

W 00A

IN THE SUPREME COURT OF FLORIDA  
STATE OF FLORIDA

BILLY WAYNE DANIELS, Jr.,  
Petitioner,

v.

CASE NO: 91,537

STATE OF FLORIDA,  
Respondent.

**FILED**

SID J. WHITE

JAN 28 1998

CLERK, SUPREME COURT  
By \_\_\_\_\_

Chief Deputy Clerk

---

AMENDMENTS FOR PETITIONER'S  
BRIEF IN SUPPORT OF  
PETITION FOR WRIT OF CERTIORARI

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COMES NOW, Billy Wayne Daniels Jr., Petitioner, pursuant to Rule 9.040(d) Fla. App. P., and will present this, his Amendments for his Brief in Support of Petition for Writ of Certiorari, and will evince the following

## SUMMARY OF ARGUMENTS

### I

Petitioner initially argues that the district court below erred in failing to dismiss his rule 3.850 appeal, upon Petitioner's timely Motion for Dismissal of same, where the circuit court lacked jurisdiction, ab initio, to rule on the 3.850 motion.

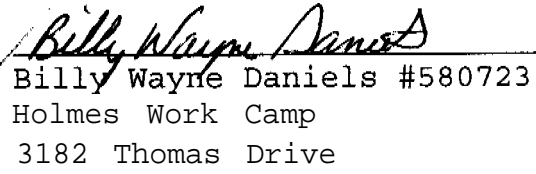
### II

Petitioner further argues that because the appellate court acknowledged that the circuit lacked jurisdiction over the case because of a pending direct appeal, the appellate court erred by affirming the circuit court's denial of Petitioner's rule 3.850 motion, rather than reversing and ordering the circuit court to quash its decision.

### III

Petitioner finally argues that assuming the appellate court could properly review the circuit court's denial of Petitioner's rule 3.850 motion, it is contended that the appellate court erred in affirming the circuit courts decision without prejudice to Petitioner's right to refile the rule 3.850 motion in the circuit court after the disposition of the appeal.

Respectfully submitted by,

  
Billy Wayne Daniels #580723  
Holmes Work Camp  
3182 Thomas Drive  
Bonifay, FL 32425

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of this Summary of Arguments has been furnished by U.S. Mail to Honorable Robert A. Butterworth, Attorney General, 301 Martin L. King Jr. Blvd., Tallahassee, FL 32399-1050 on January 26, 1998.

  
Billy Wayne Daniels,

# Appendix

INDEX OF DOCUMENTS

(APP "A") Notice of Appeal by Counsel (direct).

B Motion for Postconviction Relief.

C Order Granting Insolvency.

D Order Denying Motion for Postconviction Relief.

E Motion for Rehearing.

F Order Denying Rehearing.

G Notice of Appeal (3.850).

H Letter to Jon S. Wheeler, DCA Clerk.

I Letter to Shelly Yon, Circuit Clerk.

J Letter from Shelly Yon.

K Letter from Shelly Yon.

L Letter from DCA Clerk.

M Letter from DCA Clerk.

N Motion to Dismiss.

O Order Denying Motion to Dismiss.

P July 11, 1997, Opinion in question.

Q Order Denying Rehearing.

R Notice to Invoke Discretionary Jurisdiction.

IN THE CIRCUIT COURT OF THE  
FOURTEENTH JUDICIAL CIRCUIT  
IN AND FOR CALHOUN COUNTY,  
FLORIDA.

BILLY WAYNE DANIELS,  
Defendant/Appellant,

v.  
STATE OF FLORIDA,  
Plaintiff/Appellee.

CASE NUMBER: CIR93-177, CIR93-178  
CIR93-179, CIR93-180  
CIR93-181, CIR93-182  
CIR93-183

CALHOUN COUNTY CLERK  
FILED CIR 93-180  
MAY 21 1996  
W 96  
ELLIE P. WISE  
CLERK OF CIR 93-180

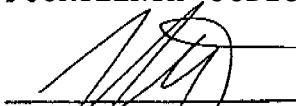
NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that BILLY WAYNE DANIELS  
Defendant/Appellant, appeals to the District Court of Appeal, First  
District of the State of Florida, pursuant to Rule 9.030(b),  
Florida Rules of Appellate Procedure, the judgment and sentence  
entered herein on the 22nd day of April, 1996.

I HEREBY CERTIFY that a copy hereof has been served upon the  
State Attorney, Fourteenth Judicial Circuit, by and through the  
Honorable H. Hentz McClellan, Assistant State Attorney, P.O. Box  
503, Blounstown, Florida, 32424; the Honorable BOB BUTTERWORTH,  
Attorney General, State of Florida, The Capitol, Tallahassee,  
Florida, 32301, by U.S. Mail 20<sup>th</sup> day of May, 1996.

HERMAN D. LARAMORE  
PUBLIC DEFENDER  
FOURTEENTH JUDICIAL CIRCUIT

BY:

  
JOHN A. RATZLAFF  
ASSISTANT PUBLIC DEFENDER  
FOURTEENTH JUDICIAL CIRCUIT  
Post Office Box 1562  
Marianna, Florida 32446  
(904) 482-3099  
Florida Bar No. 436526

ATTORNEY FOR  
DEFENDANT/APPELLANT

(4)

(APP "A")

IN THE CIRCUIT COURT OF THE  
~~Supreme~~ JUDICIAL CIRCUIT,  
IN AND FOR CALHOUN  
COUNTY, FLORIDA

STATE OF FLORIDA,  
Plaintiff,

CRIMINAL DIVISION

v.

CASE NO. (s):

93-177 through 93-181  
WILLIE D. WOOD  
CLERK OF COURT  
96 MAY 21 AIO:20  
CALHOUN COUNTY CLERK  
FILED FOR PROBATION

Billy Wayne Daniels  
Defendant,

MOTION FOR POSTCONVICTION RELIEF

1. Name and location of the court that entered the judgment of conviction under attack: CALHOUN County Court

2. Date of judgment of conviction: February 6, 1995

3. Length of sentence: twenty years

4. Nature of offense(s) involved (all counts): Violation of Probation

5. What was your plea? (check one)

(a) Not guilty

(b) Guilty

(c) Nolo contendere

(d) Not guilty by reason of insanity

If you entered on plea to one count and a different plea to another count, give details: \_\_\_\_\_

4

-1-

(APP "B")

IN THE CIRCUIT COURT OF THE  
FOURTEENTH JUDICIAL CIRCUIT  
IN AND FOR CALHOUN COUNTY,  
FLORIDA.

BILLY WAYNE DANIELS,  
Defendant/Appellant,

v.

STATE OF FLORIDA,  
Plaintiff/Appellee.

CASE NUMBER: 93-177, 93-178

~~93-179~~, 93-180

~~93-181~~, 93-182

~~93-183~~

CALHOUN COUNTY CLERK  
FILED  
JUN 12 P2:08

ORDER OF INSOLVENCY

THIS CAUSE coming on before me upon the Motion of the Defendant/Appellant, BILLY WAYNE DANIELS, for the appointment of counsel to represent him on appeal from the judgment and sentence previously entered in this cause, the Court having been advised in the premises and having previously made inquiry of the Defendant and having found him so insolvent that he was incapable of hiring his own attorney, it is, hereby

ORDERED AND ADJUDGED that the Public Defender, Fourteenth Judicial Circuit, in the State of Florida, be, and he is hereby appointed to represent the Defendant on his appeal in this cause. It is further

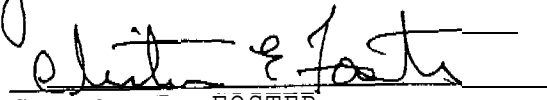
ORDERED AND ADJUDGED that the Defendant, BILLY WAYNE DANIELS, is without funds to pay the costs of his **appeal** and that Calhoun County, Florida, shall bear any and all costs necessary and incident to the prosecution of this appeal for the Defendant.

10

(APP "C")



DONE AND ORDERED in Chambers in Blountstown, Calhoun County,  
Florida, this 28 day of ~~June~~  
May, 1996.

  
CLINTON E. FOSTER  
CIRCUIT JUDGE

Copies furnished to:

Honorable H. Hentz McClellan  
Assistant State Attorney

Honorable John A. Ratzlaff  
Assistant Public Defender

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT-  
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

Case No. 93-177-1 83

STATE OF FLORIDA.  
Plaintiff,

v.

BILLY W. DANIELS JR.,  
Defendant.

CALLHOUN COUNTY, FLA  
CLERK OF COURT  
DATE: 1/19/96  
BY: [Signature]  
DEPUTY

**ORDER DENYING MOTION FOR POST-CONVICTION RELIEF**

This Court, having received the Defendant's motion dated May 28, 1996; and after reviewing same, finds:

1. The claim of ineffective assistance of counsel due to counsel's failure to investigate is successive as it is merely a rewording of an issue resolved by the First District Court of Appeal. One can not reword issues raised on direct appeal as an ineffective assistance of counsel allegation on post-conviction in an effort to re-litigate issues which were raised on direct appeal. McDina v. State, 573 So. 2d 293, 295 (Fla. 1990).

2. A defendant claiming ineffective assistance of counsel due to the failure to advise on the right to testify must satisfy the second prong of Strickland v. Washington, 466 U.S. 668, 687 (1984). counsel's deficient performance prejudiced the defense. State v. Oisorio, 657 So. 2d 4, 4-5 (Fla. 3rd DCA 1995). Petitioner has failed to show that counsel's alleged failure to advise him of the right to testify prejudiced his defense.

Therefore, it is

**ORDERED** and **ADJUDGED** that the Defendant's **Motion** is hereby denied as it is without

(18)

(APP "D")

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR GALESON COUNTY

STATE OF FLORIDA,  
Plaintiff,

V.

BILLY W. DANIELS, JR.,  
Defendant.

CASE NO.: 93-183

CLERK OFFICE  
WILLIAMS  
WALTERS  
96 JUL 10 10:03:02  
AM '96  
CALHOUN COUNTY  
CLERK

MOTION FOR RE-HEARING

COMES NOW, the Defendant, BILLY W. DANIELS, JR., who requests Re-Hearing pursuant to Rule 3.850, (g) FLA. R. CRIM. P. of the June 26, 1996 order denying his 3.850 Motion, and alleged Re-Hearing is timely filed, and avers as follows:

1. On May 28, 1996 the defendant submitted a timely 3.850 Motion.
2. On June 26, 1996 the Court denied said Motion without hearing.
3. The Defendant submitted two issues before the Court which require a Re-Hearing.

42

(APP "E")

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR CALHOUN COUNTY

STATE OF FLORIDA,  
Plaintiff,

CASE NO. 93-177 - 183

vs.

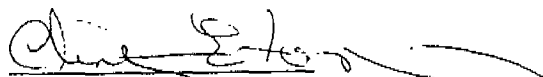
BILLY W. DANIELS, JR.,  
Defendant,

ORDER


THIS MATTER is before the Court on the Defendant's Motion for Rehearing on the Defendant's Motion for Post Conviction Relief which this Court denied on June 26, 1996 and the Court having considered the Defendant's Motion for Reheating finds that it should be denied; it is thereupon

ORDERED that the Defendant's Motion for Rehearing be and the same is hereby denied.

DONE AND ORDERED in Chambers. at the Fourteenth Judicial Circuit. this 17th day of July. 1996.

  
CLINTON E. FOSTER  
CIRCUIT JUDGE

I hereby certify that a true copy of the foregoing has been furnished via U.S. Mail to Billy Wayne Daniels, Jr., DC# 580723, Century Correctional Institution, P.O. Box 248, Century, FL 32535, this 17th of July, 1996.

  
Debbie Gehris, Judicial Assistant

(46)

(APP "F")

In The Circuit Court, Fourteenth Circuit of  
The State of Florida, In and For Calhoun County

CALHOUN COUNTY CLERK  
FILED OR RECORDED

Billy Wayne Daniels Jr. '96 JUL 25 A10:37

Defendant / Appellant

WILLIE D. WHEAT  
CLERK OF COURTS

vs.

13:

Case No. 93-177-183

State of Florida

Plaintiff / Appellee

Notice of Appeal

Notice is hereby given that Defendant / Appellant, Billy Wayne Daniels Jr. pursuant to and in accordance with Rules of Court 1993 Florida Rules of Appellate Procedure, rule 9.140 (g), appeals to the District Court of Appeal, First District State of Florida, the final order of this Court rendered on the 26<sup>th</sup> day of June, 1996.

The nature of the order is a final order denying Defendant / Appellant Motion for Post Conviction Relief, pursuant to and in accordance with Rules of Court, 1994 Florida Rules of Criminal Procedure, rule 3.850, Motion for Re-Hearing denied on the 17<sup>th</sup> day of July, 1996.

Respectfully Submitted this

22 day of July, 1996

Billy Wayne Daniels RS8072

867 207 2-141

Century Work Camp

P.O. Box 248

Century, Florida 32535-0248

Defendant / Appellant

In Propria Persona

(APP "G")

6.  
Hon. Jon S. Wheeler, Clerk  
First District Court of Appeals  
300 Martin L. King Jr., Blvd.  
Tallahassee, Florida 32399-1850

From: Billy Daniels 580723  
Box #137 Dorm A2-567  
Holmes Work Camp  
~~PO~~ Box 220  
~~Florida~~  
Bonifay, Florida  
32425-0220

Dear Mr. Wheeler:

I appealed a Post Conviction Relief Motion from Calhoun County on July 25<sup>th</sup>, 1996. The Clerk in Calhoun tells me my July 25<sup>th</sup>, 1996 appeal is consolidated with my Direct Appeal, case #96-02043.

I've filed a Motion dated February 8<sup>th</sup>, 1997 in your office to hopefully resolve my Post Conviction Relief Appeal. I've sent one letter and a Notice of Inquiry to your office to try and find out my case number of the July 25<sup>th</sup>, 1996 appeal, but have never received a reply. Your reply as to advising me to the case number of the July 25<sup>th</sup>, 1996 appeal is very urgent to me because I had to use the only case number I knew the appeal might be consolidated with, see the February 8<sup>th</sup>, 1997 Motion.

If by chance I've not used the right case number on the February 8<sup>th</sup>, 1997 Motion please work with me to correct it as soon as possible.

Sincerely,  
Billy W. Daniels Jr

FIA STAT. 92.525

I \_\_\_\_\_ under the penalty of perjury did certify this letter to the Clerk of The First District Court. Done this \_\_\_\_\_ day of February 1997.

(APP "H")

To: Deputy Clerk, Shelly Yon  
Calhoun, Clerk of Court  
425 E. Central Ave.  
Blountstown, Florida 32424

From: Billy Daniels 580723  
Box #137 Dorm A2-56T  
Holmes Work Camp  
P.O. Box 220  
Bonifay, Florida 32425-0220

Dear Shelly:

I've not received a docket number from the First District Court on my Post Conviction Relief Motion, appealed July 25<sup>th</sup> 1996. However, I do have the statement that this case was prepared by you on August 13, 1996, but nothing to certify that you did mail it, and to whom you mailed it to. For clarification, please certify to me that you did mail this case, and to whom all it was mailed to, and the date it was mailed.

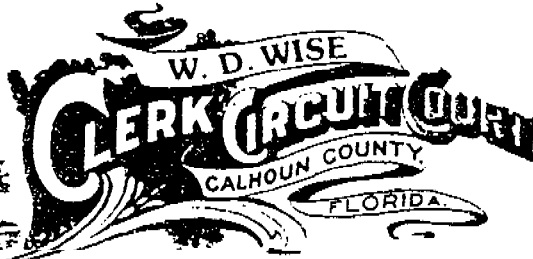
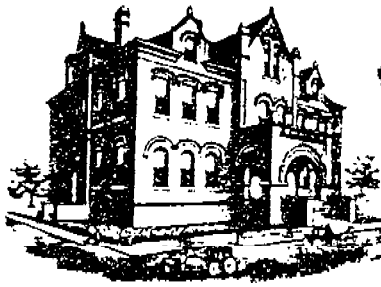
Sincerely,  
Billy W. Daniels

FIA. STAT. 92.525

I, \_\_\_\_\_ under the penalty of perjury did  
certify this letter to the Calhoun County Clerk of Court.  
Done this \_\_\_\_\_ day of February 1997.

(APP "I")

received  
3/13/97



425 EAST CENTRAL AVE., ROOM 130  
BL OUNTSTO WN, FL ORIDA 32424

MARCH 6, 1997

BILLY WAYNE DANIELS #580723  
Box 207 2-141  
CENTURY WORK CAMP  
P O BOX 248  
CENTURY, FL, 32535-0243

RE: STATE OF FLORIDA VS. BILLY WAYNE DANIELS, JR.  
CALHOUN COUNTY CASE NOS. CIR 93-177-183

DEAR BILLY:

I HAVE STRAIGHTENED EVERYTHING OUT WITH THE DISTRICT COURT OF APPEAL. THE PROBLEM WAS THAT I DIDN'T SENT A SEPARATE CERTIFIED COPY OF YOUR NOTICE OF APPEAL, LIKE I HAVE ATTACHED, WITH YOUR RECORD. THAT IS WHY IT WAS CONSOLIDATED WITH YOUR OTHER APPEAL.

BUT AS OF TODAY IT HAS ALL BEEN TAKEN CARE OF AND YOU SHOULD BE GETTING A LETTER WITH THE NEW APPEAL NUMBER ON IT.

I AM SORRY THAT IT TOOK SO LONG TO STRAIGHTEN OUT BUT IF THEY HAD TOLD ME THAT WAS WHAT THEY NEEDED THE FIRST TIME IT COULD HAVE BEEN HANDLED A MONTH OR TWO AGO.

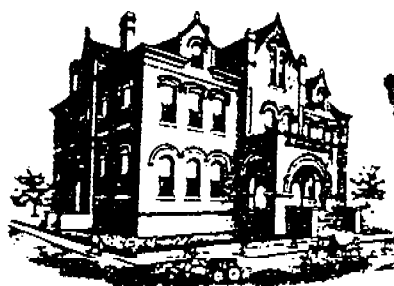
SINCERELY,

SHELLY YON  
DEPUTY CLERK

(APP "J")



Received  
3/13/97



425 EAST CENTRAL AVE., ROOM 130  
BLOUNTSTOWN, FLORIDA 32424

March 6, 1997

FIRST DISTRICT COURT OF APPEAL  
300 MARTIN L. KING, JR. BLVD  
TALLAHASSEE, FL 32399-1850

ATTN: VICKI

RE: BILLY WAYNE DANIELS, JR. VS. STATE OF FLORIDA  
CALHOUN COUNTY CASE NO. CIR 93-177-183  
DCA NO.

DEAR VICKI:

PURSUANT TO OUR TELEPHONE CONVERSATION THIS MORNING, I HAVE ENCLOSED A CERTIFIED COPY OF THE NOTICE OF APPEAL CONCERNING THE ABOVE-REFERENCED ACTION. I HOPE THIS COPY STRAIGHTENS THIS OUT, IF IT DOESN'T GIVE ME A CALL.

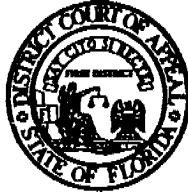
SINCERELY,

SHELLY YON  
DEPUTY CLERK  
(904) 674-4545

/SSY

(APP "K")

Received 3/19/97



DISTRICT COURT OF APPEAL  
FIRST DISTRICT  
STATE OF FLORIDA  
TALLAHASSEE, FLORIDA 32399-1850

JON S. WHEELER  
CLERK OF THE COURT

(904) 488-6151

March 13, 1997

Mr. Billy Wayne Daniels, Jr.  
DC #580723  
Century Correctional Institute  
P.O. Box 248  
Century, FL 32535-0248

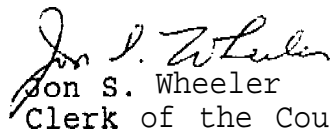
RE: Billy Wayne Daniels, Jr. v. State of Florida  
Case No.: 97-900

Dear Mr. Daniels:

This letter is written in response to your February 21, 1997, letter received in this court on February 25, 1997, in which you asked about your appeal of a denial of a postconviction motion on July 25, 1996. This court received that notice of appeal on March 10, 1997, and has set it up as the above-referenced case. Your motion to dismiss the appeal, etc., filed on February 11, 1997, has been put into that case and is under consideration by the court.

I hope this information is of assistance to you.

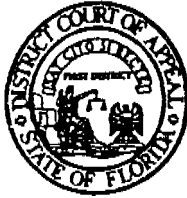
Sincerely yours,

  
Jon S. Wheeler  
Clerk of the Court

JSW/dch

(APP'L)

received 3/20/97



DISTRICT COURT OF APPEAL  
FIRST DISTRICT  
STATE OF FLORIDA  
TALLAHASSEE, FLORIDA 32399-1850

JON S. WHEELER  
CLERK OF THE COURT

(904) 488-6151

March 13, 1997

Honorable Willie D. Wise  
Clerk of the Circuit Court  
425 E. Central Avenue  
Room 130  
BIRMINGHAM, FL 32424

RE: Billy Wayne Daniels, Jr. VS State of Florida

Case Number : 97-00900  
Lower Case number : 93-177

Dear Willie D. Wise

The Clerk of the Court acknowledges receipt of the following:

Notice of Appeal from the lower tribunal reflecting a filing date of 07/25/96. Receipt number N/A for filing fee attached.

In the future, please use this court's case number on all pleadings and correspondence filed in this cause.

BEFORE THIS CASE CAN BE ASSIGNED TO A PANEL OF JUDGES FOR CONSIDERATION, the attached Docketing Statement must be completed and filed with this Court by the Appellant/Petitioner. Appellees/Respondents/Amicus need to review the information on the Appellants/Petitioner docketing sheet and file a docketing sheet if required, and as explained in the attached docketing sheet.

Sincerely Yours,

*Jon S. Wheeler*  
JON S. WHEELER, CLERK

CC:  
Billy Wayne Daniels  
Robert A. Butterworth

(APP "M")

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA  
TALLAHASSEE, FLORIDA

**BILLY DANIELS, Jr.,**

Appellant

VS

CASE NO: 96-02043

STATE OF FLORIDA

Appellee

COPY

---

MOTION TO DISMISS APPEAL AS NULL AND VOID WITH SPECIFIC AND EXPRESSED INSTRUCTION FOR THE TRIAL COURT TO VACATE AND SET **ASIDE** IT'S JUDGMENT DENYING APPELLANT'S RULE 3.850 MOTION AS BEING NULL AND VOID **AB INITIO**

---

*BILLY DANIELS Jr.*, Appellant in proper person, pursuant to Rule 9.300, Fla. R. App. Proc., submits this, his Motion to Dismiss Appeal as Null and Void with Specific and Expressed Instructions for the Trial Court to Vacate and Set Aside It's Judgment Denying Appellant's Rule 3.850 Motion as being Null and Void Ab Initio in the above styled and numbered case, and as a basis therefor states:

(APP "N")

received  
4/1/97

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Fl. 32399

Telephone (904) 488-6151

DATE March 25, 1997

CASE NO. 97-900

Billy Wayne Daniels, Jr. v. State of Florida  
appellant/petitioner appellee/respondent

BY ORDER OF THE COURT:

Appellant's motion filed February 11, 1997, seeking dismissal of this appeal with instructions to the trial court, is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

*Jon S. Wheeler*

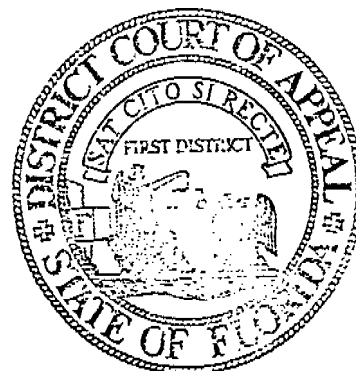
Jon S. Wheeler, Clerk

By: *Ana J. Johnson*  
Deputy Clerk

Copies:

Billy Wayne Daniels

Robert A. Butterworth



(APP "O")

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

BILLY WAYNE DANIELS, JR.,  
Appellant,

NOT FINAL UNTIL TIME EXPIRES TO FILE  
MOTION FOR REHEARING AND DISPOSITION  
THEREOF IF FILED

v.

CASE NO. 97-900

STATE OF FLORIDA,  
Appellee.

---

Opinion filed July 11, 1997.

An appeal from the Circuit Court for Calhoun County.  
Clinton E. Foster, Jr., Judge.

Billy Wayne Daniels, Jr., Pro Se, for Appellant.

No appearance for the State, for Appellee.

PER CURIAM.

The trial court lacked jurisdiction to consider appellant's motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3,850 during the pendency of appellant's direct appeal of the order revoking his community control. Bryan v. State, 470 So. 2d 864 (Fla. 2d DCA 1985); Grizzell v. State, 187 so. 2d 342 (Fla. 1st DCA 1966); see State v. Meneses, 392 So. 2d

(APP "P") (EX "C")

905 (Fla. 1981). Accordingly, we affirm the denial Of appellant's motion for postconviction relief on this ground. See Robinson v State, 393 So.2d 33, 35 (Fla. 1st DCA 1981) (stating that if trial court's order is sustainable under any theory revealed by appellate record, affirmance is proper notwithstanding that it may have been entered for a different or even erroneous reason).

MINER, ALLEN and LAWRENCE, JJ., CONCUR.

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399  
Telephone No. (904)488-6151

September 2, 1997

CASE NO: 97-00900

L.T. CASE NO. 93-177

Billy Wayne Daniels, Jr. v. State of Florida

-----  
Appellant(s),

Appellee(s).

BY ORDER OF THE COURT:

Motion for rehearing, filed July 25, 1997, is DENIED.

Motion for clarification, filed July 25, 1997, is DENIED.

Request for certification, filed July 25, 1997, is DENIED.

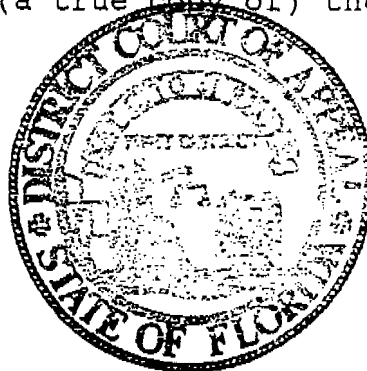
I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

*Jon S. Wheeler*

Jon S. Wheeler, Clerk

By: *Lath R. Leeper*

Deputy Clerk



Copies:

Billy Wayne Daniels

Robert A. Butterworth

(APP "Q")



IN THE DISTRICT COURT OF APPEAL OF FLORIDA  
FIRST DISTRICT

BILLY WAYNE DANIELS,  
Defendant/Petitioner,

v.

CASE NO. 97-900  
L.T. No. 93-177-183

STATE OF FLORIDA,  
Plaintiff/Respondent.

---

NOTICE TO INVOKE DISCRETIONARY JURISDICTION

Notice is given that Billy Wayne Daniels, Defendant/Petitioner, invokes the discretionary jurisdiction of the supreme court to review the decision in Daniels v. State, 22 FLW D1678 (1st DCA 1997) rendered on September 2, 1997, see rule 9.020(h) (1) Fla. R. App. P., because said decision is in expressed, direct and irreconcilable conflict with the decision of the 5th DCA in Hall v. State, 22 FLW D1877 (5th DCA August 1, 1997).


This notice is being submitted within the 30 day period prescribed by rule 9.120(b) Fla. R. App. P., such that Defendant/Petitioner deposited it in the hand of prison officials and entrusted its delivery to the court.

Pursuant to Haag v. State, 591 So. 2d 614 (Fla. 1992) the notice becomes officially filed on the date it is entrusted to prison officials for delivery to the court.. With the decision rendered in Daniels, supra, the 30 day period expires on Oct 2,

(APP "R")

1997.

Respectfully submitted

  
\_\_\_\_\_  
Billy Wayne Daniels  
DC#  
Holmes Correctional Inst.  
31.42 Thomas Drive  
Bonifay, FL 32425

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished by U.S. Mail to the Office Attorney General, Honorable Robert A. Butterworth, 301 Martin L. King Jr. Blvd., Tallahassee 32399-1850, on October 1, 1997.

  
\_\_\_\_\_  
Billy Wayne Daniels

Respectfully submitted by,

Billy Wayne Daniels  
Billy Wayne Daniels #580723  
Holmes Work Camp  
3182 Thomas Drive  
Bonifay, FL 32425

**VERIFICATION OF DOCUMENT**

Pursuant to Fla. Stat. 92.525(2)

I, Billy Wayne Daniels, declares under the penalties of perjury, that the foregoing documents in this Appendix are true and correct.

Billy Wayne Daniels  
Billy Wayne Daniels  
Petitioner, pro se

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of this Appendix for Brief for Petition for Writ Certiorari has been furnished by U.S. Mail to Honorable Robert A. Butterworth, Attorney General, 301 Martin L. King Jr. Blvd., Tallahassee, FL 32399-1050 on January 26, 1998.

Billy Wayne Daniels  
Billy Wayne Daniels,