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

CASE NO.: 1991-001276 CFAES

STATE OF FLORIDA,

v.

BERTRAM S. MANN,

Defendant.

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CLERK OF THE CIRCUIT
& CITY COURT VOLUSIA, FL
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FILED

ORDER DENYING DEFENDANT'S MOTION FOR MODIFICATION OF SENTENCE

THIS MATTER came before the Court upon Defendant's *pro se* motion for modification of sentence, pursuant to Florida Rule of Criminal Procedure 3.800(c), filed on December 21, 2020, pursuant to the Mailbox Rule. The Court having reviewed the motion and the court file, and otherwise being apprised of the premises, finds as follows:

Defendant moves this Court to modify his sentence. Defendant was sentenced on April 14, 1994. See Appendix A. As stated above, Defendant filed the instant motion on December 21, 2020. A motion for modification of sentence may only be filed within the following procedural guidelines:

~~within 60 days after the imposition, or within 60 days after receipt by the court of a mandate issued by the appellate court on affirmance of the judgment and/or sentence on an original appeal, or within 60 days after receipt by the court of a certified copy of an order of the appellate court dismissing an original appeal from the judgment and/or sentence.~~

Fla. R. Crim. P. 3.800(c) (emphasis added). Accordingly, the instant motion is exceedingly untimely. Therefore, Defendant's *pro se* motion for modification of sentence is DENIED. Notably, the Court previously denied an identical order, however, Defendant has complained that the order was not delivered to his correctional institution.

Defendant also appears to assert several grounds for post-conviction relief within his motion. The motion is facially insufficient. The motion fails to satisfy the oath and language certification requirements of Rule 3.850. See Fla. R. Crim. P. 3.850(c) ("[t]he motion must be under oath stating that the defendant has read the motion or that it has been read to him or her, that the defendant understands its content, and that all of the facts stated therein are true and correct"); see also Fla. R. Crim. P. 3.850(n)(2) ("[t]he defendant shall either certify that the defendant can understand English"). The oath and language certification should be placed after all portions of the motion that contain factual allegations. Further, Defendant fails to allege an exception to the procedural bars set forth in Florida Rule of Criminal Procedure 3.850(b). Therefore, the allegations that could be construed as a Rule 3.850 motion shall be DENIED WITHOUT PREJUDICE.

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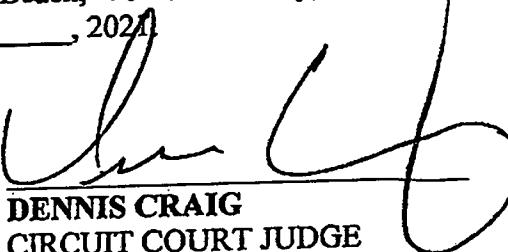
Further, “[t]o prevail on a claim of newly discovered evidence, a movant must show the following: (1) the evidence was unknown to the movant or his counsel and could not have been uncovered by due diligence at the time of trial; and (2) the evidence is such that it would probably produce an acquittal on retrial.” *Nordelo v. State*, 93 So. 3d 178, 184 (Fla. 2012) (citing *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991)). “In evaluating the legal sufficiency of a motion based on newly discovered evidence, the court must accept the allegations as true for the purpose of determining whether the alleged facts, if true, would render the judgment vulnerable to collateral attack.” *Id.* “Rule [3.850(b)(1)] permits the denial of a successive postconviction motion without an evidentiary hearing ‘[i]f the motion, files, and records in the case conclusively show that the movant is entitled to no relief.’” *Long v. State*, 183 So. 3d 342, 344 (Fla. 2016) (citing *Hunter v. State*, 29 So. 3d 256, 261 (Fla. 2008)). Presently, Defendant does not satisfy the cited authority. Therefore, the allegations that could be construed as a Rule 3.850 motion shall be **DENIED WITHOUT PREJUDICE**.

RULING

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. Defendant’s *pro se* motion for modification of sentence is **DENIED** as untimely; and
2. The allegations that could be construed as a Rule 3.850 motion shall be **DENIED WITHOUT PREJUDICE**.

DONE AND ORDERED in Chambers at Daytona Beach, Volusia County, Florida this
19th day of February, 2021.


DENNIS CRAIG
CIRCUIT COURT JUDGE

cc: Bertram S. Mann, Petitioner, D.C. # 585588, Blackwater Correctional Facility, 5814 Jeff Ates Road, Milton, Florida 32583-0000
The Office of the State Attorney, Post-Conviction Division

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

BERTRAM S. MANN,

Petitioner,

v.

CASE NO. 5D21-0873
LT CASE NO. 1991-1276-CFAES

STATE OF FLORIDA,

Respondent.

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DATE: August 04, 2021

BY ORDER OF THE COURT:

ORDERED that the Petition for Writ of Certiorari, filed April 2, 2021 (mailbox date), and Amended Petition, filed April 22, 2021 (mailbox date), are denied on the merits. See Topps v. State, 865 So. 2d 1253 (Fla. 2004).

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Sandra B. Williams



SANDRA B. WILLIAMS, CLERK

Panel: Judges Wallis, Eisnaugle and Harris

cc:

Office of the Attorney
General
Hon. Dennis Craig

Richard Alexander
Pallas

Bertram S. Mann

090

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

BERTRAM S. MANN,

Petitioner,

v.

CASE NO. 5D21-0873
LT CASE NO. 1991-1276-CFAES

STATE OF FLORIDA,

Respondent.

DATE: September 09, 2021

BY ORDER OF THE COURT:

ORDERED that Petitioner's Motion for Rehearing, filed August 17, 2021 (mailbox date), is denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*



Sandra B. Williams

SANDRA B. WILLIAMS, CLERK

Panel: Judges Wallis, Eisnaugle and Harris

cc:

Office of the Attorney
General
Hon. Dennis Craig

Richard Alexander
Pallas

Bertram S. Mann

09100

Supreme Court of Florida

MONDAY, SEPTEMBER 27, 2021

CASE NO.: SC21-1356

Lower Tribunal No(s).:
5D21-873; 641991CF001276XXAES

BERTRAM MANN

vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)

This case is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. *See Wheeler v. State*, 296 So. 3d 895 (Fla. 2020); *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

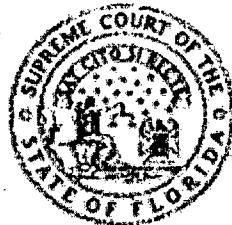
No motion for rehearing or reinstatement will be entertained by the Court.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



td

Served:

REBECCA ROCK MCGUIGAN
BERTRAM MANN
HON. DENNIS P. CRAIG, JUDGE
HON. SANDRA B. WILLIAMS, CLERK
HON. LAURA E. ROTH, CLERK

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