

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

KAI UWE THIER,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D18-29

[March 29, 2018]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Barbara McCarthy, Judge; L.T. Case No. 02-8087 CF10A.

Kai Uwe Thier, Daytona Beach, pro se.

No appearance required for appellee.

PER CURIAM.

Affirmed.

TAYLOR, MAY and CIKLIN, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

APPENDIX "A"

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,) CASE NO.: 02-8087CF10A
)
 Plaintiff,)
)
 v.)
) JUDGE: SINGHAL
 KAI UWE THIER,)
)
 Defendant.)

**ORDER DENYING DEFENDANT'S MOTION
TO VACATE, SET ASIDE, OR CORRECT SENTENCE**

THIS CAUSE comes before the Court upon Defendant's Motion to Vacate, Set Aside, or Correct Sentence, brought pursuant to Florida Rule of Criminal Procedure 3.850 and filed on or about December 19, 2013. Having considered Defendant's motion, the response of the State, applicable law, and being otherwise fully advised in the premises, this Court finds as follows:

Defendant is not entitled to relief in this matter, as his claim is without merit and his motion is nevertheless impermissibly successive. The State has filed a response which contains a thorough recital of the issues and the law. As such, this Court hereby adopts and incorporates the reasoning set forth in the State's Response, copies of which have been previously been provided to Defendant and remain a part of the court file. Accordingly,

It is ORDERED AND ADJUDGED that Defendant's Motion is hereby DENIED. The Defendant has thirty (30) days from the date of rendition of this Order to file an appeal.

DONE AND ORDERED on this _____ day of March, 2017, in Chambers,
Fort Lauderdale, Broward County, Florida.

RAAG SINGHAL
CIRCUIT JUDGE

RAAG SINGHAL
Circuit Court Judge

MAR 24 2017

TRUE COPY

Copies furnished to:

Susan Odzer Hugentugler, Esq., Office of the State Attorney, Appeals Division
Kai Uwe Their #L47927, Wakulla Cl, 110 Melaleuca Dr., Crawfordville, FL 32327
Rachael Kaiman, Esq., Office of the Attorney General, 1515 N. Flagler Dr., Ste. 900, V.
3432

APPENDIX "B"

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY,
FLORIDA

STATE OF FLORIDA,

CASE NO. 02-8087CF10A

Plaintiff,

vs.

Judge: **SINGHAL**

KAI UWE THIER,

Defendant.

STATE'S RESPONSE TO THE DEFENDANT'S
MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE

THE STATE OF FLORIDA, by and through the undersigned assistant state attorney, hereby files its Response to the Defendant's Motion to Vacate, Set Aside, or Correct Sentence filed under Rule 3.850 on December 19, 2013, and would show the following:

Procedural History

On August 27, 2003, Defendant Kai Uwe Thier was convicted of two counts of Solicitation to Commit First Degree Murder. On October 3, 2003, he was sentenced to serve consecutive terms of twenty (20) years in Florida State prison for each offense. The defendant appealed his judgment and sentence to the Fourth District Court of Appeal which court affirmed, *per curiam*, without opinion. Their v. State, 894 So. 2d 258 (Fla. 4th DCA 2005). The mandate was filed on March 4, 2005.

It appears that Thier sought review by the Supreme Court of Florida, however, the

Court dismissed this request on September 20, 2005. Their v. State, 912 So. 2d 318 (Fla. 2005).

A motion to correct illegal sentence filed under Rule 3.800(a) was denied by this court and summarily affirmed. Their v. State, 950 So. 2d 1253 (Fla. 4th DCA 2007).

On or about July 12, 2007, Thier filed his first Motion for Post Conviction Relief. This motion was denied without prejudice on December 21, 2007, because the defendant failed to include a proper oath and a sufficient factual basis. On February 20, 2008, Thier filed his Second Motion for Post Conviction Relief, which is identical to his July 12, 2007, pleading but for the inclusion of a proper oath. The state responded to the merits of the defendant's claims on or about June 19, 2008, and urged that his motion be summarily denied.

On June 25, 2008, this Court, citing numerous and various reasons, entered an order denying the Defendant's second Motion for Post-Conviction Relief. The defendant, on July 14, 2008, submitted a Motion for Rehearing, arguing that he should be allowed at least one opportunity to amend his motion in light of Spera v. State, 971 So.2d 754, at 761 (Fla. 2007). The state's response thereto urged that the defendant be permitted to re-plead only those claims which were found to have been legally insufficient by this Court's Order dated June 25, 2008. Specifically, the state agreed that the defendant be afforded one last opportunity to properly plead the

claims raised in grounds 8, 9, 10, 11, 15, 16, and 22 of his motion. In doing so, the state adopted its previously filed response.

This Court thereupon issued its Order of June 11, 2009, Granting, in Part, Defendant's Motion for Rehearing to the extent that the defendant was afforded 45 days to amend and re-file those claims previously found to have been legally insufficient; specifically claims numbered 8, 9, 10, 11, 15, 16, and 22. The defendant thereupon filed a timely Amended Motion for Post Conviction Relief limited to grounds 8, 9, 10, 11, 15, 16, and 22. Following the state's response, this Court denied the defendant's motion in its entirety, denied rehearing, and was affirmed, with an opinion. Their v. State, 84 So. 3d 365 (Fla. 4th DCA 2012), rev. denied, 104 So. 3d 1088 (Fla. 2012).

Defendant Their has now filed his instant Motion to Vacate, Set Aside, or Correct Sentence under Rule 3.850 on December 19, 2013, and this Response follows.

Argument

The defendant claims he is entitled to a new trial or discharge due to the alleged violation of his rights under the Vienna Convention. As a German national, he claims law enforcement failed to inform him his right to contact the German Consulate upon his arrest and before giving his statement to police.

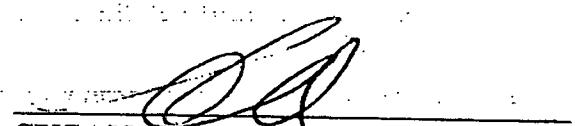
A claim alleging a violation of the Vienna Convention cannot be raised in a post conviction motion. Leyva v. State, 127 So. 3d 570 (Fla. 4th DCA 2012), *citing*

Lugo v. State, 2 So. 3d 1, 17 (Fla. 2008). This is a claim that could have and should have been raised on direct appeal and is therefore procedurally barred. Id., Valle v. State, 70 So. 3d 530, 552 (Fla. 2011). Moreover, having already filed a motion for post conviction relief under Rule 3.850, which motion was denied and affirmed on appeal as set forth above, the instant motion would also be impermissibly successive.

WHEREFORE, for the aforementioned reasons, the defendant's Motion to Vacate, Set Aside, or Correct Sentence should be **DISMISSED as procedurally barred.**

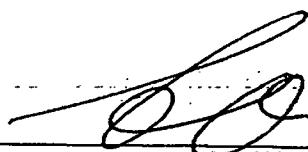
Respectfully submitted,

MICHAEL J. SATZ
State Attorney


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response was furnished by U.S. Mail this 21 day of December, 2016, to: Kai Uwe Thier, DC# L47927, Wakulla Correctional Institution Annex, 110 Melaleuca Dr., Crawfordville, FL 32327.



SUSAN ODZER HUGENTUGLER
Assistant State Attorney