

Case #

In the Supreme Court of the United States.

Jeffrey Ray Sundwall - Petitioner

vs.

St. of Fla. - Respondant

Appendix To Petition for Writ of Certiorari

Comes now Petitioner Jeffrey Ray Sundwall, pro-se and hereby submits this Appendix in support of his Petition for Writ of Certiorari.

Respectfully submitted,

*Jeffrey Ray Sundwall*

Jeffrey Ray Sundwall

DC# 829113

Dated: 1-29-2021

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<u>Exhibit</u>	<u>Description</u>	<u>P#</u>
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# Third District Court of Appeal

State of Florida

Opinion filed August 12, 2020.  
Not final until disposition of timely filed motion for rehearing.

---

No. 3D19-2462  
Lower Tribunal Nos. 17-160-A-K, 17-314-A-K, 17-164-A-K

---

**Jeffrey Ray Sundwall,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An Appeal from the Circuit Court for Monroe County, Mark H. Jones, Judge.

Jeffrey Ray Sundwall, in proper person.

Ashley Moody, Attorney General, and Linda Katz, Assistant Attorney General, for appellee.

Before SALTER, FERNANDEZ, and HENDON, JJ.

HENDON, J.

Ex "J"  
P# 16

Jeffrey Sundwall appeals from the trial court's dismissal of his motion to withdraw his plea pursuant to Florida Rule of Criminal Procedure 3.170(1). The dismissal was without prejudice to allow Sundwall to seek relief through a timely rule 3.850 motion. A review of the record conclusively shows that Sundwall's motion to withdraw his plea was untimely filed. See Fla. R. Crim. P. 3.170(f) and (1). We therefore affirm the trial court's order. See McKnight v. State, 964 So. 2d 803, 804 (Fla. 3d DCA 2007) (holding that failure to file a motion to withdraw the plea within 30 days of sentencing waives the issue for appellate review, and the defendant is limited to filing a motion pursuant to Florida Rule of Criminal Procedure 3.850) (citing Gafford v. State, 783 So. 2d 1191, 1192 (Fla. 1st DCA 2001)).

Affirmed.

EX "J"  
P#17

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
SEPTEMBER 02, 2020

JEFFREY SUNDWALL,  
Appellant(s)/Petitioner(s),

CASE NO.: 3D19-2462

vs.

L.T. NO.: 17-160,  
17-314,  
17-164

THE STATE OF FLORIDA,  
Appellee(s)/Respondent(s),

Upon consideration, the appellant's pro se "Motion to Reconsider  
August 12, 2020, Opinion Under Rule 9.330" is hereby denied.

FERNANDEZ, LOGUE and HENDON, JJ., concur.



cc: Linda Katz

Office of Attorney General Jeffrey Sundwall

la

EX "H"  
P#11

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
DECEMBER 20, 2019

JEFFREY SUNDWALL,  
Appellant,

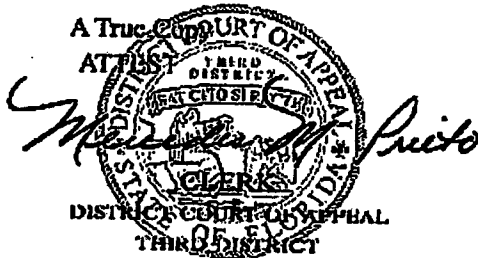
CASE NO.: 3D19-2462

vs.

L.T. NO.: 17-160,  
17-164,  
17-314

THE STATE OF FLORIDA,  
Appellee,

Appellant is deemed insolvent and may proceed *in forma pauperis* for  
purposes of this cause.



cc: Office Of Attorney  
General

Monroe Clerk

Jeffrey Sundwall

in

Ex "B"  
P#2

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT  
COUNTY OF MONROE COUNTY, FLORIDA


STATE OF FLORIDA,  
Plaintiff,

v.  
JEFFREY SUNDWALL,  
Defendant.

This copy is a true copy of the  
Original on File in this Office. Witness  
My hand and seal this 26th day of July  
And these orders shall have full force and effect

This \_\_\_\_\_  
A.D. 2018

Case Number: 2017-CF-160-A-K  
2017-CF-164-A-K  
2017-CF-314-A-K

By:   
Deputy Clerk

**ORDER DISMISSING MOTION TO WITHDRAW PLEA**

The Defendant, having moved to withdraw his plea pursuant to Fla. R. Crim. P. 3.170 (I), and the Court, having examined the record, the applicable law, and being otherwise informed in the premises, finds and orders as follows:

On July 26, 2018, the Defendant entered nolo contendere pleas to numerous charges on the above case numbers pursuant to a negotiated plea bargain, and the Court sentenced the Defendant to thirty years in Florida State Prison. The Defendant reserved the right to appeal the Court's denial of the motion to suppress on case number 17-CF-314-K, which the parties agreed was a dispositive motion. The Defendant filed a direct appeal, and the Third District Court of Appeal, proceeding in the manner outlined and recommended by the Supreme Court of the United States in *Anders v. California*, 386 U.S. 738 (1967), affirmed in a *per curiam* decision on June 5, 2019. The Mandate issued on July 1, 2019.

On June 19, 2019, the Defendant filed a *pro se* Motion to Withdraw Plea pursuant to Fla. R. Crim. P. 3.170 (I) (the "Motion") alleging that the plea was involuntary. The Court finds that the Motion is untimely. Fla. R. Crim. P. 3.170 (I) applies to all motions to withdraw the plea after sentencing and allows for thirty days after rendition of the sentence to do so. The rule

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MAY 29 2019  
11:31 AM  
CLERK OF COURT  
MONROE COUNTY, FLORIDA

EX "P"  
PB 70

differentiates between guilty pleas and pleas of nolo contendere where defendants expressly reserve the right to appeal a legally dispositive issue and those that do not. It clarifies that when a defendant does not reserve the right to appeal a legally dispositive issue, the motion to withdraw plea may only be made upon the grounds specified in Florida Rule of Appellate Procedure 9.140(b)(2)(A)(II)(a)-(e), except as provided by law.

Here, the Defendant reserved his right to appeal a legally dispositive issue, and he filed a direct appeal without first filing a motion to withdraw the plea. However, once a notice of appeal is filed, the trial court does not have jurisdiction to decide a subsequently filed motion to withdraw plea because the thirty-day time limit under Rule 3.170 (l) is jurisdictional. *Smith v. State*, 113 So. 3d 110, 111 (Fla. 5th DCA 2013). Therefore, the Motion is untimely and must be dismissed without prejudice to any right the Defendant may have to seek postconviction relief through a timely rule 3.850 motion.

Wherefore, it is hereby **ORDERED** and **ADJUDGED** that the Defendant's *pro se* Motion to Withdraw Plea is **DISMISSED** as untimely.

**DONE AND ORDERED** this 7<sup>th</sup> day of August 2019, in Key West,  
Monroe County, Florida.

  
Mark H. Jones  
Chief Circuit Court Judge

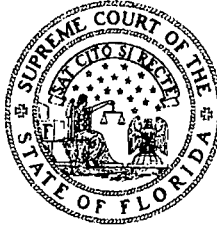
Copies furnished to:

Jeffrey Sundwall  
DC #B29113  
Jackson Correctional Institution  
5563 10<sup>th</sup> St.  
Malone, FL 32445

The Office of the State Attorney

EX "P"  
P# 71





# Supreme Court of Florida

Office of the Clerk  
500 South Duval Street  
Tallahassee, Florida 32399-1927

JOHN A. TOMASINO  
CLERK  
MARK CLAYTON  
CHIEF DEPUTY CLERK  
JULIA BREEDING  
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125  
[www.floridasupremecourt.org](http://www.floridasupremecourt.org)

## ACKNOWLEDGMENT OF NEW CASE

October 1, 2020

RE: JEFFREY RAY SUNDWALL vs. STATE OF FLORIDA

CASE NUMBER: SC20-1430

Lower Tribunal Case Number(s): 3D19-2462; 442017CF000314000AKW;  
442017CF000164000AKW; 442017CF000160000AKW

Lower Tribunal Filing Date: 9/24/2020

The Florida Supreme Court has received the following documents reflecting a filing date of 9/29/2020.

Notice to Invoke Discretionary Jurisdiction seeking review of opinion dated August 12, 2020, in which rehearing denied September 2, 2020.

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause.

tr  
cc:  
LINDA S. KATZ  
JEFFREY RAY SUNDWALL  
HON. MERCEDES M. PRIETO, CLERK

EX "F"  
P# 8

# Supreme Court of Florida

TUESDAY, DECEMBER 1, 2020

CASE NO.: SC20-1430

Lower Tribunal No(s):  
3D19-2462; 442017CF000314000AKW; 442017CF000164000AKW;  
442017CF000160000AKW

JEFFREY RAY SUNDWALL

vs.

STATE OF FLORIDA

Petitioner(s)

Respondent(s)

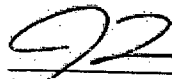
This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See Fla. R. App. P. 9.330(d)(2).*

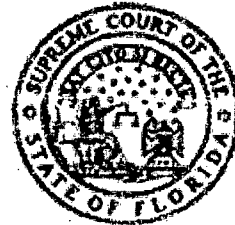
POLSTON, LABARGA, LAWSON, COURIEL, and GROSSHANS, JJ., concur.

A True Copy

Test:



John A. Tomasino  
Clerk, Supreme Court



dl

Served:

MICHAEL W. MERVINE  
JEFFREY RAY SUNDWALL  
HON. MERCEDES M. PRIETO, CLERK  
HON. KEVIN MADOK, CLERK  
HON. MARK H. JONES, CHIEF JUDGE

Ex "D"  
P#6

Ex "G"  
P# 9

PROVIDED TO  
JACKSON CI  
SEP 21 2020  
FOR MAILING BY: *De*

In the Dist. Ct. of App.  
In and for the 3d DCA of  
Florida

Jeffrey Ray Sundwall (JRS)  
Petitioner / Appellant

3d DCA - case #  
3D19-2462

vs.

The State of Florida (st)  
Respondant / Appellee

16<sup>th</sup> Jud. Cir. - case #'s  
17-CF-160  
17-CF-164  
17-CF 314

Notice of Appeal  
To Invoke Fla. Sup. Ct.  
Jurisdiction

Comes now Appellant / Petitioner (Pet) JRS, Pro-se with this "Notice of Appeal to Invoke Fla. Sup. Ct. Jurisdiction", Appealing the 3d DCA opinion under Fl. R. App. P. Rule #9.030(a)(1)(ii) and the Fla. Const. Art. V, § 3(b).

NOTICE IS GIVEN, That Appellant Jeffrey Ray Sundwall appeals to the Fla. Supreme Court (under the Fla. Const. Art. I, 3(b)) to Invoke Jurisdiction to review the opinion of this 3d DCA rendered on 8-12-20, and Rehearing Denied 9-2-20, (copies attached in accordance with Rule # 9.120).

Appellant seeks to proceed Forma Pauperis, and the Cir. Ct. determination is Attached.

The nature of the opinion is a Opinion that expressly and directly conflicts with the Rules of court applicable to this instant case and construes invalid the Appellants right created by the proper Rules.

wherefore Appellant intends to file his Jurisdictional Brief within 10 days of this Notice pursuant to Rule #9.120(d).

Jeffrey  
Jeffrey Ray Sundwall  
DC# 829113  
Dated: 9-21-20

I JRS certify a true and correct copy of the foregoing was provided via the "Mail Box Rule" by placement in the hand of Jackson C.I. Legal-mail personnel for mailing to:

A) FL. Sup. Ct.  
500 S. Duval St.  
Tall., Fla. 32399-1927

Jeffrey  
Jeffrey Ray Sundwall  
DC# 829113

B) 3rd DCA  
2001 S.W. 117<sup>th</sup> Ave.  
Miami, Fla. 33175

Jackson C.I.  
5563 10<sup>th</sup> St.  
Malone, Fla. 32445  
Dated: 9-21-20

C) Office of A.G.  
Dept. of Legal Affairs  
1SE 3rd Ave, Ste #900  
Miami, Fla. 33131

Ex "G"  
P#10

Ex "I"  
P#12

PROVIDED TO  
JACKSON C.I. ON

AUG 20 2020

FOR MAILING LW

FR

In the Dist. Ct. of App.  
In the 3d DCA of Fla.

Jeffrey Ray Sundwall  
Appellant (JRS)

3d DCA - case #  
3D19-2462

Vs.

16<sup>th</sup> Jud. Cir. - case #'s

The State of Florida  
Appellee (St. or Pros.)

17-CF-160-AK

17-CF-164-AK

17-CF-314-AK

Motion to Reconsider  
Aug-12-20 Opinion,  
under Rule #9.330

Comes now Appellant Jeffrey Ray Sundwall (JRS)  
Pro-se with this his "Motion to Reconsider 8-12-20  
Opinion, under Rule #9.330" timely filed within  
15 days of this 3d DCA's order that  
Affirmed Monroe Co. Judge Jones' Dismissal.

Background

1) on 8-3-2020 Asst. Att. Gen. Linda Katz filed  
with this 3d DCA her "Response" to this  
honorable court's order to "show cause".

2) Subject to Asst. Att. Gen. Linda Katz's Acts  
of Prosecutorial Misconduct, Appellant filed  
his "Motion to Stay Deadline of 'Reply', and  
compell the Prosecution to serve 'Response' on  
Appellant via Certified Mail. (Filed 8-10-2020  
under the "Mailbox Rule" for Incarcerated persons)

EX "I"  
P#13

3) On 8-12-2020 this honorable 3rd DCA rendered an OPINION that erroneously Affirmed "untimely filed" motion to withdraw Plea.

4) Appellant herein timely files this Reconsideration within 15 days of the courts 8-12-20 rendered opinion pursuant to Rule # 9.330(G)

### Argument I

The Appellant is entitled to fair Due Process in exercising his right to Reply to Appellee's Response under Fla. R. App. P. Rule # 9.100(K)

"Within 20 days thereafter ... the petitioner may serve a reply, which shall not exceed 15 pages in length, and supplemental appendix."

However, subject to Appellant's 8-10-20 "Motion to Stay Deadline ..." Fla. R. App. P. # 9.300(b) Effect is Invoked: "... Service of a Motion shall toll the time schedule of any proceeding in the court until disposition of the motion."

Additionally, any filing by an Incarcerated Person citing the "Mailbox Rule" Fla. R. App. P. # 9.420 (d) is deemed filed when placed in the legal-mail personnel's hand for mailing. See: Adams v. Lindell. Appellant filed for stay to begin Extended deadline to file Reply 2 days before the 8-12-20 Affirming Opinion.

Subsequently the 8-12-20 <sup>opinion</sup> was premature Pursuant to Rule # 9.100(K) deadline had not expired nor had Appellant's 8-10-20 motion been entertained.

Ex "I"  
P #14

## Argument II

Fla. R. App. P. Rule # 9.330 (a) requires Appellant seeking Rehearing "shall state with particularity the point of Law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its decision, and shall not present issues not previously raised in the proceeding."

This misapprehended issue is that the 8-12-20 Opinion applied FL. R. Crim. P. Rule # 3.170(f). Rule subsection (f) is unrelated to Appellant's Appeal, wherein (f) is "at any time before a sentence" is imposed.

Appellant's Appeal is subsection (b) "withdraw the Plea after sentence." Furthermore, the 8-12-20 Opinion cites: McKnight v. St. 964 So. 2d 803, 804 (Fla 3d DCA 2007) that dose not apply to the instant case that:

- A) did reserve the right to appeal,
- B) did timely Notice Appeal
- C) did Appeal, and

D) did Timely file Withdrawal of Plea.

Secondly, Gafford v. St. 783 So. 2d 1191, 1192 (Fla. 1st DCA, 2001) is fundamentally flawed where in the Appellant never petitioned timely to withdraw his Plea after his Appeal.

## Argument III

Subject to Covid-19 Appellant is deprived access to Jackson C.I. Law Library to study or research the far-named case-law, and

EX "I"  
P#15

deprived access to Appellant's "Legal Storage" to resource Appellant's case file in this instant case.

wherefore based on the foregoing issues and arguments Appellant Sunkovall pray this honorable SD DA to withdraw its 8-12-20 premature Opinion and enter Appellant's 8-10-20 "Motion to stay Deadline to 'Reply'" and compel the prosecution to serve "Response" granting 30 days to Reply to Appellee's Response after Appellant's receipt of such Response.

Jeffrey Ray Sunkovall  
DCA# B29113  
Date: 8-19-20

I Appellant, IRS certify a true and correct copy of the foregoing was provided via the "mailbox Rule" by Placement in the hand of Jackson C.I. Legal mail personnel for mailing to:

A) SD DA  
2001 S.W. 117th Ave  
Miami, Fla. 33175

Jeffrey Ray Sunkovall  
DCA# B29113  
Jackson C.I.  
5563 10th St.  
Makana, Fla. 32445  
Date: 8-19-20

B) Att. Gen. Linda Katz  
1 Third Ave.  
Miami, Fla. 33131



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(R)

EX "K"  
P#18

AUG 10 2020

FOR MAILING ly

In The Dist. Ct. of App.  
In the 3d DCA of Fla.

Jeffrey R. Sundwall  
Defendant/Appellant (IRS)

3d DCA - case #  
3d19-2462

vs.

St. of Fla.  
Prosecution/Appellee (st)

16th Jud. Cir - case # (LIT.)  
17-CF-160-AK  
17-CF-164-AK  
17-CF-314-AK

Motion to stay Deadline  
of "Reply",  
And Compell the Prosecution  
to 'Serve "Response"

Comes now Appellant/IRS pro-se with this  
"Motion to Stay Deadline of 'Reply", and  
Compell the Prosecution to Serve "Response".

Wherein pursuant to FL.R.crim.P. Rule #3.190(a)  
"A certificate of service must accompany the  
filing of any pleading." and the Fla. Bar  
Rules of Professional Conduct paragraph # 10  
states "Lawyes are officers of the ct. and they  
are responsible to the Judiciary for the  
propriety of their professional activities."

Asst. Att. Gen. Linda Katz has exercised  
Prosecutorial Misconduct. see St. vs. Burton  
314 So.2d 136 (June 4-1975) (I) Any order obtained  
by fraudulent representation may be recalled  
and set aside whetive entered in civil or  
Criminal" (II) "order, Judgment or decrees

Ex "K"  
P#19

which are Product of Fraud, collusion, deceit, mistake, etc may be vacated, modified, opened or otherwise acted upon at any time", and (III) "where facts disclosed in Affidavit Attached to original motion III and accepted as true were basically false, and such false statements constituted fraud practiced on court, the ct. had authority to entertain petition for rehearing and vacate III"

Wherein Attorney for the state Ms. Katz has 4 Times Motioned for Extension of time to "Respond" to this 3d DCA's "show cause order" on:

- |                  |            |         |
|------------------|------------|---------|
| 1) 4-8-20 Motion | A)         | Granted |
| 2) " Motion      | B) 5-7-20  | Granted |
| 3) 6-5-20 Motion | C) 6-10-20 | Granted |
| 4) 7-8-20 Motion | D) 7-13-20 | Granted |

All of these forgoing Motions violate the Procedural requirement that a Motion for Extension or Enlargement of time MUST:

A) Be served on opposing Party 5 days before the Expiring deadline.  
Fla. R. Crim. P. Rule # 3.060 and # 3.190(f) 5)

B) State Confiring with or Attempts to Obtain opposing Party's opinion on the filing's issue  
Fl. R. Crim. P. Rule # 3.190(f) 5)

Ex "K"  
P#20

C) Have a Attached "Certificate of Service"

Fla. R. Cr. P. Rule # 3.030, and #3.19(a)  
Fla. R. Jud. Admin. Rule # 2.516

Argument

The 4 extensions of time to Respond to this Courts order should be struck causing Mootness / Waiver to Respond to show cause wherein a Procedural Bar / Sanction is Just in the instant case by all 4 motions were filed less than the proper 5 day time for the Appellant to object to such motion, and Ms. Katz exercised "Fraudulent Representation" by filing 4 Attached certificates of Service asserting she had served the Appellant, wherein Ms. Katz has only once (upon Notice and Demand Letter) mailed a copy of her first 4-8-20 motion to the Appellant on 4-30-20 see Attached Appellants Ex "1"

Wherefor Appellant pray this honorable 3d DCA to strike all Extensions of time and Appellee's 8-3-20 "Response" or in Lue of the former render order Tolling deadline to "Reply" untill Appellant has recieved Appellee's "Response" and Order 30 days to Reply to such Response, Subject to compelling order, to serve "Response" certified mail.

Jeffrey Ray Sundwall  
Jeffrey Ray Sundwall  
DC# 829113  
Dated: 8-10-20

Ex "12"  
P#21

I Appellant / JBS certify a true and correct copy of the foregoing was provided via the "Mailbox Rule" by placement in the hand of Jackson C.I. legal mail personnel for mailing to:

1) Sol DCA  
2001 S.W. 117th Ave  
Miami, Fla. 33175

Jeff Bell  
Jeffrey Ray Sundell  
DC# 829113  
Jackson C.I.  
5563 10th St.  
Malone, FLA 32445  
Dated: 8-10-20

2) Att. Linda Katz  
1 Third Ave.  
Miami, Fla. 33131

Ex "K"  
P#22

To: Ms. Linda Katz, 3d DCA St. Att. / Prosecution.  
From: Jeffrey Ray Sundwall, DC# 829113  
at: Jackson C.I., 5563 10<sup>th</sup> St., Malone Fla. 32445  
Ref.: Prosecutorial Misconduct Notice.

Respectfully, you (Ms. Katz) are again in violation of the Fla. R. Crim. P., Fla. Bar Rules, and Ethics Thresholds by your failure to provide / Perfect service upon me / the opposing party wherein you have 5 times Attached a fraudulent certificate of service to 4 motions and 1 "Response" in case # 3d19-2462

On 4/24/2020 I corresponded with you notifying you of this defect, and on 4-30-20 you mailed a "untimely" copy of your 1<sup>st</sup> motion for Extension of time.

Be advised I'm seeking sanctions of Striking your "Response" and order compelling service of all 4 motions for Extension of time and case # 3d19-2462 "Response"

I'm formally requesting a copy of all your filings and demanding your compliance with the Rules of Court in all future filings and procedures.

Respectfully  
*Jeffrey Ray Sundwall*

Jeffrey Ray Sundwall  
DC# 829113

Dated: 8-10-20

PROVIDED TO  
JACKSON C.I. ON

Letter - crimi. - St. Att

4-24-

APR 24 2020

Ex "K"  
P#23

FOR MAILING \_\_\_\_\_

TO: Linda Katz % Office of Att. Gen. Miami Div.  
From: Jeffrey Ray Sundwall, DC# 829113  
at: Jackson C.I., 5563 18<sup>th</sup> St., Malone, Fla. 32445  
Ref: Appellate case # 3D19-2462; 4-8-20 filing

Greetings;

(A) I'm the Defendant Appealing in case # 3D19-2462.

(B) On 4-8-2020 You filed for an Extension of time

(C) The 3d DCA Granted you Motion, on 4-13-2020.

(D) I was not served a copy of your "motion for Extension of Time" as required.

Respectfully, Please mail me a copy at the address above. And be advised that you can send me my copies of future filing at the above address.

Thank-you

*Jeffrey R. Sundwall*

Jeffrey R. Sundwall

DC# 829113

Dated: 4-24-2020

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA                      THIRD DISTRICT

DCA CASE NO. 3D19-2462

**JEFFREY SUNDWALL,**

Appellant,

vs.

**RESPONSE**

**STATE OF FLORIDA,**

Appellee.

---

Appellee, THE STATE OF FLORIDA, by and through undersigned counsel, hereby files its Response to Defendant's appeal of the trial court's Order Dismissing Motion To Withdraw Plea and Order Denying Motion To Reconsider, and states as follows:

PROCEDURAL HISTORY<sup>1</sup>

On July 26, 2018, Defendant entered a global plea of nolo contendere in case nos. 17-160, 17-164, and 17-314. In case no. 17-160, Defendant entered a no contest plea to one count of sexual battery, as a lesser included offense, which is a second degree felony. Defendant was sentenced to fifteen years in state prison. In case no. 17-164, Defendant entered a no contest plea to one count of possession of cocaine and one count of attempted tampering

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<sup>1</sup> The State respectfully requests that the Court take judicial notice of the contents of its file in case no. 3D18-1763).

EX "L"  
P#24

with evidence, which are both third degree felonies. Defendant was sentenced to five years in state prison, to run concurrent with case no. 17-160. In case no. 17-314, Defendant entered a no contest plea to twenty counts of possessing computer images depicting sexual performance by a child, which are second degree felonies, in violation of Fla. Stat, § 827.071(5) and § 775.0947(2). Defendant was sentenced to fifteen years on each count, with all counts in the case to run concurrently, but consecutive with the sentences imposed in case no. 17-160. (The representations as to each of the lower court cases are found in R. 24-32, 85-91, 100-145, 270-300 of case no. 3D18-1763).

Defendant reserved the right to appeal the denial of his Motion To Suppress in case no. 17-314, which was agreed to be a dispositive motion. The Public Defender's Office filed a Memorandum Brief pursuant to Anders v. California, 386 U.S. 738 (1967), case no. 3D18-1763. The Court entered a per curiam affirmance on June 5, 2019, and entered its Mandate on July 1, 2019. Sundwall v. State, 275 So.3d 1234 (Fla. 3rd DCA 2019).

On June 19, 2019, Defendant filed a pro se Motion To Withdraw Plea, pursuant to Fla.R.Crim.P. 3.170(1), in which he alleged that his plea was involuntary. On August 7, 2019, the trial court entered an Order Dismissing Motion To Withdraw Plea, based on a

EX "L"  
P#25



finding that the motion was untimely. The dismissal was without prejudice to seek relief through a timely 3.850 motion. Defendant then filed a pro se Motion To Reconsider Motion To Withdraw Plea, which the trial court denied on September 10, 2019. Defendant then filed the subject appeal.

#### ARGUMENT

Defendant argues that his Motion To Withdraw Plea was not untimely because jurisdiction returned to the trial court after the conclusion of his appeal in case no. 3D18-1763. Defendant's argument is without merit.

The trial court properly dismissed Defendant's Motion To Withdraw plea as untimely. As explained in the trial court's Order, Fla. R. Crim. P. 3.170(1) provides that a motion to withdraw plea after sentencing *must* be filed within thirty days after rendition of the sentence.<sup>2</sup> The subject sentence was rendered on July 26,

---

<sup>2</sup> Florida Rule of Criminal Procedure 3.170(1) provides follows:

(1) Motion to Withdraw the Plea after Sentencing. A defendant who pleads guilty or nolo contendere without expressly reserving the right to appeal a legally dispositive issue may file a motion to withdraw the plea within thirty days after rendition of the sentence, but only upon the grounds specified in Florida Rule of Appellate Procedure 9.140(b)(2)(A)(ii)(a)-(e) except as provided by law.

Ex "L"  
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2018. However, Defendant did not file the subject Motion To Withdraw Plea until June 19, 2019, nearly eleven months after sentencing.

Defendant is under the false belief that because he reserved a right to appeal a legally dispositive issue, it tolled the time in which to file the subject motion and jurisdiction to file the motion to withdraw plea returned to the trial court upon the Court's disposition of the appeal in case no. 3D18-1763. To the contrary, the thirty day time limit under 3.170(1) is jurisdictional. Gafford v. State, 783 So.2d 1191, 1192 (Fla. 1st DCA 2001). Once a notice of appeal is filed, the trial court no longer has jurisdiction to decide a subsequently filed motion to withdraw plea. Kearse v. State, 858 So.2d 1247, 1248 (Fla. 5th DCA 2003). Thus, Defendant is now limited to filing a motion pursuant to Florida Rule of Criminal Procedure 3.850. See also Smith v. State, 113 So. 3d 110, 111 (Fla. 5th DCA 2013) and Copeland v. State, 867 So.2d 643, 643 (Fla. 4th DCA 2004).

Accordingly, the trial court properly dismissed the motion without prejudice for Defendant to seek postconviction relief through a timely filed rule 3.850 motion.

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PA# 27

WHEREFORE, the State respectfully requests that the Court affirm the trial court's dismissal of the motion to withdraw plea and denial of the motion to reconsider.

Respectfully submitted,

ASHLEY MOODY  
Attorney General  
Tallahassee, Florida

/s/

**LINDA KATZ**

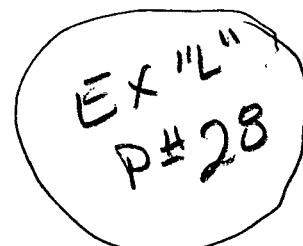
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing **RESPONSE** was furnished by mail to Jeffrey Sundwall, D.O.C. #829113, Jackson Correctional Institution, 5563 10th Street, Malone, Florida 32445, on this 3rd day of August, 2020.

/s/

**LINDA KATZ**  
Assistant Attorney General



my copy

PROVIDED TO  
JACKSON C.I. ON

In the 3rd Dist. Ct  
of Florida

FEB 07 2020

FOR MAILING

Case #  
3D19-2462

Jeffrey Ray Sundwell  
Appellant

VS.

State of Florida  
Appellee

Appeal From Circuit Court  
of 16th Jud. Cir. of the St. of Fla  
In and for Monroe Co.

Appeal Brief of  
Appellant  
Criminal Case

Jeffrey Ray Sundwell  
Dc # 829113  
Pro - Se Defendant  
Jackson C.I  
5563 10th St.  
Malone, Fla. 32445

Ex "M"  
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## Table of Authorities

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- ① Maynard v. Maynard 515 So.2d 308 (Nov 3-1987)
- ② cf. Ferrare v. Belcher Indus 483 So.2d 477 (Fla 3d DCA 1986)
- ③ Brunlik v. Catalyst Inc. 463 So.2d 240 (Fla 5th DCA 1984)
- ④ Smith v. St. 113 So.3d 110, 111 (Fla 5th DCA 2013)
- ⑤ Gofford v. St 783 So.2d 1191, 1192 (Fla 1st DCA 2001)
- ⑥ Kearse v. St 858 So.2d 1247, 1248 (Fla 5th DCA 2003)
- ⑦ Bonner v. Crosby 2006 U.S. Dist. Lexis 35066 (May 3-2006)
- ⑧ St. v. Kight 175 Ga. App 65, 332 S.E.2d 363 (1985)
- ⑨ Eads v. St 958 So.2d 1153 (Jun '29 - 2007)
- ⑩ Gust v. St 536 So.2d 642 (Fla 1st DCA 1988)
- ⑪ Venture v. St 820 So.2d 1026 (July 3-2002)
- ⑫ Austin v. Jackson 353 F.2d 910 (Nov. 1965)
- ⑬ Goins v. St. 672 So.2d 30 (4-11-1996)
- ⑭ Foos v. Aldridge 2016 U.S. Dist Lexis 96500 (July 25. 2016)
- ⑮ Village of Hoffmen Estates v. Hoffmen Estates Inc.  
455 U.S. 489, 102 S.Ct 1186, 71 L.2d 362 (1982);  
at: 455 as at, 497, 103 S.Ct 1193

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- ①6 FL. S<sup>s</sup> 775.021 Rules of Construction
- ①7 Barr v. Galvin 659 F. Supp. 2d 225 Sep (17-2009)  
Duke v. Conneh 790 F. Supp. 50 53-54 (DRI 1993)
- ①8 Cooper v. Fulton. CO Ga 458 F. 3d 1282, 1285 (11<sup>th</sup> Cir. 2006)
- ①9 National Endowment For Arts v. Finley 141 Lqd. 2d 500  
524 as 569  
Greyned v. City of Rockford 408 us 104 (1972)
- ②0 Conner v. Joe Hatten. Inc Fla. 216 SO 2d 209 (1968)
- ②1 St. ex. Rel. Davis v. Fowler 1927, 94 Fla. 752 114 SO  
436 and Lewis v. Fla. St Board of Health Fla. APP  
1962 (as stated in 1 Fla. Jur. Admin. Law: at  
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- ②2 St. v. Byars 823 SO 2d 740, 742 (Fla - 2002)
- ②3 Walker v. Astrue 593 F. 3d 274, 280 (3d Cir. 2010)
- ②4 Fla. R. crim. P# 3.110 (L) withdraw / Appeal
- ②5 Fla. R. crim. P# 3.850 (b) Sentence Became Final
- ②6 Fla. APP P. # 9.020 (i) Rendered
- ②7 Fla. R. APP P. # 9.020 (i) 3) abated order
- ②8 Fla. R. APP P. # 9.020 (5) abatement applies to DCA
- ②9 Fla. R. APP # 9.110 (L)
- ③0 Fla. Statute # 924.06 (3) Reservation of

EXHM"  
P#33

③ Fla. R APP P. # 9.340 (a) 15 days for DCA  
Mandate



Ex "M"  
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Statement of Case  
and Facts

- 1) On July 26, 2018 the Monroe County 16<sup>th</sup> Jud Cir accepted an involuntary Plea from the Appellant while the Appellant was medicated on psychotropic drugs.
- 2) Appellant's Trial Counsel never met with, spoke with or responded to Appellant's communications after July 26-2018 for any post-conviction instruction.
- 3) 12 days later Monroe County (M.C) Public Defender (P.D) filed "Notice of Appeal" on 8-7-2018 case # 3d18-1763
- 4) On June 5, 2019 the 3d DCA Dismissed Appellant's Appeal # 3D18-1763 Per Curiam Affirmed.
- 5) Appellant, on June 19, 2019 filed his "Motion to withdraw Plea" in accordance with FL R. APP. P. # 9.340 (a) so as to arrive at the M.C 16<sup>th</sup> Jud. Cir. clerk's office one day after timely 15 days to "Mandate" in that instant Appeal, due to lack of communication with M.C. P.D. on the topic of; "How much time of my 30 day deadline pursuant to FL R. Crim P. # 3.170 (4) had expired between Sentencing and Notice of Appeal?"
- 6) On July 1, 2019 this 3d DCA issued "mandate". A total of 25 days after Dismissal.

Ex "M"  
p#35

- 7) on Aug 7 2019, 31 days after Jurisdiction Returned to the LT "Chief Cir. cl Judge" Mark H. Jones Procedurally Dismissed the Appellants June 19 2019 "Motion to withdraw plea" on lack of Jurisdiction to entertain such a motion's merits
- 8) on Aug 19, 2019 Appellant sought Reconsideration of time/lines and Jurisdiction to render on the merits of Appellants "Motion to withdraw plea"
- 9) ON Sep 10 2019 Judge Mark Jones Denied Appellants "Motions to Reconsider" Motion to withdraw plea of June 19, 2019" without any Opinion or explanation.
- 10) ON Sep. 20, 2019 Appellant filed this instant case via "Notice of Appeal"

Appellant Requests Judicial Notice of 2 Additional issues:

- A) Appellant has Sought Subrenas in Support of his allegations Made in the "Motion to withdraws plea" via:
  - I) June 19, 2019 "Def's Request for SubPena"
  - II) Aug 16 2019 "Order denying Def's Request For SubPena"
  - III) Aug 27-2019 "Motion to Reconsider" Order denying Request for SubPena" (never answered)

Ex "M"  
P#36

B) Appellant has sought clarification and stay  
I) On Nov 1, 2019 Appellant filed "Notice  
of Inquiry and stay of Deadline"

II) On Jan 21, 2020 Appellant filed "Demand  
for Default Judgement on Clarification  
and Stay"

The L.T has gone mute and Appellant Prays  
this 3d DCA to exercise its supervisory  
authority by rendering orders compelling  
the 16<sup>th</sup> Jud. Clerk of Court to Subpoena  
Plea withdrawal Supporting documents and  
issuance of enforceable stay of deadlines  
for the starting of 2 year 3,850 time frame.

## Summary of Argument

EX "M"  
P#37

It is well established practice that there are 3 forms of handling a Post-Sentence motion to withdraw a Plea.

The First Pursuant to FL.R.C.M.P.#3.170(L) the 30 Calendar day deadline to file such a withdrawal of a Plea, and to rule on such a "timely filed" and "factually sufficient" motion. Second is to procedurally dismiss any untimely motion, wherein after the 30 Calendar day deadline, when no Appellant review has been invoked. Third is also to procedurally dismiss any motion to withdraw filed after the Defendant has invoked Appellant review; during the pendency of the shift of Jurisdiction to the Dist. Court, wherein the lower court holds only the authority to procedurally dismiss for lack of said Jurisdiction to entertain the merits of a motion to withdraw a Plea. This well established policy does not apply to this instant case.

The Fla. R.C.M.P. #3.170(L) establishes Defendant's right to invoke Appellate Review as cited in the heard practice above. However, as illustrated by my expert witness written statement, this right is created without borders and when any rule, statute or policy is ambiguous it becomes unconstitutionally vague. Furthermore, any unconstitutional vague and ambiguous rule, law, or statute that is capricious and arbitrary must be applied in favor of the accused defendant.

Subsequently, in this instant case the L.T. had no alternative choice other than to grant Del's motion to withdraw Plea and schedule

Ex "M"  
P#38

a hearing on the merits alleged in the motion to withdraw Plea.

Appellant Jeffrey Sundwall prays this 3d DCA Reverse and Remand on grounds that he has been prejudiced against by this erroneous abuse of L.T. discretion, with directions to schedule such hearing on the merits of this motion to withdraw Plea or grant such withdrawal of the Aug 26-19 Plea.

Ex "M"  
P#39

### Argument.

Upon the Monroe County Crim. Court accepting a Plea that combined case numbers:

- 1) 2017-CF-160-AK
- 2) 2017-CF-164-AK
- 3) 2017-CF-314-AK

The effect of such combination of these 3 cases is that an Appellate Reversal would reverse all 3 cases' convictions. Likewise a motion withdrawing the combined plea agreement withdraws sentences and conviction in all 3 cases, to be tried on all 3 cases.

In FL.R. crim. P# 3.170(L) an ambiguity is created. As is well defined by case law the doctrine is set that 2 policies apply to a motion to withdraw any plea. these are

Ⓐ Fla. R. App. P. # 9.020 (i) a motion to withdraw a plea filed before notice of appeal Ⓛ must be entertained before any transfer of jurisdiction to a DCA, to address such appeal, and

Ⓑ Policy and case law sets the doctrine that during the "pendency of any appeal" Ⓜ the lower Tribunal (L.T.) cannot entertain "the merits" of a motion to withdraw any plea and "can" dismiss such a motion to withdraw a plea, for such lack of jurisdiction. However, a dismissal is not compulsory by law. This however is the point where FL.R. Crim. P. # 3.170(L) becomes unconstitutionally vague Ⓟ by lacking clear "statutory language" Ⓠ and subsequently must be construed in the Appellant's favor by tolling or staying the starting point of the 30 day deadline Ⓡ to withdraw the plea to the DCA's motion.

Ex "M"  
# 470

Here this instant case falls into this ambiguous statutory language, wherein "without expressly reserving the right to appeal a legally dispositive issue" that section creates an exception in Rule # 3.170(L) [relating to scope of 30 days to withdraw a Plea].

However, that exception lacks parameters in which a person may comprehend what meets the exception clause. Without parameters set to guide the reader in a finite manner, the exception then becomes ambiguous." (Quoting Ex "B" Expert witness - Inmate Teaching Assistant (I.T.A) Donny Huyhn.)

As ITA Huyhn clarifies the criminal Rule is grammatically ambiguous causing it to be unconstitutionally vague and subsequently the ct. must construe the rule in the favor of the accused as follows:

Upon this 3d DCA's reiteration of constructively dismissing case # 3D18-1763 on June 5-2019 the Appellant waited 14 days to file his "motion to withdraw Plea" so as to allow the expiration of the required 15 days for Rehearing to lapse and Appellant's motion to withdraw plea to arrive post-mandate. However, Pursuant to Fla.R. App.P. #9.020(J) and #9.110(L) the L.T. having reentered Jurisdiction again.

On July 1-2019 this 3d DCA rendered it's mandate and subsequently the L.T.'s Doctrine of Procedurally Dismissing Plea withdrawal for lack of Jurisdiction was waived

Pursuant to Fla.R. App.P. #9.020(J) in conjunction with #9.110(L) Appellants motion to withdraw Plea holds standing and effect via the L.T.'s untimely or erroneous dismissal of

Ex "M"  
P#411

Appellant's motion to withdraw Plea for Lack of Jurisdiction Post-mandate in case #SD18-1763 and via the unconstitutionally vague nature of Rule #3,170(L) as to Plea withdrawal once right to appeal has been invoked.

The L.T. must render on the merits of Appellant's motion to withdraw Plea, also citing St. v. Byars and Walker v. Astrue (supra) on tolling and staying deadlines.



EX "M"  
P#42

- ① Maynard v. Maynard 515 So.2d 308 (Nov. 3-1987)  
Footnote: [When] "... a Party files both a Post-trial and a Notice of Appeal."  
effect: FL.R. APP.P. #9.020(i) specifically states that FL.R. CRIM.P. #3.170(b) withdrawal filed before a Notice would have not taken the case to the point of addressing the Reserved Dispositive issue and returned the case to the LT, not appealing the correction on suppression of evidence.
- ② Cf. Ferrare v. Belcher Indus 483 So.2d 477 (Fla. 3d DCA 1986)  
Stating "court was without Jurisdiction"  
effect: It has been well established that a court without Jurisdiction can only  
A) Procedurally dismiss, FL.R. APP.P. #9.110(L) as is illustrated in Policy: see
- ③ Brumlilk v. Catalyst Inc. 463 So.2d 240 (Fla. 5<sup>th</sup> DCA 1984)  
"Filing Notice Prior to disposition of motion"  
B) Hold the motion in abatement, FL.R. APP.P. #9.020(i)3) citing (#1 Maynard (supra) effect)  
This Policy is illustrated to apply the abatement policy to the instant case wherein FL.R. APP.P. #9.020(j) sets abatement of this withdrawal motion as entering into appeal holds pre order notice abated.  
Fact: Since my motion to withdraw Plea was not procedurally dismissed before the 3d DCA mandate it holds effectness through

Ex "M"  
P#43

Fla. R. App. P #9.110(L) "if the Final Order [mandate] is rendered before dismissal of the premature appeal, the premature notice [motion to withdraw plea] shall be considered effective to vest Jurisdiction in the ct..."

- ④ Smith v. St. 113 So.3d 110, 111 (Fla. 5th DCA 2013)  
effect: L.T. Judges cited case law is moot to the instant case wherein as is clearly illustrated Smith has not:
- A) Reserved the right to appeal (I have)
  - B) has not filed any appeal (I have)
  - C) drafting not factually sufficient (mine is)
- Furthermore: Smith cites Gafford v. St. whom also failed to meet the above A, B, and C, Thresholds.

- ⑤ Gafford v. St. 783 So.2d 1191, 1192 (Fla. 1st DCA 2001)  
effect: see above did not reserve Appeal right

- ⑥ Kearse v. St. 858 So.2d 1247, 1248 (Fla. 5th DCA 2003)  
effect: Kearse is a threshold case wherein during the pendency of an appeal the L.T. did properly procedurally dismiss Appellant's L.T. motion for lack of Jurisdiction, on grounds that the L.T. did not hold authority to entertain withdrawal due to the ongoing Appeal transferring such authority to the 5th DCA. before filing of a withdrawal motion. This instant appeal is on the timeliness of filing not on withdrawal motion merits.

Ex "M"  
P#44

⑦ Bonner v. Crosby 2006 U.S. Dist. Lexis 35066 (May 3-2006)

⑨ {2006 U.S. Dist. Lexis 23}

"Because Bonner did not take a timely appeal, his plea-based judgment became final 30 days later."

Jud. Notice: In Bonner v. Crosby it is substantiated that Defendant's argument is substantive. wherein upon an appealed issue the conviction has not "became final" until after the expiration of the time to file a Notice of Appeal and through entertaining the merits of a motion to withdraw plea being jurisdictional the plea conviction does not become final until after the 30 day pendency to file a motion to withdraw plea that starts upon issuance of a writ mandate. This policy is derivative from F.R. Crim. P. #3.850(b)

⑧ I. v. Kight 175 Ga. App. 65 332 S.E.2d 363 (1985)

"Pet.'s conviction therefore became final when his time for appeal expired."

Jud. Notice: F.R. Crim. P. #3.850(b) Time Limitations.

"... more than 2 years after the judgment and sentence became final"

effect: Because I reserved and noticed my appeal rights as illustrated in Fla. R. Crim. P. #3.170 (c) the conviction nor sentence had/has "become final" before mandate in case # 3d18-1763 on 7-1-2019

⑨ Earl v. St. 958 So.2d 1153 (June 21-2007)

⑨ {958 So.2d 1153} paragraph # 3

Ex "M"  
P #45

"3.850 does not begin to run until appellate proceedings have concluded and the ct. issues a mandate or 30 days after the trial ct. enters its order if no direct appeal is filed. see

⑩ *Gust v. St.* 536 So.2d 642 (Fla. 1st DCA 1988)

@ {535 So.2d 643} paragraph #3

"We disagree. The Judgment and sentence did not become final until that period expired"

effect: Fla. R. Crim. P. #3.170(L) expiration of the deadline isn't chronological.

⑪ *Ventura v. St.* 820 So.2d 1026 (July 3-2002)

"Headnote #3 'Holding a hearing on motion filed under #3.170 (1) [sic] is a critical stage in criminal proceedings'"

effect: *Ventura* (supra) "on July 5-2001, within 30 days of sentencing, Ventura filed a pro-se notice and simultaneously moved to withdraw his plea."

Observation: The 4<sup>th</sup> DCA deemed this withdrawal to be under FL. R. App. P. #9.020(J) before notice, and cited L.T.'s error in not scheduling entitled hearing. where in, this instant case the L.T. 16<sup>th</sup> Jud. cir dismissed a clearly "factually sufficient" motion to withdraw plea.

Ex "M"  
P #46

(12) Austin v. Jackson 353 F.2d 910 (Mo 4-1965)  
Held that "the purported findings of facts made by the review committee are not sufficient in law to support the conclusions reached. we concur in this finding and further find that the review committee failed in its duty to render a reasoned opinion."

effect: The L.T. faltered in renderance of it's 9-10-2019 "order Denying motion to Reconsider" via it's failure to address the erroneusness of the L.T.'s citing of a defective precedent case.  
Therefore review defaults to the 8-7-19 Dismissal.

(13) Goins v. St. 672 So.2d 30 (4-11-1996) -lat.- :  
A) "However, there is no rule of crim. Procedure which permits the filing of a motion to set-aside a plea after the sentence has been imposed. To require the defendant to register a complaint immediately upon sentencing or forever lose the right to withdraw the Plea is asking to much."  
B) "we request the criminal Rule committee and the Appellate Rule committee of the Fla. Bar to submit proposed rules which will provide a specified period of time within which a Def. could move to withdraw a Plea.  
C) "in an opportunity to withdraw his Plea... the st. would then be permitted to

Ex "M"  
P#47

Prosecute on all 3 counts" ...

effect: Subsequent to a plea withdrawal the case [s] default to prosecution of all cases and charges as on first year proceedings.

(14) Foos v. Aldridge 2016 U.S. Dist. Lexis 96500 (July 25-2016)

"The ct. finds Petitioner has failed to demonstrate 'cause' sufficient to overcome the procedural bar.

Fundamental Miscarriage of Justice exception to the doctrine of Procedural Bar."

effect: The instant case does not qualify for any "Procedural Bar" wherein #3.170(L) created a right and its vagueness must be construed in favor of accused.

(15) Village of Hoffmen Estates v. Flipside, Hoffmen Estates Inc. 455 U.S. 489, 102 S.Ct. 1186, 71

L.Ed.2d 362 (1982); @ 455 U.S. at 497, 103 S.Ct. 1193

"[3] The U.S. Sup. Ct. has explained the doctrine of 'vagueness': It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined."

effect: Quoting ITA Huyhn, "The context of #3.170(L) creates an exception ... that lacks parameters in which a person may comprehend what meets the exception ... without parameters set to guide the reader in a finite manner, the exception then becomes ambiguous."

Ex "M"  
P#48

(16) Fla. s<sup>s</sup> 775.021 Rules of construction

1) The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorable to the accused."

(17) Barr v. Galvin 659 F.Supp.2d 225 (Sep 17-2009)

"where... the meaning of a statute is unclear, it may be found to be void for vagueness, see:

(17.5) Duke v. Conneh 790 F.Supp. 50, 53-54 (DRI 1993)

"A vague statute can be justified by NO legitimate state interest. See Id. Accordingly... fails to pass constitutional muster as it applies to this.

(18) Cooper v. Fulton Co. Ga. 458 F.3d 1282, 1285 (11<sup>th</sup> Cir. 2006)

"under the A.P.A., we defer to the decision of the Bureau unless it:

- 1) exceeds the bureau's statutory authority
- 2) violates a constitutional right, or
- 3) constitutes an 'arbitrary' or 'capricious action' or 'an abuse of discretion' or an action 'otherwise not in accordance with law'

Ex "M"  
p#49

- ① National Endowment for Arts v. Finley  
141 Fed. 2d 500, 524 U.S. 569. @ [524 US 599]  
"The vagueness doctrine addresses the problems that arise from Gov. Reg. of expressive conduct. see:
- ①.5 Greynd v. City of Rockford 408 U.S. 104, 108-109, 33 L. Ed. 2d 222, 92 S. Ct. 2294 (1972)
- ② Conner v. Joe Hatten Inc. Fla. 216 So. 2d 209 (1968)  
"When the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body that power to say what the law shall be."
- ② St. ex rel Davis v. Fowler 1927, 94 Fla. 752, 114 So 435; and  
Lewis v. FL. St. Board of Health (Fla. App. 1962)  
"as stated in 1 Fla. Jur. Admin. Law at p# 243  
"A Law must be complete in itself, in all its terms and provisions when it leaves the legislative branch of Gov., so that by appropriate judicial review and control any action taken pursuant to such delegated authority may be kept within the deferred limits of the authority conferred and within the express and implied limitations of all controlling



Ex "M"  
p # 50

(22) St. v. Byars 823 So.2d 740, 742 (Fla 2002)  
Holding "any ambiguity or situation in which statutory language is susceptible to differing constructions must be resolved in the favor of the person charged with an offense."

effect: Because Fla. R. Crim. P. #3170(L) is ambiguous the rule must be construed in the favor of the accused seeking to withdraw his plea after any intitled appellate proceedings.

Jud. Notice: The created exception in Rule #3170(L) cites the intitled right to Appeal via "reservation", the ambiguity brought into question is the effect of that exception on a right to Petition for withdrawal of plea or the point in time that the 30 day time limit starts.

(23) Walker v. Astrue 593 F.3d 274, 280 (May 18, 2018)  
"we further hold that the application of the filing deadline is tolled until the notice [mandate] of award is issued by the commissioner [3d DCA] and counsel is notified of that..."

EX "M"  
P# 51

## Conclusion

Appellant Pray this honorable 3d DCA to Reverse and Remand this instant case to the L.T. with instructions to schedule a hearing on the merits of Appellant's motion to withdraw Plea.

Jeffrey Ray Sundwall  
Jeffrey Ray Sundwall  
DC# 829113  
Dated: 2-7-2020