

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-188

TONY DUPREE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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.

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

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**

STATE OF FLORIDA,

Plaintiff,

V.

Case No: 1989-CF-0059

TONY OWEN DUPREE,

Defendant.

**ORDER DISMISSING DEFENDANT'S
SECOND AMENDED MOTION FOR POSTCONVICTION RELIEF**

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.¹ 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.² On March 31, 1994, he was adjudicated guilty, designated a habitual violent felony offender, and sentenced to life without parole for 15 years.³

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

¹ Exhibit A, Indictment.

² Exhibit B, Verdict.

³ Exhibit C, Judgment and Sentence.

#A

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

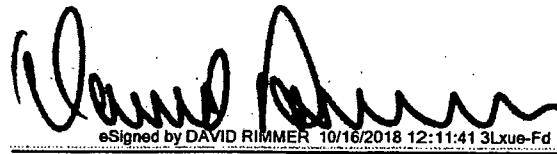
Generally, a motion for postconviction relief must be filed within two years after the defendant's judgment and sentence become final. *See Fla. R. Crim. P. 3.850(b)*. Such a motion may be filed outside the two-year time period prescribed if it sufficiently alleges a claim of newly discovered evidence. *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.



eSigned by DAVID RIMMER 10/16/2018 12:11:41 3Lxue-Fd

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

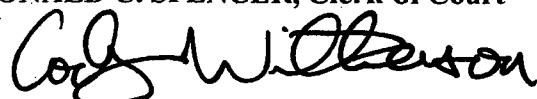
this 17th day of October, 2018.

✓ 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.

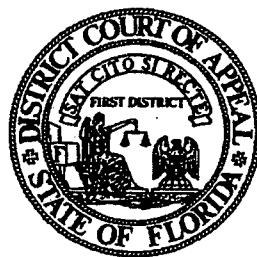
Served:

Anne C. Conley, AAG
Tony Owen Dupree

Hon. Ashley Moody, AG

th

Kristina Samuels
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

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.

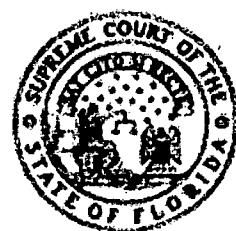
A True Copy

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 aka. Ricky Lee Goley
 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 CONVICTED</u> <u>FELON</u>			

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

PSI: Order Waived Not Required

FACTUAL BASIS:

A, I CONVICTED FELON, WAS IN POSSESSION OF A FIREARM.

FILED
SANTA ROSA COUNTY
CLERK'S OFFICE

2004 DECEMBER 14
RECEIVED
SANTA ROSA COUNTY
CLERK'S OFFICE
JUL 16 1990
20 PM '90
EX-100

STATE'S RECOMMENDATION (NOT BINDING ON THE COURT):
ALL 15 YEARS STATE PRISON CONCURRENT W/THE NOW SERVING

5. I AGREE NOT TO SEEK HABEAS OR OTHER SENTENCING ON THIS OFFENSE

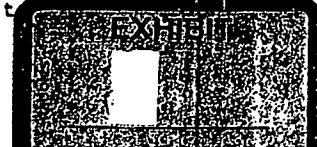
In pleading (guilty) - (nolo contendere) I understand that I am giving up the following rights:

- (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
- (f) To remain silent and not testify against myself
- (g) 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.



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

INFORMATION NO.	COURT NO.	MAXIMUM	FINE	MINIMUM
89-008		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.

Russell D. Edge
Assistant State Attorney

16 July 86
Date

Tony J. Breyer
Defendant

7/11/90
Date

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.

R. B. Edge
Attorney for Defendant

7/11/90
Date

Tony Owen Dupree
Defendant _____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 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 _____ until this date. _____ deferred imposition of sentence

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:

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.

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

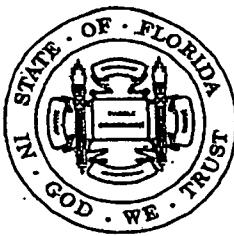
The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

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.

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):

inconcurrent/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.



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

MONICA DAVID
Commissioner/Chairman

FREDERICK B. DUNPHY
Commissioner/Vice-Chairman

TENA M. PATE
Commissioner/Secretary

February 14, 2005

Tony Dupree DC#120528
Jackson CI

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

F 1112 L

RECEIVED

FEB 22 2005

CLASSIFICATION DEPT.
JACCI

0019

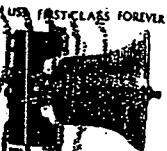


Exhibit # 6, two pages

7/1

May 22, 20

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 Lawrence
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 Rosen. They stabbed Justin
twelve times in back, little ^{Jenny} they shot
her in the head and cut her up.
They ~~wrote~~ wrote a Book called
"The flesh collector" 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 cemetery my son Justin is
Skikland in Milton.

I had twelve of my family
murdered in cold blood.

Well I ~~haven't~~ help them anymore
they are all dead.

My Mom, (2) brothers, Son, Husband

for
H. Lawrence
FL 3225
4/24/77
7/22/77
page 1, 32571

Exhibit 5 - two pages

but: Jon Lawrence and ~~Jeremiah~~
Rogers killed my Son Trotter
they are on death row also
Gary Lawrence is on death row,
for murder.

Lamar Simmens killed my husband
Jimmie Livingston, Sr.
My Mom Maggie and my Sister
killed her with birthcontrol pills at
"84" years old ^{my} Frances Winslow.

Charles F. Beebe killed by Ernest Le
Baston ~~hanging~~ hung.

Roy Beebe Shot to death by
Wayne Hawthorne

Uncle Stan Shot in California by
Black Man.

Geraldine? Cousins 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. Fisher.

Well sorry, but this is
getting to me

I will close for now

Liz Livingston