

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO.: \_\_\_\_\_

LOWER COURT NO.: 4D03-2710

**DAVID MARCUS PETERSON**

Petitioner

vs.

**STATE OF FLORIDA,**

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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## PRELIMINARY STATEMENT

Petitioner was the Defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida. Petitioner was the Appellant and Respondent was the Appellee in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court of Appeal except that Respondent may also be referred to as the State.

All emphasis in this brief is supplied by Respondent unless otherwise indicated.

**“R”** refers to the record filed in lower case no. 4D03-2710.

## STATEMENT OF THE CASE AND FACTS

After Petitioner's conviction and sentence were affirmed in the lower court, he filed a Rule 3.850 Motion collaterally attacking same (R 36-58). The State filed a written response and the trial court summarily denied the motion (R 65-197; 214-237). Petitioner appealed this order to the Fourth District Court of Appeal (R 338). That court per curiam affirmed the lower court's order without opinion (App. A). Peterson v. State, Dkt No.: 4D03-3710 (8/27/03) Petitioner filed a notice to invoke the discretionary jurisdiction of this Court (App. B).

## SUMMARY OF THE ARGUMENT

This court lacks jurisdiction to review the lower court's decision as that decision is a per curiam affirmance without opinion.

## ARGUMENT

THIS COURT LACKS JURISDICTION TO REVIEW  
THE LOWER COURT'S DECISION AS THAT  
DECISION IS A PER CURIAM AFFIRMANCE  
WITHOUT OPINION (Restated).

This court lacks jurisdiction to review the lower court's decision as that decision is a per curiam affirmance without opinion. Pursuant to Art. V, § 3(b)(3), Fla. Const., this Court has the jurisdiction to review a decision of a district court of appeal under certain narrowly defined circumstances.<sup>1</sup> Respondent submits this Court is without jurisdiction to review the lower court's order since that decision is a per curiam affirmance without a written opinion. *See, Gandy v. State*, 846 So.2d 1141, 1143 (Fla. 2003); Florida Star v. B.J.F., 530 So.2d 286 (Fla. 1988).

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<sup>1</sup>Respondent points out that Petitioner seeks to invoke this Court's jurisdiction pursuant to Art. V, § 3(b)(8), Fla. Const. (IB 5). That provision deals with the Court's original jurisdiction to issue writs of mandamus and quo warranto to state officers and state agencies. Id.; Fla. R. App. P. 9.030(c)(3). However, Petitioner seeks no such relief in that he is requesting this Court to consider the merits of his five Rule 3.850 claims (IB 6).

CONCLUSION

Based on the foregoing argument and citations, Respondent respectfully requests this Court to DISMISS the instant case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Brief on Jurisdiction" has been furnished by U.S. Mail to: DAVID MARCUS PETERSON, DC # C-106109, SANTA ROSA C.I., 5850 East Milton Road, Milton, Florida, 32583, this 29th day of September, 2003.

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AUGUST A. BONAVIDA

CERTIFICATE OF TYPE SIZE AND STYLE

The undersigned hereby certified that the instant brief has been prepared with 12 point Courier New type, a font that is not proportionately spaced, this 29th day of September, 2003.

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AUGUST A. BONAVIDA

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RESPONDENT'S APPENDIX

App. A . . . . . Peterson v. State, Dkt No.: 4D03, 8/27/03

App. B . . . . . Notice to Invoke Discretionary Jurisdiction , 9/2/03