

Nelson Rodriguez
Auburn Correctional Facility
135 State Street- Box 618
Auburn, New York 13024

Presiding Justice, Henry J. Scudder
Appellate Division:
Fourth Judicial Department
19 E. Pulteney Sq.
Bath, New York 14810-1575

December 31, 2012

Re: In re Nelson Rodriguez
Return Receipt Certified Mail/Notice
7012 2210 0000 6267 5706

Dear Presiding Justice Scudder:

Enclosed please find Petitioner's Supplemental Affidavit in Support of An Affidavit in Support of A Motion for Relief from A Judgment Based Upon Fraud, Misrepresentation or Other Misconduct of An Adverse Party, which represents Petitioner's last submission to this Appellate Court, to have his timely and properly filed Ex parte "Writ of Mandamus" Motion heard nunc pro tunc to its' initial date of filing (September 24, 2012), due to the fact that Petitioner's urgent request to this Appellate Court by way of a written complaint dated November 13, 2012, and a follow-up letter with attached documentary evidence dated November 23, 2012, to conduct a thorough investigation into the serious mishandling of Petitioner's properly and timely filed Writ of Mandamus in this action; committed by the lower Court, its' County Clerk's Office and several members of the Bar and Court Clerks, assigned to this Appellate Court, which has persisted to this day, for which, Petitioner has attached two of the most recent correspondences received, dated December 17, 2012, by Francis E Cafarell, Clerk of the Appellate Court, and December 19, 2012, by Principal Appellate Court Attorney, Ivan E. Lee, who have intentionally provided Petitioner with misrepresented information regarding his appropriate aforementioned Ex parte filing papers/petition in this action; supported by the record made before the lower Court and now

further supported by the Cayuga County Clerk's Office certification dated December 26, 2012, by Susan M. Dwyer, Cayuga County Clerk, establishing that the afore-mentioned officials in their scheme and/or desperate attempt to have Petitioner remove himself from his rightful entitlement having prevailed on the afore-mentioned Ex parte proceeding, so that the obligation that would compel a simple duty may be transferred into the realm of discretion and the reviewing Court can avoid the merits of Petitioner's claims and rubber stamp the lower Court proceedings and conceal the crimes and due process violations committed against the Petitioner from ab initio in this action.

The Petitioner has pointed out in the Supplemental Affidavit in Support of An Affidavit in Support of A Motion for Relief From A Judgment Based Upon Fraud, Misrepresentation or Other Misconduct of An Adverse Party; that as a pro se litigant he is not to be stringently held to the rigid standards of motion practice as those of the Bar. It is undeniable that the Petitioner's Writ of Mandamus was submitted Ex parte. The Caption is In re Nelson Rodriguez, the Court Clerks of the Appellate Division have been addressing their letters to the Petitioner as such. Yet, they have been purposely misadvising the Petitioner to submit one original and ten copies of a petition and notice of petition to be served upon the respondent! What respondent? The claims as expressed throughout all of the Petitioner's moving and supporting papers have had one central theme that could not have possibly escaped the attention of every single one of the Appellate Court Clerks, the Principal Appellate Court Attorney and the named Justices of the Appellate Division: Fourth Judicial Department, that have received the Petitioner's submissions.

It is clear that this "lack of attention to detail" is an elaborate pretense and now the game is over. You are now being placed on Notice. Continue in this charade of dull-witted ignorance concerning the Petitioner's numerous attempts to seek

the protections of his due process rights and you will find yourself a defendant. It should be pointed out that after five days, if the Petitioner does not hear that this Court is taking action on resolving these stated claims, not only will the Petitioner be bringing civil action against you and your Appellate personnel, the members and supporters of the New Beginning Innocence Project will also be bringing a class action.

As is Customary, thanking you for your time and consideration in this matter, the Petitioner hopes to hear back from you very shortly.

Dated: December 31, 2012
Auburn, New York

Respectfully Submitted,


Nelson Rodriguez Pro se

Cc:
Governor's Office
Mrs. Sonia Bonilla &
Mrs. Irma Diaz, Members of
A New Beginning Innocence Project
www.freenelsonrodrigueznow.com



FRANCES E. CAFARELL
CLERK OF THE COURT

NEW YORK STATE SUPREME COURT
APPELLATE DIVISION, FOURTH DEPARTMENT
M. DOLORES DENMAN COURTHOUSE
50 EAST AVENUE, SUITE 200
ROCHESTER, NEW YORK 14604
(585) 530-3100 Fax (585) 530-3247



ALAN L. ROSS
DEPUTY CLERK OF THE COURT

December 17, 2012

Nelson Rodriguez (88-A-5497)
Auburn Correctional Facility
P.O. Box 618
Auburn, New York 13024

Re: Matter of Rodriguez - Index No. 2012-0358

Dear Mr. Rodriguez:

This acknowledges receipt of your letters dated November 6, 2012, November 13, 2012, and November 23, 2012, which have been forwarded to my attention.

I have reviewed our records regarding this matter. Those records reflect that you were notified by letter, dated September 26, 2012, that your original papers seeking to commence a CPLR article 78 proceeding in this Court were returned to you because you failed to submit an original notice of petition and petition, 10 copies thereof and the required filing fee of \$315 (see 22 NYCRR 1000.9 [copy enclosed]). You subsequently submitted a check for the required filing fee, which was returned to you on October 25, 2012, because the check was not accompanied by the required notice of petition, petition and 10 copies thereof. You then re-submitted the filing fee together with a proposed order to show cause, instead of a notice of petition. A member of this Court declined to sign the order to show cause. By letter, dated November 13, 2012, you were advised that, because you did not have a signed order commencing the proceeding, your application could not be processed until such time as you submit a proper notice of petition and 10 copies thereof.

All that is needed at this time to commence a proceeding is for you to file an original and 10 copies of a notice of petition, with service on respondent. The notice of petition should set forth the full caption and index number; the relief sought; and the return date on which the matter is to be considered by the Court

Very truly yours,

Frances E. Cafarell, Esq.
Clerk of the Court

FEC/k
Enclosure



FRANCES E. CAFARELL
CLERK OF THE COURT

NEW YORK STATE SUPREME COURT
APPELLATE DIVISION, FOURTH DEPARTMENT
M. DOLORES DENMAN COURTHOUSE
50 EAST AVENUE, SUITE 200
ROCHESTER, NEW YORK 14604
(585) 530-3100 Fax (585) 530-3247



ALAN L. ROSS
DEPUTY CLERK OF THE COURT

December 19, 2012

Nelson Rodriguez (88-A-5497)
Auburn Correctional Facility
P.O. Box 618
Auburn, NY 13024



Re: In the Matter of Nelson Rodriguez - Index No. 2012-0358

Dear Mr. Rodriguez:

I am returning the enclosed motion papers received by the Court today because you cannot make a motion in this proceeding until the proceeding is commenced by submitting the notice of petition as referenced in the Clerk's letter to you (copy enclosed). In addition, in order to file a motion with this Court, you must pay a filing fee or make a motion for permission to proceed as a poor person (*see* 22 NYCRR 1000.13 and 1000.14). I have enclosed a copy of the Court's rules for your convenience.

Very truly yours,

Ivan E. Lee
Principal Appellate Court Attorney

IEL/sl

Enc.

pc: Hon. Thomas G. Leone

NEW YORK STATE APPELLATE DIVISION:
FOURTH JUDICIAL DEPARTMENT

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In re Nelson Rodriguez, :
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SUPPLEMENTAL AFFIDAVIT IN
SUPPORT OF AN AFFIDAVIT IN
SUPPORT OF A MOTION FOR
RELIEF FROM A JUDGMENT
BASED UPON FRAUD, MISREP-
RESENTATION OR OTHER MIS-
CONDUCT OF ADVERSE PARTY

Index No. 2012-0358

STATE OF NEW YORK)
)ss.:
COUNTY OF CAYUGA)

1) I, Nelson Rodriguez (hereinafter the Petitioner), being duly sworn deposes and says that: I am the Petitioner in the above-referenced action and make this Supplemental Affidavit to the 48 page Affidavit in Support of a Notice of Precautionary/Protective Appeal filed on December 3, 2012, and for Relief From A Judgment Based upon Fraud, Misrepresentation or Other Misconduct of An Adverse Party, filed, December 13, 2012.

2) Petitioner immediately being aware that his Writ of Mandamus, properly and timely filed with this Honorable Appellate Court, on or about September 24, 2012 (with attached supporting documentary evidence irrefutably establishing that the respondent in this action had failed to appear and/or respond as mandated by CPLR § 7006(a)), supports his contention that no other party can exist to perform Notice of Entry on receipt of Court's sham Memorandum/Decision Order dated October 30, 2012, did cause the

Petitioner on or about December 3, 2012, to file A Notice of Precautionary/Protective Appeal, specifically asserting that in filing said Notice of Precautionary/Protective Appeal, Petitioner does not perform Notice of Entry, nor does he take such Notice, or in any way acknowledge the legitimacy of the afore-mentioned Court's sham Memorandum/Decision Order, as Petitioner was cognizant of the fact that there can never be a Notice of Entry entered in regards to an Order/Judgment in opposition to, and/or to dismiss Petitioner's moving papers/petition, or the Court's undischarged Order to Show Cause dated April 5, 2012, as no other party other than the Petitioner existed beyond the Court's alleged deadline of July 12, 2012, in this action. Inassuch, confirming the reason why Petitioner moved by way of Notice of Precautionary/Protective Appeal, as asserted above and why he immediately made notice that the fraudulent sham Memorandum/Decision Order received, was absent of a proper certification and of a date rendered, most significant was not accompanied by a Notice of Entry, nor an Affidavit of Service as mandated by the Civil Practice Law and Rules, when the afore-mentioned sham Memorandum/Decision in receipt, was accompanied with Notice of Appeal rights papers.

3) Petitioner, aware of the irrefutable afore-mentioned facts, coupled with a brief phone conversation had with a member/supporter of A New Beginning Innocence Project, in which

said (N.B.I.P.) member/supporter had called the Cayuga County Clerk's Office on or about December 10, 2012, on Petitioner's behalf, and spoke with a Susan M. Dwyer, alleged to be the County Clerk, making inquiries as to why her Clerk's Office, as up to date, continues to ignore and/or has failed to provide the Petitioner with his request of a certification with regards to what is on file in their County Clerk's Office, under the referenced Index Number 2012-0358, for which the Petitioner has already provided their office with the sum of \$5.00 to cover the fee for said requested certification since October 27, 2012.

4) Moreover, the afore-mentioned (N.B.I.P.) member/supporter (who will provide a sworn affidavit attesting to numerous phone conversations she had with the Cayuga County Clerk's personnel) asserted that County Clerk, Susan M. Dwyer, responded by asserting that she was not very familiar with the referenced case file 2012-0358, as the Clerk in charge of the file was a Ms. Wolfe, who at the present moment was not available in her office, but if she wished to leave a phone number where she can be reached, that she will assure her that Ms. Wolfe, will return her call. The (N.B.I.P.) member/supporter did leave her with a phone number where she could be reached and the following day she received a call from a party claiming to be and/or identifying herself as Ms. Wolfe. The member/supporter then informed the Petitioner that she had reiterated what she had asserted to Ms.

Dwyer, where in terms the identified Clerk, Ms. Wolfe, responded by asserting that the "Search Results Report" printout document that their office provided is their office record, created only for their office use and that because it is not an original document filed in their office, they can not certify the report as a true copy of the original and therefore it can not be produced with certification; words to that effect.

5) Nevertheless, it should be noted that it's these aforementioned assertions made by Ms. Wolfe, that clearly are intentionally misleading and are contrary to the record made before the lower Court, recorded and/or filed with her County Clerk's Office, of which Petitioner does totally dismantle in his 48 page Affidavit in Support of his Notice of Precautionary/Protective Appeal and for his Relief from A Judgment Based Upon Fraud, Misrepresentation or Other Misconduct of An Adverse Party, that Petitioner filed with this Honorable Appellate Court on December 13, 2012, and while it was being filed, on that same date, the afore-mentioned sham Notice of Entry gets filed with the Cayuga County Clerk's Office, which Petitioner is then in receipt of said sham document on December 14, 2012. Inassuch, it's these outright obvious improprieties that forced the Petitioner to make further research and to revisit the Cayuga County Clerk's Office's "Search Results Report" printout document, as provided, with a closer and most critical analysis, discovering additional improprieties, beyond

those previously discovered and mentioned in Petitioner's filed 48 page Supporting Affidavit in this action which Petitioner Motioned be an Addendum to his properly and timely filed Writ of Mandamus and now submits this Supplemental Affidavit to be attached to his 48 page Affidavit, which duly hereby below describes Cayuga County Clerk's Office intentional misleading assertions:

a) Upon close inspection of the record provided to Petitioner by the Cayuga County Clerk's Office, in its' "Search Results Report" printout, the Petitioner discovered that, contrary to County Clerk, Ms. Wolfe's, assertions made to the (N.B.I.P.) member/supporter, that they do not file copies, copies were filed on November 2, 2012, during a mass filing after 2:21PM, a "copy" of Petitioner's Writ of Mandamus, which was personally served upon Justice Thomas G. Leone, by Petitioner's personal server, as the original having been electronically filed via the County Clerk's Office on September 24, 2012, to this Appellate Division: Fourth Judicial Department.

b) Contrary to the assertion of the afore-mentioned Cayuga County Clerk, Ms. Susan M. Dwyer, in her letter dated November 24, 2012, Petitioner discovered that many documents were filed that were not in their "correct filing form," for instance;

i) As mentioned in Petitioner's letter dated December 19,

2012, addressed to the afore-mentioned Clerk, Ms. Susan M. Dwyer, Petitioner asserted that her Office filed two specific documents dated November 2, 2012, and December 13, 2012, that they knew or should have known were in an incorrect filing form. The first document dated November 2, 2012, is Court's sham Memorandum/Decision Order, which Petitioner totally dismantled in his 48 page Supporting Affidavit; the second document is the sham Notice of Entry, which the Petitioner also totally dismantles here below in subsections (a) through (e), a document that Petitioner immediately recognized as being absent and mentions was not provided him in his December 3, 2012, filed Notice of Precautionary/Protective Appeal, in this action.

ii) In accordance with Uniform Rules- Trial Courts 202.5(d)(1)(iii), a clerk "shall refuse to accept for filing...The paper sought to be filed with the County Clerk is filed in the wrong Court;" The sham Notice of Entry violates CPLR § 2101, in that it fails to identify the Court, the venue and the title of the action. These defects in form are not excusable errors pursuant to CPLR § 5019(a), as it does effect a substantial right of the Petitioner (i.e. his due entitlement to liberty). Yet, the Cayuga County Clerk's Office has obviously overlooked the defects in this document.

iii) This County Clerk's Office, more specifically Ms. Wolfe, who claimed that, at the time she was in receipt of

Petitioner's appropriately and timely submitted Notice of Precautionary/Protective Appeal, she was not sure if she could file said document, as the member/supporter of the (N.B.I.P.), can affirm by sworn affidavit when she spoke to Ms. Wolfe over the phone, because when she received Petitioner's aforementioned Notice of Precautionary/Protective Appeal she immediately forwarded it to Justice Thomas G. Leone, due to her assertion and/or claim that she "never saw anything like it before," or being familiar with such a document. Yet, pursuant to CPLR § 5520(c) "...when a Notice of Appeal is premature or contains an inaccurate description of the judgment or order appealed from, the Appellate Court, in its discretion, when the interest of justice so demand, may treat such a notice as valid." So Ms. Wolfe's assertions that she "never saw anything like" Petitioner's Notice of Precautionary/Protective Appeal before is irrelevant and it only goes to confirm that the Court was manipulating what documents should be filed or not throughout this action, as it's the Appellate Division who determines the appropriateness of such submissions, not a County Clerk who clearly does not have a command of their position.

iv) It is undisputed that the County Clerk's Office accepted for filing a massive stack of documents that were filed out of chronological order. However, the Civil Practice Law & Rules dictates that submissions to the Supreme Court Clerk "...be

filed with the clerk of the Court in which the action is triable" (CPLR § 2102(a)). It stands to reason if these papers must be filed where the action is triable, to file them after the Court enters a final memorandum/decision, is to do so untimely. As it deprives the Court of the jurisdiction to take cognizance of the matters contained therein.

v) It is factually undeniable that the last document filed in Petitioner's action was the Court's April 5, 2012, Order to Show Cause, and there appears in the record no filings of any applications for extension requests, nor Orders granting such applications for extensions of time for the respondent to appear and/or respond made in the record created by the lower Court. The April 5, 2012, Order to Show Cause, established May 16, 2012, as the final deadline for the respondent to appear and/or respond. As there is no record of the Court extending the deadline beyond that date, the Court's sham Memorandum/Decision is in violation of CPLR § 4213(c); "The decision of the Court shall be rendered within sixty days after the cause or matter is finally submitted..." The sham Memorandum/Decision was dated October 30, 2012, over five (5) months from May 16, 2012, which is ninety (90) days over the sixty (60) day statutory mandate!

vi) Clearly the Supreme Court Clerks and the Cayuga County Clerk's Office clerks, had a statutory mandate to inform the "Pro se" Petitioner of any defects in form or otherwise

incorrectness with regards to any papers submitted to their respective offices for filing; as it is expressed in Uniform Rules- Trial Courts § 202.5(d)(2); which states, "A county clerk or chief clerk shall signify a refusal to accept a paper by use of a stamp on the paper indicating the date of the refusal and by providing on the paper the reason for the refusal." It does not appear by that language that documents may be received and held indefinitely until such time as the clerk decides to get around to filing them (even if that means after the action is concluded). In the instant case, over 5 months beyond the final submission in this action and for the purpose of depriving the Petitioner of his due process rights.

vii) However, assuming *arguendo* that there was a record made in the Cayuga County Clerk's Office that establishes that the application for the asserted extensions named in Petitioner's Writ of Mandamus, did actually occur and Court deadline was in fact, July 12, 2012, the Court would still be in violation of the sixty (60) day statutory mandate, as the record made in the Cayuga County Clerk's Office undisputably supports Petitioner's contentions that the Court was judicially estopped from making any ruling contrary to its' April 5, 2012, Order to Show Cause, as this case was governed by the doctrine of *res judicata* since May 16, 2012, which leads back to Petitioner's assertions as set forth in his Writ of Mandamus, that all that remains in this action is a ministerial duty owed the Petitioner. Which supports why the Petitioner has been able to dismantle the lower Court's

afore-mentioned sham documents.

6) The Petitioner upon receipt of the Notice of Entry document dated December 13, 2012, immediately took cognizance that it was a sham document (as he pointed out in his Notice of Precautionary/Protective Appeal that said document did not accompany the sham Memorandum/Decision dated October 30, 2012, as mandated because it included a Notice of Appeal rights) and began to methodically dismantle said Notice of Entry document, as described herein below:

a) Petitioner, upon receipt of sham Notice of Entry document immediately noticed that said "sham document" was absent of a mandated Affidavit of Service (which was also absent upon receipt of Court's sham Memorandum/Decision and Notice of Appeal Rights papers, which makes it that much more compelling to have been accompanied by an appropriate Notice of Entry document) confirming Petitioner's afore-mentioned assertions that no Notice of Entry can be performed and/or entered on Court's sham Memorandum/Decision dated October 30, 2012, as no other party, other than the Petitioner existed in this action beyond July 12, 2012, Court's alleged final deadline in this action. As it is irrefutably established by the Cayuga County Clerk's Office's own electronic filing records. For which it merits to mention that Petitioner, on or about December 28, 2012, upon the completion of this sworn Supplemental Affidavit in Support of an Affidavit in

Support of A Motion for Relief From A Judgment Based Upon Fraud, Misrepresentation or Other Misconduct of An Adverse Party, did come into receipt of a Notarized Affidavit from Susan M. Dwyer, Clerk of Cayuga County Clerk's Office, where she gave sworn affidavit ascertaining the Cayuga County Clerk's Office Records as of December 26, 2012, for Index No. 2012-0358. Though said recent certification irrefutably supports Petitioner's assertions made in both his timely and properly filed Writ of Mandamus and the afore-mentioned 48 page sworn Affidavit in Support of An Affidavit in Support of a Motion for Relief From A Judgment Based Upon Fraud, Misrepresentation or Other Misconduct of An Adverse Party; in their entirety, it merits to mention that said afore-mentioned County Clerk's Affidavit states; "...Said document is our record of papers filed in our Office and is subject to change, for additions and corrections." Clearly establishing that the action, "regarding Civil Index # 2012-0358," is still active. Which also further establishes that the improprieties that can be asserted and/or construed from said affidavit ascertaining that the "Search Results Report" is accurate as of December 26, 2012, is the fact that said Report is devoid of the page number count of the submissions on file, which was provided the Petitioner in the uncertified Report; and the documents listed as "letters" are devoid of their designation as to what they were submitted for and who authored them; as well as devoid of Petitioner's recently submitted and served afore-mentioned 48 page sworn affidavit.

b) Sham Notice of Entry is absent of the proper Court

Part. As West McKinney's Forms, Civil Practice Law & Rules, "Notice of Entry of Judgment or Order entered in Court of Original Instance" CPLR § 5513, mandated to be clearly designated;

c) Sham Notice of Entry is absent of the proper title of cause, which must indicate: "We the People" ex rel. A New Beginning Innocence Project, on behalf of Nelson Rodriguez, Petitioner, -against- Harold H. Graham, Superintendent of Auburn Correctional Facility, Respondent." Not "Defendant." The significance of changing the respondent into a defendant is obvious, considering the fact that Justice, Thomas G. Leone, has been desperately trying to distance himself from his April 5, 2012, Order to Show Cause, and the obligation attached thereto of the ministerial duty to perform an entry of judgment consistent with said Order, ever since the respondent failed to appear and/or respond in this action. (See, Exhibit "A").

d) Sham Notice of Entry is absent of the assigned/presiding Judge on the face of the document, as it is apparent from the afore-mentioned phone conversation Ms. Wolfe had with the (N.B.I.P.) member/supporter, where said member/supporter asserted that Ms. Wolfe informed her that she forwarded Petitioner's Notice of Precautionary/Protective Appeal to Justice Thomas G. Leone, and the letter mailed to Ms. Susan M.

Dwyer, regarding the intentional fraud that will be committed should anyone attempt to perform Notice of Entry, dated November 7, 2012. Thomas G. Leone, being made aware of said facts, it appears he directed the clerk of the Supreme Court, Kelly J. Wejko, to draft that fraudulent document and leave his name absent from said document.

e) Sham Notice of Entry is absent of who submitted/served said document, as the fraudulent document was addressed to the Petitioner and the defaulting respondent, which further supports that the Court performed the afore-mentioned sham Notice of Entry in response to Petitioner's Notice of Precautionary/Protective Appeal, in an attempt to cover-up the numerous due process violations committed against the Petitioner in this action throughout the entire proceedings, but at the same time exposes the fact that this matter became an ex parte action/proceeding since May 16, 2012, and not on July 12, 2012, as the Petitioner was led to believe, filing his timely and properly Summary Judgment Motion, Ex parte for Default on or about July 23, 2012, in this action.

7) Nevertheless, with regards to the afore-mentioned irrefutable facts it merits to mention that this Appellate Court must take cognizance that; "First, a Special Proceeding is not tantamount to a motion. A motion is an application for an order in a pending action or proceeding in which jurisdiction has

already been acquired over the defendant. A Special Proceeding, on the other-hand, "is an application to a court for a judgment." (N.Y.Civ.Prac. § 403," (Kriegbaum v. Katz, 909 F2d 70 [1990])). Uniform Rules- Trial Courts § 202.8(a), states; "...All motions shall be returnable before the assigned judge, and all papers shall be filed with the court on or before the return date." It was held in People v. Ponce, 943 NYS2d 793, 34 Misc. 3d 1209(A) (NY Co. Ct. 2012) that; "The people's papers were...filed after the return date which, in and of itself, renders such papers untimely." Herein, based upon the Cayuga County Clerk's, now certified "Search Results Report" electronic filing record, it is irrefutable that the "respondent's" papers appears to be filed several months after the Court's Order to Show Cause's May 16, 2012, return date, which in and of itself renders those papers untimely, most importantly, they were dated and/or filed three days after the sham Memorandum/Decision, which automatically renders and/or removes the Court's jurisdiction from ever taking notice of their contents, supporting Petitioner's Writ of Mandamus's (presently before this Appellate Court) assertions in their entirety.

8) Petitioner wishes at this time to address a clear and obvious misrepresentation of Civil Practice being perpetrated by County Clerk personnel of the Cayuga County Clerk's Office, Appellate Court Clerks and The Appellate Court Attorney. More

specifically, Ms. Wolfe, Clerk at the Cayuga County Clerk's Office, Francis E. Cafarell and LXD, Clerks of the Appellate Division: Fourth Judicial Department and Ivan E. Lee, Appellate Attorney, Appellate Division: Fourth Judicial Department. These afore-mentioned County and Court Clerks and Court Attorney, have consistently misinformed the Petitioner and his supporters via numerous phone conversations, in regards to having his properly and timely submitted Writ of Mandamus heard by this Honorable Appellate Court. Petitioner clearly exposed in his 48 page Affidavit dated December 13, 2012, the issue of filing, mailing documents and to be reimbursed his \$315.00 filing fee, which as up to date are being withheld by this Appellate Court Clerk's Office, when it was duly obvious that upon the electronic filing of Petitioner's Writ of Mandamus, the action was still active and rendered said Writ of Mandamus an interlocutory appeal/motion, recognized by the filing clerk at the Cayuga County Clerk's Office as such, who asserted upon said electronic filing; "that no filing fee was required as the case was still active." Yet, there also seems to be an issue of appropriate motion practice by the afore-mentioned State and County Officials, who have been trying to undermine the appropriate filing of Petitioner's Writ of Mandamus, in this action.

9) New York has long recognized that in a Court (Judge)- tried

case the first-tier appellate Court stands in the shoes of the trial judge (See, Mellon v. Street, 23 AD2d 210, 259 NYS2d 900 (3d Dep't 1965)). This enables the appellate court to disregard incompetent evidence in determining whether to uphold the decision and can render whatever judgment appropriate to the proof as purged. Now it is factually and documentarily undisputed that the only evidence the lower Court had before it was the properly filed submissions of the Petitioner. This prompted the Court to execute an Order to Show Cause upon the respondent, dated April 5, 2012, which was filed on April 12, 2012. The only other timely filed document in this instant action was the Petitioner's Writ of Mandamus, and the Affidavit of Service of said Writ, upon Justice, Thomas G. Leone, dated September 24, 2012, as the respondent failed to appear and/or respond. Petitioner, in recognizing that no impartiality was being afforded him during the entire proceedings, exercised his legal right to Move this Appellate Division, to intervene and determine the cause of why said Justice, Thomas G. Leone, had continuously failed to perform his clear and obvious duty in granting the Petitioner his due entitled relief. As it was clear that the sudden change in the course of the proceedings were not due to any oppositional facts being presented the Court for consideration. Making it undeniable that this abrupt change came from the trial Judge's own initiation, apparently from matters outside the scope of the proceedings and in direct conflict with

his own properly and timely filed Order to Show Cause, rendering such action or inaction, as up to date, being in contempt of his own Order.

10) The Court of Appeals has said that; "[t]he rule has long been settled and inflexibly applied that the trial Court has no revisory or appellate jurisdiction to correct be amendment error in substance affecting the judgment. It cannot, by amendment, change the judgment...to meet some supposed equity subsequently called to its attention...It cannot correct Judicial errors either of commission or omission...Clerical errors or a mistake in the entry of the judgment or the omission of a right or relief to which a party is entitled as a matter of course may alone be corrected...through an amendment." (Herpe v. Herpe, 225 NY 323, 327, 122 NE 204, 205 (1919)). As mentioned in Petitioner's properly and timely filed Writ of Mandamus, dated September 24, 2012, the Petitioner had filed an Ex parte Motion for Summary Judgment upon Default of the opposing Party on July 23, 2012, who had removed themselves from the action by their own abandonment. Subsequently, on or about August 28, 2012, the Petitioner had also filed a Motion for Proposed Judgment Discharging a Person Detained, which was served upon all defaulting parties as a courtesy with the afore-mentioned ex parte motion attached as an exhibit. No motions were filed in opposition to these motions to the Court by the respondent, as the Cayuga County Clerk's Office

(Certified) electronic files undoubtedly clearly reveals, as it is clear that the Court in sham Memorandum/Decision Order takes notice of these motions (establishing it violated CPLR § 4213(c)) which clearly raised an issue for this Honorable Appellate Court to intervene over, as all that remained upon the clear and obvious default was for the judgment to be entered in favor of the Petitioner, nothing more than a ministerial duty; a duty which this Honorable Court has now inherited due to Justice, Thomas G. Leone's, inexcusable misconduct and obvious bias, as previously mentioned in Petitioner's 48 page Affidavit in Support dated December 13, 2012. As the Civil Practice Law & Rules makes clear in Special Proceedings, a pro se litigant is given latitude in motion practice and is not held to a rigid standard of having to cite every Statute or Authority in expressing the points at issue being presented to the Court. Said Court is mandated to attach whatever statutory authority applies to the material issues raised in the pro se litigant's submissions. As the Court must take notice of what facts are presented and the law that attaches to them. Clearly in the instant case, the Petitioner by moving this Honorable Appellate Court by way of a Writ of Mandamus did present the material facts requisite to grant this Court jurisdiction to circumvent the clear and obvious injustice and due process violations perpetrated against the Petitioner throughout the entire proceedings in this action. Special Proceeding practice also forgives a mistake in form of certain

motions, to be corrected by the receiving Court and the proceedings may go forward to adjudication of the merits of the stated claim, as long as the Court can legitimize taking jurisdiction. Such is certainly true in the instant case, the Petitioner's Writ of Mandamus challenged the lower Court's refusal to entertain Petitioner's numerous objections and motions, as well as the Court's obvious bias and lack of impartiality with regard to the Petitioner. This effectively became an interlocutory appeal, which required this Honorable Appellate Court's swift intervention to circumvent an obvious obstruction of justice, as the Petitioner had undisputably prevailed in his petition, but was being denied the due entitled relief of liberty. As the lower Court is in contempt of its own Order to Show Cause; and as an interlocutory appeal, the lower Court proceedings were effectively stayed on the 24th of September, 2012, when said Writ of Mandamus was timely and properly filed and a copy thereof was personally served upon the lower Court.

11) The merits of Petitioner's Writ of Habeas Corpus are undisputed. The doctrine of res judicata forever attaches to this case. The Petitioner in the instant case stood before three separate trials, two that ended in hung juries and at the third trial the jury sent a note to the Court asking if they can convict one defendant and acquit the other (Petitioner) as they

were having great difficulty buying the witness testimony, and that the Prosecution failed to place the Petitioner at the scene, the jury agonized for an additional 24 hours before caving in to the Court's misguidance and wrongfully/illegally convicted the Petitioner in this case. The Petitioner has maintained his innocence from ab initio, which stands to reason that the only way an innocent man can be convicted of a crime in our esteemed system of justice, is by the suspension of his due process rights, whether done intentionally or not. However, it would be an absolute shock to the conscience of any American citizen to discover that an innocent man can be convicted of a crime while being afforded his due process rights. A matter that as up date is undeniable that the Petitioner is being denied. Lastly, should this Court or any other, neglect its duty under the interest of justice to intervene and correct what is clearly a due process violation of the highest magnitude, it would be a departure from the Constitutional protections so extreme, as to revert our civilization back to a foregone age of darkness, where men were left to their own faculties to defend themselves, as law was still in its pre-embryonic stage of development.

WHEREFORE, the Petitioner hereby seeks that this Supplemental Affidavit in Support of an Affidavit in Support of A Motion for Relief From A Judgment Based Upon Fraud, Misrepresentation or

Other Misconduct of an Adverse Party, be attached to said Affidavit and that the prayed for relief contained therein be granted with the following additional relief;

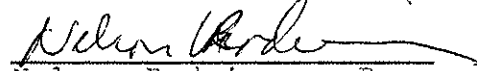
That this Honorable Court take notice of the Cayuga County Clerk's Office's "Search Results Report" which is prima facie evidence of the facts contained in the 48 page Affidavit in Support of Petitioner's Motion; (See, Exhibit "B");

That this Honorable Court disregard the sham Notice of Entry document, as it is obviously a desperate attempt to deny Petitioner his due entitlement to the relief of liberty;

And, for such other and further relief that this Honorable Court deems equitable, just and proper.

Date: December 31, 2012
Auburn, New York

Respectfully Submitted,


Nelson Rodriguez, Pro se

Sworn to before me this
31 day of December, 2012


NOTARY PUBLIC

DAVID G. O'HARA
Notary Public, State of New York
No. 01OH6233984
Qualified in Onondaga County
Commission Expires January 3, 2014

EXHIBIT A

COUNTY COURT
COUNTY OF CAYUGA
STATE OF NEW YORK

FILED
CAYUGA COUNTY CLERK
Dec 13, 2012 02:43P
Susan M. Dwyer
D W

NELSON RODRIGUEZ 88-A-5497,

vs.

NOTICE OF ENTRY
INDEX NO: 2012-0358

HAROLD GRAHAM, SUPRINTENDENT
OF AUBURN CORRECTIONAL FACILITY
Defendant

PLEASE TAKE NOTICE that the attached is a true copy of the MEMORANDUM
DECISION AND ORDER in this matter that was entered in the Office of the County Clerk of
Cayuga County, on the 2nd day of November, 2012.

Dated: December 13, 2012



Kelly J. Wejko, Chief Clerk

To:

NELSON RODRIGUEZ DIN #88-A-5497
Auburn Correctional Facility
PO Box 618
Auburn, NY 13024

Hon. Eric T. Schneiderman
Attorney General of the State of New York
By: Ray A. Kyles, Esq.
615 Erie Blvd West, Suite 102
Syracuse, NY 14871-2000
Auburn, NY 13021

EXHIBIT B

Nelson Rodriguez
Auburn Correctional Facility
135 State Street- Box 618
Auburn, New York 13024

Susan M. Dwyer, County Clerk
Cayuga County Office Building
160 Genesee Street, First Floor
Auburn, New York 13021-3424

December 19, 2012

Dear Mrs. Dwyer:

Petitioner, in receipt of your letter dated November 24, 2012, where you and/or your Office asserts that it cannot provide any certification with regards to public records that are recorded in your electronic filing system as, "it is not an original document filed in our office and therefore we could never certify this report as a true copy of the original, which is what we are attesting to with a Clerk's Certification." This assertion by you and/or your Office is in direct conflict with the 2002 amendment to CPLR § 4518(a), which facilitates the admissibility of computer-based business records ("electronic records") by allowing the use of any "tangible exhibit," such as a printout, that is determined by the Court to be "a true and accurate representation" of the electronic record.

This amendment compliments the Electronic Signatures and Records Act (ESRA) N.Y. State Technology Law § 301 et seq. Which is consistent with the Legislative intent, establishing that electronic signatures and records have the same force and effect as signatures and records produced by nonelectronic means and should be utilized to facilitate both business in, as well as business of, New York State. The ESRA provides that an electronic record may be admitted into evidence pursuant to the provisions of CPLR Article 45.

As the custodian of the records of the County of Cayuga and more specifically, the Cayuga County Supreme Court, you have the authority to, and the legal responsibility of, authenticating, as the sponsoring witness to the printout form of your "Search Results Report," when, how, or by whom the printout was made. Such can be done by giving an affidavit to the effect that the printout of the afore-mentioned "Search Results Report," is "a true and accurate representation" of your office's electronic files with regard to Petitioner's case file # 2012-0358.

PLEASE BE ADVISED, this writing represents the third and final **Notice to Produce**, the certification/affidavit attesting to the fact that the printout representing the "Search Results Report" is "a true and accurate representation" of the documents on electronic file with your office under the case # 2012-0358.

Petitioner, at this time requests a new printout of said "Search Results Report," with said authentication attached thereto, explicitly stating when, how or by whom, said printout was proffered, and that such is "a true and accurate representation" of what the Cayuga County Clerk's Office has on file under the index case # 2012-0358.

Failure to provide the Petitioner with the requested official authentication by affidavit, or otherwise, will be construed as a refusal to comply with your official duty to provide such authentication and denial of access to the Courts, as well as a concerted effort to cover-up what you know to be a departure from the appropriate/ legal method of filing documents in an elaborate attempt to deny Petitioner his due process rights. Such will lead to you and your Office being deposed for future litigation which will ultimately lead to charges and penalties, being brought against you and your office for such official misconduct, where loss of careers and prison terms are certainly in the foreseeable future.

It should be noted however, the Petitioner by this final notice wishes to bring this matter to a close as it is clear that contrary to your further assertion in same correspondence that "if the County Clerk's Office is presented with a court paper in the correct filing form, legally (s)he cannot refuse the filing." However, you and your Office on November 2, 2012 and December 13, 2012, were presented with papers that were in an incorrect filing form, yet, you and your Office being aware of such facts, still made the illegal filings of said papers, and it was done under the advise of the Court, which you and your Office knew or should have known, was being done for the sole purpose of altering the irrefutable fact that the respondent(s) in this action failed to appear and/or respond in this action. Supporting Petitioner's assertions as set forth in his Writ of Mandamus, electronically filed through your Office and personally served upon the Court on September 24, 2012.

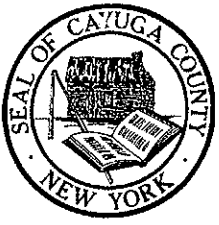
The Petitioner is aware of Justice, Thomas G. Leone's unethical and biased conduct throughout the entire proceedings. However, it is your responsibility, as an elected official to protect your position & the oath you took upon being elected to represent the County of Cayuga and its' citizens upon being County Clerk. Therefore, it will be in your best interest to assist the Petitioner, that this matter reaches a close and in doing so provide the Petitioner with the Certification as requested.

Dated: December 19, 2012
Auburn, New York

Respectfully Submitted,

Cc: Members of A New Beginning
Innocence Project

Nelson Rodriguez, Pro se



County of Cayuga

December 26, 2012

I, Susan M Dwyer, Cayuga County Clerk, make this affidavit to ascertain that the attached report regarding Civil Index # 2012-358 is accurate as of December 26, 2012 .

Said document is our record of papers filed in our office and is subject to change, for additions or corrections.

Susan M Dwyer

Susan M Dwyer
Cayuga County Clerk

12-26-12

Date

Sworn to:
December 26, 2012

Shelley L Patterson

Notary Public

SHELLEY L. PATTERSON
Notary Public - State of New York
No. 04PA6269344
Qualified in Cayuga County
My Commission Expires Sept. 24, 2016

SEARCH RESULTS REPORT

Document No	Case Type	Case Date	Volume	Page	Reten Yrs	Remarks	Court
2012-00000358	CIVIL	04/03/2012			\$.00		SUPREME

Defendant
 GRAHAM HAROLD SUPERINTENDENT

Plaintiff
 RODRIGUEZ NELSON
 NEW BEGINNING INNOCENT PROJECT WE THE PEOPLE

Action Date	Description	Secure
04/03/2012	INDEX NUMBER APPLICATION	No
04/03/2012	WRIT OF HABEAS CORPUS	No
04/03/2012	MEMORANDUM OF LAW	No
04/03/2012	VERIFICATION	No
04/03/2012	SIGNATURE SHEET	No
04/03/2012	PETITION (6)	No
04/12/2012	ORDER TO SHOW CAUSE	No
09/24/2012	AFFIDAVIT OF SERVICE	No
11/02/2012	MEMORANDUM DECISION & ORDER	No
11/02/2012	LETTER	No
11/02/2012	NOTICE PROPOSED JUDG DISCHARGING PERSON	No
11/02/2012	DETAINED PURSUANT TO CPLR 7010	No
11/02/2012	AFFIDAVIT IN SUPPORT OF CORR TO EX PARTE	No
11/02/2012	MOTION CERT RET RECT 7009341000049183812	No
11/02/2012	AFFIDAVIT OF SERVICE	No
11/02/2012	VERIFICATION	No
11/02/2012	EXH A THRU C	No
11/02/2012	LETTER	No
11/02/2012	AFFT IN SUPPORT OF EX PARTE MOTION FOR A	No
11/02/2012	SUMMARY JUDGMENT PURSUANT CPLR 3212	No
11/02/2012	VERIFICATION	No
11/02/2012	EXH A THRU B	No
11/02/2012	LETTER	No
11/02/2012	PETITION SIGNATURES	No
11/02/2012	LETTER	No
11/02/2012	VERIFIED ANSWER & RETURN	No
11/02/2012	EXH A THRU B	No
11/02/2012	AFFIDAVIT IN SUPPORT OF WRIT OF MANDAMUS	No