

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

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

AL RUE HOPKINS,

Appellant,

v.

Case No. 5D19-1240

STATE OF FLORIDA,

Appellee.

Decision filed July 9, 2019

3.850 Appeal from the Circuit Court
for Volusia County,
Dennis Craig , Judge.

Al Rue Hopkins, Crawfordville, pro se.

Ashley Moody, Attorney General,
Tallahassee, and Bonnie Jean Parrish,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

AFFIRMED.

EVANDER, C.J., WALLIS and GROSSHANS, JJ., concur.

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

CASE NO.: 2011-035980 CFATS

STATE OF FLORIDA

v.

AL RUE HOPKINS,
Defendant.

FILED
APR -3 AM 11:15
CLERK OF THE COURT
CITY COURT VOLUSIA CO. FL
CC18

**ORDER SUMMARILY DENYING DEFENDANT'S SECOND OR SUCCESSIVE
MOTION FOR POSTCONVICTION RELIEF WITH PREJUDICE**

THIS MATTER came before the Court upon the Defendant's *pro se* motion for postconviction relief, filed on March 27, 2019, pursuant to Florida Rule of Criminal Procedure 3.850(b)(2), which this Court will consider as a second or successive motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850(h). The Court, having reviewed the motion and the court file, and being otherwise fully apprised of the premises, finds as follows:

Defendant alleges that, based on the retroactive application of *Missouri v. McNeely*, 569 U.S. 141 (2013), and *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016), which would exclude his warrantless blood test results, his conviction and sentence should thus be vacated. *See Witt v. State*, 387 So. 2d 922 (Fla. 1980); Fla. R. Crim. P. 3.850(b)(2). Notwithstanding Defendant's *Witt* test analysis, the motion is currently untimely pursuant to rule 3.850(b)(2). "Rule 3.850(b)(2) provides an exception to the two-year time limitation for filing postconviction motions where a 'fundamental constitutional right asserted was not established within the period provided for herein *and has been held to apply retroactively.*'" *Anthony v. State*, 762 So. 2d 528, 529 (Fla. 2d DCA 2000) (emphasis added) (quoting *Dixon v. State*, 730 So. 2d 265, 268-69 (Fla. 1999)); *see* Fla. R. Crim. P. 3.850(b)(2). Because *McNeely* and *Birchfield* have not been held to

apply retroactively, and Defendant's conviction and sentence have been final for over two (2) years, this motion does not meet any of the time limitation exceptions to rule 3.850. *See* Fla. R. Crim. P. 3.850(b). This Court therefore concludes that this motion is untimely and Defendant is not entitled to relief.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the Defendant's *pro se* second or successive motion for postconviction relief is **SUMMARILY DENIED WITH PREJUDICE** as untimely.

Defendant has **thirty (30) days** from the rendition of this order to file a notice of appeal.

DONE AND ORDERED in Chambers, in Volusia County, Daytona Beach, Florida, this
2d day of Apr. 1 2019.


DENNIS CRAIG
CIRCUIT COURT JUDGE

cc: Al Rue Hopkins, Defendant. D.C. # V09306, Wakulla Correctional Institution, 110 Melaleuca Drive, Crawfordville, Florida 32327-4963
The Office of the State Attorney, Post-Conviction Division, eservicevolusia@sao7.org