APPENDIX

A

2ND DCA

1-29

DISTRICT COURT OF APPEAL

SECOND DISTRICT
Post Office Box 327
LAKELAND, FLORIDA 33802
(863)940-6060

ACKNOWLEDGMENT OF NEW CASE

DATE: October 26, 2018

STYLE: ANTHONY D. WHITE v. STATE OF FLORIDA

2DCA#: 2D18-4259

The Second District Court of Appeal has received the Appeal reflecting a filing date of October 9, 2018.

The county of origin is Pinellas.

The lower tribunal case number provided is 14-19892-CF.

The filing fee is: No Fee-3.850.

Case Type: Criminal 3.850 Final Summary

The Second District Court of Appeal's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

Please review and comply with any handouts enclosed with this acknowledgment.

cc: Attorney General, Tampa Anthony D. White Ken Burke, Clerk

A-1

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

October 26, 2018

CASE NO.: 2D18-4259
L.T. No.: 14-19892-CF

ANTHONY D. WHITE v. STATE OF FLORIDA

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

This will proceed as a summary appeal pursuant to Florida Rule of Appellate Procedure 9.141(b)(2). Appellant is not obligated to submit a brief. An optional brief, should appellant choose to file one, must be served within thirty days.

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

Served:

Attorney General, Tampa Anthony D. White Ken Burke, Clerk

mf

Mary Elizabeth Kuenzel
Clerk

A-2

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

October 18, 2019

CASE NO.: 2D18-4259
L.T. No.: 14-19892-CF

ANTHONY D. WHITE	v.	STATE OF FLORIDA
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for continuance of a cross appeal is denied. Appellant's motion for pleadings and correspondence is denied.

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

Served:

Attorney General, Tampa
Ken Burke, Clerk

Katherine Coombs Cline, A.A.G.

Anthony D. White

ag

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

A-3

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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

ANTHONY D. WHITE

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D18-4259

Opinion filed October 18, 2019.

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

Anthony D. White, pro se.

PER CURIAM.

Affirmed.

CASANUEVA, LaROSE and ATKINSON, JJ., Concur.

A-4

DISTRICT COURT OF APPEAL
SECOND DISTRICT
P.O. BOX 327
LAKELAND, FL 33802

Dear Appellant:

The attached sheet is a copy of a decision on your appeal in this court.

I am not permitted to explain the reason or reasons the court came to its decision in a case. I can tell you that decisions are reached in an appeal after review by this court of the record from the trial court, the briefs submitted, if applicable (briefs are not required in summary rule 3.850 or 3.800 appeals), as well as oral argument, if any.

The attached decision means that after reviewing your appeal, this court has determined that there was not reversible error in the action taken by the lower tribunal in your case, and the judgment, order, or sentence you appealed is upheld and stands unchanged (affirmed).

Sincerely,

Mary Elizabeth Kuenzel

Mary Elizabeth Kuenzel
Clerk

MEK: sg

Attachment

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.: 14-19892-CF
UCN: 522014CF019892000APC
DIVISION: D

ANTHONY D. WHITE,
PID: 3280152, Defendant. /

ORDER DENYING DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF

THIS MATTER came before the Court on the Defendant's *pro se* Motion for Postconviction Relief, filed on August 29, 2018,[1] pursuant to Florida Rule of Criminal Procedure 3.850. Having considered the motion, the record, and the applicable law, the Court finds as follows:

Procedural History

On October 22, 2015, a jury found the Defendant guilty of one count of burglary of a dwelling with a battery. (See Exhibit A: Verdict Form). On December 14, 2015, the Court sentenced the Defendant to 20 years' imprisonment. (See Exhibit B: Judgment and Sentence). The Second District Court of Appeal *per curiam* affirmed the Defendant's conviction and sentence; the mandate issued on April 12, 2017. See White v. State, 224 So. 3d 225 (Fla. 2d DCA 2017).

On July 25, 2018, the Defendant filed a motion for postconviction relief. On August 3, 2018, the Court struck the Defendant's motion and granted him 60 days' leave to file an amended motion. On August 29, 2018, the Defendant timely filed the present motion.

Analysis

The Court notes that the Defendant's motion is difficult to decipher, and the Court will endeavor to glean cognizable claims from the motion. Some claims are repeated under each heading, and the Court will only address each claim once. Florida Rule of Criminal Procedure 3.850 permits a defendant to challenge the legality of his or her conviction via a timely filed motion for postconviction relief. See Fla. R. Crim. P. 3.850. In a motion for postconviction relief, the defendant bears the burden of establishing a *prima facie* case based on a legally valid claim. See Griffin v. State, 866 So. 2d 1,9 (Fla. 2003). Conclusory allegations are not enough to meet this burden. Id.

[1] See Haag v. State, 591 So. 2d 614, 617 (Fla. 1992) (holding that the date a *pro se*, incarcerated litigant relinquished his pleading to prison officials for mailing is the date of filing of the pleading).

(Appendix B 1-5) B 1 6th cor

Ground One

The Defendant claims the State committed a Brady[2] violation when it intentionally or negligently failed to disclose exculpatory evidence favorable to the defense. Specifically, he alleges that the State withheld: 1) that he was carrying condoms at the time of his arrest, and 2) photographs. Some of the photographs of the victim's home apparently showed that the victim's back porch door was held open by a rug and a rug by the stairs was askew. He also appears to claim that items in and around the victim's home were moved by the victim and/or law enforcement officers prior to the photographs being taken to evince that there was a struggle in the home. He also claims that the State has another photo of the rug depicted in Exhibit 2D showing a different rug in a different position. He also claims that law enforcement removed his shirt from inside of the shed where he lived before they photographed it, which "disadvantaged" him.

To establish a Brady violation, a defendant must show that 1) the evidence was favorable to the defendant, either because it is exculpatory or impeaching, 2) the evidence was willfully or inadvertently suppressed by the State, and 3) there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed. See Wickham v. State, 124 So. 3d 841, 851 (Fla. 2013).

The Court finds that Ground One is facially insufficient because it fails to allege that there is a reasonable probability that that the result of the proceeding would have been different had the evidence been disclosed. Notwithstanding the facial insufficiency of Claim One, the Court finds Claim One to be without merit because no Brady violation occurred. First, the Defendant was aware that he possessed condoms at the time of his arrest, so this information could not have been withheld from him. Second, there is nothing to support the assertion that disclosure of the existence of the condoms would exculpate the Defendant or impeach any witness. This is not a Brady violation.

Additionally, the record reflects that the defense was provided with photographs in discovery. (See Exhibit C: Acknowledgement of Additional Discovery). The Defendant's claims regarding the photographs are vague and conclusory, and do not establish that the photographs were exculpatory or impeaching. His claim that the State withheld other photographs is speculative. Speculation is insufficient to establish a claim for postconviction relief. See Spencer v. State, 842 So. 2d 52, 63 (Fla. 2003); Bass v. State, 932 So. 2d 1170, 1172 (Fla. 2d DCA 2006)

[2] Brady v. Maryland, 373 U.S. 83 (1963).

(citing Jones v. State, 845 So. 2d 55, 64 (Fla. 2003) ("pure speculation cannot be a basis for postconviction relief.")). Also, to the extent the Defendant argues that furniture and other items were moved prior to the photographs being taken, such a claim is not cognizable in a Rule 3.850 motion because it challenges the sufficiency of the evidence. See Childers v. State, 782 So. 2d 946, 947 (Fla. 4th DCA 2001) (stating that a "challenge to the sufficiency of the evidence [is] an issue for direct appeal, and therefore not cognizable under Rule 3.850."). Likewise, the Defendant's assertion that the evidence and the verdict conflict with one another is not cognizable.

Florida Rule of Criminal Procedure 3.850(f)(2) permits a Defendant leave to amend a claim that is legally insufficient. However, the Court finds that the Defendant cannot amend this claim in good faith based on the reasons stated above. This claim is therefore denied. See Spera v. State, 971 So. 2d 754, 762 (Fla. 2007) (holding that only defective pleadings which can be remedied in good faith may be amended).

Ground Two

The Defendant appears to allege that there was a change in the law that would be retroactive as applied to him. He argues that invitation or openness to the public is a defense to burglary under section 810.02, Florida Statutes. He then claims that the victim had opened her home up to the public for an open house and removed a lock from her chain link fence. He concludes, therefore, that his conviction for burglary is unlawful.

The Court finds that this claim is meritless because there are no retroactive changes to section 810.02, Florida Statutes, that would apply in this case. Compare § 810.02, Fla. Stat. (2014) with § 810.02, Fla. Stat. (2018). While the Defendant is correct that invitation and openness to the public are defenses to the crime of burglary, the Defendant cannot challenge the sufficiency of the evidence regarding invitation and openness to the public in a Rule 3.850 motion. See Childers, 782 So. 2d at 947. Additionally, the Court notes that the Defendant did not testify that he was in the victim's home during an open house, but he did testify that the victim invited him into her home, which the victim denied. (See Exhibit D: Trial Transcript, pp. 159-192, 205-232, 317-384). This claim is therefore denied.

Ground Three

The Defendant appears to reiterate his claim that the items in the victim's home were moved before the photographs were taken in order to make it falsely seem as though there was a struggle. He claims he accidentally damaged the screen at the victim's home and the "jury

instruction rule acquits the defendant of burglary." He also claims that in its closing argument, the State "excited the jury by instigating an imaginative recreation of the defendant's testimony by performance with action in showmanship, displaying her personal belief, that was a last minute plea to appeal to a jury, their verdict was based on emotional basis, caused by the state's recreation of the defendant's testimony, simultaneously expressing her belief of his guilt and victim's testimony to be believed..." The Court cannot decipher a cognizable claim under Rule 3.850. To the extent the Defendant is attempting to raise a claim of prosecutorial misconduct, such a claim is not cognizable. See Henry v. State, 933 So. 2d 28, 29 (Fla. 2d DCA 2006) (claims of prosecutorial misconduct not cognizable in a motion for postconviction relief). This claim is therefore denied.

Ground Four

The Defendant alleges that the Court did not provide a definition of the term "bear hug" to the jury. He claims that the State argued that the battery alleged was a "bear hug." To the extent the Defendant is trying to raise a claim of trial court error, such claims are not cognizable under Rule 3.850. See Sampson v. State, 845 So. 2d 271, 272 (Fla. 2d DCA 2003). Additionally, the Court notes that the Court properly instructed the jury as to the definition of battery. (See Exhibit D, pp. 406-10); see also Fla. Std. Jury Instr. (Crim.) 8.3. The Court cannot decipher any cognizable claim. This claim is therefore denied.

Ground Five

The Defendant appears to allege that his arrest and conviction was a conspiracy between the government and homeowners to remove homeless people from St. Petersburg. He claims that "suspicion and allure" was the *modus operandi* of this conspiracy, which included the Social Security Administration and the person who compiled his Presentence Investigation report. The Court cannot decipher a cognizable claim under Rule 3.850. This claim is therefore denied.

Accordingly, it is

B-4 6th cir.

ORDERED AND ADJUDGED the Defendant's motion is hereby **DENIED.**

DEFENDANT IS HEREBY NOTIFIED that this is a final order, and he has thirty (30) days in which to file an appeal, should he choose to do so.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida, this _____ day of September, 2018. A true and correct copy of the foregoing has been furnished to the parties listed below. ORIGINAL SIGNED

SEP 2 0 2018

JOSEPH A. BULONE
CIRCUIT JUDGE

Joseph A. Bulone, Circuit Judge

cc: Office of the State Attorney

Anthony D. White, DC # R86411
Walton Correctional Institution (Male)
691 Institution Road
DeFuniak Springs, Florida 32433-1831

B-5 6th cor