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IN THE FLORIDA SUPREME COURT  
STATE OF FLORIDA

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2014 JUN 16 AM 15

CLERK, SUPREME COURT

BY \_\_\_\_\_

ANTOINE SMITH  
PETITIONER

CASE#: 1D14-0765

V.

STATE OF FLORIDA  
RESPONDENT

ON DISCRETIONARY REVIEW  
FROM THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT

PETITIONER'S JURISDICTIONAL BRIEF

Antoine Smith

ANTOINE SMITH, DL# B-310236  
LAKE CORR. INST.  
19225 U.S. HWY. 27  
CLERMONT, FLORIDA 34175

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## CITATIONS OF AUTHORITY

GRIFFIN, 82 SO3d 187 (1st DCA 2012)... 2, 4  
GRIFFIN, 114 SO3d 890 (Fla. 2013)... 2  
SMITH, 93 SO3d 387 (1st DCA 2012)... 3  
STEPHENS, 974 SO2d 455 (2nd DCA 2008) 2, 5  
STRAZZULLA, 117 SO2d 1, 4 (Fla. 1965)... 2  
ST. v. KELLY, 999 SO2d 1029 (Fla. 2008)... 3  
ST. v. SEREPHIN, 818 SO2d 485 (Fla. 2002)... 3  
PERRY, 900 SO2d 755 (4th DCA 2005)... 3  
KASISCHEKE, 991 SO2d 803 at 828 (Fla. 2008)...

## OTHER CITATIONS CITED

Fla. R. APP. P. 9.140 (b)(2)(A)(ii) a-c (2014)

Fla. R. APP. P. 9.030 (a)(2)(A)(iv)(v)(vi)

Fla. R. APP. P. 9.141 (c)

Fla. R. CRIM. P. 3.172 (c)(1), (7) (2014)

Fla. CONST. ART. I, § 9, 16 ; V, § 3(b) 3

Fla. CONST. ART. V, § 4(b)(1)

U.S. CONST. AMEND. XIV § 1, 2 .

Fla. STAT. 924.05 (2014)

————— END OF AUTHORITIES —————

## STATEMENT OF THE CASE AND FACTS

ON FEBRUARY 18, 2014, THE PETITIONER, ANTOINE SMITH, SUBMITTED A PETITION FOR WRIT OF HABEAS CORPUS VIA APPELLATE PROCEDURE 9.141(K).

ON FEBRUARY 21, 2014, THE APPELLATE COURT ACKNOWLEDGED THE SUBMITTED PROCEEDING AND TREATED IT AS A PETITION SEEKING BELATED APPEAL. EX. C.

THE SAME DAY THE APPELLATE COURT ORDERED PETITIONER TO FILE SUPPLEMENTAL APPENDIX CONTAINING COPIES OF HIS JUDGEMENT AND SENTENCE WITHIN 30 DAYS. THE PETITIONER COMPLIED ON MARCH 4, 2014, TIMELY. EX. D.

ON APRIL 9, 2014, THE APPELLATE COURT DENIED THE PETITION FOR BELATED APPEAL AS UNTIMELY. (ATT'D) EX. A.

ON APRIL 22, 2014, THE PETITIONER FILED A MOTION FOR REHEARING EXPRESSING THE POINTS OF LAW AND FACTS THE APPELLATE COURT OVERLOOKED AND MISAPPREHENDED IN THE OPINION OF THE MOVANT, THAT WAS TIMELY.

PETITIONER EXPLAINED THAT THIS COURT (APPELLATE COURT) HAS GRANTED A BELATED APPEAL TO UNRELATED DEFENDANTS WHOS SUBMISSION FOR A BELATED APPEAL WAS IN ACCORDANCE TO A JUDGMENT AND SENTENCE

THAT WAS OLDER AND IN THE SAME TRIAL COURT AS THE INSTANT PETITIONER; IN THE CASE OF GRIFFIN v. STATE, 82 So3d 187 (FLA. 1st DCA 2012). EX. B

BEFORE THE APPELLATE COURT FILED ITS ORDER DENYING PETITIONER'S MOTION FOR REHEARING FILED: (4-22-14) THE COURT DENIED IT ON MAY 22, 2014. PETITIONER FILED A SECOND - AMENDED MOTION FOR REHEARING PROVIDING THE COURT WITH THAT CITATIONS EXPRESSLY DEMONSTRATING INTRA-DISTRICT CONFLICT; ON 5-19-14 -- THREE DAYS BEFORE THE COURT RULED ON PETITIONER'S AMENDED MOTION FOR REHEARING.

THE APPELLATE COURT TOTALLY IGNORED THE SUPPOSEDLY CONSTITUTIONAL-MANDATORY EQUAL PROTECTION CLAUSE PETITIONER POINTED OUT IN STEPHENS, 974 So2d 455 (Fla. 2nd DCA 2009. U.S.C.A. CONST. AMEND. XIV § 2 AND ART. I, § 9, 16 Fla. Const. (2014).

IT WAS HELD THAT TO DENY ONE DEFENDANT RELIEF AND GIVE RELIEF TO AN UNRELATED DEFENDANT UNDER VIRTUALLY IDENTICAL CIRCUMSTANCES IS A MANIFEST INJUSTICE. STRAZZULLA v. HENDRICK, 177 So2d 1, 4 (Fla. 1965).

THIS COURT (SUPREME COURT) RECENTLY HELD IN GRIFFIN v. STATE, 114 So3d 890 (Fla. 2013)

EXPLAINED MATTERS PERTAINING TO THE CRITERIA TO WITHDRAW A PLEA.

THE DEFENDANT IN THE INSTANCE CASE, OBTAINED A WRITTEN OPINION IN (2012) SMITH, 93 503d 387 (1st DCA 2012) WHERE THE APPELLATE COURT FOUND HIS SENTENCE TO BE ILLEGAL AND PLEA INVOLUNTARILY ENTERED - at 388.

BASED ON THE SAME RECORD FACTS AFTER REMAND -- THE COURT DENIED RELIEF. (1D12-5670).

WHEN THE TRIAL JUDGE IN TAKING A PLEA FAILS TO ADDRESS ALL OR SUBSTANTIALLY ALL OF THE MATTERS COVERED UNDER RULE 3.172(C) A DEFENDANT IS ENTITLED TO WITHDRAW HIS PLEA SIMPLY BECAUSE OF THIS DEFICIENCY. SEE PERRY v. STATE, 900 502d 755 (4th DCA 2005) "BUT A DEFENDANT WHO RELIES UPON A TRIAL JUDGE'S LESS SIGNIFICANT FAILURES TO COMPLY WITH THE RULE 3.172(C) PROCEDURES AS THE BASIS FOR SEEKING TO WITHDRAW HIS PLEA WILL BE REQUIRED TO SHOW PREJUDICE WHICH MAY BE ACCOMPLISHED THROUGH DEMONSTRATING THAT THE TRIAL JUDGE'S FAILURE TO COMPLY WITH THE 3.172(C) PROCEDURES CAUSED THE DEFENDANT TO ENTER A PLEA HE OTHERWISE WOULD NOT HAVE ENTERED. SEE STATE v. SEREPHIN 818 502d 485 (Fla. 2002); STATE v. KELLY, 999 502d 1029 (Fla. 2008) (QUOTING) PERRY, SUPRA. at 1038.

## Summary of the ARGUMENT

HONORABLE VAN NORWICK AND THOMAS AND ROBERTS DENIED THIS PETITIONER A RELATED APPEAL UNDER HIS (2007) JUDGMENT AND SENTENCE.

HONORABLE VAN NORWICK, THOMAS, AND ROBERTS GRANTED PETITIONER GRIFFIN, 82 SO3d 187 (Fla. 1st DCA 2012): A RELATED APPEAL UNDER HIS (2006) JUDGMENT AND SENTENCE.

EQUAL PROTECTION CLAUSE TO THE 14TH AMENDMENT PROVISION REQUIRING THE STATES TO GIVE SIMILAR SITUATED PERSONS OR CLASSES SIMILAR TREATMENT UNDER THE LAW. U.S.C. AMEND. XIV § 2.

THIS PROVISION GUARANTEES THAT THE GOVERNMENT MUST TREAT A PERSON OR CLASS OF PERSONS THE SAME AS IT TREATS OTHER PERSONS OR CLASSES IN LIKE CIRCUMSTANCES.

THUS, STEPHENS, 974 SO2d 455 (Fla. 2nd DCA 2008) APPLIES IN THIS CASE.

THE DECISION IN THE INSTANT CASE IS IN CERTIFIED CONFLICT WITH GRIFFIN, 82 SO3d 187 (Fla. 1st DCA 2012). Fla. R. APP. P. 9.030 (a)(2)(A)(V) AND A QUESTION OF GREAT PUBLIC IMPORTANCE IS

SOUGHT :

WHETHER THE APPELLATE COURT HAS VIOLATED A PETITIONER'S RIGHTS UNDER DUE PROCESS OF LAW AND EQUAL PROTECTION IS ABUSE OF DISCRETION, WHEN IT FAILS TO GIVE RELIEF TO SIMILAR SITUATED - UNRELATED DEFENDANTS IN LIKE CIRCUMSTANCES REQUIRES REMAND FOR FURTHER PROCEEDINGS? ACCORD STEPHENS, 974 S02d 455 (Fla. 2nd DCA 2008)?

### ARGUMENT

1. IT IS HEREIN DEMONSTRATED THAT THIS PETITIONER HAS NOT RECEIVED DUE PROCESS OF LAW NOR EQUAL PROTECTION UNDER THE U.S. OR STATE CONSTITUTION. U.S. CA. AMEND. XIV § 1 AND 2 ; ART. I, § 9, 16 (2014) FLA. CONST.
2. IT IS ALSO A FACT THAT WHEN THE PETITIONER ADVISED HIS PLEA COUNSEL DAVID TAYLOR FROM THE BLACKSTONE BUILDING, JACKSONVILLE, FLORIDA, TO FILE A MOTION TO WITHDRAW PLEA BEFORE SENTENCE WAS ISSUED AND / OR FILE AN APPEAL VIA RULE 9.140(b)(2) (A)(ii)(a)-(c) (2014), EGREGIOUSLY DENIED THE PETITIONER OF HIS STATUTORY RIGHT. ART. V, § 4(b)(1) FLA. CONST.; F.S. 924.05 (2014).

(IT IS HELD THAT "CRIMINAL DEFENDANTS ARE ENTITLED TO A DIRECT APPEAL AS A MATTER OF RIGHT"). *id.*

3. NOT ONLY DID PETITIONER GET DENIED AN OPPORTUNITY TO FILE DIRECT APPEAL, HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS OF LAW, EQUAL PROTECTION, PREJUDICED BY THE APPELLATE COURT, WHO ABUSED ITS DISCRETION, FOR DENYING HIS PETITION FOR DELAYED APPEAL, AND AN OPPORTUNITY TO PROVE THAT HIS GUILTY PLEA IS INVOLUNTARY ENTERED BECAUSE HIS PLEA COUNSEL FAILED TO INFORM HIM OF A DEFENSE THAT WAS AVAILABLE TO THE OFFENSES, EXCULPATORY EVIDENCE LEADING TO CLEAR AND CONVINCING PROOF OF HIS INNOCENCE AND, AN OPPORTUNITY TO PROVE THAT WITHDRAW OF THE PLEA IS NECESSARY TO AVOID AND CORRECT A MANIFEST INJUSTICE; TO WIT:
  - ① THE WAIVER OF HIS RIGHT TO JURY TRIAL WAS INVOLUNTARY BECAUSE THE PLEA WAS ENTERED AND COURT ACCEPTED IT TO AN ILLEGAL SENTENCE (SMITH, 93 503d 387)
  - ② THE RECORD AND OPINION SUPPORTS THIS PLAINLY & IT AFFECTED HIS SUBSTANTIVE RIGHTS & AFFECTED THE FUNDAMENTAL FAIRNESS OF THE PROCEEDINGS.
4. THE VIOLATION OF THE PLEA AGREEMENT BY IMPOSITION OF AN ILLEGAL SENTENCE

BECAUSE THE TRIAL COURT (JUDGE) FAILED TO INFORM THE PETITIONER OF THE AFFECTS OF THE RECLASSIFICATION OF THE DEGREE OF THE FELONIES DURING THE FACTUAL BASIS OF ACCEPTANCE OF THE PLEA. RULE 3.172 (c) (1), (7) (2014). IF IT WERE NOT FOR THE TRIAL COURT'S FAILURE TO ADVISE HIM AND INFORM HIM OF THE DIRECT CONSEQUENCES OF ENTRY TO THE PLEA, THE PETITIONER WOULD NOT HAVE DECIDED ON ENTERING THE PLEA AND WOULD HAVE DECIDED ON PROCEEDING TO TRIAL ON THE ORIGINAL CHARGES. PERRY, SUPRA.

5. WHEREFORE, THIS COURT HAS JURISDICTION UNDER ART. V, § 3 (b)(3) FLA. CONST. AND, FLA. R. APP. P. 9.030 (a)(2)(A), (IV), (V), (VI) (2014) BECAUSE CERTIFIED CONFLICT IS DEMONSTRATED; A QUESTION OF GREAT PUBLIC IMPORTANCE IS SOUGHT; AND THE DECISION RENDERED BY THE APPELLATE COURT ON MAY 22, 2014 AND APRIL 9, 2014 EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FIRST DISTRICT (INTRA-DISTRICT) COURT OF APPEAL.

KASISCHEKE, 991 S02d 803 at 828 (Fla. 2008)

#### CONCLUSION

THE PETITIONER RESPECTFULLY REQUESTS THIS COURT ACCEPT JURISDICTION AND QUASH THE DECISIONS AND REMAND FOR FURTHER PROCEEDINGS. id.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT  
COPY OF THE FOREGOING HAS BEEN PLACED  
IN THE HANDS OF PRISON OFFICIALS FOR  
U.S. MAILING TO: OFFICE OF THE ATTORNEY  
GENERAL, PL-01, THE CAPITOL, TALLAHASSEE,  
FLORIDA 32399-1050, ON THIS 13  
DAY OF JUNE 2014.

Antoine Smith

ANTOINE SMITH

DC # B-310236

LAKE L. I.

19225 U.S. HWY 27

CLERMONT, FLORIDA 34715