IN THE SUPREME COURT OF FLORIDA

CASE NO. 93,547

THIRD DISTRICT COURT OF APPEAL CASE NO. 98-444

L. T. CASE NO. 92-31611

JORGE E. GONZALEZ,

Petitioner,

-vs-

HARRY K. SINGLETARY, et al.,

Respondent.

ON REVIEW FROM THE DISTRICT COURT
OF APPEAL OF FLORIDA, THIRD DISTRICT

RESPONDENT'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
Attorney General

Douglas Gurnic
Assistant Attorney General
Florida Bar No. 0000063
Office of the Attorney General
Appellate Division
Republic Tower, 110 S.E.6th St.
Ft. Lauderdale, Florida 33301
Telephone: (954) 712-4615
Facsimile: (954) 712-4658

Counsel for the Respondent

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INTRODUCTION

The Respondent, Harry K. Singletary, was the Appellee in the Third District Court of Appeal, and the Petitioner, Gerardo Plaza, was the Appellant. In this brief, the parties will be referred to as the Petitioner and the Respondent. The symbol "R" designates the record on review. The symbol "App." designates the appendix to the Respondent's brief on the merits. Emphasis added unless otherwise noted.

STATEMENT OF THE CASE AND FACTS

The Respondent is in substantial agreement with the Petitioner's statement of the case and regarding the facts relevant to the issue before this Court the Respondent would state the following:

On November 2, 1994 the Petitioner pled guilty to one count each of kidnaping with a weapon and battery for which he received a sentence of fifteen years. (App. A). The Petitioner has never filed a motion to withdraw his plea.

On February 17, 1998 the Petitioner filed a petition for writ of habeas corpus for the belated appeal of both his 1994 judgment and sentence and the trial court's denial of a motion for post-conviction relief as being untimely and successive. (App. B). In the petition, regarding the 1994 judgment and sentence, the petitioner simply alleges his appointed counsel failed to file a notice of appeal of that judgment and sentence after the Petitioner instructed him to do so. The Petitioner made no statement as to the issue, sought to be appealed, being within the limited exceptions allowed for a direct appeal of a guilty plea.

On July 1, 1998 the Third District Court of Appeal denied in part and granted in part the Petition. (App. C). The district court denied the petition as to the motion for belated appeal of the 1994 judgment and sentence based upon the Petitioner's failure "to allege with specificity any of the limited exceptions,

dictated by Robinson v. State, 373 So. 2d 898 (Fla. 1979), necessary for an appeal from a guilty plea." (App. C). The District Court granted the petition as to the motion for post-conviction relief because the lower court's order denying the motion did not advise the Petitioner of his right to appeal that decision or a deadline for doing so. (App. C).

ISSUE PRESENTED

WHETHER THE DISTRICT COURT PROPERLY DENIED THE PETITIONER'S MOTION FOR A BELATED APPEAL FROM HIS PLEA OF GUILTY BASED UPON HIS FAILURE TO ALLEGE ANY OF THE LIMITED EXCEPTIONS, REQUIRED BY ROBINSON v. STATE, 373 So. 2d 898 (Fla. 1979), FOR SUCH AN APPEAL?.

SUMMARY OF THE ARGUMENT

As this Court asserted in Robinson v. State, 373 So.2d 898, 902-903 (Fla. 1979) there is no right to an appeal on unknown and unidentified grounds. This Court made clear that the right to a direct appeal from a guilty plea is severely restricted as only those issues that are contemporaneous with the plea may form the basis for a direct appeal.

The opinions holding that there is a right to general review from a guilty plea directly and expressly conflicts with statutory law prohibiting such appeals, case law from this Court upholding the authority of the Florida Legislature to place such terms and conditions on the right to appeal, and rules of criminal and appellate procedure which this Court adopted in order to implement the statutory restrictions on appeals from criminal convictions.

The requirement that defendant's who have entered guilty pleas must state, in their notices of appeal or motions for belated appeal, the ground upon which their appeal is based is not unfair, unconstitutional, nor overburdensome. As such appeals are very restricted, requiring a defendant to show that his claim fits within the limited exceptions for such appeals, provides notice of the court's jurisdiction to hear the case and eliminates the filing of numerous frivolous appeals. The decision of the Third District Court of Appeals to deny the Petitioner's petition for a belated

appeal based upon his failure to state a cognizable ground for such an appeal should be affirmed.

ARGUMENT

THE DISTRICT COURT PROPERLY DENIED THE PETITIONER'S MOTION FOR A BELATED APPEAL FROM HIS PLEA OF GUILTY BASED UPON HIS FAILURE TO ALLEGE ANY OF THE LIMITED EXCEPTIONS REQUIRED BY ROBINSON v. STATE, 373 So. 2d 898 (Fla. 1979), FOR SUCH AN APPEAL.

This Court, in Robinson v. State, 373 So.2d 898, 902-903 (Fla. 1979) addressed the conditions under which an appeal could be taken from a guilty plea and held that there was no general right to an appeal on unknown and unidentified grounds as follows:

> The appellant contends that he has a right to a general review of the plea by an appellate court to be certain that he was made aware of all the consequences of his plea and apprised of all the attendant constitutional rights waived. In effect, **he is asserting a right of review without a specific assertion of wrongdoing. We reject this theory of an automatic review from a guilty plea.** The only type of appeal that requires this type of review is a death penalty case. See S 921.141(4), Fla. Stat. (1977). Furthermore, **we find that an appeal from a guilty plea should never be a substitute for a motion to withdraw a plea.** If the record raises issues concerning the voluntary or intelligent character of the plea, that issue should first be presented to the trial court in accordance with the law and standards pertaining to a motion to withdraw plea. If the action of the trial court on such motion were adverse to the defendant, it would be subject to review on direct appeal. The standards for the withdrawal of a guilty plea both before and after sentence were discussed in detail in Williams v. State, 316 So.2d 267 (Fla. 1975). After sentence is imposed, the burden is on the defendant to prove that a manifest injustice has occurred. Williams v. State, ABA Standards Relating to the Administration of Criminal Justice, Pleas of Guilty, 14-2.1 (1979). To adopt the view asserted by the appellant in this case would in effect eliminate both the necessity for a defendant to move for a withdrawal of his plea and the obligation to show a manifest injustice or prejudice as grounds for such a plea withdrawal after sentence.
> Id.

This Court went on to hold that there was a limited and exclusive class of issues which occur contemporaneously with the entry of the plea that can properly be brought on direct appeal from a guilty plea. Id. at 902. The class consists of "only the following:

(1) the subject matter jurisdiction,

(2) the illegality of the sentence,

(3) the failure of the government to abide by the plea agreement, and

(4) the voluntary and intelligent character of the plea." Id.

As Robinson failed to assert any of these cognizable claims this Court held the district court was justified in summarily dismissing the appeal as frivolous. Id. at 903.

Moreover, the United States Supreme Court has repeatedly held that there is no constitutional right to an appeal of non-capital criminal cases and that the states, if they grant such right, may place such terms and conditions, consistent with due process and equal protection, as they consider appropriate. See, Ross v. Moffitt, 417 U.S. 600, 611 (1974)("[I]t is clear that the State need not provide any appeal at all."; Abney v. United States, 431 U.S. 651, 656 (1977)("It is well settled that there is no constitutional right to an appeal" and "[t]he right to appeal as we presently know it in criminal cases, is purely a creature of

appeal from guilty pleas despite not meeting any of the statutory and rule criteria the Florida Legislature and this Court have implemented.

Before turning to the specifics of the Reform Act and implementing rules, it is useful to recall this Court's comments and action in 1995 on the problem of appeals from guilty pleas, prior to the enactment of the Reform Act in 1996, and the more recent comments in 1998 addressed to the commendable way in which the Florida Legislature and this Court, working "hand-in-hand" have implemented appellate reform.

First, see Amendments to Florida Rules of Appellate Procedure 9.020(g) and 9.140(b) and Florida Rule of Criminal Procedure 3.800, 21 Fla. L. Weekly S5 (Fla. 21 December 1995)("It has come to our attention that scarce resources are being unnecessarily expended in appeals from guilty pleas and appeals relating to sentencing errors."). This Court's proposed rule of 1995 requiring that all sentencing errors be first brought to the attention of the trial court, together with the Robinson requirement that motions to withdraw the plea are a prerequisite to any appeal, are essentially what was subsequently adopted in the Reform Act, effective 1 July 1996, and implemented by this Court in its revised rules of criminal and appellate procedure which became effective 1 January 1997.

The second, more recent comment, addresses the post-Reform Act

and its implementation by this Court. See, Kalway v. Singletary, 23 Fla. L. Weekly S102 (Fla. 26 February 1998):

> Separation of powers is a potent doctrine that is central to our constitutional form of state government. See, Art.II,S3, Fla. Const. ("No person belonging to one branch shall exercise any power appertaining to either of the other branches unless expressly provided herein.") This does not mean, however, that two branches of state government in Florida cannot work hand-in-hand in promoting the public good or implementing the public will, as evidenced by our recent decision in Amendments to the Florida Rules of Appellate Procedure, 685 So.2d 773 (Fla. 1996), wherein we deferred to the legislature in limited matters relating to the constitutional right to appeal.
>
> [W]e believe that the legislature may implement this constitutional right and place reasonable condition upon it so long as they do not thwart the litigant's legitimate appellate rights. Of course, this Court continues to have jurisdiction over the practice and procedure relating to appeals. Id, at 774-775.

With the above perspective in mind, which correctly recognizes the constitutional duty of the three branches of government to cooperatively work together for the greater public good, the state turns to the specific provisions of the Reform Act, Amendments, and the implementing rules of criminal and appellate procedure which are in direct and express conflict with the decision below.

Section 924.051(3), Florida Statutes (Supp. 1996) places the following condition precedent on the right to appeal.

> (3) **An appeal may not be taken** from a judgment or order of a trial court **unless a prejudicial error is alleged and is properly preserved** or, if not properly preserved, would constitute fundamental error.

By its terms, this condition precedent applies to all appeals, including those entered following guilty or unreserved no contest pleas.

This Court explicitly upheld the authority of the legislature to condition the constitutional right to appeal upon the proper preservation of error in the trial court.

Applying this rationale to the amendment of section 924.051(3), we believe **the legislature could reasonably condition the right to appeal upon the preservation of a prejudicial error** or the assertion of fundamental error. Anticipating that we might reach such a conclusion, this Court on June 27, 1996, promulgated an emergency amendment designated as new Florida Rule of Criminal Procedure 3.800(b) to authorize the filing of a motion to correct a defendant's sentence with ten days. [cite omitted] Because many sentencing errors are not immediately apparent at sentencing, **we felt that this rule would provide an avenue to preserve sentencing errors and thereby appeal them.**

Amendments at 775.

This Court similarly construed section 924.051(4) as consistent with section 924.051(3).

We construe this provision of the Act [section 924.051(4)] to permit a defendant who pleads guilty or nolo contendere without reserving a legally dispositive issue to nevertheless appeal a sentencing error, **providing it has been timely preserved by motion to correct the sentence**. See State v. Iacovone, 660 So. 2d 1371 (Fla. 1995); Williams v. State, 492 So. 2d 1051 (Fla. 1986)(statutes will not be interpreted so as to yield an absurd result).

Accordingly, we have rewritten rule 9.140 to accomplish the objectives set forth above. **Consistent with the legislature's philosophy of attempting to resolve more issues at the trial court level**, we are also promulgating Florida Rule of Criminal Procedure 3.170 (l), which authorizes the filing of a motion to withdraw the plea after sentencing within thirty days from the rendition of the sentence, but only upon the grounds recognized by Robinson or otherwise provided by law. Id.

The terms of the new rules condition the right to appeal on the proper preservation of error in the trial court with the exception of fundamental error. See, criminal rule 3.170 (l) and

its companion appellate rule 9.140(b)(2):

3.170(l) Motion to Withdraw the Plea After Sentencing. A defendant who pleads guilty or nolo contendere without expressly reserving the right to appeal a legally dispositive issue may file a motion to withdraw the plea within thirty days after rendition of the sentence, **but only upon the grounds specified in Florida Rule of Appellate Procedure 9.140(b)(2)(B)(I) - (v).**

9.140(b)(2) Pleas. A defendant **may not appeal from a guilty or nolo contendere plea except as follows:**

(A) A defendant who pleads guilty or nolo contendere **may expressly reserve the right to appeal a prior dispositive order of the lower tribunal,** identifying with particularity the point of law being reserved.

(B) **A defendant who pleads guilty or nolo contendere may otherwise directly appeal only**

(I) the lower tribunal's lack of **subject matter jurisdiction;**

(ii) a violation of the plea agreement, **if preserved by a motion to withdraw plea;**

(iii) an involuntary plea, **if preserved by a motion to withdraw plea;**

(iv) a sentencing error, **if preserved;**

(v) as otherwise preserved by law.

This Court did not overlook the substantive requirement that sentencing errors be first raised in the trial court. Rule 9.140(d) requires:

(d) Sentencing errors. A sentencing error may not be raised on appeal unless the alleged error has first been brought to the attention of the lower tribunal:

(1) at the time of sentencing; or

(2) by motion pursuant to Florida Rule of Criminal Procedure 3.800(b).

It should be noted that this rule is simply an extension of the same rule which this Court proposed in December 1995 prior to the enactment of the Reform Act.

The state also invites the attention of the Court to the

provisions of Florida Rule of Appellate Procedure 9.020(h)(1) and 9.020(h)(3). The first delays the rendition of final trial court orders when motions to correct sentence or withdraw pleas are pending in the trial court. Relevant portions of the second are instructive on whether an appeal may be taken when no issues have been properly preserved in the trial court.

> (3) .... However, a pending motion to correct a sentence or order of probation or a motion to withdraw the plea after sentencing shall not be affected by the filing of a notice of appeal from a judgment of guilt. In such instance, the notice of appeal shall be treated as prematurely filed and the appeal is held in abeyance until the filing of a signed, written order disposing of such motion.

This Court recently reiterated its decision in Amendments upholding and implementing the authority and decision of the Florida Legislature to place reasonable conditions on the right to appeal and to prohibit appeals where these conditions precedent were not met. See, Kalway v. Singletary, 23 Fla. L. Weekly 102, 103 (Fla. 26 February 1998), as discussed and quoted above.

The Court's attention is also invited to a recent **en banc** decision of the Fifth District Court of Appeal holding that there is no right to appeal from guilty or no contest pleas unless prejudicial errors have been reserved, preserved, or raised and ruled on by post-judgment motions during the thirty-day window provided by this Court. Maddox v. State, 23 Fla. L. Weekly 720 (Fla. 5th DCA 13 March 1998). The decision in Maddox is noteworthy, not merely because of the holdings, but because of the perceptive

analysis and understanding of the Criminal Appeal Reform Act and the implementing rules promulgated by this Court in Amendments. Reasoned and written in the spirit of Kalway and Amendments, with a keen appreciation of, and deference to, the separation of powers doctrine, the Fifth District shows that appellate and trial courts, appellants, and appellees, i.e., everyone, will benefit from the interplay between the Act and the implementing rules. The Act and the rules together, "hand-in-hand," collectively present the parties with increased opportunities and rights to raise and preserve issues in the trial court and, if relief is not obtained, to then seek appellate review with a fully developed record and preserved issues which can be intelligently addressed on their merits by the parties and the appellate courts.

The forgoing principles are supported by decisions from the second as well as third district courts of appeal which hold that there is no right to appeal from a guilty plea unless a motion to withdraw the plea has been filed or there is a Robinson issue. See, e.g., Gonzalez v. State, 685 So.2d 975 (Fla. 3rd DCA 1997)("[T]he defendant's motion failed to allege with specificity any of the limited exceptions, dictated by Robinson v. State, 373 So.2d 898 (Fla. 1979), necessary for an appeal from a guilty plea.") and Bridges v. State, 518 So.2d 298,300 (Fla. 2nd DCA 1987):

> Bridges's problem, however, is even more fundamental in that he cannot show that he would have had a right to appeal at all. Bridges entered a plea of guilty without reserving any appellate issues, received a sentence that is facially legal and which was

accepted without contemporaneous objection, and did not move to withdraw that plea prior to the imposition of a sentence which on its face is lawful. Id. To the same end, see, Loadhold v. State, 683 So.2d 596 (Fla. 3rd DCA 1996) and Zduniak v. State, 620 So.2d 1083 (Fla. 2nd DCA 1993).

The primary decision upon which conflict is based is the First District Court opinion in Trowell v. State, 706 So.2d 332 (Fla. 1st DCA 1998). In this opinion the district court relied on two lines of cases from this Court, Baggett v. Wainwright, 229 So.2d 239 (Fla.1969), and, from the U.S. Supreme Court, Douglas v. California, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d811 (1963). Baggett was adjudged guilty and sentenced in 1962. In 1969, he filed a petition for writ of habeas corpus in this Court alleging that he and his trial counsel, immediately following his conviction, had informed the trial court that he was now indigent and requested that the trial court appoint appellate counsel to prosecute the appeal. Baggett further alleged that the trial court advised him it would do so, but failed to do so. Baggett alleged that two years later, upon inquiry, he was told by the trial court that his appeal was being handled by a public defender. Significantly, this Court summarized the thrust of Baggett's allegations as "an attempt to demonstrate that through State action Petitioner was deprived of, or inadequately afforded, the assistance of counsel for the purpose of directly appealing his conviction." Baggett, 229 So.2d at 240-241. There was, in short, no

question of Baggett's right to appeal following a conviction entered on a jury verdict. There was only the question of whether Baggett, as an indigent, had been denied the right to the assistance of counsel contrary to Douglas v. California, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963).

This Court held that Baggett's allegations, if true, would show a denial of the assistance of counsel and that Baggett could not be required to show that his appeal would have successfully overturned the judgment[3]. In so holding, this Court cited to and relied in part on Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967) and Rodriquez v. United States, 395 U.S. 327, 89 S.Ct. 1715, 23 L.Ed.2d 340 (1969).

In Trowell, the district court's reliance on Baggett, Douglas, Anders, and Rodriquez, is completely misplaced. The cited cases stand for the unexceptionable proposition that **if** there is a right to an appeal then there is a right to the assistance of counsel if indigent. None of the cases were from guilty pleas and none presented the issue of whether they was a right to appeal from guilty pleas. Thus, by misapplying the cases, and specifically Baggett to a set of facts unlike Baggett, the district court has created direct and express conflict with the very cases on which it

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[3] As it turned out, Baggett's allegations were false and there had been no denial of the assistance of counsel. See, Baggett v. Wainwright, 235 So.2d 486 (Fla. 1970)(Writ discharged, neither Baggett nor his attorney told the trial court he was indigent, wished to appeal, and wanted counsel appointed.)

relies. Gibson v. Avis Rent-A-Car System, Inc, et al, 386 So.2d 520, 521 (Fla. 1980)(Conflict jurisdiction is created "when a district court of appeal misapplies the law by relying on a decision materially at variance with the one under review.")

The Respondent further points out that the Trowell opinion also misapplied case law from the United States Supreme Court. The decisions in Douglas, Anders, and Rodriguez stand for the unexceptionable and uncontroverted principle that indigents must be afforded the right to counsel **if** they and similarly situated non-indigents have a right to an appeal. Nothing in these cases concerns the right to appeal from guilty pleas.

As the Third District Court of Appeals pointed out in Gonzalez v. State, 685 So. 2d 975 (Fla. 3d DCA 1997), the idea behind a defendant's right to assistance of counsel in making a first appeal of a conviction is that it is the responsibility of a knowledgeable appellate counsel to review the records to identify any appropriate issues to be raised on appeal. It would be unreasonable to infringe on a defendant's right to appeal in such a situation to require a pro se showing of what meritorious issues he intended to bring on appeal. Id. at 977. As Judge Minor points out in his dissenting opinion in Trowell, in situations of guilty pleas the defendants do not face the hardship of having to review a trial record in search of error without the benefit of counsel. A defendant appealing a guilty plea does not have an entire record to

review nor are they even allowed to try to establish innocence. Id. at 344. Because the issues allowed to be raised on appeal of a guilty plea are so limited, requiring the defendant to allege an issue cognizable on direct appeal is no more restrictive than is appropriate. Id. Anything less would result in an unjustified waste of judicial resources by an already over-burdened criminal justice system.

The claim that this requirement specifically violates the rights of indigent defendants is without merit. Ross v. Moffitt, 417 U.S. 600, 601 (1974),is particularly relevant. Contrary to the rationale that indigency is critical to the right to appeal, indigency is irrelevant unless there is a showing that the state has, contrary to the Douglas line of cases, "arbitrarily cut off appeal rights for indigents while leaving open avenues of appeal for more affluent persons" 417 U.S. at 607, and "[u]nfairness results only if indigents are singled out by the State and denied meaningful access to the appellate system because of their poverty." 417 U.S. at 611. Nothing in section 924.06(3), Florida Statutes (1995) or its successor, section 924.051(4), Florida Statutes (Supp. 1996), draws any distinctions between the indigent and the non-indigent. Neither have a right to appeal unless conditions set out in the statute, as interpreted and implemented by this Court in Amendments, and in Florida Rule of Appellate Procedure 9.140(b)(2) are met. Whether you are rich or poor you do

not have the right to take a groundless appeal.

Further it is important to consider, as Judge Minor pointed out in his dissent in Trowell, that the requirement is simply to identify a ground over which the court has jurisdiction to hear following a guilty plea and not, as other opinions have expressed, a requirement that the defendant show the claims to be meritorious. Id. Thus the majority in Trowell and the other cases holding there is an unfettered right to take a direct appeal from a guilty plea not only misapplied the law controlling appeals from guilty pleas they also misapplied the law on the primacy of jurisdiction. The question of jurisdiction is a "primary concern ... **which [a court] must address ... sua sponte when any doubt exists**" even if the parties fail to raise the issue. Mapoles v. Wilson, 122 So. 2d 249 (Fla. 1st DCA 1960). Stein v. Darby, 126 So. 2d 313 (Fla. 1961); Cohen v. State, 121 So. 2d 155 (Fla. 1960). It is hornbook law that "**[c]ourts are bound to take notice of the limits of their authority, and if want of jurisdiction appears at any stage of the proceeding, original or appellate, the court should notice the defect and enter an appropriate order.** [cites omitted]." West 132 Feet v. City of Orlando, 80 Fla 233, 86 So. 197, 198-199 (Fla. 1920).

This holding was reaffirmed in Bohlinger v. Higginbotham, 70 So. 2d 911,914-915 (Fla. 1954)(**When jurisdiction was brought in**

issue "the court should have considered and ruled on the merits of the [jurisdictional] issue" because **"courts 'are bound to take notice of the limits of their authority, and if want of jurisdiction appears at any stage of the proceedings ... the court should notice the defect and enter an appropriate order.'** [cites omitted]". The holding was followed in Mendez v. Ortega, 134 So. 2d 247, 248 (Fla. 1961) where the court reversed and remanded because the trial court lacked jurisdiction.

> **This must be done despite the fact that the question of jurisdiction was not raised by the pleadings or otherwise presented. Courts are bound to take notice of the limits of their authority and if want of jurisdiction appears at any stage of the proceedings, original or appellate, the court should notice the defect and enter an appropriate order. [cites omitted]**

Accord, Swad v. Swad, 363 So. 2d 18 (Fla. 3d DCA 1978)("Where a party questions the subject matter jurisdiction of the court proceeding with a cause, **the court must carefully examine the question and make a determination of its jurisdiction"**.

Historically, the First District Court followed this hornbook law. See, Ford Motor Company v. Averill, 355 So. 2d 220, 221 (Fla. 1st DCA 1978):

> **We, of course, have no authority to assume jurisdiction when there is none. We therefore have the duty and responsibility at any stage of the proceeding at which we discover jurisdiction lacking to immediately cease exercising same.**

This Court recently reiterated the above rule of law that

jurisdiction is a threshold or primary issue which must be immediately addressed and which, if found absent, ends review. Proceedings, orders, and decisions in the absence of jurisdiction are a nullity. Polk County v. Sofka, 702 So.2d 1243 (Fla. 1997).

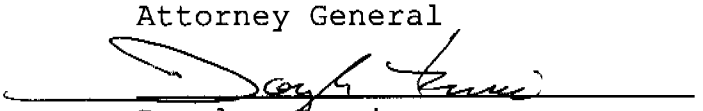
In summary, the holding that there is an unfettered right to full appellate review of guilty pleas, belated or timely, regardless of the failure to preserve or identify a cognizable issue is contrary to this Court's case law, to Florida Statutes, this Court's rules of criminal and appellate procedure, and decisions of other district courts. At the same time, properly prohibiting unauthorized appeals enables parties with legitimate issues and an authorized right to an appeal to more efficiently obtain such review as they will not have to compete for scarce judicial resources with parties such as those who have no cognizable issues and no right to an appeal. Further, through proper adherence to the simple jurisdictional requirement for obtaining a direct appeal of a guilty plea Florida taxpayers will not have to fund numerous wholly frivolous and abusive judicial proceedings.

CONCLUSION

Based upon the foregoing arguments and cited authorities, the Respondent respectfully requests this Court to find that the District Court properly denied the Petitioner's motion for belated appeal.

Respectfully Submitted,

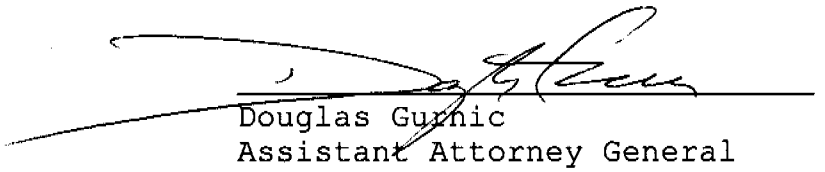
ROBERT A. BUTTERWORTH
Attorney General



Douglas Gurnic
Assistant Attorney General
Florida Bar No. 0000063
Office of the Attorney General
Appellate Division
Republic Tower.110 S.E.6th St.
Ft. Lauderdale, Florida 33301
Telephone: (954) 712-4615
Facsimile: (954) 712-4658

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON THE MERITS was mailed this 16th day of September, 1998, to Jorge E. Gonzalez, DC# 451635, Hamilton Correctional Institution, Rt. 1 P.O. Box 1360, Jasper, Florida 32052-1360.



Douglas Gurnic
Assistant Attorney General