APPENDIX

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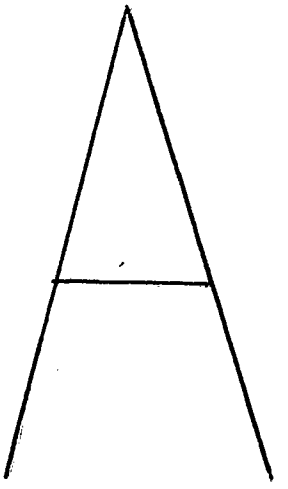
APPENDIX



2nd degree Robbery Absent a prima facie showing of the necessary information to establish the essential elements of the Crime that would support the plea of guilty to the Charge. There was no factual basis introduced to the trial Court Record to support that the Crime Charged was in fact the Crime Committed. The defendant Contends that it is fundamental error to Convict and Sentence a defendant Absent the showing of the Elements of a Crime that is essential to its proof. In Dyder v. State the Court Held that: "Fundamental error has been defined as error which goes to the foundation of the Case or to the merits of the Cause of Action." (See: Sanford v. Rubin 237 So.2d 134 (Fla. 1970)." We Can think of no error more fundamental than the Conviction of a defendant in the Absence of a prima facie showing of the essential Elements of the Crime Charged." (Dyder v. State 400 So.2d 1265).

The defendant Relies upon the foregoing Argument to establish as well that there was no factual basis introduced to the Record in open Court at the plea hearing to support his guilty plea to 3rd degree grand theft. And Contends that where there's no necessary information given to Establish the Essential Elements of 3rd degree grand theft and the defendant stands Convicted and judgement and Sentence has been imposed for 3rd degree grand

theft, a manifest injustice has occured and the defendant was prejudiced. There was no factual basis introduced to the trial Court Record to support that the Crime Charged was in fact the Crime Committed.

In Conclusion the defendant Argues that where the Court failed to make the mandatory determinations in open Court to satisfy itself that a factual basis for his plea existed, and failed to introduce into the Record any necessary information that would establish the essential elements of the offenses charged, i.e., 2nd degree Robbery and 3rd degree grand theft, and the State and the defense Counsel failed to Assist the Court in making the mandatory determinations prior to the Court Accepting his plea, that the Court transgressed the Rules of Florida Criminal Procedure and violated the defendants Rights to due process and Equal protection under the Law pursuant to U.S. Const. 5th and 14th Amend. Finally, that the Court is an institution charged with the duty to punish Rule breakers and Law violators and must not be seen to Engage in such Conduct itself, As such Conduct would undermine the integrity and fundamental fairness of Equal justice and due process that our judicial System vigorously labors to uphold. That the Court upon Recognizing and Acknowledging that it has broken the Rules, violated the Law and the defendants Rights to due process and Equal protection, should seek to undo its transgression Expediently and with Efficiency by the most appropriate

means necessary. Which the defendant asserts to be: Where there is Absolutely no factual information in the Record of the plea hearing that is necessary to establish the elements of Offenses for which the defendant entered the plea and judgement and Sentence has been imposed, A manifest injustice has occured, And where the defendant has shown prejudice in the foregoing Circumstance and Arguments, this Honorable Court must vacate the plea.

Due Process Violation
Involuntary Plea
Count Error

The Court erred in determining that the defendants plea was Voluntary.

The defendant Claims that his plea was involuntary, Contending that no officer of the Court inform or explain nor at any time make him Aware prior to his entering, or the judge Accepting his guilty plea that he would be admitting to the Essential Elements of the Crime of Robbery in the 2nd degree, i.e., that he used force, Violence, Assault or the putting in of fear during the Course of the Alleged taking, that he was not Appraised of the Nature of the Charge. (See: Fla. R. Crim. P. 3.172(c)(1)).

The defendant Argues that it is the first and most universally Recognized Requirement of due process that in order for a defendants plea to be A Voluntary and intelligent Admission of guilt, that he Committed the offense that the State has Charged him with, that he must be Appraised of the Essential Elements of the Crime for which he's pleading guilty and made Aware that the facts of the Cause would Constitute the Elements of the offense Charged.

The defendant Argues that the Essential Elements of the Charge is in fact the very Nature of the

offense, and that Fla. R. Crim. P. 3.172(c)(1) provides that the judge shall place the defendant under oath and shall address the defendant personally and shall determine that he or she understands: "the nature of the charge to which the plea is offered."

The defendant argues that understanding of the nature of the charge is essential to making a knowing, voluntary and intelligent decision. That it is essential in the constitutional sense of due process that he be informed of the nature of the charge in order that his admission of guilt can be truly voluntary.

The defendant contends that he would not have voluntarily pled guilty to committing the essential elements of Robbery 2nd degree, i.e., that force, violence, assault or that the putting in of fear was used in the course of the alleged taking. That where the Court failed to appraise him of the nature of the charge, i.e., that by pleading guilty he would be admitting that he used force, violence, assault and the putting in of fear, it violated his rights to due process and equal protection under the law pursuant to U.S. Const. 5th & 14th Amend. and violated the mandatory requirement of Fla. R. Crim. P. 3.172 (c) (1).

Further, arguing that where the record of the plea hearing lacks any evidence that the defendant was informed of the nature of the charge or that it was ascertained by the judge that he understood

the natural of the charge of 2nd degree Robbery, i.e., the essential elements of the offense for which he stands convicted and judgement and sentence has been imposed, a manifest injustice has occured.

In Colding v. State the Court held that: "When no evidence is presented, nor testimony given to the Court for it to comply with the duty to satisfy itself that the plea was voluntary, the burden to show prejudice is met. (see: Colding v. State 698 So 2d 1008). See: Cust 558 So 2d at 464). Baker v. State 630 So 2d 1122 1st DCA 1993).

The defendant asserts that Standard 2.1, Pleas of Guilty, American Bar Association Standard of Criminal Justice, sets forth the following under Plea Withdrawal: "(a) (i) Withdrawal is necessary to correct a manifest injustice whenever the defendant proves that: "(3) the plea was involuntary....

In conclusion the defendant contends that his plea was involuntary based upon the fact that he was not informed of the nature of the charge in violation of Fla. R. Crim. P. 3.172(c)(1). That where a manifest injustice has been shown and moreover, the burden of prejudice has been met, the defendants rights to due process and equal protection under the law pursuant to the U.S. Const 5th & 14th Amnd. having been violated; this Honorable Court must vacate the plea.

Relief Sought

Wherefore the defendant Tyrone Smith humbly prays that this Honorable Court grant any and all such Relief that he is lawfully entitled in this proceeding, including but not limited to the following:

1. The vacating of the defendants judgement and sentence.

2. In the alternative, vacate the defendants sentence and impose a minimal sentence under the Criminal Punishment Code and placement in "Fresh Start" drug program as promised by Counsel and Pastor Swallow.

3. Any such other Relief that this Honorable Court deems just and proper.

Oath Pursuant to Fla Statute 92.525

Under penalty of perjury, I declare that I have read the foregoing motion and that the facts stated therein are true.

Tyrone Smith Prose 048335

Certificate of Service

I Hereby Certify that a true and correct copy of the foregoing motion has been mailed to the office of the State Attorney: 2725 Judge Fran Jamieson Way, Building D Viera, Florida 32940. On this 4th day of January 2017.

Tyrone Smith Prose 048335

LEGAL MAIL PROVIDED TO WAKULLA CI

JAN 04 2017

FOR MAILING

Tyrone Smith 048335

Wakulla C.I. B2-122L

110 Melaleuca Dr

Crawfordville Fl. 32327

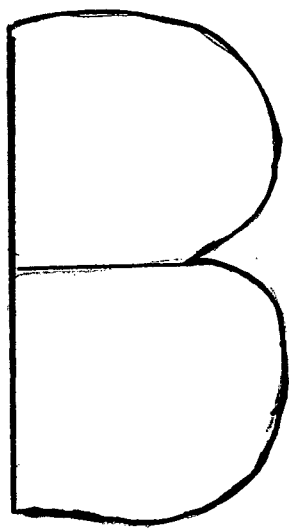
The defendant further says naught.

Tyrone Smith 048335
Wakulla C.I. B2-122L
110 Melaleuca Dr
Crawfordville Fla
32327

Scott Ellis
Brevard County
Clerk of the Court
Moore Justice Center
2825 Judge Fran Jamieson Way
Viera, Florida 32940

LEGAL MAIL

APPENDIX



understood the nature of the charges against him, his maximum possible penalties, and his waiver of rights. Further, the Court found the Defendant's plea was intelligently and voluntarily entered and there was no indication the Defendant was confused; therefore, the Defendant has failed to demonstrate prejudice. See Curry v. State, 671 So. 2d 291 (Fla. 5th DCA 1996). The Defendant is not entitled to relief on these claims.

q. In the Defendant's seventh due process claim, he argues the Court erred when it determined the Defendant's plea was voluntary because the Court did not apprise him of the elements of the charges for which he was entering his plea. According to Rule 3.172(c)(1), Florida Rules of Criminal Procedure, in determining whether a plea was entered voluntarily, the Court must determine on the record that the defendant understands the nature of the charge which includes the maximum possible penalty and any mandatory minimum penalty. There is no requirement the Court inform the Defendant of the elements of each charge. During his plea colloquy, the Defendant was advised of the charges to which he was entering a guilty plea, including the maximum possible penalty if he was determined to be an HVFO, and the potential for a 10-year mandatory minimum (See Exhibit D, pp. 7-8). The Defendant is not entitled to relief on this claim.

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

1. The Defendant's Motion to Vacate Sentence is **DENIED.**

2. The Defendant's Supplemental Argument in Addendum to Post-Conviction Relief Motion is **DENIED.**

3. The Defendant has the right to appeal this Order within thirty (30) days of its rendition.

1 The Petitioners claim is that the Court failed to inform him of the Nature of the Charge. See Record, 3.850 Motion,

APPENDIX C

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

TYRONE SMITH,

Appellant,

v.

Case No. 5D17-2988

STATE OF FLORIDA,

Appellee.

_____/

Decision filed April 3, 2018

3.850 Appeal from the Circuit Court
for Brevard County,
Morgan Laur Reinman, Judge.

Tyrone Smith, Crawfordville, pro se.

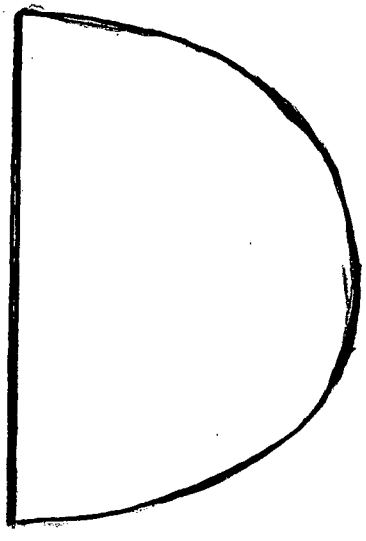
Pamela Jo Bondi, Attorney General, Tallahassee, Rebecca Rock McGuigan and Rebecca Roark Wall, Assistant Attorney Generals, Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED.

COHEN, C.J., PALMER and EISNAUGLE, JJ., concur.

APPENDIX



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

TYRONE SMITH,

Appellant,

v. CASE NO. 5D17-2988

STATE OF FLORIDA,

Appellee.
_____/

DATE: May 16, 2018

BY ORDER OF THE COURT:

ORDERED that Appellant's Motion for Rehearing, filed April 27, 2018, is denied.

I hereby certify that the foregoing is
(a true copy of) the original Court order.

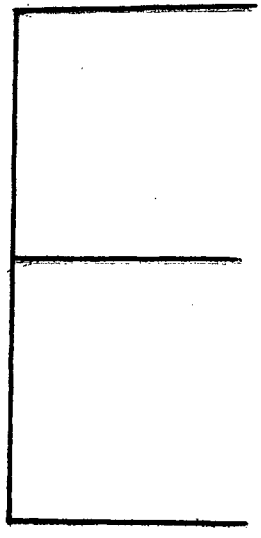
Joanne P. Simmons
JOANNE P. SIMMONS, CLERK

Panel: Judges Cohen, Palmer, and Eisnaugle

cc:

Office of Attorney General Rebecca Rock Mcguigan Rebecca Roark Wall
Tyrone Smith

APPENDIX



established federal law, as determined by the Supreme Court of the United States. Applying the AEDPA's deferential standard, Claim Two is denied.

C. **Claim Three**

Petitioner argues that the trial court erred in determining that his plea was voluntary because the trial court did not apprise him of the elements of the charges for which he was entering his plea. (Doc. 1 at 7). This claim was raised in Petitioner's Rule 3.850 motion and was denied.

"Due process does not require that the defendant, in pleading guilty, be informed of each element of the crime in question at the plea hearing." *Gaddy v. Linahan*, 780 F.2d 935, 944 (11th Cir. 1986). Here, the trial court advised Petitioner of the charges to which he was entering a guilty plea and the sentences he was facing. (Doc. 9-2 at 15-16). When asked by the trial court whether he had any questions, Petitioner responded "No, I'm very well aware of what I'm facing." (*Id.* at 17). Petitioner also acknowledged that he was aware of all of the rights he would be waiving by entering the plea. (*Id.* at 20). The trial court found that Petitioner's plea was entered into knowingly and voluntarily, and the record supports the finding. (Doc. 9-2 at 20-21). Under the circumstances, the trial court properly denied this claim.[7]

[7] In addition, the plea agreement specifically acknowledges that counsel advised him of the nature of the charges, "their elements," and any possible defenses. (Doc. 9-2 at 7).

As such, Petitioner has failed to demonstrate that the state court's decision rejecting his claim was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States. Applying the AEDPA's deferential standard, Claim Three is denied.

Allegations not specifically addressed herein are without merit.

IV. CERTIFICATE OF APPEALABILITY

This Court should grant an application for a certificate of appealability only if the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. ' 2253(c)(2). To make such a showing "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Lamarca v. Sec'y, Dep't of Corr.*, 568 F.3d 929, 934 (11th Cir. 2009). However, the petitioner need not show that the appeal will succeed. *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003).

Petitioner fails to demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. Moreover, Petitioner cannot show that jurists of reason would find this Court's procedural rulings debatable. Petitioner fails to make a substantial showing of the denial of a constitutional right. Thus, the Court will deny Petitioner a certificate of appealability.

V. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. The Petition for Writ of Habeas Corpus (Doc. 1) is **DENIED**.

2. This case is **DISMISSED with prejudice**.

3. Petitioner is **DENIED** a certificate of appealability in this case.

4. The Clerk of the Court is directed to enter judgment in favor of Respondents and to close this case.

DONE and **ORDERED** in Orlando, Florida on November 12, 2019.

GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party
OrlP-2 11/12

APPENDIX F

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

TYRONE SMITH,

Petitioner,

v. Case No: 6:18-cv-715-Orl-31LRH

SECRETARY, DEPARTMENT OF CORRECTIONS and ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents.
_____/

ORDER

This cause is before the Court on Petitioner's Motion for A Certificate of Appealability (Doc. 19). Upon consideration, it is **ORDERED** that the motion is **DENIED**. The Court previously denied this motion. (Doc. 16).

DONE and **ORDERED** in Orlando, Florida on December 18, 2019.

Leslie R. Hoffman

LESLIE R. HOFFMAN
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party
OrlP-2 12/18

APPENDIX G

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-15004-C

TYRONE SMITH,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

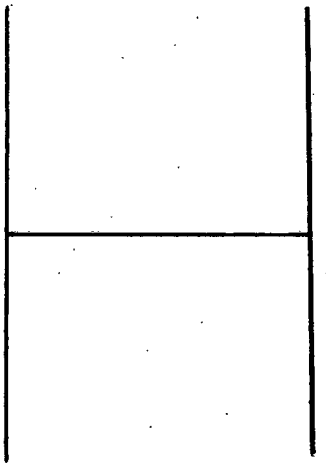
Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Tyrone Smith moves for a certificate of appealability ("COA") and *in forma pauperis* ("IFP") status, in order to appeal the denial of his 28 U.S.C. § 2254 petition. To merit a COA, Smith must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Smith's motion for a COA is DENIED because he failed to make the requisite showing. His IFP motion is DENIED AS MOOT.

UNITED STATES CIRCUIT JUDGE

APPENDIX



IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-15004-C

TYRONE SMITH,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before: GRANT and LAGOA, Circuit Judges.

BY THE COURT:

Tyrone Smith has filed a motion for reconsideration of this Court's March 23, 2020, order, denying a certificate of appealability and *in forma pauperis* status, following the denial of his petition for a writ of habeas corpus, 28 U.S.C. § 2254. Upon review, Smith's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.