

IN THE SUPREME COURT OF FLORIDA

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BY _____

LAZARO SAN PEDRO, *pro se* initials LS
Petitioner,

v.

CASE NO.: SC13-1388
3d DCA NO.: 3D13-0722

STATE OF FLORIDA,
Respondent.

_____ /

PETITIONER'S JURISDICTIONAL BRIEF

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

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PRELIMINARY STATEMENT

In this Brief, Lazaro San Pedro will be referred to as the “Petitioner,” and the Respondent will be referred to as the “State.”

STATEMENT OF THE CASE AND FACTS

On December 6, 2000, the Petitioner was indicted for the March 19, 1996 first-degree murder of Geraldo Levy.

On August 23, 2001, he was found guilty (as charged) by a jury (before Judge Leslie Rothenberg of the 11th Judicial Circuit Court, Miami-Dade County), and was given a life sentence, without possibility of parole.

On January 29, 2003, the Third District Court of Appeal (3d DCA) *per curiam* Affirmed [see *San Pedro v. State*, 837 So. 2d 988 (Fla. 3d DCA 2003)].

On September 23, 2003, a Petition for Writ of Habeas Corpus was denied [see *San Pedro v. Crosby*, 857 So. 2d 888 (Fla. 3d DCA 2003)].

On June 2, 2004, Petitioner filed a Motion for Postconviction Relief (3.850), which was denied on January 13, 2005. Motion for Rehearing was denied on March 4, 2005, and a *per curiam* Affirmed was issued on March 22, 2006 [see *San Pedro v. State*, 923 So. 2d 1226 (Fla. 3d DCA 2006)].

A second Motion for Postconviction Relief (3.850) was denied on April 14, 2009, and was *per curiam* Affirmed August 19, 2009 [see *San Pedro v. State*, 17 So. 3d 300 (Fla. 3d DCA 2009)].

On November 15, 2012, Petitioner filed a (3.850) Motion for Postconviction Relief, wherein “Newly Discovered Evidence” was cited. After receiving the State’s response, which stated that such third Motion was “legally defective,” Petitioner (on February 21, 2013) filed a Motion to “Strike” same, with “Leave to Amend,” in accordance with this Court’s ruling in *Spera v. State*, 971 So. 2d 754 (Fla. 2007).

Just one day later, on February 22, 2013, a denial Order was signed, with a claim that it had been served to Petitioner on February 25, 2013, notwithstanding the fact that it was stamped as having been filed on February 15, 2013, i.e., filed (by the Clerk) a full seven (7) days before it was actually signed. Due to the confusion, which those dates exhibit, on March 4, 2013, Petitioner filed a Motion to Correct [Apparent] Scrivener's Error, as well as a Motion for Reconsideration / Rehearing, but Petitioner has never received any responses or rulings pertaining to those March 4, 2013 Motions.

On March 14, 2013, Petitioner filed Notice of Appeal. On June 19, 2013, the Third District Court of Appeal summarily "Affirmed" the lower court's denial Order;

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

It is undisputed that the Petitioner's "Newly Discovered Evidence" 3.850 Motion was "legally defective" (see face of the record – State's "Response to Third Motion for Postconviction Relief Pursuant to 3.850", fourth page). [While not argued here, in reality, both of the prior 3.850 Motions were (likewise) "legally defective"].

Petitioner, virtually an English language illiterate (with a limited education), had been at the mercy of other Spanish-speaking inmates, for the preparation of the 3.850 Motions, without realizing that he could have sought the assistance of a prison certified law clerk.

After receiving the State's Response, and upon learning that qualified help was available (at the prison law library), a Motion to Strike and Leave to Amend 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 ruling, the lower court (followed by 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.

Lazaro San Pedro
Lazaro San Pedro, *pro se* #405979

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 8th 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.

Lazaro San Pedro
Lazaro San Pedro, *pro se* #405979

APPENDIX

(Conformed Copy of 3d DCA's Decision)

Third District Court of Appeal

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

Opinion filed May 15, 2013.

Not final until disposition of timely filed motion for rehearing.

No. 3D13-722

Lower Tribunal No. 00-33033

Lazaro San Pedro,
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, Cristina Miranda, Judge.

Lazaro San Pedro, in proper person.

Pamela Jo Bondi, Attorney General, for appellee.

Before CORTIÑAS, FERNANDEZ and LOGUE, JJ.

PER CURIAM.

Affirmed.