Appendix – 1

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

DUANE BLAKE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D19-2823

[January 16, 2020]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Daliah H. Weiss, Judge; L.T. Case No. 50-2009-CF-012955-AXXX-MB.

Duane Blake, Madison, pro se.

No appearance required for appellee.

PER CURIAM.

Affirmed.

GROSS, MAY and KLINGENSMITH, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

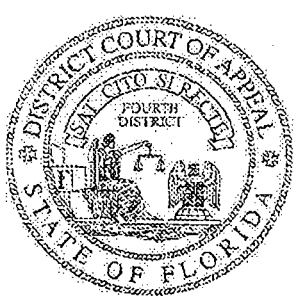
This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable Spencer D. Levine, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

DATE:	**February 17, 2020**
CASE NO.:	**19-2823**
COUNTY OF ORIGIN:	**Palm Beach**
T.C. CASE NO.:	**502009CF012955A**

STYLE: **DUANE BLAKE** **v.** **STATE OF FLORIDA**



LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

Served:

cc: Attorney General-W.P.B. Duane M. Blake State Attorney-P.B.
Clerk Palm Beach

kr

Appendix – 2

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
Criminal Division

STATE OF FLORIDA, Case No.: **09CF012955AWB**

Plaintiff

v.

DUANE BLAKE,

Defendant

_____/

PETITION FOR WRIT OF HABEAS CORPUS
(Alleging Fundamental Error in *Montgomery*[1] Manslaughter Jury Instruction)

COMES NOW, the Petitioner/Defendant, **Duane Blake**, *pro se*, pursuant to Rule 3.850(m), Fla. R. Crim. P. (2018); Rule 1.630, Fla. R. Civ. P. (2018); and section 79.01, Florida Statutes, and respectfully moves this Honorable Court to issue a Writ of Habeas Corpus vacating the judgment and sentence in the above-styled case; and grant him a new trial based upon a fundamental error involving an erroneous manslaughter instruction which resulted in an unlawful conviction and sentence in the criminal proceeding instituted against him by the State of Florida, and thus authorizing his current unlawful confinement.

The Defendant files this postconviction motion in good faith and with a reasonable belief that his claims have merit, are facially and legally sufficient, and have not been previously raised outside of this proceeding. Defendant requests appointment of postconviction counsel; and that in the absence of record evidence conclusively refuting his claims, this Court grant him an evidentiary hearing as provided herein.

[1] *State v. Montgomery*, 39 So.3d 252 (Fla. 2010).

JURISDICTIONAL STATEMENT

This Court has jurisdiction to issue a Writ of Habeas Corpus pursuant to Article V, section 5, Fla. Const.; section 79.01, Florida Statutes; Rule 1.630, Fla. R. Civ. P.; and Rule 3.850(m), Fla. R. Crim. P. (2018).

In *Quarles v. State*, 56 So.3d 254 (Fla. 1st DCA 2011), the court stated that "[t]he rules of procedure applicable to petitions for the extraordinary writ of habeas corpus are set out in Chapter 79, Florida Statutes, and rule 1.630, Fla. R. Civ. P. Accordingly, if the complaint states prima facie grounds for relief, the trial court must issue the writ, requiring a response from the detaining authority."

The *Quarles* court further determined that "[i]n order to state a prima facie case for a writ of habeas corpus, the complaint must allege: (1) That the petitioner is currently detained in custody; and (2) show by affidavit or evidence, probable cause to believe that he or she is detained without lawful authority. (citing § 79.01, Fla. Stat.)." See also *Smith v. Kearney*, 802 So.2d 387, 389 (Fla. 4th DCA 2001) ("To show a prima facie entitlement to habeas relief, the petitioner must show that he is unlawfully deprived of his liberty and is illegally detained against his will").

JUDICIAL NOTICE

Pursuant to § 90.202, Fla. Stat. (2018), the Defendant requests this Court to take Judicial Notice of the fact that this motion for postconviction relief has been prepared by the Defendant with the assistance of a fellow inmate, both of whom are laymen of the law. As such, should the State fault the present motion in any respect, the Defendant humbly seeks the Court's indulgence in viewing the motion under less stringent standards than formal pleadings drafted by trained attorneys. See *Code v. Montgomery*, 725 F.2d 1316 (11th Cir. 1984); *Haines v. Kerner*, 92 S.Ct. 594 (1972); *Boag v. MacDougall*, 102 S.Ct. 700 (1982); and *Green v. United States*, 260 F.3d 78, 83 (C.A. 2 (N.Y.) 2001) (*pro se* complaints are "h[e]ld to less stringent standards that formal pleadings drafted by lawyers"). As such, should this Court find any pleading deficiency herein, Defendant respectfully requests that he be given an opportunity to cure such deficiency in good faith pursuant to *Spera v. State*, 971 So.2d 754 (Fla. 2007).

RELEVANT PROCEDURAL HISTORY

(1) On February 15, 2011, the Defendant was found guilty by a jury of attempted first degree murder with special findings of possession and discharge of a firearm resulting in great bodily harm. (Ex. 1).

(2) On April 14, 2011, the Defendant was sentenced to Life in prison for the murder charge. By a separate bench proceeding, the Defendant was also found guilty of possession of a firearm by a convicted felon, for which he was sentenced on the same date to 15 years in prison, ordered to run concurrent with the sentence imposed on the murder charge.

(3) The Defendant appealed his conviction which was upheld by the Fourth DCA with Mandate issued on January 11, 2013.

(4) The Defendant filed a motion for postconviction relief pursuant to Rule 3.850 on May 13, 2013. This Court denied that motion by Order rendered on May 8, 2014.

(5) The Defendant appealed the denial of his motion to the Fourth DCA, and the appellate court per curiam affirmed the denial without an opinion on the merits of his claims. The Mandate issued on September 15, 2016.

(6) On or about May 2, 2017, the Defendant filed a Petition under 28 U.S.C. § 2254 in the U.S. District Court for the Southern District of Florida. That petition was denied in June 20, 2018.

(7) There are no other motions or petitions for relief that are pending resolution in this or any other court in connection with the above-styled case.

(8) The issue raised in this petition has not been previously raised or adjudicated in any court.

(9) This timely filed Motion for Postconviction Relief now follows pursuant to Florida Rule of Criminal Procedure 3.850.

STATEMENT OF RELEVANT FACTS

The charges filed against the Defendant in this case arose from a shooting incident on October 13, 2009. The State's case was based upon the victim's statement which was refuted by an independent witness and could have been corroborated by another eye-witness. That witness, whose nickname was, ironically, "Pistol," did not appear for trial. Trial counsel's failure to obtain "Pistol" at trial was a major issue in this case, complicated by his passing during this litigation.

Pre-trial statements by the Defendant, while ultimately claiming self-defense, were evasive and equivocal at first and thereby contributed to his conviction by the jury, along with the other, and circumstantial, evidence.

The incident began with Defendant confronting the victim with the fact that he was a C.I., working for law enforcement. During the confrontation, both parties carried firearms. The testimony of the independent witness at trial (Ms. Dixon) and "Pistol" was that the victim abruptly and without provocation, pointed a gun to shoot at Defendant who, in a scene from the Wild West, drew his gun, dodged and fired in self defense, striking the victim. Defendant was simply quicker on the draw once the "victim" pulled his gun first.

Nevertheless, Defendant was found guilty by a jury of attempted first degree murder (firearm / great bodily) and, in a separate bench trial, was also found guilty of possession of a firearm by a convicted felon.

As stated, the Defendant was sentenced to Life plus 15 years respectfully, concurrent, with a 25-year minimum/mandatory condition for the firearm enhancement.

While the circumstantial evidence is relevant hereto, this motion, however, primarily concerns the instruction to the jury regarding the charge of attempted voluntary manslaughter. The Court's written and stated instruction to the jury was as follows:

> "To prove the crime of attempted voluntary manslaughter with a firearm, the State must prove the following elements beyond reasonable doubt:
>
> > One, Duane Blake committed an act or procured the commission of an act **which was intended to cause the death of [the victim]** ..."

TT at 388 (Ex. 1).

In so instructing the jury, the Court committed fundamental error and, therefore, any claim that Defendant's current motion may be procedurally barred must yield to the claim presented herein necessitating an order which vacates the judgment and sentence in the instant case.

APPLICABLE STANDARDS OF REVIEW

Manifest Injustice Exception to Postconviction Procedural Bars

In *State v. Atkins*, 69 So.3d 261 (Fla. 2011), the Florida Supreme Court held that "[u]nder Florida law, appellate courts have 'the power to reconsider and correct rulings in exceptional circumstances and where reliance on previous decision would result in a manifest injustice.' *Muehleman v. State*, 3 So.3d 1149, 1165 (Fla. 2009) (recognizing this Court's authority to revisit a prior ruling if that ruling was erroneous)." See also *Fla. Dep't of Transp. v. Juliane*, 801 So.2d 101, 106 (Fla. 2001) ("[A]n appellate court has the power to reconsider and correct an erroneous ruling that has become the law of the case, where prior ruling would result in a 'manifest injustice'.") (quoting *Strazzulla v. Hendrick,* 177 So.2d 1, 3 (Fla. 1965)). Therefore, as recognized in *Lago v. State*, 975 So.2d 613, 614 (Fla. 3d DCA 2008), where "a manifest injustice has occurred it is the responsibility of the court to correct that injustice if it can."

This standard applies equally to trial courts as recognized by the court in *State v. Davis*, 2017 WL4485507 (Fla. Cir. Ct.), where it ruled that "even if [a claim] does not fall under any of the exceptions of Rule 3.850(b)(1)-(3) ... it would be a manifest injustice to preclude relief based upon the procedure bars because [the defendant] has otherwise raised a valid, cognizable claim ... is entitled to relief from [the] court."

In *Adams v. State*, 957 So.2d 1183 (Fla. 3rd DCA 2006), the court similarly recognized that "courts have granted habeas relief which had been previously denied on numerous occasions. See *Ross v. State*, 901 So.2d 252, 254 (Fla. 4th DCA 2005) (granting habeas relief even though an issue had been repeatedly raised and rejected, to correct a manifest injustice where defendant did not receive the benefit of the same law as similarly-situated defendants.)"

Ineffective Assistance of Counsel

Generally, "[t]he benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2053 (1984).

In *Strickland*, the U.S. Supreme Court held that to determine whether counsel was ineffective a two-prong test must be applied. First, the defendant must show that counsel made errors so serious that "counsel was not functioning as the counsel guaranteed by the Sixth Amendment."

Second, even if it is established that counsel's performance was deficient, the second prong of the *Strickland* test requires the defendant to show that trial counsel's deficient performance actually resulted in "prejudice."

As the prejudice prong, it is well settled that in order to prove prejudice, a defendant must prove that but for counsel's unprofessional errors, there is a reasonable probability the result of the proceeding would have been different. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding." *Downs v. State*, 453 So.2d 1102, 1108 (Fla. 1984).

The Need for an Evidentiary Hearing

A defendant is entitled to a "fair adjudication" of his case, and a proceeding which is free from errors of counsel that "undermine confidence in the outcome of [that] proceeding." See *Williams v. State*, 175 So.3d 349 (Fla. 3d DCA 2015); *Halliburton v. Singletary*, 691 So.2d 466 (Fla. 1997).

Therefore, upon filing a postconviction motion, a defendant is entitled to receive an evidentiary hearing unless, (1) the motion, files, and record of the case conclusively show that the defendant is entitled to no relief, or (2) the motion or a particular claim is legally insufficient. See Rule 3.850(f)(4), Fla. R. Crim. P. (2018).

Finally, absent an evidentiary hearing, the sworn factual allegations made by a defendant in a motion for postconviction relief must be accepted as true to the extent that they are not refuted by the record. See *Freeman v. State*, 761 So.2d 1055, 1061 (Fla. 2000).

GROUND ONE

THE TRIAL COURT COMMITTED FUNDAMENTAL ERROR IN INSTRUCTING THE JURY ON THE CHARGE OF ATTEMPTED VOLUNTARY MANSLAUGHTER BY ACT WHEREIN IT REQUIRED THE JURY TO WEIGHT EVIDENCE PROVING BEYOND REASONABLE DOUBT THAT DEFENDANT "*INTENDED TO CAUSE THE DEATH OF THE VICTIM.*" THIS ERROR HAS BEEN HELD BY FLORIDA COURTS TO BE FUNDAMENTAL, AND THUS REQUIRES A NEW TRIAL;

... OR IN THE ALTERNATIVE,

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE COURT'S FUNDAMENTALLY ERRONEOUS INSTRUCTION TO THE JURY, WHICH CANNOT BE SAID TO HAVE NOT AFFECTED THE OUTCOME OF THE PROCEEDING.

Standard of Review

Unpreserved arguments regarding jury instructions are generally not reviewable on appeal unless they constitute fundamental error. See *State v. Delva*, 575 So.2d 643, 644 (Fla. 1991) (holding that unpreserved challenges to jury instructions "can be raised on appeal only if fundamental error occurred"). For an erroneous jury instruction to amount to fundamental error, it "must reach down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error." Id. at 644-45 (quoting *Brown v. State*, 124 So.2d 481, 484 (Fla. 1960)). In making such a determination, we must consider the "totality of the record at trial," *Garzon*, 980 So.2d. at 1041, including "the other jury instructions, the attorneys' arguments, and the evidence in the case." *Garzon v. State*, 939 So.2d 278, 283 (Fla. 4th DCA 2006).

Absent an evidentiary hearing, the sworn factual allegations made by a defendant in a motion for postconviction relief must be accepted as true to the extent that they are not refuted by the record. See *Freeman v. State*, 761 So.2d 1055, 1061 (Fla. 2000).

"Under the provisions of rule 3.850, the defendant's allegations, which we have determined to be facially sufficient and not conclusively refuted by the record, now require the trial court to order the State to respond. The trial court must then consider (pursuant to the considerations specified in rule 3.850(d)) holding an evidentiary hearing to resolve the issue of counsel's effectiveness ..." *Jacobs v. State*, 880 So.2d 548, 555 (Fla. 2004).

Relevant Facts and Applicable Law

Specifically, two well-known decisions by the Florida Supreme Court are dispositive of Defendant's issue herein. First, in *State v. Montgomery*, 39 So.3d 252 (Fla. 2010), the court held that the crime of manslaughter by act (one of 3 forms of manslaughter in addition to "by culpable negligence" and "by procurement") does not impose a requirement that the defendant intended to kill the victim. Id. at 256. Such requirement would as the court stated "blur the distinction" between manslaughter and murder, and thus affect the "pardon power" a jury may otherwise exercise in a full appreciation of an option of the lesser-included charge of manslaughter. (Id. at 260).

The court's decision resulted in the issuance of an amended instruction which deleted the element of an "intent to kill the victim" from the crime of manslaughter. See *Instruction 7.7* as amended by the Florida Supreme Court in case SC10-110, 2010 Fla. Lexis 476 (Fla. April 8, 2010).

The amended instruction was available to this Court on February 15, 2011, at the time this Court delivered its instructions to the jury in Defendant's case before they rendered a verdict. So, too, was the *Montgomery* decision available to this Court. (Decided on April 8, 2010).

Attached hereto as Exhibits 3 and 4 are, respectively, the written and oral instructions to the jury in Defendant's case. Exhibit 4 contains the oral instruction to the jury in pertinent part as follows:

> "To prove the crime of attempted voluntary manslaughter with a firearm, the State must prove the following elements beyond reasonable doubt:
>
> > One, Duane Blake committed an act or procured the commission of an act **which was intended to cause the death of [the victim].**"

As this Court is now no doubt aware, it is the *intent to commit the act* which caused death, rather than the *intent to cause the death* which is proper in a manslaughter instruction, and the court's instruction in its wording that "the act was intended to cause the death" was improper and constitutes fundamental error. See *Montgomery, supra; Instruction 7.7, supra.*

Significantly, in *Montgomery,* both the State and Defense agreed that an instruction such as that given in Defendant's case was improper. The import of the *Montgomery* holding was to answer the disputed question of *whether such an error was fundamental error.* The court answered in the affirmative, holding that where, as in Defendant's case, intent is at issue and, more importantly, where, as in Defendant's case, manslaughter is a necessary lesser-included instruction, a "Montgomery Instruction," is in fact, fundamental error and necessitates a new trial. See *Montgomery,* at 260.

Furthermore, lest there be any question of derivative error as to an attempted voluntary manslaughter instruction, that question was answered in identical fashion as in *Montgomery* by Florida's Supreme Court shortly after that decision. See *Williams v. State*, 123 So.3d 23 (Fla. 2013); Daugherty v. State, 211 So.3d 29 (Fla. 2017).

The court also at that time, similarly amended the instruction for attempted voluntary manslaughter to address the finding of fundamental error. See *Amended Instruction 6.6*, 132 So.3d 1124 (Fla. 2014).

Finally, that Defendant may have filed previous pleadings seeking postconviction relief is irrelevant in review of meritorious claims of fundamental error. Therefore, there can be no procedural bar to the relief the Defendant seeks herein. A reversal and remand for a new trial is therefore the appropriate relief in this matter. See *Prince v. State*, 98 so.3d 768 (Fla. 4th DCA 2012); *Johnson v. State*, 9 So.3d 640, 642 (Fla. 4th DCA 2009); *Adams v. State*, 957 So.2d 1183 (Fla. 3rd DCA 2006); and *Ross v. State*, 901 So.2d 252, 254 (Fla. 4th DCA 2005) (granting habeas relief even though an issue had been repeatedly raised and rejected, to correct a manifest injustice where defendant did not receive the benefit of the same law as similarly-situated defendants.)"

CONCLUSION

WHEREFORE, based on the foregoing reasons, Defendant prays this Honorable Court GRANT this motion for postconviction relief and issue a Writ of Habeas Corpus in which it:

(1) VACATES the current Judgment, sets aside the sentence imposed upon him in the above styled case;

(2) GRANTS a new trial; or

(3) In the alternative, GRANTS Defendant an evidentiary hearing in this matter, where he can fully and fairly litigate his claims with the assistance of court-appointed postconviction counsel; and

(4) Provides any such and further relief to which Defendant may be entitled in the present matter.

Respectfully submitted,

Duane Blake, Defendant, *pro se*
DC# 617195
Madison Correctional Institution
382 SW MCI Way
Madison, FL 32340-4430

DECLARATION OF UNNOTARIZED OATH

Under penalties of perjury and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this motion is found to be frivolous or made in bad faith, I certify that I understand the contents of the foregoing motion, that the facts contained in the motion are true and correct, and that I have a reasonable belief that the motion is timely filed. I further certify that this motion does not duplicate previous motions that have been disposed of by the court. I also certify that I understand English and have read the foregoing motion or had the motion read to me.

This Declaration is being made on this ..... day of ....., 2018, pursuant to § 92.525, Fla. Stat. (2018); and Rules 3.850(n), 3.987, Fla. R. Crim. P. (2018).

Duane Blake, Defendant, *pro se*
DC# 617195
Madison Correctional Institution
382 SW MCI Way
Madison, FL 32340-4430

CERTIFICATE OF SERVICE / MAILING

I HEREBY CERTIFY that on this ..... day of ....., 2019, I hand-delivered a true and correct copy of the foregoing "Petition for Writ of Habeas Corpus" to a prison official at the Madison Correctional Institution for mailing via USPS First Class Mail, postage prepaid, to the following parties:

CLERK OF THE CIRCUIT COURT
15th Judicial Circuit – Palm Beach County
P.O. Box 229
West Palm Beach, FL 33402-0229

OFFICE OF THE STATE ATTORNEY
15th Judicial Circuit – Palm Beach County
401 N. Dixie Hwy.
West Palm Beach, FL 33401-4209

Duane Blake, Defendant, *pro se*
DC# 617195
Madison Correctional Institution
382 SW MCI Way
Madison, FL 32340-4430

Exhibit – 1

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, CRIMINAL DIVISION
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 09CF012955AWB DIV "S"

STATE OF FLORIDA

vs.

DUANE BLAKE,

Defendant.
_____/

VERDICT

WE, THE JURY, FIND as follows:

AS TO COUNT 1, we find the Defendant

✓ Guilty of ATTEMPTED FIRST DEGREE MURDER WITH A FIREARM, as charged in the Information.

If you find the Defendant guilty of ATTEMPTED FIRST DEGREE MURDER WITH A FIREARM you must then answer the following questions:

Did DUANE BLAKE actually possess a firearm?

✓ Yes _____ No

Did DUANE BLAKE actually discharge a firearm?

✓ Yes _____ No

Did DUANE BLAKE actually inflict great bodily harm upon MAURICE DOWNIE?

✓ Yes _____ No

_____ Guilty of ATTEMPTED SECOND DEGREE MURDER WITH A FIREARM, a lesser included offense.

If you find the Defendant guilty of ATTEMPTED SECOND DEGREE MURDER WITH A FIREARM you must then answer the following questions:

Did DUANE BLAKE actually possess a firearm?

_____ Yes _____ No

Did DUANE BLAKE actually discharge a firearm?

_____ Yes _____ No

Did DUANE BLAKE actually inflict death or great bodily harm upon MAURICE DOWNIE?

_____ Yes _____ No

_____ Guilty of ATTEMPTED VOLUNTARY MANSLAUGHTER WITH A FIREARM, a lesser included offense.

_____ Not Guilty.

AS TO COUNT 2, we find the Defendant

_____ Guilty of RETALIATING AGAINST A WITNESS

__✓__ Not Guilty.

SO SAY WE ALL, this 15th day of February, 2011, in West Palm Beach, Palm Beach County, Florida.

JURY FOREPERSON SIGNATURE

Richard Alzer

PRINT NAME

Exhibit – 2

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO.: 09CF012955AXX

OBTS NO: _____

v.

Dwayne Blake

Defendant

FILED
Circuit Criminal Department
APR 14 2011
SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

SENTENCE

As to Count (s) _____

The Defendant, being personally before this Court, accompanied by _____, his/her attorney of record, and having been adjudicated guilty herein, and the Court having given Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

IT IS THE SENTENCE OF THE COURT that:

The Defendant pay a fine of $_____ pursuant to § _____, Fla. Stat., plus all court costs and additional charges as outlined in the separate order assessing additional charges, costs and fines entered herein.

The Defendant is hereby committed to the custody of the:

_____ Department of Corrections
_____ Department of Corrections as a Youthful Offender
_____ Sheriff of Palm Beach County, Florida

to be imprisoned for a term of life. It is further ordered that the Defendant shall be allowed a total of 954 days as credit for time incarcerated prior to imposition of this sentence.

IT IS FURTHER ORDERED that the composite terms of all sentences imposed for the counts specified in the order shall run (CHECK ONE) _____ consecutive to ✓ concurrent with (CHECK ONE) the following:

_____ any active sentence being served
_____ specific sentences Ct. 1+2; 06CF10320A; 06CF13688A; 06CF13702A-07CF6250A; 07CF10130A; 07CF12215A; 09CF129

In the event the above sentence is to the Department of Corrections, the Sheriff of Palm Beach County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of the Judgment and Sentence, and any other documents specified by Florida Statute. Additionally, pursuant to §947.16(4), Florida Statutes, the Court retains jurisdiction over the Defendant.

_____ Pursuant to §§322.055, 322.056, 322.26, 322.274, Fla. Stat., the Department of Highway Safety and Motor Vehicles is directed to revoke the Defendant's privilege to drive. The Clerk of Court is ordered to report the conviction and revocation to the Department of Highway Safety and Motor Vehicles.

The defendant in open court was advised of the right to appeal from this sentence by filing Notice of Appeal within thirty (30) days from this date with the Clerk of Court. The Defendant was also advised of the right to the assistance of counsel in taking said appeal at the expense of the State upon a showing of indigency.

DONE AND ORDERED in open court at West Palm Beach, Palm Beach County, Florida this 14th day of April, 2011.

CIRCUIT JUDGE

STATE OF FLORIDA

vs.

DUANE BLAKE

09CF012955AXX

CRIMINAL DIVISION OF THE CIRCU
COURT OF THE FIFTEENTH JUDICIAL CIRCU
IN AND FOR PALM BEACH COUNTY, FLORI

CASE NUMBER(S): [redacted]

PLEA IN THE CIRCUIT COURT

1. DEFENDANT: I am the defendant in the above-mentioned matter(s), and I am represented by the attorney indicated below. I understa I have the right to be represented by an attorney at all stages of the proceeding until the case is terminated, and i cannot afford an attorney, one will be appointed free of charge. [DB

2. DEFENDANT: I understand I have the right to a speedy and public trial either by jury or by court. I hereby waive and give up this rig [DB

3. DEFENDANT: I understand I have the right to be confronted by the witnesses against me and to cross-examine them by myself through my attorney. I hereby give up these rights. [DB

4. DEFENDANT: I understand I have the right to testify on my own behalf but I cannot be compelled to be a witness against myself ar may remain silent if I so choose. I hereby give up these rights. [DB

5. DEFENDANT: I understand I have the right to call witnesses on my behalf and to invoke the compulsory process of the Court to subpoer those witnesses. I hereby give up these rights. [DB

6. DEFENDANT: I understand I have the right to appeal all matters relating to the charge(s) and, unless I plead Guilty or No Contes specifically reserving my right to appeal, I will give up such right of appeal. [DB

7. DEFENDANT: I understand that if I am not a United States Citizen, my plea may subject me to deportation pursuant to the laws an regulations governing the United States Citizen and Immigration Services; and, this Court has no jurisdiction (authority in such matters. [DB

8. DEFENDANT: I have not received any promises from anyone, including my attorney, concerning eligibility for any form of early releas authorized by law and further no promises have been made to me as to the actual amount of time that I will serve unde the sentence to be imposed. Further, I understand that this plea may be used to enhance future criminal penalties in an court system, even if adjudication of guilt is withheld. [DB

9. DEFENDANT: I offer my plea freely and voluntarily and of my own accord, with full understanding of all matters set forth in the pleadings and this waiver. [DB

10. DEFENDANT: I have personally placed my initials in each bracket above, and I understand each and every one of the rights outlined above. I hereby waive and give up each of them in order to enter my plea to the charge(s). I understand that even though the Court may approve the agreement of sentence, the Court is not bound by the agreement, the Court may withdraw its approval at any time before pronouncing judgement, in which case I shall be able to withdraw my plea should I desire to do so. [DB

11. DEFENDANT: I understand that if the offense to which I am pleading is a sexually violent offense or a sexually motivated offense, or if I have been previously convicted of such an offense, the plea may subject me to involuntary civil commitment as a sexual violent predator upon completion of my sentence. [

12. DEFENDANT: Choose one:
If applicable, I choose a program which is or may be spiritually based. [X]
If applicable, I choose a program which is NOT spiritually based. [ ]
If applicable, I have no preference if the program is or may be spiritually based. [ ]

FILED
Circuit Criminal Department
APR 14 2011
SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

DEFENDANT

4/14/11
DATE

DEFENDANT'S ATTORNEY ONLY:

I am attorney of record. I have explained each of the above rights to the defendant and have explored the facts with him/her and studied his/her possible defenses to the charge(s). ~~I concur with his/her decision to waive the rights and to enter this plea. I further stipulate that this document may be received by the Court as evidence of defendant's intelligent waiver of these rights and that it shall be filed by the Clerk as a permanent record of that waiver.~~

ATTORNEY FOR THE DEFENDANT

4/14/11
DATE

000000933

09CF12955HXX

PLEA IN THE CIRCUIT COURT

THE FOLLOWING IS TO REFLECT ALL TERMS OF THE NEGOTIATED SETTLEMENT

Name: Duane Blake

Plea: Guilty ___ Guilty/Best Interest ___ Nolo Contendere ___

Case No.	Charge	Count	Lesser	Degree
[redacted]	Poss. Cocaine (VOP)	1	No	3rd F
[redacted]	Poss. Cocaine Intent to Sell (VOP)	1	No	2nd F
	DWLR (Habitual) (VOP)	2	No	3rd F
[redacted]	Sale of Cocaine	1	No	2nd F

State to Nolle Prosse the following at sentencing: _____

PSI: Waived/Not Required ___ Required/Requested ___

ADJUDICATION: Adjudicate [X] Withhold [ ] Court's Discretion [ ]

If the Defendant is convicted of possession, sale, trafficking or conspiracy to possess, sell or traffic in any controlled substance, the Court directs the Department of Motor Vehicles and Highway Safety to revoke the Defendant's driver's license for two (2) years. If the Defendant is convicted of grand theft of a motor vehicle theft of motor vehicle parts; or, any felony in the commission of which a motor vehicle was used, the Court directs the Department of Motor Vehicles and Highway Safety to revoke the Defendant's driver's license as mandated by law. The Clerk is directed to make the proper notifications.

SENTENCE:

$_____ Fine $_____ Court Costs $_____ Drug Trust Fund

$_____ Cost of Prosecution $_____ Public Defender Fees/Costs

Incarceration: _____ Days _____ Months _____ Years

with credit for time served; which is _____ days.

PROBATION: _____ Months / Years - Drug Offender if checked [ ]

ALL CONDITIONS OF PROBATION MUST BE SUCCESSFULLY COMPLETED NO LESS THAN 30 DAYS BEFORE PROBATION IS SCHEDULED TO TERMINATE UNLESS STATED BELOW.

STANDARD CONDITIONS OF PROBATION HAVE BEEN EXPLAINED BY DEFENSE COUNSEL.

SPECIAL CONDITIONS OF PROBATION:

A) Restitution as per the accompanying order. [ ] (check if ordered)

B) Fine: $_____ Court Costs: $_____ Drug Trust Fund: $_____
Cost of Prosecution $_____ Public Defender Fees/Costs $_____

C) Substance abuse evaluation and successful completion of recommended treatment [ ] (check if ordered) (enroll within 30 days) If in custody, release only to _____

D) Random Drug Testing at Defendant's expense [ ] (check if ordered)

E) _____ hours of community service at a rate of no less than _____ hours per month

F) Incarceration: _____ Days _____ Months _____ Year
with credit for time served which is _____ days.

FILED
Circuit Criminal Department

APR 14 2011

SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

OTHER COMMENTS OR CONDITIONS:

page 1 of 2

SENTENCING IS DEFERRED UNTIL _____ IN COURT ROOM _____:

THE DEFENDANT UNDERSTANDS IF SHE/HE DOES NOT APPEAR OR IS ARRESTED ON NEW CHARGES, A CAPIAS WILL BE ISSUED AND THE COURT WILL IMPOSE ANY LAWFUL SENTENCE.

Assistant State Attorney

Attorney for the Defendant

000000934

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO.: 09CF12955AXX

OBTS NO: _____

v.

D Wayne Blake

Defendant

FILED
Circuit Criminal Department
APR 14 2011
SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

SENTENCE

As to Count (s) 2

The Defendant, being personally before this Court, accompanied by _____, his/her attorney of record, and having been adjudicated guilty herein, and the Court having given Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

IT IS THE SENTENCE OF THE COURT that:

The Defendant pay a fine of $_____ pursuant to § _____, Fla. Stat., plus all court costs and additional charges as outlined in the separate order assessing additional charges, costs and fines entered herein.

The Defendant is hereby committed to the custody of the:

__✓__ Department of Corrections
_____ Sheriff of Palm Beach County, Florida
_____ Department of Corrections as a Youthful Offender

to be imprisoned for a term of 15 yrs. It is further ordered that the Defendant shall be allowed a total of 954 days as credit for time incarcerated prior to imposition of this sentence.

IT IS FURTHER ORDERED that the composite terms of all sentences imposed for the counts specified in the order shall run (CHECK ONE) ___ consecutive to ___X___ concurrent with (CHECK ONE) the following: Ct. 1+2

_____ any active sentence being served
_____ specific sentences 06CF10320A; 06CF13688A; 06CF13702A 07CF6250A; 07CF10130A; 07CF12215A 09CF12956A

In the event the above sentence is to the Department of Corrections, the Sheriff of Palm Beach County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of the Judgment and Sentence, and any other documents specified by Florida Statute. Additionally, pursuant to §947.16(4), Florida Statutes, the Court retains jurisdiction over the Defendant.

_____ Pursuant to §§322.055, 322.056, 322.26, 322.274, Fla. Stat., the Department of Highway Safety and Motor Vehicles is directed to revoke the Defendant's privilege to drive. The Clerk of Court is ordered to report the conviction and revocation to the Department of Highway Safety and Motor Vehicles.

The defendant in open court was advised of the right to appeal from this sentence by filing Notice of Appeal within thirty (30) days from this date with the Clerk of Court. The Defendant was also advised of the right to the assistance of counsel in taking said appeal at the expense of the State upon a showing of indigency.

DONE AND ORDERED in open court at West Palm Beach, Palm Beach County, Florida this 14 day of April, 20 11.

_____
CIRCUIT JUDGE

000000930

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

SENTENCE (continued)

(As to Count(s) 1)

Defendant Dwayne Blake

Case Number 09CF 012955AXX

By appropriate notation, the following provisions apply to the sentence imposed:

FIREARM	[V]	It is further ordered that the 25 year minimum provisions of Florida Statute 775.087(2) are hereby imposed for the sentence specified in the count.
PRISON RELEASEE REOFFENDER	[ ]	The Defendant is adjudicated a prison releasee reoffender and has been sentenced in accordance with the provisions of Florida Statute 775.082(9). The Defendant shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Additionally, the Defendant must serve 100 percent of the court imposed sentence. The requisite findings by the court are set forth in a separate order or stated in the record in open court.
SALE OF CONTROLLED SUBSTANCE W/IN 1000' OF A SCHOOL	[ ]	It is further ordered that the 3 year minimum provisions of Florida Statute 893.13(1)(c)1, are hereby imposed for the sentence specified in this count.
DRUG TRAFFICKING	[ ]	It is further ordered that the _____ year mandatory minimum provisions of Florida Statute 893.135(1) are hereby imposed for the sentence specified in this count.
CRIMES AGAINST LAW ENFORCEMENT OFFICERS	[ ]	The Defendant having been convicted of Aggravated Assault on a Law Enforcement Officer, it is further ordered that the defendant shall serve a minimum of 3 years before release in accordance with Florida Statute 784.07(2)(c).
	[ ]	The Defendant having been convicted of Aggravated Battery on a Law Enforcement Officer, it is further ordered that the defendant shall serve a minimum of 5 years before release in accordance with Florida Statute 784.07(2)(d).
	[ ]	The Defendant having been convicted of Battery on a Law Enforcement Officer and having possessed a firearm or destructive device during the commission of said offense, it is further ordered that the defendant shall serve a minimum of 3 years before release in accordance with Florida Statute 784.07(3)(a).

FILED
Circuit Criminal Department
APR 14 2011
SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

DONE AND ORDERED in Open Court at West Palm Beach, Palm Beach County, Florida this 14 day of April, 2011.

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IN THE CIR[illegible] COURT OF THE FIFTEENTH J[illegible]AL CIRCUIT,
IN [illegible]ND FOR PALM BEACH COUNTY, [illegible]ORIDA

SENTENCE (continued)

(As to Count(s) 2)

Defendant Dwayne Blake

Case Number 09CF12955AXX

By appropriate notation, the following provisions apply to the sentence imposed:

FIREARM	[✓]	It is further ordered that the 3 year minimum provisions of Florida Statute 775.087(2) are hereby imposed for the sentence specified in the count.
PRISON RELEASEE REOFFENDER	[ ]	The Defendant is adjudicated a prison releasee reoffender and has been sentenced in accordance with the provisions of Florida Statute 775.082(9). The Defendant shall be released only by expiration of sentence and shall not be eligible for parole, contro release, or any form of early release. Additionally, the Defendant must serve 100 percent of the court imposed sentence. The requisite findings by the court are set forth in a separate order or stated in the record in open court.
SALE OF CONTROLLED SUBSTANCE W/IN 1000' OF A SCHOOL	[ ]	It is further ordered that the 3 year minimum provisions of Florida Statute 893.13(1)(c)1, are hereby imposed for the sentence specified in this count.
DRUG TRAFFICKING	[ ]	It is further ordered that the _____ year mandatory minimum provisions of Florida Statute 893.135(1) are hereby imposed for the sentence specified in this count.
CRIMES AGAINST LAW ENFORCEMENT OFFICERS	[ ]	The Defendant having been convicted of Aggravated Assault on a Law Enforcement Officer, it is further ordered that the defendant shall serve a minimum of 3 years before release in accordance with Florida Statute 784.07(2)(c).
	[ ]	The Defendant having been convicted of Aggravated Battery on a Law Enforcement Officer, it is further ordered that the defendant shall serve a minimum of 5 years before release in accordance with Florida Statute 784.07(2)(d).
	[ ]	The Defendant having been convicted of Battery on a Law Enforcement Officer and having possessed a firearm or destructive device during the commission of said offense, it is further ordered that the defendant shall serve a minimum of 3 years before release in accordance with Florida Statute 784.07(3)(a).

FILED
Circuit Criminal Department
APR 14 2011
SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

DONE AND ORDERED in Open Court at West Palm Beach, Palm Beach County, Florida this 14 day of April, 2011.

000000932

Exhibit – 3

3.1 INTRODUCTION TO FINAL INSTRUCTIONS

Members of the jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you.

2009CF12955AXX
Dwayne Blake

3.2 STATEMENT OF CHARGE

DUANE M. BLAKE, the defendant in this case, has been accused of the crime of ATTEMPTED FIRST DEGREE MURDER WITH A FIREARM and RETALIATING AGAINST A WITNESS.

6.2ATTEMPTED MURDER - FIRST DEGREE (PREMEDITATED) WITH A FIREARM
F.S. 782.04(1)(a) and 777.04

To prove the crime of Attempted First Degree Premeditated Murder with a Firearm, the State must prove the following three elements beyond a reasonable doubt:

1. DUANE BLAKE did some act intended to cause the death of MAURICE DOWNIE that went beyond just thinking or talking about it.

2. DUANE BLAKE acted with a premeditated design to kill MAURICE DOWNIE.

3. The act would have resulted in the death of MAURICE DOWNIE except that someone prevented DUANE BLAKE from killing MAURICE DOWNIE or he failed to do so.

A premeditated design to kill means that there was a conscious decision to kill. The decision must be present in the mind at the time the act was committed. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the act. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the act was committed.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the attempted killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the attempted killing.

It is not an attempt to commit first degree premeditated murder if the defendant abandoned the attempt to commit the offense or otherwise prevented its commission under circumstances indicating a complete and voluntary renunciation of his criminal purpose.

The punishment provided by law for the crime of Attempted First Degree Murder is greater if "in the course of committing the Attempted First Degree Murder" the defendant carried some kind of weapon. An act is "in the course of committing the Attempted First Degree Murder" if it occurs in an attempt to commit Attempted First Degree Murder or in flight after the attempt or commission. Therefore, if you find the defendant guilty of Attempted First Degree Murder, you must then consider whether the State has further proved those aggravating circumstances and reflect this in your verdict.

If you find that DUANE BLAKE committed Attempted First Degree Murder and you also find that during the commission of the crime he used a firearm, you should find him guilty of Attempted First Degree Murder with a Firearm.

A "firearm" is legally defined as any weapon (including a starter gun) which will, or is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

RETALIATING AGAINST A WITNESS
F.S. 914.23

To prove the crime of RETALIATING AGAINST A WITNESS, the State must prove the following elements beyond a reasonable doubt:

1. DUANE BLAKE knowingly engaged in conduct that caused bodily injury to MAURICE DOWNIE

2. DUANE BLAKE did so with the intent to retaliate against MAURICE DOWNIE for giving a law enforcement officer information relating to the commission or the possible commission of an offense.

3.4 WHEN THERE ARE LESSER INCLUDED CRIMES OR ATTEMPTS

In considering the evidence, you should consider the possibility that although the evidence may not convince you that the defendant committed the main crime of which he is accused, there may be evidence that he committed other acts that would constitute a lesser included crime. Therefore, if you decide that the main accusation has not been proved beyond a reasonable doubt, you will next need to decide if the defendant is guilty of any lesser included crime. The lesser crimes indicated in the definition of ATTEMPTED FIRST DEGREE MURDER WITH A FIREARM are:

ATTEMPTED SECOND DEGREE MURDER WITH A FIREARM

ATTEMPTED VOLUNTARY MANSLAUGHTER

6.4 ATTEMPTED SECOND DEGREE MURDER WITH A FIREARM
F.S. 782.04(2) and 777.04

To prove the crime of Attempted Second Degree Murder with a Firearm, the State must prove the following two elements beyond a reasonable doubt.

1. DUANE BLAKE intentionally committed an act which would have resulted in the death of MAURICE DOWNIE except that someone prevented DUANE BLAKE from killing MAURICE DOWNIE or he failed to do so.

2. The act was imminently dangerous to another and demonstrating a depraved mind without regard for human life.

An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose.

An act is "imminently dangerous to another and demonstrating a depraved mind without regard for human life," if it is an act or series of acts that:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and

2. is done from ill will, hatred, spite or an evil intent, and

3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict of attempted second degree murder, it is not necessary for the State to prove the defendant had an intent to cause death.

It is not an attempt to commit second degree murder if the defendant abandoned the attempt to commit the offense or otherwise prevented its commission under circumstances indicating a complete and voluntary renunciation of his criminal purpose.

The punishment provided by law for the crime of Attempted Second Degree Murder is greater if "in the course of committing the Attempted Second Degree Murder" the defendant carried some kind of weapon. An act is "in the course of committing the Attempted Second Degree Murder " if it occurs in an attempt to commit Attempted Second Degree Murder or in flight after the attempt or commission. Therefore, if you find the defendant guilty of Attempted Second Degree Murder, you must then consider whether the State has further proved those aggravating circumstances and reflect this in your verdict.

If you find that DUANE BLAKE committed Attempted Second Degree Murder and you also find that during the commission of the crime he used a firearm, you should find him guilty of Attempted Second Degree Murder with a Firearm.

A "firearm" is legally defined as any weapon (including a starter gun) which will, or is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

6.6 ATTEMPTED VOLUNTARY MANSLAUGHTER WITH A FIREARM
F.S. 782.07 and 777.04

To prove the crime of Attempted Voluntary Manslaughter with a Firearm, the State must prove the following element beyond a reasonable doubt:

1. DUANE BLAKE committed an act or procured the commission of an act, which was intended to cause the death of MAURICE DOWNIE and would have resulted in the death of DUANE BLAKE except that someone prevented DUANE BLAKE from killing MAURICE DOWNIE or he failed to do so.

However, the defendant cannot be guilty of attempted voluntary manslaughter with a firearm if the attempted killing was either excusable or justifiable as I have previously explained those terms.

It is not an attempt to commit manslaughter with a firearm if the defendant abandoned the attempt to commit the offense or otherwise prevented its commission under circumstances indicating a complete and voluntary renunciation of his criminal purpose.

To "procure" means to persuade, induce, prevail upon or cause a person to do something.

In order to convict of attempted voluntary manslaughter with a firearm it is not necessary for the State to prove that the defendant had a premeditated intent to cause death.

The punishment provided by law for the crime of Attempted Voluntary Manslaughter is greater if "in the course of committing the Attempted Voluntary Manslaughter" the defendant carried some kind of weapon. An act is "in the course of committing the Attempted Voluntary Manslaughter" if it occurs in an attempt to commit Attempted Voluntary Manslaughter or in flight after the attempt or commission. Therefore, if you find the defendant guilty of Attempted Voluntary Manslaughter, you must then consider whether the State has further proved those aggravating circumstances and reflect this in your verdict.

If you find that DUANE BLAKE committed Attempted Voluntary Manslaughter and you also find that during the commission of the crime he used a firearm, you should find him guilty of Attempted Voluntary Manslaughter with a Firearm.

A "firearm" is legally defined as any weapon (including a starter gun) which will, or is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

Exhibit – 4

attempted second-degree murder, and you also find that during the commission of the crime he used a firearm, you should find him guilty of attempted second-degree murder with a firearm.

A firearm is legally defined as any weapon, including a starter gun, which will, or is designed to, or may readily be converted to expel a projectile by the action of an explosive, the frame or receiver of any such weapon, any firearm muffler or firearm silencer, any destructive device, or any machine gun.

The term firearm does not include an antique firearm unless the antique firearm is used in the commission of a crime.

To prove the crime of attempted voluntary manslaughter with a firearm the State must prove the following elements beyond a reasonable doubt:

One, Duane Blake committed an act, or procured the commission of an act which was intended to cause the death of Maurice Downie. And would have resulted in the death Duane Blake (sic) except that someone prevented Duane Blake from killing Maurice Downie, or he failed to do so.

I think we have that in error there, don't we?

Appendix – 3

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

FELONY DIVISION S
CASE NO. 50-2009-CF-012955-AXXX-MB

STATE OF FLORIDA,
Plaintiff
vs.
DWAYNE BLAKE,
Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF

THIS CAUSE came before the Court on Defendant's Motion for Postconviction Relief ("Motion") pursuant to Florida Rule of Criminal Procedure 3.850. This Motion was originally filed as a petition for writ of habeas corpus, provided to a prison official for mailing on January 15, 2019 and filed on January 24, 2019. However, given the arguments set forth by Defendant, the Court recharacterized the petition as a motion for postconviction relief and transferred it to Circuit Criminal Division "S" on January 31, 2019 (attached herein). The Court has carefully examined and considered the Motion, the court file, and being otherwise fully advised in the premises, the Court rules as follows:

Florida Rule of Criminal Procedure 3.850(b) provides:

> *Time Limitations*. --A motion to vacate a sentence that exceeds the limits provided by law may be filed at any time. No other motion shall be filed or considered pursuant to this rule if filed more than 2 years after the judgment and sentence become 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;
> 2. the fundamental constitutional right asserted was not established within the 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; or
> 3. the defendant retained counsel to timely file a 3.850 motion and counsel, through neglect, failed to file the motion. A claim based on this exception shall not be filed more than 2 years after the expiration

of the time for filing a motion for postconviction relief.

Defendant was sentenced on April 14, 2011. The Fourth District Court of Appeal affirmed and issued its mandate on January 11, 2013. Defendant subsequently filed a motion for postconviction relief pursuant to Rule 3.850, which was ultimately denied by this Court and affirmed by the Fourth District Court of Appeal.

The present Motion was not filed within two (2) years after the judgment and sentence became final on January 11, 2013, and it neither seeks to vacate a sentence that exceeds the limits provided by law nor alleges any of the three circumstances delineated in Rule 3.850(b). As such, the Motion is time-barred, and the Court therefore **DENIES** Defendant's Motion for Postconviction Relief. Defendant is advised that he has a right to appeal this Order within thirty (30) days of its rendition.

DONE AND ORDERED, in Chambers at West Palm Beach, Palm Beach County, Florida this 1st day of August, 2019.

50-2009-CF-012955-AXXX-MB 08/01/2019
Dallah H. Weiss
Judge

COPIES TO:
Office of the State Attorney, 401 North Dixie Highway, West Palm Beach, Florida 33401 (e-postconviction@sa15.org)
Duane M. Blake, DC # 617195, Madison Correctional Institution, 382 Southwest MCI Way, Madison, Florida 32340-4430