

APPENDIX

A

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

WAYNE A. BISSO,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D18-2733

[November 29, 2018]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Gary L. Sweet, Judge; L.T. Case No. 562005CF001314B.

Wayne A. Bisso, South Bay, pro se.

No appearance required for appellee.

PER CURIAM.

Affirmed.

GERBER, C.J., Damoorgian and CIKLIN, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

APPENDIX

B

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR ST. LUCIE COUNTY, FLORIDA

STATE OF FLORIDA

FELONY DIVISION

CASE NO.: 562005CF1314B

vs.

WAYNE BISSO,

Defendant.

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS
AND
ORDER TO SHOW CAUSE

THIS CASE came before the Court in chambers on the Defendant's pro se motion dated August 7, 2017, which this Court construes pursuant to Florida Rule of Criminal Procedure 3.850. The Court finds and orders as follows.

On May 11, 20007, the Defendant was found guilty by a jury of first degree grand theft (count 4), grand theft motor vehicle (count 5), uttering a forged instrument (count 6), and perjury (count 7). On October 25, 2007, the Defendant was sentenced to five years in prison on count 4 followed by twenty years probation, two years in prison on count 5, and five years in prison on counts 6 and 7. The Defendant's judgment and sentence were affirmed on appeal with a mandate issued November 14, 2008. *Bisso v. State*, 993 So. 2d 534, (Fla. 4th DCA 2008).

The Defendant filed this pleading as a petition for writ of habeas corpus. However, the proper vehicle to raise these issues would have been under rule 3.850. Just because the Defendant previously had a rule 3.850 motion denied on its merits and the time to file a motion under that rule has expired, it does not give the Defendant the right to have a second bite at the apple in a habeas corpus petition.

As noted above, this petition is untimely. The time to file under rule 3.850

expired in November of 2010. Additionally, this petition is successive. The Defendant has filed multiple post conviction motions, including a prior successive rule 3.850 motion that raised the same issues as raised in this petition. (See rule 3.850 motion and order attached as composite Ex. A). Additionally, the Defendant has previously been sanctioned for filing a frivolous rule 3.800(a) motion. (See rule 3.800(a) motion and order attached without exhibits as composite Ex. B). The Defendant's motion is procedurally barred.

ORDER TO SHOW CAUSE

This Court finds the Defendant's petition to be frivolous and abusive. As noted above, the Defendant's petition is untimely and successive. Although the Defendant filed this pleading as a petition for writ of habeas corpus and there might not have been an intention of filing a successive motion, again the Defendant was attempting to raise a claim that was previously denied in a successive motion as untimely without any bona fide exception to the time limits of rule 3.850. Therefore, the Defendant loses the benefit of doubt that he was not trying to circumvent rule 3.850.

This Court finds that "enough is enough." See *Isley v. State*, 652 So. 2d 409, 410 (Fla. 5th DCA 1995); see also *Steele v. State*, 14 So.3d 221, 223 (Fla.2009) (the courts need to devote their finite resources to consideration of legitimate claims) and *Britt v. State*, 931 So.2d 209, 210 (Fla. 5th DCA 2006) (Defendant's "pro se filings have become frivolous, an abuse of process, and a waste of the taxpayers' money").

The Rules of Criminal Procedure provide the following:

No motion may be filed pursuant to this rule unless it is filed in good faith and with a reasonable belief that it is timely, has potential merit, and does not duplicate previous motions that have been disposed of by the court.

(1) By signing a motion pursuant to this rule, the defendant certifies that: the defendant has read the motion or that it has been read to the defendant and that the defendant understands its content; the motion is

filed in good faith and with a reasonable belief that it is timely filed, has potential merit, and does not duplicate previous motions that have been disposed of by the court; and, the facts contained in the motion are true and correct.

(2) The defendant shall either certify that the defendant can understand English or, if the defendant cannot understand English, that the defendant has had the motion translated completely into a language that the defendant understands. The motion shall contain the name and address of the person who translated the motion and that person shall certify that he or she provided an accurate and complete translation to the defendant. Failure to include this information and certification in a motion shall be grounds for the entry of an order dismissing the motion pursuant to subdivision (f)(1), (f)(2), or (f)(3).

(3) Conduct prohibited under this rule includes, but is not limited to, the following: the filing of frivolous or malicious claims; the filing of any motion in bad faith or with reckless disregard for the truth; the filing of an application for habeas corpus subject to dismissal pursuant to subdivision (m); the willful violation of any provision of this rule; and the abuse of the legal process or procedures governed by this rule.

The court, upon its own motion or on the motion of a party, may determine whether a motion has been filed in violation of this rule. The court shall issue an order setting forth the facts indicating that the defendant has or may have engaged in prohibited conduct. The order shall direct the defendant to show cause, within a reasonable time limit set by the court, why the court should not find that the defendant has engaged in prohibited conduct under this rule and impose an appropriate sanction. Following the issuance of the order to show cause and the filing of any response by the defendant, and after such further hearing as the court may deem appropriate, the court shall make a final determination of whether the defendant engaged in prohibited conduct under this subsection.

(4) If the court finds by the greater weight of the evidence that the defendant has engaged in prohibited conduct under this rule, the court may impose one or more sanctions, including:

- (A) contempt as otherwise provided by law;
- (B) assessing the costs of the proceeding against the defendant;
- (C) dismissal with prejudice of the defendant's motion;
- (D) prohibiting the filing of further pro se motions under this rule and directing the clerk of court to summarily reject any further pro se motion under this rule;

- (E) requiring that any further motions under this rule be signed by a member in good standing of The Florida Bar, who shall certify that there is a good faith basis for each claim asserted in the motion; and/or

- (F) if the defendant is a prisoner, a certified copy of the order be forwarded to the appropriate institution or facility for consideration of disciplinary action against the defendant, including forfeiture of gain time

pursuant to Chapter 944, Florida Statutes.

(5) If the court determines there is probable cause to believe that a sworn motion contains a false statement of fact constituting perjury, the court may refer the matter to the state attorney.

Fla. R. Crim. P. 3.850(n). The Defendant will be given the opportunity to demonstrate why he should not be prohibited from filing pro se pleadings in this case as provided in rule 3.850(n)(4)(D) as a consequence of filing a frivolous and abusive motions.

It is hereby ORDERED that the Defendant's petition for writ of habeas corpus is DENIED.

It is further ORDERED that the Defendant must show cause in writing, on or before March 30, 2018, why he should not be prohibited from filing pro se pleadings as a sanction permitted by rule 3.850(n)(4). See *State v. Spencer*, 751 So. 2d 47, 48 (Fla. 1999).

The Defendant has thirty days to seek appellate review of the denial of his rule 3.850 petition.

DONE AND ORDERED in chambers in Fort Pierce, St. Lucie County, Florida on

1-2, 2018.



GARY L. SWEET
CIRCUIT COURT JUDGE

Certificate of Service

I hereby certify that a true and correct copy of the above order, including any attachments, has been sent to the following addressees by U.S. Mail, postage prepaid or e-portal, to the following persons, on January 2, 2018.

Wayne Bisso, pro se
DOC # K72335
South Bay Correctional Facility
600 U.S. Highway 27 South
South Bay, Florida 33493-2233

Office of the State Attorney



JOSEPH E. SMITH
CLERK OF THE COURT

By: 
Deputy Clerk