

IN THE SUPREME COURT OF FLORIDA

GREGORY RUFF,  
Petitioner,

CASE NO.: SC13-1245

L.T.: 4D13-1589-03-18626-~~CF10A~~

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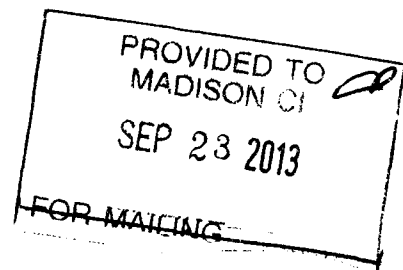
V.

STATE OF FLORIDA,  
Respondent.

PETITIONERS JURISDICTIONAL BRIEF

ON REVIEW FROM THE DISTRICT COURT OF APPEAL  
FOURTH DISTRICT STATE OF FLORIDA

GREGORY RUFF  
PRO SE



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THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN FLORIDA DEPT. OF TRANSP. V. JULIANO, 801 SO.2D 101 (FLA. 2001); STATE V. MCBRIDE, 848 SO.2D 287 (FLA. 2003) (HOLDING RES JUDICATA AND COLLATERAL ESTOPPEL PRINCIPLES WILL NOT BE INVOKED TO BAR RELIEF WHERE ITS APPLICATION WOULD RESULT IN A MANIFEST INJUSTICE)	
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## **TABLE OF CITATIONS**

FLORIDA DEPT. OF TRANSP. V. JULIANO, 801 SO.2D 101 (FLA. 2001)

STATE V. MCBRIDE, 848 SO.2D 287 (FLA. 2003)

BAKER V. STATE, 878 SO.2D 1236 (FLA. 2004)

STRAZZULA V. HENDRICK, 177 SO.2D 1, 4 (FLA. 1965)

DECANCIN V. E. AIRLINES, INC., 283 SO.2D 97 (FLA. 1973)

FLORIDA STATUTES 893.101 (2003)

## **STATEMENT OF CASE AND FACTS**

Petitioner Ruff was charged in this case under Review, with Two Counts of trafficking in Oxycodone in violation of § 893.135 (1)(c) 1. b. Fla. Stat. (2003). The first alleging that he delivered between 14 and 28 grams and the second alleging that he delivered between 4 and 14 grams, and one count each of delivery of cocaine § 893.13 (1)(a) 1. Fla. Stat. (2003), and possessing cocaine § 893.13 (6)(a) (Fla. Stat. 2003)

On September 25, 2006, Petitioner was found guilty by trial by jury as charged.

On December 8, 2006, the Court sentenced the Defendant to concurrent terms of 15 years incarceration as to counts I thru III in accordance to 775.084 Habitualization Enhanced Sentencing (30 years), in addition to enhanced sentencing to count IV 10 years. All sentences to run concurrent.

Petitioner Ruff appealed his “sentences” to the Fourth District Court of Appeal. On September 24, 2008, the Court reversed the habitual offender sentence imposed as to count IV of that charging possession of cocaine and remanded for resentencing as to that count. Ruff v. State, 990 So.2d 7004 (Fla. 4<sup>th</sup> DCA 2008).

On September 6, 2011 Petitioner filed a Postconviction Motion (untitled) alleging that his jury at trial was misled in accordance to § 893.101 of his right to an affirmative defense and that knowledge of the illicit nature of the substance as a (matter of law) was disputed at trial and does rise to reversible trial court error. Thus, reaching to the Manifest Injustice Doctrine claim.

The Trial Court and District Court have both invoked collateral estoppel and Res Judicata principles to bar relief.

### **SUMMARY OF ARGUMENT**

In this case the District Court of Appeal has held that Petitioners application for Writ of Habeas Corpus be dismissed citing Baker v. State, 878 So.2d 1236-1241 (Fla. 2004). The District Courts rationale for dismissal is based on a procedurally barred claim of trial court error where a postconviction motion would be untimely and successive in his case. Petitioners allegations of Manifest Injustice is ruled frivolous as he committed his offenses after section 893.101 Fla. Stat. became effective therefore failing to show that knowledge of the illicit nature of the substance was a disputed issue in his case.

The decision of the District Court cannot be reconciled with the previous decisions of this court in State v. McBride, 848 So.2d 287 (Fla. 2003); Florida

Dept. of Transp. v. Julianano, 801 So.2d 101-105 (Fla. 2001); Strazzula v. Hendrick, 177 So.2d 1, 4 (Fla. 1965). Wherein this Court has held that Res Judicata and collateral Estoppel principles will not be invoked to bar relief where its application would result in a manifest injustice. Thus the Petitioner contends that the decision of the District Court expressly and directly conflicts with the previous decision of this Court.

### **JURISDICTIONAL STATEMENT**

The Florida Supreme Court has discretionary jurisdiction to review a decision of a District Court of Appeal that expressly and directly conflict with a decision of the Supreme Court or another District Court of Appeal on the same point of law. Art V. § 3(b)(3) (Fla. Const. (1980)). Fla. R. App. P. 9.030 (a)(2)(A)(IV).

### **ARGUMENT**

**RES JUDICATA AND COLLATERAL  
PRINCIPLES WILL NOT BE INVOKED TO BAR  
RELIEF WHERE ITS APPLICATION WOULD  
RESULT IN A MANIFEST INJUSTICE**

## **THE LAW OF THE CASE DOCTRINE**

This Court has long held that the law of the case doctrine requires the “questions of law actually decided on appeal must govern the case in the same court and trial court thru all subsequent stages of the proceedings.” See. Florida Dept. of Transp. v. Julian, 801 So.2d 101, 105 (Fla. 2001) (Law of the case doctrine principles do not apply unless the issues are decided on appeal.

## **RES JUDICATA AND COLLATERAL ESTOPPEL PRINCIPLES**

This Court has also explained that doctrine as follows:

A judgement on the merits rendered in a former suite between the same parties or their privies, upon the same cause of action, by a court of competent jurisdiction is conclusive not only to every matter which was offered and received to sustain or defeat the claim, but at to every matter which might with propriety have been litigated and determined in that action...

Juliano, 801 So.2d at 105 quoting Kimbrell v. Paige, 448 So.2d 1009, 1012 (Fla. 1984). Thus under Res Judicata a judgement on the merits bars a subsequent action between the same parties on the same cause of action.

## **MANIFEST INJUSTICE**

This Court again has long recognized that Res Judicata will not be invoked where it would defeat the ends of justice. See *deCancino v. E. Airlines, Inc.*, 283 So.2d 97-98 (Fla. 1973); *Universal Const. Co. v. City of Fort Lauderdale*, 68 So.2d 366-369 (Fla. 1953).

## **CONCLUSION**


In the instant case the lower tribunal has applied the doctrine of Res Judicata in their procedural denial. Their upon appellate review the District Court did adopt the lower tribunals ruling as the law of the case. Both courts failing to reach the merits of Petitioners Manifest Injustice claim.

Contrary to the District Courts written opinion, Petitioner Ruff asserts if given the opportunity, he can show that knowledge of the illicit nature of the substance as a matter of law does rise to reversible trial court error thus reaching to the Manifest Injustice Doctrine claim.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of this Jurisdictional Brief of Petitioners has been furnished to: The Attorney Generals Office, 1515 N. Flagler Drive, Suite 900, West Palm Beach, FL 33401, on this 23 day of September 2013.

/s/   
GREGORY RUFF  
DC # 642947 – H-1133-S  
Madison Correctional Institution  
382 SW MCI Way  
Madison, FL 32340

**CERTIFICATE OF FONT SIZE**

I HEREBY CERTIFY the instant brief has been prepared with 14 point Times New Roman type, in compliance with R. App. P. 9.210 (a)(2).

/s/   
GREGORY RUFF

**IN THE SUPREME COURT OF FLORIDA**

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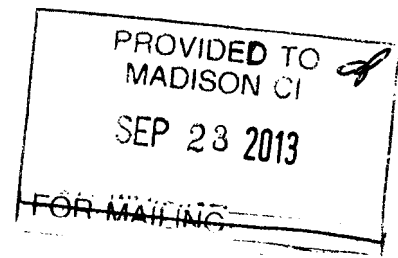
**GREGORY RUFF,**  
Petitioner,

**CASE NO.: SC13-1243**  
**L.T.: 4D13-1589-03-18626-CF10A**

**V.**

**STATE OF FLORIDA,**  
Respondent.

**APPENDIX**



**EXHIBIT**

**FOURTH DISTRICT COURT OF APPEAL**  
**ORDER OF DENIAL – DATED May 22, 2013**

**GREGORY RUFF**  
**PRO SE**  
**MADISON CORRECTIONAL INSTITUTION**

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**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM  
BEACH, FL 33401**

May 22, 2013

**CASE NO.: 4D13-1589**

L.T. No.: 03-18626 CF10A

**GREGORY RUFF**

**v. STATE OF FLORIDA**

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**Appellant / Petitioner(s)**

**Appellee / Respondent(s)**

**BY ORDER OF THE COURT:**

ORDERED that this petition for writ of habeas corpus is dismissed. *Baker v. State*, 878 So.2d 1236, 1241 (Fla. 2004). Petitioner attempts to raise a procedurally barred claim of trial court error. A postconviction motion would be untimely and successive in this case. Petitioner's allegation of "manifest injustice" is frivolous as he committed his offenses after section 893.101, Florida Statutes, became effective, and he has not shown that knowledge of the illicit nature of the substance was a disputed issue in his case. Petitioner is cautioned that further abusive, repetitive, malicious, and/or frivolous filing may result in sanctions, such as a bar on *pro se* filing in this court or referral to prison officials for disciplinary procedures which may include forfeiture of gain time. *See State v. Spencer*, 751 So.2d 47 (Fla. 1999); § 944.279(1), Fla. Stat. (2012).

**WARNER, TAYLOR and FORST, JJ., Concur.**

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


Served:

cc: Attorney General-W.P.B.      Gregory Ruff

dl

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of this Jurisdictional Brief of  
Petitioners has been furnished to: The Attorney Generals Office, 1515 N.  
Flagler Drive, Suite 900, West Palm Beach, FL 33401, on this 23 day of  
September 2013.

/s/   
\_\_\_\_\_  
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