IN THE SUPREME COURT
STATE OF FLORIDA

CRAIG B. DANIELS,
Appellant,

V.

S.CT. CASE NO: SC11-1646
DCA CASE NO: 1D11-0969

STATE OF FLORIDA,
Appellee.
_____/

AMENDED JURISDICTIONAL BRIEF

Craig B. Daniels, DC# 091436
Lake Correctional Institution
19225 U.S. Highway 27
Clermont, FL 34715-9025

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BASIS FOR INVOKING JURISDICTION

This Honorable court has jurisdiction under *Article V, Section 3(b)(3), and Florida Rules of Appellate Procedure 9.030(a).* Recent examples of the exercise of discretionary jurisdiction to resolve express and direct conflict in decisions of the District Courts of Appeal are: *Arthur v. Arthur*, 2010 WL 114532 (Fla. 2010); *C.F.L. v. State*, 24 So.3d 1181 (Fla. 2009); *Coppola v. State*, 938 So.2d 507 (Fla. 2006); *Florida Dept. of Revenue v. Cummings*, 930 So.2d 604 (Fla. 2006); *Colby Materials Inc. v. Caldwell Const. Inc.*, 926 So.2d 1181 (Fla. 2006).

(PRO SE LITIGANTS)

The Appellant invokes the authority of *Haines v. Kerner,* 92 S. Ct. 594 (1972) and *Erickson v. Pardus*, 127 S. Ct. 2197 (2007) (Pro se pleadings must be liberally construed is favor of the pro se litigant "however inartfully plead they may be"; sworn allegations of pro se litigants must be accepted as true).

PROCEDURAL HISTORY

On or about October 25, 2004, the Appellant was arrested and charged by Information to One Count of Robbery with a Firearm *Section 812.13(2)(a), Florida Statutes (2004);* One Count of Grand Theft *Section 812.014(1)(a), Florida Statutes (2004)* and Burglary of a Conveyance with Dangerous Weapon *Section 810.02(1)(b), Florida Statutes (2004).* On or about May 19, 2005, the Appellant was sentenced to two Life sentences running consecutive.

On May 20, 2005, the Appellant timely appealed his judgment and conviction. The Appellant's direct appeal became per curiam affirmed on June 15, 2007. See *Daniels v. State*, 959 So.2d 756 (Fla. 1st DCA 2007). On January 28, 2008, the Appellant filed his first Motion for Postconviction Relief. The trial court struck said motion without prejudice. On September 4, 2008, the Appellant filed his second Motion for Postconviction Relief, which was dismissed because it did not contain an oath. On October 17, 2008, the Appellant refiled his motion correcting the deficiency. On April 20, 2009, the Appellant moved to voluntarily dismiss the said motion as it was inadequately pled. On June 11, 2009, the Appellant filed an Amended Motion for Postconviction Relief which was not addressed on its merits but rather denied with prejudice. The Appellant timely appealed both the Motion to Dismiss and Motion for Postconviction Relief. (See Case no: 1D10-0969). The attached opinion has warranted this brief.

STANDARD OF REVIEW

The standard governing review of decisions of law is referred to as the De Novo Standard. *Sumner Group Inc. v. M.C. Distribution, Inc.*, 949 So.2d 1205 (Fla. 4th DCA 2007).

ISSUE I

THE DISTRICT COURT OF APPEALS IS IN EXPRESS AND DIRECT CONFLICT WITH RULINGS FROM OTHER DISTRICT COURTS INCLUDING THE FLORIDA SUPREME COURT.

ARGUMENT

The Appellant's argument herein is quite simple! The Appellant filed a second Amended Motion for Postconviction Relief pursuant to *Florida Rules of Criminal Procedure 3.850.* On April 20, 2009, this Appellant timely filed a Motion to Voluntarily Dismiss his *Rule 3.850.* However, the trial court did not rule on the Appellant's Motion to Voluntarily Dismiss, but rather the trial court denied the Appellant's Motion for Postconviction Relief and Dismissed with prejudice the Amended and corrected 3.850. The Appellant notes here that in his Voluntary Motion to Dismiss he was attempting to correct the deficiencies of his motion to gain a proper and fair ruling. However, this did not take place.

Florida law is well established in holding "Because a Motion for Voluntary Dismissal was filed before the court ruled on his postconviction motion and there was no prejudice to the state, the Appellant was entitled to withdraw his Rule

3.850)". *Davis v. State*, 28 So.3d 168 (Fla. 1st DCA 2010) and *Hutchinson v. State*, 921 So.2d 780 (Fla. 1st DCA 2006).

In the case at bar, the Appellant's Motion to Dismiss was never ruled upon. The trial court erred when it ruled upon the Appellant's 3.850 and did not rule on the Motion for Voluntary Dismissal. The Appellant was attempting to correct his own deficiency before the trial court made its ruling and dismissed the Appellant's Motion for him to refile an Amended and corrected motion pursuant to *Spera v. State*, 971 So.2d 754 (Fla. 2007).

However, the Appellant was not even given this opportunity to correct his facially insufficient motion. The Appellant did however file an Amended Motion for Postconviction Relief which was timely[1] and facially sufficient. This motion was dismissed with prejudice and never addressed on its merits.

THE APPEAL AND OPINION

The Appellant timely appealed the final order of the trial court. In the opinion filed by the First District Court of Appeal (See Exhibit A), the opinion consists of the facts that the motion that was pending before the court, had been amended to several times and that the Appellant had several opportunities pursuant to *Spera* to correct this motion. However, this is not the case. The Appellant's original Motion for Postconviction Relief Rule 3.850 filed on February 6, 2008,

was struck by the trial court. The Appellant filed an Amended Rule 3.850 on March 19, 2008. This motion was also struck. Thus, the present motion that was filed by the Appellant was only his second Rule 3.850. *Florida Rules of Criminal Procedure 3.850(f)* states: A second or successive motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits, or if new and different grounds are alleged, the judge finds that the failure of the movant or the attorney to assert those grounds in a prior motion constituted an abuse of procedure governed by these rules. In the instant case, the Appellant's recently filed motion does assert and allege different grounds to which have never been addressed by the trial court. Moreover, the Appellant's two year period had not expired upon the filing of said motion. Thus, the appellate court in issuing its opinion misapplied the ruling in *Spera.*

THE CONFLICT OF LAW

The Supreme Court held in *Engle v. Liggett Group Inc.,* 945 So.2d 1246 (Fla. 2006) cert. denied 128 S. CT. 96 (U.S. 2007) that express conflict may be based upon the misapplication of a decision. *Aguilera v. Inservices Inc.,* 905 So.2d 84 (Fla. 2005). In the case at bar the Appellant's recent opinion conflicts with a previous decision in *Davis v. State*, 28 So.3d 168 (Fla. 1st DCA 2010) and *Smith v. State*, 2 So.3d 1073 (Fla. 4th DCA 2009). There the appellate courts stated "A

[1] The Appellant's two year time period had not expired upon the filing of the Final Amended Motion for

Motion for Voluntary Dismissal was filed before the court ruled on the postconviction motion, there was no prejudice to the state, and the appellant was entitled to withdraw his Rule 3.850. *Davis*, supra.

Thus, it is the same in *Smith*, supra. There the appellate court reversed the order of the trial court holding that the Appellant's motion was not successive and untimely. As the trial court had applied. In the instant case the same applies here as in *Davis*, supra. The Appellant timely filed a Motion to Voluntarily Dismiss which was not ruled upon. Thus the appellate court did commit a reversible error when it issued its opinion and denied the Appellant his right to have his motion properly ruled upon.

The appellate court and trial court should have applied the ruling from the Florida Supreme Court in *Bryant v. State*, 901 So.2d 810 (Fla. 2005) wherein it states as follows "Based upon due process concerns, logically extends to the other postconviction claims". In *Bryant*, we noted that ["I]n a civil context, striking pleadings and dismissing with prejudice are considered severe sanctions that require a strong justification. And that "Dismissing a [civil] complaint without granting at least one opportunity to amend is considered an abuse of discretion unless the complaint is not amendable". *Spera,* supra.

Postconviction Relief.

Thus the law is very clear on this matter holding that the trial court as well as the appellate court both erred in failing to rule on the Appellant's Motion for Voluntary Dismissal.

CONCLUSION

WHEREFORE, the Appellant in this cause prays that this Honorable Court grant jurisdiction over this appeal and resolve the said conflict between the District Courts and within itself.

Respectfully Submitted,

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UN-NOTARIZED OATH
Pursuant to Section 92.525(2), Florida Statutes (2010)

Under penalties of perjury, I, Craig B. Daniels declare that I have read the foregoing Initial Brief of Appellant and that the facts stated are true and correct.

Sept. 1, 2021
Date

Craig B. Daniels #091436
Craig B. Daniels, DC# 091436

CERTIFICATE OF SERVICE

I, Craig B. Daniels, hereby certify that a true and correct copy of the foregoing has been provided to:

Supreme Court of Florida
500 Duval Street
Tallahassee, FL 32399

Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399

by handing said Initial Brief to prison officials for mailing on this 1 day of September, 2011.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I, Craig B. Daniels, hereby certify that the foregoing Initial Brief has been typed in Times New Roman 14 point font and proportional spacing has been utilized.

Respectfully Submitted,

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