

APPENDIX

A

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO: 05-2006-CF-27085-AXXX-XX

STATE OF FLORIDA,
Plaintiff,

v.

JAMAR LIVINGSTONE WILLIAMS
Defendant.

SCOTT ELLIS
2014 SEP 15 P 3:32
FILED IN VERA
CLERK OF CIR
BREVARD CO.

ORDER DENYING DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF

THIS CAUSE came before the Court on the Defendant's Motion for Post-Conviction Relief filed on June 9, 2014 pursuant to Rule 3.850, Florida Rules of Criminal Procedure. The Court, having reviewed the Defendant's motion and the official court file, and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law:

a. On July 24, 2008, the Defendant was found guilty by a jury of Carjacking with a Firearm and he was sentenced to life in the Department of Corrections (Exhibit A, Verdict and Exhibit B, Amended Judgment). The Defendant's judgment and sentence were per curiam affirmed on March 17, 2009 with a mandate issued on April 8, 2009 (Exhibit C, Decision and Mandate).

b. In Ground One of his motion, the Defendant alleges that he has newly-discovered evidence in the form of three written statements from witnesses. These statements, which are not notarized, were provided by Sheldon Gayle, Leaundrea Parker, and Victor Stallworth. According to Sheldon Gayle, he was at an apartment complex in Cocoa when the Defendant was arrested. Mr. Gayle claims that based on his observations, the police arrested the wrong person. Both Mr. Parker's and Mr. Stallworth's statements are based on what Mr. Gayle told them about the incident, and neither of them has any direct knowledge of what transpired at the time of the Defendant's arrest.

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Exhibit "CC"

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c. To be considered as newly-discovered evidence for purpose of a post-conviction relief motion, evidence must have been unknown by the trial court, by the party, or by counsel at the time of trial and it must appear that the defendant or his counsel could not have known of it by the use of diligence. Padron v. State, 769 So. 2d 432, 433 (Fla. 2d DCA 2000). Clearly the statement of Sheldon Gayle could have been discovered through the use of diligence. The statements of Leaundrea Parker and Victor Stallworth are irrelevant because they are based purely on hearsay. None of these statements are considered newly-discovered evidence.

d. It appears the Defendant is actually arguing that he received ineffective assistance of counsel because his attorney failed to investigate these witnesses prior to trial. Rule 3.850(b) provides that no motion, other than one to vacate a sentence which exceeds the limits provided by law, may be considered more than two years after the judgment and sentence become final. The Defendant's motion was filed more than three years after this deadline. There are three exceptions to the two-year time limit: (1) a claim of illegal sentence; (2) a claim of newly-discovered evidence; or (3) a claim based on a fundamental change in the law held to apply retroactively. Howarth v. State, 673 So. 2d 580, 581 (Fla. 5th DCA 1996) (citing Bannister v. State, 606 So. 2d 1247, 1248 (Fla. 5th DCA 1992)). As none of the above-referenced exceptions are applicable to the Defendant's claim in Ground One, this claim is untimely and will not be considered on the merits. The Defendant is not entitled to relief on Ground One.

e. In Ground Two of his motion, the Defendant alleges that he was denied due process because the prosecutor committed a Giglio violation. Claims of prosecutorial misconduct are

required to be raised on direct appeal, not in a post-conviction motion. Henry v. State, 933 So. 2d 28 (Fla. 2d DCA 2006). The Defendant is not entitled to relief on Ground Two.

f. In Ground Three of his motion, the Defendant alleges that he received ineffective assistance of counsel when his attorney failed to investigate and call witnesses at trial. As set forth in Ground One above, this claim is untimely and will not be considered on the merits. The Defendant is not entitled to relief on Ground Three.


g. In Ground Four of his motion, the Defendant alleges that he was denied a fair trial due to the prosecutor's misconduct. As set forth in Ground Two above, this claim should have been raised on direct appeal and not in a post-conviction motion. The Defendant is not entitled to relief on Ground Four.

Accordingly, it is **ORDERED AND ADJUDGED:**

1. The Defendant's Motion for Post-Conviction Relief is **DENIED**.
2. The Defendant has the right to appeal this Order within thirty (30) days of the date of its rendition.

DONE AND ORDERED in Viera, Brevard County, Florida, this 15th day of

September, 2014.



CHARLES ROBERTS
CIRCUIT COURT JUDGE