IN THE SUPREME COURT OF FLORI

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STATE OF FLORIDA,

Petitioner,

vs.

GERARDO FUNDORA,

Respondent.

OLERK, SUPJECTE COURT By CASEPNOUNK 70, 150

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON THE MERITS

MICHAEL E. ALLEN
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#### IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner, :

vs. : CASE NO: 70,150

GERARDO FUNDORA, :

Respondent.

BRIEF OF RESPONDENT ON THE MERITS

### STATEMENT OF THE CASE AND FACTS

The respondent accepts petitioner's recitation of the case and facts as set forth in petitioner's Brief on the Merits.

### STATEMENT OF THE ISSUE

WHETHER AN ALIEN/MOVANT UNDER FLORIDA RULE OF CRIMINAL PROCEDURE 3.850 STATES A COLORABLE CLAIM FOR POST-CONVICTION RELIEF WHEN HE ALLEGES THAT HE PLED GUILTY TO A CRIME WITHOUT BEING PREVIOUSLY ADVISED BY HIS COUNSEL AS TO THE POTENTIAL DEPORTATION CONSEQUENCES OF SUCH PLEA.

## SUMMARY OF ARGUMENT

#### ARGUMENT

Since the legal issues involved herein are the same as those involved in <u>State v. Ginebra</u>, for his argument respondent refers this Court to the brief and motion for rehearing filed in behalf of Lazaro Ginebra. The said brief and motion are included in the appendix to this brief.

#### CONCLUSION

Upon the arguments and authorities set forth in the brief and motion for rehearing heretofore filed in behalf of Lazaro Ginebra, the Third District's opinion in <u>Fundora v. State</u> should be affirmed.

Respectfully submitted,

MICHAEL E. ALLEN

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Richard L. Polin, Assistant Attorney General, Florida Regional Service Center, Ruth Bryan Owens Rhode Building, 401 N.W. 2nd Avenue (Suite 820), Miami, Florida 33128 and to Mr. Gerardo Fundora, #100022, Polk Correctional Institution, 3876 Evans Road, Box 50, Polk City, Florida 33868, this 2005 day of July, 1987.

MICHAEL E. ALLEN