

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

NEIL J. GILLESPIE

Appellant,

Case No.: 2D10-5197

Lower Court Case No. 05-CA-007205

vs.

BARKER, RODEMS & COOK, PA, a Florida  
Corporation; and WILLIAM J. COOK,

Appellees.

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**APPELLANT'S MOTION FOR EXTENSION  
OF TIME TO FILE AMENDED INITIAL BRIEF**

Appellant pro se Neil J. Gillespie hereby files this Motion for Extension of Time to File Amended Initial Brief and in support thereof states:

1. This Court, by Order dated May 2, 2011, partially granted Appellant's motion of April 25, 2011, to the extent that the amended initial brief shall be served by May 23, 2011. This Court denied appellant's emergency motion to stay pending appeal. This Court denied appellant's motion for order of protection. While the Appellant appreciates the extension of time to file his amended brief, the underlying need for an extension remains since the Court denied appellant's emergency motion to stay pending appeal. Appellant has been forced, by Mr. Rodems' intentional disruption of the appellate process, to devote most of his time to an evidentiary hearing to incarcerate him, which continues to prevent Appellant from working on his amended brief.
2. Currently the lower tribunal has set an Order to Show Cause for hearing June 1, 2011 at 11:00 AM. (Exhibit A). This is a contempt hearing on an "Order Adjudging

Plaintiff Neil J. Gillespie In Contempt”, an Order that is current on appeal in this Court, Case No.: 2D10-5197. This Court could have stayed the matter under Rule 9.310, Fla. R. App. P., or Rule 9.600(b), Fla. R. App. P., but did not. Therefore Appellant must devote his time to preparing for the hearing, since it involves his likely incarceration.

3. This Court found Appellant indigent. Appellant cannot afford counsel to represent him. Appellant is disabled and no longer able to represent himself at a court hearing. Therefore Appellant has a right to court-appointed counsel when faced with incarceration for violating a state court order.

4. The United States Supreme Court heard argument in Turner v. Rogers, Docket 10-10, on March 23, 2011 according to SCOTUS Blog <http://www.scotusblog.com/case-files/cases/turner-v-price/>. The issue is (1) Whether an indigent defendant has a constitutional right to appointed counsel at a civil contempt proceeding that results in his incarceration; and (2) whether the Court has jurisdiction to review the decision of the South Carolina Supreme Court. Tom Goldstein, Publisher of SCOTUS Blog, emailed Gillespie May 16, 2011 that “It [Turner v. Rogers] very likely will be decided in June.”

5. This case is more compelling than Turner v. Rogers. Gillespie is disabled and cannot appear in court without counsel under any circumstance. Gillespie’s disabilities are both physical and cognitive. During a hearing May 3, 2011 the record shows Judge Arnold is uninformd about Gillespie’s disability. (Transcript, p7, line 7). Judge Arnold held the hearing ex parte. The hearing was transcribed at Gillespie’s request and expense. Gillespie was not present at the hearing and he was not represented by counsel at the

hearing. Opposing counsel Mr. Rodems mislead the court about Gillespie's disability<sup>1</sup>. In fact, Mr. Rodems is the problem in this case due to his conflict of interest with a former client. Gillespie sued to recover \$7,143 stolen by Rodems' firm, Barker, Rodems & Cook, PA, from a settlement in prior representation. Mr. Rodems countersued Gillespie for libel, and is unlawfully representing his law firm against a former client in a matter that is the same or substantially the same as the prior representation. Mr. Rodems' independent professional judgment is materially limited by his own interest and conflict.

6. Appellant is currently working on a motion for appointment of counsel for the June 1, 2011 hearing before Judge Arnold based upon Petitioner's Brief in Turner that the Sixth and Fourteenth Amendments of the US Constitution support a right to counsel in civil contempt proceedings:

(a) The Sixth Amendment provides in relevant part: In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense. U.S. Const. amend. VI. The Petitioner further argues (Brief, p. 27) "In *Powell v. Alabama*, 287 U.S. 45 (1932), this Court recognized that "[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel." *Id.* at 68-69. In a range of proceedings, both criminal and civil, this Court has accordingly held that an indigent defendant facing incarceration is entitled to be advised of his right to counsel and, if he cannot afford an attorney, to have counsel appointed to assist in his defense. In the criminal context, the right to appointed counsel stems in part from the Sixth Amendment's textual guarantee of "the Assistance of Counsel" in "all criminal prosecutions." U.S. Const. amend. VI. The Court has construed this provision to

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<sup>1</sup> Mr. Rodems has personal knowledge of Plaintiff's disability from his firm's prior representation of him

confer a right to appointed counsel in any proceeding that “may end up in the actual deprivation of a person’s liberty.” *Alabama v. Shelton*, 535 U.S. 654, 658 (2002) (internal quotation marks omitted). This understanding of the Sixth Amendment right to counsel reflects “the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty.” *Johnson v. Zerbst*, 304 U.S. 458, 462-463 (1938). Thus, absent a valid waiver, “no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.” *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972). Rather, “any amount of actual jail time has Sixth Amendment significance.” *Glover v. United States*, 531 U.S. 198, 203 (2001) (emphasis added); *see also Scott v. Illinois*, 440 U.S. 367, 373 (1979).”

(b) The Fourteenth Amendment provides in relevant part: [N]or shall any State deprive any person of life, liberty, or property, without due process of law. U.S. Const. amend. XIV, §1. The Petitioner further argues (Brief, p. 28) “This Court has recognized, however, that the right to the assistance of counsel for persons facing incarceration arises not only from the Sixth Amendment, but also from the requirement of fundamental fairness under the Due Process Clause of the Fourteenth Amendment. Thus, in *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Court extended the Sixth Amendment right to counsel to all criminal prosecutions in state courts in which the defendant faced a loss of liberty through the Due Process Clause, holding that the right to counsel is a “fundamental safeguard[] of liberty” that is “essential to a fair trial.” *Id.* at 339-345. As the Court had recognized in *Powell*, without the “guiding hand of counsel,” even a

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on disability matters.

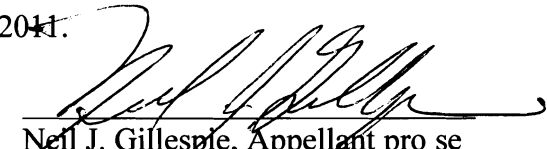
defendant who is not guilty “faces the danger of conviction because he does not know how to establish his innocence.” 287 U.S. at 69. “That which is simple, orderly and necessary to the lawyer, to the untrained layman may appear intricate, complex and mysterious.” *Johnson*, 304 U.S. at 463. Indeed, the assistance of counsel “is often a requisite to the very existence of a fair trial,” *Argersinger*, 407 U.S. at 31, and, accordingly, no defendant should “face[] incarceration on a conviction that has never been subjected to the crucible of meaningful adversarial testing,” *Shelton*, 535 U.S. at 667 (internal quotation marks omitted).”

7. Pursuant to Rule 9.300(b), Fla. R. App. P., service of a motion shall toll the time schedule of any proceeding in the court until disposition of the motion.

8. Appellant did not contact opposing counsel Mr. Rodems due to past problems and believes he may object to this motion.

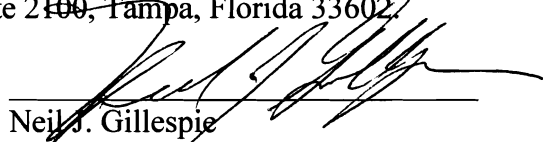
WHEREFORE, Appellant pro se moves this Court for an extension of time for 30 days to file his amended initial brief and other relief as this Court deems proper.

RESPECTFULLY SUBMITTED May 19, 2011.

  
Neil J. Gillespie, Appellant pro se  
8092 SW 145<sup>th</sup> Loop  
Ocala, Florida 34481  
Telephone: (352) 854-7807

Certificate of Service

I certify that a copy hereof was mailed May 19, 2011 to Ryan C. Rodems, Barker, Rodems & Cook, PA, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602.

  
Neil J. Gillespie

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
GENERAL CIVIL DIVISION

NEIL J. GILLESPIE,

Plaintiff(s)

Case No.: 05-CA-7205

Vs.

Division: "J"

SERVED  
A TRUE COPY  
5/11/11  
DATE & TIME  
ED DEAN, SHERIFF  
MARION COUNTY, FL  
BY: APAS 274 D.S.

BARKER, RODEMS & COOK, P.A.,  
A Florida corporation; WILLIAM  
J. COOK,  
Defendant(s)

FILED  
CLERK OF CIRCUIT COURT  
2011 MAY -4 PM 1:11  
HILLSBOROUGH COUNTY  
CIRCUIT CIVIL

ORDER TO SHOW CAUSE

THIS CAUSE having come before the Court on May 3, 2011 on the Defendants' Verified Motion for an Order to Show Cause Why Plaintiff, Neil J. Gillespie, Should Not Be Held In Contempt of Court and Writ of Bodily Attachment Should Not Be Issued for his failure to appear at a deposition as court ordered and appearing for Defendants, Ryan Christopher Rodems, Esquire, and the Plaintiff, Neil J. Gillespie, having been noticed but not appearing, and the Court having heard argument of counsel, and being otherwise fully advised in the premises, it is hereby:

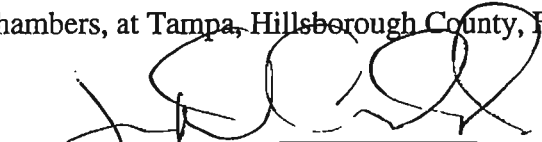
**ORDERED AND ADJUED** as follows:

That Neil J. Gillespie shall appear before the Honorable James D. Arnold, in chambers on Wednesday, June 1, 2011 at 11:00 a. m. in Room 514 of the Hillsborough County Courthouse, located at 800 E. Twiggs Street, Tampa, FL. 33602 to show cause why he should not be held in contempt of court for failure to appear for deposition as ordered by this court.

**NEIL J. GILLESPIE SHALL APPEAR IN PERSON.**


Notice of this ORDER TO SHOW CAUSE shall be served by personal service upon NEIL J. GILLESPIE. Failure to appear in person to this order may result in sanctions and/or arrest.

**DONE AND ORDERED**, in Chambers, at Tampa, Hillsborough County, Florida this 4 day of May, 2011.

  
JAMES D. ARNOLD, Circuit Judge

STATE OF FLORIDA )  
COUNTY OF HILLSBOROUGH )  
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE  
AND CORRECT COPY OF THE DOCUMENT ON FILE IN  
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL  
THIS 4 DAY OF May 2011



PAT FRANK  
CLERK OF CIRCUIT COURT  
BY:  D.C.



Copies furnished to:

Neil J. Gillespie  
8092 S.W. 115<sup>th</sup> Loop  
Ocala, Florida 34481

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