

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk of Court

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October 23, 2012

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 12-15422-P

Case Style: John Ferguson v. Secretary, Florida Department

District Court Docket No: 1:12-cv-23817-DTKH

The referenced case has been docketed in this court. Please use the appellate docket number noted above when making inquiries.

Although trial exhibits are routinely transmitted to this court, contraband, weapons, and currency may not be sent except by court order. Also, counsel must arrange at their own expense for transportation to and from this office of oversized exhibits. See 11th Cir. R. 11-3.

In lieu of arranging for transmittal by the district court of oversized physical exhibits, parties are encouraged to substitute photographs, diagrams, or models of lesser size and weight, or to stipulate to the nature and content of such exhibits. Exhibits retained by the district court remain a part of the record on appeal for all purposes [Fed.R.App.P. 11], and thus requests to transmit oversized exhibits are discouraged.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Jenifer Tubbs

Phone #: (404) 335-6166 or 6200

DKT-1 Appeal NO Deficiency

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

JOHN FERGUSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 12-CIV-23817
	)	
	)	<b>DEATH PENALTY CASE</b>
	)	
KENNETH S. TUCKER, in his	)	<b>EXECUTION SCHEDULED</b>
official capacity as the Secretary, Florida	)	<b>FOR OCTOBER 23, 2012 at</b>
Department of Corrections,	)	<b>6.00 p.m.</b>
	)	
Respondent.	)	
_____	)	

**NOTICE OF APPEAL**

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October 23, 2012  
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Counsel for Petitioner  
John Errol Ferguson

**NOTICE OF APPEAL**

Notice is hereby given that the John Errol Ferguson, Petitioner in the above named case, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the Order Denying Petitioner's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, entered in this action on the 23th day of October, 2012. [Doc. 31].

Dated: October 23, 2012

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23th day of October, 2012, a true and correct copy of the NOTICE OF FILING EXHIBITS was served on all parties on the service list via ECF to:

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 12-23817-CIV-HURLEY

JOHN FERGUSON,  
petitioner,

v.

KENNETH TUCKER,  
respondent.

\_\_\_\_\_ /

ORDER DENYING PETITIONER’S PETITION FOR WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2254

**THIS CAUSE** is before the court upon the petitioner’s application for writ of habeas corpus under 28 U.S.C. §2254 [DE #1].

It is **ORDERED** and **ADJUDGED**:

1. The petitioner’s petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 [DE # 1] is **DENIED**.
2. Pursuant to Rule 11 of the Rules Governing Section 2254 Proceedings in the United States District Court, the Court finds that petitioner has made a substantial showing of a denial of a constitution right and therefore **GRANTS** a certificate of appealability on the following issues:
  - A. Whether the decision of the Florida Supreme Court involved an unreasonable application of the Untied States Supreme Court’s decision in *Ford* and *Panetti*.
  - B. Whether the Florida Supreme Court’s affirmance of the state trial court was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding, viz, that (a) the petitioner has a documented history of

paranoid schizophrenia; (b) he is not malingering, and (c) he has a fixed grandiose delusion that he is the "Prince of God."

**DONE** and **SIGNED** in Chambers at West Palm Beach, Florida this 23<sup>rd</sup> of October, 2012.



\_\_\_\_\_  
Daniel T. K. Hurley  
United States District Judge

Copies furnished to:  
all counsel