IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,

v.

CASE NO. 93,795

RANDY LAVERN SPENCER,
Respondent.

_____/

RESPONDENT'S BRIEF ON THE MERITS

RANDY LAVERN SPENCER 541845
RESPONDENT / PRO SE
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PRELIMINARY STATEMENT

Respondent, Randy Lavern Spencer, the appellant in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as respondent or "Spencer". Petitioner, the State of Florida, the appellee in the First District Court of Appeal, will be referenced in this brief as petitioner.

CERTIFICATE OF FONT AND TYPE SIZE

Respondent certifies that this brief was typed using Courier New 12.

SUMMARY OF ARGUMENT

The First District Court of Appeals' decision to reverse the trial court's sanction against Spencer should be approved. The trial court simply failed to establish a complete record when not issuing a show cause order prior to the imposition of sanction which would have initiated a separate proceeding; therefore, Spencer would have had an opportunity to challenge the sanction where there does not exist a record that Spencer has filed numerous postconviction motions or that the merits were ever reached of the alleged prior motions. It is wholly an infringement on Spencer's right to court access absent required due process.

ARGUMENT

ISSUE I

MAY THE CIRCUIT COURT SANCTION A DEFENDANT IN THE FORM OF PROHIBITING THE DEFENDANT FROM FILING ANY FURTHER PRO SE POSTCONVICTION CHALLENGES TO HIS 1992 JUDGMENT AND SENTENCE WITHOUT ISSUING AN ORDER TO SHOW CAUSE? (RESTATED)

The petitioner contends that Spencer has filed numerous postconviction motions challenging his 1992 conviction, but since the trial court's order did not prohibit Spencer from appealing or filing a motion for rehearing to challenge the imposition of the restriction, nor prohibit a licensed attorney from filing a postconvition motion, the order did not "totally cut off" Spencer's access to the court and, like Huffman v. State, 693 So. 2d 570, 571 (Fla. 2nd DCA 1996), did not rise to the level that required the due process safeguards as set forth by the First District. (See Petitioner's Initial Brief On Merits, pgs. 7, 9).

Spencer respectfully disagrees. There is absolutely no records of evidence to support the petitioner's allegation that Spencer has filed numerous postconviction motions challenging his 1992 conviction. Although the trial court, "Within the order denying the motion, referenced six postconviction motions Spencer has previously filed challenging his 1992 sentence," it did not attach

any copies of the referenced motions to support its order and the sanction. Spencer v. State, 23 Fla. L. Weekly D1898 (Fla. 1st DCA August 13, 1998). Further, the trial court did not attach copies of the previous orders nor denote "Whether the referenced motions raised the same claims as before, and if so, whether they were denied on merits." Mitchell v. State, 699 So. 2d 810, 811 (Fla. 1st DCA 1997). Therefore, the First District properly found that "the trial court did not follow the proper procedures when it determined that it would not entertain any further pro se challenges to Spencer's 1992 conviction and sentence". Spencer, supra.

Indeed, it is unclear exactly why the trial court imposed the sanction against Spencer, but it does not demonstrate whether Spencer's behavior is the result of egregious abuse of the judicial process. See Attwood v. Singletary, 661 So. 2d 1216 (Fla. 1995); Attwood v. Eighth Circuit Court, 667 So. 2d 356 (Fla. 1st DCA 1995). That is why the trial court should have issued an order to show cause prior to the imposition of sanction, this would have initiated a separate proceeding independent of the 3.800 action and allowed Spencer an opportunity to defend, or yet establish a complete record. The First District also observed that "fundamental fairness and the necessity for the creation of a complete record require that a party be given reasonable notice prior to the

imposition at the trial level of this extreme sanction." Id. For, the District Court reasoned:

> An independent order assures that review of the 3.800 motion in the appellate court will proceed in a timely manner and assures preparation of an adequate record in the sanction action.
> It is impossible to determine from the record whether the sanction imposed in this case was substantively based upon Spencer's conduct. It is unnecessary for us to reach that issue, however, because of the trial court's failure to give proper notice prior to imposing the sanction.

Spencer, supra, footnotes 1 and 2.

Since the trial court totally cuts off Spencer's right to further access to the court system regarding his 1992 conviction and sentence, but wholly failed to issue an order to show cause which initiates a separate proceeding independent of the action, thus failing to provide Spencer with adequate notice prior to the imposition of the sanction by establishing a complete record, the First District's decision should not be reversed.

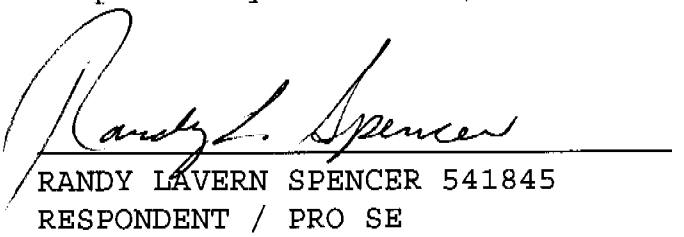
Unlike Spencer, both Attwood and Huffman, supra, consists of a complete record which clearly depicts each pleading that was submitted in the Courts and an order thereof. There simply is not a record available which substantiates that Spencer has filed numerous postconviction motions, notwithstanding the orders denying

said motions or that the merits of each were reached. Hence the petitioner's contention that since the trial court did not prohibit Spencer from appealing the Circuit Court's ruling, or filing a motion for rehearing to challenge the imposition of the restriction, nor did the order prohibit a licensed attorney from filing a postconviction motion in Spencer's behalf, is irrelevant because there does not exist a record that Spencer has filed numerous motions which warrants sanction; if that is the reason for the sanction. Moreover, Spencer is declared insolvent and cannot afford a licensed attorney.

CONCLUSION

Based on the foregoing, Spencer respectfully submits that the District Court of Appeal's decision reported at 23 Fla. L. Weekly D1898 should be approved.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that an accurate copy of the respondent's Answer Brief on the Merits has been furnished by U.S. Mail to James W. Rogers, Tallahassee Bureau Chief, and Trisha E. Maggs, Assistant Attorney General, Office of the Attorney General, The Capitol, Tallahassee, Florida 32399-1050, this 13 day of October, 1998.

Randy L. Spencer

Randy Lavern Spencer
Respondent/Pro Se