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FILED

SID J. WHITE

JUL 11 1996

CLERK, SUPREME COURT

By _____
Clerk Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

7/8/96

RE: ROBERT LEE MCFADDEN,

Petitioner,

v.

CASE NO. : 87,112

FOURTH DISTRICT COURT OF APPEAL,

Respondent.

COMMENT ON THE NEW RULE 9.430 BY ATTORNEY DAVID SOLOMON

COMES NOW Attorney David Solomon, who hereby respectfully comments on the new Rule 9.430. Attorney Solomon has undertaken many civil cases representing indigent parties, several on a pro bono basis. Attorney Solomon has also undertaken many cases of indigents that other attorneys declined to undertake because their cases did not appear to offer a sufficient likelihood of financial gain, even though the parties' legal causes were compelling. Attorney Solomon represents to this Honorable Court, that his motives in representing parties are often to provide access to the legal system, to deserving parties, otherwise unable to bear the financial burden of legal representation.

Through an unfortunate confluence of circumstances involving Rule 9.430, Attorney Solomon is in the process of a disciplinary matter stemming from his pro bono representation of Ms. Keene in her petition for an Order of Indigency.

In representing indigent parties, such as Ms. Keene, Attorney Solomon has often been unable to locate these indigent parties. This is due to their financial circumstances of indigency,

perhaps causing them to move often, and not have telephones.

These were the circumstances in Keene v. Nudera, 661 So.2d 40 (Fla.App. 2 DCA 1995). Ms. Keene was unavailable shortly before or after Attorney Solomon filed a Petition for Writ of Certiorari on her behalf. Therefore, she was unavailable to execute an affidavit of indigency.

Attorney Solomon motioned the Second District for an extension of time of approximately 36 days from the date on which the motion was filed, in which to file the affidavit. The motion for the extension of time set forth as grounds for the extension, the unavailability of Ms. Keene.

Shortly after Attorney Solomon's motion for an extension was filed, he located Ms. Keene and she executed an affidavit of indigency following the affidavit format found in Rule 3.989.

The Second District dismissed her petition because it held the affidavit format found in Rule 3.989 was insufficient as compared to the affidavit format found in Rule 3.987. The Second District did not cite Rule 3.989 in their opinion, but did cite Rule 3.987.

In requesting review of this dismissal, Ms. Keene submitted to this Honorable Supreme Court of Florida, the very same affidavit of indigency that the Second District ruled insufficient. This Honorable Supreme Court of Florida held the affidavit sufficient to establish indigency status. Attorney Solomon advised the Clerk of this Court of the actions of the Second District, but the affidavit was accepted to establish indigency nonetheless.

As a result of the dismissal by the Second District based upon the insufficiency of the affidavit, the Second District has imposed sanctions. The alleged insufficiency of this affidavit, and the unavailability of Ms. Keene has snowballed into nothing short of a massive disciplinary matter.

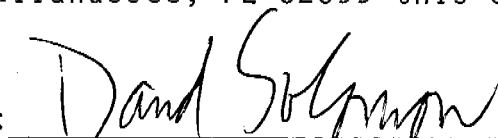
As a result of this unfortunate experience, Attorney Solomon is very wary of undertaking indigent parties on a pro bono basis.

Based upon Attorney Solomon's unfortunate experience, he proposes that the word "incarcerated" be omitted from the new Rule 9.430, so that this expedited procedure for indigent status is not limited only to indigent parties who are incarcerated.

As a collateral matter, which is part of the cause of Attorney Solomon's present difficulties arising from his efforts to assist an indigent establish indigency status, Attorney Solomon respectfully requests this Honorable Court review the affidavit format of Rule 3.989, as compared to the affidavit format of Rule 3.987, and advise if the affidavit format found in Rule 3.989 is sufficient to satisfy the requirements for an affidavit. Such clarification will be of more assistance to other practitioners who have not had the unfortunate experience of Attorney Solomon.

I certify these comments were furnished by U.S. Mail to:
SID J. WHITE, ESQUIRE, Clerk of the Florida Supreme Court,
500 South Duval Street, Tallahassee, FL 32399 this 8th day of
July, 1996.

Respectfully submitted by:



David Solomon, Esquire FBN 368466
A Law Office of David Solomon
880 Mandalay Avenue, Suite # N-911
Clearwater, Florida 34630-1242
(813)449-8000

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

KEENE

v

CASE NO. : 94-4406

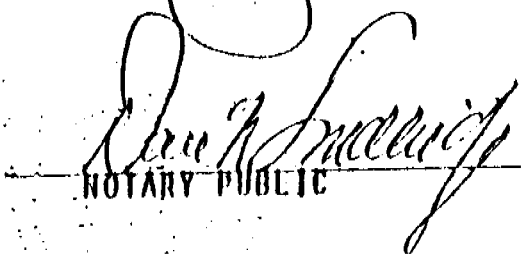
HUDERA /

AFFIDAVIT OF THE PETITIONER IN SUPPORT OF HER
MOTION FOR INSOLVENCY, FOR PURPOSES OF THE
WRIT OF CERTIORARI.

1. MY NAME IS MARJORIE KEENE.
2. I AM CURRENTLY WITHOUT GAINFUL EMPLOYMENT, ANY INCOME, OR ANY ASSETS.
3. I AM CURRENTLY RESIDING WITH FAMILY AND/OR FRIENDS, WHO DO NOT CHARGE ME RENT.

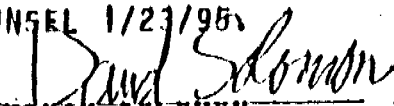
SWORN AND SUBSCRIBED BEFORE ME THIS 20TH DAY OF JANUARY, 1995.


MARJORIE KEENE


NOTARY PUBLIC

MY COMMISSION
EXPIRES: 4/24/95

I CERTIFY A TRUE COPY WAS MAILED TO RECORD COUNSEL 1/23/95
A LAW OFFICE OF DAVID SOLOMON FDN 368466
800 MANDALAY AVENUE, SUITE #N911
CLEARWATER, FL 34630-1229 (813)449-8000

BY: 
DAVID SOLOMON

**RULE 3.989. AFFIDAVIT, PETITION,
AND ORDER TO EXPUNGE OR
SEAL FORMS**

(a) Affidavit in Support of Petition.

In the Circuit Court of the
_____ Judicial Circuit,
In and for _____
County, Florida
Case No.: _____
Division _____

NOTARY PUBLIC, or
other person authorized to
administer an oath

Printed, typed, or stamped
commissioned name of No-
tary Public

Personally known _____ or produced identification

Type of identification produced _____

My commission expires:

State of Florida,)
)
Plaintiff,)
)
v.)
)
)
)
Defendant/Petitioner)

_____ the
_____ Circuit Court of the
_____ Judicial Circuit,
Case Number: _____

AFFIDAVIT

State of Florida
County of _____

State of Florida

v.
_____ Defendant/Petitioner

I, _____ (name of defendant/petitioner),
am the defendant/petitioner in the above-styled cause
and I do hereby swear or affirm that:

1. I fully understand the meaning of all of the terms of this affidavit.
2. I have never been adjudicated guilty of a criminal offense or a comparable ordinance violation.
3. I was arrested on the _____ day of _____, 19____, by _____ (arresting agency), and I have not been adjudicated guilty of the charges stemming from that arrest or the alleged criminal activity surrounding my arrest.
4. I am eligible for the relief requested, to the best of my knowledge and belief, and do not have any other petition to expunge or seal pending before any court.
5. I have never secured a prior records expunction or sealing under any law.
6. (For use in expunction petitions only.) My record of arrest for this date has been sealed for at least 10 years; or an indictment or information was not filed against me for the above criminal transaction; or an indictment or information filed against me was dismissed by the prosecutor or the court.

ORDER PURSUANT TO SECTION
943.0585, FLORIDA STATUTES, AND FLORIDA
RULES OF CRIMINAL PROCEDURE
THAT _____ heard before
me _____ upon a petition to expunge certain rec-
ords _____ on the _____ day of _____
(arresting agency) for _____ (charges).
The court having heard _____ and
otherwise _____, the court
hereby finds and orders that _____
1. The defendant/petitioner has not been ad-
judicated guilty of a criminal offense or a comparable
ordinance violation.
2. _____
3. _____
4. _____
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Petitioner

18

Judge

Original: Clerk of the Court

Added July 18, 1980 (603 So.2d 112). Amended July 18, 1980, effective Jan. 1, 1981 (389 So.2d 10, 1981, effective Nov. 1, 1981 (408 So.2d 207); amended effective May 28, 1992 (603 So.2d 1144); amended Sept. 21, 1992, effective Jan. 1, 1993 (606 So.2d 227); Dec. 23, 1993, effective July 1, 1994 (615 So.2d 112).

1999 Amendment. The proposed changes to Rule 3.986 are housekeeping in nature. The Department of Offender Rehabilitation have been changed to Department of Corrections to reflect a legislative change. See Section 44.01, Florida Statutes (Supp. 1978). The reference to "hard labor" has been stricken as the courts have consistently held such a term unconstitutional. See 458 (Fla. 4th DCA 1976).

RULE 3.987 MOTION FOR POSTCONVICTION RELIEF

MODEL FORM FOR USE IN MOTIONS FOR POSTCONVICTION RELIEF PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.850

In the Circuit Court of the
Judicial Circuit,
in and for _____
County, Florida

State of Florida)
)
v.) Criminal Division
)
(your name)) Case No.: _____
) (the original case number)

MOTION FOR POSTCONVICTION RELIEF

Instructions—Read Carefully

(1) This motion must be legibly handwritten or typewritten, signed by the defendant, and contain either the first or second oath set out at the end of this rule. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

(2) Additional pages are not permitted except with respect to the facts that you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted in support of your legal claims (as opposed to

your factual claims), they should be submitted in the form of a separate memorandum of law. This memorandum should have the same caption as this motion.

(3) No filing fee is required when submitting a motion for postconviction relief.

(4) Only the judgment of one case may be challenged in a single motion for postconviction relief. If you seek to challenge judgments entered in different cases, or different courts, you must file separate motions as to each such case. The single exception to this is if you are challenging the judgments in the different cases that were consolidated for trial. In this event, show each case number involved in the caption.

(5) Your attention is directed to the fact that you must include all grounds for relief, and all facts that support such grounds, in the motion you file seeking relief from any judgment of conviction.

(6) When the motion is fully completed, the original must be mailed to the clerk of the court whose address is _____ County Court-house, _____ Florida.
(county where sentence was imposed)
(address of clerk)

MOTION

- Name and location of the court that entered the judgment of conviction under attack: _____
- Date of judgment of conviction: _____
- Length of sentence: _____
- Nature of offense(s) involved (all counts): _____
- What was your plea? (check only one)
(a) Not guilty _____

(b) Guilty
(c) Not
(d) Not
If you entered plea to an

6. Kind:
(a) Jury
(b) Judge
7. Did you hearing?
Yes _____
If yes, I

8. Did you
Yes _____
9. If you
(a) Narcotics
(b) Resisted
(c) Dangerous
(d) Other

10. Other conviction petitions, this judgment
Yes _____
11. If you following this court
(a)(1) _____

(2) _____
(3) I
your presence
Yes _____

(4) I
(5) I
(b) As
etc., give

(1) _____
(2) _____
(3) _____
your presence

(g) On appeal from any adverse ruling in a postconviction proceeding: _____

matters therein set forth and alleged and that each and all of these facts and matters are true and correct.

WHEREFORE, movant requests that the court grant all relief to which the movant may be entitled in this proceeding, including but not limited to (here list the nature of the relief sought):

1. _____

2. Such other and further relief as the court deems just and proper.

OATH

Complete 1 or 2

1. Notarized Oath.

STATE OF FLORIDA)
COUNTY OF _____)

Before me, the undersigned authority, this day personally appeared _____, who first being duly sworn, says that he or she is the defendant in the above-styled cause, that he or she has read the foregoing motion for postconviction relief and has personal knowledge of the facts and

(your signature)

SWORN AND SUBSCRIBED TO before me this _____ day of _____, 19____

NOTARY PUBLIC or other person authorized to administer an oath

(print, type, or stamp commissioned name of notary public)

Personally known _____ or produced identification _____
Type of Identification produced _____

2. Unnotarized Oath.

Under penalties of perjury, I declare that I have read the foregoing motion and that the facts stated in it are true.

(your signature)

Added Dec. 22, 1977, effective Jan. 1, 1978 (353 So.2d 552).
Amended Sept. 24, 1992, effective Jan. 1, 1993 (606 So.2d 227); amended Dec. 2, 1993 (628 So.2d 1102); amended Dec. 23, 1993, effective Jan. 1, 1994 (630 So.2d 552).