No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

APPENDIX 1

STATE AND FEDERAL COURT ORDERS

STATE COURT ORDERS — PAGES

PAGES

c)(1) PETITION FOR WRIT OF SUPERSEDEAS (CERTIORARI, PROHIBITION), TRANSFERRED FROM 2 D.C.A. TO S. CT. OF FLA. 5/10/2012, CASE NO. 2012-2143, FAST V. FLORIDA, 139 So. 3d 885 (FLA. 2014); 2014 FLA. LEXIS 1186 (DECIDED April 7, 2014) A-14

(2) SUPREME COURT OF FLORIDA, NO. SC13-1814 DISMISSED 4/7/2014 ..... A-15

d) PETITION FOR HABEAS CORPUS: INEFFECTIVE ASSISTANCE OF COUNSEL, DENIED 4/11/2012, CASE NO. 2D12-1408 ....A-16

e)(1) PETITION FOR HABEAS CORPUS: INEFFECTIVE ASSISTANCE OF COUNSEL, DISMISSED AS SUCCESSIVE, NO. 2D13-2224, FAST V. FLORIDA, 2013 FLA. App. LEXIS A-17

(2) REHEARING DENIED 8/13/2013 ..... A-18

(3) SUPREME COURT OF FLORIDA, NO. SC13-1814, MOOT, 10/1/2013, 2014 FLA. LEXIS 1186 (DECIDED OCTOBER 1, 2013) A-19

f)(1) FLA. R. CRIM. P. 3.850 DISMISSED WITHOUT PREJUDICE ORDERED TO REFILE 9/27/2012 ..... A-20, A-20(A), A-21

(2) REHEARING DENIED 10/29/2012 ..... A-22 TO A-25

g) FLA. R. CRIM. P. 3.850, DISMISSED WITHOUT PREJUDICE ORDERED TO REFILE 8/21/2013 ..... A-26, A-26(A), A-27, A-27(A)

h)(1) FLA. R. CRIM. P. 3.850 DENIED 6/27/2014 ..... A-28 TO A-32

PAGES

UNITED STATES COURTS ORDERS

PAGES

PAGES

g)(1) 28 U.S.C. 2254, No. 8:21-CV-252-WFJ-AEP DISMISSED WITHOUT PREJUDICE ORDERED TO Apply FOR 28 U.S.C. 2244(b) PERMISSION, 2/4/2021 ..... A-84, A-85

(2) 28 USC 2244(b), No. 22-10362-G, FIVE CLAIMS, FAST V. FLORIDA, 2022 U.S. App. LEXIS 4192 (DISMISSED 2/15/2022) ..... A-86 TO A-90

h)(1) 28 U.S.C. 2254, No. 8:22-CV-1474-MSS-AAS DISMISSED NO JURISDICTION 7/11/2022 ORDERED TO Apply FOR 28 U.S.C. 2244(b) PERMISSION A-91, A-92

(2) MOTION FOR RECONSIDERATION DENIED 8/26/2022 ... A-93 TO A-95

(3) 28 U.S.C. 2244(b): OPEN 11TH U.S.C.C.A. CASE .....

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

THOMAS L. FAST,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D09-3523

Opinion filed May 27, 2011.

Appeal from the Circuit Court for Manatee County; Gilbert A. Smith, Jr., Judge.

James Marion Moorman, Public Defender, and Robert Augustus Harper, Special Assistant Public Defender, Bartow, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Richard M. Fishkin, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed.

CASANUEVA, C.J., and VILLANTI and KHOUZAM, JJ., Concur.

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

July 21, 2011

CASE NO.: 2D09-3523
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 extension of time is stricken as unauthorized because Appellant is represented by counsel in this appeal. See Benjamin v. State, 32 So. 3d 131 (Fla. 2d DCA 2010).

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

Served:

Thomas L. Fast
Robert Augustus Harper, Jr., S.A.P.D
James Marion Moorman, P.D.

Richard M. Fishkin, A.A.G.
R. B. "Chips" Shore, Clerk

dm

James Birkhold
Clerk

A-6

Supreme Court of Florida

TUESDAY, MAY 15, 2012

CASE NO.: SC12-805
Lower Tribunal No(s).: 2D09-3523,
07-CF-2989

THOMAS L. FAST vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

Having considered this case under any or all of the jurisdictional bases described in Article V, Section 3(b)(3) and 3(b)(7)-(9), Florida Constitution, it appears that the Court is without jurisdiction. Accordingly, this case is hereby dismissed. See Grate v. State, 750 So. 2d 625 (Fla. 1999); Jenkins v. State, 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing will be entertained by the Court.

A True Copy
Test:

Thomas D. Hall
Clerk, Supreme Court

kb
Served:

THOMAS L. FAST ✓
HON. PAMELA JO BONDI
HON. JAMES R. BIRKHOLD, CLERK
HON. GILBERT ALEXANDER SMITH, JR., JUDGE
HON. RICHARD B. SHORE, CLERK

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 DISMISSING PETITION FOR "WRIT OF MANDAMUS"

This matter is before the Court on the Defendant's *pro se* "Writ of Mandamus" filed on November 23, 2011. The Court has carefully reviewed the Defendant's Petition, the court file, the applicable law, and is otherwise duly advised in the premises.

The Defendant was charged with first degree murder (Count I) and robbery (Count II). On July 13, 2009, a jury found the Defendant guilty as charged. On Count I, the Court sentenced the Defendant to life in the Department of Corrections with credit for time served, but without the possibility of parole. As to Count II, the Defendant was sentenced to 15 years in 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.

In his present petition, the Defendant asks the Court to order the Manatee Clerk of Court and the Court Reporter's Office to forward to the Defendant, the Second District Court of Appeal, and the Attorney General "printed copies of unaltered, unedited, complete and proper pre-trial and trial transcripts and court admissible copies of all courtroom audio and audio-visual recordings on V.H.S. tapes or CD-ROM disks." This request appears to stem from the

Defendant's, perhaps misplaced, belief that the transcripts and record prepared and provided for his direct appeal had errors or discrepancies in them.

Mandamus is a common law remedy utilized to enforce an "established legal right by compelling a person in an official capacity to perform an indisputable *ministerial* duty required by law." *Puckett v. Gentry*, 577 So. 2d 965, 967 (Fla. 5th DCA 1991), *rev. denied,* 591 So. 2d 183 (Fla. 1991) (emphasis added). Thus, a mandamus petitioner must demonstrate a clear legal right to performance of the requested act, an indisputable legal duty, and no adequate remedy at law. *See Turner v. Singletary*, 623 So. 2d 537, 538 (Fla. 1st DCA 1993).

The Defendant has failed to show a clear legal right to the relief requested or that the named Respondent (*i.e.*, "R.B. Chip Shore") has an indisputable legal duty to perform the requested action. Moreover, the Petitioner fails to allege that he exhausted his administrative remedies prior to seeking review in this Court. *See Widel v. Venz*, 805 So. 2d 1080 (Fla. 5th DCA 2002) (person seeking mandamus relief "must first seek administrative relief . . . , and be able to demonstrate the fact that it was sought prior to seeking review in court."). The prerequisite to the issuance of an extraordinary writ is exhaustion of all administrative remedies. *See Reed v. Moore,* 768 So. 2d 479 (Fla. 2d DCA 2000).

Based on the foregoing, it is hereby,

ORDERED AND ADJUDGED that the Defendant's Petition for Writ of Mandamus is **DISMISSED.**

DONE AND ORDERED in Bradenton, Manatee County, Florida on this 13th day of December 2011.

Gilbert A. Smith, Jr., Circuit Judge

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing order was furnished by U.S. mail to **Thomas Fast**, DOC #818015, Mayo Correctional Institution, 8784 US Highway 27 West, Mayo, Florida 32066-3458; and the **Office of the State Attorney**, P.O. Box 1000, Bradenton, Florida 34206, on this 14th day of December 2011.

R.B. "Chips" Shore, Clerk of Court

By: _____
Deputy Clerk

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

THOMAS L. FAST,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D12-237

Opinion filed August 24, 2012.

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Manatee County; Gilbert A. Smith, Jr. Judge.

Thomas L. Fast, pro se.

PER CURIAM.

Affirmed.

SILBERMAN, C.J., and ALTENBERND and NORTHCUTT, JJ., Concur.

A-11

Supreme Court of Florida

TUESDAY, DECEMBER 11, 2012

CASE NO.: SC12-2515
Lower Tribunal No(s).: 2D12-237,
07-CF-2989

THOMAS L. FAST vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing will be entertained by the Court.

A True Copy
Test:

Thomas D. Hall
Clerk, Supreme Court

kb
Served:

THOMAS L. FAST
HON. PAMELA JO BONDI
HON. JAMES R. BIRKHOLD, CLERK
HON. GILBERT ALEXANDER SMITH, JR., JUDGE
HON. RICHARD B. SHORE, CLERK

Supreme Court of Florida

TUESDAY, DECEMBER 11, 2012

CASE NO.: SC12-2525
Lower Tribunal No(s).: 2D12-237,
07-CF-2989

THOMAS L. FAST vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

The petition for writ of mandamus is hereby dismissed. See Grate v. State, 750 So. 2d 625 (Fla. 1999).

No motion for rehearing will be entertained by the Court.

A True Copy
Test:

Thomas D. Hall
Clerk, Supreme Court

kb
Served:

THOMAS L. FAST
HON. PAMELA JO BONDI
HON. JAMES R. BIRKHOLD, CLERK
HON. RICHARD B. SHORE, CLERK

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

May 10, 2012

CASE NO.: 2D12-2143
L.T. No. : 2007-CF-2989

Thomas L. Fast v. Pamela Jo Bondi, A. A. G.

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

Because the petitioner is challenging this court's per curiam affirmance of his direct appeal in case number 2D09-3523, petitioner's petition for writ of supersedeas and "emergency remedies to petition for writ of supersedeas" are transferred to the Florida Supreme Court.

WALLACE, KHOUZAM, and MORRIS, JJ., Concur.

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

Served:

Thomas L. Fast Pamela Jo Bondi, A.A.G. R. B. "Chips" Shore, Clerk
Thomas D. Hall, Clerk (encl.)

aw

James Birkhold
Clerk

A-14

Supreme Court of Florida

MONDAY, APRIL 7, 2014

CASE NO.: SC13-1814
Lower Tribunal No(s).: 2D13-2224;
2007-CF-2989

THOMAS L. FAST vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

The petition for a writ of mandamus is hereby dismissed. See Mathews v. Crews, 39 Fla. L. Weekly S37 (Fla. Jan. 23, 2014). Any motions or other requests for relief are hereby denied. No rehearing will be entertained by this Court.

PARIENTE, LEWIS, CANADY, LABARGA, and PERRY, JJ., concur.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

kb
Served:

HON. PAMELA JO BONDI
THOMAS L. FAST
HON. RICHARD B. SHORE, CLERK
HON. JAMES R. BIRKHOLD, CLERK

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

April 11, 2012

CASE NO.: 2D12-1408
L.T. No. : 2007-CF-2989

Thomas L. Fast v. State Of Florida

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's petition alleging ineffective assistance of appellate counsel is denied.

SILBERMAN, C.J., and KELLY and VILLANTI, JJ., Concur.

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

Served:

Thomas L. Fast Attorney General R. B. "Chips" Shore, Clerk

js

James Birkhold
Clerk

A-16

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

June 25, 2013

CASE NO.: 2D13-2224
L.T. No. : 2007-CF-2989

Thomas L. Fast v. State Of Florida

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's petition alleging ineffective assistance of appellate counsel is dismissed as successive. See Fla. R. App. P. 9.141(d)(6)(C).

KHOUZAM, CRENSHAW, and BLACK, JJ., Concur.

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

Served:

Thomas L. Fast Attorney General R.B. "Chips" Shore, Clerk

lb

James Birkhold
Clerk

A-17

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

August 12, 2013

CASE NO.: 2D13-2224
L.T. No. : 2007-CF-2989

Thomas L. Fast v. State Of Florida

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's motion for rehearing is denied.

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

Served:

Thomas L. Fast Attorney General R.B. "Chips" Shore, Clerk

ag

James Birkhold
Clerk

A-18

Supreme Court of Florida

TUESDAY, OCTOBER 1, 2013

CASE NO.: SC13-1814
Lower Tribunal No(s).: 2D13-2224,
2007-CF-2989

THOMAS L. FAST vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

Petitioner's motion for leave to proceed in forma pauperis and amended motion for leave to proceed in forma pauperis is moot as petitioner received ineffective assistance of counsel from Manatee County in the Second District Court of Appeal.

A True Copy
Test:

Thomas D. Hall
Clerk, Supreme Court

tg
Served:

THOMAS L. FAST
HON. PAMELA JO BONDI
HON. JAMES R. BIRKHOLD, CLERK

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 DISMISSING DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF; ORDER DENYING DEFENDANT'S "MOTION TO EXPAND AND SUPPLEMENT FL. 3.850 RECORD WITH EXCULPATORY EVIDENCES"

This matter is before the Court on the Defendant's *pro se* Motion for Post-Conviction Relief, filed on July 27, 2012, and "Addendum to Post Conviction Relief," filed August 3, 2012, as well as his "Motion to Expand and Supplement Fl. 3.850 Record With Exculpatory Evidences," filed August 22, 2012. The Court has carefully reviewed the Defendant's motions, the court file, the applicable law, and is otherwise duly advised in the premises.

Case History

The Defendant was charged with first degree murder (Count I) and robbery (Count II). On July 13, 2009, a jury found the Defendant guilty as charged. On Count I, the Court sentenced the Defendant to life in the Department of Corrections with credit for time served, but without the possibility of parole. As to Count II, the Defendant was sentenced to 15 years in 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).

Thereafter, Defendant filed a Petition for Writ of Mandamus asking this Court to order the Manatee Clerk of Court and the Court Reporter's Office to forward to the Defendant, the Second District Court of Appeal, and the Attorney General "printed copies of unaltered, unedited, complete and proper pre-trial and trial transcripts and court admissible copies of all courtroom audio and audio-visual recordings on V.H.S. tapes or CD-ROM disks." Defendant's Petition for Writ of Mandamus was dismissed by Order entered on December 13, 2011; Defendant appealed, and the Second District Court of Appeal *per curiam* affirmed. *Fast v. State*, -- So. 3d --, 2012 WL 3641058 (Fla. 2d DCA 2012).

Motion for Post-Conviction Relief

In his present Motion for Post-Conviction Relief, Defendant alleges twenty-two claims of error. However, after reviewing the Defendant's motion, the Court finds that such motion was not properly sworn as required by rule 3.850, in the format prescribed by rule 3.987. *See Love v. State*, 623 So. 2d 1221, 1223 (Fla. 1st DCA 1993). Indeed, the Defendant's use of the qualifying language "to the best of undersigned's knowledge" renders his oath inadequate. *See Gorham v. State,* 494 So. 2d 211, 212 (Fla. 1986). Thus, the Court will not entertain the merits of the allegations raised therein.

Motion to Expand and Supplement Fl. 3.850 Record With Exculpatory Evidences

Moreover, in his "Motion to Expand and Supplement Fl. 3.850 Record With Exculpatory Evidences," Defendant requests the Court permit him to exceed the 50-page limit for his rule 3.850 motion. In support of this request, Defendant states "expansion of the 50 page limit is necessary to supplement material record with exculpatory evidences and exhibits withheld from trial court showing [Defendant's] actual, factual, now also, legal innocence." Defendant further lists a plethora of documents, including but not limited to depositions transcripts, warrants, DOC

A-20(A)

grievances, copies of Florida statutes, copies of Federal Regulations, telephone invoices, and Department of Justice records, as well as video recordings, that he wants to submit along with his rule 3.850 motion.

Defendant has 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). Therefore, his motion will be denied.

Based on the foregoing, it is hereby,

ORDERED AND ADJUDGED that the Defendant's Motion for Post Conviction Relief is **DISMISSED without prejudice** to the Defendant's filing a timely, properly sworn rule 3.850 motion. It is further,

ORDERED AND ADJUDGED that the Defendant's "Motion to Expand and Supplement Fl. 3.850 Record With Exculpatory Evidences" is **DENIED**.

DONE AND ORDERED in Chambers in Bradenton, Manatee County, Florida, this 27 day of September 2012.

Thomas Krug, Circuit Judge

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing order was furnished by U.S. mail to **Thomas Fast**, DOC #818015, Mayo Correctional Institution Annex, 8784 US Highway 27 West, Mayo, Florida 32066-3458; and the **Office of the State Attorney**, P.O. Box 1000, Bradenton, Florida 34206, on this 27 day of September 2012.

By: _____
Judicial Assistant

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 "MOTION FOR REHEARING AND SWORN OATH'S REPLACEMENTS"

This matter is before the Court on the Defendant's *pro se* "Motion for Rehearing and Sworn Oath's Replacements," filed October 9, 2012. The Court has carefully reviewed the Defendant's motion, the court file, the applicable law, and is otherwise duly advised in the premises.

Case History

The Defendant was charged with first degree murder (Count I) and robbery (Count II). On July 13, 2009, a jury found the Defendant guilty as charged. On Count I, the Court sentenced the Defendant to life in the Department of Corrections with credit for time served, but without the possibility of parole. As to Count II, the Defendant was sentenced to 15 years in 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.[1]

Thereafter, Defendant filed a Petition for Writ of Mandamus asking this Court to order the Manatee Clerk of Court and the Court Reporter's Office to forward to the Defendant, the

[1] *Fast v. State*, 69 So. 3d 283 (Fla. 2d DCA 2011).

Second District Ccurt of Appeal, and the Attorney General "printed copies of unaltered, unedited, complete and proper pre-trial and trial transcripts and court admissible copies of all courtroom audio and audio-visual recordings on V.H.S. tapes or CD-ROM disks." Defendant's Petition for Writ of Mandamus was dismissed by Order entered on December 13, 2011; Defendant appealed, and the Second District Court of Appeal *per curiam* affirmed.[2]

Defendant recently filed a *pro se* Motion for Post-Conviction Relief and "Addendum to Post Conviction Relief," on July 27, 2012, and August 3, 2012, respectively, as well as a "Motion to Expand and Supplement Fl. 3.850 Record With Exculpatory Evidences," which was filed on August 22, 2012. By Order entered September 28, 2012, the Court dismissed Defendant's Motion(s) for Post Conviction Relief without prejudice to the Defendant's filing a timely, properly sworn rule 3.850 motion, and denied his "Motion to Expand and Supplement Fl. 3.850 Record With Exculpatory Evidences," in which Defendant requested the Court permit him to exceed the 50-page limit for his rule 3.850 motion.

Present Motion for Rehearing

In his present motion for rehearing, Defendant asks the Court to reconsider permitting him to exceed the 50-page limit for his rule 3.850 motion. Defendant's argument appears to overlook the applicable standard (*i.e.*, "[w]here an evidentiary hearing has not been held, a movant's allegations . . . must be accepted as true except to the extent that the allegations are conclusively rebutted by the record").[3] It follows that if there is nothing in the record to conclusively refute a defendant's properly sworn claims, then an evidentiary hearing is warranted, at which such defendant may introduce testimony and evidence to support his claims.

---

[2] *Fast v. State*, -- So. 3d --, 2012 WL 3641058 (Fla. 2d DCA 2012).
[3] *Hamilton v. State*, 979 So. 2d 420 (Fla. 2d DCA 2008) (citing *Murphy v. State*, 638 So. 2d 975, 976 (Fla. 1st DCA 1994)).

Based in part upon this reasoning, the Court previously ruled that this Defendant has 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). The purpose of a motion for rehearing is to give the court an opportunity to consider matters, which it failed to consider or overlooked the first time.[4] It is not just an opportunity for one to reargue his case merely because he disagrees with the Court's opinion. The Defendant has failed to set forth any argument of merit in support of his contention that the Court should permit him to exceed rule 3.850's 50-page limit so that he can attach various deposition transcripts, warrants, DOC grievances, copies of Florida statutes, copies of Federal Regulations, telephone invoices, and Department of Justice records, as well as video recordings. Accordingly, the Defendant's Motion for Rehearing will be denied.

In his present motion, Defendant also asks the Court to accept the attached oaths and apply them to his previous Motion(s) for Post Conviction Relief, which were dismissed for inadequate oath. The Defendant's proposed "fix" of subsequently attaching a proper oath to previously submitted motions will not suffice. Case law indicates that post conviction claims must be submitted *in conjunction with* an adequate oath.[5] Therefore, the Court also denies Defendant's request to attach the oaths submitted with his Motion for Rehearing to his previously dismissed Motion(s) for Post Conviction Relief. In so doing, the Court notes that Defendant has two years from when the Second District Court of Appeal Mandate issued on September 28, 2011, in which to file a timely and properly sworn rule 3.850 motion.

Based on the foregoing, it is hereby,

---

[4] *See Pingree v. Quaintance*, 394 So. 2d 161, 162 (Fla. 1st DCA 1981).
[5] *See, e.g., Brown v. State*, 620 So. 2d 1076 (Fla. 2d DCA 1993) (trial court correctly refused to entertain unsworn memorandum attached to motion which contained facts in support of defendant's allegations).

ORDERED AND ADJUDGED that Defendant's "Motion for Rehearing and Sworn Oath's Replacements" is **DENIED.**

DONE AND ORDERED in Chambers in Bradenton, Manatee County, Florida, this 29 day of October 2012.

Thomas Krug, Circuit Judge

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing order was furnished by U.S. mail to **Thomas Fast**, DOC #818015, Mayo Correctional Institution Annex, 8784 US Highway 27 West, Mayo, Florida 32066-3458; and the **Office of the State Attorney**, P.O. Box 1000, Bradenton, Florida 34206, on this 29 day of October 2012.

By: _____
Judicial Assistant

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 DISMISSING DEFENDANT'S MOTION FOR POST CONVICTION RELIEF AND AMENDED MOTION FOR POST CONVICTION RELIEF

This matter is before the Court on Defendant's *pro se* Motion for Post Conviction Relief, filed on November 13, 2012, and Defendant's *pro se* Amended Motion for Post Conviction Relief, filed on March 1, 2013. The Court has reviewed the motions, the court file, the applicable law, and is otherwise duly advised in the premises.

Case History

The Defendant was charged with first degree murder (Count I) and robbery (Count II). 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.[1]

Present Motions

Defendant's present motions are not his first attempt to file rule 3.850 claims; indeed, his first rule 3.850 motion for post-conviction relief was dismissed for inadequate oath. Thus, on

[1] *Fast v. State*, 69 So. 3d 283 (Fla. 2d DCA 2011).

November 13, 2012, Defendant filed another *pro se* Motion for Post Conviction Relief that was 34 pages in length. Before the Court issued an order on that motion, Defendant filed an Amended Motion for Post Conviction Relief that consisted of 48 pages. Defendant's Amended Motion appears to contain at least some new grounds that were not included in his original motion. Since the "amended" motion actually supplements Defendant's original motion, the Court will treat both motions as an 82 page singular motion. Fla. R. Crim. P. 3.850(c) provides, "No motion, including any memorandum of law, shall exceed 50 pages without leave of the court upon a showing of good cause." Defendant's combined motions exceed the page limit by 32 pages. Defendant previously moved the Court to extend the 50 page limit for such post conviction motions, and the Court denied Defendant's request.[2] Therefore, the Court will dismiss Defendant's present motions for his failure to abide by the 50-page limit set forth in Fla. R. Crim. P. 3.850(c). Defendant is permitted to refile his claims in a singular motion, but if he chooses to refile, he should combine all of his grounds into one motion and memorandum of law, not exceeding 50 pages.[3]

The Court further notes that most of Defendant's claims are unintelligible. The Court has the discretion to dismiss any claims, which are presented in an unintelligible manner.[4] Defendant is cautioned that if he refiles his claims in a similar unintelligible manner as his previous two motions, they may denied on that basis.

Last, the Court points out that many of Defendant's claims are not cognizable in a motion for post conviction relief filed pursuant to Fla. R. Crim. P. 3.850. Claims relating to planted or falsified evidence, prosecutorial misconduct, insufficiency of evidence, and the trial court's

---

[2] *See* 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" (Attachment 1).
[3] *See* Fla. R. Crim. P. 3.850(c)
[4] *Cortes v. State*, 85 So. 3d 1135, 1137 (Fla. 4th DCA 2012).

A-26(A)

denial of Defendant's various motions before and during trial could have been addressed on direct appeal and, therefore, are improper for a 3.850 motion.[5] Motions for post conviction relief are not meant for review of ordinary trial errors cognizable by means of direct appeal.[6] Thus, Defendant is also cautioned that if he refiles any claims that could have been addressed on direct appeal, such claims may be denied on that basis as well.

Based on the foregoing, it is hereby,

ORDERED AND ADJUDGED that Defendant's Motion for Post Conviction Relief, filed on November 13, 2012, and Defendant's Amended Motion for Post Conviction Relief, filed on March 1, 2013, are **DISMISSED without prejudice**. Defendant may file an amended singular motion **not exceeding 50 pages**, within **thirty (30) days of the date of this order, but no later than September 28, 2013.**

DONE and **ORDERED** in Chambers in Bradenton, Manatee County, Florida, on this 22 day of August 2013.

Thomas K. Krug

Thomas Krug, Circuit Judge

Attachment(s) to this Order:

1. 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] *See*, e.g., *Cherry v. State*, 659 So. 2d 1069, 1071 (Fla. 1995); *McCrae v. State*, 437 So. 2d 1388 (Fla. 1983).
[6] *Id.*

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 21 day of August 2013.

Judicial Assistant

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).

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.

ORIGINAL SIGNED
JUN 27 2014
CHARLES E. ROBERTS
CIRCUIT JUDGE

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

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 REHEARING

This matter is before the Court on Defendant's *pro se* Motion for Rehearing, together with attachments, delivered to Department of Corrections' officials at Union Correctional Institution on July 10, 2014, and filed by the Clerk of Court on July 14, 2014. The Court has carefully reviewed Defendant's motion and accompanying attachments, the court file, and the applicable law, and is otherwise duly advised in the premises.

In his present Motion for Rehearing, Defendant requests the Court to reconsider the claims raised in his "Amended Motion for Postconviction Relief" and "Appendix in Support of Defendant's Fla. R. 3.850 Motion for Post Conviction Relief," filed on October 7, 2013, and denied by order entered on June 27, 2014. In support, Defendant alleges that he 'was not provided the opportunity to file an Amendment or Supplement to clarify the seven claims" raised in his October 7, 2013 motion. Contrary to Defendant's allegations, his amended motion, filed on October 7, 2013, was his *fourth* unsuccessful attempt to file a facially sufficient motion for postconviction relief.

The purpose of a motion for rehearing is to give the court an opportunity to consider matters, which it failed to consider or overlooked the first time. *See Pingree v. Quaintance*, 394 So. 2d 161, 162 (Fla. 1st DCA 1981). The Defendant has failed to set forth any argument of merit to support a contention that the Court overlooked or misapprehended any matters of law or fact.

Accordingly, it is hereby,

ORDERED AND ADJUDGED that Defendant's Motion for Rehearing is **DENIED**. The Defendant is further advised that he has the right to appeal within thirty (30) days of rendition of this Order.

DONE AND ORDERED in Chambers in Bradenton, Manatee County, Florida, on this _____ day of July 2014.

ORIGINAL SIGNED
JUL 16 2014
CHARLES E. ROBERTS
CIRCUIT JUDGE

Charles E. Roberts, Circuit Judge

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 _____ day of July 2014.

ORIGINAL SIGNED
JUL 16 2014
ANITA BRASS
JUDICIAL ASSISTANT

Judicial Assistant

A-34

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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

THOMAS FAST,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D14-3550

Opinion filed March 11, 2015.

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Manatee County; Thomas W. Krug and Charles E. Roberts, Judges.

Thomas Fast, pro se.

PER CURIAM.

Affirmed.

SILBERMAN, MORRIS, and SLEET, JJ., Concur.

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

April 24, 2015

CASE NO.: 2D14-3550
L.T. No. : 2007-CF-2989

Thomas L. Fast	v.	State of Florida
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for rehearing en banc, written opinion and clarification is denied.

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

Served:

Attorney General Thomas L. Fast R. B. "Chips" Shore, Clerk

ag

James Birkhold
Clerk

A-36

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

STATE OF FLORIDA,

Plaintiff,

v.

CASE NOS. 2007-CF-2566
2007-CF-2989

THOMAS FAST,

Defendant.
_____/

COPY

ORDER DENYING DEFENDANT'S *PRO SE*
"FREEDOM OF INFORMATION ACT REQUEST"

This matter is before the Court on Defendant's *pro se* correspondence, which is captioned as a "Freedom of Information Act Request" and was filed April 25, 2016. The Court has carefully reviewed Defendant's correspondence, the court files, and applicable law, and is otherwise duly advised of the premises.

In his present correspondence, which is addressed to the Manatee County Clerk of Court, Defendant requests the "return" of "stolen personal and business materials" that he believes "are under control of state . . . agents." Defendant includes a lengthy list of presumably written materials purportedly related to properties and businesses owned by him and his wife. The Court construes Defendant's present correspondence as a public records request.

While Defendant may be entitled to public records under chapter 119, Florida Statutes, that statute does not require public institutions to either generate or supply documents free of charge. *Smith v. State*, 696 So. 2d 814 (Fla. 2d DCA 1997). Other than a record on a *direct appeal*, which is provided at no cost, a defendant has no entitlement to complimentary court documents. *Id; Golden v. State*, 870 So. 2d 167 (Fla. 2d DCA 2004); *Carr v. State*, 495 So. 2d

282 (Fla. 2d DCA 1986) (a defendant's intent to file a postconviction motion creates no entitlement to free documents).

Ultimately, the Court finds that Defendant has failed to demonstrate an entitlement to the relief requested.

It is, therefore,

ORDERED AND ADJUDGED that Defendant's *pro se* "Freedom of Information Act Request," filed April 25, 2016, is **DENIED**.

DONE AND ORDERED in Chambers in Bradenton, Manatee County, Florida, on this 11 day of May 2016.

Hunter W. Carroll, Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail, electronic mail, or hand-delivery to: **Thomas L. Fast,** DOC #818015, Mayo Correctional Institution Annex, 8784 US Highway 27 West, Mayo, Florida 32066-3458; and to the **Office of the State Attorney,** P.O. Box 1000, Bradenton, FL 34206-1000, on this 11 day of May 2016.

Judicial Assistant

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

STATE OF FLORIDA,

Plaintiff,

v.

CASE NOS. 2007-CF-2566
2007-CF-2989

THOMAS FAST,

Defendant.

ORDER DENYING DEFENDANT'S *PRO SE* MOTION FOR REHEARING

This matter is before the Court on Defendant's *pro se* Motion for Rehearing, filed May 31, 2016. The Court has carefully reviewed Defendant's motion and accompanying attachments, the court file, and the applicable law, and is otherwise duly advised in the premises.

In his present Motion for Rehearing, Defendant requests the Court to reconsider the claims raised in his *pro se* correspondence, which was captioned as a "Freedom of Information Act Request" and filed on April 25, 2016. By order rendered May 12, 2016, the Court denied that correspondence as a construed public records request.

The purpose of a motion for rehearing is to give the court an opportunity to consider matters, which it failed to consider or overlooked the first time. *See Pingree v. Quaintance*, 394 So. 2d 161, 162 (Fla. 1st DCA 1981). It is not just an opportunity for one to reargue his case merely because he disagrees with the Court's opinion. Defendant has failed to set forth any argument of merit to support a contention that the Court overlooked or misapprehended any matters of law or fact.

Accordingly, it is hereby,

ORDERED AND ADJUDGED that Defendant's *pro se* Motion for Rehearing is **DENIED.**

DONE AND ORDERED in Chambers in Bradenton, Manatee County, Florida, on this 3rd day of ~~June~~ July 2016.

Hunter W. Carroll, Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail, electronic mail, or hand-delivery to: **Thomas L. Fast,** DOC #818015, Mayo Correctional Institution Annex, 8784 US Highway 27 West, Mayo, Florida 32066-3458; and to the **Office of the State Attorney,** P.O. Box 1000, Bradenton, FL 34206-1000, on this 5 day of ~~June~~ July 2016.

Judicial Assistant

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

STATE OF FLORIDA,

Plaintiff,

v.

CASE NOS. 2007-CF-2566
2007-CF-2989

THOMAS FAST,

Defendant.

/

ORDER DISMISSING DEFENDANT'S *PRO SE*
MOTION FOR RETURN OF PROPERTY

This matter is before the Court on Defendant's *pro se* Motion for Return of Property, filed July 15, 2016. The Court has carefully reviewed Defendant's motion, the court files, and applicable law, and is otherwise duly advised of the premises.

Defendant's present motion somehow pertains to two cases. In **Case No. 2007-CF-2566**, the State charged Defendant by Information on August 1, 2007, with carrying a concealed firearm. On July 23, 2009, however, the State filed its *nolle prosequi* of that charge, presumably due to the result obtained in Case No. 2007-CF-2989.

In **Case No. 2007-CF-2989**, the State charged Defendant with first degree murder (Count I) and robbery (Count II). On July 13, 2009, a jury found the 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 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 requesting the "return" of "stolen personal and business materials" that he believes "are under control of state . . . agents." In his present motion, Defendant once again seeks the return of "financial materials listed as attachment C," which are purportedly being held by the Clerk of Court "and probably Sheriff's Department."

Notably, Defendant's present motion does not specifically identify what materials he seeks, which specific state agency he believes possesses them, nor specifically where he believes such documents are located. As an aside, Defendant also fails to name the proper respondent to his motion. The Court's review of both case dockets certainly does not indicate any such "financial materials" contained therein.

Regardless, Defendant's present motion is facially insufficient and as such it must be dismissed. *See Harkless v. State*, 975 So. 2d 437 (Fla. 2d DCA 2007) (citing *Scott v. State,* 922 So. 2d 1024, 1026 (Fla. 5th DCA 2006) ("A facially sufficient motion for return of property must *specifically identify* the property and allege that it is the movant's personal property, that the property is not the fruit of criminal activity, and that the property is not being held as evidence.") (emphasis added); *Eight Hundred, Inc. v. State,* 895 So. 2d 1185, 1186 (Fla. 5th DCA 2005); and *Bolden v. State,* 875 So. 2d 780, 782 (Fla. 2d DCA 2004)).

It is therefore,

ORDERED AND ADJUDGED that Defendant's Motion for Return of Property is **DISMISSED.**

DONE AND ORDERED in Chambers in Bradenton, Manatee County, Florida, on this 28 day of July 2016.

Hunter W. Carroll, Circuit Judge

A-42

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail, electronic mail, or hand-delivery to: **Thomas L. Fast,** DOC #818015, Mayo Correctional Institution Annex, 8784 US Highway 27 West, Mayo, Florida 32066-3458; and to the **Office of the State Attorney,** P.O. Box 1000, Bradenton, FL 34206-1000, on this 28 day of July 2016.

Susan Fritz

Judicial Assistant

A-42(A)

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

STATE OF FLORIDA,

Plaintiff,

CASE NO. 2007-CF-2989

v.

THOMAS FAST,

Defendant.
_____/

ORDER DENYING DEFENDANT'S *PRO SE*
"MOTION TO PRODUCE COMPROMISED EXEMPT PUBLIC RECORDS PERTAINING TO DEFENDANT'S CASE"

This matter is before the Court on Defendant's *pro se* "Motion to Produce Compromised Exempt Public Records Pertaining to Defendant's Case," filed July 7, 2021. The Court has carefully reviewed Defendant's Motion, the court file, and applicable law, and is otherwise duly advised of the premises.

Defendant was charged with first degree murder (Count I) and robbery (Count II). On July 13, 2009, a jury found the Defendant guilty as charged. On Count I, the Court sentenced the Defendant to life in the Department of Corrections with credit for time served, but without the possibility of parole. As to Count II, the Defendant was sentenced to 15 years in 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.

In his present motion, Defendant moves the Court to order the Manatee County Clerk of Court and the Court Reporter to provide a free transcript copy of a purported May 15, 2009 *Nelson* Hearing. In support of his motion, Defendant alleges that he has not yet received a copy of the transcript of that hearing and that such would constitute newly discovered evidence. Defendant also seeks a "copy of in-camera photographs of Assistant State Attorney that was standing behind Defendant during his hearing when motioned with a hand to/in his trousers pocket similar to pulling a small handgun out of his pocket."

This is not the first time Defendant has requested copies of transcripts or court records. (*See, e.g.*, Attachments 1 and 2) While Defendant may be entitled to public records under Florida's Public Records Law, Ch. 119, Florida Statutes, that statute does not require public institutions to either generate or supply documents free of charge. *Smith v. State*, 696 So. 2d 814 (Fla. 2d DCA 1997). Other than a record on a *direct appeal*, which is provided at no cost, a defendant has no entitlement to complimentary court documents. *Id; Golden v. State*, 870 So. 2d 167 (Fla. 2d DCA 2004); *Carr v. State*, 495 So. 2d 282 (Fla. 2d DCA 1986) (a defendant's intent to file a postconviction motion creates no entitlement to free documents).

Ultimately, the Court finds that Defendant has failed to demonstrate an entitlement to the relief requested.

It is, therefore,

ORDERED that Defendant's *pro se* "Motion to Produce Compromised Exempt Public Records Pertaining to Defendant's Case," filed July 7, 2021, is **DENIED**.

DONE AND ORDERED in Chambers in Bradenton, Manatee County, Florida, on this ____ day of July 2021, or as otherwise dated by electronic signature.

ORIGINAL SIGNED

JUL 15 2021

Stephen M. Whyte, Circuit Judge MATT WHYTE CIRCUIT JUDGE

Attachments to Order:
1. Order Dismissing Petition for "Writ of Mandamus," filed December 13, 2011
2. Order Denying Defendant's Pro Se "Freedom of Information Act Request," filed May 12, 2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail, electronic mail, or hand-delivery to: **Thomas L. Fast**, DOC #818015, Martin Correctional Institution, 1150 S.W. Allapattah Road, Indiantown, Florida 34956-4397; and to the **Office of the State Attorney**, P.O. Box 1000, Bradenton, FL 34206-1000, saorounds@sao12.org on this 15 day of July 2021, or as otherwise dated by electronic signature.

Judicial Assistant

A-44

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).

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 09 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."

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.

eSigned by STEPHEN WHYTE, Circuit Judge 12/10/2021 17:40:25 QZCmuF07

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@sao12.org, on this 10 day of December 2021, or as otherwise dated by electronic signature.

Judicial Assistant

PAGE 5 OF 10 IS AN ATTACHMENT COVER SHEET PAGE

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@sao12.org, on this ____ day of December 2021, or as otherwise dated by electronic signature.

eSigned by KELLY ZOELLNER 12/10/2021 09:39:06 CwYqoMeZ

Judicial Assistant

A-48(A)

 PAGE 418 IS AN ATTACHMENT COVER SHEET PAGE DELETED TO SAVE PAPER. KLB

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
2014 JUN 27 PM 3:23
CLERK OF CIRCUIT COURT
MANATEE CO FLORIDA

A-49

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

5

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

February 15, 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:

By an order dated January 6, 2022, this court classified this appeal as a summary postconviction appeal. Florida Rule of Appellate Procedure 9.141(b)(2)(A) specifies what documents are to comprise the record for a summary appeal.

This court received from the clerk of the circuit court for Manatee County on January 6, 2022, a summary record complying with this rule which also included a "Designation of Court Reporter" which was filed in the circuit court on January 3, 2022.

This Designation requested additional documents and transcripts beyond what is outlined by rule 9.141(b)(2)(A) to be included in the summary record. However, rule 9.141(b)(2)(A) does not authorize appellant to file such a pleading in a summary postconviction appeal.

On February 7, 2022, this court received from appellant a "Motion to Enforce Duties of the Clerk and Court Reporters" to supplement the summary record with the documents and transcripts specified in the motion.

The role of this court under Florida Rule of Appellate Procedure 9.141(b)(2)(D) is to determine whether or not the circuit court orders under judicial review including the records relied upon by the circuit court conclusively show that appellant is not entitled to relief.

Appellant has not established in the motion to enforce that the requested documents and transcripts are necessary for this court to fulfill its responsibilities under the law. Accordingly, appellant's motion to enforce is denied.

Appellant's pro se motion for an extension of time to file an initial brief is granted to the extent that appellant may file an optional initial brief which complies with Florida Rule of Appellate Procedure 9.210(a) and (b) within 60 days from the date of this order.

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

lb

Mary Elizabeth Kuenzel
Clerk

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 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. COLONNESO, CLERK

ag

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

A-54

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

THOMAS L. FAST,

Petitioner,

-vs- Case No. 8:11-CV-1884-T-33TBM

SECRETARY, DEPARTMENT OF CORRECTIONS

Respondent.

ORDER

This cause is before the Court on Petitioner Fast's 28 U.S.C. § 2254 petition for writ of habeas corpus. (Doc. 1). The petition is incomprehensible.

Accordingly, the Court orders:

That Petitioner's petition is dismissed, without prejudice to his filing a petition on the proper form in a new case with a new case number. The Clerk is directed to terminate any pending motions and to close this case.

ORDERED at Tampa, Florida, on August 31, 2011.

Virginia M. Hernandez Covington

VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

Thomas L. Fast

A-58

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

THOMAS L. FAST,

Petitioner,

-vs- Case No. 8:13-cv-6-33TGW

SECRETARY, DEPARTMENT OF CORRECTIONS

Respondent.

ORDER

This cause is before the Court on Petitioner Fast's motion for extension of time to file his petition for writ of certiorari with the United States Supreme Court. (Doc. 6).

Discussion

The Supreme Court Rules do not provide this Court with jurisdiction to extend Petitioner's time to file a petition for a writ of certiorari with the United States Supreme Court. See 28 U.S.C. § 2101(d) ("The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court."). Certiorari review is governed by Supreme Court Rule 13 which provides that a petition for a writ of certiorari is timely when filed

"within 90 days after entry of the judgment."[1] The Supreme Court requires a person seeking an extension of time to file for such writ to request an extension from a Justice.

Accordingly, the Court orders:

That Petitioner Fast's motion for extension of time to file his petition for writ of certiorari with the United States Supreme Court (Doc. 6) is denied without prejudice.

ORDERED at Tampa, Florida, on March 26, 2013.

Virginia M. Hernandez Covington

VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

Thomas Fast

---

[1] Rule 13 provides as follows:

> Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

THOMAS L. FAST,

Petitioner,

-vs- Case No. 8:13-cv-774-T-17AEP

STATE OF FLORIDA,

Respondent.

ORDER

Thomas L. Fast petitions for a writ of certiorari pursuant to 28 U.S.C. § 1651(b). Fast seeks to have this Court review final orders in his state criminal case. Fast also seeks to have this Court determine the meaning of state statutes and criminal rules that appear to contradict each other. Apparently, Fast is seeking 28 U.S.C. § 2254 habeas relief pursuant to 28 U.S.C. § 1651(a), the "All Writs Act."

The All Writs Act grants federal courts the power to issue writs "necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). However, "[t]he All Writs Acts [sic] is a residual source of authority to issue writs that are not otherwise covered by statute. Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling." *Pennsylvania Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 43, 106 S.Ct. 355, 361, 88 L.Ed.2d 189 (1985). Although the Act "empowers federal courts to fashion extraordinary remedies when the need arises, it does not authorize them to issue ad hoc writs whenever compliance with statutory

procedures appears inconvenient or less appropriate." *Id.* Accordingly, common law writs, such as coram nobis and audita querela, survive only to the extent that they fill gaps in the system of federal postconviction remedies. *See United States v. Holt*, 417 F.3d 1172, 1175 (11th Cir.2005) (holding that the common law "writ of audita querala may not be granted when relief is cognizable under § 2255"). Moreover, the Act does not create any substantive federal jurisdiction; "rather, it empowers a federal court -- in a case in which it is already exercising subject matter jurisdiction -- to enter such orders as are necessary to aid it in the exercise of such jurisdiction." *In re Hill*, 437 F.3d 1080, 1083 (11th Cir.2006). *Morales v. Florida Dep't of Corr.*, 346 Fed.Appx. 539, 540 (11th Cir.2009) (per curiam) (not selected for publication in the Federal Reporter), *cert. denied*, —— U.S. ——, 131 S.Ct. 156, 178 L.Ed.2d 94 (2010). Because Fast has an adequate statutory remedy for attacking his conviction pursuant to 28 U.S.C. § 2254, he may not raise his claims pursuant to the All Writs Act.

Simply put, Fast must meet the requirements of 28 U.S.C. § 2254. Fast filed a 28 U.S.C. & 2254 petition for writ of habeas corpus in case number 8:11-cv-1884-T-33TBM. In that case, the Court entered an order requiring Fast to file a new petition because his petition was incomprehensible. Fast filed a new 106-page petition in case number 8:13-cv-6-T-33TGW. The Court dismissed the petition because it contained unbelievable and implausible grounds for relief and instructed Fast to file a new petition. In its order, the Court cited specific portions of the petition that were unbelievable. (See exhibit one to this Order.) Fast did not file a new habeas corpus petition.

Now, Fast has filed the present petition for writ of certiorari pursuant to 28 U.S.C. § 1651. Here, this Court is not authorized to issue the writ Fast seeks, as Fast must seek relief pursuant to 28 U.S.C. § 2254.

Accordingly, the Court orders:

1. That Fast's petition for writ of certiorari is denied.

2. That Fast's motion to proceed in forma pauperis (Doc. 2) is denied.

To the extent it is necessary to rule on these issues, the Court declines to issue a certificate of appealability and Fast is not entitled to appeal in forma pauperis.

The Clerk is directed to close this case.

ORDERED at Tampa, Florida, on MARCH 28th, 2013.

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Thomas L. Fast

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

THOMAS L. FAST,

Petitioner,

v. Case No. 8:17-cv-2670-T-17TBM

SECRETARY, DEPT. OF CORRECTIONS,

Respondent.

ORDER

THIS CAUSE is before the Court on pro se Petitioner Thomas Fast's 28 U.S.C. § 2254 petition for writ of habeas corpus. Fast challenges his Manatee County, Florida, 2009 convictions for first degree murder and robbery (counts one and two). Fast was convicted of murdering and dismembering his stepmother in 2007.

Fast states that he appealed his conviction and sentence and that the state district court of appeal per curiam affirmed his conviction and sentence in 2011. He alleges that he filed a petition that was transferred to the Florida Supreme Court and denied on May 15, 2012. He alleges that he filed a petition for writ of mandamus in the state district court of appeal for Manatee County, Florida. That petition was dismissed December 14, 2011. Fast appealed, and the court per curiam affirmed the dismissal on September 19, 2012. The Florida Supreme Court denied Fast's motion for discretionary review in December 2012.

Fast claims that he needs additional time to conduct proper discovery and investigations, and to complete amendments to the petition.

Previously, Fast filed a 28 U.S.C. § 2254 petition in case number 8:11-cv-1884-T-33TBM. On August 31, 2011, the Court dismissed the petition, without prejudice, as incomprehensible, and sent Fast the forms for filing a timely proper petition. Fast did not do so.

Subsequently, Fast filed a 149-page 28 U.S.C. § 2254 petition in case number 8:13-cv-06-T-33TGW, which the Court dismissed, without prejudice to Fast's filing a petition on the proper form in a new case with a new case number. The Court stated that the Respondent would not be required to respond to "unbelievable and implausible grounds for relief." For example, Fast claimed that a "male and female, dressed in nightgowns, sat behind Fast in church-styled pews, and sprayed Fast with a water-like substance, possible diluted "hydrotetradoxine" during trial. Fast also claimed that the State Attorney refused to accept or recognize Fast's list of individuals who dismember their victims. Fast also claimed that State Agents refused to take into consideration Fast's extended fight with both Soviet Russian Mafia and Revolutionary Armed Forces of Columbia. He claims that, during Memorial Day weekend, two agents chased Fast to Washington, D.C., and then to Ft. Bragg. He claims these agent "subversives achieved Fast's fast imprisonment through the State's miscarriage of justice." (*See* Exhibit 1 to Doc. 4 in case 8:13-cv-06-T-33TGW.)

Fast did not file a new petition until December 2017. The petition is untimely.

DISCUSSION

The Anti-Terrorism and Effective Death Penalty Act created a limitation for a Section 2254 petition for the writ of habeas corpus. "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, "[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." 28 U.S.C. § 2244(d)(2).

The record demonstrates that Fast's present filing challenging his 2009 conviction, for crimes committed in 2007, is time-barred. *See Day v. McDonough*, 547 U.S. 198, 209 (2006) ("[W]e hold that

district courts are permitted . . . to consider, sua sponte, the timeliness of a state prisoner's habeas petition."), *and Jackson v. Sec'y, Dep't of Corr.*, 292 F.3d 1347, 1349 (11th Cir. 2002) (holding that a district court possesses discretion to sua sponte raise the issue of the timeliness of a Section 2254 petition for habeas corpus). Although a district court may raise timeliness sua sponte, *Day* cautions that "before acting on its own initiative, a court must accord the parties fair notice and an opportunity to present their positions." *Day, supra*, at 210.

Accordingly, the Court orders;

1. That Fast's petition is dismissed. The Clerk is directed to terminate all pending motions and to close this case.

2. That, within 30 days of the date of this Order, the Court will entertain a motion to reopen this case if Fast can demonstrate, with **record evidence**, that he is entitled to equitable tolling.

ORDERED at Tampa, Florida, on November 28th, 2017.

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Thomas Fast

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

THOMAS L. FAST,

Petitioner,

v. Case No. 8:17-cv-2670-T-17TBM

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent.

ORDER

On November 29, 2017, the Court dismissed Fast's petition as time-barred, but allowed him 30 days to show, with record evidence, that his petition was not time barred. (See Order attaching, dismissing the petition as time-barred). Fast was convicted of murdering and dismembering his stepmother in 2007.

Fast has now filed an incomprehensible response to the Court order, with voluminous exhibits. Nothing in his filing demonstrates that his petition is not time-barred.

Accordingly, the Court orders:

That Fast's motion to reopen this case (Doc. 22) is denied.

CERTIFICATE OF APPEALABILITY AND

LEAVE TO APPEAL IN FORMA PAUPERIS DENIED

The Court declines to issue a certificate of appealability pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts because Petitioner

has failed to make a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c)(2).

Because Petitioner is not entitled to a certificate of appealability, Petitioner is not entitled to appeal in forma pauperis. Petitioner is required to pay the $505.00 appellate filing fee unless the appellate court grants Petitioner in forma pauperis status on appeal.

ORDERED at Tampa, Florida, on January 30th, 2018.

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Thomas L. Fast

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-11071-J

THOMAS L. FAST,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

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

ORDER:

Thomas L. Fast is a Florida prisoner serving a total sentence of life imprisonment after a jury convicted him of first-degree murder and robbery. On November 6, 2017, Fast filed in the district court a *pro se* 28 U.S.C. § 2254 petition for a writ of habeas corpus, raising three grounds for relief:

(1) The trial court abused its discretion and violated his due process rights because there was insufficient evidence to support his convictions;

(2) *Brady*[1] violation;

(3) Ineffective assistance of appellate counsel for failure to raise issues on appeal.

---

[1] *Brady v. Maryland*, 373 U.S. 83 (1963).

A-69

In his § 2254 petition and in voluminous exhibits, Fast indicated that he had submitted multiple state court filings seeking post-conviction relief. Without requiring a response from the government, the district court *sua sponte* dismissed Fast's § 2254 petition as untimely based on the face of his petition. The district court stated that it would entertain a motion to reopen in 30 days if Fast could demonstrate, through record evidence, that he was entitled to equitable tolling. Fast filed a motion to reopen, which the district court denied on the basis that it did not show that his § 2254 petition was timely. Fast now has appealed and seeks a certificate of appealability ("COA") and leave to proceed on appeal *in forma pauperis* ("IFP") in this Court.

To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted). When the district court has denied a § 2254 petition on procedural grounds, the movant must show that jurists of reason would find debatable whether (1) the district court was correct in its procedural ruling, and (2) the § 2254 petition states a valid claim of the denial of a constitutional right. *Id.*

In this case, reasonable jurists could debate the district court's *sua sponte* dismissal of Fast's petition as untimely. *See Slack*, 529 U.S. at 484. The district court did not order the state to respond, and, thus, did not give the state the opportunity to raise the issue of timeliness, or, alternatively, respond on the merits of the § 2254 claims, as timeliness is not a jurisdictional prerequisite. Further, reasonable jurists could debate whether Fast raised a valid claim of the denial of a constitutional right because his claims are not facially invalid and are unrefuted. *See Slack*, 529 U.S. at 484. As the district court relied only on the filings that Fast submitted, there is no

assurance that it had the full record of Fast's state court proceedings before it. Accordingly, a COA is GRANTED on the issue of:

> Whether the district court erred in *sua sponte* dismissing Fast's § 2254 petition as untimely, solely relying on Fast's filings.

The issuance of a COA is proper because Fast's claims are unrefuted and there is nothing in the available record to suggest that his claims in his § 2254 petition are inherently meritless. *See Spencer v. United States*, 773 F.3d 1132, 1138 (11th Cir. 2014). Finally, leave to proceed on appeal IFP is GRANTED because Fast has a non-frivolous issue on appeal. *See Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (stating that an action is frivolous if it is without arguable merit either in law or fact).

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE

A-70(A)

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-11071-JJ

THOMAS L. FAST,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

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

ORDER:

Thomas L. Fast seeks appointment of counsel in his appeal of the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition. He has been granted a certificate of appealability on the issue of "[w]hether the district court erred in *sua sponte* dismissing Fast's § 2254 petition as untimely, solely relying on Fast's filings." Fast already has filed his initial brief, as well as a motion to amend that brief, and the state has already filed its response.

A defendant has no constitutional right to counsel when collaterally attacking his conviction. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). Rather, this Court may appoint counsel to a person seeking federal habeas relief if the person is financially eligible and this Court it determines that the interests of justice so require. *See* 18 U.S.C. § 3006A(a)(2); *see also Schultz*

v. Wainwright, 701 F.2d 900, 901 (11th Cir. 1983) ("Counsel must be appointed for an indigent federal habeas petitioner only when the interests of justice or due process so require.").

Generally, appointment of counsel in civil cases is "a privilege justified only by exceptional circumstances, such as the presence of facts and legal issues [which] are so novel or complex as to require the assistance of a trained practitioner." *Kilgo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993) (quotations omitted) (alteration in original). "The key is whether the *pro se* litigant needs help in presenting the essential merits of his . . . position to the court." *Id.* Where the facts and legal issues are simple, he usually will not need such help. *Id.*

Here, although Fast's initial brief is somewhat difficult to decipher, when liberally construed, it addresses the relevant issue in a way that is sufficient to permit review. Accordingly, he does not need assistance presenting the merits of his claims to this Court. *See Kilgo*, 983 F.2d at 193. Furthermore, given that the initial and response briefs already have been filed, and Fast did not seek appointment of counsel until after filing his initial brief, it is not in the interest of judicial efficiency to appoint counsel at this time. Thus, Fast's motion for appointment of counsel is DENIED.

UNITED STATES CIRCUIT JUDGE

MIME-Version:1.0
From:cmecf_flmd_notification@flmd.uscourts.gov
To:cmecf_flmd_notices@localhost.localdomain
Bcc:
--Case Participants:
--Non Case Participants:
--No Notice Sent:

Message-Id:<18426026@flmd.uscourts.gov>
Subject:Activity in Case 8:17-cv-02670-EAK-TBM Fast v. Secretary, Department of Corrections et al Order on motion to supplement
Content-Type: text/plain
This is an automatic e-mail message generated by the CM/ECF system.
Please DO NOT RESPOND to this e-mail because the mail box is unattended.
NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court
Middle District of Florida

Notice of Electronic Filing
The following transaction was entered on 5/21/2019 3:49 PM EDT and filed on 5/21/2019

Case Name: Fast v. Secretary, Department of Corrections et al
Case Number: 8:17-cv-02670-EAK-TBM
https://ecf.flmd.uscourts.gov/cgi-bin/DktRpt.pl?343303

Filer:

WARNING: CASE CLOSED on 11/29/2017

Document Number: 45

Copy the URL address from the line below into the location bar of your Web browser to view the document:
45(No document attached)

Docket Text:
ENDORSED ORDER granting [44] Fast's Motion to supplement record.. Signed by Judge Elizabeth A. Kovachevich on 5/21/2019. (SM)

8:17-cv-02670-EAK-TBM Notice has been electronically mailed to:

8:17-cv-02670-EAK-TBM Notice has been delivered by other means to:
Thomas L. Fast
#818015
Martin Correctional Instituion
1150 SW Allapattah Rd
Indiantown, FL 34956

DOCKET ENTRY NO. 45

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 18-11071

District Court Docket No.
8:17-cv-02670-EAK-TBM

THOMAS L. FAST,

Petitioner - Appellant,

versus

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

Respondents - Appellees.

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

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: September 02, 2020
For the Court: DAVID J. SMITH, Clerk of Court
By: Jeff R. Patch

ISSUED AS MANDATE 12/15/2020

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-11071
Non-Argument Calendar

D.C. Docket No. 8:17-cv-02670-EAK-TBM

THOMAS L. FAST,

Petitioner-Appellant,

versus

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

Respondents-Appellees.

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

(September 2, 2020)

Before ROSENBAUM, BLACK and MARCUS, Circuit Judges.

PER CURIAM:

Thomas L. Fast appeals the district court's *sua sponte* dismissal of his *pro se* 28 U.S.C. § 2254 petition as untimely. We granted Fast's motion for a certificate of appealability (COA) on one issue: whether the district court erred in *sua sponte* dismissing his § 2254 petition as untimely, solely relying on his filings. After review,[1] we affirm the district court's dismissal.

Pursuant to the Antiterrorism and Effective Death Penalty Act (AEDPA), a § 2254 petition is governed by a one-year statute of limitations that begins to run on the latest of four triggering events, including the date of final judgment. 28 U.S.C. § 2244(d)(1). Statutory tolling allows state prisoners to toll the limitations period while properly filed state post-conviction actions are pending. *Id.* § 2244(d)(2).

Fast's petition and its attachments plainly demonstrated the instant motion was statutorily time-barred. *See* Rules Governing § 2254 Cases, Rule 4 ("If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner."). First, Fast included a comprehensive history of his post-conviction filings, including dates and the types of motions filed. Second, Fast conceded that 151 untolled days accumulated between the time his direct

[1] We review *de novo* the district court's dismissal of a § 2254 petition as untimely. *Pugh v. Smith*, 465 F.3d 1295, 1298 (11th Cir. 2006).

appeal became final on August 25, 2011, and the filing of his Rule 3.850 motion on May 21, 2012. While Fast argued in his petition that certain filings tolled the limitations period until March 29 or July 5, 2017, those dates correspond with when he received responses to Freedom of Information Act (FOIA) requests. The FOIA requests were not post-conviction actions that tolled the limitations period, however. *See Hall v. Sec'y Dep't of Corr.*, 921 F.3d 983, 987 (11th Cir. 2019) (explaining this court recognizes the following Florida proceedings as applications for state post-conviction or other collateral review under § 2244(d)(2): (1) a motion for state post-conviction relief under Fla. R. 3.850; (2) a motion to correct an illegal sentence filed under Fla. R. 3.800(a); (3) a motion for rehearing on the denial of a motion to correct an illegal sentence; and (4) any appeals filed in state court from the denial of these motions). Looking to the other filings Fast listed, the most recent action that could have tolled the limitations period was Fast's appeal of a Rule 3.850 motion. *See* 28 U.S.C. § 2244(d)(2); *Hall*, 921 F.3d at 987. But if the motion and appeal were properly filed, the appeal would have only tolled the limitations period from July 24, 2014, to May 13, 2015. *See* 28 U.S.C. § 2244(d)(2). Thus, Fast's October 30, 2017, § 2254 petition was still filed more than two years after this latest state post-conviction action, and it is clear from Fast's application that it was untimely. *See* 28 U.S.C. § 2244(d)(1)-(2); Rules Governing § 2254 Cases, Rule 4. Additionally, while the district court noted Fast

had filed two prior § 2254 petitions that were dismissed without prejudice, the present petition does not relate back to those filings for purposes of determining timeliness. *See Nyland v. Moore*, 216 F.3d 1264, 1266 (11th Cir. 2000) (stating an untimely § 2254 petition cannot relate back to a previously filed petition that was dismissed without prejudice). Thus, because it plainly appeared from Fast's petition and its attachments the petition was untimely, Habeas Rule 4 permits the district court to dismiss the petition on that basis. Rules Governing § 2254 Cases, Rule 4.

Furthermore, the district court provided Fast with sufficient notice of its dismissal and an opportunity to respond. *See Paez v. Sec., Fla. Dep't of Corr.*, 947 F.3d 649, 653 (11th Cir. 2020) ("We hold that the District Court did not err by *sua sponte* dismissing Mr. Paez's § 2254 petition after giving him notice of its decision and an opportunity to be heard in opposition."). The district court dismissed Fast's petition but stated it would entertain a motion to reopen within 30 days. Fast timely filed the motion to reopen and presented arguments, but the district court denied the motion to reopen.

Finally, Fast has abandoned any claim his petition was timely based on equitable tolling or the exception for actual innocence by failing to raise them in his initial brief. *See Herring v. Sec'y, Dep't of Corr.*, 397 F.3d 1338, 1342 (11th Cir. 2005) (stating arguments raised for the first time in a reply brief are not

properly before this Court). Regardless, even construing Fast's arguments liberally, his unsupported, conclusory statements failed to present the type of rare and exceptional circumstances that warrant equitable tolling or to demonstrate actual innocence that would overcome the timeliness bar. *See McQuiggin v. Perkins*, 569 U.S. 383, 390 (2013) (stating to demonstrate actual innocence, a petitioner must show that, in light of new evidence, it is more likely than not that no reasonable juror would have voted to find him guilty beyond a reasonable doubt); *Cadet v. Fla. Dep't of Corr.*, 853 F.3d 1216, 1221 (11th Cir. 2017) (explaining the statute of limitations can be equitably tolled when a petitioner pursued his rights diligently, but some extraordinary circumstance stood in his way and prevented timely filing); *Dupree v. Warden*, 715 F.3d 1295, 1299 (11th Cir. 2013) (explaining habeas petitions filed by a *pro se* litigant are liberally construed).

Accordingly, we affirm the district court.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

December 15, 2020

Clerk - Middle District of Florida
U.S. District Court
801 N FLORIDA AVE
TAMPA, FL 33602-3849

Appeal Number: 18-11071-JJ
Case Style: Thomas Fast v. Secretary, Department of Corr., et al
District Court Docket No: 8:17-cv-02670-EAK-TBM

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and pro se parties on the date it was issued.

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Lois Tunstall
Phone #: (404) 335-6191

Enclosure(s)

MDT-1 Letter Issuing Mandate

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-11071-JJ

THOMAS L. FAST,

Petitioner - Appellant,

versus

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

Respondents - Appellees.

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

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before: ROSENBAUM, BLACK and MARCUS, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ORD-42

DECEMBER 7, 2020

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-11071-JJ

THOMAS L. FAST,

Petitioner-Appellant,

versus

SECRETARY, 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, BLACK, and MARCUS, Circuit Judges.

BY THE COURT:

Appellant's "Motion to Recall Mandate and Amend Judgment to Prevent Injustice" is DENIED.

A-82

DENIED 4/5/2021

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 4, 2021

Mr. Thomas L. Fast
Prisoner ID 818015
1150 SW Allapattah Road
Indiantown, FL 34956

Re: Thomas L. Fast
v. Mark S. Inch, Secretary, Florida Department of Corrections, et al.
No. 20-8025

Dear Mr. Fast:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

THOMAS L. FAST,

Petitioner,

v. Case No. 8:21-cv-252-WFJ-AEP

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent.
_____/

ORDER

Mr. Fast, a Florida prisoner, initiated this action by filing a petition for a writ of habeas corpus under 28 U.S.C. § 2254 (Doc. 1) in which he challenges convictions for first-degree murder and robbery entered in 2009 in Manatee County, Florida. Because the petition was filed after the enactment date of the Antiterrorism and Effective Death Penalty Act of 1996 (hereinafter "AEDPA"), it is governed by the provisions thereof. *See Wilcox v. Singletary*, 158 F.3d 1209, 1210 (11th Cir. 1998), *cert. denied*, 531 U.S. 840 (2000). The AEDPA contains several habeas corpus amendments, one of which established a "gatekeeping" mechanism for the consideration of "second or successive habeas corpus applications" in the federal courts, *see* 28 U.S.C. § 2244(b). *See also Stewart v. Martinez-Villareal*, 523 U.S. 637, 641-42 (1998). Section 2244(b) provides, in pertinent part, that before a second or successive application for habeas corpus relief is "filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A).

Mr. Fast previously sought federal habeas relief in this Court regarding the convictions he

challenges in this action. *See Fast v. Secretary, Department of Corrections*, Case No. 8:17-cv-2670-T-60AEP (M.D.Fla.) (petition denied as time-barred November 29, 2017). Therefore, the instant petition is a successive petition challenging the convictions. Consequently, prior to initiating this action in this Court, Mr. Fast was required to obtain authorization from the Eleventh Circuit Court of Appeals. *See Medina v. Singletary*, 960 F.Supp. 275, 277-78 (M.D. Fla. 1997) (and cases cited therein). He has not, however, alleged or shown that the court of appeals has authorized this Court to consider his petition. Accordingly, this Court is without jurisdiction to consider the petition,[1] and the case must be dismissed to allow Mr. Fast the opportunity to seek said authorization.

The petition (Doc. 1) is therefore **DISMISSED** without prejudice. Mr. Fast's Motion to proceed *in forma pauperis* (Doc. 2) and motion for appointment of counsel (Doc. 3) are **DENIED** as moot. The **Clerk of the Court** is directed to send Mr. Fast the Eleventh Circuit's application form for second or successive habeas corpus petitions under 28 U.S.C. § 2244(b) and close this case.

DONE and ORDERED in Tampa, Florida, on February 4, 2021.

WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

SA: sfc
Copy to: Thomas L. Fast, *pro se*

[2] *See Wells v. AG*, 2012 U.S. App. LEXIS 7542, at *4 (11th Cir. Apr. 16, 2012) (unpublished) (district court must dismiss second or successive § 2254 petition for lack of jurisdiction unless the prisoner has obtained an order from court of appeals authorizing the district court to consider it).

A-85

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 22-10362-G

IN RE: THOMAS FAST

Petitioner.

Application for Leave to File a Second or Successive
Habeas Corpus Petition, 28 U.S.C. § 2244(b)

Before: JORDAN, LUCK, and BRASHER, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. § 2244(b)(3)(A), Thomas Fast has filed an application seeking an order authorizing the district court to consider a second or successive petition for a writ of habeas corpus. Such authorization may be granted only if:

> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
>
> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2). "The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the

application satisfies the requirements of this subsection." *Id.* § 2244(b)(3)(C); *see also Jordan v. Sec'y, Dep't of Corrs.*, 485 F.3d 1351, 1357-58 (11th Cir. 2007) (explaining that our determination that an applicant has made a *prima facie* showing that the statutory criteria have been met is simply a threshold determination).

In 2017, Fast filed his original § 2254 petition,[1] in which he raised, in relevant part, an ineffective-assistance claim for failure to adequately argue that evidence was falsified, tampered, and planted, that the jury was tampered with, that there was prosecutorial misconduct, and that the trial court abused its discretion. The district court dismissed his petition with prejudice as time-barred.

In his instant application, Fast seeks to raise six claims in a successive § 2254 petition. First, Fast claims that the district court had exclusive original jurisdiction over the violation of his rights by "Soviet G.R.U, Peruvian Shining Path, and subversives" and that the state court's denials of his requests for the district court to exercise its jurisdiction violated his due process rights. Second, Fast claims that, under *Fast v. State*, 69 So. 3d 283 (Fla. Dist. Ct. App. 2011), he had qualified immunity as a federal officer of the National Security Agency. Third, Fast argues that his case should be subject to "absolute" removal to the district court to verify his qualified immunity. Fourth, Fast claims that he did not commit the murder or robbery of the decedent and that evidence was planted and falsified. Fifth, Fast argues that his appellate counsel was ineffective for (1) failing to argue that there were *Miranda*[2] violations; (2) failing to argue that the

[1] Fast had filed previous § 2254 petitions that the district court dismissed without prejudice on procedural grounds.

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

evidence was falsified; (3) failing to remove the case to the district court to verify his qualified immunity; (4) failing to correct and supplement the trial transcript; (5) failing to argue prosecutorial misconduct; (6) failing to argue that the jury was tampered with; and (7) failing to argue that the trial court abused its discretion. Sixth, Fast claims that the trial court abused its discretion and violated his due process rights because it was biased. Fast indicates that each of his claims relies on a new rule of constitutional law, namely the state court opinion in *Fast* and several federal statutes. Fast also indicates that each of his claims relies on newly discovered evidence, namely his recent complaints to federal investigators related to "international terrorists prosecutorials [sic] criminal activities" as well as Exec. Order No. 12,333, 46 Fed. Reg. 59,941 (Dec. 14, 1981), and Exec. Order No. 13,526, 75 Fed. Reg. 707 (Dec. 29, 2009), as amended.

Fast attached to his application the following: (1) an affidavit of indigency and prison funds statements; (2) a § 2254 petition raising the same claims in his successive application; (3) several state court and federal court dockets; (4) several state court trial and post-conviction motions and related state court orders; (5) several state court document and information requests and related responses; (6) state and federal public document requests and related responses; (7) an excerpt from a state court probable cause affidavit; (8) an excerpt from a state court order about a newspaper's public records request of documents related to Fast's case; (9) several state court affidavits and applications for a search warrant; (10) his state court judgment; (11) several excerpts from trial transcripts; (12) police forensic documents and investigation reports; (13) several inmate grievance forms; (14) several letters addressed to Fast from a reporter; (15) a letter to the state public defender's office about his § 2254 petition; (16) purported letters from Fast addressed to the Federal Bureau of Investigation; and (17) a denial of rehearing by this Court.

We must dismiss a claim presented in an application to file a second or successive § 2254 petition that was presented in an original § 2254 petition. *See* 28 U.S.C. § 2244(b)(1); *In re Everett*, 797 F.3d 1282, 1288 (11th Cir. 2015) (stating that a prisoner's original § 2254 petition is a "prior application" for purposes of § 2244(b)(1)). An applicant cannot create a new claim by producing new supporting evidence and new legal arguments in support of a prior claim. *In re Everett*, 797 F.3d at 1288. The claim will remain the same when the "thrust or gravamen" of the petitioner's "legal argument is the same." *Id.* (quotation marks omitted). We have clarified that this bar is jurisdictional. *In re Bradford*, 830 F.3d 1273, 1277–78 (11th Cir. 2016) (interpreting § 2244(b)(1) in the context of a § 2255 motion).

We dismiss in part Fast's application as to his fifth claim because he seeks to raise, in part, the same claim that he raised in his original § 2254 petition. 28 U.S.C. § 2244(b)(1); *In re Everett*, 797 F.3d at 1288. Fast previously raised an ineffective-assistance claim for his counsel's failure to adequately argue that evidence was falsified, tampered, and planted, that the jury was tampered with, that there was prosecutorial misconduct, and that the trial court abused its discretion, which the district court denied. Accordingly, we lack jurisdiction to review the parts of Fast's fifth claim that he raised in his initial § 2254 petition and dismiss his application as to those parts of his claim. *In re Bradford*, 830 F.3d at 1277–78.

Next, we deny Fast's application as to his first, second, third, fourth, and sixth claims and the remainder of his fifth claim because he has not made a *prima facie* showing that his claim satisfies the statutory criteria. 28 U.S.C. § 2244(b)(2)(A), (B). While Fast asserts that each of these claims relies on a new rule of law, the Florida appellate court's opinion in *Fast* and the federal statutes to which he cites do not constitute a new rule of constitutional law set forth by the

Supreme Court. As to his assertions that each of these claims relies on newly discovered evidence, the two Executive Orders that he cites were issued before he filed his initial § 2254 petition. And his own complaints to federal investigators do not constitute new evidence. Finally, the hundreds of pages of attachments to his application include numerous requests for documents that he made over several years and various court records. Some of these documents were not previously unavailable because the dates from his requests reflect that he received them before he filed his initial § 2254 petition. If he received some of these documents after he filed his initial § 2254 petition, he does not explain why he was not able to discover these documents, or the facts contained within them, through a reasonable investigation before he filed his initial § 2254 petition or how they specifically support his claims. *In re Boshears*, 110 F.3d 1538, 1540–41 (11th Cir. 1997). Thus, Fast has not satisfied the statutory criteria as to these claims. 28 U.S.C. § 2244(b)(2)(A), (B).

Accordingly, Fast's application is hereby DISMISSED as to part of his fifth claim, because he seeks to raise claims that he previously raised in a § 2254 petition that the district court dismissed with prejudice, and DENIED as to the remainder of his fifth claim, as well as his first, second, third, fourth, and sixth claims, because he has not satisfied the statutory criteria.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

THOMAS L. FAST,

Petitioner,

Case No. 8:22-cv-1474-MSS-AAS

v.

SECRETARY, DEPARTMENT OF CORRECTIONS, *et al.*,

Respondents.
_____/

ORDER

Fast petitions for a writ of habeas corpus under 28 U.S.C. § 2254 and challenges his state court convictions in Manatee County, Florida for murder and robbery. (Doc. 1 at 1) Also, Fast moves for leave to proceed *in forma pauperis*. (Doc. 2) The Court preliminarily reviews the petition for sufficiency. Rule 4, Rules Governing Section 2254 Cases.

Judge Elizabeth Kovachevich dismissed as time barred Fast's earlier Section 2254 petition challenging the same state court judgment. Order, *Fast v. Sec'y, Fla. Dep't Corrs.*, No. 8:17-cv-2670-TPB-AEP (M.D. Fla.), ECF No. 20. The court of appeals affirmed. *Fast v. Sec'y, Dep't Corrs.*, 826 F. App'x 764 (11th Cir. 2020). Because Judge Kovachevich adjudicated the earlier petition on the merits, the Court lacks jurisdiction to consider the second or successive Section 2254 petition in this action until Fast obtains permission from the court of appeals. 28 U.S.C. § 2244(b)(3)(A). Rule 9, Rules Governing Section 2254 Cases. *Patterson v. Sec'y, Fla. Dep't Corrs.*, 849 F.3d 1321, 1325–26 (11th Cir. 2017).

In his petition, Fast contends that actual innocence excuses the bar on a second or successive petition. (Doc. 1 at 5–10) Fast must demonstrate to the court of appeals that: (1)

A-91 Exh. 88

"the factual predicate for the claim could not have been discovered previously through the exercise of due diligence," and (2) "the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." 28 U.S.C. § 2244(b)(2)(B). *In re Everett*, 797 F.3d 1282, 1290 (11th Cir. 2015) ("Under the plain language of the statute, § 2244(b)(2)(B)(ii) requires both clear and convincing evidence of actual innocence *and a constitutional violation*, which we have referred to as the 'actual innocence plus' standard.") (italics in original).[1]

Accordingly, the Court **DISMISSES** Fast's second or successive Section 2254 petition (Doc. 1) for lack of jurisdiction. Because the Court lacks jurisdiction to consider the petition, the Court cannot issue a certificate of appealability. *Williams v. Chatman*, 510 F.3d 1290, 1295 (11th Cir. 2007). Fast's motion for leave to proceed *in forma pauperis* (Doc. 2) is **DENIED** as moot. The Clerk is **DIRECTED** to **CLOSE** this case.

DONE AND ORDERED in Tampa, Florida on July 11, 2022.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

[1] The court of appeals denied Fast's application for leave to file a second or successive petition. Order, *In re Fast*, No. 22-10362-G (11th Cir. Feb. 15, 2022).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

THOMAS L. FAST,

Petitioner,

Case No. 8:22-cv-1474-MSS-AAS

v.

SECRETARY, DEPARTMENT OF CORRECTIONS, *et al.*,

Respondents.
_____/

ORDER

An earlier order dismissed Fast's petition for a writ of habeas corpus under 28 U.S.C. § 2254 as an unauthorized second or successive petition. (Doc. 3) Fast moves for an extension of time to file a "petition for rehearing" (Doc. 4) and moves for "reconsideration" of the order dismissing his case. (Doc. 6)

Motion for Extension of Time to File a "Petition for Rehearing"

The Court construes the *pro se* motion for extension of time to file a "petition for rehearing" as a motion for extension of time to file a motion to alter or amend the judgment under Rule 59(e), Federal Rules of Civil Procedure. A party must file a Rule 59(e) motion no later than twenty-eight days after entry of the judgment. Fed. R. Civ. P. 59(e). The Court cannot extend the time to file a Rule 59(e) motion. Fed. R. Civ. P. 6(b)(2).

The order dismissing Fast's petition entered on July 11, 2022. (Doc. 3) Fast placed in the hands of prison officials for mailing a *pro se* motion for "reconsideration" on August 2, 2022, within twenty-eight days after entry of the final order. (Doc. 6) Even though Fast cites Rule 60(b) in his motion, he asks the Court to construe his motion as a Rule 59(e) motion and

A-93
Exhibit

asserts that the order of dismissal contains errors of law and fact. (Doc. 6 at 1–5) Therefore, the Court construes the *pro se* motion as a Rule 59(e) motion. *United States v. Jordan*, 915 F.2d 622, 624–25 (11th Cir. 1990). Because Fast timely filed the construed Rule 59(e) motion, the Court **DENIES** his motion for extension of time (Doc. 4) as moot.

Motion to Alter or Amend the Judgment

"'The only grounds for granting [a Rule 59] motion are newly-discovered evidence or manifest errors of law or fact.'" *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (quoting *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999)). "'[A] Rule 59(e) motion [cannot be used] to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.'" *Arthur*, 500 F.3d at 1343 (quoting *Michael Linet, Inc. v. Village of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005)).

In his motion, Fast asserts that the order of dismissal erroneously determined that Judge Elizabeth Kovachevich adjudicated his earlier Section 2254 petition on the merits. (Doc. 6 at 1–2) He contends that the Judge Kovachevich did not reach the merits of the petition and instead dismissed the petition as untimely. (Doc. 6 at 2) However, the order of dismissal (Doc. 3 at 1) cites *Patterson v. Sec'y, Fla. Dep't Corrs.*, 849 F.3d 1321, 1325–26 (11th Cir. 2017), which confirms that an order dismissing a Section 2254 petition as untimely bars a second or successive petition:

> When his first federal petition was dismissed as untimely, Patterson lost his one chance to obtain federal habeas review of his 1998 judgment. *See Jordan v. Sec'y, Dep't of Corr.*, 485 F.3d 1351, 1353 (11th Cir. 2007). Because Patterson's 2011 petition challenges the 1998 judgment a second time, the district court correctly dismissed it as second or successive.

Next, Fast asserts that the order of dismissal erroneously determined that the Court lacks jurisdiction over the second or successive petition. (Doc. 6 at 2) He contends that the

A-94

EXH. 122

Court has jurisdiction over the action because his petition raises a federal question. (Doc. 6 at 2–3) However, before this Court may consider his second or successive Section 2254 petition, Fast must apply to the court of appeals for an order authorizing this Court to consider the second or successive petition. 28 U.S.C. § 2244(b)(3)(A). Without that authorization, this Court lacks jurisdiction to consider the second or successive petition. *Osbourne v. Sec'y, Fla. Dep't Corrs.*, 968 F.3d 1261, 1264 (11th Cir. 2020) ("Absent authorization from [the court of appeals], the district court lacks jurisdiction to consider a second or successive habeas petition.").

Lastly, Fast contends that newly discovered evidence demonstrating his actual innocence permits the Court to review the second or successive petition. (Doc. 6 at 3–4) However, as the order of dismissal explained (Doc. 3 at 1–2), if Fast contends that newly discovered evidence demonstrates his actual innocence, he must present that new evidence to the court of appeals and show that: (1) "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence," and (2) "the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [Fast] guilty of the underlying offense." 28 U.S.C. § 2244(b)(2)(B). *In re Everett*, 797 F.3d 1282, 1290 (11th Cir. 2015).

Because Fast fails to demonstrate that the order of dismissal contains "manifest errors of law or fact," the Court **DENIES** his construed Rule 59(e) motion. (Doc. 6) Because the Court lacks jurisdiction to consider the second or successive petition, the Court cannot issue a certificate of appealability. *Williams v. Chatman*, 510 F.3d 1290, 1295 (11th Cir. 2007).

DONE AND ORDERED in Tampa, Florida on August 26, 2022.

A-95
~~Exh. 123~~

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

APPENDIX 2

FLA. R. CRIM. P. 3.800(a) COURT ORDERS

PAGES

a) MANATEE COUNTY, FLORIDA CIRCUIT 12 COURT

ORDER, 6 PAGES ..... A-96 TO A-103

b) NOTICE TO SUMMARY APPEAL, CASE NO. 2022-

3622 IN THE SECOND DISTRICT COURT OF APPEAL, 1 PAGE... A-103

c) PER CURIAM AFFIRMANCE, CASE NO. 2022-3622

RECIEVED MARCH 17, 2023 ..... A-103A

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 L. FAST,
Defendant.
_____/

ORDER DENYING DEFENDANT'S *PRO SE* "MOTION TO CORRECT ILLEGAL CONVICTION AND, [SIC] THE SENTENCING SCORESHEET"

THIS MATTER is before the Court on the Defendant's *pro se* "Motion to Correct Illegal Conviction and, [sic] the Sentencing Scoresheet," filed July 18, 2022, pursuant to Fla. R. Crim. P. 3.800(a). The Court has considered the motion, the court file, and applicable law, and is otherwise duly advised of the premises.

On August 21, 2007, the State charged the Defendant via indictment with Murder in the First Degree, §§782.04 and 775.087, Fla. Stat. (Count 1), and Robbery, §§812.13(1) and (2)(c), Fla. Stat. (Count 2) (see Attachment 1). Following a jury trial, the Defendant was convicted as charged, and sentenced to life in prison on Count 1, with a concurrent 15-year Department of Corrections (DOC) sentence on Count 2, with credit for all time served (see Attachment 2). The Defendant's judgment and sentence were affirmed by Mandate issued September 28, 2011 (see Attachment 3; see also Fast v State, 69 So. 3d 283 (Fla. 2d DCA 2011 (Table)).

Relief pursuant to Fla. R. Crim. P. 3.800(a) is limited: "A court may at any time correct an illegal sentence imposed by it, or an incorrect calculation made by it in a sentencing scoresheet, or a sentence that does not grant proper credit for time served when it is affirmatively alleged that the court records demonstrate on their face an entitlement to that relief." An "illegal sentence" for purposes of rule 3.800(a) is one which imposes a "kind of punishment that no judge under the

entire body of sentencing statutes could possibly inflict under any set of factual circumstances." Carter v. State, 786 So. 2d 1173, 1181 (Fla. 2001) (quoting Blakley v. State, 746 So. 2d 1182, 1187 (Fla. 4th DCA 1999). With this legal framework in mind, the Court has considered Defendant's claims, and finds that his present motion is without merit.

In the present motion, the Defendant makes numerous allegations regarding the purported illegality of his sentence. Several of the Defendant's arguments allege errors in his Criminal Punishment Code Scoresheet (CPCS) (see Attachment 4). First, the Defendant alleges that it was error to list Robbery as the primary offense, instead of Murder in the First Degree. However, the Florida Criminal Punishment Code (CPC) does not apply to capital felonies such as Murder in the First Degree, which means that only the Defendant's conviction for Robbery is properly included in the CPCS. See §921.0027, Fla. Stat. The Defendant also argues that there is a discrepancy between the CPCS and the judgment and sentence because the former lists Robbery as the primary offense and the latter lists Murder in the First Degree as Count 1 (see Attachments 2 and 4). However, the Court finds both documents are correctly prepared and accurately record the Defendant's conviction and sentence.

Next, the Defendant alleges a calculation error in the CPCS, claiming that the State neglected to subtract 28 points from his total sentence points of 37.8. However, it is only "[w]hen the total sentence points exceed 44 points, the lowest permissible sentence in prison months shall be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent." §921.0024(2), Fla. Stat. Because the Defendant's total sentence points for Count 2 did not exceed 44 points, subtraction of 28 points is not required.

The Defendant also alleges that he received an upward departure sentence. The Defendant is incorrect. Since October 1, 1998, Florida's CPCS require the calculation of a lowest permissible sentence, which in the Defendant's case was any non-state prison sanction for Count 2 (see Attachment 4). However, this is a floor, not a ceiling, for sentencing. Between June 1, 1994, and October 1, 1998, CPCS's did have a calculated "ceiling," requiring the State to prove grounds for an upward departure to exceed it, but this sentencing procedure was not in place at the time of the Defendant's crime and sentencing. See, e.g., Hall v. State, 773 So. 2d 99, 100-01 (Fla. 1st DCA 2000) (observing "the CPC provides for the establishment of the lowest permissible sentence and permits the judge to sentence within its discretion from the lowest permissible sentence up to the statutory maximum without written explanation. The lowest permissible sentence is not a presumptive sentence"). Therefore, the Defendant's sentence of 15 years DOC for Count 2 is a legal sentence.

The last allegation regarding scoresheet errors relates to the Defendant' life sentence. The Defendant argues that unless the total sentence points exceed 363, a life sentence cannot be imposed. However, the life sentence applies only to Count 1, which is not listed on the CPCS because as previously noted, Murder in the First Degree is a capital felony and falls outside of the CPC. The Defendant's 15-year DOC sentence on Count 2 is authorized both by statute and his specific CPCS.

The Defendant also alleges several errors in his judgment and sentence documents. The Defendant claims that the judgment states that he entered a plea of guilty to both counts. However, first page of the judgment plainly states that the Defendant was tried and found guilty by a jury on both counts. Next, the Defendant states that his sentence "exceeds the Statutory maximum for First-degree charged offense" (see page 4 of the Defendant's motion). However, Murder in the

First Degree is a capital felony, which is punishable by either the death penalty or life in prison without the possibility of parole. See §§775.082(1) and 782.04(1)(a), Fla. Stat. The Defendant also alleges that the sentence is vindictive, but the Court notes that either life in prison or the death penalty are the only two possible legal sentences for Count 1. See id. As to Count 2, Robbery is a second-degree felony punishable by up to 15 years DOC, which is the sentence the Court imposed. See §775.082(3)(d) and 812.13(2)(c), Fla. Stat. In any event, vindictive sentencing claims are not cognizable in a motion to correct illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). See, e.g., Boyd v. State, 880 So. 2d 726, 727 (Fla. 2d DCA 2004); see also Johnson v. State, 948 So. 2d 896, 897 (Fla. 5th DCA 2007) ("What Johnson fails to recognize is that no vindictive sentencing claim is cognizable in a rule 3.800(a) proceeding.").

Next, the Defendant alleges that the Court failed to pronounce his sentences. However, following the jury's verdict, the Court orally pronounced the Defendant's sentence in open court (see Attachment 5). In contrast to the last allegation, the Defendant also argues that the Court's oral pronouncement of sentence and the sentencing documents do not conform. Having reviewed the Court's oral pronouncement and the sentencing documents, the Court finds that they are in conformity (see Attachments 2 and 5).

Finally, the Defendant alleges that his sentence was improperly reclassified and enhanced based on his use of a weapon to commit Murder in the First Degree. The Defendant is incorrect. Offenses cannot be enhanced pursuant to §775.087, Fla. Stat., if the use of a weapon is an essential element of the offense. For example, aggravated assault with a firearm does not qualify for enhancement because the possession of the firearm is the defining fact in enhancing the offense from a misdemeanor to a felony in the first place. However, as stated by State v. Tinsley, 683 So. 2d 1089 (Fla. 5th DCA 1996):

> Whether the attempted second-degree murder charge should have been reclassified pursuant to section 775.087(1) depends on whether section 775.087(1) refers to an "essential element" set forth in an *information,* or whether it refers to a required and necessary element of the crime as set forth by the *particular substantive criminal statute.* In this case, the element of use of the knife appears solely in the information. Second degree murder can be attempted in a variety of ways other than by use of a knife or weapon. That statute does not require as an essential element that a knife or any other weapon be used.
>
> The proper reference in section 775.087(1) is to the substantive criminal law which defines the crime in question. In an analogous case, Strickland v. State, 437 So.2d 150 (Fla.1983), the Florida Supreme Court held that a first-degree attempted murder charge was properly enhanced by section 775.087(1) to a life felony. The defendant had been charged by information with attempting to murder a victim with a shotgun. In affirming the enhancement, the court said: "We find the use of a firearm not to be an essential element of the crime of attempted first degree murder." 437 So. 2d at 152.

Id. at 1090. As in Tinsley and Strickland, the Defendant could have committed Murder in the First Degree in any number of ways, and not necessarily using a weapon at all. Therefore, his crimes were not improperly reclassified and his sentences were not improperly enhanced.

It is, therefore, **ORDERED** that the Defendant's *pro se* "Motion to Correct Illegal Conviction and, [sic] the Sentencing Scoresheet," filed July 18, 2022, is **DENIED**. The Defendant has thirty (30) days from rendition of this order to file an appeal.

DONE in Chambers in Bradenton, Manatee County, Florida, this _____ day of October, 2022, or as otherwise dated by electronic signature.

ORIGINAL SIGNED

OCT 04 2022

MATT WHYTE
CIRCUIT JUDGE

Stephen M. Whyte
Circuit Court Judge

Attachments to Order:

1. Indictment, filed August 21, 2007
2. Judgment and sentence, filed July 13, 2009
3. Mandate, issued September 30, 2011
4. Criminal Punishment Code Scoresheet, filed July 15, 2009
5. Trial transcript, pages 1326-1330

CERTIFICATE OF SERVICE

I hereby certify that on this 4 day of October, 2022, or as otherwise dated by electronic signature, copies of the foregoing Order were furnished by U.S. Mail/hand delivery and/or electronic mail to: **Thomas L. Fast**, DC #818015, Tomoka Correctional Institution, 3950 Tiger Bay Road, Daytona Beach, Florida 32124-1098, and the **Office of the State Attorney**, saorounds@sao12.org, 1112 Manatee Avenue West, Bradenton, Florida 34206.

By: _____
Judicial Assistant

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

November 08, 2022

CASE NO.: 2D22-3622
L.T. No.: 2007-CF-2989AX

THOMAS L. FAST v. STATE OF FLORIDA

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

This will proceed as a summary appeal pursuant to Florida Rule of Appellate Procedure 9.141(b)(2). Appellant is not obligated to submit a brief. An optional brief, should appellant choose to file one, must be served within thirty days.

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

Served:

ATTORNEY GENERAL, TAMPA
ANGELINA M. COLONNESO, CLERK

THOMAS L. FAST

ls

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

THOMAS L. FAST

v.

STATE OF FLORIDA,

Appellee.

No. 2D22-3622

March 17, 2023

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

PER CURIAM.

Affirmed.

NORTHCUTT, KHOUZAM, and ROTHSTEIN-YOUAKIM, JJ., Concur.

Opinion subject to revision prior to official publication.

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