

(A)

IN AND FOR THE SUPREME COURT
STATE OF FLORIDA

FILED
THOMAS D. HALL

2009 DEC 23 P 2:30

CLERK, SUPREME COURT

BY _____

DONNELL QUARTERMAN
AKA DORNAN QUARTERMAN

PETITIONER

VS

SEC: WALTER A MCNEIL ETC:
RESPONDENTS

CASE NO: SC 09-1139

LT. CASE NO: 2208-1844-2005-CA-001584

LT. Filing Date 6.23.2009

PETITIONER DONNELL QUARTERMAN
INITIAL ____ BRIEF

DISCRETIONARY REVIEW OF THE FIRST
DISTRICT COURT OF APPEAL OPINION ORDER DISMISSAL
OF APPEAL FEB 9, 2009 AND DENIAL REHEARING MAY 26, 2009.

DONNELL QUARTERMAN DCH 174376 H-21405
TAMUHA CORRECTION INSTITUTION
3950 TIGER BAY ROAD
DAYTONA BEACH, FLA 32124

PROSE: ATTORNEYS: DONNELL QUARTERMAN
PETITIONER DCH 174376
AKA DORNAN QUARTERMAN

"PRELIMINARY STATEMENT"

PETITIONER DONNELL QUARTERMAN DISCRETIONARY
REVIEW APPEAL FROM RESPONDENT THE HON 1ST DCA OPINION
DISMISS OF APPEAL FEB 9, 2009 AND REHEARING DENIAL MAY 26
2009: TO THIS HONORABLE SUPREME COURT OF FLORIDA:

THE RECORD CONSIST OF (1) VOLUME AND APPENDIX
WILL BE REFERRED TO AS E VOL (1) AND (A000) AND TRIAL
RECORD AS (T-R) OMITTED AND APPELLATE RECORD AS (A-R)

AND PLAINTIFF AND APPELLANT AS PETITIONER AND THE
HON: TRIAL COURT AND HON APPELLATE COURT APPELLEES AS
RESPONDENTS AND HON TRIAL COURT JUDGES AS PREDECESSOR
AND SUCCESSOR: AND RESPONDENT 3001 EMPLOYEES AND ATTORNEY:

THIS APPEAL DISCRETIONARY REVIEW WAS TAKEN
IN GOOD FAITH LOVE AND REASON: WITHIN THE INTEREST
OF JUSTICE: DUE TO EXCEPTIONAL EXTRAORDINARY CIRCUMSTANCES
AND ANY EXCUSABLE NEGLECT:

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[FLA CONST]

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[US CONST AMEND]

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"STATEMENT OF CASE AND FACTS"

(1) PETITIONER STATE ILLEGAL DNA WAS TAKEN FROM HIS HANDICAP IMPAIRED PERSON TWICE, ON 8-26-04 AND 3-11-05 WITH EXCESSIVE FORCE BY RESPONDENT FOOL EMPLOYEES BEATEN ALMOST TO DEATH DURING THESE TWO CEN EXTRACTION WHO A WARRANT, WHO CONSENT WHO A COURT ORDER AND PETITIONER DID NOT QUALIFY FOR DNA PURSUANT TO 7SS 943.325 (1)(A) THRU (D); NO PROBABLE CAUSE:

(2) AFTER PETITIONER (2) 303 CIRCUMNANCE TO RESPONDENT FOOL SEC OFFICE DATED 2/15/05 AND DATED 5/5/05 LOSA 05-613380 NASH 05-605601 WAS DENIED. TO COMPEL RESPONDENT FOOL TO FOLLOW THE DNA LAW PURSUANT (TO 7SS 943.325 (1)(A)).

(3) PETITIONER FILE WRIT OF mandamus TO COMPEL RESPONDENT TO FOLLOW THE DNA LAW: (JUNE 20, 2005)

(4) RESPONDENT ATTORNEY WAS GIVEN A SHOW CAUSE ORDER

RESPONDENT ATTORNEY SOUGHTED AND MORE DEFINITE STATEMENT. PETITIONER COMPLY RESPONDENT ATTORNEY CLAIMS PETITIONER WAS ATTACKING CHALLENGING (DR) INTENTION AND MOVE DISMISS AS TIME BAR PURSUANT TO 7SS 95.11(8) AND THAT PETITIONER DID NOT FILE WITHIN (30) DAYS, THAT RESPONDENT HAD A RIGHT TO TAKE DNA SINCE PETITIONER WAS CONVICTED OF POSS OF FIREARM BY CONVICTED QUALIFIED FOR DNA SIMILAR PURSUANT TO 7SS, 943.325 (B)(4) [WAS FALSE] NOV 29, 2005]

(5) RESPONDENT HON TRIAL COURT JUDGE JANET E. FERRIS DISMISS WITH PETITIONER LEAVE TO AMEND WITHIN (30) DAYS TO FILE ANOTHER mandamus:

CONT:

"STATEMENT OF CASE AND FACTS"

- (6) PETITIONER FILE SHAM PLEADING MOTION AGAINST RESPONDENT ALEXANDRIA E. WAITERS MISLEADING THE HUD TRIAL COURT WITH FALSE MATERIAL FACTS EVIDENCE RECKLESS DISREGARD FOR THE TRUTH (12/12/05): RESPONDENT HUD TRIAL COURT JUDGE JANET E. FERRIS FAIL TO RULE ON PETITIONER SHAM AND MOTION FOR EXTENSION OF TIME TO FILE AMEND MANDAMUS (12-15-05): AMENDED MANDAMUS FILE 1,29,06
- (7) RESPONDENT HUD TRIAL COURT JUDGE JANET E. FERRIS DENIED PETITIONER AMENDED MANDAMUS NOV 30, 2006 AFTER ADOPTING RESPONDENT ATTORNEY ALEXANDRIA E. WAITERS FALSE MATERIAL FACTS EVIDENCE MISLEADING RECKLESS DISREGARD FOR THE TRUTH: STATING DISCIPLINARY CLAIM AND TIME BARRED: VOLUMINOUS PREPOSTEROUS CLAIM ARE FRIVOLOUS AND ABSURD: THE GPS GLOBAL SATELLITE EFFECTS ELEMENTS IMPLANTS IN BODY LARGE AMOUNT OF ELECTRIC SURGE'S CAUSING SUFFERING AND 3-D AUDIO SPEAKER SOUND SYSTEM BROADCASTING SPEECH FALSELY ALUSING PETITIONER OF RAPING CHILDREN, CHILD MOLESTER, DRUG DEALER FILING FRIVOLOUS LAWSUIT AND NO HANDICAP ETC: THREATEN PETITIONER WAS SANCTIONS AND NO REHEARING WILL BE CONSIDERED:
- (8) PETITIONER REQUEST LEAVE TO FILE A REHEARING DEC 8, 06 WITHIN A MOTION FOR EXTENSION OF TIME FILE (3) DAYS AFTER NOV 30, 2006 DENIAL RECEIPT DEC 5, 2006. MOTION TO DISQUALIFY RESPONDENT HUD TRIAL COURT JUDGE JANET E. FERRIS: FILE 12-15-06 (10) DAYS AFTER NOV 30, 06 DENIAL ORDER DEC 5, 06 RECEIPT:
- (9) RESPONDENT HUD TRIAL COURT JUDGE JANET E. FERRIS FAIL TO RULE ON HER MOTION TO DISQUALIFY WITHIN (30) DAYS PURSUANT TO F.R. Jud. Adm. RULE (2.330C3).

CONT: (4)

"STATEMENT OF CASE AND FACTS"

Respondent Hon Trial Court Judge Janet E. Ferris Subsequent Ruling Denying PETITIONER REQUEST LEAVE TO FILE A REHEARING AND MOTION FOR EXTENSION OF TIME AND MOTION FOR DISQUALIFICATION OVER (30) DAYS CONTESTING NOV 30, 2006 VOID JUDGMENT, HER JAN 30, 07 JUDGMENT ORDER WAS (VOID) ALSO WHICH VIOLATE DUE PROCESS OF LAW:

(10) NO DIRECT APPEAL WAS TAKEN WITHIN (30) DAYS FROM RESPONDENT Hon Trial Court Judge Janet E. Ferris NOV 30, 2006, NOR (JAN 30, 2007) VOID JUDGMENT FINAL ORDERS: PURSUANT TO FR CIVIL RULE 1.540 (B)(4) HAS NO TIME LIMITATION TO ATTACK A POST VOID JUDGMENT EVEN PASS (30) DAYS RENDITION FOR DIRECT APPEAL: PETITIONER FILE MOTION TO VACATE Respondent Hon Trial Court Judge Janet E. Ferris Final (VOID) JAN 30, 2007 INCORPORATED WITH (NOV 30, 2006) FINAL VOID JUDGMENT ORDER: (2-18-08)

(11) Respondent SUCCESSOR Hon Trial Court Judge P.K. Davey WAS ASSIGN AND WAS REQUIRED TO REMOVE THE Taint OR PREJUDICE VOID JUDGMENT NOT RECONSIDERING THE MERIT: AND DENIAL MOTION TO VACATE AND SET ASIDE FINAL JUDGMENT ORDER ENTER (MAR 12, 2008) WAS SUBJECT FOR REVIEW FOR ABUSE OF DISCRETION AND JUDICIAL LABOR HIS BEEN COMPLETED:

(12) PETITIONER FILE MOTILE OF APPEAL APRIL 2008 Respondent Hon APPELLATE COURT STIPULATION ORDER APRIL 18, 2008 WAS MET. PETITIONER APPEAL WAS DISMISS FOR FILING FEE AND REINSTATED 8.25.08 ON NOV 3, 08 Respondent Hon APPELLATE COURT STATE IN ITS ORDER WHY APPEAL SHOULD NOT BE DISMISS FOR LACK OF JURISDICTION PURSUANT TO FRAR RULE 9.130(b)(5) ETC:

(13) PETITIONER FILE NOTICE TO Respondent Hon APPELLATE COURT FEB 4, 2009 THAT HIS BRIEF SHOULD BE COMPLETED WITHIN 60 DAYS PETITIONER APPEAL AND REHEARING WAS DISMISS FEB 9, 09 AND REH. MAY 26, 09 IN TIMELY DISCRETIONARY JURISDICTION FOR REVIEW WAS FILED:

"SUMMARY-----ARGUMENT"

PETITIONER INVOKE DISCRETIONARY JURISDICTION WITHIN THIS STATE OF FLORIDA SUPREME COURT FROM THE FIRST DISTRICT COURT OF APPEAL OPINION ORDER BY RESPONDENT DISMISSAL OF PETITIONER APPEAL FEB 9, 2009 W/O NOTICE AND OPPORTUNITY TO BE HEARD BY BRIEF PRIOR TO DISMISSAL JUDGMENT ENTER BY RESPONDENT NON APPELLATE COURT WAS VOID AND DENING PETITIONER REHEARING MAY 26, 2009 AND PETITIONER WAS DENIED DUE PROCESS OF LAW; PURSUANT TO FRAP. RULE 9.03007(2)(A)

PETITIONER HAD A RIGHT TO APPEAL FROM ANY FINAL JUDGMENT ORDER WHERE JUDICIAL LABOR HAS BEEN COMPLETED EVEN FROM FROM A CIVIL POST JUDGMENT ORDER PURSUANT TO FRCP RULE 2.540(B)(4) VOID JUDGMENT TO VACATE AND SET ASIDE FINAL JUDGMENT IS APPEALABLE PURSUANT TO F.R.A.P. RULE 9.130(A)(5):

Respondent ~~Non~~: Appellate Court Claim in its Feb 9, 2009 order Dismissed For Lack of Jurisdiction Citing BENNETT'S LEASING INC. FIRST ST. MORTGAGE CORP. 870 So 2d 93.98 (Fla. 1st DCA 2003)

(HOLD ORDER ENTERED ON A MOTION TO VACATE A NON FINAL ORDER IS NOT REVIEWABLE PURSUANT TO FRAP 9.130(A)(5) [DEIT WITH AN INTERLOCUTORY APPEAL FROM A NON FINAL ORDER AND FINAL DISPOSITION OF THE CASE WAS NOT COMPLETED IN FORM OF JUDICIAL LABOR NOT APPEAL BY WAY OF FRAP RULE 9.130(A)(5)] IF A POST JUDGMENT PROCEEDING WAS NOT FINAL AND CLAIM APPEAL MUST BE TIMELY:

TO THE CONTRARY PETITIONER STATES PURSUANT FRCP. Rule 1.540. (B)(4) VOID JUDGMENT (30) Days Rendition To FILE APPEAL DOES NOT APPLY PETITIONER Feb 18, 2008 motion to vacate and set aside Respondent Non Trial Court Judge JANETE FERRIS TWO VOID JUDGMENT ORDERS NOV 30, 06 AND JUN 30, 07. FINAL ORDER MAR 17, 2008 Denial was appealable for ABUSE OF DISCRETION;

(ARGUMENT)

(A) WHETHER RESPONDENT THE HONORABLE APPELLATE COURT CAN DISMISS PETITIONER APPEAL FROM A VOID FINAL COURT JUDGMENT ORDER WHERE (30) DAYS REVISION FOR FILING AN APPEAL HAD EXPIRE WHICH CIVIL POST JUDGMENT VEHICLE PURSUANT TO TRIN P. RULE 7.540 (B)(4) VOID JUDGMENT HAS NO TIME LIMITATION TO VACATE AND SET-ASIDE VOID JUDGMENT CORRECTING DEFECTIVE PLEADING AND RULING THAT IS VOID AND IS A MISFEASANCE OF JUSTICE VIOLATION OF DUE PROCESS OF LAW [WHICH CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL: PURSUANT TO FRAP RULE 9.030 (A)(2)(A):

(B) CONFLICT EXIST BETWEEN THESE DISTRICT COURTS OF APPEAL OPINIONS HEREIN FINAL JUDGMENT ORDER APPEALABLE:

THE RESPONDENT 1ST DCA OPINION FEB 9, 2009 DISMISSING PETITIONER APPEAL CLAIM LACK OF JURISDICTION *REMITTING BENNETT'S LEASING INC. V FIRST ST. MORTGAGE CORP.* 870 SO 2d 93 98 [FLA 1ST DCA 2003] [HOLDING ORDER ENTER ON A MOTION TO VACATE A NON FINAL ORDER IS NOT REVIEWABLE PURSUANT TO FRAP 9.130 (A)(5): IN BENNETT'S CASE DEBIT WITH A INTERLOCUTORY APPEAL FROM FINAL COURT ORDER APPROVING SUBSTITUTION OF ASSIGNEES OF INSOLVENT CORPORATION ASSETS FOR BENEFIT OF CREDITOR DID NOT BRING JUDICIAL LABOR TO AN END THIS WAS NOT A FINAL APPEALABLE ORDER AND NEITHER WAS AMENDED ORDER DENYING CREDITORS COLLATERAL ATTACK ON INTERLOCUTORY ORDER CONFIRMING SUPERSEDING ASSIGNMENTS FIRST ORDER DID NOT DETERMINE JURISDICTION OF PERSON AND MOTION ADDRESS TO ORDER ALLOWING SUBSTITUTION OF ASSIGNEES DID NOT SEEK A RELIEF FROM A FINAL JUDGMENT ORDER DECREE OR PROCEEDING FRAP 9.130 (A)(3)(D)(5)(A):

CONT(A)

(ARGUMENT)

HOWEVER THE RESPONDENT HON APPELLATE COURT ORDER ENTERED Feb 9, 2009 Dismissing PETITIONER APPEAL WAS VOID PETITIONER WAS APPEALING FROM THE FINAL ORDER ENTERED MAR 17, 2008 DENING PETITIONER MOTION TO VACATE SET ASIDE BY RESPONDENT HON SUCCESSOR TRIAL COURT JUDGE P.K. DAVEY INCORPORATING WITH RESPONDENT HON PREDECESSOR TRIAL COURT JUDGE JANET E. TERRELL'S TWO VOID JUDGMENT ORDER NOV 30, 2006 AND JAN 30, 2007 HAD NO TIME LIMITATION WHICH (30) DAYS RENDITION TO FILE APPEAL DID NOT APPLY PURSUANT F.R.C.P. RULE 1.540 (B)(4): [SEE: RINAS V RINAS 847 S02d 555-557 [FLA 5 DCA. -2003] [WEISS V MOSHT P.C. ENTER 935 30 2d 69-70 & FLA 3d DCA 2006]:

RESPONDENT SUCCESSOR TRIAL COURT JUDGE P.K. DAVEY WAS ALLOW TO VISIT AND ENTERTAIN PREDECESSOR JUDGE PRIOR RULING PURSUANT TO FLA R. JUD ADM RULE 2.330 (H) AND (J) AND F.R.C.P. RULE 1.540 (B)(4) WHO CAN REMOVE THE Taint OR PREJUDICE THE FINAL ORDER OF JUDICIAL LABOR HAS BEEN COMPLETED AND WAS REVIEWABLE BY THE RESPONDENT HON APPELLATE COURT FOR ABUSE OF DISCRETION:

THE CONFLICT EXIT BETWEEN 3rd DCA JUDGMENT AND OPINION CASE BASTIDA V PABLO PABLO VITAYER 590 S02d 1092-93 [FLA 3 DCA 1991] MOTION FOR REHEARING AND AFFIRMATION OF ORDER DISMISSING W/O PREJUDICE MOVANT MOTION TO VACATE FINAL JUDGMENT WAS DENIED BY THE COURT DADE CO. HONORABLE BOLAMUN J. MOVANT APPEALED: THE DISTRICT COURT OF APPEAL HELD THAT ORDER SOUGHT TO BE REVIEWED WAS NON FINAL ORDER WHICH WAS NOT APPEALABLE (APPEAL DISMISS):

HOWEVER IN BASTIDA V. PABLO VITAYER 590 S02d 1092-AT-93 [FLA - 3 DCA 1991] STATES [AND ORDER FINALLY DISPOSING OF AMEND MOTION TO VACATE JUDGMENT AS AUTHORIZED BY ORDER OF DISMISSAL W/O PREJUDICE WOULD BE APPEALABLE AS FINAL ORDER ALTHOUGH TIME FOR TAKING SUCH APPEAL WOULD NOT BE STAYED BY MOTION FOR - -

CONT.(A)

(ARGUMENT)

REHEARING FILED THERE AFTER: [FRLVP 1.540, FRAP Rule 9.130(a)(5):

IN PETITIONER PRESENT CASE: [DISCRETIONARY REVIEW] OF Respondent Hon Appellate Court's Feb 9, 2009 order finding Dismissing his appeal: That was taken from the Final Judgment order Mar 17, 2008 Denying PETITIONER Feb 18, 2008 motion to vacate and set aside Respondent Hon Trial Court Judge Janet E. Harris Two void Final Judgment Nov 30, 2006 and Jan 30, 2007:

EVEN THOUGH PETITIONER DID NOT TAKE AN DIRECT APPEAL THE 30 DAYS GRANTION TO APPLY DOES NOT APPLY PURSUANT TO FRUP RULE 1.540 (B)(4): SEE [RINE V RINE 849 S00D 555-557 [7th 521A 8003] NOV 30, 2006 AND JAN 30, 2007 FINAL VOID JUDGMENT ORDER WAS INCORPORATED WITH PETITIONER FEB 18, 2008 MOTION TO VACATE AND SET A SIDE.

PETITIONER HAD JURISDICTION TO APPEAL TO THE Respondent's Hon Appellate Court ~~1 DCR~~ TO RESOLVE THE Respondent's Hon Trial Court void Judgments That was Taint and Prejudice violating DUE PROCESS OF LAW Fla. Const ART (1) SEC (9) and (5) and 14th Amend US CONST, which The Final order Denying PETITIONER POST JUDGMENT motion to vacate and set aside Mar 17, 2008 Judicial Labor HAS BEEN COMPLETED. FROM THIS FINAL JUDGMENT ORDER:

This Feb 9, 2009 Judgment ENTER BY Respondent Hon Appellate Court was void and REVERSABLE:

Finally SINCE Respondent Hon Appellate Court DENIED PETITIONER ADEQUATE NOTICE AND OPPORTUNITY TO BE HEARD BY BRIEF BEFORE DISMISSAL OF HIS APPEAL: VIOLATE DUE PROCESS OF LAW Feb 9, 2009 Judgment ORDER ENTERED BY Respondent Hon Appellate Court was void and REVERSABLE:

SEE: SHAPPEL V GUARDIANSHIP OF MAY BAR 87650 2d 690 1691 [Fla 2nd. DCR 2004] CITING [RYANS FURNITURE EXCHANGE INC V. McNAIR 120 Fla 109-162 50-483.487. 1935] JUDGMENT IS VOID WHO ADEQUATE NOTICE AND OPPORTUNITY TO BE HEARD:

"CONCLUSION:"

WHEREFORE: PRO-SE PETITIONER MOVES THIS HONORABLE SUPREME COURT TO GRANT HIS PETITION AND RELIEF SOUGHTED HEREIN GOOD CAUSE TO VACATE SET-ASIDE RESPONDENT NON: PROBATE COURT 1ST DCA (VOID) JUDGMENT ORDER DISMISSAL OF HIS APPEAL FEB 9, 2009 AND REVERSE AND REMAND. NON TRIAL COURT VOID JUDGMENT ORDERS NOV 30, 2006, JUN 30, 2009 AND MAR 17, 2008 TO CORRECT THEIR (VOID) JUDGMENT ORDERS TO PREVENT THIS MIS CARRIAGE OF JUSTICE AND GIVING PETITIONER AN OPPORTUNITY TO BE HEARD:

"CERTIFICATE OF SERVICE"

(I)

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THIS FOREGOING DOCUMENT HAS BEEN FURNISH TO RESPONDENT ATTORNEY NON: BILL MCCOLLUM DEPT OF LEGAL AFFAIRS STATE CAPITOL TALL. FLA. 32399-1050 AND ATTORNEY KATHLEEN YOUNG JUD. GENERAL COUNSEL 2601 BIVAR STONE ROAD TALL, FLA 32399-2500 BY US MAIL ON THIS 21ST DAY OF DEC 2009

EXECUTED ON THIS
21ST DAY OF DEC 2009:

Donald J. T. N/A 124326
PRO-SE PETITIONER HEREIN:

"VERIFICATION OF SERVICES"

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THIS LEGAL MAIL DOCUMENTS HAS BEEN PLACED IN THE HANDS OF TOMOKA C.I. MAIL OFFICER TO MAIL TO THIS HONORABLE SUPREME COURT AND ALL ABOVE PARTIES: HEREIN ON THIS 21ST DAY OF DEC. 2009:

Provided to Tomoka C.I.
On 12-21-09 For Mailing

Donald J. T. N/A 124326
PRO-SE PETITIONER HEREIN:
TOMOKA CORRECTION INSTITUTION
3950 TIGER BAY ROAD
DAYTONA BEACH, FLA 32124

VOLUME (1)

(APPENDIX)

PURSUANT TO FLA R.A.P. RULE 9.720(D) DISCRETIONARY PROCEEDINGS TO REVIEW DECISION OF DISTRICT COURTS OF APPEAL A COPIES INCLUDED HEREIN DECISION OF 1ST DCA FEB 9, 2009 AND MAY 26, 2009:

(EXHIBITS)

(A) 1ST DCA FEB 9, 2009 OPINION ORDER PER-CURIAM:

HAVING CONSIDERED THE APPELLANT'S RESPONSE TO THIS ORDER OF NOV 3, 2008 THE APPEAL IS HEREBY DISMISSED FOR LACK OF JURISDICTION: SEE BENNETTS LEASING INC. V FIRST ST. MORTGAGE CORP 870 SO 2d 93 98 [FLA 1ST DCA 2003]:

C Holding ORDER ENTER ON A MOTION TO VACATE A NON FINAL ORDER IS NOT REVIEWABLE PURSUANT TO FLA RULE OF APPELLATE PROCEDURE 9.130(A)(5):

(B) 1ST DCA MAY 26, 2009 BY ORDER OF THE COURT.

APPELLANT'S MOTION FILED MARCH 2, 2009 FOR REHEARING IS DENIED:

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DONNELL QUARTERMAN,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D08-1844

WALTER A. MCNEIL, Secretary,
FLORIDA DEPARTMENT OF
CORRECTIONS,

Appellee.

_____/

Opinion filed February 9, 2009.

An appeal from the Circuit Court of Leon County.
P. Kevin Davey, Judge.

Donnell Quarterman, pro se, Appellant.

Bill McCollum, Attorney General and Kathleen Von Hoene, General Counsel,
Department of Corrections, Tallahassee, for Appellee.

PER CURIAM.

Having considered the appellant's response to this Court's order of November 3, 2008, the appeal is hereby DISMISSED for lack of jurisdiction. See Bennett's Leasing, Inc. v. First St. Mortgage Corp., 870 So. 2d 93, 98 (Fla. 1st DCA 2003) (holding order entered on a motion to vacate a nonfinal order is not reviewable pursuant to Florida Rule of Appellate Procedure 9.130(a)(5)).

The appellant brought this appeal seeking review of an "Order Denying Relief from Judgment and Closing File," entered on March 17, 2008. This order ruled on a motion that addressed and sought relief from an "Order Denying Rehearing and Denying Motions for Disqualification," which had been entered on January 30, 2007. The order on rehearing and disqualification had been entered following the final judgment denying mandamus relief, entered on November 30, 2006.

This Court's appellate jurisdiction in civil cases is limited to final orders and nonfinal orders as prescribed by Rule 9.130. See Fla. R. App. P. 9.030(b). The order on appeal is neither final nor appealable pursuant to Rule 9.130. Orders entered on authorized and timely motions for relief from judgment are immediately appealable pursuant to Rule 9.130(a)(5). However, the appellant's motion for relief filed below was not such an authorized motion because it was not directed towards a "final judgment, decree, order or proceeding" as required by Florida Rule of Civil Procedure 1.540(b). Bennett's Leasing, 870 So. 2d at 98. Although a timely motion for rehearing will delay rendition of a final order until an order on the motion has been entered, see Fla. R. App. P. 9.020(h), the order on the motion is not a final judgment. Further, a trial court does not have authority to vacate its order on rehearing. State ex rel. Cantera v. Dist. Court of Appeal, Third Dist., 555 So. 2d 360 (Fla. 1990). Therefore, an order on a motion for relief from an order on a motion for rehearing is not

appealable under the rule. Similarly, a motion to disqualify the trial judge does not result in a final order. See generally Klapper-Barrett v. Nurell, 742 So. 2d 851 (Fla. 5th DCA 1999); Cardinal v. Wendy's of S. Fla., 529 So. 2d 335 (Fla. 4th DCA 1988). Consequently, an order on a motion for relief from an order on a motion to disqualify the trial judge is not appealable under the rule.

The "Appellant [sic] Motion for Extension of time to File Initial Brief," filed in this Court on November 24, 2008, is hereby denied as moot.

DISMISSED

BARFIELD, and LEWIS, JJ., CONCUR; ALLEN, J., CONCURS IN JUDGMENT.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
301 S. Martin Luther King, Jr. Blvd.
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151

May 26, 2009

CASE NO.: 1D08-1844

L.T. No. : 2005 CA 001564

Donnell Quarterman

v.

Walter A. Mcneil, Sec.,
Florida, Etc.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion filed March 2, 2009, for rehearing is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Donnell Quarterman

Kathleen Von Hoene, G.C.

Hon. Bill Mc Collum, A.G.

jm


JOHN S. WHEELER, CLERK

