

**NOT FOR PUBLICATION**

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

ISHMAEL S. IBRAHIM, )  
 )  
 Appellant/Petitioner, )  
 )  
 v. )  
 )  
 GOVERNMENT OF THE VIRGIN ISLANDS, )  
 )  
 Appellee/Respondent. )

---

**S. Ct. Civ. No. 2007-76**  
Re: Super. Ct. Civ. No. 396/2006

**NOTICE OF ENTRY OF JUDGMENT/ORDER**

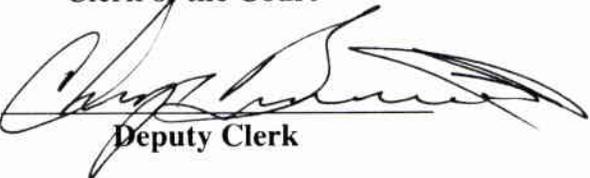
**TO: Justices of the Supreme Court**  
**Hon. Thomas K. Moore, Designated Justice**  
**Judges of the Superior Court**  
**Ishmael S. Ibrahim – GGACF - Legal Mail Open in Presence of Inmate Only**  
**Richard S. Schrader, Esq., AAG**  
**Venetia Harvey Velazquez, Esq., Clerk of the Supreme Court**  
**Deloris Allen-Copemann, Acting Clerk of the Superior Court**  
**Supreme Court Law Clerks**  
**Janet Lloyd, Law Librarian – St. Thomas**  
**Carmencita Suarez, Law Librarian – St. Croix**  
**Jacqueline Reovan**  
**Janiese Kelly**  
**Arlene Sutton**

2008 JAN 18 PM 6:12  
SUPREME COURT

Please take notice that on January 18, 2008, an **ORDER OF THE COURT** dated January 16, 2008, was entered by the Clerk in the above-entitled matter.

**Dated: January 18, 2008**

**VENETIA H. VELÁZQUEZ, ESQ.**  
Clerk of the Court

By:   
Deputy Clerk

NOT FOR PUBLICATION

SUPREME COURT OF THE VIRGIN ISLANDS

ISHMAEL S. IBRAHIM, ) S. Ct. Civ. No. 2007-76  
Appellant/Petitioner, ) Re: Super. Ct. Civ. No. 396-2006  
v. )  
GOVERNMENT OF THE VIRGIN ISLANDS, )  
Appellee/Respondent. )

---

Appeal from the Superior Court of the Virgin Islands

Considered: December 21, 2007

Filed: January 16, 2008

**BEFORE:** Rhys S. Hodge, Chief Justice; and Ive Arlington Swan, Associate Justice,  
Thomas K. Moore, Designated Justice.<sup>1</sup>

**APPEARANCES:**

Ishmael S. Ibrahim, pro se  
St. Croix, U.S.V.I.

*for Appellant*

**ORDER OF THE COURT**

PER CURIAM

Ishmael S. Ibrahim (“Appellant”) seeks an order from this court, reversing the trial court’s denial of his motion for reconsideration of the trial court’s previous order denying his petition for a writ of habeas corpus. In denying the motion for reconsideration, the trial court also ordered Appellant not to file, and the Clerk of the Superior Court not to accept from Appellant, further pleadings or motions in this case.

Appellant’s bases for seeking reversal of the trial court’s order are (1) that he was an

---

<sup>1</sup> Justice Moore, retired judge of the District Court of the Virgin Islands, sits as a designated justice pursuant to V.I. Code ann. tit. 4, § 24(a).

authentic furniture salesman contrary to characterizations made by previous court rulings, (2) that he had no intent to commit the crimes for which he was convicted, and (3) that during his criminal trial, he received ineffective assistance of counsel, in violation of his rights under the Sixth Amendment to the Constitution of the United States. For the following reasons, we will affirm the decision of the trial court and instruct that the trial court refrain from prohibiting litigants from filing claims with the trial court.

Pursuant to title 4, section 32(a) of the Virgin Islands Code, we have jurisdiction over all appeals, such as this one, arising from final judgments, final decrees, or final orders of the Superior Court. The trial court's denial of Appellant's habeas corpus petition is reviewed *de novo*. *Bakhtiger v. Elwood*, 360 F.3d 414, 417 (3d Cir.2004)("we exercise plenary review where [the trial court] dismisses a habeas corpus petition based on a legal conclusion without holding an evidentiary hearing.")(citing *Zettlemyer v. Fulcomer*, 923 F.2d 284, 291 (3d Cir. 1991)); *Francois v. Gonzales*, 448 F.3d 645, 648 (3d Cir. 2006)("our [habeas corpus]' standard of review remains the same.").

Following a jury trial, Appellant was convicted of three counts of grand larceny under 14 V.I.C. §§ 1081 and 1083(1); one count of forgery under 14 V.I.C. § 791(1); and four counts of obtaining money under false pretenses, under 14 V.I.C. § 834(2). *See Ibrahim v. Government of Virgin Islands*, 2005 WL 3077601, \* 2 (D.V.I. Nov. 3, 2005). Upon appeal, the Appellate Division of the District Court of the Virgin Islands reversed only the conviction on the forgery charge and affirmed the convictions on all other charges. *Id.* Subsequently, Appellant filed a petition for a writ of habeas corpus with the trial court. Finding that the petition lacked merit, the trial court denied Appellant's petition on April 2, 2007. On May 16, 2007, the trial court similarly denied Appellant's motion for reconsideration and ordered that no further motions or

pleadings shall be filed in the matter. This timely appeal was filed on June 13, 2007.

The issues of whether Appellant was an authorized salesperson in the Virgin Islands and whether he possessed the requisite intent to commit the crimes for which he was convicted were presented to the jury during Appellant's criminal trial. *See id.* at \*7. The jury rejected these defenses. Moreover, the Appellate Division of the District Court addressed, and likewise rejected, Appellant's claims. *Id.* Appellant is attempting to re-litigate the same issues in his criminal case, by petitioning the trial court for a writ of habeas corpus. A writ of habeas corpus may issue to "[e]very person unlawfully imprisoned or restrained of his liberty, under any pretence whatever . . . ." 5 V.I.C. § 1301. However, a writ of habeas corpus is an inappropriate medium to rehash these issues. *See United States v. Hollis*, 569 F.2d 199, 206 (3d Cir. 1977) ("[w]here a matter has been litigated once, to have another proceeding is to run a risk of needlessly overburdening the judicial system.").

Appellant's ineffective assistance of counsel claim is unavailing. "A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." *Strickland v. Washington*, 466 U.S. 668, 690 (1984). In order to successfully raise the issue of ineffective assistance of counsel, a defendant must prove that his counsel's performance fell below an objective standard of reasonableness and that counsel's performance prejudiced the defendant resulting in an unreliable or fundamentally unfair outcome in the proceeding. *Strickland* at 466 U.S. at 687-688.

This Court has found no credible evidence to substantiate Appellant's allegation of ineffective assistance of counsel. Similarly, we have uncovered no evidence to suggest that, but for counsel's action or trial strategy in representing Appellant, there would have been a different

result in the criminal case. Tactical decisions about which competent counsel might disagree do not qualify as objectively unreasonable. *Bell v. Cone*, 535 U.S. 685, 702 (2002). Considering the totality of circumstances, there is no evidence to suggest that informing the jury of Appellant's claim of his being an "authentic salesman" within this territory or that restating his mental state, would have changed the outcome of the criminal case. A counsel's strategic choices will not be second guessed by a post-hoc determination that a different trial strategy would have fared better. *Rolan v. Vaughn*, 445 F.3d 671, 681-82 (3d Cir. 2006). Therefore, Appellant's petition for a writ of habeas corpus upon the pretext that he received ineffective assistance of counsel must fail.

Because we discern nothing in the record before us that Appellant is "unlawfully imprisoned or restrained of his liberty," we will not disturb the trial court's decision denying Appellant's petition for a writ of habeas corpus.<sup>2</sup>

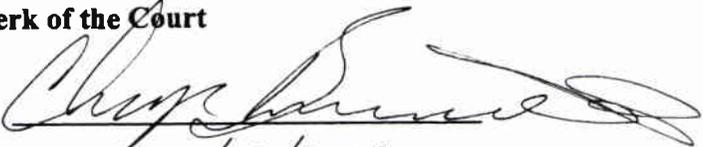
---

<sup>2</sup> Nevertheless, we are troubled by the part of the court's May 16<sup>th</sup>, 2007 order instructing the Appellant not to file, and for the Clerk of the Superior Court not to accept, further pleadings and motions in this matter. Appellant did not raise this issue on appeal; but pro se petitions are liberally construed. *Erickson v. Pardus*, \_\_\_ U.S. \_\_\_, \_\_\_, 27 S.Ct. 2197, 2200(2007). We are mindful that courts should not bar citizens from filing claims. *Brow v. Farrelly*, 994 F.2d 1027, 1038 (3d Cir.1993) (courts "should not restrict a litigant from filing claims absent exigent circumstances"); *Procup v. Strickland*, 792 F.2d 1069, 1074 (11<sup>th</sup> Cir. 1986) ("[Litigant] just cannot be completely foreclosed from any access to the court."). It is the court's responsibility to deter endless frivolous filings. *In re McDonald*, 489 U.S. 180, 184 (1989) ("part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice."). The *In re McDonald* petitioner filed seventy-three separate meritless claims before the Court. *Id.* at 181-182. But the Court did not completely bar this litigant from filing further petitions at the litigant's expense. Similarly, after notice to the litigant, the Supreme Court of Florida limited, but did not completely bar, access to its court to a pro se litigant who filed forty-eight meritless claims with the court. *Lanier v. State*, 908 So.2d 332, 332 (Fla. 2005). In *Brow*, the United States Court of Appeals for the Third Circuit outlined a three part test for restricting a litigant's access to the court. 994 F.2d at 1038. First, there must be "exigent circumstances such as a litigant's continuous abuse of the judicial process by filing meritless and repetitive actions." *Id.* Second, the court must give notice to the litigant of the proposed restriction and afford the litigant an opportunity to oppose the restriction before it is instituted. *Id.* Thirdly, even where the sanction of restriction of the litigant's access is warranted, such a restriction must fit the facts of the case. *Id.* Where, as here, the trial court violated all the *Brow* requirements, it is abuse of discretion. *See id.*

Accordingly, we **AFFIRM** the decisions of the trial court denying Appellant's Motion for Reconsideration and denying his petition for a writ of habeas corpus.

**ATTESTED:**

**VENETIA HARVEY VELAZQUEZ**  
Clerk of the Court

BY: 

DATE: 1/18/2008

**Copies to:**

Justices of the Supreme Court  
Judges of the Superior Court  
Designated Justice Moore  
Ishmael Sameer Ibrahim  
Supreme Court Law Clerks  
Venetia Harvey Velazquez, Esq., Clerk of the Supreme Court  
Mrs. Deloris Allen-Copeman, Acting Clerk of the Superior Court  
Kevin A. Williams, Sr. Director of Information Technology  
Janet Lloyd, Librarian  
Janise Kelly  
Jacqueline Reovan  
Arlene Sutton  
OAB 1/18/08