

No.:

IN THE UNITED STATES
OF SUPREME COURT

ROBERT LEE SWINTON JR.
Petitioner,

VS.

THE STATE OF FLORIDA
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SECOND DISTRICT COURT OF APPEALS

APPENDIX OF THE PETITIONER ROBERT LEE SWINTON JR.

Robert Lee Swinton Jr.
Fed.Reg.No.: 22008-055
FEDERAL CORRECTIONAL INSTITUTION LORETTO
P.O. Box 1000
Cresson, PA 16630

TABLE OF CONTENTS.

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	7
REASON FOR GRANTING THE WRIT	13
CONCLUSION	14

INDEX TO APPENDIX.

APPENDIX A

Page.

State of Florida, Second District Court of Appeals, Per Curiam
Affirmance.

APPENDIX B

(Appendix page numbers appear in brackets at the top of pages)

Decision and Order Appealed to The 2DCA	1
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APPENDIX C

Notice of Appeal to 2DCA	4
Notice of Motion	5
Affidavit of Service	6
Sworn In Forma Pauperis Statement	7

Sworn Affirmation in Support of Motion	12
Tenth Circuit Appendix of Evidence for Defendant	24
1994 PSI Report and Probation Guidelines Scoresheet	27 - 33
Conflicting Florida COA Citations	34 - 42
Memorandum of Law	43
Notice of Motion To Show Cause	45B
Mem. of Law from The Middle District of Florida	47
2DCA Docket Report of 2D15-1600	56
Affidavit from 2D15-1600, 11/30/15	62
Judgment of Richard Cornelius Toney, Co-Defendant	63
Docket Sheet of 1994-CF-2464 as of 02/01/13	70
1994 Complaint and 2001 Revokation Judgment	76

(END OF 2DCA APPENDIX ON APPEAL)

Second District Brief of The Appellant	81
Supplemental Second District Brief of Appellant	103
Notice of Supplemental Authority, 2DCA	112
Appellee's Notice to Court (No filing of brief)	115
Appellant Memorandum of Law	117
Medina v. Inch, 2019 U.S. Dist. LEXIS 38638 at *4 - 5 (Mar. 8, 2019 S.D. Fla.)	121

APPENDIX D

Motion Filed by 2014 Federal Appointed Counsel, Motion
to Correct Sentence, In Polk County, Florida 122

APPENDIX E

Petitioner's Requested "Motion to Correct Sentence, In Polk
County, Florida", Submitted to Federal Court, Federal
and State Counselmen 130

* ALL PAGE NUMBERS ARE BRACKETED AT THE TOP-MIDDLE OF
EACH PAGE OF THE APPENDIX.

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ROBERT L. SWINTON, JR.,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D19-2781

Opinion filed January 15, 2020.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for Polk
County; Larry Helms, Judge.

Robert L. Swinton, Jr., pro se.

PER CURIAM.

Affirmed.

SILBERMAN, LaROSE, and SLEET, JJ., Concur.

[1]
IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO.: CF94-2464-XX

ROBERT LEE SWINTON,

Defendant.

ORDER DENYING DEFENDANT'S
NOTICES OF MOTION FILED ON APRIL 5, 2019, AND MAY 28, 2019

This matter has come before the Court upon Defendant's *Notice of Motion* filed on April 5, 2019, and *Notice of Motion* filed on May 29, 2019.

The April Notice moves this Court for the following:

- 1) "Ineffectiveness of 1994 trial counsel;"
- 2) "Correction, Setting Aside or Vacatur 1994 sentence;"
- 3) Withdrawal of his 1994 plea.

Defendant simultaneously filed an "Affirmation in Support of Motion," an "Appendix of Evidence," and a brief "Memorandum of Law." The May Notice moves this Court to show cause why relief should not be granted in the "pending motion."

Upon consideration of the Notices and other provided documentation, the case record, and applicable law, the Court finds as follows:

Defendant entered a plea in this case on September 23, 1994. On November 3, 1994, he was sentenced to five years' prison to be followed by ten years' probation. The mandate on the appellate court's affirmance of the judgment and sentence¹ was filed on April 19, 1996. On page 3 of the "Affirmation in Support of Motion," Defendant reveals that the present conviction has "unjustly increased" an apparent subsequent "federal sentence" that has nothing to do with the present case.

APPENDIX B

¹ Some monetary conditions of the sentence were stricken and/or reversed.

To the extent that Defendant raises postconviction claims under 3.850, they are procedurally barred as untimely under Fla. R. Crim. P. 3.850(b)².

Defendant does not provide a sustainable argument as to his claim of an illegal sentence. On page 1 of his "Affirmation in Support of Motion," he asks, rather than alleges, whether his 1994 sentence was illegal. On page 4 of the Affirmation, he claims that "State appeal courts at that time" held his sentence illegal because his codefendant was found guilty of a lesser offense the same day Defendant entered his plea. Defendant does not cite to those "State appeal courts," nor is this Court familiar with any decisions of a similar nature. Results of a codefendant's separate trial do not render a defendant's plea and/or sentence illegal.

Defendant's motion to withdraw his plea needed to have been made within thirty days of rendition of sentence, and even then would have had to comply with Fla. R. App. P. 9.140(b)(2)(A)(ii)(a)-(e). The mandate in this case issued twenty-three years ago. The motion to withdraw plea is quite untimely.

Accordingly, it is **ORDERED AND ADJUDGED** that:

- 1) Defendant's 3.850 claim of ineffective assistance of counsel as expressed in his *Notices of Motion* is **DENIED** as untimely.
- 2) Defendant's Motion to Correct Illegal Sentence as expressed in his Notices is **DENIED**.
- 3) Defendant's Motion to Withdraw his 1994 plea in this case is **DENIED** as untimely.
- 4) This is a final order. Defendant has thirty (30) days from the date of this Order within which to appeal this Order to the Second District Court of Appeal.

DONE AND ORDERED at Bartow, Polk County, Florida, this 1st day of July, 2019.

/s/ Larry Helms

LARRY HELMS, Circuit Judge

cc:

-Robert Swinton, DC# 398350, Fed. Corr. Inst., P.O. Box 1000, Cresson, PA 16630

-Victoria Avalon, Esq., Assistant State Attorney

LH/jmp

² Any 3.850 motion commingled in his current filings is also not under oath as required, Fla. R. Crim. P. 3.850(c), and lacks the certifications required by Fla. R. Crim. P. 3.850(n).

I HEREBY CERTIFY that the foregoing is a true copy of the original as it appears on file in the office of the Clerk of the Circuit Court of Polk County, Florida, and that I have furnished copies of this order and its attachments to the above-listed parties on this _____ day of _____, 2019.

CLERK OF THE CIRCUIT COURT

By: _____
Deputy Clerk