No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

TERRY PERRY, PROSE
(Your Name) — PETITIONER

VS.

SECRETARY FDOC et al — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☑ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

The Florida Supreme Court granted in forma pauperis on January 17th, 2023 case No: SC22-1793 See Appendix 1

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____, or

☐ a copy of the order of appointment is appended.

T P
(Signature)

AFFIDAVIT OR DECLARATION IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, TERRY PERRY, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$ Ø	$ Ø	$ Ø	$ Ø
Self-employment	$ Ø	$ Ø	$ Ø	$ Ø
Income from real property (such as rental income)	$ Ø	$ Ø	$ Ø	$ Ø
Interest and dividends	$ Ø	$ Ø	$ Ø	$ Ø
Gifts	$ Ø	$ Ø	$ Ø	$ Ø
Alimony	$ Ø	$ Ø	$ Ø	$ Ø
Child Support	$ Ø	$ Ø	$ Ø	$ Ø
Retirement (such as social security, pensions, annuities, insurance)	$ Ø	$ Ø	$ Ø	$ Ø
Disability (such as social security, insurance payments)	$ Ø	$ Ø	$ Ø	$ Ø
Unemployment payments	$ Ø	$ Ø	$ Ø	$ Ø
Public-assistance (such as welfare)	$ Ø	$ Ø	$ Ø	$ Ø
Other (specify): N/A	$ Ø	$ Ø	$ Ø	$ Ø
Total monthly income:	$ Ø	$ Ø	$ Ø	$ Ø

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE	NONE	NONE	$ Ø
NONE	NONE	NONE	$ Ø
NONE	NONE	NONE	$ Ø

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE	NONE	NONE	$ Ø
NONE	NONE	NONE	$ Ø
NONE	NONE	NONE	$ Ø

4. How much cash do you and your spouse have? $ Ø
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
NONE	$ Ø	$ Ø
NONE	$ Ø	$ Ø
NONE	$ Ø	$ Ø

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value NONE

☐ Other real estate
Value NONE

☐ Motor Vehicle #1
Year, make & model NONE
Value NONE

☐ Motor Vehicle #2
Year, make & model NONO
Value NONE

☐ Other assets
Description NONE
Value NONE

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NONE	$ Ø	$ Ø
NONE	$ Ø	$ Ø
NONE	$ Ø	$ Ø

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
NONE	NONE	Ø
NONE	NONE	Ø
NONE	NONE	Ø

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☑ No Is property insurance included? ☐ Yes ☑ No	$ Ø	$ Ø
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ Ø	$ Ø
Home maintenance (repairs and upkeep)	$ Ø	$ Ø
Food	$ Ø	$ Ø
Clothing	$ Ø	$ Ø
Laundry and dry-cleaning	$ Ø	$ Ø
Medical and dental expenses	$ Ø	$ Ø

	You	Your spouse
Transportation (not including motor vehicle payments)	$ ~~NONE~~ Ø	$ Ø
Recreation, entertainment, newspapers, magazines, etc.	$ Ø	$ Ø
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ Ø	$ Ø
Life	$ Ø	$ Ø
Health	$ Ø	$ Ø
Motor Vehicle	$ Ø	$ Ø
Other: NONE	$ Ø	$ Ø
Taxes (not deducted from wages or included in mortgage payments)		
(specify): NONE	$ Ø	$ Ø
Installment payments		
Motor Vehicle	$ Ø	$ Ø
Credit card(s)	$ Ø	$ Ø
Department store(s)	$ Ø	$ Ø
Other: NONE	$ Ø	$ Ø
Alimony, maintenance, and support paid to others	$ Ø	$ Ø
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ Ø	$ Ø
Other (specify): NONE	$ Ø	$ Ø
Total monthly expenses:	$ Ø	$ Ø

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☑ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☐ No

If yes, how much? Ø

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No

If yes, how much? Ø

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I have been continuously incarcerated illegally in the FDOC
OF 17 years working with no pay whatso ever.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: December, 2023

(Signature)

ATTACHED COPY

Supreme Court of Florida

TUESDAY, JANUARY 17, 2023

CASE NO.: SC22-1793
Lower Tribunal No(s).:
162006CF012293AXXXMA

TERRY PERRY vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

→ Petitioner's motion for leave to proceed in forma pauperis is hereby granted.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

ks
Served:

TRISHA MEGGS PATE
TERRY PERRY

No._____

IN THE
SUPREME COURT OF THE UNITED STATES

TERRY PERRY,
Petitioner

Vs.

SECRETARY OF FDOC ET. AL.,
Respondent

On Petition for Writ Of Certiorari to

THE SUPREME COURT OF FLORIDA
(Name of court that last ruled on merits of your case)

PETITION FOR WRIT OF CERTIORARI

TERRY PERRY DC# J35064
Graceville Correctional Facility
5168 Ezell Rd.
Graceville, FL 32440

Petitioner pro se

QUESTIONS PRESENTED

ONE: WHETHER THE FLORIDA FOURTH JUDICIAL CIRCUIT COURT'S DECISION ON AN IMPORTANT MATTER THAT IS IN DIRECT CONFLICT WITH DECISIONS OF OTHER STATE COURTS MISUSE OF PERJURED TESTIMONY THAT OBTAINED A JUDGMENT AGAINST PETITIONER PERRY.

TWO: WHETHER THE FLORIDA STATE COURT"S DECISIONS ARE IN DIRECT CONFLICT WITH THE DECISIONS OF THE UNITED STATES SUPREME COURT, BY FAILING TO ADDRESS THE MERITS AND THE KNOWING USE OF PERJURED TESTIMONY. (FORMER DEFENSE TRIAL COUNSEL).

THREE: WHETHER THE FLORIDA FOURTH JUDICIAL CIRCUIT COURT'S DECISION BEING FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT BASED/OPINED ITS JUDGMENT ON THE CREDIBILITY OF A LAWYER'S TESTIMONY WITHOUT ANY RECORD OVER THE PETITIONER'S SWORN STATEMENTS AND DOCUMENTED SUPPORTING RECORD.

FOUR: WHETHER THE FLORIDA STATE COURTS FAILED TO ADDRESS OR HOLD ANY PROCEEDINGS TO ALLOW THE PETITIONER, AN OPPORTUNITY TO INVESTIGATE THROUGH DISCOVERY, OR EXPOSE THE PERJURED TESTIMONY THAT WAS USED TO OBTAIN A JUDGMENT IN AN OFFICIAL PROCEEDING.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page

[ ] All parties do not appear in the caption of the case on the cover page. a list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Perry v. Florida Attorney General, Case No. 3:16-cv-370-HLA-JBT
U.S. Dist. Court Middle Dist. of Florida (Jacksonville)

Perry v. State, 10 So.3d 695 (Fla. 1st DCA 2009)

Perry v. State, 178 So. 3d 4020 (Fla. 1st DCA 2015)

Perry v. Sec. FDOC, SC2023-0876 (2023 Fla. LEXIS 1179)(07/31/23)

Perry v. State of Florida, SC20022-1793 (2023 Fla. LEXIS 459)(03/24/23)

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INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER(S)

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari Issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix ____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported;or,

[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported;or,

[ ] is unpublished.

[X] For cases from state courts:

The opinion of the highest State court to review the merits appears at Appendix _A_ to the petition and is

[X] reported at 2023 Fla. LEXIS 1179 (Fla. SC2023-0876) or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the Fourth Jud. Cir. Court in Duval county appears at Appendix _B__ to the petition and is

[X] reported at 16-2006-CF-12293 _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[X] For cases from state courts:

The date on which the highest state court decided my case was July 31, 2023
A copy of that decision appears at Appendix ___A___.

[X] A timely petition for rehearing was thereafter denied on the following date: ___July 31, 2023___, and a copy of the order denying rehearing appears at Appendix ___A___.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTION AND STATUTORY PROVISIONS

The Due Process Clause of the 14th Amendment forbids the government from knowingly using or failing to correct false testimony Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763 L.Ed.2d 104 (1972).

U.S.C.A. Const. Amend 5 Due Process/Fair trial

U.S.C.A. Const. Amend 14 State Due Process Equal Protection provisions under the due process clause Article I Sub 9 Fla. Const.

A Defendant's due process requires that a Defendant be given every opportunity to expose fraud/perjury and obtain relief form it U.S.C.A. Const. Amends 5, 14 U.S.C.A. Const. Amend VI effective assistance of counsel § 1503 U.S.C. was violated a federal crime to corruptly endeavor to influence obstruction or impede the administration of justice.

STATEMENT OF THE CASE

On October 4, 2007, A jury found Petitioner Perry guilty of sexual battery on a person less than twelve years of age (Count one), Sexual Battery on a child by a person in familial or custodial authority (Count Three), and Sexual Battery on a child by a person in familial or custodial authority (Count Five).

On October 25, 2007 the Fourth Judicial Circuit Court sentenced Petitioner Perry to life imprisonment without parole as to (Count One), A Thirty-Year term on imprisonment as to (Count Three) and Thirty Year term of imprisonment as to (Count Five).

On June 9, 2009, the First District Court of Appeal issued a mandate affirming the Petitioner's convictions and sentences. Thereafter, the Petitioner challenged his trial counsel's ineffective assistance in his original Florida Rule Criminal Procedure 3.850 motion, wherein, Mr. Perry raised fourteen (14) various grounds for relief, which resulted in evidentiary proceedings conducted on grounds 2, 8, and 14.

In regard to Petitioner's original post conviction post conviction evidentiary proceedings, trial counsel testified on April 26, 2013 and the court postponed/continued the hearing until a later date, wherein, Petitioner Perry presented documented evidence proving his assertions and refuting the former trial counsel's testimony. A Perjury challenge was not raised and/or entered in the record at that time.

On July 2, 2014, the Fourth Judicial Circuit denied Petitioner Perry's 3.850 motion while stating its determination regarding the denial of grounds Two (2) and Eight (8) as being due to the court's finding that the Petitioner's trial counsel's testimony was more credible and more persuasive than the Petitioner's own testimony and sworn allegations in his original rule 3.850 motion. Appx. C

While the above appeal was pending, Petitioner Perry filed his Federal Writ of Habeas Corpus 2254 in 2016; However, while his federal case was pending, Mr. Perry field his second motion for Post conviction relief pursuant to Fla.R.Crim.P. 3.850 challenging his former trial counsel's perjurious testimony while under oath on April 26, 2013; and challenged the Judicial misconduct of the Honorable Mark Hulsey III, C.J. , who presided over his original post conviction relief proceedings denial. Appx D Appx E

In 2018, the Federal District Court, 11th Circuit, issue an order staying proceeding regarding the Petitioner's Federal Claims until Petitioner Perry exhausted his perjury claim in State Court.

The Petitioner filed motions that he thought to be appropriate post conviction remedies regarding his perjury challenge, such as civil suit/action and a motion for contempt, whereby, even though the Circuit Court acknowledged this Petitioner's perjury challenge, a hearing or otherwise addressing said perjury has not been accomplished in compliance with the law. Appx. F, G, H,

Ultimately, on December 21, 2021, the First District Court of Appeal (Florida) barred Petitioner Perry from future filings in that court regarding the lower tribunal case number 2006-CF-12293 by utilizing 6 writ of mandamus filed over a period of years on different motions within this case; However, the appellate court failed to mention that the Petitioner still had a habeas Corpus (successive post conviction relief 3.850) still pending in the lower State Circuit Court.

On May 23, 2022, the Circuit Court issued an "order directing defendant to show cause why he should not be barred form future pro se filings." Petitioner Perry filed a timely response

while informing the court that his acknowledged perjury claims have never been addressed on their merit. Appx. I, J.

On July 29, 2022, the Circuit Court entered an order denying Defendant's motion for post conviction relief and barring Defendant from future pro-se filings. Wherein, the court instructed that order to be a "Final Order" and stated that Petitioner had thirty (30) days to take a timely appeal by filing a notice of appeal with the clerk. Appx. K.

Petitioner Perry filed a timely notice of appeal; however, on September 1, 2022, the Clerk of the Circuit Court issued a "mail returned memorandum," notifying the Petitioner that his notice was returned because he was barred from pro-se filings in that court.

On September 19, 2022, Perry filed a "Notice and/or Request" informing the clerk that he has a substantial Due Process Right to receive a lawful procedural Review of the Circuit Court's final order, through the appellate process, and attached the previous orders and documents thereto. Those documents were returned with a 'Return to Sender" label on the envelope, without filing the Petitioner's appeal.

On December 21, 2022 Petitioner Perry filed an all writs petition to the Florida Supreme Court, challenging the State's use of perjured testimony to obtain a favorable ruling against Perry. The Florida Supreme court denied jurisdiction and allowed Petitioner to refile. See Perry v. State, Case Number SC2022-1793.

On June 9, 2023, Petitioner Perry followed with a writ of habeas corpus to the Florida Supreme Court. Petitioner had asserted that extraordinary circumstances exists in this present case; wherein, this Petitioner is entitled to relief in the above styled case, where the lower tribunal's action is in violation of the constitution and laws of the United States and the State of Florida through its deviation form the essential requirements of law. Appx. L

On July 31, 2023, the Florida Supreme Court denied jurisdiction and rehearing. Appx. A.

HISTORICAL FACTS

Petitioner Perry's case was before the Fourth Judicial Circuit Court in Duval County, Florida, on a Petition for Writ of Habeas Corpus field in November 27, 2017. The Writ of Habeas Corpus allowed Petitioner Perry , a prisoner, to expose and obtain immediate relief from unlawful confinement by challenging the constitutionality of his conviction or sentence through the use of perjured testimony.

In Perry's case, grounds one and two said "Original 3.850 motion," was in reference to "Hearsay Testimony;" wherefore, after establishing counsel's failure to object to the detrimental testimony as being a representation falling below an objective standard reasonableness, and the the deficient performance prejudiced the defense. Petitioner Perry was entitled to the vacating of or the setting aside of his conviction and sentence, with orders for a new trial.

Testimonial transcript/records form April 26, 2013, 3.850 motion proceedings, and records form the Public Defender's Office in Perry's file, is irrefutable documentation evidence of the commission of perjury, which deprived Petitioner Perry form receiving in his criminal case in violation of his State and Federal Constitutional Provisional rights. Petitioner Perry presents record of post conviction proceedings:

On April 26, 2013, during direct examination by Mr. Khary O. Gaynor, Esquire, Assistant State Attorney, Fourth Judicial Circuit Court, State of Florida, the following colloquy took place:

During direct examination by Mr. Khary O. Gaynor, Esquire, Assistant State Attorney, the following colloquy took place:

"If we can address Ground 2 first. Did you have discussions with Mr. Perry regarding statements
that Kristen Terado was expected to make at trial?
A. Yes.
Q. Did Mr. Perry, in fact, write out some of the things that he wanted you to elicit form Kristen Terado?
A. He discussed them with me and he wrote them out and he was given copies of depositions of all witnesses.
Q. There are some specific quotations laid out in his 3.850 Motion under Ground 2, alleging that Kristen Terado's statement that Tabbatha had told her that her father had molested her and that it was some time May or June of 2006, appeared to be alleged Hearsay statements; can you explain to the Court, (a) why those statements were permitted to come in?
A. Because Mr. Perry wanted them to.
Q. Why did he want them to?
A. He specifically wanted the words "molest" brought out by every witness who would testify to it, because he felt this showed a conspiracy on their part to use a pattern of description about what happened.

So if Tabbatha used "molest" if Kayla or Kristen Terado, or her Mother Judy was to use the word "molest" it was to show that perhaps Tabbatha was describing this - - using the word "molest" consistently, rather than this act happened and that happened. She just used the word "molest" to show a pattern of behavior that might in some way suggest a conspiracy, so he specifically in writing and verbally told me to do that.
Q. What about the time frame, did he have an interest in making certain that the time frame was also addressed?
A. He was very concerned about the time frame.
Q. Why?
A. Because it established potential inconsistencies that could be brought up in closing arguments. Such as, one witness might say, well, I was told before spring break or after spring break, and I'm sure the State and the Court is aware of children, even if they're 15, sometimes can have difficulty testifying temporally; they use benchmarks, such as before Christmas or after Christmas or spring break and that was the way some of these children testified." (See attached evidentiary transcripts; [e.t.] page 8, line 15, trough page 10, line 10.)(Emphasis added).

During cross examination by Ms. Andrea Hart, Esquire, Assistant Regional Conflict Counsel, the following colloquy took place:

"Q. According to Ground 2, regarding the hearsay, you stated that regarding the certain testimony that it was Mr. Perry's contention and wanted you to continuously have the word - - say the word "molest" in everybody's testimony, correct?
A. He did not want me to do anything to limit that word being used.
Q. Did you agree with that strategy?

A. It was something the Mr. Perry felt strongly enough about that he was convinced that that was important. I can't say I necessarily agreed with it or disagreed it. It was a decision in the case that he thought was central to his defense that felt that was a decision that I would go along with him in his request.
Q. And it's - - if you didn't feel strongly about it, even though your client did, isn't the attorney's job to dictate the appropriate strategy not the client's position. It's the attorney who is trained in argument?
A. Well, having tried over a hundred cases at jury trials, I will tell you that there are sometimes where I disagree with client to the point that I'll will not under any circumstances, I guess, call a witness or ask questions that they want. This case, even though that called for hearsay, it was hearsay that arguably could have been accepted by the jury, and in this case they rejected it, so it was something I thought was of the nature that I would let the client make the call. on. So, I guess, the answer is I did not disagree. I didn't think it was the best course of action, but ultimately, I didn't disagree with that.
Q. So it wasn't the best course of action, but you continued with that strategy anyway as - -
A. I'm sorry?
Q. You didn't believe that was the best course action, but you continued with that strategy anyway?
A. When I say it wasn't the best course of action. I disagreed with my client, but was willing to let him make that choice, and, yes, continue with that strategy. There were other differences that we had that I ultimately thought were so detrimental to his case that I was not willing to do.
Q. Before coming to this hearing, did you attempt to try to get the notes from the public defender's office?
A. Yes.
Q. And what was - - did you review those notes from the public defender office?
A. I reviewed some of them, but not that many, because it wasn't necessary.
Q. Were you able to find the so-called letters or writings from Mr. Perry that state that he - - That this was his strategy and this is what he wanted to do?
A. There are some notes I have. Where he wrote about Kristen Terado, and made a point to think about - - this was before trial and Tabby told her "He molested me," which is the exact same words Kristen used. Those are his own handwriting and those subjects were discussed.
Q. Again, isn't the attorney's job, not the client's job, to determine what is appropriate hearsay that you might not object to and what's the appropriate trial strategy?
A. I think I've answered that question." (See attached e.i., page line through page 15 Line 4) (Emphasis added).

During redirect examination by Mr. Gaynor, the following colloquy took place:

"Q. Was it Mr. Perry's theory that there was some overarching conspiracy between the parties that testified against him at trial?

A. Yes.
Q. Is establishing conspiracy between parties can amount to affecting their credibility before the jury?
A. Yes.
Q. Was this overarching strategy from the defense's perspective to attack the credibility of Tabbatha Perry, specifically?
A. Yes.
Q. Was the overarching strategy of the defense to attack the credibility of the varying witnesses that testified against Mr. Perry?
A. Yes.
Q. Now, whether you agreed with the inclusion of the word "molest' by these other witnesses or not, was it is clear from the trial that the testimony would be that Tabbatha had said that Terry Perry molested her?
A. Yes, and that word was used with other witnesses, other witnesses said Tabbatha said he molested me, and the point that Mr. Perry wanted to bring out is that another witness didn't testify at deposition Tabbatha Perry told me her father did Act A, B, C: it was word "molest" that was used.
Q. In other words, Tabbatha never specific with any of them?
A. No.
Q. Now - -
A. There were times she gave little details, but she was not overly descriptive.
Q. Right. So in the eliciting of the statements, these hearsay statements as alleged, would that have gone to the overreaching strategy, whether you agreed with that specific detail or not?
A. It did. That was the whole point. The whole point was that this child was lying, and her motivations for doing it was because she didn't want to go live with her father, and so she brought it up at the time she did.

Meaning she didn't - - there is some indication that she might have disclosed at an earlier age to, I think, a familial grandmother or someone who had indications but she didn't make an open disclosure until she was a teenager, because Mr. Perry's strategy was that she thought maybe she was going to have to live with him and so she made all this up." (See attached page 20, line 4 through page 22, line 1)(emphasis added). Appx. M

The aforementioned testimonial transcripts clearly evinces that, during the post conviction hearing on April 26, 2013, Ms. Shelley Eckels, as the sole witness of this hearing testified that the Petitioner had wanted the hearsay witness testimony of Kristen Turado in Trial to show conspiracy between the hearsay witness and the alleged victim in this case. Ms. Eckels specifically testified that Petitioner Perry requested this hearsay verbally and in writing. When Ms. Hart asked Ms. Eckels if she had attempted to try and get the notes from the Public

Defender's Office, She claimed that she did and that she had reviewed some of the notes, But not that many, because it wasn't necessary. When questioned if she (Ms. Eckels) was able to find the so-called letters or writings from this Petitioner, she testified that it was His strategy and this was what He wanted to do.

On August 30, 2013, Petitioner Perry had testified that he did not want the aforementioned hearsay testimony coming in at trial. During that hearing, the Petitioner had introduced a pretrial letter written to Ms. Eckels; wherein, the letter had requested that Ms. Eckels as his counsel, file several motions in limine or suppression motions against several witnesses, including Kristen Terado, claiming their testimony as hearsay; and that, the Petitioner's letters had shown the inconsistencies between the hearsay testimony of each witness and the alleged victim, not a common conspiracy as Ms. Eckels had claimed in the April 26, 2013 testimony. The letter written to Ms. Eckels that requested motions in limine or suppression was attached to a complaint written on September 6, 2007, requesting a Nelson Hearing, to remove Ms. Eckels as defense counsel or permit Petitioner Perry to file his own motions. That complaint and letter was recorded as being filed on September 13, 2007. (See attached complaint and letter, 3 pages). Appx. N.

However, Petitioner Perry also attached a copy of a previous letter written to Ms. Eckels dated April 3, 2007, to his second 3.850 motion for post conviction relief; wherein, he specifically expressed his desire to have All third party depositions [testimony] thrown out, [not admitted in court] regarding the alleged victim's friends, parents, or otherwise hearsay witnesses. (See attached letter, one (1) page).

Thus, Judy Terado and her daughter Kristen Terado were the hearsay witnesses specifically addressed approximately six (6) months prior to his trial; which, was reiterated in his

letter that was attached to the aforementioned September 6, 2007 complaint; and, was referenced in Grounds one and two of his original 3.850 post conviction motion.

The Circuit Court records provide that, Ms. Eckels' testimony rendered on April 26, 2013, was used as a guide to the court, which was material to the issue raised for Post Conviction Relief. The Court's order denying relief had characterized Ms. Eckels' testimony as trial strategy. The Court further determined that Ms. Eckels' testimony was more credible, more persuasive than Petitioner Perry's testimony, and that Ms. Eckels was a member in good standing with the Florida Bar since 1994. Nevertheless, Ms. Eckels was not a public defender at the time of her testimony.

Petitioner Perry asserts that Ms. Eckels violated Chapter 837.02 of the Florida Statutes while testifying as a witness/respondent in the April 26, 2013, post conviction hearing under fraud/perjury. Ms. Eckels knowingly provided fraudulent/fabricated testimony to the court.

In Petitioner Perry's case, the hand written letters that Perry presented form the record and Public Defender's file did not become relevant documented evidence until April 26, 2013, when former defense trial counsel had taken the stand under oath and chose to render false testimony.

From the time Petitioner Perry filed his claims in this first motion for post conviction relief 3.850 in March 2010, until the former trial counsel testified, the prosecution had every opportunity to file a motion for discovery or investigate as to any evidence that supported Petitioner Perry's claims and a further opportunity to investigate and expose and correct the perjured testimony and put the judge on notice that testimony was perjured as procedural and constitutional law dictate, as well as the standards to which a lawyer (Prosecutor) is required to meet under oath and the rules that govern the Florida Bar.

REASONS FOR GRANTING THE WRIT

Due to these unconstitutional actions that occurred in the Petitioner's present case at bar. Petitioner was deprived of his substantive due process rights by the Florida State Court's denial to even address Petitioner's perjury challenge a substantial claim clear on the face of the record and upon a quick review of several detailed instructions in letters to defense counsel. These fabricated statements by former trial counsel alone were the basis of the trial court's denial of relief upon an evidentiary hearing challenging counsel's unprofessional representation these perjurious statements prejudiced the outcome without a doubt. Therefore, pursuant to U.S. Supreme Court and U.S. Constitutional guarantees dictating this claim a compelling reason to grant this writ is shown, and avoid erroneous deprivations of the right to due process, to expose fraud, perjury or the use of perjured testimony in an official proceeding that obtained a judgment against the Petitioner or Defendant, and to clarify the standards to which a Petitioner can obtain relief form the following:

A. Obtain relief from the Florida Fourth Judicial Court's decision on an important matter that is in direct conflict with decisions of other State Courts when it failed to address the prosecutorial misuse of perjured testimony to obtain a judgment against Petitioner Perry.

B. Obtain relief form the State Court's decision that is in direct conflict with decisions of the Untied States Supreme Court, by the knowing use of perjured testimony. (Former trial defense counsel). Giglio v. U.S., 405 U.S. 150, 153, 92 S.Ct. 76, 3 L.Ed.2d 104 (1972).

C. Obtain relief from the Fourth Judicial Circuit Court's decision being far departed from the accepted and usual course of judicial proceedings when it based/opined its judgment on the credibility of a lawyer's testimony without any record over the Petitioner's sworn statements and

documented supporting record. (Gallego violation) "credit counsel in case of conflict rule"announced in Gallego v. United State, 174 F.3d 1196, 1199 (11th Cir. 1999).

D. Failing to address or hold any proceedings to allow the Petitioner to investigate and expose the perjured testimony that was used to obtain a judgment in an official proceeding. Ronaldson v. State, 672 So.2d 564 (Fla. 1st DCA 1996); McCrae v. State, 437 So.2d 1388, 1390 (Fla. 1983); and State v. Glover, 564 So.2d 191 (Fla. 5th DCA 1990),

Petitioner Perry asserts that granting this writ will pull the reigns of the State prosecutor's behavior during a post conviction, and other proceedings so that they will notify the court of the false testimony once it has been brought to the prosecutor's attention and/or stop from obscuring the truth afterwards which would be the equivalent to presenting false testimony that violates the rule announced in Giglio (1972). By knowingly using or allow the court to use, the perjured testimony of a State witness to obtain a ruling, judgment, decree, or sustain a conviction. States v. Wright, 847 Fed. Appx. 823 (11th Cir. 2021)(Quoting Giglio supra.).

Additionally, while this has yet to be raised, Petitioner Perry asserts that the Fourth Judicial Circuit Court violated the "credit counsel in case of conflict rule," announced in Gallego v. United States, 174 F.3d 1196 (11th Cir. 1999), by utilizing former trial defense counsel's testimony as its reasoning without any record to deny Petitioner's motion for post conviction relief or opining that former trial defense counsel's testimony was made credible or persuasive than Petitioner Perry's sworn testimony and documented evidence.

By granting this writ will notify the State Courts of Florida and other State's that the United States Supreme Court does not stand for unequal protection of law and that the laws of our great nation does not give credibility to one witness over another without supporting

evidence, no matter their standing within the judicial system or society and that this Court has the inherent authority to enforce its rulings, judgments, decrees and laws.

A judgment such as this one passed by the Florida Fourth Judicial Circuit Court, swept under the carpet of procedural technicalities by the Florida First District Court of Appeal and the Florida Supreme Court, hurts the democracy of the United States and its judicial system as a whole and the procedural due process right of any man, woman, or child that comes before a court. The damaging effects of this case can bleed down into cases across the land, and allowing a lawyer to give false testimony under oath would cause others to suffer the damaging effects of lies to be accepted, without repercussions, as truth over factual evidence, or the State prosecutor coming into the knowledge that its witness has committed perjury and fails to correct it or notify the court.

In this case, the Florida Tribunal Courts violated its own constitutional, procedural, and cited case laws are in direct conflict with other State Courts including laws and constitutional amendments under the 5th and 14th Amendments of the United States that guarantee the right to equal treatment and due process, when failing to address the merits of a Giglio and a Gallegos violation, by not allowing the Petitioner the opportunity of a hearing to expose the use of perjured testimony and adapting a per-se 'Credit Counsel in case of Conflict Rule'.

The United States Supreme Court first addressed a prosecutor's knowing use of false testimony in Mooney v. Holohan, there, (Just like this case) The Supreme Court asserted that a prosecutor violates due process in he presents false testimony or deliberately suppresses evidence favorable to the accused.

Mooney v. Holohan, 294 U.S. 103 (1935).

In Giglio, The Supreme Court established the materiality standard that still applies today. "A new trial is required if the false testimony could in any reasonable likelihood have affected the judgment of the jury." Giglio v. United States, 405 U.S. 150, 154 (1972) (Internal quotation marks omitted)); States v. Wright, 847 Fed. Appx. 823; 2021 U.S. APP. LEXIS 4783 (February 19, 2021) (quoting Giglio supra).

[Due Process] is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction, or in this case a denial of his motion for post conviction relief, through the pretense of a trial or proceeding which in truth is but used as a means of depriving a Defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a State to procure or uphold the conviction or judgment and imprisonment of a Defendant is as inconsistent with the rudimentary demands of justice.

In these two sentences, the Court laid the foundation for the argument that a prosecutor's knowing use of false testimony is a violation of the Due Process Clause of the Fourteenth Amendment and is therefore, unconstitutional.

In Alcorta v. Texas, the Supreme Court advanced the jurisprudence regarding a prosecutor's knowing presentation of false testimony in two important ways. First, the Court found that the prosecutor's failure to correct false testimony, (as in Perry's case) was tantamount to the knowing presentation of false testimony. Second, the court, for the first time, did what can accurately be described as a materality analysis. The Supreme Court relying on Mooney and Pyle, held that a prosecutor's knowing presentation of false testimony violated due process.

Alcorta v. Texas, 355 U.S. 28, 31-32 (1957).

In Alcorta, the court held that the prosecutor's behavior at trial obscured the truth and was therefore equivalent to presenting false testimony. This holding reinforced the importance of protecting the criminal Defendant from a prosecutor's use off false testimony. A violation was found not where a prosecutor presented false testimony but just as Perry's case, artfully asked questions to obscure the truth.

The Supreme Court relies on Mooney in Pyle v. Kansas, 317 U.S. 213, 216 (1942) ("These allegations sufficiently charge a deprivation of rights guaranteed by the federal constitution, and, if proven, would entitle Petitioner release from his present custody.") or, in Petitioner Perry's case, overturning his conviction for further proceedings and released from Florida Department of Corrections.

Petitioner Perry has established the circumstances that trigger materality in his case. In Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959), this Court found that prosecutors are prohibited from using false testimony both when the false testimony applies to the defendant's guilt and when it applies to a witness's credibility. In Napue, the key witness for the State testified that he had not received any consideration or promise in return for his testimony. The prosecutor failed to correct his testimony.

Similarly, in Perry's case the prosecutor failed to investigate, or notify the Court that the former State witness was not being truthful as seen in the colloquy on April 26, 2013.

This Court reiterated that where a conviction is obtained through the State's knowing presentation of false testimony, there has been a violation of the Fourteenth Amendment; further, this result is the same whether the State solicits the false testimony or allows false testimony to go uncorrected when it occurs.

The Court stressed that the prohibition on a prosecutor's knowing use of false testimony "does not cease to apply merely because the false testimony goes to the credibility of the witness. Both evidence relating to a defendant's guilt and evidence relating to the credibility of a witness may be critical in a jury's determine of guilt or innocence: "It is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend."

Petitioner Perry asserts that it is plainly obvious in his case. The grounds raised in his original post conviction motion for ineffective assistance of counsel requires a reversal of his case and conviction; once Petitioner alleged ineffective assistance of counsel. It was critical that former trial defense counsel Shelley Eckels to be truthful. No matter the consequences or the outcome of the proceeding. Additionally, while this issue has not been addressed in State courts, Petitioner Perry added this issues in support of the founding perjury claim. It shows that the State courts ruling is contrary to law. In Gallego, the defendant appealed the judgment from the United States District Court for the Southern District Court of Florida, which convicted Gallego of conspiracy to possess with the intent to distribute cocaine, in violation of U.S.C. §§ 841(a)(1), 846, and 2, pursuant to 28 U.S.C. § 2255, based on ineffective assistance of counsel.

There was no evidence that former counsel's testimony was more credible than Gallego's testimony. Gallego was not required to present some evidence in addition to his words that he was deprived of the constitutional right to testify due to ineffective assistance of counsel.

The United States Court of Appeals for the Eleventh Circuit reversed Gallego's conviction and held that the trial court failed to make specific findings of fact concerning defendant's credibility based on defendant's allegations of ineffective assistance of counsel.

Petitioner Perry has firmly established in his case ineffective assistance of counsel with additional record from the Fourth Judicial Circuit Public Defender's Office and the Clerk of the Court. The State provided only former trial defense counsel Shelley Eckels who's testimony was contrary to the record in this case.

The Petitioner's case is currently on stay and administratively closed until this issue is exhausted. This case will ultimately be brought before the Eleventh Circuit Court of Appeals as it is the United States District Court that handles state cases that come before it. As this Honorable Court can see, Petitioner Perry's case falls in-line with the holdings and decisions within his District.

Gallego v. United States, 174 F.3d 1196, 1198-99 (11th Cir. 1999)("We cannot adopt a per se 'credit counsel in case of conflict rule, which allows that in any case where the issue comes down to the 'bare-bones testimony' of the defendant against the contradictory testimony of counsel, defendant is going to lose every time.").

In Petitioner's Perry's case, the Circuit Court records provide that, former trial defense counsel, Ms. Eckels' testimony rendered on April 26, 2013, was used as a guide to the court, which was material to the issues raised for post conviction relief. The Fourth Judicial Circuit Court's order denying relief had characterized Ms. Eckels' testimony as trial strategy. The court further determined that Ms. Eckels' testimony was more credible, more persuasive than Petitioner Perry's testimony, and that Ms. Eckels was a member in good standing with the Florida Bar since 1994. Nevertheless, Ms. Eckels was not an attorney with the Public Defender's Office at the time of her testimony. Additionally, the court was aware of the evidence that exposed the perjured testimony.

Petitioner Perry not only had made sworn allegations of ineffective assistance of counsel, he supported it with documentary evidence that could be found on record. The August 23, 2018, decision by the Fourth Judicial Circuit Court, Duval County, Florida, dismissing Perry's second motion for post conviction relief as reported in case number 16-2006-CF-012293 filed on November 27, 2017 fell short of the standards presented in Giglio and other presiding cases that address the use of perjured testimony by the prosecution against a defendant in an official proceeding. The prosecution did not file any reply to Perry's claims in his second post conviction motion and the Florida Fourth Circuit Court ruled that Perry's motion was essentially a request for rehearing and ruled it outside of the time window and that Perry should have challenged the testimony in a timely rehearing motion. The court further stated that this Petitioner did not raise an exception to the two-year limit in rule 3.850(b) and that the appellate court had reviewed and affirmed the trial court's order on his previous rule 3.850 motion.

Petitioner asserts that Florida's failing to recognize its own law as well as the laws of of the United States that govern as to when and where a perjury claim can be addressed. Florida courts have ruled that; "a final order procured by fraudulent testimony against a defendant in a criminal case is deserving of no protection, and due process requires that he be given every opportunity to obtain relief from it. (Emphasis added). U.S.C. Constitutional Amendments 5, 14." State v. Glover, 564 So.2d 191 (Fla. 5th DCA 1990).

". . . orders, judgments or decrees which are the products of fraud, collusion, deceit, mistakes, etc., may be vacated, modified, opened or otherwise acted upon at anytime. This is an inherent power of courts of record, and one essential to insure the true administration of justice and the orderly function of the judicial process." State v. Burton, 314 So.3d 136 (Fla. 1975) (omission).

Additionally, Florida has recognized that: :Neither Brady of Giglio contain a due diligence prong; rather, the focus with Giglio the critical inquiry is whether the State presented false testimony." Thomas v. State, 260 So.3d 226 (Fla. 2018). Perry asserts that the denial of the habeas corpus filed in the Florida Supreme Court also fell outside of those standards in Giglio. The decision denying Perry's habeas corpus as reported as Perry v. Dixon, Case Number: SC2023-0876, ruled that Perry's claim was procedurally barred which falls contrary to allowing a Petitioner to raise a challenge to the use of perjured testimony in a judgment against a defendant. Second, the Florida Supreme Court asserted that Perry cannot litigate or re-litigate issues that were or could have been raised on direct appeal or in prior post conviction proceedings. Perry asserts the perjured testimony did not appear until after direct appeal, during a Florida rule of criminal procedure 3.850, ineffective assistance of counsel claim, so the concept of bringing Perry's claim on direct appeal would be ludicrous and as the State court record will evince, that Petitioner Perry has filed this claim under several different procedural vehicles, all of which the State tribunal has failed to address on the merits.

Ranaldson v. State, 672 S.2d 564 (Fla. 1st DCA 1996); "A successive motion raising the same grounds for relief can only be denied as an abuse of process if the determination is on the merits. The restriction under Fla.R.Crim.P. 3.850 against successive motions on the same grounds is applied only when the grounds are previously adjudicated on their merits, and not where the previous motion is summarily denied or dismissed for legal insufficiency." See also McCrae v. State, 437 S.2d 1388, 1390 (Fla. 1983).

Lastly, as shown by the record, the perjured testimony could not have been challenged until the Florida Fourth Judicial Circuit Court had formed a ruling, which allowed the State and the court an opportunity to investigate the documented evidence presented by Perry and locate

any other record to correct it, deny it, or further support Perry's sworn statements and documented evidence.

Every motion, Petition, or otherwise, filed by Petitioner Perry in the State courts has been dismissed and or denied without addressing the perjury claim; nevertheless, the courts have continually acknowledged that the petitioner was challenging the unlawful commission of perjury; however, the only reference made by the State court regrading defense counsel's "perjury," was quotations of the court's original decision that Ms. Eckels' testimony was both more credible and more persuasive." The State tribunal has never addressed the fact that the former defense counsel's persuasive/credible testimony was perjurious, and record evidence from pretrial filing proves perjury.

CONCLUSION

In conclusion, Petitioner Perry states that the findings of the Florida tribunal courts in this case can cause catastrophic consequences to prisoner's rights to due process across the United State who can suffer from the opinions in the following:

A. It allows perjured testimony to go unchecked in official proceedings and accepted as factual truth without repercussions or corrections, which is contrary to standing law and constitutional rights of the United States.

B. It allows courts to deny a Petitioner the right to a hearing to expose or correct the use of perjured testimony or to expose or correct the misuse or perjured testimony against a Petitioner to obtain or sustain conviction.

C. It allows court procedural technicalities to supersede the right to due process which is contrary to the established standards and laws that state the use of perjury to obtain a judgment against a defendant that can be challenged in any court at anytime.

D. It places a limitation of time as to when and where a Petitioner can file a "*Giglio*" or "*Gallego*" violation which is contrary to standing law and constitutional rights. And;

E. It allows a court to give credibility to one witnesses' testimony over another when ruling without supplying a court record of factual evidence to support it.

All in all, it is a lack of integrity against the judicial system as a whole to allow such discrepancies to filter into our judicial system and change or attempt to overlook laws that have already established, through vigilant means, by our predecessor Justices of the United States Supreme Court without recourse. Any common man can see the damages that would filter into our society through the rulings, or the lack thereof by the Florida State Tribunal Courts and the prosecutorial misconduct and its witness in this case. The granting of this great writ of certiorari is desperately needed to conserve and uphold what the Supreme Court of the United States has already established throughout history so that its citizens can be protected within the judicial system against prosecutorial misconduct, perjury, and the misapplications of procedures to avoid constitutional due process violations. For these reasons, this writ of certiorari should issue to review the judgment and opinion of the State's court's in Florida of last resort the Supreme Court of Florida and it subsidiaries.

The petition for Writ of Certiorari should be granted.

Respectfully Submitted

/s/ _____

Terry Perry, DC# J35064

Date: March 11th, 2024

MAY 23, 2024

Provided to Graceville Correctional Facility on _____ for mailing, by _____.

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

TERRY PERRY — PETITIONER
(Your Name)

VS.

SECRETARY FDOC ET. AL — RESPONDENT(S)

PROOF OF SERVICE

I, TERRY PERRY, do swear or declare that on this date, MARCH 11TH, 2024, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

OFFICE OF THE ATTORNEY GENERAL, PL-01, THE CAPITOL, TALLAHASSEE, FLORIDA 32440

I declare under penalty of perjury that the foregoing is true and correct.

Executed on MARCH 11TH, 2024
MAY 23, 2024

T P
(Signature)

Provided to Graceville Correctional Facility on 5.23.24 for mailing, by T P.

APPENDIX A

Supreme Court of Florida

MONDAY, JULY 31, 2023

Terry Perry,

v. Petitioner(s)

SC2023-0876
Lower Tribunal No(s).:
162006CF012293AXXXMA

Ricky D. Dixon, etc.
Respondent(s)

The petition for writ of habeas corpus is hereby 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). No rehearing will be entertained by this Court.

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

A True Copy
Test:

SC2023-0876 7/31/2023
John A. Tomasino
Clerk, Supreme Court
SC2023-0876 7/31/2023

KS
Served:
CRIMINAL APPEALS ATTORNEY GENERAL TLH
DUVAL CLERK
LANCE ERIC NEFF
TERRY PERRY

B

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 06-CF-12293

DIVISION: CR-A

STATE OF FLORIDA

v.

TERRY PERRY,
Defendant.

_____/

ORDER DISMISSING DEFENDANT'S SECOND MOTION FOR POSTCONVICTION RELIEF 3.850

This matter came before this Court on Defendant's *pro se* "Second Motion for Postconviction Relief 3.850," filed pursuant to Florida Rule of Criminal Procedure 3.850, on November 27, 2017.

In the instant Motion, Defendant raises two grounds for relief. Ground One is essentially a request for rehearing which is outside of the time-window. Further, the former Trial Defense Counsel gave this testimony in 2013. Defendant could have challenged this testimony in a timely rehearing motion. As to Ground Two, Defendant cites that the Judicial Qualifications Commission filed formal charges against The Honorable Mark Hulsey, III, Circuit Judge and that Judge Hulsey did not write his own Orders and alleges it is unknown who wrote the Order in this case, but his allegations are based on pure speculation which cannot form the basis of postconviction relief. See Maharaj v. State, 778 So. 2d 944, 951 (Fla. 2000). Lastly, Defendant does not raise an exception to the two-year time limit in Rule 3.850(b) and the Appellate Court reviewed and affirmed the Trial Court's Order on his previous Rule 3.850 Motion. **(Exhibit A)** Thus, Defendant is not entitled to relief.

In view of the above, it is:

ORDERED AND ADJUDGED that Defendant's *pro se* "Second Motion for Postconviction Relief 3.850," filed on November 27, 2017 is hereby **DISMISSED WITH PREJUDICE**. This is a final order, and Defendant shall have thirty (30) days from the date that this Order is filed to take an appeal, by filing a Notice of Appeal with the Clerk of the Court.

DONE AND ORDERED in Chambers, in Jacksonville, Duval County, Florida, on this _____ day of August, 2018.

ORDER ENTERED

AUG 23 2018

/s/ Bruce R. Anderson Jr.

BRUCE R. ANDERSON, JR.
Circuit Judge

Copies to:

Office of the State Attorney
Division: CR-A

Terry Perry
D.O.C. #: J35064
Graceville Correctional Facility (Male)
5168 Ezell Road
Graceville, Florida 32440

CERTIFICATE OF SERVICE

I do hereby certify that a copy hereof has been furnished to Defendant by United States mail this 24 day of August, 2018.

Deputy Clerk

Case No.: 06CF-12293
Attachments: Exhibits A.
/dg

C

IN THE CIRCUIT COURT,
FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 16-2006-CF-012293-AXXX-MA
DIVISION: CR-A

STATE OF FLORIDA,

v.

TERRY D. PERRY,
Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF WITH CONFIDENTIAL INFORMATION AND ATTACHMENTS

This matter came before the Court on Defendant's *pro se* Motion for Postconviction Relief, filed pursuant to Florida Rule of Criminal Procedure 3.850 on May 11, 2010,[1] and re-filed on or about March 18, 2011. On October 20, 2011, the State filed a response to Grounds Two and Eight of Defendant's Motion. On August 29, 2013, Defendant's newly-appointed counsel filed a Motion for Leave to Amend Previously Filed Motion for Postconviction Relief, seeking to add a claim of newly discovered evidence.[2] On August 30, 2013, the Court granted the amendment. On October 7, 2013, the State filed a response to Defendant's claim of newly discovered evidence.

On April 26, 2013, and August 30, 2013, the Court conducted evidentiary hearings as to Grounds Two and Eight of Defendant's Motion. Ms. Shelley Eckels, Esquire, who represented Defendant at trial, testified at the April hearing and Defendant testified at the August hearing. On January 17, 2014, and February 28, 2014, the Court conducted evidentiary hearings as to the

[1] See Haag v. State, 591 So. 2d 614, 617 (Fla. 1992) (applying mailbox rule to inmate filings).
[2] On January 13, 2014, upon leave of court, defense counsel filed a Supplement to Motion for Post Conviction Relief, officially supplementing Defendant's Motion for Postconviction Relief with "ground thirteen." Because Defendant's Motion for Postconviction Relief originally raised thirteen grounds, however, the Court renumbers this claim as ground fourteen.

[EXHIBIT D]

Applying the aforementioned standards to the claims of ineffective assistance of counsel that were argued at the evidentiary hearings, the Court concludes that Defendant's trial counsel, Ms. Shelley Eckels, Esquire, functioned as "reasonably effective counsel" in her investigation and defense preparation. See Coleman, 718 So. 2d at 829. The Court further concludes that Ms. Eckels' trial decisions constituted sound trial strategy by a seasoned defense attorney. See Strickland, 466 U.S. at 689 (stating counsel's tactical decisions by counsel do not constitute ineffective assistance); Chavez v. State, 12 So. 3d 199, 207 (Fla. 2009) (noting strategic decisions by counsel do not "constitute ineffective assistance if alternate courses of action have been considered and rejected and counsel's decision was reasonable under the norms of professional conduct"). The Court's conclusions in this regard are supported by its personal observations and evaluations of Ms. Eckels' and Defendant's testimonies at the evidentiary hearings, as well as the Court's review of the record. The Court also notes that she has been practicing as an attorney in good standing with the Florida Bar since 1994. Based on its observations, evaluations, and review, the Court finds Ms. Eckels' testimony was both more credible and more persuasive than both Defendant's own testimony and sworn allegations in the instant Motion. See Bussell v. State, 66 So. 3d 1059, 1062 (Fla. 1st DCA 2011) ("When the evidence is in conflict, 'it is within the province of the trier of fact to assess the credibility of witnesses, and upon evaluating the testimony, rely upon the testimony found by it to be worthy of belief and reject such testimony found by it to be untrue.'" (quoting I.R. v. State, 385 So. 2d 686, 687 (Fla. 3d DCA 1980))); see also Thomas v. State, 838 So. 2d 535, 540-41 (Fla. 2003) (affirming lower court's finding that counsel's testimony was more credible and persuasive than defendant's own allegations and testimony).

(EXHIBIT C)

In view of the above, it is:

ORDERED AND ADJUDGED that Defendant's Motion for Postconviction Relief, as amended, is hereby **DENIED**. This is a final order and Defendant shall have thirty (30) days from the date this Order is filed to take an appeal, by filing a Notice of Appeal with the Clerk of the Court.

DONE AND ORDERED in Chambers, at Jacksonville, Duval County, Florida, on this 26th day of June, 2014.

Mark Hulsey III

MARK HULSEY, III
Circuit Judge

ORDER ENTERED

JUN 26 2014

/s/ MARK HULSEY III
CIRCUIT JUDGE

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