

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MILO ROSE,

Petitioner

v.

Case No. 8:93-cv-1169-T23EAJ

JAMES V. CROSBY, JR.,

REPORT AND RECOMMENDATION

Rose's petition for the writ of habeas corpus challenges the validity of his state court conviction for murder and sentence of death. On November 9, 2005, the Honourable Steven D. Merryday directed that the undersigned United States Magistrate Judge conduct an evidentiary hearing pursuant to *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.ED.2D 562 (1975), and render a report and recommendation on Rose's motion (Dkt. 89) for self-representation. In compliance with the order (Doc. 89) setting the hearing, counsel for the respondent and counsel for Rose filed briefs addressing Rose's rights to self-representation in a federal habeas proceeding (Doc. 93 & 94 respectively). Both counsel recognize that the Sixth Amendment right to self-representation, as recognized in *Faretta*, only applies to initial criminal trial proceedings and not subsequent proceedings, neither appeals nor post-conviction proceedings. Respondent's brief at 1-3 (Doc. 93) and Rose's brief at 2-3 (Doc. 94).

On December 12, 2005, the undersigned conducted an evidentiary hearing within the rubric of *Faretta* to determine whether Rose understands the implications of self-representation. Rose was the only individual to testify at the hearing. Transcript of Proceedings (Doc. 98). The undersigned makes the following findings of fact from the hearing.

1. FINDINGS OF FACT

1. Milo Rose is 55 years of age and is of generally good health, although he had a drug and alcohol problem in the 1970's. Transcript at 9-11.
2. Mr. Rose is a plumber by trade. He completed less than two years of junior college in the field of mental health and psychology. Transcript at 9, 14.
3. Mr. Rose did not study the law at any time prior to his conviction, but since his incarceration he has read legal books and published opinions that pertain to his own case; he had not acted as a "jailhouse lawyer" helping other inmates. Transcript at 12-13. By his own admission, Mr. Rose has no knowledge of the appellate rules that would govern his appeal to the Eleventh Circuit Court of Appeals. Transcript at 14.
4. The reason Mr. Rose wants to represent himself in this proceeding is that the attorneys who have represented him have refused to assert certain issues he believes should be raised: post-conviction counsel in 1987 failed to develop a *Brady* claim, post-conviction counsel in 1996 "proved themselves correct" in stating that "they were ineffective," and present counsel has refused to raise certain issues "the way I want them raised." Transcript at 17-18. Mr. Rose understands that present counsel can be replaced with a new attorney, but believes that a replacement would simply delay his case further. Transcript at 19-20. Mr. Rose seeks self-representation because he believes that will cause his case to be decided more quickly. Transcript at 27.

5. Mr. Rose understands that there may be procedural bars that will preclude the court from reaching the merits of some of his claims, but believes that the court can review the merits of defaulted claims as plain error. Transcript at 20.

6. If Mr. Rose is unsuccessful in obtaining habeas relief in this court, then the circumstances would force him to accept representation by an attorney on appeal and in any future proceeding when a death warrant issues. Transcripts 22-23 & 27-28. The request for self-representation is limited to only the pending habeas corpus petition in the district court. Transcript 45.

7. Mr. Rose does not know the standard of review that will govern the review of his petition. Transcript at 25.

8. After explaining to him the meaning and limitations of having standby counsel, and that it is not the same as having co-counsel, Mr. Rose stated that he wants standby counsel appointed for the purpose of taking possession of the 45 boxes of materials in the control of present appointed counsel and to possibly look through those boxes to find certain documents Mr. Rose may believe he needs to review. Mr. Rose does not want present counsel appointed as standby counsel because said counsel failed to research certain issues Mr. Rose wanted researched. Transcript at 30-34.

9. If Mr. Rose is allowed to represent himself, he will not have unrestricted access to the inmate law library or his legal materials, especially the 43 boxes of materials, and his access to the library and his materials will not be increased because he is representing himself. Because of this limited access, Mr. Rose will not be able to meet the normal filing deadlines. Transcript at 36-37.

11. CONCLUSIONS OF LAW

A. Right to Self-Representation

Rose had a Sixth Amendment right to counsel when he was convicted in state court. "The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." *Faretta v. California*, 422 U.S. at 807. Rose claims that he has a Sixth Amendment right to represent himself in this federal habeas proceeding. He is mistaken. Granted, Rose had a protected Sixth Amendment right to self-representation at the time of his criminal trial.

The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be 'informed of the nature and cause of the accusation,' who must be 'confronted with the witnesses against him,' and who must be accorded 'compulsory process for obtaining witnesses in his favour.' Although not stated in the Amendment in so many words, the right to self-representation - to make one's own defense personally - is thus necessarily implied by the structure of the Amendment.

Faretta v. California, 422 U.S. at 819. But once a jury makes a finding of guilt, the balance of interests between the state and the accused changes. "The status of the accused defendant, who retains a presumption of innocence throughout the trial process, changes dramatically when a jury returns a guilty verdict." *Martinez v. Court of Appeal of California*, 528 U.S. 152, 162 (2000). As a consequence, the Sixth Amendment right self-representation vanishes following a guilty verdict, including on direct appeal. "[N]either the holding nor the reasoning in *Faretta* requires California to recognize a constitutional right to self-representation on direct appeal from a criminal conviction." *Martinez v. Court of Appeal*, 528 U.S. at 163. *Accord Douglas v. California*, 372 U.S. 353, 357-58 (1963) (the right to counsel on the first appeal of right is based on the Fourteenth Amendment Equal Protection Clause and not the Sixth Amendment). Instead, the reviewing court has the discretion whether to allow self-representation.

Considering the change in position from defendant to appellant, the autonomy interests that survive a felony conviction are less compelling than those motivating the decision in *Faretta*. Yet the overriding state interest in the fair and efficient administration of justice remains as strong as the trial level. Thus, the States are clearly within their discretion to conclude that the government's interests outweigh an invasion of the appellant's interest in self-representation.

Martinez v. Court of Appeal, 528 U.S. at 163. Moreover, after a defendant passes beyond the direct appeal stage and into post-conviction proceedings, there is simply no constitutionally protected right to counsel.

We have never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions, see *Johnson v. Avery*, 393 U.S. 483, 488, 89 S.Ct. 747, 750, 21 L.Ed.2d 718 (1969), and we decline to so hold today. Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further. Thus, we have rejected suggestions that we establish a right to counsel on discretionary appeals. *Wainwright v. Torna*, 455 U.S. 586, 102 S.Ct. 1300, 71 L.Ed.2d 475 (1982); *Ross v. Moffitt*, 417 U.S. 600, 94 S.Ct. 2437, 41 L.Ed.2d 341 (1974). We think that since a defendant has no federal constitutional right to counsel when pursuing a discretionary appeal on direct review of his conviction, a fortiori, he has no such right when attacking a conviction that has long since become final upon exhaustion of the appellate process.

Pennsylvania v. Finley, 481 U.S. 551, 555 (1987). Consequently, any right to counsel Rose may have is not constitutional, but statutory.

Because Rose is challenging a state court conviction and sentence of death in a § 2254 habeas petition, the appointment of counsel is governed by two statutory provisions, both of which recognize that self-representation and the appointment of counsel are within the court's discretion:

(1) "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. § 1654; and

(2) "In any post conviction proceeding under section 2254 or 2255 of Title 28, seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of one or more attorneys and the furnishing of such other service in accordance with paragraphs (5), (6), (7), (8) and (9)." 21 U.S.C. § 848(q)(4)(B).

Because Rose has neither a constitutional right to counsel nor a right to self-representation in the post-conviction proceeding, but instead both are within the court's discretion, the undersigned will now determine whether Rose should be allowed to represent himself in this proceeding.

B. Discretion of the Court

The dangers inherent in self-representation accompany Rose's request. He is not schooled in the law, but recognizes that the claims raised in his petition are complex, especially regarding procedural default issues and the standard of review that will govern this action. And as an incarcerated individual, he will have limited access to a law library as well as his voluminous legal materials. Rose believes he can surmount these problems by relying on the petition and briefs already on file, eliminating his need to conduct any research or write any new briefs. Because the petition and briefs are four years old and do not address the issues recently resolved in state proceedings, as well as the intervening changes in case law regarding death penalty matters, the likelihood is that a new petition and new briefs are prudent. Consequently, Rose's belief

that he will get a speedier review of his petition if he proceeds *pro se* rather than with counsel is not well founded.

The principal factor that weights against allowing Rose to represented himself is that he desires self-representation limited only to a decision here at the district court level. Rose admits that he will want counsel appointed to represent him if his petition is unsuccessful and an appeal is necessary. Consequently, counsel should not be dismissed and Rose should not be allowed to represent himself in this proceeding*.

C. Appointed Counsel

When present counsel was appointed more than two years ago, the action was stayed for a considerable period of time to allow counsel to review 43 boxes of materials provided by the Capital Collateral Regional Centre. The action was stayed further until state proceedings concluded recently. Present counsel represented Rose in those state proceedings. Consequently, considerable time and resources have already been expended by present counsel on Rose's behalf. Dismissing present counsel and appointing new counsel will substantially delay review of Rose's claims, delay that Rose expressly wishes to avoid.

* Rose requested during the hearing that standby counsel be appointed to assist him with self-representation. If the district court follows the recommendation to disallow self-representation, then the issue of standby counsel is also resolved. If the district court allows self-representation, then Rose requests that the court dismiss present counsel and appoint new counsel as standby counsel.

Rose has not presented a valid reason for dismissing present counsel. Rose filed two motions (Doc. 75 & 77) seeking removal of present counsel, but both times the district court rejected (Doc. 76 & 78) each motion because Rose had shown only a disagreement in tactics or strategy and not a conflict of interest. Tactics and strategy are left to the discretion of counsel. *White v. Singletary*, 972 F.2d 1218, 1220 (11th Cir. 1992), *cert. denied*, 514 U.S. 1131 (1995). See also *Jones v. Barnes*, 463 U.S. 745 (1983) (Counsel need not raise every nonfrivolous issue on appeal.). Accord *Atkins v. Dugger*, 541 So.2d 1165, 1167 (Fla. 1989) ("Most successful appellate counsel agreed that from a tactical standpoint it is more advantageous to raise only the strongest points on appeal and that the assertion of every conceivable argument often has the effect of diluting the impact of the stronger points.") Rose did not present anything further during the evidentiary hearing that would necessitate the dismissal of present counsel. Nevertheless, because Rose expressed a desire to dismiss present counsel and have different counsel appointed as standby counsel if allowed to proceed *pro se*, and if the district court follows the undersigned's recommendation to disallow self-representation, the court should give Rose an opportunity to choose between proceeding with present counsel or accepting the concomitant delay caused by the appointment of new counsel.

Rose's primary desire is an expeditious review of his conviction and sentence. Because Rose should not be allowed to proceed *pro se*, and because present counsel is an experienced capital litigator who has been representing Rose for more than two years and knows the present record (including the 43 boxes of legal materials), Rose should be required to proceed with present counsel. Rose has not shown that there is a complete breakdown in the attorney-client relationship. See, generally, *Hardwick v. Corsby*, 320 F.3d 1127, 1189-90 (11th Cir. 2003) (complete breakdown in attorney-client relationship in capital trial amounts to ineffective assistance of counsel). Instead, Rose's complaints directed towards present counsel amount to a difference of opinion

regarding the continued pursuit of state court proceedings (which have now concluded) and tactics or strategy regarding the presentation of claims for relief. These differences do not amount to a conflict necessitating the appointment of new counsel.

111. CONCLUSION

Rose's expressed desire for self-representation is predicated upon his erroneous belief that his petition will be decided more quickly if he proceeds *pro se*. Because the present amended petition (Doc. 37) will likely need amending to address the matters recently resolved in state proceedings, and because the present briefs are more than four years old, a second amended petition might be required and new briefs are required. Rose has neither the legal training nor adequate access to research the legal and evidentiary materials necessary to timely prepare the new petition or subsequent briefs. Rose's request for self-representation is a limited request; Rose recognizes that he will need to be represented by appointed counsel on any appeal should his habeas challenge prove unsuccessful. All of these factors weigh heavily against permitting Rose to represent himself in this matter and instead support a conclusion that the court should exercise its discretion to deny the request. Further, because Rose currently has experienced capital counsel representing him, and substitution of counsel would inevitably delay the proceedings, the court should also permit current counsel to continue as counsel for Rose as the concerns expressed by Rose do not rise to the level of circumstances warranting substitution of counsel in this case.

1V. RECOMMENDATION

The undersigned recommends that the Honourable Steven D. Merryday deny Rose's request for self-representation (Doc. 88) and also order that current counsel for Rose remain as counsel of record.

The parties should be aware of the following:

1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C) and Local Rule 6.02(a), specific written objections to this report and recommendation within ten days of receipt. These objections should be titled "objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the District Court.

2. That this report and recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1), Fed. R. Civ. P., should not be filed until entry of the District Court's judgement.

ORDERED in Tampa, Florida, on January 17 2006.

Elizabeth A Jenkins
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MILO A. ROSE,

Petitioner

v.

JAMES V. CROSBY, JR.,

Case No. 8:93-1169-Civ-T-23EAJ

Respondent

**RESPONDENT'S OBJECTIONS TO MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

Comes now, the Respondent, James V. Crosby, Jr., and hereby enters his Objections to the Report and Recommendation entered by Magistrate Jenkins on January 17, 2006. The Report and Recommendation ("Report") concludes that Petitioner Rose's pending motion to discharge his present attorney and proceed pro se with new standby counsel should be denied. The Respondent agrees with the relevant factual findings and legal analysis applied and does not object to the Magistrate's recommendation for denial of Rose's motion. However, the Respondent respectfully submits that the Magistrate's suggestion that further briefing may be required in this case should be rejected, for the following reasons.

The Report posits that, because the most recent amended Petition and response were filed over four years ago. Because additional state court proceedings have been conducted since that time, and because new case law relating to capital habeas litigation has been developed, "the likelihood is that a new petition and new briefs are prudent" (Report, p.7). The Report concludes that Rose's belief that his case will be resolved more quickly if he is permitted to act pro se is erroneous because the amended petition currently pending "will likely need amending to address the matters recently resolved in state proceedings, and because the present briefs are more than four years old, a second amended petition might be required and new briefs are required" (Report, p.9).

The issue as to the need for additional briefing in this case was not directly before the Magistrate, who understandably has not taken into account the adequacy of the pleadings already pending or the nature of the recently-concluded state proceedings. Neither Rose nor his current counsel have requested the opportunity for further briefing, and Rose has clearly expressed his opinion that this Court can resolve his claims based on the pleadings already before the Court. However, in light of the implications in the Report that further briefing might be beneficial to this Court, Respondent is compelled to address this aspect of the Report.

The fact that the amended petition and answer were filed several years ago does not establish the need for supplemental briefing. The recent state court proceedings did not involve any assertion of a federal constitutional issue. Rose sought and received DNA testing on some of the trial evidence, which brought inconclusive results, and no further claim has been or can be presented to the state court. The trial judge's orders granting the request for DNA testing, and acknowledging the receipt of inconclusive results, were not appealed. Because no federal constitutional claim was presented to or considered by the trial court, and no appeal was taken, there is clearly no cognizable habeas issue to be brought before this Court in a supplemental brief. See O'Sullivan v. Boerckel, 526 U.S. 838, 845-48 (1999) (discussing exhaustion principles).

Similarly, the fact that there has been additional case law decided relating to federal habeas and/or death penalty litigation does not demonstrate the need for additional briefing. Even though this case is not subject to the limits of the Antiterrorism and Effective Death Penalty Act of 1996 (as the petition was filed in 1993), this Court is restricted from consideration of cases decided after Rose's conviction and sentence became final in 1985. Teague v. Lane, 498 U.S. 288 (1989). Any relevant decisions unavailable at the time the most recent pleadings were filed could be

Brought to the attention of this Court as supplemental authority or in a request for further briefing, but no such cases have been identified by either party. No additional pleadings are warranted on these facts.

Unless and until Rose identifies a federal constitutional issue to be pled, which has been exhausted in state court and is properly subject to habeas consideration, there is no basis for the filing of additional briefs in this case. However, the fact that the case is ripe for decision without further briefing does not change the Magistrate's well-reasoned conclusion that Rose's request to proceed pro se should be denied. It remains true that any change of counsel, including the granting of Rose's motion and the attendant appointment of a new attorney to assist Rose as stand-by counsel, will result in additional delay. The other reasons cited by the Magistrate - including the "principal" fact that Rose only seeks pro se status in this Court and not for any appeal; his lack of knowledge of procedural or appellate rules; his inability to access necessary resources; and his failure to identify a conflict of interest requiring current counsel's dismissal - still support and justify adoption of the Report and Recommendation.

Rose's petition for writ of habeas corpus has been pending in this Court for well over twelve years. Respondent understands that some of the delay was unavoidable, but shares Rose's frustration at the length of time taken to secure justice in this case. As all of Rose's state court proceedings have been completed, and no new federal claims are available for consideration, this Court should consider and resolve the pending petition for habeas relief in this case.

Respectfully submitted

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

CAROL M. DITTMAR
Senior Assistant Attorney General
Florida Bar No. 0503843
Counsel for Respondent
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3507 East Frontage Road, Suite 200
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of January 2006, I electronically filed the foregoing RESPONDENT'S OBJECTIONS TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: Bjorn Brunvand, Esquire, 615 Turner Street, Clearwater, Florida, 33756-5314. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participant : Milo Rose, DC #090411, Union Correctional Institution, 7819 NW 228th St., Raiford, Florida, 32026-4450.

CAROL M. DITTMAR

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MILO A. ROSE

Petitioner

v.

Case No. 8:93-cv-1169-T-23EAJ

JAMES V. CROSBY, JR.,

Respondent

PRO SE PETITIONERS NON-RECEIPT OF REPORT
AND RECOMMENDATION ENTERED BY MAGISTRATE
JENKINS ON JANUARY 17, 2006

Comes now, PRO SE petitioner, Milo A. Rose and hereby enters that as of January 26, 2006. Petitioner has not received copy of Magistrate Judge Jenkins COURT ORDERED Report and Recommendation issued on January 17, 2006. That receipt of RESPONDENT'S OBJECTIONS TO MAGISTRATE JENKINS REPORT AND RECOMMENDATION entered on January 19, 2006, and received by PRO SE Petitioner on January 24, 2006, is the only notification Petitioner received as to Magistrate Judge Jenkins REPORT AND RECOMMENDATION having been filed. Therefore leaving Petitioner unable to respond to said REPORT AND RECOMMENDATION. Petitioner now requests said copy of Judge Jenkins, January 17 2006, REPORT AND RECOMMENDATION be sent to him and ample time be given to file his response.

PRO SE Petitioner swears under penalty of perjury that everything contained within this petition to be true.

Respectfully submitted
MILO A. ROSE - PRO SE Petitioner

Union Correctional Institution
7819NW 227th St
Raiford, FLORIDA 32026-4460

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition has been furnished by U.S. mail, first class delivery, this 26 day of January 2006. To: Asst. Attorney General Carol Dittmar, Concourse Centre #4, 3507 Frontage Road, Suite 200, Tampa, Florida 33605, Asst St. Attorney C Marie King, Office of State Attorney, P.O. Box 5028, Clearwater, Florida, 34618, and Bjorn Brunvand Esq, 615 Turner Street, Clearwater, Florida, 33756-5314.

MILO A. ROSE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MILO A. ROSE

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v.

Case No. 8:93-cv-1169-T-23EAJ

JAMES V. CROSBY,

Respondent

**PETITIONER'S RESPONSE TO RESPONDENT'S OBJECTIONS TO
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner Milo A. Rose, by and through his undersigned counsel, hereby submits his Response to the Respondent's Objections to Magistrate Judge's Report and Recommendation regarding Mr. Rose's motion for self-representation. Counsel for the Petitioner agreed with the Magistrate Judge's recommendation that this Court preclude Mr. Rose from proceeding pro se. As the Magistrate Judge stated in her Report, the case law does not seemingly provide for a right to self-representation in collateral proceedings. The decision to allow Mr. Rose to proceed pro se is, therefore, within this Court's discretion. While Mr. Rose has requested that Counsel withdraw from this case, the gravity of the sentence imposed

and the complexity of the issues at bar indicate that it would be imprudent for this Court to allow Mr. Rose to proceed without the assistance of counsel, particularly given Mr. Rose's lack of legal training.

While the government does object to the Magistrate Judge's substantive recommendation, it has objected to her assertion that Mr. Rose may possibly file future briefs in the federal courts. Though the consideration of that issue is irrelevant at the present time, Mr. Rose feels compelled to respond to the government's objection.

The government first asserts that Mr. Rose is barred from raising any future issues in the federal court under the exhaustion of state remedies doctrine. As the Supreme Court has confirmed, however, "the general rule of exhaustion is not rigid and inflexible. *Granberry v. Greer*, 481 U.S. 129, 136 (1987). Aside from the fact that the government has not yet met its burden of proving that the rule of exhaustion bars any of Mr. Rose's future claims, it has similarly failed to recognize any of the numerous exceptions to the rule of exhaustion that may be applicable in this case. *See generally Id.*; 28 U.S.C. § 2254(b)(1)B; *Duckworth v. Serrano*, 454 U.S. 1 (1981); *Turner v. Bagley*, 401 F.3d 718 (6th Cir. 2005); *Shands v. Purkett*, 211 F.3d 1077 (8th Cir. 2000); *Allen v. Maine*, 80 F.3d 569 (1st Cir. 1996). As a result, the government's position regarding Mr. Rose's litigable issues is an inaccurate and premature generalization.

Next, the government mistakenly suggests that, under *Teague v. Lane*, 489 U.S. 288 (1989), Mr. Rose is barred from raising any issues of law promulgated in cases that were decided after Mr. Rose's sentence and conviction became final. *Teague*, however, does not provide a blanket restriction against collateral retroactivity, but merely establishes a rule governing the retroactive application of new rules of criminal procedure. *Id.* The government has therefore ignored the possibility that any of the subsequently decided rules of criminal procedure will fall into one of the *Teague* exceptions.

Finally, the government prematurely assumes that this Court will deny Mr. Rose's petition for habeas corpus, thereby, precluding him from filing any further briefs or other documents in the federal court. As the Magistrate Judge noted in her Report and Recommendation, regardless of whether the petition is granted or denied, possible appellate issues may exist in this case and such issues could be properly litigated only with the assistance of counsel.

CONCLUSION

Considering the nature of his sentence and the possibility that Mr. Rose will be obliged to file future briefs in this case, this Court should afford Mr. Rose the ability to pursue, with the assistance of counsel, any and all avenues for relief available to him under the laws of the United States.

Respectfully submitted this 25th day of January 2006

Bjorn Brunvand, Esq.

I HEREBY CERTIFY that on January 25, 2006, I electronically filed the following with Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Carol Dittmar, Assistant Attorney General

caroldittmar@oag.state.fl.us

I FURTHER CERTIFY that on January 25, 2006, I mailed a copy of the following to the Petitioner Milo Rose, #090411, Union Correctional Institute, 7819 N.W. 228th Street, P4117-S, Raiford, Florida 32026-4440.

Bjorn Brunvand, Esq
Bjorn E. Brunvand, P.A.
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Petitioner's Response to Respondent's Objections to
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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

TAMPA DIVISION

MILO A. ROSE

Petitioner

v.

Case No. 8:93-cv-1169-T-23EAJ

JAMES V. CROSBY,

Respondent

**PRO SE PETITIONER'S OBJECTIONS TO
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Comes now, Pro Se Petitioner Milo A rose, in response to Magistrate Jenkins, January 17, 2006, REPORT AND RECOMMENDATION. Although Petitioner agrees with Magistrate Jenkins assessment of this Court having the discretion of allowing him to proceed Pro Se. Yet, takes exception to Magistrate Jenkins assessment of denying Pro Se status due to the tactic and strategy of limiting it to this Court as this reasoning by Magistrate Jenkins discriminates against Petitioner in that it presumes this Honorable Court will find no merit in the issues already before it.

Magistrate Jenkins wrongly presumes this Petitioner will acquiesce to further representation by Attorney Brunvand. This Petitioner is under the mercy of this Court not to force unwanted counsel upon him and believes this Court will find merit in the issues already before it. The State has handcuffed this Petitioner with patently

ineffective assistance of counsel throughout all proceedings and present counsel included has failed to fully develop and challenge the Malicious Prosecution taking place due to their wanton shedding of their moral and ethical obligation as vanguards in protecting the integrity of the law of which this Petitioner, no matter how unconventional seeks the mercy of this Court to recognize and correct so as not to propagate under the guise of Justice being served. The State is guilty of Malicious Prosecution and Attorney Brunvand has shown he has no desire to challenge or pursue their blatant disregard for protecting the integrity of the law. As such this Pro Se Petitioner is unable to acquiesce to his failure to provide effective representation.

Although Magistrate Jenkins feels further review is needed to protect the integrity of the law, this Petitioner believes this Court has the moral and ethical obligation to recognise the Malicious Prosecution taking place and grant this as Petitioner firmly believes when this Court accepts "PETITIONER'S SUPPORT BRIEF ADDRESSING FARETTA STANDARD WHILE AMENDING AND INCORPORATING ALL EXISTING HABEAS ISSUES PENDING BEFORE THIS COURT". Submitted December 2, 2005. There is more than sufficient evident to show Petitioner was denied all Constitutional Safeguards of Due Process on the State level making it incumbent upon this Court to overturn his conviction and sentence while barring re-trial due to the irreparable prejudice created by the States misconduct.....

Pro Se Petitioner swears under penalty of perjury that everything contained within this Petition to be true.

Respectfully submitted
February 14, 2006
Milo A. Rose - Pro Se

Union Correctional Institution
7819 N.W. 228th Street
Raiford, Florida 32026-4460

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition has been furnished by U.S. Mail, First Class delivery. This 14th day of February, 2006, to: Asst. Attorney General Carol Dittmar, Concourse Center #4, 3507 Frontage Road, Suite 200, Tampa, Florida 33607, Asst C Marie King, Office of State Attorney, P.O. Box 5028, Clearwater, Florida, 34618, and Bjorn Brunvand Esq., 615 Turner Street, Clearwater, Florida, 33756-5314.

MILO A. ROSE