

IN THE SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT

BY _____

RAMON VIDAL, *pro se*,
Petitioner,

v.

CASE NO.: SC13-1344
3d DCA NO.: 3D13-962

STATE OF FLORIDA,
Respondent.

_____/

PETITIONER'S JURISDICTIONAL BRIEF

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

Ramon Vidal, *pro se* #187504
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PRELIMINARY STATEMENT

In this Brief, Ramon Vidal will be referred to as the “Petitioner,” and the Respondent will be referred to as the “State.”

STATEMENT OF THE CASE AND FACTS

On January 27, 1989, after previously having been cleared, by way of an investigation conducted by the Department of Health and Rehabilitative Services (DHRS), and by the Miami-Dade Sheriff's Office (from April '88 through 11/30/88), Petitioner was arrested and charged with willfully punishing and torturing his two (2) step-children; bail was set and Petitioner was released from custody.

On January 31, 1989, Petitioner was re-arrested, and additionally charged with sexual battery on minor(s) under the age of twelve (<12) [digital penetration of the two (2) girls, while bathing them].

After trial by jury (in October 1989), Petitioner was acquitted on all counts of physical child abuse, but was found guilty of the sexual battery charge(s), and was sentenced to life in prison [twenty-five (25) years mandatory]. Upon Direct Appeal, the Third District Court of Appeal (3d DCA) *per curiam* Affirmed [*Vidal v. State*, 578 So. 2d 292 (Fla. 3d DCA 1991)].

Petitioner filed a timely *pro se* Motion for Postconviction Relief (3.850), which was denied by the 11th Judicial Circuit Court (Miami-Dade) on June 16, 1993.

In November 2012, Petitioner filed a second "**Motion for Postconviction Relief (3.850)**" (based on Newly Discovered Evidence), which, on March 12, 2013, was denied by the 11th Judicial Circuit Court's Order (as "**Defendant's Motion to Correct Illegal Sentence**"[*sic*]), because it was "**legally insufficient.**" (Bold and underlinings added, for emphasis). (Curiously, the Clerk certified that a copy of said denial Order was not served on the Petitioner until March 27, 2013

[fifteen (15) days after it was filed], while the Order's envelope was post-marked April 5, 2013, and was not received by the Petitioner until April 9, 2013).

On April 11, 2013, Petitioner filed Notice of Appeal, which was followed (on May 11, 2013) by a timely filed "Appellant's Initial Brief."

On May 29, 2013, the Third District Court of Appeal summarily *per curiam* "Affirmed" the lower court's denial Order, and Petitioner's June 7, 2013, "Motion to Stay the Mandate, Motion for Rehearing, and Motion for Rehearing *En Banc*" was denied on June 26, 2013.

After Petitioner filed a "Notice to Invoke Discretionary Jurisdiction," this Court issued its "Acknowledgement of New Case" on July 30, 2013.

HENCE, this Brief.

SUMMARY OF THE ARGUMENT

The lower court erred in denying Petitioner one (1) opportunity to amend his State declared "legally defective" *pro se* Motion, thereby denying Petitioner his Due Process rights, in that the lower court's ruling is in conflict with the holdings of this Court in *Spera v. State*, 971 So. 2d 754 (Fla. 2007). The Third District Court of Appeal ascerbated the error, by failing to reverse and remand. Said conflicts invoke this Court's jurisdiction to review the lower court's ruling.

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 . . . [Art. V, § 3(b)(3), Fla. Const. (1980); Fla. R. App. P. 9.030(a)(2)(A)(iv)].

ARGUMENT

On the face of the record, it is undisputed that the Petitioner's instant 3.850 Motion was/is "legally defective." [See State's Response and the 11th Judicial Circuit Court's Denial Order (of "Defendant's Motion to Correct Illegal Sentence" [*sic*]), wherein it is stated, that said Motion was "legally insufficient."]. [While not argued here, in reality, the first 3.850 Motion was (likewise) also "legally defective"].

The Spanish-speaking *pro se* Petitioner had written his own "legally defective" Motions because he was under the false impression that he would have to "pay" to acquire the services of a prison certified law clerk. Upon learning that "free" qualified help was available (at the prison law library), an Appeal was filed, citing *Spera v. State*, 971 So. 2d 754 (Fla. 2007), which provides at least one (1) opportunity to amend a claim that is found to be "legally defective."

Contrary to this Court's *Spera* ruling, the Third District Court of Appeal denied Petitioner even a single opportunity to amend and correct the legally defective Motion. In addition, Petitioner has cited *Haines v. Kerner*, 404 U.S. 519, 520 (1972), where the ruling was reversed, because the litigant was denied an opportunity to amend his claim. That denial effectively denied the litigant proper access to the courts [see *Bryant v. State*, 901 So. 2d 810 (Fla. 2005)].

CONCLUSION

This Court has Discretionary Jurisdiction to review the Third District Court of Appeal's decision to *per curiam* Affirm the lower court's denial, since Petitioner was not provided at least one (1) opportunity to amend the undisputed "legally defective" Motion for Postconviction Relief (3.850), based on "Newly Discovered Evidence," as held in *Spera*, and, therefore, this Court should exercise that Discretionary Jurisdiction.

OATH

UNDER PENALTIES OF PERJURY, I declare that I have read the foregoing Petitioner's Jurisdictional Brief, and that the facts stated in it are true.

Ramon Vidal
Ramon Vidal, *pro se* #187504

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Jurisdictional Brief has been handed to the mailroom official at the South Florida Reception Center, South Unit, for mailing to the Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399-1050, on this ____ day of August 2013.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

Ramon Vidal
Ramon Vidal, *pro se* #187504

APPENDIX

(Conformed Copy of 3d DCA's Decision)

Third District Court of Appeal

State of Florida, January Term, A.D. 2013

Opinion filed May 29, 2013.

Not final until disposition of timely filed motion for rehearing.

No. 3D13-962
Lower Tribunal No. 89-3614

Ramon Vidal,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Teresa M. Pooler, Judge.

Ramon Vidal, in proper person.

Pamela Jo Bondi, Attorney General, for appellee.

Before EMAS and LOGUE, JJ., and SCHWARTZ, Senior Judge.

PER CURIAM.

Affirmed.