

Appendix A-1

Supreme Court of Florida

THURSDAY, OCTOBER 14, 2021

CASE NO.: SC21-1293

Lower Tribunal No(s).:

3D21-83;
131983CF0293010001XX

ALAN JEROME PRICE

vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)

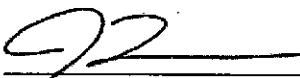
This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that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

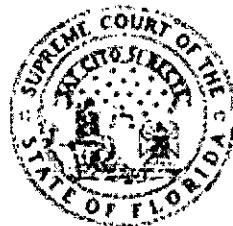
No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

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

A True Copy

Test:


John A. Tomasino
Clerk, Supreme Court



CASE NO.: SC21-1293

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Served:

MICHAEL W. MERVINE
ALAN JEROME PRICE
HON. MERCEDES M. PRIETO, CLERK
HON. LOURDES SIMON, JUDGE
HON. HARVEY RUVIN, CLERK

Appendix A-2

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff.
vs.

Case No.: F83-29301
Section No.: 01
Judge SIMON

ALAN J. PRICE
Defendant

**ORDER DENYING DEFENDANT'S MOTION FOR POST CONVICTION RELIEF
PURSUANT TO FLA. R. CRIM. P. RULE 3.850**

THIS CAUSE having come before this Court on the defendant ALAN J. PRICE'S Motion for Post-Conviction Relief under Rule 3.850, filed with the court on 4/28/2020, and this Court having reviewed the motion, the court files and records in this case, and being otherwise fully advised in the premises therein, hereby denies the defendant's Motion on the following grounds:

The defendant's claims for relief are time-barred under Rule 3.850 from the Florida Rules of Criminal Procedure. Pursuant to governing law, a defendant has two-years from the date that the judgment and sentence became final to file a Rule 3.850 claim. Dean v. State, 644 So.2d 122 (Fla. 2nd DCA 1994); Fla.R.Crim.P. 3.850. For purposes of a Rule 3.850, a judgment and sentence are final when any direct review proceedings have concluded and jurisdiction to review a Rule 3.850 claim returns to the lower court. Ward. V. Duver, 508 So.2d 778 (Fla. 1st DCA 1987). The time starts after the expiration of the thirty-day window to file an appeal, [McGee v. State, 684 So.2d 241 (Fla. 2nd DCA 1996)], or after the mandate. [Jones v. State, 602 So.2d 606 (Fla. 1st DCA 1992)]. Furthermore, the two-year time limit is not tolled by other collateral proceedings, even if a corrected sentence is entered. Joseph v. State, 835 So.2d 1221, fn3 (Fla. 5th DCA 2003).

In the cases at hand, the defendant's original conviction and sentence are well outside the two-year period for which such claims can be made. The final judgment and sentence were entered in 1990. The current motion before the court was filed on 4/28/2020, - well outside the two-year window of opportunity for bringing forth the claims he now alleges in his motion. Therefore, this claim for relief is time-barred. As such, the Defendant's motion should be denied as untimely under Rule 3.850.

ORDERED AND ADJUDGED that the Defendant's Motion is hereby DENIED. (XW)

RECORDED

for 5/1/2020
E-FILED

The Defendant, ALAN J. PRICE, is hereby notified that he has the right to appeal this order to the District Court of Appeal of Florida, Third District within thirty (30) days of the signing and filing of this order.

The Clerk of this Court is hereby ordered to send a copy of this Order to the Defendant, ALAN J. PRICE.

In the event that the defendant takes an appeal of this order, the Clerk of this Court is hereby ordered to transport, as part of this order, to the appellate court the following:

1. Defendant's Motion.
2. This order.

DONE AND ORDERED at Miami, Miami-Dade County, Florida, this 19th day
of May, 2020.



JUDGE LOURDES SIMON
CIRCUIT COURT JUDGE

CERTIFY that a copy of this order has been furnished to
the defendant, Alan J. Price, by mail this 20th day
of May, 2020.



Appendix A-3.

IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,
vs.

Case No: F83-29301
Section No: 01
Judge: LOURDES SIMON

ALLAN PRICE,
Defendant

FILED
DEC 02 2020
CLERK

**ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION FOR POST-CONVICTION
RELIEF UPON DEFENDANT'S MOTION FOR REHEARING**

THIS CAUSE having come before this Court on the Defendant, ALLAN PRICE'S Successive Motion for Post-Conviction Relief, filed with the Court on or about 4/28/2020, and this Court, having reviewed the Defendant's Motion, the Defendant's Motion for Rehearing filed on or about September 14, 2020, files and records in this case, after hearing oral argument from both parties, and being otherwise fully advised in the premises therein, hereby denies the Defendant's Successive Motion for Post-Conviction Relief.

BACKGROUND

1. On April 28, 2020, the Defendant filed a pro se motion titled Successive Motion for Postconviction Relief, wherein he argued he was entitled to a new trial because his counsel confessed on his behalf in closing argument and that this confession was not voluntarily given. See Defendant's Successive Motion for Postconviction Relief at 6. The Defendant claimed he was entitled to this relief under *McCoy v. Louisiana*, 584 U.S. ____ (2018).
2. On May 20, 2020, this Court issued an order denying the Defendant's motion as time barred.
3. On or about June 15, 2020, the Defendant, represented by counsel, filed a Motion for Rehearing of Defendant's Motion for Post-Conviction Relief Pursuant to Florida Rule of Criminal Procedure 3.850(B)(2). A motion for rehearing was granted.
4. On November 19, 2020, the State filed a State's Response to Defendant's Motion for Rehearing of Defendant's Motion for Post-Conviction Relief Pursuant to Florida Rule of Criminal Procedure 3.850(B)(2). The State cited to *Atwater v. State*, 300 So.3d 589 (Fla. 2020) in support of the position that the Defendant's motion was facially insufficient to warrant relief under *McCoy* since the Defendant's motion failed to allege that he expressly told his counsel he wanted to maintain his innocence or expressly objected to any admission of guilt.

E-FILED
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5. On November 30, 2020, oral argument was heard and at the conclusion of the hearing, the Court denied the Defendant's Successive Motion for Post-Conviction Relief for the following reasons:

ANALYSIS

The Defendant alleges that he never relinquished his plea of not guilty and that he was never made aware of his counsel's intention to pronounce a confession to the jury during trial and specifically during closing arguments. This is akin to the Defendant in *Atwater*, who like this Defendant, alleged that his counsel never discussed with him the possibility of conceding guilt. *Atwater*, 300 So.3d at 590. In *Atwater* the Florida Supreme Court stated:

Unlike the defendant in *McCoy*, Atwater does not allege that he expressed to counsel that his objective was to maintain innocence or that he expressly objected to any admission of guilt. Instead, Atwater states that he did not discuss the possibility of conceding guilt with counsel. The crux of Atwater's argument is to fault counsel for failing to discuss the possibility of conceding guilt. But counsel's duty to discuss trial strategy with the defendant was established long before the Supreme Court's decision in *McCoy*. . . .¹ At its heart, Atwater's claim is not a *McCoy* claim; Atwater has not alleged that counsel conceded guilt over Atwater's objection. Therefore, the trial court was right to conclude that Atwater's allegations are facially insufficient to warrant relief under *McCoy*.

Id. at 591. Like the defendant in *Atwater*, here the Defendant does not allege that he expressed to counsel that his objective was to maintain his innocence or that he expressly objected to any admission of guilt. Instead, the Defendant broadly states that defense counsel never discussed his intentions to concede guilt. This Court finds that like Atwater, this Defendant has not stated a facially sufficient claim entitling him to relief under *McCoy*.

In light of this holding, this Court will not address the issue of timeliness and retroactivity.

For the reasons stated above, the Defendant's Successive Motion for Postconviction Relief is hereby denied.

The Defendant, ALLAN PRICE, is hereby notified that he has the right to appeal this order to the District Court of Appeal of Florida, Third District within thirty (30) days of the signing and filing of this order.

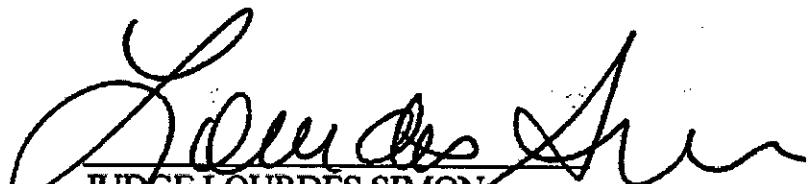
In the event that the Defendant takes an appeal of this order, the Clerk of this Court is hereby ordered to transport, as part of this order, to the appellate court the following:

¹ The Court cites to *Strickland v. Washington*, 466 U.S. 668 (US 1984) alluding to the fact that Atwater's claim is more aptly an ineffective assistance of counsel claim under *Strickland*, not a *McCoy* claim.

- 1. Defendant's Successive Motion for Post-Conviction Relief filed on or about April 28, 2020.
- 2. The trial court's Order Denying Defendant's Motion for Post-Conviction Relief filed on or about May 20, 2020.
- 3. The Defendant's Motion for Rehearing of Defendant's Motion for Post-Conviction Relief Pursuant to Florida Rule of Criminal Procedure 3.850(B)(2) filed on or about June 15, 2020.
- 4. The State's Response to Defendant's Motion for Rehearing of Defendant's Motion for Post-Conviction Relief Pursuant to Florida Rule of Criminal Procedure 3.850(B)(2) filed on or about November 19, 2020.
- 5. This order.

DONE AND ORDERED at Miami, Miami-Dade County, Florida, this 2 day of

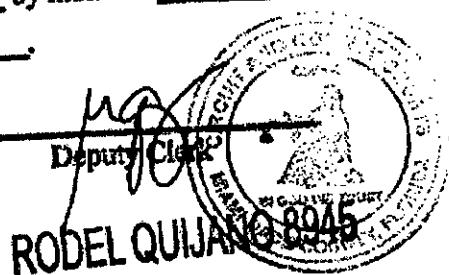
December, 2020.



JUDGE LOURDES SIMON
CIRCUIT COURT JUDGE

CC: Alex Saiz, Counsel for the Defendant
Annette Rasco, Assistant State Attorney

ERTIFY that a copy of this order has been furnished to
MOVANT, ALLAN PRICE by mail this 8TH day
DECEMBER, 2020.



Appendix A-4

Third District Court of Appeal

State of Florida

Opinion filed June 23, 2021.
Not final until disposition of timely filed motion for rehearing.

No. 3D21-83
Lower Tribunal No. F83-29301

Alan Price,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from
the Circuit Court for Miami-Dade County, Lourdes Simon, Judge.

Law Office of Alex John Saiz PLLC, and Alex John Saiz, for appellant.

Ashley Moody, Attorney General, for appellee.

Before EMAS, C.J., and HENDON and MILLER, JJ.

PER CURIAM.

Affirmed. See Atwater v. State, 300 So. 3d 589, 590-91 (Fla. 2020) (observing that the United States Supreme Court in McCoy v. Louisiana, ___ U.S. ___, 138 S. Ct. 1500, 200 L.Ed.2d 821 (2018) “did not hold that counsel is required to obtain the express consent of a defendant prior to conceding guilt. Instead, the [McCoy] Court held that if a defendant ‘expressly asserts that the objective of ‘*his* defence’ [quoting U.S. Const. amend. VI] is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt.’ Because McCoy ‘vociferously insisted that he did not engage in the charged acts and adamantly objected to any admission of guilt,’ the Supreme Court found that counsel’s concession of guilt violated McCoy’s ‘[a]utonomy to decide that the objective of the defense is to assert innocence.’” (quoting McCoy, 138 S. Ct. at 1505, 1508, 1509)).

Appendix B-1