

APPENDIX A

1. U.S. SUPREME COURT RESPONSE TO MOTION FOR CLARIFICATION (2/14/2025) 8A
2. FLORIDA SUPREME COURT ORDER DISMISSING MOTION (11/26/2024 and 9/11/2024) 8B
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4. REQUEST TO RE-FILE NOTICE TO APPEAL TO FLORIDA SUPREME COURT (11/08/2024) 8D
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Supreme Court of Florida

WEDNESDAY, SEPTEMBER 11, 2024

Harry Lee Goldsboro, II,
Petitioner(s)

v.

State of Florida,
Respondent(s)

SC2024-1316

Lower Tribunal No(s):

6D2023-2883;

482018CF004010000AOX

Petitioner's Notice to Invoke Discretionary Jurisdiction, seeking review of the order or opinion issued by the 6th District Court of Appeal on July 31, 2024, is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. *See Wheeler v. State*, 296 So. 3d 895 (Fla. 2020); *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

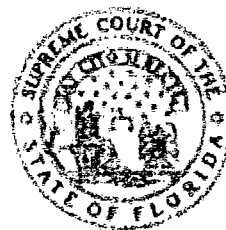
No motion for rehearing or reinstatement will be entertained by the Court.

A True Copy

Test:

SC2024-1316 9/11/2024

John A. Tomasino
Clerk, Supreme Court



CASE NO.: SC2024-1316

Page Two

SC2024-1316 9/11/2024

TD

Served:

CRIMINAL APPEALS DAB ATTORNEY GENERAL
HON. LUIS FERNANDO CALDERON
6DCA CLERK
ORANGE CLERK
HARRY LEE GOLDSBORO, II

Supreme Court of Florida

TUESDAY, NOVEMBER 26, 2024

Harry Lee Goldsboro, II,
Petitioner(s)

v.

State of Florida,
Respondent(s)

SC2024-1316

Lower Tribunal No(s).:

6D2023-2883;

482018CF004010000AOX

Petitioner's Request to Re-File Notice of Appeal has been treated as a motion for reinstatement, and pursuant to this Court's order dated September 11, 2024, said motion is hereby stricken as unauthorized.

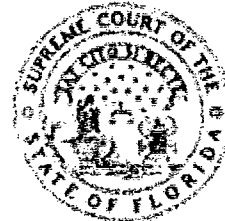
A True Copy
Test:

SC2024-1316 11/26/2024

John A. Tomasino

Clerk, Supreme Court

SC2024-1316 11/26/2024



LC

Served:

CRIMINAL APPEALS DAB ATTORNEY GENERAL

HON. LUIS FERNANDO CALDERON

6DCA CLERK

ORANGE CLERK

HARRY LEE GOLDSBORO, II

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

February 14, 2025

Harry Lee Goldsboro
#4838407
Brevard County Jail Complex
860 Camp Road
Cocoa, FL 32927

RE: FLSC NO. 2024-1316 (6D2023-2883)
FLSC NO. SC2025-0197 (5D2023-1391)
No: 24A511

Dear Mr. Goldsboro:

Returned is your letter postmarked February 6, 2025 and received February 11, 2025.

In response to your letter which indicates you are not seeking review of any Supreme Court of Florida orders and that you seek review of the docket entry dated from August 21, 2024 by the Fifth District Court of Appeal of Florida in case No. 5D2023-1391, you are informed this cannot be construed as an order for which you may seek review. According to the docket record, the Fifth District Court of Appeal of Florida did not take any action on your petition for rehearing on August 21, 2024 as the mandate was issued on July 1, 2024. Furthermore, the order dated June 12, 2024 cannot alone be sought review of without the case having been appealed to the Supreme Court of Florida. As such, to the extent you intend to seek review of the order dated February 12, 2025 by the Florida Supreme Court in case No. SC25-0197, then you must file a petition for writ of certiorari within 90 days pursuant to Rule 13.

8A1

APPENDIX A

Application 24A511 was docketed in this Court as an extension of time to file a petition for writ of certiorari which seeks review of the order dated September 11, 2024 from the Florida Supreme Court in case No. SC2024-1316. The orders dated June 11, 2024 for which a timely rehearing was denied on July 31, 2024 in case No. 6D2023-2883 cannot be reviewed as stand alone orders. This Court has jurisdiction to review the order from the Florida Supreme Court. To the extent you intend to file a petition which seeks review of the order dated September 11, 2024 by the Florida Supreme Court in case No. SC2024-1316, then the statement of jurisdiction must reflect the same. Rule 14.1.

Sincerely,
Scott S. Harris Clerk
By:

Angela Jimenez
(202) 479-3392

Enclosures

8A1

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

November 25, 2024

Mr. Harry Lee Goldsboro
Prisoner ID 4838407
Brevard County Jail Complex
860 Camp Road
Cocoa, FL 32927

Re: Harry Lee Goldsboro, II
v. Florida
Application No. 24A511

Dear Mr. Goldsboro:

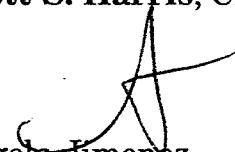
The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on November 25, 2024, extended the time to and including January 9, 2025.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by


Angela Jimenez
Case Analyst

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

NOTIFICATION LIST

Mr. Harry Lee Goldsboro
Prisoner ID 4838407
Brevard County Jail Complex
860 Camp Road
Cocoa, FL 32927

Clerk
Supreme Court of Florida
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399-1927

GOLDSBORO,
PETITIONER

SUPREME COURT OF THE UNITED STATES

CASE NO.:
24-5554

FLCOAS NO.:
SD2023-1391

FLORIDA,
RESPONDENT

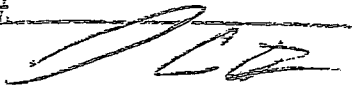
LT. CASE NO.:
2019-LF-021200-A

REQUEST FOR EXTENSION TO FILE WRIT OF CERTIORARI DATE: 8 NOVEMBER 2024

COMES Now, on this 8th day of November 2024, the Petitioner, HARRY LEE GOLDSBORO II, prose, submits this Request For Extension to File Writ of Certiorari to the United States Supreme Court in response to the U.S. Supreme Court's notice filed on November 4th, 2024 indicating that the Petitioner's documents for the writ of certiorari used to initiate U.S. Supreme Court case no. 24-5554, were returned because the Petitioner's case must first be reviewed by a U.S. District Court or by the highest state court. The Petitioner files this request for extension because he has complied with the exhaustion requirement by filing a Notice of Appeal with the Florida Supreme Court on August 24th, 2024; however, he has not received a response or ruling from the Florida Supreme Court. The Petitioner is including a copy of the timely filed Notice of Appeal to the Florida Supreme Court in case no. SD2023-1391, and also a copy of the timely filed Notice of Appeal to the Florida Supreme Court in case no. 6D2023-2883 and the Florida Supreme Court's Order denying the Petitioner's Notice to Invoke Discretionary Jurisdiction ordered on September 11th, 2024. The Petitioner filed the Notice of Appeal in case 6D2023-2883 on August 15th, 2024 and received the Florida Supreme Court's order on September 11th, 2024; however, the Petitioner followed the exact same procedures in preparation to file the writ of certiorari and filed the Notice of Appeal to the Florida Supreme Court on August 24th, 2024, but he has not received a response or order in that case and no mail was returned undeliverable. The Petitioner asserts that both notices were timely filed, but it seems that the Florida Supreme Court only ruled on one of them. The Petitioner is requesting an extension to refile his writ of certiorari to provide him time to resubmit his Notice of Appeal to the Florida Supreme Court and receive the court's response to ensure that his writ complies with the requirements of exhaustion. (The Florida Supreme Court published its order on September 11th, 2024 in case no. 6D2023-2883 and a copy is available online and the Petitioner has included a copy as evidence of compliance in one case to demonstrate that he also complied with the same requirement in the instant case).

OATH

Under penalties of perjury, I declare that I have read the foregoing motion or had it read to me, that I understand the motion's contents, and that all of the facts alleged in the motion are true and correct.


HARRY LEE GOLDSBORO II, JR.
DEFENDANT, JAIL #4838427

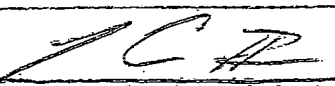
CERTIFICATIONS AND ACKNOWLEDGEMENTS

I certify that the motion is filed in good faith, that I have a reasonable belief that the motion is timely filed, has potential merit, and does not duplicate previous motions that have been disposed of by the court. I certify that I understand English and have read the foregoing motion or had the motion read to me. I understand that I am subject to judicial or administrative sanctions, including but not limited to forfeiture of gain time, if this motion is found to be frivolous, malicious, made in bad faith, or with reckless disregard for the truth, or an abuse of the legal process.


HARRY LEE GOLDSBORO II, JR.
DEFENDANT, JAIL #483840

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Request for Extension to File Writ of Certiorari was delivered by mail to: the United States Supreme Court Office of the Clerk of Courts 1 First St. NE Washington, D.C. 20543, the United States Attorney General 950 Pennsylvania Avenue Washington, D.C. 20530, and the Florida Supreme Court Office of the Clerk of Courts 500 South Duval Street Tallahassee, FL 32399-1927 on the 8th day of November 2024.


HARRY LEE GOLDSBORO II, JR.
DEFENDANT, JAIL #4838407
STEVARD COUNTY JAIL COMPLAINT
ATTORNEY AT LAW
860 CANYON ROAD
COCOA, FL 32927
DATE: 08 NOVEMBER 2024

MANDATE

from

**DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA
SIXTH DISTRICT**

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY NOTICE OF APPEAL, AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION OR DECISION;

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 DAN TRAVER, CHIEF JUDGE OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, SIXTH DISTRICT, AND THE SEAL OF THE SAID COURT AT LAKELAND, FLORIDA ON THIS DAY.

DATE: October 4, 2024

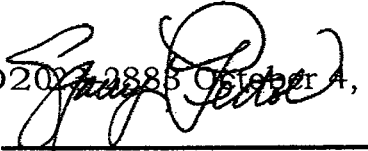
SIXTH DCA CASE NO. 6D2023-2883

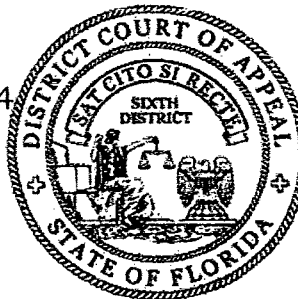
COUNTY OF ORIGIN: Orange County

LOWER TRIBUNAL CASE NO. 2018-CF-004010-A-O

CASE STYLE: HARRY LEE GOLDSBORO, I I VS STATE OF FLORIDA

6D2023-2883 October 4, 2024


Stacey Pectol
Clerk



cc:

HON. LUIS FERNANDO CALDERON
DAYTONA ATTORNEY GENERAL
DAYTONA OFFICE OF THE
ATTORNEY GENERAL

HARRY LEE GOLDSBORO II
TIFFANY RUSSELL, CLERK

HARRY LEE GOLDSBORO II
PETITIONER,
v.
STATE OF FLORIDA,

THE UNITED STATES SUPREME COURT

MOTION FOR CLARIFICATION

U.S. S.C. No. 1
FLCOAS No. 502023-1391
Formerly 24-5554
L.T. 2019-CF-021200A XXX

RESPONDENT

AND CORRECTION TO CASE NUMBERS AND RECORD

DATE: 02 FEBRUARY 2025

COMES NOW, on this 1st day of FEBRUARY, 2025, the Petitioner, HARRY LEE GOLDSBORO II,
pro se, and pursuant to Fed. Sup. Ct. Rule 21, submits this timely Motion For Clarification and Correction to
Case Numbers and Record. On January 21st, 2025, the Clerk of the United States Supreme Court mailed
three separate orders related to three separate petitions For writs of certiorari. However, the documents
that were returned did not match the case numbers For the appeals to which they relate. For example,
the order from the clerk dated "January 21, 2025 RE: Goldsboro v. Florida FLSC No. 2024-1316 No. 24A511"
indicates the petition For writ of certiorari was postmarked December 27th, 2024 and received January
10th, 2025. The papers were returned For the following reasons: "The cover page does not comply with Rule 34.1(d)
in that the cover must bear the nature of the proceeding and the name of the court from which the action is brought.
The statement of jurisdiction must properly show the date the judgment or order sought to be reviewed was entered.
Rule 14.1(e). To the extent the petition intends to seek review of the order dated September 11, 2024 by the Florida
Supreme Court in case No. SC 2024-1316, then the statement of jurisdiction must reflect the same." After
reviewing the Court's order, the Petitioner realizes that he made a mistake when filling out the certiorari
petition, and the Court seemingly mixed up the case numbers. The Petitioner actually is seeking the Court's
jurisdiction to review the order from the 5th District Court of Appeals from August 21st, 2024 denying the Petitioner's
Belated Appeal and Motion For Rehearing. However, when the Petitioner filed his initial writ of certiorari with the Clerk of
the United States Supreme Court, the Florida Supreme Court had not ruled on his appeal that was filed on August 24th, 2024.
On November 4th, 2024, the Clerk of the U.S. Supreme Court ordered that the Petitioner must first have his case reviewed
by the highest state court in case FLCOAS No. 502023-1391 (the petition was filed on October 30th, 2024). On
November 5th, 2024, the clerk returned the Petitioner's documents. After reviewing the Court's orders, the Petitioner
filed a "Request to Re-file Notice of Appeal" to the Florida Supreme Court in 5th DCA case number 502023-1391, in
which he explained that he filed an appeal to the Florida Supreme Court in 6th DCA case number 602023-2883
on August 15th, 2024 and in 5th DCA case number 502023-1391 on August 24th, 2024. The Petitioner included
his legal mail log to show he mailed documents to the Florida Supreme Court on two separate dates: 8/23/2024
and 9/16/2024. The Petitioner also included both Notices of Appeal as proof. The Petitioner also included a copy of
the Florida Supreme Court's order issued on September 11th, 2024 in case number 602023-2883. On November 8th, 2024

No. 502023-1391" provided a new case number as 24AS11, which relates to certiorari review of the 6th DCA's order dated September 11th, 2024 by the Florida Supreme Court in case No. SC2024-1316. To clarify, the Petitioner IS NOT seeking review of any of the Florida Supreme Court rulings, but is seeking review of the 5th DCA's ruling from August 21st, 2024, in case no. 502023-1391, and the 6th DCA's order from July 31st, 2024, in case no. 602023-2883. Furthermore, the clerk's third letter indicated that the court denied certiorari review of the Petitioner's writ in 6th DCA case no. 602023-2876, which sought review of the 6th DCA's order from October 15th, 2024, which per curiam affirmed the lower tribunal's ruling. The case was appealed to the U.S. Supreme Court on January 15th, 2025 after the Florida Supreme Court dismissed the case for lack of jurisdiction to review an unelaborated decision, on January 3rd, 2025 in case no. SC2024-1714 from 6th DCA case number 602023-2876. The U.S. Supreme Court case no. 24-6011 is listed as the case number for 602023-2876.

The Petitioner is attempting to ensure that the proper documents are filed with the proper cases, and that he is filing his writ correctly. The Brevard County Jail has no one trained in the law to help assist the Petitioner with filing his writ; therefore, the Petitioner is trying to ensure that he is proceeding properly.

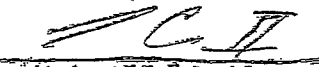
OATH

Under penalties of perjury, I declare that I have read the foregoing motion or had it read to me, that I understand its contents, and that all of the facts alleged in the motion are true and correct.


HARRY LEE COLOSBOROS II, JR.
DEFENDANT, JAIL #4838407

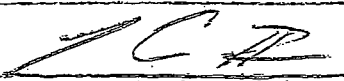
CERTIFICATIONS AND ACKNOWLEDGEMENTS

I certify that the motion is filed in good faith, that I have a reasonable belief that the motion is timely filed, has potential merit, and does not duplicate previous motions that have been disposed of by the court. I certify that I understand English and have read the foregoing motion or had the motion read to me. I understand that I am subject to judicial or administrative sanctions, including but not limited to forfeiture of gain time, if this motion is found to be frivolous, malicious, made in bad faith, or with reckless disregard for the truth, or an abuse of the legal process.


HARRY LEE COLOSBOROS II, JR.
DEFENDANT, JAIL #4838407

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Clarification and Correction was delivered by mail to the Office of the Clerk for the United States Supreme Court, First Street N.E., Washington, D.C. 20543 on this 2nd day of February 2025.


HARRY LEE COLOSBOROS II, JR.
DEFENDANT, JAIL #4838407
BREVARD COUNTY JAIL COMPLEX

ATTN: LEGAL MAIL
860 CANA ROAD
COCOA, FL 32927
DATE: 02 FEBRUARY 2025

HARRY LEE GOLDSBORO II

APPELLANT

v.

STATE OF FLORIDA

APPELLEE

FLORIDA SUPREME COURT

5TH DCA CASE NO.:

5D2023-1391

L.T. NO.:

2019-CF-021200-A

DATE: 08 NOVEMBER 2024

REQUEST TO RE-FILE NOTICE OF APPEAL

COMES Now, on this 8th day of NOVEMBER 2024, the Appellant, HARRY LEE GOLDSBORO II, pro se, submits this Request to Re-File a Notice of Appeal to the Florida Supreme Court of the 5th District Court of Appeal's per curiam affirmance of the lower tribunal's order denying the Appellant's Writ of Prohibition, that the 5th DCA decided without an opinion on June 12th, 2024. The Appellant's counsel provided affirmative misadvice regarding the Appellant's right to file an appeal and to proceed to trial based on an expiration of speedy trial and the Appellant was forced to choose between his right to appeal and his right to a speedy trial. The Appellant's trial was ultimately postponed, and the Appellant elected to proceed pro se and filed a "Related Appeal and Motion For Rehearing, Rehearing En Banc, Certification, and Written Opinion on August 10th, 2024. The 5th DCA denied to take any action on the motion and dismissed the case on August 21st, 2024. On August 24th, 2024, the Appellant filed a Notice of Appeal to the Florida Supreme Court and U.S. Supreme Court in case 5D2023-1391, and also a Notice of Appeal from August 15th, 2024 to the Florida Supreme Court and U.S. Supreme Court in case no. 6D2023-2883. The Florida Supreme Court issued its order denying discretionary jurisdiction in case no. 6D2023-2883 on September 11th, 2024; however, the Appellant never received an order in case no. 5D2023-1391. The Appellant is requesting to re-submit his Notice of Appeal to exhaust his state remedies, which is a procedural requirement to filing a writ of certiorari to the U.S. Supreme Court, and also for filing habeas corpus relief. The Appellant is including a copy of the Notice of Appeal and Florida Supreme Court order to demonstrate that he mailed those documents, but for some reason, the Florida Supreme Court did not receive the Appellants' Notice of Appeal in case no. 5D2023-1391. The Appellant respectfully requests that this Honorable court permit the Appellant to re-file his Notice of Appeal, even if it is considered a Related Notice of Appeal, as the delay was directly related to affirmative misadvice and timely filing of the Notice of Appeal to the Florida Supreme Court may have been misfiled or misplaced in the mail. The Appellant is also including a copy of his outgoing mail log to demonstrate that he mailed the Notices on August 23rd, 2024 and September 16th, 2024 to the Florida Supreme Court, yet only one notice was received and responded to by the Florida Supreme Court.

OATH

Under penalties of perjury, I declare that I have read the foregoing motion or had it read to me, that I understand motion's contents and that all of the facts alleged in the motion are true and correct.


HARRY LEE COLOSBOROS II, JR.
DEFENDANT, JAZL # 4838407

CERTIFICATIONS AND ACKNOWLEDGEMENTS

I certify that the motion is filed in good faith, that I have a reasonable belief that the motion is timely, filed in a potential merit, and does not duplicate previous motions that have been disposed of by the court. I certify that I understand English and have read the foregoing motion or had the motion read to me. I understand that I am subject to judicial or administrative sanctions, including but not limited to forfeiture of gain time, if this motion is found to be frivolous, malicious, made in bad faith, or with reckless disregard for the truth, or an abuse of the legal process.


HARRY LEE COLOSBOROS II,
DEFENDANT, JAZL # 4838407

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Request to Re-File Notice of Appeal was delivered by mail to the Florida Supreme Court Office of the Clerk of Courts 500 South Pinal Street Tallahassee, FL 32399-1927, and the Fifth District Court of Appeals ATTN: Clerk of Courts 300 South Beach Street Daytona Beach, FL 32114-5002 on this 8th day of NOVEMBER 2024.


HARRY LEE COLOSBOROS II,
DEFENDANT, JAZL # 4838407
BREVARD COUNTY JAZL COUNTY
ATTN: LEGAL MAIL
850 CANN ROAD
COCOA, FL 32927
DATE: 08 NOVEMBER 2024

Print Date/Time: 10/16/2024 6:01:57 AM

Date/Time	Contact Type	Contact Name	Comment
10/15/2024 08:11:18	Mail	SIXTH DISTRICT COURT OF APPEAL	
10/14/2024 11:22:59	Mail	Attorney General	
10/14/2024 11:22:39	Mail	Fifth District Court of Appeal	
10/14/2024 11:22:01	Mail	UNITED STATES DISTRICT	
10/14/2024 08:58:43	Mail	UNITED STATES DISTRICT	
10/07/2024 06:28:57	Mail	UNITED STATES DISTRICT	
10/04/2024 12:17:20	Mail	Brevard County Judge	SAMUEL BOOKHARDT III
10/03/2024 10:07:18	Mail	Fifth District Court of Appeal	
09/27/2024 06:09:42	Mail	BREVARD COUNTY PUBLIC DEFENDER	STEVEN RICE
09/27/2024 06:07:56	Mail	CLERK OF COURTS	
09/27/2024 06:06:54	Mail	CLERK OF COURTS	
09/25/2024 07:07:38	Mail	CLERK OF COURT	18TH JUDICIAL CIRCUIT
09/25/2024 07:20:51	Mail	DEPARTMENT OF JUSTICE	U.S. ATTORNEY GENERAL
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09/23/2024 06:17:59	Mail	State Attorney Office	
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09/23/2024 05:45:50	Mail	CLERK OF COURTS	
09/20/2024 10:23:40	Mail	State Attorney Office	STATE ATTORNEY PHIL ARCHER
09/20/2024 10:21:18	Mail	Fifth District Court of Appeal	
09/19/2024 11:09:55	Mail	Supreme Court Of the United States	
09/18/2024 07:17:12	Mail	UNITED STATES DISTRICT	
09/16/2024 07:55:15	Mail	<u>Supreme Court of Florida</u>	OFFICE OF THE CLERK
09/11/2024 10:45:40	Mail	UNITED STATES DISTRICT	OFFICE OF THE CLERK
09/11/2024 08:47:43	Mail	United States Department of State	ATTN: ATTORNEY GENERAL
09/11/2024 08:42:55	Mail	UNITED STATES SUPREME COURT	
09/10/2024 07:12:07	Mail	CLERK OF COURT	
09/10/2024 07:08:16	Mail	CLERK OF COURT	
09/10/2024 07:07:47	Mail	State Attorney Office	
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09/10/2024 06:48:43	Mail	Fifth District Court of Appeal	
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09/06/2024 10:20:21	Mail	UNITED STATES SUPREME COURT	ATTN: CLERK OF COURTS
08/27/2024 10:44:11	Mail	Fifth District Court of Appeal	
08/23/2024 06:49:02	Mail	CLERK OF COURT	
08/23/2024 06:48:39	Mail	SIXTH DISTRICT COURT OF APPEAL	
08/23/2024 06:48:17	Mail	Brevard County State Attorney's Office	
08/23/2024 06:47:56	Mail	<u>Florida Supreme Court</u>	
08/23/2024 06:47:14	Mail	UNITED STATES DISTRICT COURT	
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08/16/2024 10:30:47	Mail	UNITED STATES DISTRICT	
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08/16/2024 07:14:02	Mail	Fifth District Court of Appeal	
08/12/2024 06:17:50	Mail	State Attorney Office	
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08/07/2024 07:47:43	Mail	SIXTH DISTRICT COURT OF APPEAL	
08/02/2024 10:30:00	Mail	District Court of Appeals	
07/30/2024 06:34:51	Mail	UNITED STATES DISTRICT	
07/30/2024 06:33:03	Mail	UNITED STATES DISTRICT COURT	
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07/30/2024 06:27:47	Mail	State Attorney Office	
07/30/2024 06:26:00	Mail	BREVARD COUNTY PUBLIC DEFENDER	STEVEN RICE
07/25/2024 07:27:13	Mail	BREVARD COUNTY PUBLIC DEFENDER	MR STEVEN RICE
07/25/2024 07:26:54	Mail	SIXTH DISTRICT COURT OF APPEAL	
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Total Rows: 149

HARRY LEE COLOSABO II

APPELLANT

v.

STATE OF FLORIDA

APPELLEE

UNITED STATES SUPREME COURT

6TH DCA CASE NO.:

6D2023-2883

L.T. No.: 2018-CF-004010-A-C

DATE: 15 AUGUST 2024

NOTICE OF APPEAL

COMES NOW, on this 15th day of August 2024, the Appellant,

HARRY LEE COLOSABO II, pro se, submits this Notice of Appeal from the 6th DCA's order denying

the Appellant's motion and amended motion for rehearing, certification, written opinion, and rehearing en banc on July 31, 2024, to the Florida Supreme Court. The Appellant understands that the Florida Supreme

Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in or reversed or quashed by the Florida Supreme Court (see *Ostrander v. State*, SC2024-0670 Fla. May 03, 2024; *Wheeler v.*

State, 296 So.3d 895 Fla. 2020; *Wells v. State*, 132 So.3d 1110 Fla. 2014; *Dodi Publishing Co. v. Editorial*

America, S.A., 385 So.2d 1369 Fla. 1980; *Jollie v. State*, 405 So.2d 418 Fla. 1981 - explaining that the Florida

Supreme Court does not have subject-matter jurisdiction over a district court opinion that fails to expressly

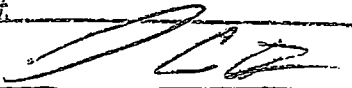
address a question of law, such as opinions issued without opinion or citation.) Thus, a district court decision rendered without opinion or citation constitutes a decision from the highest state court empowered to hear

the cause, and appeal may be taken directly to the United States Supreme Court. The Appellant files this

Notice of Appeal to the Florida Supreme Court to ensure that he is following proper procedures and exhausting all of his state remedies as he files a certiorari petition in the United States Supreme Court.

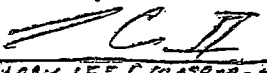
OATH

Under penalties of perjury, I declare that I have read the foregoing motion, or had it read to me, that I understand the motion's content, and that all of the facts alleged in the motion are true and correct.


HARRY LEE GOLDSBORO II, JR. SE
DEFENDANT, JAIL # 4838407

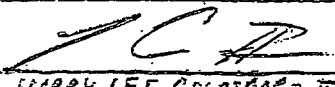
CERTIFICATIONS AND ACKNOWLEDGEMENTS

I certify that the motion is filed in good faith, that I have a reasonable belief that the motion is timely filed, has potential merit, and does not duplicate previous motions that have been disposed of by the court. I certify that I understand English and have read the foregoing motion or had the motion read to me. I understand that I am subject to judicial or administrative sanctions, including but not limited to forfeiture of gain time, if this motion is found to be frivolous, malicious, made in bad faith, or with reckless disregard for the truth, or an abuse of the legal process.


HARRY LEE GOLDSBORO II, JR.
DEFENDANT, JAIL # 4838407

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Appeal was delivered by mail to the Florida Supreme Court Office of the Clerk 500 South Duval Street Tallahassee, FL 32399-1927 and the Sixth District Court of Appeal 811 East Main Street Lakeland, Florida 33801 on this 15th day of August 2024.


HARRY LEE GOLDSBORO II, JR.
DEFENDANT, JAIL # 4838407
BREVARD COUNTY JAIL COMPLEX
ATTN: LEGAL MAIL
830 CAMP ROAD
COCOA, FL 32927
DATE: 15 AUGUST 2024

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SIXTH DISTRICT

July 31, 2024

HARRY LEE GOLDSBORO, II,
APPELLANT(S),

CASE NO.: 6D2023-2883
L.T. NO.: 2018-CF-004010-A-O

V.

STATE OF FLORIDA,
APPELLEE(S).

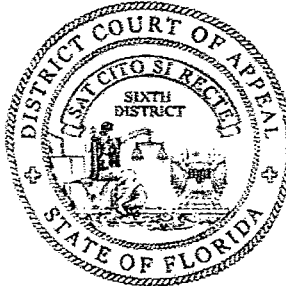
BY ORDER OF THE COURT:

Appellant's motion and amended motion for rehearing, certification, written opinion, and rehearing en banc are denied.

I hereby certify that the foregoing is a true copy of the original court order.

6D2023-2883 July 31, 2024


Stacey Pectol
Clerk



PANEL: TRAVER, C.J., and NARDELLA and WOZNIAK, JJ. (acting on panel-directed motion(s))

EN BANC COURT (acting on en banc motion)

cc:

DAYTONA ATTORNEY GENERAL
DAYTONA OFFICE OF THE
ATTORNEY GENERAL

HARRY LEE GOLDSBORO II
TIFFANY RUSSELL, CLERK

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SIXTH DISTRICT

July 31, 2024

HARRY LEE GOLDSBORO, II,
APPELLANT(S),

CASE NO.: 6D2023-2883
L.T. NO.: 2018-CF-004010-A-O

V.

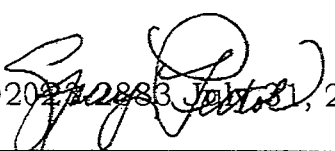
STATE OF FLORIDA,
APPELLEE(S).

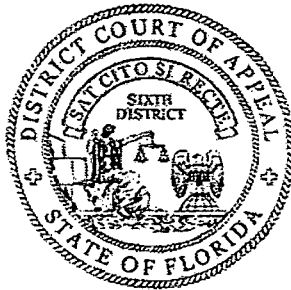
BY ORDER OF THE COURT:

Appellant's Amended Motion for Rehearing, Rehearing En Banc, Certification and Written Opinion filed July 10, 2024, is denied. Appellant's Motion for Rehearing and Request for a Written Opinion filed June 28, 2024, is denied as moot.

I hereby certify that the foregoing is a true copy of the original court order.

6D2023-2883 July 31, 2024


Stacey Pectol
Clerk



PANEL: TRAVER, C.J., and NARDELLA and WOZNIAK, JJ.

cc:

DAYTONA ATTORNEY GENERAL
DAYTONA OFFICE OF THE
ATTORNEY GENERAL

HARRY LEE GOLDSBORO II
TIFFANY RUSSELL, CLERK

APPENDIX B

1. AMENDED MOTION FOR REHEARING, REHEARING EN BANC, CERTIFICATION
AND WRITTEN OPINION (6/21/2024) 9A

2. 6TH DCA ORDER DENYING 3.800 MOTION CASE NO. 6D2023-2883 (6/11/2024) 9B

HARRY LEE GOLDSBORO II,
APPELLANT
v.

SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NO: 6023-2883
LOWER TRIBUNAL No.:
2018-CF-004010-A-0
DATE: 21 JUNE 2024

STATE OF FLORIDA,
APPELLEE

AMENDED MOTION FOR REHEARING, REHEARING EN BANC,

APPENDIX B

CERTIFICATION, AND WRITTEN OPINION

COMES NOW on this 21st day of June 2024, the Petitioner, HARRY LEE GOLDSBORO II, and se, submits this timely Amended Motion For Rehearing, Rehearing En Banc, Certification, and Written Opinion in Case no.: 6023-2883 From the Sixth District Court of Appeal's Per Curiam AFFIRMANCE OF the Lower Tribunal's Order Denying the Petitioner's 3.850 Postconviction Motion Filed in the 6th DCA on March 28, 2024. The 6th DCA denied the Petitioner's appeal on June 11, 2024 and the Petitioner received a copy of the order via mail on June 19th, 2024. The Petitioner then immediately Filed a Motion For Rehearing and Request For a Written Opinion on June 19th, 2024. However the Petitioner's original motion, although timely Filed, did not comply with the requirements established in F.R. App.P. Rule 9.330 and 9.331. This amended motion attempts to rectify those errors.

MOTION FOR REHEARING AND REHEARING EN BANC

The Petitioner asserts that the court overlooked or misapprehended in its order the Following issues:

1. A manifest injustice occurred when the defendant accepted a plea without the court or his attorney explaining that pleading to the technical violation of probation only could result in a maximum five-year prison sanction, which renders the plea involuntary.
2. Whether the court failed to act and counsel was ineffective for failing to inform the defendant of his right to withdraw his plea prior to sentencing in accordance with F.R. Crim. P. Rule # 3.170 after the new charge was dismissed.
3. Whether a plea to a technical violation of probation can result in a revocation of probation and a maximum five-year sanction when a technical violation is not a substantial and willful violation.
4. Whether the court and counsel failed to follow F.R. Crim. P. Rule # 3.170(j) Time and Circumstances of Plea, when the court and counsel failed to provide the defendant with a reasonable amount of time to consider the plea.
5. Whether the court and counsel failed to introduce FL ST. 943.06 as the authority for technical violations of probation sanctions and violated the law and the defendant's right to due process when it sentenced the defendant to an unauthorized five-year prison sentence.

The Petitioner is requesting a rehearing en banc as the Petitioner's first issue is of great importance because the defendant signed an involuntary plea based on the court's and counsel's failure to explain that a first-time technical violation could expose him to a five-year prison sentence, which resulted in a manifest injustice. In addition, such consideration is necessary to maintain uniformity in the court's decision.

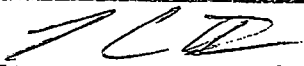
REQUEST FOR A WRITTEN OPINION

The Petitioner believes that a written opinion would provide: (i) a legitimate basis for supreme court review; (ii) an explanation for an apparent deviation from prior precedent; and (iii) guidance to the parties and lower tribunal when a. the issue decided is also present in other cases pending before the court or another PCA (Goldsboro v. State, 6024-0751); b. the issue decided is expected to recur in future cases; and c. there are conflicting decisions on the issue from lower tribunals.

WHEREFORE the Petitioner prays that this Honorable Court of Appeals grants the rehearing or hearing en banc, certification of both questions of great public importance, and provide a written opinion to establish a legitimate basis for Florida Supreme Court review.

OATH

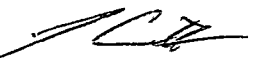
Under penalties of perjury, I declare that I have read the foregoing motion or had it read to me, that I understand the motion's content, and that all of the facts alleged in the motion are true and correct.


HARRY LEE GOLDSBORO JR.

APPELLANT, PRO SE
B30111 / JAL #4838907

CERTIFICATIONS AND ACKNOWLEDGEMENT

I certify that the motion is filed in good faith, that I have a reasonable belief that the motion is timely filed, has potential merit, and does not duplicate previous motions that have been disposed of by the court. I certify that I understand English and have read the foregoing motion or had it read to me. I understand that I am subject to judicial or administrative sanctions, including but not limited to forfeiture of gain time, if this motion is found to be frivolous, malicious, made in bad faith or with reckless disregard for the truth, or an abuse of the legal process.


HARRY LEE GOLDSBORO JR.

APPELLANT, PRO SE
B30111 / JAL #4838907

**SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 6D23-2883
Lower Tribunal No. 2018-CF-004010-A-O

HARRY LEE GOLDSBORO, II,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appeal pursuant to Fla. R. App. R. 9.141(b)(2) from the Circuit Court for Orange County.
Luis F. Calderon, Judge.

June 11, 2024

PER CURIAM.

AFFIRMED.

TRAVER, C.J., and NARDELLA and WOZNIAK, JJ., concur.

Harry Lee Goldsboro, II, Cocoa, pro se.

No Appearance for Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING
AND DISPOSITION THEREOF IF TIMELY FILED

APPENDIX C

1. NOTICE OF INQUIRY TO 6TH DCA (1/25/2024)

10A

2. EMERGENCY APPEAL OF ORDER TO 5TH DCA (5/24/2023)

10B

HARRY LEE GOLDENBORD II
Appellant/Petitioner
v.
STATE OF FLORIDA
Appellee/Respondent

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA SIXTH DISTRICT
(Personal Copy for Records)
NOT ORIGINAL

CASE NO.: 6D23-2883
L.T. NO.: 2018-CF-004010-A-0

NOTICE OF INQUIRY

COMES NOW, the appellant, HARRY LEE GOLDENBORD II, pro se, submits this Notice of Inquiry to the 6th DCA on January 16, 2024 to find out the status of case no. 6D23-2883. Filed on June 27th 2023 from the 9th Judicial Circuit Clerk of Court. On June 9th, 2023 the appellant filed three Emergency Appeals of Orders denying the appellant's pro se 3,850s and 3,800s conviction motions to the 5th DCA. The appellant had not yet received the record and the appeal was transferred to the 6th DCA, who mailed a notice to the appellant on June 21st 2023 instructing him that the court required the record to determine jurisdiction and a \$1300.00 Filing Fee was required (Case No.: 6D23-2876). On June 27th 2023, the Orange County Clerk of Courts sent the final record after receiving the appellant's Application for Criminal Indigent Status, and the case was assigned to 6D23-2883. The appellant files this Notice of Inquiry to determine the status of the case.

C. J.

1. Name
2. Appellant, Pro Se
3. DC / Jail #
4. SMART COMPASS
5. P.O. BOX
6. SEMINOLE
7. 25 JAN 2024

STATE OF FLORIDA,

vs. Appellee

HARRY LEE GOLDSBORO II,

Defendant/Appellant

FIFTH DISTRICT COURT OF THE NINTH JUDICIAL

CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

APPEAL TO THE FIFTH DISTRICT COURT OF APPEALS

CASE NO. 2018-CF-004010-A-0

DIV. 19

EMERGENCY

AL OF ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE TO THE FIFTH DISTRICT COURT OF APPEALS

COMES NOW on this 9th day of June 2023, the defendant/appellant, HARRY LEE GOLDSBORO II, pro se, submits this Emergency Appeal of Order Denying Defendant's Motion to Correct Illegal Sentence. Following the circuit court's denial without notice of defendant's pro se "3.800 Motion to Correct an Illegal Sentence" filed on May 24, 2021. The circuit court filed order on May 24, 2023 denying the defendant's motion finding that the defendant's reliance on FL ST 948.06 was misplaced challenge of the conviction on condition three is not a recognizable claim for a 3.800(a) motion, his claim of violations of ST 948.06(1)(h) 1-7 (2018) and 948.06(9) (2019) does not apply to him, and he was not illegally sentenced for giving a statutory maximum five year prison sentence for a technical violation of probation. In rebuttal, the defendant in this appeal that section 948.06(2)(g) mandates that if the court dismisses an affidavit alleging a violation of probation, the offender's probation shall continue as previously imposed. This clearly means that when the new law was dismissed, the technical violation was not a substantial violation that could lead to revoking probation, and his probation should have been reinstated, or terminated since he spent over 7 months incarcerated. The defendant asserts and the trial court acknowledges in its procedural history section that the defendant filed a 3.800 motion while his direct appeal was still pending, which means he filed a 3.800(b) motion and is entitled to an evidentiary hearing. The defendant's claims of violations of FL ST 948.06 and his comparison between 948.06 (2018) and (2019) was to demonstrate that the sanctions were not drastically altered to permit prison sentence for a single technical violation because they are not considered substantial violations of probation. The defendant claims an illegal sentence because FL ST 948.06 (2018) does not authorize a prison sentence, especially a maximum sentence for a technical violation of probation.

The defendant/appellant is requesting consideration for an emergency review and expedited ruling because the defendant successfully completed his prison sentence on May 12th, 2023, and said sentence was the direct result of the conviction from which the defendant is seeking relief. In addition, the defendant argues in a separate 3.850 motion that his counsel misled and misinformed him of the consequences of signing the original plea. One such consequence is that the state filed a petition seeking civil commitment as a sexual predator under the Jimmy Ryce Act based on the underlying conviction of which the defendant sought relief from by filing a 3.850 Motion for Postconviction Relief in May and June 2021. The state is basing its civil commitment petition on this same conviction of which the defendant's counsel affirmatively explained "you don't have to worry about that, it doesn't apply to you,"

could impose under any set of factual circumstances." (citing *Williams v. State* 957 So.2d 600 Fla. 2018). *Plett v. State* also cites *State v. Mancino* 714 So.2d 429 Fla. 1998 which defines an illegal sentence as "a sentence that patently fails to comport with statutory or constitutional limitations is by definition illegal". The court of appeals denied Plett's claims of an illegal sentence because his case concerned an upward departure that exceeded the statutory maximum. The circuit court then cited *Johnson v. State* 60 So.3d 1045 Fla. 2011 which found that "A defendant bears the burden to show clear entitlement based on the face of the record,"; however, *Johnson v. State* involved the appellant seeking credit for time served under rule 3.800 for plea agreements which the Florida Supreme Court found are not cognizable under the rule, and this case is also irrelevant to the defendant's 3.800 motion. The circuit court also relies on *Brooks v. State* 969 So.2d 238 Fla. 2007 stating that "Under rule 3.800(a) no evidentiary hearing is allowed," but Brooks's case involved a sentencing error related to using an incorrect worksheet, which would require evidence to be reviewed since the error could not be clear based on the face of the record, which is prohibited by a rule 3.800(c) motion. In *State v. Anderson* 905 So.2d 111 Fla. 2005 the Florida Supreme Court explained that a defendant has several options for raising a sentencing error: First, when preserved for review, the error may be raised on direct appeal and, even if not preserved 3.800(b) allows defendants to file a motion to correct sentencing errors even while an appeal is pending; the rule also entitled a defendant to an evidentiary hearing (*Muddox v. State* 760 So.2d 89 Fla. 2000); third, a defendant may file a sentencing error under a rule 3.850 motion; and fourth, a defendant may file a 3.800(c) motion at any time, based on a claim of a sentencing error that is demonstrated on the face of the record since an evidentiary hearing is not allowed. The defendant claims that he filed a 3.800(b) since his appeal was still pending and is therefore entitled to an evidentiary hearing; however, his rule 3.800 motion also meets the requirements of a 3.800(c) motion and his claim that a prison sanction following a probation revocation for a technical violation was an illegal and unlawful sentence satisfies the requirements for a 3.800(c) motion and the evidence is clear from the record.

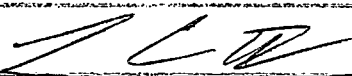
The circuit court's reliance on *Stambotham v. State* 891 So.2d 1136 Fla. 4th DCA 2005 is also erroneous in rebutting the defendant's claim of violations of FL ST. 948.06, because the 4th DCA's ruling essentially validates the defendant's claim that his probation would have been reinstated after the dismissal of the new law violation and all tolled time should have been credited with reinstatement of probation. FL ST. 948.06(2)(g) provides that if the court dismisses a VOP affidavit, the offender's probation "shall continue as previously imposed, and the offender shall receive credit for all tolled time against his or her

3d 1143 Fla. 5th DCA 2019, the 5th DCA found that appellant did not willfully and substantially violate two conditions of probationing that where it is unclear from the record whether the court would have revoked probation and imposed the same sentence based on missing violations, the appellate court must reverse and remand for determination whether properly-substantiated violations warrant a revocation of probation; *Hugan v. State* 190 So.3d 210 Fla. App. 2016, *Garcia v. State* 701 So.2d 607 Fla. 2d DCA 1997, *Idle v. State* 755 So.2d 771 Fla. 4th DCA 2000 and *Stevens v. State* 599 So.2d 254 Fla. 3d DCA 1992 all find that inept or negligent conduct do not amount to a willful or deliberate violation of probation. Failure to attend required program absent a showing that failure was a product of a knowing and willful act and not negligence or ineptitude could not support a probation revocation (*Buckins v. State* 789 So.2d 1184 Fla. 4th DCA 2001); inept/negligent failure to return to halfway house because of car trouble was not willful violation (*Thomas v. State* 672 So.2d 587 Fla. 4th DCA 1992); missing meeting of sex offender program not support conclusion that the defendant willfully or deliberately missed the meeting (*Stevens v. State* 599 So.2d 254 Fla. 3d DCA 1992); the 2nd DCA has held that a violation of supervision is willful only where the defendant fails to make reasonable efforts to comply with the alleged violated condition (*Rousey v. State* 226 So.3d 1015 Fla. App. 2017); Rousey's failure to contact his P.O. and return home was at worst due to negligence or ineptitude; therefore, the trial court abused its discretion in finding a willful and substantial violation of community control (*Rousey v. State*, *Hicks v. State* 890 So.2d 959 Fla. 2d DCA 2004, *Benedict v. State* 774 So.2d 940 Fla. 2d DCA 2001, *Jacobsen v. State* 536 So.2d 373 Fla. 2d DCA 1988, *Scott v. State* 485 So.2d 133 Fla. 2d DCA 1986); a violation of probation will not be found where the violation is due to negligence or ineptitude (*Filmore v. State* 133 So.3d 1188 Fla. 2d DCA 2014).

In *Tanner v. State* 724 So.2d 643 Fla. App. 1989, the 1st DCA has ruled that unpreserved sentencing errors which are "fundamental" still be corrected on direct appeal (see *Nelson v. State* 719 So.2d 1230 23 Fla. L. Weekly D2241 Fla. 1st DCA 1989, citing *State v. Encino* 714 So.2d 929 Fla. 1988 - holding a sentence is illegal by definition when it patently fails to comport with statutory or constitutional limitations, *Hopping v. State* 708 So.2d 263 Fla. 1998). Section 924.051(3) Florida Statutes provides: "an appeal may not be taken from a judgment or order of a trial court unless a prejudicial error is alleged and is properly preserved, or if not properly preserved, would constitute fundamental error. A judgment or sentence may be reversed on appeal only when an appellate court determines after a review of the complete record that prejudicial error occurred and was properly preserved in the trial court, or if not properly preserved, would constitute fundamental error. The defendant moves

OATH

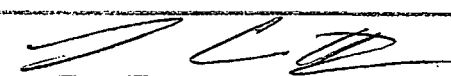
Under penalties of perjury, I declare that I have read the foregoing motion, or had it read to me, that I understand the motion's content, and that all of the facts alleged in the motion are true and correct.


HARRY LEE GOLDSBORO II

Defendant, PRO SE
B30111 / Jail # 4838407

CERTIFICATIONS AND ACKNOWLEDGEMENT

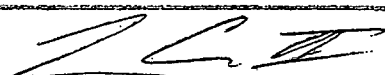
I certify that the motion is filed in good faith, that I have a reasonable belief that the motion is timely filed, has potential merit, and does not duplicate previous motions that have been disposed of by the court. I certify that I understand English and I read the foregoing motion or had it read to me. I understand that I am subject to judicial or administrative sanctions including but not limited to forfeiture of gain time, if this motion is found to be frivolous, malicious, made in bad faith or in reckless disregard for the truth, or an abuse of the legal process.


HARRY LEE GOLDSBORO II

Defendant, PRO SE
B30111 / Jail # 4838407

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the 5th DCA Clerk of Courts 300 S. Beach St. Daytona Beach, FL 32114-5002, the 9th Judicial Circuit Clerk of Courts 425 N. Orange Ave. Room 210 Orlando, FL 32801, Office of the State Attorney, Conviction Felony Unit 425 N. Orange Ave. Orlando, FL 32801, and State Attorney's Office 301 South Monroe St. Suite #475 Tallahassee, FL 32301. Brevard County Jail law library provided the addresses for the 5th DCA and State Attorney's Offices, so if they are incorrect, please forward the correct mailing address by mail on 11 June 2023.


HARRY LEE GOLDSBORO II

Defendant, PRO SE
B30111 / Jail # 4838407

SMART COMMUNICATIONS / BREVARD COUNTY
P.O. Box 9145

SEMIWOLE FL 33775-9145
11 JUNE 2023

LEE GULOSBORO II,
et

JUDICIAL CIRCUIT IN AND FOR
ORANGE COUNTY, FLORIDA
CASE NO. 2018-01-004010-A-0
DIV: 19

AMENDMENT TO DEFENDANT'S 3,800 MOTION TO CORRECT ILLEGAL SENTENCE TO THE 9TH JUDICIAL CIRCUIT COURT

COMES NOW, on this 24th day of May 2023, the defendant/appellant, HARRY LEE GULOSBORO II, pro se, submits this timely amendment to the defendant's 3,800 Motion to Correct Illegal Sentence in case no. 2018-CF-004010-A-0 Violation of Probation hearing. The defendant is currently incarcerated in the Brevard County Jail and does not have access to his copies of the previously filed originals to determine and verify dates of submission and the oaths. The defendant's copies are stored in his property at Hardee C.Z., but he has requested copies from the Orange County Clerk of Courts. The defendant filed this amendment to his original motion to ensure it contains a proper oath. In accordance with the 2nd DCA's ruling in *Miller v. State* 617 So.2d 332 Fla. App. 1996, *Leaves v. State* 615 So.2d 388 Fla. App. 1996, and *Haywood v. State* 615 So.2d 707 Fla. App. 1992, a defendant may resubmit their motions to the court after amending them to be in technical compliance by adding a proper oath, since the original motions were timely filed; therefore, amendment and resubmission of the motion to bring it into technical compliance is not time-barred (*Miller, Leaves, and Haywood*). The trial court has not made a ruling in this case as of 24 MAY 2023 and this amendment is submitted timely to correct any potential technical non-compliance with a proper oath.

APPENDIX D

1. 9TH JUDICIAL CIRCUIT COURT ORDER DENYING 3.800 MOTION (5/24/2023) 11

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

CASE NO: 2018-CF-004010-A-O
DIV.: 19

v.

DIRECTIONS TO CLERK PAGE 6

HARRY LEE GOLDSBORO II,
Defendant.

ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE

THIS MATTER came before the Court on Defendant's *pro se* "3.800 Motion to Correct an Illegal Sentence," filed on May 24, 2021. Upon reviewing Defendant's Motion, the court file, and the record, the Court finds as follows:

PROCEDURAL HISTORY

On April 27, 2004, the State charged Defendant by Information with attempted sexual battery (count one), false imprisonment (count two), and exposure of sexual organs (count three). On September 18, 2018, Defendant pled to count two and count three. The State nol-prossed count one. The court withheld adjudication, and Defendant was sentenced to a term of 40 days in the Orange County Jail with credit for 40 days' time served on each count. The court ordered Defendant to be placed on Supervised Probation for a period of three years for count two and one year for count three.

On November 6, 2018, the Florida Department of Corrections ("DOC") filed a Violation of Probation Affidavit. In the Affidavit, DOC alleged that Defendant had violated conditions three and five of his Supervised Probation by leaving his county of residence without consent and violating the law. On February 19, 2019, Defendant entered a plea of no contest on condition three of his probation.

On June 3, 2019, the court found Defendant guilty of violating condition three of his probation and adjudicated Defendant guilty as to the underlying charges. The court sentenced Defendant to five years in DOC with credit for 204 days' time served on count two and 204 days in Orange County Jail with credit for 204 days' time served on count three.

On August 14, 2019, Defendant filed a Motion to Withdraw VOP Admission. The court denied Defendant's motion on October 16, 2020. Defendant appealed. The Fifth District Court of

Appeal affirmed and issued its Mandate on July 6, 2021. *Goldsboro v. State*, 5D20-2283, 2021 WL 1940831 (Fla. 5th DCA May 11, 2021).

In the meantime, Defendant filed a Motion for Belated Plea Withdraw on April 26, 2021, a Motion to Correct, Reduce or Modify Sentence on May 24, 2021, and his first Motion for Postconviction Relief on May 27, 2021.

ANALYSIS AND RULING

"[A]n 'illegal sentence' [i]s one that imposes a punishment or penalty that no judge under the entire body of sentencing statutes and laws could impose under any set of factual circumstances." *Plott v. State*, 148 So. 3d 90, 93 (Fla. 2014) (quoting *Williams v. State*, 957 So. 2d 600, 602 (Fla. 2007) (internal citation omitted)). Any sentence that fails to comport with statutory or constitutional limitations is deemed illegal. *Id.* (quoting *State v. Mancino*, 714 So. 2d 429, 433 (Fla. 1998)). In a motion to correct a sentence, a defendant bears the burden to show clear entitlement based on the face of the record. *Johnson v. State*, 60 So. 3d 1045, 1051 (Fla. 2011). Under Rule 3.800(a), "no evidentiary hearing is allowed." *Id.* (quoting *Brooks v. State*, 969 So. 2d 238, 242 (Fla. 2007)).

In his Motion, Defendant claims the court violated sections 948.06(2)(g) and 948.06(1)(h)1.-7., Florida Statutes (2018), and violated sentencing guidelines established in rules 3.701, 3.702, and 3.703, Florida Rules of Criminal Procedure, when sentencing Defendant on his violation of probation.

Defendant violated two conditions of his probation: leaving the county without permission (condition three) and a new arrest for the criminal offense of indecent exposure (condition five). At his plea hearing on the violation of probation, Defendant pled guilty to violating condition three of his probation. (PH. 16-21.)¹ The State dismissed the underlying charge that gave rise to his

¹ Excerpts from transcripts will be designated the following way: Plea Hearing (PH. ____); and Sentencing Hearing (SH. ____).

violation of condition five and therefore dismissed the violation of condition five. (SH. 30-31.) Defendant was ultimately adjudicated guilty on condition three and the underlying charges of false imprisonment and exposure of sexual organs and sentenced to five years in DOC.

First, Defendant contends the court violated section 948.06(2)(g), Florida Statutes (2018), by failing to dismiss the violation of condition three after the charge that was the basis for the violation of condition five was nol-prossed by the State. Specifically, Defendant violated condition five of his probation when he was charged with indecent exposure. DOC charged him with violating technical condition three for failing to get permission to leave the county because the new charge of indecent exposure occurred in a different county. According to Defendant, the State nol-prossed his indecent exposure charge; thus, his violation of condition five was dismissed. Defendant argues that the violation of condition three should have been dismissed as well.

Pursuant to section 948.06(2)(g), "[i]f the court dismisses an affidavit alleging a violation of probation or community control, the offender's probation or community control shall continue as previously imposed, and the offender shall receive credit for all tolled time against his or her term of probation or community control." The purpose of this section is to nullify the tolling mechanism when a court finds that a defendant did not violate his probation. *See Stambaugh v. State*, 891 So. 2d 1136, 1139 (Fla. 4th DCA 2005). Thus, Defendant's reliance on section 948.06(2)(g) is misplaced.

Further, Defendant's challenge of the conviction on condition three is not a cognizable claim for a 3.800(a) motion. *See, e.g., Coughlin v. State*, 932 So. 2d 1224, 1226 (Fla. 2d DCA 2006); *Plowman v. State*, 586 So. 2d 454, 456 (Fla. 2d DCA 1991); *State v. Spella*, 567 So. 2d 1051, 1051 (Fla. 5th DCA 1990); *Henry v. State*, 920 So. 2d 1204, 1205 (Fla. 4th DCA 2006); *Salazar v. State*, 675 So. 2d 654, 655 (Fla. 3d DCA 1996); *Ferenc v. State*, 563 So. 2d 707, 707

(Fla. 1st DCA 1990). Allowing Defendant to attack his conviction would infringe upon rule 3.850, Florida Rules of Criminal Procedure. *See Coughlin*, 932 So. 2d at 1226. Therefore, Defendant's first basis for relief is denied.

Second, Defendant argues that the court violated section 948.06(1)(h)1.-7., Florida Statutes (2018) when sentencing him. According to Defendant, leaving the county without permission is a low-risk technical violation pursuant to section 948.06(9), Florida Statutes (2019). Because he was a first-time violator and it was a low-risk technical violation, his probation should not have been revoked and terminated. For this claim, Defendant is relying on a version of 948.06 that was not enacted at the time he violated his probation. The version of section 948.06(9), Florida Statutes that Defendant relies on went into effect in October of 2019, which was after he was sentenced. Therefore, the language in section 948.06 that Defendant relies on for relief does not apply to him.

Lastly, Defendant maintains that the court violated sentencing guidelines established in rules 3.701, 3.703, and 3.704, Florida Rules of Criminal Procedure, by illegally sentencing him to five years in DOC. According to Defendant, the court illegally sentenced him to five years in prison which was more than a 25% deviation from his total sentence points on his scoresheet. Defendant claims that the total sentence points for his underlying offenses were 42.2, which is below the total sentence points needed for a prison sentence. He further contends that the court failed to follow the sentencing guidelines established in 3.703(d)(30)(A) and (B) and in 3.704 (d)(25), which prohibits a prison sentence of more than a 25% deviation from a defendant's total sentence points.

Here, Defendant received 36.2 total sentence points on his scoresheet. (*See Scoresheet*). The maximum possible sentence that Defendant could receive for counts two and three is five

years.² § 775.082(3)(e), Fla. Stat. (2018). Florida's Criminal Punishment Code provides that "[t]he permissible range for sentencing must be the lowest permissible sentence up to and including the statutory maximum, as defined in section 775.082, Florida Statutes, for the primary offense and any additional offenses before the court for sentencing." Fla. R. Crim. P. 3.704(26). Defendant was sentenced to five years in DOC, which is the maximum sentence. Because Defendant was sentenced within the permissible range for sentencing, his argument that the court violated the Criminal Punishment Code is without merit.

Based on the foregoing, Defendant was not given an illegal sentence; therefore, his motion is denied.

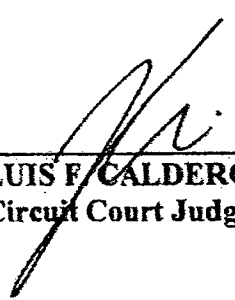
Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

1. Defendant's "3.800 Motion to Correct an Illegal Sentence," filed on May 24, 2021, is **DENIED**.
2. Defendant may file a notice of appeal in writing within **thirty (30) days** of the date of this Order.
3. The following document(s) are hereby attached and are incorporated throughout by reference: VOP Affidavit, Plea Form, VOP Plea Hearing Transcript, Order of Disposition, Sentence, Judgment, VOP Sentencing Hearing.

² Defendant plead guilty to the charges of false imprisonment and exposure of sexual organs. False imprisonment is a third-degree felony and exposure of sexual organs is a first-degree misdemeanor. § 787.02(2), Fla. Stat. (2018); § 800.003, Fla. Stat. (2018).

4. The Clerk of Court is ordered to mail a copy of this Order to Defendant, including an appropriate certificate of service, addressed as follows: Smart Communications / Brevard County, Harry Lee Goldsboro II, ID# 4838407, PO BOX 9145, Seminole, Florida 33775-9145. The Clerk shall also file a copy of the certificate of service in the court file.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on the 24
day of May 2023.


LUIS F. CALDERON
Circuit Court Judge

Original Signed by:
Judge Luis F. Calderon
Circuit Judge, this

MAY 24 2023

Certificate of Service

I HEREBY CERTIFY that a copy of this Order has been furnished to Harry Lee Goldsboro II, ID# 4838407, Smart Communications / Brevard County, PO BOX 9145, Seminole, Florida 33775-9145; and to the Office of the State Attorney, Postconviction Felony Unit, 415 North Orange Avenue, Orlando, Florida 32801, PCF@sao9.org, SPostConv@sao9.org, on this 24 day of May 2023.


Judicial Assistant