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CASE NO. SC12-13

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,  
Plaintiff - Appellee,

v.

WINSTON WILKINS,  
Defendant - Appellant.

HONORABLE PAMELA JO BONDI

On Appeal from the Fourth District Court  
of Appeals of the State of Florida

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4D11-4052, 1995CF006781BXX

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FINAL BRIEF OF DEFENDANT - APPELLANT  
WINSTON WILKINS

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WINSTON WILKINS  
Appellant, pro se  
Fed. Reg. No. 53115-004  
Federal Correctional Institution  
P.O. Box 7007  
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ORAL ARGUMENT NOT REQUESTED

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STATEMENT REGARDING ORAL ARGUMENT

Appellant, Winston Wilkins, has filed this appeal pro se. He is currently incarcerated at F.C.I. Marianna, Florida, and therefore oral argument is not possible. Appellant requests that the Supreme Court make its decision based on the facts as presented in Appellant's brief.

STATEMENT OF JURISDICTION

This is an appeal from a decision from the Fourth District Court of Appeals relating to the dismissal without briefing of a timely filed appeal of a Circuit Court ruling dismissing a writ of habeas corpus ad subjiciendum without any evidentiary hearing or briefing. The decision of the Circuit Court was rendered by the Honorable Pamela Jo Bondi, 15th Judicial Circuit, Palm Beach County, Florida.

The Florida Supreme Court has jurisdiction in matters in which a final decision has been made by a Florida District Court of Appeals. A timely notice of Appeal was filed on 12/30/2011 and was received by the Florida Supreme Court on 1/4/2012. Petitioner's notice of appeal has been treated as a notice to invoke discretionary jurisdiction. Petitioner has been ordered by the Court to serve initial brief on or before January 19, 2012.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. Whether the Fourth District Court of Appeals abused its discretion in dismissing Appellant's timely appeal from the denial of the lower Court's decision on the issue of counsel's affirmative misadvice regarding collateral consequences of his plea, therefore making his plea not knowing and intelligently made in violation of Petitioner's Due Process Rights as guaranteed by Amendment to the United States Constitution.

FACTS AND PROCEDURAL HISTORY

During the period of several years, in an effort to quickly dispose of various minor drug offenses, Petitioner plead guilty or nolo contendere in State Court as a convenience to both the Petitioner and the State. In most of these situations, (some of which the facts showed he was not guilty), Petitioner was being held in jail without bond or with a bond he could not make. The most expeditious way of getting out of jail was to plead guilty and receive a time served sentence or probation and Petitioner could then be released. This process not only allowed the Petitioner to return to his family, but also relieved the prosecutor and the public defender of another case in their overloaded case load.

However, Petitioner was never told of the consequences of his plea as it would relate to Criminal History Points on a federal case. In some cases, Petitioner was told that unless he pleaded guilty to the charges, members of his family could be targeted

for prosecution. Petitioner could not have predicted the future and file a timely Rule 3.850 motion due to the fact that the collateral consequences took place after the statute of limitations had expired. Therefore , the only avenue available for Petitioner was to file a writ of habeas corpus ad subjiciendum.

Petitioner's multiple motions were denied without evidentiary hearings or briefings. Petitioner then appealed to the Fourth District Court of Appeals each time his motions were denied. The District Court, without briefing, grouped Petitioner's appeals and dismissed them as a group.

The issues brought forth by Petitioner were not frivolous issues. As a result of counsel's affirmative misadvice regarding collateral consequences of his state pleas, Petitioner received an enhanced federal sentence of more than 20 years.

Petitioner therefore appeals to the Supreme Court of Florida for appropriate relief and to correct the manifest injustice that has taken place.

## SUMMARY OF ARGUMENT

I. The Fourth District Court of Appeals abused its discretion in dismissing Appellant's timely appeal from the denial of the lower Court's decision concerning the issue of counsel's affirmative misadvice regarding collateral consequences of his plea to state offenses, therefore making his plea not knowing and intelligently made in violation of Petitioner's Due Process Rights as guaranteed by Amendment to the United States Constitution.

## ARGUMENT

Petitioner's pleas to his state cases were not knowingly and intelligently made due to his counsel's affirmative misadvice concerning collateral consequences. In Burns v. State of Florida, the Fourth District Court of Appeals, Case No. 4D01-5012, reversed in part and, and remanded for an evidentiary hearing on the sole issue of trial counsel's affirmative misadvice. In this instant case, Petitioner's motion was dismissed without the benefit of either briefing or evidentiary hearing.

The Fourth District Court of Appeals has recognized that a claim of affirmative misadvice is a proper ground for rule 3.850 review. See Ghanvati v. State, 820 So. 2d 989 (Fla. 4th DCA 2002); Smith v. State, 784 So. 2d 460 (Fla DCA 2000). However, Petitioner was time barred from making a timely 3.850 claim due to the fact that he was not aware of the collateral consequences from the

misadvice given by state counsel until the time limit for filing a claim under rule 3.850 had expired. Petitioner's only avenue for relief was a writ of habeas corpus ad subjiciendum. This writ serves the modern and noble purpose of providing a remedy for those whose conviction was obtained outside the bounds of the law. Fay v. Noia, 372 U.S. 391, 399, 9 L.Ed. 2d 837, 83 S.Ct 822 (1963).

The doctrine that no person may be illegally deprived of his liberty is a cornerstone of our legal system and of our society. Petitioner does not ask the Court to determine whether or not there is actual guilt or innocence in this matter. That is an issue for the lower court to decide. Rather, the Petitioner is asking the Court to determine whether or not his Due Process Rights have been violated. That is the principle behind the due process right; that no innocent person should ever be deprived of his liberty. The legalities examined by previous courts have been formulated to achieve this goal to the extent it is humanly possible.

The act of convenience pleading is abhorrent to our principles of justice. Granted, the court calendars are crowded and the cost of prosecution and defense grows to the extent that an indigent defendant is the most likely target of such convenient justice. However, in the Petitioner's case, the collateral consequences of this type of justice has had a far reaching effect obviously not anticipated by his counsel. The totality of Petitioner's convenience pleas, while not overly damaging on the state level, have caused Petitioner to be sentenced to a much greater level on his federal sentence. This can be likened to a cigarette smoker who is persuaded by advertising to smoke in order to look

"cool". How could a cigarette do the damage that we now know it causes? The Petitioner is not a lawyer and is not schooled in the law, he relied on his counsel to give him accurate and legally sound advice. However, the affirmative misadvice became routine and now has caused a cancer of more than 20 years in a federal prison.

Petitioner asks this Court to determine if the Circuit Court erred in dismissing Petitioner's habeas corpus motion without briefing. Had the Petitioner had the opportunity to present his arguments in a proper fashion, he would have shown that not only was he exposed to convenience pleading, but was also exposed to numerous instances in which an arrest was made but the charges had to be dropped by the court because there was absolutely no evidence against him. Had the lower court or the district court ordered a briefing, Petitioner could have been appointed counsel and a proper brief could have been prepared for the Court to review. Petitioner has been subjected to pleas without the lower court's close examination of the facts. The mere fact that counsel has urged Petitioner to plead guilty without closer inspection has caused a manifest injustice to occur. Now, without the Court's closer examination of Petitioner's claim to affirmative misadvice, an even greater miscarriage of justice has occurred.

Article 1, Section 9, Clause 2 of the United States Constitution states: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it". In Lonchar v. Thomas, 517 U.S.,

314, 324 (1996)(quoting Ex parte Yerger, 75 U.S. (8 Wall) 85,95 (1869). See also Bousley v. United States, 523 U.S. 614,620 (1998) (among "'principal functions of habeas corpus [is] "to assure that no man has been incarcerated under a procedure which creates an impermissably large risk that the innocent will be convicted"" (citations ommitted)). Affirmative misadvice by Petitioner's counsel and the Lower and District Court's dismissal of Petitioner's habeas claim without briefing purpetuates this prohibition.

#### CONCLUSION

The Petitioner, Winston Wilkins, plead to various non-violent drug offenses as a convenience to the Court as a result affirmative misadvice. His own lack of understanding of the law led him to follow this advice. Now, as a consequence of those pleadings, he is serving an enhanced federal sentenced, increased solely on the basis of those pleadings. Petitioner did not become aware of these consequences until after the time period had expired under Fl. Statute 3.850. Therefore his only avenue was to file a writ of habeas corpus ad subjiciendum. This writ was dismissed without appointment of coussel and without providing court records which were needed for filing the proper briefs. These dismissals amounted to an even further violation of Petitioner's Due Process Rights. The issues brought forth to the Court should be heard. Counsel should be appointed and briefs should be properly filed in order for the Court to make a proper decision on Petitione's claims.

Therefore, for the reasons set forth, Petitioner prays this Honorable Court will **invoke discretionary jurisdiction** and order the lower court to correct this manifest injustice by 1) reopening Petitioner's Habeas Corpus Ad Subjiciendum petition, 2) order the Court to set a briefing schedule, 3) provide Petitioner with requested court records, and 4) appoint competent and compassionate counsel so that a more accurate and complete brief may be filed with the Court.

Respectfully, submitted,

Dated 1/12/2012

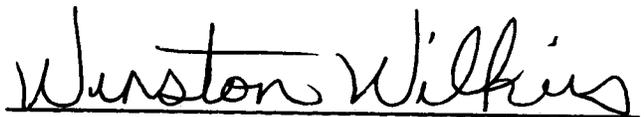


Winston Wilkins  
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CERTIFICATE OF SERVICE

I hereby certify that I have this 12 day of January, 2012, served a true and exact copy of the foregoing motion by U.S. Mail, first class postage prepaid to:

Florida Attorney General  
State Capitol, Pl 01  
Tallahassee, FL. 32399-1050



Winston Wilkins, pro se