IN THE SUPREME COURT OF FLORIDA

ALVIN MITCHELL,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent,
_____/

Case No.: 4D11-2323
L.T. No.: 04-10653-CF-10A

PETITIONER'S JURISDICTIONAL BRIEF

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

Alvin Mitchell, DC# B03839
South Bay Correctional Facility
P.O. Box 7171
South Bay, Florida 33493-7171

TABLE OF CONTENTS

TABLE OF CITATIONS

Rules:

STATEMENT OF THE CASE AND FACTS

Petitioner, Alvin Mitchell, appealed the judgment of the Fourth District Court of Appeal (Fla.) upholding the trial courts decision in denying Petitioner's Post Conviction Relief motion. Following the rendition of the judgment, the Petitioner filed a motion for rehearing on January 18, 2011, which was subsequently denied.

The motion was argued in a non-evidentiary hearing in the 17th Judicial Circuit in and for Broward County Florida on December 21, 2010. At the conclusion of the hearing the trial judge ruled that the petitioner is entitled to no relief pursuant to the states response. (See: Appx. A and B). However, the state had not complied with the courts order to show cause in that the state deliberately delayed its response to petitioner Rule 3.850, which constitutes a violation of Fla.R.Crim.P. 3.850(d). The Respondent violates the Florida Rule in that their response to Petitioners Rule 3.850 was not filed within the fixed period set by the Court. The order to show cause was served on September 27, 2010, and a ninety (90) day moratorium was afforded to the state for the issuance of their response. (See: Appx. C). Petitioner received the trial courts denial before he had any knowledge of the states response. In light of this, Petitioner received the order denying relief on 1/4/11; and on 1/5/11, Petitioner received the states response. Even though, Respondent's Certificate of Service on their response reflected a date

of December 14, 2010, yet, the Petitioner did not receive the same until 1/5/11, which was fifteen (15) days after the court had issued its denial. The trial court denied Petitioners Rule 3.850 Motion on December 21, 2010. (See: Appx. A)

Although, the certificate of the clerk, which certified the denial reflected a date of December 27, 2010, the Petitioner had not received the same until 1/4/11. Above all, the attached portions of the records did not conclusively refutes Petitioner's claims raised in his Rule 3.850, which constitutes a violation of Fla.R.App.P. 9.141(b)(2)(D).

Upon receiving the denial an appeal was filed to the Fourth District court of appeal to review the trial courts decision. The District Court affirmed. However, the district court stated that the appeal appears to be untimely; with an extended offer to the Petitioner to seek a Petition for Belated Appeal. (See: Appx. D). The petition was filed on February 25, 2013, which was subsequently denied on March 12, 2013 (See: Appx. E). Following the denial of the Petition for Belated Appeal a Motion for Rehearing was filed on March 27, 2013. The Motion for Rehearing was also denied, the order was rendered on May 21, 2013 (See: Appx. F), and the Petitioner's notice to invoke the discretionary jurisdiction of this Court was timely filed on June 19, 2013.

SUMMARY OF THE ARGUMENT

POINT I

In the instant case the district court upheld the trial courts decision which is contrary to Fla.R.App.P. 9.141(b)(2)(D). The decision of the district court cannot be reconciled with the previous decision in Peede v. State, 748 So.2d 253 (Fla. 1999). In Peede..., the court reversed and remand for an evidentiary hearing in a proceeding which conflicts with Fla.R.App.P. 9.141(b)(2)(D). Thus, the Petitioner contends that the decision of the district court expressly and directly conflicts with a previous decision of this Court on the same question of law and fact.

POINT II

The trial court engaged in the conduct and practice of law that is prejudicial to the administration of justice. Also, to the contrary the state demonstrates evasive and dilatory tactics to the extent that the Petitioner's ability to file a timely appeal has been frustrated by the "States action" which is contrary to Fla.R.App.P. 9.141(c) and to the courts ruling in Latimore v. State, 696 So.2d 1290 (Fla. 4th DCA 1997). In Latimore..., the district court granted Petitioner's belated appeal on similar issues. Thus, the Petitioner contends that the decision of the district court expressly and to directly conflicts with a previous decision of this Court on the same question of law and fact.

JURISDICTIONAL STATEMENT

As provided in the Art iii § (1) U.S. Const. , the Judicial power of the United States shall be vested in one Supreme Court. However, The Supreme Court of Florida is a subdivision of the highest court, which holds the same Superior judicial Authority. Moreover, the Florida Supreme Court has discretionary jurisdiction to review any decision of another district court of appeal or of The Supreme Court on the same question of law and fact. Importantly, in an instance where the constitutional rights of access to the courts is violated where government officials obstruct legitimate efforts to seek judicial redress, the immediate resolution of the Supreme Court is absolutely necessary to resolve such issues. See: First Amendment U.S. Const. Art. V, § 3(b)(3) Fla. Const. (1980); Fla.R.App.P. (a)(2)(A).

Moreover, in the interest of justice where there exists a conflict in decision and a break in the uniformity within this DCA the need for the immediate resolution of the Supreme Court is inevitable: so as to preserve and maintain uniformity of the principles and practices within the judicial body. "The Supreme Court of Florida has the authority as the highest court of the state to resolve legal conflicts created by the district court of appeal... "Quoting in part Fla. App. Practice § 3.10. Also, The Supreme Court of this State is hereby authorized and empowered to collaborate with any and all other courts of last resort or other states

and of the U.S. in the preparation and approval of uniform rules of court to make effective this and similar laws. Also the Supreme Court is vested with all the power and authority necessary for carrying into complete execution all its judgments, decrees and determination in the matters, before it, agreeable to the usage and principles of law. See: Fla. Stat. § 25.032 and § 25.041 above all, a state prisoner must exhaust his remedies in the state courts, before he presents any issue in the Supreme Court. Wherefore, Petitioner contends that his filing of this Jurisdictional Brief is included in the exhaustion of his state remedies, and as provided in Fla. Const. Art. V, § 3(b)(3). The Florida Supreme Court has discretionary jurisdiction to resolve conflict in decisions.

ARGUMENT

POINT I

THE DECISION OF THE DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN PEEDE V. STATE, 748 So.2d 253 (FLA. 1999).

In the instant case the district court upheld the trial courts decision in denying Petitioner's Rule 3.850, with the exception of the claims raised being facially invalid or conclusively refuted by the records, which is contrary to Fla.R.App.P. 9.141(b)(2)(D) and to the decision made in Peede v. State, 748 So.2d 253 (Fla. 1999). In Peede, the court reversed and remanded for a hearing on the

same question of law and fact, wherein the claims raised were not conclusively refuted by the records, unlike the decision made in the instant case which tantamounts to a finding that the decision of the Fourth District Court of Appeal is expressly and directly conflicts with a decision of a Supreme Court precedents and that of Fla.R.App.P. 9.141(b)(2)(D).

Herein, we find evidence of a failure in the administration of justice that of which requires the immediate resolution of the Supreme Court. However, if a state court's decision is "contrary to" clearly established Supreme Court precedents; if it applies a rule that contradicts the governing law set forth in Supreme Court cases; or if it confronts a set of facts that are materially indistinguishable from a decision of the Supreme Court and nevertheless arrives at a different result the Supreme Court precedents shall have the governing authority in any such instances. As in the instant case it is evident that there exist expressly and directly conflicts within the DCA which is tantamount to a finding that the need for the Supreme Courts immediate resolution is absolutely necessary, being that all power is vested in the Supreme Court.

Also, to the extent where no evidentiary hearing is being held the court must accept the Petitioner's factual allegations as they are not conclusively refuted by the records. Therefore an evidentiary hearing should have been held. In Peede..., 'Supra'... the court reversed and remand for a hearing on the same question of law

and fact. Herein, we find that the district court's decision had a great effect on the proper administration of justice that of which indeed prejudice the Petitioner. Thus, the Petitioner contends that there would have been a reasonable probability that but for the courts unprofessional errors the result of the proceeding would have been different. Herein, the immediate resolution of the Supreme Court is necessary to maintain uniformity within the judicial body. To the extent the Petitioner was prejudiced solely because his claims were not refuted by the records partially or whole. Thus, an evidentiary hearing is required or any other appropriate relief in order to resolve the credibility determination as to the facts backed by law which was presented in the motion. See: McLin v. State, 827 So.2d 948 (Fla. 3d DCA 2002). In McLin..., the district court's decision was quashed and the case remanded for an evidentiary hearing. "It is well established that to support summary denial of a postconviction motion without a hearing a trial court must attach those specific parts of the records that refute each claim presented in the motion.

This requirement is embodied in Fla.R.Crim.P. 3.850(d), which permits summary denial. Further, where no evidentiary hearing is held, and appellate court must accept the defendant's factual allegation to the extent they are not refuted by the record. This requirement is embodied in Fla.R.App.P. 9.141(b)(2)(D), which governs appeal of summary denial of motion for post-conviction relief in non-

death cases. It continues to say; that, on appeal from the denial of relief, unless the records show conclusively that the appellant is entitled to no relief, the order shall be reversed and the cause remanded for an evidentiary hearing or other appropriate relief..." quoting McLin.

However, in the instant case the decision of the Fourth District Court of Appeal is expressly and directly conflicts with the decision of this court in McLin v. State, 827 So.2d 948 (Fla. 3d DCA 2002); in Gunn v. State, 612 So.2d 643 (Fla. 4th DCA 1993) in Brantley v. State, 912 So.2d 342 (Fla. 3d DCA 2005), in Foster v. State, 810 So.2d 910 (Fla. 2002), in Jones v. State, 591 So.2d 911 (1991), and in Brown v. State, 967 So.2d 440 (Fla. 4th DCA 2007), on the issues of the appellate standard of review of trial courts summary denial of a Rule 3.850 motion when the movant alleges that the claims raised were not conclusively refuted by the records. Herein, the Petitioner contends that the decision of the Fourth District Court of Appeal conflicts with the decision of a Supreme Court precedent and of other district courts on the same question of law and fact. Additionally, to uphold a trial courts summary denial without an evidentiary hearing or other appropriate relief is a break in the uniformity of principles and practice within the judicial body. The decision in McLin... 'Supra"... is irreconcilable with the decision in the instant case. Further, Florida precedents, as well as Fla.R.App.P. 9.141(b)(2)(D) mandate an evidentiary hearing unless the allegations in a postconviction motion are

conclusively refuted by the record. Herein, the Supreme Court has jurisdiction. See: Art. V. § 3(b)(3), Fla. Const., for the reasons set forth the Petitioner prays that this Court accept jurisdiction and quash the Fourth District Court's decision in this case and remand for an evidentiary hearing or other appropriate relief, consistent with the above precedents.

Wherefore, premises considered, the Petitioner requests that this Honorable Court accept jurisdiction and resolve the legal controversies surrounding this appeal.

ARGUMENT

POINT II

THE STATE HAD NOT COMPLIED WITH THE COURT'S ORDER TO SHOW CAUSE WITHIN THE FIXED PERIOD, THE STATE ALSO DEMONSTRATES EVASIVE AND DILATORY TACTICS IN ITS PROCEEDINGS REGARDING THEIR RESPONSE TO PETITIONER'S RULE 3.850 MOTION WHICH CONSTITUTES A VIOLATION OF FLA.R.CRIM.P. 3.850(d), AND FLA.R.APP.P. 9.141(c)(4)(F)(ii).

The state failed to comply with the courts order to show cause which constitutes a violation of Fla.R.Crim.P. 3.850(d), and of Fla. Stat. § 1.02, that resulted in a deprivation of Petitioner's due process guaranteed by the Fourteenth Amendment of the U.S. Constitution. The Petitioner has been deprived of life, liberty, property and the equal protection of the law guaranteed by this

Amendment. In light of this the state had not provided their response to Petitioner's Rule 3.850 motion within the period of time fixed by the court or to the time of performance; also, the respondent failed to make known whether the Petitioner had used any other available state remedies including any other postconviction motion under Rule 3.850.

The Respondent demonstrates evasive and dilatory tactics. The decision to be reviewed shows various instances where evasive and dilatory tactics have been employed with no other intention than to avoid compliance to the courts order. (See: Appx. A, B and C).

Herein, the district courts decision is contrary to Fla.R.App.P. 9.141(c)(4)(F)(ii) and to the decision of this court in Latimore v. State, 696 So.2d 1290 (Fla. 4th DCA 1997).

It is well established by law that if a petitioner seeks belated appeal and petitioner's right to appeal has been frustrated by the "States Action" the petition shall be granted. In Latimore..., the district court ruled that if the petitioners appeal has been frustrated by the state action. He is therefore entitled to a belated appeal. "There is no need to resolve the factual dispute, because either way Petitioner's right to appeal has been frustrated by the states action. He is entitled to a belated appeal." - quoting Latimore. See: Showers v. State, 359 So.2d 928 (Fla. 2d DCA 1978). In Showers, the district court granted defendant (Showers)

belated appeal based on a finding that defendant's right to appeal was frustrated by the "State Action." However, in the instant case there exist expressly and directly conflict in decision within the DCA which constitutes a break in the uniformity of the principles and practice of the judicial body. Thus, the Petitioner was prejudiced because of the states failure to administrate justice. The government agent unreasonably delayed their response which indeed frustrated the Petitioner's appeal. Herein, the decision on review expressly and directly conflicts with a decision of another district court of appeal and of the Supreme Court on the same question of law and fact. The opinion of the Fourth District Court in this case expressly and directly conflicts with the decision of this Court in Latimore v. State, 696 So.2d 1290 (Fla. 4th DCA 1997) and Showers v. State, 359 So.2d 928 (Fla. 2d DCA 1978); and Florida precedents as well as Fla.R.App.P. 9.141(c)(4)(F)(ii), which mandates belated appeal wherein the petitioner's right to appeal has been frustrated by the "State action." Evidently, the substantial rights of Petitioner were injured based upon the unreasonable errors that occurred throughout the entire proceeding. Thus, the judgment shall be reversed or modified. See § 924.33 Fla. Stat. and Matera & Galtieri v. State, 218 So.2d 180, (Fla. 3rd DCA 1969).

Indeed, Petitioner's Fourteenth Amendment right was violated as a result of the states action which prejudiced the Petitioner. Wherefore, the Petitioner

contends that but for the states evasive and dilatory tactics probably the outcome of his appeal would have been different.

CONCLUSION

The 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 and resolve the legal controversies herein.

Respectfully Submitted,

/S/ Alvin Mitchell
Alvin Mitchell, DC# B03839

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Jurisdictional Brief has been furnished to: Supreme Court of Florida, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927 and Office of the Attorney General, The Capitol, Tallahassee, Florida 32399-1050, by U.S. Mail this 29th day of June 2013.

/S/ Alvin Mitchell
Alvin Mitchell, DC# B03839
South Bay Correctional Facility
P.O. Box 7171
South Bay, Florida 33493-7171

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Jurisdictional Brief complies with the font requirements of Fla.R.App.P. 9.210.

/S/ Alvin Mitchell

Alvin Mitchell, DC# B03839
South Bay Correctional Facility
P.O. Box 7171
South Bay, Florida 33493-7171

INDEX TO APPENDIX IN SUPPORT OF
THE DECISION TO BE REVIEWED

EXHIBIT - "A"

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

ALVIN MITCHELL,

Defendant.
_____/

CASE NO.: 04-10653CF10A

JUDGE: BARBARA McCARTHY

DIVISION: FF

ORDER DENYING DEFENDANT'S
MOTION FOR POST-CONVICTION RELIEF

THIS CAUSE having come before this Court upon the Defendant's Motion for Post-Conviction Relief, filed September 17, 2010,pursuant to Florida Rules of Criminal Procedure 3.850, and the Court having considered same, along with the State's Response thereto, and being fully advised in the premises, it is hereby,

ORDERED AND ADJUDGED that the Defendant's Motion for Post-Conviction Relief is hereby **denied** for the reasons given in the State's Response and exhibits attached and incorporated herein as the basis for the Court's ruling.

Defendant has thirty (30) days to appeal from the rendition of this Order.

DONE AND ORDERED in Chambers on December 21, 2010 at Fort Lauderdale, Broward County, Florida.

Barbara McCarthy
BARBARA McCARTHY, Circuit Judge

Copies furnished:

Joel Silvershein,Esq, Assistant State Attorney

Alvin Mitchell, Pro se
Inmate # B03839
South Bay Correctional Institution
P.O. Box 7171
South Bay, Florida, 33493

Received 1/4/11

HOWARD C. FORMAN
CLERK OF CIRCUIT AND COUNTY COURT
17TH JUDICIAL CIRCUIT

201 SOUTHEAST 6TH STREET
BROWARD COUNTY
COURTHOUSE
FORT LAUDERDALE, FL 33301

STATE OF FLORIDA

VS. JOHN DOE aka ALVIN MITCHELL

CASE NUMBER: 04-10653CF10A

CERTIFICATE OF CLERK
PURSUANT TO FLORIDA RULES OF COURT 3.850(g)

I, HOWARD C. FORMAN, CLERK OF THE COURTS, BROWARD COUNTY, FLORIDA HEREBY CERTIFY THAT A COPY OF THE ORDER DENYING DEFENDANT'S MOTION FOR POST CONVICTION RELIEF HAS BEEN MAILED TO THE DEFENDANT AT THE ADDRESS BELOW, TO WIT:

Alvin Mitchell, Inmate # B03839
South Bay Correctional Institution
P.O. Box 7171
South Bay, FL 33493

DATE: 12/27/2010

HOWARD C. FORMAN
CLERK OF COURTS

BY: _____
DEPUTY CLERK

Received 1/4/11

EXHIBIT - "B"

Motion To Dismiss

IN THE CIRCUIT COURT OF
THE SEVENTEENTH JUDICIAL
CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

STATE OF FLORIDA	CASE NO: 04-10653 CF
	JUDGE: McCARTHY
v.	
ALVIN MITCHELL	
Defendant	

RESPONSE TO DEFENDANT'S MOTION FOR

POST-CONVICTION RELIEF

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and responds to the Defendant's Motion for Post-Conviction Relief, pursuant to Fla.R.Crim.P. 3.850 and the Order of this Honorable Court, as follows:

1. The allegation of the defendant that trial counsel, Sandra Perlman, was ineffective for failing to impeach witness Robert Watts during the hearing on the motion to suppress identification is without merit. Initially, it appears that the defendant is trying to improperly bootstrap an issue raised on appeal in a claim of ineffective assistance of counsel. *Blanco v. Wainwright*, 507 So.2d 1377 (Fla. 1987); *Dean v. State*, 580 So.2d 808 (Fla. 3d DCA 1991). Whether the Court erred in denying the motion to suppress the identification was raised on appeal, and addressed by the State

Received 1/5/11

in its answer brief (Exhibit I). The fact that the Fourth District Court of Appeal simply affirmed without an opinion (Exhibit II) means that the appellate court reviewed all points of error raised by the defendant on its merits and rejected them. *Shayne v. Saunders*, 176 So. 495 (Fla. 1937). Because this issue was raised on appeal, it is not cognizable in a motion for post-conviction relief. *Koon v. Dugger*, 619 So.2d 246 (Fla. 1993); *Medina v. State*, 573 So.2d 293 (Fla. 1990).

Regardless, the record refutes the allegation of the defendant. There was no deficiency, because trial counsel thoroughly cross-examined Watts during the suppression hearing, and impeached him with his prior statement when he gave an inconsistent answer (Exhibit III, pp. 24-33). The answers that Watts gave as far as the identification process was concerned were consistent between the deposition and his testimony during the suppression hearing (Exhibit III, pp. 23-24; Exhibit IV, pp. 26-34). Additionally, the fact that the witness stated that he was positive in his identification was reflected in both the hearing transcript and the deposition (Exhibit III, pp. 24, 27, 33-34; Exhibit IV, p. 34). In denying the motion, Judge Weinstein correctly noted that the purpose of the motion to suppress was to determine whether the identification process was unduly suggestive, and although the identification was weak, the process was not unduly suggestive (Exhibit III, pp. 44-47). See *Grant v. State*, 390 So.2d 341 (Fla. 1980). The appellate court found no error based on its affirmance

in this matter (Exhibit II).

Additionally, there was no prejudice as a result of the alleged deficiency on the part of counsel. At trial, counsel attacked the identification during the cross-examination of Watts at trial (Exhibit V, pp. 261-271), and noted that the weakness of the identification in opening statement and closing arguments as reasons that the defendant was not guilty (Exhibits VI and VII). Additionally, she preserved the issue of the sufficiency of the identification by moving for a judgment of acquittal, in part based on the weakness of the identification (Exhibit VIII). Since there was neither a deficiency on the part of counsel, nor prejudice to the defendant, relief must be summarily denied.

2. The allegation of the defendant that the evidence of identity was insufficient is not cognizable in a motion for post-conviction relief. Whether there was sufficient evidence to support a conviction is a matter which was or could have been raised on appeal, and is not cognizable in a motion for post-conviction relief. *Morris v. State*, 422 So.2d 338 (Fla. 3d DCA 1982); *Spencer v. State*, 389 So.2d 652 (Fla. 1st DCA 1980). The issue of sufficiency of the evidence was preserved by the motion for judgement of acquittal at the conclusion of the case in chief of the State. *Morris v. State*, 721 So.2d 725 (Fla. 1998); *In re T.M.M.*, 560 So.2d 805 (Fla. 4th DCA 1990). Since this issue could have been raised on appeal, this claim must be summarily denied. *Koon, supra; Medina, supra.*

WHEREFORE, the State of Florida respectfully requests this Honorable Court to deny the Defendant's Motion for Post-Conviction Relief.

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail to Alvin Mitchell, Defendant, Pro Se, Inmate #B03839, South Bay Correctional Institution, P.O. Box 7171, South Bay, Florida 33493-7171, this 14th day of December, 2010.

MICHAEL J. SATZ
State Attorney

By: 

JOEL SILVERSHEIN
Assistant State Attorney
Florida Bar No: 608092
Room 675
201 S.E. 6th Street
Fort Lauderdale, FL 33301
Telephone: (954)831-7913

EXHIBIT - "C"

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

ALVIN MITCHELL a/k/a
JOHN DOE,

Defendant.
_____/

CASE NO.: 04-010653CF10A

DIVISION: FF

JUDGE: CARLOS A. RODRIGUEZ

ORDER REQUIRING A RESPONSE BY STATE TO DEFENDANT'S MOTION FOR POST CONVICTION RELIEF

THIS COURT having received Defendant's Motion for Post Conviction Relief dated September 14, 2010, filed pursuant to Florida Rules of Criminal Procedure 3.850, and the Court being of the opinion that a Response to said Motion by the State is necessary, it is hereby

ORDERED that the Office of the State Attorney of Broward County, State of Florida, shall have **90** days from the date of this order to file a Response to said Motion.

DONE AND ORDERED in Chambers on September 27, 2010, at Fort Lauderdale, Broward County, Florida.

CARLOS A. RODRIGUEZ

_____
CARLOS A. RODRIGUEZ, Circuit Judge

A TRUE COPY

Copies furnished:

State Attorney's Office, Appeals Division

Alvin Mitchell, DC#B03839
South Bay Correctional Facility
P.O. Box 7171
South Bay, FL 33493-717

EXHIBIT - D

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

February 6, 2013

CASE NO.: 4D11-2323
L.T. No. : 04-10653 CF10A

ALVIN MITCHELL
A/K/A JOHN DOE

v. STATE OF FLORIDA

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

This court has received the notice of appeal in the above styled case and finds, from the face of the record, that the appeal appears to be untimely filed. The order on appeal, dated and entered December 21, 2010, was served on appellant by mail on December 27, 2010, but his motion for rehearing apparently was not filed until January 18, 2011 (the date of the incarcerated appellant's certificate of service, *see* Fla. R. App. P. 9.420(a)(2)), a total of twenty-two (22) days later, making it appear that the motion for rehearing was untimely filed more than eighteen (18) days later, *see* Fla. R. Crim. P. 3.850(g) (2010) ("The movant may file a motion for rehearing of any order denying a motion under this rule within 15 days of the date of service of the order.") & 3.070 (adding 3 days after service by mail), and thus did not defer rendition of the order on appeal, see Fla. R. App. P. 9.020(h)(1) (providing that if a **timely** and authorized motion for rehearing is filed in the lower tribunal, the final order is not deemed rendered until the filing of a signed written order disposing of the motion). Thus, in order for the notice of appeal from the December 21, 2010 order to be timely, it would have to be filed within thirty days of the December 21, 2010 date of rendition of the order, or by January 20, 2011. However, the notice of appeal in this case was deemed filed on May 20, 2011 (the date it was turned over to prison officials for mailing). In light of the foregoing, it is

ORDERED that appellant shall file with this court, within twenty (20) days of the date of this order, and show cause why the instant appeal should not be dismissed as untimely.

Appellant's failure to timely comply with this order will result in the dismissal of this appeal as untimely.

If Defendant chooses to seek a belated appeal, a sworn petition conforming to Florida Rule of Appellate Procedure 9.141(c) shall be filed within twenty (20) days of the date of this order.

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

Served:

Howard Forman, Clerk Alvin Mitchell Attorney General-W.P.B.

Rec. 2/

pb

Marilyn Beuttenmuller

MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

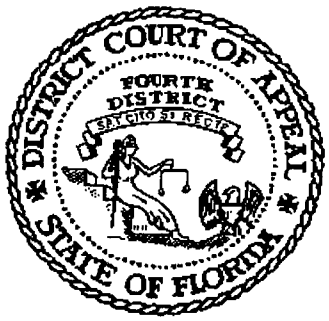


EXHIBIT - "E"

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

March 12, 2013

CASE NO.: 4D11-2323
L.T. No. : 04-10653 CF10A

ALVIN MITCHELL
A/K/A JOHN DOE

v. STATE OF FLORIDA

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that the petition for belated appeal filed February 27, 2013, is hereby denied on the merits.

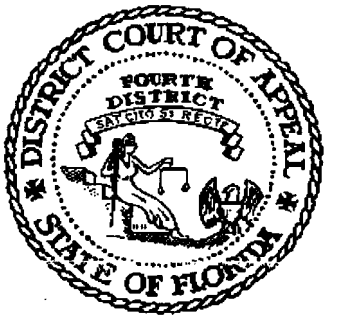
I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Alvin Mitchell Attorney General-W.P.B.

ck

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal



Rec. 3/14/13

EXHIBIT - F

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

May 21, 2013

CASE NO.: 4D11-2323
L.T. No.: 04-10653 CF10A

ALVIN MITCHELL a/k/a JOHN DOE v. 'STATE OF FLORIDA

Appellant / Petitioner(s) Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that petitioner's motion filed April 1, 2013, for rehearing is hereby denied.

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

Served:

cc: Attorney General-W.P.B. Alvin Mitchell
Hon. Barbara McCarthy

ck

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal