

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JOHNNY PATTERSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D23-1031

August 18, 2023

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Hillsborough County; Michelle D. Sisco, Judge.

Johnny Patterson, pro se.

PER CURIAM.

Affirmed.

KHOZAM, 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
1700 N. TAMPA STREET, SUITE 300, TAMPA, FL 33602

October 18, 2023

CASE NO.: 2D23-1031
L.T. No.: 87-16087

JOHNNY PATTERSON

v. STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

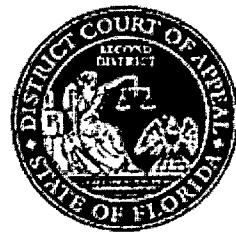
The motion for rehearing, rehearing en banc, and motion to certify question of great public importance is denied.

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

lb

Mary Elizabeth Kuenzel

Mary Elizabeth Kuenzel
Clerk



Served:

ATTORNEY GENERAL, TAMPA
JOHNNY PATTERSON

CERESE CRAWFORD TAYLOR, A.A.G.
HILLSBOROUGH CLERK

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA

CASE NO.: 87-CF-016087

v.

JOHNNY PATTERSON,
Defendant.

DIVISION: C/J

**FINAL ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF
HABEAS CORPUS**

THIS MATTER is before the Court on Defendant's Petition for Writ of Habeas Corpus, filed February 10, 2023. After reviewing Defendant's petition, the court file, and the record, the Court finds as follows:

On August 5, 1988, a jury found Defendant guilty of murder in the first degree (count one) and armed robbery (count two). (See Verdict Form, attached). On June 10, 1988, the trial court sentenced Defendant to prison for a term natural of life without the possibility of parole for 25 years on count one and to five-and-one-half years' prison on count two. (See Judgment and Sentence, attached). The Second District Court of Appeal affirmed Defendant's conviction and sentence on October 17, 1990, and the mandate issued November 2, 1990. See *Patterson v. State*, 569 So. 2d 450 (Fla. 2d DCA 1990) (table); Second DCA Case #2D88-1740.

Defendant has filed several postconviction motions since his conviction became final. Defendant filed a Motion for Postconviction Relief on September 19, 2005, which was denied in an Order rendered March 1, 2006. (See Order, attached). He filed a Motion for Leave of Court to File a Motion to Dismiss Indictment out of Time and a Motion to Dismiss Indictment on February 22, 2008, which was denied in an Order entered on February 29, 2008. (See Order, attached). On April 23, 2010, and April 27, 2010, Defendant filed Petitions for Writ of Habeas Corpus, which were denied in an Order entered on December 2, 2010. (See Order, attached). He filed an "Actual Innocence Motion to Vacate and Set Aside Sentence and Conviction" on December 13, 2018, which was denied in a Final Order entered on January 22, 2019. (See Final Order, attached).

In November of 2019, Defendant filed several additional motions, including a Motion to Vacate Sentence and Set Aside Conviction Based on Fraud and Miscarriage of Justice filed on November 20, 2019, which was denied in a Final Order entered on April 21, 2020. (See Final Order, attached). The April 21, 2020 Final Order was affirmed on appeal on February 19, 2021, and the mandate issued on April 9, 2021. (See Mandate, attached). Defendant next filed an Emergency Petition for Writ of Habeas Corpus on February 22, 2021, and a supplemental petition on

March 4, 2021, which were denied in a Final Order entered on May 17, 2021. (See Final Order, attached). The May 17, 2021, Final Order was affirmed on appeal on October 15, 2021, and the mandate issued November 12, 2021. (See Mandate, attached).

* In his current petition, Defendant alleges “[t]here was no deadly * weapon or firearm of any kind found prior to trial, nor was one presented at trial for the jurors to view and no one showed the jury what the deadly weapon looked like or how it was used during the commission of the charged crimes.” (See petition, p. 3, attached). He alleges he was charged and convicted of armed robbery, which required him to have actual physical possession of a deadly weapon. He alleges without a weapon, the trial court’s denial of his motion for judgment of acquittal should be reversed or his criminal charges dismissed. He alleges no robbery was proven because the prosecution failed to prove an essential element. He alleges the verdict “guilty as charged” did not ask the jury to determine if he possessed a deadly weapon. As a result, Defendant requests dismissal of his criminal charges and immediate release from custody.

* As an initial consideration, the Court finds that Defendant’s petition * challenges his conviction and sentence entered on June 10, 1988. Although petitions for writs of habeas corpus are properly filed only in the

circuit court of the county where a prisoner is detained, if a petition challenges a prisoner's conviction and sentence, the trial court that sentenced the defendant shall treat the petition as a motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. See *Valdez-Garcia v. State*, 965 So. 2d 318, 319 (Fla. 2d DCA 2007). Because this Court finds that Defendant's petition challenges his

* conviction, the Court shall treat Defendant's petitions as motions filed pursuant to rule 3.850.

Reviewing Defendant's petitions under rule 3.850, the Court first finds that Defendant failed to file his petition under oath as is required for all motions filed pursuant to rule 3.850. See Fla. R. Crim. Pro. 3.850(c). Usually, the Court would dismiss an unsworn motion in order for the defendant to refile his motion under oath. However, the Court finds that even if Defendant refiled his instant petition under oath, it would remain without merit. As such, in the interest of judicial economy, the Court will address Defendant's instant petition as written.

After reviewing Defendant's petition, the Court finds it is untimely as it was filed outside the two-year period provided for in subsection 3.850(b). See Fla. R. Crim. Pro. 3.850(b). Additionally, the Court finds Defendant fails to establish entitlement to any exception to the two-year time bar set

out in subsection 3.850(b). As such, Defendant's petition is procedurally barred as untimely.

Moreover, the Court finds that the issues raised in the petition are not cognizable in a rule 3.850 as the issues could have been raised, if at all, either during the trial proceedings or on direct appeal. See Fla. R. Crim. Pro. 3.850(c) ("This rule does not authorize relief based on grounds that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence."). **For all of the above reasons, no relief is warranted on Defendant's petition or.**

It is therefore **ORDERED AND ADJUDGED** that Defendant's Petition for Writ of Habeas Corpus, filed February 10, 2023, is hereby **DENIED**.

Defendant has thirty (30) days from the date of this Final Order within which to appeal. However, a timely-filed motion for rehearing shall toll the finality of this Order.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this _____ day of _____, 2023.

ORIGINAL SIGNED

APR 19 2023

**MICHELLE SISCO
CIRCUIT JUDGE**

MICHELLE SISCO, Circuit Judge