ORIGINAL

IN THE SUPREME COURT
STATE OF FLORIDA

FILED
SID J. WHITE
MAY 1 1997
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

EDWIN H. BEATY,

v.

CASE NO. 89,356
DCA CASE NO. 96-03252

STATE OF FLORIDA.

PETITIONERS' BRIEF ON THE MERITS

On review from the District Court of Appeal, Second District, State of Florida, pursuant to this Court's order of March 26, 1997.

EDWIN H. BEATY 350297 M.B.#359
CHARLOTTE CORRECTIONAL INST.
33123 OIL WELL ROAD
PUNTA GORDA, FL 33955
DEFENDANT PRO SE

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STATEMENT

In as much as the petitioner has never filed a brief on the merits to a Supreme Court, the petitioner is not sure if he is supposed to argue trial court error or district court error. The argument will incorporate both.

In this brief, petitioner, Edwin H. Beaty, will be referred to by name or as defendant, the respondent will be referred to as state.

Citations to the record up for review will be made by the letter "R" and the appropriate page number of the relevant: pleading. Relevant pleadings may consist of the following:

MO - Motion for Postconviction Relief

ME - Memorandum of law in support of motion for postconviction relief

Θ - Trial Court order denying relief

AB - Petitioner's initial brief for appeal to the District Court

DE - Decision of the District Court

RE - Motions for rehearing and rehearing en banc

STATEMENT OF THE CASE AND FACTS

This is a brief on the merits of the instant case pursuant to this Court's order of March 26, 1997.

Defendant was convicted of one count of first degree murder and sentenced on August 9, 1990. (R-1-MO)

Defendant appealed his conviction to the second District Court of Appeal, the conviction was affirmed Per Curiam without opinion on June 2, 1993. Mandate was issued from that court on June 22, 1993. (R-2-MO)

Defendant requested direct review from the Florida Supreme Court by letter on July 13, 1993, this letter was stamped filed by the Chief Deputy Clerk of the Supreme Court, the Honorable Sid White, on July 19, 1993. Request for review was denied on September 10, 1993. (R-2-MO and R- 7-9 attachments-RE)

Defendant filed a timely motion for postconviction relief with (17) grounds for relief on July 25, 1995, with a memorandum of law in support: thereof, with affidavits and other documents. (R-1-35-MO and R-1-26-ME)

The motion for postconviction relief with attached memorandum of law consisted of sixteen (16) grounds of ineffective assistance of counsel, one (1) ground of a conviction obtained by the unconstitutional failure of the prosecution to disclose to defendant evidence favorable to the defendant - Discovery/Brady violation, and one (1) ground of Newly discovered evidence - Discovery/Brady violation. (R-1-35-MO and R-1-26-ME)

Approximately one year later on July 18, 1996, the trial court denied relief declaring the motion was filed untimely. (R-1-3-0)

Defendant filed a timely notice of appeal on July 26, 1996, and an initial brief on September 20, 1996. (R-1-14-AB)

The District Court issued it's opinion affirming the trial court's order

denying the defendant relief on October 23, 1996. **(R-1-4-DE)**

Defendant filed motions for rehearing and rehearing en banc with attachments, to the District Court on November **3, 1996. (R-1-6,** attachments 7-9-RE and **R-1-5-RE)**

The District Court denied the motions for rehearing on December 16, 1996.

Defendant filed Notice to invoke discretionary jurisdiction on November 12, 1996.

Defendant filed Petitioners' Jurisdictional Brief on November 21, 1996.

Respondent: state filed Respondent's Brief on Jurisdiction on December 17, 1996.

Defendant filed a Notice to this Court on December 30, **1996.**

Defendant filed **a** Notice of Supplemental Authority to this Court on February 6, **1997.**

This Court accepted jurisdiction on March 26, 1997, and instructed the defendant to file a brief on the merits on or before April 21, **1997.**

Defendant filed an Emergency Motion for Enlargement of Time to file this brief on the merits on April 16, 1997.

This Brief on the merits follows.

SUMMARY OF THE ARGUMENT

The merits of this brief are based on a violation of due process and equal protection of the law. In the instant case the trial court denied the defendant's motion for postconviction relief stating the motion was untimely filed under Rule 3.850(b), and the defendant had not sufficiently alleged an exception to the two year requirement under 3.850(b)(1). Moreover, the trial court: denied the defendant's Brady violation and newly discovered evidence claims stating they did not fall within any exception to the two-year requirement. These conclusions are based on a misapplication of law and erroneous.

Furthermore, the District Court agreed with the trial court and affirmed with an opinion. This conclusion was based on a misapplication of law and speculation, therefore, it is erroneous. Both decisions must be reversed.

Moreover, the crux of this contention is based on the well established law in Florida, that the trial court lacks jurisdiction to consider postconviction motions until direct review proceedings are completed, which does not occur until the Supreme Court grants or denies review.

After the defendant's capital criminal conviction was per curiam affirmed without an opinion, being untrained in law, the defendant made an honest good faith attempt to seek direct review from this Court by written letter. The letter basically alleged there was a departure from the essential requirements of law which violated constitutional rights creating a miscarriage of justice.

Therefore, this Court had the authority to accept jurisdiction if it had chosen to do *so*, and the defendant's attempt to gain this Court's review jurisdiction could not have been frivolous, nor, unauthorized by law.

This being the case, the tolling of the two year time limit for the filing of a Rule 3.850 postconviction relief motion began when this Court denied the defendant's request for direct review, and not when the district court issued it's mandate.

The law is well settled in Florida that letters from prisoners untrained in law seeking relief are accepted and accorded liberal interpretation, which is to effect: justice and afford indigent persons the advantage denied them by the lack of legal training. Otherwise, these persons could and would effectively be denied due process and equal protection of the law.

In light of this fact, the defendant's attempt to seek this Court's review by letter would have been legally viable and authorized by law.

Although the defendant believed he was well within the two year time frame for the filing of his Rule 3.850 motion and attached memorandum of law, the defendant gave the trial court sufficient specific facts in his pleadings to show he had been faced with state interference for at least: six (6) months prior to the filing.

This was not an attempt to circumvent the two year time limit by making excuses for lateness, they were factual allegations showing a motion for relief had already been completed approximately six months earlier and had been purposely destroyed by prison officials.

The trial court was made aware of this situation because the defendant felt he would have to amend the motion with added grounds once he was again in possession of all his criminal papers and records withheld from him by prison officials for approximately six months.

The trial court nor the district court chose to acknowledge this state interference that impeded the defendants access to the courts.

Even if it could be assumed that the motion was not within the two year time limit of Rule 3.850, the law of this state and this Court is that a defendant shall not be denied due process of the law if state interference is shown, if it is shown state interference thwarted and or deprived a prisoner of reasonable access to the courts. Therefore, the denial of the postconviction relief motion by the trial court and the affirmance of that denial by the district court is erroneous and violates the constitutional requirements of due process and equal protection of the law.

Finally, the defendant brought one ground in his motion that his conviction was obtained by the failure of the prosecution to disclose favorable evidence to the defense which could actually be viewed as newly discovered evidence claim in the interest of justice. Especially, since the defendant was not aware of the evidence until it was eventually turned over to the defendant in a public records request, which the defendant pursued with all due diligence available to him but, was thwarted by the state attorneys office.

Moreover, the defendant brought one ground in his motion of newly discovered evidence which should have been addressed by the trial court even if it felt the rest of the motion was untimely.

The Brady claim under ground two (2) of the motion is based on information received through a public records request that was made by the defendant in 1993. However, the defendant was unable to personally obtain these records from the state and it was not because the defendant had not made a diligent and valid attempt or refused to pay for the records.

Being incarcerated, the defendant was forced to depend on his personal representative who lives in Syracuse, New York. The personal representative was diligent in her numerous attempts by telephone, letters, and a number of

trips of flying back and forth from Florida to New York, to view state held records.

Time and time again the defendant's personal representative was completely thwarted by the state. Eventually, she was allowed access to a small portion of the state held records, the state claimed numerous exemptions to preclude examination of the majority of the records. It was after this examination of the records by the representative that the defendant was made aware of the evidence of the Brady violation, and the bringing of this ground would be timely according to the law of this Court.

In denying this ground the trial court based it's conclusion on a letter supplied by the defendant from the state attorneys office showing claimed exemptions, as an exhibit in the postconviction relief motion. However, this conclusion is erroneous since it relies on a brief and partial account from the state of the defendants attempts to gain access to the records.

This letter does not detail all contact between the defendant and his personal representative with the state attorneys office, nor, does it include a recitation of the thousands of dollars spent and wasted by the defendant's representative when she was instructed by the state to come to Florida to view the records, and after arriving on three *(3)* different occasions was given the run around by the state and not allowed to view any records, allegedly because they were not all prepared for examination after she had been told they were.

The hybrid newly discovered evidence claim at ground four *(4)* of the motion is based on information that was received by the defendant and brought to the trial court's attention in accordance with the law of this Court and state. The newly discovered evidence time limit is not predicted on the two year time limit set by Rule 3.850. Therefore, the trial court's conclusion

in denying this ground and the district court's affirmance of that denial is based on a misapplication of the law and erroneous.

Accordingly, the decisions of the trial court and the district court must be reversed.

ARGUMENT

THAT THE PETITIONER WAS DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAW WHEN THE REVIEWING COURT AFFIRMED THE LOWER COURT'S DECISION ALTHOUGH THAT DECISION DIRECTLY CONFLICTS WITH EXISTING LAW OF FLORIDA AND PRIOR SUPREME COURT PRECEDENT ON THE SAME QUESTIONS OF LAW

The basis of the petitioner's argument is that all courts, circuit and district in this state, are bound to follow prior precedent of the Supreme Court of Florida. Hoffman v. Jones, 280 So.2d 431 (Fla.1973). Furthermore, when at any time a state refuses to adhere to its own law and the defendant is adversely affected, to the point of prejudice, both the state and federal constitutions have been violated. Hicks v. Oklahoma, 100 S.Ct. 2227, 2229 (1980); Jones v. Arkansas, 929 F.2d 375, 377 (8th Cir. 1991); U.S. v. Suarez, 911 F.2d 1016, 1021 (5th Cir. 1991).

The lower courts have refused to adhere to this Court's prior precedent law as it relates to the issues before this Court, and now suggests that this Honorable Court is robbed of any judicial discretion to remedy their arrogant presumptuousness without their specific request or permission, in spite of the conflict, in their rulings with case law as set: out. by this Court.

In the interest of justice, such legal rationale is unfounded in any concept of liberty and justice for all, and hopefully this Court will forgive their impudence, and reject their self important declaration, and give this case the attention it deserves.

The defendant's capital conviction was per curiam affirmed by the district: court on June 2, 1993, and the order clearly states "Opinion filed June 2, 1993." As a layman the defendant waited on the opinion that he now knows was not forth coming. See Appendix Exhibit "A"

After the defendant's court appointed public defender refused a request from the defendant to appeal his case to the Florida Supreme Court: without giving an explanation, being untrained in law, the defendant sought the assistance of an inmate law clerk. The clerk advised the defendant to read the Florida rules of court and file for review himself. The defendant was unable to fully comprehend all the rules of the court, however, the defendant was able to find that the Supreme Court would accept letters from prisoners as pro se pleadings.

Actually being innocent of the crime he was convicted of and knowing his conviction was a inherent miscarriage of justice, and having absolutely no idea that he allegedly could not seek justice from the highest: court of this state for his capital criminal conviction, the defendant wrote a letter *to* the Florida Supreme Court seeking justice on July 13, 1993. This request for review was denied by letter from the Clerk of the Supreme Court on September 10, 1993. See Appendix Exhibits "B & C"

The law of this state is that pro *se* motions, petitions and letters seeking relief should be accorded liberal interpretation, and principles should be applied to effect justice and afford indigent persons the advantage denied them by lack of legal training, and should not be invoked to create further disadvantage. Thomas v. State, *164* So.2d 857 (2nd DCA 1964); Tillman v. State, 287 So.2d **693** (2nd DCA 1973); Gust v. State, 558 So.2d *450* (Fla.App. 1 Dist. 1990); Ferris v. State, 575 So.2d 303 (Fla.App. *4* Dist. 1991).

The trial court and the district court refuse to recognize the defendant's letter to this court as an attempt to seek review, and claim the attempt was frivolous and unauthorized. The refusal appears to be in direct conflict with the law of Florida as stated above.

The defendant made an honest good faith attempt to seek this Court's review jurisdiction, and contends the 1980 Amendment to Art. V, § 3(b), Florida Constitution, did not prohibit the Supreme Court from granting review to cases that were per curiam affirmed without opinion, it only limited and restricted the Court's authority to accept such jurisdiction. Furthermore, since the defendant's letter basically alleged the essential requirements of law had been violated in his trial and by the district court affirming the conviction, which resulted in a miscarriage of justice, the Supreme Court had the authority to accept jurisdiction if it had chosen to do so. Combs v. State, *436* So.2d 93 (Fla. 1983); Haines City Community Dev. v. Heggs, 658 So.2d 523 (Fla. 1995): State v. Bock, 659 So.2d 1196 (Fla.App. 3 Dist. 1995). Therefore, the defendants attempt by letter could not have been frivolous or unauthorized by law.

The above stated law of Florida and of this Court brings us to the crux of the the defendant's argument that the tolling of the two year limit for the filing of a Rule 3.850 motion began when this Court denied the defendant's request for direct review, and not when the district court issued it's mandate.

In light of this fact, the defendant contends the well established law of Florida, is that the trial court lacks jurisdiction to consider postconviction motions until direct review proceedings are completed, which does not occur until the Supreme Court grants or denies review. State v. Meneses, 392 So.2d 905 (Fla. 1981); Ward v. Dugger, 508 So.2d 778 (Fla.App. 1 Dist. 1987); Huff v. State, 569 So.2d 1247, (Fla. 1990); Nava v. State, 659 So.2d 1314

(Fla.App. 4 Dist. 1995); Rector v. State, 668 So.2d 1104 (Fla.App. 4 Dist. 1996).

Therefore, the defendant's postconviction motion was timely according to the law of Florida and this Court.

The above cases are silent as to whether a written opinion was given or not which was noted by the district court in the instant case. However, it is interesting to note that the district court in attempting to distinguish the facts of the instant: case and Nava, supra, it did presume that the Fourth District affirmed the direct appeal without a written opinion. If the district court's presumption is correct, the defendant fails to see the difference in this issue of law. The defendant was charged and convicted of first degree murder, a statutory capital crime in the state of Florida, and is unaware of any statutory authority that lessens a capital offense, especially after conviction of the offense, because a person receives a life sentence instead of a death sentence. The death sentence was sought in the instant case!

Nevertheless, the cases are silent as to whether a written opinion was given or not, and any rational, reasonable layman untrained in law would not know one way or the other. And this Court has held in the past, when the law is so ambiguous that a reasonable person must guess at it's effect, then that law is unconstitutional and must be set aside. Moreover, the law of this Court somewhat analogous to this issue and based on due process of law is, "To extent that definiteness is lacking, statute must be construed in manner most favorable to accused." (emphasis added) Perkins v. State, 576 So.2d 1310 (Fla. 1991); Overstreet v. State, 629 So.2d 125 (Fla. 1993).

Furthermore, as this Court has stated in the past concerning the issue of the two-year time limitation imposed by Rule 3.850, "nothing in our law

suggests that the two-year limitation must be applied harshly or contrary to the fundamental principles of fairness." Haag v. State, 591 So.2d 614 (Fla. 1992). This basic concept of fairness is the very basis of due process and equal protection of the law guaranteed by the Florida and United States Constitutions, which has been denied the defendant by the decisions of the trial court and the district court.

The defendant made sufficient specific allegations of state interference which impeded the filing of his postconviction motion any earlier, and apparently the trial court and the district court chose to ignore these factual allegations.

The defendant was forced by department of corrections rules to store the majority of his legal work (concerning his criminal case), in the institutional law library at Hardee Correctional Institution. The defendant received a transfer of a retaliatory nature from that institution which concerned prison litigation, on 12/16/94 to Polk Correctional Institution, where he remained for approximately one hundred and two (102) days.

The defendant was not allowed to take any legal material he had in the law library at: Hardee C.I., with him. A small portion of his legal material was eventually sent to the law library at Polk C.I., however, this material was not turned over to the defendant, prison officials refused to turn it over for reasons unknown to the defendant.

The defendant was forced to file a civil complaint pursuant to 42 U.S.C. § 1983, case number GC-G-95-295, Tenth .Judicial. Circuit, Polk County, Florida for denial of access to the courts since prison officials refused to turn over records, and for lost or destroyed records. After the defendant filed this complaint he received another retaliatory transfer to his present housing unit..

After approximately three (3) months at his present housing unit the defendant's criminal case file was eventually sent to the law library at his present housing unit, after numerous calls from the defendant's family members and the defendant's employer librarian Ms. Ducat. However, hundreds of pages of documents were missing, including but not limited to a prepared motion for postconviction relief.

A copy of the motion and memorandum of law had been stored on computer disc at Hardee C.I., the defendants employer requested a copy be printed and immediately sent to the defendant. She was told by the librarian at Hardee C.I. that this was not possible since he had been instructed by prison administrators to clear or wipe out all information on the disc, and other missing legal material was allegedly sent to the defendant's personal representative which was never received.

The defendant immediately began working on a new motion and memorandum of law, and honestly believed it was filed well within the time limits. The trial court was made aware of the state interference because he felt he would need to amend and supplement the motion *as* soon as documents were received which would be used as exhibits. Documents that had been received through a public records request and already paid for but, were lost or destroyed by prison officials.

The fundamental concept of fairness and due process of law enumerated in the Florida Constitution, and the law of this state and this Court, is that interference of state officials to the courts will not foreclose a defendant from having his conviction reviewed, which was extended to Rule 3.850 motion proceedings. Dennis v. State, 231 So.2d 230 (Fla. 2d DCA 1970); Walker v. Wainwright, 303 So.2d 321 (Fla. 1974); Clifford v. State, 513 So.2d 772

(Fla. 2d DCA 1987); Haag v. State, 591 So.2d 614 (Fla. 1992).

Although the above cases basically apply to the timely or untimely filing of appeals and may not be exactly on point with a denial of access to the courts by state officials, they clearly pronounce the law of this state concerning state interference with reasonable access to the courts.

Therefore, even if this Court should somehow decide the defendant's 3.850 motion should have been filed two years from the district: courts mandate and not this Court's denial of his request for review, the state interference issue is fundamentally viable and should have precluded the denial of the motion by the trial court.

Furthermore, the claims of the defendant in his Rule 3.850 motion of Brady violations and newly discovered evidence, were brought well within the time frame according to the law of this Court. The trial court somehow twisted and misapplied the law of this Court as cited in it's order as Bolender v. State, 658 So.2d 82 (Fla.), cert. denied, ____U.S.____, 116 S.Ct. 12, 132 L.Ed.2d 896 (1995); Porter v. State, 653 So.2d 374 (Fla.), cert. denied,____ U.S.____, 115 S.Ct. 1816, 131 L.Ed.2d 739 (1995), when it denied these claims as untimely.

These cases are predicated on the well established law of this Court found in Adams v. State, 543 So.2d 1244 (Fla. 1989), where this Court held "all postconviction relief motions filed after June 30, 1989, and based on new Eacts or significant change in law must be made within two years from the date facts became known or changed announced." (emphasis added)

The time limit expressed in Adams, supra, is not based on the two year time limit imposed as a time limitation for the filing of a Rule 3.850 motion, a first time after direct review Rule 3.850 motion.

The time limitation found in Adams, Porter, Bolender, supra, is based on the time period the newly discovered evidence is discovered or time from a significant change in law takes place, which could be years after the two year time limit for the timely filing of a first time Rule 3.850 motion.

Even if this Court should find the defendant's good faith attempt to seek this Court's review jurisdiction after his direct appeal was per curiam affirmed without a written opinion, was frivolous or unauthorized by law, and the state interference claim is somehow without merit, the claims of Brady violations and newly discovered evidence were brought to the attention of the trial court within the time limits pronounced by the law of this Court, and should have been addressed by the trial court.

Clearly, the trial court's conclusion is erroneous and is based on a misapplication of the law. Moreover, the district court's agreement with the trial court's conclusion, and it's refusal to certify conflict with Nava, supra, is a misapplication of law and erroneous. The defendant was denied due process and equal protection of the law by these erroneous conclusions that are based on misapplications of the law.

Finally, the defendant has consistently and adamantly proclaimed his innocence in the instant: case. The conviction, eventual affirmance of that conviction, and the summary denial of the postconviction relief motion have only compounded the fundamental miscarriage of justice the defendant has been forced to live with for almost eight *(8)* years, and the law of Florida in appropriate cases, is a procedural default shall not preclude relief for victims of a fundamental miscarriage of justice. Mills v. U.S., 36 F.3d 1052 (11th Cir. 1994); Carr v. Singletary, 904 F.Supp. 1356 (M.D. Fla. 1995).

Furthermore, the law in Florida is when there is a great probability that a defendant is innocent, it would be a gross miscarriage of justice not to bend a rule of procedure a little rather than to use the rule to prevent justice. Hanson v. State, 187 So.2d 54 (Fla. 3rd DCA 1966); Jones v. State, 233 So.2d 432 (Fla. 3rd DCA 1970); McCallum v. State, 559 So.2d 233 (Fla.App. 5 Dist. 1990); Malcolm v. State, 605 So.2d 945 (Fla.App. 3 Dist. 1992).

CONCLUSION

In the instant case the defendant was convicted of a crime he is not guilty of. There was absolutely no physical evidence introduced by the state that would link the defendant to the crime. There was no eye.witness that could possibly link the defendant to the crime. The only direct and/or circumstantial evidence the state offered was highly dubious and equivocal testimony. The defendant was convicted by the testimony of two state witnesses and the defendant shall present material evidence (newly discovered), to the trial court in the very near future of illegal witness tampering perpetrated by law enforcement and state attorneys office, which will show that the state knowingly used perjured testimony and fabricated and manufactured evidence (perjured testimony), to gain it's conviction.

Accordingly, consistent with the foregoing arguments and authorities, and in the interest of justice, the defendant prays this Honorable Court will reverse and remand the instant case for further proceedings, ordering an evidentiary hearing for all grounds in the defendant's postconviction motion, and/or a new trial and any other relief this Court deems just and proper.

Respectfully submitted,

Edwin H Beaty

EDWIN H. BEATY PKO SE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief on the Merits has been furnished by U.S. Mail to Katherine V. Blanco, Assistant Attorney General, Office of the Attorney General, Westwood Center, Suite 700, 2002 North Lois Avenue, Tampa, FL 33607-2366, on this 28th day of April, 1997.

Edwin H Beaty

EDWIN H. BEATY 350297 M.B.#359
CHARLOTTE CORRECTIONAL INST.
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PUNTA GORDA, FL 33955

APPENDIX

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

EDWIN BEATTY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Cane No. 90-02433

Opinion filed June 2, 1993.

Appeal from the Circuit Court for Pareo County; Brandt D. Downey, III, Judge.

James Marion Moorman, Public Defender, Bartow, and Allyn Giambalvo, Assistant Public Defendant, Clearwater, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and David R. Gemmer, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed.

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DANAHY, A.C.J., and ALTENBERND, J., and SCHEB, JOHN n., (senior) J., Concur.

EXHIBIT "A"

The Honorable Supreme Court of Florida 7/13/93

I was indicted for 1ST degree murder May 26TH 1989, the crime had taken place (5) years earlier May 12TH 1984. Trial was held for (4) calendar weeks from June 11TH 1990 - July 10TH 1990. I was convicted of the crime, and given a mandatory life sentence. Case # 8901442, Pasco County, Florida.

Appeal was taken to the Second District Court of Appeals, after almost (3) years the appeal was orally argued by an assistant public defender, Allyn Giambalvo. (2) weeks later the appeal was denied and the conviction was Per Curiam Affirmed. Appeal # 90-02433. I requested appellate counsel file for a rehearing, she refused.

I believe the appeal was per curiam affirmed to block me from seeking justice from the Florida Supreme Court. The Supreme Court of Florida does have the authority to accept jurisdiction, and grant me discretionary review of the entire record of appeal.

This was a capital crime, the death penalty was sought, even though the jury convicted after (18) hours of deliberation and then recommended a mandatory life sentence, which was given, it is still a capital case. In the interest of justice, I would beg the Supreme Court to accept jurisdiction and grant me review.

There are volumes and volumes of transcript, the trial transcript alone is almost 5000 pages I believe, it is not possible that the District Court of Appeal, completely went over the entire record on appeal in just two weeks.

EXHIBIT "B"

(merit)

Trial counsel filed in the Statement of Judicial Acts, over (50) different issue's to be reviewed, appellate counsel brought up only (7) issues on direct appeal, why? I do not know.

I understand higher courts will not second guess the jury's decision. But this was an extremely long trial, there was no overwhelming evidence to sustain my conviction. There was no direct evidence of the homicide to link me to the case. There was no scientific evidence such as fingerprints or a ballistics comparison tying me to the crime.

The only damning evidence against me was the testimony of a co-defendant Wayne Cady, this testimony along with certain circumstantial evidence constituted the sum total of the states case.

I presented an alibi defense, I never confessed to the crime, but my co-defendant Wayne Cady, did to numerous people. The state did not disprove my defense, defense attorney's and myself felt we had proven to the jury that Wayne Cady had in fact committed the crime himself, apparently this wasn't so.

Even if, the (7) issue's brought up by appellate counsel on the appeal weren't enough to warrant a reversal of the conviction, there were numerous other issue's that weren't brought up for some reason. And the cumulated effect of these must prove that I did not receive a fair and impartial trial guaranteed by the constitution.

The indictment, trial, conviction, was a Travesty of Justice. There is no justice in my conviction and to allow it to stand is a black mark on the Justice System.

I am indigent, and I would request, if the Supreme Court does accept my case for review to please appoint counsel in my behalf to prepare any documents.

I pray that the Florida Supreme Court, will deem that in the best interest of justice, review is required.

Sincerely

Edwin H. Beasley