IN THE DISTRICT COURT OF APPEAL OF FLORIDA

SECOND DISTRICT

NO. 95-02917

L.T. NO. CRC 89-11425 CFANO

KEVIN RICHARD HERRICK,

Petitioner,-

-vs.-

HARRY K. SINGLETARY, JR.,
as Secretary of the Florida
Department of Corrections

Respondent.

PETITION FOR A WRIT OF HABEAS CORPUS

KEVIN R. HERRICK #240583 MN#614
DeSoto Correctional Institution
Post Office Drawer 1072
Arcadia, FL 33821-1072

Petitioner In Propria Persona

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PRELIMINARY STATEMENT

In accordance with the provisions of Fla.R.App.P. 9.100, Kevin Richard Herrick, a state prisoner incarcerated at DeSoto Correctional Institution, located in Arcadia, Florida, respectfully petitions this Honorable Court for a writ of habeas corpus directed to Harry K. Singletary, Jr., as Secretary of the Florida Department of Corrections.

BASIS FOR INVOKING JURISDICTION

This Court has jurisdiction to issue a writ of habeas corpus under Art. V, Sect. IV(b)(3), Fla.Const. (1980), and Fla.R.App.P. 9.030(b)(3). It is well settled that habeas corpus is the proper remedy to challenge a prisoner's unlawful detention based upon the denial of effective assistance of appellate counsel on direct appeal. Knight v. State, 394 So.2d 997 (Fla. 1981); Smith v. State, 400 So.2d 956 (Fla. 1981); Martin v. Wainwright, 497 So.2d 872 (Fla. 1986); White v. State, 456 So.2d 1302 (Fla. 2nd DCA 1984); Triola v. State, 464 So.2d 1312 (Fla. 2nd DCA 1985).

FACTS UPON WHICH PETITIONER RELIES

After reviewing less than the entire record of the proceedings below, Mr. Herrick's court-appointed appellate counsel, Allyn Myers Giambalvo, an assistant public defender, filed an wholly inadequate Anders brief claiming that the appeal was frivolous. Furthermore, Ms. Giambalvo failed to ensure that a complete record of the proceedings below was included in the record on appeal to enable this Court to adequately conduct its own independent Anders review of the entire proceedings below.

On July 17, 1992, after reviewing a partial record of the proceedings below, this Court per curiam affirmed Mr. Herrick's convictions and sentences. Herrick v. State, 602 So.2d 536 (Fla. 2nd DCA 1992).

NATURE OF THE RELIEF SOUGHT

The nature of the relief sought by this petition is the appointment of appellate counsel to (1) review the omitted portions of the proceedings below in conjunction with the partial record on appeal to ascertain and point out whether any plain or other arguable issues of error occurred which may support Mr. Herrick's direct appeal, and (2) ensure that the omitted portions of the proceedings below are included in the record on appeal to enable this Court to adequately conduct its own independent Anders review of the entire trial record if counsel should determine that Mr. Herrick's appeal is in fact frivolous.

ARGUMENT

As detailed below, the petitioner, Kevin Richard Herrick, was denied effective assistance of appellate counsel on direct appeal.

I.

In Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), the United States Supreme Court outlined the constitutionally-required safeguards that appellate counsel and the reviewing court must employ to ensure that an indigent appellant receives a fair and meaningful review of his conviction when counsel moves to withdraw from the case claiming that the appeal is frivolous.

First, counsel must "master the trial record," "thoroughly research the law," and "exercise judgment in identifying the arguments that may be advanced on appeal." Only after such a thorough examination has led counsel to the conclusion that the appeal is "wholly frivolous," is counsel justified in making a motion to withdraw. See In re Anders Briefs, 581 So.2d 149, 151 (Fla. 1991), citing McCoy v. Court of Appeals, 486 U.S. 429, 108 S.Ct. 1895, 1902-1903, 100 L.Ed.2d 440 (1988); United States v. Clark, 944 F.2d 803, 804 (11th Cir. 1991)(the first requirement of Anders is a "conscientious examination of the entire record" by counsel); In re Order of the First Dist. Ct. of Appeal, 556 So.2d 1114 (Fla. 1990)(the Anders brief must evident a complete and careful review of the record in order to support counsel's

representations that the appeal is wholly frivolous); United States v. Osorio-Cadavid, 955 F.2d 686 (11th Cir. 1992), citing Hardey v. United States, 375 U.S. 277, 84 S.Ct. 424, 11 L.Ed.2d 331 (1964)(when an attorney other than the actual trial attorney handles the direct appeal of a criminal conviction, the new attorney could not faithfully discharge the obligations that the court places on him unless he could read the entire transcript).

Here, Mr. Herrick's court-appointed appellate counsel, Allyn Myers Giambalvo, an assistant public defender, failed to review the exculpatory trial testimony of the only defense witness, Mr. Herrick's alibi witness, Theresa Porrey, prior to submitting an Anders brief claiming that the appeal was frivolous.[1]

It was apparent on the face of the partial record on appeal that the testimony of Ms. Porrey was presented at trial by way of a videotaped deposition in lieu of live testimony (R. 227-228),[2] and that just immediately prior to the video presentation of the defense testimony, Judge Downey announced that the court reporter would not stenographically record Ms. Porrey's testimony since the videotape itself was going into evidence. (R. 226). could be reviewed. Therefore, after reviewing the transcribed portions of Mr. Herrick's trial, Ms. Giambalvo was on legal notice that a crucial portion of the trial had not been stenographically recorded, but rather was preserved for appellate review on the actual videotape

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[1]Ms. Giambalvo did not represent Mr. Herrick at trial.

[2]The symbol "R." denotes the partial record on Mr. Herrick's direct appeal, consisting of various instruments and transcripts of the proceedings below.

admitted into evidence.

It follows, therefore, in order to fully discharge her legal obligations as Mr. Herrick's advocate on appeal, Ms. Giambalvo necessarily would have to review Ms. Porrey's videotaped trial testimony in conjunction with the stenographically recorded portions of the trial in order adequately determine whether any plain or other arguable issues of error occurred which may have supported the appeal, and certainly before submitting an Anders brief claiming that the appeal was frivolous.

In its entirely, Ms. Giambalvo refers to Ms. Porrey's testimony in the Anders brief, "Theresa Porrey testified for the defense by means of videotape. The essence of her testimony was that when she heard Cheryl screaming, she went and awakened appellant who was sound asleep in her apartment." (Anders Brief, at 6). This meager two-sentence paragraph, apparently ascertained by Ms. Giambalvo by reviewing the stenographically recorded closing arguments and rebuttal testimony, was not a fair or full appraisal of the videotape which was played in its entirety before the jury. In fact, Ms. Porrey's exculpatory videotaped trial testimony touched upon other substantial areas of both the prosecution's and defense's cases which arguably may have supported Mr. Herrick's direct appeal.

Ms. Giambalvo's superficial, two-sentence guesstimate of Ms. Porrey's testimony cannot be considered under any reasonable judicial analysis a careful and conscientious review of the entire record on appeal in search of plain or other arguable

issues of error which may have supported Mr. Herrick's appeal. See United States v. Gregory, 472 F.2d 484, 486 (5th Cir. 1973)(noting that the Supreme Court stressed that the duty of representation as an appellate lawyer includes the duty to search out plain error and nothing less than a complete transcript of the entire proceedings below would suffice to accomplish this).

Without reviewing Ms. Porrey's crucial testimony, which was the testimony of the sole defense witness, Ms. Giambalvo merely presented this Court with the prosecution's case-in-chief, omitting Mr. Herrick's defense entirely, except of course for a couple of inherently ambiguous sentences.[3]

Under the unique facts of this case, Ms. Giambalvo's failure to review Ms. Porrey's videotaped testimony and the jury selection proceedings before submitting an Anders brief claiming that the appeal was frivolous, was substantial error and prejudiced Mr. Herrick by denying him a fair and meaningful review of his convictions and sentences on direct appeal.

No specific error

II.

In Anders, supra, the United States Supreme Court held that after counsel filed an Anders brief claiming that an appeal is frivolous, the reviewing court shall conduct its own independent review of the entire trial record. Anything less is

[3]Ms. Giambalvo also failed to review the jury selection proceedings which were stenographically recorded below, but not transcribed or included on the record on appeal, necessarily rendering Mr. Herrick's entire direct appeal fundamentally unfair and the results thereof unreliable. Clark; Gregory; Anders;

insufficient. See In re Anders Briefs, 581 So.2d at 151; Hampton v. State, 591 So.2d 945 (Fla. 4th DCA 1991); State v. Causey, 503 So.2d 321 (Fla. 1987); Clark; Gregory.

Here, Mr. Herrick's court-appointed appellate counsel, Allyn Myers Giambalvo, failed to ensure that the exculpatory trial testimony of the only defense witness, Mr. Herrick's alibi witness, Theresa Porrey, was included in the record on appeal as to enable this Court to adequately conduct its own constitutionally-required Anders review of the entire trial record.

As previously stated, it was apparent on the face of the partial record on appeal that the testimony of Ms. Porrey was presented at trial by way of a videotaped deposition in lieu of live testimony (R. 227-228), and that just prior to the video presentation, Judge Downey announced that the court reporter would not stenographically record Mr. Porrey's testimony since the videotape itself was going into evidence. (R. 226). Therefore, after reviewing the transcribed portions of Mr. Herrick's trial, Ms. Giambalvo was on legal notice that a crucial portion of the trial had not been stenographically recorded, but rather was preserved for appellate review on the actual videotape admitted into evidence.

It follows, therefore, in order to fully discharge her legal obligations, and in order for this Court to conduct its own independent Anders review of the entire trial record, Ms. Giambalvo necessarily would have to ensure that Ms. Porrey's

videotaped trial testimony and the stenographically recorded jury selection proceedings were included in the record on appeal. Without crucial portions of the trial record included on the record on appeal, this Court could not adequately discharge its duty under Anders to conduct its own independent review of the entire trial record in search of error.

III.

In Anders, supra, the United States Supreme Court held that when an appellate attorney feels that he cannot ethically present an argument in support of the appeal and moves to withdraw, the attorney must submit an appellate brief referring to "anything" in the record that may support or justify the appeal. Anders, 386 U.S., at 744, 87 S.Ct., at 1400; McCoy, 486 U.S. at, 430, 439, 108 S.Ct., at 1898, 1902; Penson v. Ohio, 488 U.S. 75, 80, 109 S.Ct. 346, 350, 102 L.Ed.2d 300 (1988); In re Order of the First Dist. Ct. of Appeal, 556 So.2d, at 1116 (one of the fundamental points of Anders and its progeny is that, even though counsel find no merit in the appeal, he must present any argument that would reasonably support the appellant's theory, and he must point out anything in the record which might arguably justify the appeal).

Here, rather than present any reasonable arguments and facts apparent on the face of the partial record on appeal which arguably justified Mr. Herrick's direct appeal, Ms. Giambalvo merely presented the Court with a diluted version of the

prosecution's case. Ms. Giambalvo's concluded, "From the [partial] record herein, there does not appear to be any legal error that would constitute grounds for reversal of appellant's conviction." Ms. Giambalvo, however, failed to point out the following points which may have supported Mr. Herrick appeal:

A.

The prosecution in this case was rendered fatally defective as denial of due process based upon the unreasonable contamination of prosecution witnesses by the Largo Police Department.

It was apparent on the face of the partial record on appeal that both prosecution witnesses Hagen and Barfield candidly admit that, on the night in question, officers of the Largo Police Department informed them that they had conducted a search of Mr. Herrick's residence, recovering the bloody knife and bloody pants used and worn by Mr. Herrick during the attack. (R. 134-135, 195). Although this information was completely unsubstantiated, proven false by FDLE laboratory analysis, neither Hagen or Barfield were ever informed of the negative test results, and therefore truly believed the false information to be fact when they testified at trial some fifteen months later.

Couple the fact that absolutely no evidence whatsoever was ever found to corroborate Barfield's questionable identification testimony, or otherwise support the conviction, and Hagen's candid admission that she was not sure that Mr. Herrick was the

perpetrator, the case boiled down the credibility of Barfield versus Ms. Porrey's alibi testimony, essentially turning this case into a swearing contest. Thus, under these facts, the prosecution's case relied upon the relative credibility of Barfield's testimony, which was the only testimony presented that could create a factual issue for the jury to determine, and was the only legally sufficient evidence which the jury could have relied upon to convict. However, by intentionally exposing Barfield to such prejudicially false information, the police manifestly denied Mr. Herrick a fair trial by irreparably contaminating Barfield's testimony; the false information could have no other foreseeable affect than to convince Barfield of Mr. Herrick's guilt, profoundly altering Barfield's demeanor and certainty expressed while testifying at trial, which is something the jury necessarily would have observed and then considered while subsequently discounting Ms. Porrey's alibi testimony. Therefore, considering the fact that this case was simply a question of credibility, offering the jury inculpatory testimony of a witness whose credibility has been irreparably altered by the impermissible exposure of the police's misinformation, is fundamentally unfair and certainly deprived Mr. Herrick of the right to a fair trial, rendering the prosecution fatally defective as a denial of due process.

B.

The prosecution in this case necessarily created a

reasonable doubt as to Mr. Herrick's guilt, and was rendered fatally defective as a denial of due process based upon the prosecution's presentation of two witnesses, during the state's case-in-chief, who gave completely contradictory testimony identifying two different perpetrators.

It was apparent on the face of the partial record on appeal that the prosecution offered Hagen's tainted testimony to identify Mr. Herrick: Although she candidly admitted that she was not sure Mr. Herrick was the perpetrator, Hagen was positive that the perpetrator had long, curly, fluffy hair (R. 120-121), and was wearing a dark blue or black t-shirt with no sleeves. (R. 110, 114-115, 117-119). Following Hagen's testimony, however, the prosecution presented the testimony of Barfield who, contrary to Hagen's description, stated that the man he saw had greased back hair with oil or moose, which was close to his scalp (R. 188-189, 194-195), and was completely nude, definitely was not wearing a t-shirt. (R. 181-182, 184-186).

The presentation of different witnesses who, during the state's case-in-chief, give completely contradictory testimony identifying different perpetrators, necessarily creates a reasonable doubt as to the accused's guilt, rendering the prosecution fatally defective as denial of due process. See Majors v. State, 247 So.2d 447 (Fla. 1st DCA 1971).

C.

The trial court erred in allowing the prosecution, over

defense objection, to reopen its case on rebuttal to introduce the contents of a cordless telephone conversation intercepted in violation of the Florida Security of Communications Act.

It was apparent on the face of the partial record on appeal that, after the defense rested its case, the trial court allowed the prosecution, over defense objection, to reopen its case on rebuttal to introduce the contents of a cordless telephone conversation between Ms. Porrey and an unheard, unidentified party. (R. 229-230).

Both prosecution witnesses Hagen and Barfield testified that on some unspecified date after Herrick's arrest, while cleaning their apartment, they intercepted one side of a cordless telephone conversation between Ms. Porrey and an unheard, unidentified party, using a baby monitor. According to Hagen and Barfield, Ms. Porrey allegedly told the other party that she had went into Mr. Herrick's bedroom and discovered that his shoes and socks were wet, and that the sliding glass door was open. (R. 230-243).[4] The prosecution offered this "rebuttal" testimony in an attempt to impeach Ms. Porrey's videotaped trial testimony where she denied having ever seen or told anyone over the telephone that she had observed that Mr. Herrick's shoes and socks were wet, and that the sliding glass door was open.[5]

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[4]As to its relevancy, neither Hagen or Barfield testified as to when Ms. Porrey allegedly observed this.

[5]As a general evidentiary principle, the only purpose for the admission of hearsay testimony of this nature would be to establish that the alleged telephone conversation actually took place, rather than for the truth of the matter asserted during the purported

Ms. Porrey's alleged prior inconsistent statement, illicited by the prosecutor beyond the scope the defense's direct examination, was purely collateral in nature, completely irrelevant to any fact at issue in Mr. Herrick's trial, and therefore was not subject to subsequent impeachment on rebuttal. See Gelabert v. State, 407 So.2d 1007 (Fla. 5th DCA 1981); DuPont v. State, 556 So.2d 457 (Fla. 4th DCA 1990). Moreover, it appears that the prosecutor failed to establish a proper foundation for impeachment by informing Ms. Porrey of the time, place, or to whom the statement was allegedly made. See Kimble v. State, 537 So.2d 1094 (Fla. 2nd DCA 1989); Hutchins v. State, 397 So.2d 1001 (Fla. 1st DCA 1981)(for purposes of establishing a proper foundation for impeachment, it is not enough to generally asked if a particular statement was made).[6]

Furthermore, the trial court erred in admitting the contents of Ms. Porrey's putative one-sided cordless telephone conversation because it clearly was intercepted by Hagen and Barfield using baby monitor in violation of Chapter 934 of the

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conversation. Nonetheless, in his closing arguments, the prosecutor asserted that Mr. Herrick's shoes and socks were wet, and that the sliding glass door was open on the night question (albeit with no admissible evidence to substantiate the claim), which is something the jury must have considered while weighing the conflicting testimony of Barfield and Ms. Porrey, ultimately resolving the conflict by discounting Mr. Herrick's otherwise viable alibi defense.

[6]Arguably, the failure to point out this particular issue in the Anders brief can be attributed to Ms. Giambalvo's manifest failure to review Ms. Porrey's videotaped trial testimony where the prosecutor would have had to lay the proper foundation for subsequent impeachment on rebuttal.

Florida Security of Communications Act. See Section 934.06, Fla.Stat. (1989)(whenever any wire or oral communication has been intercepted, no part of the contents of such communication, and no evidence derived therefrom, may be received in evidence in any trial). The Florida Supreme Court has expressly held that cordless telephone conversations and their contents fall within the boundaries of this chapter. See State v. Mozo, 20 Fla.L.Weekly S-161 (Fla. April 13, 1995).

D.

The trial court erred in allowing the videotaped deposition of Theresa Porrey, admitted at trial in lieu of live testimony, to go into the juryroom for unrestricted, unsupervised review during the jury's deliberation.

It was apparent on the face of the partial record on appeal that, after retiring for their deliberations, the jury requested to view Ms. Porrey's testimony again. (R. 28, 326-327). After consulting with the prosecution and the defense, Judge Downey allowed the jury to review the videotape again. However, rather than bringing the jury back into the courtroom to review the videotape under his judicial supervision in the presence of the parties, e.g., like the court reporter reading back stenographically record trial testimony in open court in the presence of everyone concerned, Judge Downey instructed the bailiff to place the videotape and player in the juryroom, leaving the jury free to review Ms. Porrey's videotaped testimony

without any judicial supervision whatsoever, nor any of the procedural safeguards normally employed when testimony is read back to the jury by a court reporter.[7]

Videotaped testimony presented at trial in lieu of live testimony is not allowed in the juryroom. See Young v. State, 645 So.2d 965 (Fla. 1994)(if a deposition is read into evidence in lieu of live testimony, it cannot be taken back to the juryroom, and there is all the more reason to preclude video presentations of trial testimony from being taken into the juryroom. Should the jury wish to see such video testimony again, the court may consider the request as it would with respect to any other request to have testimony read back).

In Flanagan v. State, 586 So.2d 1085, 1091 (Fla. 1st DCA 1991), First District Court of Appeal, en banc, held that the jury should not be allowed unrestricted review of videotaped testimony. In that particular case, however, there was no reasonable possibility that the jury viewed the videotape during their deliberations. The jury in Mr. Herrick's case, on the other hand, expressly requested to review the videotaped testimony, and Judge Downey responded by allowing unrestricted review of the testimony. (R. 28, 326-327).

Here, not only was the jury impermissibly permitted to review Ms. Porrey's videotaped testimony in the juryroom, but

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[7]This is analogous with sending the court reporter back to juryroom to read back stenographically recorded trial testimony without the attendance of the judge, prosecutor, and defense counsel.

that review was not restricted in any manner, nor was there any judicial supervision of the review, or any instructions given as to what the jury could and could not do with the videotape, such as reviewing some or all of testimony, or conduct repeated reviews of some or all of the testimony. Moreover, neither the prosecution or defense were present during the jury's review of the videotape.

E.

Mr. Herrick was denied effective assistance of trial counsel as matter of law, which was clearly ascertainable on the face of the partial record on appeal, based upon counsel's failure to timely file a motion for new trial.

Ineffective assistance of trial counsel claims are generally limited to collateral review and ordinarily will not be considered on direct appeal, there is a narrow exception to this rule when the record on appeal clearly reflects counsel's ineffectiveness.

Here, it was apparent on the face of the partial record on appeal that, on October 25, 1990, twenty-two (22) days after the jury found him guilty on October 3, 1990, Mr. Herrick's trial counsel, Roy Edward Leinster, filed a motion for new trial which alleged that the verdict was contrary to the weight of the evidence, and that the conduct of law enforcement in this case rendered the prosecution fatally defective as a denial of due

process. (R. 35-36). Further, the partial record on appeal reflected that no hearing was held on the motion, nor did Judge Downey render an order disposing of the untimely motion.

Florida courts recognize that trial counsel's failure to timely file a motion for new trial is analogous to the failure to timely file a notice of appeal, and when counsel's failure results in a loss of all judicial review of the evidentiary weight of the evidence, the failure to timely file a motion for new trial is per se ineffective assistance of counsel. See Robinson v. State, 462 So.2d 471 (Fla. 1st DCA 1984); Uprevert v. State, 507 So.2d 162 (Fla. 3rd DCA 1987); Kelley v. State, 19 Fla.L.Weekly D-1256 (Fla. 1st DCA June 17, 1995)(the judicial review afforded under a motion for new trial is a "fundamental right").

As a direct result of Mr. Leinster's failure to timely file a motion for new trial within ten (10) days of the jury's verdict,[8] Mr. Herrick was deprived of the only opportunity to have authorized judicial review of the weight of the evidence on the grounds that the verdict was contrary to the weight of the evidence.

F.

The trial court erred in sentencing Mr. Herrick by incorrectly calculating his composite sentencing guidelines score on a fundamentally defective sentencing guidelines scoresheet.

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[8]See Fla.R.Crim.P. 3.590(a)

The sentencing guidelines were created to set forth a uniform standard to guide the sentencing judge in the decision-making process. Fla.R.Crim.P. 3.701(b). The sentencing guidelines ranges include both recommended and permitted ranges. Fla.R.Crim.P. 3.701(d)(8). The recommended ranges are assumed to be appropriate for the composite score of the offender. The permitted ranges, however, allow the sentencing judge some additional discretion when the particular circumstances of a crime make it appropriate to increase or decrease the recommended sentence without a requirement of written justification to do so. Fla.R.Crim.P. 3.701(d)(8).

Here, it was apparent of the face of the partial record on appeal that Judge Downey incorrectly calculated Mr. Herrick's composite sentencing guidelines score while utilizing a fundamentally defective sentencing guidelines scoresheet. (R. 71-72). This form had been implemented for the sentencing guidelines originally effective on July 1, 1984, at time in which no permitted ranges existed. By the time Mr. Herrick was sentenced on January 4, 1991, however, the Florida Supreme Court had already approved an entirely new sentencing guidelines scoresheet which included both recommended and permitted ranges. See In re Florida Rules of Criminal Procedure 3.701 and 3.988, 566 So.2d 770, 790 (Fla. 1990); Fla.R.Crim.P. 3.988(j)(1991); Also see Florida Rules of Criminal Procedure re: Sentencing Guidelines, 522 So.2d 374, 375 (Fla. 1988)(expanding discretion of sentencing judges by implementing "permitted ranges"). The

new scoresheet, remarkably, expressly requires the calculation of both recommended and permitted sentences, and then requires an indication of the actual sentence imposed by the sentencing judge. A permitted sentence on the new scoresheet would appear to be a departure sentence on the scoresheet used to sentence Mr. Herrick.

Review of the transcripts of the sentencing proceeding also reveals that neither Judge Downey, the prosecutor, or defense counsel ever determined what Mr. Herrick's permitted range was, and incorrectly believed (relying on the fundamentally defective scoresheet) that a life sentence was mandatory under sentencing guidelines. Under the permitted range on the new scoresheet, however, Mr. Herrick could have received a substantially lesser sentence of twenty-seven (27) to forty (40) years.

CONCLUSION

Based upon the foregoing facts and authorities, this Honorable Court should appoint appellate counsel to (1) review the omitted portions of the proceedings below in conjunction with the partial record on appeal to ascertain and point out whether any plain or other arguable issues of error occurred which may support Mr. Herrick's direct appeal, and (2) ensure that the omitted portions of the proceedings below are included in the record on appeal to enable this Court to adequately conduct its own independent Anders review of the entire trial record if counsel should determine that Mr. Herrick's appeal is in fact frivolous.

Respectfully submitted,

KEVIN R. HERRICK #240583 MN#614
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Arcadia, FL 33821-1072

Petitioner In Propria Persona

VERIFICATION OATH

UNDER THE PENALTIES OF PERJURY, I declare that I have read the foregoing petition for writ of habeas corpus and that the facts stated in it are true. Section 92.525(2), Fla.Stat. (1991).

EXECUTED this 1st day of AUGUST, 1995.

Kevin R. Herrick

KEVIN R. HERRICK #240583 MN#614
DeSoto Correctional Institution
Post Office Drawer 1072
Arcadia, FL 33821-1072

Petitioner In Propria Persona

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was furnished by mail to the Honorable Robert A. Butterworth, Attorney General, 2002 North Lois Avenue, Suite 700, Tampa, FL 33607-2366, this 1st day of AUGUST, 1995.

Kevin R. Herrick

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