

SUPREME COURT OF FLORIDA

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LARRY JAMES BARBER,  
PETITIONER,

JAN 31 2019

For mailing WR 82,

vs  
STATE OF FLORIDA,  
RESPONDENT.

CASE No. SC 18-1739  
Lit. No. 81-24230

RESPONSE TO SHOW CAUSE  
DECEMBER 19, 2018

Received, Clerk, Supreme Court

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SINCE 1998 PETITIONER WAS PAROLED OUT-OF-CUSTODY MAY 2006, WHEN HE CONTACTED ELBERT SCHENKERS, PUBLIC DEFENDER DIRECT APPEAL ATTORNEY WHO ADVISED PETITIONER, HE NO LONGER WAS EMPLOYED THE PUBLIC DEFENDERS' OFFICE, BUT MAY CONTACT BETH WETZLER, AND INVOLVE THE PUBLIC DEFENDERS' FAILURE TO RAISE PER SE REVERSIBLE ERROR TO GIVE JURY REQUESTED ONE-STEP REMOVE LESSER INCLUDED OFFENSE ROBBERY WITH A WEAPON, PRESERVED REVIEW BY INDEPENDENT PRIVATE COUNSEL (EXHIBIT "A", PROHIBITION EXHIBIT "C" "H"); FUNDAMENTAL SENTENCING ERROR THE IMPROPER APPLICATION 775.087, FLORIDA STATUTE, AND DOUBLE JEOPARDY COLLATERAL ESTOPPEL VIOLATION A SECOND PROSECUTION THE PETITIONER FOR ROBBERY WITH A FIREARM ACQUITTED BY A JURY THE CO-DEFENDANT THE FIRST PROSECUTION BETWEEN SAME PARTIES, DENIED DISCOVERY SUBPOENA DUCES TECUM, AND MOTION TO REMINE. (PROHIBITION EXHIBIT "E", SUPPLEMENT APPENDIX "F").

MS. WELZER INSTRUCTED PETITIONER TO FORWARD ALL MOTIONS/RECORDS TO THE PUBLIC DEFENDERS OFFICE TO CONSIDER ASSISTANCE RESOLVING THE PROCEDURAL TIMELINESS, IRREGULARITIES AS A RESULT OF THE COURT APPOINTED CONFLICTING APPELLATE COUNSEL. UPON SEVERAL REQUEST THE PUBLIC DEFENDERS OFFICE REFUSE TO RETURN MY MOTION/RECORDS TO ME; TO DATE.

ON MAY 8, 2008 THE ELEVENTH JUDICIAL CIRCUIT COURT DENIED PETITION FOR WRIT OF HABEAS CORPUS A COLLATERAL CRIMINAL MOTION AND ALL ADDENDUMS, INSUFFICIENT, SUCCESSIVE, INCORPORATING ANOTHER ERRONEOUS ORDER FROM THE NINETEENTH JUDICIAL CIRCUIT COURT FEBRUARY 8, 1993<sup>WAS WRONG</sup>, AND INSTITUTED A "WARNING" TO SANCTION. EXHIBIT "B", PROHIBITION EXHIBIT "E". PETTERWAY v. MCNEEL, 987 So.2d. 20 (Fla. 2008)<sup>1</sup>.

ARTICLE V SECTION (3) (b) (7), Fla. CONST., PROVIDES JURISDICTION TO ISSUE WRIT OF PROHIBITION. AND PROHIBITION IS PROPER REMEDY TO CHALLENGE AN ORDER DENYING MOTION TO DISMISS CRIMINAL CONVICTION BASED ON DOUBLE JEOPARDY COLLATERAL ESTOPPEL GROUNDS CANNOT BE SUCCESSIVE, FRIVOLOUS OR PRECLUDED BY STATUTES OR RULES. MURRAY v. CHAZER, 671 So.2d. 183 (Fla. 3d DCA 1986); MITCHELL v. STATE, 699 So.2d. 810 (Fla. 10CA 1997); ULZBY v. STATE, 709 So.2d. 501 (Fla. 10CA 1999). SEE ALSO GREENSON v. STATE, 709 So.2d. 397 (Fla. 10CA 1998); TOLIVER v. STATE, 657 So.2d. 1291 (Fla. 10CA 1995); LEPPINS v. STATE, 626 So.2d. 1091 (Fla. 10CA 1993).

1 THE THIRD DISTRICT COURT OF APPEAL IMPOSED CONFLICT SANCTION THE CIRCUIT COURT. BARBER v. STATE 994 So.2d 376 (Fla. 3d DCA 2008).

THE PETITIONER HUMBLU REQUEST THE COURT TO CONSIDER HE IS A 70 YEAR OF AGE ELDER (ADA) WITH A HEART CONDITION DISABILITY AND RELEASE FROM OUTSIDE HOSPITAL, HAS BEEN INCARCERATED FOR 30 PLUS YEARS, TEN PLUS DISCIPLINARY FREE, PRESENTLY ENROLLED IN A FAITH AND CHARACTER BASED PROGRAM SINCE 2018 AND INDIGENT TO RETAIN ATTORNEY REPRESENTATION.

IN GOOD FAITH, ON JULY 19, 2013 THE ELEVENTH JUDICIAL CIRCUIT COURT, FOUND PETITIONER'S MOTION TO DEFINE / CLARIFY JUDGEMENT AND SENTENCE WAS GRANTED REQUIRED PERMISSION IN LIGHT OF 2008 WARNING GROUNDS OF SUFFICIENT NATURE. (EXHIBIT "C").

THE PETITIONER WAS MISTAKEN, AND UNDER THE IMPRESSION THAT ANY SANCTIONS WAS VACATED AND/OR WITHDRAWN BY THE COURT'S ORDER GRANTING MOTION'S SUFFICIENT GROUNDS RAISED ANY WELL SUCCEED IF REVIEWED ON THE MERITS SUPPORTED BY RECORDS. THE CIRCUIT COURT NEVER INDICATED THE 2008 PENDING SANCTION WAS VIOLATED AND ABOVE MOTION SENTENCE GROUND, LEGAL AND SUCCESSIVE SEPTEMBER 25, 2013.

UNLESS THE CLAIMS RAISED IN PETITION FOR WRIT OF PROHIBITION, A FRIVOLOUS PLEADING IS ONE THAT ON ITS FACE, IS SO READILY RECOGNIZABLE AS DEVOID OF MERIT "... THAT THERE IS LITTLE, IF ANY PROSPECT THAT IT CAN EVER "SUCCEED" ON THE GROUNDS RAISED. YASIR V. HANCOCK, 868 So. 2d. 670 (Fla. 3d DCA 2004).

THE CLAIMS THE PETITIONER'S WRIT OF PROHIBITION AND MOTIONS ARE OF A FUNDAMENTAL PER SE REVERSIBLE ERROR CLEARLY PRESERVED FOR REVIEW, MANIFEST INJUSTICE A FUNDAMENTAL SENTENCING ERROR APPLICATION STATE THAT WOULD RESULT IN A DIFFERENT SENTENCE, FACTUAL / ACTUAL INNOCENCE OF A FUNDAMENTALLY UNJUST INCARCERATION VIOLATION OF BOTH STATE AND FEDERAL CONSTITUTION THAT WOULD "SUCCEED" FROM THE FACE OF RECORDS WHEN REVIEWED ON THE MERITS.

STRUCTURAL ERRORS CONSTITUTE A "FUNDAMENTAL FLAW" IN THE TRIAL OR SENTENCING PROCEEDINGS AND UNDERMINE THE STRUCTURAL INTEGRITY OF THE ORIGINAL TRIAL ITSELF WARRANTING A NEW TRIAL IRRESPECTIVE OF PREJUDICE - VASQUEZ v. HELLER, 474 U.S. 854, 863-64, 106 S. CT. 617, 623, 88 L. Ed. 2d 598 (1986); U.S. v. WILES, 102 F. 3d 1043, 1056 (10th Cir. 1996); WILSON v. STATE, 764 So. 2d 13 (Fla. 4th DCA 2000).

WHEN PRO SE MOTION FILED, THE TRIAL COURT SHOULD NOT SANCTION IT FOR TECHNICAL NICETIES AND MUST HOLD THE PRO SE PRISONER TO A LESS STRINGENT STANDARD THAN FORMAL PLEADINGS DRAFTED BY LAWYER - NORTON v. STATE, 851 So. 2d 868 (Fla. 3d DCA 2003) HAWES v. KERRER, 404 U.S. 519, 90 S. Ct. 594, 30 L. Ed. 2d 657 (1974). IF SANCTION ORDER REFUSE TO ACCEPT PLEADINGS AS UNAUTHORIZED BY PRO SE FILING BUT ACCEPT PLEADINGS AND DEEM GROUNDS SUFFICIENT MERITS, THEN SANCTION WITH DISCIPLINARY ACTION AND FORFEIT SAVING THE COURTS VIOLATION ITS OWN IMPOSED SANCTION ORDER ACCEPTING PLEADINGS?

THERE IS NO INDICATION IN THE RECORD THAT THE CIRCUIT COURT CONDUCTED ANY INQUIRY INTO WHETHER PETITIONER'S MOTION WAS BROUGHT IN GOOD FAITH, ALTHOUGH SUFFICIENT, AND THE ONLY "FINDING" PROVIDED BY THE CIRCUIT COURT WAS A MERE LEGAL CONCLUSION THAT THE MOTION WAS SUCCESSIVE, NO FINDINGS EVER MADE MOTION FRIVOLOUS.

ON OCTOBER 22, 2013 THE CIRCUIT COURT AGAIN "APPOINTED COUNSEL PUBLIC DEFENDERS OFFICE A GOOD STANDING MEMBER THE FLORIDA BAR JAMES MOODY" FOR THE RELIEF REVIEW ON APPEAL. (3D13-2798). APPEAL COUNSEL'S INITIAL BRIEF ADVISE THE STATE ITS FAILURE TO ADDRESS DOUBLE JEOPARDY COLLATERAL ESTOPPEL GROUND PETITIONER'S ERRONEOUS CONVICTION ROBBERY WITH A FIREARM THE SAME (VICTIM) PARTIES. ACQUITTED BY A JURY THE ELEMENTS OF THE SAME PREVIOUS CRIME CHARGED IN THE FIRST PROSECUTION THE CONSPIRACY (PROHIBITION EXHIBIT "B" - "D") VIOLATION ONE PROCESS AND RIGHT TO FAIR TRIAL. SMITH V. STATE, 211 So.2d. 176 (Fla. 3DCA 2016). Improper Application 775.187, H.A.S.A. AND OMITTED REQUESTED REQUIRED ONE-STEP REMOVED JURY INSTRUCTION, ALSO IN VIOLATION ONE PROCESS RIGHT TO FAIR TRIAL. HERE, THE PUBLIC DEFENDER, REFUSE TO FILE PETITIONER'S REPLY BRIEF, PROHIBITION UPON REQUEST, REHEARING REVIEW CREATING PROCEDURAL DEFAULT, STATUTE OF LIMITATIONS AND UNWARRANTED SHOW CAUSE SANCTIONS, MERITORIOUS CLAIMS FOUND TO BE "SUFFICIENT" CIRCUIT COURT AND DISTRICT COURT REVIEW. (EXHIBIT "E"). HAPER V. STATE, 43 So.3d. 174 (Fla. 3DCA 2010). BROWN V. STATE, 829 So.2d. 975 (Fla. 1DCA 2002).

NO ALLEGATIONS MADE OF FRIVOLOUSNESS, LIMITATIONS, AND WAS PER CURIAM AFFIRMED ON APPEAL, MANDATE ISSUED MARCH 15, 2015. KEY v. STATE, 990 So.2d. 539 (Fla. 3d DCA 2008).

FURTHERMORE, THE PLAIN MEANING OF THE PHRASE "COLLATERAL CRIMINAL PROCEEDING" USED IN SECTION 944.279 REFERS TO A TYPE OF CRIMINAL PROCEEDING THAT IS "CRIMINAL TO" OR SOMEWHAT SEPARATED FROM THE "MAIN" CRIMINAL PROCEEDINGS. THE VERY LIMITED PURPOSE OF INTERPRETING THE STATUTES CREATED OR AMENDED BY CHAPTER 96-106, PREAMBLE AT 92-93, LAWS OF FLORIDA (EMPHASIS ADDED). HALL v. STATE, 758 So.2d. 575 (Fla. 2000). IF THE ORIGINAL INTENT OF THE ACT WAS EVIDENCED BY THE PREAMBLE WHICH CLEARLY REFERS ONLY TO CIVIL ACTIONS, ANY "BROADER INTENT" TO INCLUDE CRIMINAL ACTION IS SIMPLY NOT THERE. A PERSON'S FELONY CONVICTION WOULD BE THE RESULT OF THE "MAIN" CRIMINAL PROCEEDING ORIGINAL PROHIBITION CHALLENGES DOUBLE JEOPARDY WOULD BE "COLLATERAL" TO PETITIONER'S "MAIN" CRIMINAL CONVICTION. THERE IS NOTHING IN THIS ANALYSIS INDICATING THAT THE LEGISLATURE INTENDED TO SEPARATE 944.28(b)(1) FROM 944.279 OR IN ANY WAY TO ALLOW 944.28(b)(2) TO BE USED TO SANCTION FRIVOLOUS COLLATERAL CRIMINAL PROCEEDINGS SUCH AS POST CONVICTION PROCEEDINGS INDEPENDENTLY OF 944.279 WHICH HAS ALWAYS PROVIDED AND STILL PROVIDES, THAT SUCH SANCTIONS MAY NOT BE UTILIZED IN COLLATERAL CRIMINAL PROCEEDINGS THE PETITIONER'S "MAIN" CRIMINAL CONVICTION RETROACTIVELY. ART. II, SECTION 3; FLA. CONST. HOLLY v. AURD, 450 So.2d. 211 (Fla. 1984); BARBER v. STATE, 994 So.2d. 376 (Fla. 3d DCA 2008).

THE PETITIONER SUBMITS REASONS WHY SANCTION SHOULD NOT BE IMPOSED: FIRST, THE CIRCUIT COURT ORDER DENYING WRIT OF HABEAS CORPUS ON A DIFFERENT GROUND WAS A "WARNING NOT BEING ABLE TO FILE ANY PLEADINGS WITH THE COURT OR RESULT IN LOSS OF PRIVILEGES". (EXHIBIT "B"). ON APPEAL, THE THIRD DISTRICT AND THIS COURT ORDERED A DIFFERENT SANCTION THAT "ANY PLEADINGS CIRCUIT COURT BE BY COUNSEL IN GOOD STANDING THE FLORIDA BAR, ALSO INSTRUCTING THE CLERK TO REFUSE TO ACCEPT ANY FUTURE PLEADINGS SUBMITTED BY THE PETITIONER RELATED TO HIS CONVICTION AND SENTENCE. BARBER V. STATE, 994 So. 2d. 376 (Fla. 3d DCA 2008) (3D 08-1875); PETWAY V. STATE, 987 So. 2d. 20 (Fla. 2008).

SECOND, THE PETITIONER, IN GOOD FAITH ON JULY 5, 2013 REQUEST PERMISSION CIRCUIT COURT TO FILE SUFFICIENT MOTION AND GROUNDS FOR RELIEF (PENDING SANCTION (2008)), AND WAS GRANTED PERMISSION JULY 29, 2013. ON SEPTEMBER 25, 2013 THE CIRCUIT COURT SUMMARILY DENIED MOTION AS BEING SUCCESSIVE, LEGAL SENTENCE, AND PETITIONER NEVER CHARGED IN CASE NO. 81-760 THAT OF THE CO-DEFENDANT DERRICK BARRISON. ON OCTOBER 27, 2013 THE CIRCUIT COURT APPOINTED COUNSEL IN GOOD STANDING THE FLORIDA BAR, THE PUBLIC DEFENDERS OFFICE FOR PURPOSE OF APPEAL (3D13-2778); COUNSEL RAISED IDENTICAL SUFFICIENT GROUNDS FOR RELIEF ITS INITIAL BRIEF, RAISED IN WRIT OF PROHIBITION THIS COURT PROCEEDING.

THE PETITIONER WAS UNDER THE IMPRESSION THE CIRCUIT COURT'S GRANTING PERMISSION TO FILE PLEADINGS TERMINATED ALL PENDING SANCTIONS (EXHIBIT "C"), AND ACCEPTING PLEADINGS WITHOUT ANY REFERENCE TO SANCTION. THE DISTRICT COURT MAY HAVE LACK AUTHORITY OR WITHOUT JURISDICTION TO REGULATE AND ALTER THE IMPOSITION OF AN INCREASE SANCTION PENALTY PERTAINING TO CONFINEMENT, LOSS OF CREDIT TIME CONTRARY TO WAIVING OR LOSS OF PRIVILEGES. CUBSTA V. STATE, 999 So.2d. 648 (Fla. 3d CA 2006); MOORE V. BANKS, 996 So 2d 1961 (Fla. 3d CA 2001); SANGVIETARY V. ACOSTA, 659 So.2d. 449 (Fla. 3d CA 1995). SEE ALSO McBRINER V. STATE, 919 So.2d. 673 (Fla. 10 CA 2006).

Plainly, FROM FACE OF THE RECORDS AND CONFESSION OF RESPONDENT "PETITIONER WAS NEVER CHARGED THE SAME CASE NO. 81-760" AS CODEFENDANT BARRISON, HOWEVER; A JURY MAY CONSIDER OF THE GREATER OFFENSE (PROHIBITION EXHIBIT "B", "D") OR THE LESSER OFFENSE (PROHIBITION EXHIBIT "C"), BUT NOT ON BOTH OFFENSES THE SAME SET OF FACTS AND PARTIES. THE PETITIONER IS ACTUALLY, FACTUALLY, AND LEGALLY INNOCENCE THE CHARGES, JUDGEMENT, CONVICTION, AND SENTENCE OFFENSE ROBBERY WITH A FIREARM, AND MUST BE AFFORDED LIBERAL CONSTRUCTION THE CIRCUMSTANCES OF FACTS AND PLEADINGS FOR RELIEF. BOAG V. MCDONOUGH, 454 U.S. 364 (1982); DENTON V. HERNANDEZ, 404 U.S. 519 (1972); HOUSE V. BEL, 547 U.S. 518 (2006); SAUNDERS V. UNITED STATES, 113 F.3d. 184 (11th Cir. 1997); IN RE OURSAINVILLE, 119 F.3d. 245 (3d. Cir. 1997).



WHERE INDIGENT PETITIONER FACE 'THE DANGER OF CONVICTION BECAUSE HE DOES NOT KNOW HOW TO ESTABLISH HIS INNOCENCE'. POWELL V. ALABAMA, 387 U.S. 45, 77 L. Ed. 158 (1937). AND APPEAL COUNSEL FAIL TO HONOR TIMELY REQUEST FOR REPLY BRIEF. MOORE V. STATE, 661 So. 2d. 921 (Fla. 10CA 1995).

THE PETITIONER DID NOT KNOWINGLY DISOBEY AN OBLIGATORY ORDER OF THE COURT, UNDER THE RULES OF A TRIBUNAL WARNING EXCEPT FOR AN OPEN OPPORTUNITY TO FILE A GRANTED SUFFICIENT MOTION AND GROUND BY THE SAME TRIBUNAL BASED ASSERTIONS THAT NO VALID SANCTION EXISTED OR INDICATED BY THE COURT. ABSENT EVIDENCE OF A WILLFUL FAILURE TO COMPLY OR EXTENSIVE PREJUDICE TO THE RESPONDENT, HOWEVER, THE GRANTING OF SUCH A ORDER PERMITTING PETITIONER TO FILE MOTION TO DEFINE / CLARIFY JUDGEMENT BY THE COURT.

CONSTITUTES AN ABUSE OF DISCRETION ON ITS PART. CLARK V. LAKE CITY POLICE DEPT., 723 So. 2d. 901 (Fla. 10CA 1999).

IT ALSO HAS BEEN FOUND TO BE AN ABUSE OF DISCRETION TO STRIKE OR SANCTION PLEADINGS WHERE A PETITIONER IS PUNISHED FOR FAILURE OF COUNSEL, OR WHERE THERE IS ONLY A SINGLE FAILURE TO COMPLY WITHOUT GRANTED PERMISSION WHICH DID NOT RESULT IN EXTREME PREJUDICE TO THE RESPONDENT.

HENCE, THE DISTRICT COURT AND THIS COURT HAS JURISDICTION TO ENTERTAIN SECOND PETITION BECAUSE PETITIONER OBTAINED AN ORDER FROM THE CIRCUIT COURT AUTHORIZING HIM TO FILE IT. BURTON V. STATE, 549 U.S. 147 157 157 (2007); FUGATE V. DEPT OF COR., 301 F. 3d. 1287, 1288 (11 Cir. 2002).

PETITIONER SUBMITS THE APPLICATION OF  
LIMITATIONS TO HIS FIRST WRIT OF PROHIBITION  
CONSTITUTES AN UNCONSTITUTIONAL VIOLATION OF  
THE SUSPENSION OF THE WRIT. U.S. CONST. ART 1,  
SECTION 9 cl. 2. EX PARTE YEAGER, 75 U.S. 85 (1886).  
JOHNSON v. AVERY, 393 U.S. 483 (1969). BOWEN v. JONHSTON,  
306 U.S. 19 (1939). SEE ALSO WYLIKOWSKI v. SINGLETARY,  
286 F.3d. 1213 (11 Cir. 2002).

ASSUMING ARGUENDO, THAT A CIRCUIT COURT  
JUDGE DOES HAVE INHERENT AUTHORITY TO PREVENT  
AN ASSERTIVE LITIGANT FROM APPEARING WITHOUT  
COUNSEL<sup>4</sup> PENDING SANCTION. THE CIRCUIT COURT  
IN THIS CASE MAY HAVE EXCEEDED ITS  
DISCRETIONARY AUTHORITY WHEN INTERFERING  
WITH PENDING SANCTION IMPOSED. WHEN LIMITING  
THE CONSTITUTIONAL RIGHT OF ACCESS TO THE  
COURTS, ESSENTIAL DUE PROCESS SAFEGUARDS MUST  
FIRST BE PROVIDED AND THE RESTRAINING ORDER  
MUST NOT EXCEED ITS PROPER SCOPE. VASTA, SUPRA.  
MARTIN v. CIRCUIT COURT SEVENTEENTH JUDICIAL  
CIRCUIT, 627 So. 2d. 1298 (Fla. 402A 1993). ARTICLE V,  
SECTION 9, 13, 17, 21, Fla. CONST. ARTICLE 8 UNIVERSAL  
DECLARATION OF HUMAN RIGHTS.

Respectfully,  
151 J. J. Barber  
LARRY BARBER, PETITIONER

DONE ON THIS 31<sup>st</sup> day of JANUARY 2019

1 GRANTED PERMISSION TO FILE PLEADING AFTER  
SANCTIONS IMPOSED RESULT STATE ACTION.  
(EXHIBIT "C").

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THE COURT: We will be giving armed robbery.

MR. BAER: Robbery with a firearm.

MR. GOLDSTEIN: This is robbery with a weapon.

THE COURT: On the one of the charge on page 265 he is entitled to robbery. We will have to get the instructions as far as with the weapon and/or with no weapon. Grant that second degree we will be talking?

MR. BAER: Correct.

THE COURT: Notice there is an objection and basis for it given by the defense. I would be omitting battery, aggravated battery. You will be entitled to assault, aggravated assault. Let me see about extortion.

MR. BAER: I don't think there is any testimony about extortion, Judge.

THE COURT: Are there any other requests, Mr. Goldstein, that you're making?

MR. GOLDSTEIN: Armed and unarmed.

THE COURT: Robbery with a firearm, just with a weapon, not a firearm and just plain robbery. We will

NEW YORK  
36 COUNTY  
BRUCKER ST  
NEW YORK

NATIONAL REPORTING SERVICE  
MANY LEGAL  
OFFICIAL COURT REPORTER

MIAMI  
200 N. BAY ST  
MIAMI, FLA.

00002272

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA  
CRIMINAL DIVISION

STATE OF FLORIDA,  
Plaintiff,

Case #: F81-24230

Section No. 12  
Judge Peter Adrien

vs.

LARRY JAMES BARBER,  
Defendant.

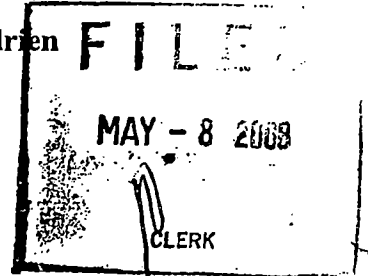


EXHIBIT "B"

ORDER ON DEFENDANT'S PETITION FOR WRIT OF CERTIORARI

THIS CAUSE having come before the Court on Defendant's Petition for Writ of Certiorari and all addendums thereto. The Court having reviewed these motions, the contents of the court file, and being otherwise fully advised in the premises,

**FINDS AS FOLLOWS:**

On or about April 7<sup>th</sup>, 1982, Defendant was convicted of Armed Robbery with a firearm. Defendant was subsequently sentenced to life in prison. Defendant has filed this motion and raises the following issue:

"The Defendant submits that the court's order denying 3.850(h) motion for post conviction and 79.01 Fla. Stat., Habeas Corpus constitute a departure from the essential requirements of law where there is no other adequate remedy by review. Compliance with the lower court's order would cause irreparable injury of a grievous oversight to give and omit from the jury's verdict form the option of a requested necessarily lesser included offense constitute a serious error and violation of clear established principles of law resulting in a miscarriage of justice.

The Defendant "seeks an order of the Court, quashing (previous) orders denying post conviction and habeas corpus, evidentiary hearing, re-sentencing to the omitted Instruction, Appointment of Counsel, new trial.

Whether the Court's orders denying post conviction and habeas corpus departed from essential requirement of law in making fact finding determination that per se reversible error is harmless, a serious violation of clearly established principles of law, subject to presumption of correctness, result in a complete miscarriage of justice rendering proceedings fundamentally unfair in violation of the due process clause of the

EXHIBIT "B"

fourteenth section I, Fifth and Eight Amendment of the United States Constitution and Article I Section 9, 13, 17, 21 of the Florida Constitution.”

This Petition filed by the Defendant is legally insufficient to grant the relief requested and is therefore Denied.

Defendant's motion is also clearly successive. Although the Defendant states in his motion that he has not raised this motion previously, he has attached prior orders entered by different courts denying this exact same issue. (See attached "Exhibits I & II"). He alleges that the most recent order from the Third DCA denying his last post conviction motion on this issue is a non final order and wants this court to review it. However, this issue has been previously ruled upon and affirmed on appeal.

Furthermore, the Defendant attached an order from the Nineteenth Circuit, dated February 8<sup>th</sup>, 1993 and signed by the Honorable Marc A. Cianca, which clearly states that his motion is conclusively refuted by the record. That order even had an attachment of the verdict form so that the Defendant could clearly see that the jury was in fact given the option of choosing between Robbery with a firearm and Robbery without a firearm, amongst numerous other lessers. (See attached "Exhibit II & III"). Thus Defendant's motion is also conclusively refuted by the record.

The Defendant's present motion is nothing more than a complete and total abuse of this process. The Defendant is WRONG and has had this issue reviewed on numerous occasions by different courts, even one outside of the eleventh judicial circuit. Since the Defendant was convicted, he has had more than his one bite at the apple. The Defendant's pleadings are a perfect example as to why the system is so back logged, because even though it may be a simple issue that is being raised, when people such as this Defendant keeps filing and re-filing the same motion it takes away time which the

EXHIBIT  
B  
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EXHIBIT B

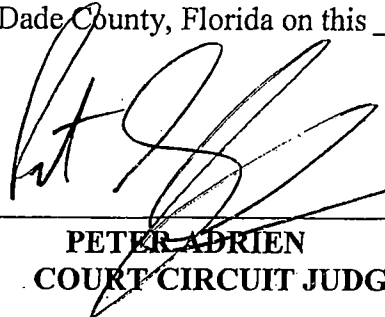
court could be utilizing on other post conviction motions that raise legitimate issues. The Defendant is hereby forewarned and cautioned regarding the filing of any further successive and/or frivolous motions. Should the Defendant fail to heed this warning, the Defendant may be sanctioned accordingly, including, but not limited to not being able to file any further pleadings with this court and/or loss of any special privileges he currently enjoys in the prison facility where he is located.

Based on the foregoing findings, it is thereupon

**ORDERED AND ADJUGED** that Defendant's Petition for Writ of Certiorari and all addendums thereto are hereby DENIED. Defendant is advised that he has the right to file an appeal within 30 days of the rendition of this Order. In the event that the Defendant takes an appeal, the Clerk of this Court is hereby ordered to transport, as part of this order, to the appellate court the following:

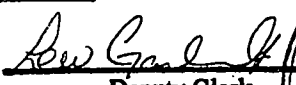
- 1. Exhibit I – Post conviction order dated August 10, 2004.
- 2. Exhibit II – Post conviction order dated February 8, 1993.
- 3. Exhibit III – Verdict form.

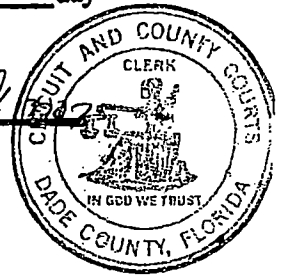
DONE AND ADJUGED in Miami-Dade County, Florida on this 5<sup>th</sup> day of May, 2008.

  
 \_\_\_\_\_  
 PETER ADRIEN  
 COURT CIRCUIT JUDGE

cc. Larry Barber, DC #047957, Okeechobee Correctional Institution, 3420 NE 168 Street, Okeechobee, Florida 34972-4824 State Attorney's Office

I CERTIFY that a copy of this order has been furnished to the MOVANT, LARRY BARBER by mail this 2ND day of MAY, 2008.

  
 Deputy Clerk



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.

DIVISION <input checked="" type="checkbox"/> CRIMINAL <input type="checkbox"/> OTHER	ORDER <input checked="" type="checkbox"/> GRANTING / <input type="checkbox"/> DENYING DEFENDANT'S PRO SE MOTION FOR: <u>REQUESTING PERMISSION</u> <u>TO FILE MOTION TO DEFINE AND CLARIFY</u> <u>SENTENCE FILED 7/2/2013</u>	CASE NUMBER F81-24230
THE STATE OF FLORIDA   PLAINTIFF	VS.  LARRY JAMES BARBER   DEFENDANT	CLOCK IN 2013 JUL 29 PM 3:44 LRK CIRCUIT & COUNTY COURTS MIAMI-DADE COUNTY, FL CIRCUIT CRIMINAL #26

THIS CAUSE HAVING COME BEFORE the Court upon the Defendant's Pro Se Motion and the Court having examined the said Motion and the Motion being  sufficient/  insufficient to support the relief prayed, IT IS THEREUPON, CONSIDERED, ORDERED AND ADJUDGED that the above Pro Se Motion filed by the above prisoner be, and the same is hereby

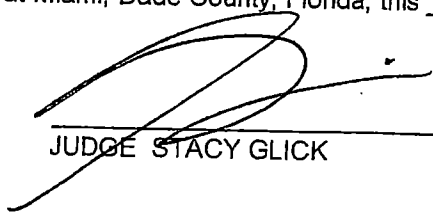
GRANTED. \_\_\_\_\_

The movant is advised that any change in the original Judgment or Sentence will be forwarded to the Department of Corrections under separate order.

DENIED. \_\_\_\_\_

The movant is advised that he/she has the right to appeal within thirty (30) days of the rendition of this order.

DONE AND ORDERED IN  Chambers  Open Court at Miami, Dade County, Florida, this 19th day of JULY, A.D., 2013.

  
 JUDGE STACY GLICK

I CERTIFY that a copy hereof has been furnished to the movant, LARRY JAMES BARBER, by mail this 19th day of JULY 2013.

STATE OF FLORIDA, COUNTY OF DADE  
 I HEREBY CERTIFY that the foregoing is a true and correct copy of the original on file in this office  
JUL 30 2013  
 HARVEY RUVIN, CLERK of Circuit and County Courts  
 Deputy Clerk Lew Garland Jr  
 Clerk's Web address: [www.miami-dadeclerk.com](http://www.miami-dadeclerk.com)



HARVEY RUVIN, Clerk

BY: Lew Garland Jr  
 Deputy Clerk LEW GARLAND JR

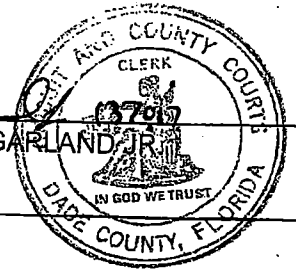


EXHIBIT G

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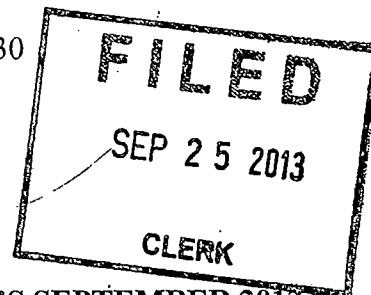
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,  
*Plaintiff,*

vs.

LARRY JAMES BARBER,  
*Defendant*

Case No. F81-24230  
Section No. 12  
Judge S. GLICK



**ORDER WITH ATTACHMENTS DENYING DEFENDANT'S SEPTEMBER 2013  
MOTION TO DEFINE AND CLARIFY SENTENCE**

THIS CAUSE having come before this Court on the defendant, LARRY JAMES BARBER's, Motion to Define and Clarify Sentence and this Court having reviewed the motion, the court files and records in this case, and being otherwise fully advised in the premises therein, hereby **DENIES** the defendant's motion on any and all of the following grounds: **(a)** pursuant to Rule 3.700, the defendant's motion is fails to state a claim for which this court can grant relief, **(b)** pursuant to Rule 3.800, the defendant fails to show his sentence is illegal, **(c)** the defendant's sentence is legal and successive.

In support thereof, this court makes the following findings:

1. The defendant titles his motion "Motion to Define and Clarify Sentence pursuant to rule 3.700," but is really arguing a motion to correct illegal sentence pursuant to rule 3.800.
2. The defendant essentially argues that the 3 YMM attached to the sentence is illegal because he was never in possession of a firearm.
3. To support his arguments, the defendant attaches the verdict forms of case F81-760 and F81-24230. One verdict form (F81-760) does not make a finding as to firearm. The second verdict form (F81-24230) does make a finding as to firearm.
4. Noteworthy however, is that the verdict form attached in case F81-760, pertains to Derrick Garrison, not the defendant. A review of the records indicates the defendant was never charged under case number 81-760. Instead, the defendant was charged under case F81-24230. A review of the verdict form in case F81-24230 shows the jury found him guilty of robbery with a firearm.
5. The defendant's recitation of facts in his motion are likewise deceitful.

EXHIBIT "D"



6. Consequently, the defendant fails to state a proper claim pursuant to Rule 3.700. He also fails to show the sentence is illegal. This court further finds the sentence is legal and successive to his endless pursuit to file post-conviction motions. See attached court docket.

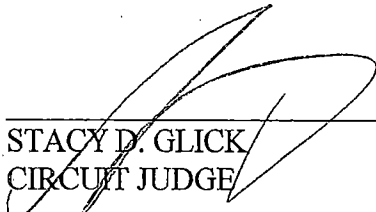
ORDERED AND ADJUDGED that the Defendant's Motion for post conviction relief is hereby DENIED.

The defendant, LARRY JAMES BARBER, DC # 47957, Everglades CI, 1599 S.W. 187 Avenue, Miami, FL 33194 is hereby notified that he has the right to appeal this order to the District Court of Appeal of Florida, Third District within thirty (30) days of the signing and filing of this order.

In the event that the defendant takes an appeal of this order, the Clerk of this Court is hereby ordered to transport, as part of this order, to the appellate court the following:

1. Defendant's instant motion
2. This order with attachments.

DONE AND ORDERED at Miami, Miami-Dade County, Florida, this the 25 day of Sept., 2013.

  
STACY D. GLICK  
CIRCUIT JUDGE

STATE OF FLORIDA, COUNTY OF DADE  
I HEREBY CERTIFY that the foregoing is a true and correct copy of the original as filed with the clerk  
SEP 26 2013 40 27  
HARVEY RUVIN, CLERK of Circuit and County Courts  
Deputy Clerk Lew Carl 913707



I CERTIFY that a copy of this order has been furnished to the MOVANT, Larry James Barber by mail this 26<sup>th</sup> day of September, 20 13.

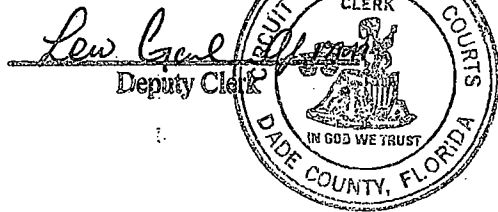


EXHIBIT "D"



LAW OFFICES OF THE  
**PUBLIC DEFENDER**  
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

Bennett H. Brummer Building  
1320 NW 14<sup>TH</sup> Street  
Miami, Florida 33125

**CARLOS J. MARTINEZ**  
PUBLIC DEFENDER

305.545.1960  
www.pdmiami.com

December 3, 2014

Larry Barber  
047957  
EVERGLADES CORRECTIONAL INSTITUTION  
1599 SW 187 AVE  
MIAMI, FL 33194-2801

**LEGAL CONFIDENTIAL**

Re: Case No. F81024230  
Judge: Stacy D. Glick  
Appellate Court Case No. DCA:13-2728

Dear Mr. Barber:

Thank you for your letter. I agree that the state's answer does not comprehend the issue, and misunderstands the argument raised in the initial brief. I do not believe that a reply brief would have benefitted your case, as nothing that the state said warranted a response. Simply put, they missed the point. Now we must wait for a decision from the Third District. I sincerely hope that they rule in your favor and reverse your case. Happy Holidays to you as well, and please feel free to continue to write if you have further questions.

Sincerely,

  
James Moody  
Assistant Public Defender

JDM:er

*ATTACH RESPONSE EXHIBIT "E"*

SUBORN AFFIDAVIT  
CASE No. 81-24230

UNDER PENALTIES OF PERJURY, I, LARRY BARBER, HEREBY MAKES THIS FOREGOING STATEMENT FREELY AND VOLUNTARY WITHOUT UNLAWFUL FORCE AND STATE THAT THE CONTENTS HEREIN ARE TRUE AND CORRECT.

THE DEFENDANT IS A 70 YEAR OLD DISABLED INMATE WITH INCREASING MEDICAL CONDITIONS AND MEDICATIONS, AND HAS BEEN IN A TRANSIT STATUS NOVEMBER 2017.

THE DEFENDANT HAS BEEN ARBITRARILY DENIED ACCESS TO HIS LEGAL STORED PROPERTY, ALSO IN TRANSIT STATUS, FOR THE PROPER REVIEW AND PREPARATION COURT PLEADING, DENIED MEANINGFUL ACCESS TO COURT.

THE DEFENDANT IS CURRENTLY ENROLL A CHARACTER AND FAITH BASE PROGRAMS, AND HAS NOT RECEIVED A DISCIPLINARY REPORT FOR MORE THAN TEN (10) YEARS.

THE DEFENDANT HAS NEVER INTENDED TO OBSTRUCT THE JUDICIAL ADMINISTRATION OF JUSTICE ANY COURT WHERE THE ENDS OF JUSTICE WARRANTS REVIEW THE INJUSTICE OF DENIED EQUAL PROTECTION AND SUBSTANTIVE DUE PROCESS HIS JUDGEMENT, CONVICTION, AND SENTENCE.

SINCE, THE IMPOSED 2008 SANCTIONS ALL MOTIONS, PETITIONS, HEARINGS, FILED THE COURTS WERE RETURN TO THE DEFENDANT FOR LACK OF JURISDICTION AND BEING UNAUTHORIZED.

THEN JULY 19, 2013 THE COURT FOUND DEFENDANT'S REQUEST FOR PERMISSION TO FILE MOTION SUFFICIENT GRANTED DEFENDANT BELIEVE 2008 SANCTIONS REMOVED. FURTHER, UPON THE COURT'S SUMMARY DENIAL OF COLLATERAL ESTOPPEL GROUND RAISED AND APPOINTMENT OF THE PUBLIC DEFENDERS OFFICE FOR APPEAL LEAD DEFENDANT TO BELIEVE 2008 SANCTION WAS VACATED. THE COURT NEVER GAVE DEFENDANT NOTICE FOR CONTEMPT OR HETD PUBLIC DEFENDER IN CONTEMPT (3013-8728). AND THERE WAS "NO DELIBERATE EFFORT" BY THE DEFENDANT TO CONCEAL OR DECEIVE THE FACTS OF 2008 SANCTION PENDING, THAT HIS WRIT OF PROHIBITION WOULD BE SUBJECT TO CONTEMPT, FRIVOLOUS FILING, OR SUCCESSIVE MOTION.

THE DEFENDANT, DUE TO ACTION OF THE STATE GRANTING PERMISSION TO FILE COLLATERAL ESTOPPEL GROUND MOTION, APPOINTING COUNSEL ON APPEAL, AND FAILING TO GIVE NOTICE OF 2008 SANCTIONS, THE DEFENDANT WAS UNDER THE IMPRESSION THAT A DIFFERENT JUDGE AND HEARING, THE 2008 SANCTION WAS VACATED.

DEFENDANT IS HUMBLy GRATEFUL APPRECIATING THIS COURT GRANTING RETIEF TO FILE PRO SE MOTIONS AND APPOINTING COUNSEL IN GOOD STANDING THE FLORIDA BAR ON APPEAL. THE 2008 "INDEFINITE" SANCTION ORDER OF THE THIRD DISTRICT COURT OF APPEAL INSTRUCTED THE CLERK TO REFECT ACCEPTING ANY FILING BY DEFENDANT. THE COURT FAIL TO GIVE FAIR NOTICE OF SANCTION AT DEFENDANT'S FILING REQUESTING PERMISSION, AND COMPLY WITH PROCEDURAL DUE PROCESS 2008 SANCTIONS.

THIS COURT CLEARLY VIOLATED SANCTION "INDEFINITE" COURT ORDER, AND NOW SEEK TO IMPOSE DISCIPLINARY MEASURES AGAINST DEFENDANT GOING IN A POSITIVE FORWARD DIRECTION WITHIN THESE CONFINES. HAD THE COURT REFECT ACCEPTING DEFENDANT'S FUTURE FILING OF MOTION, DENIED REQUESTED RETIEF, AND FAIL TO APPOINT COUNSEL ON APPEAL, THESE PROCEEDINGS WOULD BE MOOT. OR THE CIRCUIT COURT WOULD HAVE IMPOSE LOSS OF PRIVILEGES WHERE THE DISTRICT COURT CONTINUES TO REFECT ACCEPTING MOTIONS.

THIS ADMINISTRATIVE OVERSIGHT OF "INDEFINITE" SANCTION ORDER IMPOSED IN 2008, NEEDED BOTH THE COURT AND DEFENDANT, HOWEVER, ONLY DEFENDANT SUFFERS UNCONSTITUTIONAL IMPOSITION OF GUEL AND UNUSUAL PUNISHMENT, AND SUSPEND HIS WRIT OF PROHIBITION. SECTION 8 OF THE BILL OF RIGHTS; ARTICLE 1 SECTION 9, CL. 2.

JANUARY 31, 2019  
DATE

SINCERELY  
LARRY BARBER

PURSUANT TO 92.525 FLORIDA STATUTE