

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

KENNETH RAY BRABHAM,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D22-1729

September 1, 2023

Appeal from the Circuit Court for Pinellas County; Philip J. Federico,
Judge.

Howard L. Dimmig, II, Public Defender and Steven L. Bolotin, Assistant
Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee and James A. Hellickson,
Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed.

KELLY, LUCAS, and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.

Appendix A

I#: 2022140029 BK: 22045 PG: 2094, 05/03/2022 at 04:55 PM, RECORDING 5
BURKE, CLERK OF COURT AND COMPTROLLER PINELLAS COUNTY, FL BY DEPUTY CLERK:
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IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY FLORIDA
DIVISION: FELONY

UCN : 522021CF007305000APC

REF No. : 21-07305-CF - M

OBTS NUMBER _____

STATE OF FLORIDA
VS.

KENNETH BRABHAM
Defendant

PID: 708062
SS# 258-31-0898

JUDGMENT

The Defendant, **KENNETH BRABHAM**, being personally before this court represented by **ADAM TEICHLER**, Assistant Public Defender, the attorney of record, and the state represented by **JUAN SALDIVAR JR**, Assistant State Attorney, and having:

COUNT	CRIME	OFFENSE STATUTE NUMBER (S)	DEGREE OF CRIME
01	FALSE IMPRISONMENT	787.02	3F
03	AGGRAVATED BATTERY	784.045	2F

X and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED
THAT the Defendant is ADJUDICATED GUILTY of the above crime(s).

ICD: JDMT (33058192)

RETURN TO:
CRIMINAL COURT RECORDS

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Filed, APR 22, 2022, 11:50, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

Appendix B

219

43

Defendant: KENNETH BRABHAM

UCN: 522021CF007305000APC
REF No.: 21-07305-CF - M

OBTS Number _____

SENTENCE

(as to Count 01)

The defendant, being personally before the court, accompanied by the defendant's attorney of record, ADAM TEICHLER, Assistant Public Defender, and having been adjudicated guilty, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

It Is the Sentence Of the Court That:

The Defendant pay total statutory costs in the amount of \$700.00, inclusive of a \$50.00 Indigent Criminal Defense Fee as required by s. 27.52 F.S., \$100.00 as a Cost of Prosecution assessment.

The Defendant pay attorney fees and costs of defense as determined by the Court.

The Defendant is committed to the custody of the Department of Corrections.

Unless otherwise prohibited by law, the Sheriff is authorized to release the Defendant on electronic monitoring or other sentencing programs subject to the Sheriff's discretion.

To Be Imprisoned:

The Defendant is to be imprisoned for a term of 5 YEARS.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Habitual Felony Offender

The defendant is adjudicated a habitual felony offender and is sentenced to an extended term in accordance with the provision of 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Other Provisions:

Consecutive/Concurrent As To Other Counts

It is further ordered that the sentence imposed for this count shall run concurrent with the sentence set forth in count 03 of this case.

Defendant: KENNETH BRABHAM

UCN: 522021CF007305000APC
REF No.: 21-07305-CF - M

OBTS Number _____

SENTENCE

(as to Count 03)

The defendant, being personally before the court, accompanied by the defendant's attorney of record, ADAM TEICHLER, Assistant Public Defender, and having been adjudicated guilty, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

It Is the Sentence Of the Court That:

The Defendant pay total statutory costs in the amount of \$352.00, inclusive of, \$151.00 to the Rape Crisis Trust Fund, \$201.00 to the Domestic Violence Trust Fund.

The Defendant is committed to the custody of the Department of Corrections.

Unless otherwise prohibited by law, the Sheriff is authorized to release the Defendant on electronic monitoring or other sentencing programs subject to the Sheriff's discretion.

To Be Imprisoned:

The Defendant is to be imprisoned for a term of 30 YEARS.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Habitual Felony Offender

The defendant is adjudicated a habitual felony offender and is sentenced to an extended term in accordance with the provision of 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Prison Releasee Offender

It is further ordered that the defendant shall be sentenced as a prison releasee offender pursuant to 775.082(9), Florida Statutes, and a minimum term of 15 YEARS must be served before release.

Other Provisions:

No Contact Order

It is further ordered that the defendant is prohibited from having contact with the victim, directly or indirectly, including through a third person, for the duration of the sentence.

ICD: SENTENCE (35058537)

Defendant: KENNETH BRABHAM

UCN: 522021CF007305000APC
REF No.: 21-07305-CF - M

OBTS Number _____

Other Provisions: (continued)

Jail Credit

It is further ordered that the defendant shall be allowed a total of 262 DAYS as credit for time incarcerated before imposition of this sentence.

Immigration Detainer

It is further ordered that, as per s. 908.104(3)(b), F.S., the secure correctional facility in which the defendant is to be confined shall reduce the defendant's sentence by a period of not more than 12 days on the facility's determination that the reduction in sentence will facilitate the seamless transfer of the defendant into federal custody.

**Consecutive/Concurrent As
to Other Convictions**

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run concurrent with the following:
Specific sentences : Count 03

It is further ordered that:

Restitution is not applicable in this case.

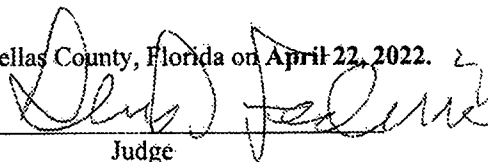
Restitution to State:

If applicable, you must make payment of any debt due and owing to the state under section 960.17 and 948.03(1)(h) Florida Statutes. The amount of such debt shall be determined by the Court at a later date upon final payment of the Crimes Compensation Trust Fund on behalf of the victim.

In the event the above sentence is to the Department of Corrections, the Sheriff of Pinellas County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing a notice of appeal within 30 days from this date with the Clerk of the Court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the state on showing of indigency.

DONE AND ORDERED in open court at Clearwater, Pinellas County, Florida on April 22, 2022.



Judge

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

SECOND DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS 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, IF REQUIRED, IN ACCORDANCE WITH THE OPINION OF
THIS COURT ATTACHED HERETO AND INCORPORATED AS PART OF THIS ORDER,
AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE DANIEL H. SLEET CHIEF JUDGE OF THE
DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, SECOND DISTRICT, AND
THE SEAL OF THE SAID COURT AT TAMPA, FLORIDA ON THIS DAY.

DATE: November 16, 2023

SECOND DCA CASE NO. 22-1729

COUNTY OF ORIGIN: Pinellas

LOWER TRIBUNAL CASE NO. 21-07305 CF

CASE STYLE: KENNETH RAY BRABHAM v. STATE OF FLORIDA



Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

cc: (without attached opinion)
ATTORNEY GENERAL, TAMPA
JAMES AARON HELICKSON, A.A.G.
KENNETH RAY BRABHAM

HOWARD L. DIMMIG, II, P. D.
STEVEN L. BOLOTIN, A.P.D.

mep

Appendix C

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT
1700 N. TAMPA STREET, SUITE 300, TAMPA, FL 33602

October 04, 2023

CASE NO.: 2D22-1729
L.T. No.: 21-07305 CF

KENNETH RAY BRABHAM

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Kenneth Brabham's pro se Motion for Rehearing En Banc is stricken because Mr. Brabham is represented by counsel in this case. 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.

mep

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk



Served:

ATTORNEY GENERAL, TAMPA
JAMES AARON HELICKSON, A.A.G.
PINELLAS CLERK

HOWARD L. DIMMIG, II, P. D.
STEVEN L. BOLOTIN, A.P.D.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT
1700 N. TAMPA STREET, SUITE 300, TAMPA, FL 33602

October 16, 2023

CASE NO.: 2D22-1729

L.T. No.: 21-07305 CF

KENNETH RAY BRABHAM

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Kenneth Brabham's pro se motion to supplement the record is stricken because Mr. Brabham is represented by counsel in this case. 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.

jr

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk



Served:

ATTORNEY GENERAL, TAMPA
JAMES AARON HELICKSON, A.A.G.
KENNETH RAY BRABHAM

HOWARD L. DIMMIG, II, P. D.
STEVEN L. BOLOTIN, A.P.D.
PINELLAS CLERK

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT
1700 N. TAMPA STREET, SUITE 300, TAMPA, FL 33602

October 31, 2023

CASE NO.: 2D22-1729

L.T. No.: 21-07305 CF

KENNETH RAY BRABHAM

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Kenneth Brabham has filed a pro se Motion for Clarification and to Except [his pro se Motion for Rehearing En Banc] As Timely Filed. The motion is stricken as a nullity, as Mr. Brabham filed the motion while represented by counsel. *See Benjamin v. State*, 32 So. 3d 131 (Fla. 2d DCA 2010). Mr. Brabham maintains that he was not represented by counsel when he filed the motion for rehearing because he had received correspondence from his attorney stating, "my office has concluded its efforts on your behalf." However, Florida Rule of Appellate Procedure 9.440(d)(3) requires an attorney to seek leave of court to withdraw. Because no motion to withdraw has been filed in this case, Mr. Brabham is considered to still be represented in this court. Thus, his pro se motion must be stricken. *See Benjamin*. As this case has been affirmed, no motion to withdraw will be entertained at this stage of the proceedings. Any further unauthorized filings will not receive judicial consideration.

Kenneth Brabham's pro se Motion for Rehearing En Banc is stricken because Mr. Brabham is represented by counsel in this case. *See Benjamin v. State*, 32 So. 3d 131 (Fla. 2d DCA 2010). Any further unauthorized filings will not receive judicial consideration.

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

mep

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

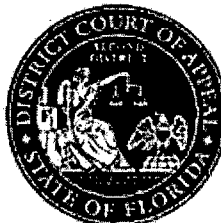


EXHIBIT 1

OFFICE OF THE PUBLIC DEFENDER
POLK COUNTY COURTHOUSE
255 N. BROADWAY - 3RD FLOOR
POST OFFICE BOX 9000-PD
BARTOW, FLORIDA 33831
PHONE: 863-534-4200
EMAIL: PD10EMAIL@PD10.STATE.FL.US



REX DIMMIG
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

September 1, 2023

Mr. Kenneth Brabham
DC# 262223
Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, FL 34956-4397

RE: Kenneth Brabham vs. State of Florida
Appeal No. 2D22-1729

Dear Mr. Brabham:

The Second District Court of Appeal has decided your appeal. Unfortunately, we lost, and your case has been affirmed. A copy of the court's decision is enclosed.

As you can see, the court did not explain its reasons for affirming your case. We cannot be certain which legal theories the court followed to reach its conclusions. Because we do not know the court's reasoning, we have no basis for seeking further appellate review in the Florida courts. Your direct appeal in the state court system is over, and my office has concluded its efforts on your behalf.

Enclosed is the 11-volume record of the appeal of your case. Please store it carefully, because it is our only copy. We will not be able to send you another one.

Sincerely,

STEVEN BOLOTIN
ASSISTANT PUBLIC DEFENDER

SB/ks

Appendix E

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OFFICE OF THE PUBLIC DEFENDER
POLK COUNTY COURTHOUSE
255 N. BROADWAY · 3RD FLOOR
POST OFFICE BOX 9000-PD
BARTOW, FLORIDA 33831
PHONE: 863/534-4200
EMAIL: PD10EMAIL@PD10.STATE.FL.US



REX DIMMIG
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

March 17, 2023

Mr. Kenneth Brabham
DC# 262223
Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, FL 34956-4397

RE: Kenneth Brabham v. State of Florida
Appeal No. 2D22-1729

Dear Mr. Brabham:

I am writing in response to your letter of February 23. Before addressing other matters, I will acknowledge that you are correct that your conviction on Count One was for the lesser included offense of false imprisonment without a finding that a weapon was used. I have filed an amended initial brief (a copy of which is enclosed) in the appellate court. However, the other statements which you call "misstatements" are all accurate as reflected by the record and trial transcripts.

As far as the issues which I raised on appeal, I would point out the following. (1) The brief is only forty (now 35) words short of the word limit, and the Second DCA very rarely permits longer briefs. (2) The three main issues I raised (unstriking juror, refusal to inquire into prostitution allegation, judicial misconduct) are all issues you mentioned or

alluded to in your letter to me dated December 4, 2022. While you also mentioned a number of other potential issues in your letter to Ms. Lott dated September 15, 2022, many of them involve claims of ineffective assistance of counsel, which - - as I explained in my December 20 letter - - can no longer be raised on direct appeal, even in the rare circumstances where ineffective assistance can be established on the face of the record.

(3) I am enclosing a copy of the United States Supreme Court's decision in Jones v. Barnes, 463 U.S. 745 (1983), as well as footnote one from the Florida Supreme Court's opinion in Cave v. State, 476 So.2d 180 (Fla. 1985). These decisions, which have been repeatedly reaffirmed, make it clear that an appellate attorney can and should exercise his or her independent judgment in deciding what issues to raise on appeal. They make it equally clear that it is very bad strategy to bury the client's stronger issues under a morass of weak issues. I chose to raise the issues which I believe have some chance of success in getting you a new trial. Since the Second District Court of Appeal affirms the overwhelming majority of criminal convictions, I also believe it is crucial to have a unifying theme; which is that many of Judge Federico's rulings, as well as his rude behavior throughout the proceedings, appears to have

been motivated (as you mentioned in your December 4 letter) by his own personal concerns about his vacation plans.

While I am not going to specifically discuss every possible issue you listed in your last letter or the previous ones, there are two I will briefly address. Regarding the impeachment with your thirteen prior convictions, the Nock case - - a controlling decision from the Florida Supreme Court - - expressly and directly states that when the state introduces a defendant's statement, and the defense introduces, on cross or in its own case, exculpatory portions of the defendant's statement, the state can introduce evidence of the defendant's prior felony convictions, just as if the defendant had taken the stand and testified. Your trial attorney made a strategic decision to cross-examine Detective Blumberg in order to bring out your version of the events, and to stipulate to the thirteen prior felony convictions. Florida law allows that, so it is not an issue I could raise on appeal. Moreover (1) strategic decisions by trial counsel rarely if ever amount to ineffective assistance, and (2) the Steiger decision makes it clear that ineffective assistance claims can no longer be raised on direct appeal even if apparent on the face of the record; and even before Steiger strategic decisions made by trial counsel could not be argued as ineffective assistance on direct appeal.

As far as sufficiency of the evidence, P.F.'s testimony alone would have been legally sufficient to withstand a motion for judgment of acquittal as to all three counts as charged (including the ones the jury acquitted you of: attempted sexual battery and kidnapping. Jurors can believe all or part or none of any witness' testimony. From their verdict it appears that they were not entirely convinced of P.F.'s version of the incident, nor were they entirely convinced of the version you gave to Detective Blumberg. That does not make the evidence legally insufficient.

Sincerely,



Steven L. Bolotin
Assistant Public Defender

SLB/ks

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

KENNETH RAY BRABHAM, :

Appellant, :

vs. :

Case No. 2D22-1729

STATE OF FLORIDA, :

Appellee. :

_____:

MOTION FOR EXTENSION OF TIME

Appellant, KENNETH RAY BRABHAM, through his undersigned counsel, moves this Court for a 60-day extension of time to file his initial brief in this appeal.

1. Appellant was tried for armed attempted sexual battery, armed kidnapping, and aggravated battery. He was convicted of armed false imprisonment and aggravated battery, and was sentenced to thirty years imprisonment as a prison releasee reoffender and habitual felony offender.

2. This is the third extension requested by this office, and the second requested by undersigned counsel since he was assigned

the case. The undersigned moved to supplement the record, and on November 15, 2022 this Court granted that motion, ordering the supplemental record to be filed within 25 days and the initial brief within 60 days. The supplemental record - - which contains two pretrial hearings which are critical to several issues which will be raised in the brief - - was filed on December 21 (eleven days late), and was not received by the Public Defender's office until December 27.

3. The record on appeal is now 1283 pages in length. Undersigned counsel tentatively expects to raise at least six Points on Appeal, several of which are factually and/or procedurally complex. In addition, several of the issues involve the trial court's behavior toward Brabham and toward the attorneys for both sides throughout the entirety of the pretrial, jury selection, trial, and sentencing proceedings. It is anticipated that the brief will closely approach the word limit, and may well require a motion to exceed it.

4. A 60-day extension will be necessary and sufficient to enable undersigned counsel to effectively complete appellant's brief. If this motion is granted in full, the undersigned anticipates that no

further extensions will be needed.

5. Opposing counsel, Assistant Attorney General William Shelhart, does not object to this requested extension.

WHEREFORE, appellant respectfully requests that this motion be granted.

CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to Assistant Attorney General William Shelhart, Office of the Attorney General, at CrimappTPA@myfloridalegal.com, on this 12th day of January, 2023.

Respectfully submitted,

Steven L. Bolotin

HOWARD L. "REX" DIMMIG, II
Public Defender
TENTH Judicial Circuit
(863) 534-4200

STEVEN L. BOLOTIN
Assistant Public Defender
Florida Bar Number 0236365
P. O. Box 9000 - Drawer PD
Bartow, FL 33831
appealfilings@pd10.org
sbolotin@pd10.org
kstockman@pd10.org

SLB/kas