

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Deontae Thomas - PETITIONER

VS.

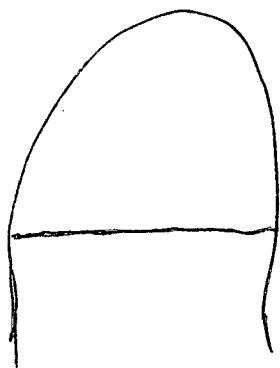
State of Florida - RESPONDENT(S)

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DEONTAE THOMAS # R12198  
Charlotte Correction Inst.  
33123 Oil Well Road  
Punta Gorda, FL.  
33955

APPENDIX



IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

Case No. 2D18-021

MORRIS, BLACK, and ATKINSON, JJ., Concur.

# APPENDIX

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: CRC03-07061CFANO-A  
CASE NO: CRC03-07065CFANO-A  
UCN: 522003CF007061XXXXNO  
UCN: 522003CF007065XXXXNO

DIVISION: M

DEONTAE THOMAS,

Person ID: 192287, Defendant A. /

**ORDER DENYING DEFENDANT'S "RULE  
3.850(b)(1) NEWLY DISCOVERED EVIDENCE"**

**THIS MATTER** came before this Court on the Defendant's pro se "Rule 3.850(b)(1) Newly Discovered Evidence," filed on August 16, 2017, pursuant to Florida Rule of Criminal Procedure 3.850. Having considered the motion, record, and applicable law, this Court finds as follows:

**Procedural History**

On June 7, 2006, a jury found the Defendant guilty of one count of attempted second-degree murder and two counts of attempted first-degree murder in case number CRC03-07065CFANO, and one count of first-degree murder in case number CRC03-07061CFANO. On June 19, 2006, the Court sentenced the Defendant to life in prison on all four offenses, with all counts to run concurrently except one of the attempted first-degree murder sentences. (See Exhibits A-1 and A-2: Judgments and Sentences). The Defendant appealed, and the mandate affirming the Defendant's judgments and sentences issued on June 1, 2007. See Thomas v. State, 956 So. 2d 1193 (Fla. 2d DCA 2007).

The Defendant also received another life sentence on a different count in case number CRC03-07061CFANO in a separate trial. However, this sentence was reversed by the Second District Court of Appeal. See Thomas v. State, 959 So. 2d 427 (Fla. 2d DCA 2007). The State nolle prossed this count on remand.

**Analysis**

Pursuant to rule 3.850(b), the two year period for filing a motion for post conviction relief begins to run thirty days after the defendant is sentenced or, if the defendant appealed his judgment and sentence, after the mandate issues from a direct appeal. See Beaty v. State, 701

So. 2d 856 (Fla. 1997). The mandate in the above-styled cases issued on June 1, 2007. Therefore, the Defendant's motion, filed August 16, 2017, is untimely. However, Deontae Thomas claims that his motion is timely based on the exception for newly discovered evidence. Thus, the Court will consider the Defendant's claim.

In his motion the Defendant alleges that January 28, 2016, Deputy Timothy Virden, a key State's witness at his trial, was charged with one count of attempted manslaughter for the shooting of a handcuffed person Deputy Virden had detained on December 30, 2015. The Defendant alleges that the affidavit supporting the charging document, as well as subsequent news articles relating to Deputy Virden's arrest, indicate that Deputy Virden lied to the police during the investigation of the shooting. The Defendant argues that Deputy Virden gave inconsistent testimony at the Defendant's trials and because Deputy Virden gave untruthful statements during the investigation of the December 30, 2015 shooting he might have also been untruthful during the Defendant's trial. Specifically, the Defendant explains that the differences in the testimony at the Defendant's trials are that Deputy Virden was more specific in his recollection of where one of the shooters was sitting (front or back window of the passenger side of the vehicle), and the hairstyle of the shooters as seen in silhouette.

To set aside a conviction based on newly discovered evidence, the defendant must show the following: (1) the asserted facts "must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known [of it] by the use of diligence"; and (2) the newly discovered evidence "must be of such nature that it would probably produce an acquittal on retrial." Wyatt v. State, 78 So. 3d 512, 523 (Fla. 2011) (quoting Jones v. State, 709 So. 2d 512, 521 (Fla. 1998)). Inherent in the analysis of newly discovered evidence is whether the evidence would be admissible at a retrial. See Schofield v. State, 67 So. 3d 1066, 1071 (Fla. 2d DCA 2011).

Here, the Defendant fails to demonstrate how an allegation that Deputy Virden lied during an investigation of his conduct of shooting a suspect during a December 2015 arrest establishes that Deputy Virden gave untruthful testimony during the Defendant's trials in the above-styled cases in 2006. The misconduct, which is alleged to have occurred approximately nine years after the Defendant's trials and has no relation to this particular Defendant, is not relevant to the testimony given at the Defendant's trials. The charges against Deputy Virden are not the type of evidence, that if considered by a jury on retrial, would probably result in an

acquittal. Gore v. State, 91 So. 3d 769, 775 (Fla. 2012). Deputy Virden's arrest based on alleged misconduct in another case is not evidence that such misconduct occurred in the Defendant's case. Additionally, the Defendant fails to show that Deputy Virden's arrest would be admissible at a retrial.

Furthermore, to the extent that the Defendant is alleging that Deputy Virden's testimony was inconsistent between the trials in the Defendant's cases, these alleged discrepancies were known at the time of trial and Deputy Virden could have been cross-examined on the differences. Thus, the alleged discrepancies were discoverable with diligence during the two-year time limitation of rule 3.850, and do not qualify as newly discovered evidence.

Accordingly, it is

**ORDERED AND ADJUDGED** that the Defendant's "Rule 3.850(b)(1) Newly Discovered Evidence," is hereby **DENIED**.

**THE DEFENDANT IS HEREBY NOTIFIED** that he has thirty (30) days from the date of this order in which to file an appeal should he wish to do so.

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

\_\_\_\_\_  
Philip J. Federico, Circuit Judge

cc: Office of the State Attorney

Deontae Thomas, DC # R12198  
Everglades Correctional Institution  
1599 S.W. 187th Avenue  
Miami, FL 33194

Original Signed

NOV 29 2017

PHILIP J. FEDERICO  
Circuit Judge

**Additional material  
from this filing is  
available in the  
Clerk's Office.**