

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
THIRD DISTRICT

SEAN CASEY,

CASE NO.

Petitioner,

L.T. CASE NOS. F01-07975  
F06-032696

vs.

THE STATE OF FLORIDA,

Respondent.

---

**PETITION FOR WRIT OF HABEAS CORPUS**  
**GRANTING A BELATED APPEAL**

**PETITION**

The Petitioner, SEAN CASEY, pursuant to Rule 9.141(c), Fla.R.App.P., petitions this Honorable Court for a writ of habeas corpus granting him a belated appeal.

The Petitioner, SEAN CASEY, was a defendant in the criminal division of the 11<sup>th</sup> Judicial Circuit, Dade County, Case Nos. F01-07975 and F06-032696. In this petition, the Petitioner will be referred to as such. The respondent, the State of Florida, will be referred to as the "State." The symbol "A" in this petition refers to the appendix attached hereto.

## JURISDICTION

This Honorable Court has jurisdiction pursuant to Rule 9.141(c), Fla.R.App.P.

## RELIEF SOUGHT

The Petitioner is seeking to have this Court enter an Order granting this petition for leave to file a belated appeal from the lower court's Order denying his Motion to Vacate Conviction and Sentence entered by the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida on March 2, 2007 (A. 1) and for this Court to additionally direct that its Order granting this petition for belated appeal be filed with the lower court and be treated as a timely notice of appeal as provided in Rule 9.141(c)(5)(D), Fla.R.App.P.

## FACTS

1. On October 17, 2006, the Petitioner pled guilty in the Circuit Court of the Eleventh Judicial Circuit to DUI manslaughter, vehicular homicide and leaving the scene of an accident involving a death (Case No. F01-07975), and failure to appear while released on bond (Case No. F06-032696).
2. That same day, the court sentenced the Petitioner to a term of imprisonment of 11 years and six months on the DUI manslaughter charge, 11 years and six months on the charge of leaving the scene of an accident involving death to

run concurrent with the DUI manslaughter sentence, and a term of imprisonment of one year on the failure to appear charge to run consecutive to the sentences for DUI manslaughter and leaving the scene of an accident. The court did not impose a sentence on the charge of vehicular homicide because it was duplicitous to the DUI manslaughter charge. Thus, the Petitioner was sentenced to a total term of imprisonment of 12 years and six months.

3. Subsequently, the Petitioner retained David S. Markus, Esq. who represented him in those cases in the filing of a "Motion to Vacate Conviction and Sentence" pursuant to Florida Rule of Criminal Procedure 3.850. That Motion, which was filed on November 3, 2006 by Mr. Markus alleged that the Petitioner's attorney at the trial level had an actual conflict of interest at the time of the guilty plea because, prior to the Petitioner's guilty plea, that attorney advised the Petitioner to flee by leaving the United States.

4. On January 5, 2007, Mr. Markus filed an "Addendum to Motion to Vacate Conviction and Sentence" on the Petitioner's behalf which alleged that Milton Hirsch rendered ineffective assistance of counsel because he failed to call the Petitioner as a witness at a pre-trial hearing on a motion to suppress filed by the Petitioner.

5. On January 8, 2007, the trial court held an evidentiary hearing on the Petitioner's Rule 3.850 Motion and addendum thereto. Prior to that hearing, the Petitioner expressly told David S. Markus that, if his Rule 3.850 Motion was denied, he wanted to appeal the Order denying it. Indeed, on October 29, 2006, the Petitioner wrote a letter to Mr. Markus in which he stated, *inter alia*, "I am going to fight to the very end until justice is served." (A. 2). On November 28, 2006, the Petitioner wrote a letter to Mr. Markus in which he stated, *inter alia*, "We need to vacate the plea. Somebody told me you can appeal a 3.850 to the Third DCA.... My family and friends are willing to take this case all the way to the Supreme Court." (A. 3). On December 23, 2006, the Petitioner wrote a letter to Mr. Markus in which he stated, *inter alia*, "I have found out at the prison's law library that you can appeal a 3.850 Motion to Vacate Plea to the Appellate Court. Hopefully you have considered this option if the motion is denied by Judge Glick." (A. 4).

6. At the hearing on the Petitioner's Rule 3.850 Motion, several witnesses testified and Mr. Markus sought to admit a tape recording of the Petitioner's trial attorney advising the Petitioner to leave the country prior to his trial. However, the State objected to the admission of the tape recording and the trial court sustained the objection without listening to the tape recording.

7. At the conclusion of the hearing, the trial court orally denied the Rule 3.850 Motion and the addendum thereto. The trial court further stated that it would be providing a *written* Order outlining its reasons for denying the Rule 3.850 Motion because a written Order would be important if the Petitioner elected to appeal the denial of his Rule 3.850 Motion. (A. 5).

8. At the time that the trial court orally denied the Petitioner's Rule 3.850 Motion, the Petitioner had made it clear to David S. Markus that he wanted him to proceed with an appeal of the denial of his Rule 3.850 Motion. Attached in the Appendix hereto is an Affidavit of David S. Markus, Esq. in which he testifies to this fact. (A. 6). At that time, David S. Markus asked the trial court to appoint a Public Defender for the purpose of appealing the denial of that Motion. Thus, the record plainly shows that Mr. Markus was aware that the Petitioner wanted to appeal the trial court's denial of his Rule 3.850 Motion. The trial court denied Mr. Markus' request for the appointment of a Public Defender to represent the Petitioner on such an appeal. (A. 5).

9. On March 2, 2007, the trial court entered its written Order denying the Petitioner's Rule 3.850 Motion and addendum thereto. A notice of appeal from that Order would have had to have been filed by April 1, 2007 in order to have been timely.

10. David S. Markus has sworn in his Affidavit attached in the Appendix hereto that he never received a copy of the trial court's March 2, 2007 written Order denying the Petitioner's Rule 3.850 Motion and was unaware of its existence until undersigned counsel e-mailed it to him on January 4, 2008. Accordingly, he never mailed a copy of it to the Petitioner. (A. 6).

11. Although the Petitioner timely told David S. Markus that he wanted to appeal the denial of his Rule 3.850 Motion and never changed his mind as to that matter, Mr. Markus failed to ever file a notice of appeal from the trial court's March 2, 2007 Order denying the Petitioner's Rule 3.850 Motion and addendum thereto. As previously explained, Mr. Markus never saw that Order until January 4, 2008 when undersigned counsel e-mailed it to him. (A. 6).

12. The Petitioner never received a copy of the trial court's March 2, 2007 Order denying his Rule 3.850 Motion until after the time for filing his notice of appeal from that Order had expired. More specifically, the Petitioner never received a copy of the trial court's Order denying his Rule 3.850 Motion from the trial court. From March 2, 2007, when that Order was entered until the present date, the Petitioner has been incarcerated at New River Correctional Institution, East Unit. Attached in the Appendix hereto is documentation from Mary Lee Osteen, Storage Consultant at the Mail Room of New River Correctional Institution, stating that she

checked the New River Correctional Institution's mail log and no legal mail was delivered to the Petitioner during the months of March and April 2007. (A. 7).

13. The Petitioner did not realize that the trial court had entered its March 2, 2007 Order denying his Rule 3.850 Motion until after the time for filing the notice of appeal therefrom had expired. The Petitioner's mother inadvertently discovered that Order in the trial court file at the Clerk's Office when she was searching for something else there after the time for filing the notice of appeal therefrom had expired. She then told the Petitioner about it.

14. The Petitioner did not realize that he could petition to belatedly appeal from that Order until just recently when undersigned counsel told him that he could do so.

15. As a result of the foregoing facts, no notice of appeal was ever filed from the trial court's March 2, 2007 Order denying the Petitioner's Rule 3.850 Motion and Addendum thereto.

### ARGUMENT

It is well-established that a petitioner is entitled to a belated appeal from an Order denying his Rule 3.850 Motion where the petitioner alleges that he did not receive a copy of that Order until the time for filing the notice of appeal had expired and the petitioner's allegations are supported by documentation from the prison mail

room. *Diresta v. State*, 860 So.2d 1052 (Fla. 5<sup>th</sup> DCA 2003)(defendant, despite waiting more than one year, deserved right to appeal the trial court's denial of his Motion for post-conviction relief, in light of the fact that, during his incarceration, he did not receive legal mail for a three-month period and thus never received the trial court's Order denying his Motion for post-conviction relief); *Miller v. State*, 838 So.2d 667 (Fla. 1<sup>st</sup> DCA 2003)(petitioner was entitled to a belated appeal from the Order denying his Rule 3.850 Motion where the petitioner alleged that he did not receive a copy of that Order until the time for filing his notice of appeal had expired and the petitioner's allegations were supported by documentation from the prison mail room); *Brigham v. State*, 769 So.2d 1100 (Fla. 1<sup>st</sup> DCA 2000)(same); *Funchess v. Moore*, 766 So.2d 348 (Fla. 1<sup>st</sup> DCA 2000)(same); *Simpkins v. State*, 807 So.2d 826 (Fla. 5<sup>th</sup> DCA 2002) (holding that a defendant who alleged that he failed to receive an Order denying his Rule 3.850 Motion until after the time had expired for filing a notice of appeal therefrom was entitled to a belated appeal where the prison mail logs confirmed that he received no legal mail during the relevant time period in which he could have timely filed a notice of appeal). *See also Hildebrand v. Singletary*, 666 So.2d 274 (Fla. 4<sup>th</sup> DCA 1996)("The incarcerated petitioner has established that, through no fault of his own, he did not receive a copy of the trial court's order in a

timely fashion. This court has permitted petitioners to file belated appeals under similar circumstances.”).

An Order denying a Rule 3.850 Motion must be reduced to writing before a notice of appeal therefrom can be filed. *See Prado-Gonzalez v. State*, 468 So.2d 991 (Fla. 4<sup>th</sup> DCA 1984); Fla.R.Crim.P. 3.850 (g)(“The clerk of the court shall promptly serve on the movant a copy of any order denying a motion for postconviction relief.”); Fla.R.App.P. 9.020(h)(“An order is rendered when a signed, written order is filed with the lower tribunal.”). In this case, the Petitioner has sworn that he did not receive a copy of the March 2, 2007 Order denying his Rule 3.850 Motion until the time for filing a notice of appeal therefrom had expired and the Petitioner’s allegations are supported by documentation from his prison mail room and by the fact that his attorney, Mr. Markus, also did not receive a copy of it. Accordingly, the Petitioner plainly is entitled to file a belated appeal from that Order.<sup>1</sup>

Furthermore, the Petitioner has an alternative ground for granting his petition for a belated appeal. More specifically, the Petitioner has sworn in this Petition that he timely told his counsel, Mr. Markus, that he wanted to appeal and did not subsequently change his instructions but his counsel neglected to file any notice of

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<sup>1</sup> The State has the ultimate burden to see that an Order denying post-conviction relief is timely received by a petitioner. *Jenkins v. State*, 603 So.2d 641 (Fla. 5<sup>th</sup> DCA 1992).

appeal for him. This claim is corroborated by an Affidavit of Mr. Markus. (A. 6). It is well-established that a defendant is entitled to a belated appeal from an Order denying his Rule 3.850 Motion where the defendant timely tells his trial counsel that he wishes to appeal and does not subsequently change his instructions but trial counsel neglects to file a notice of appeal on his behalf. *Williams v. State*, 777 So.2d 947 (Fla. 2001)(holding that defendant can file a belated appeal of the denial of his Rule 3.850 Motion that was untimely due to counsel's neglect); *Gunn v. State*, 612 So.2d 643, 644-45 (Fla. 4<sup>th</sup> DCA 1993)(recognizing that an attorney's failure to follow a defendant's request to timely appeal the denial of his Rule 3.850 Motion is grounds for a belated appeal even where the defendant pled guilty); *Johnson v. State*, 813 So.2d 230 (Fla. 1<sup>st</sup> DCA 2002)(petition for belated appeal of lower court's Order denying defendant's Rule 3.850 Motion was granted where the defendant made a timely request to initiate an appeal but his post-conviction counsel failed to file a notice of appeal); Fla.R.Crim.P. 3.850(g)(“A petitioner may seek a belated appeal upon the allegation that the petitioner timely requested counsel to appeal the order denying petitioner's motion for post-conviction relief and counsel, through neglect, failed to do so.”). *See also Crocton v. State*, 743 So.2d 1188 (Fla. 5<sup>th</sup> DCA 1999)(defendant was entitled to a belated direct appeal from his conviction where he asked his counsel to file the appeal and it was overlooked); *Reese v. State*, 743 So.2d

1104 (Fla. 4<sup>th</sup> DCA 1998)(defendant was entitled to a belated direct appeal from his conviction where defendant's trial attorney had no recollection of the defendant requesting him to file a notice of appeal but conceded that the failure to file "must have been a mistake.").


"[A] defendant's entitlement to a belated appeal under rule 3.850 because counsel failed to follow instructions to file a timely notice of appeal is not dependent on any preliminary showing on the merits [of the appeal]." *Gunn*, 612 So.2d at 645. *Accord Viqueira v. Roth*, 591 So.2d 1147, 1148 (Fla. 3d DCA 1992)(same).

Accordingly, under the facts of this case, Mr. Markus' failure to file a notice of appeal from the March 2, 2007 Order denying the Petitioner's Rule 3.850 Motion mandates that the Petitioner be entitled to belatedly appeal from that Order.

In sum, the Petitioner requests that this Honorable Court grant his petition for a writ of habeas corpus and enter an Order permitting him to file a belated appeal from the lower court's Order denying his Motion to Vacate Conviction and Sentence entered on March 2, 2007 and for this Court to additionally direct that its Order granting this petition for belated appeal be filed with the lower tribunal and be treated as a timely notice of appeal as provided in Rule 9.141(c)(5)(D), Fla.R.App.P.

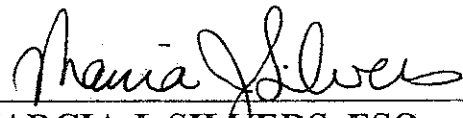
**OATH**

Under penalties of perjury I, SEAN CASEY, declare that I have read the foregoing petition and have personal knowledge of the facts and matters therein set forth and alleged and that each and all of these facts and matters are true and correct.

  
SEAN CASEY

Respectfully submitted,

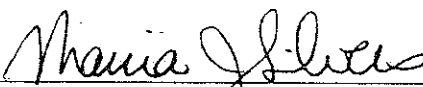
MARCIA J. SILVERS, P.A.  
Suite 606  
799 Brickell Plaza  
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Facsimile: 305/372-1644

By   
MARCIA J. SILVERS, ESQ.  
Florida Bar No: 342459  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

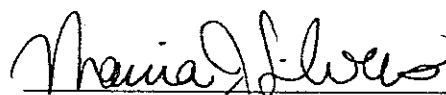
I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 15<sup>th</sup> day of January 2008 to Gail Levine, Assistant State Attorney, 1350

Northwest 12<sup>th</sup> Avenue, Miami, Florida 33136 and the Office of the Attorney General,  
444 Brickell Avenue, Suite 950, Miami, Florida 33131.

  
\_\_\_\_\_  
MARCIA J. SILVERS

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this petition complies with the font requirements of  
Rule 9100(l), Fla.R.App.P.

  
\_\_\_\_\_  
MARCIA J. SILVERS

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
THIRD DISTRICT

CASE NO.

L.T. CASE NOS. F01-7975

F06-032696

SEAN CASEY,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

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APPENDIX TO  
PETITION FOR WRIT OF HABEAS CORPUS  
GRANTING A BELATED APPEAL

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA

STATE OF FLORIDA

CASE No. 01-7975  
JUDGE LEONARD E. GLICK

VS.

SEAN CASEY, DEFENDANT

ORDER DENYING MOTION TO VACATE CONVICTION AND SENTENCE

THIS MATTER CAME BEFORE THIS COURT ON THE DEFENDANT'S MOTION TO VACATE THE CONVICTION AND SENTENCE. THE COURT REVIEWED THE MOTION, CONSIDERED THE TRANSCRIPT AND HELD AN EXTENSIVE EVIDENTIARY HEARING ON THE ISSUES ALLEGED. THE DEFENDANT, SEAN CASEY, WAS REPRESENTED AT THE HEARING BY ATTORNEY DAVID S. MARKUS.

THE COURT HEREBY DENIES THE MOTION FOR POST CONVICTION RELIEF AND FINDS

- (1) THE DEFENDANT ENTERED INTO A NEGOTIATED PLEA WITH THE STATE ON OCTOBER 17<sup>TH</sup>, 2006. THE DEFENDANT WAS REPRESENTED BY ATTORNEY MILTON HIRSCH AND MICHAEL HABER. THIS PLEA WAS MEMORIALIZED IN A PLEA COLLOQUY, A TRANSCRIPT OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF.
- (2) THE DEFENDANT FILED THIS MOTION WITHDRAW THE PLEAS OF GUILTY ON NOVEMBER 6<sup>TH</sup>, 2006.
- (3) THE DEFENDANT'S CLAIM IS REFUTED BY THE ENTIRE PLEA DIALOGUE, SPECIFICALLY THOSE PORTIONS DEALING WITH THE SATISFACTION WITH THE WORK AND ADVICE OF HIS COUNSEL. THE DEFENDANT ACKNOWLEDGED THAT NO PERSON, INCLUDING ANY ATTORNEY, HAD FORCED HIM OR THREATENED HIM IN ORDER TO GET HIM TO ENTER THIS PLEA.
- (4) THE DEFENDANT IS A SOPHISTICATED AND HIGHLY INTELLIGENT ADULT.
- (5) AT THE EVIDENTIARY HEARING, TESTIMONY WAS RECEIVED BY THIS COURT FROM TRIAL COUNSEL, MILTON HIRSCH, MICHAEL HABER AND DR. MICHAEL RAPPAPORT. THE DEFENDANT WAS CALLED AS WITNESS AS WAS HIS MOTHER. THE COURT EVALUATED THE CREDIBILITY OF EACH WITNESS AND THE NATURE OF THEIR TESTIMONY AND FOUND THE TESTIMONY OF THE DEFENDANT AND HIS MOTHER, ON ALL POINTS COMPLAINED OF, TO BE UNWORTHY OF BELIEF.
- (6) WITH RESPECT TO THE ISSUE OF THE DEFENDANT'S FAILURE TO TESTIFY OR PRESENT WITNESSES AT ANY PRE-TRIAL HEARINGS, THE COURT FINDS THAT THESE WERE STRATEGIC OR TACTICAL DECISIONS MADE BY THE DEFENDANT AND HIS ATTORNEY.

THIS COURT FINDS, AS TO ALL ISSUES RAISED IN THE PLEADINGS, COMPETENT AND SUBSTANTIAL EVIDENCE, FROM THE TESTIMONY PRESENTED, THAT THE ACTIONS OF TRIAL COUNSEL WERE STRATEGIC OR TACTICAL DECISIONS MADE IN THE BEST INTERESTS OF THE PETITIONER.

THERE IS NO CREDIBLE EVIDENCE OF A CONFLICT OF INTEREST ON THE PART OF TRIAL COUNSEL THAT WOULD JUSTIFY THE VACATING OF THIS PLEA.

THIS COURT FINDS THAT TRIAL COUNSEL, MILTON HIRSCH AND MICHAEL HABER WERE NOT IN CONFLICT WITH, NOR INEFFECTIVE IN THEIR REPRESENTATION OF, SEAN CASEY.

THE PETITIONER HAS NOT MET HIS BURDEN IN SHOWING PREJUDICE OR ACTS OF HIS ATTORNEYS THAT WERE SO DEFICIENT AS TO REQUIRE A VACATING OF THE PLEA OF DECEMBER 19<sup>TH</sup> 2006.

THE COURT FINDS THE PLEA WAS KNOWINGLY, FREELY AND VOLUNTARILY ENTERED INTO AND DENIES THE MOTION TO VACATE SAID PLEA.

THE DEFENDANT IS HEREBY NOTIFIED THAT HE HAS THIRTY ( 30 ) DAYS IN WHICH TO APPEAL THIS ORDER TO THE THIRD DISTRICT COURT OF APPEAL.

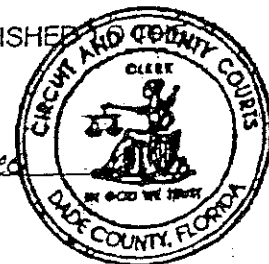
DONE AND ORDERED AT MIAMI, DADE COUNTY, FLORIDA, THIS 2 DAY OF MARCH, 2007.

  
LEONARD E. GLICK  
CIRCUIT COURT JUDGE

XC: SEAN CASEY, DEFENDANT  
DAVID S. MARKUS, ATTORNEY FOR THE DEFENDANT  
GAIL LEVINE, ASSISTANT STATE ATTORNEY, STATE ATTORNEYS OFFICE  
MILTON HIRSCH, FORMER ATTORNEY FOR THE DEFENDANT  
MICHAEL HABER, FORMER ATTORNEY FOR THE DEFENDANT

I HEREBY CERTIFY THAT A COPY OF THIS ORDER HAS BEEN FURNISHED DEFENDANT, BY MAIL, THIS 6<sup>th</sup> DAY OF MARCH, 2007.

  
DEPUTY CLERK



October 29, 2006

Dear Mr. Markus,

I appreciate you coming to visit me last week. I spent more time speaking to you about my case than my entire time with Milton Hirsch as my attorney is over 5 1/2 years. It is a great relief to have new counsel to hopefully correct the wrongs in this case. As I mentioned, I believe I have been taken advantage of three-fold by the criminal justice system.

First, I was misled, lied to and tricked by the police, and those weren't my words but those of Judge Travick who illegally was assigned this case. Second, I was short-handed by the State Attorney's Office that concluded too much in the quick police investigation instead of trying to find out what really happened. I have always been just another case number to the many prosecutors assigned to the case over the years, instead of the good citizen that I am. They never considered my clean record, background, education, career, community service, and other important factors to judge someone's character. Third, I have been failed by my own attorney. I am not second-guessing Mr. Hirsch's expertise, although if you really examine the cases he won that made him well-known, he was a flake and technicalities and not a legal wisdom. He never seemed to pay attention to my case, but rather focused on his federal cases, book writing, teaching, and speaking engagements. My case was definitely a second priority. Perhaps he gave me the advice to plea because he genuinely felt it would be best for me because he knew it wouldn't survive prison. On the other hand, maybe he just wanted to wipe his hands clean of this case. Either way I can never forgive him for the way he handled my case upon my return from Chile. He lied to me, put me in a trap, and destroyed my life. This is criminal, and even though I have no faith in the system anymore, I am going to fight to the very end until justice is served.

Ironically, nobody has paid attention to the facts of this case. If all the parties involved sat down at the same table and looked at the evidence and what could have happened that tragic morning, nobody would be able to say "beyond a reasonable doubt" that I was driving the car. If there ever was a case with reasonable doubt, this is one of them. Everyone I have told my story to cannot believe the situation I am in. Nobody should suffer as much as I have. It is cruel.

Mr. Markus, my life has been destroyed 3 times in less than 6 years. First, on March 11, 2001, when I was arrested. I lost my car, my savings, my future was put on hold, and I was trapped in the criminal justice system, which doesn't have a place for people like me. The only thing I still had was the truth, my family's support, and my job at the Inter American Press Association (IAPA) whose directors never even considered firing me because I was so valuable to the organization. After the accident I tried to put my life together albeit difficult since unless you know what your future holds it's hard to plan in the present. Not knowing how my case was going to end was a huge burden - what reasonable person can live with the possibility of spending 45 years behind bars for a crime he didn't believe he committed! Nonetheless, I never would have left to Chile unless my attorney - one of the best paid but criminal defense attorneys in America - told me to do so, and even gave me pointers how to do it without getting caught. Not to mention, by that point in the litigation I was brainwashed to do anything my attorney told me to do, probably since I had witnessed first hand how the police and prosecution have misconstrued and manipulated the facts of my case. When my attorney tells me to "take my life

back" and go to South America, I had to do it. This was not an admission of guilt. I knew I was most likely innocent, but how could I have someone so vested in the criminal justice system tell me to do something and not do it. He even said there is no place for people like me in the system and I would never "survive" prison. I built my life up again in Chile. I found a truck, bought a car, had a good job, friends, etc. Finally I had my life back, but it came tumbling down again. When Chilean officials said I was going to be deported, I hired attorneys to fight this. Mr. Hirsch even sent documents to Chile to help my case. I stayed in Chile until all my legal resources were exhausted and then was brought back by Chilean officials at the expense of the Chilean government. I have no idea where the prosecutor got information that I was caught while boarding a flight to Argentina! This makes for a good sound bite in front of a judge and jury, but it's a complete lie! Then, after returning, Mr. Hirsch met with me once at D.C. before being moved to Thailand. He said he was requesting a speedy trial, that my plea to Chile would never be mentioned at trial, and no plea offer would ever be made. He lied and tricked me into signing a plea agreement that destroyed my youth and future. I won't get out of prison until my 40s and with a felony conviction, I won't be marketable professionally since I will be <sup>hard</sup> to travel internationally and I won't be able to pursue job interviews at State Department or at an international organization.

Finally, you know what my deal and plea agreement would be: 90 days county jail, with 60 days time served, 6 month furlough to access items in Chile and find housing in Miami, then 2 consecutive <sup>1-year</sup> house arrest sentences. I would sign this tomorrow! Most important is that I avoid prison, and that I can travel abroad for work purposes only. I did plenty of research before, which my parents are continuing to do, and we have found a way.

the same charges that have even gotten probation or county jail time. Many get house arrest. These are all in Dade County and in recent years. In fact, there is someone right now at Metrowest that got 10 years probation for the same exact charges. He violated probation with another DUI and the judge let it slide. He is here now on two second violations. Some people just don't learn, but the point is he never had gone to prison. There's a case of someone in my cell who was convicted for strong armed robbery while out on a prebail from a previous charge. He fled to Brazil for 3 years. The judge considered his 3 years on the run as time served! Why am I getting screwed when there isn't even criminal intent in my case and there is plenty of reasonable doubt that I am even guilty? Let alone the fact the police lied and tricked me and my own attorney may put me in a trap! I have every confidence that you will do your best to fight for me and get me out of this nightmare and "Hell on Earth".

In order to help you get caught up on my case, I have written my story. This is a factual account of my life, the accident, and subsequent litigation. All I ask is that you read it carefully. I am sure this will help you understand my case after we get the plea vacated (hopefully this week!) and either negotiate a new plea based on no prison time or prepare for trial. Please submit the motion ASAP and immediately request I NOT be moved from Metrowest 302. I don't want to go through the difficult prison classification process if I am just going to be pulled back into county jail. Please try your very best to keep me where I am. All indications show that they will pick me up this Friday, so PLEASE act quickly.

Yours truly,

Sean D. Cassey

11/28/00

Dear Mr. Markus,

I completed orientation last week at South Florida Reception Center, and should be shipped out between this week and next. Hopefully you have received my letters. I don't know why you haven't responded. I am going crazy wondering what happened. Corrections keep telling me the motion was "denied", but my mom says we have a hearing on Nov. 29. I want to be there. I demand to be there. But, it's probably too late. I don't understand how they could have a hearing without me there to testify. It's time for me to speak. Also, why was I moved from County jail if Judge Schwartz ordered a hold? Is this the influence of Hirsch and Rappaport? I am convinced, as well as many people I tell, that Milton worked with the State Attorney's office to set me up. That's the only explanation why Hirsch didn't correct the prosecutor for the record when she was telling the judge lies in her account of what she thought happened, especially on being picked up by US Nichols boarding a flight to Argentina. I was in a detention center for a week in Santiago. My Chilean attorneys immediately told Milton. My mom told him! I was brought back by Chilean detectives. The US wasn't even looking for me. They never requested extradition, as the prosecutor stated. I was deported! Why didn't he correct her? He obviously fed her these lies, which obviously made me look worse.

Also, I have learned that you are not completely released after serving 85% of your sentence. You are on a monthly reporting probation for the remainder of your time. Also, I heard convicted felons cannot be issued

passports! Milton told me, take the plea and in 10 years you'll be back in Chile. He even joked that he'd come down to celebrate. All this in the courtroom just before I signed the plea. He told me lies, which made the plea more "attractive" (for lack of a better word). I wouldn't be able to go back until my first 12.5 years are over and if I can renew my passports! These are major items that could have influenced my decision.

We need to vacate this plea. Somebody told me you can appeal a 3.550 to the Third DCA. Then we need to submit a new motion to suppress. The evidence in my case was clearly obtained illegally. My 4th Amendment Rights were violated. Just a few weeks ago a confessed murderer had his conviction overturned because of this and he's a free man. It's not fair that I have to suffer.

I must say I do fear for my safety in here. Someone has stolen my eyeglasses, broke into my locker and stolen all my things, and threatened someone would rape me if I don't "put out". This last threat I fear the most. I don't want to get AIDS in prison. If gang raped this probably will happen. Obviously I am an easy target being a gay male unaware of the prison system. Someone in my dorm is even on a psychological hold and attacked someone for not having sex with him! It's like being around grammar school bullies all over again. It's truly horrific. What's most frustrating is that I have a huge sentence compared to others whose crimes are intentional and habitual. I have one of the highest sentences in a . . .

I am praying they keep me here, however. The permanent inmate side is a lot load back. My classification officer, Mrs. Vasquez, told me she has recommended I stay here, but they usually don't accept inmates with a sentence of more than 8 years. Please call her. Lobby for me to stay until we go back to court. At least I would be earning good time while in prison.

Mr. Markus, you need to fight for me. My life is literally in your hands. My family and friends are willing to take this case all the way to the Supreme Court. We cannot let this injustice go unnoticed. Plus, Hirsch, Haber and Rappaport should all be punished and their licenses should be taken away so they don't have the opportunity to tell other clients to skip bond and cause more problems for themselves, especially those like me that could actually be innocent of my charges. Please read and re-read "My Story". I just ask you know the facts when you go into the courtroom on my behalf. Milton never did.

Please keep me posted on what's going on. I am ready to fight this.

Best,

Sean Casey

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN  
AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

STATE OF FLORIDA,  
PLAINTIFF,  
-vs-  
SEAN CASEY  
DEFENDANT.

CASE NO.: F01-797

**CRIMINAL**

2007 FEB 27 PM 12:20  
CLERK, CIRCUIT & COUNTY COURT  
DADE COUNTY, FLA.  
CRIMINAL #15

FILED FOR RECORD

Metropolitan Justice Building  
1351 Northwest 12th Street  
Miami, Florida 33125  
January 8, 2007  
10:30 a.m.

The above-entitled matter came on for hearing before the  
Honorable LEONARD GLICK, Circuit Judge, pursuant to Notice.

APPEARANCES:

KATHERINE FERNANDEZ-RUNDLE, STATE ATTORNEY, BY,  
GAIL LEVINE, ALISON HANEY, and ANGELICA ZAYAS,  
Assistant State Attorneys,  
on behalf of the State.

DAVID MARKUS, Esq.  
on behalf of the Defendant.

*[Handwritten signature]*

1 I'm not happy about this part, people say that all the tim  
2 here.

3 You and I have been doing this business for a long  
4 time and you have seen plea colloques where the client  
5 says, you know, my lawyer told me this that and the other  
6 thing and we deal with it. If we can resolve it, we do.  
7 And if we can't, the plea doesn't happen.

8 But I ask this for a reason so we don't have to deal  
9 with these later on and I expect people accept the benefit  
10 of the bargain they got and that's what he's going to have  
11 to do because there is no evidence here that leads me to  
12 believe that this plea was involuntarily taken or that he  
13 was coerced into taking this plea or he was misadvised by  
14 his lawyers or he didn't have the opportunity to have the  
15 advice of more than competent but excellent lawyers in  
16 their representation of this defendant and I just have a  
17 real difficult time dealing with it when they have that  
18 buyer's remorse and come back and say I just didn't feel I  
19 could have said anything.

20 Please. Please. That just didn't happen here. As to  
21 the motion that was filed to vacate the conviction and  
22 sentence in case number 01-7975 filed November 6th, 2006,  
23 the Court is going to deny the motion and the Court will  
24 provide a written order as well outlining some of the  
25 points, but more importantly a written order so if you want

1 to take an appeal of it, you can, and you have thirty day  
2 in which to appeal the Court's order denying the motion to  
3 vacate the plea.

4 MR. MARKUS: Judge, I don't think he has any further  
5 funds at this point within which to take an appeal. Would  
6 the Court appoint the Public Defender for him?

7 THE COURT: No, not at this time. So we'll ask that  
8 the Department of Corrections take Mr. Casey back to state  
9 prison. And if there is nothing further on his case, we  
10 will be in recess. Thank you.

11 (Thereupon, the proceedings were concluded.)

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AFFIDAVIT OF DAVID S. MARKUS

STATE OF FLORIDA )  
COUNTY OF DADE) ss. :

BEFORE ME, the undersigned authority, this day personally appeared, DAVID S. MARKUS, who after being duly sworn, deposes and says:

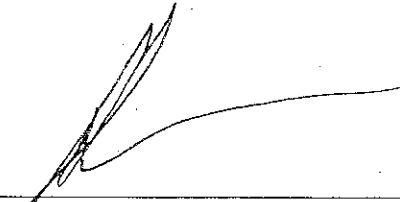
1. I am an attorney-at-law and a member of the Florida Bar.
2. I represented Sean Casey in the filing of a motion for post-conviction relief pursuant to Fla. R. Crim. P. 3.850 and at the hearing thereon in January 2007.

3. I never received a copy of the Court's written Order of March 2, 2007 denying Sean Casey's Rule 3.850 motion. I was unaware of the existence of that Order until Marcia J. Silvers, Esq. e-mailed a copy of it to me on January 4, 2008.

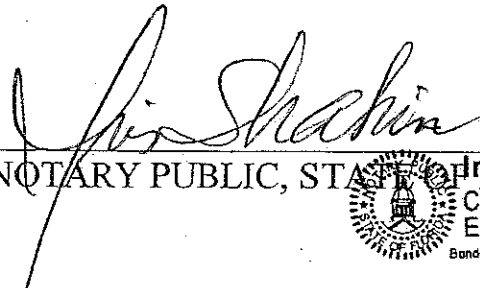

I never mailed a copy of that Order to Sean Casey.

4. At the time that the Court orally denied Sean Casey's Rule 3.850 Motion, Sean Casey had told me that he wanted to appeal the denial of his Rule 3.850 Motion and he never told me that he changed his mind as to that matter.

FURTHER AFFIANT SAITH NAUGHT.

  
\_\_\_\_\_  
DAVID S. MARKUS, ESQUIRE

SWORN AND SUBSCRIBED TO before me this 7<sup>th</sup> day of January 2008.

  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA  
 Iris Shapiro  
Commission # DD530219  
Expires May 21, 2010  
Bonded Troy Fair - Insurance, Inc. 800-385-7019

Personally known  or produced identification \_\_\_\_\_

Type of Identification produced \_\_\_\_\_

# INMATE REQUEST

STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS

Mail Number: 01  
Team Number: 03  
Institution: NRE

(Instructions on Back)

TO: (Check One)  Warden  Asst. Warden  Classification  Security  Medical  Dental  Other Mailroom

FROM:	Inmate Name <u>CASEY, SEAN</u>	DC Number <u>B03942</u>	Quarters <u>D2111U</u>	Job Assignment <u>60</u>	Date <u>12/21/07</u>
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## REQUEST

I apologize for bothering you again, but my request came back blank without a response.

Please confirm in writing on my original request that I stapled to this that I did not receive legal mail during the months of March and April 2007. I need to overnight this to my attorney in Miami on Wednesday, Dec. 26 at the latest. Thank you.

All requests will be handled in one of the following ways: 1) Written Information or 2) Personal Interview. All informal grievances will be responded to in writing.

DO NOT WRITE BELOW THIS LINE

## RESPONSE

DATE RECEIVED: \_\_\_\_\_

I did not receive your request that you sent on the 12-20-07.

You did not receive any legal mail in March or April 2007.

[The following pertains to informal grievances only:  
Based on the above information, your grievance is \_\_\_\_\_ (Returned, Denied, or Approved). If your informal grievance is denied, you have the right to submit a formal grievance in accordance with Chapter 33-103.006, F.A.C.]

Official (Signature): M. C. [Signature] Date: 12-26-07

Distribution: White -Returned to Inmate Pink -Retained by official responding, or if the response is to an informal grievance then forward to be placed in inmate's file.  
Canary -Returned to Inmate

# INMATE REQUEST

## STATE OF FLORIDA DEPARTMENT OF CORRECTIONS

(Instructions on Back)

Mail Number: 01  
Team Number: 03  
Institution: NRE

TO:  
(Check One)

Warden  
 Asst. Warden

Classification  
 Security

Medical  
 Dental

Other Mailroom

FROM:	Inmate Name <u>CASEY, SEAN</u>	DC Number <u>B03942</u>	Quarters <u>D2111U</u>	Job Assignment <u>60</u>	Date <u>12/20/07</u>
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### REQUEST

I hereby request that you confirm that the prison mail log at New River Correctional Institution will reflect that I did not receive legal mail during the months of March and April 2007.

I sent a similar request a few weeks ago, but I now need that the confirmation covers this entire period. I appreciate your prompt response.

All requests will be handled in one of the following ways: 1) Written Information or 2) Personal Interview. All informal grievances will be responded to in writing.

DO NOT WRITE BELOW THIS LINE

### RESPONSE

DATE RECEIVED:

<b>RECEIVED</b>
DEC 21 2007
NEW RIVER CORRECTIONAL INSTITUTION
CLASSIFICATION

[The following pertains to informal grievances only:

Based on the above information, your grievance is \_\_\_\_\_ (Returned, Denied, or Approved). If your informal grievance is denied, you have the right to submit a formal grievance in accordance with Chapter 33-103.006, F.A.C.]

Official (Signature):

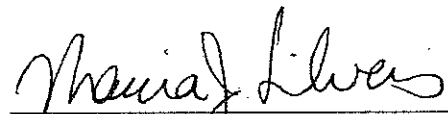
Date:

Distribution: White -Returned to Inmate  
Canary -Returned to Inmate

Pink -Retained by official responding, or if the response is to an informal grievance then forward to be placed in inmate's file.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 15<sup>th</sup> day of January 2008 to Gail Levine, Assistant State Attorney, 1350 Northwest 12<sup>th</sup> Avenue, Miami, Florida 33136 and the Office of the Attorney General, 444 Brickell Avenue, Suite 950, Miami, Florida 33131.

  
\_\_\_\_\_  
MARCIA J. SILVERS