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SUPREME COURT OF FLORIDA
500 SOUTH DUVAL STREET
TALLAHASSEE, FLORIDA
ZIP CODE 32299-1927

ACENCION MEDRANO,

CASE NO: 93-997

DCA NO: 98-2371

v.

STATE OF FLORIDA, et al.,

_____ /

PETITIONER'S AMENDED BRIEF ON THE MERITS

BASIS FOR INVOKING JURISDICTION

This court has jurisdiction to accept this brief on the merits under Art. V. Sec 4 (b)(3), Florida Const., and Florida rules of Appellate Procedures 9.030 (2)(A)(v)

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
OPENING STATEMENT	iii
STATEMENT OF FACTS AND CASE	iv-v
SUMMARY OF THE STATEMENT	vi
ISSUE: I	1
IS A PETITIONER ENTITLED TO FILE A BELATED RULE 3.850 MOTION FOR COLLATERAL RELIEF IF HE CAN PROVE THAT PRIVATELY RETAINED COUNSEL AGREED TO FILE A TIMELY RULE 3.850 MOTION FOR COLLATERAL RELIEF BUT FAILED TO DO SO	
ARGUMENT	1
CONCLUSION	6
RELIEF SOUGHT	7
CERTIFICATE OF SERVICE	8

TABLE OF CITATIONS

<u>Fishland v. State</u> 107 So.2d 131	3
<u>Florida Bar v. Dawson</u> 111 So.2d 427	3,5
<u>Florida Bar v. Moses</u> 380 So.2d 412	4
<u>Florida Bar v. Timson</u> 301 So.2d 448	4
<u>Meyer v. State</u> 415 So.2d 70	2
<u>Scull v. State</u> 569 So.2d 1251	1
<u>Steele v. Kehoe</u> 23 Fla. L. Weekly D771	1

OPENING STATEMENT

Petitioner comes before this Honorable Court and its entrusted justices clothed in meekness and gratitude for it is a honor within itself to have his petition heard before this court. Petitioner asserts that he has not the wisdom of the law or its science, but acknowledges that it is indeed a honor and rare privilege to have a pro se petition heard before justices of great knowledge, experience, and wisdom. Petitioner ask that this court exercise great patience in considering his petition for this is the petitioner only means of relief.

STATEMENT OF THE FACTS.

On April 29, 1994, petitioner was found guilty of first degree premeditated murder by jury. A direct appeal was submitted in his behalf for case number 92-531 CFA by the Public Defender Office out of the West Palm Beach office. Before February 9, 1995, assistance public defender Joseph Choloupk was appointed to represent petitioner on direct appeal for case number# 92531 CFA. Before February 9, 1995, petitioner's family hired Attorney Lonworth Butler, Jr. to prepare petitioner's post postconviction rule 3.850 motion for the amount of \$5,000. On June 11, 1995, petitioner received a letter from Lonworth

Butler, Jr. informing Mr. Acencion Medrano that he had made contact with assistant public defender Joseph Chloupek who was handling his direct appeal, and for Mr. Medrano to forward his transcripts to Mr. Butler's office (See Ex. A). After complying to Mr. Butler request, petitioner sent numerous letters thereafter trying to compel attorney Butler to advise him on the progress made towards his 3.850 motion. Petitioner declares that from September 7, 1995 to April 5, 1998, his attorney made little if no effort to inform him of any progress in his case or gave any indication that he was not going to file a timely rule 3.850 motion (See Ex. B-F). In July 6, 1998, said petitioner filed a state habeas corpus/belated rule 3.850 appeal to the 4th District Court of Appeal. The Fourth District Court granted petitioner permission to file his belated rule 3.850 motion, denied without prejudice petitioner request to compel former attorney Lonworth Butler to forward documents needed to formulate other legal issues for rule 3.850 motion, and certified a question of great public importance to the Florida Supreme Court. Petitioner filed to the Fourth District Court Appeal a notice to invoke discretionary jurisdiction with a copy of the DCA opinion of 9/9/98.

SUMMARY OF THE ARGUMENT

The sole point on appeal in this case is that the petitioner hired Lonworth Bulter Jr. to submit a timely rule 3.850 motion and thus failed to do so. As a result, the petitioner was deprived the right to contest any and all pre-trial and trial errors which may of occurred. In sum, petitioner privately retained attorney is surely to blame for not filing a timely 3.850 rule when hired to do so.

IS A PETITIONER ENTITLED TO FILE A BELATED
RULE 3.850 MOTION FOR COLLATERAL RELIEF
IF HE CAN PROVE THAT PRIVATELY RETAINED
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MOTION FOR COLLATERAL RELIEF BUT FAILED
TO DO SO

ARGUMENT

Petitioner declares that under the American Due Process System of Law, each person is required to so use and enjoy his own rights as not to injure others in their rights, or to violate any rule or law in force for the preservation of the general welfare. Petitioner declares that the pillars of the United States Constitution holds that no person shall be deprived of life or liberty without due process of law. Similarly, such is the same with the Florida Constitution which provides that no person shall be deprived of life and liberty. The constitution of the United States and of Florida ensures that all proceedings affecting life and liberty must be conducted according to due process is considered to be one of the most basic tenets of law, Scull v. State, 569 So.2d 1251, Steele v. Kehoe, 23 Fla. L. Weekly D771. Petitioner contends that a grave injustice had occurred when his privately retained attorney not only failed to timely file a post conviction motion, but worst of all misled the petitioner by building false hope and trust in his

attorney's ability to defend his honor. Petitioner asserts that the constitutional right to have appointed counsel ends at the last letter of the appellate judge's pen when he/she signs their name, and that any further quest for justice must come at ones own expense. For all purposes and intents, no petitioner should lose his/her right to file a timely 3.850 rule for it can determine the life or death of the petitioner.

Due process is the right to meaningful access to the judicial process which is as vital to a petitioner's life, as an umbilical cord between a mother and her child, they both sustain life.

Petitioner declares that when an attorney who knows the law and chooses not to obey the law is no different than the criminal who willing breaks the law; both, criminal and counselor have broken the law by violating someone's constitutional rights. Petitioner contends that a lawyer has an ethical obligation to pursue justice on the behalf of his client. In Meyer v. State, the court held:

"The ethical obligation of an attorney requires diligent attention to the legal problems of his client, and no lawyer can ethically neglect a legal matter entrusted to him nor handle it incompetently. Meyer v. State, 415 So.2d 70"

Petitioner declares that not only was he denied due process of the law when his attorney failed to file a timely 3.850

motion, but his family was victimized when they paid said attorney \$5,000 to file a timely motion which was never done.

Petitioner contends that the image of an attorney is one clothed in truthfulness, dignity, and honor, for he/she is a minister of the law ordained with great responsibility with the courtroom as their church where they preach the gospel of the law. But when the minister is motivated more by money than the truth, their standards begin to deplete. Petitioner contends that the practice of law is a privilege which places a special burden upon those choosing to pursue the profession, Fishland v. State, 107 So.2d 131. In Dawson v. The Florida Bar, the Bar looks upon a lawyer as a minister who courthouse is the church when it held:

"A lawyer should view his work not as mere money getting but as service of the highest orders, not as a mere occupation but as a ministry, Florida Bar v. Dawson, 111 So.2d 427."

Movant holds that this court has the greatest responsibility to protect its constitution and those within it. This court must protect its citizens from money craved attorneys who take advantage of the emotions of those in despair and solely focus on how much they can be paid instead how to seek justice.

This court has set the tape rule in which attorneys must measure up to and how its watchful eyes are on those whom it has sworn to protect when it held that:

"A single most important concern in the supreme court's defining and regulating practice of law is protection of the public from incompetent, unethical, or irresponsible representation, Florida Bar v. Moses, 380 So.2d 412."

Furthermore, the Supreme Court is the warden of our constitutional rights whether they be of the law of the land or the state. The Honorable court has held that:

"It is the responsibility of the supreme court to safeguard rights of public to secure adequate representation by attorneys and to maintain image and integrity of Bar as a whole, Florida Bar v. Timson, 301 So.2d 448."

Petitioner asserts that the arm of justice should not only extend to punish the criminal who infringes on the inherent rights of citizens, but should extend to the ethical and moral crimes that are committed by those entrusted to prosecute and defend the law who infringes on the constitutional rights of the criminal by not rendering adequate representation when he/she has been hired to do so. Petitioner contends that the discipline applied onto an attorney for those who violate a petitioner's constitutional rights which either hinder, prejudice, or bars a petitioner from exercising his right to either prove their innocence, or correct trial court errors which may have denied

him a fair trial. When an attorney fails to file within the required amount of time rendered by law as in the instant case a mere judicial tap on their wrist cannot justify the attorney error, or be a substitute for the petitioners life. Petitioner declares that such an error cannot/shouldn't be taken lightly do to the fact that an innocent person can be found guilty of a crime in which he/she hasn't done. Being so, a person can be denied an opportunity to enjoy the ripe fruit of success based on his occupation, but worse of all, he is deprived life and liberty. Petitioner asserts that a lawyer's time and advice are his/her stock in trade. From this, the service of a good lawyer is something that cannot be found in a bargain basement or located on the shelves of a super market or traced through the want ad columns of the daily newspaper. Furthermore, an attorney being an officer of the court is bound by the administration of justice which requires that one exercise sincerity, integrity, and reliability. It's the relationship to a client which demands the highest degree of fidelity. Its been held many times that the moral conviction of an lawyer is charged with the great public responsibility of aiding in the administration of justice and as one court has so aptly said:

"That a lawyer should view his work not as mere money getting but as service of the highest order, Bar v. Dawson, 111 So.2d 427"

Petitioner contends that in determining the appropriate discipline to be imposed upon those guilty of unprofessional conduct, the factors to bear in mind are that the discipline must be just to the public and designed to correct an antisocial tendency on part of attorney as well as deter others who might tend to engage in like violations, and it must be fair to the attorney but at the same time the duty of the court to society is paramount. Petitioner asserts that the practice of law is a privilege which places special burdens upon those choosing to pursue this honorable profession. Law, being a "jealous mistress," makes extraordinary demands upon members of the bar. The members of the legal profession, must realize that higher standards is often measured in the layman's mind by the manner in which it should discipline that small minority of our members who break the rules of fidelity and trust required by their calling.

CONCLUSION

Petitioner declares that every person whether free or bound are entitled to the competent representation of an attorney whether appointed by the inherent rights under the United States Constitution, or privately retained. Its well understood that a lawyer is not held to be ineffective when they prepared a defense or performed a service, but yet, the results were not

in favor of the client surely he cannot be held to be ineffective but effective. But when an attorney is paid in full to perform a specific duty and chose not to and the service in which the attorney was hired for prejudices the client, placing the client at a disadvantage, or deprives the client of his/her constitutional rights to the point in which the client is barred from being able to correct the error, surely the attorney is ineffective and their incompetence is unacceptable.

RELIEF SOUGHT

For every year petitioner was prejudice by his privately retained counsel that he be barred from practicing law which is a privilege and honor within itself, or what this Honorable courts deems necessary.

CERTIFICATE OF SERVICE

I hereby declare that a true and correct copy of the foregoing Supreme Court Amended Brief on the Merits has been sent to Robert Butterworth, Attorney General of Florida, The Capitol, 400 S. Monroe Street, Tallahassee, Florida, 32399-6563, and Mr. Louis Vargas, Department of Corrections, Lgl Bur, 2601 Blairstone Rd. Tallahassee, Florida 32299-6563 on this 4th day of November, 1998.

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