

IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA,
Petitioner,

Vs.

WARREN STANG,
Respondent.

Case No: SC09-1409
DCA No: 2D08-3536

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RESPONSE TO PETITIONER'S JURISDICTIONAL BRIEF

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AUG 21 2009

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Case No: SC09-1409
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WARREN STANG,
Respondent.

_____ /

RESPONSE TO PETITIONER'S JURISDICTIONAL BRIEF

COMES NOW, the Respondent, Warren Stang, acting in *pro se* form in response to, and in opposition of Petitioner's Jurisdictional Brief, and respectfully requests and prays that this Honorable Court reject and deny Petitioner's arguments seeking to invoke the jurisdiction of this Honorable Court, and that upon denial of Petitioner's Motion(s) to remove Order staying the Mandate issued by the Second District Court of Appeal so as to be carried out and executed by the State. As grounds for this Response and in support thereof, Respondent offers the following for consideration and review by this Honorable Court.

PRELIMINARY STATEMENT AND AUTHORITY

Pro se Motions ¹ are traditionally accorded liberal interpretation to affect justice and afford movant advantage denied him by the lack of legal training. See, *Moreno vs. Macaluso*, 844 F. Supp. 736 (M.D. Fla. 1994). *Pro se* pleadings are traditionally held to less stringent standards than pleadings drafted by attorneys. See, *Fernandez vs. United States*, 941 F.2d 1488 (C.A. 11th 1991); *Moreno vs. Macaluso, supra*; *Clark vs. Sierra*, 837 F. Supp. 1179 (M.D. Fla. 1993); *Devin vs. Indian River*, 121 F.3d 576 (C.A. 11th 1992). Respondent prays that this Honorable Court, while making a determination in this cause, construe his *pro se* Response liberally. See, *Haines vs. Kerner*, 404 U.S. 519, 92 S.Ct. 594 (1972); *Roberts vs. Wainwright*, 666 F.2d 517 (11th Cir. 1982).

STATEMENT OF THE CASE AND FACTS

Respondent filed a Petition for Writ of Habeas Corpus in the 19th Judicial Circuit, Okeechobee County, Florida, which was dismissed *without prejudice* so that Respondent could exhaust all three (3) tiers of the Administrative Grievance Procedure utilized by the Florida Department of Corrections ² in regard to the

¹ In the instant case at bar, Respondent's response to Petitioner's jurisdictional brief.

² See, Appendix "I" – All Grievances, Requests, filed at Okeechobee C.I., and Tallahassee, and their Responses.

application of all credit for time served as to each count of Respondent's sentence. At no time in any proceeding before the 19th Judicial Circuit did Respondent attempt to collaterally attack his conviction or sentence.

Following Respondent's transfer to Hardee Correctional Institution and subsequently learning of the Okeechobee Court's dismissal without prejudice, Respondent immediately filed and exhausted all of the available Administrative remedies/avenues available to Respondent³. Respondent then filed his Petition for Writ of Habeas Corpus in the 10th Judicial Circuit, Hardee County, which was subsequently denied without the Court addressing the merits or reaching the essential elements of law.

The Honorable Second District Court of Appeal which after close scrutiny of the Record and pleadings by both parties chose to exercise liberal construance pursuant to Florida Rules of Appellate Procedure, Rule 9.040 (c), subsequently exercising its authority to issue its Writ of Habeas Corpus and ordering the immediate release from incarceration of Respondent.

Petitioner⁴ sought an "Emergency Rehearing and Stay" and was denied relief on July 31, 2009. Petitioner sought leave for jurisdictional review in the

³ See, Appendix "J" – All Grievances filed at Hardee C.I. and Tallahassee, and their Responses.

⁴ It should be noted that the Attorney General was and is, at all times the Prosecution of Respondent from arrest to this date.

Florida Supreme Court and was denied. Petitioner now seeks to have this Honorable Court review this matter, and as such this Response follows:

SUMMARY OF THE ARGUMENT

Petitioner asserts in error that Respondent has been forum shopping and that in the very unusual circumstances triggered by the illegal encroachment of the Florida Department of Corrections pursuant to *Rood vs. State*, 790 So.2d 1192 (Fla. 1st DCA 2001). “The Department does not have the authority to review and reject a trial court’s specific award of credit.” See, *Hall vs. Moore*, 777 So.2d 1105, 1006 (Fla. 1st DCA 2001).

ARGUMENT ON THE MERITS

PETITIONER'S JURISDICTIONAL BRIEF IS WITHOUT MERIT BASED ON THE UNIQUE SET OF CIRCUMSTANCE IN THIS CASE "ONLY" TO REVISIT THE OPINIONS IN *ALACHULA JUVENILE CENTER VS. T.O.*, 681 SO.2D 814 (FLA. 1996); AND *MURRAY VS. REIGER*, 872 SO.2D 217 (FLA. 2002) HAS THE POTENTIAL TO OPEN A FLOODGATE OF MEANINGLESS PETITIONS, WHEREAS RESPONDENT MEETS AN IDEAL LIST OF CIRCUMSTANCES THAT QUALIFY FOR THE RELIEF GRANTED BY THE SECOND DISTRICT COURT OF APPEAL AND ENVISIONED BY THIS HONORABLE COURT IN *ALACHULA* AND *MURRAY*

Respondent ardently asserts that the circumstances of the instant case at bar fails to qualify for review by this Honorable Court as Petitioner has failed to demonstrate a *prima facie* cause for relief, to wit;

1. Petitioner cites that the impact of the Second District Court of Appeals decision will increase court case loads through a number of Habeas Corpus Petitions. This is not only inaccurate, but is also an attempt to incite and retry the facts and blatant violations of Respondent's constitutional rights, as well as to deny Respondent Habeas Corpus review, as was defined by this Honorable Court in *Alachula Juvenile Center vs. T.O.*, *supra*, and *Murray*, *supra*.

Respondent's unique set of circumstances, which include the Department of Corrections seeking a clarification of Respondent's sentence resulting in a *nunc*

pro tunc Order outside the realm of any known legal vehicle to challenge the original unambiguous sentence violated the Separation of Powers Act. Furthermore, this action triggered not only a double jeopardy violation, but also, a due process violation, whereas Respondent, Respondent's Appellate Counsel, or the State ⁵ were never noticed of any action by the Department of Corrections, never present at any hearing, not provided a copy of the *nunc pro tunc* Order and denied the right to challenge or appeal an order which has kept Respondent unlawfully detained for years past his release date.

2. Petitioner also argues that Respondent has had or made multiple attempts to garner relief by litigating the same issue in multiple forums. This is again inaccurate.

In Respondent's 3.850 Motion, when the issue of the inappropriate credit for time served was addressed, neither Respondent nor the Attorney General were aware of the illicit *nunc pro tunc* Order as evidenced by Appendices "A" through "E".

As evidenced by Appendix "E", the Trial Court adopted and incorporated in its denial for post conviction relief, the State's Response and the original Sentencing Order. Thus, the Trial Court now overruled its *nunc pro tunc* Order that only the Trial Court and the Department of Corrections knew of. In this case

⁵ Again, Respondent wishes this Honorable Court take Notice that the Attorney General was Respondent's Prosecutor.

instead of double jeopardy, Respondent was subjected to triple jeopardy. Instead of the Trial Court seizing the opportunity to resentence Respondent, it now put the original Order back in place as the law of the case. Yet, the Department of Corrections insisted still on detaining Respondent illegally.

3. Petitioner asserts erroneously that once the 10th Judicial Circuit denied Respondent's Habeas Corpus Petition, that Respondent did not have the right to seek review by the Second District Court of Appeals, or that the Second District Court of Appeals did not have the authority under these unique set of circumstances to exercise its clearly constitutional right to issue its Writ of Habeas Corpus. This accusation is an affront to the justices that rendered their decision *per curiam* in the instant case at bar.

4. Petitioner's reliance in *State vs. Mancino*, 714 So.2d 429 (Fla. 1998); *State vs. McBride*, 848 So.2d 287(Fla. 2003); and *Baker vs. State*, 878 So.2d 1236 (Fla. 2004) are completely out of context with the unique and ultimately ideal set of circumstances outlined by this Honorable Court in *Alachula Juvenile Center*, *supra*, and *Murray*, *supra*.

There exist no factual disputes that warranted any form of post conviction motion attacking Respondent's conviction or sentence with regard to this issue at hand. In fact, the only issue was, and until this Honorable Court denies Petitioner relief, is that the actions leading up to, and after the illicit *nunc pro tunc* Order

initiated by the Department of Corrections and issued the Trial Court which acted to deny Respondent of the full panoply of constitutional safeguards and statutory vehicles for post conviction or appellate relief.

Given these unique circumstances, Respondent diligently researched the issue and determined by virtue of the opinion rendered by this Honorable Court in *Alachula Juvenile Center vs. T.O., supra*. See also, *Pearson vs. Moore*, 767 So.2d 1235 (Fla. 1st DCA 2000), that Respondent's appropriate response was to file in the Circuit Court where he was incarcerated a Petition for Writ of Habeas Corpus. This was further asserted by the opinions given in *Nelson vs. State*, 724 So.2d 1202 (Fla. 2nd DCA 1998); *Kings vs. State*, 891 So.2d 1067 (Fla. 2nd DCA 2004); *Kelly vs. State*, 414 So.2d 1117 (Fla. 4th DCA 1982); and *Williams vs. State*, 780 So.2d 1031 (Fla. 1st DCA 2001).

Furthermore, it became crystal clear after further research that a circuit court had no authority to enter amended judgments and sentence on defendants charged after defendant filed a notice of appeal from original judgment, as notice of appeal divested circuit court of jurisdiction. See, *Ivory vs. State*, 699 So.2d 820, 822 (Fla. 5th DCA 1997); *State vs. Girard*, 694 So.2d 131 (Fla. 5th DCA 1997). See also, *Wolfson vs. State*, 437 So.2d 174 (Fla. 2nd DCA 1983).

All other authorities cited by the Second District Court of Appeal in its opinion, which were presented by Respondent in his Petition for Writ of Habeas Corpus all support the unique circumstances which merited relief.

5. Finally, Petitioner's asserting that the impact of the Second District Court of Appeal's decision will increase court case loads through an increased number of Habeas Corpus Petitions. The burden this decision will place on court is exactly what Post Conviction Motions were designed to prevent. The Statement leads the fertile mind of Respondent to pose two questions to him and the jurists who shall read this Response. First, does the Petitioner imply that the Department of Corrections has committed in concert with other trial courts, the same set of unique circumstances as those of Respondent, and, thus set themselves above the law? Second, does Petitioner seek to abolish the Habeas Corpus vehicle that has been defined by this Honorable Court and the Constitution of the State of Florida, as well as that of the Constitution of the United States?

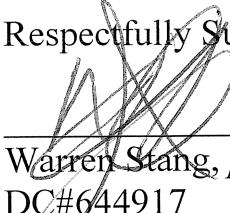
Petitioner is acting in manner contrary to their position, which is to uphold the Constitution and seek justice, even if faced with a decision they do not agree with.

CONCLUSION

As in the instant case at bar, Respondent avidly asserts that he has suffered blatant violations of his Constitutional rights, and as such brought his cause of action before the Honorable Second District Court of Appeals seeking relief, that was and is in accord with the safeguards that are those of a citizen as guaranteed by the United States Constitution and the Constitution of the great State of Florida. These safeguards were abandoned by the Florida Department of Corrections, the Trial Court, and now the Office of the Attorney General, Respondent's Prosecutor, and that the abandonment is the same as denying an accused and impairs the worth of the great constitutional safeguards by treating them as empty verbalisms. When the administration of the criminal law is hedged about as it is by the constitutional safeguards for the protection of an accused or in the instant case Respondent who by any measure is now being illegally detained, to deny Respondent or any other individual some of these statements safeguard is to imprison a mans in his privileges and call it the Constitution.

WHEREFORE, based upon the aforementioned assertions, arguments, attached Appendices, and opinion of the Honorable Second District Court of Appeal, the Record, cited Authorities, Respondent respectfully requests and prays that this Honorable Court reject Petitioner's pleadings and summarily deny Petitioner the relief they seek.

Respectfully Submitted,



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CERTIFICATE OF TYPE AND FONT

I HEREBY CERTIFY that the size and style of type used in this Response to Petitioner's Jurisdictional Brief is 14 point Times New Roman, in compliance with Florida Rules of Appellate Procedure, Rule 9.210 and 9.210 (a) (2).



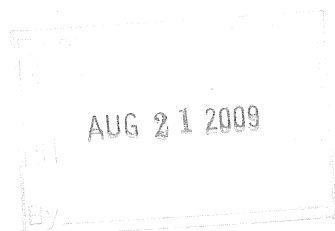
Warren Stang, *pro se*
DC#644917

DECLARATION

UNDER PENALTY OF PERJURY, I declare that I have read the contents of the foregoing Motion to Supplement the Record and Correct Erroneous Pleading made by Petitioner and that the facts stated therein are true and correct. Fla. Stat. 92.525 (2), and *State vs. Shearer*, 628 So.2d 1102 (Fla. 1994).



Warren Stang, *pro se*
DC#644917



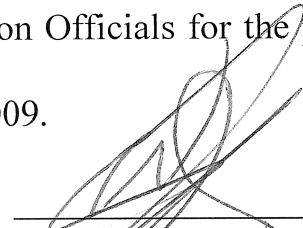
PROOF OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing Motion to Supplement the Record and Correct Erroneous Pleading made by Petitioner, was sent to:

1. The Clerk of Court, Supreme Court of Florida, 500 S. Duval Street, Tallahassee, Florida 32399; and

2. Office of the Attorney General, Criminal Appeals Division, Concourse Center 4, 3507 E. Frontage Road, Suite 200, Tampa, Florida 33607-7023,

And was placed in the hands of Prison Officials for the purpose of mailing via U.S. Mail, on this 21st day of August, 2009.



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