

IN THE SUPREME COURT OF FLORIDA

CASE NO.:

CIRCUIT COURT CASE NO.:F92-39548

SEBURT NELSON CONNOR,
Petitioner/Appellant,

vs.

THE STATE OF FLORIDA,
Respondent/Appellee.

_____ /

PETITION FOR BELATED APPEAL

Appellant, Seburt Nelson Connor, pursuant to Fla. R. App. P.9.142(b)(3), hereby petitions this Court for a belated appeal and states as follows.

A. INTRODUCTION

Petitioner, is a death sentenced inmate. He filed a successive motion for post-conviction relief based on newly discovered evidence. The circuit court denied the motion without a hearing or notice to the parties. Undersigned counsel did not receive the order denying appellant's successive motion for post conviction relief until he researched the court file. This petition follows.

The separately bound appendix will be referred to as A. Page numbers will be referred to in numerical sequence at the

bottom right of each page.

B. PRELIMINARY STATEMENT UNDER FLA. R. APP. P. 9.141(C)(4)

(A) the order that petitioner requests review of is the order denying successive motion for post-conviction relief dated February 3, 2011;

(B) the order was rendered by The Circuit Court Of The Eleventh Judicial Circuit In And For Miami-Dade County, Florida;

(C) the nature, disposition, and dates of all previous proceedings in the lower tribunal and appellate courts are outlined below in the statement of the case and facts;

(D) a previous petition for belated appeal was not filed;

(E) petitioner seeks appeal of the order denying successive motion for post-conviction relief and requests an appeal of the circuit court's order denying his successive motion for post-conviction relief;

(F) in the statement of the case and facts outlined below, are the specific acts and omissions that give rise to this petition for belated appeal.

C. STATEMENT OF THE CASE AND FACTS

On November 20, 1992 Lawrence Goodine and Jessica Goodine were found murdered. Petitioner, was charged by indictment with the murders. Counsel was appointed for petitioner.

Petitioner, was born and raised in Roatan, Honduras.

Matthews and Associates were hired as mitigation investigators. There was no social history report done on defendant's childhood prior to trial. In fact, the file and bills of Matthews and Associates do not reflect even a phone call to Roatan, Honduras.

This case proceeded to trial. Petitioner, was convicted as charged in the indictment. A penalty phase hearing was conducted.

The jury recommended a sentence of life for the murder of Lawrence Goodine. The jury, by a vote of 8-4, recommended a sentence of death for the murder of Jessica Goodine. The circuit court followed the jury's recommendations. On June 19, 1998, petitioner, was sentenced to death for the murder of Jessica Goodine.

Petitioner, took a direct appeal to this Court. On December 17, 2001, this Court affirmed the judgment and sentences. The only exception was that this Court struck the avoid arrest aggravator. Connor v. State, 803 So. 2d. 598 (Fla. 2001) On May 28, 2002, petition for writ of Certiorari to the Supreme Court Of The United States was denied.

On May 23, 2003, petitioner, filed in the circuit court, a motion for post conviction relief under Fla. R. Crim. P. 3.851.

The circuit court held oral argument on the motion. An evidentiary hearing was held by the circuit court on one claim. Petitioner claimed that he received ineffective assistance of counsel during the penalty phase of his trial, because trial counsel failed to investigate and present mitigating evidence of petitioner's childhood. On June 4, 2004 the circuit court denied the motion, after evidentiary hearing.

On June 30, 2004, petitioner, appealed to this Court. This court affirmed the circuit court on all issues. Connor v. State, 979 So. 2d. 852 (Fla. 2007) Petitioner, did not file application for writ of certiorari to the Supreme Court of The United States.

On April 14, 2008, petitioner, filed an application for writ of habeas corpus in the United States District Court. While the petition was pending, undersigned requested appointment of a psychologist and competency hearing. A defense expert psychologist was appointed. Later a court expert psychologist was appointed. The defense psychologist opined that petitioner was incompetent. The court psychologist concurred in the conclusions reached by the defense expert psychologist. The district court denied petitioner's request for competency hearing.

Later, on May 18, 2010, the district court denied petitioner's application for writ of habeas corpus. On June 14, 2010, petitioner, filed a notice of appeal to the United States Court Of Appeals For The Eleventh Circuit. The district court granted a certificate of appealability on whether there is a federal right to competence during a federal habeas corpus proceeding, and the scope of the right.

This United States Court of Appeals expanded the certificate of appealability. That included whether petitioner received ineffective assistance of counsel during the penalty phase of his trial because trial counsel failed to investigate and present mitigating evidence of his childhood. Petitioner and the state filed their briefs. The case was orally argued on August 30, 2011. A decision has not been reached by the court.

On January 5, 2011, petitioner, filed in the circuit court, a successive motion for post-conviction relief based on information received by undersigned counsel. No oral argument was held on the motion for post-conviction relief. Sometime, after the motion was filed the circuit court denied the motion (in chambers without a hearing).

Undersigned counsel was not notified of the circuit

court's ruling. On, or about, April 4, 2011 undersigned searched the circuit court file. The order denying the successive motion for post conviction relief was found. (A.1-4) Undersigned never received a certified copy (or uncertified copy through the mail).

The time period for filing a notice had expired prior to finding the order denying the motion for post-conviction relief in the court file.

In anticipation of a hearing on the successive motion for post-conviction relief, sent an investigator to Roatan, Honduras.

The investigator located defense witnesses that would have testified at an evidentiary hearing. Unknown to petitioner, the circuit court had denied the successive motion for post-conviction relief. Undersigned, did not receive the order from the circuit court. This petition follows.

D. ARGUMENT-PETITIONER, NOR PETITIONER'S COUNSEL, WERE NOTIFIED OF, SERVED WITH, OR RECEIVED, THE CIRCUIT COURT'S ORDER DENYING PETITIONER'S SUCCESSIVE MOTION FOR POST-CONVICTION RELIEF AND WERE NOT ABLE TO TIMELY FILE A NOTICE OF APPEAL

Petitioner, has a right to appeal the denial of a motion for post-conviction relief. Williams v. State, 777 So. 2d. 947 (Fla. 2000) To be sure, in a capital case, the nature of the penalty,

makes the right to appeal even more important. Fla. R. Crim. P. 9.142; Nelson v. State, 43 So. 3d. 20 (Fla. 2010)

In a capital case, usually the trial court holds a case management conference. After argument of counsel, the trial court either denies, or grants an evidentiary hearing. In the event the trial court did not grant an evidentiary hearing, a petitioner would know where he stands. Petitioner, nor petitioner's counsel were given notice of any hearing.

In the instant case, the circuit denied petitioner's motion for post-conviction relief without any hearing. Furthermore, petitioner's motion was denied without presence of undersigned defense counsel. Petitioner, nor undersigned defense counsel, received a copy of the order denying petitioner's successive motion for post-conviction relief. (See, attached affidavit of David S. Molansky, Esq.) No certificate of service is attached to the order. No certified copy of the order was in the court file. Therefore, petitioner was unaware when the motion for post-conviction relief was denied and could not file a timely notice of appeal. See, Brigham v. State, 769 So. 2d. 1100 (Fla. 1st DCA 2000)(petitioner entitled to belated appeal when he did not receive order denying motion for post-conviction relief

in time to file notice of appeal)

E. CONCLUSION

Petitioner, has demonstrated extraordinary and exceptional circumstances under the facts underlying this petition for belated appeal. Petitioner requests that this Court: grant this petition and order the circuit court to accept petitioner's belated notice of appeal; and, any other relief that this Court deems appropriate.

CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing has been sent by U.S. Mail to: Office Of The Attorney General 444 Brickell Avenue, Suite 650, Miami, FL 33131, Office Of The State Attorney, 1350 N.W. 12 Avenue, Miami, FL 33136 this __, day of _____, _____,

BY: _____

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VERIFICATION

Pursuant to Fla. Stat. Ch. 92.525(2), under penalties of perjury, I declare that I have read the foregoing petition and that the facts stated in it are true and correct.

BY: _____
SEBURT NELSON CONNOR

DATED: