

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

AL PRINCE — PETITIONER
(Your Name)

vs.

FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ELEVENTH CIRCUIT COURT OF APPEALS FOR THE UNITED STATES
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

AL D. PRINCE
(Your Name)

CROSS CITY CORRECTIONAL INST. 568 N.E. 255TH STREET
(Address)

CROSS CITY, FLORIDA 32628
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

- I. WHETHER A CONFLICT EXISTS BETWEEN THE U.S. 11TH CIRCUIT COURT OF APPEALS DECISIONS IN THIS INSTANT CASE OF NOT TO TOLL THE TIME PERIOD OF THE STATE ACTION OF FAILING TO INFORM PETITIONER BY NOTIFICATION OF FINALITY IN STATE POSTCONVICTION PROCEEDINGS ?

- II. WHETHER A DIRECT APPEAL THAT PRODUCE AN AFFIRMANCE OF JUDGMENT AND SENTENCE WITH INSTRUCTIONS OF STRIKING HVFO LANGUAGE FROM JUDGMENT TO ENTER AMENDMENTED JUDGMENT, SHALL RECEIVE THE 90-DAY U.S. SUPREME COURT CERTIORARI TIME OR DOES A SECOND APPEAL HAS TO TAKE PLACE TO GET THE 90-DAY TIME PERIOD ?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

ATTORNEY GENERAL OF FLORIDA, PAMELA JO BONDI
11TH CIRCUIT COURT OF APPEALS OF THE U.S., JUDGE MARTIN

LATOSHA HOBBS, VICTIM

ANGELA B COREY, STATE ATTORNEY

PAPA KELLY, DEFENSE TRIAL ATTORNEY

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	8
CONCLUSION.....	12

INDEX TO APPENDICES

APPENDIX A 11TH CIRCUIT U.S. COURT OF APPEALS DECISION OF JULY 28, 2017

APPENDIX B 11TH CIRCUIT U.S. COURT OF APPEALS DENIAL OF RECONSIDERATION

APPENDIX C U.S. MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION HABEAS DISMISSAL

APPENDIX D ONLY JUDGMENT OF CONVICTION AND SENTENCE PROPERLY RENDERED

APPENDIX E PETITIONER'S 54(e) MOTION TO ALTER OR AMEND A JUDGMENT IN U.S. DISTRICT COURT

APPENDIX F 28 U.S.C. § 2254 PETITION FOR WRIT OF HABEAS CORPUS

APPENDIX G APPLICATION FOR COA IN THE 11TH CIR. U.S. COURT OF APPEALS

APPENDIX H MOTION TO RECONSIDER IN THE 11TH CIR. U.S. COURT OF APPEALS

APPENDIX I LETTER FROM STATE PUBLIC DEFENDERS OFFICE REPRESENTING DIRECT APPEAL

APPENDIX J U.S. DISTRICT COURT OF MIDDLE DISTRICT OF FLORIDA ORDER ON MOTION TO ALTER/AMEND

TABLE OF AUTHORITIES CITED

CASES

CASES	PAGE NUMBER
APPRENDI V. NEW JERSEY, 530 U.S. 466 (2000)	4
CASON EX REL SAFERIGHT V. HAMMOCK, 908 So.2d 512	10
CRAWFORD V. WASHINGTON, 541 U.S. 36 (2004)	4
EARL V. FABIAN, 556 F.3d 717 (8 TH CIR. 2009)	6, 12
JIMENEZ V. QUARTERMAN, 555 U.S. AT 119	7
MITCHELL V. STATE, 911 So.2d 1211 (Fla. 2005)	10
PALM V. STATE, 947 So.2d 1199 (Fla 1 ST DCA 2007)	11
PRINCE V. STATE, 991 So.2d 1036 (Fla. 1 ST DCA 2008)	9
SIMS V. STATE, 998 So.2d 494	9
STATE V. ESTEVEZ, 753 So.2d 1 (Fla. 1999)	4
MC DOWELL V. CALDERON, 197 F.3d 1253	12

STATUTES AND RULES

FLA. STAT. 924.09	11
FLA. R. CRIM. P. 3.670	9, 10
FLA. R. CRIM. P. 3.850	4, 11
FLA. R. APP. P. 9.140	10

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JULY 28, 2017.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: SEPTEMBER 14, 2017, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was MAY 15, 2012.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14TH UNITED STATES CONSTITUTIONAL AMENDMENT

5TH UNITED STATES CONSTITUTIONAL AMENDMENT

6TH UNITED STATES CONSTITUTIONAL AMENDMENT

28 U.S.C.A. 2244

28 U.S.C.A. 2254

FLORIDA STATUTE 924.09

STATEMENT OF THE CASE

PETITIONER IS A FLORIDA PRISONER SERVING A TOTAL LIFE SENTENCE AS A PRISON RELEASEE REOFFENDER AFTER A JURY FOUND HIM GUILTY OF TWO COUNTS OF SEXUAL BATTERY AND ONE COUNT OF BATTERY ON FEBRUARY 15, 2007¹. THE JURY FOUND COUNT 1, SEXUAL BATTERY AS CHARGED IN THE INFORMATION - USED ACTUAL FORCE LIKELY TO CAUSE SERIOUS PERSONAL INJURY AND DID NOT USE OR THREATEN TO USE A DEADLY WEAPON, TO WIT: SCISSORS. FOR COUNT 2, SEXUAL BATTERY AS CHARGED IN THE INFORMATION - USED ACTUAL PHYSICAL FORCE LIKELY TO CAUSE SERIOUS PERSONAL INJURY AND DID NOT USE OR THREATEN TO USE A DEADLY WEAPON, TO WIT: SCISSORS. PETITIONER WAS FOUND NOT GUILTY OF COUNT 3, ARMED BURGLARY WITH ASSAULT OR BATTERY. FOR COUNT 4, GUILTY OF BATTERY, AND PETITIONER WAS FOUND NOT GUILTY OF COUNT 5, GRAND THEFT AUTO.

THE JURY, REJECTED THE STATE'S THEORY OF PROSECUTION UNDER SECTION 794.011 (3) FLA. STAT., BECAUSE THE EVIDENCE DID NOT SUPPORT THAT PETITIONER USED (1) A DEADLY WEAPON; (2) NO GREAT BODILY HARM, (3) SERIOUS PERSONAL INJURY, (4) PERMANENT DISABILITY OR (5) PERMANENT DISFIGUREMENT.

PETITIONER FILED A DIRECT APPEAL CHALLENGING THE JUDGMENT OF CONVICTION AND SENTENCES TO THE STATE HIGHEST APPELLATE COURT HAVING JURISDICTION, NAMELY THE DISTRICT COURT OF APPEAL, FIRST DISTRICT OF FLORIDA, DOCKET CASE NUMBER 1D07-1753. PETITIONER RAISED SIX ISSUES OF ARGUMENT AS FOLLOWS: 1. WHETHER THE TRIAL COURT ERRED IN GRANTING THE STATE'S THIRD AND FIFTH MOTIONS IN LIMINE, THEREBY PRECLUDING APPELLANT FROM INTRODUCING EVIDENCE OF THE VICTIM'S PRIOR SEXUAL HISTORY IN DEFENSE, NOTWITHSTANDING THE FLORIDA RAPE SHIELD STATUTE; 2. WHETHER THE STATE OPENED THE DOOR TO EVIDENCE OF THE VICTIM'S PRIOR SEXUAL HISTORY; 3. WHETHER THE TRIAL COURT ERRED IN IMPOSING AN HABITUAL VIOLENT FELONY OFFENDER SENTENCE; 4. WHETHER THE IMPOSITION OF A PRISON RELEASEE REOFFENDER SENTENCE VIOLATED APPENDIX V, NEW JERSEY, 530 U.S. 466 (2000); 5. WHETHER THE IMPOSITION OF A PRISON RELEASEE REOFFENDER SENTENCE VIOLATED STATE V. ESTEVEZ, 753 So. 2d 1 (FLA. 1999); 6. WHETHER THE IMPOSITION OF A PRISON RELEASEE REOFFENDER SENTENCE VIOLATED CRAWFORD V. WASHINGTON, 541 U.S. 36 (2004).

1. SEE APPENDIX D.

THE APPEAL RESULTED IN AFFIRMANCE WITH INSTRUCTIONS ORDERING THE HABITUAL VIOLENT FELONY OFFENDER (HVFO) DESIGNATION VACATED AND REMANDED THE CASE TO THE TRIAL COURT FOR RESENTENCING. THE TRIAL COURT ATTEMPTED TO FOLLOW THE INSTRUCTIONS OF THE APPELLATE COURT BY ISSUING AN ORDER CORRECTING SENTENCE STRIKING THE HVFO. THIS ATTEMPTED RESENTENCING WAS HAD EX PARTE OUTSIDE THE PRESENCE OF PETITIONER WITHOUT A DE NOVO RESENTENCING HEARING AND PETITIONER WAS A PRO SE PRISONER WITHOUT COUNSEL, BY FAILURE OF THE STATE PROCESS, DURING THE ATTEMPTED RESENTENCING. AS REFLECTED BY THE ORDER'S CERTIFICATE OF SERVICE, WHICH REVEAL THAT IT WAS COPIES ISSUED TO THE STATE ATTORNEY OFFICE, AND THE PETITIONER, EXCLUDING DELIVERY TO ANY DEFENSE COUNSEL.

THE ATTEMPTED ORDER CORRECTING SENTENCE CONTAINED FURTHER CONSTITUTIONAL DEFICIENCIES OF FAILING TO PROVIDE PETITIONER THE OPPORTUNITY OF SELECTING HIS CHOICE OF AN APPEAL IN THE MATTER, NAMELY WHETHER THE PETITIONER WANTED TO PROCEED PRO SE, PRIVATE RETAINED COUNSEL, OR PUBLIC DEFENDER. ESPECIALLY WHERE PETITIONER HAD ALREADY BEEN DEEMED TO BE INDIGENT. FURTHER THE ORDER FAILED TO APPRAISE PETITIONER OF HIS RIGHT TO APPEAL THE ORDER CORRECTING SENTENCE.²

THE PETITIONER UNLEARNED IN LAW AND WITHOUT KNOWLEDGE OF LOSING THE RIGHT TO THE SECOND APPEAL, PETITIONER MOVED ON TO DILIGENTLY PURSUE HIS RIGHTS BY FILING POST CONVICTION PLEADINGS IN THE STATE TRIAL COURT AND STATE APPELLATE COURT HAVING JURISDICTION.

PETITIONER WENT ON TO FILE A 28 U.S.C. 2254 PETITION FOR WRIT OF HABEAS CORPUS IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA,³ CASE # 3:14-cv-00807 ARGUING THAT:

- (1) COUNSEL WAS INEFFECTIVE IN FAILING TO MOVE FOR DISMISSAL OF HIS CHARGES BASED ON A SPEEDY-TRIAL VIOLATION;
- (2) COUNSEL WAS INEFFECTIVE IN MISADVISING HIM TO REJECT A PLEA OFFER;
- (3) COUNSEL WAS INEFFECTIVE IN MISADVISING HIM REGARDING HIS RIGHT TO TESTIFY ON HIS OWN BEHALF; AND
- (4) THE COURT ERRED IN SENTENCING HIM TO LIFE IMPRISONMENT.

THE DISTRICT COURT DISMISSED THE PETITION AS UNTIMELY, GIVING THE RATIONALE THAT THE PETITIONER DID NOT FILE A DIRECT APPEAL FROM HIS NOVEMBER 14, 2008 AMENDED JUDGMENT,

2. SEE APPENDIX E'S ATTACHED EXHIBIT,

3. SEE APPENDIX F.

SO HIS CONVICTIONS BECAME FINAL FOR AEDPA PURPOSES ON DECEMBER 15, 2008, AND THE PETITION WAS 30 DAYS LATE.

THEN IN APRIL 2016, PETITIONER FILED A RULE 59(e) MOTION MOVING THE DISTRICT COURT TO CONSIDER EQUITABLE TOLLING OF THE UNINFORMED AMENDED JUDGMENT AND THE 90 DAY CERTIORARI U.S. SUPREME COURT TIME PERIOD, TOWARDS THE 30 DAYS TARDINESS. ON JUNE 16, 2016, THE DISTRICT COURT ISSUED A DENIAL OF THE 59(e) MOTION.

THE PETITIONER PURSUED A APPEAL IN THE 11TH CIRCUIT COURT OF APPEALS TO APPEAL THE DISTRICT COURT'S DISMISSAL OF THE HABEAS PETITION AND THE DENIAL OF THE 59(e) MOTION. BY WAY OF FILING A NOTICE OF APPEAL AND AN APPLICATION FOR (COA) MOVING THE COURT TO FIND EQUITABLE TOLLING UNDER THE 90 DAY U.S. SUPREME COURT CERTIORARI TIME OR EQUITABLE TOLLING UNDER THE CIRCUMSTANCES OF A SIMILAR SITUATED AUTHORITY EARL V. FABIAN, 556 F.3d 717 (8TH CIR, 2009), OF AN UNINFORMED STATE CREATED DELAY OF NOTIFICATION THAT HIS JUDGMENT OF CONVICTION HAD BECOME FINAL, AMOUNTING TO AN EXTRAORDINARY CIRCUMSTANCES BEYOND PETITIONER'S CONTROL, AS DEBATABLE AMONG JURISTS OF REASON.⁴

ON JULY 28, 2017, THE 11TH CIRCUIT COURT OF APPEALS ISSUED A DENIAL OF THE APPLICATION FOR (COA) REASONING THAT THE PETITION WAS UNTIMELY UNDER 8 2244 (d)(1)(A), WHERE PETITIONER DID NOT FILE A DIRECT APPEAL FROM HIS NOVEMBER 14, 2008 AMENDED JUDGMENT AND THE CONVICTIONS BECAME FINAL ON DECEMBER 31, 2008, AND 30 DAYS LATE. AS TO DENYING THE 59(e) MOTION THE 11TH CIRCUIT COURT GAVE REASON AS A LITIGANT CANNOT USE A 59(e) MOTION TO RELITIGATE OLD MATTERS, RAISE ARGUMENT, OR PRESENT EVIDENCE THAT COULD HAVE BEEN RAISED PRIOR TO THE ENTRY OF JUDGMENT.

THE DENIAL FURTHER MISCONSTRUED PETITIONER'S CONTENTION ASSERTED BY HIS 59(e) MOTION AS "... (2) THE DISTRICT COURT FAILED TO CONSIDER A 90-DAY PERIOD DURING WHICH HE COULD HAVE SOUGHT CERTIORARI IN THE UNITED STATES SUPREME COURT FOLLOWING THE FIRST DISTRICT COURT OF APPEALS' AFFIRMANCE OF THE DENIAL OF HIS AMENDED RULE 3.850 MOTION. HOWEVER, MR. PRINCE COULD HAVE RAISED THESE ARGUMENTS BEFORE JUDGMENT WAS ENTERED AGAINST HIM, SO HE COULD NOT RAISE THEM IN A RULE 59(e) MOTION...". SEE 11TH CIRCUIT COURT OF APPEALS ORDER OF JULY 28, 2017, ().

THE TRUE ESSENCE OF PETITIONER'S ASSERTED CONTENTION WAS PERTINENT TO THE FIRST DIRECT

4. SEE APPENDIX G

COURT OF APPEALS AFFIRMANCE, OF THE JUDGMENT OF CONVICTION RENDERED, DURING THE FIRST AND ONLY DIRECT APPEAL TAKEN IN THIS CASE, WITH DIRECTIONS TO STRIKE THE HVFO SENTENCE IMPOSED, WHICH SHOULD HAVE ALLOTTED THE PETITIONER THE 90-DAY PERIOD IN WHICH HE HAD TO PETITION THIS THE U.S SUPREME COURT FOR CERTIORARI.

ON AUGUST 14, 2017, THE PETITIONER FILED A MOTION TO RECONSIDER, VACATE, OR MODIFY AN ORDER, MOVING THE 11TH CIRCUIT COURT OF APPEALS TO RECONSIDER THE FACTS PERTINENT TO THE CALCULATION OF THE AEDPA TOLLING THE TIME PERIOD, IN WHICH THE STATE TRIAL COURT CREATED IMPEDIMENT, OF FAILING TO COMPLY WITH DUE PROCESS OF NOTIFYING PETITIONER OF HIS RIGHT AND OPPORTUNITY TO TAKE A SECOND DIRECT APPEAL, ASSERTING THIS THE U.S. SUPREME COURT AUTHORITY OF JIMENEZ V. QUARTERMAN, 555 U.S. AT 119.⁵

ON SEPTEMBER 14, 2017, THE 11TH CIRCUIT COURT OF APPEALS ISSUED AN OPINION DENYING THE MOTION FOR RECONSIDERATION, GIVING THE RATIONALE OF PETITIONER OFFERING NO NEW EVIDENCE OR ARGUMENTS OF MERIT TO WARRANT RELIEF.

THIS PETITION IS TIMELY FILED IN GOOD FAITH, OF GAINING THIS THE U.S. SUPREME COURT'S ATTENTION, OF THE TREATMENT THIS COUNTRY IS PRODUCING A COMMON BLIND EYE TO THE USE OF PROCEDURAL DEFAULT TECHNICALITY, OVER CONSTITUTIONAL VIOLATION.

PETITIONER RECEIVED A LETTER FROM THE PUBLIC DEFENDERS OFFICE INFORMING HIM THAT THE NEW JUDGMENT AND SENTENCE BEING ENTERED WOULD PLACE THE RESPONSIBILITY OF FILING A NEW NOTICE OF APPEAL, FALL UPON THE TRIAL ATTORNEY.⁶

5. SEE APPENDIX H.

6. SEE APPENDIX I.

REASONS FOR GRANTING THE PETITION

THE PETITIONER CONTENDS THAT THE REASONS FOR GRANTING THIS PETITION ARE AS FOLLOWS:

THE STATE OF FLORIDA HAS OVERLY VIOLATED PETITIONER'S CONSTITUTIONAL RIGHTS OF FAILING TO PROVIDE FINALITY, NOTIFICATION, DUE PROCESS AND ACCESS TO THE COURT, DURING THE FIRST DIRECT APPEAL PROCEEDING, WHICH RESULTED IN PROCEDURAL DEFAULTED LITIGATION THROUGH STATE AND FEDERAL COURT'S PROCESS IN ERR.

WHERE THIS COUNTRY PROVIDES THE CONSTITUTIONAL PROTECTION AGAINST NO STATE MAKING OR ENFORCING "ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS." 14TH U.S.C.A.

THIS VERY CONSTITUTIONAL AMENDMENT HAS BECOME COMMONLY VIOLATED BY STATE JUDICIAL SYSTEMS ON A MULTITUDE OF LEVELS OF JUDICIARY TRICKERY AND DECEIT. AS THE AVERAGE PRISONER DEFENDANT IN THIS COUNTRY, PROCEEDS PRO SE AND ONLY AT BEST A LAYMAN OF THE LAW, WHICH MAKES THE EQUAL PROTECTION OF THE LAWS, THAT IS EXPLOITED, HIDDEN, HINDERED, AND PREVENTED, BY THE STATE'S PROFESSIONAL BAR MEMBERS TACTICS WHICH HAS BECOME THE NORMAL UNFEATHERED PROCESS IN THIS COUNTRY. (THE PROCEDURAL DEFAULTING OF A PRO SE CLAIM TO CAST A NET OF PROTECTION OVER PROFESSIONAL BAR MEMBERS TRASHING OF AN INDIVIDUAL'S CONSTITUTIONAL RIGHTS).

WHERE WHO PARTICIPATE IN THIS JUDICIAL PROCESS, JUDGE, PROSECUTION, & DEFENSE ATTORNEY, ALL HAVE TO OBTAIN PROFESSIONAL KNOWLEDGE AND SKILL TO REPRESENT THEIR POSITION IN THIS JUDICIARY PROCESS THROUGH YEARS OF SCHOOLING AND PRACTICE. AS OPPOSED TO THE PETITIONER AND THE AVERAGE PRISONER HAVING NO KNOWLEDGE AND LIMITED ACCESS TO THE LAW AND RULES OF LAW. THIS ALREADY PLACES A

HEAVY BURDEN OF LITIGATING ANY TYPE OF POST CONVICTION PLEADINGS PRO SE .

THE PETITIONER WAS PROCEEDING THROUGH THE DIRECT APPEAL PROCESS, WITH THE ASSISTANCE OF APPELLATE COUNSEL RICHARD M. SUMMA, PROVIDED BY THE STATE THROUGH THE FLORIDA CONSTITUTION. UNDER THE TUTELAGE OF APPELLATE COUNSEL, THE DIRECT APPEAL ON OCTOBER 15, 2008, RESULTED IN OPINION PER CURIAM CONCLUDING VERBATIM AS FOLLOWS:

"ACCORDINGLY, WE AFFIRM APPELLANT'S CONVICTIONS AND SENTENCES VACATE THAT PORTION OF THE JUDGMENT SENTENCING HIM AS AN H.V.F.O. AND RE-MAND WITH INSTRUCTIONS THAT THE TRIAL COURT ENTER AN AMENDED JUDGMENT."
PRINCE V. STATE 991 So.2d 1036 (Fla. 1st DCA 2008).

AT THAT POINT, THROUGH APPELLATE COUNSEL'S TUTELAGE. PETITIONER WAS OF THE IMPRESSION THERE WAS NOTHING MORE TO BE DONE IN THE APPEAL BASED UPON THE AFFIRMANCE OF THE JUDGMENT AND SENTENCES WITHIN THE STATE APPELLATE COURT'S OPINION EXPRESS MISGUIDED LANGUAGE. THIS IS WHERE STATES ARE COMMONLY PLAYING THE TRICKERY AND DECEIT ON THE LEGALLY LESS FORTUNATE.

WHERE THE APPELLATE COUNSEL'S OBLIGATIONS TO THE PETITIONER'S APPEAL, MAINTAINED UNTIL THE TRANSMISSION OF THE STATE APPELLATE COURT'S DECISION. SEE SIMS V. STATE, 998 So.2d 494 (Fla. 2008). THIS LEFT THE PETITIONER TO FEND FOR HIMSELF DURING THE LEGAL CHURNING OF THE JUDICIAL ACTS INSTRUCTED TO BE PERFORMED, BY THE STATE TRIAL COURT. AS THE STATE TRIAL COURT WITHOUT PROVIDING PETITIONER A COUNSEL, WHERE HE HAD BEEN AND STILL WAS PROCEEDING INDICENT THROUGHOUT ALL THE PROCEEDINGS WITH THE ASSISTANCE OF THE PUBLIC DEFENDERS OFFICE, SUBMITTED AN INSUFFICIENT ORDER CORRECTING SENTENCE. THIS ORDER FAILED TO INFORM PETITIONER OF THE RIGHT TO TAKE A SECOND DIRECT APPEAL, AS PROSCRIBED AND MANDATED BY FLA. R. CRIM. P. 3.670 IN PERTINENT PART AS FOLLOWS:

WHEN A JUDGE RENDERS A FINAL JUDGMENT OF CONVICTION, WITHHOLDS ADJUDICATION OF GUILT AFTER A VERDICT OF GUILTY IMPOSES A SENTENCE

GRANT'S PROBATION, OR REVOKES PROBATION, THE JUDGE SHALL FORTHWITH INFORM THE DEFENDANT CONCERNING THE RIGHTS OF APPEAL THEREFROM, INCLUDING THE TIME ALLOWED BY LAW FOR TAKING AN APPEAL. WITHIN 15 DAYS AFTER THE SIGNED WRITTEN JUDGMENT AND SENTENCING IS FILED WITH THE CLERK OF COURT, THE CLERK OF THE COURT SHALL SERVE ON COUNSEL FOR THE DEFENDANT AND COUNSEL FOR THE STATE A COPY OF THE JUDGMENT OF CONVICTION AND SENTENCE ENTERED, NOTING THEREON THE DATE OF SERVICE BY A CERTIFICATE OF SERVICE. ¹⁾

Fla.R.Crim.P. 3.670.

AS THE LAW IN FLORIDA HOLDS THAT "... THE COURT OF APPEALS MUST APPLY THE RULES OF STATUTORY CONSTRUCTION TO THE RULES OF COURT PROMULGATED BY THE FLORIDA SUPREME COURT ..." CASON EX REL SAFERIGHT, V. HAMMORK, 908 So.2d 512. SEE ALSO MITCHELL V. STATE, 911 So.2d 1211 (Fla. 2005). THUS, PETITIONER'S FAILURE TO FILE AN APPEAL CAN BE ATTRIBUTED TO THE STATE'S CONDUCT AND AT NO FAULT OF PETITIONER.

FURTHER, WHERE THE STATE TRIAL COURT'S ORDER ATTEMPTING TO CORRECT SENTENCE, WAS PERFORMED WITHOUT A DEFENSE COUNSEL OF RECORD, THIS NEGATED ANY OPPORTUNITY CONSTITUTIONALLY PROVIDED OF PETITIONER HAVING COUNSEL FILE AN APPEAL AS MANDATED BY Fla. R. App. P. 9.140 IN PERTINENT PART AS FOLLOWS:

(d) WITHDRAWAL OF DEFENSE COUNSEL AFTER JUDGMENT AND SENTENCE OR AFTER APPEAL BY STATE.

(1) THE ATTORNEY OF RECORD FOR A DEFENDANT IN A CRIMINAL PROCEEDING SHALL NOT BE RELIEVED OF ANY PROFESSIONAL DUTIES, OR BE PERMITTED TO WITHDRAW AS DEFENSE COUNSEL OF RECORD, EXCEPT WITH APPROVAL OF THE LOWER TRIBUNAL ON GOOD CAUSE SHOWN ON WRITTEN MOTION, UNTIL EITHER THE TIME HAS EXPIRED FOR FILING AN AUTHORIZED NOTICE OF APPEAL AND NO SUCH NOTICE HAS BEEN FILED BY THE DEFENDANT OR STATE... ¹⁾

Fla.R. App. P. 9.140 (d) (1).

THEREFORE THE PETITIONER HAS BEEN ENDURING A CONSTITUTIONAL IMPEDIMENT, OF HIS RIGHT TO BE

INFORMED OF FINALITY, THE RIGHT TO SPEAK UPON ANY APPEAL, THE RIGHT TO HAVE COUNSEL AT THAT CRITICAL STAGE IN THE PROCEEDINGS TO ENSURE THE FILING OF AN APPEAL, THE RIGHT TO ACCESS THE APPELLATE ^{COURT} TIMELY, AND THE RIGHT OF DUE PROCESS OF LAW.

NOW EVEN FURTHER THE TRIAL COURT'S ORDER ATTEMPTING TO CORRECT SENTENCE IS ALSO ERRONEOUS, WHERE IT FAILS TO CONTAIN ANY INSIGNIA OF BEING FILED, OR DELIVERED, BY THE CLERK PRIOR TO BEING DELIVERED TO THE PETITIONER, STOPPING ANY CHANCE AT PERFECTING AN APPEAL. THIS MADE THE ORDER NON APPEALABLE AND UN RENDERED, AS "... APPEAL MAY BE TAKEN BY THE DEFENDANT ONLY WITHIN THE TIME PROVIDED BY THE FLORIDA RULES OF APPELLATE PROCEDURE AFTER THE JUDGMENT, SENTENCE, OR ORDER APPEALED FROM IS ENTERED, ...)" § 924.09 FLORIDA STATUTES. CONSEQUENTLY, WHEN AN ORDER FAILS TO CERTIFY THE DATE OF SERVICE, COURTS ARE UNABLE TO DETERMINE WHETHER THE 'NOTICE OF APPEAL' "WAS TIMELY FILED, THUS DELAYING RENDITION OF THE ORDER FOR THE PURPOSE OF TIMELY FILING AN APPEAL ..." PALM V. STATE, 947 So. 2d 1199, 1200 (Fla. 1st DCA 2007).

THE PETITIONER MOVED ON AFTER THE MISPLACED ATTEMPTED CORRECTED SENTENCING TO DILIGENTLY PURSUE WHAT HE HAD BEEN DIRECTED BY APPELLATE COUNSEL, BY FILING FOR A MOTION FOR POSTCONVICTION RELIEF 3.850 AND HAS BEEN CONTINUALLY SEEKING JUSTICE ALL THE WAY THROUGH, NOW. THIS BRINGS US TO THE § 2254 PETITION DISMISSED BY THE U.S. MIDDLE DISTRICT OF FLORIDA, COURT, AS BEING UNTIMELY BY LESS THAN TWO WEEKS, WHERE THAT COURT EXPLAINED IT WOULD NOT TOLL THE 90-DAY CERTIORARI TIME FOR PETITIONING THE U.S. SUPREME COURT, BECAUSE PETITIONER DID NOT FILE THE UNINFORMED SECOND APPEAL.

THIS RULING BROUGHT ABOUT THE PETITIONER'S FILING FOR A RULE 59(c) MOTION TO ALTER OR AMEND THE DISMISSAL. THE MOTION WAS ASSERTED TO INCLUDE A COPY OF THE ORDER, WHICH CAUSED THE IMPEDIMENT TO THE PETITIONER'S LATE FILING OF THE § 2254 HABEAS CORPUS, AND TO POINT OUT THE COURT'S OVERLOOKING TOLLING UNDER THE ERRONEOUS CIRCUMSTANCES CONTAINED BY THE ATTEMPTED ORDER CORRECTING SENTENCE, TO CORRECT WHAT WAS AND HAS BECOME A MANIFEST ERROR OF LAW AND FACT, UPON WHICH THE DISMISSAL IS BASED. AS 59(c) MOTIONS HAS BEEN HELD TO BE APPROPRIATE IN HABEAS CORPUS PROCEEDINGS, IN PERTINENT PART AS FOLLOWS:

IN HABEAS CORPUS, AS IN OTHER, PROCEEDINGS, RULE 59(c) MOTION MAY BE USED

TO "CORRECT MANIFEST ERRORS OF LAW OR FACT UPON WHICH THE JUDGMENT IS BASED")
McDOWELL V. CALDERON, 197 F.3d 1253, 1255 n1 (9th Cir. 1999). THE COURT WENT ON TO DENY
THE 59(c) MOTION CONTRARY TO THE PETITIONER'S SUBSTANTIAL CONSTITUTIONAL RIGHTS BEING VIOLATED
PETITIONER MOVED ON TO PURSUE AN APPEAL AND COA IN THE U.S. 11th CIRCUIT COURT OF APPEALS,
WHERE AGAIN HIS CONTENTION WAS DENIED AS NOT DESERVING DEBATABILITY AMONG JURISTS OF REASON AND
THAT THE 59(c) MOTION CONTENTS SHOULD HAVE BEEN RAISED PRIOR TO THE DISTRICT COURT'S RULING. THIS
DECISION IS IN DIRECT EXPRESS CONFLICT WITH EARL V. FABIAN, 556 F.3d 717 (8th Cir. 2009).

ALL OF THE FOREGOING COURT RESULTS ARE THE COMMONLY USED TACTICS THAT ARE BEING EMPLOYED IN THIS
COUNTRY AGAINST THE LESS FORTUNATE POOR INDIGENT PRISONER (U.S. CITIZEN) BY THE LAW PROFESSIONAL
OFFICERS OF THE COURT'S, WHO ARE PAID TO UPHOLD THE LAW, NOT TO LOOSE JUSTICE IN A WEB OF PROCEDURAL
DEFAULTS. ESPECIALLY CLEAR ERROR AS FOUND IN THIS INSTANT CASE UNCORRECTED THIS FAR UP THE
JUDICIAL LADDER.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ _____

Date: DECEMBER 5, 2017