

SUPREME COURT OF THE UNITED STATES

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WASHINGTON, DC 20543 - 0001

WILLIE SAFFORD

243373

HAMILTON CORRECTIONAL INSTITUTION ANNEX

10650 SW 46th St.

JASPER, FLORIDA 32052

RE: SAFFORD v. FLORIDA

NO. 2D 19 - 120

MOTION DIRECTING THE CLERK OF THIS COURT

TO FILE THIS PETITION FOR WRIT OF CERTIORARI
OUT-OF-TIME

DEFENDANT'S PETITION FOR A WRIT OF CERTIORARI WAS
ORIGINALLY POSTMARKED JANUARY 17, 2020 AND RECEIVED
ON APRIL 8, 2020. THE PETITION WERE RETURNED BECAUSE
IT WAS OUT-OF-TIME. PETITIONER WISHES, HE MAY RETURN
HIS SUBMISSION WITH THIS MOTION, DIRECTING THE
CLERK OF THIS COURT TO FILE IT OUT-OF-TIME.

RECEIVED

MAY 11 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

THANK-YOU

SINCERILY

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

WILLIE SAFFORD,)
Appellant,)
v.) Case No. 2D19-120
STATE OF FLORIDA,)
Appellee.)

)

Opinion filed October 18, 2019.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pinellas County; Philip J. Federico,
Judge.

Willie Safford, pro se.

PER CURIAM.

Affirmed.

NORTHCUTT, CASANUEVA, and VILLANTI, JJ., Concur.

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
CRIMINAL DIVISION

STATE OF FLORIDA

v.

WILLIE SAFFORD,
Person ID: 00324504, Defendant.

CASE NO.: CRC10-09375CFANO
UCN: 522010CF009375XXXXNO

DIVISION: M

**ORDER DISMISSING DEFENDANT'S "MOTION FOR POSTCONVICTION
RELIEF 3.850(B) FOR NEWLY DISCOVERED EVIDENCE"**

THIS CAUSE came before the Court on the Defendant's *pro se* "Motion for Postconviction Relief 3.850(B) for Newly Discovered Evidence," filed on June 17, 2019. Having considered the motion, record, and applicable law, this Court finds as follows:

PROCEDURAL HISTORY

On May 28, 2010, defendant was charged with one count of aggravated battery. On May 12, 2011, defendant was found guilty as charged by a jury. He was sentenced as a Habitual Felony Offender (HFO) to 30 years' imprisonment, with a 30 year minimum-mandatory as a Violent Career Criminal Offender (VCC), and 15 year minimum-mandatory as a Prison Releasee Reoffender (PRR). (Ex. A, Judgment and Sentence). Defendant appealed his conviction, and the Second District Court of Appeal affirmed *per curiam*. See *Safford v. State*, 81 So. 3d 427 (Fla. 2d DCA 2012) (table). The mandate issued on March 21, 2012. On November 17, 2017, defendant's judgment and sentence was amended to strike his HFO designation.

Since his conviction on May 12, 2011, defendant has filed ten motions for postconviction relief in this matter, none of which have been meritorious.¹ And all of the orders that defendant has appealed have been upheld by the Second District Court of Appeal. The instant motion is defendant's eleventh.

¹ As noted above, defendant did successfully obtain correction of his sentence under Rule 3.800(a) in an order dated November 17, 2017. But none of his motions attacking the underlying conviction were successful.

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THE MOTION

Defendant's motion suffers from several fatal defects that prevent the Court from considering it.

First, the Court is unable to consider the merits of defendant's motion because it is not properly sworn. Any factual statements or allegations asserted in support of a postconviction motion must be accompanied by a proper oath. *See, e.g., Fla. R. Crim. P. 3.987; State v. Shearer, 628 So. 2d 1102, 1103 (Fla. 1993).* Defendant's motion contains no oath at all. For this reason, the Court cannot consider the motion.

Second, his motion exceeds the page limit. "No motion . . . shall exceed 50 pages without leave of the court upon a showing of good cause." Fla. R. Crim. P. 3.850(d). Defendant's motion, exclusive of attachments, is 68 pages. Defendant does not attempt to seek the court's leave or show good cause why the court should grant leave to file a longer motion. For this reason also, the Court cannot consider the motion.

Notwithstanding, defendant's motion would be dismissed even if it was properly sworn and under 50 pages because it is untimely. A motion for postconviction relief must be filed within two years of the date the judgment and sentence becomes final, unless an exception is invoked. *See Fla. R. Crim. P. 3.850(b).* The judgment and sentence becomes final thirty days after it is entered or, in the event of a direct appeal, when the mandate issues from appeal. *See Beatty v. State, 701 So. 2d 856, 857 (Fla. 1997).* Defendant appears to allege that newly discovered evidence renders his motion timely, under the exception to the time limitations for motions based on newly discovered evidence. Newly discovered evidence must be evidence which is unknown to the defendant and counsel, could not have been ascertained using due diligence, and must be raised within two years of the time that it was discovered or could have been discovered using due diligence. *See Fla. R. Crim. P. 3.850(b)(1).* Defendant, however, appears to be basing his claim on police reports from his case from 2010, which are not newly discovered. (*See Def. Ex. A, B, C; see also Zeigler v. State, 632 So. 2d 48, 50 (Fla. 1993)* (public records generally not considered newly discovered evidence). In fact, defendant has included at least some of these reports in prior motions: in his motion filed April 25, 2016, and in his motion filed July 20, 2016—both of which were denied. Because the evidence is not newly discovered, the exception is inapplicable. Thus the Court cannot consider the motion.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's "Motion for Postconviction Relief 3.850(B) for Newly Discovered Evidence" is hereby **DISMISSED**.

DEFENDANT IS NOTIFIED that he has thirty (30) days from the rendition date of this Order to file an appeal, should he choose to do so.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this _____ day of February, 2019. A true and correct copy of this order has been furnished to the parties listed below.

Philip J. Federico, Circuit Judge

cc: Office of the State Attorney

Willie Safford, DC# 243373
Hamilton Annex
10650 SW 46th Street
Jasper, Florida 32052-1360

Original Signed

JUL 08 2019

PHILIP J. FEDERICO
Circuit Judge

**Additional material
from this filing is
available in the
Clerk's Office.**