EXHIBIT "A"

Supreme Court of Florida

FRIDAY, OCTOBER 18, 2019

CASE NO.: SC19-1206
Lower Tribunal No(s).:
1D19-66; 162000CF001315AXXXMA

TRAVIS WELSH 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:

TRISHA MEGGS PATE
TRAVIS WELSH
HON. KRISTINA SAMUELS, CLERK
HON. RONNIE FUSSELL, CLERK
HON. BRUCE RUTLEDGE ANDERSON JR., JUDGE

EXHIBIT "B"

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-0066

TRAVIS A. WELSH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Bruce Anderson, Judge.

June 13, 2019

PER CURIAM.

AFFIRMED.

RAY, BILBREY, and JAY, JJ., concur.

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

EXHIBIT "C"

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

CASE NO.: 16-2000-CF-1315-AXXX-MA

DIVISION: CR-C

STATE OF FLORIDA,
Petitioner,
v.

TRAVIS A. WELSH,
Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO APPLY MAILBOX RULE TO AMENDED 3.850 AND NOTICE OF SUPPLEMENTAL AUTHORITY

This matter came before this Court on the Defendant's "Motion to Apply Mailbox Rule to Timely Amended 3.850" filed on January 3, 2006 and Defendant's Notice of Supplemental Authority filed on April 10, 2006.

On February 1, 2001, the Defendant was convicted of Capital Sexual Battery (count two), and Lewd, Lascivious, or Indecent Act-Fondling (count four). In count two, The Defendant was sentenced to a term of natural life of imprisonment. In count four, the Defendant was sentenced to a term of fifteen (15) years of imprisonment to run concurrent with count two. (Exhibit "A.") The Defendant's convictions and sentences were affirmed by a Mandate issued on May 20, 2002. (Exhibit "B.")

The Defendant alleges that he filed a Motion for Post Conviction Relief dated July 9, 2004 and an "Original Amended 3.850 Motion" dated May 18, 2005. (After careful review of the Court file, this Court finds no activity transpired in Defendant's case in the calendar years 2004 and 2005. (Exhibit "C.") Therefore, this Court notes that the Defendant's instant Motion is untimely, in that it was filed more than two years after his conviction became final.) (Exhibit "B.") Huff v. State, 569

So. 2d 1247 (Fla. 1990); Delap v. State, 513 So. 2d 1050 (Fla. 1987); Gust v. State, 535 So. 2d 642 (Fla. 1st DCA 1988).

In view of the above, it is:

ORDERED AND ADJUDGED that the Defendant's Motion to Apply Mailbox Rule to Amended 3.850 and Defendant's Notice of Supplemental Authority are **DENIED**. The Defendant shall have thirty (30) days from the date that this Order is filed in which to take an appeal, by filing a Notice of Appeal with the Clerk of the Court.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 23 day of Oct, 2006.

CIRCUIT COURT JUDGE

Copies to:

Office of the State Attorney
Division: CR-C

Travis A. Welsh
DOC# 95328
Hamilton Correctional Institute; M/U I-1211 Low
10650 S W 46th Street
Jasper, FL 32052-3732

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the Defendant by United States Mail this 24 day of October, 2006.

Deputy Clerk

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

CASE NO.: 16-2000-CF-01315-AXXX-MA

DIVISION: CR-A

March 2016

STATE OF FLORIDA

v.

TRAVIS A. WELSH,
Defendant.
_____/

ORDER GRANTING DEFENDANT LEAVE TO AMEND MOTION FOR LEAVE TO RESUBMIT MOTION FOR POSTCONVICTION RELIEF RULE 3.850 WITH MEMORANDUM OF LAW INCLUDED

This matter came before the Court on Defendant's *pro se* Motion for Leave to Resubmit Motion for Postconviction Relief Rule 3.850 with Memorandum of Law Included, filed on December 23, 2013, pursuant to Florida Rule of Criminal Procedure 3.850.

Defendant asserts he filed a timely motion for postconviction relief pursuant to rule 3.850 on July 3, 2004, and an amended motion on May 18, 2005. To support his assertion, Defendant attaches an order from the Middle District of Florida dismissing his Petition for Writ of Habeas Corpus filed in that court. In the order, the court stated "Petitioner has submitted exhibits, reflecting that he initiated the Rule 3.850 proceedings on July 3, 2004." (Ex. A at 6.)

A review of this Court's docket and a search through Defendant's files does not reveal any pleadings from Defendant on or about the dates he claims he filed his motions

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for postconviction relief. Defendant must provide evidence of these documents to show the Court he initiated rule 3.850 proceedings before the two-year deadline passed.

ORDERED:

Defendant is **GRANTED** thirty (30) days leave to amend his Motion for Leave to Resubmit Motion for Postconviction Relief Rule 3.850 with Memorandum of Law Included to submit evidence that he timely initiated rule 3.850 proceedings. This is a *non-final, non-appealable* order.

DONE at Jacksonville, Duval County, Florida, on March 8, 2016.

Mark Hulsey III
MARK HULSEY, III
CIRCUIT COURT JUDGE

Copies to:

Office of the State Attorney
Division: CR- A

Travis A. Welsh
DOC #D95328
South Bay Correctional Facility
600 U.S. Highway 27, South
South Bay, FL 33493-2233

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

CASE NO.: 16-2000-CF-01315-AXXX-MA

DIVISION: CR-A

STATE OF FLORIDA

v.

May 2016

TRAVIS A. WELSH,
Defendant.
_____/

ORDER DIRECTING STATE TO FILE A RESPONSE TO DEFENDANT'S MOTION FOR LEAVE TO RESUBMIT MOTION FOR POSTCONVICTION RELIEF RULE 3.850 WITH MEMORANDUM OF LAW INCLUDED

This matter came before the Court on Defendant's *pro se* Motion for Leave to Resubmit Motion for Postconviction Relief Rule 3.850 with Memorandum of Law Included, filed on December 23, 2013, pursuant to Florida Rule of Criminal Procedure 3.850.

Defendant asserts he filed a timely motion for postconviction relief pursuant to rule 3.850 on July 3, 2004, and an amended motion on May 18, 2005. A review of the Court's docket and a search through Defendant's files does not show any pleadings from Defendant on or about the dates he claims he filed his motions for postconviction relief.

To support his assertion of timely filing his motions for postconviction relief, Defendant attaches an order from the Middle District of Florida dismissing his Petition for Writ of Habeas Corpus filed in that court. In the order, the court stated "Petitioner has submitted exhibits, reflecting that he initiated the Rule 3.850 proceedings on July 3, 2004." (Ex. A at 6.)

The Court issued an order on March 9, 2016, granting Defendant leave to amend his motion to include the exhibits he submitted to the federal court that allegedly show he timely filed his rule 3.850 motion. Defendant filed the amended Motion on March 24, 2016, and attached the following exhibits:

- *Pro se* Motion for Rehearing, filed in the Florida Supreme Court on June 23, 2003;
- Certificate of Service, dated July 3, 2004, that does not refer to a specific filing;
- Request, dated July 6, 2004, for a copy of a 3.850 motion; Form DC5-154 (D.O.C.)
- Proof of Service by *Pro Se* Inmate of a 3.850 motion for postconviction relief, dated May 18, 2005; w/in 2yr of June 23, 2003 + 90 day
- Request, dated May 17, 2005, for a copy of a 3.850 motion and exhibits; DC5-154
- Inquiry to the Fourth Judicial Circuit Clerk of Court, dated April 9, 2005, as to the disposition of a motion for postconviction relief; due diligence w/in 2yrs
- Motion for Case Status, dated September 1, 2005; due diligence
- Inquiry to the Fourth Judicial Circuit Clerk of Court, dated December 12, 2005, as to the disposition of a motion and amended motion for postconviction relief;
- Amended Motion for Postconviction Relief, without a prison stamp date but with a certificate of service dated March 24, 2016; ? Face of motion contains "Provided to SBCC on 3-24-16 for mailing" Prison stamp
- Letter from the Second Judicial Circuit of Florida's Office of the Public Defender to Defendant, dated June 26, 2003, wherein the Assistant Public Defender advised Defendant he could raise ineffective assistance of appellate counsel and discussed possible ineffective assistance of trial counsel claims; following order to Amend dated 3/2/16
- Letter to trial court, filed on October 10, 2000, regarding Defendant's rights to a speedy trial;
- Portions of unidentified transcripts;

- January 29, 2002 Letter to Defendant from the New Hampshire Department of Corrections providing Defendant with the dates he was incarcerated at a facility in New Hampshire; and

- Portions of unidentified transcripts.

The only exhibit that is possibly relevant is the certificate of service, dated July 3, 2004. That document by itself does not show Defendant filed a *motion for postconviction relief* on that day. The certificate of service indicates the document was "furnished to the State Attorney . . . ." Because there is no record of Defendant having filed his motion and amended motion with this Court, the State is directed to file a written response as to whether Defendant provided these motions to the correctional institution for mailing on or around July 3, 2004 and May 18, 2005, respectively. The State shall file its written response within sixty (60) days of the filing of this Order, attaching all documents in support of its position.

DONE at Jacksonville, Duval County, Florida, on May 5th, 2016.

Mark Hulsey III

MARK HULSEY, III
CIRCUIT COURT JUDGE

COPY

Copies to:

Office of the State Attorney
Division: CR- A

Travis A. Welsh
DOC #D95328
South Bay Correctional Facility
600 U.S. Highway 27, South
South Bay, FL 33493-2233

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

CASE NO.: 16-2000-CF-01315-AXXX-MA

DIVISION: CR-A

STATE OF FLORIDA

v.

July 22 2016

TRAVIS A. WELSH,
Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION FOR LEAVE TO RESUBMIT MOTION FOR POSTCONVICTION RELIEF RULE 3.850 WITH MEMORANDUM OF LAW INCLUDED

This matter came before the Court on Defendant's *pro se* Motion for Leave to Resubmit Motion for Postconviction Relief Rule 3.850 with Memorandum of Law Included, filed on December 23, 2013, pursuant to Florida Rule of Criminal Procedure 3.850.

On December 15, 2000, a jury found Defendant guilty of sexual battery (Count Two) and committing a lewd, lascivious, or indecent act (Count Four).[1] (Ex. A.) On February 1, 2001, the Court sentenced Defendant to life in prison on Count Two and to a concurrent fifteen-year term on Count Four. (Ex. B.) On May 20, 2002, the First District Court of Appeal affirmed Defendant's judgment and sentence. (Ex. C.) The Florida Supreme Court approved the First District Court of Appeal's decision. See Welsh v. State, 850 So. 2d 467, 471-72 (Fla. 2003).

On October 24, 2006, the Court denied, as untimely, Defendant's Motion to Apply Mailbox Rule to Amended 3.850 and Notice of Supplemental Authority. (Ex. D.)

[1] The counts are incorrectly identified on the verdict forms as Count One and Court Two.

22 E

The Court rejected Defendant's contention that he filed timely motions on July 9, 2004, and on May 18, 2005. According to the Court, "[a]fter careful review of the Court file, this Court finds no activity transpired in Defendant's case in the calendar years 2004 and 2005." (Ex. D at 1.)

Here, Defendant again asserts he filed a timely motion for postconviction relief pursuant to rule 3.850 on July 9, 2004, and an amended motion on May 18, 2005. Another review of the Court's docket and search through Defendant's files does not reveal any pleadings from Defendant on or about the dates he claims he filed his motions for postconviction relief. Defendant, however, supports his assertion by relying on an order from the Middle District of Florida on Defendant's Petition for Writ of Habeas Corpus. (Ex. E.) There, the court acknowledged that Defendant "submitted exhibits, reflecting that he initiated the Rule 3.850 proceedings on July 3, 2004." (Ex. E at 6.) The court, however, did not conclusively find Defendant's motions were timely filed but, instead, wrote "assuming *arguendo* that Petitioner filed his original Rule 3.850 motion on July 3, 2004, that motion would have been timely . . . ." (Ex. E at 6, n.3.)

The exhibits Defendant provided this Court, including copies of the motions at issue, belie Defendant's assertion of timely filing these motions. The certificates of service in the July 9, 2004 motion and in the May 18, 2005 amended motion show Defendant served the Office of the State Attorney, not the Clerk of the Court. Defendant used the address of only the Office of the State Attorney in both certificates. (Exs. F at 23, G at 16.) Consequently, Defendant never filed his 2004 motion or his 2005 amended motion with the Court.

Therefore, it is No mention of finality nor thirty (30) day appealability.

ORDERED that Defendant's Motion for Leave to Resubmit Motion for Postconviction Relief Rule 3.850 with Memorandum of Law Included is **DENIED**.

DONE at Jacksonville, Duval County, Florida, on July 22, 2016.

CIRCUIT JUDGE

CR-I for CR-A

different Judge from Husley III

Copies to:

Office of the State Attorney
Division: CR- A

Travis A. Welsh
DOC #D95328
South Bay Correctional Facility
600 U.S. Highway 27, South
South Bay, FL 33493-2233

Enter 12-23-13
Grant 3-8-16
Deny 7-22-16

CERTIFICATE OF SERVICE

I certify a copy of this Order has been furnished to Defendant by U.S. mail on July 26th, 2016.

8-13-2016 dcard: 1:15

Deputy Clerk

Case No.: 16-2000-CF-01315-AXXX-MA
Exhibits: A-G
/cfb

CLERK OF THE CIRCUIT COURT SUUM CUIQUE DUVAL COUNTY, FLORIDA

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

CASE NO.: 16-2000-CF-01315-AXXX-MA

DIVISION: CR-A

STATE OF FLORIDA

v.

TRAVIS A. WELSH,
Defendant.
_____/

ORDER DENYING DEFENDANT'S AMENDED MOTION FOR POST CONVICTION RELIEF AND CAUTIONING DEFENDANT FROM FUTURE FRIVOLOUS FILINGS

This matter came before this Court on Defendant's *pro se* "Amended Motion for Post Conviction Relief with Memorandum of Law Included," filed on July 12, 2018, pursuant to Florida Rule of Criminal Procedure 3.850.

On December 15, 2000, a jury found Defendant guilty of Sexual Battery (Count Two) and Lewd, Lascivious, or Indecent Act- Fondling (Count Four). (Ex. A.) On February 1, 2001, the trial court sentenced Defendant to life imprisonment on Count Two and a concurrent fifteen-year term of imprisonment on Count Four. (Ex. B.) On May 20, 2002, the First District Court of Appeal affirmed Defendant's convictions and sentences. (Ex. C.) The Florida Supreme Court approved the First District Court of Appeal's decision. See Welsh v. State, 850 So. 2d 467, 471-72 (Fla. 2003).

On October 24, 2006, this Court denied Defendant's Motion to Apply Mailbox Rule to Amended 3.850 and Notice of Supplemental Authority as untimely, rejecting Defendant's contention that he timely filed motions on July 9, 2004, and May 18, 2005. (Ex. D.) On July 22, 2016, this Court denied Defendant's Motion for Leave to Resubmit Motion for Postconviction

Exhibit G

Relief Rule 3.850 with Memorandum of Law Included, filed on December 23, 2013. (Ex. E.) The First District Court of Appeal affirmed that decision on September 22, 2017. (Ex. F.)

In the instant Motion, Defendant attempts to file an Amended Motion resting in part on those previous Motions this Court has already dealt with to the best of its ability. This Court finds the instant Motion is untimely with no exception, nor do any of the claims within the instant Motion meet some exception. See Fla. R. Crim. P. 3.850(b). As such, this Motion is abusive and sanctionable. See Johnson v. State, 44 So. 3d 198 at 200 (Fla. 4th DCA 2010) ("Untimely post-conviction challenges, which do not establish an exception to the two-year time limit, are abusive and sanctionable."). Accordingly, this Court cautions Defendant 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 (2018), which may include the forfeiture of gain time pursuant to section 944.28(2)(a). See Fla. R. Crim. P. 3.850(n)(3)-(4); 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 order to show cause); accord Ferris, 100 So. 3d at 143 (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 Fla. R. Crim. P. 3.850(n)(4).

Exhibit C

ORDERED AND ADJUDGED that Defendant's *pro se* "Amended Motion for Post Conviction Relief with Memorandum of Law Included," filed on July 12, 2018, is hereby **DENIED**. Defendant shall have thirty (30) days from the date this Order is filed to take an appeal, by filing Notice of Appeal with the Clerk of the Court.

DONE AND ORDERED in Jacksonville, Duval County, Florida, on _____, 2018.

ORDER ENTERED

DEC 03 2018

/s/ Bruce R. Anderson Jr.

_____,

BRUCE R. ANDERSON, JR.
Circuit Judge

Copies to:

Office of the State Attorney
Division: CR-A

Travis Welsh
DOC # D95328
South Bay Correctional Facility
600 U.S. Highway 27, South
South Bay, Florida 33493-2233

CERTIFICATE OF SERVICE

I do hereby certify that a copy hereof has been furnished to the above-named parties by United States mail on December 4th, 2018.

_____,
Deputy Clerk

Case No.: 16-2000-CF-01315-AXXX-MA
Attachments: Exhibits A-F
/bjj

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Exhibit 5

EXHIBIT - "D"

STATE OF FLORIDA,	IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA
vs.	CASE NO.: 162000CF001315AXXX
TRAVIS A. WELSH /	DIVISION: CR A

RESPONSE TO DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF

NOTICE OF NO CONFIDENTIAL INFORMATION WITHIN COURT FILING

Pursuant to Florida Rule of Judicial Administration 2.420(d)(2), the filer of the document attached, to-wit : State's Response to Defendant's Motion for Post-Conviction Relief, indicates that there is no confidential information included within the document being filed.

A. **Procedural and factual history relevant to the two motions at issue**

This matter comes before the Court on Defendant's Motion for Post-Conviction Relief filed pursuant to Florida Rule of Criminal Procedure 3.850, wherein, the Defendant raised seven (7) grounds for relief premised upon claims of ineffective assistance of trial counsel. In this case, the Defendant was convicted by a jury on December 15, 2000 for the crimes of sexual battery and lewd and lascivious. (State's Exhibits A and B). On February 1, 2001, the Court sentenced the Defendant to life imprisonment as to the sexual battery and fifteen years in prison as to the lewd and lascivious. (State's Exhibit C). The Defendant appealed his conviction and a mandate was issued on May 23, 2002. However, the Defendant sought discretionary review with the Florida Supreme Court and the mandate was issued on June 12, 2003. Welsh v. State, 850 So.2d 467 (Fla. 2003). The Defendant also sought a rehearing with the Florida Supreme Court, but that motion was stricken as unauthorized on August 11, 2003.

In the case sub judice, the Defendant claims his original Motion for Post-Conviction Relief was filed on July 9, 2004 based upon the mailbox rule. The original Motion contained seven

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grounds alleging ineffective assistance of counsel, to-wit : 1) failed to move for dismissal because the Defendant was charged by Information rather than by Indictment; 2) failed to ensure proper jury instructions provided to jury; 3) failed to ensure a presentence investigation report was ordered prior to sentencing; 4) failed to object to the testimony of witness Vargas; 5) failed to file an adequate judgment of acquittal motion; 6) failed to move for a statement of particulars to narrow the charged date range and 7) failed to impeach the victim with inconsistent statements. The Defendant also claims that he filed a second motion on May 18, 2005 based upon the mailbox rule. The 2005 motion was identical to the Defendant's original 2004 Motion. If the Defendant had properly filed the two motions at issue with the clerk's office, this court would arguably have jurisdiction.

On December 23, 2013, the Defendant filed a motion to resubmit the 2004 Motion. On January 7, 2014, the Defendant filed a motion to amend, dated December 26, 2013, which contained the same grounds as the original motion filed in 2004. On March 9, 2016, this court granted the Defendant leave to submit an amended motion with thirty days. On March 24, 2016, the Defendant filed an amended motion to his 2004 Motion, which was identical except he conceded grounds 1, 4 and 6. Therefore, if this court decides to consider the Defendant's 2004 Motion, the only grounds still at issue in the 2004 Motion are grounds 2, 3, 5 and 7. Because the two motions were never received by the clerk of court, and thus never technically filed, this court has directed the State to review its file to determine whether or not the State had been served with the two motions from 2004 and 2005. The court allowed the State until July 5, 2016 to provide a response. Thus, this Response is timely filed.

B. **Procedural and factual history of subsequent post-conviction motions filed**

On January 3, 2006, the Defendant filed a motion to apply the mailbox rule to the 2004 and 2005 motions. On February 23, 2006, he then re-filed the 2004 Motion. On October 24, 2006, the trial court denied the Defendant's motion to apply the mailbox rule and the appellate court affirmed that ruling by mandate issued on July 16, 2007.

On January 5, 2009, the Defendant filed another 3.850 motion, but this time, he alleged newly discovered evidence. The motion contained eight grounds, to-wit : 1) court erred by using the wrong standard when denying the Defendant's judgment of acquittal; 2) the Information was fundamentally defective because the State Attorney did not sign it; 3) the Defendant was charged under an unconstitutional statute; did not receive a guideline sentence and was sentenced improperly because the jury did not determine aggravation and mitigation; 4) court erred by retaining jurisdiction over the Defendant's sentence; 5) the Defendant was charged with a fundamentally defective Information because it used the word 'did' rather than 'alleged'; 6) the Defendant was charged with a fundamentally defective Information because it used the word 'vagina'; 7) court erred by not explaining the penalties to the jury and 8) court erred by not applying the mailbox rule. The Defendant filed a motion to amend and consolidate ground 8. On November 17, 2010, the trial court denied the Defendant's motion on the merits and a mandate was issued on May 6, 2011 affirming the trial court's ruling.

C. **The mailbox rule**

Florida has adopted the federal 'mailbox rule' relating to inmate filings. Haag v. State, 591 So.2d 614 (Fla. 1992). The mailbox rule is construed strictly and thus ***an inmate does not receive the benefit of the rule if he has failed to meet his responsibility of doing all he***

reasonably can to ensure documents are received for filing in a timely manner. Lofton v. United States, 2007 WL 1789117, 1 (M.D. Fla. 2007). (Emphasis added). Specifically, if an inmate does not avail himself of a system to establish the date of filing, when one is available, the prisoner is not entitled to the benefit of the mailbox rule. Price v. Philpot, 420 F.3d 1158, 1164, n. 5 (10th Cir. 2005). Florida Administrative Code 33-210.102(8)(g) provides for the following procedure for the processing of outgoing legal mail :

> Inmates shall present all outgoing legal mail unsealed to the mail collection representative to determine, in the presence of the inmate, that the correspondence is legal mail and that it contains no unauthorized items. Only the address may be read to determine whether it is properly addressed to a person or agency listed [in the Rule as a proper recipient of legal mail]. If the outgoing mail contains unauthorized items or is not legal mail, the inmate shall be subject to disciplinary action. If the outgoing mail is legal mail and it contains no unauthorized items, the mail collection representative ***shall stamp the document(s) to be mailed*** and the inmate's copy, if provided by the inmate, "provided to (name of institution) on (blank to insert date) for mailing." The mail collection representative shall then have the inmate initial the document(s) next to the stamp. For confinement areas, the staff member who picks up the legal mail each day shall stamp the documents, have the inmate place his or her initials next to the stamp, and have the inmate seal the envelope in the staff member's presence. The use of mail drop boxes for outgoing legal mail is prohibited.

The mailbox rule is in place for a reason. When an inmate complies with this administrative rule, he will have proof of the mailing of the legal document. When an inmate chooses not to comply with this rule, he will not have proof of when the document was mailed. Thus, in order to receive the benefit of the mailbox rule, an inmate housed in an institution that has a system designed for handling legal mail which provides a way to record when the document was relinquished to institution officials for mailing ***must*** use that system. (Emphasis added). Green v. State, ---So.3d---, 2016 WL 455652, 1 (Fla. 1st DCA 2016), citing Rivera v. Dep't of Health, 177 So.3d 1, 3 (Fla. 1st DCA 2015). In Green, the trial court denied the defendant's alleged timely motion for a rehearing on October 1, 2015. (State's Exhibit D). The Green defendant's

certificate of service for the notice of appeal was dated October 23, 2015. (State's Exhibit D). The envelope from the prison was stamped October 29, 2015. (State's Exhibit D). The notice of appeal was filed with the clerk's office on November 3, 2015. (State's Exhibit D). The First District Court of Appeals held that because the defendant did not use the institution's mailing system that was in place, he could not receive the benefit of the mailbox rule, and thus, his notice of appeal was untimely filed. Id. (State's Exhibit E).

In addition to requiring that an inmate use the system that is in place, the inmate must properly address the document being mailed. In U.S. v. Rodriguez, although the tenth circuit declined to determine whether an inmate qualifies for the mailbox rule when he uses an incorrect mailing address, the court noted that the district court denied the inmate's petition in large part because the wrong address was used when mailing the document. U.S. v. Rodriguez, 422 Fed.Appx. 668, 670 (United States Court of Appeals, Tenth Circuit, 2011). Furthermore, in Smith, the United States District Court noted that a party loses the benefit of the mailbox rule if the party sent the document to the wrong address and thus there was no delivery to the intended recipient. Smith v. Jenkins. 777 F.Supp.2d 264 (United States District Court, D. Mass., 2011), citing Univ. Emergency Med. Found v. Rapier Invs. Ltd., 197 F.3d 18, 23 (1st Cir. 1999) and Lightfoot v. United States, 564 F.3d 625, 628 (3d Cir. 2009). As noted below, the certificate of service for the Defendant's 2004 Motion indicated that the document was being mailed to the State Attorney's Office but does not include the Clerk's Office as a recipient of the document. Additionally, in the Defendant's 2005 Motion, although the certificate of service listed both the State Attorney's Office and the Clerk's Office, only one address was listed, which was the address of the State Attorney's Office and where the pleading was received.

D. The State received Defendant's 2004 and 2005 post-conviction motions

As directed by this court, the State reviewed its file and did find the Defendant's 2004 and 2005 post-conviction motions. The 2004 Motion has a date stamp on it that indicates it was 'provided to Hamilton C.I. on 7-9-04 for mailing' and has the initials 'T.W.' (State's Exhibit F). The State Attorney's Office date stamped that pleading on July 12, 2004, which would indicate that was the date the pleading was received by the office. The certificate of service indicates that the document at issue was to be mailed to the State Attorney's Office located at the Duval County Courthouse, 330 East Bay Street, Jacksonville, Florida 32202. The certificate of service does not indicate that the document at issue was also mailed to the Clerk's Office.

The 2005 motion does not have a date stamp on it indicating when it was provided to Hamilton Correctional Institution. (State's Exhibit G). There is a name written into the certificate of service that is not legible indicating that the document was placed into that person's hands, a Hamilton Correctional Institution mailroom official, on May 18, 2005. Thus, arguably, because the Defendant did not follow the mailbox rule and obtain a stamp from the prison office, the 2005 document cannot be deemed filed at the time the document was placed with a prison official. The State Attorney's Office date stamped that pleading on May 20, 2005, which would indicate that was the date the pleading was received by the office. However, although the certificate of service indicated that the document was to be mailed to both the State Attorney's Office and the Clerk's Office, there was only one address listed, which is the address noted above, and thus, there is no evidence that the Defendant actually mailed a separate copy of the document to the clerk's office.

Conclusion

Although the Defendant mailed his 2004 and 2005 post-conviction motions to the State Attorney's Office in a timely manner, there is no evidence that the documents were mailed to the Clerk's Office. Therefore, the Defendant cannot use the mailbox rule to show that the motion were timely mailed. Furthermore, this issue has already been decided by the trial court and is now law of the case. Specifically, the Defendant brought this same matter to the court's attention when he filed his motion to apply the mailbox rule on January 3, 2006. The Defendant attached his 2004 Motion and asked that the trial court accept it as timely filed in light of the mailbox rule. The trial court denied the Defendant's Motion on October 24, 2006, and the First District Court of Appeals affirmed that ruling on July 16, 2007. The law of the case doctrine requires that "questions of law actually decided on appeal must govern the case in the same court and the trial court, through all subsequent states of the proceedings." State v. McBride, 848 So.2d 287, 289 (Fla. 2003). Accordingly, the law of the case doctrine procedurally bars the Defendant from re-litigating the same issue. Arbelaez v. State, 775 So.2d 909, 915 (Fla. 2000).

WHEREFORE, the State suggests that although the State was timely served with the Defendant's post-conviction motions from 2004 and 2005, there is no evidence that the Defendant properly filed them with the clerk's office. Furthermore, this issue has been previously litigated and the Defendant is procedurally barred by the law of the case doctrine from re-litigating the same issue. Therefore, for the reasons stated above, despite the service to the State Attorney's Office, the Defendant's motions should not be considered timely filed.

EXHIBIT - "E"

PROVIDED TO HAMILTON C.I. ON
7-9-04 FOR MAILING ZW.

IN THE CERCUET COURT OF THE FOURTH
JUDECIAL CERCUET IN AND FOR DUVAL COUNTY
FLORIDA

STATE OF FLORIDA

V

CASE NO: 00-1315

TRAVIS WELSH

MOTION FOR POST CONVICTION RELIEF
WITH MEMORANDUM OF LAW INCLUDED

COMES NOW, THE DEFENDANT, TRAVIS WELSH, PRO SE, PURSUANT TO RULE 3.850 FLA. R. CRIM. P. AND RESPECTFULLY MOVES THIS HONORABLE COURT TO GRANT THE RELIEF REQUESTED HEREIN, AND AS GROUNDS IN SUPPORT THEREOF, STATES THE FOLLOWING:

1. NAME AND LOCATION OF THE COURT WHICH ENTERED THE JUDGEMENT OF CONVICTION UNDER ATTACK: 4TH JUDICIAL CIRCUIT, DUVAL COUNTY, JACKSONVILLE, FL.

2. DATE OF JUDGEMENT OF CONVICTION: FEBRUARY 1, 2001

3. LENGTH OF SENTENCE: MANDATORY NATURAL LIFE WITHOUT PAROLE PLUS 15 YEARS.

4. SENTENCING JUDGE: WADDELL WALLACE

5. NATURE OF OFFENSE(S) INVOLVED: F.S. 794.011(2)(A)) AND 800.04(1).

F 39

PROVIDED TO HAMILTON C.I.
7/3/4RH FOR MAILING
JW.

OATH

UNDER THE PENALTIES OF PERJURY, PURSUANT TO FLORIDA STATUTE 92.525, I DECLARE THAT I HAVE READ THE FOREGOING MOTION AND THE FACTS STATED IN IT ARE TRUE, OF THIS 3.850.

RESPECTFULLY SUBMITTED

Travis A. Welsh

TRAVES WELSH
DC# D95328 DORM I-1211 Low
HAMILTON CI MAIN UNIT
10650 SW 46TH ST
JASPER, FL 32052

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, THAT A TRUE AND CORRECT COPY OF THE FOREGOING HAS BEEN FURNISHED TO THE STATE ATTORNEY FOR DUVAL COUNTY AT 600 DUVAL COUNTY COURTHOUSE, 330 E. BAY ST. JACKSONVILLE, FL, 32202 AND THAT THE FOREGOING WAS PLACED IN THE HANDS OF AN INSTITUTIONAL OFFICIAL FOR MAILING BY U.S. MAIL THIS 3rd DAY OF July, 2004.

R. Fleet

Travis A. Welsh

TRAVES WELSH
DEFENDANT, PRO SE

F

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EXHIBIT - "F"

Ex. A

5th, then?

MS. COLL: Yes, sir.

Judge, I know that the count that he was found guilty of is mandatory life. He has felony convictions. We have the judgments and sentences from up north but not in Jacksonville. Mr. Lazarus indicated that on another case like this that he had they still did a PSI, considering the sentence, so that's something to consider. I know it takes a couple of weeks to do that, however, I know Ms. Hanania and I will be available next week or the week after to put it back on the calendar. So I don't know how you want to handle that, or if Ms. Hanania has a position as to the PSI.

No P.S.

MS. HANANIA: Your Honor, I think it would be best to order a PSI. I actually am not going to be available next week or the week after. Of course, if the Court sets it, I will come in for the hearing. So whatever the Court wants to do in setting a date, that's fine.

THE COURT: I can order a PSI now, and the fact that I ordered it can be

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a case like this, even though it's still called a capital case, that the Supreme Court has felt that the need for the indictment and a 12-person jury was really reserved for cases involving death. And I think that's the only place now under Florida juris prudence where an indictment and a 12-person jury is required for a criminal charge.

So she is right, and that was not something that we overlooked or made a mistake about. And so the reason no relief is available to you on that ground is these cases do not require an indictment or a 12-person jury.

MS. HANANIA: And, Your Honor, I'd just like to just add the fact that Mr. Welsh raised these issues before the trial, and I explained this to him before the trial. So these were things that he and I had talked about, and I explained to him that under Florida case law that my understanding of Florida case law, my review of Florida case law, did not mandate either an indictment or a 12-member jury, so we had had these discussions in the past.

THE COURT: And then I have looked at the other matters raised in Mr. Welsh's motion. Most of the motions do address the indictment and the jury issue and the capital crime issue. There are some

F1

EXHIBIT - "G"

Clerk of the Circuit and County Courts
Duval County
330 East Bay Street
Jacksonville, Florida 32202

same address in Certificate

JIM FULLER
Clerk of the Circuit and County Courts

Felony Department
Room M-101
(904) 630-2065

DATE: DECEMBER 19,2005
IN RE: 2000-CF-1315

The fee for copies is $1.00 per page. Certified copiesare $1.50 for each document sealed.

The copies/search you request will cost Please make a certified check, cashier's check or money order payable to JIM FULLER, Clerk of the Circuit Court, and we shall be glad to supply your request.

Enclosed is the information you requested. Your payment was in excess of that required and our check representing a refund of a portion of your payment will follow.

We fail to find on our indexes any reference to the matter inquired about between the parties referred to in your letter.

The payment you sent us is not sufficient to pay for the search/copies you requested. We are therefore returning your check with the request that you send a certified check, cashier's check or money order payable to JIM FULLER, Clerk of the Circuit Court in the amount along with a pre-stamped, self addressed envelope.

The service charge for conducting a search of the public record is $1.50 for each year on the index that is searched for any single name.

Kindly return this letter to us. The number references on this letter will expedite preparation of the material you request.

Please note that we cannot accept your personal check. You must supply us a certified check, cashier's check or money order payable to JIM FULLER, Clerk of the Circuit Court

Please see attached. Note, your motion is pending and at this time we do not have an approximate date for ruling.

X Other: Please see attached, we are not showing receipt of any motions sent in 2004 or 2005 for case number 2000-cf-1315.

JIM FULLER
CLERK OF CIRCUIT COURT

By: _____
Deputy Clerk

4/4

Robert Hill, Liberty Co. Cthse.
Bristol 32321 ..... 850/643-2215

THIRD Judicial Circuit

(Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee and Taylor Counties)

Judges:
James Roy Bean (Chief Judge)
P.O. Drawer 1000,
Perry 32347..... 850/838-3520
Fax 850/838-3521
Thomas J. Kennon, Jr.
Suwannee County Courthouse,
Live Oak 32060 ..... 386/362-6353
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Lake City 32056-2083 ..... 386/758-2147
Fax 386/758-2151
E. Vernon Douglas
P.O. Box 2075,
Lake City 32056 ..... 386/758-1010
Fax: 386/758-1188
John W. Peach
101 Hamilton Co. Cthse.,
207 N.E. First St.,
Jasper 32052 ..... 386/792-1719
Fax: 386/792-1937
Julian E. Collins
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Lake City 32056 ..... 386/719-7546
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Perry 32347 ..... 850/584-2886
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Cross City 32628 ..... 352/498-1248
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Ricky Lyons (Lafayette)
P.O. Box 88, Mayo 32066 .... 386/294-1600
Tim Sanders (Madison)
P.O. Box 237, Madison 32340. 850/973-1500
Kenneth Dasher (Suwannee)
[illegible]

FOURTH Judicial Circuit

(Clay, Duval and Nassau Counties)
www.duvalcourthouse.com

Judges:
Donald R. Moran, Jr. (Chief Judge)
Duval Co. Cthse., Rm. 220, 330 E. Bay St.,
Jacksonville 32202 ..... 904/630-2541
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Duval Co. Cthse., Rm. 210,
Jacksonville 32202 ..... 904/630-2591
L. Haldane Taylor
Duval Co. Cthse., Rm. 210,
Jacksonville 32202 ..... 904/630-2583
Frederick B. Tygart
Duval Co. Cthse., Rm. 202,
Jacksonville 32202 ..... 904/630-2536
L. Page Haddock
Duval Co. Cthse., Rm. 206,
Jacksonville 32202 ..... 904/630-2526
Bernard Nachman
Duval Co. Cthse., Rm. 202,
Jacksonville 32202 ..... 904/630-2532
Charles O. Mitchell, Jr.
Duval Co. Cthse., Rm. 208,
Jacksonville 32202 ..... 904/630-2395
Jean M. Johnson
Duval Co. Cthse., Rm. 204,
Jacksonville 32202 ..... 904/630-2530
Hugh A. Carithers, Jr.
Duval Co. Cthse., Rm. 206,
Jacksonville 32202 ..... 904/630-2876
Family Law Division:
E. McRae Mathis
Duval Co. Cthse., Rm. 200,
Jacksonville 32202 ..... 904/630-2111
Brad Stetson
Duval Co. Cthse., Rm. 200,
Jacksonville 32202 ..... 904/630-2111
David M. Gooding
Duval Co. Cthse., Rm. 356,
Jacksonville 32202 ..... 904/630-2111
David C. Wiggins
Duval Co. Cthse., Rm. 208,
Jacksonville 32202 ..... 904/630-2111
Waddell A. Wallace
Duval Co. Cthse., Rm. 227,
Jacksonville 32202 ..... 904/630-2111
A.C. Soud, Jr.,
Duval Co. Cthse., Rm. 224,
Jacksonville 32202 ..... 904/630-2111
Criminal Division:
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Duval Co. Cthse., Rm. 224,
Jacksonville 32202 ..... 904/630-2592
Michael R. Weatherby
Duval Co. Cthse., Rm. 204,
Jacksonville 32202 ..... 904/630-2524
Peter L. Dearing
Duval Co. Cthse., Rm. 219,
Jacksonville 32202 ..... 904/630-2540
Lance M. Day
Duval Co. Cthse., Rm. 229,
Jacksonville 32202 ..... 904/630-2349
Henry E. Davis
Duval Co. Cthse., Rm. 228,
Jacksonville 32202 ..... 904/630-2534
Charles W. Arnold
Duval Co. Cthse., Rm. 201,
Jacksonville 32202 ..... 904/630-2567
Karen K. Cole
Duval Co. Cthse., Rm. 227,
Jacksonville 32202 ..... 904/630-7154
Juvenile Division:
[illegible]

W. Gregg McCaulie
Duval Co. Cthse., Rm. 107,
Jacksonville 32202 ..... 904/630-2537
Jack M. Schemer
Duval Co. Cthse., Rm. 107,
Jacksonville 32202 ..... 904/630-2528
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Fernandina Beach 904/879-3750
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Green Cove Springs 32043 904/284-6318
Family Court Services 904/630-7682
Family Mediation Unit 904/630-4700
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191 Nassau Place Yulee 32097
Fax: 904/321-5795

FIFTH Judicial Circuit

(Hernando, Lake, Marion, Citrus and Sumter Counties)
www.jud5.flcourts.org

[illegible] (Chief Judge)
[illegible]
..... 352/401-6770

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EXHIBIT "H"

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

TRAVIS ANTHONY WELSH,

Petitioner,

vs. Case No. 3:08-cv-340-J-34JRK

WALTER A. MCNEIL,
et al.,

Respondents.

ORDER OF DISMISSAL WITH PREJUDICE

Petitioner Travis Anthony Welsh, an inmate of the Florida penal system proceeding pro se and in forma pauperis, initiated this action by filing a Petition for Writ of Habeas Corpus (Petition) (Doc. #1) pursuant to 28 U.S.C. § 2254 on April 1, 2008, pursuant to the mailbox rule.[1] Petitioner challenges a 2001 state court (Duval County, Florida) judgment of conviction for sexual battery and lewd and lascivious assault on the following grounds: (1) the circuit court improperly refused to address his Rule 3.850 motion and amended Rule 3.850 motion under the mailbox rule; (2)

---

[1] The Petition (Doc. #1) was filed in this Court on April 4, 2008; however, giving Petitioner the benefit of the mailbox rule, this Court finds that the Petition was filed on the date Petitioner handed it to prison authorities for mailing to this Court (April 1, 2008). See Houston v. Lack, 487 U.S. 266, 275-76 (1988). The Court will also give Petitioner the benefit of the mailbox rule with respect to his pro se state court filings when calculating the one-year limitations period under 28 U.S.C. § 2244(d).

trial counsel was ineffective for failing to move to dismiss those charges that were brought by Information rather than by a grand jury Indictment; (3) trial counsel was ineffective for failing to ensure that the proper jury instructions were given; (4) trial counsel was ineffective for failing to ensure that a presentence investigation was completed, as the court directed; (5) trial counsel was ineffective for failing to object to the testimony of Margarita Vargas regarding prior bad acts; (6) trial counsel was ineffective for failing to file an adequate motion for judgment of acquittal at the close of the State's case; (7) trial counsel was ineffective for failing to move for a statement of particulars to narrow the one-year period of the offense; and (8) trial counsel was ineffective for failing to properly impeach the alleged victim during the trial testimony.

On April 24, 1996, the President signed into law the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). This law amended 28 U.S.C. § 2244 by adding the following subsection:

> (d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--
>
> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

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> (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
>
> (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
>
> (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d).

Respondents contend, and this Court agrees, that Petitioner has not complied with the one-year period of limitations as set forth in 28 U.S.C. § 2244(d). See Respondents' Motion to Dismiss Petition for Writ of Habeas Corpus (Doc. #13).[2] Petitioner was given admonitions and a time frame to respond. See Court's Order to Show Cause and Notice to Petitioner (Doc. #4). Petitioner filed

[2] The Court will refer to Respondents' exhibits as "Resp. Ex."

Petitioner's Objection to the State's Response (Reply) (Doc. #15) with exhibits (Petitioner's Ex.). This case is ripe for review. 2 #3

The following procedural history is relevant. On October 13, 2000, Petitioner Welsh, by Amended Information, was charged with sexual battery committed upon a person twelve years of age or older, but less than eighteen years of age, by a person in familial or custodial authority on or between January 1, 1998, and January 15, 2000 (count one); sexual battery committed upon a person less than twelve years of age on or between January 1, 1999, and December 31, 1999 (count two); lewd or lascivious molestation (count three); and lewd, lascivious or indecent act - fondling (count four). Resp. Exs. A at 8; B, Amended Information. Counts one and three were severed, and counts two and four proceeded to trial. Resp. Exs. A at 12; C. On December 15, 2000, the jury returned verdicts of guilty as charged. Resp. Ex. C. On February 1, 2001, the court sentenced Petitioner to a term of life imprisonment without the possibility of parole for the offense of sexual battery (count two) and a concurrent term of fifteen years of imprisonment for the offense of lewd, lascivious or indecent act - fondling (count four). Resp. Ex. D.

On appeal, Petitioner, through counsel, filed an Initial Brief of Appellant. Resp. Ex. E. The State filed an Answer Brief, and Petitioner filed a Reply Brief. Resp. Exs. F; G. On May 2, 2002, the appellate court affirmed by issuing a written opinion, see

date of the AEDPA, Petitioner had one year from the date his case became final to file the federal petition (November 3, 2004). His Petition, filed in this Court on April 1, 2008, is due to be dismissed as untimely unless he can avail himself of one of the statutory provisions which extends or tolls the limitations period.

Respondents contend that Petitioner initiated proceedings pursuant to Rule 3.850, Florida Rules of Criminal Procedure, on December 30, 2005 (Response at 3); however, Petitioner has submitted exhibits, reflecting that he initiated the Rule 3.850 proceedings on July 3, 2004. Since Petitioner has submitted the pertinent documents reflecting that his Rule 3.850 proceedings were pending from July 3, 2004, through July 11, 2007, this Court will assume, for purposes of the one-year period of limitations issue, that the federal limitations period was tolled during this period.[3] Thus, the one-year period of limitations began to run on November 4, 2003, and ran two-hundred and forty (240) days until Petitioner filed his pro se Rule 3.850 motion on July 3, 2004. Petitioner's Ex. E. According to Petitioner's exhibits, on May 18, 2005, Petitioner filed a pro se Motion for Leave to Amend Motion for Post

[3] This Court recognizes that the state trial court denied the December 30, 2005, Rule 3.850 motion as untimely since the court found that no activity had transpired in Petitioner's case in 2004 and 2005, and therefore, the Rule 3.850 motion was filed more than two years after his conviction became final. However, assuming arguendo that Petitioner filed his original Rule 3.850 motion on July 3, 2004, that motion would have been timely (within two years after his conviction became final).

Conviction Relief, see Petitioner's Ex. F, and on April 9, 2005, September 1, 2005, and December 12, 2005, Petitioner inquired about the status of his case, see Petitioner's Ex. G. However, on December 19, 2005, the court responded to Petitioner's inquiries, noting that "we are not showing receipt of any motions sent in 2004 or 2005 for case number 2000-cf-1315." Petitioner's Ex. H; Resp. Ex. Q.

On December 30, 2005, Petitioner filed a Motion to Apply Mailbox Rule to Timely 3.850 and a Motion to Apply Mailbox Rule to Timely Amended 3.850. Petitioner's Ex. I; Resp. Ex. Q. And, on April 7, 2006, Petitioner filed a Notice of Supplemental Authority. Petitioner's Ex. J. On October 24, 2006, the court denied Petitioner's December 30, 2005, Rule 3.850 motion as untimely, stating that "[a]fter careful review of the Court file, this Court finds no activity transpired in Defendant's case in the calendar years 2004 and 2005," and therefore concluded that the Rule 3.850 motion was filed more than two years after his conviction became final. Resp. Ex. R.

Petitioner appealed and filed a pro se brief. Resp. Ex. S. The State filed a notice that no answer brief would be filed. Resp. Ex. T. The appellate court per curiam affirmed without issuing a written opinion on May 16, 2007. Welsh v. State, 958 So.2d 928 (Fla. 1st DCA 2007); Resp. Ex. U. On May 25, 2007, Petitioner filed a motion for rehearing (Petitioner's Ex. K; Resp.

Ex. V), which the court denied on June 25, 2007. Petitioner's Ex. L; Resp. Ex. W. The mandate was issued on July 11, 2007. Resp. Ex. X.

The one-year period of limitations began to run again on July 12, 2007, at which time Petitioner had one-hundred and twenty-five (125) days left to file his federal petition in this Court. Thus, Petitioner should have filed his Petition in this Court on November 14, 2007. Petitioner did not file his Petition until April 1, 2008, well beyond the November 14, 2007, deadline.

Petitioner has not set forth any facts showing he is entitled to equitable tolling. The United States Supreme Court set forth the two-prong test for equitable tolling, stating that a petitioner "must show '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way' and prevented timely filing." Lawrence v. Florida, 549 U.S. 327, 336 (2007); see also Downs v. McNeil, 520 F.3d 1311, 1318 (11th Cir. 2008) (stating that equitable tolling "is a remedy that must be used sparingly"); Brown v. Barrow, 512 F.3d 1304, 1307 (11th Cir. 2008). Petitioner has not met this burden.

Petitioner claims that he is not trained in the law and "does not, as a prisoner, have the access to the same monitoring faculties as other litigants or their lawyers." Reply at 6. The lack of a formal education does not excuse Petitioner from his delay in filing a timely federal petition. Moore v. Bryant, No.

5:06cv150/RS/EMT, 2007 WL 788424, at *2-*3 (N.D. Fla. Feb. 12, 2007) (Not Reported in F.Supp.2d) (Report and Recommendation), Report and Recommendation adopted by the District Court on March 14, 2007; see Conner v. Bullard, No. Civ.A. 03-0807-CG-B, 2005 WL 1387630, at *3 (S.D. Ala. June 9, 2005) (Not Reported in F.Supp.2d) (finding the claim of illiteracy to not be justification for equitable tolling of the one-year statute of limitations), Conner v. Bullard, No. CIV.A. 03-807-CG-B, 2005 WL 1629951 (S.D. Ala. July 8, 2005) (Not Reported in F.Supp.2d) (Report and Recommendation Adopted by the District Court); Malone v. Oklahoma, 100 Fed. Appx. 795, 798 (10th Cir. 2004) (not selected for publication in the Federal Reporter) (stating that ignorance of the law, even for an incarcerated pro se petitioner, generally does not excuse prompt filing); Turner v. Johnson, 177 F.3d 390, 392 (5th Cir. 1999) (stating that unfamiliarity with the legal process due to illiteracy does not merit equitable tolling), cert. denied, 528 U.S. 1007 (1999). Petitioner has not shown a justifiable reason why the dictates of the one-year limitations period should not be imposed upon him. For this reason, this Court will dismiss this case with prejudice pursuant to 28 U.S.C. § 2244(d).

EXHIBIT - "I"

(1)

RICARDO THOMPSON, Petitioner, vs. STATE OF FLORIDA, and THE FLORIDA DEPARTMENT OF CORRECTIONS, Respondents.
SUPREME COURT OF FLORIDA
761 So. 2d 324; 2000 Fla. LEXIS 1426; 25 Fla. L. Weekly S 599
No. SC95751
July 13, 2000, Decided

Editorial Information: Subsequent History

Rehearing Granted July 13, 2000. Released for Publication July 25, 2000.

Editorial Information: Prior History

Application for Review of the Decision of the District Court of Appeal - Constitutional Construction. Fifth District - Case No. 5D98-2267. (Brevard County). Thompson v. State, 731 So. 2d 819, 1999 Fla. App. LEXIS 5538 (Fla. Dist. Ct. App. 5th Dist., 1999)

Disposition:

Petitioner's motion for reinstatement granted.

Counsel Richardo Thompson, pro se, Wewahitchka, Florida, for Petitioner. Susan A. Maher, Deputy General Counsel, Department of Corrections, Tallahassee, Florida, for Respondents.

Judges: WELLS, C.J., and SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

CASE SUMMARY

PROCEDURAL POSTURE: Petitioner inmate filed a motion for reinstatement to review the decision of the District Court of Appeal, Fifth District, Brevard County (Florida), which dismissed the petition for review as untimely filed.Inmate's motion for reinstatement granted where court determined it will accept as presumptively timely a pleading which includes certificate of service showing that pleading was placed in hands of officials for mailing on particular date.

OVERVIEW: Petitioner inmate asserted he prepared a notice to invoke discretionary jurisdiction, which he handed over to prison officials for mailing. The petition for review was dismissed as untimely. Petitioner filed a motion for reinstatement, arguing he had timely filed his notice to invoke because he filed his document under the "mailbox rule" for filing established in Haag. Additionally, petitioner argued that since his correctional institution maintained no outgoing mail log, petitioner could not provide any additional evidence that he actually submitted his notice to the officials on time. The court granted petitioner's motion for reinstatement, determining it would no longer require that inmates attempt to obtain additional proof of the timely submission of their documents. Rather, the court would accept as presumptively timely a pleading which included a certificate of service showing that the pleading was placed in the hands of officials for mailing on a particular date, if the pleading would be timely filed if it had been received and file-stamped by the court on that particular date.

OUTCOME: The court granted petitioner inmate's motion for reinstatement. The court concluded that it would accept as presumptively timely a pleading which included a certificate of service showing that the pleading was placed in the hands of officials for mailing on a particular

date if the pleading would be timely filed if it had been received and file-stamped by the court on that particular date.
When an outgoing mail log is maintained at state correctional institutions, inmates may request a certified photocopy of it in order to prove that the inmate did actually place his or her document in the hands of prison officials on a certain date.
The important date for purposes of the mailbox rule is the date when the inmate hands over his or her documents to prison officials for mailing.
In order to carry out the intent of the Supreme Court of Florida's decision in Haag, henceforth Florida courts will presume that a legal document submitted by an inmate is timely filed if it contains a certificate of service showing that the pleading was placed in the hands of prison or jail officials for mailing on a particular date, if that the pleading would be timely filed if it had been received and file-stamped by the court on that particular date. This presumption will shift the burden to the State to prove that the document was not timely placed in prison officials' hands for mailing.

Opinion

{761 So. 2d 325} PER CURIAM.

Petitioner filed a petition for review asserting that the decision in *Thompson v. State*, 731 So. 2d 819 (Fla. 5th DCA1999), expressly construes a provision of the state or federal constitution. *See* Art. V. 3(b)(3), Fla. Const. The petition was dismissed, however, as untimely filed. We have before us petitioner's motion for reinstatement, which we hereby grant. We write to explain that from this point forward, since a large number of Florida's state and county correctional and detention facilities have not set up workable procedures for documenting the date when inmates submit legal documents to them for mailing to the courts, this Court will no longer require that inmates attempt to obtain additional proof of the timely submission of their documents to these officials. We will accept as presumptively timely a pleading which includes a certificate of service showing that the pleading was placed in the hands of officials for mailing on a particular date, if the pleading would be timely filed if it had been received and file-stamped by the Court on that particular date.

FACTS

Thompson appealed his conviction to the Fifth District which, in a written opinion dated April 30, 1999, affirmed. *See Thompson v. State*, 731 So. 2d 819 (Fla. 5th DCA1999). Thompson asserts that he prepared a notice to invoke discretionary jurisdiction which he handed over to prison officials for mailing on May 28, 1999. On the notice, Thompson included a certificate of service indicating that he was submitting his notice (to prison officials) on that same day (May 28, 1999). The Fifth District received and file-stamped the notice on June 3, 1999, and forwarded the notice to this Court, which received and file-stamped it on June 8, 1999. In accordance with the prior policy of this Court, since the notice was not actually filed in this Court within the requisite time-frame, Thompson's petition for review was dismissed as untimely. In the dismissal order, however, Thompson was advised that his case might be reinstated if he established timeliness in a proper motion filed within fifteen days of the date of the order. In a motion for reinstatement, Thompson asserted that he had timely filed his notice to

invoke because he "filed" his document under the "mailbox rule" for filing established in *Haag v. State*, 591 So. 2d 614 (Fla. 1992), when he placed his document in the hands of prison officials on May 29, 1999 (he later stated that he erred and meant May 28, 1999). The clerk's office instructed Thompson to send this Court a copy of his institution's outgoing mail log. Thompson responded asserting that the Apalachee Correctional Institution does not keep an outgoing mail log. Thompson attached copies of grievance responses from his institution in which prison officials informed Thompson that it maintained no outgoing mail log. The Florida Department of Corrections (hereinafter the Department) was added as a party and asked to file a preliminary response addressing the practical application of the mailbox rule. The Department responds that it was unaware that the individual institutions had not properly instituted procedures to implement this Court's decision in *Haag*.

Thompson argues that his notice to invoke should have been considered timely because this Court held in *Haag* that an inmate's document is deemed "filed" when he or she places it in the hands of prison officials. Thompson states that he timely placed his notice to invoke in the hands of prison officials, but since his institution maintains no outgoing mail log in which it documents when inmates submit their legal documents to prison officials for mailing, Thompson cannot provide any additional evidence that he actually submitted his notice to the officials on time.

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ANALYSIS

Under this Court's decision in *Haag*, 1 since an inmate loses control of his document after placing it in the hands of prison officials who may not timely mail the document, this Court has held that an inmate's document is deemed "filed" when he or she places it in the hands of prison officials. Nevertheless, we have generally required that inmates provide additional proof, usually in the form of copies of their institutions' outgoing mail logs, that the document was actually placed in prison officials' hands on the relevant date.

In the past, although there was no rule requirement that prisons keep either an outgoing mail log or an incoming mail log, many institutions had both types of mail logs. The most recent version of the Department's rule now specifically requires that all state correctional institutions keep an *incoming* mail log (the rule does not cover county jails). However, there is still no official requirement that an institution keep an *outgoing* mail log. *See* Fla. Admin. Code R. 33-602.402(15). Some institutions, however, continue to have an outgoing mail log and when such a log is maintained, the inmates may request a certified photocopy of it in order to prove that the inmate did actually place his or her document in the hands of prison officials on a certain date.

Nevertheless, even in a number of institutions which do maintain an outgoing mail log, the log does not comply with the procedures set forth in *Haag*. The important date for purposes of the mailbox rule is the date when the inmate hands over his or her documents to prison officials for mailing. At a number of institutions, the date recorded on the outgoing mail log is the date the document is actually mailed and not the date when it was submitted to prison officials. Therefore, if the inmate happens to be incarcerated in an institution that does not maintain an outgoing mail log or one that

maintains a log which does not provide the relevant information, the inmate cannot meet the burden of proving the document was handed over to prison officials in a timely manner. In other words, such inmates are placed in a "Catch-22" situation due to no fault of their own. Therefore, in order to carry out the intent of our decision in *Haag*, henceforth we will presume that a legal document submitted by an inmate is timely filed if it contains a certificate of service showing that the pleading was placed in the hands of prison or jail officials for mailing on a particular date, if that the pleading would be timely filed if it had been received and file-stamped by the Court on that particular date. This presumption will shift the burden to the State to prove that the document was not timely placed in prison officials' hands for mailing. Should the State wish to have a means of verifying or objecting to an inmate's assertion that his or her pleading was actually placed in the hands of prison or jail officials on a particular date, we leave it to the State to create and implement the mechanism for doing so.

Accordingly, petitioner's motion for reinstatement is hereby granted and the State is instructed to file an answer brief on jurisdiction within twenty days of the date this decision becomes final.

It is so ordered.

WELLS, C.J., and SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

Footnotes

Our decision in *Haag* specifically concerned the filing of a postconviction motion. Subsequently, the rule was generally extended to other types of filings. *See, e.g., Gonzalez v. State*, 604 So. 2d 874 (Fla. 1st DCA1992); *Higgs v. State*, 599 So. 2d 274 (Fla. 5th DCA1992).