

IN THE SUPREME COURT OF THE STATE OF FLORIDA  
CASE NO.: SC17-1961

Case No.: 3D16-1007  
L.T. No.: F85-25037

\_\_\_\_\_  
SAMUEL RIVERA, )  
Appellant/Petitioner, )  
 )  
v. )  
 )  
STATE OF FLORIDA, )  
Appellee/Respondent. )  
\_\_\_\_\_ )

SUPPLEMENTAL  
APPENDIX OF EXHIBITS

EXHIBIT

DOCUMENT

BY "A"  
"B"

Third DCA Order to Show Cause rendered July 5, 2017  
Third DCA Reasoned Opinion rendered September 6, 2017

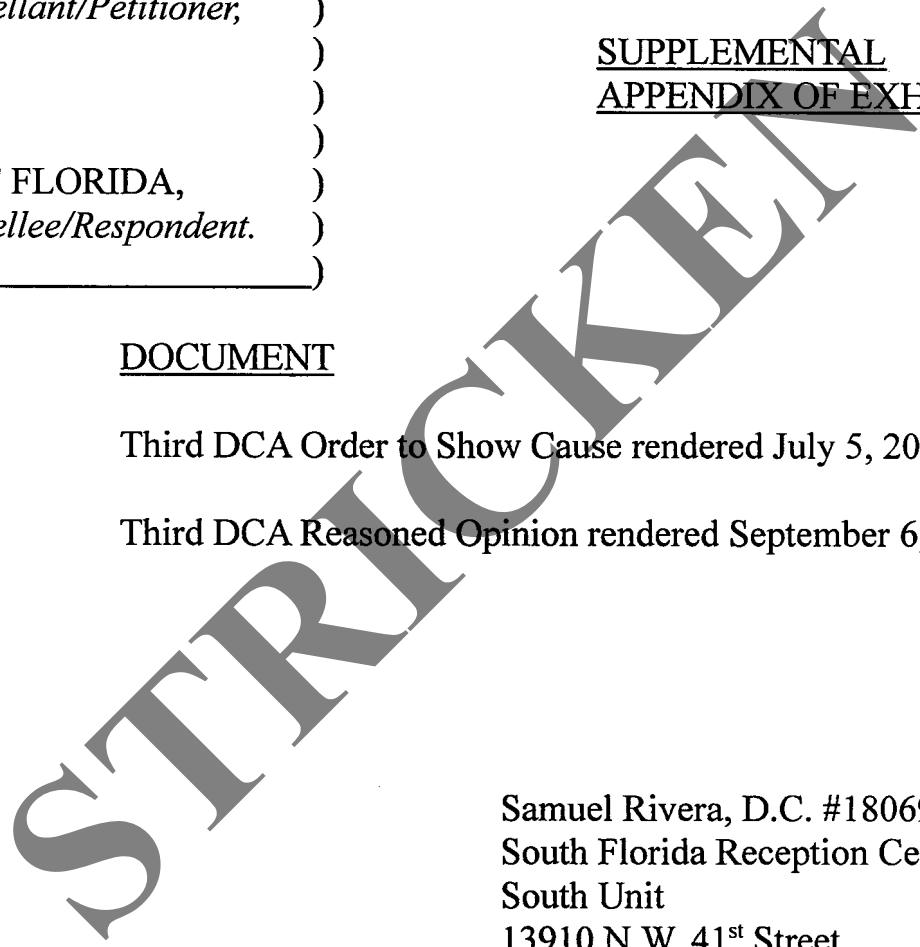
Samuel Rivera, D.C. #180695  
South Florida Reception Center  
South Unit  
13910 N.W. 41<sup>st</sup> Street  
Doral, Florida 33178-3014

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FILED  
JOHN A. TOMASINO  
DEC - 5 2017

CLERK, SUPREME COURT



# Third District Court of Appeal

State of Florida

Opinion filed July 5, 2017.

Not final until disposition of timely filed motion for rehearing.

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No. 3D16-1007

Lower Tribunal No. 85-25037

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**Samuel Rivera,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Victoria R. Brennan, Judge.

Samuel Rivera, in proper person.

Pamela Jo Bondi, Attorney General, and Sandra Lipman, Assistant Attorney General, for appellee.

Before ROTHENBERG, C.J., and SCALES and LUCK, JJ.

SCALES, J.

On April 29, 2016, Appellant Samuel Rivera filed with this Court a “Notice for Belated Appeal Nunc Pro Tunc Motion.” We grant Appellee State of Florida’s motion to dismiss this motion. We dismiss Rivera’s related May 26, 2017 “Motion to Deny the State Attorney General’s Motion to Dismiss.” Further, we issue an order to show cause as described below.

### ORDER TO SHOW CAUSE

In 1987, Rivera was convicted of first degree murder and armed robbery. His conviction and life sentence on the first degree murder count were upheld on direct appeal, although his sentence for armed robbery was reversed by this Court with an order to re-sentence Rivera on this count. Rivera v. State, 526 So. 2d 1046 (Fla. 3d DCA 1988). The trial court re-sentenced Rivera in 1989. Since then, Rivera has filed twelve post-conviction appeals and petitions with this Court.<sup>1</sup> After Rivera filed similar motions and petitions in the circuit court, the circuit court issued a November 2012 order requiring Rivera to show cause as to why Rivera should not be barred from filing future pro se pleadings. After Rivera filed a response, the trial court

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<sup>1</sup> Rivera v. State, 189 So. 3d 780 (Fla. 3d DCA 2015) (table); Rivera v. State, 162 So. 3d 1021 (Fla. 3d DCA 2014) (table); Rivera v. State, 117 So. 3d 423 (Fla. 3d DCA 2012); Rivera v. State, 112 So. 3d 495 (Fla. 3d DCA 2013) (table); Rivera v. State, 109 So. 3d 1168 (Fla. 3d DCA 2013) (table); Rivera v. State, 83 So. 3d 734 (Fla. 3d DCA 2012) (table); Rivera v. State, 49 So. 3d 1278 (Fla. 3d DCA 2010) (Table); Rivera v. State, 31 So. 3d 789 (Fla. 3d DCA 2010) (table); Rivera v. State, 12 So. 3d 233 (Fla. 3d DCA 2009) (table); Rivera v. State, 795 So. 2d 70 (Fla. 3d DCA 2001) (table); Rivera v. State, 639 So. 2d 1124 (Fla. 3d DCA 1994); Rivera v. State, 581 So. 2d 1325 (Fla. 3d DCA 1991) (table).

entered a December 21, 2012 order prohibiting Rivera from filing further pro se pleadings in lower court case number 85-25037.

It appears that Rivera's purported belated appeal in the instant case is an effort to appeal not only Rivera's original conviction, but also the trial court's 2012 show cause order and the resulting prohibition order preventing Rivera from further pro se filings. Rivera has already unsuccessfully appealed the trial court's 2012 show cause and sanctions orders,<sup>2</sup> as well as his original conviction. We, therefore, grant the State's motion and dismiss the instant case.

Further, Rivera is hereby directed to show cause, within forty-five days from the date of this order, why he should not be prohibited from filing any further pro se appeals, petitions, motions or other proceedings related to his criminal sentencing in circuit court case number 85-25037.

If Rivera does not demonstrate good cause, any such further and unauthorized filings by Rivera will subject him to appropriate sanctions, including the issuance of written findings forwarded to the Florida Department of Corrections for its consideration of disciplinary action, including forfeiture of gain time. See § 944.279(1), Fla. Stat. (2015).

State's motion granted; Rivera's motion dismissed. Order to show cause issued.

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<sup>2</sup> Rivera v. State, 109 So. 3d 1168 (Fla. 3d DCA 2013).

# Third District Court of Appeal

State of Florida

Opinion filed September 6, 2017.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D16-1007  
Lower Tribunal No. 85-25037

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**Samuel Rivera,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Victoria R. Brennan, Judge.

Samuel Rivera, in proper person.

Pamela Jo Bondi, Attorney General, and Sandra Lipman, Assistant Attorney General, for appellee.

Before ROTHENBERG, C.J., and SCALES and LUCK, JJ.

PER CURIAM.

On July 5, 2017, this Court issued an order granting the State of Florida's motion to dismiss Appellant Samuel Rivera's "Notice for Belated Appeal Nunc Pro Tunc Motion," which had sought to advance Rivera's continuing and repetitive efforts to overturn his 1987 convictions for first degree murder and armed robbery. Contained within the Court's order was an order to show cause why Rivera should not be prohibited from filing with this Court any pro se appeals, petitions, motions, or other proceedings related to his criminal sentencing in circuit court case number 85-25037.

Rivera's August 4, 2017 response to our show cause order introduces no new argument or information for our consideration. We conclude that Rivera has not demonstrated good cause to justify further pleadings with this Court, absent the participation of an attorney to represent him.

The access to courts provision of the Florida Constitution – Article I, section 21 – provides an avenue for an incarcerated person in Florida to challenge the legal basis of his or her incarceration; however, this constitutional right may be forfeited if that person abuses the judicial process. Jimenez v. State, 196 So. 3d 499, 501 (Fla. 3d DCA 2016). Our responsibility is to balance the incarcerated person's right to access to courts with the need of this Court to devote its finite resources to legitimate appeals and petitions. State v. Spencer, 751 So. 2d 47, 48 (Fla. 1999). Accordingly, after notice in the form of an order to show cause and an opportunity for the

incarcerated person to respond, a court may prevent further filings. Id.; see also Whipple v. State, 112 So. 3d 540 (Fla. 3d DCA 2013).

Because we conclude that Rivera has not demonstrated good cause to justify further pro se filings of appeals, petitions, motions, or other proceedings with this Court, we direct the Clerk of the Third District Court of Appeal to refuse to accept from Rivera further pro se filings related to circuit court case number 85-25037; provided, however, that the Clerk may accept filings related to case number 85-25037 if such filings have been reviewed and signed by an attorney who is a licensed member of the Florida Bar in good standing.

Any such further and unauthorized pro se filings by Rivera will subject him to sanctions, including the issuance of written findings forwarded to the Florida Department of Corrections for consideration by it for disciplinary action, pursuant to section 944.279(1) of the Florida Statutes.

Order issued.

# Supreme Court of Florida

WEDNESDAY, NOVEMBER 22, 2017

CASE NO.: SC17-1961

Lower Tribunal No(s):

3D16-1007; 131985CF0250370001XX

SAMUEL RIVERA

vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)


In reviewing our records, we note that your case is subject to dismissal for failure to comply with this Court's direction. See Fla. R. App. P. 9.410.

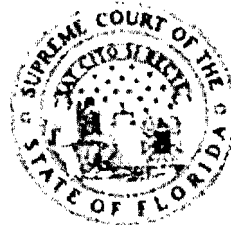
We have not received the jurisdictional brief and appendix in accordance with Florida Rule of Appellate Procedure 9.120(d). Failure to file the above referenced documents with this Court within fifteen days from the date of this order could result in the imposition of sanctions, including dismissal of the petition.

Please understand that once this case is dismissed, it may not be subject to reinstatement.

A True Copy

Test:

  
\_\_\_\_\_  
John A. Tomasino  
Clerk, Supreme Court



lc

Served:

SANDRA LIPMAN  
SAMUEL RIVERA