

PROVIDED TO MARION
CORRECTIONAL INSTITUTION ON
7-24-08 FOR MAILING
FLS FLS

THE EIGHTH JUDICIAL CIRCUIT COURT
IN AND FOR ALACHUA COUNTY, FLORIDA
CIVIL DIVISION

PROVIDED TO MARION
CORRECTIONAL INSTITUTION ON
8-1-08 FOR MAILING
FLS

FRANK LEE SPIKES, JR.,
DC# 830256,

Petitioner,

v.

GAINESVILLE POLICE DEPARTMENT,

Respondent.

Case No.: 01-2008-CA-2189

ALTERNATIVE WRIT OF MANDAMUS/ PROCESS
[Fla. R. Civ. P. 1.630(d)(3) (2008); Fla. R. Civ. P. 1.070(a) (2008)]

THIS ACTION came before this Court upon Petitioner's petition for writ of mandamus filed 14 May 2008.

Petitioner alleges that Respondent has failed to fully comply with his request, made pursuant to section 119.07, Florida Statutes, to inspect and/or copy the following public records:

1. result from breathalyzer test conducted on Petitioner at 8:09 am on February 4, 1989
2. result from breathalyzer test conducted on Petitioner at 9:20 am on February 4, 1989

Petitioner seeks a writ of mandamus from this Court compelling Respondent's compliance with the above public records request. Specifically, Petitioner claims that the response that he received from Respondent in regard to his public records request was insufficient in that it did not indicate whether the specific records requested were available for inspection and/or copying.

This Court finds that the petition shows a prima facie case for relief, and therefore issues this alternative writ of mandamus. See Fla. R. Civ. P. 1.630(d)(3) (2008). Upon being served with this writ, and a copy of the petitioner, Respondent shall be required to (1) provide Petitioner with the records described above, or (2) show cause why the requested relief should not be granted.

Accordingly, it is

FILED
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2008 JUN 13 PM 3:42
JK "BUDDY" FRY
CLERK OF COURTS
ALACHUA COUNTY, FL

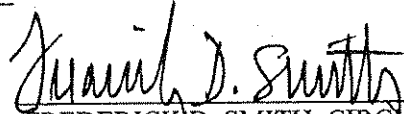


A TRUE COPY
SADIE DARNELL, SHERIFF
ALACHUA COUNTY, FLORIDA
Served at 8:40 AM on the 7th Day
of Aug., 2008
BY [Signature]
As Deputy Sheriff

ADJUDGED that

1. Petitioner must cause this writ to be served, along with a copy of the petition, on the Respondent in the manner prescribed by law. *See Fla. R. Civ. P. 1.630(d) (2008); Fla. R. Civ. P. 1.070 (2008)*. This alternative writ of mandamus is a form of process authorized by law, and serves the same function as a more traditional summons. *See Fla. R. Civ. P. 1.070(a) (2008)*.
2. It is Petitioner's responsibility to obtain complete contact information for the Defendant/Respondent and deliver it, along with any order of indigence that has been issued in this case, a certified copy of this writ, and a copy of the petition, to the Sheriff of the County in which the Defendant resides for service of process.
3. Upon being served with process, Defendant/Respondent shall respond in the manner provided for in Florida Rule of Civil Procedure 1.140 (2008). *See Fla. R. Civ. P. 1.630(e) (2008)*. As set forth above, Respondent must either comply with the Petitioner's request, or, in the alternative, show cause why the relief requested by Petitioner should not be granted.
4. Petitioner, while not required to serve a reply, may do so within 20 days of service of Respondent's answer.

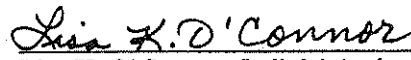
ORDERED in Alachua County, Florida on 13 June 2008.


 FREDERICK D. SMITH, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed on 13 June 2008 to:

Frank Lee Spikes, Jr.
 DC# 830256
 Marion County Correctional Institution
 PO Box 158
 Lowell, FL 32663-0158


 Lisa K. O'Connor, Judicial Assistant

/blb



J.K. "Buddy" Irby, Clerk of the Circuit & County Court, Eighth Judicial Circuit of Florida, in and for Alachua County, hereby certifies this to be a true and correct copy of the document now of record in this office. Witness my hand and seal this 13 day of June, 2008.
 J.K. "Buddy" Irby, Clerk of the Circuit & County Court
 Deputy Clerk

PROVIDED TO MARION
CORRECTIONAL INSTITUTION ON
5/13/08 FOR MAILING
FLS

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA
Civil Division

FRANK LEE SPIKES, JR.,
Petitioner,

vs.

Case No.: 01-08-CA-2189

GAINESVILLE POLICE DEPARTMENT,
Respondent.

CLERK OF COURTS
ALACHUA COUNTY, FL

2008 MAY 14 AM 11:48

FILED
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PETITION FOR WRIT OF MANDAMUS

COMES NOW the Petitioner, FRANK LEE SPIKES, JR.,
and respectfully petitions this Honorable Court for a writ of mandamus pursuant to
Fla.R.Civ.P. 1.630, to compel the respondent(s) to PRODUCE 2 COPIES OF RESULTS
OF 2 BREATHALYZER TESTS TAKEN ON February 4, 1989,
CONCERNING CASE NO: 01-1989-CF-000553-A, 8:09 am and 9:20 a.m.

I. BASIS FOR INVOKING JURISDICTION

This Court has jurisdiction to issue a writ of mandamus under Article V,
Section 5(b), Florida Constitution and Fla.R.App.P. 9.030(c)(3). Mandamus is the
proper remedy when it is shown that a clear legal right exists to the performance of
a clear legal duty by public officer and that no other legal remedies are available.
See Plymel v. Moore, 770 So.2d 242 (Fla. 1st DCA 2000); Holcomb v.
Department of Corrections, 609 So.2d 751 (Fla. 1st DCA 1992); Hatten v. State,
561 So.2d 562 (Fla. 1990) and; Shea v. Cochran, 680 So.2d 628 (Fla. 4th DCA
1996).



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II. FACTS RELIED UPON

1. Petitioner has diligently attempted to obtain these documents for several years. The Trial court judge, in his order dismissing petitioner's motion for a hearing (AT EXHIBIT A) SUGGESTED A Public Records Request to the Gainesville Police Department, City of Gainesville, Florida.
2. On 4-21-08 petitioner mailed a public Records Request requiring them to (Gainesville Police Department) to produce the documents Cat EXHIBIT "B".
3. Petitioner received a copy of his Public Records request with an unsigned highlighted note stating that with few exceptions all reports prior to 1990 have been destroyed.
4. The Gainesville Police Department has a duty to search and disclose the requested records, or make a statement as to the specific disposition of the 2 Breathalyzer tests taken at 8:09 a.m. and 9:20 am on February 4, 1989.
5. Petitioner's case is a capital murder case and pursuant to the General Record Schedule 652 CAPITAL LIFE FELONY ITEM 31 must retain Laboratory tests or information derived for 100 years.

III. NATURE OF RELIEF SOUGHT

The Petitioner seeks this Honorable Court to accept jurisdiction over this matter and parties and grant all relief to which he is entitled to in this proceeding including but not limited to:

1. Produce copies of the results of the breathalyzer tests OR specifically state by formal reply that they are destroyed.
2. Award costs and fees against Respondent in favor of the petitioner.

IV. ARGUMENT

1. The Gainesville Police Department failed to make a legal, formal reply to the Public Records Request, (at EXHIBIT "B") as required and mandated by Roesh v State 633 So 2d 1 (Fla. 1993), Campbell v State, 598 So 2d 1148 (Fla. 1st DCA 1992), and Yank v State 588 So 2d 5 (Fla. 5TH DCA 1991) as well as Florida Statute § 119.07, and have a clear, legal duty to do so.
2. Pursuant to the GENERAL RECORDS SCHEDULE G 5 2 ITEM 17 Test reports and Item 31 CAPITAL LIFE FELLOW LAW ENFORCEMENT AGENCIES ... with respect to an identifiable person... compiled by a criminal justice

agency... information derived by laboratory tests, must retain same for 100 years. The court has stated it is not in court or state files. The only agency involved otherwise is the Gainesville Police Department, City of Gainesville, Florida.

3. (Fla. 1967) Dickey v Circuit court, Gadsden ~~Florida~~ county, Quincy, Florida 200 So 2d 521 mandates that MANDAMUS lies to require performance of a non-discretionary official. Petitioner asserts that the Gainesville Police Department holds said evidence or has destroyed the specific recordings of the results of these tests and must comply with the Public Records Request formally and legally. An unsigned note that most of the documents with a few exceptions does not meet the disclosure requirement of the specific documents at issue and that they thereby have failed to comport with the law.

4. Petitioner claims he has a right to relief by the use of a writ of mandamus as it is a remedy to command performance of a ministerial act and it is plain that it is the official duty of respondent to perform and cites state ex rel. Allen v Rose 167 So 2d, 123 Fla. 544 (Fla. 1936) as law of the case, and asserts that his right to the writ of mandamus in this cause is clear and compelling and also asserts that there is no other alternative available citing Hastings v Krischen 840 So 2d 267, rehearing denied in that he has exhausted the afforded Direct Appeal and Postconviction avenues available to him in a timely manner and has not provided an adequate record or remedy to petitioner.

CONCLUSION

WHEREFORE, the Petitioner respectfully requests this Honorable Court to issue the writ for the relief as set forth herein.

Respectfully submitted,

Frank Lee Spikes, Jr.
FRANK LEE SPIKES, JR. DC# 830256
Petitioner, Pro Se

OATH

Under the penalties of perjury I declare that I have read the foregoing document and that the facts stated in it are true and correct.

Frank Lee Spikes, Jr.
FRANK LEE SPIKES, JR.
DC# 830256
Petitioner, Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished to: GAINESVILLE POLICE DEPARTMENT,

CITY OF GAINESVILLE P.O. BOX 1250, GAINESVILLE, FL 32602-1250

by handing said document to a prison official, for mailing by pre-paid first class U.S. mail on this 13th day of MAY, 2008.

Frank Lee Spikes, JR.
FRANK LEE SPIKES, JR.

Petitioner, Pro Se

DC# 830256

Marion C.I.

P.O. Box 158

Lowell, FL 32663-0158