

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D17-3042

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CORRY MENCY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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On appeal from the Circuit Court for Duval County.  
Waddell Wallace, Judge.

April 6, 2018

PER CURIAM.

AFFIRMED.

LEWIS, OSTERHAUS, and BILBREY, JJ., concur.

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*Not final until disposition of any timely and  
authorized motion under Fla. R. App. P. 9.330 or  
9.331.*

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Corry Mency, pro se, Appellant.

IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2005-CF-08426-AXXX-MA

DIVISION: CR-F

STATE OF FLORIDA

v.

CORRY ANTONIA MENCY,  
Defendant.

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**ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS AND  
CAUTIONING DEFENDANT**

This matter came before the Court on Defendant's *pro se* "Petition for Writ of Habeas Corpus," filed on November 16, 2016.<sup>1</sup>

On January 11, 2006, a jury found Defendant guilty of Carjacking (Count One) and Battery on a Person Sixty-Five Years of Age or Older (Count Two). (Ex. A.) On February 16, 2006, the Court sentenced Defendant as a habitual felony offender to life in prison as to Count One and ten years in prison as to Count Two. (Ex. B at 4-6.) The Court further sentenced Defendant to a thirty-year minimum mandatory term as a prison releasee re-offender as to Count One. (Ex. B at 6.) The Court ordered Count Two to run concurrently to Count One. (Ex. B at 5.) The First District Court of Appeal affirmed Defendant's convictions and sentences in a Mandate issued on July 16, 2007. (Ex. C.)

In the instant Petition, Defendant challenges the constitutionality of the Habitual Felony Offender Statute by arguing that it violates the United States Supreme Court decision in Apprendi v. New Jersey, 530 U.S. 466 (2000).

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<sup>1</sup> See Haag v. State, 591 So. 2d 614 (Fla. 1992) (mailbox rule).

A petition for writ of habeas corpus is not a means for obtaining the kind of relief available through direct appeal or postconviction proceedings. Zuluga v. State, Dept. of Corrections, 32 So. 3d 674, 677 (Fla. 1st DCA 2010). A Florida Rule of Criminal Procedure 3.850 motion cannot be used to review ordinary trial errors reviewable by means of direct appeal, and cannot be used to provide a second appeal or to provide an alternative to direct appeal. Baker v. State, 878 So. 2d 1236, 1243 (Fla. 2004). Section 775.084, Florida Statutes, does not violate Apprendi. West v. State, 82 So. 3d 987, 989 (Fla. 1st DCA 2011).

Defendant's claim is procedurally barred as a petition for writ of habeas corpus. Zuluga, 32 So. 3d at 677. Likewise, not only is this claim procedurally barred under Florida Rule of Criminal Procedure 3.850, but it would be untimely as well. Id.; Fla. R. Crim. P. 3.850(b). Lastly, Defendant's sentence is not illegal, as section 775.084 does not violate Apprendi. West, 82 So. 3d at 989.

Upon review of the instant Petition in conjunction with the record, the Court finds the Petition to be frivolous. Accordingly, Defendant's actions constitute an abuse of process. See Rozzelle v. State, 119 So. 3d 493, 493-94 (Fla. 1st DCA 2013). Defendant is, therefore, cautioned that if he continues to file frivolous *pro se* motions, he will be referred to the Department of Corrections for the imposition of disciplinary proceedings in accordance with section 944.279(1), Florida Statutes (2016), which may include the forfeiture of gain time pursuant to section 944.28(2)(a), Florida Statutes (2016). See Ibarra v. State, 45 So. 3d 911, 914 (Fla. 4th DCA 2010) (holding imposition of disciplinary sanctions under sections 944.279(1) and 944.28(2)(a) does not require an order to show cause); accord Ferris v. State, 100 So. 3d 142, 143 (Fla. 1st DCA 2012)

(Wetherell, J., concurring); Cooper v. State, 89 So. 3d 979 (Fla. 1st DCA 2012). Additional sanctions may include the prohibition of *pro se* filings pursuant to Spencer v. State, 751 So. 2d 47 (Fla. 1999). See, e.g., Gaffney v. Tucker, 94 So. 3d 556, 558 (Fla. 2012).

Accordingly, it is:

**ORDERED** that Defendant's *pro se* "Petition for Writ of Habeas Corpus," filed November 16, 2016, is **DENIED**. Defendant shall have thirty (30) days from the date that this Order is filed to appeal, by filing a Notice of Appeal with the Clerk of this Court.

**DONE** in Jacksonville, Duval County, Florida this \_\_\_\_\_ day of  
\_\_\_\_\_, 2017.

**ORDER ENTERED**

**JUN 02 2017**

/s/ Waddell A. Wallace

**WADDELL WALLACE**  
Circuit Court Judge