

IN THE SUPREME COURT OF FLORIDA

CASE NO: SC 99-39

RICARDO PEREZ
Petitioner

Versus

MICHAEL W. MOORE, Secretary
Florida Department of Corrections
Respondent

PETITIONERS REPLY BRIEF ON THE MERITS

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

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ARGUMENT IN RESPONSE

THE WRIT OF ERROR CORAM NOBIS IS AVAILABLE
TO THE PETITIONER WHEN THE CLAIM WAS SUFFICIENT
AND THE RESPONDENT IS TAKING AN INCONSISTENT
POSITION THAN THAT RAISED IN THE LOWER TRIBUNAL

The Respondent in its Answer Brief are now alledging that Petitioners claim for relief is insufficient as a matter of law and fact and that the lower tribunal was correct in denying Error Coram Nobis relief. (see Respondents Brief at 10 and 11.)

The position below by the Respondent was that the Petitioner was not entitled to relief on the basis that the claim was not one traditionally recognized by the Writ of Error Coram Nobis (R-30-42).

The basis of the jurisdiction was founded on the District courts decision of Peart v. State , 705 So. 2d 1059 (Fla. 3rd DCA 1998), (en banc) being in direct conflict with both Marriott v. State , 605 So. 2d 985 (Fla. 4th DCA 1992) (en banc) and Wood v. State, 698 SO. 2d 293 (Fla. 1st DCA 1997)

This court has now reversed the district courts decision of Peart, in its totality and with Wood, has now allowed the filing of Writ of Error Coram Nobis within two-years from the date that the decision was made final by the Supreme Court of Florida.

The Petitioner stated a claim for relief in the lower tribunal and was entitled to relief when the district court of appeal had taken the position that the petitioner did not state a claim for relief under its decision of Peart supra., 705 so. 2d 1059 (Fla. 3rd DCA 1998) (en banc). Because the decision of this court in Peart had now overruled that decision, the position of the Respondent is now without merit in this case., (see Peart 25 Fla. L. Weekly s274 (Fla. 2000)(n.3., "we note that both the failure to advise a advise a defendant of possible deportation consequences and the error of providing "affirmative misadvice" as to such a consequence should be treated the same under the above analysis.").

The decision of the lower tribunal in Perez should be quashed and the matter remanded for further proceeding that are consistent with this courts decision of Peart, supra., @

@ It should also be remembered that the Petitioner is pro se, and without the assistance of counsel, his pleading should be liberally construed and not treated too harshly while attempting to make his claim known before the court, see Haines v. Kerner, 404 U.S. 519 (1972); Hall v. Key, 476 So. 2d at 789 (Fla. 1st DCA 1985)(prisoners pro se petition should be held to less stringent stand-ard than formal pleadings drafted by lawyers).

Since this court has already decided the issue of time limits in its Peart, decision, see 25 Fla. L. Weekly s271, (Fla. 2000), Issue II is now decided and that quashes the Third Districts holding the Peart, decision below and Perez herein concomitantly. Further argument would only be duplicitous.

As to Issue III, the Petitioners Brief on the Merits and the Answer Brief by Respondent on this claim, the courts decision again in both Peart and Wood, had now decided the matter against the Respondent and would require that the decision of Perez below be quashed as was done in Peart, also 25 Fla. L. Weekly s.271 (Fla. April 13, 2000).

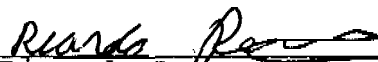
In sum, the decision of Perez, supra., by the lower tribunal should be quashed and remanded on the authority on Peart, supra., and Wood, supra.*

* Its interesting to note that this court mention in Peart, "before the admendment (rule 3.172., Fla. R. Crim. P. this-court treated a trial court flure to warn a defendant of the possible deportation consequences of a plea as a "collateral consequence" that would not support a claim of ineffective assistance of counsel State v. Ginebra, 511 So. 2d 960 (Fla. 1987). One year later, however, we established rule 3.72(c)(8)..We subsequently acknowledge tat our old case law was superseded by the new rule....rule 3.172.,(c)(8) expressly requires that a trial jduge inform all defendants of immigration consequences..." Id. at., 25 Fla. L. Weekly s271., n.5 & 10.,. (Fla. April 13, 2000).,

CONCLUSION

Based on the decision of this court in Peart, supra., 25 Fla. L. Weekly §271 (Fla. April 13, 2000)., this court should quash the decision of Perez, below and remand for further proceedings consistent therewith.

Respectfully submitted



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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY, that a true and correct copy of the foregoing **PETITIONERS REPLY BRIEF ON THE MERITS** HAS been furnished by U.S Mail this 4 day of JUNE, 2000, to:

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CERTIFICATE OF FONT AND TYPE SIZE

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



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