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IN THE SUPREME COURT OF FLORIDA

CASE NO: 96-CF-9726-B
DCA CASE NO: 1D11-6132
CASE NO: SC12-174

VERNON PINCKNEY,

PETITIONER,

VS.

STATE OF FLORIDA,

RESPONDENT(S).

APPEAL FROM THE FIRST DISTRICT COURT OF APPEAL
TALLAHASSEE, FLORIDA

PETITIONER INITIAL BRIEF ON JURISDICTION

SUMTER CORRECTIONAL INSTITUTION
DATE 2/9/12
INITIALS VP

COUNSEL FOR PETITIONER
VERNON PINCKNEY DC# [redacted]
SUMTER CORRECTIONAL INST.
9544 COUNTY ROAD 476B
BUSHNELL, FLORIDA 33513-0667

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PRELIMINARY STATEMENT

Respondent was the Appellee in the First District Court of Appeal and the Prosecution in the Circuit Court of the Fourth Judicial Circuit, Criminal Division, in and for Duval County, Florida. The Petitioner was the Appellant in the First District Court of Appeal, and the Defendant in the Criminal Division of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida.

In the brief, the parties will be referred to as they appear before the Supreme Court of Florida except that Respondent may also be referred to as the State or Government. The Petitioner may be referred to as Mr. Pinckney.

The following symbols will be used:

"R" Record on Appeal

ALL emphasis has been added unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Petitioner accepts his original statements of the case and facts as given in the Petition for Writ of Certiorari to the extent that they are true, accurate and nonargumentative.

SUMMARY OF ARGUMENT

The district court was in fault for not following this supreme court decision in Kozel v. Ostendorf, supra, where Petitioner did followed the First District Court's orders to serve a copies of the Petition for mandamus and Appendixs on the Attorney General office and Clerk of Court for Duval County and to file a supplemental certificate of service; district court should employ sanction, which Petitioner did not violated these District Court's orders, than dismissal with prejudice when it determines, upon consideration that the trial has violated the Florida Rules of Judicial Administrative. See, Fischer v. Knuck, 497 So.2d 240, 242 (Fla. 1986) (Explaining that fear of judicial bias must be objectively reasonable); id., at 629 So.2d 817 (Fla. 1993). (See Appendix E, p. 9).

ARGUMENT ON APPEAL

THE TRIAL COURT ERRED IN FAILING TO REQUIRE TO RULED UPON PETITIONER MOTIONS RULES 3.800(a) AND 3.850(a) WITHIN 90 AND 180 DAYS WHEN PETITIONER FILED THESE MOTIONS ON DIFFERENT SUBJECT MATTERS PROVIDED BY RULE FLORIDA RULE OF JUDICIAL ADMINISTRATIVE 2.330(C)(h)(i) AND 2.050 CANON 3B(8) OF CODE OF JUDICIAL CONDUCT

ON July 2, 2010, Petitioner Filed his First motion pursuant to Florida Rule of Criminal Procedure 3.800(a); however, shortly thereafter, on July 14, 2010, Petitioner Filed his second motion pursuant to Florida Rule of Criminal Procedure 3.850(b). Petitioner inquired to the Fourth Judicial Circuit Court, on three occasions by a Rulings on his motions: October 12, 2010, February 22, 2011, and May 19, 2011. (See Appendix E, pp. 7-8). On November 8, 2011, Petitioner Filed an Petition for Writ of mandamus in the First District Court of Appeal, to Compel the trial court to Ruled upon said motions. (See Appendix E, pp. 1-5).

On November 17, 2011, the First District Court of Appeal Acknowledge Receipt of the Petition for Writ of mandamus and a new Filing Case number: 1D11-6132. (See Appendix D). On November 18, 2011, the District Court order Petitioner to provide District Court with an Appendix that Contains a Copy of the pleading for which mandamus Relief is sought. (See Appendix C). Petitioner did not have a extra copy of

his specific demand for performance to the trial Court on June 19, 2011, Compelling the trial Court Ruled upon these said motions. (See Appendix E, pp. 9). On November 30, 2011, the District Court Order Petitioner Again to produced case number and Order from the trial Court to demand for performance to the trial Court. Petitioner Again Sented Copies of Petition for Writ of mandamus and last page of the motion to demand for performance. (See Appendixs E and B). On January 5, 2012, the First District Court dismissed the Petition for Writ of mandamus. (See Appendix A).

As to the Appeal Filed by the Petitioner, this Court should Assume for purposes of this discussion that Petitioner had Filed An Effective Specific demand for performance to the trial Court on June 19, 2011, (See Appendix E, p. 9), Compel trial Court to Ruled upon said motions that have been in the Fourth Judicial Circuit Court Custody for One (1) year in violation of Rules 3.800(a) and 3.850(a) and (b). See, Florida Rules of Appellate Procedure 9.040(c) and 9.300(a); See Also. Mancini v. State, 273 So. 2d 371, 373 (Fla. 1973)(quoting Kelley v. Gottschalk, 143 Fla. 371, 196 So. 844 (1940)). The Petitioner Assuming the prison officials Filed and mail his specific demand for performance to the trial Court on June 19, 2011, in the Appeal provides this Court with At Least sufficient jurisdiction to determine this Court jurisdiction; the question is whether this Court has jurisdiction to Review A trial Court Refusal not to Rule upon these motions, which are Required by Rules 3.800(a) and 3.850(d); Florida Rule of Judicial Administrative 2.050(F); Canon 3B(8), Code of Judicial Conduct. This Court should give Full Consideration to the

provisions of the stipulation, "the ultimate power and responsibility in making a determination rests with this Court." In re Kinsey, 892 So.2d 77, 85 (Fla. 2003)(quoting In re Davey, 645 So.2d 398, 404 (Fla. 1994). The Fourth Judicial Circuit Court has violated Canons, 1, 2A, 2B, and 5A of the Code of Judicial Conduct in that it "failing to Rule upon these motions as required by these Rules 3.800(a) and 3.850(b). The Petitioner motions was based on Constitutional and Laws in State of Florida were violated, (See Appendixs F and pp. 3-30), demonstrated bias through Fourth Judicial Circuit Refuse Rulings on these motions. These claims in both motions are violation of Petitioner due process Clause and, because they relate to matters which occurred at trial, they are not procedurally barred, but raises a manifest injustice. See, Cromartie v. State, (S) 473, (S) 474 (Fla. Aug. 25, 2011)(quoting Hannum v. State, 13 So.3d 132, 136 (Fla. 2d DCA 2009)); Hopkins v. State, 632 So.2d 1372, 1374 (Fla. 1994)(quoting State v. Johnson, 616 So.2d 1, 3 (Fla. 1993)).

In Kozel, he filed a medical malpractice Complaint against Steven Osterdorf on July 25, 1989, in the Circuit Court of Lee County. Osterdorf filed a motion to dismiss on the grounds that the Complaint failed to state a cause of action and that Kozel failed to comply with section 766.205, Florida Statutes (1989). The Court granted Osterdorf's motion to dismiss and granted Kozel twenty days to amend her Complaint. By agreement of the parties, the time period to amend the Complaint was extended another ten days. Kozel's Attorney, Kelley A.

Firm, did not file the Complaint until July 23, 1990, over five months past the due date. On Osterdorf's motion the Circuit Court then dismissed the Complaint with prejudice and the district Court affirmed. id., at 629 So.2d at 817.

The district Court properly Recognized that the trial Court has the discretionary power to dismiss a Complaint if the plaintiff fails to timely file an Amendment. Although such broad power is vested in the trial Court, it is not necessary or beneficial for that power to be exercised in all situation id., at 817. This Court Concur with Judge Altenberend's suggestion that the trial Courts need a meaningful set of guidelines to assist them in their task of sanctioning parties and attorneys for acts of malfeasance and disobedience. See, Kozel v. State, Osterdorf, 603 So. 2d 602, 605 (Fla. 2d DCA 1992) (Altenberend, J., dissenting). id., at 818.

In this instant case, the district Court acted outside the boundaries of the law. This Court should view, though, the district Court's decision to dismiss the Petition for Writ of mandamus based solely on the Petitioner's placed the specific demand for performance to the trial Court filed on June 19, 2011, (See Appendix E, p.9), in prison officials hand on the alleged date, unduly punishes the Petitioner and espouses a policy that this Court should not promote. The purpose of the Florida Rule of Appellate Procedure 9.410, is to encourage the orderly movement of Petitioner. See, Beasley v. Girten, 61 So.2d 179, 181 (Fla. 1952). As this Court held in Mancini, 273 So.2d at 373 (quoting

Kelley v. Gottschalk, 143 Fla. 371, 196 So. 844 (1940):

> The administration of justice is the most precious function a democracy is called on to perform and no rule of procedure was ever intended to defeat it. Courts must have rules to guide them in the performance of this function, but it has never been consider improper to toss right and common sense in the scales and weigh them with the evidence to reach a just result. Rules of procedure are as essential to administer justice as they are to conduct a baseball game, but they should never be permitted to become so technical, fossilized, and antiquated that they obscure the justice of the cause and lead to results that bring its administration into disrepute.

id., At 373.

As Petitioner asserts that once he placed the specific demand for performance in the prison officials hand on June 19, 2011; Petitioner stated in Appendix E, p.9, the only thing that was left of this motion to the trial court, he was not at fault for this dismiss of his alleged Petition for Writ of mandamus being sanction. Because dismissal is the ultimate sanction in the adversarial system, it should be reversed for those aggravating circumstances in which a lesser sanction would not fail to achieve a just result in allowing the Petitioner to refile his motion for

demand performance by Petitioner with copies and refile his Petition for writ of mandamus. This Court should quash the district Court's decision, approve Petitioner foregoing reasons, and remand the case with directions that the trial Court be ordered to reconsider in light of these rules and time requirements in 3.800(b)(1)(B), (b)(2)(B) and 3.850(b).

Respectfully submitted,
Vernon Pinckney #993574
VERNON PINCKNEY DC# 993574
SUMTER CORRECTIONAL INST.
9544 COUNTY ROAD 476B
BUSHNELL, FLORIDA 33513-0667

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been furnished to ATTORNEY GENERAL OFFICE: PAMELA JO BONDI, THE CAPITOL-PL-1, TALLAHASSEE, FLORIDA 32399-1050, by via U.S. mail on this 9th day of February, 2012.

Vernon Pinckney
VERNON PINCKNEY