

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

WALTER KYSER,

Petitioner,

v.

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D12-4841

STATE OF FLORIDA,

Respondent.

\_\_\_\_\_ /

Opinion filed January 30, 2013.

Petition for Writ of Prohibition -- Original Jurisdiction.

Walter Kyser, pro se, Petitioner.

Pamela Jo Bondi, Attorney General, and Charlie McCoy, Assistant Attorney General,  
Tallahassee, for Respondent.

PER CURIAM.

Walter Kyser petitions this court for a writ of prohibition. For the reasons set forth below, we grant the petition.

Kyser was tried and convicted in Bay County and sentenced to death. The conviction was reversed on appeal and remanded for a new trial. Kyser v. State, 533 So. 2d 285 (Fla. 1988). On remand, venue was transferred to Escambia County. There, Kyser was again convicted and sentenced to life in prison. This court affirmed. Kyser v. State, 576 So. 2d 888 (Fla. 1st DCA 1991). Kyser recently filed a motion for postconviction relief in the Circuit Court for Escambia County. The clerk of that court sent the motion to Bay County. Kyser argues that this was incorrect and that Escambia County is the proper forum to consider the postconviction motion. The state concedes the correctness of this position. See Hernandez v. State, 64 So. 3d 1175 (Fla. 2011); Waterfield v. State, 35 So. 3d 60 (Fla. 2d DCA 2010). Accordingly, we grant the petition. The Circuit Court for Bay County is directed to return the motion and, if necessary, the record or portions thereof to Escambia County for further proceedings.

PETITION GRANTED.

BENTON, C.J., DAVIS and ROBERTS, JJ., CONCUR.