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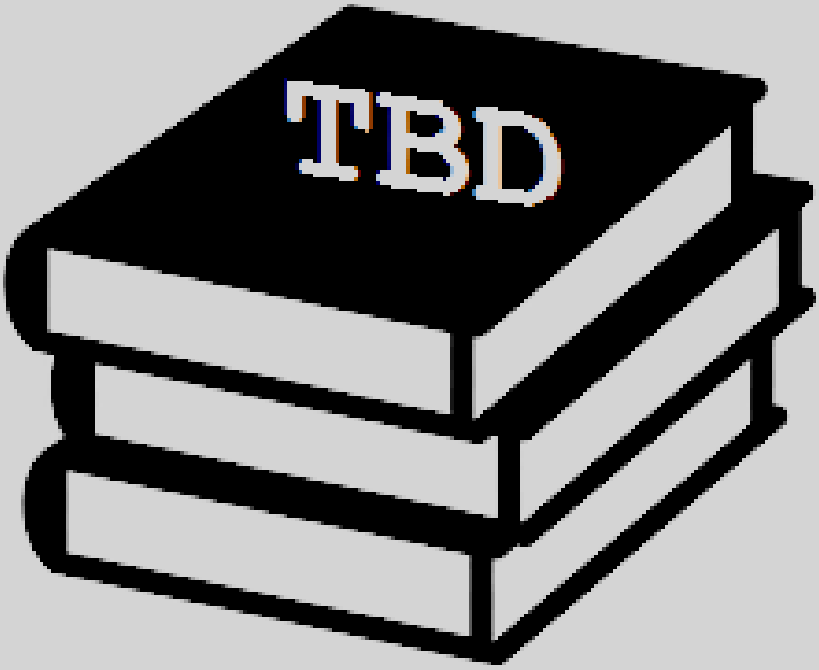

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SUPREME COURT OF FLORIDA

TIMMY WILLIAMS,
Petitioner,

v.

Case No.:_____
Dist. Ct. No.: 2D16-889
L.T. No.: CF92-04048

STATE OF Florida
Respondent.
_____/

PETITION FOR WRIT OF MANDAMUS

Pursuant to Rule 1.630 of Fla. R. Liv. P. Timmy Williams, petition this Honorable Court to issue the writ of mandamus; compelling the Second District Court of Appeal to reinstate Appeal and/or adhere to and enforce the legal principle established in this Court *Nordelo* holding.[1]

I

BASIS FOR INVOKING JURISDICTION

This Court has jurisdiction to issue the Writ of Mandamus under Article V. 3(b)(8) of Florida Constitution to correct its inferior court(s) decision rendered contrary to

[1] *Nordelo v. State,* 93 So.3d 178 (Fla. 2002)

this Court. See Fla. Bar. 427 So.2d 733 (Fla. 1983); *Griffin v. Fla. Parole Comm'n,* 451 So.2d 457 (Fla. 1984).

II

STATEMENT OF THE FACTS

1. On Feb. 24, 2016, Trial Court summarily denied Florida Rules of Criminal Procedure 3.850(b) (based on newly discovered evidence).

2. Subsequently a timely Notice of Appeal was filed in which court of appeal employed Rule 9.141(b)(2).

3. On March 29, 2016, Appellant's Initial Brief was filed.

4. On Sept. 21, 2016, District Court PCA under Rule 9.130.

5. On Sept. 27, 2016, Appellant file mtn. for Rehearing/Clarification.

6. On November 30, 2016, Rehearing was denied.

Note: Comprehensive appendix accompanying petition.

III

THE NATURE OF THE RELIEF SOUGHT

The nature of the relief sought is to vacate District Court's "Silent PCA" and remand to the Trial Court for an evidentiary hearing on the claim associated with the Alfonso K. Williams affidavit.

IV

ARGUMENT ON THE MERIT

> **"A trial court abuses its discretion if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination or makes finding of fact that clearly erroneous."[2]**

Petitioner contends that by conducting what amounts to a *de novo* review of the evidence. The substance of Petitioner's claim of whether the inferior court departed from the essential requirement or well - established legal principle and being without authority to do so. See *State v. Wiggins*, 151 So.3d 457, 462 (Fla. 1st Dist. 2014).

In this instance, the District Court 'PCA' judgment (Ex.C) proffers an incorrect legal standard 9.130 of trial court's summary denial of Rule 3.850(b) without conducting an evidentiary hearing *inter alia.* The correct standard of review of such order is Appellate Rule 9.141(b)(2). See *Nordelo,* 93 So.3d at 186 and n.10 holding....

> "we have repeatedly held that 'where no evidentiary hearing is held below, (the Appellate Court) must accept the defendant's factual allegations to the extent they are not refuted by the record.'" *Id.*

---

[2] *Brown v. Alabama Dept. of Transp.*, 597 F. 3d 1160 (11th Cir. 2010)
Rush v. Burdge, 141 So.3d 764, 766 (Fla. 2nd Dist. 2014)

Petitioner point out that the Appellant Court not only used an incorrect legal standard (9.130) (Ex. C) but clearly misapplied this precedent in failing to accept the factual allegations of the Rule 3.850 and initial brief, including the newly discovered affidavit. *Id* at 186 and n.10.

In this instance, post conviction court allowed Affiant to be deposed and granted defense motion for (to) run latent recovered fingerprints in the case (Ex. F) and immediately summary denied the same without employing fact finding hearing, which amounts to denial of due process and equal protection of law. See U.S.C.A. Const. Amend. 14.

Accordingly, Petitioner argues that an evidentiary hearing was required on his claim of newly discovered evidence. The factual allegations in both Alfonso K. Williams affidavit and deposition that exculpate Petitioner must be tried and tested in an evidentiary hearing where they are subject to credibility determinations. *Id* at 187 and n.11.

Thus, the trial court erred in making factual determinations as a basis for its (Ex. A) summary denial without conducting evidentiary inquiry, which amounts to departure of essential requirements established by this court *Nordelo* precedent.

Moreover, Appellate Court in reviewing appeal under Rule 9.130 (Ex. C) precluded the correct application of Rule 9.141(b)(2)(d) requiring remand to trial court to conduct an evidentiary hearing, resulting in abuse of discretion, in that it misapplied or ignored completely *Nordelo* precedent.

Particularly so, where neither the State or trial court were required to file a responsive pleading with the intentions of refuting Petitioner's claim. Since neither inferior court do not possess the liberty to disregard an applicable rule of law established by this court.

Wherefore Appellate Court PCA must be quashed and the matter remand to trial court to conduct an evidentiary hearing as due process envisions presented in good faith.

UNNOTARIZED OATH

Under penalty of perjury [s.92.525(2)] Fla. Stat. I declare that I have read the foregoing writ of mandamus, including the comprehensive Appendix accompanying and state that all contained therein are true and correct.

Sworn to and signed this 27 day of Dec., 2016.

/s/ Timmy Williams
Declarant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing writ w/appendix have been placed in Hardee Correctional Institution officials hands for mailing to:

Person of Interest
Annie P. Bray
1513 E. Hanna Ave.
Tampa, Fl. 33610

This 27 day of Dec., 2016.

/s/ Timmy Williams 111885
Timmy Williams, #111885
Hardee Correctional Institution
6901 State Road 62
Bowling Green, Florida 33834

SUPREME COURT OF FLORIDA

TIMMY WILLIAMS,
Petitioner,

v.

Case No.:_____
Dist. Ct. No.: 2D16-889
L.T. No.: CF92-04048

STATE OF Florida
Respondent.
_____/

ON REVIEW FOR WRIT OF MANDAMUS
COMPREHENSIVE APPENDIX IN SUPPORT

EXHIBITS	**DOCUMENTS**
A	Trial Court summary denial Rule 3.850
B	Appellant's Initial Brief
C	District Court 'silent' PCA
D	Appellant's Rehearing Clarification
E	District Court denial of Rehearing
F	Counsel mtn. to run fingerprint thru AFIS

EXHIBIT

A

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

STATE OF FLORIDA

v.

Case No. 92-4048CFAES
UCN: 511992CF004048A000ES

TIMMY WILLIAMS
SPN: 00186371

_____/

ORDER DENYING DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF

THIS CAUSE came before the Court upon the Defendant's Motion for Postconviction Relief (based on newly discovered evidence), filed pursuant to Florida Rule of Criminal Procedure 3.850 on September 8, 2015. Having reviewed the Defendant's motion, the record, the State's Response and relevant law, the Court finds as follows:

On February 1, 1994, the Defendant was convicted by a jury of one count of robbery and sentenced to life imprisonment. *Exhibit A: Judgment and Sentence.* The Defendant appealed and the Second District Court of Appeal affirmed the judgment and sentence on April 21, 1995. Williams v. State, 654 So. 2d 927 (Fla. 2d DCA 1995) (Table). The Mandate was filed on May 22, 1995.

On September 15, 2003, Defendant filed a "Motion for Postconviction Relief on Newly Discovered Evidence." On January 23, 2004, the Court denied the motion. November 4, 2014, the Defendant filed a Motion for New Trial based on a claim of newly discovered evidence. The Court conducted several hearings regarding Defendant's motion. On August 25, 2015, the Court issued an Order striking the motion as it lacked the oath required by rule 3.850. On September 8, 2015, Defendant filed his amended "Motion for Postconviction Relief." On September 24, 2015, the Court entered an order directing the State to respond to the September 8, 2015 motion. The State filed its response on December 18, 2015. The Court agrees with the State's response that the Defendant's motion is without merit and should be denied.

A rule 3.850 motion must be filed within two years after the judgment and sentence become final, subject to an exception. Fla. R. Crim. P. 3.850(b); State v. Green, 944 So. 2d 208, 210 (Fla. 2006). Pursuant to rule 3.850(b), the two-year period for filing a motion for postconviction relief begins to run thirty days after the defendant is sentenced or, if the defendant

appealed his judgment and sentence, after the mandate issues from a direct appeal. See Beaty v. State, 701 So. 2d 856 (Fla. 1997). In this case, the mandate from the Defendant's direct appeal was filed on May 22, 1995. Therefore, the Defendant's Motion for Postconviction Relief, filed on September 8, 2015, is untimely by approximately 20 years unless it falls within an exception to the two-year limitation.

An exception occurs when new evidence has been discovered that was unknown to the movant or his attorney. See Richardson v. State, 546 So. 2d 1037, 1038 (Fla. 1989). However, if the new evidence could have been discovered with "due diligence" before the expiration of the limitation period, the motion is still time-barred. See Jones v. State, 591 So. 2d 911, 916 (Fla. 1991).

The Defendant alleges that he has newly discovered evidence supporting his innocence. The evidence consists of an admission from Alonso K. Williams that he participated in the armed robbery Defendant was convicted of and not Defendant. To support his claim, Defendant attaches to his motion an affidavit from Mr. Williams attesting to Defendant's innocence. On April 10, 2015, Mr. Williams was deposed and gave information regarding his involvement in the armed robbery and Defendant's asserted innocence. In the affidavit and in the deposition, Mr. Williams states that he was with two men – "Pee-Wee" and "Rome" – on the date of the crime and that Defendant was not with them. He states that Rome possessed the firearm and robbed the victim in the cab of a semi-truck. He also states that he did not want to be a part of a robbery and did not know that Rome was planning on committing one. *Exhibit B: April 10, 2015 Deposition of Alfonso Williams.*

Defendant claims that his motion is timely filed based on the exception which allows a motion to be filed past the two year period if the motion is based on newly discovered evidence. See Rule 3.850(b)(1). In order to qualify as newly discovered evidence, the evidence "must have been unknown by the trial court, the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known [of it] by the use of due diligence...and the newly discovered evidence must be of such a nature that it would probably produce an acquittal on retrial." Jones v. State, 709 So. 2d 512, 521 (Fla. 1998). "In applying this two-prong test, the postconviction trial court must 'consider all newly discovered evidence which would be admissible,' and must 'evaluate the weight of both the newly discovered evidence and the

evidence which was introduced at the trial.'" Davis v. State, 26 So. 3d 519, 526 (Fla. 2009). (quoting Jones v. State, 591 So. 2d 911, 916 (Fla. 1991)).

Also, to succeed on a claim of newly discovered evidence, the evidence must be of the type that "could not have been ascertained by the exercise of due diligence."" Rule 3.850(b)(1). A claim of newly discovered evidence must be made within two years from the date upon which the evidence could have been discovered through the use of due diligence. Bolender v. State, 658 So. 2d 82 (Fla. 1995).

The information Mr. Williams provides in his affidavit and deposition does not constitute newly discovered evidence. The records reflect that the Defendant knew at the time of his 1983 trial that Rome (Jerome Anderson) and Pee-Wee (Edward Arnold) had participated in several robberies with the Defendant. It is clear in the record that Defendant, Anderson and Arnold were known associates who committed multiple robberies together in the early 1990's. *Exhibit C: Hillsborough County Jerome Anderson proceedings transcript; Exhibit D: Jerome Anderson Police Report; Exhibit E: Trial Transcript, pp. 174-75.*

Defendant filed a Motion for Postconviction Relief on September 15, 2003 asserting a very similar claim. Defendant alleged that he had newly discovered evidence in the form of a sworn affidavit from Kenneth Bradford claiming that Jerome Anderson and two other black males committed the offense Defendant was convicted for. *Exhibit F: September 15, 2003 Motion for Postconviction Relief on Newly Discovered Evidence.* The Court denied the motion on January 21, 2004. *Exhibit G: Order.*

The record is clear that that Defendant has known the identities of Jerome Anderson and Edward Arnold since the early 1990's. They were known associates of the Defendant who committed similar crimes together. Additionally, the Defendant claimed in his 1993 rule 3.850 motion that Jerome Anderson allegedly committed the crime Defendant was convicted of. While Defendant may have found another source to provide this information, the actual information provided is not new and has been known by Defendant since 2003. Therefore, the affidavit now presented by Defendant does not amount to newly discovered evidence.

Even assuming that Defendant was unaware of the information provided by Mr. Williams, his claim would still fail. In determining whether William's testimony would probably produce an acquittal on retrial, the Court evaluates the weight of both the newly discovered evidence and the evidence which was introduced at trial. Davis v. State, 26 So. 3d at

526. At trial, the victim testified that the lights of his truck lit the Defendant's face, that he stared at Defendant's face for 15-20 seconds, and identified Defendant as the individual who attacked him. *Exhibit E: pp. 22, 38-40, 52, 94.* Further, the State presented Williams Rule evidence of Defendant's conviction for a very similar robbery. *Exhibit E: p. 26, 131-44.* In light of all this evidence, the Court finds that Mr. Williams' testimony would not produce an acquittal on retrial. Therefore, the Defendant's claim further fails to qualify as newly discovered evidence and is denied.

Therefore, it is

ORDERED AND ADJUDGED that the Defendant's Motion for Postconviction Relief is hereby **DENIED**.

The Defendant is notified that he has thirty (30) days from the date of this Order to file an appeal, should he choose to do so.

DONE AND ORDERED in Chambers at Dade City, Pasco County, Florida, this 24th day February, 2016.

Susan G. Barthle, Circuit Judge

Copies to:

State Attorney's Office

Jorge Leon Chalela, Esquire
P.O. Box 173407
Tampa, Florida 33672-0407

EXHIBIT
B

SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

TIMMY WILLIAMS,
Appellant,

v.

Case No.: 2D16-1142
L.T. No.: CF92-4048

STATE OF FLORIDA,
Appellee.
_____/

Pursuant to Rule 9.141 (b) (2) on appeal from L.T.'s Summary Denial of Fla. R. Crim. P. Rule 3.850 (b) (2) Motion for Post-Conviction Relief

---

APPELLANT'S INITIAL BRIEF

Timmy Williams #111885
Hardee Correctional Institution
6901 State Road 62
Bowling Green, Florida 33834

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other

Constitutional Provisions

Florida Rules of Criminal Procedure

STATEMENT OF THE FACTS

1. November 4, 2014 Defendant through undersigned counsel filed erroneous Rule 3.600 (a)(3) Motion For New Trial.

2. On September 8, 2015 undersigned counsel filed [h]is Amended Motion For Post-Conviction Relief.

3. On September 24, 2015 the Court entered an order directing the State to respond to the 9/8/15 Motion.

Note: this order may include a Court order for fingerprint analysis.

4. On December 18, 2015 the State filed its response. That the Defendant – Appellant's motion is without merit and should be denied.

5. On February 24th, 2016 the Court denied Appellant's Motion For Post-Conviction Relief.

6. This timely Appeal follows.

SUMMARY ARGUMENT

Appellant contends that an accused, as is required by the State, must comply with established rule of procedure designed to assure both fairness and reliability in the ascertainment of guilt and innocence. Where, as here, "clearly established law",

can derive from a variety of legal sources, including recent controlling case law, rules of Court, statutes and Constitutional law. See *Allstate Ins. Co. v. Kaklamanas*, 843 So.2d 885, 890 (Fla. 2003).

The Post-Conviction Court abused its discretion by and through a material error of law – resulting in a decision that is "contrary to" clearly established Supreme Court law, in that [h]er decision contradicts the governing law set forth in the Supreme Court case(s). *Nordelo v. State*, 93 So.3d 178 (Fla. 2012) and *McLin v. State*, 827 So.2d 948 (Fla. 2002).

Thus, in this instance, the State Court acted in a manner inconsistent with due process of law. *U.S.C.A. Const. Amend. 5.14*

ARGUMENT POINT ONE

Procedural arbitrariness arose where trial Judge acted in manner which failed to promote public confidence in the integrity and impartiality of the judiciary.[1]

Appellant contends that a presumption of judicial bias arose where the Judge's bare assertion of ordering the State to respond to Appellant's Rule 3.850 (b) motion and after having received the State's response, denied the motion based on the State's response without conducting an evidentiary hearing. Simply by agreeing with the State's response. See *Morgan v. State,* 475 So.2d 681 at 682 (Fla. 1985). Holding...

[1] See Fla. Code of Judicial Conduct canon 2 (A).

> "It is improper for the trial Court to order the Prosecution to respond to a motion and then deny it based on the prosecutorial response without holding an evidentiary hearing." *Id at 682.*

See also *In re, Henderson,* 22 So.3d 58 at 64 and n.7 (Fla. 2009) holding: Canon 2a of the Code of Judicial Conduct states:

> "A Judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary."

The Supreme Court held that "[t]his provision is not an aspirational principle but a clear and unequivocal mandate." The Court clearly failed to employ this standard and unrenouncible judicial duty by virtue of her oath of office.

Wherefore, the relief sought in this context based on the requisite deference due to Judge's sue sponte 'bare assertion' is reversal of the order summary denying Rule 3.850 motion and remand to trial Court to conduct an evidentiary hearing before a different unbiased and impartial Judge mandate by the due process clause to the United States Constitution.

ARGUMENT POINT TWO

Appellant made a facially sufficient claim that newly discovered evidence would probably result in a different verdict on retrial and thus was entitled to an evidentiary hearing.[2]

[2] *Lamar v. State,* 768 So.2d 500 (Fla. App. 2nd Dist. 2000).

Appellant's contention in proceeding to the merits of his Rule 3.850 (b) motion based on the established law of this Court, 3rd DCA (sister) Court, and Fla. Supreme Court. The necessity of an evidentiary hearing. In this instance, the witness (actual culprit) affidavit raised new and significant issues and Trial Court failed to produce records which tends to conclusively refute Appellant's assertion that he and his Trial Counsel were unaware before trial of [Alfonso Williams] existence or the substance of his testimony. See *Harris v. State*, 128 So.3d 44 at 45 and n. 1,2 (Fla. App. 3rd Dist. 2012).

For the purpose of this collateral proceeding, the witness was deposed and the Court ordered fingerprint analysis.

Nevertheless, the trial Court Judge was required to accept Alfonso K. Williams affidavit as true, which included conducting an evidentiary hearing to determine the 'truthfulness' of Williams statement. See *Melin v. State,* 827 So.2d 948 at 955 and n.4 (Fla. 2002).

This is so because when taken as true, the Affiant's "Exculpatory testimony," presented a legally sufficient claim that triggers an evidentiary hearing. See *Nordelo v. State,* 93 So.3d 178 at 184 and n.3 (Fla. 2012).

CONCLUSION

WHEREFORE, Trial Court's decision is contrary to clearly established law because it contradicts the decisions of Appellate Courts jurisprudence, and Florida Supreme Court case law.

The Appellate Court is constrained to accept the witness [Alfonso K. Williams] statement – exculpatory testimony as true where no hearing were conducted to determine the truthfulness thereof and the Court failed to produce any records to conclusively refute Appellant's allegations that he and his counsel were unaware of the witnesses existence or the substance of his testimony.

Thus, Rule 9.141 (b) (2) (d) and fundamental fairness mandates an evidentiary hearing on the legally sufficient claim. See *McLin*, 827 So.2d at 955 and n. 4.

The relief sought in this context is a reversal of the summary denial of Rule 3.850 (b) and remand to the Trial Court for a merit based evidentiary hearing before a different Judge presiding. Presented in good faith.

Respectfully,

/s/ Timmy Williams
Appellant pro se

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Initial Brief has been placed in the hands of Hardee Correctional Institution officials for mailing to:

Office of the Attorney General; Pamela Jo Bondi, 3507 E. Frontage Road, Ste. 200, Tampa, Florida 33607-7013 on this 29 day of March 2016.

/s/ Timmy Williams 111885

Timmy Williams, #111885
Hardee Correctional Institution
6901 State Road 62
Bowling Green, Florida 33834

EXHIBIT C

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

TIMMY WILLIAMS, DOC # 111885,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D16-889

Opinion filed September 21, 2016.

Appeal pursuant to Fla. R. App. P.
9.130 from the Circuit Court for
Pasco County; Susan G. Barthle, Judge.

Timmy Williams, pro se.

PER CURIAM.

Affirmed.

NORTHCUTT, LaROSE, and CRENSHAW, JJ., Concur.

EXHIBIT D

DISTRICT COURT OF APPEAL
OF FLORIDA SECOND DISTRICT

Timmy Williams,
Appellant.

CASE NO: 2D16-889

V.

State of Florida,
Appellee. /

NOTICE FOR REHEARING - CLARIFICATION

This Cause before this Court to review Lower Tribunal Summary denial of Rule 3.850 based on Newly discovered Evidence And Appellant Move for Rehearing and/or Clarification of This Court's inadvertence or Oversight relating to whether the Lower Tribunal "observed the Essential Requirements of law" or "Afforded Due Process of law. See Martinez v. State, 933 So. 2d 1155 (Fla. 3rd Dist. 2006); State v. Caswell, 999 So. 2d. 1065 (Fla. 1st Dist 2003).

Procedural Posture

Appellant's Rule 3.850 based on Newly discovered Evidence Consisted of An Affidavit from the Actual 'Perpetrator' of the Crime Appellant stands Convicted.

This Probative Evidence in itself demonstrates a Fundamental Miscarriage of Justice because it Establishes a Colorable Claim of factual Innocence. See Cooper V. Neven, 641 F.3d 322, 327 (9th Cir. 2011); McKay V. U.S., 657 F.3d 1190, 1197 (11th Cir. 2011).

In This Instance, the Court ordered Affiant to be depose And For Fingerprint Analysis. Then Immediately Summerily denied Rule 3.850 without Conducting An Evidentiary hearing in Violation of Appellants Federal Protected right to be heard According to law. See Code of Judicial Conduct Canon 3B(7). Citing Scull V. State, 15 Fla. L. Weekly S369 (Fla. 1990).

Appellant Contends that Florida Supreme Court Expressly Concluded that An Evidentiary hearing is Mandated Under these Circumstance because the Evidence Implicates "Actual Innocence." See Nordelo, 93 So. 3d 178 at 187-88

And Appellant Infer that based on this Evidence No reasonable Juror Would have Found Appellant guilty of Committing the Underlying Offense, if Exposed to this Evidence. See McKay 657 F.3d at 1197 And n. 10

Accord Putman V. Turpin, 53 F. Supp. 2d 1285 at 1293 (U.S. M.D. Ga 1999).

Wherefore, The Lower Tribunal departed from the Essential Requirements of law when it failed to Conduct An evidentiary hearing in light of the "standard of Review" Rule 3.850 And the Supreme Court Nordelo decision. In that it Constitutes Conduct which Erodes Public Confidence in the Integrity And Impartiality of the Judiciary [Canon 2A] because Circuit Judge (1) Failed to be faithful to the law [Canon 3B(2)] And (2) Performed her Judicial duties with bias or Prejudice [Canon 3B(5)]

Thus, The Proper Inquiry is whether the Court Afforded Procedural due Process And whether it Applied a Correct Principle of law. See Caswell 999 So.2d at 1066

In this Instance, Post Conviction Court Failure to Conduct An Evidentiary hearing - Constitutes failure to observe the Essential requirements of law, which Means it Failed to Accord due Process of law within the Contemplation of the Constitution

Id. at 1066

This envisions a law that hears before it condemns, Proceeds upon Inquiry And renders Judgment only After Proper Consideration of Issues advanced by Adversserial Parties. In this Respect, the term due Process Embodies a Fundamental Conception of Fairness that derives ultimately From the Natural rights of All Individuals. See Scull, 15 Fla. L. Weekly S369 at S 369

WHEREFORE, Appellant Cannot be said to have had the remedy by due Course of law, guaranteed by the Declaration of Rights of our Constitution where the Circuit Court Judge Failed to And Completely refused to Apply to the Admitted Facts, a Correct Principle of law. See Caswell, 999 So. 2d at 1066

Thus, A Fundamental Error would result if this Error Correcting Court Fail to Consider these facts And Controlling Authority. See Martinez, 933 So. 2d at 1158

So Circuit Court order of denial Must be reversed And the Cause Remand for An Evidentiary hearing which is Statuterily Mandated by law.

Presented In Good faith

/s/ Timmy Williams
Appellant Pro Se

Certificate of Service

I Hereby Certify that A true Copy of Notice for Rehearing- Clarification have been Placed In Hardee CI officials hands For Mailing To:

Attorney General Ofc.
Tampa Office
3507 East Frontage Rd., ste 200
Tampa, Florida 33607-7013

This 27 Day of September 2016.

BY Timmy Williams 111885

Timmy Williams # 111885
Hardee CI
6901 State Road 62
Bowling Green, Fla
33834

EXHIBIT E

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

November 30, 2016

CASE NO.: 2D16-889
L.T. No. : 9204048CFAES

Timmy Williams v. State of Florida

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for rehearing and clarification is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Jorge L. Chalela, Esq. Attorney General Timmy Williams
Paula S. O'Neil, Clerk

ag

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

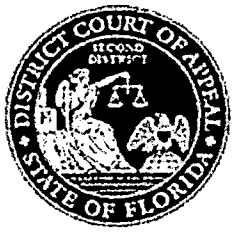

EXHIBIT F

JORGE LEON CHALELA, P.A.

Attorney/Abogado
MAIL: P.O. Box 173407, Tampa, Florida 33672-0407
OFFICE: 3030 N. Rocky Point Drive West, Suite 150, Tampa, Florida 33607
office: (813) 221-5600; mobile: (727) 415-4286; fax: (813) 350-7801; chalelalaw@yahoo.com

CRIMINAL LAW: Motions, Trials, Appeals, Post Conviction Relief
STATE & FEDERAL COURTS
MILITARY COURTS: Military and Court Martial Defense
CIVIL RIGHTS, FALSE ARREST, EXCESSIVE USE OF FORCE LITIGATION
AUTO ACCIDENTS & PERSONAL INJURY
SOCIAL SECURITY INCOME & DISABILITY
IMMIGRATION & DEPORTATION DEFENSE
FAMILY AND MARITAL LAW
MEDICAL MALPRACTICE LITIGATION

HABLO Y LEO ESPANOL

August 5, 2015

Timmy Williams
Land O' Lakes Jail

Dear Timmy:

Enclosed is your copy of the 6 paged motion for new trial and of the 3 paged motion to run latent recovered finger prints through AFIS.

Respectfully,

/s/ Jorge Leon Chalela

JORGE LEON CHALELA, ESQ.
Jorge Leon Chalela, P.A.
Attorney at Law/Abogado

IN THE SIXTH JUDICIAL CIRCUIT COURT
FOR PASCO COUNTY, FLORIDA
DADE CITY CRIMINAL FELONY DIVISION

STATE OF FLORIDA

v.

TIMMY WILLIAMS ///

CASE NO: 92-4048CF

DIVISION: JUDGE SUSAN G. BARTHLE

DEFENDANT'S MOTION TO RUN THE LATENT RECOVERED FINGER PRINTS IN THIS CASE THROUGH AFIS
(based on newly discovered evidence)

COMES NOW THE DEFENDANT, Timmy Williams, by and through his undersigned counsel, pursuant to Fla.R.Cr.P.3.600(a)(3), and makes this his Motion to Run the Latent Recovered Finger Prints in this Case through AFIS (based on newly discovered evidence), and ***respectfully*** says:

State v. Lewis, 656 So. 2d 1248, 1250 (Fla. 1994) (holding that concerning post-conviction claims and upon good cause shown, lower tribunals have inherent authority to permit limited Discovery into relevant and material matters; the standard of review of these lower tribunal rulings is "abuse of discretion").

It is respectfully submitted that, because the Defendant can show good cause why running the known latent prints recovered in this case by law enforcement through AFIS is relevant and material, given the nature of the newly discovered alleged evidence in this instant post-conviction claim, a State failure to now, 23 years later of print records accumulation, run the known recovered prints through AFIS would constitute a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972).

This motion ***respectfully*** follows.

1. Defendant is before this Court on his above-styled motion for new trial (based on newly discovered evidence). The motion for new trial is still pending and has not been ruled upon yet. The alleged newly discovered evidence is that DOC inmate Alfonso K. Williams (no familial relation) has come forward to offer sworn testimony that the armed robbery for which the Defendant Timmy Williams is serving a life without parole sentence in the above-styled case, is a criminal episode about which Alfonso K. Williams is keenly aware. Alfonso K. Williams alleges under oath that he was one of the participating robbers; he identifies an actual person whom is alive and living in Hillsborough County as being another one of the robbers; and he says that the Defendant was falsely convicted of this robbery because Defendant Timmy Williams was not present during the criminal episode (even though the State's victim witness identified through photograph lineup the Defendant as one of the robbers); and because Defendant

Timmy Williams played absolutely no part in the planning or commission of the criminal episode whatsoever. Unlike Defendant, Alfonso K. Williams is NOT serving a life sentence.

2. The Defendant moves this Honorable Court to have the latent prints forensically recovered in this case by law enforcement as part of their investigation here, run through AFIS in order to see if his "Newly Discovered Evidence" (i.e. Alfonso K. Williams having come forward in 2013 to say that he committed the crime in 1992, that there is an existing identified individual living today in Hillsborough County whom was also a robber in this case, and that Defendant Timmy Williams was not only not present during the robbery, but played no role in it whatsoever) is corroborated by 21 years of additionally AFIS records keeping (i.e. corroborated by a result that the prints of Alfonso K. Williams were recovered by law enforcement [which corroborates what Alfonso K. Williams is claiming-that Alfonso K. Williams was a robber in this case]; corroborated by a result that the prints of the now-existing identified individual living today in Hillsborough County were recovered by law enforcement [which corroborates what Alfonso K. Williams is claiming-that this existing-today individual was one of the robbers]; and corroborated by a result that the prints are returned to an individual whose "mug shot" or "DL photo" (each commonly used in photo lineups) match in similarity to the "mug shot" or "DL photo" of the Defendant-explaining how a misidentification was made that the Defendant was a robber in the above-styled case).

3. The State has exclusive access to AFIS, the Defendant does not have access to it. The State runs prints through AFIS all the time every day, it is a very easy but critically important process. There is no alternative method with which the Defendant can achieve the results of the latent prints recovered by law enforcement in this case in 1992. Subject-suspects' have been added to AFIS in the last 23 years which makes running these latent prints in 2015 much more intensely "forensically intelligent" a process than it was in 1992. The Defendant is serving life without parole in this case and when balanced against the virtually no onus for the State in running the latent recovered prints through AFIS, the analysis ought to conclude the prints to be run through AFIS.

Giglio v. United States, 405 U.S. 150 (1972):

"At a hearing on this motion, the Assistant United States Attorney who presented the case to the grand jury admitted that he promised the witness that he would not be prosecuted if he testified before the grand jury and at trial. The Assistant who tried the case was unaware of the promise.

Held: Neither the Assistant's lack of authority nor his failure to inform his superiors and associates is controlling, and the prosecution's duty to present all material evidence to the jury was not fulfilled, and constitutes a violation of due process, requiring a new trial. Pp. 405 U. S. 153-155." Syllabus, 405 U.S. at 150.

"We do not, however, automatically require a new trial whenever "a combing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict. . . ." *United States v. Keogh,* 391 F.2d 138, 148

(CA2 1968). ***A finding of materiality of the evidence is required under*** **Brady, supra,** ***at 373 U. S. 87. A new trial is required if "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury. . . ."*** *Napue, supra,* at 360 U. S. 271." *Giglio v. United States*, 405 U.S. at p.154 (***emphasis*** added), citing *Napue v. Illinois,* 360 U. S. 264, 271 (1959), and *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

WHEREFORE, the Defendant, Timmy Williams, by and through his undersigned counsel, prays this Honorable Court enter its order directing all latent prints recovered in this case be run through AFIS.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished: on Wednesday 8/5/15: by Florida Courts E-Filing Portal Delivery to the Clerk of Court; and by E-Filing or E-Mail Delivery to ASA Manuel Garcia, III, at: mgarcia@CO.pinellas.FL.US

Respectfully **submitted,**

/s/ Jorge Leon Chalela

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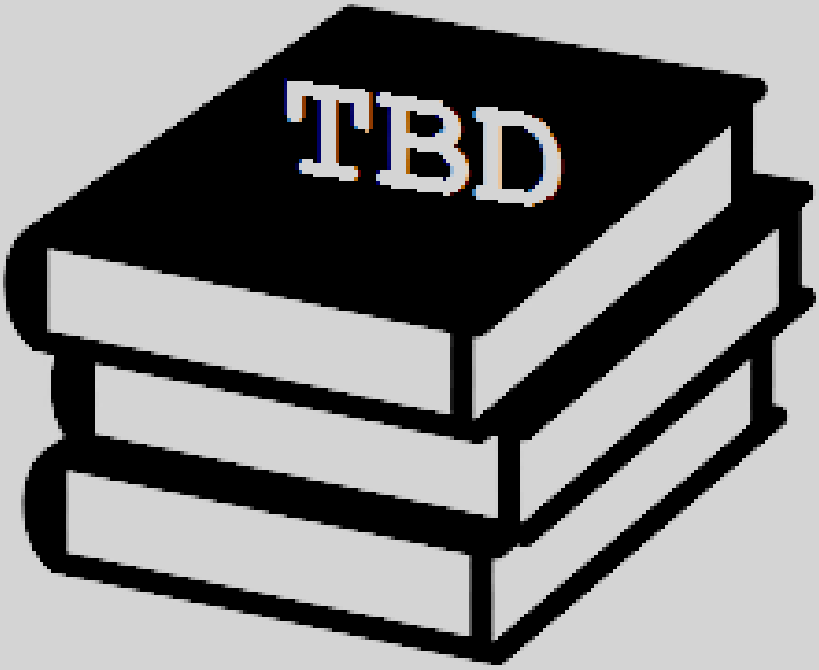

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