APPENDIX

A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-13120-J

JAMIE M. COFFEY,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before: ROSENBAUM and GRANT, Circuit Judges.

BY THE COURT:

Jamie M. Coffey has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's order dated December 21, 2021, denying his motions for leave to proceed on appeal *in forma pauperis*, and for a certificate of appealability, in his appeal from the district court's order dismissing his *pro se* 28 U.S.C. § 2254 habeas corpus petition as untimely. Because Coffey has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motions, his motion for reconsideration is DENIED.

APPENDIX

B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-13120-J

JAMIE M. COFFEY,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Jamie M. Coffey is a Florida prisoner serving a term of 15 years for driving while under the influence resulting in manslaughter. On July 27, 2020, Coffey filed a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254, arguing, *inter alia*, that he had received ineffective assistance of counsel. The district court dismissed his petition as time-barred. The district court also denied certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP") on appeal. Coffey appealed, and he now moves this Court for a COA and leave to proceed IFP.

Here, reasonable jurists would not debate the district court's determination that Coffey's § 2254 petition was time-barred. Coffey's conviction and sentence became final on August 9,

2016, which was 90 days after the Florida Second District Court of Appeal affirmed his conviction and sentence on May 11, 2016. Thus, absent any statutory or equitable tolling, Coffey had one year from that date, or until August 9, 2017, to file a § 2254 petition.

When Coffey filed his Florida Rule of Criminal Procedure 3.850 motion on September 20, 2016, 41 days of the limitation period had run. The limitation period began to run again on October 8, 2018, which was the date that the 30-day deadline to appeal the state court's dismissal of his Rule 3.850 motion on September 6, 2018, expired. The limitation period ran for an additional 324 days and expired on August 28, 2019. Coffey's § 2254 petition, filed on July 27, 2020, was untimely. Further, the district court properly found that neither Coffey's motion for rehearing nor appeal from the denial of relief under Rule 3.850 tolled the statute of limitations, as both were dismissed as untimely, and thus, were not properly filed. Thus, Coffey's motion for a COA is DENIED and his motion for IFP status is DENIED AS MOOT.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE

APPENDIX

C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JAMIE M. COFFEY,

Applicant,

v. CASE NO. 8:20-cv-1758-SDM-CPT

SECRETARY, Department of Corrections,

Respondent.
_____/

ORDER

Coffey applies under 28 U.S.C. § 2254 for the writ of habeas corpus (Doc. 1) and challenges his conviction for, among other lesser offenses, driving while under the influence resulting in manslaughter, for which Coffey is imprisoned for fifteen years. The respondent argues (Doc. 7) that the application is time-barred. Coffey persists in arguing that his application is timely.

Under the Anti-Terrorism and Effective Death Penalty Act, "[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of . . . the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review . . . ." 28 U.S.C. § 2244(d)(1)(A). Additionally, under 28 U.S.C. § 2244(d)(2), "[t]he time during which a properly filed application for State post-conviction or other collateral review

with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection."

Coffey's convictions became final on August 9, 2016.[1] Absent tolling for a timely post-conviction application in state court, the federal limitation barred his claim one year later on August 9, 2017. Coffey let 41 days elapse before he moved under state Rule 3.850 for post-conviction relief on September 20, 2016 (Respondent's Exhibit 6 at 1), which tolled the limitation. Tolling continued until the circuit court denied the motion and the time to appeal expired, which was October 8, 2018.[2] Coffey did not timely appeal. Because he had 324 days of the one-year limitation remaining, Coffey's deadline to apply under Section 2254 was August 28, 2019 (October 8, 2018 + 324 days = August 28, 2019). Coffey filed his application under Section 2254 on July 27, 2020, eleven months late.

Coffey argues for entitlement to tolling for the appeal from the denial of relief under Rule 3.850. As shown above, the deadline to appeal was October 8, 2018 (thirty days after the final order denying relief). Instead of appealing to the district court, Coffey moved for rehearing in the circuit court (Respondent's Exhibit 11), which motion the circuit court denied as untimely. (Respondent's Exhibit 12)

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[1] Coffey's direct appeal concluded on May 11, 2016. (Respondent's Exhibit 5) The conviction became final after ninety days, the time allowed for petitioning for the writ of *certiorari*. 28 U.S.C. § 2244(d)(1)(A). *See Bond v. Moore*, 309 F.3d 770 (11th Cir. 2002), and *Jackson v. Sec'y, Dep't of Corr.*, 292 F.3d 1347 (11th Cir. 2002).

[2] The circuit court issued an amended final order on September 6, 2018. The deadline to appeal expired thirty days later on October 6, 2018, but because that was a Saturday, under Rule 2.514(a)(1)(C), Florida Rules of Judicial Administration, the deadline is extended to "the next day that is not a Saturday, Sunday, or legal holiday . . . ." October 8, 2018, was the next Monday.

Coffey's subsequent appeal to the district court was dismissed as untimely. (Respondent's Exhibit 18) Later the appellate court denied Coffey's petition for a belated appeal. (Respondent's Exhibits 24 and 25) Tolling is not afforded to a state proceeding that was dismissed as untimely. *Pace v. DiGuglielmo*, 544 U.S. 408, 417 (2005) ("[W]e hold that time limits, no matter their form, are 'filing' conditions. Because the state court rejected petitioner's PCRA petition as untimely, it was not 'properly filed,' and he is not entitled to statutory tolling under § 2244(d)(2)."); *Allen v. Siebert*, 552 U.S. 3, 7 (2007) ("We therefore reiterate now what we held in *Pace*: 'When a postconviction petition is untimely under state law, "that [is] the end of the matter" for purposes of § 2244(d)(2).'") (brackets original). Consequently, the federal limitation was not tolled while Coffey pursued his untimely motion for rehearing and untimely appeal from the Rule 3.850 proceeding.

Coffey's application (Doc. 1) is **DISMISSED AS TIME-BARRED**. The clerk must enter a judgment against Coffey and **CLOSE** this case.

DENIAL OF BOTH CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL *IN FORMA PAUPERIS*

Coffey is not entitled to a certificate of appealability ("COA"). A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his application. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a COA. Section 2253(c)(2) permits issuing a COA "only if the applicant has made a substantial showing of the denial of a constitutional right."

To merit a COA, Coffey must show that reasonable jurists would find debatable both (1) the merits of the underlying claims and (2) the procedural issues he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir 2001). Because the application is clearly time-barred, Coffey is entitled to neither a COA nor leave to appeal *in forma pauperis*.

A certificate of appealability is **DENIED**. Leave to appeal *in forma pauperis* is **DENIED**. Coffey must obtain permission from the circuit court to appeal *in forma pauperis*.

ORDERED in Tampa, Florida, on August 17, 2021.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JAMIE M. COFFEY,

Petitioner,

v. **Case No: 8:20-cv-1758-SDM-CPT**

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS and ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is entered against Petitioner, Jamie M. Coffey.

ELIZABETH M. WARREN,
CLERK

s/MB, Deputy Clerk

APPENDIX

D

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA **CASE NO.: 13-CF-008726**

v.

JAMIE M. COFFEY, **DIVISION: I/J**
Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION FOR REHEARING

THIS MATTER is before the Court on Defendant's Motion for Rehearing, filed on October 1, 2018. After reviewing Defendant's motion, the court file, and the record, the Court finds as follows:

In his motion, Defendant requests a rehearing on claims one, two, three, four, five, and six of his Motion for Postconviction Relief. The Court entered its Final Order denying Defendant's postconviction motion on August 17, 2012, following an evidentiary hearing. (*See* Final Order, attached). The Final Order mailed to Defendant was damaged in the mail and returned to the Court. (*See* copy of envelope, attached). As a result, the Court entered an Amended Final Order on September 5, 2018, with a Certificate of Service date of September 6, 2018. (*See* Amended Final Order, attached).

A motion for rehearing must be filed within 15 days of the date of service of the Order, or, if served by mail, the motion must be filed within 18 days of the date of service of the Order. *See* Fla. R. Crim. P. 3850(j); Fla. R. Crim. P. 3.070, *Whipple v. State*, 867 So. 2d 433 (Fla. 1st DCA 2004). Defendant received service of the Amended Final Order by mail, and the date of service was September 6, 2018. (*See* Amended Final Order, attached). Thus, a timely motion for rehearing was due on or before September 24, 2018.

Defendant's Motion for Rehearing, although filed with the Clerk of the Circuit Court on October 1, 2018, indicates Defendant provided his motion to prison officials for mailing on September 25, 2018. Likewise, the Certificate of Service date for his motion is September 25, 2018. However, even using the September 25, 2018 date as the date of filing, *see Haag v. State*, 591 So. 2d 614 (Fla. 1992), Defendant's motion for rehearing was not filed within 18 days of September 6, 2018, and is therefore untimely.[1] **As such, Defendant's motion for rehearing is subject to being denied as untimely.**

It is therefore **ORDERED AND ADJUDGED** that Defendant's Motion for Rehearing is hereby **DENIED.**

Defendant has thirty (30) days from the date of this order to file an appeal.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this 16th day of October, 2018.

ORIGINAL SIGNED

OCT 16 2018

MICHELLE SISCO
CIRCUIT JUDGE

MICHELLE SISCO, Circuit Judge

Attachments:

Motion for Rehearing
Final Order Denying Defendant's Motion for Postconviction Relief
Copy of envelope from returned mail
Amended Final Order Denying Defendant's Motion for Postconviction Relief

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Order has been furnished to Jamie Marquios Coffey, D.C. #C09864, Suwannee Correctional Institution, 5964 U.S. Highway 90, Live Oak, FL

[1] "Smith had fifteen days under Rule 3.850, plus three days for mailing under Rule 3.0070, or until July 2, to file a motion for rehearing. He filed his motion for rehearing on Tuesday, July 3, 2007, nineteen days after the June 14, 2007, certificate of service date. Therefore his motion for rehearing was untimely . . ." *Smith v. State*, 984 So. 2d 547, 547 (Fla. 5th DCA 2008).

32060, by regular U.S. Mail; and Barbara Coleman, Assistant State Attorney, 419 Pierce Street, Tampa, Florida 33602, by inter-office mail, on this 16th day of OCT 2018.

Valeria Anderson

DEPUTY CLERK

APPENDIX

E

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE, THE FLORIDA RULES OF JUDICIAL ADMINISTRATION, THE FLORIDA RULES OF CRIMINAL PROCEDURE, AND THE FLORIDA RULES OF APPELLATE PROCEDUREELECTRONIC SERVICE.
SUPREME COURT OF FLORIDA
257 So. 3d 66; 2018 Fla. LEXIS 2049
No. SC17-882
October 25, 2018, Decided

Editorial Information: Subsequent History

Rehearing denied by In re: Amendments to the Fla. Rules of Civ. Procedure, 2018 Fla. LEXIS 2247 (Fla., Nov. 20, 2018)

Counsel Scott Michael Dimond, Chair, Civil Procedure Rules Committee, Miami, Florida, Roger James Haughey, II, Past Chair, Tampa, Florida, Civil Procedure Rules Committee; Eduardo I. Sanchez, Chair, Rules of Judicial Administration Committee, Miami, Florida, Honorable Steven Scott Stephens, Past Chair, Rules of Judicial Administration Committee, Tampa, Florida; Sheila Ann Loizos, Chair, Criminal Procedure Rules Committee, Jacksonville, Florida, H. Scott Fingerhut, Past Chair, Criminal Procedure Rules Committee, Coral Gables, Florida; Courtney Rebecca Brewer, Chair, Appellate Court Rules Committee, Tallahassee, Florida, Kristin A. Norse, Past Chair, Appellate Court Rules Committee, Tampa, Florida; and Joshua E. Doyle, Executive Director, Mikalla Andies Davis, Krys Godwin, and Heather Savage Telfer, Staff Liaisons, The Florida Bar, Tallahassee, Florida, for Petitioners.

Victoria Katz of Aderant, Culver City, California; Paul R. Regensdorf, Palm City, Florida; Honorable Richard A. Nielsen, Circuit Judge, Thirteenth Judicial Circuit, Tampa, Florida; Donald E. Christopher of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Orlando, Florida; and Robert M. Eschenfelder, Bradenton, Florida, Responding with Comments.

Judges: CANADY, C.J., and PARIENTE, QUINCE, POLSTON, LABARGA, and LAWSON, JJ., concur. LEWIS, J., dissents.

Opinion

{257 So. 3d 66} Original Proceeding Florida Rules of Civil Procedure, Florida Rules of Judicial Administration, Florida Rules of Criminal Procedure, Florida Rules of Appellate Procedure Electronic Service

{257 So. 3d 67} PER CURIAM.

This matter is before the Court for consideration of proposed amendments to the Florida Rules of Judicial Administration, Rules of Civil Procedure, Rules of Criminal Procedure, and Rules of Appellate Procedure.1

Background

The Florida Bar's Rules of Judicial Administration Committee, the Civil Procedure Rules Committee, the Criminal Procedure Rules Committee, and the Appellate Court Rules Committee (Rules Committees) have filed a joint out-of-cycle report proposing a number of rule amendments addressing the computation of time to respond to documents served by e-mail. The Rules Committees published the proposals for comment before filing them with the Court and made revisions to the proposals in response to the comments they received. The amendments before the Court were unanimously approved by the Board of Governors of The Florida Bar.

After the joint report was filed, the Court published the proposed amendments for comment. The Court received comments from Victoria Katz, a rules attorney for Aderant CompuLaw, as well as from several members of the original Joint Email Service Committee.2 The Civil Procedure Rules Committee filed a response to the comments indicating its opposition to the proposed amendment to Rule of Judicial Administration 2.514(a)(1)(A), and suggesting additional amendments to the rule. The Rules of Judicial Administration Committee, the Criminal Procedure Rules Committee, and the Appellate Court Rules Committee filed a joint response addressing the concerns raised in the comments and declining to make any further revisions to the proposed amendments.

After considering the proposed amendments, the comments filed, the Rules Committees' responses, and hearing oral argument, we adopt the amendments as proposed and set forth in the appendix to this opinion.

Rules of Judicial Administration

Subdivision (b) of Rule of Judicial Administration 2.514 (Computing and Extending {257 So. 3d 68} Time) is amended to remove "or e-mail" so that service by mail and e-mail are no longer treated identically. We also amend subdivision (a)(1)(A) of that rule so that time frames are calculated beginning from the next day following the event that triggers the time frame that is not a weekend or legal holiday. Subdivision (b)(1)(D)(iii) (Service; How Made; Service by Electronic Mail ("e-mail"); Time of Service) of rule 2.516 is amended to no longer allow parties an additional five days to respond following service of a document by e-mail. This amendment is consistent with the amendment to subdivision (b) of rule 2.514. E-mail, unlike postal mail, is now nearly instantaneous and no additional time should be permitted for responses to documents served by e-mail.

Rules of Civil Procedure

Rules of Civil Procedure 1.170 (Counterclaims and Crossclaims), 1.260 (Survivor; Substitution of Parties), 1.351 (Production of Documents and Things Without Deposition), 1.410 (Subpoena), 1.440 (Setting Action for Trial), 1.442 (Proposals for Settlement), and 1.510 (Summary Judgment) are amended to directly reference Rule of Judicial Administration 2.516 (Service of Pleadings and Documents) instead of referencing Rule of Civil Procedure 1.080 (Service and Filing of Pleadings, Orders, and Documents).

We further amend rule 1.351 to reduce the time frame for parties to serve by e-mail a notice of intent to serve a subpoena requesting production of documents and things from fifteen to ten days. Lastly, we also amend rule 1.510 in subdivision (c) (Motion and Proceedings Thereon) to treat summary judgment evidence submitted electronically or by e-mail the same as summary judgment evidence that is "delivered," providing that while service by mail must take place at least five days prior to the day of the hearing, service by delivery, e-filing, and e-mail must take place no later than two days prior to the day of the hearing.

Rules of Criminal Procedure

Rule of Criminal Procedure 3.040 (Computation of Time) is amended to remove the reference to subdivision (a) of Florida Rule of Judicial Administration 2.514, to conform with the amendment to that rule. As amended, the rule provides that computation of time shall be governed by Rule of Judicial Administration 2.514. Rule 3.070 (Additional Time After Service by Mail, When Permitted, or E-Mail) is deleted in its entirety. The rule provided its own time frames for service by mail and e-mail; specifically, it provided for an additional three days to be added to the deadline when a party had the right or was required to do some act or take some proceedings within a prescribed period after the service of a notice or other document on the party by mail or e-mail. Deleting rule 3.070 makes the Rules of Criminal Procedure consistent with the other amendments herein adopted. Computation of time in criminal proceedings is now governed by Florida Rule of Judicial Administration 2.514.

Rules of Appellate Procedure

The Rules Committees' proposed amendments to the Rules of Appellate Procedure all concern enlarging time frames. The Rules Committees' report indicates that in response to the proposed amendments to Florida Rule of Judicial Administration 2.514 removing the additional five days when service is made by e-mail, the Appellate Court Rules Committee originally proposed amending the Rules of Appellate Procedure to retain the additional five days for service by e-mail. The Board of Governors expressed concerns about the removal of the five days from the other bodies of rules when service is made by e-mail, while maintaining {257 So. 3d 69} the five days for e-mail service in the Rules of Appellate Procedure. The Board of Governors suggested that the Committees attempt to come to an agreement that would address its concerns and maintain one rule for computation of time. The amendments proposed here reflect a compromise among the Rules Committees to address the Appellate Court Rules Committee's concern about the loss of the five additional days to respond to service of a document by e-mail.

We amend rules 9.100 (Original Proceedings), 9.110 (Appeal Proceedings to Review Final Orders of Lower Tribunals and Orders Granting New Trial in Jury and Nonjury Cases), 9.120 (Discretionary Proceedings to Review Decisions of District Courts of Appeal), 9.125 (Review of Trial Court Orders and Judgments Certified by the District Courts of Appeal as Requiring Immediate Resolution by the Supreme Court of Florida), 9.130 (Proceedings to Review Nonfinal Orders and Specified Final Orders), 9.140 (Appeal Proceedings in Criminal Cases), 9.141 (Review Proceedings in Collateral or Postconviction Criminal Cases), 9.142 (Procedures for Review in Death Penalty Cases), 9.146 (Appeal Proceedings in Juvenile Dependency and Termination of Parental Rights Cases and Cases Involving Families and Children in Need of Services), 9.180 (Appeal Proceedings to Review Workers' Compensation Cases), 9.200 (The Record), 9.210 (Briefs), 9.300 (Motions), 9.320 (Oral Argument), 9.330 (Rehearing; Clarification; Certification; Written Opinion), 9.331 (Determination of Causes in a District Court of Appeal En Banc), 9.350 (Dismissal of Causes), 9.360 (Parties), and 9.410 (Sanctions) to enlarge time frames as proposed.

We further adopt the Rules Committees' nonsubstantive editorial amendments to subdivisions (i) (Ineffective Assistance of Counsel for Parents ClaimsSpecial Procedures and Time Limitations Applicable to Appeals of Orders in Termination of Parental Rights Proceedings Involving Ineffective Assistance of Counsel Claims), (i)(2) (Rendition), (i)(4)(A) (Ineffective Assistance of Counsel Motion Filed After Commencement of Appeal; Stay of Appellate Proceeding), and (i)(4)(C) (Ineffective Assistance of Counsel Motion Filed After Commencement of Appeal; Duties of the Clerk, Preparation and Transmittal of Supplemental Record) of rule 9.146, as proposed.

Conclusion

Accordingly, the Florida Rules of Judicial Administration, Rules of Civil Procedure, Rules of Criminal Procedure, and Rules of Appellate Procedure are hereby amended as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective January 1, 2019, at 12:02 a.m.

It is so ordered.

CANADY, C.J., and PARIENTE, QUINCE, POLSTON, LABARGA, and

LAWSON, JJ., concur.

LEWIS, J., dissents.

Footnotes

1 We have jurisdiction. *See* art. V, 2(a), Fla. Const.

2 The Joint Email Service Committee was established in 2009 to devise a system that would effectively move Florida courts away from a paper-dominated system into one utilizing e-mail as the principal means of service. In *In re Amendments to Florida Rules of Civil Procedure, Florida Rules of Judicial Administration, Florida Rules of Criminal Procedure, Florida Probate Rules, Florida Small Claims Rules, Florida Rules of Juvenile Procedure, Florida Rules of Appellate Procedure, and Florida Family Law Rules of ProcedureElectronic Filing*, 102 So. 3d 451 (Fla. 2012), the chair of The Florida Bar's Rules of Judicial Administration Committee, together with the committee chairs for several bodies of court rules, filed an out-of-cycle report proposing new Florida Rule of Judicial Administration 2.516 (Service of Pleadings and Documents), which implemented mandatory e-mail service for all cases in Florida. The Court adopted the amendments as proposed.

APPENDIX

F

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA

CASE NO.: 13-CF-008726

v.

JAMIE M. COFFEY,
Defendant.
_____/

DIVISION: I/J

ORDER DENYING DEFENDANT'S "REQUEST RECONSIDERATION WITH RESPECT TO TIMELY MOTION FOR REHEARING"

THIS MATTER is before the Court on Defendant's "Request Reconsideration with Respect to Timely Motion for Rehearing," filed on October 29, 2018. After reviewing Defendant's "request," the court file, and the record, the Court finds as follows:

In his "request," Defendant alleges this Court miscalculated the due date of his motion for rehearing. Defendant alleges the Court did not follow the rule that, "[i]n computing time, the day of the event that begins the running of the time period is not counted." Defendant asserts, thus, his motion for rehearing was due September 25, 2018, not September 24, 2018.

The Court finds Defendant's "request" to be without merit. The Court finds it properly calculated the due date of Defendant's motion for rehearing. (*See* Order Denying Defendant's Motion for Rehearing, attached). **Accordingly, Defendant's "Request Reconsideration with Respect to Timely Motion for Rehearing" is denied.**

It is therefore **ORDERED AND ADJUDGED** that "Request Reconsideration with Respect to Timely Motion for Rehearing, filed on October 29, 2018, is hereby **DENIED**.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this 15th day of NOV., 2018.

MICHELLE SISCO, Circuit Judge

APPENDIX

G

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

JAMIE M. COFFEY,

Appellant,

v. Case No.: 2D18-4868

STATE OF FLORIDA,

Appellee.
_____/

APPELLEE'S MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION

Appellee, STATE OF FLORIDA, by and through the undersigned Assistant Attorney General, respectfully files this Motion to Dismiss Appeal for Lack of Jurisdiction. Specifically, the record establishes that this Court lacks jurisdiction, and dismissal is required, because Appellant's notice of appeal was untimely. In support, Appellee states as follows:

Background and Procedural History

In this appeal, Appellant, Jamie M. Coffey, seeks review of an order denying his *pro se* motion for postconviction relief filed pursuant to Fla. R. Crim. P. 3.850. (R. at 1-48; see Amended Initial Brief). The trial court denied Appellant's Rule 3.850 motion, after an evidentiary hearing, in a Final Order that was entered on August 17, 2018. (R. at 134-310).

Although the trial court served a copy of that Final Order on Appellant, the order was damaged in the mail and was returned to

the trial court. Therefore, the trial court entered an Amended Final Order on September 6, 2018. (R. at 311-509). In a footnote to the Amended Final Order, the trial court stated that it was amending its order "solely to resend the final order to [Appellant]." (R. at 311 n.1). The certificate of service reflects that the Amended Final Order was served on Appellant by U.S. Mail on September 6, 2018. (R. at 330-31).

On September 25, 2018, Appellant filed a *pro se* Motion for Rehearing from the Amended Final Order by providing the motion to prison officials for mailing.[1] (R. at 510-18). On October 16, 2018, the trial court denied the Motion for Rehearing as untimely. In its order, the trial court explained that, pursuant to Florida Rules of Criminal Procedure 3.850(j) and 3.070, Appellant had 18 days from the date of service of the Amended Final Order to file a motion for rehearing, i.e., 15 days from the date of the order plus an additional 3 days for service by mail. As a result, the trial court found that a timely motion for rehearing was due no later than September 24, 2018, rendering Appellant's Motion for Rehearing untimely by one day. (R. at 519-21).

On October 24, 2018, Appellant filed a *pro se* "Request [for] Reconsideration" of the trial court's order denying his Motion for

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[1] Under the "mailbox rule," a document from a pro se inmate is "deemed filed" when it is provided to prison officials for mailing. See Haag v. State, 591 So. 2d 614, 617 (Fla. 1992).

Rehearing. (R. at 573-76). On November 15, 2018, the trial court entered an order denying Appellant's request for reconsideration. (R. at 577-85). On November 21, 2018, Appellant filed his Notice of Appeal.[2] (R. at 586-88).

Argument

A notice of appeal from an order denying a motion for postconviction relief filed under Rule 3.850 is due no later than 30 days following rendition of the order. See Fla. R. Crim. P. 3.850(k); Fla. R. App. P. 9.110(b); Hammerl v. State, 779 So. 2d 410, 411 (Fla. 2d DCA 2000) ("In postconviction proceedings, criminal defendants must institute an appeal within thirty days of the rendering of the order appealed."). "An order is rendered when a signed, written order is filed with the clerk of the lower tribunal." Fla. R. App. P. 9.020(h).

Rendition of an order denying relief under Rule 3.850 will be tolled pending the disposition of a timely motion for rehearing. See Fla. R. App. P. 9.020(h)(1). However, in order to be timely,

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[2] The Notice of Appeal purports to appeal only the November 15 order denying reconsideration rather than the Amended Final Order. Because Appellant's brief on the merits addresses only the denial of the Rule 3.850 motion, rather than the denial of the request for reconsideration, it appears that Appellant simply listed the wrong order on the Notice of Appeal. See Jenkins v. State, 268 So. 3d 931, 932 (Fla. 5th DCA 2019) (stating that "the procedural error of misidentifying the order under appeal" in the notice of appeal may generally be disregarded). To the extent that Appellant intended to challenge the order denying reconsideration, he has waived any argument regarding that order by failing to address it in his Amended Initial Brief. Id.

the rehearing motion must be filed "within 15 days of the date of service of the order." Fla. R. Crim. P. 3.850(j). If the order was served by mail, the defendant receives an additional three days to file the motion for rehearing. See Fla. R. Crim. P. 3.070. An untimely motion for rehearing is a "nullity" and does not toll the time to file a notice of appeal. Outlaw v. State, 96 So. 3d 1057, 1057 (Fla. 2d DCA 2012).

In this case, the trial court served the Amended Final Order by mail on September 6, 2018. Eighteen days from the service date of the Amended Final Order was Monday, September 24, 2018. As a result, Appellant's Motion for Rehearing filed on September 25, 2018, was untimely and did not toll the time to appeal. The notice of appeal was therefore due no later than Monday, October 8, 2018, i.e., 30 days after the Amended Final Order was rendered.[3] See Smith v. State, 984 So. 2d 547, 547 (Fla. 5th DCA 2008) (explaining that rehearing motion filed on the nineteenth day after service by mail of order denying Rule 3.850 motion "was not timely and did not toll rendition" of the order).

Even if the Motion for Rehearing had been timely, however, Appellant's notice of appeal would still be untimely. That is because the Motion for Rehearing was denied on October 16, 2018.

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[3] Because 30 days from the date the Amended Final Order was filed with the clerk of the lower tribunal was Saturday, October 6, 2018, the notice of appeal was due the following Monday, October 8. See Fla. R. Jud. Admin. 2.514(a)(1)(C).

Although Appellant filed a "Request [for] Reconsideration" of the order denying rehearing, that request was not a timely motion for rehearing of the Amended Final Order under Rule 3.850(j). At the very latest, then, Appellant's notice of appeal from the Amended Final Order was due by November 15, 2018, i.e., 30 days from the date the order denying rehearing was entered.

Accordingly, Appellant's notice of appeal filed on November 21, 2018, was not timely and did not invoke the jurisdiction of this Court. Therefore, this Court lacks jurisdiction, and the instant appeal must be dismissed. See Outlaw, 96 So. 3d at 1057 (dismissing appeal of order denying Rule 3.850 motion for lack of jurisdiction "due to the untimely filing of the notice of appeal"); Jackson v. State, 64 So. 3d 684, 684 (Fla. 2d DCA 2011) ("As the certificate of service on the notice of appeal demonstrates service on the thirty-first day following rendition of the order, this appeal is dismissed as untimely filed."); see also Parks v. State, 126 So. 3d 352, 352 (Fla. 3d DCA 2013) (dismissing Rule 3.850 appeal where motion for rehearing in the lower court was untimely and, therefore, did not delay rendition).

Conclusion

Based on the foregoing authorities and arguments, Appellee respectfully requests that this Honorable Court dismiss this appeal for lack of jurisdiction.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ Jonathan S. Tannen
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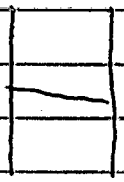
COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to JAMIE M. COFFEY, DOC No. C09864, Suwannee Correctional Institution, 5964 U.S. Highway 90, Live Oak, Florida 32060, on September 4, 2019.

/s/ Jonathan S. Tannen
JONATHAN S. TANNEN

APPENDIX



YOUR COPY

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT
STATE OF FLORIDA

JAMIE M. COFFEY
Appellant,
v.

STATE OF FLORIDA
Appellee
_____/

Case No.: 2D18-4868

L.T. Case No.: 13-CF-08726-A
(Hillsborough County)

REPLY TO APPELLEE'S RESPONSE

COMES NOW the Appellant, Jamie M. Coffey, pro se and pursuant to this Court's December 30, 2019 Order, and files his Reply to the State's Response in this case. After considering the arguments within the State's response, and for the reasons set forth below, the Appellant believes this Court should grant his request for reinstatement of his/3.850 motion appeal and offers the following in support thereof:

STATEMENT OF PERTINENT FACTS

1. On September 6, 2018, the 13th Judicial Circuit Court entered an order denying the Appellant's Motion for Postconviction Relief ("3.850 Motion").

2. On September 25, 2018, utilizing Fla.R.Jud.Admin. Rule 2.514(b) that allows a party 5 additional days to act after service of an order by mail, the Appellant filed his "timely" Motion for Rehearing with the lower court.

3. On October 15, 2018, the lower court issued an order to dismiss Coffey's Motion for Rehearing claiming that the Appellant's Motion for Rehearing was untimely filed, utilizing Fla.R.Crim.P. Rule 3.070 that only allowed a party 3 additional days to act after service of an order by mail.

4. On October 24, 2018, the Appellant filed a Motion for Reconsideration of the lower court order dismissing his motion for rehearing, claiming that the motion for rehearing was timely under Fla.R.Jud.Admin. Rule 2.514(b) that allows a party 5 additional days to act after service of an order by mail.

5. On November 15, 2018, the lower court issued its final order arguing that it had correctly calculated the due date for the Appellant's motion for rehearing.

6. On November 21, 2018, the Appellant filed his timely Notice of Appeal.

7. On September 4, 2019, the Appellee filed its Motion to Dismiss the instant appeal for lack of jurisdiction, claiming that the Appellant's November 21, 2018 notice of appeal was untimely.

8. The State argued that the notice of appeal was due by October 8, 2018 and no tolling should be granted for the Appellant's September 25, 2018 rehearing motion because it was not a "properly filed" motion warranting any tolling.

9. Alternatively, the State argued that the Appellant's notice of appeal was due by November 14, 2018, thirty days after the lower court's October 15, 2018 motion to dismiss was filed.

This Court's November 5, 2019 Order

On November 5, 2019, this Honorable Court issued an Order requesting the State to address the following issues:

a) **In light of Fla.R.Jud.Admin Rule 2.110 giving precedence to all conflicting rules and statutes, should Rule 2.514(b) apply to the Appellant's case notwithstanding the existence of Fla.R.Crim.P. Rule 3.070 at the time? and**

b) **To the extent that the first sentence of Rule 2.514(a) makes Rule 3.070 applicable, the Appellee shall address whether Rule 2.514(b) is encompassed in that first sentence. and**

c) **The impact, if any, of the Appellant's October 24, 2018 Motion for Reconsideration of the lower court's October 15, 2018 order dismissing the Appellant's September 25, 2018 motion for rehearing as untimely.**

On November 25, 2019, the State filed its Response to this Court's November 5, 2019 Order. On December 30, 2019, this Court granted the Appellant's Motion for Leave to Reply to State's Response.

Appellant's Reply to State's Response

a) **In light of Fla.R.Jud.Admin Rule 2.110 giving precedence to all conflicting rules and statutes, should Rule 2.514(b) apply to the Appellant's case notwithstanding the existence of Fla.R.Crim.P. Rule 3.070 at the time? and**

b) To the extent that the first sentence of Rule 2.514(a) makes Rule 3.070 applicable, the Appellee shall address whether Rule 2.514(b) is encompassed in that first sentence.

- In their **Response (Page 6)**, the State argues that Fla.R.Crim.P. Rule 3.040 governs the computation of time in criminal cases, and that only Fla.R.Jud.Admin. Rule 2.514(a), and not Rule 2.514(b) applied to the Florida Rules of Criminal Procedure back in late 2018.
- In their **Response (Page 6)**, the State argues that the amendment to Fla.R.Crim.P. Rule 3.040 making all of Fla.R.Jud.Admin. Rule 2.514 applicable to criminal cases did not go into effect until January 1, 2019 – more than three months after the Appellant filed his September 25, 2018 Motion for Rehearing.
- In their **Response (Page 8)**, the State argues the language in Fla.R.Crim.P. Rule 3.040 specifically only listed Rule 2.514(a) as applicable to criminal cases computation of time, and did not extend to not Rule 2.514(b).
- In their **Response (Pages 8-9)**, the State argues that prior to 2019, this Honorable Court recognized that Fla.R.Crim.P. Rule 3.070 applied to criminal cases, and not Fla.R.Jud.Admin. Rule 2.514(b), citing to *Long v. State*, 177 So.3d 89 (Fla. 2nd DCA 2015).
- In their **Response (Page 9)**, the State argues that prior to 2019, other DCA's recognized that Fla.R.Crim.P. Rule 3.070 applied to criminal cases, and not

Fla.R.Jud.Admin. Rule 2.514(b), citing to *Johnson v. State*, 221 So.3d 715, 717 (Fla. 5th DCA 2017); *Parks v. State*, 126 So.3d 352 (Fla. 3rd DCA 2013); and *McCray v. State*, 151 So.3d 449, 451 n.3 (Fla. 1st DCA 2014).

- In their **Response (Pages 10-11)**, the State argues that in 2012, when the Florida Supreme Court amended Fla.R.Jud.Admin. Rule 2.514, prior to the 2019 change, it specifically included that only Rule 2.514(a) applied to Fla.R.Crim.P. Rule 3.040, and the High Court left Fla.R.Crim.P. Rule 3.070 intact.
- In their **Response (Page 13)**, the State argues that if the Florida Supreme Court intended the language in Fla.R.Jud.Admin. Rule 2.514(b) to apply to Fla.R.Jud.Admin. Rule 2.514(a), they would not have made the language a separate subsection of the Rule.

Appellant's Argument in Reply to State

Coffey argues that he gets retroactive benefit of the January 1, 2019 rule changes (see *Amendments to Rules,* 257 So.3d 66 (2018)) that deleted Fla.R.Crim.P. Rule 3.070 and now hold that Fla.R.Crim.P. Rule 3.040 "computation of time" shall be governed by Rule of Judicial Administration **2.514 (a) and (b)**. Under the "pipeline theory," "[T]he integrity of judicial review requires that we apply [rule changes] to all similar cases pending on direct review"

(citing to *Griffith [v. Kentucky*, 479 U.S. 314, 323, 93 L. Ed. 2d 649, 107 S. Ct. 708 (1987)]. . . . Thus, we hold that any decision of this Court announcing a new rule of law, or merely applying an established rule of law to a new or different factual situation, must be given retrospective application by the courts of this State in every case pending on direct review or not yet final" (Art. I, Sections §9 and §16, Fla. Const.) (see *Smith v. State*, 598 So.2d 1063, 1066 (Fla. 1992)). **Coffey's appeal on this issue is still not yet final until this Court issues its final order and mandate in this case. Therefore, the Appellant gets the benefit of the new rule under the "pipeline theory."**

This Honorable Court is bound by your precedent in *Rivera v. State*, 235 So. 3d 983, 985 (Fla. 2nd DCA 2017) ("Under the "pipeline rule" the appellate court should dispose of a case on appeal "in accord with the law in effect at the time of the appellate court's decision rather than the law in effect at the time the judgment appealed was rendered" (see also *Bledsoe v. State*, 764 So. 2d 927, 928 (Fla. 2nd DCA 2000) (quoting *Nolte v. State*, 726 So. 2d 307, 308 (Fla. 2nd DCA 1998)). See also *Plasencia v. State*, 170 So. 3d 865, 871 (Fla. 2nd DCA 2015) (The holding in *Blakely*, 542 U.S. at 303, applies to Mr. Plasencia's case because "Mr. Plasencia's appeal from his judgment and sentence was in the "pipeline" when *Blakely* was decided. (see *See Behl v. State*, 898 So.2d 217, 222 (Fla. 2nd DCA 2005). See also *Barthel v. State*, 882 So.2d 1054, 1055 (Fla. 2nd DCA 2004)

(holding that where an appeal was in the "pipeline" when new controlling law was decided, the appellant was "entitled to the benefit of the controlling law . . . in effect at the time of appeal"). Mr. Plasencia's appeal was in the "pipeline" because the time had not expired for him to file a motion for rehearing and this court's mandate had not yet issued. See *Barthel*, 882 So.2d at 1054-55 (observing that the appeal was in the "pipeline" when our original opinion had issued but new controlling law became final before our mandate issued). See *Reed v. State*, 565 So.2d 708, 709 (Fla. 5th DCA 1990) ("A 'pipeline case' is one in which a conviction is not final by trial or appeal at the time a controlling decision is issued by the supreme court. The appellate process is not completed until a mandate is issued").

Coffey raised the argument that his motion for rehearing was timely under Fla.R.Jud.Admin. Rule 2.514(b) at the first opportunity – his October 24, 2018 Motion for Reconsideration. This argument/motion was necessary in order to allow the lower court to respond to this argument on the merits – which the lower court did in its November 15, 2018 final order – and to preserve this issue for the current appellate review by this Honorable Court.

Therefore, applying Fla.R.Jud.Admin. Rule 2.514(b) to Coffey's September 25, 2018 motion for rehearing makes it timely filed (within 20 days of the lower court's September 6, 2018 denial of his 3.850 motion). Additionally, the Appellant's November 21, 2018 Notice of Appeal was also timely filed (i.e. within

30 days of the lower court's November 15, 2018 final order arguing that it had correctly calculated the due date for the Appellant's motion for rehearing despite considering Coffey's Rule 2.514(b) argument).

Appellant's Reply to Court Order Point (c)

c) The impact, if any, of the Appellant's October 24, 2018 Motion for Reconsideration of the lower court's October 15, 2018 order dismissing the Appellant's September 25, 2018 motion for rehearing as untimely.

- In their **Response (Pages 14-17)**, the State argues that the Appellant's October 24, 2018 Motion for Reconsideration did not toll the 30 days to appeal from the lower court's October 16, 2018 denial order of the Appellant's first Motion for Rehearing. The State argues that Coffey's October 24, 2018 motion was actually a successive (second) rehearing motion, which are prohibited.

Coffey disagrees. Coffey's first September 25, 2018 Motion for Rehearing involved arguments concerning overlooked facts or controlling case law on the court's September 6, 2018 denying the Appellant's Motion for Postconviction Relief ("3.850 Motion") on the merits. On October 15, 2018, the lower court issued an order to dismiss Coffey's Motion for Rehearing claiming that the Appellant's Motion for Rehearing was untimely filed, utilizing Fla.R.Crim.P. Rule 3.070 that only allowed a party 3 additional days to act after service of an order by

mail. Therefore, Coffey had to file his October 24, 2018 Motion for Reconsideration to argue for the first time and at his first opportunity that his rehearing was not untimely filed per Fla.R.Jud.Admin. Rule 2.514(b). Such motion for reconsideration was necessary in order to give the lower court a chance to consider Coffey's use of Fla.R.Jud.Admin. Rule 2.514(b), and also to preserve this issue for this Court's instant review on appeal. Accordingly, the lower court did rule on the merits of Coffey's October 24, 2018 Motion for Reconsideration in its final order issued on November 15, 2018. On November 21, 2018, the Appellant filed his timely Notice of Appeal.

Furthermore, the State is asking this Court to make the presumption that Coffey's October 24, 2018 Motion for Reconsideration was not "properly filed" and therefore not a valid motion for tolling purposes. Such presumption is contrary to the holding of the United States Supreme Court in *Evans v. Chavis*, 546 US 189, 208 (2006). In a concurring opinion, Justice Stevens held, "The Ninth Circuit deals with this situation by applying the presumption that a ruling on the merits, simpliciter, means that the State Court has concluded that the petition was timely. The Court today seemingly assumes – incorrectly – that we rejected that presumption in *Saffold*. Even if we did so sub silentio, however, I am convinced that the Court should now endorse the Ninth Circuit's presumption because it is both eminently sensible as a matter of judicial administration and entirely sound as

a matter of law"). Therefore, because the lower court ruled on the merits of Coffey's October 24, 2018 Motion for Reconsideration, it qualifies as a valid motion for tolling purposes. See *Evans, id.* at 208.

WHEREFORE the Appellant respectfully moves this Honorable Court to grant his request for reinstatement of his 3.850 motion appeal in this case.

OATH

Under the penalties of perjury, I declare and certify that I do understand English and that I have read the foregoing motion and that the facts stated in it are true and correct.

/s/ Jamie Coffey

Jamie Coffey, DC #C09864
Marion Correctional Institution
P.O. Box 158
Lowell, Florida 32663-0158

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this motion was placed in the hands of prison officials to send via U.S. Mail pre-paid postage to the: Clerk of Court, 2nd District Court of Appeal, P.O. Box 327, Lakeland, FL 33802-0327; and the Office of Attorney General, Attn: AAG Jonathan S. Tannen, 3507 East Frontage Road, Suite 200, Tampa, Florida 33607-7013 on this 29th day of January 2020.

Respectfully submitted,

/s/ Jamie Coffey

Jamie Coffey, DC #C09864
Marion Correctional Institution
P.O. Box 158
Lowell, Florida 32663-0158

APPENDIX

I

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

February 04, 2020

CASE NO.: 2D18-4868
L.T. No.: 13-CF-8726

JAMIE M. COFFEY	v.	STATE OF FLORIDA
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

The appellant's reply filed on February 3, 2020, is noted and has been considered by the court. This court's October 1, 2019, order dismissing this appeal and its December 30, 2019, order denying the appellant's motion for rehearing remain in effect. This case is closed.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

ATTORNEY GENERAL, TAMPA
JONATHAN S. TANNEN, A.A.G.
PAT FRANK, CLERK

JOHNNY T. SALGADO, A.A.G.
JAMIE M. COFFEY

ag

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk