

IN THE SUPREME COURT OF FLORIDA

WILLIAM L. WHIPPLE
Petitioner/Appellant

v.

STATE OF FLORIDA
Respondent/Appellee

Case No. SC13-

OUTGOING LEGAL MAIL
PROVIDED TO TAYLOR C.I. FOR
MAILING ON

5-21-13 / v.w.
DATE (CONFINEMENT-ANNEX) /M INT.

2013 MAY 29 PM 1:50
CLERK SUPREME COURT
BY _____

ON NOTICE TO INVOKE DISCRETIONARY JURISDICTION TO REVIEW A
DECISION OF THE THIRD DISTRICT COURT OF APPEAL

Mr. Whipple's Brief on Jurisdiction

William L. Whipple DC#: 816787
Taylor Correctional Institution
8629 Hampton Spring Rd.
Perry, Fl. 32348

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PRELIMINARY STATEMENT

Whipple was the Appellant/Petitioner and the State of Florida was the Appellee/Respondent in the Third District Court of Appeal (Third District).

The parties will be referred as they appear before this court. The Petitioner may also be referenced as "Whipple" and the Respondent may be referenced as the "State." Appendix will be referred to as App. With an enclosed alphabet designating the record e.g. App "A".

STATEMENT OF THE CASE AND FACTS

Whipple was convicted of one count of first degree murder; and one count of robbery with a firearm. During Whipple's pre-trial criminal proceedings, Whipple filed a motion for self representation. Without any Faretta hearing during this period; approximately fourteen months later Whipple filed a motion to withdraw his motion for self representation and the motion to withdraw it.

On March 31, 1999, Whipple without the assistance of counsel or waiver thereof; at a crucial stage during pre trial proceedings was forced to represent himself on the pre trial motions that former appointed counsel Eugene F. Zenobi had filed which were; Motion to suppress evidence; Motion to dismiss both attempted murder counts; and Motion to sever firearm, Whipple was found guilty of both counts. On appeal the Third District per curiam affirmed. Whipple v. State, 762 So. 2d 583 (Fla. 3rd DCA 2002).

Whipple, on January 3, 2013 filed a common law writ of habeas corpus alleging appellate counsel was prejudicially ineffective in failing to raise (1) the structural defect of Appellant being denied the right to counsel at a crucial stage of his criminal proceeding and (2) failing to raise the structural defect of Appellant being denied his right to self representation. The Third District treated

Whipple's common law writ of habeas corpus as a petition alleging ineffective assistance of appellate counsel pursuant to Fla. R. App. P. 9.141(d), and thereby denied the petition without any indication of whether the petition was considered on its merits.

In the same order, the Third District issued a Spencer¹ order for Whipple to file a response within thirty (30) days and show cause why the court should not prohibit him from submitting further pro se appeals, petitions, or motions regarding his conviction and sentence imposed in the lower tribunal case no. 93-40908, unless such pleading are signed by an attorney who is a licensed member of the Florida Bar. The Third District's show cause order did not delineate the record of Whipple's pleadings, motions or petitions filed in its court (App. "A" order denying habeas/show cause).

Thereafter, Whipple, for convenience of the court filed his response with a delineated reference to the record of his proceedings in the Third District showing good cause why he should not be prohibited from further pro se pleadings regarding his conviction and sentence in the lower tribunal case no. 93-40908. Subsequently, the Third District entered an order denying Whipple access to the

¹ State v. Spencer, 751 So. 2d 47 (Fla. 1999)

court. (App. "B"- Spencer Order) the Third District in its Spencer order did not serve to generate a complete record so it could enhance the ability to determine whether the denial to access the court is an appropriate sanction, nor did the court after the issuance of its Spencer order make a determination whether Whipple's pleadings were either frivolous or meritless and whether Whipple has abused the judicial system before imposing the sanction. On April 16, 2013, the Third District denied motion for rehearing (App "C" order)

On May 15, 2013 Whipple timely filed his notice to invoke discretionary jurisdiction of this Court pursuant to rule 9.030(a)(2)(a)(iv), Fla. R. App. P., and Article V, § 3(b)(3), of the Florida Constitution.

SUMMARY OF THE ARGUMENT

This court should accept jurisdiction. The decision of the Third District Court of Appeal misapplied this Court's precedents in State v. Spencer, 751 So. 2d 47 (Fla. 1999); and Attwood v. Singletary, 661 So. 2d 1216 (Fla. 1995), concerning a balance notice and sanction in prohibiting a pro se litigant from further pro se pleadings, motions or petitions relating to his conviction as sentence unless signed by an attorney who is a duly licensed member of the Florida Bar. This Court should resolve the conflict where the issue presented in the instant case will likely be reoccurring.

ARGUMENT

THIS COURT SHOULD ACCEPT JURISDICTION SINCE THE DECISION OF THE THIRD DISTRICT MISAPPLIED THIS COURT'S PRECEDENTS CONCERNING SANCTIONS IN PROHIBITING A PRO SE LITIGANT FROM FURTHER ATTACKING HIS OR HER CONVICTION AND SENTENCE UNLESS SIGNED BY AN ATTORNEY WHO IS A DULY LICENSED MEMBER OF THE FLORIDA BAR.

This Court has clear authority to accept discretionary review pursuant to Rule 9.030(a)(2)(A)(iv), Fla. R. App. P., and Article V. Section 3(b)(3), of the Florida Constitution, since the instant decision is a misapplication conflict of this Court's decisions in *State v. Spencer*, and *Attwood v. Singletary*. See *Jaimes v. State*, 51 So. 3d 445, 446 (Fla. 2010) (identifying misapplication of decisions as a basis for express and direct conflict jurisdiction under Article V, § 3(b)(3), Fla. Const.) The Petitioner submits that this Court should accept review so that this conflict may be resolved.

This Court in *State v. Spencer*, 751 So. 2d 47 (Fla. 1999), recognized, courts may, upon a demonstration of egregious abuse of judicial process, restrict parties from filing pro se pleadings with the court. *Id* at 47. This Court further noted that, "to achieve the best balance of litigant's rights of access to courts and the need of the courts to prevent repetitious and frivolous pleadings, it

is important for courts to first provide notice and an opportunity to respond before preventing that litigant from bringing further attacks on his or her conviction and sentence." Further, this Court concluded that providing notice and an opportunity to respond through the issuance of an order to show cause also serves to generate a more complete record. *Id* at 48. In the instant case, there were no formality or safeguards as to why the sanction should be imposed, forcing Whipple to shoot an inapt shot to show good cause why sanctions should not be imposed.

Under the dictates in Spencer, this Court recognized the First Districts reasoning that "fundamental fairness and the necessity of the creation of a complete record require that a party be given 'reasonable' notice prior to the imposition at the trial level of this extreme sanction." (emphasis added). The Third District's blanket order to show cause to Whipple was not reasonable and did not generate a complete record before it imposed the severe sanction. Further, the order did not demonstrate any legal basis in itself. Since the Third District's Spencer sanction (order) was misapplied there is a basis for conflict jurisdiction. Jaimes; supra.

Whipple further argues that this Court in Attwood v. Singletary 661 So. 2d 1216 (Fla. 1995) have long maintained

that such orders "should not be construed as a diminution of its support for the principle of free access to the courts." The Attwood courts further concluded, such orders further "the right of access because it permits courts to devote finite resources to the consideration of legitimate claims of persons who have not abused the process." Id. at 1217. In Whipple's case, the Third District, after Whipple's response imposed the bar without any demonstration as to whether Whipple has filed any repetitious and frivolous pleading to prevent any abuse of the judicial system. The Third District in imposing the sanction against Whipple wholly misapplied Attwood in its consideration of Whipple's legitimate claim(s) which were not shown to be an abuse of the process. Since the Third District's order imposing the sanction against Whipple was misapplied there is a basis for conflict jurisdiction. Attwood; *supra* Spencer; *supra*.

Furthermore; jurisdiction should be accepted since the issue presented in the instant case is likely to reoccur. In fact Florida District Courts have maintained its uniformity that before the trial courts impose sanctions of denial to the courts, it must first address the merits of the litigants pleadings and determine whether they are frivolous or repetitious. See Morgan v. State, 983 So. 2d

1230 (Fla. 5th DCA 2008)(citing Long v. State 793 So. 2d 1141) (Fla. 1st DCA 2001); Jordan v. State, 760 So. 2d 973 (Fla. 2nd DCA 2000).

It is entirely reasonable to conclude that what occurred in the Third District Court of Appeal will occur elsewhere in the District Courts throughout the State. Therefore, the instant decision presents a conflict which should be resolved by this Court. In resolving the conflict, Whipple invites this Court to modify Spencer by adopting a standard that mandates the District Courts to address the merits of claims advanced by pro se litigants just as the above District Courts have required the trial courts to do before imposing sanctions. This procedure would defer "blanket" Spencer orders as presented in Whipple's case and relieve unnecessary burdens to this Court of the reoccurrences.

CONCLUSION

WHEREFORE based on the foregoing arguments and the authorities cited herein, Petitioner respectfully request that this Court accept discretionary review.

PROOF OF SERVICE

I, **William L. Whipple**, **Certify** that the foregoing
"Petitioner's Brief on Jurisdiction has been placed in the
hands of D.O.C. Taylor C.I. Annex, for mailing to:

Office of Attorney General Pamela Jo Bondi The Capitol -PL-02, Tallahassee Fl. 32309-1050	Clerk of Supreme Court of Florida Thomas D. Hall 500 South Duval Street Tallahassee Fl. 32399
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Date May 21, 2013

/s/ 
William L. Whipple

CERTIFICATE OF COMPLIANCE

In accordance with Fla. R. App. P. 9.210 the
Petitioner hereby certifies that the instant brief has been
prepared with 12 point courier new type.

/s/ 
William L. Whipple

IN THE SUPREME COURT OF FLORIDA

WILLIAM L. WHIPPLE
Petitioner/Appellant

v.

STATE OF FLORIDA
Respondent/Appellee

Case No. SC13-

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MAILING ON

5-21-13 / W.W.

APPENDIX TO: DATE (CONFINEMENT-ANNEX) I/M INT.
BRIEF ON JURISDICTION

ORDER DENYING HABEAS/SHOW CAUSE ORDERA
SPENCER ORDER/SANCTIONB
ORDER DENYING REHEARINGC

PROOF OF SERVICE

I, William L. Whipple, Certify that the foregoing
"Appendix to Brief on Jurisdiction" has been placed in the
hands of D.O.C. Taylor C.I. Annex, for mailing to:

Office of Attorney General
Pamela Jo Bondi
The Capitol -PL-02,
Tallahassee Fl. 32309-1050

**Clerk of Supreme Court of
Florida**
Thomas D. Hall
500 South Duval Street
Tallahassee Fl. 32399

Date: 5-21-13

/s/ W.L. Whipple
William L. Whipple

2013 MAY 29 PM 1:50
CLERK SUPREME COURT

EXHIBIT A

ORDER DENYING HABEAS/SHOW CAUSE ORDER

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 2013

JANUARY 16, 2013

WILLIAM L. WHIPPLE,

CASE NO.: 3D13-45

Appellant(s)/Petitioner(s),

vs.

THE STATE OF FLORIDA,

LOWER

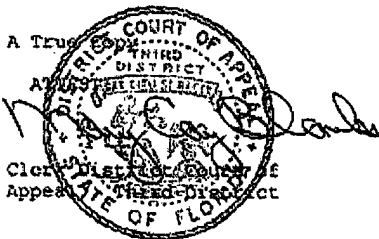
TRIBUNAL NO. 93-40908

Appellee(s)/Respondent(s).

Petitioner's common law writ of habeas corpus is treated as a petition alleging ineffective assistance of appellate counsel pursuant to Fla. R. App. P. 9.141(d), and is hereby denied.

Petition William L. Whipple is ordered to file a response within thirty (30) days and show cause why this Court should not prohibit him from submitting further pro se appeals, petitions or motions regarding the conviction and sentence imposed in lower tribunal case number 93-40908, unless such pleadings are signed by an attorney who is a duly licensed member of The Florida Bar.

SHEPHERD, CORTIÑAS and FERNANDEZ, JJ., concur.



CC:

William Lewis Whipple

Pamela Jo Bondi

Hon. Milton Hirsch

la

EXHIBIT B

SPENCER ORDER/SANCTION

Third District Court of Appeal

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

Opinion filed March 20, 2013.
Not final until disposition of timely filed motion for rehearing.

No. 3D13-45
Lower Tribunal No. 93-40908

William L. Whipple,
Petitioner,

vs.

The State of Florida,
Respondent.

A case of original jurisdiction – Habeas Corpus.

William L. Whipple, in proper person.

Pamela Jo Bondi, Attorney General, for respondent.

Before SHEPHERD, SALTER, and FERNANDEZ, JJ.

On Order to Show Cause

PER CURIAM.

On January 16, 2013, we issued an order treating Whipple's petition for common law writ of habeas corpus as a Florida Rule of Appellate Procedure 9.141(d) petition alleging ineffective assistance of appellate counsel, and denied the petition. At the same time, we ordered Whipple to show cause why he should not be prevented from filing further pro se appeals, petitions, or motions in this court regarding the conviction and sentence imposed in lower tribunal Case No. 93-40908. See State v. Spencer, 751 So. 2d 47 (Fla. 1999) (holding a court can restrict future pro se pleadings if it first provides a pro se litigant notice and an opportunity to respond). After carefully considering Whipple's response to this court's order, we conclude good cause has not been shown.

Accordingly, Whipple now is prohibited from filing any further pro se appeals, pleadings, motions, or petitions in this court relating to the conviction and sentence in Case No. 93-40908. We direct the Clerk of the Third District Court of Appeal to refuse to accept any such papers relating to lower court Case No. 93-40908, unless they have been reviewed and signed by an attorney who is a duly licensed member of the Florida Bar in good standing. See Johnson v. State, 915 So. 2d 682 (Fla. 3d DCA 2005) (ordering, after repeated denials of frivolous pro se filings, that any future papers filed be reviewed and signed by an attorney licensed to practice law). We also caution Whipple that a prisoner who is found by a court to have brought a frivolous suit, action, claim, proceeding, or appeal in any court is

subject to having his gain-time forfeited. See Minor v. State, 963 So. 2d 797 (Fla. 3d DCA 2007).

EXHIBIT C

ORDER DENYING REHEARING

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

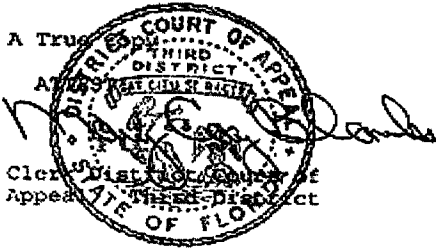
APRIL 16, 2013

WILLIAM L. WHIPPLE,
Appellant(s)/Petitioner(s),
vs.
THE STATE OF FLORIDA,
Appellee(s)/Respondent(s),

CASE NO.: 3D13-0045

L.T. NO.: 93-40908

Upon consideration, petitioner's motion for rehearing is hereby
denied. SHEPHERD, SALTER and FERNANDEZ, JJ., concur.



cc: Pamela Jo Bondi

William Lewis Whipple

la