

ORIGINAL

IN THE INDIANA COURT OF APPEALS

CAUSE NO. 18A-SP-994



JERMAINE DODD,)

LOWER COURT

PETITIONER,)

CAUSE NO. _____

v.)

FROM THE LAKE COUNTY

STATE OF INDIANA,)

SUPERIOR COURT

RESPONDENT,)

The Hon. CLARENCE D.

MURRAY, JUDGE

PETITION FOR PERMISSION TO FILE SUCCESSIVE VERIFIED PETITION FOR POST-CONVICTION RELIEF

COMES NOW THE PETITIONER, JERMAINE DODD, PROSE, PURSUANT TO INDIANA POST-CONVICTION RULE 2, AND REQUESTS THIS COURT'S PERMISSION TO FILE A SUCCESSIVE VERIFIED PETITION FOR POST-CONVICTION RELIEF. IN SUPPORT OF THIS MOTION, PETITIONER STATES AS FOLLOWS:

1. WERE YOU REPRESENTED BY AN ATTORNEY ON YOUR PRIOR PETITION FOR POST-CONVICTION RELIEF? YES NO

(a.) IF "YES", NAME AND ADDRESS OF EACH ATTORNEY: NATHANIEL RUFF, PUBLIC DEFENDER, 2293 N. MAIN ST., CROWN POINT, INDIANA, 46307

(b.) PROCEEDINGS AT WHICH EACH ATTORNEY REPRESENTED YOU:

(i) DRAFTING PETITION FOR POST-CONVICTION RELIEF: YES NO

(ii) HEARING ON PETITION FOR POST-CONVICTION RELIEF: YES NO

(iii) APPEAL OF DENIAL OF PETITION FOR POST-CONVICTION RELIEF: YES NO

2. WAS THERE A HEARING ON YOUR PRIOR PETITION? YES NO

3. IF THE PETITION WAS DENIED, DID YOU APPEAL? YES NO

IF YES, PLEASE STATE RESULT ON APPEAL, DATE OF DECISION AND CITATION TO CASE IF KNOWN: DENIED ON JUNE 10, 2003; MEMORANDUM DECISION NOT FOR PUBLICATION.

4. IF YOU ARE ALLEGING GROUND(S) FOR RELIEF THAT WERE RAISED IN YOUR PREVIOUS PETITION, PLEASE, EXPLAIN WHY YOU FEEL CONSIDERATION IS MERITED: NO

5. IF YOUR PETITION RAISES NEW GROUNDS THAT WERE NOT INCLUDED IN YOUR PRIOR PETITION, EXPLAIN WHY YOU ARE RAISING THESE GROUNDS NOW. YOUR EXPLANATION SHOULD RELY ON FACTS, NOT YOUR OPINIONS OR CONCLUSIONS: THE PETITIONER IS RAISING THESE NOW NEW GROUNDS DUE TO THE FACT THAT THESE NEW GROUNDS WERE DEMONSTRABLY UNAVAILABLE IN ALL OF THE PETITIONERS PRIOR PROCEEDINGS. PETITIONER REQUESTS PERMISSION TO ESTABLISH A REASONABLE POSSIBILITY OF HIS NEW GROUNDS TO SHOW THE COURT THAT HE IS ENTITLED TO POST-CONVICTION RELIEF.

WHEREFORE, THE PETITIONER REQUESTS PERMISSION FROM THE INDIANA COURTS OF APPEALS TO FILE THE ATTACHED SUCCESSIVE PETITION FOR POST-CONVICTION RELIEF WITHIN THE LAKE COUNTY SUPERIOR COURT SO THAT THE PETITIONER WOULD ESTABLISH A GROUND FOR A MERITORIOUS EXAMINATION AND EVALUATION WITHIN THIS HONORABLE COURT TO GRANT SUCH A REQUEST FOR PERMISSION.

DATED: 4-9-18

SIGNATURE: GERMANE [Signature]

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 9th day of April, 2018. I served a true and correct copy of the following, PETITION FOR PERMISSION TO FILE A SUCCESSIVE VERIFIED PETITION FOR POST-CONVICTION RELIEF, with sufficient first class postage affixed, mailing by authorized prison personnel / notary public an employee of the (I.D.O.C) Miami Correctional facility, 3038 West 850 South, Bunker Hill, Indiana, 46914-9810, for prompt processing and mailed to the Court's Clerk of Court of Appeals, State of Indiana, 217 State House, Indianapolis, Indiana, 46204, by mail.

DATED: 4-9-18

GEMARNE A. Rhodes
AFFIANT - PETITIONER - PROSE

STATE OF INDIANA)
COUNTY OF Miami) SS: NOTARIZATION

Subscribed and sworn to before me, a Notary Public in and for the above state and county, on this 9 day of April, 2018.

Jessica Rhodes
NOTARY PUBLIC SIGNATURE
Jessica Rhodes
NOTARY PUBLIC PRINT NAME

MY COMMISSION EXPIRES:
Aug / 21 / 2024
MONTH / DAY / YEAR

RESIDENCE OF Miami county:

5. WAS THE FINDING OF GUILTY MADE:

AFTER A PLEA OF GUILTY? OR

AFTER A PLEA OF NOT GUILTY?

6. DID YOU APPEAL FROM THE JUDGMENT OF CONVICTION?

YES NO

7. IF YOU ANSWERED "YES" TO (6), LIST:

a) THE NAME OF THE COURT TO WHICH YOU APPEALED?

INDIANA COURT OF APPEALS

CAUSE NUMBER: 45A03-0108-CR-276

b) THE RESULT AND THE DECISION DATE: APPEAL

TERMINATED; 1-16-02; THE ORDER IS UNPUBLISHED AND IS ATTACHED AS EXHIBIT C.

8. STATE CONCISELY ALL THE GROUNDS KNOWN TO YOU FOR VACATING, SETTING ASIDE OR CORRECTING YOUR CONVICTION AND SENTENCE. (SEE PC RULE 1, § 1 a.)

a) WHETHER THE TRIAL COURT LACK SUBJECT MATTER JURISDICTION BY DISPOSING THE PETITIONERS DODD'S JUDGMENT OF CONVICTION AND SENTENCE VIOLATING THE PETITIONERS FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE STATE OF INDIANA ARTICLE 1. SECTION (12).

b)

c)

9. STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET FORTH IN (8):

a) WHETHER THE TRIAL COURT LACK SUBJECT MATTER JURISDICTION BY DISPOSING THE PETITIONERS DODD'S JUDGMENT OF

JERMAINE Dodd - VERIFIED P.C.R.
CONTINUANCE of 9(a):

CONVICTION AND SENTENCE VIOLATING THE PETITIONER'S FOURTEENTH (14TH) AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE STATE OF INDIANA ARTICLE 1. SECTION (12). HONORABLE SENIOR JUDGE CLARENCE D. MURRAY WAS THE PETITIONER'S/DEFENDANT'S DODD'S TRIAL JUDGE OF THE SUPERIOR COURT OF LAKE COUNTY OF THE STATE OF INDIANA.

IN FAVOR OF A COLLATERAL ATTACK, DODD WAS CONVICTED OF MURDER ON JUNE 15, 2001 (SEE; 6-15-01 ORDER, EXHIBIT-A) AND SENTENCED ON JULY 18, 2001. (SEE; 7-18-01 ORDER, EXHIBIT-B). THE JUDGMENT OF CONVICTION AND SENTENCE WHICH WERE ENTERED INTO THE RECORD UNDER CAUSE NUMBER 45G02-9811-CF-00211 ON SEPTEMBER 14, 2001 (SEE; 9-14-01 DOCKET SHEET ENTRY, EXHIBIT-B1) ARE VOID AND/OR VOID AB INITIO. AT THE TIME THAT THE STATE OF INDIANA ALLEGED THAT THE PETITIONER DODD COMMITTED THE CRIMES OF CAUSE NUMBER 45G02-9811-CF-00211 ON NOVEMBER 7, 1998 (SEE; 11-7-98 ORDER, EXHIBIT-B2), THE INDIANA SUPERIOR COURT HAD ORIGINAL JURISDICTION OVER SUCH CRIMES AS CONTAINED WITHIN CAUSE NUMBER 45G02-9811-CF-00211.

HOWEVER, IT IS CLEAR THAT THE LAKE COUNTY SUPERIOR COURT CRIMINAL DIVISION ROOM 2, THE SAME COURT WHICH ENTERED THE JUDGMENTS OF CONVICTION AND SENTENCE IN CAUSE NUMBER 45G02-9811-CF-00211 DID NOT HAVE JURISDICTION OVER THE SUBJECT MATTER OF CAUSE NUMBER 45G02-9811-CF-00211 (SEE; ATTACHED EXHIBITS (A) AND (B)). THE SAID JUDGMENTS OF CONVICTION IN CAUSE NUMBER 45G02-9811-CF-00211 ARE VOID AND/OR VOID AB INITIO AND VIOLATES THE PETITIONER'S 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE STATE OF INDIANA ARTICLE 1. SECTION (12). LACK OF SUBJECT MATTER JURISDICTION RENDERS VOID ANY ACTION UNDERTAKEN BY THE COURT BECAUSE THE DEFECT IS NOT SUSCEPTIBLE TO WAIVE OR CURE. WHEN COURTS LACK SUBJECT MATTER JURISDICTION, THEIR ACTIONS ARE VOID AB INITIO AND MAY BE ATTACKED AT ANY TIME. PETITIONER REQUESTS THAT JUDGMENTS OF CONVICTION AND SENTENCE UNDER CAUSE NUMBER

JERMAINE DOLA - VERIFIED P.C.R.
CONTINUANCE OF 9(a):

45G02-9811-CF-00211 TO BE VACATED, UNDER POST-
CONVICTION RELIEF RULE 1 SECTION (1) AND SECTION (12).

b)

c)

10. PRIOR TO THIS PETITION, HAVE YOU FILED WITH RESPECT TO THIS CONVICTION:

(a) ANY PETITION FOR POST CONVICTION RELIEF PURSUANT TO RULE PC 1 OR PC 2?

(x) YES () NO

(b) ANY PETITIONS FOR HABEAS CORPUS IN STATE OR FEDERAL COURTS?

(x) YES () NO

(c) ANY PETITIONER'S FOR OR IN THE UNITED STATES COURT FOR CERTIORARI?

(x) YES () NO

(d) ANY OTHER PETITIONS, MOTIONS OR APPLICATIONS IN THIS COURT OR ANY OTHER COURT?

(x) YES () NO

11. IF YOU ANSWERED "YES" TO ANY PART OF (10), LIST WITH RESPECT TO EACH PETITION, MOTION OR APPLICATION:

(a) ITS SPECIFIC NATURE:

i. PETITION FOR POST-CONVICTION RELIEF 1

PETITION FOR POST-CONVICTION RELIEF 2 - SUCCESSIVE

PETITION FOR POST-CONVICTION RELIEF 2 - SUCCESSIVE

ii. PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS

iii. PETITION FOR A WRIT OF CERTIORARI

iiii. PETITION FOR REHEARING

DIRECT APPEAL

PETITION TO TRANSFER TO THE INDIANA SUPREME COURT

(b) THE NAME AND LOCATION OF THE COURT IN WHICH EACH WAS FILED:

i. SUPERIOR COURT OF LAKE COUNTY

SUPERIOR COURT OF LAKE COUNTY

SUPERIOR COURT OF LAKE COUNTY

ii. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
OF INDIANA

iii. SUPREME COURT OF THE UNITED STATES

iiii. THE INDIANA COURT OF APPEALS

THE INDIANA COURT OF APPEALS

INDIANA SUPREME COURT

(c) THE DISPOSITION OF THE PETITION, MOTION OR APPLICATIONS AND THE DATE OF DISPOSITION:

i. THE PETITION FOR P.C.R.(1) WAS DENIED - 11-1-02

P.C.R. (2) - 11-8-04 - THE INDIANA COURT OF APPEALS DECLINED

P.C.R. (2) - 1-24-05 - THE INDIANA COURT OF APPEALS DECLINED

ii. PETITIONER FILED A PETITION UNDER 28 USC 2254 ON 7-29-04
AND STAYED THIS PETITION 10/28/04 AMENDED ON 5-25-05
ON 1-5-07 THE COURT DENIED THE PETITION IN PART FOR INEFFECTIVE
TRIAL COUNSEL BUT ORDER INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

iii. PETITION WAS FILED ON MARCH 5, 2009 AND

PLACED ON THE DOCKET APRIL 1, 2009 AS A

PETITION FOR A WRIT OF CERTIORARI AND DENIED.

iiii. PETITIONER FILED A PETITION FOR REHEARING, WHICH THE INDIANA
COURT OF APPEALS DENIED ON 4-26-05

THE COURT OF APPEALS REJECTED (LETTER FROM JAMES GOLDEN)
10-8-08

THE COURT DENIED THE APPELLANT'S PETITION TO TRANSFER
OF JURISDICTION ON 12-11-08

(d) IF KNOWN, CITATION OF ANY WRITTEN OPINIONS OR ORDERS ENTERED PURSUANT TO EACH DISPOSITIONS:

- i. (THE ORDER IS ATTACHED AS EXHIBIT D.)
(THE ORDER IS ATTACHED AS EXHIBIT E.)
(THE ORDER IS ATTACHED AS EXHIBIT F.)
- ii. (SEE 10-28-04 ORDER, ATTACHED AS EXHIBIT G.) AND
(SEE 1-5-07 ORDER, ATTACHED AS EXHIBIT H.)
- iii. (SEE; LETTER DATED April 1, 2009; NO: DB-9554,
BY THE CLERK OF THE COURT FOR THE SUPREME
COURT OF THE UNITED STATES) EXHIBIT I.
- iiii. (SEE - ATTACHED AS EXHIBIT J.)
LETTER FROM JAMES GOLDEN
(SEE 10-8-08 [REDACTED] EXHIBIT K.)
(SEE SUPREME COURT ORDER 12-11-08 EXHIBIT L.)

12. HAS ANY GROUND SET FORTH IN (8) BEEN PREVIOUSLY PRESENTED TO THIS COURT OR ANY OTHER COURT, STATE OR FEDERAL, IN ANY PETITION, MOTION OR APPLICATION WHICH YOU HAVE FILED?

() YES NO

13. IF YOU ANSWERED "YES" TO (12), IDENTIFY:

(a) WHICH GROUNDS HAVE BEEN PREVIOUSLY PRESENTED:

- i. _____
- ii. _____
- iii. _____

(b) THE PROCEEDING IN WHICH EACH GROUND WAS RAISED:

- i. _____
- ii. _____
- iii. _____

14. WERE YOU REPRESENTED BY AN ATTORNEY AT ANY TIME DURING THE COURSE OF:

(a) YOUR PRELIMINARY HEARING?

YES () NO

(b) Your ARRAIGNMENT AND plea ?

YES () NO

(c) Your TRIAL, IF ANY ?

YES () NO

(d) Your SENTENCING ?

YES () NO

(e) Your APPEAL, if ANY, from the JUDGMENT of CONVICTION OR THE IMPOSITION of SENTENCE ?

YES () NO

(f) PREPARATION, PRESENTATION OR CONSIDERATION of ANY PETITIONS, MOTIONS OR APPLICATIONS with respect to this CONVICTION, which you filed ? YES () NO

15. If you ANSWERED "YES" to ONE OR MORE PARTS of (14), list:

(a) THE NAME AND ADDRESS of EACH ATTORNEY who REPRESENTED you:

- i. KEVIN Relphorde, 640 W. 5th AVE., GARY, IN. 46402
- ii. PATRICK Young, 4321 BROADWAY, GARY, IN. 46409
- iii. NATHANIEL Ruff, Public DEFENDER, 2223 N. MAIN ST. Crown Point 46307
- iiii. JERMAINE Dodd, PRO'SE AND JAMES GOLDEN 200 EAST RANDOLPH DR. CHICAGO, IL. 60601
- iiiii. JERMAINE Dodd, PRO'SE LITIGANT

(b) THE PROCEEDINGS AT WHICH EACH SUCH ATTORNEY REPRESENTED you:

- i. PRELIMINARY HEARING AND ARRAIGNMENT AND plea
- ii. AT TRIAL AND AT SENTENCING
- iii. ON APPEAL; PCR; ON APPEAL FROM ANY RULING AGAINST YOU IN A POST-CONVICTION PROCEEDING.
- iiii. ON PCR 2; 28 U.S.C. 2254 HABEAS CORPUS; ON APPEAL; PETITION TO TRANSFER PETITION FOR REHEARING;
- iiiii. WRIT FOR CERTIORARI TO THE UNITED STATES SUPREME COURT

(c) WAS SAID ATTORNEY:

Appointed by THE COURT ? OR

() of your own choosing ?

16. HAVE you COMPLETED SERVICE of THE CHALLENGED SENTENCE ?

() YES (x) NO

17. HAVE YOU RETAINED AN ATTORNEY TO REPRESENT YOU IN THIS PROCEEDING?

YES NO

18. IF YOU ARE WITHOUT SUFFICIENT FUNDS TO EMPLOY COUNSEL AND ARE INCARCERATED IN THE INDIANA DEPARTMENT OF CORRECTION, THE PUBLIC DEFENDER MAY REPRESENT YOU. IF YOU CHECK "NO" YOU LOSE THE RIGHT TO REPRESENTATION BY THE STATE PUBLIC DEFENDER FOR THE DURATION OF THIS PROCEEDING INCLUDING ANY APPEAL THEREFROM.

(a) DO YOU WISH TO HAVE THE PUBLIC DEFENDANT REPRESENT YOU?

YES NO

(b) IF YES, HAVE YOU COMPLETED THE AFFIANT OF INDIGENCY ATTACHED TO THIS FORM, STATING YOUR SALARY, IF ANY, AMOUNT OF SAVINGS, AND ALL PROPERTY OWNED BY YOU?

YES NO

DATED: 4-9-18

GEMMINE D. DODD
SIGNATURE OF PRO SE PETITIONER

STATE OF INDIANA)

COUNTY OF Miami)

SS: AFFIDAVIT OF INDIGENCY

I, the undersigned, being first duly sworn upon my oath, deposes and states:

1. THAT I AM THE PETITIONER IN THE FOREGOING INSTRUMENT.
2. THAT I BELIEVE I AM ENTITLED TO THE RELIEF SOUGHT.
3. PETITIONER IS INCARCERATED AT MIAMI CORRECTIONAL FACILITY, 3038 WEST 850 SOUTH, BUNKER HILL, INDIANA, 46924-9810.
4. PETITIONER DO NOT HAVE ANY MEANINGFUL EMPLOYMENT AT THE TIME; BUT A SANITATION JOB IS PENDING;
5. PETITIONER DOES NOT OWN ANY STOCKS, BONDS, CHECKING/SAVINGS ACCOUNT; HOWEVER; THE PETITIONER DOES RECEIVE DONATIONS FROM FAMILY AND FRIENDS FROM TIME TO TIME.
6. PETITIONER DOES HAVE MONIES ON HIS INMATE TRUST FUND ACCOUNT AT MIAMI CORRECTION FACILITY OF THE INDIANA DEPARTMENT OF CORRECTIONS, FOR THE STATE OF INDIANA.

I, the undersigned, affirm under penalties for perjury that the foregoing representations are true to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

DATED: 4-9-18

German D. Durd
AFFIANT - PRO'SE - PETITIONER

STATE OF INDIANA)

COUNTY OF Miami)

SS: AFFIDAVIT OF SERVICE

I, JERMAINE D'SHANNI DODO, PRO'SE PETITIONER, BEING duly SWORN upon my OATH, HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY, DEPOSE AND SAY THAT I HAVE SUBSCRIBED TO THE FOREGOING AFFIDAVIT OF INDIGENCY, AFFIDAVIT OF SERVICE, AND VERIFIED PETITIONER'S PETITION FOR POST-CONVICTION RELIEF; THAT I KNOW THE CONTENTS THEREOF; AND THAT THE MATTERS THEREIN SET FORTH ARE TRUE. THAT BY PLACING SAME IN THE MIAMI CORRECTIONAL FACILITY'S MAILING CONTAINER WITH A PROPERLY ADDRESSED ENVELOPE WITH SUFFICIENT FIRST-CLASS POSTAGE ATTACHED AND DEPOSITING SAID ENVELOPE FOR PROMPT PROCESSING AND MAILING BY AUTHORIZED PRISON PERSONNEL.

Jermaine D. Dodo
AFFIANT SIGNATURE

Subscribed and SWORN to before ME THIS 9
DAY of April, 2018.

MY COMMISSION EXPIRES:

Aug / 21 / 2024
MONTH / DAY / YEAR

RESIDENCE of Miami County:

Jessica Rhodes
NOTARY PUBLIC SIGNATURE
Jessica Rhodes
NOTARY PUBLIC PRINT NAME

EXHIBIT - A

STATE OF INDIANA)
) ss:
COUNTY OF LAKE)

SUPERIOR COURT OF LAKE COUNTY
CRIMINAL DIVISION
CAUSE 45G02-9811-CF-00211 ✓
45G02-9811-CF-00212

STATE OF INDIANA,)
Plaintiff,)
)
v.)
)
JERMAINE DODD &)
ERIC FITZGERALD)
Defendant.)

ORDER

6-15-01 Trial resumes. Both parties give closing arguments. State gives rebuttal. Court reads final instructions. Bailiffs are sworn and take charge of the jury for deliberations. 5:00 p.m. Jury signals a verdict. All parties present. Verdict of guilty of murder as to both defendant is published by the Court. Pre-sentence investigation report is ordered returnable for sentencing July 18, 2001. Pending sentencing, the defendants are remanded to the custody of the Lake County Sheriff. No bond.

SO ORDERED.  _____ mc
CLARENCE D. MURRAY, JUDGE ROOM II



EXHIBIT - B

STATE OF INDIANA)
) ss:
COUNTY OF LAKE)

SUPERIOR COURT OF LAKE COUNTY
CRIMINAL DIVISION
CROWN POINT, INDIANA

STATE OF INDIANA,)
)
Plaintiff,)
)
v)
)
JERMAINE D'SHANN DODD,)
)
Defendant.)

CAUSE 45G02-9811-CF-00211

ORDER

7/18/01

The State of Indiana appears by Deputy Prosecuting Attorney Susan Collins. The defendant, Jermaine D'Shann Dodd, appears in person and with his Attorney Patrick Young. Marianna Clark reporting.

The defendant having been found guilty by a jury on the 15th Day of June, 2001, the court having entered judgment of conviction for the crime of Murder, a Felony, and having considered the written presentence investigation report, now finds as follows:

Mandatory Considerations:

1. The risk that the defendant will commit another crime is high because of his prior criminal history and propensity for violence.
2. The nature and circumstances of the crime committed are as follows: The defendant shot and killed Jerome Thomas, a person unknown to him, from a moving car in what was essentially a "drive by" killing.
3. The defendant's prior criminal record is as follows: As a juvenile: Three (3) adjudications; Resisting Law Enforcement, Possession of Marijuana and Fleeing Law Enforcement. In addition, a fully loaded handgun was found in the defendant's locker while in high school. In a later unrelated case, defendant pled guilty to Carrying A Handgun Without a License, a Class (A) Misdemeanor, and was waived to Adult Court in that case. The defendant currently has another Murder charge pending in this court under cause #45G02-0009-CF-00182 that was filed while on pretrial release in the instant case.

4. The defendant's character is ruthless and dangerous.

Mitigating Circumstances:

1. The defendant was a juvenile at the time he was charged with the instant offense.

Aggravating Circumstances:

1. While on own recognizance release in the instant offense, the defendant fled the jurisdiction of this court and had to be extradited from California.
2. The defendant has a history of criminal activity as previously stated.
3. The defendant is in need of correctional and rehabilitative treatment that can best be provided by his commitment to a penal facility for the reason that his prior lenient treatment has had no deterrent effect.
4. The defendant used the element of surprise to effectuate the murder in that the victim was caught off guard and was shot at almost point blank range and thus had no opportunity to escape or otherwise defend himself.
5. The killing was entirely senseless and unprovoked.

SENTENCE:

After considering the above factors, the Court now finds that the aggravating factors outweigh the mitigating factors, and now sentences the defendant as follows:

The defendant is now ordered committed to the custody of the Department of Correction for classification and confinement in a maximum security facility for a period of sixty (60) years. The sentence of imprisonment shall run consecutively to any sentence which may later be imposed in Cause No. 45G02-0009-CF-00182 for the reason that it is mandatory pursuant to I.C. 36-50-1-2(2).

The Court also finds that the defendant shall be given five hundred fifty-three (553) days credit toward the sentence of imprisonment for time spent in confinement as a result of this charge and the Court recommends that said time be considered as good time credit as provided by law.

The defendant shall pay court costs fee in the amount of One Hundred Twenty-Five Dollars (\$125.00).

The defendant has been advised of his rights of appeal and advised the court that he wishes to appeal and has insufficient funds to hire his own lawyer. An Appellate Public Defender is appointed counsel at public expense to represent the defendant in the direct appeal.

The defendant is remanded to the custody of the Sheriff of Lake County for execution of the judgment of the court.

The Clerk is directed to notify the Office of the Appellate Public Defender.

Cause disposed.

SO ORDERED:


CLARENCE D. MURRAY, SENIOR JUDGE

nlw

EXHIBIT - B1

Search Criteria
 Docket Entry
 Images
 Participant

Begin Date
 End Date

SortDescending

Search Results

Docket Date	Referenc e	Description	Amt Owed/ Amt Dismissed Amount Dismissed	Amount Due
9/14/2001		Sent Notice of Completion of Clerk's Record to Clerk Of Supreme Court, and copy of Notice to Atty General Steven Carter & Appellate Division. [jt]		0.00
8/20/2001		Notified court reporter M Clark. [jt]		0.00
8/17/2001		Appellate PD Nathaniel Ruff filed a Notice Of Appeal. [jt]		0.00
7/24/2001		AOJ issued. [jt]		0.00
7/19/2001		SENTENCING ORDER ISSUED. [TS/19]		0.00
7/18/2001		Jury Trial.		0.00
7/18/2001		Def apprs with Atty Patrick Young. State apprs by Susan Collins. Def sentenced to 60 years DOC. Cause disposed. [CDM/MC/NW/RJO]		0.00
6/18/2001		Remand issued. [rh/18]		0.00
6/15/2001		JT held. Def found guilty of Murder. SH: 7/18/01. No bond. [CDM/MC/RJO]		0.00
6/14/2001		JT held. FE: 6/15/01. [CDM/MC/RJO]		0.00
6/13/2001		jt HELD. fe: 6/14/01. [CEM/MC/RJO]		0.00
6/12/2001		JT HELD. FE: 6/13/01. [CDM/MC/NW/12]		0.00
6/11/2001		Atty John Maksimovich filed Defendant's Motion In Limine and Request For Pretrial Hearing Concerning Admissibility of other Misconduct Evidence; Motion In Limine-Co-Defendant's Statement; Motion For Separation of State's Witnesses; and Motion to Preclude Improper Prosecutorial Argument. [jt]		0.00
6/11/2001		FE with Atty John Maksimovich and Atty Patrick Young. FE: 6/12/01. [CDM/MC/NW/11]		0.00
6/1/2001		Def apprs with Atty Patrick Young. State apprs by Mary Ryan. PTC is held. JT affirmed for 6/11/01. [CDM/MC/NW/01]		0.00

EXHIBIT - B2

EXHIBIT - C

STATE OF INDIANA)
) ss:
COUNTY OF LAKE)

SUPERIOR COURT OF LAKE COUNTY
CRIMINAL DIVISION
CASE 45G02-9811-CF-00211

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
JERMAINE D'SHANN DODD,)
)
Defendant.)

ORDER

01-16-02 The Court of Appeals issues an order terminating the defendant's direct appeal, and remanding this case for the filing of a petition for postconviction relief. The defendant is directed to file a petition for postconviction relief on or before March 20, 2002. The clerk is directed to notify the defendant, Appellate Public Defender Nathaniel Ruff and Deputy Prosecuting Attorney Susan Collins.

SO ORDERED: CLARENCE D. MURRAY, Judge. (gas/23)

EXHIBIT-D

STATE OF INDIANA)
)
COUNTY OF LAKE)

Filed in Open Court

SUPERIOR COURT OF LAKE COUNTY
CRIMINAL DIVISION, CROWN POINT
CASE NO. 45G02-0203-PC-00003

NOV 01 2002

JERMAINE D'SHANN DODD,)

Petitioner,)

Anna M. Anton
CLERK LAKE SUPERIOR COURT

vs.)

STATE OF INDIANA,)

Respondent.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11-01-02 After considering the evidence presented at the hearing on the petition for post-conviction relief, and on the recommendation of the magistrate, the court enters the following findings of fact and conclusions of law:

Findings of Fact

1. On November 7, 1998, the petitioner was charged with the murder of Jerome Thomas.
2. The court appointed attorney Patrick Young to represent the petitioner at trial and attorney Nathaniel Ruff to represent the petitioner on direct appeal.
3. The State having submitted a summary of the evidence presented at trial in its proposed findings of fact and conclusions of law, and the petitioner having offered no contrary facts in his proposed findings and conclusions, the court now adopts, in part, the State's summary and finds that the evidence presented at trial established the following facts:

On November 5, 1998, the petitioner and his step-brother, Eric Fitzgerald, became involved in a dispute with Jerome Thomas. Following the dispute, the petitioner and Eric Fitzgerald left returning a short time later in the petitioner's car. The petitioner drove his car slowly past a car in which Jerome Thomas and two friends were parked, listening to music. As the petitioner's car passed, witnesses observed gunshots being fired from two guns coming from the petitioner's car. Jerome Thomas was shot in the abdomen and died as a result of his injuries.

4. The petitioner did not testify at his jury trial.
5. On June 15, 2001, the jury convicted the petitioner of murder.
6. The court sentenced the petitioner to sixty years.
7. The petitioner initiated a direct appeal but later petitioned the appellate court to stay that appeal for purposes of filing the instant petition for post-conviction relief. On January 16, 2002, the Court of Appeals granted the stay and remanded the case for litigation of this petition.
8. On March 6, 2002, the petitioner filed a petition for post-conviction relief which raised several claims including assertions of trial court error and ineffective assistance of counsel. Of central contention in the litigation of the petition was the claim that trial counsel rendered ineffective assistance by advising the defendant not to testify in his own defense at his jury trial.
9. On July 18, 2002, a hearing was held on the petition for post-conviction relief at which the petitioner and trial counsel testified. Also presented were various documents: a supplemental transcript of a hearing for severance of the co-defendants' cases which was held on May 15, 2001 (PCR Exhibit 1); the clerk's record in petitioner's cause (PCR Exhibit 2); a letter from the petitioner to his trial attorney dated April 16, 2001 (PCR Exhibit 3); and finally, a proffer statement of the petitioner taken on January 21, 2000 (PCR Exhibit 4). The petitioner later submitted the record of proceedings from the jury trial for the court's use in ruling on the petition.
10. At the post-conviction relief hearing, the petitioner testified that trial counsel and he discussed whether he should testify on many occasions, both before and during trial. The petitioner believes his attorney told him that if he testified, the State could impeach him with a pending murder charge. As he explained counsel's advice the petitioner said that the reason such impeachment could occur is because the petitioner was out on his own recognizance for one murder when he committed another. The petitioner testified that counsel told him that if he testified, evidence of his flight from the jurisdiction and subsequent extradition would be admissible.
11. At the post-conviction relief hearing, trial counsel also testified that he and the petitioner had numerous conversations concerning whether the petitioner should testify; that the choice was always the petitioner's, but that ultimately, his client followed his advice. He told petitioner that things were going well, that the evidence pointed to the guilt of co-defendant Fitzgerald, and that little or no evidence pointed to him. Young testified that after Fitzgerald testified however, things began to fall apart. Fitzgerald's testimony, while non-credible vis-a-vis the physical evidence, painted the petitioner in a bad light. Young was concerned that the petitioner would not be able to articulate his version of the events in a manner that would make him

appear credible. Young advised the petitioner that it was against his best interest to testify.

12. Young made clear that although he does not recall whether he told the petitioner that the pending murder could be raised if he testified, he does not believe he would have said that because the case had not been reduced to a conviction. (Record of the PCR Proceedings, p. 13) He was concerned however, that based on the relative skills of the Deputy Prosecuting Attorney, the evidence that was introduced, the state of the proffer statement and Young's assessment of his client, the petitioner would open the door to the pending murder charge on cross-examination.

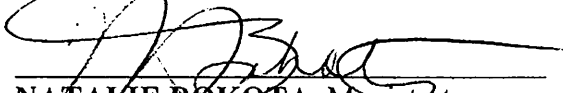
Conclusions of Law:

1. Petitions for post-conviction relief are quasi-civil in nature and the petitioner bears the burden of proving the claims raised therein by a preponderance of the evidence.
2. A court of review judges the effectiveness of trial counsel by the standard expressed in *Strickland v. Washington*, 466 U.S. 668, 687, 694, 104 S.Ct. 2052, 2064-65, 80 L.Ed.2d 674 (1984). The question on review is whether counsel's performance fell below prevailing professional norms and if so, whether the substandard performance prejudiced the petitioner. To prove the prejudice prong of this analysis, the petitioner must demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Lambert v. State*, 743 N.E.2d 719, 730-31 (Ind. 2001), citing *Strickland, supra.* and *State v. Holmes*, 728 N.E.2d 164, 172 (Ind. 2000).
3. Counsel are presumed competent, and this presumption must be overcome by strong and convincing evidence. *Martin v. State*, 2001 WL 275201 (Ind.App 2001), *Howell v. State*, 453 N.E.2d 241-43 (Ind. 1983), and *Slaton v. State*, 510 N.E.2d 1343, 1345 (Ind. 1987), *cert. denied*, 506 U.S. 921, 113 S.Ct. 337, 121 L.Ed.2d 254 (1992).
4. The petitioner claims that his attorney rendered ineffective assistance in advising him not to testify because he would be impeached with his prior record and the fact that he was charged with another homicide.
5. In Indiana, a criminal defendant has the right to be heard, speaking on his own behalf or through counsel, pursuant to our state's constitution. Ind. Const. art. 1, §13.
6. Furthermore, an attorney is ethically constrained to abide by his client's decision, after consultation with the attorney, concerning whether the client will testify. Rules Prof. Conduct 1.2(a) (1996).
7. The petitioner does not claim that his attorney forbade him from testifying but rather, that the attorney misinformed him concerning the law which led the petitioner to decline testifying in his own defense.

8. However the petitioner may have understood counsel's words, we conclude that trial counsel did not misinform the petitioner concerning the possibility of the State's use of the pending murder charge.
9. We further conclude that even if trial counsel had misstated the circumstances under which the petitioner's pending murder charge could be raised before the jury, there is no evidence that petitioner's decision to refrain from testifying prejudiced him. There is no evidence that had the petitioner testified, it would have benefitted his chances of acquittal. Indeed, a comparison of the evidence presented at trial and the proffer statement of the petitioner leads to a contrary conclusion. As previously stated, the evidence introduced at trial included the testimony of witnesses who saw gunshots being fired from *two* guns coming from the petitioner's car. In his proffer statement, the petitioner testified that Fitzgerald was firing with one gun, not two, and that he and Fitzgerald were the only occupants of the car at the time of the shooting.
10. There is no evidence that counsel's performance fell below prevailing professional norms.
11. There is no evidence that the petitioner was prejudiced by any act or omission of counsel.
12. We conclude that trial counsel did not render ineffective assistance of counsel.
13. Trial counsel was not questioned about any of the other claims raised in the petition for post-conviction relief during his direct examination at the hearing on the petition, nor did the petitioner address any other claims in his proposed findings of fact and conclusions of law. We deem the remaining claims waived.

Judgment: Based on the findings of fact and the law relevant to the issues raised, the petition for post-conviction relief is denied. The clerk is directed to forward copies of these findings to the petitioner, appellate attorney Nathaniel Ruff and Deputy Prosecuting Attorney Susan Collins. The clerk is further directed to return the Record of Proceedings to the Clerk of the Court of Appeals. The clerk is directed to show this case as disposed.

So Recommended:



NATALIE BOKOTA, Magistrate
Superior Court of Lake County
Criminal Division
2293 North Main Street
Crown Point, IN 46307-1896
Telephone: (219) 755-3511

So Ordered:



CLARENCE D. MURRAY, Judge
Superior Court of Lake County
Criminal Division, Room 2
2293 North Main Street
Crown Point, IN 46307-1896
Telephone: (219) 755-3500

EXHIBIT-E



CLERK

SUPREME COURT, COURT OF APPEALS, AND TAX COURT

STATE OF INDIANA

217 STATE HOUSE, INDIANAPOLIS, IN 46204

317-232-1930 • FAX 317-232-8365

David C. Lewis
Clerk

Cause Number

DODD, JERMAINE D. #112883
INDIANA STATE PRISON
PO BOX 41
MICHIGAN CITY, IN 46361

45A03-0409-SP-00443
Lower Court Number:
45G029811CF211

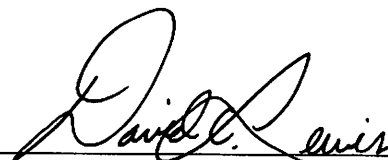
DODD, JERMAINE D. -V- STATE OF INDIANA

You are hereby notified that the COURT OF APPEALS
ISSUED THE ENCLOSED ORDER:

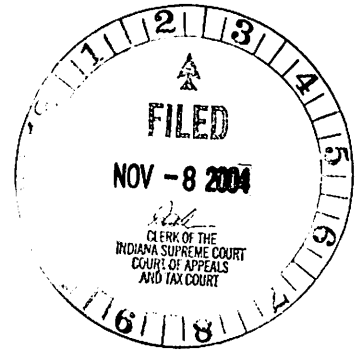
has on this day 11/08/04

WITNESS my name and the seal of said Court,

this 8TH day of NOVEMBER, 2004


Clerk, Supreme Court, Court of Appeals and Tax Court

IN THE
COURT OF APPEALS OF INDIANA



JERMAINE DODD,
Appellant,
vs.
STATE OF INDIANA,
Appellee.

)
)
)
) CAUSE NO. 45A03-0409-SP-443
)
)
)

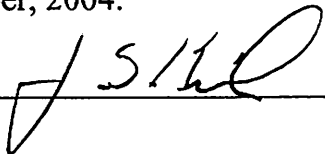
ORDER

The Petitioner, *pro se*, has filed a Successive Petition for Post-Conviction Relief.

Having reviewed the matter, the Court now finds that the Petitioner has failed to establish a reasonable possibility that he is entitled to post-conviction relief, and accordingly, the Court declines to authorize the filing of the Petition.

IT IS THEREFORE ORDERED that the Clerk of this Court is directed to return the Petition to the Petitioner, together with a copy of this Order, and send a copy of this Order to the Clerk of the Superior Court of Lake County and to close this docket.

ORDERED this 8 day of November, 2004.



Chief Judge

Kirsch, C.J., Najam, J., and Hoffman, Sr.J., concur.

EXHIBIT-F



CLERK

SUPREME COURT, COURT OF APPEALS, AND TAX COURT

STATE OF INDIANA

217 STATE HOUSE, INDIANAPOLIS, IN 46204

317-232-1930 • FAX 317-232-8365

David C. Lewis
Clerk

DODD, JERMAINE #112883
INDIANA STATE PRISON
PO BOX 41
MICHIGAN CITY, IN 46361

Cause Number

45A03-0412-SP-00550
Lower Court Number:
45G029811CF211

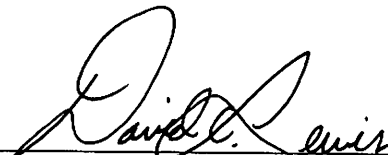
DODD, JERMAINE -V- STATE OF INDIANA

You are hereby notified that the COURT OF APPEALS
ISSUED THE ENCLOSED ORDER:

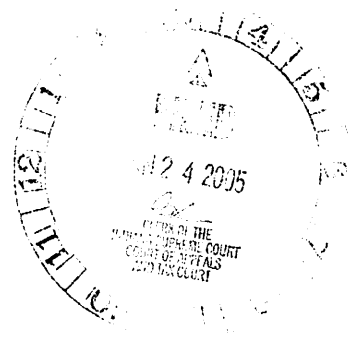
has on this day 1/24/05

WITNESS my name and the seal of said Court,

this 24TH day of JANUARY, 2005


Clerk, Supreme Court, Court of Appeals and Tax Court

IN THE
COURT OF APPEALS OF INDIANA



JERMAINE DODD,)
)
 Petitioner,)
)
 vs.) CAUSE NO. 45A03-0412-SP-550
)
 STATE OF INDIANA,)
)
 Respondent.)

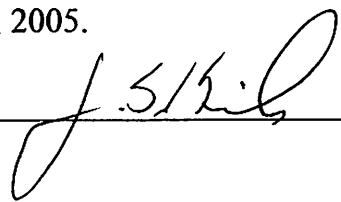
ORDER

The Petitioner, *pro se*, has filed a Successive Petition for Post-Conviction Relief.

And the Court, having examined said Petition and being duly advised, now finds that the Petitioner has failed to establish a reasonable possibility that he is entitled to post-conviction relief, and accordingly, the Court declines to authorize the filing of the Petition.

IT IS THEREFORE ORDERED that the Clerk of this Court is directed to return the Petition to the Petitioner, together with a copy of this Order, and send a copy of this Order to the Clerk of the Lake Superior Court, and to close this docket.

ORDERED this 27 day of January, 2005.



: Chief Judge

Sullivan, Vaidik; J.J., Hoffman; Sr.J., concur.

EXHIBIT-G

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

JERMAINE DODD,)	
)	
Petitioner,)	
)	
v.)	CAUSE NO. 2:04-CV-304 PS
)	
CECIL DAVIS)	
)	
)	
Respondent.)	

ORDER

This case is before the Court on Petitioner's Motion to hold in abeyance consideration of his pending petition for writ of habeas corpus. This Motion was filed on September 30, 2004, and Dodd filed his petition for writ of habeas corpus on August 4, 2004.

At this time, Dodd's petition contains only a claim for ineffective assistance of counsel, a claim that he has exhausted in the state courts. However, he also currently has pending before the Indiana state courts an application to proceed with a successive state court petition for post-conviction relief. He wants his petition for writ of habeas corpus stayed while the proceedings for his petition in the state courts are concluded. After the state courts finish, he asks for leave to amend his petition for writ of habeas corpus to include the newly exhausted claims.

The Supreme Court has spoken on issues that are germane to this case:

[A]lthough the Court's pre-AEDPA decision in *Rose v. Lundy*, 455 U.S. 509, 522, 102 S.Ct. 1198, 71 L.Ed.2d 379 (1982), prescribed the dismissal of federal habeas corpus petitions containing unexhausted claims, in our post-AEDPA world there is no reason why a district court should not retain jurisdiction over a meritorious claim and stay further proceedings pending the complete exhaustion of state remedies. Indeed, there is every reason to do so when AEDPA gives a district court the alternative of simply denying a petition containing unexhausted but nonmeritorious claims, see 28 U.S.C. § 2254(b)(2) (1994 ed., Supp. V), and when the failure to retain jurisdiction would

foreclose federal review of a meritorious claim because of the lapse of AEDPA's 1-year limitations period.

Duncan v. Walker, 533 U.S. 167, 183 (2001) (Stevens, J., concurring). The Seventh Circuit has endorsed this approach by saying that when a petitioner has claims pending in both a state court (as to unexhausted claims whose merits are unresolved) and the federal court (via a mixed petition), it is appropriate for the court to stay the federal action until “the state court decides what to do.” *Freeman v. Page*, 208 F.3d 572, 577 (7th Cir. 2000). While the situation presently before the Court is slightly different from this in form, in substance they are very similar. Dodd does not have any unexhausted claims in his petition for writ of habeas corpus, but he does have claims pending before the state courts that were not included in his petition for writ of habeas corpus. Given the presumption against piecemeal habeas proceedings, *Clay v. Bronnenberg*, 950 F.2d 486, 488 (7th Cir. 1991), it would be more appropriate to grant Dodd’s motion to stay and wait for the state courts to act.

Accordingly, the court **GRANTS** Dodd’s motion to stay [Docket No. 6], and directs Dodd to notify the court when all of his claims have been exhausted. At that time, he is granted leave to amend his petition to reflect the results of his state court proceedings. Dodd is directed to include this cause number on any future filings with the Court.

The order to show cause issued to the respondent is **VACATED**.

SO ORDERED.

ENTERED: October 28, 2004

s/ Philip P. Simon
PHILIP P. SIMON, JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT-H

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

JERMAINE DODD,)
)
 Petitioner,)
) NO. 2:04-CV-304 PS
 vs.)
)
 STAN KNIGHT,)
)
 Respondent.)

OPINION AND ORDER

Jermaine Dodd filed a petition pursuant to 28 U.S.C. § 2254, challenging his 2001 Lake County conviction for murder. The Response to the order to show cause filed by the Attorney General of Indiana demonstrates the necessary compliance with *Lewis v. Faulkner*, 689 F.2d 100 (7th Cir. 1982). Petitioner filed a traverse. For the following reasons, the Court denies Dodd's Petition in part. As for the remaining ground for relief, we appoint counsel to Dodd and defer ruling on the matter until further briefing and oral argument have been completed.

I. FACTS

The facts as detailed below come from the Indiana trial court's opinion from the post-conviction petition in this matter. *See Dodd v. Indiana*, 45G02-0203-PC-3 (Lake Superior Ct., Nov. 1, 2002) [DE 9 at 16-19]. The state court found that the evidence presented at Petitioner Dodd's murder trial established these facts. *Id.* at 1. On November 5, 1998, Dodd and his step-brother, Eric Fitzgerald, were involved in an altercation with Jerome Thomas. *Id.* Dodd and Fitzgerald left after the dispute but then returned later in Dodd's car. *Id.* Dodd drove past a parked car in which Thomas and two friends were listening to music. *Id.* As Dodd's car drove

past the parked car, witnesses saw two guns shooting from Dodd's car. *Id.* Thomas was shot in the abdomen and consequently died from his injuries. *Id.*

II. PROCEDURAL HISTORY

The procedural history of this matter is rather convoluted, but a full description of it is necessary for the disposition of the matters before the Court. At a trial by jury, Petitioner Dodd was convicted of murder on June 15, 2001. *Id.* at 2. Attorney Patrick Young represented Dodd during the trial. Docket, *Indiana v. Dodd*, 45G02-9811-CF-211 (Lake Superior Court), at 2, Resp. Ex. A [DE 14]. The state court sentenced Dodd to sixty years in prison on July 19, 2001. *See id.*; *Dodd v. Indiana*, 45G02-0203-PC-3, at 2 [DE 9 at 16-19]. Dodd, via appellate counsel Nathaniel Ruff, filed a direct appeal of his conviction on August 17, 2001. Docket, *Indiana v. Dodd*, 45G02-9811-CF-211, at 1, Resp. Ex. A [DE 14]. On January 9, 2002, Dodd sought permission to return his case to the trial court to take additional evidence for his appeal or for a petition for post-conviction relief. Docket, *Dodd v. Indiana*, 45 A 03-108-CR-276 (Ind. Ct. App.), at 2, Resp. Ex. B [DE 14]. The Indiana Court of Appeals granted Dodd's request on January 16, and remanded the case to the Lake Superior Court. *Id.*

Dodd filed a petition for post-conviction relief on March 6, 2002, arguing several issues, including ineffective assistance of trial counsel because counsel advised Dodd not to testify in his own defense. *Dodd v. Indiana*, 45G02-0203-PC-3, at 2 (Lake Superior Ct. Nov. 1, 2002) [DE 9 at 16-19]; *see also Dodd v. Indiana*, Pet. for PCR, filed Mar. 6, 2002 [DE 19-1 at 6-15]. The trial court held a hearing on July 18, 2002, where Dodd was represented by attorney Nathaniel Ruff. *Dodd v. Indiana*, 45G02-0203-PC-3, at 2, 4 (Lake Superior Ct. Nov. 1, 2002) [DE 9 at 16-19]. The court denied Dodd's petition on November 1, 2002 after concluding that

the trial counsel was not ineffective for advising Dodd not to testify. *Id.* at 1, 4. It further found that, because trial counsel was not questioned about the other claims raised in Dodd's Petition, those claims were waived. *Id.* Dodd appealed on November 18, 2002. Docket, *Dodd v. Indiana*, 45G02-203-PC-3, at 1 (Lake Superior Ct.), Resp. Ex. C [DE 14]. On June 10, 2003, the Indiana Court of Appeals affirmed the trial court's finding that Dodd's trial counsel was not ineffective when he advised Dodd not to testify during the trial. *Dodd v. Indiana*, 45 A05-211-PC-557, at 8 (Ind. Ct. App. June 10, 2003), Resp. Ex. H [DE 14]. *See also Dodd v. State*, 790 N.E.2d 620 (Ind. Ct. App. June 10, 2003). Dodd then filed a petition to transfer to the Indiana Supreme Court on July 10, 2003. Docket, *Dodd v. Indiana*, No. 45A05-211-PC-557, at 3, Resp. Ex. D [DE 14]. The supreme court denied the petition on August 28, 2003. *Dodd v. Indiana*, 45A05-211-PC-557 (Ind. August 28, 2003) [DE 9 at 20].

Dodd filed a writ of habeas corpus petition with this Court on August 16, 2004 [DE 3]. On October 4, he filed a motion for a stay until he exhausted all state court procedures. (Mot. to Hold Pet. in Abeyance at 1 [DE 6].) Specifically, Dodd wished to file a successive petition for post-conviction relief for ineffective assistance of post-conviction counsel that he had not raised in his original habeas petition. *Id.* at 2. The Court granted his request. (10/28/04 Ord. [DE 7].)

Dodd meanwhile had already filed in state court a post-conviction relief petition, alleging ineffective assistance of his appellate/post-conviction counsel (Nathaniel Ruff), on September 27, 2004. *Dodd v. Indiana*, Successive Pet. for PCR, filed Sept. 27, 2004 [DE 19-1 at 16-DE 19-2 at 12]. The Indiana Court of Appeals declined to authorize the filing of the successive petition in the trial court, effectively dismissing Dodd's post-conviction claim. *Dodd v. Indiana*, No. 45A03-409-SP-443 (Ind. Ct. App. Nov. 8, 2004) [DE 9 at 22]. He then filed another successive

post-conviction relief petition on December 6, 2004, alleging the same claims – ineffective assistance of trial and post-conviction counsel. *Dodd v. Indiana*, Successive PCR, filed Dec. 6, 2004 [DE 19-2 at 13-DE 19-3 at 10]. The appellate court again refused to authorize the filing of Dodd’s successive petition in state trial court. *Dodd v. Indiana*, No. 45A03-412-SP-550 (Ind Ct. App. January 24, 2005) [DE 9 at 24]. Dodd attempted to exhaust state court procedures one last time – he petitioned the Indiana Court of Appeals for a rehearing regarding its dismissal of Dodd’s claim of ineffective assistance of trial and post-conviction counsel. *Dodd v. Indiana*, Pet. for Rehrgr., filed Feb. 17, 2005 [DE 19-3 at 11-19-4 at 15]. The appellate court denied the petition. *Dodd v. Indiana*, 45A03-412-SP-550 (Ind. Ct. App. April 26, 2005) [DE 9 at 26].

On May 27, 2005, Dodd submitted an amended § 2254 petition [DE 9] to this Court.

III. DISCUSSION

In his § 2254 petition, Dodd raises three issues. First, he alleges that his trial counsel Patrick Young was ineffective when he advised Dodd not to testify during the jury trial. Second, Dodd claims that his post-conviction counsel Nathaniel Ruff was ineffective because he failed to raise or preserve several other errors made by trial counsel, in Dodd’s post-conviction petition. Third, Dodd maintains that he is entitled to an evidentiary hearing.

A. Ineffective Assistance of Trial Counsel

Dodd’s first claim is that his trial counsel inappropriately advised him not to testify at trial. Dodd claims that trial counsel inaccurately told Dodd that if he testified, the State could impeach him with a pending unrelated murder charge and evidence of his flight from the jurisdiction. *Dodd v. Indiana*, 45G02-0203-PC-3, at 2 (Lake Superior Ct. Nov. 1, 2002) [DE 9 at 16-19]. Respondent argues that this claim should be denied because the Indiana Court of

Appeals “correctly and reasonably found that [Dodd] received the effective assistance of counsel” at his trial. (Resp. Mem. at 4.)

As provided by the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”), a federal court may not grant a petition for habeas corpus based on any claim adjudicated in state court proceedings “unless the adjudication of the claim (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d). “‘Contrary to’ means that a federal court may grant the writ only if the state court arrives at a conclusion opposite that reached by the Supreme Court on a question of law, or if the state court decides a case differently than the Supreme Court on a set of materially indistinguishable facts.” *Woods v. McBride*, 430 F.3d 813, 816 (7th Cir. 2005) (citing *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000)).

In *Strickland v. Washington*, the Supreme Court determined that a party claiming ineffective assistance of counsel must demonstrate that the alleged acts or omissions of counsel were not the product of “reasonable professional judgment.” 466 U.S. 668, 690 (1984). This standard is deferential; counsel is presumed to have acted in a reasonable and professional manner. *See id.*

To decide Dodd’s claim, the Indiana Court of Appeals applied the familiar two-part test to determine ineffectiveness. As the court noted,

[t]o succeed before the fact finder on his claim of ineffective assistance of counsel, Dodd needed to prove by a preponderance of the evidence not only that his trial counsel’s representation fell

below an objective standard of reasonableness, but also that his counsel's errors were so serious as to deprive him of a fair trial because of a reasonable probability that, but for counsel's unprofessional errors, the result would have been different.

Dodd v. Indiana, 45A05-211-PC-557, at 3-4 (citing *Stevens v. State*, 770 N.E.2d 739, 746 (Ind. 2002)), Resp. Ex. H [DE 14]. The Court of Appeals then correctly noted that “[i]solated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective.” *Id.* at 4 (citing *Stevens*, 770 N.E.2d at 746).

Using these standards, the Indiana appeals court reviewed Dodd's claim. First, the appellate court found that the trial court's findings of fact were not clearly erroneous. *Id.* at 7. The trial court held a hearing at which Dodd and his trial counsel testified. *Id.* at 5. Dodd testified that on many occasions he and his lawyer discussed whether he should testify. *Id.* He further stated that his counsel said that, if Dodd testified, the State could impeach him with a unrelated pending murder charge because Dodd was released on his own recognizance for the murder at issue when he committed the other crime. *Id.* Moreover, trial counsel allegedly told Dodd that, if he testified, evidence of his flight from the jurisdiction and following extradition would be admissible. *Id.*

For his part, trial counsel stated that he had numerous conversations with Dodd about whether or not he should testify, but that ultimately the choice was always Dodd's. *Id.* In the end, Dodd followed counsel's advice not to testify. *Id.* Counsel testified that he told Dodd that the trial was going well for Dodd until the testimony from Dodd's co-defendant. *Id.* His co-defendant's testimony painted Dodd in a bad light. *Id.* Nevertheless, counsel still advised Dodd not to testify because he was concerned that Dodd would be unable to articulate his version of

the events in a credible manner. *Id.* Trial counsel further testified that, although he didn't recall telling Dodd that the pending murder charge could be raised if he testified, he didn't believe he did so because that charge had not been reduced to a conviction. *Id.* More to the point, trial counsel was concerned that Dodd would open the door to the pending murder charge on cross-examination. *Id.*

After listening to the testimony of Dodd and his trial counsel, the state court found that the trial counsel "did not misinform Dodd about the circumstances under which the pending murder charge could have been raised if Dodd had testified." *Id.* at 6-7. Thus, it decided that there was no evidence that trial counsel's performance fell below prevailing professional norms, or that Dodd was prejudiced by any act or omission of trial counsel. *Dodd v. Indiana*, 45G02-0203-PC-3, at 4 [DE 9 at 16-19].

The appellate court found that there was sufficient evidence, despite evidence also to the contrary, to support the trial court's holding that trial counsel did not erroneously advise Dodd. *Dodd v. Indiana*, 45A05-211-PC-557, at 7, Resp. Ex. H [DE 14]. It therefore accepted the trial court's factual findings, and affirmed the trial court's decision that trial counsel did not render ineffective assistance of counsel. *Id.* at 7.

The appellate court also raised a second basis for affirming the state court decision. It held that trial counsel's advice that Dodd not testify was a strategic decision. *Id.* The court stated:

[Trial counsel] explained that he did not believe Dodd would be able to articulate his version of the events in a credible manner and that he was concerned Dodd would open the door for the State to be able to use the pending murder charge. Regardless of whether he actually misinformed Dodd about the ability of the State to use the pending charge if Dodd

testified, the other issues [trial counsel] cited were proper considerations in determining whether it was advisable for Dodd to testify.

Id. The court thus refused to condemn trial counsel who “should be given deference in choosing a trial strategy that, at the time and under the circumstances, seems best.” *Id.* at 7-8 (citing *Whitener v. State*, 696 N.E.2d 40, 42 (Ind. 1998)). Because the court of appeals found that Dodd’s representation didn’t fall below the objective standard of reasonableness, it did not address the second prong of the ineffective assistance of counsel test – whether or not trial counsel’s performance prejudiced Dodd. *Id.* at 8.

This Court, when reviewing factual findings in a state adjudication of an ineffective assistance claim, “must presume that all factual determinations made by the state courts, including credibility determinations, are correct, unless rebutted by clear and convincing evidence.” *Murrell v. Frank*, 332 F.3d 1102, 1112 (7th Cir. 2003) (citation and emphasis omitted). Dodd has not presented any such evidence to refute the trial court’s or the appellate court’s findings of fact. We therefore accept the state courts’ findings as true.

Through this lens, we must find that the Indiana Court of Appeals’ decision was not contrary to, or an unreasonable application of, federal law. The state appellate court gave the appropriate level of deference to the decisions made by Dodd’s trial counsel, and properly applied the “reasonable professional judgment” standard. Accordingly, the claim of ineffective assistance of trial counsel does not present an appropriate ground for habeas relief.

B. Ineffective Assistance of Appellate/Post-Conviction Counsel

Dodd’s second claim is more troubling. In general, Dodd is complaining about the performance of his appellate counsel, Nathaniel Ruff. To put it bluntly, the record that was

provided to the Court in this case is murky at best, and Respondent has not assisted the Court in deciphering it. What appears to have happened, although we cannot be certain, is that Ruff was appointed to represent Dodd in his direct appeal. Ruff then filed a notice of appeal but the appeal was later dismissed so that Dodd could file a PCR instead. It is not at all clear why Ruff would choose to jettison a direct appeal to immediately proceed to a PCR. No answer is readily apparent from the record. In any event, Respondent concedes that, after losing in the trial court on his PCR, Dodd “had a joint direct appeal and post-conviction relief proceeding.” Resp. Mem at 6. In that joint appeal, Ruff only raised one issue – the ineffectiveness of trial counsel Patrick Young.

Respondent argues that Dodd’s claim of Ruff’s ineffective is not cognizable on federal habeas review because ineffective assistance of post-conviction counsel is not itself a cognizable federal constitutional violation. (Resp. Mem. at 5-6.) It cites *Steward v. Gilmore*, 80 F.3d 1205, 1212 (7th Cir. 1996) for this principle. *Id.* at 6. However, the application of that case to this situation is not so straight-forward. As mentioned and as conceded by Respondent, Ruff served as both PCR counsel and direct appellate counsel. Respondent argues that “[w]hile claims of appellate counsel’s ineffectiveness would be available on habeas review[, Dodd] does not identify any claims counsel should have made as direct appeal claims.” (*Id.*) But this simply isn’t the case. Both Dodd’s Petition Notifying Readiness with Request to Amend Habeas Corpus and Appoint Counsel [DE 10 at 4-5] and his traverse (Pet. Traverse at 4 [DE 18]) specify which claims Ruff should have made as direct appeal claims. In particular, Dodd alleges trial errors involving several aspects of the trial – including joinder with the accomplice during trial, improper or insufficient jury instructions, the introduction of his co-defendant’s statement, and

other claims – that possibly should have been raised by his appellate lawyer, but were not. Thus, while Respondent admits that claims of appellate counsel’s ineffectiveness generally would be available for review before this Court, he then fails to explain why such a claim is unavailable here. (*Id.*) It may well be that Dodd’s appellate lawyer reasonably determined, for whatever reason, that these potential appellate claims were not cognizable and made a professional judgment not to pursue them. But we cannot assume that to be the case.

In sum, Respondent’s Memorandum in response to Dodd’s claim of ineffective assistance of appellate counsel is insufficient because it does not address the alleged ineffectiveness of appellate counsel Ruff. This case needs a fresh start. Newly appointed counsel for Dodd (more on that in a moment) is directed to amend the habeas petition and focus the claim on whether Dodd received ineffective assistance of appellate counsel (or any other claims not disposed of in this Order). The amended petition should be filed on or before March 15, 2007. Respondent is then ordered to file an amended response addressing the specific issues raised by Dodd by April 15, 2007. Any traverse by Dodd will then be due no later than May 15, 2007. The Court will review the filings, and set this matter for oral argument thereafter.

C. Request for Evidentiary Hearing

Dodd argues that he is entitled to an evidentiary hearing either in federal or state court because he is “not being offered any fair or meaningful [way] to prepare or defend himself in this matter, and this is the reason that Mr. Dodd should be afforded an amendment, evidentiary hearing and counsel, if possible.” [DE 10 at ¶ 11].

28 U.S.C. § 2254 (e)(2) states:

If the applicant has failed to develop the factual basis of a claim in State court

proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

At this point in the case, Dodd has not fulfilled one of the reasons required by the statute.

Therefore, at this time, Dodd's request for an evidentiary hearing is denied.

D. Appointment of Counsel

Dodd filed a Motion to Alter or Amend [DE 21] requesting, among other things, that this Court vacate its earlier ruling denying Dodd appointment of counsel. Appointment of counsel is left to the discretion of the district court. *See Winsett v. Washington*, 130 F.3d 269, 281 (7th Cir. 1997) (citing 18 U.S.C. § 3006A(a)(2)(B)). The Court, after review of the case record, is now convinced that Dodd's claim of ineffective assistance of appellate counsel is sufficiently complex to require counsel. Accordingly, this Court now vacates its previous ruling and grants Defendant's Motion to Alter or Amend, such that Petitioner is now appointed counsel. James Golden, Esq. at Kirkland & Ellis LLP is appointed pro bono counsel. Any other relief sought by Dodd's Motion to Alter or Amend is denied.

IV. CONCLUSION

Accordingly, the Court:

(1) **DISMISSES** Petitioner's claim of ineffective assistance of trial counsel;

(2) **DISMISSES WITHOUT PREJUDICE** Petitioner's request for an evidentiary hearing;

(3) **ORDERS** Petitioner to amend his habeas petition by March 15, 2007 regarding Petitioner's claim of ineffective assistance of appellate counsel (or any other issues not disposed of by this Order) and **ORDERS** Respondent to respond to the amended petition by April 15, 2007; any traverse will be due from Petitioner by May 15, 2007;

(4) **GRANTS** Petitioner's Motion to Alter or Amend [DE 21] as it relates to his request for appointment of counsel; and accordingly, James Golden, Esq. of Kirkland & Ellis LLP is appointed as pro bono counsel; and,

(5) **DENIES** Petitioner's Motion to Alter or Amend [DE 21] such that it relates to any other relief sought by Petitioner.

SO ORDERED.

ENTERED: January 5, 2007

s/ Philip P. Simon
PHILIP P. SIMON, JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT - I

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

**William K. Suter
Clerk of the Court
(202) 479-3011**

April 1, 2009

Mr. Jermaine D. Dodd
Prisoner ID # 112883
P.C.F., J-15-1F
4490 W. Reformatory Road
Pendleton, IN 46064-9001

Re: Jermaine D'Shann Dodd
v. Indiana
No. 08-9554


Dear Mr. Dodd:

The petition for a writ of certiorari in the above entitled case was filed on March 5, 2009 and placed on the docket April 1, 2009 as No. 08-9554.

A form is enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

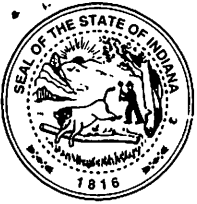
William K. Suter, Clerk

by 

Melissa Blalock
Case Analyst

Enclosures

EXHIBIT - J



CLERK

SUPREME COURT, COURT OF APPEALS, AND TAX COURT

STATE OF INDIANA

217 STATE HOUSE, INDIANAPOLIS, IN 46204

317-232-1930 • FAX 317-232-8365

David C. Lewis
Clerk

Cause Number

DODD, JERMAINE #112883
PENDLETON CORR FAC
PO BOX 30
PENDLETON, IN 46064

45A03-0412-SP-00550
Lower Court Number:
45G029811CF211

DODD, JERMAINE -V- STATE OF INDIANA

You are hereby notified that the COURT OF APPEALS
ISSUED THE ENCLOSED ORDER:

has on this day 4/26/05

WITNESS my name and the seal of said Court,

this 26TH day of APRIL, 2005

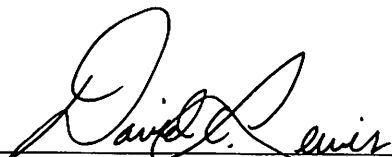

Clerk, Supreme Court, Court of Appeals and Tax Court

EXHIBIT-K

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

200 East Randolph Drive
Chicago, Illinois 60601

James M. Golden
To Call Writer Directly:
312 469-7021
jagolden@kirkland.com

312 861-2000

www.kirkland.com

Facsimile:
312 846-9136

October 8, 2008

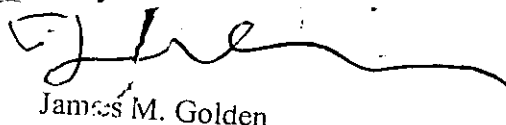
Jermaine Dodd
#112883
Pendleton Correctional Facility
P.O. Box 30
Pendleton, IN 46064

Dear Jermaine:

Attached for your records is the Indiana Court of Appeals' October 8, 2008 Opinion. Unfortunately, the Court denied the appeal and upheld your conviction.

The next step would be filing a petition for transfer to the Indiana Supreme Court. This petition asks the Supreme Court to review the Opinion ~~of the Indiana Court of Appeals~~. We are currently reviewing the Opinion to determine whether there are grounds to file such a petition to transfer. If we decide to file the petition, it would be due thirty days from the date of the Court of Appeals' Opinion -- November 7, 2008. Please contact me some time the week of October 13 to discuss whether we should pursue filing a petition and any other next steps. If we decide to file a petition, I will come meet with you to discuss it once we have completed a draft.

Very truly yours,



James M. Golden

Vic.

Jon

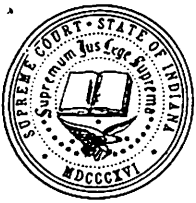
Los Angeles

New York

San Francisco

Washington, D.C.

EXHIBIT-L



CLERK

SUPREME COURT, COURT OF APPEALS, AND TAX COURT

STATE OF INDIANA

217 STATE HOUSE, INDIANAPOLIS, IN 46204
317-232-1930 • FAX 317-232-8365

2008 DEC 15 PM 12:02

Kevin S. Smith
Clerk

Cause Number

JAMES GOLDEN
200 EAST RANDOLPH DRIVE

CHICAGO, IL 60601-6636

45A03-0802-CR-00087
Lower Court Number:
45G020203PC3+

DODD, JERMAINE D'SHANN -V- STATE OF INDIANA

You are hereby notified that the

has on this day

SUPREME COURT

12/11/08

THIS MATTER HAS COME BEFORE THE INDIANA SUPREME COURT ON A PETITION TO TRANSFER JURISDICTION FOLLOWING THE ISSUANCE OF A DECISION BY THE COURT OF APPEALS. THE PETITION WAS FILED PURSUANT TO APPELLATE RULE 57. THE COURT HAS REVIEWED THE DECISION OF THE COURT OF APPEALS. ANY RECORD ON APPEAL THAT WAS SUBMITTED HAS BEEN MADE AVAILABLE TO THE COURT FOR REVIEW, ALONG WITH ANY AND ALL BRIEFS THAT MAY HAVE BEEN FILED IN THE COURT OF APPEALS AND ALL THE MATERIALS FILED IN CONNECTION WITH THE REQUEST TO TRANSFER JURISDICTION. EACH PARTICIPATING MEMBER OF THE COURT HAS VOTED ON THE PETITION. EACH PARTICIPATING MEMBER HAS HAD THE OPPORTUNITY TO VOICE THAT JUSTICE'S VIEWS ON THE CASE IN CONFERENCE WITH THE OTHER JUSTICES.

BEING DULY ADVISED, THE COURT NOW DENIES THE APPELLANT'S PETITION TO TRANSFER OF JURISDICTION.

RANDALL T. SHEPARD, CHIEF JUSTICE

ALL JUSTICES CONCUR.

KJ

WITNESS my name and the seal of said Court,

this 11TH day of DECEMBER, 2008

Clerk, Supreme Court, Court of Appeals and Tax Court

IN THE
INDIANA COURT OF APPEALS

CAUSE NO. _____

JERMAINE DODD,)

PETITIONER,)

v.)

STATE OF INDIANA,)

RESPONDENT,)

LOWER COURT

CAUSE NO: 45602-9811-CF-00211

THE HON. CLARENCE D.

MURRAY, JUDGE

PROSE PETITIONER'S ENTRY OF APPEARANCE

PURSUANT TO INDIANA CRIMINAL RULE 2.1(C), COMES NOW THE PETITIONER TO ENTER HIS APPEARANCE PRO' SE. THE PETITIONER DOES NOT WISH TO HAVE THE ASSISTANCE OF COUNSEL, AT THIS TIME. IN ACCORD WITH CRIM. R. 2.1(B), PETITIONER STATES THE FOLLOWING:

(1.) NAME: JERMAINE D. DODD DOC# 112883
ADDRESS: 3038 WEST 850 South
BUNKER HILL, INDIANA [REDACTED] 46914
Telephone: N/A FAX: N/A EMAIL: N/A

(2.) CAUSE NUMBER: 45602-9811-CF-00211

(3.) THIS PRO' SE PETITIONER CAN NOT ACCEPT SERVICES ELECTRONICALLY.

(4.) THIS PETITIONER DOES NOT REQUIRE THE SERVICES OF THE INDIANA PUBLIC DEFENDER, AT THIS TIME.

WHEREFORE, PETITIONER REQUESTS THE COURT TO ACCEPT AND TO CONSIDER SUCH MOTION OF PROSE PETITIONER'S ENTRY OF APPEARANCE AND TO GRANT SUCH SAID MOTION.

RESPECTFULLY SUBMITTED THIS 9TH DAY OF APRIL, 2018.

X JERMAINE DODD
PETITIONER PROSE

(1.)

CERTIFICATE OF SERVICE

I, The undersigned, hereby certify that on this 9th day of April, 2018. I served a True and correct copy of the foregoing, Motion for prose Petitioners Entry of Appearance, with sufficient first class postage affixed mailing by authorized prison personnel / Notary / employee of the (I.D.O.C.) Miami Correctional Facility, 3038 West 850 South, Bunker Hill, Indiana, 46914-9810, for prompt processing and mailed to the Court of Appeals, State of Indiana, 217 State House, Indianapolis, Indiana, 46204 by mail.

DATED: 4-9-18

C. J. MANN
- APPLICANT - PETITIONER - PROSE

STATE OF INDIANA,)
COUNTY OF MIAMI) SS: NOTARIZATION

Subscribed and sworn to before me, a Notary Public in and for the above State and County, on this 9 day of April, 2018.

My Commission Expires:

Aug. / 21 / 2024
MONTH / DAY / YEAR

Jessica Rhodes
NOTARY PUBLIC SIGNATURE
Jessica Rhodes
NOTARY PUBLIC PRINT NAME

RESIDENCE OF MIAMI county: