

IN THE SUPREME COURT OF FLORIDA

SC12-99

FERNANDO RUIZ,  
Petitioner/Appellant

FROM THE THIRD DISTRICT  
COURT OF APPEAL, MIAMI-DADE  
CASE NUMBER 3D11-1268

v.

YUSMERY GADEA,  
Respondent/Appellee.

PETITIONER'S JURISDICTIONAL BRIEF

On review from the District Court of Appeal, Third District,  
State of Florida.



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BY

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## STATEMENT OF THE CASE AND FACTS

Due the inability of Petitioner Fernando Ruiz to file his Initial Brief on time, by December 2, 2011, the 3rd District Court of Appeal dismissed his Appellate Case on December 14, 2011.

This Order was contrary to the spirit or tradition of District Courts of Appeal in Florida, including this Third (3rd) District Court, who misapplied its own previous rulings on other different Cases in the past.

The established policy in the Florida District Courts of Appeal, regarding the tardy or late filing of a brief, is as follows:

(1)---"Florida's public policy favors deciding appellate contro-  
-versies on their merits, even when an Initial Brief is untimely  
filed."--- **Appeal and Error**, West's Key Note 773 (2)

(2) ---"A sanction imposed under the Rules of Appellate Procedure  
must be commesurate with the violation; Dismissal is an extreme  
sanction and, as such, it is reserved for the most flagrant  
violations."--- West's F.S.A. R. App. P. Rule 9.410  
**Appeal and Error**, West's Key Note 784

Please find the above quotations on these Cases:

- (a) Lindsey v. King, 894 So. 2d 1058 (Fla. 1st DCA 2005)
- (b) Nicaragua Trader Corp. v. Alejo Florida Properties, LLC,  
19 So. 3d 395 (Fla. 3d DCA 2009)

Throughout this appeal process, Petitioner/Appellant Fernando Ruiz found many obstructions, impediments and interruptions, that delayed the preparation of his Initial brief. In timely order, the following events occurred:

(1) During May and June 2011, Fernando Ruiz had a struggle with the Court Reporting Company, "Absolute Video, Inc.", from Miami, Florida, who recorded his trial of April 12, 2011. It took two (2) weeks just to get them write a simple memo. with the estimate cost (\$450.00) for the transcript of proceedings.

This, after numerous complaint calls made by Fernando Ruiz, to the Administrative Offices of the 11th Judicial Circuit.

(2) Petitioner Fernando Ruiz had to file not one (1), but two (2) "DIRECTIONS TO THE CLERK" notices, to get the "Record" of his Case transmitted from the Circuit Court, Family and Domestic Violence Division, towards the 3rd District Court of Appeal.

The first notice was filed on July 22 at the 3rd DCA, and the second on September 8, 2011 at the Circuit Court, Family Division.

But it was not until after October 14, 2011 when photocopies of most of these documents arrived at the Clerk's Office of the 3rd DCA, that Fernando Ruiz was able to start working on his brief.

He was not able to pay for the transcript of proceedings, so He depended and relied on these documents to prepare his brief.

(3) Not having a "transcript of proceedings" from his trial of April 12, 2011, He prepared and filed on October 6, 2011, a: "Statement of the Evidence or Proceedings", a lengthy 44 pages document narrating the story and events of what was said during trial.

Somebody in the Clerk's Office of the 3rd DCA lost or mis-placed this document. Fernando Ruiz had to prepare and file a "replacement copy" on October 28, 2011.

On October 6, 2011 Petitioner/Appellant Fernando Ruiz filed his last "Motion for an Extension of Time to File Initial Brief", which was granted on October 10. But with a remark that said: "No further extensions allowed".

Not being allowed any more extensions of time, when the due date for filing arrived, on December 2, 2011, Petitioner/Appellant Fernando Ruiz filed an: "Emergency Notice to the Court Regarding Appellant's Initial Brief" where He urges the Court to bear a little patience with him, and tells them that He is working steadily day and night in his brief, which is almost completed and ready to go. He apologizes to the Court and reverently implores them to wait a few more days for him to file his Initial Brief.

Unfortunately, on Thursday December 15, 2011 He received the dreadful letter containing the bad news that his Case was dismissed.

On December 29, 2011 Petitioner/Appellant Fernando Ruiz filed a combined: (I) Motion for Re-hearing, and (II) Motion for Rehearing En Banc, at the 3rd DCA.

On January 13, 2012 He filed a "Notice to Invoke Discretionary Jurisdiction of the Florida Supreme Court", also at the Clerk's Office of the 3rd DCA. Exactly 30 days after the Order dismissing his Case.

Petitioner Fernando Ruiz will hopefully place in the U.S. Post Office, a certified envelope containing this: "Petitioner's Jurisdictional Brief", on Monday January 23, 2012 exactly 10 days after the filing of his "Notice to Invoke Discretionary Jurisdiction of the Florida Supreme Court".

#### **SUMMARY OF THE ARGUMENT**

The dismissal of this Case by the 3rd District Court of Appeal, due the inability of Petitioner/Appellant Fernando Ruiz to file his Initial Brief on time, expressly and directly conflicts with previous decisions in "all" five (5) District Courts of Appeal in Florida. In the "Argument" ahead, Petitioner

Fernando Ruiz gives one example Case, in each of these five District Courts of Appeal, to reiterate his claim, that since many years ago, these Courts have maintained a uniformity of decision on this same point of law.

When they dismissed this Case, the Panel of three (3) Judges from the 3rd DCA, departed from this established principle of law among the District Courts of Appeal.

Therefore, the Supreme Court of Florida, in the Petitioner's humble opinion, should consider and review this Case, to resolve this legal issue or policy question.

#### **JURISDICTIONAL STATEMENT**

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the supreme court or another district court of appeal on the same point of law. Article V, section 3 (b) (3) Florida Constitution (1980); Florida Rule of Appellate Procedure 9.030 (a) (2) (A) (iv).



## ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN THIS CASE, EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FORMER DECISIONS IN THE PAST, OF EACH OF THE FIVE DISTRICT COURTS OF APPEAL.

The extreme sanction of "dismissal" only because of the tardy (late) filing of a brief, is highly disfavored in "all" the five (5) District Courts of Appeal within Florida.

Petitioner/Appellant Fernando Ruiz respectfully will give herein, at least one sample Case, in each of the five (5) District Courts of Appeal, where such practice is discouraged.

The panel of three (3) Judges, from the 3rd District Court of Appeal, Hon. Linda Ann Wells, Chief Judge, and Hon. Angel A. Cortinas and Hon. Leslie B. Rothenberg, JJ., concurred in dismissing this Case, for the late (tardy) filing of the Initial Brief. The delay, at the moment the dismissal order was issued was only 12 days.

By doing so, this Court conflicts with former decisions of all the five (5) District Courts of Appeal in the past. Even Hon. Angel A. Cortinas, one of the three (3) Judges in this Panel, contradicts himself, when in the past, together with Senior Judge Hon. Schwartz, and Hon. Judge Gersten, ruled that:

---"Florida public policy favors deciding controversies on their merits."---

---"The failure timely to file a brief has not been serious enough to warrant the sanction of dismissal."---

(the two quotes above from: Nicaragua Trader Corp. v. Alejo Florida Properties, LLC, 19 So. 3d 395 (Fla. 3d DCA 2009)

Other sample Cases, from the other four (4) District Courts of Appeal:

Lindsey v. King, 894 So. 2d 1058 (Fla. 1st DCA 2005)

---"In the absence of particularly egregious conduct, the failure to timely file a brief, is not serious enough violation to warrant dismissal of an appeal."--- F.S.A. R.App.P.Rule 9.410 Appeal and Error, West's Key Note 773 (2)

---"Dismissals of Appeals for the tardy filing of a brief are highly disfavored."--- Appeal and Error, West's Key Note 773 (2)

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Altman v. State, 41 So. 3d 1030 (Fla. 2d DCA 2010)

---"A ruling constitutes a departure from the essential requirements of the law, so as to warrant certiorary relief, when it amounts to a violation of a clearly established principle of law, resulting in a mis-carriage of justice."---

Criminal Law, West's Key Note 1011

....continued Altman v. State, 41 So. 3d 1030 (Fla. 2d DCA 2010)

**Criminal Law, West's Key Notes 1011, 1131 (4)**

---"Dismissal of an appeal for violation of the appellate rules without providing the requisite 10 days' notice constitutes a departure from the essential requirements of the law warranting certiorari relief."--- West's F.S.A. R.App.P.Rule 9.410

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Affirmative Ins. Co. v. Gomez, 14 So. 3d 1244 (Fla. 4th DCA 2009)

**Appeal and Error, West's Key Note 784**

---"A sanction imposed for the violation of the appellate rules must be commensurate with the violation; dismissal is an extreme sanction and, as such, it is reserved for the most flagrant violations of the appellate rules."--- West's F.S.A. R.App.P.9.410

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Krebs v. State, 588 So. 2d 38 (Fla. 5th DCA 1991)

**Criminal Law, West's key Note 1131 (4)**

---"Dismissal of an appellate proceeding should be employed sparingly and only after repeated violations or contumacious disregard of a court's orders."---

**CONCLUSION:**

This court has discretionary jurisdiction to review the decision below, and the court should exercise that jurisdiction to consider the merits of the petitioner's argument.

**CERTIFICATE OF SERVICE**

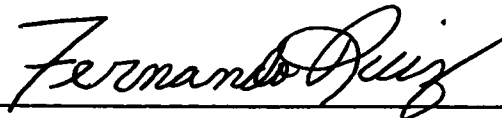
This brief will be placed at the U.S. Post Office today, Monday the 23th of January 2012. A copy will also be mailed to Respondent/Appellee Ms. Yusmery Gadea, at her last known address. And to certify all of the above as correct, I Fernando Ruiz, Petitioner, sign this Certificate of Service, at Miami-Dade County, Florida, today, Monday the 23th of January, 2012.



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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the specifications requirements, under Rule 9.210 (a) of the Florida Rules of Appellate Procedure.



Fernando Ruiz, Petitioner