

APPENDIX

A

Supreme Court of Florida

WEDNESDAY, MAY 24, 2023

Edward R. Brown,
Petitioner(s)

v.

Ricky D. Dixon, etc.,
Respondent(s)

SC2023-0198

Lower Tribunal No(s):

3D22-367;

132014CF0007000001XX

To the extent Petitioner challenges the circuit court's denial of his motion filed under Florida Rule of Criminal Procedure 3.850, the petition is denied as procedurally barred. A petition for extraordinary relief is not a second appeal and cannot be used to litigate or relitigate issues that were or could have been raised on direct appeal or in prior postconviction proceedings. *See Denson v. State*, 775 So. 2d 288, 290 (Fla. 2000); *Breedlove v. Singletary*, 595 So. 2d 8, 10 (Fla. 1992). To the extent Petitioner challenges the Third District Court of Appeal's decision in case number 3D22-367, the petition is denied. No rehearing will be entertained by this Court.

CANADY, LABARGA, COURIEL, GROSSHANS, and FRANCIS, JJ.,
concur.

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SC2023-0198 5/24/2023

John A. Tomasino

Clerk, Supreme Court

SC2023-0198 5/24/2023



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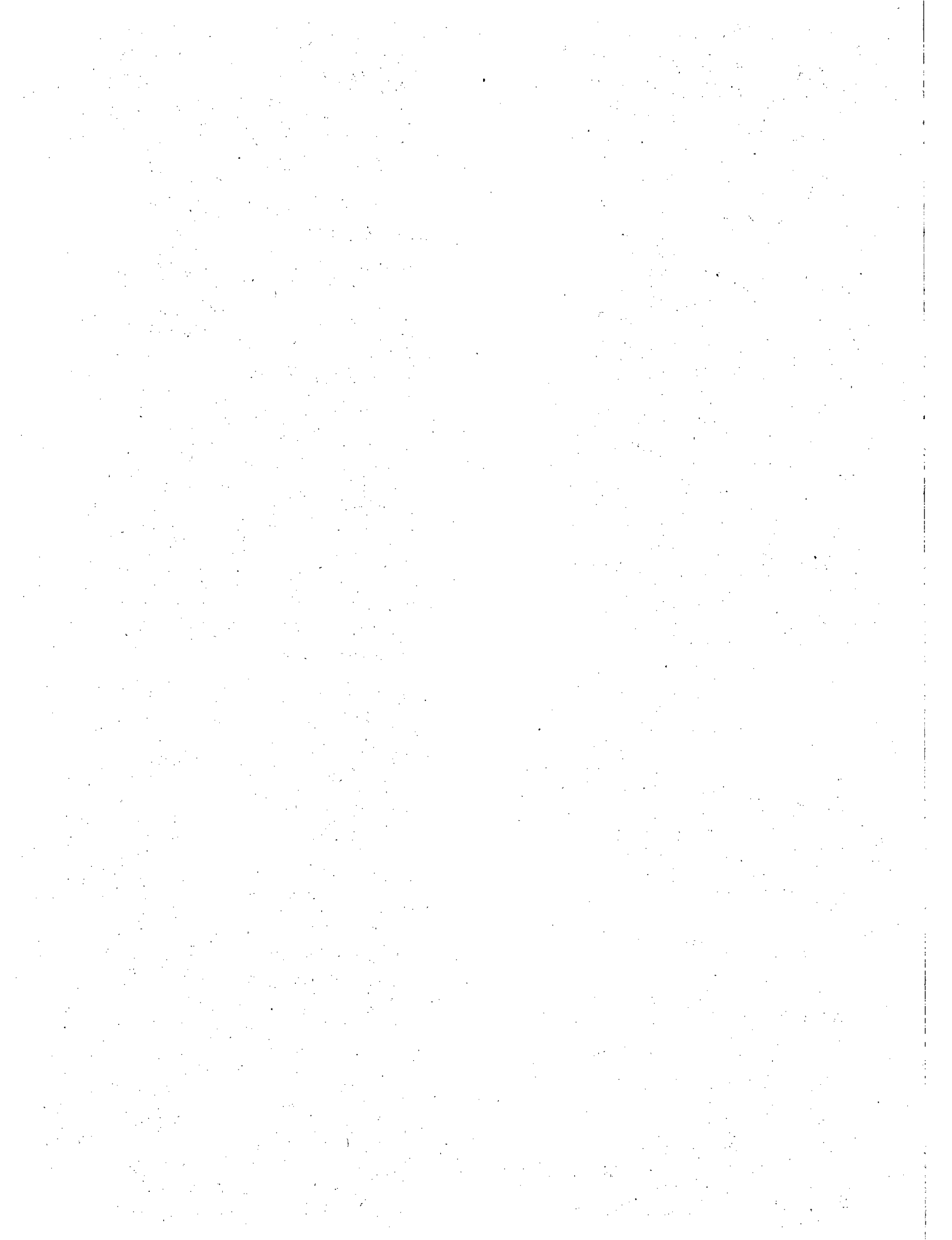
EDWARD R. BROWN

HON. LUIS GONZALO MONTALDO

LANCE ERIC NEFF

RICHARD L. POLIN

HON. MERCEDES M. PRIETO



APPENDIX

B

Third District Court of Appeal

State of Florida

Opinion filed July 27, 2022.
Not final until disposition of timely filed motion for rehearing.

No. 3D22-367
Lower Tribunal No. F14-700

Edward R. Brown,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Miguel M. de la O, Judge.

Edward R. Brown, in proper person.

Ashley Moody, Attorney General, for appellee.

Before LOGUE, HENDON and GORDO, JJ.

GORDO, J.

Edward R. Brown appeals a trial court order denying his petition for writ of certiorari. In 2016, Brown was convicted of robbery with a firearm and two counts of attempted second degree murder with a firearm. He was sentenced to a mandatory life sentence on all counts, concurrently, with a ten-year minimum mandatory sentence on the firearm charges. This Court affirmed on direct appeal. See Brown v. State, 263 So. 3d 1121, 1121 (Fla. 3d DCA 2019). In January 2021, Brown filed a petition for certiorari arguing his sentence was illegal because his arrest warrant was not stamped with a court seal for certification. This Court treated the petition as an appeal from the denial of a postconviction motion and affirmed, finding the record conclusively refuted Brown's claim. See Brown v. State, 317 So. 3d 165, 166–67 (Fla. 3d DCA 2021). In May 2021, Brown filed a 3.850 motion alleging newly discovered evidence claiming the State failed to turn over his three arrest warrants. The trial court denied the motion, and this Court affirmed. See Brown v. State, 327 So. 3d 281, 281 (Fla. 3d DCA 2021). Brown subsequently filed a petition for certiorari asking the trial court to reconsider its previous denial of his 3.850 motion, which this Court had affirmed. Id. The trial court denied the petition, and this appeal followed.

This Court has already considered and affirmed the trial court's denial of the issues raised by Brown. "[T]o the extent that the grounds raised in the

instant petition have been previously considered and rejected by this court, the instant petition was a successive petition for the same relief, which could not properly be entertained by the trial court and was subject to summary denial.” State v. Dearing, 513 So. 2d 232, 233 (Fla. 3d DCA 1987) (internal citations omitted); see also State ex rel. Miller v. Kelly, 88 So. 2d 118, 119 (Fla. 1956). Further, “successive filings of petitions for habeas corpus or writs of certiorari that are, in effect, motions for post-conviction relief,” are procedurally barred. Ali v. State, 729 So. 2d 963, 963 (Fla. 3d DCA 1999); see also Duncan v. State, 728 So. 2d 1237, 1237 (Fla. 3d DCA 1999) (finding a post-conviction motion was successive because it attempted “to litigate issues that were, could, or should have been raised either on direct appeal or in his previous motions.”). Additionally, as this Court previously noted, “the law is clear that even if Brown’s arrest was illegal, this does not void his convictions or sentence.” Brown, 317 So. 3d at 166 (citing State v. Perkins, 760 So. 2d 85, 87 (Fla. 2000)); see also State v. Tillman, 402 So. 2d 19, 20 (Fla. 3d DCA 1981) (“An illegal arrest, without more, has never been viewed as a bar to subsequent prosecution nor as a defense to a valid charge.”).

Affirmed.

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA THIRD DISTRICT

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable Ivan F. Fernandez, Chief Judge of the District Court of Appeal of the State of Florida, Third District, and seal of the said Court at Miami, Florida on this day.

DATE: August 29, 2022

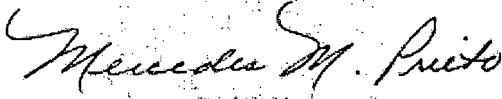
CASE NO.: 22-0367

COUNTY OF ORIGIN: Dade

T.C. CASE NO.: F14-700

STYLE: EDWARD R. BROWN, v. THE STATE OF FLORIDA,

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CLERK
DISTRICT COURT OF APPEAL
THIRD DISTRICT

ORIGINAL TO: Miami-Dade Clerk

cc: Office of Attorney General Edward R. Brown

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APPENDIX

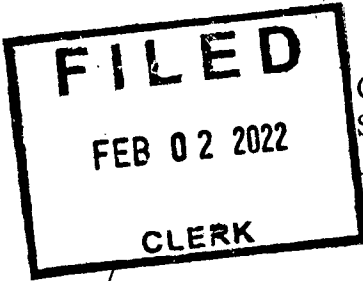
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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

THE STATE OF FLORIDA,
Plaintiff,

v.

EDWARD BROWN,
Defendant,



CASE NO: F14-700
SECTION 60
JUDGE: MIGUEL M. DE LA O

**ORDER DENYING MOTION FOR POSTCONVICTION RELIEF BASED ON
NEWLY DISCOVERED EVIDENCE**

THIS CAUSE came before the Court on Defendant, Edward Brown's ("Brown"), Motion for Postconviction Relief Based On Newly Discovered Evidence (dated January 20, 2022). The Court has reviewed the Motion, the court file, and is otherwise fully advised in the premises. The Motion is **DENIED.**

Pursuant to Florida Rule of Criminal Procedure 3.850(b)(1), Brown must establish that (1) he filed the Motion within two years of the time the new facts were or could have been discovered by the exercise of due diligence; and (2) "the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial." *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991). Here, although the Motion purports via its title to be grounded upon newly discovered evidence, the Motion identifies no such evidence. Rather, the Motion argues that the Court should have excluded testimony regarding DNA because such testimony was false and misleading. This is a claim that should have been raised on direct appeal. "[M]otions for post-conviction relief are not

substitutes for direct appeal[.] [I]ssues that should have been raised on direct appeal, or were raised on direct appeal are procedurally barred for relief under Florida Rule of Criminal Procedure 3.850.” *Johnson v. State*, 280 So. 3d 535 (Fla. 3d DCA 2019). *See Muhammad v. State*, 603 So. 2d 488, 489 (Fla. 1992) (“Issues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack.”); *Torres-Arboleda v. Dugger*, 636 So. 2d 1321, 1323 (Fla. 1994) (“Proceedings under rule 3.850 are not to be used as a second appeal; nor is it appropriate to use a different argument to relitigate the same issue.”).

Moreover, the DNA report was known at trial. Indeed, there were *numerous* references by trial counsel, the prosecutors, and the witnesses, to the fact that the DNA found on a skull cap at the scene did not include or exclude Brown. *See* Trial Transcript at 348, 350, 724, 755, 757, 758, 983, 1036, and 1049. Despite this, the jury convicted Brown on the basis of the strong eyewitness testimony by three people, the cellphone location evidence, and the fact that Brown posited a false alibi based on forged bus ticket.

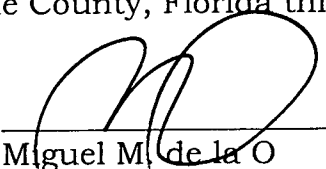
The Clerk of Court is directed to forward a copy of this order to Edward Brown (#M57932), Blackwater River Correctional Facility, 5914 Jeff Ates Road, Milton, Florida 32583.

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

In the event the Defendant takes an appeal of this order, the Clerk of this Court is hereby ordered to transport, as part of this Order, to the appellate court the following documents with all of their attachments:

1. Defendant's Motion; and
2. This Order.

DONE and ORDERED in Miami-Dade County, Florida this 2nd day of February 2022.



Miguel M. de la O
Circuit Judge

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