

Third District Court of Appeal

State of Florida

Opinion filed July 24, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1121
Lower Tribunal No. 07-30464A

Venise Metayer,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.315(a) from the
Circuit Court for Miami-Dade County, Victoria Del Pino, Judge.

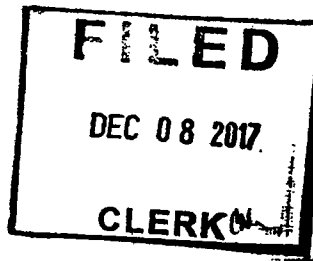
Venise Metayer, in proper person.

Ashley Moody, Attorney General, for appellee.

Before EMAS, C.J., and FERNANDEZ, and LOBREE, JJ.

PER CURIAM.

Affirmed.



IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR
MIAMI-DADE COUNTY,
FLORIDA

JUDGE: VICTORIA DEL PINO

CASE NO.: F07-30464A

STATE OF FLORIDA,

Plaintiff,

v.

VENISE METAYER,

Defendant.

**ORDER DENYING DEFENDANT'S PRO SE MOTION
TO CORRECT ILLEGAL SENTENCE**

THIS CAUSE, having come before this Court on the Defendant's, VENISE METAYER, ("Defendant") Motion for Post-Conviction Relief filed on or about August 11, 2017 ("Motion"). The State of Florida ("State") served a response to the Motion on or about October 6th, 2017 ("Response"). The Court, having reviewed the Motion, the State's Response, the court files, and records in this case, and being otherwise fully advised in the premises therein; **ORDERED AND ADJUDGED** that Defendant's Motion for Post-Conviction Relief is hereby **DENIED** for the reasons set forth herein.

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BACKGROUND AND PROCEDURAL HISTORY

The Defendant plead guilty pursuant to a written plea agreement that was ratified by court order on May 26, 2011.

The State filed an amended information on the date of the plea reducing the charges previously charged in an indictment pursuant to the plea agreement.

The Defendant was adjudicated guilty for the charges of: Grand Theft 3rd (F3); Murder in the Second Degree with a Deadly Weapon (FL); Kidnapping with Deadly Weapon/Aggravated Battery (FL); and Robbery with a Weapon (F1).

The Defendant was sentenced to five years in State Prison on the Grand Theft 3rd count, and 25 years in State prison for the remaining counts. All counts were to run concurrent.

On July 26, 2011 the Defendant filed a Pro Se Motion to Reduce or Modify Sentence. That motion was denied by the Court on July 27th, 2011 with an order entered stating the basis for the denial on July 29, 2011.

The Defendant's current Motion to Correct Illegal Sentence was filed on August 11, 2017. As explained below, the Defendant's two claims warrant denial.

ANALYSIS

The Defendant has filed a motion pursuant to Fla. R. Crim. P. 3.800 alleging: (1) The Defendant's attorney was ineffective for failing to challenge the charging document and advising the defendant to accept a plea because the charges

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983 So.2d 562, 573 (Fla. 2008)). Therefore, the Court can presume that the Defendant intended to file her motion pursuant to Rule 3.850.

Florida Rule of Criminal Procedure 3.850 provides that a motion to vacate or set aside a criminal conviction shall not be filed more than two (2) years after the judgment and sentence becomes final unless it alleges that “(1) the facts on which the claim is predicated were unknown to the movant or the movant’s attorney and could not have been ascertained by the exercise of due diligence, and the claim is made within 2 years of the time the new facts were or could have been discovered with the exercise of due diligence, or (2) the fundamental constitutional right asserted was not established within the [two-year] period provided for herein and has been held to apply retroactively, and the claim is made within 2 years of the date of the mandate of the decision announcing the retroactivity . . .” Fla. R. Crim. P. 3.850(b)(1)-(2); see also *Llerena v. State*, 696 So. 2d 1301, 1302 (Fla. 3d DCA 1997) (noting that Rule 3.850 provides an exception for its two-year time limit for raising claims, which involve fundamental constitutional rights not established until after the two-time period has run); *Witt v. State*, 387 So. 2d 922, 931 (Fla. 1980) (establishing the necessary analysis for determining whether a decision constitutes a right of constitutional and fundamental significance).

The Defendant’s claims of ineffective assistance of counsel for failure to

challenge alleged errors in the State's charges and charging documents are

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procedurally time barred. The Defendant has not raised any claims that could not have been known through the exercise of due diligence within the two year time period proscribed by the rule. Additionally, the claims do not involve fundamental constitutional rights that have been found to apply retroactively.

Finally, the Defendant's claim regarding double jeopardy, in addition to being time barred, was also waived at the time she accepted the plea agreement. Acceptance of a bargained for plea waives any double jeopardy violations. *Richardson v. State*, 885 So.2d 999 (Fla. 3rd DCA 2004).

Based on the foregoing and the record evidence in this case, the Court summarily **DENIES** the Defendant's Rule 3.800 Motion for Post-Conviction Relief.

CONCLUSION

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that Defendant's Motion for Post-Conviction Relief is hereby **DENIED**.

1. Defendant is hereby notified that he has the right to appeal this Order to the Third District Court of Appeal within thirty (30) days of the signing and filing of this Order.
2. The Clerk of this Court is hereby ordered to send a copy of this Order to

the Defendant, VENISE METAYER, pro se, Inmate #163985,

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Homestead Correctional Institution, 1900 SW 377th St., Ste. 200, Florida
City, FL 33034.

3. In the event that the Defendant takes an appeal of this order, the Clerk of
this Court is hereby ordered to transport, as part of this order, to the
appellate court the following:

- i. Defendant's Motion for Post-Conviction Relief.
- ii. The State's response to the Motion.
- iii. This order.

DONE AND ORDERED in Chambers in Miami-Dade County,
Florida, on December 8, 2017.

Victoria del Pino
Circuit Court Judge

VICTORIA DEL PINO
CIRCUIT COURT JUDGE

Copies furnished to:

Venise Metayer, Pro Se Defendant
Sara Imm, Assistant State Attorney