

FILED

Serial: 216707

IN THE SUPREME COURT OF MISSISSIPPI

JAN 10 2018

No. 2017-M-00681

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

RUBEN ORLANDO BENITEZ A/K/A
RUBEN O. BENITEZ

Petitioner

v.

APPENDIX A

STATE OF MISSISSIPPI

Respondent

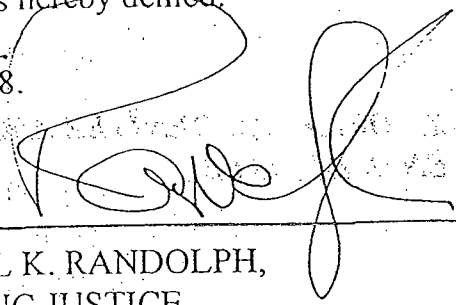
ORDER

This matter is before the panel of Randolph, P.J., King and Ishee, JJ., on the petition for evidentiary hearing filed *pro se* by Ruben Orlando Benitez. Said motion is in the nature of a motion for post-conviction relief, and it is treated as such.

Benitez's conviction of murder and sentence of life in the custody of the Mississippi Department of Corrections were affirmed on direct appeal, and the mandate issued on May 18, 2017. *Benitez v. State*, 139 So. 3d 134 (Miss. Ct. App. 2014). On direct appeal, Benitez challenged the validity of the search warrants, arguing that underlying facts and circumstances attached to those search warrants failed to satisfactorily show the probable cause required. In the instant matter, he again challenges the validity of search warrants, alleging that an officer lied on the affidavit. We find this argument was capable of being raised at trial or on direct appeal, and it has been waived. Miss. Code Ann. § 99-39-21(1). Further, Benitez has failed to make a substantial showing of the denial of a state or federal right. Miss. Code Ann. § 99-39-27(5). Accordingly, the panel finds the instant filing should be denied.

IT IS THEREFORE ORDERED that Benitez's petition for an evidentiary hearing, which is treated as a motion for post-conviction relief, is hereby denied.

SO ORDERED, this the 10th day of January, 2018.



MICHAEL K. RANDOLPH,
PRESIDING JUSTICE

Serial: 217209

IN THE SUPREME COURT OF MISSISSIPPI

No. 2017-M-00681

*Ruben Orlando Benitez a/k/a Ruben O. Benitez**Petitioner*

v.

APPENDIX

B*State of Mississippi**Respondent*ORDER

This matter is before the undersigned Justice on the Motion for Reconsideration filed *pro se* by Ruben Orlando Benitez. On January 10, 2018, a panel of this Court denied Benitez's filing, which was in the nature of and treated as a motion for post-conviction relief. Benitez now seeks reconsideration of that motion, to which he is not entitled. M.R.A.P. 27(h). Accordingly, the undersigned Justice finds that the motion should be dismissed.

IT IS THEREFORE ORDERED that the Motion for Reconsideration is hereby dismissed.

SO ORDERED.

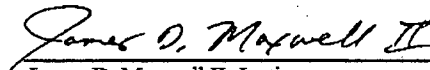
DIGITAL SIGNATURE CERTIFICATION

Order#: 217209

Sig Serial: 100000168

Org: SC

Date: 02/02/2018


James D. Maxwell II, Justice

**Additional material
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Clerk's Office.**