

IN THE SUPREME COURT OF FLORIDA

FILED
DEBBIE CAUSSEUX
DEC 22 1999
CLERK, SUPREME COURT
BY _____

RICARDO PEREZ,
Petitioner,

vs.

CASE NO: 1999-39

MICHAEL W. MOORE, etc.,
Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL-THIRD DISTRICT
STATE OF FLORIDA

JURISDICTIONAL BRIEF OF PETITIONER

Respectfully Submitted,

/s/ Ricardo Perez
Petitioner, Pro Se

DC# 384899

WASHINGTON CORR. INST.
4455 SAM MITCHELL DRIVE
CHIPLEY, FLORIDA 32428

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<p style="text-align: center;">The decision of the Third District Court of Appeal was based on <u>Peart v. State</u>, 705 So.2d 1059 (Fla. 3d DCA 1998), rev. granted, 722 So.2d 193 (Fla. 1998). WHICH HAS BEEN GRANTED REVIEW IN THIS COURT SUBJECTING JURISDICTION HEREIN FOR PETITIONER.</p>	
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IN THE SUPREME COURT OF FLORIDA

RICARDO PEREZ,
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vs.

MICHAEL W. MOORE, etc.,
Respondent.

CERTIFICATE OF FONT AND TYPE SIZE

COMES NOW Petitioner, Ricardo Perez, pro se to certify the Font and Type Size used in Petitioner's BRIEF ON JURISDICTION (original).

Petitioner does hereby certify the following to this Honorable Court:

The Font and Type Size used for the aforementioned brief is 10 Courier Legal 189 as used on the Olivetti 2450MD model typewriter.

Respectfully Submitted,


/s/ 
Petitioner, pro se
WASHINGTON CORR. INST.
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CHIPLEY, FLORIDA 32428

TABLE OF CITATIONS

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CASES

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OTHER AUTHORITIES

Article V, Section 3 (b)(3), Fla. Const. (1998)	5
Rule 3.172 (c)(8), Fla. R. Crim. P.	6

STATEMENT OF THE CASE AND FACTS

On February 18, 1994, Petitioner was charged by Information in the Circuit Court for MiamiDade County with Burglary and Petit Theft, Fla. Stat., §§ 810.02(3), 812.014 (1)(2)(d).

On May 3, 1994, after a plea hearing, Petitioner was sentenced to Thirtyfive (35) years as a Habitual Offender. Petitioner appealed to the Third District Court of Appeal: Affirmed in part and reversed in part. Perez v. State, 647 So.2d 1007 (Fla. 3d DCA 1994).

On September 1, 1999, Petitioner filed an Application for Habeas Corpus and Error Coram Nobis Relief in the District Court of Appeal. That Court denied relief on the authority of its prior en banc decision of Peart v. State, 705 So.2d 1059 (Fla. 3d DCA 1998)(en banc), rev. granted 722 So.2d 193 (1998) on November 9, 1999. see exhibit "A").

Petitioner filed his timely Notice to Invoke Discretionary Jurisdiction on December 6, 1999.

SUMMARY OF THE ARGUMENT

In the instant case the Third District Court of Appeal denied the Petitioner's Application for Habeas Corpus/Error Coram Nobis based on Peart v. State, 705 So.2d 1059 (Fla. 3d DCA 1998)(en banc), rev. granted, 722 So.2d 193 (Fla. 1998).

This Court granted review in Peart. Petitioner prays that this Court will accept and grant review on the instant case.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of the Third District Court of Appeal that was based on a prior case where review has been granted by the Florida Supreme Court of that decision.

ARGUMENT

The decision of the Third District Court of Appeal was based on Peart v. State, 705 So.2d 1059 (Fla. 3d DCA 1998), rev. Granted, 722 So.2d 193 (Fla. 1998). WHICH HAS BEEN GRANTED REVIEW IN THIS COURT SUBJECTING JURIDICITION HEREIN FOR PETITIONER.

The District Court of Appeal based its decision on Peart v. State, 705 So.2d 1059 (Fla. 3d DCA 1998), rev. granted, 722 So.2d 193 (Fla. 1998). The granting of Peart was based on a direct conflict with the en banc court in Merriott v. State, 605 So.2d 985 (Fla. 4th DCA 1992)(en banc).

Both Courts conflicted on the interpretation of Rule 3.172, Fla. R. Crim. P., and the use of Error Coram Nobis Petitions.

This Court granted review of Peart based on conflict with Merriott, and as such, Petitioner should be granted review in light of the Courts granting review in Peart.


CONCLUSION

This Court has discretionary jurisdiction to review the denial below, and the Court should exercise that jurisdiction to consider the merits of the Petitioner's argument.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a copy of this brief has been furnished this 18 day of Dec, 1999 by U.S. Mail to: CHRISTINE E. ZAHRALBAN, Assistant Attorney General, 444 Brickell Avenue, Suite 950, Miami, Florida 33131.

Respectfully Submitted



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A P P E N D I X

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1999
NOVEMBER 9, 1999

RICARDO PEREZ,

CASE NO.: 99-2196

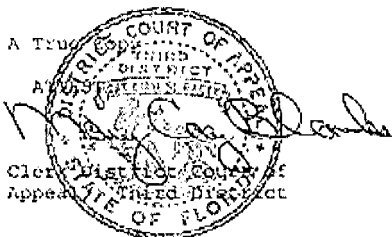
Appellant(s)/Petitioner(s),

vs.

MICHAEL W. MOORE, SEC. OF
FL. DEPT. OF CORR., ETC.,
Appellee(s)/Respondent(s).

LOWER
TRIBUNAL NO. 93-36225

Following review of the petition for writ of error
coram nobis/habeas corpus and the response and reply thereto, it
is ordered that said petition is hereby denied. See Peart v.
State, 705 so. 2d 1059 (Fla. 3d DCA 1998), review granted, 722
So. 2d 193 (1998). NESBITT, COPE and SORONDO, JJ., concur.



cc:
Ricardo Perez
Christine E. Zahralban
Hon. Sidney B. Shapiro

la

DEBBIE CAUSSEAUX, ACTING CLERK
Supreme Court o f **Florida**
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1/1 8/00 filed 12/22/99

RICARDO PEREZ

vs.

MICHAEL W. MOORE, etc.

CASE NO. SC99-39

I have this date received the below-listed pleadings or documents:

Jurisdictional Brief of Petitioner

The above brief was served nineteen (19) days late. A motion to accept the brief as timely filed must be filed immediately with this Court.

Please make reference to the case number in all correspondence and pleadings.

Most cordially,



Acting Clerk
Supreme Court

**ALL PLEADINGS SIGNED BY
AN ATTORNEY MUST INCLUDE
THE ATTORNEY'S FLORIDA
BAR NUMBER.**

DC/dy

cc: Ms. Christine E. Zahralban