IN THE SUPREME COURT
OF THE UNITED STATES

ANTHONY J. STOKES,
PETITIONER,

V.

STATE OF FLORIDA,
RESPONDENT.

CASE NO. TO BE ASSIGNED
4TH DCA CASE NO. 4D-18-2947
L.T. CASE NO. 99-002141CF10A
Fla. S.C. NO. SC19-1564

APPENDIX IN SUPPORT OF
WRIT OF CERTIORARI

APPENDIX A "ORDER DENYING DEFENDANT'S WRIT OF HABEAS CORPUS (17TH JUD. CIR.)

APPENDIX B "ORDER DENYING APPEAL OF ORDER) FOURTH DISTRICT COURT OF APPEAL

APPENDIX C "ORDER DENYING "MOTION FOR REHEARING" FOURTH DISTRICT COURT OF APPEAL

APPENDIX D "ORDER REQUIRING RESPONSE" 17TH JUDICIAL CIRCUIT

APPENDIX E " FLA. SUPREME COURT (LACK OF JURISDICTION)

"A"

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

ANTHONY J. STOKES,

Defendant.

Case No. 99-2141CF10A

Judge: Bernard Bober

ORDER DENYING DEFENDANT'S "PETITION FOR WRIT OF HABEAS CORPUS BASED UPON MANIFEST INJUSTICE; OR, IN THE ALTERNATIVE, SUCCESSIVE PETITION FOR POST-CONVICTION RELIEF BASED UPON MANIFEST INJUSTICE; [AND] REQUEST FOR AN EVIDENTIARY HEARING"

THIS CAUSE came before the Court upon the Defendant's "Petition for Writ of Habeas Corpus Based Upon Manifest Injustice; or, in the Alternative, Successive Petition for Post-Conviction Relief Based Upon Manifest Injustice; Request for an Evidentiary Hearing and Incorporated Memorandum of Law," pursuant to Rule 3.850, Florida Rules of Criminal Procedure, filed through counsel[1] on March 20, 2018. Pursuant to Court Order, the State filed a Response thereto on September 4, 2018. The Court, having examined the instant pleading, the State's Response, the Court file, and applicable law, finds as follows:

On July 19, 1999, Defendant was convicted by jury of the following offenses:

- Count 1—Armed Burglary of a Conveyance
- Count 2—Aggravated Assault (originally Aggravated Battery)

On August 20, 1999, he was sentenced as follows:

- Count 1—As a habitual felony offender to life in prison, with credit for 201 days of time served.
- Count 2—Ten years in prison, with credit for 201 days of time served, to run concurrent to count 1.

[1] The Court notes that on August 29, 2011, it entered an Order prohibiting Defendant from filing any further *pro se* pleadings in the instant case and directed the Clerk not to accept any further pleadings unless they were submitted and signed by a member of the Florida Bar in good standing.

APPENDIX "A"

(11.)

Defendant appealed his convictions and sentences to the Fourth District Court of Appeal, which affirmed his conviction and sentence for count 1, but reversed his conviction and sentence for count 2, concluding that aggravated assault was not a lesser-included offense of aggravated battery, and the elements of aggravated assault had not been alleged in the Information. *Stokes v. State*, 773 So. 2d 1239 (Fla. 4th DCA 2000), *rehearing denied* on January 10, 2001. The Mandate entered on January 26, 2001. On February 9, 2001, pursuant to the Mandate, this Court vacated the judgment and sentence for count 2.

Since his case became final on January 26, 2001, Defendant has filed four motions for post-conviction relief and one petition for writ of habeas corpus, all of which were denied and affirmed on appeal. Defendant also filed a petition for writ of habeas corpus in federal court, which was also denied.

In the instant pleading, Defendant raises the following claims:

Claim 1

Defendant states that effective January 1, 2008, the Florida Supreme Court adopted new rules and instructions permitting jurors the right, under certain circumstances, to take notes in criminal cases. *In re Amendments to the Florida Rules of Civil Procedure*, 967 So. 2d 178 (Fla. 2007). This jury "right" did not exist during his trial in 1999. He alleges that his trial was not fair "due to the judge stripping away the juror's rights to take notes during testimony," and "[t]his evidence validates [his] stance of innocence from the onset of this case." He contends that this "right" of a jury note-taking, which became effective over ten years ago, constitutes "newly discovered evidence." He asserts that this claim is timely, pursuant to Rule 3.850(b)(1), Florida Rules of Criminal Procedure, because he did not learn of this new jury "right" until December 19, 2016, when he retained counsel to file the instant pleading.

Claim 2

Defendant alleges that his trial counsel was ineffective for failing to adequately cross-examine the victim, for failing to adequately argue the elements of burglary to the jury during closing argument, and for failing to move for a reevaluation of his conviction of count 1 after the Fourth District Court had reversed his conviction for count 2. He alleges that all these matters constitute a "manifest injustice."

Claim 3

Defendant alleges that his trial counsel was ineffective for failing to "pursue[ ] the best possible plea for him."

Claim 4

Defendant alleges cumulative error.

The Court adopts and incorporates herein the factual and legal analysis that is contained in the State's Response and denies the instant pleading. As more fully set forth in the State's Response,[2] the claims raised in the instant pleading fail, *inter alia*, for the following reasons:

- The instant pleading—as a petition for writ of habeas corpus—fails in its entirety because a petition for writ of habeas corpus cannot be used to attack a judgment or sentence on grounds which were, could have, or should have been raised on direct appeal or in a timely filed motion under Rule 3.850; moreover, a petition for writ of habeas corpus cannot be used to circumvent the time limits of Rule 3.850. *Wainwright v. State*, 896 So. 2d 695, 703 n.7 (Fla. 2004), *quoting Parker v. Dugger*, 550 So. 2d 459, 460 (Fla. 1989); *Baker v. State*, 878 So. 2d 1236, 1241 (Fla. 2004).

- The instant pleading—as a motion for post-conviction relief—fails because it is time-barred, as more than two years have elapsed since the instant case became final on January 26, 2001, and Defendant fails to allege a legitimate claim of newly discovered evidence,[3] fundamental change in law, or an illegal sentence.

- The instant pleading—as a motion for post-conviction relief—also fails because it is successive. As noted above, the record reveals that Defendant has filed numerous previous post-conviction motions, all of which were denied and affirmed on appeal. The issues raised in the instant pleading were or could have been raised in his prior post-conviction pleadings, and he fails to explain why any new claim could not have been so raised.

- As to the "manifest injustice" claims, "[S]imply construing an alleged error as 'manifest injustice' does not relieve [an appellant] of the time bar contained in rule 3.850." *State v. Manning*, 121 So. 3d 1083 (Fla. 4th DCA 2013), citing *Hall v. State*, 94 So. 3d 655, 659 (Fla. 1st DCA 2012). "Incanting the words 'manifest injustice' does not excuse the procedural bars." *McClellion v. State*, 186 So. 3d 1129, 1132 (Fla. 4th DCA 2016). "[R]ule 3.850 contains no 'manifest injustice' exception to the rule's time limitation or bar against filing successive post-conviction motions." *Cuffy v. State*, 190 So. 3d 86, 87 (Fla. 4th DCA 2015). In any event, the Court finds that no manifest injustice has occurred.

- Since claims 1, 2 and 3 fail, there could be no cumulative error, and thus, claim 4 is fails.

Based on the foregoing, it is:

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[2] The State has certified that a copy of its Response was electronically sent to counsel for Defendant on September 4, 2018; as such, an *additional* copy is not attached hereto.

[3] Defendant's claim that his discovery on December 19, 2016, of a change in the *rules* of criminal procedure that became effective on January 1, 2008, does not constitute "newly discovered evidence," pursuant to Rule 3.850(b)(1), Florida Rules of Criminal Procedure. Defendant had an opportunity to raise this issue in his 2009 petition for writ of habeas corpus, but failed to do so. Even if this claim did constitute "newly discovered evidence" *and* was timely, it would nonetheless fail because the Court finds the claim to be speculative and probably would not have produced an acquittal at retrial. *Jones v. State*, 591 So. 2d 911 (Fla. 1991). A change in law does not constitute a newly discovered fact under the *Jones* test. *Walton v. State*, 246 So. 3d 246 (Fla. 2018); *Coppola v. State*, 938 So. 2d 507 (Fla. 2006). In any event, changes in jury instructions are *prospective* in nature. *See Tascano v. State*, 393 So. 2d 540 (Fla. 1980).

ORDERED AND ADJUDGED that Defendant's "Petition for Writ of Habeas Corpus Based Upon Manifest Injustice; or, in the Alternative, Successive Petition for Post-Conviction Relief Based Upon Manifest Injustice; [and] Request for an Evidentiary Hearing" is hereby **DENIED**.

The Defendant has thirty (30) days from the date of this Order to file an appeal.

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida, this 5th day of September, 2018.

BERNARD BOBER
CIRCUIT COURT JUDGE

Copies furnished:

Joel Silvershein, Esq.
Assistant State Attorney

Richard Rosenbaum, Esq.
Attorney for Defendant
Email: pleadings@RLRosenbaum.com

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"B" 11

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

ANTHONY J. STOKES,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D18-2947

[June 20, 2019]

Appeal of order denying petition for writ of habeas corpus to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Bernard I. Bober, Judge; L.T. Case No. 99-2141 CF10A.

Anthony J. Stokes, Florida City, pro se.

Ashley B. Moody, Attorney General, Tallahassee, and Melanie Dale Surber, Senior Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

GROSS, CIKLIN and FORST, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

APPENDIX "B"

(15.)

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

August 20, 2019

CASE NO.: 4D18-2947
L.T. No.: 99-002141 CF10A

ANTHONY J. STOKES v. STATE OF FLORIDA

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

BY ORDER OF THE COURT:

ORDERED that the appellant's July 8, 2019 motion for rehearing en banc and/or clarification is denied.

Served:

cc: Attorney General-W.P.B. Melanie Dale Surber Anthony J. Stokes *W*

kr

Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

DISTRICT COURT OF APPEAL
FOURTH DISTRICT
ISAT CITO SI RECTE
STATE OF FLORIDA

APPENDIX "C"

(16.)

"D"

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

ANTHONY J. STOKES,

Defendant.
_____/

CASE NO.: 99-2141CF10A

DIVISION: FW

JUDGE: BERNARD I. BOBER

ORDER REQUIRING A RESPONSE BY STATE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS BASED UPON MANIFEST INJUSTICE; OR, IN THE ALTERNATIVE, SUCCESSIVE PETITION FOR POST CONVICTION RELIEF BASED UPON MANIFEST INJUSTICE

THIS COURT having received Defendant's Petition for Writ of Habeas Corpus based upon Manifest Injustice, dated March 19, 2018, and filed with the Clerk on March 20, 2018, and the Court being of the opinion that a Response to said Motion by the State is necessary, it is hereby

ORDERED that the Office of the State Attorney of Broward County, State of Florida, shall have **90** days from the date of this order to file a Response to said Petition. due 6/18/18 (D)

DONE AND ORDERED in Chambers on this 20 day of March 2018, at Fort Lauderdale, Broward County, Florida.

TRUE COPY
MAR 20 2018
BERNARD I. BOBER

BERNARD I. BOBER, Circuit Judge

Copies furnished:
State Attorney's Office - Appeals Division

Richard L. Rosenbaum, Esq., Attorney for Defendant, 315 S.E. 7th Street, Suite 300, Fort Lauderdale, Florida 33301

APPENDIX "D"

(17.)

"E"

Supreme Court of Florida

TUESDAY, SEPTEMBER 17, 2019

CASE NO.: SC19-1564
Lower Tribunal No(s).:
4D18-2947; 061999CF002141A88810

ANTHONY J. STOKES vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

This case is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. *See Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing or reinstatement will be entertained by the Court.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

td
Served:

CELIA TERENZIO
ANTHONY J. STOKES
HON. BERNARD ISAAC BOBER, JUDGE
HON. BRENDA D. FORMAN, CLERK
HON. LONN WEISSBLUM, CLERK

Appendix - "E"

(18.)