

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D19-188

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TONY DUPREE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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On appeal from the Circuit Court for Santa Rosa County.  
David Rimmer, Judge.

December 10, 2019

PER CURIAM.

AFFIRMED.

WOLF, B.L. THOMAS, and MAKAR, JJ., concur.

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

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Tony Dupree, pro se, Appellant.

Ashley Moody, Attorney General, and Anne C. Conley, Assistant Attorney General, Tallahassee, for Appellee.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR SANTA ROSA COUNTY, FLORIDA

2018 OCT 17 AM 8:03

DONALD C. SPENCER  
CLERK OF COURT  
COURT REPORTER

STATE OF FLORIDA,

Plaintiff,

v.

Case No: 1989-CF-0059

TONY OWEN DUPREE,

Defendant.

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ORDER DISMISSING DEFENDANT'S  
SECOND AMENDED MOTION FOR POSTCONVICTION RELIEF

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**THIS CAUSE** is before the Court on Defendant's *pro se* "[Second] Amended Motion for Postconviction Relief" filed on August 7, 2018, pursuant to Florida Rule of Criminal Procedure 3.850. Having reviewed the motion, record, and applicable law, the Court finds as follows:

On February 1, 1989, Defendant was indicted for first-degree premeditated murder.<sup>1</sup> On February 24, 1994, at the conclusion of his second jury trial, he was found guilty of the lesser-included offense of second-degree murder.<sup>2</sup> On March 31, 1994, he was adjudicated guilty, designated a habitual violent felony offender, and sentenced to life without parole for 15 years.<sup>3</sup>

Defendant appealed his judgment and sentence to the First District Court of Appeal in case number 1D94-1198. On May 30, 1995, the First District *per curiam* affirmed and, on June 15, 1995, the mandate was issued. As such, on June 15, 1997, Defendant's judgment and sentence became final. *See Breland v. State*, 58 So. 3d 326, 327 (Fla. 1st DCA 2011). On July

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<sup>1</sup> Exhibit A, Indictment.

<sup>2</sup> Exhibit B, Verdict.

<sup>3</sup> Exhibit C, Judgment and Sentence.

31, 2017, more than 20 years later, Defendant began filing the series of motions for postconviction relief now before the Court.

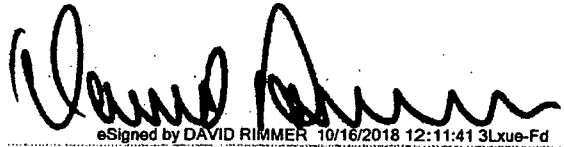
Generally, a motion for postconviction relief must be filed within two years after the defendant's judgment and sentence become final. *See* Fla. R. Crim. P. 3.850(b). Such a motion may be filed outside the two-year time period prescribed if it sufficiently alleges a claim of newly discovered evidence. *See* Fla. R. Crim. P. 3.850(b)(1). In the instant motion, although Defendant uses the phrase "newly discovered" several times, he does not sufficiently allege any claims of newly discovered evidence. Specifically, he does not allege that the facts on which the claims are predicated were unknown to him or his attorney and could not have been ascertained by the exercise of due diligence or that the claims were made within two years of the time the new facts were or could have been discovered with the exercise of due diligence. Moreover, simply construing an alleged error as a "fraud," "miscarriage of justice," or "manifest injustice" does not relieve Defendant of the time limitations set forth in rule 3.850. *See Hall v. State*, 94 So. 3d 655, 657 (Fla. 1st DCA 2012). Because Defendant has been given at least two opportunities to amend, further amendment will not be permitted, and the motion will be dismissed as untimely. *See Oquendo v. State*, 2 So. 3d 1001, 1005-06 (Fla. 4th DCA 2008).

With respect to Defendant's claim in Ground 3 that he was improperly habitualized, the Court would point out that *Hawkins v. State*, 195 So. 3d 1196 (Fla. 1st DCA 2016), does not apply in this case because Defendant was convicted of a first-degree felony punishable by life, not a life felony as he alleges. *See* §§ 782.04(2) & 775.084(4)(b)1. (1988 Supp.); *Jacobs v. State*, 162 So. 3d 29 (Fla. 4th DCA 2014).

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant's "[Second] Amended Motion for Postconviction Relief" is **DISMISSED WITH PREJUDICE**. Defendant has the right to appeal within 30 days of the rendition of this order.

# A

**DONE AND ORDERED** in Chambers at the Santa Rosa County Courthouse, Milton,  
Florida.



DAVID RIMMER  
CIRCUIT JUDGE

DR/cl

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and accurate copy of the foregoing Order Dismissing Defendant's Second Amended Motion for Postconviction Relief was furnished via regular U.S. Mail (unless otherwise indicated) to:

✓ Tony O. Dupree (DC#120528)  
Century Correctional Institution  
400 Tedder Road  
Century, Florida 32535-3659

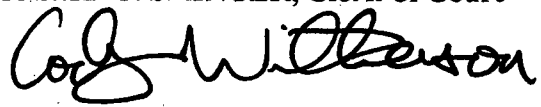
✓ Office of the State Attorney  
6495 Caroline Street, Suite S  
Milton, Florida 32570

this 17th day of October, 2018.

✓ Close

**DONALD C. SPENCER, Clerk of Court**

BY:

  
Deputy Clerk

**DISTRICT COURT OF APPEAL, FIRST DISTRICT  
2000 Drayton Drive  
Tallahassee, Florida 32399-0950  
Telephone No. (850)488-6151**

February 04, 2020

**CASE NO.: 1D19-0188  
L.T. No.: 1989-CF-0059**

Tony Dupree

v.

State of Florida

---

Appellant / Petitioner(s),

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

Appellant's motion filed December 26, 2019, for reconsideration is denied.

**I HEREBY CERTIFY** that the foregoing is (a true copy of) the original court order.

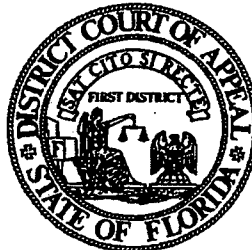
Served:

Anne C. Conley, AAG  
Tony Owen Dupree

Hon. Ashley Moody, AG

th

  
KRISTINA SAMUELS, CLERK



# Supreme Court of Florida

FRIDAY, FEBRUARY 21, 2020

CASE NO.: SC20-263

Lower Tribunal No(s):

1D19-188; 571989CF000059XXAXMX

TONY OWEN DUPREE

vs. STATE OF FLORIDA

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Petitioner(s)

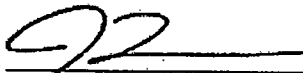
Respondent(s)

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.

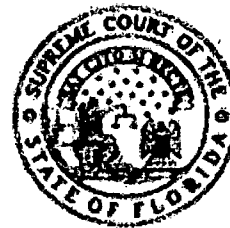
A True Copy

Test:



John A. Tomasino

Clerk, Supreme Court



td

Served:

TRISHA MEGGS PATE

TONY OWEN DUPREE

HON. DONALD C. SPENCER, CLERK

HON. DAVID HAROLD RIMMER

HON. KRISTINA SAMUELS, CLERK

# D

DEFENDANT Tony Owen Dupree / N/A Ricky Lee Cooley  
CASE NO. 89-002  
DATE OF PLEA 7/10/90

THE FOLLOWING IS TO REFLECT ALL TERMS OF PLEA:

PLEA:                      GUILTY                      ☒ NOLO CONTENDERE

CASE #	COUNT	CHARGE	CASE #	COUNT	CHARGE
<u>89-002</u>	<u>1</u>	<u>POSS. F/A BY CONDUCTED</u> <u>FELONY</u>			

(Note if plea is to lesser included offense instead of original charge)

PSI:                      Order                      ☒ Waived                      Not Required

FACTUAL BASIS:

A, I CONDUCTED FELONY, WAS IN POSSESSION OF A FIREARM.

STATE'S RECOMMENDATION (NOT BINDING ON THE COURT):

ALL 15 YEARS STATE PRISON CONCURRENT W/ TIME NOW SERVING

5. I ASK JUDGE NOT TO SEEK HYPOTHETICAL OFFENDER SENTENCING ON THIS CHARGE

In pleading (guilty) - (nolo contendere) I understand that I am giving up the following rights:

- (a) To plead not guilty
- (b) A trial by jury
- (c) To be represented or helped at trial by a lawyer
- (d) To compel or make my witnesses come to trial
- (e) To be present when witnesses testify against me
- (g) To remain silent and not testify against myself
- (h) To appeal all matters relating to the judgment, including the issue of guilt or innocence.

I understand there will not be a further trial of any kind, and I waive my right to a trial.

I also understand the judge may ask me questions about the offense or crime, and any answers I give under oath may be used against me in a later charge of perjury if these answers are not true.

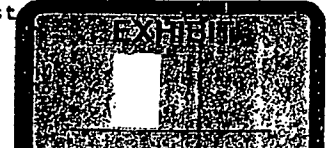
I hereby waive any right to request a modification of my sentence within the limits of this agreement absent a substantial change in circumstances occurring after sentencing.

FILED  
SANTA ROSA COUNTY  
CLERK'S OFFICE

SANTA ROSA COUNTY  
CLERK'S OFFICE

JUL 15 12 28 PM '90

OFFICIAL  
DECLARATION  
RECORDED  
INDEXED





I understand that the maximum period of imprisonment and fine that I could receive on each offense is as follows:

INFORMATION NO.	COUNT NO.	MAXIMUM	FINE	MINIMUM
89-002	1	15 YEARS	\$10,000	

I am satisfied with the advice and services given to me by my attorney and my attorney has not compelled or induced me to enter this plea by force, duress, threats, or pressure.

I have not had any drugs, alcohol or medication of any kind within the last twenty-four hours except NONE

I have never been declared legally incompetent or insane.

I understand that if I am not a United States citizen, this agreement may subject me to deportation pursuant to the laws and regulations governing the United States Naturalization and Immigration Service.

I am able to read, and I have read and understood everything on both pages of this plea; or I cannot read, but everything on both pages has been read to me, and I understand all of it.

I hereby enter this plea agreement freely and voluntarily and of my own accord and with full understanding of all matters set forth in the Information and in this Written Plea Agreement.

Barbara D. Elger  
Assistant State Attorney

Date 16 July 90

TONY D. Dupree  
Defendant

Date 7/11/90

#### CERTIFICATE OF DEFENDANT'S ATTORNEY

I, Defendant's counsel of record, certify that: I have discussed this case with defendant, including the nature of the charge(s), essential elements of each, the evidence against him/her of which I am aware, the possible defenses he/she has, the maximum penalty for the charge(s) and his/her right to appeal. No promises have been made to the defendant other than as set forth in this plea or on the record. I believe he/she fully understands this written plea, the consequences of entering it, and that defendant does so of his/her own free will.

B. B. [Signature]  
Attorney for Defendant

Date 7/11/90

Defendant Tony Owen Dupree  
Case Number 89-59-CFA

# SENTENCE

(As to Count one)

The Defendant, having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and for matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by Law, and no cause being shown:

(Check either provision if applicable)

- ☐ and the Court having on \_\_\_\_\_ (date) deferred imposition of sentence until this date.
- ☐ and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein,

IT IS THE SENTENCE OF THE LAW that the Defendant be committed to the custody of:

- ☒ The Department of Corrections of the State of Florida, or
  - ☐ The Sheriff\* of \_\_\_\_\_ County, Florida
- \*Name of Local Corrections Authority to be inserted at printing if other than Sheriff

To be imprisoned (check one; unmarked sections are inapplicable)

- ☐ For a term of Natural Life
- ☒ For a term of Life Without Parole for Fifteen (15) Years
- ☐ For an indeterminate period of 6 months to \_\_\_\_\_ years.

If "split" sentence complete either of these 2 paragraphs

- ☐ Followed by a period of \_\_\_\_\_ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.
- ☐ However, after serving a period of \_\_\_\_\_ imprisonment in \_\_\_\_\_ the balance of such sentence shall be suspended and the defendant shall be placed on probation for a period of \_\_\_\_\_ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

## ..... SPECIAL PROVISIONS .....

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

Firearm—3 year mandatory minimum

- ☐ It is further ordered that the 3 year minimum provisions of 775.087(2) are hereby imposed for the sentence specified in this count, as the defendant possessed a firearm.

Drug Trafficking—mandatory minimum

- ☐ It is further ordered that the \_\_\_\_\_ year minimum provisions of 893.135(1)( ) are hereby imposed for the sentence specified in this count.

Retention of jurisdiction

- ☐ The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of \_\_\_\_\_. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

Habitual Offender

- ☐ The defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

if Credit

- ☐ It is further ordered that the Defendant shall be allowed a total of see next page credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

concurrent/Concurrent

- It is further ordered that the sentence imposed for this count shall run ☐ consecutive ☐ concurrent (check one) to the sentence set forth in count \_\_\_\_\_ above.

**Rule 3.988 (j)**  
**SENTENCING GUIDELINES SCORE SHEET**

#E

Primary Docket Number <b>89-059</b>	2. Additional Docket Numbers	3. OBTS Number	4. Category: <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9
Name (Last Name First) <b>Dupree, Tony Owen</b>	6. Date of Birth <b>12-28-60</b>	7. Sex: <input checked="" type="checkbox"/> M <input type="checkbox"/> F	8. Race: <input type="checkbox"/> B <input checked="" type="checkbox"/> W <input type="checkbox"/> Other
Judge at Sentencing <b>K. Bell</b>	12. Date of Offense <b>12-12-88</b>	13. Date of Sentence <b>3-31-94</b>	9. Violation <input type="checkbox"/> Prob <input type="checkbox"/> CC <input type="checkbox"/> CC
		14. <input type="checkbox"/> Plea <input checked="" type="checkbox"/> Trial	10. County <b>Santa Rosa</b>
			15. DOC Number

**OFFICE USE ONLY**

**POINTS**

**I. PRIMARY OFFENSE AT CONVICTION**

Counts	Degree	Statute	Description
<u>1</u>	<u>1</u>	<u>782.04</u>	<u>Murder 2°</u>

**I. 150**

**II. ADDITIONAL OFFENSES AT CONVICTION**

Counts	Fel/Misd	Degree	Statute	Description

**II. 0**

(Continue on Reverse)

**III. A. PRIOR RECORD**

Counts	Fel/Misd	Degree	Statute	Description
<u>1</u>	<u>F</u>	<u>1PBL</u>	<u>B12</u>	<u>Robbery with a Firearm</u>
<u>1</u>	<u>F</u>	<u>2</u>	<u>B12</u>	<u>Dealing in Stolen Property</u>
<u>2</u>	<u>M</u>	<u>1</u>	<u>316</u>	<u>DWI</u>
<u>1</u>	<u>M</u>	<u>1</u>	<u>316</u>	<u>Reckless Driving</u>
<u>1</u>	<u>M</u>	<u>2</u>	<u>B12</u>	<u>Petit Theft</u>
<u>1</u>	<u>M</u>	<u>2</u>	<u>322</u>	<u>DWLS</u>

**III. A. 63**

(Continue on Reverse)

**III. B. SAME CATEGORY PRIORS (categories 3, 5 and 6 only)**

**III. B. 0**

**III. C. PRIOR DUI CONVICTIONS (category 1 only)**

**III. C. 0**

**IV. LEGAL STATUS AT TIME OF OFFENSE**

\_\_\_\_\_ (1) no restrictions X (2) legal constraint

**IV. 21**

**V. VICTIM INJURY**

Number of Scoreable Victim Injuries	Degree of Injury
	none or no contact
	slight or contact but no penetration
	moderate or penetration
<u>X</u>	severe or death

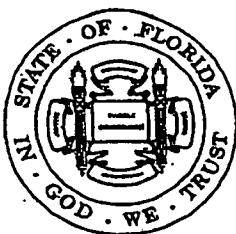
**V. 21**

**TOTAL POINTS 255**

RECOMMENDED SENTENCE 17-22 (2°) PERMITTED SENTENCE 12-27  
 TOTAL SENTENCE IMPOSED SECOND DEGREE MURDER Life with out parole for 15 years  
 REASONS FOR DEPARTURE \_\_\_\_\_  
 JUDGE [Signature] PREPARER JOHN A. MOGHAN

**OFFICE USE ONLY**

T.S. \_\_\_\_\_ CC \_\_\_\_\_ Prob. \_\_\_\_\_  
 S.P. \_\_\_\_\_ C.J. \_\_\_\_\_ E.F. \_\_\_\_\_



## FLORIDA PAROLE COMMISSION

2601 Blair Stone Road, Building C, Tallahassee, Florida 32399-2450

#F  
MONICA DAVID  
*Commissioner/Chairman*

FREDERICK B. DUNPHY  
*Commissioner/Vice-Chairman*

TENA M. PATE  
*Commissioner/Secretary*

February 14, 2005

Tony Dupree DC#120528  
Jackson CI

F112L

RECEIVED

FEB 22 2005

CLASSIFICATION DEPT.  
JACCI

Dear Inmate Dupree:

As previously indicated in the correspondence dated 10/9/2002, you are no longer eligible for parole consideration. Your minimum mandatory is not the reason you have not received an interview.

Parole ended in 1983 except for certain capital offenses. You were eligible for parole as long as your offense of conviction was for first-degree murder, which is a capital felony. Once you were adjudicated guilty and convicted of a lesser included offense, second-degree murder, which is a first degree felony, you became ineligible for parole.

Sincerely,

Janice Britt  
Government Analyst I

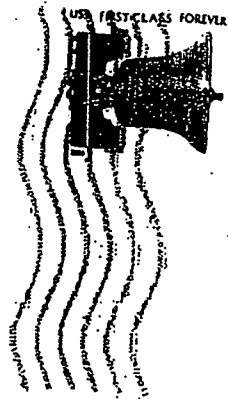


Exhibit # 06, two pages

Fri  
May-22, 2001

Hey Tony,

I think Roy Lee Lawrence or  
Ricky Lawrence did kill  
Geraldine, they are all kin to me  
I am sorry to say, Ricky Lawra  
took my son Justin Livingston for his  
last ride. I found him one month  
and week later in a hole at  
Sandy landing, they also killed  
Jenny Ransom. They stabbed Justin  
twelve times in back, little <sup>Jenny</sup> they shot  
her in the head and cut her up.  
They ~~wrote~~ wrote a Book called  
"The flesh collectors" written by  
Fred Rosen" listed in true Crime.  
I saw Pee Wee Mona she said  
they was eye witness to her son's  
murder, Pee Wee is buried at  
some cementary my son Justin is  
Skiland in Milton.

I had twelve of my family  
murdered in cold blood.  
Well I ~~cannot~~ help them anymore  
they are all dead.  
my Mom, (2) brothers, son, husband

for  
4694 Fowler Road  
Pace, FL 32571

Exhibit 7. - Two pages

unt: Jon Lawrence and Jeremiah Rogers killed my son Justin they are on death row also Gary Lawrence is on death row, for murder.

Lamar Simmons killed my husband Jimmie D. Livingston, Sr.

My Mom Maggie and my Sister killed her with birth control pills at "84" years old <sup>now</sup> France Winslow.

Charles F. Beebe killed by Ernest Le Baton ~~being~~ hung.

Roy Beebe shot to death by Wayne Hawthorne

Uncle Stan shot in California by black man.

Geraldine ? Cousin's wife Roy Lee Law or Ruby did it?

Pee Wee King Marriage to my nephew Mike Samley he also was shot to death by A. J. Luker.

Well sorry, but this is getting to me

I will close for now

Liz Livingston