

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

DAVID P. MORAN,

Petitioner,

v.

CASE NO. 5D20-1177

STATE OF FLORIDA,

Respondent.

DATE: May 29, 2020

BY ORDER OF THE COURT:

ORDERED that the Petition for Writ of Habeas Corpus, filed May 18, 2020, is denied.

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

Sandra B. Williams



SANDRA B. WILLIAMS, CLERK

Panel: Judges Edwards, Grosshans, and Sasso

cc:

Office of the Attorney General David P. Moran

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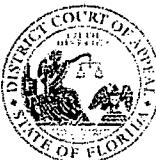
DATE: June 19, 2020

BY ORDER OF THE COURT:

ORDERED that Petitioner's Motion for Rehearing, Certification, and/or Written Opinion filed June 11, 2020, is denied.

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

Sandra B. Williams



SANDRA B. WILLIAMS, CLERK

Panel: Judges Edwards, Grosshans, and Sasso

cc:

Office of the Attorney General David P. Moran

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 2016-CF-6177-A-O
DIV.: 10

STATE OF FLORIDA,
Plaintiff,

v.

DAVID P. MORAN,
Defendant

ORDER DENYING MOTION TO STRIKE ORIGINAL MOTION FOR RECONSIDERATION
AND AMENDED MOTION FOR RECONSIDERATION

This matter came before the Court upon the filing of Defendant's "Request to Strike Original Motion for Reconsideration and Amended Motion for Reconsideration of Motion to Suppress," filed on March 11, 2020, pursuant to Florida Rule of Criminal Procedure 3.190(h).

PROCEDURAL HISTORY

On July 27, 2017, Defendant was adjudicated guilty of attempted first degree murder of a law enforcement officer with a weapon (count 1); aggravated battery with a deadly weapon or causing great bodily harm to a law enforcement officer (count 2); aggravated fleeing or attempting to elude a law enforcement officer causing injury or damage (count 3); and battery (count 4). He was sentenced on September 15, 2017, to life on count 1, consecutive to counts 2, 3, and 4; 25 years with a 5-year minimum mandatory on count 2; 15 years on count 3; and time served on count 4. Defendant appealed and the appellate court affirmed with the Mandate issued on March 25, 2019. *Moran v. State*, 278 So. 3d 687 (Fla. 5th DCA 2019).

ANALYSIS AND RULING

Before trial, on April 13, 2017, Defendant filed a "Motion to Suppress Statement Made by Accused in the Hospital on May 18, 2016." On April 28, 2017, the Court denied the motion to suppress and failed to rule on Defendant's Motion to Reconsider the motion to suppress, filed on July 13, 2017. Defendant now asks the Court to strike the Motion to Reconsider filed on July 13, 2017, and consider the instant Amended Motion for Reconsideration of Motion to Suppress.

Under Fla. R. Crim. P. 3.192, a motion for rehearing may be filed within 10 days of the order subject to appellate review. The trial court's order disposing of the motion shall be filed within 15 days of a response to the motion, if filed, but not later than 40 days from the date of the order of which rehearing is sought. The original motion for reconsideration was filed later than 10 days after the order denying the motion to suppress. In addition, it has not only been well past the 40 days from the date in which the Court denied the motion to suppress, it has been nearly 3 years. The Court was not required to rule on the motion to reconsider. *See Hunter v. Dennies Contracting Co., Inc.*, 693 So. 2d 615, 616 (Fla. 2d DCA 1997) (Holding that the trial court has inherent authority to reconsider any of its nonfinal rulings prior to the entry of the final order terminating the action, but it is not required to exercise that authority and its decisions whether to do so are not reviewable.). Defendant also did not appeal the court's denial of the motion to suppress. Defendant's request has now been rendered moot, as the Court denied the motion to suppress and trial proceeded. The motion for reconsideration was deemed denied once the Court failed to rule on the motion within the allotted time period of 40 days. Defendant was then found guilty by a jury, and was adjudicated and sentenced.

Furthermore, because the time in which to appeal the denial of the motion to suppress has passed, the order denying the motion to suppress has become final and this Court lacks jurisdiction to reconsider it.

Finally, Defendant raised the issue of the denial of the motion to suppress on direct appeal. *See Initial Brief of Appellant.* The Fifth District Court of Appeal held in *Moran v. State*, No. 5D19-1833, 2020 WL 250406 at *1 (Fla. 5th DCA Jan. 17, 2020), “Moran’s direct appeal was evaluated under the procedures emanating under *Anders*, which, among other things, requires an appellate court independently to ‘examine the record to the extent necessary to discover any errors apparent on the face of the record.’” (quoting *State v. Causey*, 503 So. 2d 321, 322 (Fla. 1987)). The record was reviewed for any error and the Fifth District found that Defendant’s claim regarding the motion to suppress lacked merit. “[A]ny error in the trial court’s denial of the suppression motion was necessarily considered by this court on direct appeal, and we determined that no additional briefing was necessary, because, on the face of the record, the claim lacked merit.” *Id.* at *2. Thus, Defendant’s claim that this Court should reconsider the denial of the suppression motion is barred by collateral estoppel. *See State v. McBride*, 848 So. 2d 287, 291 (Fla. 2003) (Holding that collateral estoppel precludes relitigation of an issue in a subsequent but separate cause of action and its intent to prevent parties from rearguing the same issues that have been decided between them applies in the postconviction context.); *Knox v. State*, 873 So. 2d 1250, 1252 (Fla. 5th DCA 2004) (Holding that since defendant’s issue was fully litigated in a final decision of the Second Judicial Circuit, he was estopped from relitigating the issue again.). Thus, Defendant is estopped from relitigating the issue of the denial of the motion to suppress, and this Court will not consider an amended motion for reconsideration.