IN THE DISTRICT COURT OF APPEALS
SECOND DISTRICT COURT OF APPEALS, STATE OF FLORIDA

STATE OF FLORIDA

CASE NO.:

VS. **L.T. CASE NO. 2018CF9167**

WILLIAM JOHN MONTANEZ
Defendant
_____/

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, Petitioner, **WILLIAM JOHN MONTANEZ**, by and through the undersigned counsel, and files this Emergency Petition for Writ of Habeas Corpus, and states:

JURISDICTION

The Petitioner seeks to invoke the jurisdiction of this Court pursuant to Florida Rules of Appellate Procedure 9.030 (b)(3), Article V, Section (4)(b)(3) of the Florida Constitution, and section 79.01, Florida Statutes (2017). Habeas corpus is the proper remedy to challenge the reasonableness of pretrial bail or conditions of pretrial release or anytime a person is held in criminal contempt of court on a basis of a show cause order, and in cases where the petitioner has been denied procedural and substantive due process resulting in the loss of liberty. See generally, Young v. Shoap, 862 So. 2d 904 (Fla. 2d DCA 2003).

STANDARD OF REVIEW

Appeals from criminal contempt orders are reviewed de novo.

STATEMENT OF THE FACTS

1. On 21 June 2018, the Petitioner was the subject of a traffic stop for allegedly violating Florida State Statute 316.125(2) for failing to stop at the business entrance prior to entering onto the roadway. It is not known whether or not the Defendant has been actually cited for this traffic offense at the time of this filing.

2. After making the traffic stop in question, and upon making contact with the Petitioner, Deputy Kalin Hall, who is assigned to and works with the street crimes unit which specifically conducts frequent narcotics and firearms investigations, asked the Defendant if he would consent to a search of his vehicle. It is unknown how often Deputy Kalin makes traffic stops for traffic offenses, nor is it known how long Deputy Kalin was following this particular Petitioner, although the nature of the stop is highly irregular, and the Statute cited is rarely, if ever, enforced. Notwithstanding, the Petitioner refused consent to search his vehicle.

3. Thereafter, Canine Deputy Grecco arrived on the scene and conducted an open air narcotics sniff of the Defendant's vehicle. It is unknown how long it took Deputy Grecco to arrive at the scene prior to this search taking place, or whether the Petitioner was detained longer than necessary for him to receive a citation which was

not issued at the time of the Defendant's arrest. What is known is that the Petitioner never received a citation at the scene of the incident.

4. The Canine search met with positive results, as the dog alerted. A subsequent search of the vehicle being driven by the Petitioner uncovered a clear plastic bag with a misdemeanor amount of cannabis, three new wrapping papers, and several smoked marijuana blunts in the center console. Additionally, a black Glock .40 caliber handgun was located in the glove compartment, along with magazine clips. A field reagent test conducted on two liquid vials tested positive for cannabis resin (THC Oil). This field test has yet to be confirmed by FDLE as accurate and it is unknown whether the substance found is in reality THC Oil. The front seat passenger in the vehicle was the Father of the Petitioner, and a convicted felon. According to the criminal report affidavit, the Petitioner admitted to possession of the handgun, although other facts indicate that the Defendant's mother arrived at the scene to take possession of the vehicle (which is registered in her name) and claimed actual ownership of the handgun. While the Criminal Report Affidavit states that the Petitioner claimed possession of the firearm in question, the Affidavit supporting a search warrant of the Petitioner's two cell phones omits this fact. In another interesting point of fact, the vehicle driven by the Petitioner was not seized and was turned over to the Petitioner's mother, but the cell phones belonging to the Petitioner

were seized.

5. While taking possession of the Petitioner's two cell phones, it is asserted that a text message was received on one of the two phones. The text message from person's unknown read: "OMG, did they find it". It is unknown what "it" refers too.

6. In the Affidavit seeking a search warrant for both cell phones, it is claimed by Deputy Kalin that "this text message was delivered after the original traffic stop time, thus implicating the defendant sent a text message regarding items in the vehicle. Your affiant has reason to believe evidentiary content is stored and saved on the two cellular phones pertaining to this investigation." There is no evidence, other than rank conjecture, to show that the Petitioner sent a text message about what Deputy Kalin infers is illegal conduct. Futhermore, Deputy Kalin has given absolutely no showing in his affidavit what "evidentiary content" he believes is located on the "two" phones. Even if one were to give some weight to this anonymous text message, it certainly cannot be used as evidence for "both" phones seized for purposes of the search warrant.

7. Significantly, Deputy Hall omitted essential facts found in the police report. First, Deputy Hall failed to disclose that the Petitioner admitted to the actual possession and use of marijuana found in the vehicle and to having smoked the

marijuana found in the center console. Second, while the Affidavit fails to mention that the amount of marijuana found was only 4.5 grams, and that the amount of the already smoked cannabis weighed 3.8 grams. Third, Deputy Hall failed to mention in his affidavit that he contacted a canine unit to the scene prior to making any contact with the Defendant, who was stop ostensibly for a traffic infraction. Fourth, Deputy Hall failed to state in his Affidavit that the Petitioner's mother arrived on scene to claim ownership of the handgun found in her vehicle's glove compartment. Fifth, Deputy's Hall affidavit specifically omits any statements from the Petitioner denying that he sell's drugs or THC Oil, and that he is presently employed. All of this information is pertinent in determining whether a warrant should be issued to search cell phones found on the Petitioner's body. If the Defendant is claiming actual ownership of the contraband found, and denies engaging in selling narcotics, what specific evidentiary value exists in a cell phone unrelated to actual possession allegation.

8. A search warrant was issued requiring the Petitioner to provide the pass codes to both phones. The Search Warrant was delivered to the Petitioner on or about 29 June 2018. The Petitioner did not comply with the Search Warrant. Even if the Petitioner wanted to comply with the warrant, the Petitioner claimed at the time that he no longer remembered the pass codes one week after they were

seized.

9. On 3 July 2018, a show cause hearing was held in First Appearance (PP) Court, 13th Judicial Circuit, Hillsborough County, before the Honorable Judge Gregory Holder. Judge Holder refused to consider whether the search warrant was validly issued based on probable cause, as the local administrative order does not provide First Appearance (PP) Court the jurisdiction to consider any motion to quash a warrant. Without the ability to attack the warrant, it was procedurally impossible to resist the motion to show cause. In point of fact, the court stated it could only consider whether or not to hold the Petitioner in contempt on the order to show cause, thereby denying the Petitioner both the Procedural and Substantive Due process required by the 14th Amendment of the United States Constitution before one's liberty could be deprived.

10. The Petitioner was ordered to provide the pass codes. The Petitioner stated that he could not remember the pass codes. After several attempts, the phones could not be opened. The Petitioner was found to be in contempt and taken into custody. The court did not make a specific finding that the Petitioner was purposefully failing to provide the information, or that his failing memory was contemptuous.

11. At this point, the Petitioner is being held in the Hillsborough County

Jail for the next 170 plus days in violation of his constitutional rights under both the Federal and State Constitutions.

NATURE OF THE RELIEF SOUGHT

The nature of the relief sought is a Writ of Habeas Corpus commanding a judge in the lower tribunal to release Petitioner on his own recognizance or to order that Petitioner's motion to quash the warrant in question be heard so that the Petitioner might receive the due process presently denied by the trial court.

ARGUMENT AND MEMORANDUM OF LAW

A. The Warrant in question was improvidently issued and not supported by probable cause.

1. Probable Cause is Necessary for a Search Warrant

Deputy's Kalin Hall's 22 June 2018, Search Warrant Affidavit (hereinafter "Affidavit") fails to meet the standard of probable cause. Probable cause for issuance of a search warrant is determined solely with reference to the facts stated in the warrant and the supporting affidavit. *State v. Bond*, 341 So.2d 218 (Fla. 2d DCA 1976), *citing State v. Knapp*, 294 So.2d 338 (Fla. 2d DCA 1974).

"In determining whether probable cause exists to justify a search, the trial court must make a judgment based on the totality of the circumstances, as to whether from the information contained in the warrant there is a reasonable probability that contraband will be found in a particular place and time." *Pagan v. State*, 830 So.2d

792, 806 (Fla. 2002) (*citing Illinois v. Gates*, 462 U.S. 213 (1983)). The duty of the reviewing court is to ensure that the magistrate had a substantial basis for concluding that probable cause existed, and this determination must be made by examining the four corners of the affidavit. *Id.*

A person does not surrender all Fourth Amendment protection by venturing into the public sphere. To the contrary, "what [one] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Carpenter v. United States*, No. 16-402, 585 U.S. ____ (2018), citing *Katz v. United States*, 389 U. S., at 351–352.

The Affidavit in the present case fails to establish a nexus between the object of the search, marijuana, marijuana resin (THC Oil) as indicated by a positive field reagent test, and a concealed firearm and the Petitioner's two cell phones.

Even if the Court overlooks the errors in the affidavit that engages in mere speculation and supposition without any evidence, the determination that either cell phone contains information related to the actual possession of a misdemeanor amount of marijuana, cannabis resin (THC Oil), or the possession of a concealed firearm is "based on speculation, rather than a fair probability." *See Burnett v. State*, 848 So.2d 1170, 1173-74 (Fla. 2d DCA 2003)(concluding that warrant application failed because the affidavit failed to set forth crime-specific facts establishing the

likelihood that evidence of defendant's possession of child pornography would be found at the places to be searched). Based on this analysis, the Second District Court of Appeal found in *Garcia* that the "factual deficiencies in the affidavit render the warrant invalid for lack of probable cause." *Garcia v. State*, 872 So.2d 326, 329 (Fla. 2d DCA 2004).

Like the *Garcia* court, the factual deficiencies in Deputy Hall's Affidavit render the warrant invalid for lack of probable cause.

2. The Existence of Marijuana, and Marijuana THC Oil Fails to Establish Probable Cause to allow an open ended search of the Petitioner's cell phones

In Petitioner's case, Deputy's Hall's Affidavit indicates that the Petitioner possessed a control substance along with a misdemeanor amount of cannabis. There is no evidence or statement to show that the amount of marijuana located by police was for any use other than Petitioner's personal use. There was a small amount of marijuana and THC Oil located. There were no individual baggies of marijuana or marijuana wax.

Further, Deputy Hall gives no supporting evidence in the four corners of the Affidavit as to how marijuana or THC Oil gives any additional level of heightened scrutiny that would give probable cause for a search warrant of Petitioner's two cell phones. Therefore, the mere allegation that the Petitioner possessed marijuana or THC Oil, absent any other substantive evidence, does not arise to the level of

probable cause to search the Petitioner two cell phones, and all evidence obtained as a result of the search absent probable cause would be subject to suppression.

3. A future motion to suppress is an inadequate remedy for the violation of the Petitioner's constitutional rights and the deprivation of his liberty.

It goes without saying that every day the Petitioner sits in jail without being provided any due process, that it is a violation of his constitutional rights. The trial court suggested that the Petitioner's remedy was to provide the pass codes now, and attack any evidence found with a motion to suppress later. Such theoretical advice places the cart before the horse. For example, it would be like suggesting that someone should give up classified information, and then attempt to suppress that information later. It is the information that is protected and once that protected status is lost, it can never be recovered. Once the information is released, the damage is done and cannot be undone. In the same way, citizens protect their private personnel information on their cell phones with a pass code to ensure that information is not disseminated to third parties without prior consent. Just like classified information is contained in a secured classified information facility (SCIF) to protect from unwarranted release of information, citizens secure their cell phones from a similar release of information behind a protected firewall to ensure that their private personal information remains just that…private.

To suggest that the police should be able to gather all the information on the

Petitioner's two cell phones, even if it was for intelligence gathering information only to be used at a later time, damages the personal privacy rights of the Petitioner. A motion to suppress does nothing to put such a release of information back into the bottle. Once the horse has left the barn, it does no good to put the horse back into the barn later. The damage is done. Therefore, it is incumbent upon the Government to make a showing that the information being sought is related to the offenses being alleged, and that their exists some probable cause evidence that shows such evidence can be found on the devices to be search.

The State relies upon *State v. Stahl*, 206 So. 3d 124 (2d DCA 2016). Such reliance is totally misplaced. In *Stahl*, the Defendant was charged with Video Voyeurism. In that particular case, the Defendant was observed using a cellphone to take photography under the skirt of the alleged victim. What is clear in *Stahl* is that law enforcement established a nexus between the conduct alleged and the information being sought from the device in question. That is an essential factor lacking in the Petitioner's case. Further still, *Stahl* involved whether requiring someone to give up a passcode to his mobile device violated an individual's Fifth Amendment protections against self incrimination. That is certainly not at issue here. The Criminal Report affidavit makes it clear that the Petitioner claimed ownership of the gun found in the glove compartment. He was the driver of the

vehicle and the evidence found in the vehicle was in his constructive possession. A search of his two cell phones does nothing to bolster the State's case, nor is it essential in the State's case in chief.

Probable Cause Conclusion

Using the standard set forth by the United States Supreme Court in *Gates* and adopted by the Florida Supreme Court in *Pagan*, in determining whether probable cause exists to justify a search, the trial court must make a judgment based on the totality of the circumstances, as to whether from the information contained in the warrant there is a reasonable probability that contraband will be found in a particular place and time. *Pagan v. State*, 830 So.2d at 806 (Fla. 2002) (*citing Illinois v. Gates*, 462 U.S. 213 (1983)). In the present case, looking at the totality of the circumstances surrounding Petitioner's arrest, as contained within the four corners of Deputy Hall's Affidavit, any belief that there is a reasonable probability that evidence of illegal activity, or any other supporting evidence with respect to the offense that the Petitioner was arrested for would be found on the Petitioner's two cell phones is simply not supported by the evidence.

The Petitioner's traffic stop was due to the enforcement of a traffic offense rarely seen or enforced. Members of the public might find it peculiar that they are

responsible for coming to a complete stop prior to leaving their driveways to exit onto their own street. One suspects that the members of this very Court engaged in similar conduct on their way to court this morning. The subsequent investigation by law enforcement, as outlined in the four corners of the affidavit, support a simple, routine misdemeanor drug arrest for Possession of Marijuana, Possession of drug Paraphernalia, Possession of a Controlled Substance (THC Oil) and Carrying a Concealed Firearm. The Petitioner made no admissions or statements that support the belief that he was a drug dealer/trafficker, let alone that any evidence of being a drug dealer/trafficker would be found on the cell phones seized from his possession. There is no mention by Deputy Hall that marijuana or THC Oil is a substance that is frequently used by drug dealers/traffickers. The amount of marijuana found was minimal. The duty of the reviewing court is to ensure that the magistrate had a substantial basis for concluding that probable cause existed, and this determination must be made by examining the four corners of the affidavit. *Id.* Petitioner respectfully requests this Honorable Court to find, after examining the four corners of Deputy Hall's Affidavit, that there was no substantial basis for concluding that probable cause existed to search the Petitioner's two cell phones and to require that the Petitioner give up his pass codes as ordered by the court in its show cause order.

B. ***There is No Nexus Between the Peitioner's two cell phones and the offense for which he was arrested***

In the Affidavit, Deputy Hall failed to establish a nexus between the Petitioner's cell phones and any illegal activity. The Second District Court of Appeals has repeatedly held that an affidavit must show a "nexus between the object of the search – evidence of the sale of methamphetamine – and the residence. *Sanchez v. State*, 141 So.3d 1281 (Fla. 2d DCA 2014) *See Garcia v. State*, 872 So.2d 326, 330 (Fla. 2d DCA 2004)(stating that the affidavit failed to establish a nexus between cocaine and the residence that '[e]ven if we overlook the omissions and errors within the affidavit, the determination that cocaine was located within the residence was necessarily based on speculation, rather than a fair probability')."

In Petitioner's case, Deputy Hall fails to mention in the four corners of the Affidavit where the marijuana, THC Oil, drug paraphernalia or handgun was located. Deputy Hall did not specify whether the marijuana was located on the Petitioner's person, in his vehicle, outside his vehicle or any other location. The Affidavit did state that the Cell Phones where located on the Petitioner. The lack of specificity of the location of where law enforcement located the marijuana, THC Oil and other items works against a nexus between evidence of the contraband found and the cell phones located on the Petitioner.

Reiterating all the arguments listed in section "**A. *Probable Cause is Necessary for a Search Warrant***" of this emergency writ, there is no nexus at all

established between the object of the search which one must presume as being evidence of the illegal use, distribution, and/or manufacturing of marijuana or THC Oil – and the Petitioner's cell phones. Instead, just as in *Garcia*, if the Court overlooks the omissions and errors within Deputy Hall's Affidavit, the determination that evidence would be located within Petitioner's cell phones was necessarily based on speculation, rather than a fair probability.

The Petitioner respectfully requests this Honorable Court to find, after examining the four corners of Deputy Hall's Affidavit, that there was no nexus between the object of the search and the two cell phones possessed by the Petitioner.

C. ***The Defendant has been taken into custody without being provided Procedural or Substantive due process as required by the United States Constitution***

A state shall not "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, § 1. "The Due Process Clause provides two different kinds of constitutional protections: procedural due process and substantive due process*." Maddox v. Stephens*, 727 F.3d 1109, 1118 (11th Cir. 2013). Procedural due process is, as its name suggests, "a guarantee of fair procedure." *Zinermon v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 983 (1990).. See *McKinney v. Pate*, 20 F.3d 1550, 1555 (11th Cir. 1994) (en banc) (procedural due process claim may form the basis of a § 1983 suit). "[A] § 1983 claim alleging a

denial of procedural due process requires proof of three elements: (1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally inadequate process." *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003). All three elements exist in this case.

1. Procedural Due Process

The Petitioner was denied procedural and substantive due process because his liberty has been taken' Petitioner has not had the opportunity to fight the very action that resulted in his loss of liberty; and the process provided the Petitioner by the Circuit Court was inadequate. What has occurred to the Petitioner is a perfect example of government power run amok. The Petitioner is arrested. The arresting officer seeks and obtains a warrant. The Petitioner is then order to comply with the warrant but the Petitioner is not provided any opportunity to litigate whether or not the warrant issued is lawful. The Petitioner is told that he must give up his constitutional protections or have his liberty taken from him. Procedural due process is required by the Due Process Clauses of the Fifth and Fourteenth Amendments to the US Constitution. This was denied the Petitioner when the Petitioner is specifically told that he must wait for another day to litigate the very issue that result in his loss of liberty. In short, the Defendant has yet to have his day in court.

Procedural due process is denied when the reviewing court (this case the Circuit First Appearance Court) fails to apply applicable state law, in reviewing the a County Court judges determination to issue a warrant to insure the "essential requirements of the law" are met. Judge Holder specifically stated that the local administrative order did not permit him to consider whether or not the warrant issued was based on probable cause. Judge Holder made clear that his only role was to enforce the show cause order related to the warrant. In short, the Defendant has been denied procedural due process.

Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. The Supreme Court has held that practically all the criminal procedural guarantees of the Bill of Rights—the Fourth, Fifth, Sixth, and Eighth Amendments—are fundamental to state criminal justice systems and that the absence of one or the other particular guarantees denies a suspect or a defendant due process of law under the Fourteenth Amendment. In addition, the Supreme Court has held that the Due Process Clause protects against practices and policies that violate precepts of fundamental fairness, even if they do not violate specific guarantees of the Bill of Rights. In the instant case, nothing about the hearing held that led to the confinement of the Petitioner was fair. When the Petitioner is

denied the very ability to fight the very action leading to his deprivation of liberty, that is the definition of an unfair process. The standard query in such cases is whether the challenged practice or policy violates "a fundamental principle of liberty and justice which inheres in the very idea of a free government and is the inalienable right of a citizen of such government." *Twining v. New Jersey*, 211 U.S. 78, 106 (1908). See also, *Palko v. Connecticut*, 302 U.S. 319, 325 (1937); *Rochin v. California*, 342 U.S. 165, 169 (1952).

2. Substantive Due Process

Substantive rights are those general rights that reserve to the individual the power to possess or to do certain things, despite the government's desire to the contrary. Substantive due process protection is reserved not merely for unwise or erroneous governmental decisions, but for egregious abuses of governmental power shocking to the judicial conscience. In the case at bar, what is the limiting principle to government power and over reach. If allowed to stand on its merits, any person arrested for any crime, at any location, whether a home, in a hotel, car or individually outside, may have whatever electronic devices in their possession subject to a search if a judge can be found to simply "rubber stamp" a search warrant on the flimsiest nexus between the electronic device and the reasons for the arrest. That kind of power should cause this court some pause, when considering what our

Framers intended in providing all citizens 4th Amendment protections against "unreasonable" searches and seizures. This court should ponder whether the search here is reasonable under these circumstances. The right not to be subject to arbitrary or capricious action by governmental, legislative, or administrative action is a substantive due process right.

The procedure used by the Circuit Court that denied the Petitioner's ability to attack the underlying warrant also violates substantive due process because the warrant itself and others like it in future may be used to punish entirely innocent activities. Art. I, § 9; *State v. Saiez*, 489 So. 2d 1125, 1129 (Fla. 1986). The warrant as drafted "unjustifiably transgresses the fundamental restrictions on the power of government to intrude upon individual rights and liberties." *State v. Walker*, 444 So. 2d 1137, 1138 (Fla. 2d DCA), adopted, 461 So. 2d 108 (Fla. 1984). In this case, the ability of a citizen to protect their private information on an electronic device that has no nexus to the criminal activities alleged.

It should be noted that the Petitioner cannot remember the pass codes. The Circuit Court made no finding that such lack of memory was contemptuous of the Court's order. A person cannot be held against his will simply because he does not have the ability to comply with the very order given by the court. To be found in contempt of court requires an act calculated to obstruct, hinder, or defy a court in the

administration of justice. The lack of memory is not an act. Rather it is the exact opposite of an act. It is the actual failure to act because one cannot act. No amount of will power can cause the Petitioner to act in this particular matter.

The Petitioner was found in indirect contempt, which by contrast, occurs "not in the presence of a court or of a judge acting judicially, but at a distance under circumstances that reasonably tend to degrade the court or the judge as a judicial officer, or to obstruct, interrupt, prevent, or embarrass the administration of justice by the court or judge." *Forbes v. State*, 933 So. 2d 706, 711 (Fla. 4th DCA 2006). It seems a bit ironic, therefore, that the very acts that resulted in a loss of liberty to the Petitioner took place not more than 10 feet in front of the Circuit Judge. It is therefore difficult to see how the Petitioner was found in indirect contempt of court.

Indirect criminal contempt furthermore requires a judgment of guilt that recites the facts constituting the contempt. Fla. R. Crim. P. 3.840(f); See also Hagerman v. Hagerman, 751 So. 2d 152 (Fla. 2d DCA 2000) (reversing order that failed to recite factual basis for contempt); See also Price v. Hannahs, 954 So. 2d 97, 100 (Fla. 2d DCA 2007). No such recitation of facts occurred in the instant case.

Indirect criminal contempt charges are governed by Rule 3.840, Florida Rules of Criminal Procedure. The Rule provides that indirect contempt charges must be governed and prosecuted as follows:

(1) Order to Show Cause. The judge, of his own motion or upon affidavit of any person having knowledge of the facts, may issue and sign an order directed to the defendant, stating the essential facts constituting the criminal contempt charged and requiring him to appear before the court to show cause why he should not be held in contempt of court. The order shall specify the time and place of the hearing, with a reasonable time allowed for preparation of the defense after service of the order on the defendant.

In the instant case, this was completed by the State Attorney's office.

(2) Motions; Answer. The defendant, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars or answer such order by way of explanation or defense. All motions and the answer shall be in writing unless specified otherwise by the judge. A defendant's omission to file motions or answer shall not be deemed as an admission of guilt of the contempt charged.

This was specifically not permitted, because the Petitioner was not allowed to challenge the very basis for the order to show cause.

(3) Arraignment; Hearing. The defendant may be arraigned at the time of the hearing, or prior thereto upon his request. A hearing to determine the guilt or innocence of the defendant shall follow a plea of not guilty. The judge may conduct

a hearing without assistance of counsel or may be assisted by the prosecuting attorney or by an attorney appointed for that purpose. The defendant is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and may testify in his own defense. All issues of law and fact shall be heard and determined by the judge.

(4) Verdict; Judgment. At the conclusion of the hearing the judge shall sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the defendant has been found and adjudicated guilty.

This was not done by the court. No finding of facts was entered by the circuit court.

(5) The Sentence; Indirect Contempt. Prior to the pronouncement of sentence, the judge shall inform the defendant of the accusation and judgment against him and inquire as to whether he has any cause to show why sentence should not be pronounced. The defendant shall be afforded the opportunity to present evidence of mitigating circumstances. The sentence shall be pronounced in open court and in the presence of the defendant.

Again, the Defendant was not permitted the opportunity to present the mitigating evidence that he no longer remembered the pass codes, and therefore

could not comply with the order even if he desired to do so. The sentence ordered the Defendant to produce the pass codes and upon doing so, he could be released. Therefore, because of the deficient memory of the Defendant, due to no fault of his own, he is now facing 179 days in the county jail.

Wherefore, because the Petitioner was denied both procedural and substantive due process as protected by the United States and Florida Constitution, this writ should be granted, and this court should order the Petitioner released from confinement immediately.

Conclusion

The state must release a person who is involuntarily committed if the grounds for his commitment cease to exist. See *O'Connor v. Donaldson*, 422 U.S. 563, 574–75, 95 S. Ct. 2486, 2493 (1975); cf. *Jackson v. Indiana*, 406 U.S. 715, 738, 92S. Ct. 1845, 1858 (1972) ("[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.")

Looking at the four corners of the Affidavit, there is a paucity of evidence to suggest that probable cause exists for a search of the Petitioner's two cell phones. There was no nexus between Petitioner's cell phones and the contraband found in the vehicle being driven by the Petitioner. Furthermore, the Petitioner did not

receive adequate process consistent with our values and Constitution.

WHEREFORE based on the aforementioned reasons, the undersigned respectfully requests this Honorable Court to grant the Writ of Habeas Corpus, quash the warrant as improvidently issued, order the return of the Petitioner's property, and release the Petitioner on his own recognizes.

Respectfully submitted:

Patrick N. Leduc

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Certificate of Service

I HEREBY CERTIFY that pursuant to Fla. R. Jud. Admin. 2.516, a copy of the foregoing petition has been furnished as follows: to the Second District Court of Appeal; the Attorney General, CrimAppTPA@MyFloridaLegal.com; State Attorney's Office in and for Hillsborough County, Mr. Anthony Falcone, Esquire, at mailprocessingstaff@sao13th.com; and a copy to Petitioner, William John Montanez, Falkenburg Road Jail, 520 Falkenburg Rd., Tampa, FL 33619 on the 10th day of July 2018.

Respectfully submitted,

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Certificate of Font Size Compliance

I HEREBY CERTIFY that I have complied with the provisions of Fla. R. App. P. 9.100 (1) and 9.210 (a)(2) with respect to the proper form and font (Times New Roman 14-point type).

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