

IN THE SUPREME COURT OF FLORIDA

CASE NO 94,568

**GUSTAVO ROMERO,**

Petitioner,

vs.

**THE STATE OF FLORIDA,**

Respondent.

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ON APPEAL FROM THE THIRD DISTRICT COURT OF APPEAL  
CASE NO. 98-1040

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**BRIEF OF RESPONDENT ON THE MERITS**

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## INTRODUCTION

In the trial court the Petitioner, GUSTAVO ROMERO was the Defendant and the Respondent, THE STATE OF FLORIDA, was the prosecution. The parties will be referred to as they stood in the trial court. The symbol "R" denotes the record on appeal and references to the Appendix will be denoted by the letter "A."

## STATEMENT OF THE CASE AND FACTS

The State accepts Defendant's Statement of the Case and Facts to the extent that it is accurate and non-argumentative. The State does add the following facts set forth below.

On November 18, 1998, the Third District Court of Appeal issued a Per Curiam Affirmance of the order of the trial court. (A4). Following the issuance of the Third District's mandate, this Court rendered a decision in Wood v. State, \_\_\_So.2d\_\_\_, 24 FLW S240 (Fla. May 27, 1999). Wood is dispositive to this appeal and the State concedes that the Writ of Coram Nobis should be remitted to the trial court to address the writ on the merits.

QUESTION PRESENTED

WHETHER THE DEFENDANT'S WRIT OF CORAM NOBIS SHOULD BE REMITTED TO THE TRIAL COURT TO ADDRESS THE WRIT ON THE MERITS IN LIGHT OF THIS COURT'S RULING IN WOOD?

**SUMMARY OF THE ARGUMENT**

The order of the Third District Court of Appeal was issued well prior to this Court's decision rendered in Wood v. State, \_\_\_\_ So.2d\_\_\_\_, 24 FLW S240 (Fla. May 27, 1999). The Third District Court of Appeal had issued a Per Curiam Affirmance of the order of the trial court dismissing the Petition seeking a Writ of Coram Nobis as untimely. This Court's decision in Wood held that all Defendants adjudicated guilty prior to the filing of the Wood opinion (May 27, 1999) shall have two years from the filing date within which to file claims traditionally cognizable under review by Writ of Coram Nobis. In light of this Court's ruling in Wood, the Petition must be construed as timely filed and the case should be remitted to the trial court to address the petition on the merits.

## ARGUMENT

THE DEFENDANT'S PETITION SEEKING A WRIT OF  
CORAM NOBIS SHOULD BE REMITTED TO THE TRIAL  
COURT TO ADDRESS THE PETITION ON THE MERITS IN  
LIGHT OF THIS COURT'S RULING IN WOOD.

Defendant contends that both the trial court and the Third District Court of Appeals erred in dismissing his Petition seeking a Writ of Coram Nobis as untimely. Specifically, Defendant argues that he was never advised by the initial trial court of any potential immigration consequences resulting from his plea of nolo contendere with respect to a plea entered on December 6, 1989 to the crime of possession of cocaine. (A1). Defendant now contends that the failure of the trial court to so advise the Defendant of the potential immigration consequences resulting from the plea runs afoul of Fla. R. Crim. P. Rule 3.172(c)(8).

The State concedes that the order of the Third District Court of Appeals must be reversed due to this Court's decision in Wood v. State, supra rendered on May 27, 1999. The concession of error is based solely on the fact that Defendant was never in custody after entry of the initial plea. Wood directly ruled that the two year statute of limitations applicable to Rule 3.850 Motions for post-conviction relief was not to be applicable to defendants adjudicated prior to the filing of the opinion (for a period of two years). Because Defendant herein was adjudicated guilty on

December 6, 1989, and due to the fact that he was never in custody after entry of the plea, his Petition seeking a Writ of Coram Nobis was timely within the parameters of Wood. Because neither the Third District Court of Appeal nor the trial court addressed the merits of the petition, the order on appeal should be reversed and the matter remitted to the trial court to address the merits of the Petition.



**CONCLUSION**

WHEREFORE, based on the foregoing citations of authority and arguments, this Honorable Court should reverse the order of the Third District Court of Appeal and the Petition should be remitted to the trial court to be addressed on the merits.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT was mailed to William M. Richardson, Jr., Esq., Nations Bank Tower-37th Floor, 100 SE 2nd Street, Miami, Florida, 33131 on this \_\_\_\_ day of August, 1999.

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FRANK J. INGRASSIA  
Sr. Assistant Attorney General