☐ Specific sentences: \_\_\_\_\_

In the event the above sentence is to the Department of Corrections, the Sheriff of DADE County, Florida is hereby ordered and directed to deliver the defendant to the Department of Corrections together with a copy of this judgment and Sentence.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

In imposing the above sentence, the Court further recommends \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DONE AND ORDERED in Open Court at Miami, Dade County, Florida, this 26th day of FEBRUARY  
A.D., 19 87.



JUDGE

ELLEN J. MORPHONIOS

REF: 13218PC2884