

IN THE DISTRICT COURT OF APPEAL  
\_\_\_\_\_ DISTRICT OF FLORIDA

\_\_\_\_\_,  
Petitioner,

Case No.: \_\_\_\_\_

Original Case No.: \_\_\_\_\_

vs.

\_\_\_\_\_ County, Florida

STATE OF FLORIDA,  
Respondent.

\_\_\_\_\_

**PETITION ALLEGING  
INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL**

**Pursuant to Fla.R.App.P. 9.141(d)**

\_\_\_\_\_  
Petitioner, Pro se

DC# \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**BASIS FOR INVOKING JURISDICTION**

This petition addresses alleged ineffective assistance of appellate counsel on the part of: \_\_\_\_\_.

The Petitioner, \_\_\_\_\_, is herein referred to as the “Petitioner”.

The Respondents, the Department of Corrections and the State of Florida, shall be referred to herein as the “State”.

A petition for writ of habeas corpus alleging ineffective assistance of appellate counsel is an original proceeding provided by Fla.R.App.P. 9.141(d)(2) and taken in accordance with Fla.R.App.P. 9.100.

Ineffective assistance of appellate counsel is properly cognizable only in appellate court wherein appellate jurisdiction was vested and only through habeas corpus petition, Fla.R.App.P. 9.141(c)(3).

This petition is timely filed as the instant direct appeal mandate issuance occurred after the decision on \_\_\_\_\_ thus creating a two (2) year deadline for filing of \_\_\_\_\_, see Fla.R.App.P. 9.141(c)(5).

## STANDARD OF REVIEW

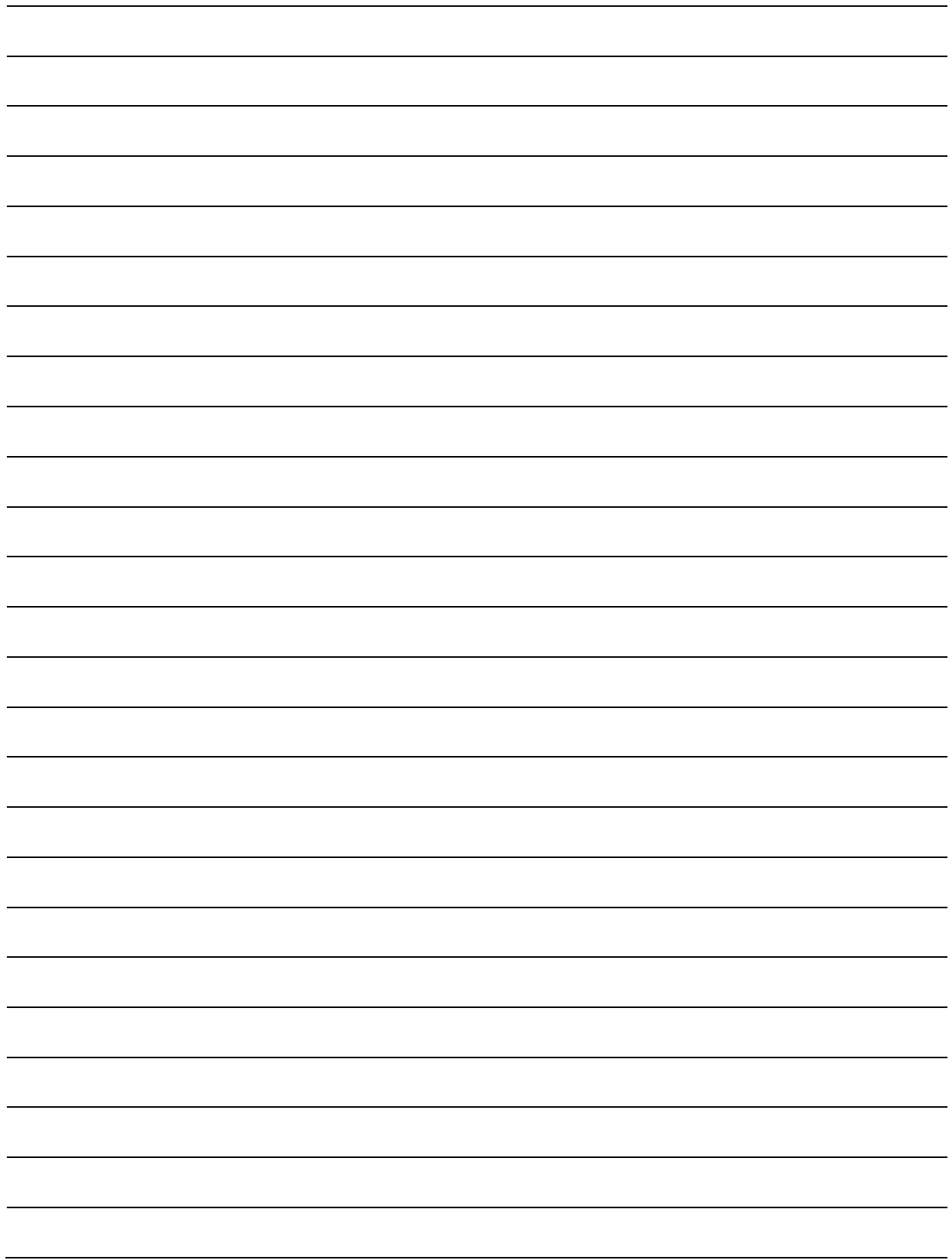
The same standard of review is applicable for claims of ineffective assistance of appellate counsel as for claims of trial counsel deficiencies. See Strickland v. Washington, 466 U.S. 688 (1984); Haliburton v. Singletary, 691 So.2d 466 (Fla. 1997) citing Ferguson v. Singletary, 632 So.2d 53, 57 (Fla. 1993) citing Pope v. Wainwright, 496 So.2d 798, 800 (Fla. 1986), cert. denied 480 U.S. 951 (Fla. 1993). Id., showing that in appellate ineffectiveness claims the reviewing court must evaluate as follows:

The court must determine first ‘whether the alleged omissions are of such magnitude as to constitute a serious error or substantial deficiency falling measurably outside the range of professionally acceptable performance and, second, whether the deficiency in performance compromised the appellate process to such a great degree as to undermine confidence in the correctness of the result.

See also Jackson v. Dugger, 580 So.2d 161, 162 (Fla. 4<sup>th</sup> DCA 1991) citing; Johnson v. Wainwright, 463 So.2d 207 (Fla. 1985) (habeas review resulting in reversal for a new trial) and; Jackson v. State, 596 So.2d 812 (Fla. 4<sup>th</sup> DCA 1992).

The Petitioner will show that due to named appellate counsel deficiencies, the reliability of the appellate review has been undermined and that there is at least a “reasonable probability” that a more favorable result would have occurred absent the attorney errors. See Byrd v. Singletary, 655 So.2d 67 (Fla. 1995); Agan v. Singletary, 12 F.3d 1012 (11<sup>th</sup> Cir. 1994) and; Yordan v. Dugger, 909 F.2d 474 (11<sup>th</sup> Cir. 1990).







**CONCLUSION**

Wherefore the Petitioner respectfully requests this Honorable Court to take judicial notice of all the exhibits attached hereto and grant the requested relief.

Respectfully submitted,

\_\_\_\_\_  
\_\_\_\_\_  
Petitioner, Pro Se

**OATH**

Under the penalties of perjury, I declare and certify that I do understand English and that I have read the foregoing document and that the facts stated in it are true and correct.

\_\_\_\_\_  
\_\_\_\_\_  
Petitioner, Pro Se

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished to the Office of the Attorney General, Criminal Appeals Division at: \_\_\_\_\_

\_\_\_\_\_ by handing said document to a prison official for mailing by pre-paid first class U.S. mail on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
Petitioner, Pro Se  
DC# \_\_\_\_\_  
\_\_\_\_\_  
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## INDEX TO APPENDIX

<u>EXHIBIT</u>	<u>DOCUMENT</u>	<u>DATE</u>
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D

E