

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
ATLANTA, GEORGIA**

Case No. _____

_____,
APPELLANT/APPELLANT,

VS.

**SECRETARY, DEPARTMENT OF CORRECTIONS
ATTORNEY GENERAL,
STATE OF FLORIDA,
RESPONDENTS/APELLEES.**

On Appeal from the United States District Court
For the _____ District of Florida Denial of Federal Habeas Corpus

BRIEF OF APPELLANT

Appellant, Pro Se
DC# _____

**UNITED STATES COURT OF APPEALS
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**_____,
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VS.

**SECRETARY, DEPARTMENT OF CORRECTIONS
ATTORNEY GENERAL,
STATE OF FLORIDA,
RESPONDENTS/APELLEES.**

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Undersigned certifies that the following may have an interest in the outcome
of this appeal:

STATEMENT REGARDING ORAL ARGUMENT

The Appellant (herein referred to as “_____”) believes that the issue presented herein is clear on the face of the record so he does not request oral argument as the case would not benefit from same.

TABLE OF CONTENTS

	<u>Page</u>
Certificate of Interested Persons	C1-1
Statement Regarding Oral Argument.....	i
Table of Contents.....	ii
Table of Citations.....	iii
Statement of Jurisdiction.....	
Statement of the Issue	
Statement of the Case	
i. The Course of the Proceedings and Dispositions in the Court Below	
ii. Statement of the Facts	
iii. Statement of the Standard or Scope of Review.....	
Summary of the Argument.....	
Argument and Citations of Authority	
<u>Insert issue as named by Circuit Court's Order Here</u>	
Conclusion	
Certificate of Compliance.....	
Certificate of Service	

TABLE OF CITATIONS

Page

SUPREME COURT CASES

CIRCUIT COURT CASES

DISTRICT COURT CASES

STATE CASES

CONSTITUTIONAL AND STATUTORY/RULE PROVISIONS

STATEMENT OF JURISDICTION

This is an appeal from the District Court's denial of a Petition for Writ of Habeas Corpus filed by Appellant pursuant to Title 28 U.S.C. §2254.

This Eleventh Circuit Court of Appeals has jurisdiction as this is an appeal taken pursuant to Federal Rules of Appellate Procedure 22(b) and Title 28 U.S.C. §2253.

On _____ this Honorable Court granted Appellant's Motion for Certificate of Appealability.

Therefore, this brief is timely filed.

Appellant asserts that this appeal is from a final order denying habeas corpus relief that disposed of all parties' claims.

STATEMENT OF THE ISSUE

Insert statement of issue quoted from 11th Circuit Court's Order.

STATEMENT OF THE CASE

(i) The Course of the Proceedings and Dispositions in the Court Below.

Appellant presently an incarcerated individual, was originally charged by Information on _____ with _____.¹ (Doc No. __)

A jury trial was held on _____ where the jury reached a verdict of guilt to _____. (Doc. No. __)

The trial court adjudicated Appellant guilty of _____ and sentenced him to _____ year prison sentence. *Id.*

A *direct appeal* ensued wherein Appellant represented by _____, raised _____. (Doc. No. __) The *direct appeal* resulted in _____, see _____ v. State, ___ So.2d ___ (Fla. __ DCA 2___).

On _____ Appellant filed his state postconviction motion pursuant to Florida Rules of Criminal Procedure 3.850. (Doc. No. __) That motion raised _____ (__) grounds for relief including the following:

Insert claims from 3.850 here.

(State postconviction motion p. __) (Doc. No. __)

¹ Factual statements are supported by citation to the attached Appendix of Exhibits or to the Record by reference to the document number or name and page number. The U.S. District Court's case docket is appended hereto as Exhibit A.

The state trial court entered a final order denying relief on _____. (Doc. No. __) Appellant did appeal resulting in a per curiam affirmance on _____, see _____ v. State, ___ So.2d ____ (Fla. ___ DCA 2___).

On _____ the Appellant filed the Habeas Petition pursuant to Title 28 U.S.C. §2254. (Doc. No. 1) The Habeas Petition was supported by a Memorandum of Law. (Doc. No. __, Memo) Ground __ of the Petition raised an argument involving allegations of _____. (Doc. No. 1, Petition, pp. _____ and Memo, p. __)

The State was ordered to and did file a Response. (Doc. No. __) The State argued that _____. (Doc. No. __, Response, pp. _____)

In his Reply to the State's Response Appellant argued that _____. (Doc. No. __, Reply, p. _____)

The District Court adopted the State's argument and on _____ denied Appellant's Petition stating:

Insert from District Court's Order here.

(Doc. No. __, Order Denying Petition, p. __) The District Court incorporated a denial of a Certificate of Appealability in its order. (Doc. No. __, Order pp. _____)

On _____ the Appellant filed his timely Notice of Appeal. (Doc. No. __)

On _____ the Clerk of the District Court transmitted the partial record to this Court. (Exhibit A, District Court Docket, p. __)

On _____ the Appellant filed his timely Motion for Certificate of Appealability in this Court, along with a supporting Appendix of Exhibits.

On _____ this Honorable Court granted Appellant's Motion for Certificate of Appealability as to the single issue set forth in this brief.

On _____ the Clerk of this Court published the briefing schedule providing a filing date for Appellant's brief of _____.

On _____ Appellant completed his brief and filed same.

This brief follows:

(ii) Statement of the Facts

Insert facts with record citations here.

(iii) Statement of the Standard or Scope of Review

The sole issue raised in this brief is whether the District Court erred in denying the habeas petition where the state court denied the claim of ineffective assistance of counsel for _____. As claims of ineffective assistance of counsel involve mixed questions of law and fact the standard of review on federal appeal is de novo. See Strickland, 466 U.S. 668, 698, 104 S.Ct. 2052, 2070 (on review of a federal habeas challenge to a state criminal judgment alleging

ineffective assistance of counsel the issue is a mixed issue of law and fact so that the *de novo* standard applies); Mincey v. Head, 206 F.3d 1106, 1131 (11th Cir. 2000)(“[W]e review *de novo*, however, the district court’s resolution of questions of law and of mixed questions of law and fact.) and; Baty v. Balkcom, 661 F.2d 391 (5th Cir. 1981) cert. denied 456 U.S. 1011 (court reviewing denial of habeas corpus applies its own judgment to mixed legal and factual questions such as those involving ineffective assistance of counsel).

SUMMARY OF THE ARGUMENT

ARGUMENT AND CITATIONS OF AUTHORITY

Insert from 11th Circuit's order here.

Insert argument here.

Therefore, _____ seeks a new state trial or release from confinement.

CONCLUSION

WHEREFORE the Appellant respectfully prays this Honorable Court to vacate the state judgment and order this case retried or the Appellant discharged.

Dated: this _____ day of _____.

Respectfully submitted,

Appellant, Pro Se

OATH

Appellant declares under penalty of perjury, in accordance with Title 28 U.S.C. §1746, that he has read this initial brief and that the facts stated in it are correct and true.

Appellant, Pro Se
DC# _____
Marion C.I.
P.O. Box 158
Lowell, FL 32663-0158

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 32(a)(7)(B). This brief contains 6263 words, less than the 14,000 allowed for Appellate Briefs.

Appellant, Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Brief of Appellant** has been furnished to _____, Assistant Attorney General, at _____
by handing said document to a prison official, for mailing by pre-paid first class U.S. mail on this ____ day of _____ 20__.

Appellant, Pro Se
DC# _____
Marion C.I.
P.O. Box 158
Lowell, FL 32663-0158

_____, 20____

DC# _____

_____ C.I.

Clerk of Court
Eleventh Circuit Court of Appeals
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

RE: CASE NO.: _____

Dear Honorable Clerk:

Enclosed is the following pleading for filing:

Brief of the Appellant

Please file the pleading and notify me thereof in the SASE provided.

Thank you,

Appellant, Pro Se

Cc: _____, Assistant Attorney General, _____, FL
File

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**RECORD EXCERPTS
AS
APPENDIX TO
INITIAL BRIEF OF APPELLANT**

Appellant, Pro Se
DC# _____

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Undersigned certifies that the following may have an interest in the outcome
of this appeal:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Record Excerpts as Appendix to Brief of Appellant** has been furnished to _____, Assistant Attorney General, at _____, FL _____ by handing said document to a prison official, for mailing by pre-paid first class U.S. mail on this _____ day of _____ 20__.

Appellant, Pro Se
DC# _____
_____ C.I.

INDEX

<u>EXHIBIT</u>	<u>DOCUMENT</u>	<u>DATE</u>
A	U.S. District Court Clerk Docket Case No. 6:09-cv-00880-MSS-KRS	Feb. 02, 2012
B		
C		
D		
E		
F		

EXHIBIT A

EXHIBIT A

EXHIBIT B

EXHIBIT B

EXHIBIT C

EXHIBIT C

EXHIBIT D

EXHIBIT D

EXHIBIT E

EXHIBIT E

EXHIBIT F

EXHIBIT F