IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY CRIMINAL DIVISION

STATE OF FLORIDA,

v.

CASE NO.: CRC12-17124CFANO
UCN: 522012CF017124XXXXNO
DIVISION: D

SHARON LEE,
AKA SHARON BYRD,
Person ID: 2475796, Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF

THIS CAUSE came before the Court upon the Defendant's *pro se* Motion for Postconviction Relief, filed June 3, 2016,[1] and amended Motion for Postconviction Relief, filed June 30, 2016, pursuant to Florida Rule of Criminal Procedure 3.850. Having reviewed the Defendant's motions, the record, and the applicable law, this Court finds as follows:

Procedural History

On May 14, 2014, the Defendant pled guilty to one count of second-degree murder. On August 12, 2014, she was sentenced to 33 years in prison. (*Ex. A: Judgment and Sentence*). The Defendant did not file a direct appeal.

On June 3, 2016, the Defendant filed the instant Motion for Postconviction Relief. On June 10, 2016, the Court entered an order striking the Defendant's motion because it did not include a proper oath and her substantive claims were facially insufficient.[2] The Defendant was granted 60 days' leave to file an amended motion. On June 30, 2016, the Defendant timely filed her amended Motion for Postconviction Relief with an appropriate oath.

Analysis

In her amended motion, the Defendant appears to raise two claims for relief. First, she alleges that her plea was involuntary. Second, she alleges counsel was ineffective for failing to adequately investigate the case and the Defendant's competency.

[1] The record reflects that the Defendant's motion was originally mailed to the Second District Court of Appeal, which forwarded the motion to the Pinellas County Clerk of the Circuit Court for filing.
[2] The Court's June 3, 2016 Order Striking Defendant's Motion for Postconviction Relief is hereby incorporated by reference.

EXHIBIT "A"
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penalty was life imprisonment, but that pursuant to the plea agreement, the Court could sentence her up to a maximum of forty years. (*Ex. D: Change of Plea Hearing Transcript, p. 36*).

As for the Defendant's mental state at the time of the plea, the Defendant denied having a history of mental illness and stated that she understood the proceedings. (*Ex. D: Change of Plea Hearing Transcript, p. 35*). The Defendant's claim in her motion that it is "clearly apparent [that] she lacks the ability to communicate thoughts clearly and lacks the ability to comprehend simple situations," is not at all apparent from the record of the plea colloquy. Her responses to the Court were clear and reflect that the Defendant understood the consequences of pleading. Dr. Richard Carpenter, who examined the Defendant before and after she pled guilty, opined that the Defendant suffered from a learning disability, but repeatedly found her competent to proceed. (*Ex. E: Part I Sentencing Hearing Transcript, pp. 7, 11-12, 31, 34*).

The sum of the record belies the Defendant's claim that her plea was involuntary. The plea was the result of prolonged negotiations with both the State and the Court. As the Court explained at length during the change of plea hearing, the Defendant was facing a maximum of life imprisonment without the possibility of parole if convicted at trial. See § 782.04(2), Fla. Stat. (2012). The State's factual basis indicated that the Defendant argued with the victim, her husband, before she stabbed him in the chest in the living room of their shared apartment. (*Ex. D: Change of Plea Hearing Transcript, p. 5*). The victim's friend, Juan McQueen, witnessed the stabbing and called 911 as the Defendant fled the scene. (*Ex. D: Change of Plea Hearing Transcript, pp. 5-6*; *Ex. F: Part II Sentencing Hearing Transcript, pp. 69-76*). Given the facts alleged and the Defendant's apparent desire to resolve the case short of trial, a plea to the court with a cap was certainly not unreasonable and, indeed, the Defendant's only option under the circumstances to avoid a trial. Further, even if there were some evidence that the Defendant had a mental illness, it would not intrinsically render her unable to knowingly, intelligently, and voluntarily enter a plea. See Thompson v. State, 88 So. 3d 312, 319 (Fla. 4th DCA 2012) ("[N]ot every manifestation of mental illness demonstrates incompetence to stand trial; rather, the evidence must indicate a present ability to assist counsel or understand the charges.") (quoting Card v. Singletary, 981 F.2d 481, 487-88 (11th Cir. 1992)). The Defendant's dissatisfaction with her sentence does not render her plea involuntary and her vague, general allegations that she did not understand the terms of the plea are insufficient to establish a manifest injustice. This claim is therefore denied.

Exhibit "A"
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that, had counsel adequately investigated her mental health and the facts of the case, she could have secured a more favorable plea deal or obtained a conviction for a lesser charge at trial.

(a) Mental Health – The Defendant's claim that counsel was ineffective for failing to investigate her mental health is refuted by the record. Counsel advised the Court at a pretrial hearing that he did investigate the Defendant's mental health. (*Ex. C: Sept. 6, 2013 Pretrial Hearing Transcript, p. 6*). Psychologist Dr. Richard Carpenter examined the Defendant before she entered her plea and found her competent to proceed. (*Ex. E: Part I Sentencing Hearing Transcript, pp. 7, 31*). Dr. Carpenter further testified at sentencing that, while the Defendant reported suffering from a learning disability, he found no clinical indication that the Defendant was insane or suffering from a psychiatric illness. (*Ex. E: Part I Sentencing Hearing Transcript, p. 12*). Dr. Carpenter opined that Defendant may have suffered from depression, but that her "primary problem" was alcohol use. (*Ex. E: Part I Sentencing Hearing Transcript, p. 12*). It is apparent from the record that counsel did investigate the Defendant's mental state and had her clinically evaluated, but the evaluations did not reveal any conditions that rendered the Defendant insane at the time of the offense or otherwise incompetent to proceed. Counsel cannot be found ineffective under Strickland when it is apparent that he did explore mental health information that may have been favorable to the Defendant.

Furthermore, the Defendant cannot establish that she was prejudiced by counsel's alleged lack of diligence on this matter. The Defendant's contention that she could have obtained a better plea bargain is dubious, considering the State's refusal to accept any of her plea offers. Her additional position that she otherwise would have gone to trial and been convicted of a lesser-included offense also is precarious. Mr. McQueen testified at sentencing that the Defendant was drunk and angry when she approached the victim with a knife, stabbed him in the chest, and fled the scene. (*Ex. F: Part II Sentencing Hearing, pp. 69-76*). The State indicated during its factual basis for the plea that the Defendant also made inculpatory statements to a fellow inmate at the Pinellas County Jail. (*Ex. D: Change of Plea Hearing Transcript, p. 6*). The Defendant was facing a maximum possible sentence of life imprisonment if convicted at trial as charged. See § 782.04(2), Fla. Stat. (2012). The State refused to agree to any of the Defendant's proposed dispositions. The only reason she was able to obtain a 33 year sentence was because the Court allowed her to plea to a cap over the State's objection. Certainly, 33 years is significantly less than the potential life sentence she faced if convicted at trial. Considering the totality of the

Exhibit 'A'
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State's evidence included physical evidence and eyewitness testimony that the Defendant threatened her husband several times during an argument and stabbed him in the heart. (*Ex. B: Pretrial Hearing Transcript, pp. 7-10*). There is therefore no reasonable probability that further argument from counsel that the victim's death was an accident would have altered the outcome of plea negotiations under these circumstances. Additionally, there is no reasonable probability that the Defendant would not have pled guilty. As recounted in Claim One, the plea colloquy indicates that the Defendant's plea was knowingly, intelligently, and voluntarily entered. (*Ex. D: Change of Plea Hearing Transcript, pp. 32-36*). She was allowed to plea to a 40 year cap and present evidence to argue for a departure and was ultimately sentenced to a term of years that is substantially less than the statutory maximum of life imprisonment. Considering the totality of the circumstances surrounding the plea, the Defendant fails to establish that she would not have pled guilty if counsel argued further that the victim's death was an accident. This claim is denied.

Accordingly, it is

ORDERED AND ADJUDGED that the Defendant's Motion for Postconviction Relief is hereby **DENIED.**

THE DEFENDANT IS HEREBY NOTIFIED that this is a final order and she has thirty days from the date of this order to appeal, should she choose to do so.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida this 28 day of November, 2016. A true and correct copy of the foregoing has been furnished to the persons indicated below.

COPY

Joseph A. Bulone, Circuit Judge

cc: Office of the State Attorney

Sharon Lee / AKA Sharon Byrd, DC# 577342
Lowell Correctional Institution – Annex
11120 NW Gainesville Rd.
Ocala, FL 34482-1479

Exhibit "A"
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SHARON BYRD, Appellant / Petitioner(s), v. STATE OF FLORIDA, Appellee / Respondent(s).
COURT OF APPEAL OF FLORIDA, SECOND DISTRICT
2017 Fla. App. LEXIS 12289
CASE NO.: 2D17-0590
June 29, 2017, Decided

Notice:

DECISION WITHOUT PUBLISHED OPINION

Editorial Information: Prior History

L.T. No.: 12-17124-CFANO.

Judges: CASANUEVA, SILBERMAN, and SALARIO, JJ., Concur.

Opinion

BY ORDER OF THE COURT:

After consideration of appellant's response received June 16, 2017, this court dismisses this appeal 2D17-0590 for lack of jurisdiction because the notice of appeal was filed more than 30 days after rendition of the order being appealed and is, therefore, untimely.

CASANUEVA, SILBERMAN, and SALARIO, JJ., Concur.

Exhibit "B"

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY CRIMINAL DIVISION

STATE OF FLORIDA

v.

CASE NO.: CRC12-17124CFANO
UCN: 522012CF017124XXXXNO
DIVISION: D

SHARON LEE
AKA SHARON BYRD,
Person ID: 2475796, Defendant. /

ORDER DENYING DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF

THIS CAUSE came before the Court on Defendant's *pro se* "Postconviction Motion," filed on July 31, 2017, pursuant to Florida Rule of Criminal Procedure 3.850. Having considered the motion, the record, and applicable law, this Court finds as follows:

Procedural History

On May 14, 2014, the Defendant pled guilty to one count of second-degree murder. On August 12, 2014, she was sentenced to 33 years in prison. (*Exhibit A: Judgment and Sentence*). The Defendant did not file a direct appeal.

Analysis

In her motion, Defendant makes multiple claims alleging that her plea was involuntary and counsel was ineffective. These claims must be raised in a timely, facially sufficient motion for postconviction relief. See Fla. R. Crim. P. 3.850(a)(5), (b); Spera v. State, 971 So. 2d 754, 759 (Fla. 2007); Johnson v. State, 60 So. 3d 1045, 1052 (Fla. 2011). According to Rule 3.850(b), the two year period for filing a motion for postconviction relief begins to run thirty days after the defendant is sentenced or, if the defendant appealed her judgment and sentence, after the mandate issues from a direct appeal. See Beaty v. State, 701 So. 2d 856 (Fla. 1997); Valdez-Garcia v. State, 965 So. 2d 318 (Fla. 2d DCA 2007). Claims raised pursuant to Rule 3.850 must be brought within two years after the judgment and sentence become final, unless the claim falls under an enumerated exception that extends the two-year window in which to file the claim. Fla. R. Crim. P. 3.850(b). Defendant's judgment and sentence became final in September, 2014. (*See Exhibit A*). Therefore, this motion is untimely because it was not filed until July 31, 2017; nearly three years after the judgment and sentence became final. Additionally, Defendant's motion is insufficient because she failed to include a proper oath, under penalty of perjury, that the stated

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facts are true. See Fla. R. Crim. P. 3.987; State v. Shearer, 628 So. 2d 1102, 1003 (Fla. 1993).

Defendant claims, however, that her motion is timely pursuant to Rule 3.850(b)(1), which allows an otherwise untimely claim if it is based on newly discovered evidence. See Fla. R. Crim. P. 3.850(b)(1). Defendant alleges that the transcript of the pretrial hearing proves that a jury would have found her guilty of manslaughter because the State did not prove that she had the required state of mind to establish second degree murder. When analyzing whether a defendant's claim contains newly discovered evidence, the Court must apply a two-prong test. Robinson v. State, 770 So. 2d 1167, 1169 (Fla. 2000); Jones v. State, 709 So. 2d 512, 521 (Fla. 1998). First, the evidence "must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that the defendant or his counsel could not have known [of it] by the use of diligence." Jones, 709 So. 2d at 521. Second, the evidence "must be of such nature that it would probably produce an acquittal on retrial." Id. When the defendant pleads guilty, the second prong is modified and the defendant must prove that withdrawal of the plea, based on the newly discovered evidence, is necessary to correct a manifest injustice. Bradford v. State, 869 So. 2d 28, 29 (Fla. 2d DCA 2004); Deck v. State, 985 So. 2d 1234, 1237 (Fla. 2d DCA 2008).

Defendant is essentially asserting that an on-the-record hearing is newly discovered evidence. Any discussions recorded on the record are not evidence or newly discovered facts. The applicable law, facts alleged, and arguments made by the defense were known by all parties prior to Defendant's plea. This transcript therefore cannot satisfy either prong of the Jones test. Defendant fails to establish an applicable exception to the timeliness requirement and her motion is denied.

The Court notes that it denied similar involuntary plea and ineffective assistance of counsel on the merits that Defendant raised in a previous timely motion for postconviction relief. (*See Exhibit B: Order without Exhibits*). Therefore, even if Defendant's motion were timely, the Court would not consider its merits because the motion is successive. See State v. McBride, 848 So. 2d 287, 290-91 (Fla. 2003) (holding that a defendant is not entitled to successive review of a specific issue which has already been decided against him).

Accordingly, it is

Exhibit "C"

ORDERED AND ADJUDGED that Defendant's Motion for Postconviction Relief is hereby **DENIED**.

DEFENDANT IS HEREBY NOTIFIED that she has thirty (30) days from the date of this Order in which to file an appeal, if she should choose to do so.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida, this ____ day of September, 2017. A true and correct copy of the foregoing has been furnished to the parties listed below.

ORIGINAL SIGNED

SEP 14 2017

JOSEPH A. BULONE
CIRCUIT JUDGE

Joseph A. Bulone, Circuit Judge

cc: State Attorney

Sharon Lee
aka Sharon Byrd, DC# 577342
Lowell Correctional Institution - Annex
11120 NW Gainesville Rd
Ocala, Florida 34482-1479

Exhibit "C"

SHARON LEE a/k/a SHARON BYRD, DOC #577342, Appellant, v. STATE OF FLORIDA, Appellee.
COURT OF APPEAL OF FLORIDA, SECOND DISTRICT
2018 Fla. App. LEXIS 3602
Case No. 2D17-4014
March 14, 2018, Opinion Filed

Notice:

DECISION WITHOUT PUBLISHED OPINION

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

Editorial Information: Prior History

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Pinellas County; Joseph A. Bulone, Judge.

Counsel Sharon Lee a/k/a Sharon Byrd, Pro se.

Judges: SILBERMAN, LUCAS, and ROTHSTEIN-YOUAKIM, JJ., Concur.

Opinion

PER CURIAM.

Affirmed.

SILBERMAN, LUCAS, and ROTHSTEIN-YOUAKIM, JJ., Concur.

Exhibit "D"

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

April 10, 2018

CASE NO.: 2D17-4014
L.T. No.: 1217124CFANO

SHARON LEE	v.	STATE OF FLORIDA
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for rehearing and request for written opinion is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Dawn A. Tiffin, A. A. G. Sharon Lee Ken Burke, Clerk

ag

Mary Elizabeth Kuenzel
Clerk

Exhibit "E"