

Supreme Court of Florida

TUESDAY, JUNE 26, 2018

CASE NO.: SC18-750
Lower Tribunal No(s).:
4D17-3854;
062004CF000990A88810

JAMES FORNEY

vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

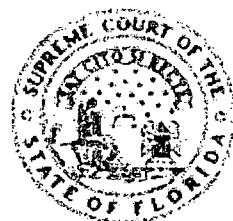
No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

LABARGA, C.J., and PARENTE, LEWIS, QUINCE, and LAWSON, JJ., concur.

A True Copy

Test:

John A. Tomasino
Clerk, Supreme Court



db

Served:

CELIA TERENZIO
RACHAEL KAIMAN
JAMES FORNEY

HON. LONN WEISSBLUM, CLERK
HON. BRENDA D. FORMAN, CLERK
HON. ILONA MAXINE HOLMES, JUDGE

Rec'd & Signed for
on 24 June 2018
@ G.C.I.

Appendix "C"

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JAMES FORNEY,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D17-3854

[February 28, 2018]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ilona M. Holmes, Judge; L.T. Case No. 04-990 CF10A.

James Forney, Raiford, pro se.

No appearance required for appellee.

PER CURIAM.

We affirm the summary denial of appellant's successive rule 3.850 motion for post-conviction relief. We write only to address appellant's claim that the orders entered after he filed a motion to disqualify the trial judge were void. This claim is meritless because appellant failed to serve the motion on the judge. See Fla. R. Jud. Admin. 2.330(c), (j); *Braddy v. State*, 111 So. 3d 810, 833 (Fla. 2012); *Hedrick v. State*, 6 So. 3d 688, 693 (Fla. 4th DCA 2009).

Affirmed.

WARNER, CIKLIN and KUNTZ, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

Appendix "A"

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on 5 March 2018
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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY FLORIDA

STATE OF FLORIDA
Plaintiff,

v.

JAMES FORNEY,
Defendant.

Case No.: 04-990CF10A

JUDGE: HOLMES

COPY SENT TO:
STATE ATTORNEY
DEFENDANT

**ORDER DENYING DEFENDANT'S "SECOND" MOTION FOR
POST-CONVICTION RELIEF AND MOTION FOR PRIORITY STATUS**

This cause came on for consideration of the Defendant's "Second Motion"¹ for Post-conviction Relief based upon Newly Discovered Evidence. The Court has read the motion and the grounds stated therein. Being fully apprised in the premises, the Court finds as follows.

Defendant in this successive motion has claimed that Court in some way altered the jury instructions in the case. The Court notes that Defendant's attachments are "bate" stamped with the same page numbers as were filed in the original appeal, thus making them copies of what the appellate court reviewed in affirming his convictions. This does not constitute newly discovered evidence. Accordingly, it is

ORDERED AND ADJUDGED that the Court adopts the arguments made and the caselaw cited in the State's response and incorporates the same by reference by attaching a copy to this order (exhibit A). Accordingly, it is

FURTHER ORDERED AND ADJUDGED that the motion for "priority status" is **DENIED**. It is

Appendix "B"
WITHOUT ITS ATTACHMENTS

Rec'd & Signed for
on 22 Sept 2017
C.U.C.I.

¹ The Court would note that this is actually the third motion for post-conviction relief filed by this defendant.

FURTHER ORDERED AND ADJUDGED that the "Second Motion" for post-conviction relief is **DENIED** and **DISMISSED**.

THE DEFENDANT SHALL HAVE THIRTY (30) DAYS TO FILE AN APPEAL FROM THE RENDITION OF THIS FINAL ORDER.

DONE AND ORDERED in chambers at Fort Lauderdale, Broward County, Florida this 19th day of September 2017.



ILONA M. HOLMES
CIRCUIT JUDGE

TRUE COPY

attachment/

cc: Joel Silvershein, Esquire, Assistant State Attorney, Appeals Section
 James Forney, Defendant, pro se