

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

September 08, 2022

CASE NO.: 2D22-0043
L.T. No.: 07-CF-2989

THOMAS L. FAST

v. STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion to strike "Appellant's Motion for Written Opinion" docketed by this court on July 14, 2022, is granted. Appellant's amended "Motion for Rehearing and Written Opinion" docketed by this court on September 2, 2022, is denied.

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

Served:

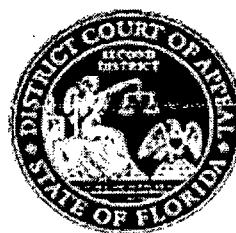
ATTORNEY GENERAL, TAMPA
THOMAS L. FAST

CERESE CRAWFORD TAYLOR, A.A.G.
ANGELINA M. COLONNESE, CLERK

ag

Mary Elizabeth Kuenzel

Mary Elizabeth Kuenzel
Clerk



Exh. 87

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

August 19, 2022

CASE NO.: 2D22-0043
L.T. No.: 07-CF-2989

THOMAS L. FAST

v. STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's "Motion to Amend" is granted to the extent that Appellant may file by September 12, 2022, a single amended motion for rehearing and written opinion. Along with the new amended motion, Appellant must also file a motion to strike the previous "Appellant's Motion for a Written Opinion."

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

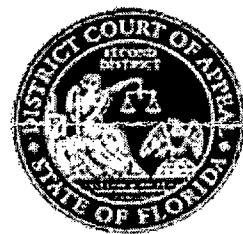
Served:

ATTORNEY GENERAL, TAMPA
THOMAS L. FAST

CERESE CRAWFORD TAYLOR, A.A.G.
ANGELINA M. COLONNESO, CLERK

ag

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk



EXH. 86 B

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

July 13, 2022

CASE NO.: 2D22-0043
L.T. No.: 07-CF-2989

THOMAS L. FAST

v. STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's pro se motion for an extension of time to file a motion for rehearing is granted. The motion may be filed within sixty days from the date of this order. Appellant should not anticipate any further extensions of time unless exceptional circumstances can be shown.

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

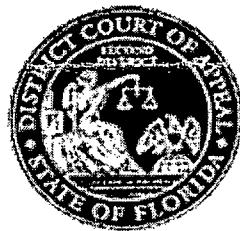
Served:

ATTORNEY GENERAL, TAMPA
THOMAS L. FAST

CERESE CRAWFORD TAYLOR, A.A.G.
ANGELINA M. COLONNESE, CLERK

ag

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk



EXH. 86A

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

THOMAS L. FAST,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D22-43

June 8, 2022

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Manatee County; Stephen Mathew Whyte, Judge.

Thomas L. Fast, pro se.

PER CURIAM.

Affirmed.

VILLANTI, BLACK, and ROTHSTEIN-YOUAKIM, JJ., Concur.

Opinion subject to revision prior to official publication.

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO. 2007-CF-2989

THOMAS FAST,

Defendant.

ORDER DENYING DEFENDANT'S PRO SE
MOTION FOR POSTCONVICTION RELIEF

This matter comes before the Court on Defendant's pro se Motion for Postconviction Relief, filed December 6, 2021, pursuant to Fla. R. Crim. P. 3.850(m). The Court has carefully reviewed Defendant's motion and supporting attachments, the court file, and applicable law, and is otherwise duly advised of the premises.

Case History

The State charged Defendant by Indictment, filed August 21, 2007, with first degree Murder (Count I), a capital felony, and Robbery (Count II), a second degree felony. On July 13, 2009, a jury found Defendant guilty as charged. On Count I, the Court sentenced Defendant to life in the Department of Corrections with credit for time served, but without the possibility of parole. As to Count II, Defendant was sentenced to 15 years in the D.O.C., with credit for time served, to run concurrent with the sentence imposed for Count I. Defendant appealed, and the Second District Court of Appeal affirmed by Mandate issued September 28, 2011. *Fast v. State*, 69 So. 3d 283 (Fla. 2d DCA 2011). Defendant has filed several previous motions for postconviction relief, each to no avail.¹

Present Motion

As a general rule, a motion for postconviction relief under Rule 3.850 must be filed within two years of the date the judgment and sentence became final.² As previously noted, the Second

¹ Defendant's postconviction filing history is outlined more extensively in a "Final Order Denying Defendant's Pro Se Motion(s) for Post Conviction Relief," filed June 27, 2014 (Attachment 1).

² See Fla. R. Crim. P. 3.850(b).

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EVS 14

DCA's Mandate affirming Defendant's judgment and sentence was issued September 28, 2011; therefore, Defendant had two years from the date that Mandate was issued within which to timely file a motion for postconviction relief.³ Exceptions to the two-year limitation include newly discovered evidence, new constitutional law, and retained counsel failed to timely file a motion on a defendant's behalf.

A defendant must meet two requirements to obtain a new trial based on newly discovered evidence.⁴ "First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial."⁵ To determine whether the newly discovered evidence requires a new trial, the postconviction court must "consider all newly discovered evidence which would be *admissible*" and must "evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial."⁶ Such a determination includes "whether the evidence goes to the merits of the case or whether it constitutes impeachment evidence. The trial court should also determine whether this evidence is cumulative to other evidence in the case. The trial court should further consider the materiality and relevance of the evidence and any inconsistencies in the newly discovered evidence."⁷ A claim of newly discovered evidence "must be made within two years from the date upon which the evidence could have been discovered through the use of due diligence."⁸ Furthermore, it is well settled that a defendant bears the burden of establishing a *prima facie* case based upon a legally valid claim, and mere conclusory allegations are insufficient to meet this burden.

In his present motion purportedly based on "newly discovered evidence," Defendant once again attempts to collaterally challenge his judgment and conviction. In conclusory terms intermingled in barely intelligible ramblings, as well as inherently incredible allegations, including but not limited to a claim that the trial judge, the Honorable Janette Dunnigan, is a "Circuit 12 Soviet G.R.U. Officer,"⁹ Defendant attempts to circumvent the two-year filing deadline

³ See *Beaty v. State*, 701 So. 2d 856, 857 (Fla. 1997).

⁴ *Reichmann v. State*, 966 So. 2d 298, 316 (Fla. 2007).

⁵ *Id.*

⁶ See *Jones v. State*, 591 So. 2d 911, 916 (Fla. 1991) (*Jones I*) (emphasis added).

⁷ See *Jones II*, 709 So. 2d at 521 (citations omitted).

⁸ See, e.g., *Parks v. State*, 944 So. 2d 1230, 1231 (Fla. 5th DCA 2006).

⁹ Defendant's Motion for Postconviction Relief at 19.

for this motion by attaching “missing trial records . . . recovered . . . from the State Attorney General Office.”¹⁰ Defendant alleges, “If these post-trial material actual-factual innocence’s missing/lost/destroyed records would have been provided earlier to petitioner, a reasonable jurist would have produced a different result.”

Defendant has failed to meet the first requirement for a true newly discovered evidence claim. Indeed, as Defendant's purported "newly discovered evidence" consists of documents from the record in this matter, it follows that Defendant, his trial counsel, the State, and the trial judge were either aware or should have been aware of it at the time of Defendant's trial or shortly thereafter. Furthermore, the Court finds that, even if Defendant could get past the first hurdle, the proposed "newly discovered evidence" is not something that would have probably resulted in an acquittal. Thus, the Court finds Defendant's newly discovered evidence claim to be completely without merit.

Ultimately, the two-year deadline in Defendant's case expired over eight years ago, and Defendant fails to demonstrate that his present motion falls within any valid exceptions to the two-year filing rule. Accordingly, Defendant's motion will be denied as untimely.

In doing so, the Court observes, “[A]ny citizen, including a citizen attacking his or her conviction, abuses the right to *pro se* access by filing repetitious and frivolous pleadings, thereby diminishing the ability of the courts to devote their finite resources to the consideration of legitimate claims.” *State v. Spencer*, 751 So. 2d 47, 48 (Fla. 1999). Thus, the Court strongly cautions Defendant that if he continues to file procedurally barred and otherwise meritless motions, he risks the sanctions provided in Fla. R. Crim. P. 3.850(n)(4)(A)-(F) and (5), including a recommendation from the Court that the Department of Corrections impose disciplinary proceedings against Defendant pursuant to § 944.279, Florida Statutes.

It is, therefore,

ORDERED that Defendant's *pro se* Motion for Postconviction Relief, filed December 6, 2021, is DENIED. Defendant has the right to appeal within thirty (30) days of rendition of this order.

DONE in Chambers in Bradenton, Manatee County, Florida, on this ____ day of December 2021,
or as otherwise dated by electronic signature. ORIGINAL SIGNED

DEC 03 2021

Stephen Mathew Whyte, Circuit Judge **MATT WHYTE**
CIRCUIT JUDGE

¹⁰ *Id.* at 30.

for this motion by attaching "missing trial records . . . recovered . . . from the State Attorney General Office."¹⁰ Defendant alleges, "If these post-trial material actual-factual innocence's missing/lost/destroyed records would have been provided earlier to petitioner, a reasonable jurist would have produced a different result."

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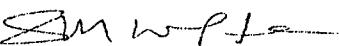
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It is, therefore,

ORDERED that Defendant's *pro se* Motion for Postconviction Relief, filed December 6, 2021, is DENIED. Defendant has the right to appeal within thirty (30) days of rendition of this order.

DONE in Chambers in Bradenton, Manatee County, Florida, on this _____ day of December 2021, or as otherwise dated by electronic signature.



Stephen Mathew Whyte, Circuit Judge

¹⁰ *Id.* at 30.

Attachment(s) to Order:

1. "Final Order Denying Defendant's Pro Se Motion(s) for Post Conviction Relief," filed June 27, 2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail to: Thomas L. Fast, DOC #818015, Martin Correctional Institution, 1150 S.W. Allapattah Road, Indiantown, FL 34956-4397; and to the Office of the State Attorney, P.O. Box 1000, Bradenton, FL 34206-1000, saorounds@saol2.org, on this 10 day of December 2021, or as otherwise dated by electronic signature.



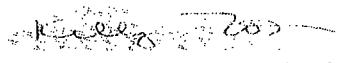
Judicial Assistant

Attachment(s) to Order:

1. "Final Order Denying Defendant's Pro Se Motion(s) for Post Conviction Relief," filed June 27, 2014

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Judicial Assistant

Page 4 of 10
EXH. 74

Attachment 1

Exh. 75

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Exh. 75

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO. 2007-CF-2989

THOMAS FAST,

Defendant.

**FINAL ORDER DENYING DEFENDANT'S PRO SE
MOTION(S) FOR POST CONVICTION RELIEF**

This matter is before the Court on Defendant's *pro se* "Amended Motion for Postconviction Relief" and "Appendix in Support of Defendant's Fla. R. 3.850 Motion for Post Conviction Relief," each filed on October 7, 2013, pursuant to Fla. R. Crim. P. 3.850. The Court has reviewed the Motion, the court file, the applicable law, and is otherwise duly advised in the premises.

Case History

The Defendant was charged by Indictment, filed on August 21, 2007, with first degree Murder (Count I), a capital felony, and Robbery (Count II), a second degree felony. On July 13, 2009, a jury found Defendant guilty as charged. On Count I, the Court sentenced Defendant to life in the Department of Corrections with credit for time served, but without the possibility of parole. As to Count II, Defendant was sentenced to 15 years in the D.O.C., with credit for time served, to run concurrent with the sentence imposed for Count I. The Defendant appealed, and the Second District Court of Appeal affirmed by Mandate issued September 28, 2011. *Fast v. State*, 69 So. 3d 283 (Fla. 2d DCA 2011).

FILED FOR RECORD
R.B. SHORE
CLERK OF CIRCUIT COURT
MANATEE CO FLORIDA
2014 JUN 27 PM 3:23

Defendant filed his first Motion for Post-Conviction Relief on July 27, 2012, which was followed by his "Addendum to Post Conviction Relief," filed on August 3, 2012, as well as his "Motion to Expand and Supplement Fl. 3.850 Record With Exculpatory Evidences," filed on August 22, 2012. On September 27, 2012, the Court entered an "Order Dismissing Defendant's Motion for Post-Conviction Relief; Order Denying Defendant's Motion to Expand and Supplement FL 3.850 Record With Exculpatory Evidences," finding that Defendant's use of the qualifying language "to the best of undersigned's knowledge" rendered his oath inadequate and ruling Defendant had not shown good cause for leave of Court to exceed the 50-page limit set forth in Florida Rule of Criminal Procedure 3.850(c). That dismissal was without prejudice to the Defendant's right to file a timely, properly sworn amended rule 3.850 motion. (See Attachments 1 thru 4) Defendant filed a "Motion for Rehearing and Sworn Oath's Replacements," which the Court denied by Order entered October 29, 2012. (See Attachments 5 and 6)

Thereafter, Defendant tried again with his *pro se* Motion for Post Conviction Relief, filed on November 13, 2012, as well as an Amended Motion for Post Conviction Relief, filed on March 1, 2013. By Order entered on August 21, 2013, the Court dismissed those motions for Defendant's failure to abide by the 50-page limit set forth in Fla. R. Crim. P. 3.850(c). In that ruling, the Court noted that most of Defendant's claims were unintelligible and many of his claims were not even cognizable in a motion for postconviction relief filed pursuant to Fla. R. Crim. P. 3.850. Nevertheless, the Court yet again permitted Defendant to refile his claims in a singular motion not to exceed 50 pages. (See Attachments 7 thru 9) On September 30, 2013, Defendant filed a Petition for Extension of Time to file his amended motion for postconviction relief, which the Court granted by Order entered October 2, 2013. (See Attachments 10 and 11)

Defendant's present amended and sworn motion with appendix timely followed on October 7, 2013. In the instant Motion, Defendant raises the following claims:

1. Ineffective assistance of counsel for failing to introduce into trial electronic and testimonial evidence substantiating Defendant's innocence and refuting the State's theory of prosecution.
2. Ineffective assistance of counsel for failing to file a pre-trial motion for suppression of the physical evidence based on erroneous search warrants and procedures.
3. Ineffective assistance of counsel for "fail[ing] to move court into a Richardson hearing when State introduced affidavits and applications for search warrants evidences into material transcript record during trial."
4. Ineffective assistance of counsel for "fail[ing] to motion the court for suppression on State executed and served June 30, 2007 search warrant that was not placed in material along with 5 other search warrants that were not executed or served to defense."
5. "Defendant's due process rights were violated by court reporter's or 'other' State agents whom accessed pre-trial and trial material record. Record that was forwarded to appellate counsel by Manatee County Clerk of Court prior to direct appeal proceeding was altered, contained deletions, edited, falsified, modified, and has prejudicially hindered Defendant's ability to research and fully prepare claims for this instant motion."
6. Ineffective assistance of counsel for "failure to properly argue and explain to the jury the chain of events that occurred prior to decedent's actual disappearance."
7. "Claims of ineffective assistance of counsel when viewed together or cumulatively, clearly show that counsel was deficient and that Defendant was denied a fair and impartial trial by jury."

However, the Court cannot reach the merits of these claims because Defendant's Motion fails to comply with the certification requirements under Rule 3.850(n)(1) and (2). Additionally, the Court notes that—despite Defendant's *multiple* opportunities to amend—each of these claims are conclusory and barely intelligible, if not outright facially insufficient. Ultimately, the Court

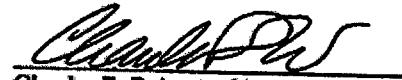
finds Defendant's facially insufficient postconviction claims are now subject to summary denial with prejudice, pursuant to Florida Rule of Criminal Procedure 3.850(f)(2).

It is, therefore,

ORDERED AND ADJUDGED that Defendant's *pro se* postconviction motions, filed on July 27, 2012, August 3, 2012, November 13, 2012, March 1, 2013, and October 7, 2013, respectively, are **DENIED** with prejudice. Defendant has thirty days from the rendition of this order within which to file an appeal.

DONE and ORDERED in Chambers in Bradenton, Manatee County, Florida, on this

27 day of June 2014.


Charles E. Roberts, Circuit Judge

Attachments to Order:

1. Motion for Post-Conviction Relief, filed July 27, 2012
2. "Addendum to Post Conviction Relief," filed August 3, 2012
3. "Motion to Expand and Supplement FL 3.850 Record With Exculpatory Evidences," filed August 22, 2012
4. "Order Dismissing Defendant's Motion for Post-Conviction Relief; Order Denying Defendant's Motion to Expand and Supplement FL 3.850 Record With Exculpatory Evidences," filed September 28, 2012
5. "Motion for Rehearing and Sworn Oath's Replacements," filed October 9, 2012
6. Order Denying Defendant's "Motion for Rehearing and Sworn Oath's Replacements," filed October 29, 2012
7. Motion for Post Conviction Relief, filed November 13, 2012
8. Amended Motion for Post Conviction Relief, filed March 1, 2013
9. Order Dismissing Defendant's Motion for Post Conviction Relief and Amended Motion for Post Conviction Relief, filed August 22, 2013
10. Petition for Extension of Time, filed September 30, 2013
11. Order Granting Defendant's Petition for Extension of Time, filed October 3, 2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail to:
Thomas L. Fast, DOC #818015, Union Correctional Institution (Male), 7819 N.W. 228th Street,
Raiford, Florida 32026-4000; and to the Office of the State Attorney, P.O. Box 1000,
Bradenton, FL 34206-1000, on this 27 day of June 2014.



Judicial Assistant

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Exh. 80

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