

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,           CASE NUMBER: 592004CF002491AXXXXX  
Plaintiff,

vs.

CLEMENTE JAVIER AGUIRRE-JARQUIN,  
Defendant.

\_\_\_\_\_/

**STATE’S MOTION TO DISMISS PETITION FOR DETERMINATION OF STATUS AS  
A WRONGFULLY INCARCERATED PERSON**

Pursuant to this Court’s inherent authority to dismiss the petition that is the subject of this motion, *Fessenden v. State*, 52 So.3d 1 (Fla. 2d DCA 2010); *Bartek v. State*, 198 So.3d 1009 (Fla. 5th DCA 2016), and Section 961.03(1)(b)1., Florida Statutes, requiring petitions filed pursuant to Chapter 961 to be filed within 90 days of the order vacating a conviction and sentence becoming final, the State requests that this Court dismiss Clemente Aguirre’s Petition for Determination of Status as a Wrongfully Incarcerated Person, and as grounds sets forth the following:

**PERTINENT FACTS**

In 2006, Clemente Aguirre was convicted of two counts of first degree murder and one count of burglary with an assault or battery, and was sentenced to death for the murder convictions. On October 27, 2016, the Supreme Court of Florida reversed Aguirre’s convictions and ordered a new trial. See attached Exhibit “A.” On November 17, 2016, the Mandate of the Florida Supreme Court issued. See attached Exhibit “B.” On November 21, 2016, the Mandate was filed in the Seminole County Clerk of Court. See attached Exhibit “B.” On December 7, 2016, the Mandate was “recorded” in the Seminole County Clerk of Court. See attached Exhibit “B.” On November 5, 2018, the State filed a *nolle prosequi* in this case. See attached Exhibit

“C.” On January 11, 2019, *more than two years after* the Florida Supreme Court reversed Aguirre’s convictions and ordered a new trial, Aguirre filed his Petition for Determination of Status as a Wrongfully Incarcerated Person. See attached Exhibit “D.”

## DISCUSSION

Aguirre filed his Petition under Chapter 961, Florida Statutes, and more specifically pursuant to section 961.03. There is very little case law addressing Chapter 961, but the appellate decisions that have addressed Chapter 961 are clear and unequivocal, mandating the course this Court must take with respect to this motion to dismiss.

The Victims of Wrongful Incarceration Compensation Act, Chapter 961, is in the nature of a statute waiving sovereign immunity, and consequently should be strictly construed in favor of the State. In *Fessenden v. State*, 52 So.3d 1 (Fla. 2d DCA 2010), the Second District Court of Appeal stated:

Although not a complete waiver of sovereign immunity, the Victims of Wrongful Incarceration Compensation Act *is in the nature of a statute waiving sovereign immunity*. *But cf.* § 961.06(7) (“Any payment made under [the Act] does not constitute a waiver of any defense of sovereign immunity.”). The Act does not authorize a lawsuit against the State, but it creates a streamlined claims process that is similar in practice and outcome to a lawsuit. The Act sets aside questions of wrongdoing or negligence on the part of a state actor and creates an avenue for relief against the State by a person who has been wrongfully incarcerated.

It is well established that provisions for bringing suit against the State under article X, section 13, of the Florida Constitution must be strictly construed. “When a statute purports to authorize a waiver [of sovereign immunity], the statutory language must be clear and unequivocal; such statutes should be strictly construed.” *McPhee v. Dade Cnty.*, 362 So.2d 74, 79 (Fla. 3d DCA 1978); *see also Am. Home Assurance Co. v. Nat'l R.R. Passenger Corp.*, 908 So.2d 459, 472 (Fla.2005) (“In interpreting ... legislative waivers of sovereign immunity, this Court has stated that it must strictly construe the waiver.”). Waivers of sovereign immunity are strictly construed “as a protection of the public against profligate encroachments on the public treasury.” *Spangler v. Fla. State Turnpike Auth.*, 106 So.2d 421, 424 (Fla.1958).

We conclude that these policies are applicable to the Act and that it should be ***strictly construed in favor of the State***. Under such a strict construction, an order vacating a conviction and sentence based on the legal ruling of this court is not an order “based upon exonerating evidence,” as required by section 961.03(1)(a).

52 So.3d at 6-7 (Emphasis added).

Keeping the requirements of strict construction in mind as articulated in *Fessenden*, the Fifth District Court of Appeal issued an opinion that is fatal to Aguirre’s Petition. In *Bartek v. State*, 198 So.3d 1009 (Fla. 5th DCA 2016), the Fifth District addressed the time constraints set forth in section 961.03. The facts of *Bartek* are strikingly similar to the facts surrounding Aguirre’s petition and are as follows. Bartek was sentenced to life in prison after being convicted of two counts of sexual battery upon a child under twelve years of age. After spending twenty two years in prison, he filed a post-conviction motion based upon newly discovered recantation evidence. The trial court granted the motion, vacated his convictions, and ordered the he be retried. The State appealed, but the Fifth District per curiam affirmed. The Fifth District’s mandate was issued on December 20, 2013. The State filed a *nolle prosequi* on February 27, 2014. On May 20, 2014, Bartek filed a Petition for Determination of Status as a Wrongfully Incarcerated Person. Finding that Bartek’s petition was untimely, the trial court dismissed it. The Fifth District affirmed the dismissal in clear and unequivocal language:

The Act provides that a person must file a petition seeking compensation within 90 days after the order vacating a conviction and sentence becomes final. § 961.03(1)(b) 1., Fla. Stat. (2014). **The Act does not mention the State's filing of a *nolle prosequi*.** As the trial court aptly observed in its dismissal order, “[t]he plain language of the statute requires a defendant to file the petition within 90 days after the order vacating a conviction and sentence becomes final, **not upon the State entering a *nolle prosequi*.**”

As such, Bartek had only until March 20, 2014, to file a petition seeking compensation. Thus, his May 20, 2014 petition was untimely filed. *See generally Ward v. Dugger*, 508 So.2d 778, 779 (Fla. 1st DCA 1987) (interpreting the phrase “become final” in rule 3.850(b) as being the date mandate issued). *Accord Beaty*

v. State, 701 So.2d 856, 857 (Fla.1997); Lewis v. State, 196 So.3d 423 (Fla. 4th DCA 2016); Breland v. State, 58 So.3d 326, 327 (Fla. 1st DCA 2011).

198 So.3d at 1010. (Emphasis added).

*Bartek* is binding authority and is on point with the facts of this case. The mandate on the Florida Supreme Court's opinion vacating Aguirre's convictions and ordering a new trial was issued on November 17, 2016. As noted by the Fifth District, the date of the issuance of a mandate is the date an order becomes final. Thus, the date of the issuance of its mandate, November 17, 2016, is the date the Supreme Court's order became final. It is upon this mandate that Aguirre bases his petition. As the petition was filed more than two years after the Supreme Court's opinion (order) became final, it is well outside section 961.03(1)(b)1.'s requirement that it be filed "[w]ithin 90 days after the order vacating a conviction and sentence becomes final if the person's conviction and sentence is vacated on or after July 1, 2008." Aguirre's convictions and sentences were vacated after July 1, 2008.

Additionally, the Fifth District in its *Bartek* opinion clearly contemplated a situation in which a Petition for Determination of Status as a Wrongfully Incarcerated Person is filed and pending at the same time the criminal prosecution to which the petition relates is also pending. Thus, Aguirre cannot argue that he had to wait for the prosecution to terminate by a *nolle prosequi* before he could file his petition. He should have filed his petition within 90 days of November 17, 2016, regardless of the fact that the criminal prosecution against him was still pending.

## CONCLUSION

As Chapter 961, including section 961.03, must be strictly construed, *Fessenden*, and as *Bartek* is clear in its holding that the petition must be filed within 90 days of the vacating order

becoming final, not the date the State files a *nolle prosequi*, this Court respectfully must dismiss Aguirre's Petition for Determination of Status as a Wrongfully Incarcerated Person.

WHEREFORE, the State requests that this Court dismiss Clemente Aguirre's Petition for Determination of Status as a Wrongfully Incarcerated Person.

PHIL ARCHER  
STATE ATTORNEY

BY: 

STEWART G. STONE  
ASSISTANT STATE ATTORNEY  
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101 ESLINGER WAY  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-MAIL to MARIE-LOUISE SAMUELS PARMER, ESQUIRE, Attorney for Defendant, at MARIE@SAMUELSPARMERLAW.COM this 8th day of February, 2019.

PHIL ARCHER  
STATE ATTORNEY

BY: 

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# Supreme Court of Florida

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No. SC13-2092

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**CLEMENTE JAVIER AGUIRRE-JARQUIN,**  
Appellant,

vs.

**STATE OF FLORIDA,**  
Appellee.

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No. SC14-1332

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**CLEMENTE JAVIER AGUIRRE-JARQUIN,**  
Petitioner,

vs.

**JULIE L. JONES, etc.,**  
Respondent.

[October 27, 2016]

PER CURIAM.

Clemente Javier Aguirre-Jarquín (“Aguirre”) appeals the denial of his motions to vacate his conviction of first-degree murder and sentence of death filed

EXHIBIT “A”



MARYANNE MORSE, SEMINOLE COUNTY  
CLERK OF CIRCUIT COURT & COMPTROLLER  
BK 8820 Pgs 579-601 (23Pgs)  
CLERK'S # 2016127125  
RECORDED 12/07/2016 03:41:39 PM  
RECORDING FEES \$0.00  
RECORDED BY Jeckenro

# MANDATE

## SUPREME COURT OF FLORIDA

To the Honorable, the Judges of the:

Circuit Court in and for Seminole County, Florida

WHEREAS, in that certain cause filed in this Court styled:

**CLEMENTE JAVIER vs. STATE OF FLORIDA**  
**AGUIRRE-JARQUIN**

2016 NOV 21 AM 11:37  
MARYANNE MORSE  
CLERK OF CIRCUIT COURT  
SEMIMOLE COUNTY FLA

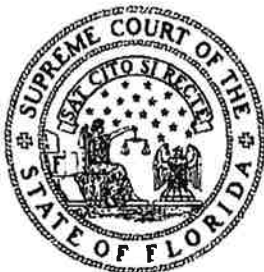
Case No.: **SC13-2092**


Your Case No.: **592004CF002491A000X**

The attached opinion was rendered on: **10/27/2016**

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rule of this Court and the laws of the State of Florida.

WITNESS, The Honorable JORGE LABARGA, Chief Justice of the Supreme Court of Florida and the Seal of said Court at Tallahassee, the Capital, on this 17th day of November 2016.



  
Clerk of the Supreme Court of Florida

MANDATE PLACED ON  
12/09/16 TRIAL DOCKET case management  
FOR CONTROL PURPOSES'  
Reksiedler EXHIBIT "B"

copy to SAO of PD via email 11/23/16

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,  
Plaintiff,

CASE NUMBER: 592004CF002491AXXXXX

VS.

CLEMENTE JAVIER AGUIRRE-JARQUIN,  
Defendant.

**NOLLE PROSEQUI**

THE STATE OF FLORIDA, by and through the undersigned Assistant State Attorney, hereby enters a Nolle Prosequi in this cause filed under the case number listed above. This Nolle Prosequi is with respect to the two counts of first degree murder alleged in the indictment filed under this case number and the one count of burglary of a dwelling with an assault or battery alleged in the information filed under this case number.

PHIL ARCHER  
STATE ATTORNEY



BY:

/S STEWART G. STONE  
ASSISTANT STATE ATTORNEY  
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EXHIBIT "C"



**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR  
SEMINOLE COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**CASE NO: 592004CF002491A**

**v.**

**CLEMENTE JAVIER AGUIRRE-JARQUIN,**

**Defendant.**

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**PETITION FOR DETERMINATION OF STATUS AS A WRONGFULLY  
INCARCERATED PERSON**

Pursuant to the Victims of Wrongful Incarceration Compensation Act, Fla. Stat. § 961.03, Clemente Javier Aguirre-Jarquin hereby submits this petition for a determination of his status as a wrongfully incarcerated person.

Clemente Aguirre was wrongfully incarcerated for more than 14 years in connection with the 2004 murders of Cheryl Williams and Carol Bareis. Aguirre has always maintained his innocence. Since the day of the victims' murders, he has maintained that he found the victims in their home after their death, and no evidence has been presented to the contrary. Nonetheless, he was charged with these crimes in 2004, and then in 2006 a jury wrongly convicted him and sentenced him to death. He spent more than a decade on death row. In 2016, based on powerful new evidence of Aguirre's innocence and overwhelming new evidence of the guilt of another suspect, Samantha Williams—including DNA, forensic, and testimonial evidence, including multiple confessions by Samantha to her friends and neighbors—the Florida Supreme Court unanimously vacated Aguirre's convictions and sentence because "adding the newly discovered evidence to the picture changes the focus entirely . . . . [Aguirre] is now the scapegoat for [Samantha Williams's] crimes." *Aguirre-Jarquin v. State*, 202 So. 3d 785, 795 (Fla. 2016).

**EXHIBIT "D"**