

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

JULY TERM 2008

WALI SALEEM,

Petitioner,

v.

Case No. 5D08-2295

OFFICE OF THE STATE ATTORNEY,
ETC.,

Respondent.

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Opinion filed September 19, 2008

Petition for Writ of Quo Warranto,
A Case of Original Jurisdiction.

Wali Saleem, Raiford, *pro se*.

No Appearance for Respondent.

PLEUS, J.

Wali Saleem has filed a Petition for Writ of *Quo Warranto* alleging that Daniel Wixtrom signed a four-count information against him on June 7, 1999. He alleges that Wixtrom was not appointed to the position of Assistant State Attorney until January 2, 2001. Assuming that to be true, Saleem asks to have the complaint against him dismissed.

This case is controlled by *Johnson v. State*, 33 Fla. L. Weekly D1850 (Fla. 5th DCA July 25, 2008). In *Johnson*, a petition for *quo warranto* was dismissed because *quo warranto* is not a proper vehicle for seeking post-conviction relief years after a conviction. This Court held Johnson waived his right to complain that elected officials

failed to submit oaths of office by not timely filing a challenge to the officials' authority in a direct *quo warranto* proceeding in the trial court. When the power and authority of an assigned state attorney is tested, it should be done in direct proceedings by *quo warranto* in the trial court and not in the appellate court. *Carey v. State*, 349 So. 2d 820 (Fla. 3d DCA 1977); see also *State ex rel. Vance v. Wellman*, 222 So. 2d 449, 449 (Fla. 2d DCA 1969).

Accordingly, the petition is DISMISSED.

SAWAYA and EVANDER, JJ., concur.