

RECEIVED 06/07/2016 9:37 am FLORIDA SUPREME COURT

IN THE DISTRICT COURT OF APPEAL  
FOR THE FOURTH DISTRICT  
STATE OF FLORIDA

ERNESTO BEHRENS  
Appellant/Petitioner,

v.

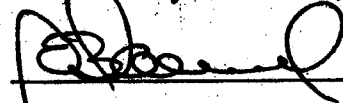
STATE OF FLORIDA,  
Appellee/Respondent

CASE NO: 4D16 - 0219

NOTICE OF APPEAL

NOTICE IS GIVEN that Ernesto Brehens, Appellant/Petitioner, appeals to the Supreme Court of Florida, the order of this Court rendered on May 17, 2016. The nature of the order is a final order Denying Petitioner's Writ of Habeas Corpus.

Respectfully submitted,



Ernest Brehens, *pro se*,  
DC # 732564  
Martin Correctional Institution  
1150 S.W. Allapattah Road  
Indiantown, Florida 34956

2016 JUN -3 AM 11:38

CLERK  
DISTRICT COURT OF APPEAL  
FOURTH DISTRICT

PROVIDED TO  
MARTIN CORRECTIONAL INSTITUTION  
ON 06/07/16  
FOR MAILING

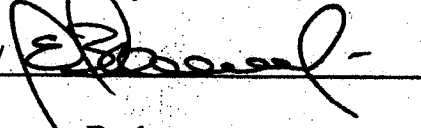
EB, An

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Appeal has been hand delivered to prison officials at Martin Correctional Institution for mailing by U.S. Mail to: Office of the Attorney General 1525 Palm Beach Lakes Blvd, West Palm Beach, FL 33401, on this 12 day of June, 2016.

Respectfully submitted,

/s/

  
Ernesto Brehens, *pro se*

DC # 732564

Martin Correctional Institution

1150 S.W. Allapattah Road

Indiantown, Florida 34956

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

March 22, 2016

CASE NO.: 4D16-0219

L.T. No.: 98-5739 CF10A

ERNESTO BEHRENS

v. STATE OF FLORIDA

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Appellant / Petitioner(s)

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that the Petition for Writ of Habeas Corpus filed January 20, 2016, is denied. There is no manifest injustice that warrants reconsideration of the decision in *Behrens v. State*, 2 So. 3d 391 (Fla. 4th DCA 2009). The mistake of fact regarding *Damiano v. State*, 944 So. 2d 516 (Fla. 4th DCA 2006), did not affect the result in *Behrens*. Section 921.0016(3)(r), Florida Statutes allows for an upward departure regardless of whether the prior level 8 or higher offense was already included in the scoresheet. There was no impermissible double counting contrary to legislative intent because the Legislature authorized a departure in these circumstances. The Legislature provided that certain serious reoffenders could receive an upward departure in contrast to defendants who may have the same guidelines score based on less serious prior convictions. The statute permitted *Behrens'* upward departure.

TAYLOR, MAY and CONNER, JJ., concur.

Served:

cc: Attorney General-W. P. B.

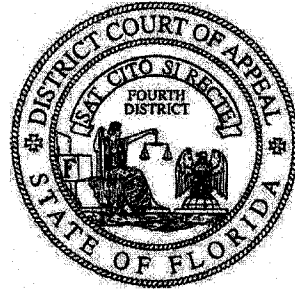
Luke Newman

Ernesto Behrens

ct

*Lonn Weissblum*

**LONN WEISSBLUM, Clerk**  
**Fourth District Court of Appeal**



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

May 17, 2016

CASE NO.: 4D16-0219

L.T. No.: 98-5739 CF10A

ERNESTO BEHRENS

v. STATE OF FLORIDA

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Appellant / Petitioner(s)

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that the appellant's April 8, 2016 second amended motion for rehearing and motion for rehearing en banc is denied.

Served:

cc: Attorney General-W. P. B.

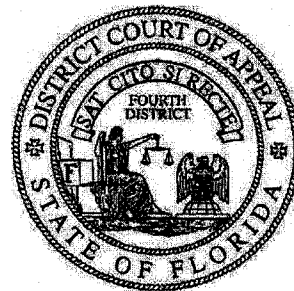
Donald Stuart Goldrich

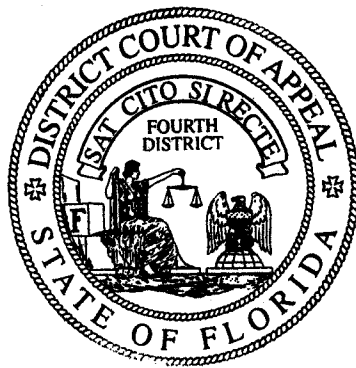
Luke Newman

ct



**LONN WEISSBLUM, Clerk**  
Fourth District Court of Appeal





**I hereby certify that the above and foregoing is a true copy of instrument filed in my office.**

**Lonn Weissblum, CLERK**

**DISTRICT COURT OF APPEAL OF  
FLORIDA, FOURTH DISTRICT**

Per *Holly D. D.*  
**Deputy Clerk**

FOURTH DISTRICT COURT OF APPEAL  
1525 PALM BEACH LAKES BLVD.  
WEST PALM BEACH, FLORIDA 33401  
(561) 242-2000

Date: June 7, 2016

Case Name: ERNESTO BEHRENS vs. STATE OF FLORIDA

Case No: 4D 16-0219

Trial Court No.: 98-5739 CF10A

Trial Court Judge: None Provided.

Dear Mr. Tomasino:

Attached is a certified copy of a Notice to Invoke Discretionary Jurisdiction/Notice of Appeal to the Supreme Court of Florida pursuant to Rule 9.120, Florida Rules of Appellate Procedure. Attached also is this Court's opinion or decision relevant to this case.

- The filing fee prescribed by Section 25.241(3), Florida Statutes, was received by this court and will be mailed.
- The filing fee prescribed by Section 25.241(3), Florida Statutes, was not received by this court.
- Petitioner/Appellant has been previously determined insolvent by the circuit court or our court.
- Petitioner/Appellant has already filed, and this court has granted, petitioner/appellant's Motion to proceed without payment of costs in this case.
- Petitioner/Appellant filed Notice via EDCA and the fee has not been received by this court.

No filing fee is required in the underlying case in this court because it was:

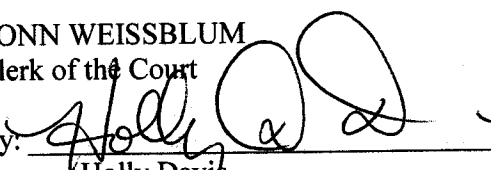
- A Summary Appeal (Rule 9.141)
- From the Unemployment Appeals Commission
- A Habeas Corpus Proceeding
- A Juvenile Case
- Other - \_\_\_\_\_

If there are any questions regarding this matter, please do not hesitate to contact this Office.

Sincerely,

LONN WEISSBLUM  
Clerk of the Court

By: \_\_\_\_\_

  
Holly Davis  
Deputy Clerk