

**IN THE SUPREME COURT OF FLORIDA**

CHARLES KENNETH FOSTER,  
PETITIONER

CASE NO.: SC01-767  
LOWER TRIBUNAL NO.: 75-486

VS.

**MICHAEL W. MOORE, SECRETARY,  
DEPARTMENT OF CORRECTIONS, AND  
THE STATE OF FLORIDA,  
RESPONDENTS**

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**REPLY TO RESPONSE TO PETITION FOR  
WRIT OF HABEAS CORPUS**

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**IN THE SUPREME COURT OF FLORIDA**

**CHARLES KENNETH FOSTER,  
PETITIONER**

**CASE NO.: SC01-240  
LOWER TRIBUNAL NO.: 75-486**

**VS.**

**MICHAEL W. MOORE, SECRETARY,  
DEPARTMENT OF CORRECTIONS, AND  
THE STATE OF FLORIDA,  
RESPONDENTS**

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**REPLY TO RESPONSE TO PETITION FOR  
WRIT OF HABEAS CORPUS**

RESPONDENT MOORE argues that there is disputed evidence which was resolved against Petitioner as to the existence of facts supporting robbery or robbery motive. He thus concludes that since Petitioner's appellate counsel raised the "sufficiency of evidence" issue in the original appeal that habeas is barred.

Petitioner's issue is that no evidence exists of a robbery or motive to commit robbery. The so-called "rip off" statement by a witness is not supportive of a robbery theory. The evidence is abundantly clear that robbery was not the motive of the homicide.

Obviously, a person cannot be convicted of a crime without evidence. Neither can a failure of evidence of robbery support a death penalty aggravator.

Simple, due process demands that there be proof beyond a reasonable doubt and that does not exist in this case as to robbery. There is no evidence of a robbery motive.

Habeas Corpus is the appropriate remedy to correct a due process violation. Snowden v. Singletary, 135 F. 3<sup>rd</sup> 732 (11<sup>th</sup> Cir. 1998), “The due process failure of proof is a “dead bang winner”.”

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U.S. Mail to MICHAEL MOORE, SECRETARY, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500; the Office of the Attorney General, Attention: RICHARD MARTELL, ASST ATTORNEY GENERAL, The Florida Capitol Building, Plaza Level One, Tallahassee, Florida 32399-1050; and The Office of the State Attorney, Bay County, Attention: ALTON PAULK, ASA, P O Box 1040, Panama City, FL 34202 this the \_\_\_\_\_ day of July, 2001.

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing REPLY TO RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS complies with Rule 9.100(1) and Rule 9.210(a)(2), FLORIDA RULES OF APPELLATE PROCEDURE, and that this Brief has been submitted in **Times New Roman 14-point font**.

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