

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-812

LARRY DORTLEY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Columbia County.
Paul S. Bryan, Judge.

September 25, 2020

PER CURIAM.

AFFIRMED.

LEWIS, NORDBY, and LONG, JJ., concur.

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

**IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
IN AND FOR COLUMBIA COUNTY, FLORIDA**

STATE OF FLORIDA,

CASE NO.: 1982-99-CF (B)

vs.

LARRY DORTLEY,
Defendant.

_____/

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

THIS CAUSE comes before this Court upon the Defendant's "Petition for Writ of Habeas Corpus," filed with the Columbia County Clerk of Court on November 19, 2018.¹ Upon consideration of the petition, the record, and applicable law, this Court finds and concludes as follows:

In the instant petition, the Defendant alleges he was initially found to be incompetent to stand trial, and a hearing was not held regarding his competency upon his being transferred from the Florida State Hospital back to the Columbia County Jail in 1983 to face the pending charges in the instant case. According to the Defendant, this hearing was required by Florida Rule of Criminal Procedure 3.212. As such, his conviction and sentence are illegal. The Defendant concedes that this issue should have been raised on direct appeal; however, he argues that he "should not be penalized for failure to file a direct appeal on the judgment and sentence in 1983, and for failing to raise on direct appeal the issue of the court failing to conduct a competency hearing." *Petition at 6*. The Defendant does not provide any legal support for this premise.

Despite the fact that the Defendant believes he should not be "penalized" for failing to file a direct appeal, the case law is clear: "[An] underlying claim that [one] was incompetent to stand trial should have been raised on direct appeal and therefore is procedurally barred." Carroll v. State, 815 So. 2d 601, 610 (Fla. 2002) (citing Patton v. State, 784 So. 2d 380, 393 (Fla. 2000); Johnston v. Dugger, 583 So. 2d 657, 659 (Fla. 1991)). Accordingly, the Defendant's claim regarding his incompetence is procedurally barred.

Therefore, it is hereby **ORDERED**:

¹ Until January 3, 2020, an appeal regarding a similar issue was pending. *First DCA Case No. 1D18-3932*. Accordingly, this Court was waiting until the conclusion of that appeal before considering this petition and rendering an order.

State v. Larry Dortley
Order Denying Petition for Writ of Habeas Corpus
Case No. 1982-99-CF (B)
Paul S. Bryan, Circuit Judge

The Defendant's "Petition for Writ of Habeas Corpus" is hereby **DENIED**. The Defendant may appeal this Order within 30 days of this order.

DONE in Columbia County, Florida, on January 22nd, 2020.



PAUL S. BRYAN, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order was furnished by U.S. Mail/electronic service, on January 22, 2020, to the following:

Larry Dortley, D.C. # 222093
Zephyrhills Correctional Institution
2739 Gall Blvd.
Zephyrhills, FL 33541-9701

Office of the State Attorney
Third Judicial Circuit
e.service@sao3.org



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IN THE CIRCUIT COURT OF THE
THIRD JUDICIAL CIRCUIT IN AND
FOR COLUMBIA COUNTY, FLORIDA

Case No.: 1982-99-CF(B)

STATE OF FLORIDA,

Plaintiff/Respondent,

v.

LARRY DORTLEY,

Defendant/Petitioner. /

MOTION FOR REHEARING

Pro se Defendant/Petitioner, Larry Dortley, hereby moves this Honorable Court for a rehearing on the January 22, 2020, Order Denying Petition for Writ of Habeas Corpus ("Order"), and submits this Court overlooked and/or misapprehended the following when denying relief:

1. Defendant filed a writ of habeas Corpus petition asserting that the Court declared him incompetent to proceed to trial in 1982, and then tried and convicted him in 1983 without finding him competent to proceed to trial. This violated Florida Rule of Criminal Procedure 3.212, Defendant's due process and equal protection rights, and as a result his conviction and sentence are illegal.

2. In denying relief this Court ruled Defendant's claim of his incompetence is procedurally barred, citing Carroll v.

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State, 815 So.2d 601, 610 (Fla.2002) (citing Patton v. State, 784 So.2d 380, 393 (Fla.2000); Johnson v. Dugger, 583 So.2d 657, 659 (Fla.1991)).

3. None of the Cases Cited in this Court's Order are apposite. Carroll raised a Claim that he was incompetent to stand trial; Patton raised a Claim of ineffective Counsel for failure to advise the Court of a Competency issue; and, Johnson raised a Claim of Failure to Challenge a Finding of Competency.

4. Defendant's Claim is that this Court declared him incompetent and never reversed that order. As was held in Dougherty v. State, 149 So.3d 672 (Fla.2014) (An individual who has been adjudicated incompetent is presumed to remain incompetent until adjudicated Competent to proceed by the Court.).

5. To the extent Defendant's Claim should have been raised on appeal, Defendant was represented by Virlyn B. Willis, Jr., who did not file a direct appeal, and since Defendant was represented by Counsel, Defendant was prohibited from filing an appeal, Hughes v. State, 565 So.2d 354 (Fla.1st DCA 1990), even if he had known what one was. It should also be noted that Defendant's Counsel was twice suspended from practicing law, The Florida Bar v. Virlyn B. Willis, Jr., 459 So.2d 1026 (Fla.1984); and, The Florida Bar v. Virlyn B. Willis, Jr., 542 So.2d 1335 (Fla.1989).

6. It is inconceivable that this Court declared Defendant incompetent, lacking the capacity to consult with his attorney in a rational manner and unable to comprehend the significance of the proceedings against him, and then declare him proced-

urally barred for not filing an appeal without the assistance of Counsel. This concept is an affront to the holding in Gideon v. Wainwright, 372 U.S. 335 (1963).

Additionally, the Court in Wright v. Sec'y for the Dept. of Corrections, 278 F.3d 1245, 1258-59 (11th Cir. 2002) held that a substantive competency claim generally cannot be defaulted, which clearly applies to the instant case.

7. Defendant had a right under both the Confrontation clause of the Sixth Amendment and the due process clause of the Fourteenth Amendment to be present at any proceeding in a criminal prosecution in which his presence would contribute to the proceeding's fairness. But Defendant's right to be present for such proceedings includes more than the right to be physically present. Although physically present, Defendant is not present for a proceeding in any meaningful sense if he lacks sufficient capacity to consult with his attorney in a rational manner or is unable to comprehend the significance of the proceeding. Thus, so long as Defendant's condition is such that he lacks capacity to understand the nature and object of a material proceeding in his case, to consult with his counsel in relation to the proceeding, the proceeding may not be conducted. Drope v. Missouri, 420 U.S. 162, 171-72 (1975).

8. It can also fairly be argued that due to the mandatory language in Florida Rule of Criminal Procedure 3.210(a) "... shall not be proceeded against while incompetent, ..." this Court was deprived of personam jurisdiction and had no legal

authority to enter judgment or sentence against Defendant.

9. Since Defendant remains legally incompetent, Dougherty, this Court cannot hold Defendant legally responsible for failing to take any legal action without being represented by Counsel. Gideon.

10. It is a sad day when the judicial system convicts and sentences an incompetent Defendant, with an incompetent attorney, and deprives him his right to appeal, and then tells him sorry about your luck, you should know the law.

WHEREFORE, based upon the foregoing Defendant requests this Honorable Court to grant a rehearing; vacate or set aside the January 22, 2020, Order Denying Petition for Writ of Habeas Corpus; and, grant any further equitable relief.

Respectfully Submitted,

Larry Dortley
Larry Dortley #222093
Zephyrhills Correctional Institution
2739 Gall Blvd.
Zephyrhills, FL 33541-9701

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Rehearing has been delivered to prison officials for mailing to the Office of the State Attorney, ^{310 Pine Avenue, Live} ~~PO Box 351, Lake~~ ^{Oak} ~~FL~~, FL 32056, via U.S. mail this 30 day of January, 2020.

Larry Dortley
Larry Dortley
Defendant/Petitioner, pro se

**IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
IN AND FOR COLUMBIA COUNTY, FLORIDA**

STATE OF FLORIDA,

CASE NO.: 1982-99-CF (B)

vs.

LARRY DORTLEY,
Defendant.

_____ /

ORDER DENYING MOTION FOR REHEARING

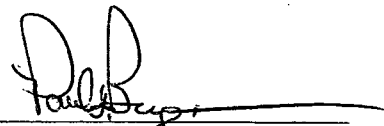
THIS CAUSE comes before this Court upon the Defendant's "Motion for Rehearing," filed with the Columbia County Clerk of Court on February 3, 2020. Upon consideration of the motion, the record, and applicable law, this Court finds and concludes as follows:

The Defendant alleges that this Court erred in denying his petition for writ of habeas corpus because a "substantive competency claim generally cannot be defaulted" and that he remains incompetent. *Motion at 3-4*. This Court explained in its previous denial order that the issue of the Defendant's competency to stand trial should have been raised on direct appeal and is therefore barred. *See attached Order Denying Petition for Writ of Habeas Corpus dated January 22, 2020*. Additionally, the Defendant has raised this claim at least one other time. *See attached Order Denying Petition for Writ of Habeas Corpus dated August 14, 2018, which was recently affirmed by the First District with a warning to the Defendant regarding future frivolous filings (1D18-3932)*. In light of this Court's prior rulings and consideration of the instant motion, a rehearing is unwarranted, and the Defendant's petition for writ of habeas corpus remains denied.

Therefore, it is **ORDERED**:

The Defendant's "Motion for Rehearing" is hereby **DENIED**. The Defendant may appeal the underlying denial order to the First District Court of Appeal within **30 days** of the rendition of this order. Fla. R. Crim. P. 3.850(k).

DONE in Columbia County, Florida, on February ~~March~~ 25th, 2020.



PAUL S. BRYAN, CIRCUIT JUDGE

Attachments:

- Order Denying Petition for Writ of Habeas Corpus dated January 22, 2020
- Order Denying Petition for Writ of Habeas Corpus dated August 14, 2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order was furnished by U.S. Mail/electronic service, on February/~~March~~ 25, 2020, to the following:

Larry Dortley, D.C. # 222093
Zephyrhills Correctional Institution
2739 Gall Blvd.
Zephyrhills, Florida 33541-9701

Office of the State Attorney
Third Judicial Circuit
e.service@sao3.org



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IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
IN AND FOR COLUMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: 1982-99-CF (B)

vs.

LARRY DORTLEY,
Defendant.

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

THIS CAUSE comes before this Court upon the Defendant's "Petition for Writ of Habeas Corpus," filed with the Columbia County Clerk of Court on November 19, 2018.¹ Upon consideration of the petition, the record, and applicable law, this Court finds and concludes as follows:

In the instant petition, the Defendant alleges he was initially found to be incompetent to stand trial, and a hearing was not held regarding his competency upon his being transferred from the Florida State Hospital back to the Columbia County Jail in 1983 to face the pending charges in the instant case. According to the Defendant, this hearing was required by Florida Rule of Criminal Procedure 3.212. As such, his conviction and sentence are illegal. The Defendant concedes that this issue should have been raised on direct appeal; however, he argues that he "should not be penalized for failure to file a direct appeal on the judgment and sentence in 1983, and for failing to raise on direct appeal the issue of the court failing to conduct a competency hearing." *Petition at 6*. The Defendant does not provide any legal support for this premise.

Despite the fact that the Defendant believes he should not be "penalized" for failing to file a direct appeal, the case law is clear: "[An] underlying claim that [one] was incompetent to stand trial should have been raised on direct appeal and therefore is procedurally barred." Carroll v. State, 815 So. 2d 601, 610 (Fla. 2002) (citing Patton v. State, 784 So. 2d 380, 393 (Fla. 2000); Johnston v. Dugger, 583 So. 2d 657, 659 (Fla. 1991)). Accordingly, the Defendant's claim regarding his incompetence is procedurally barred.


Therefore, it is hereby **ORDERED**:

¹ Until January 3, 2020, an appeal regarding a similar issue was pending. *First DCA Case No. 1D18-3932*. Accordingly, this Court was waiting until the conclusion of that appeal before considering this petition and rendering an order.

State v. Larry Dortley
Order Denying Petition for Writ of Habeas Corpus
Case No. 1982-99-CF (B)
Paul S. Bryan, Circuit Judge

The Defendant's "Petition for Writ of Habeas Corpus" is hereby **DENIED**. The Defendant may appeal this Order within 30 days of this order.

DONE in Columbia County, Florida, on January 22nd, 2020.



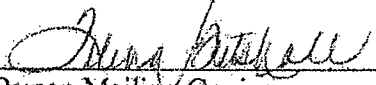
PAUL S. BRYAN, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true copy of the foregoing Order was furnished by U.S. Mail/electronic service, on January 22, 2020, to the following:

Larry Dortley, D.C. # 222093
Zephyrhills Correctional Institution
2739 Gall Blvd.
Zephyrhills, FL 33541-9701

Office of the State Attorney
Third Judicial Circuit
e.service@sao3.org



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IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
IN AND FOR COLUMBIA COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO.: 1982-99-CF

vs.

LARRY DORTLEY,
Defendant.

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

THIS CAUSE comes before this Court upon the Defendant's "Petition for Writ of Habeas Corpus," filed with the Columbia County Clerk of the Court on April 10, 2018. Upon consideration of the petition, the record, and applicable law, this Court finds and concludes:

In the instant petition, the Petitioner alleges that he was tried by an indictment that was based on perjured testimony. He also alleges that he was incompetent to proceed to trial. Both claims are attacks on the Defendant's conviction. Accordingly, his claims are cognizable in a motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850 and not in an action seeking habeas corpus relief. See Zuluaga v. State, Dep't of Corr., 32 So. 3d 674, 676-77 (Fla. 1st DCA 2010) (finding that claims that could have and should have been raised on direct appeal or in a motion for postconviction relief are barred from an action seeking habeas corpus relief). Accordingly, this Court construes the instant petition as a postconviction motion, and as the Court that imposed the sentence and rendered the judgment of conviction in the Defendant's criminal case, it will exercise jurisdiction over the instant matter.¹ Coakley v. State, 43 So. 3d 790, 791 (Fla. 1st DCA 2010). A motion pursuant to rule 3.850 would be untimely at this point; as such, this Court lacks jurisdiction to consider the motion. Fla. R. Crim. P. 3.850(b); see Edwards v. State, 128 So. 3d 134, 136 (Fla. 1st DCA 2013). As to Petitioner's claim of manifest injustice, this Court finds it is without merit as the Petitioner had available procedural avenues for raising the claims raised herein. His failure to seek relief through those available procedural avenues does not amount to a manifest injustice.

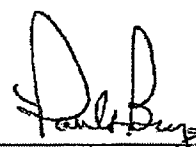
Therefore, it is **ORDERED**:

The Defendant's "Petition for Writ of Habeas Corpus Alleging Entitlement to Immediate Release" is hereby **DENIED**. The Defendant may appeal this decision to the First District Court of Appeal within **thirty days** of rendition of this order. Fla. R. Crim. P. 3.850(k).

¹ This Court does not have jurisdiction to rule on the instant petition if construed as a petition for writ of habeas corpus since the Defendant is not currently being detained in a facility within this Court's jurisdiction. See Fla. Stat. § 79.09; Coakley v. State, 43 So. 3d 790 (Fla. 1st DCA 2010).

State of Florida v. Larry Dortley
Order Denying Petition for Writ of Habeas Corpus
Case No. 1982-99-CF
Paul S. Bryan, Circuit Judge

DONE in Columbia County, Florida, on August 14th, 2018.



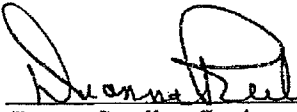
PAUL S. BRYAN, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order and attachments was furnished by U.S. Mail and/or electronic transmission, on August 15th, 2018, to the following:

Larry Dortley, DC # 222093
Zephyrhills Correctional Institution
2739 Gall Boulevard
Zephyrhills, Florida 33541-9701

Office of the State Attorney
Third Judicial Circuit
e.service@sao3.org



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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

Case No.: 1D20-0812
L.T. No.: 1982-99-CF(8)

LARRY DORTLEY,

Appellant,

v.

STATE OF FLORIDA,

Appellee. /

ON APPEAL FROM THE THIRD JUDICIAL CIRCUIT
IN AND FOR COLUMBIA COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

Larry Dortley #222093
Zephyrhills Correctional Institution
2739 Gall Blvd.
Zephyrhills, FL 33541-9701
Appellant, pro se

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PRELIMINARY STATEMENT

Appellant, Larry Dortley, will be referred to as "Appellant," and the Circuit Court will be referred to as the "lower tribunal."

References to the record on appeal will be designated by the letter "R" followed by the appropriate page number in the record.

Appellant attempted to supplement the record on appeal with the items requested in the Directions to the Clerk (R-93-94), to prove no order of competency ever issued below, however, this Court denied Appellant's motion to supplement the record on April 21, 2020, in this case.

STATEMENT OF THE CASE AND FACTS

Appellant was indicted on Count 1-First degree murder, Count 2-Armed Burglary, and Count 3-Kidnapping, on March 5, 1982 (R-5).

Appellant was ordered, by the lower tribunal, incompetent to stand trial and involuntarily committed to the State Hospital in Chattahoochee, Florida (R-5, 14).

Appellant was removed from the State Hospital and tried in June, 1983 (R-5).

No determination, or order, of competency was made (R-5).

Appellant was convicted by jury verdict on Counts 1 and 2 (R-5), and sentenced to life imprisonment.

No direct appeal was filed (R-5) by Appellant's Counsel.

Appellant filed a petition for Writ of Habeas Corpus, in the lower tribunal (R-4-13) challenging his being convicted while declared incompetent by Court order (R-6-11).

The lower tribunal denied the petition for writ of habeas Corpus as procedurally barred (R-70-71).

Appellant filed a motion for rehearing (R-72-76), which was denied by the lower tribunal (R-81-82).

Appellant filed a timely notice of appeal (R-90-91), and directions to the Clerk (R-93-94) to include the order declaring Appellant incompetent, any order declaring Appellant competent, the indictment, judgment and sentence (R-93).

SUMMARY OF THE ARGUMENT

Appellant was declared incompetent to proceed to trial, but he was subsequently tried, convicted, and sent to prison without a finding of Competency, contrary to United States Supreme Court precedent.

Appellant, who is still incompetent, filed a writ of habeas Corpus attacking his erroneous conviction and the lower tribunal ruled the issue procedurally barred stating it should have been raised on direct appeal, citing cases attacking a "Competency" finding, that are irrelevant to Appellant's claim.

While federal law holds Appellant's claim cannot be defaulted, it is inconceivable that an incompetent person should be required to: file an appeal; understand what issues should be raised; or have any concept of procedural rules and deadlines, when the Court ruled Appellant is unable to understand trial proceedings or even have the ability to consult with his counsel.

There is no case law barring an incompetent person from attacking his conviction, that never should have occurred and violated Appellant's rights, and therefore, this Court should overrule the decision below and remand this cause for further proceedings where there is no bar to Appellant's claim.

ARGUMENT

WHETHER THE LOWER TRIBUNAL ERRED IN
APPLYING A PROCEDURAL BAR TO THE FACTS OF
THIS CASE?

STANDARD OF REVIEW

The standard of review on a decision of the application of law is de novo, Bosem v. Musa Holdings, Inc., 46 So.3d 42 (Fla. 2010). Under the de novo standard this Court is at liberty to decide the question of law without deference to the lower tribunal, Transportes Aereos Nacionales, S.A. v. De Brenes, 625 So.2d 4 (Fla.3d DCA 1993).

MERITS

Appellant argued below that in 1983, after he was declared incompetent to stand trial, was removed from the State mental hospital, tried, convicted, and sent to prison for life without a Court finding, or order, of Competence (R-4-12).

The lower tribunal ruled the issue should have been raised on direct appeal and is procedurally barred, citing Carroll v. State, 815 So.2d 601, 610 (Fla. 2002) (citing Patton v. State, 784 So.2d 380, 393 (Fla. 2000); Johnston v. Dugger, 583 So.2d 657, 659 (Fla. 1991)). (R-70).

However, none of the lower tribunal's cited cases are on point with the instant case. In Carroll and Johnston there was no finding of incompetence and in Patton his Counsel

never advised the Court there was a Competency issue at all. Unlike these Cases, Appellant was declared, by Court order, to be incompetent, and then tried anyway.

A declaration of incompetence embodies the principle that the person's Condition is such that he lacks Capacity to understand the nature and object of a material proceeding in his Case, to Consult with his Counsel in relation to the proceeding, and the proceeding may not be Conducted, Drope v. Missouri, 420 U.S. 162, 171-72 (1975). And, an individual who has been adjudicated incompetent is presumed to remain Incompetent until adjudicated Competent to proceed by the court. Dougherty v. State, 149 So.3d 672 (Fla. 2014).

Appellant, who is incompetent, is not Contesting a finding in an incompetency hearing. Appellant is challenging being Convicted of a Crime, under Court ruling that he was not able to understand the proceedings or Consult with his Counsel. Under the authority of Drope no trial could be had, and his Conviction is tantamount to the Conviction that was reversed in Gideon v. Wainwright, 372 U.S. 335 (1963).

While Appellant's Competency Claim cannot be defaulted, Wright v. Sec'y for the Dept. of Corrections, 278 F.3d 1245, 1258-1259 (11th Cir. 2002), it is inconceivable that an incompetent person should be required to file an appeal; understand what issues should be raised; or have any concept of procedural rules and deadlines.

Appellant is unable to find any Case law that imposes

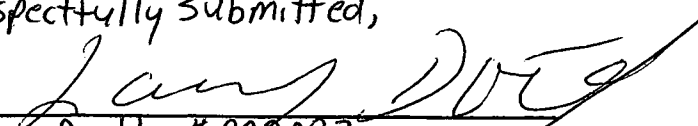
any type of bar on a Challenge to being Convicted of a crime after being declared incompetent to proceed by court order. The Cases Cited by the lower tribunal do not support a procedural bar on the issue presented, and therefore, the lower tribunal erred in denying relief.

Appellant's Conviction, while under order of incompetency, violated Appellant's rights of equal protection of the law and due process of law, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and is contrary to the decision in Drope v. Missouri, 420 U.S. 162 (1975), and therefore, this Court should reverse the decision of the lower tribunal and remand this cause for further proceedings, where there is no bar to his claim.

CONCLUSION

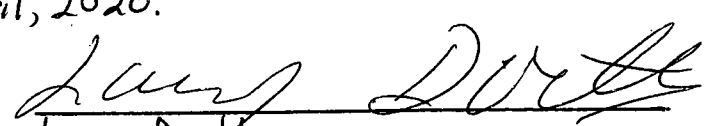
Based upon the foregoing facts and authorities this Court should reverse the order below and remand this case for further proceedings, and grant any further equitable relief.

Respectfully submitted,


Larry Dortley #222093
Zephyrhills Correctional Institution
2734 Gall Blvd.
Zephyrhills, FL 33541-9701

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief of Appellant has been delivered to prison officials for mailing to: The Office of the Attorney General, PL-01 The Capitol, Tallahassee, FL 32399-1050, via U.S. mail this 4 day of April, 2020.


Larry Dortley
Appellant, pro se