31,116

DIVISION OF CORR
CORRESPONDENCE R

MOTIONS
MONDAY, OCTOBER 16, 1961
NOT TO BE HEARD

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O'C

MAIL WILL NOT BE DELIVERED WHICH DOES NOT CONFORM WITH THESE RULES

No. 1 -- Only 2 letters each week, not to exceed 2 sheets letter-size 8 1/2 x 11" and written *on one side only*, and if ruled paper, do not write between lines. *Your complete name* must be signed at the close of your letter. *Clippings, stamps, letters from other people, stationery* or *cash must not be enclosed* in your letters.

No. 2 -- All *letters* must be addressed in the *complete prison name* of the inmate. *Cell number*, where applicable, and *prison number* must be placed in lower left corner of envelope, with your complete name and address in the upper left corner.

No. 3 -- *Do not send any packages without a Package Permit.* Unauthorized *packages* will be destroyed.

No. 4 -- *Letters* must be written in English only.

No. 5 -- *Books, magazines, pamphlets,* and *newspapers* of reputable character will be delivered *only if* mailed direct from the publisher.

No. 6 -- *Money* must be sent in the form of *Postal Money Orders* only, in the inmate's complete prison name and prison number.

INSTITUTION STATE PENITENTARY RAIFORD CELL NUMBER D-9

NAME CLARENCE EARL GIDEON NUMBER 003836

Dear Sir

SUPHREME COURT
STATE OF FLORIDA

PETITION FOR WRIT OF HABEUS CORPUS

I C.J. of Clarence Earl Gidion, informs this court that I am a pauper without funds or any possible of obtaining finances to aid and I beg of this court to listen and act upon my plea.

On the 3rd day of June 1961 A.D. I was arrested and charged with the crime of Breaking and entering with the intent to commit a misdeamor to wit petty larceny. And that I plead not guilty to this charge. That on the 4th day of august 1961 A.D. I was tried in court of BAY COUNTY the 14th DISTRICT COURT IN AND FOR THE STATE OF FLORIDA and was found guilty as charge That on the 25th day of august 1961 A.D. was sentenced to a term of five years (5 yrs.) in the State Prison.

DIVISION OF CORRECTIONS

CORRESPONDENCE REGULATIONS

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INSTITUTION State Prison Raiford, Fl. CELL NUMBER D-9

NAME CLARENCE EARL GIDEON NUMBER 003826

=3= I claim Earl Gideon will show this court that I did not have a fair trial and was denied my constitutional rights that is guranteed by the constitution and the Bill of rights by the United State Government.

=4= I was without funds and without a attorney. I asked this court to appointed me a attorney but they denied me that right. I told this court of the 14th District of Bay County Florida. That United State Supreme Court of the United State of America had stated that the State of Florida should see that everyone who is tried for a felony charge should have legal counsel. But the Court ignored this plea.

=5= I declare Earl Gideon claim that I was denied the rights of the 4th 5th and 14 Amendments of the Bill of rights.

=6= I sent a petition from the County Jail of Bay County. To the United State District Court at Tallahassee Florida. But the sheriff office and officials refuse to let it go out which is contrary of the laws of

DIVISION OF CORRECTIONS

CORRESPONDENCE REGULATIONS

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INSTITUTION State Prison Raiford Fla CELL NUMBER D-9

NAME Clarence Earl Gideon NUMBER 003826

I by united States Government. I Clarence Earl Gideon, Beg of this court to issue a Writ of Habeus Corpus and to set aside the 5-yr sentence that I have by the Court of Bay County in the District in and for the State of Florida and to give me the aid that I need

signed
Clarence Earl Gideon

State of Florida
County of Union

Subscribed and sworn to before me, a Notary Public, this 9th. day of October, A.D., 1961.

Lawrence C Dugger
NOTARY PUBLIC

Notary Public, State of Florida at Large
My Commission Expires Sept. 19, 1962
Bonded by American Surety Co. of N. Y.

ON MANDATE FROM UNITED STATES SUPREME COURT MONDAY, APRIL 15, 1963

R D CT O'C H

To: CT

United States of

THE PRESIDENT OF THE UNITED STATES OF AMERICA

for judgment on mandate

Brm

To the Honorable the Judges of

the Supreme Court of the State

of Florida,

FILED

APR 15 1963

GUYTE P. McCORD
CLERK SUPREME COURT
BY [signature]
DEPUTY CLERK

GREETINGS:

WHEREAS, lately in the Supreme Court of the State of Florida, there came before you a cause between Clarence Earl Gideon, petitioner, and H. G. Cochran, Jr., Director, Division of Corrections, respondent, wherein the judgment of the said Supreme Court was duly entered on the 30th day of October A. D. 1961, as appears by an inspection of the transcript of the record of the said Supreme Court which was brought into the SUPREME COURT OF THE UNITED STATES by virtue of a writ of certiorari as provided by act of Congress.

AND WHEREAS, Louie L. Wainwright was substituted in the place of H. G. Cochran, Jr., pursuant to Rule 48 (3) as amended.

AND WHEREAS, in the October Term, 1962, the said cause came on to be heard before the SUPREME COURT OF THE UNITED STATES on the said transcript of record, and was argued by counsel:

ON CONSIDERATION WHEREOF, it was ordered and adjudged on March 18, 1963, by this Court that the judgment of the said Supreme Court in this cause be reversed with costs, and that this cause be remanded to the Supreme Court of the State of Florida for further proceedings not inconsistent with the opinion of this Court.

NOW, THEREFORE, THE CAUSE IS REMANDED to you in order that such

proceedings may be had in the said cause, in conformity with the judgment of this Court above stated, as accord with right and justice, and the Constitution and laws of the United States, the said writ of certiorari notwithstanding.

Witness the Honorable EARL WARREN, Chief Justice of the United States, the twelfth ---------- day of April --------- , in the year of our Lord one thousand nine hundred and sixty-three.

Costs:

Clerk's costs	$ 186.96
Printing record	405.56
	$ 592.52

John F. Davis
Clerk of the Supreme Court of the United States

The above amount to be paid directly to the Clerk of the Supreme Court of the United States.

No. 155, October Term, 1962

Clarence Earl Gideon,

vs

Louie L. Wainwright, Director,
Division of Corrections

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1961

MONDAY, OCTOBER 30, 1961

CLARENCE EARL GIDEON, **

Petitioner, **

vs. **

H. G. COCHRAN, JR., Director, Division of Corrections, **

Respondent. **

The above-named petitioner has filed a petition for writ of habeas corpus in the above cause, and upon consideration thereof, it is ordered that said petition be and the same is hereby denied.

A True Copy

TEST:

Guyte P. McCord.
Clerk Supreme Court.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DETERMINED.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1963

CLARENCE EARL GIDEON,	**	
Petitioner,	**	
vs.	**	CASE NO. 31,116
LOUIE L. WAINWRIGHT, Director, Division of Corrections,	**	
Respondent.	**	

Opinion filed May 15, 1963

Case of original jurisdiction - Habeas Corpus

Clarence Earl Gideon, in proper person, for Petitioner

Richard W. Ervin, Attorney General, and Bruce Jacob, Assistant Attorney General, for Respondent

THORNAL, J.

Following our denial of petitioner's application for a writ of habeas corpus this cause was considered by the Supreme Court of the United States on a writ of certiorari. Our judgment was reversed and the cause was remanded for further action not inconsistent with the opinion of the United States Court.

The matter now recurs for consideration pursuant to the mandate of the Supreme Court of the United States.

By his post-conviction petition for a writ of habeas corpus, Gideon alleged that at his trial on a felony information he was insolvent and requested the assistance of counsel. His request was denied. His petition failed to allege that he was unable to defend himself adequately because of a lack of

intelligence or ability or because of any complications arising out of the charge and a lack of familiarity with minimal essentials of criminal procedure. In the absence of these allegations we originally denied the writ on the authority of Betts v. Brady, 316 U. S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595. As noted by the United States Court in its opinion in the instant case, there is a marked factual similarity between this case and Betts. In view of the Betts precedent which we have followed since its announcement in 1941, we felt obligated to follow its pronouncements in this instance. In consequence of this view, we initially concluded that the petition was fatally insufficient to motivate the issuance of a post-conviction writ. Johnson v. Mayo, 158 Fla. 264, 28 So. 2d 585, cert. den. 329 U.S. 804, 67 S. Ct. 492, 91 L. Ed. 687.

By its instant opinion the Supreme Court of the United States has expressly receded from the long-established rule announced in Betts v. Brady, supra. We are now confronted with the responsibility of taking note of the belatedly recognized federal organic right to counsel authoritatively announced by the United States Supreme Court in its Gideon opinion.

In order to meet this judicial responsibility we have promptly undertaken to establish appropriate procedures that will accord to prisoners an effective forum in which they may expeditiously obtain a hearing and any relief to which they might be entitled. We have taken judicial cognizance of the large number of felons incarcerated in the state prison who potentially have claims to relief because of absence of counsel at the time of their trial and conviction. The task of reviewing these claims, if and when asserted, appeared to be of such magnitude that it was essential to establish an effective procedural remedy that would distribute the judicial responsibility, while simultaneously according to the prisoner an expeditious and complete opportunity to obtain relief. Roy v. Wainwright ____So. 2d _____Opinion filed April 10, 1963.

In meeting the full measure of our responsibility we turned to federal criminal procedures for a precedent. It appeared to us that the most effective procedural remedy that could be provided under the circumstances would be to adopt as a criminal procedure rule the express language of 28 USC, Section 2255, which had been enacted by the Congress in 1948, and has since been employed in the federal system in many cases. Under our constitutional rule-making power, Article V, Section 3, Florida Constitution, we promulgated, on April 1, 1963, Criminal Procedure Rule #1. Except to the extent necessary to adapt the language of the statute to the Florida courts, the rule which we have promulgated is identical with the federal statute. Roy v. Wainwright, supra.

Under the rule which we have announced, post-conviction relief can be obtained where there is a claimed denial of some fundamental or organic right in the course of the trial. The relief available is coextensive with that which would be available in habeas corpus. The rule, however, minimizes the difficulties encountered in habeas corpus hearings and affords the same rights in a more convenient forum and one best prepared to consider the claims of a prisoner convicted in that very forum. Hill v. U. S., 368 U. S. 424, 82 S. Ct. 468, 7 L. Ed. 2d 417; Machibroda v. United States, 368 U. S. 487, 82 S. Ct. 510, 7 L. Ed. 2d 473; United States v. Hayman, 342 U. S. 205, 72 S. Ct. 263, 96 L. Ed. 232. See also Parker, Limiting the Abuse of Habeas Corpus, 8 FRD 171.

We took this action prior to receipt of the mandate of the Supreme Court of the United States in the instant case in prompt fulfilment of our judicial obligation which was indicated in the opinion of that Court.

Inasmuch as it was not announced until April 1, 1963, the existence of our Criminal Procedure Rule #1, was naturally not made known to the United States Supreme Court in the course of the Gideon proceeding. Nevertheless, we consider the promulgation of

that rule as being "action not inconsistent" with the Gideon opinion. In fact, we confess it to be action taken pursuant to the directive of the Gideon judgment. In view of that Court's consistent recognition of the effectiveness of a post-conviction motion under 28 USC, Section 2255, we feel justified in assuming that a motion under the Florida rule would receive similar endorsement. In accord with the decision of the Supreme Court of the United States in the instant matter and pursuant to its mandate, we therefore hold that Gideon has asserted claims which, if established, would entitle him to relief under Criminal Procedure Rule #1. Inasmuch as he can obtain such relief promptly and effectively under the cited rule, and in furtherance of the directive of the United States Supreme Court, we therefore hold that the petitioner is entitled to proceed under that rule. Having provided the petitioner with an efficient, expeditious and effective forum within which the claimed relief can be obtained, we decline to issue a writ of habeas corpus but expressly without prejudice to any rights which the petitioner might assert in the Circuit Court of Bay County, pursuant to the provisions of Criminal Procedure Rule #1.

In further consequence of the mandate of the Supreme Court of the United States the costs of the Clerk of that Court in the amount of $186.96, and the cost of printing the record in that Court, in the amount of $405.56, are ordered to be paid by Bay County Florida directly to the Clerk of the Supreme Court of the United States. See Carnley v. Cochran, 143 So. 2d 327.

It is so ordered.

ROBERTS, C.J., DREW, O'CONNELL and HOBSON (Ret.), JJ., concur