

# Supreme Court of Florida

TUESDAY, JUNE 20, 2023

Elbert Johnson,  
Petitioner(s)  
v.

**SC2023-0482**  
Lower Tribunal No(s).:  
321979CF000636CFAXMX

State of Florida,  
Respondent(s)

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The Court having retained jurisdiction to pursue possible sanctions and having directed the petitioner to show cause why the petition for writ of habeas corpus filed in this case should not be found frivolous pursuant to section 944.279, Florida Statutes, and Petitioner having failed to file a response pursuant to this Court's order dated May 11, 2023, which denied said case, we find that the petition is a frivolous proceeding brought before this Court by a state prisoner.

IT IS FURTHER ORDERED AND ADJUDGED that, pursuant to section 944.279, Florida Statutes, the clerk of court is hereby directed to forward a certified copy of this order; the Court's May 11, 2023, order denying the petition; and the petition to the Florida Department of Corrections' institution or facility where the petitioner, Elbert Johnson, is incarcerated for the initiation of disciplinary proceedings in accordance with the department's rules for filing a frivolous pleading in this Court.

No motion for rehearing or clarification will be entertained by the Court.

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

**CASE NO.: SC2023-0482**

Page Two

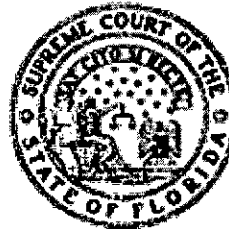
A True Copy

Test:

SC2023-0482 6/20/2023

John A. Tomasino

Clerk, Supreme Court  
SC2023-0482 6/20/2023



KS

Served:

Criminal Appeals Attorney General TLH  
Elbert Johnson  
Hon. Clayton O. Rooks, III

# Supreme Court of Florida

THURSDAY, MAY 11, 2023

Elbert Johnson,  
Petitioner(s)

v.

State of Florida,  
Respondent(s)

**SC2023-0482**

Lower Tribunal No(s).:  
321979CF000636CFAXMX

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To the extent Petitioner seeks a petition for writ of prohibition, the petition is hereby denied because petitioner has failed to demonstrate that a lower court is attempting to act in excess of its jurisdiction. *See Mandico v. Taos Constr., Inc.*, 605 So. 2d 850 (Fla. 1992); *English v. McCrary*, 348 So. 2d 293 (Fla. 1977). To the extent Petitioner seeks a petition for writ of habeas corpus, the petition is denied as procedurally barred, as 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). No motion for rehearing will be entertained.

The Court hereby retains jurisdiction to pursue any possible sanctions. *See Fla. R. App. P. 9.410(a)* (Sanctions; Court's Motion). Petitioner is hereby directed to show cause on or before May 26, 2023, why, pursuant to section 944.279(1), Florida Statutes (2022), a certified copy of the Court's findings should not be forwarded to the appropriate institution for disciplinary procedures pursuant to the rules of the Florida Department of Corrections as provided in section 944.09, Florida Statutes (2022).

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

IN THE CIRCUIT COURT  
OF THE FOURTEENTH JUDICIAL CIRCUIT  
IN AND FOR JACKSON COUNTY, FLORIDA  
CRIMINAL DIVISION

CASE NO.: 79-636 CF, 80-356 CF,  
80-366 CF, 80-365 CF

STATE OF FLORIDA,  
Plaintiff,

v.

ELBERT JOHNSON,  
Defendant.

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ORDER DISMISSING MOTION TO CORRECT ILLEGAL SENTENCE AS  
UNAUTHORIZED  
AND ORDER DIRECTING DEFENDANT TO SHOW CAUSE  
WHY SANCTIONS SHALL NOT BE IMPOSED

THIS MATTER is before the Court on the Defendant's Motion to Correct Illegal Sentence pursuant to Fla. R. Crim. P. 3.800(a) filed April 22, 2022. Having considered said Motion, court files and records, and being otherwise fully advised, this Court finds as follows:

On February 28, 1997, this Court entered an Order in Jackson Co Case No. 79-636 CF barring the Defendant from filing any further pro se challenges to his conviction in this Court due to multiple successive post conviction motions filed in the past. Pursuant to an opinion issued on October 10, 1997, the First DCA in case no. 97-1126 per curiam affirmed the trial court's ruling. *See Johnson v. State*, 700 So. 2d 690 (Fla. 1<sup>st</sup> DCA 1997).

Defendant has filed numerous post conviction motions without success. Further, Defendant continues to attack his convictions and sentences despite the Court's pro se bar in Case No. 79-636 CF by including other Jackson County case numbers. In fact, the First DCA pro se barred the Defendant in all of his Jackson County Case Numbers pursuant to an Order issued on July 30, 2021 in Case 1D20-1440.

Defendant now files the instant Motion essentially alleging that he is serving an illegal sentence. Specifically, Defendant is attacking the imposition of his sentences by Judge McCrary in Case Number 79-636 CF (100 years DOC) and 80-356 CF (15 years DOC), which must be vacated as a matter of law because the defendant alleges that Judge McCrary recused himself from his cases. The Defendant fails to attach any document which supports this contention. However, Defendant's motion is facially insufficient to warrant relief. *See Baker v. State*, 714 So. 2d 1167 (Fla. 1<sup>st</sup> DCA 1998). Despite the foregoing, the Defendant's motion is without merit

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Order Dismissing Motion to Correct Illegal Sentence as Unauthorized and Order Directing D to Show Cause as to Why Sanctions Shall not be Imposed

State v. Elbert Johnson, DOC# 013118/ 79-636, 80-356, 80-366, 80-365 CF

and refuted by the attached record. A review of the transcripts from the sentencing hearing and the court record reflects no recusal entered by Judge McCrary.

This Court specifically finds that the instant motion is an abuse of judicial process. As previously stated, Defendant has been pro se barred by the Court in at least one case, 79-636 CF, and he continues to file frivolous motions by challenging his conviction and sentence via other Jackson County cases in the above styled case, 80-356 CF, 80-366 CF, 80-365 CF to circumvent the Court's pro se bar in Case No. 79-636 CF.

Florida courts "are authorized to sanction an abusive litigant, regardless of his prior judicial history," and the abusive litigant's claims need not be repetitive or an abuse of post-conviction process to warrant sanctions. See Hall v. State, 94 So. 3d 655, 656 (Fla. 1st DCA 2012) (citing Johnson v. State, 44 So. 3d 198, 200 (Fla. 4th DCA 2010)). Defendant has yet again filed another frivolous petition/motion challenging his judgment and sentence pursuant to Florida Rules of Criminal Procedure 3.800.

The Defendant's instant claims should have been raised on direct appeal or in prior post-conviction proceedings. "Habeas corpus is not a vehicle for obtaining additional appeals of issues which were raised or should have been raised on direct appeal, which were waived at trial, or which could have, should have, or have been raised in post-conviction proceedings." Breedlove v. Singletary, 595 So. 2d 8, 10 (Fla. 1992); see also Baker v. State, 878 So. 2d 1236, 1245 (Fla. 2004) (Petition for writ of habeas corpus is not permissible to test the legality of a prisoner's criminal judgment as a substitute for seeking relief through an appropriate post conviction motion). See also Zuluaga v. State, Fla. DOC, 32 So. 3d 674 (Fla. 1st DCA 2010); Johnson v. State, 44 So. 3d 198, 201 (Fla. 4th DCA 2010); Hughes v. State, 22 So. 3d 132 (Fla. 2nd DCA 2009).

Furthermore, Defendant's instant motion would be considered untimely and successive if considered as a motion for post conviction relief under rule 3.850. As such, his motion is due to be dismissed. See Baker, 878 So. 2d at 1246. See also Gust v. State, 535 So. 2d 642 (Fla. 1st DCA 1988). Thus, the Defendant's grounds would be time barred. See Gust v. State, 535 So. 2d 642 (Fla. 1st DCA 1988); See also Fla. R. Crim. P. 3.850(b); Earls v. State, 958 So. 2d 1153 (Fla. 1st DCA 2007); Cabrera v. State, 721 So. 2d 1190 (Fla. 2d DCA 1998). See Hughes v. State, 22 So. 3d 132 (Fla. 4th DCA 2009) (holding that allegation of "fundamental error" could not be used as mechanism for seeking review of untimely motion for postconviction relief.).

Moreover, issues of prosecutorial misconduct, insufficiency of the evidence, and trial court error are not cognizable under Rule 3.850. See Johnson v. State, 985 So. 2d 1215 (Fla. 1st DCA 2008); see also Swanson v. State, 984 So. 2d 629 (Fla. 1st DCA 2008) citing Hodges v. State, 885 So. 2d 338, 366 (Fla. 2004) (holding that claims of trial court error should be raised on direct appeal, not in a rule 3.850 motion); McCray v. State, 933 So. 2d 1226 (Fla. 1st DCA 2006). Moreover, challenges to the sufficiency of the evidence was an issue for direct appeal, and therefore not cognizable under Rule 3.850. See Childers v. State, 782 So. 2d 946 (Fla. 4th

DCA 2001); *Betts v. State*, 792 So. 2d 589 (Fla. 1st DCA 2001); *Williams v. State*, 642 So. 2d 67 (Fla. 1st DCA 1994).

Therefore, Florida courts "are authorized to sanction an abusive litigant, regardless of his prior judicial history," and the abusive litigant's claims need not be repetitive or an abuse of post-conviction process to warrant sanctions. *See Hall v. State*, 94 So. 3d 655, 656 (Fla. 1st DCA 2012) (citing *Johnson v. State*, 44 So. 3d 198, 200 (Fla. 4th DCA 2010)). *See also* Section 944.279, Florida Statutes, *Walker v. Ellis*, 28 So.3d 91 (Fla. 1<sup>st</sup> DCA 2009) and *Sweitzer v. State*, 46 So.3d 1132 (Fla. 1<sup>st</sup> DCA 2010).

### **ORDER DIRECTING DEFENDANT TO SHOW CAUSE**

Further, sanctions are authorized when a Defendant's repetitious or frivolous pleadings require the use of limited judicial resources which are properly used for the consideration of legitimate claims filed by others. *See Sweitzer v. State*, 46 So.3d 1132 (Fla. 1st DCA 2010); *Schmidt v. State*, 41 So. 3d 427 (Fla. 1st DCA 2010); *Tate v. State*, 32 So.3d 657, 658 (Fla. 1<sup>st</sup> DCA 2010); *Pettway v. McNeil*, 987 So.2d 20 (Fla. 2008). **Any 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.** *See State v. Spencer*, 751 So.2d 47 (Fla. 1999).

However, The Court records reflect that Defendant has filed at least ten (10) prior appeals in the First DCA related to Jackson County case number 79-636 CF, 80-356 CF, 80-366 CF, and 80-365 CF:

1. First DCA Case No. 1D20-1440:<sup>1</sup>  
*Johnson v. State*, 322 So. 3d 625 (Fla. 1<sup>st</sup> DCA 2021);
2. First DCA Case No. 1D17-4226:  
*Johnson v. State*, 253 So. 3d 1068 (Fla. 1<sup>st</sup> DCA 2018);
3. First DCA Case No. 1D11-3574:  
*Johnson v. State*, 70 So. 3d 674 (Fla. 1<sup>st</sup> DCA 2011);
4. First DCA Case No. 1D10-1829:  
*Johnson v. State*, 41 So. 3d 895 (Fla. 1<sup>st</sup> DCA 2010);
5. First DCA Case No. 1D04-5461:  
*Johnson v. State*, 896 So. 2d 750 (Fla. 1<sup>st</sup> DCA 2005);
6. First DCA Case No. 1D04-351:  
*Johnson v. State*, 871 So. 2d 210 (Fla. 1<sup>st</sup> DCA 2004);
7. First DCA Case No. 1D99-2777:  
*Johnson v. State*, 743 So. 2d 512 (Fla. 1<sup>st</sup> DCA 1999);

<sup>1</sup> In DCA Case No. 1D20-1440, Defendant was pro se barred from future pro se filings concerning Jackson Co. Case No. 79-636, 80-356 CF, 80-366 CF, 80-365 CF, unless they are filed by a member in good standing of The Florida Bar. *See* Order issued July 30, 2021, Case No. 1D20-1440.

8. First DCA Case No. 1D97-1126:<sup>2</sup>  
*Johnson v. State*, 700 So. 2d 690 (Fla. 1<sup>st</sup> DCA 1997);
9. Firsts DCA Case No. 1D95-3943:  
*Johnson v. State*, 670 So. 2d 944 (Fla. 1<sup>st</sup> DCA 1996);
10. First DCA Case No. 1D89-2095:  
*Johnson v. State*, 557 So. 2d 37 (Fla. 1<sup>st</sup> DCA 1990)

These cases reveal a history of filing meritless and successive post conviction motions. Defendant's instant post conviction motion is meritless.

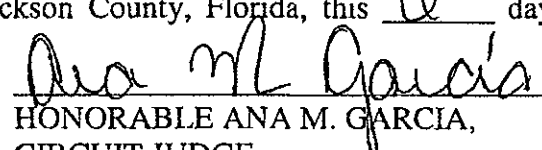
Accordingly, pursuant to *State v. Spencer*, 751 So. 2d 47 (Fla. 1999), Defendant shall show cause within thirty (30) days of the date of this Order why sanctions should not be imposed on him, including a prohibition on further pro se filings in this court related to Jackson County case numbers 80-356 CF, 80-366 CF, and 80-365 CF and a referral of this matter to the Department of Corrections for disciplinary action under section 944.279, Florida Statutes. This Court retains jurisdiction to address the imposition of sanctions.

Therefore, it is

ORDERED AND ADJUDGED as follows:

1. The Defendant's Motion to Correct Illegal Sentence is hereby DISMISSED as UNAUTHORIZED. The Defendant has thirty (30) days from the date of this Order to file a Notice of Appeal with the Clerk of the Circuit Court; and
2. The Defendant shall SHOW CAUSE within thirty (30) days from the date of this Order why sanctions should not be imposed on him. This Court retains jurisdiction to address the imposition of sanctions.

DONE AND ORDERED in chambers, Jackson County, Florida, this 6<sup>th</sup> day of June 2022.

  
HONORABLE ANA M. GARCIA,  
CIRCUIT JUDGE

<sup>2</sup> On February 28, 1997, the trial court entered an Order in Jackson Co Case No. 79-636 CF barring the Defendant from filing any further pro se challenges to his conviction in this Court due to multiple successive post conviction motions filed in the past. Pursuant to an opinion issued on October 10, 1997, the First DCA in case no. 97-1126 per curiam affirmed the trial court's ruling. *See Johnson v. State*, 700 So. 2d 690 (Fla. 1<sup>st</sup> DCA 1997).

Attachments:

First DCA Case Docket for Case Numbers:

1D20-1440; 1D17-4226; 1D11-3574; 1D10-1829; 1D04-5461; 1D04-0351; 1D99-2777;  
1D97-1126; 1D95-3943; 1D89-2095

Order Dismissing Petition for Writ of Habeas Corpus filed March 30, 2020

Petition for Writ of Habeas Corpus filed March 23, 2020

Order Dismissing Motion for Correction of Jail Credit as Frivolous with Directions to Clerk filed June 26, 2014

Motion for Correction of Jail Credit filed June 9, 2014

Order Dismissing Motion to Correct Sentence and Order Directing Clerk to Transmit Copy of Order to Department of Corrections filed February 24, 2010

Motion to Correct Sentence filed January 22, 2010

Order Dismissing Motion for Post Conviction Relief filed November 6, 2008

Order Denying Motion to Correct Illegal Sentence filed November 29, 2004

Order Denying Motion for Post Conviction Relief filed February 28, 1997

Order filed February 28, 1997 barring future pro se challenges to his conviction

Order Denying Motion for Post Conviction Relief filed October 3, 1995

Order Denying Motion to Correct an Illegal Sentence filed January 7, 1994

Order Dismissing Motion for Post Conviction Relief filed July 14, 1989

Order Denying Motion for Post Conviction Relief filed November 7, 1984

Order Denying Motion for Post Conviction Relief filed December 30, 1983

Order from Court on Post Conviction Motion filed December 28, 1981

Charging documents (Information) filed in Case Numbers 79-636, 80-356, 80-366, 80-365 CF

Affidavit Complaints filed in Case Numbers 79-636, 80-356, 80-366, 80-365 CF

Jury's Verdict Forms filed in Case Numbers 79-636, 80-356, 80-366, 80-365 CF

Judgment and Sentences filed in Case Numbers 79-636, 80-356, 80-366, 80-365 CF

Excerpts of Transcript of Statement of Facts of Trial held April 28-29, 1980, filed January 24, 1981, Case No. 79-636 CF, pp. 1-2, 77-79

Excerpts of Transcript of Statement of Facts from Trial held September 25, 1980, filed January 21, 1981, Case No. 80-356 CF, pp. 1-3, 139-143

I HEREBY CERTIFY that a true and exact copy of the foregoing has been provided by U.S. Mail and/or E-portal to **Elbert Johnson**, DOC# 013118, Wakulla Correctional Institution, 110 Melaleuca Drive, Crawfordville, Florida 32327; and **Shalla Jefcoat**, ASA, State Attorney's Office, P.O. Box 956, Marianna, Florida 32447, [shalla.jefcoat@sa14.fl.gov](mailto:shalla.jefcoat@sa14.fl.gov); this 7th day of June 2022.

  
Debbie Burch, Judicial Assistant



IN THE CIRCUIT COURT  
OF THE FOURTEENTH JUDICIAL CIRCUIT  
IN AND FOR JACKSON COUNTY, FLORIDA  
CRIMINAL DIVISION

CASE NO.: 79-636 CF, 80-356 CF  
80-366 CF, 80-365 CF

STATE OF FLORIDA,  
Plaintiff,

v.

ELBERT JOHNSON,  
Defendant.

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ORDER BARRING FURTHER PRO SE FILINGS

THIS MATTER is before the Court on the Court's Order Dismissing Motion to Correct Illegal Sentence as Unauthorized and Order Directing Defendant to Show Cause Why Sanctions shall not be Imposed filed June 7, 2022, in which this Court directed the Defendant Elbert Johnson to show cause within 30 days why he should not be barred from submitting further pro se pleadings in the circuit court of the Fourteenth Judicial Circuit in and for Jackson County, Florida. Having considered said Motion, court files and records, Defendant's Motion to Correct Illegal Sentence filed April 22, 2022, the Defendant's Motion for Rehearing on Order Dismissing Defendant's 3.800(a) Motion to Correct Illegal Sentence as Unauthorized filed June 24, 2022,<sup>1</sup> and being otherwise fully advised, this Court finds as follows:

On February 28, 1997, this Court entered an Order in Jackson Co. Case No. 79-636 CF barring the Defendant from filing any further pro se challenges to his conviction in this Court due to multiple successive post conviction motions filed in the past. Pursuant to an opinion issued on October 10, 1997, the First DCA in case no. 97-1126 per curiam affirmed the trial court's ruling. *See Johnson v. State*, 700 So. 2d 690 (Fla. 1<sup>st</sup> DCA 1997).

Defendant has filed numerous post conviction motions without success. Further, Defendant continues to attack his convictions and sentences despite the Court's pro se bar in Case No. 79-636 CF by including other Jackson County case numbers. In fact, the First DCA pro se barred the Defendant in all of his Jackson County Case Numbers pursuant to an Order issued on July 30, 2021 in Case 1D20-1440.

On April 22, 2022, Defendant filed a Motion to Correct Illegal Sentence essentially alleging that he is serving an illegal sentence. Specifically, Defendant was attacking the

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<sup>1</sup> By separate Order, the Court denied the Defendant's Motion for Rehearing.

imposition of his sentences by Judge McCrary in Case Number 79-636 CF (100 years DOC) and 80-356 CF (15 years DOC), which must be vacated as a matter of law because the defendant alleges that Judge McCrary recused himself from his cases. The Defendant failed to attach any document which supports this contention. However, Defendant's motion was facially insufficient to warrant relief. See Baker v. State, 714 So. 2d 1167 (Fla. 1<sup>st</sup> DCA 1998). Despite the foregoing, the Defendant's motion was without merit and refuted by the attached record. A review of the transcripts from the sentencing hearing and the court record reflects no recusal entered by Judge McCrary. The Court dismissed his motion to correct illegal sentence as unauthorized. See Order Dismissing Motion to Correct Illegal Sentence as Unauthorized and Order Directing Defendant to Show Cause Why Sanctions Shall Not be Imposed filed June 7, 2022.

This Court specifically finds that the instant post conviction motion is an abuse of judicial process. As previously stated, Defendant has been pro se barred by the Court in at least one case, 79-636 CF, and he continues to file frivolous motions by challenging his conviction and sentence via other Jackson County cases in the above styled case, 80-356 CF, 80-366 CF, 80-365 CF to circumvent the Court's pro se bar in Case No. 79-636 CF.

Florida courts "are authorized to sanction an abusive litigant, regardless of his prior judicial history," and the abusive litigant's claims need not be repetitive or an abuse of post-conviction process to warrant sanctions. See Hall v. State, 94 So. 3d 655, 656 (Fla. 1<sup>st</sup> DCA 2012) (citing Johnson v. State, 44 So. 3d 198, 200 (Fla. 4<sup>th</sup> DCA 2010)). Defendant has yet again filed another frivolous motion challenging his judgment and sentence pursuant to Florida Rules of Criminal Procedure 3.800.

Further, sanctions are authorized when a Defendant's repetitious or frivolous pleadings require the use of limited judicial resources which are properly used for the consideration of legitimate claims filed by others. See Sweitzer v. State, 46 So.3d 1132 (Fla. 1<sup>st</sup> DCA 2010); Schmidt v. State, 41 So. 3d 427 (Fla. 1<sup>st</sup> DCA 2010); Tate v. State, 32 So.3d 657, 658 (Fla. 1<sup>st</sup> DCA 2010); Pettway v. McNeil, 987 So.2d 20 (Fla. 2008). **Any 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.** See State v. Spencer, 751 So.2d 47 (Fla. 1999).

The Court records reflect that Defendant has filed at least ten (10) prior appeals in the First DCA related to Jackson County case number 79-636 CF, 80-356 CF, 80-366 CF, and 80-365 CF:

1. First DCA Case No. 1D20-1440:<sup>2</sup>  
*Johnson v. State*, 322 So. 3d 625 (Fla. 1<sup>st</sup> DCA 2021);

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<sup>2</sup> In DCA Case No. 1D20-1440, Defendant was pro se barred from future pro se filings concerning Jackson Co. Case No. 79-636, 80-356 CF, 80-366 CF, 80-365 CF, unless they are filed by a member in good standing of The Florida Bar. See Order issued July 30, 2021, Case No. 1D20-1440.

2. First DCA Case No. 1D17-4226:  
*Johnson v. State*, 253 So. 3d 1068 (Fla. 1<sup>st</sup> DCA 2018);
3. First DCA Case No. 1D11-3574:  
*Johnson v. State*, 70 So. 3d 674 (Fla. 1<sup>st</sup> DCA 2011);
4. First DCA Case No. 1D10-1829:  
*Johnson v. State*, 41 So. 3d 895 (Fla. 1<sup>st</sup> DCA 2010);
5. First DCA Case No. 1D04-5461:  
*Johnson v. State*, 896 So. 2d 750 (Fla. 1<sup>st</sup> DCA 2005);
6. First DCA Case No. 1D04-351:  
*Johnson v. State*, 871 So. 2d 210 (Fla. 1<sup>st</sup> DCA 2004);
7. First DCA Case No. 1D99-2777:  
*Johnson v. State*, 743 So. 2d 512 (Fla. 1<sup>st</sup> DCA 1999);
8. First DCA Case No. 1D97-1126:<sup>3</sup>  
*Johnson v. State*, 700 So. 2d 690 (Fla. 1<sup>st</sup> DCA 1997);
9. Firsts DCA Case No. 1D95-3943:  
*Johnson v. State*, 670 So. 2d 944 (Fla. 1<sup>st</sup> DCA 1996);
10. First DCA Case No. 1D89-2095:  
*Johnson v. State*, 557 So. 2d 37 (Fla. 1<sup>st</sup> DCA 1990)

These cases reveal a history of filing meritless and successive post conviction motions. Defendant's instant post conviction motion is meritless.

Accordingly, pursuant to *State v. Spencer*, 751 So. 2d 47 (Fla. 1999), Defendant was directed to show cause within thirty (30) days of the date of this Order why sanctions should not be imposed on him, including a prohibition on further pro se filings in this court related to Jackson County case numbers 79-636 CF, 80-356 CF, 80-366 CF, and 80-365 CF and a referral of this matter to the Department of Corrections for disciplinary action under section 944.279, Florida Statutes. This Court retained jurisdiction to address the imposition of sanctions.

Upon review, the Defendant's response to the order to show cause within the time permitted. Upon review, the Defendant's response continues to argue the frivolous points made in his initial post conviction motion and does not provide any justification for his continued abuse of the post conviction process through his frivolous challenges to his now over forty-year-old judgment and sentence. The Defendant has not shown cause for his repeated frivolous filings. Therefore, the Court finds and concludes that sanctions against the Defendant, Elbert Johnson are warranted to issue a pro se bar in this case. The Court directs the Clerk of this court not to accept any future filings concerning Jackson County Case Numbers 79-636 CF, 80-356 CF, 80-366 CF, and 80-365 CF unless they are signed and filed by a member in good standing of The Florida Bar.

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<sup>3</sup> On February 28, 1997, the trial court entered an Order in Jackson Co Case No. 79-636 CF barring the Defendant from filing any further pro se challenges to his conviction in this Court due to multiple successive post conviction motions filed in the past. Pursuant to an opinion issued on October 10, 1997, the First DCA in case no. 97-1126 per curiam affirmed the trial court's ruling. See Johnson v. State, 700 So. 2d 690 (Fla. 1<sup>st</sup> DCA 1997).

Therefore, it is

ORDERED AND ADJUDGED as follows:

1. The Defendant Elbert Johnson, DOC# 013118 is hereby BARRED from future pro se filings in this Court concerning Jackson County Circuit Court case numbers 79-636 CF, 80-356 CF, 80-366 CF, and 80-365 CF, and
2. The Clerk of the Court is directed not to accept any future filings from Elbert Johnson unless they are signed by a member in good standing of The Florida Bar, and any filings barred by this order shall be returned to Elbert Johnson without filing and with a reference to this Order.

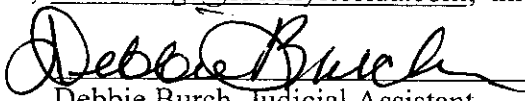
DONE AND ORDERED in chambers, Jackson County, Florida, this 1<sup>ST</sup> day of November 2022.

  
HONORABLE ANA M. GARCIA,  
CIRCUIT JUDGE

Attachments:

Order Dismissing Motion to Correct Illegal Sentence as Unauthorized and Order Directing Defendant to Show Cause Why Sanctions Shall not be Imposed filed June 7, 2022

I HEREBY CERTIFY that a true and exact copy of the foregoing has been provided by U.S. Mail, hand delivery and/or e-portal to **Elbert Johnson**, DOC# 013118, Wakulla Correctional Institution, 110 Melaleuca Drive, Crawfordville, Florida 32327; **Shalla Jefcoat**, Assistant State Attorney, State Attorney's Office, P.O. Box 956, Marianna, Florida 32447, [shalla.jefcoat@sa14.fl.gov](mailto:shalla.jefcoat@sa14.fl.gov); and **Department of Corrections**, Attn: Office of General Counsel, 501 S. Calhoun Street, Tallahassee, Florida 32399-2500, [courtfilings@fdc.myflorida.com](mailto:courtfilings@fdc.myflorida.com); this 1<sup>ST</sup> day of November 2022.

  
Debbie Burch, Judicial Assistant

IN THE CIRCUIT COURT  
OF THE FOURTEENTH JUDICIAL CIRCUIT  
IN AND FOR JACKSON COUNTY, FLORIDA  
CRIMINAL DIVISION

CASE NO.: 79-636 CF, 80-356 CF  
80-366 CF, 80-365 CF

STATE OF FLORIDA,  
Plaintiff,

v.

ELBERT JOHNSON,  
Defendant.

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ORDER DENYING DEFENDANT'S MOTION FOR REHEARING

THIS MATTER is before the Court on the Defendant's pro se Motion for Rehearing filed June 24, 2022. Having reviewed said Motion, court file and records, and being otherwise fully advised, the Court hereby finds the Defendant's motion is without merit. The function of a motion for rehearing is to present something that the court overlooked or failed to consider that renders the judgment erroneous. *See Hollywood v. Clark*, 15 So. 2d 175 (Fla. 1943); *Cole v. Cole*, 130 So.2d 126 (Fla. 1st DCA 1961). The Defendant fails to raise any new arguments or allegations of merit which the Court overlooked in his previous motion.

Therefore, it is

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

DONE AND ORDERED in chambers, Jackson County, Florida, this 1<sup>ST</sup> day of November 2022.

  
HONORABLE ANA M. GARCIA,  
CIRCUIT JUDGE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been provided by U.S. Mail and/or E-portal to **Elbert Johnson**, DOC# 013118, Wakulla Correctional Institution, 110 Melaleuca Drive, Crawfordville, Florida 32327; and **Shalla Jefcoat**, Assistant State Attorney, State Attorney's Office, P.O. Box 956, Marianna, Florida 32447, [shalla.jefcoat@sa14.fl.gov](mailto:shalla.jefcoat@sa14.fl.gov); this 1<sup>ST</sup> day of November 2022.

  
Debbie Burch, Judicial Assistant

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