

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

DIEGO NUNEZ,

Petitioner,

CASE NO.: 2020-CA-000628-O

v.

JAMES J. SCHNEIDER, General
Counsel, OFFICE OF THE STATEWIDE
PROSECUTOR, ORANGE COUNTY
SHERIFF'S OFFICE,

Respondents.

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ORDER DENYING PETITION FOR WRIT OF MANDAMUS

THIS MATTER comes before the Court on Petitioner's "Petition for Writ of Mandamus," filed January 21, 2020. The Court, having considered the same and being otherwise fully advised in the premises, finds as follows:

In order for the petitioner to make out a facially sufficient writ of mandamus, the petitioner must show a clearly established legal right to have a public officer perform a nondiscretionary duty. *Davis v. State*, 861 So. 2d 1214, 1216 (Fla. 2d DCA 2003). If the court determines that the writ is facially insufficient, it may dismiss the claims that are facially insufficient; if the petition is facially sufficient, but fails to show that the petitioner has a clear legal right to the requested act, then the court may deny the petition. *Holcomb v. Department of Corrections*, 609 So. 2d 751, 753 (Fla. 1st DCA 1992) (indicating that "[i]f the court finds the allegations insufficient, it will deny the petition, or dismiss those claims that are factually insufficient").

In his Petition, Petitioner requests that Respondents produce a 1999 federal court order authorizing the interception of wire communications for cell phone number (407) 312-0239 and affidavit in support of application establishing probable cause. He states that he believes the order does not exist, as he never received a copy of it, yet it was used to convict him at trial. Petitioner also indicates that Respondents never responded to his public records request. The Court previously found the Petition to be facially sufficient and issued an alternative writ of mandamus on October 9, 2020, ordering Respondents to show cause as to why relief should not be granted.

Respondent Schneider filed his response on November 9, 2020, stating that while his office had not received Petitioner's purported October 31, 2019 records request, it had already communicated in writing in 2015 to Petitioner that it did not have the requested records in its files. Respondent also stated that his office had previously identified other agencies to which Petitioner could direct his request. Respondent Mina likewise filed a Response on November 18, 2020 stating that his office is not in possession of the requested documents. Petitioner filed a reply on December 2, 2020 that, like his Petition, does not affirmatively allege that Respondent is in possession of the requested documents. Instead, Petitioner questions the validity of his conviction if the federal court order is not in Respondent's possession.

After carefully considering the Petition alongside the Respondents' responses and Petitioner's reply, the Court finds that the Petition must be denied. Respondents have asserted, and Petitioner does not appear to dispute, that the requested documents are not in their possession. The Court cannot order Respondents to produce records they do not have, Respondents have no legal duty to produce records in another agency's possession, and a Petition for Writ of Mandamus is not an appropriate vehicle to raise issues regarding Petitioner's conviction.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the Petition for Writ of Mandamus is **DENIED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 11th day of February, 2021.



eSigned by Vincent Falcone III 02/11/2021 10:06:04 P7TINJLI

VINCENT FALCONE III
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 11, 2021, a true and accurate copy of the foregoing was sent via U.S. Mail to **Diego Nunez, DOC# M01234**, South Bay Correctional Facility, 600 U.S. Highway 27, South, South Bay, Florida 33493 and **James J. Schneider, General Counsel**, Statewide Prosecution, Attorney General's Office, 135 W. Central Blvd., Suite 1000, Orlando, Florida 32801.



eSigned by Diane Lacone 02/11/2021 10:06:04 P7TINJLI

Judicial Assistant