IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-14547-C

IRA L. JACKSON,

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 LUCK, Circuit Judges.

BY THE COURT:

Ira Jackson has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's March 20, 2020, order denying him a certificate of appealability, and denying him leave to proceed on appeal *in forma pauperis* as moot. Upon review, Jackson's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

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IRA L. JACKSON,

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:

Ira Jackson's motion for a certificate of appealability is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). Jackson's motion for leave to proceed on appeal *in forma pauperis* is DENIED AS MOOT.

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

IRA L. JACKSON,

Petitioner,

v. Case No: 6:17-cv-2063-Orl-18GJK

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

Respondents.
_____/

ORDER

This cause is before the Court on the Petition for Writ of Habeas Corpus ("Petition," Doc. 1) filed by Petitioner pursuant to 28 U.S.C. § 2254. Respondents filed a Response to Petition ("Response," Doc. 13) in compliance with this Court's instructions and with the *Rules Governing Section 2254 Cases in the United States District Courts.* Petitioner filed a Reply (Doc. 15) and an Amended Reply (Doc. 17) to the Response.

I. PROCEDURAL BACKGROUND

The State Attorney in and for the Eighteenth Judicial Circuit charged Petitioner by criminal information in Seminole County, Florida with one count of burglary of a dwelling (Count One) and one count of criminal mischief (Count Two). (Doc. 14-1 at 24). A jury found Petitioner guilty of the charges. (*Id.* at 83-84). The trial court adjudicated Petitioner guilty of the crimes and sentenced him to imprisonment for a term of thirty years as to Count One and for a term of fifteen years as to Count Two, with the sentences

to run concurrently. (*Id.* at 191-96). As to Count One, the trial court sentenced Petitioner as a violent career criminal ("VCC") and a prison releasee reoffender ("PRR"). (*Id.* at 193). As to Count Two, the trial court sentenced Petitioner as a Habitual Felony Offender ("HFO") and a PRR. (*Id.*). Petitioner filed a direct appeal with Florida's Fifth District Court of Appeal ("Fifth DCA"), which affirmed *per curiam*. (Doc. 14-2 at 191).

Petitioner next filed a motion for reduction of sentence pursuant to Florida Rule of Criminal Procedure 3.800(b), which the trial court denied. (*Id.* at 200-07). It does not appear that Petitioner appealed the denial.

Petitioner then filed motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850, which the trial court denied. (*Id.* at 209-48; Doc. 22-1 at 5-60). Petitioner appealed the denial, and the Fifth DCA affirmed *per curiam*. (*Id.* at 263).

Petitioner subsequently filed several other Rule 3.800(a) motions, which the trial court denied. (*Id.* at 272-343, 373-417). The Fifth DCA affirmed the denials *per curiam*.

Petitioner also filed a petition for writ of habeas corpus, which the Fifth DCA denied. (*Id.* at 335-43, 366).

II. LEGAL STANDARDS

A. Standard of Review Under the Antiterrorism Effective Death Penalty Act ("AEDPA")

The AEDPA governs the Petition. Because Petitioner's claims were adjudicated on the merits by the state courts, Petitioner can obtain relief only if that adjudication was "contrary to, or involved an unreasonable application of, clearly established federal law,

as determined by the Supreme Court," or was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(1)-(2). A state court's findings of fact are presumed correct under AEDPA "unless rebutted by clear and convincing evidence." *McNair v. Campbell*, 416 F.3d 1291, 1297 (11th Cir.2005) (citing 28 U.S.C. 2254(e)(1)).

"A state court decision is 'contrary to' clearly established federal law when it arrives at an opposite result from the Supreme Court on a question of law, or when it arrives at a different result from the Supreme Court on 'materially indistinguishable' facts." *Owens v. McLaughlin*, 733 F.3d 320, 324 (11th Cir. 2013) (quoting *Williams v. Taylor*, 529 U.S. 362 (2000)). Under the "unreasonable application" clause, habeas relief may be granted only if "the state court identifie[d] the correct governing legal principle from [the Supreme] Court's decisions but unreasonably applie[d] that principle to the facts of the prisoner's case." *Pope v. Sec'y, Fla. Dep't of Corr.*, 752 F.3d 1254, 1262 (11th Cir.2014) (quoting *Jones v. GDCP Warden*, 746 F.3d 1170, 1183 (11th Cir.2014)).

"[A]n unreasonable application [of clearly established federal law] must be objectively unreasonable, not merely wrong; even clear error will not suffice. Rather, . . . a state prisoner must show that the state court's ruling on the claim . . . was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *White v. Woodall*, 134 S. Ct. 1697, 1702 (2014) (internal quotation marks omitted).

B. Standard for Ineffective Assistance of Counsel

To succeed on an ineffective-assistance claim under *Strickland v. Washington*, 466 U.S. 668 (1984), the § 2254 petitioner must show that his Sixth Amendment right to counsel was violated because (1) his attorney's performance was deficient, and (2) the deficient performance prejudiced his defense. *Id.* at 687. "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690. Counsel's performance is deficient only if it falls below the wide range of competence demanded of attorneys in criminal cases. *Id.* at 687.

Prejudice is established by a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. The petitioner must affirmatively prove prejudice by demonstrating that the unprofessional errors were so egregious as to render the trial unfair and the verdict suspect. *Johnson v. Alabama*, 256 F.3d 1156, 1177 (11th Cir. 2001).

Because judicial review of counsel's performance already "must be highly deferential," a federal habeas court's review of a state court decision denying a *Strickland* claim is "doubly deferential." *See Cullen v. Pinholster*, 563 U.S. 170, 189-90 (2011) (quotations omitted). Further, because "*Strickland*'s general standard has a substantial range of reasonable applications," *Harrington v. Richter*, 562 U.S. 86, 89 (2011), "a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard." *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009). In sum, the pertinent

inquiry under § 2254(d) "is whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Harrington*, 562 U.S. at 105.

III. ANALYSIS

A. Claim One

Petitioner states that counsel was ineffective for failing to thoroughly discuss the State's plea offer, to provide him with a proper evaluation of the evidence, and to inform him of the mandatory enhanced sentence. (Doc. 1 at 7-8). Claim One was raised in Petitioner's Rule 3.850 motion, and it was denied because the allegations were refuted by the record.

Prior to trial, the trial court held a "docket sounding" in which the plea offer was placed on the record, and Petitioner was informed that he qualified as a PRR, a HFO, and a VCC, which would increase his sentencing exposure.[1] (Doc. 14-2 at 421-25). Petitioner informed the trial court that he did not want to accept the plea offer. (*Id.* at 425).

After the docket sounding and prior to trial, the trial court held a status hearing, and the State presented Petitioner with another plea offer, the terms of which were placed on the record. (*Id.* at 431-32). Petitioner was again specifically told that he qualified as a PRR, a HFO, and a VCC, which would increase his sentencing exposure.[2] (*Id.* at 431-33).

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[1] The plea offer involved a sentence of fifteen years' imprisonment; however, Petitioner was told that, if he refused the offer, he could receive a minimum sentence of thirty years' imprisonment and a maximum sentence of forty years' imprisonment. (*Id.* at 422-23).

The trial court also advised Petitioner of the sentencing consequences of rejecting the plea offer. (*Id.* at 432-34). Petitioner rejected the plea offer. (*Id.* at 434).

Prior to trial and after the docket sounding, the trial court also conducted a *Nelson* hearing.[3] Petitioner's counsel explained that he had a "very thorough" familiarity with Petitioner's case and that the structure wherein Petitioner committed the crime was, in fact, a residence. (*Id.* at 108-09). In fact, Petitioner's counsel stated that he had visited the crime scene, and, "in my opinion, it could certainly qualify as a dwelling [that was] habitable at the time of the entry." (*Id.* at 109).

Petitioner's counsel also made a counter-offer to the State that included drug treatment; however, the State rejected the counter-offer. (*Id.* at 109-10). The trial court advised Petitioner that, if he refused the State's original plea offer, he could qualify as a PRR, HFO, and a VCC, which would increase his sentencing exposure. (*Id.* at 111-13). The trial court informed Petitioner that, if he refused the offer, he could receive a minimum sentence of thirty years' imprisonment and a maximum sentence of forty years' imprisonment. (*Id.* at 112). However, Petitioner refused to accept that the structure was

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[2] The plea offer involved a sentence of fifteen years and six months' imprisonment; however, Petitioner was told that, if he refused the offer, he could receive a minimum sentence of thirty years' imprisonment and a maximum sentence of forty years' imprisonment. (*Id.* at 430-32).

[3] *Nelson v. State*, 274 So. 2d 256 (Fla. 4th DCA 1973) (establishing the procedure a trial court must follow, consistent with an indigent's right to effective representation, when a defendant expresses a desire to discharge court appointed counsel because of counsel's alleged incompetency).

a dwelling or that burglary could be classified as a violent crime for sentencing purposes. (*Id.* at 113-14). As a result, Petitioner refused to consider any plea offer.

Immediately prior to trial, the trial court conducted another *Nelson* hearing. Petitioner's counsel specifically informed the trial court that he was familiar with the facts of Petitioner's case and that he had investigated the facts. (*Id.* at 129). Petitioner's counsel also reiterated Petitioner's sentencing exposure if found to be a PRR, HFO, or a VCC.

Clearly, Petitioner's counsel investigated the case, discussed the plea offer with him, and informed him of the maximum sentence involved in the case. Petitioner's counsel also made a counter-offer to the State. As found by the trial court, "[t]he record shows that [Petitioner] was made aware of all material matters by trial counsel and by this court." (Doc. 22-1 at 6). Petitioner's rejection of the plea offers was knowing, voluntary, and intelligent after being fully informed as to their contents and as to the consequences in the event the plea offers were rejected.

Petitioner has failed to demonstrate that counsel acted deficiently or that he sustained prejudice with regard to this matter. 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 One is denied.

B. Claim Two

Petitioner states that the trial court erred in failing to "dismiss" his court-appointed counsel and denying him the right to represent himself. (Doc. 1 at 11). This claim was raised in Petitioner's Rule 3.850 motion and was denied.

The trial court held two *Nelson* hearings on this issue and found that Petitioner failed to meet his burden under *Nelson*. Additionally, at the second *Nelson* hearing, the trial court provided Petitioner with the opportunity to represent himself, but Petitioner declined to do so. ((Doc. 14-2 at 140).

Petitioner has failed to demonstrate that the trial court erred with regard to this matter. As such, Petitioner has failed to show 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 Two is denied.

C. Claims Three and Four

Petitioner argues that appellate counsel was ineffective for failing to argue that the trial court erred in denying his motion for a judgment of acquittal (Claim Three) and in granting the State's request for special instructions (Claim Four). (Doc. 1 at 17-24). These claims were raised in Petitioner's petition for writ of habeas corpus, and the Fifth DCA denied them.

On direct appeal, Petitioner's appellate counsel filed an initial brief in compliance with *Anders v. California*, 386 U.S. 738 (1967),[4] and Claims Three and Four were raised therein. (Doc. 14-2 at 155-56, 159-60). In addition, Petitioner filed a *pro se* initial brief, and Petitioner raised both claims therein. (*Id.* at 172-75, 180-82).

Since these claims were raised on direct appeal, Petitioner has failed to demonstrate that counsel acted deficiently or that he sustained prejudice. As such, Petitioner has failed to show 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, Claims Three and Four are denied.

D. Claim Five

Petitioner argues that appellate counsel was ineffective for failing to argue that he was erroneously sentenced "for both violent career criminal (VCC) and prison release [sic] reoffender for single offense of burglary in violation of Double Jeopardy." (Doc. 1 at 24). This claim was raised in Petitioner's petition for writ of habeas corpus, and the Fifth DCA denied it.

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[4] "*Anders* set forth a procedure for an appellate counsel to follow in seeking permission to withdraw from the representation when [counsel] concludes that an appeal would be frivolous; that procedure includes the requirement that counsel file a brief referring to anything in the record that might arguably support the appeal." *Smith v. Robbins*, 528 U.S. 259, 268 (2000) (citation omitted) (quotation omitted).

The dual enhancements as a VCC and a PRR did not violate Petitioner's Double Jeopardy rights because the imposition of concurrent mandatory minimum sentences on a single offense does not violate Double Jeopardy. *McDonald v. State*, 912 So. 2d 74, 76 (Fla. 5th DCA 2005).

Moreover, the sentencing structure complied with the prison releasee reoffender requirements under § 775.082(9), Florida Statutes. The trial court did not impose two separate sentences for the same offense. As set forth in section 775.082(9)(c), "[n]othing in the [PRR Act] shall prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084 or any other provision of law." In the present case, Petitioner was sentenced to thirty years' imprisonment as a VCC, which was a greater term than the PRR provision of fifteen years' imprisonment; therefore, the sentence was not erroneous, and appellate counsel did not act deficiently for failing to raise this issue.

Consequently, Petitioner has failed to demonstrate that appellate counsel acted deficiently or that he sustained prejudice with regard to this matter. 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 Five 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 October 17, 2019.

G. KENDALL SHARP
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party
OrlP-2 10/16

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR SEMINOLE COUNTY, FLORIDA

APPEAL CASE NO. 5D14-0310
L.T. CASE NO. 13-CF-1918-A

STATE OF FLORIDA,

Plaintiff(s),

vs.

IRA LEE JACKSON,

Defendant(s).

_____/

ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE

The Defendant was found guilty of burglary of a dwelling and possession of burglary tools. He was sentenced to thirty years as a violent career criminal with a fifteen year minimum mandatory term as a prison release reoffender as to count one and he was sentenced to a concurrent term of ten years in prison as a habitual felony offender as to count two. The Defendant's direct appeal of the convictions and sentences remains pending.[1]

On September 29, 2014, he filed a "Motion for Reduction, Modification, or Correction of Sentence" pursuant to Fla. R. Crim. P. 3.800(b). That motion was denied on September 30, 2014. On November 19, 2014, he filed the instant "Motion to Correct Illegal Sentence." He cites Fla. R. Crim. P. 3.800(a) as the procedural basis for his motion, but since the appeal is still pending, this should be treated as if it were also filed pursuant to Fla. R. Crim. P. 3.800(b).

In claim one, the Defendant asserts that he was improperly designated as a prison releasee reoffender despite not having a prior conviction for armed burglary. A person is a PRR if they commit an enumerated felony, such as burglary of a dwelling, within three years of being released from prison. *See* Fla. Stat. §775.082(9)(a)1.q. A PRR sentence does not require any particular prior felonies to qualify, nor did the Court cite to any non-existent prior felony when finding that the Defendant qualified as a PRR. (See Order Finding Defendant to be a Prison Releasee Reoffender, attached as Exhibit A). The Defendant was convicted of burglary of a dwelling, so he met the first prong of PRR qualification.

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[1] The Defendant now represents himself on appeal after appointed counsel filed an *Anders* brief.

The Defendant then asserts that the State failed to prove his release date because the crime and time report is not self-authenticating. He is incorrect. "There is ... no applicable legal impediment to the State and the DOC using a *signed* release-date letter, *written under seal,* as a means of authenticating an attached DOC Crime and Time Report, which then renders the entire report admissible as a public record." *Yisrael v. State*, 993 So. 2d 952, 960 (Fla. 2008), *as revised on denial of reh'g* (July 10, 2008) (*emphasis in original*). The State presented such a release date letter, written under seal and attached to a DOC Crime and Time Report. (See Crime and Time report, attached as Exhibit B). This was sufficient to establish that the Defendant had been released from prison on August 13, 2010. The crime occurred on July 1, 2013, which was within three years of his release from prison. (See Amended Information, attached as Exhibit C).

In his other claim, the Defendant asserts that he does not have sequential prior felonies. He cites to case numbers 08-6378-CFA and 09-0789-CFC, which were both sentenced on the same day, to support his claim. He neglects to reference case numbers 83-2743-CF (burglary of a dwelling), 85-794-CF (uttering a forgery and grand theft), 94-517-CFA (possession of cocaine with intent to sell or deliver), 95-535-CFA (burglary of a dwelling and possession of burglary tools), 01-4531-CFA (felony petit theft), 02-CF-3309-CFA (felony DWLSR), 05-5149-CFA (felony DWLSR), or 92-3142-CFA (burglary of a structure), each of which were sentenced on separate days from each other. (See Sentencing Exhibit and Identification List, attached as Exhibit D). Certified convictions of these judgments were admitted into evidence. (See excerpt of transcript of sentencing hearing attached as Exhibit E). He was extensively qualified as a habitual felony offender.

ORDERED AND ADJUDGED:

1. The Defendant's Motion to Correct Illegal Sentence is hereby **denied**.
2. The Defendant has 30 days from the date of this Order in which to file an appeal.

DONE AND ORDERED in chambers at Sanford, Seminole County, Florida this 1st day of December, 2014.

KENNETH R. LESTER, JR., Circuit Judge

cc: the Defendant

cc: the Defendant

Copies furnished this 1st day of December, 2014 to:

Office of the State Attorney

Ira Lee Jackson #597150
Liberty Correctional institution
11064 N.W. Dempsey Barron Road
Bristol, FL 32321

Office of the Attorney General
444 Seabreeze Boulevard, Fifth Floor
Daytona Beach, FL 32118

Pamela R. Masters, Clerk of the Court
Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, FL 32114

Marilyn J. McWhite
JUDICIAL ASSISTANT

Noel Pne Defendan

Noel Pne Defendan

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR SEMINOLE COUNTY, FLORIDA

CASE NO. 13-CF-1918-A

STATE OF FLORIDA,

Plaintiff,

vs.

IRA LEE JACKSON,

Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO VACATE JUDGMENT AND SENTENCE

The Defendant was tried and found guilty of burglary of a dwelling and possession of burglary tools. On January 15, 2014, he was sentenced to 30 years in prison as a violent career criminal with a 15 year minimum mandatory term as a prison releasee reoffender as to count one and he was sentenced to 10 years as a habitual felony offender for count two, to run concurrent to count one. The judgments and sentences were affirmed on appeal. *Jackson v. State*, 162 So. 3d 1034 (Fla. 5th DCA 2015) (per curiam).

On December 21, 2015, the Defendant filed the instant "Motion to Vacate Judgment and Sentence" in which he raises two claims. First, he asserts that counsel was ineffective for failing to properly convey the State's fifteen year plea offer in the context of the strength of the case against him and the potential for a higher sentence if convicted at trial. His second claim is that this Court erred in refusing to appoint substitute counsel at the Defendant's request. The State responded to the first claim of the Defendant's motion on February 9, 2016 and the Defendant replied to that response on February 23, 2016.

He first claims that trial counsel failed to fully discuss the plea offer with the Defendant. He admits that he was told of the plea offer in a five minute discussion early in the representation, but claims that there was no discussion of the consequences of rejecting the plea, the elements of the offense, the evidence against him, or the potential mandatory minimum sentences that he would face upon conviction after trial. He claims that without this information, he was forced to make an uninformed decision to reject the plea on the morning of trial. In his "Response to the State's Response," he elaborates on the claim, asserting that he asked counsel to make a ten year counter offer and he asked counsel to investigate the structure because the Defendant did not believe it would qualify as a dwelling, but counsel refused to comply with either request. At that point, the Defendant refused further contact with trial counsel. He then claims that he would have accepted the 15 year plea offer had he been fully advised of the enhanced

sentence he would face if convicted after trial. Under these circumstances, he asserts that he should retroactively gain the benefit of that bargain under the authority of *Alcorn v. State*, 121 So. 3d 419 (Fla. 2013).

The record refutes the Defendant's claims in their entirety. On October 2, 2013, the plea offer at issue was placed on the record. He was facing only PRR enhancement at that time, but was told that he also qualified as a VCC and HFO, which would increase his exposure to 40 years with a 30 year minimum mandatory term. The Defendant rejected that offer. (See transcript of docket sounding, attached as Exhibit A). Therefore, his claim that he was not advised of the sentencing consequences of rejecting the plea is refuted.

Shortly thereafter, the court held a hearing pursuant to *Nelson v. State*, 274 So.2d 256 (Fla. 1973). Trial counsel advised that he did investigate the structure and believed that it would qualify as a dwelling. He further advised that he made a counter offer to the State to include some drug treatment, but they refused that offer. He further noted that the Defendant was caught inside the residence and confessed to the crime. As such, trial counsel believed that there was not a reasonable possibility of success at trial, short of something unusual, like "a witness gets hit by a bus or something doesn't show up or something like that." The Defendant refused to accept that the structure was a dwelling or that the burglary could be classified as a violent crime for VCC purposes, so he again refused to consider entering any plea.[1] (See transcript of *Nelson* hearing, attached as Exhibit B). Thus, it is apparent that trial counsel did investigate the dwelling and made a counter-offer, as the Defendant requested, so that part of the claim is also refuted.

Two weeks later, at the next docket sounding, the State made an offer of 15 years and 6 months as a habitual felony offender with a 15 year minimum mandatory term as a PRR. The Defendant again rejected this offer. The State then filed its VCC notice, allowing for a 40 year sentence with a 30 year minimum mandatory term. (See transcript of docket sounding, attached as Exhibit C). At another *Nelson* hearing held just before jury selection, the parties again went over the chronology of the case and it became more apparent that any failure of trial counsel to communicate with the Defendant was attributable to the Defendant. It is clear that any failure of trial counsel to meet with the Defendant to give further advice on the benefits of the plea offer and to convince the Defendant to accept that plea was attributable solely to the Defendant. (See transcript of *Nelson* hearing, attached as Exhibit D). The record shows that he was made aware of all material matters by trial counsel and by this court. Therefore, his rejection of the plea was knowing and voluntary, so he is not entitled to relief under *Alcorn*.

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[1] While the State did say that the plea offer had expired, since the Defendant was still only facing a second-degree felony and the State had only filed a PRR notice, he could have pled to the Court and received only the 15 year PRR sentence. The State did not file the VCC or HFO notices until November 7, 2016.

In the Defendant's second claim, he asserts that this Court erred in refusing to appoint new counsel. The court held two hearings on the matter and found that the Defendant failed to meet his burden under *Nelson*. (See Exhibits B and D). These rulings were or could have been addressed on direct appeal, and therefore this claim may not be readdressed in this collateral motion. *See Medina v. State*, 573 So. 2d 293 (Fla. 1990).

ORDERED AND ADJUDGED:

1. The Defendant's Motion to Vacate Judgment and Sentence is hereby **denied**.
2. The Defendant has 30 days from the date of rendition of this Order in which to file an appeal.

DONE AND ORDERED in chambers at Sanford, Seminole County, Florida this 26th day of February, 2016.

KENNETH R. LESTER, JR., Circuit Judge

I hereby certify that copies of the foregoing have been furnished by mail this 26th day of February, 2016, to:

Office of the State Attorney

Ira Lee Jackson #597150
Okeechobee Correctional Institution
3420 N.W. 168th Street
Okeechobee, FL 34972

MARYANNE MORSE, Clerk of Courts

By: _____
DEPUTY CLERK