

IN THE SUPREME COURT OF THE
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Michael D. Miller
Petitioner:

No. 25-5269

VS.

STATE OF FLORIDA
Respondant:

MOTION FOR REPLEVIN
REHEARING

GROUNDAS AS FOLLOW:

APPENDIX D - ORDER Denying Motion
for RELIEF FROM JUDGMENT 19 #14
15, 16 and 17

Michael D. Miller
Michael D. Miller
DC #542102, Pro Se
MADISON C. J., 382
SIX MILE WAY
MADISON, FL 32340

CC. Miller Michael

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SUPREME COURT, U.S.

REHEARING

No.: 25-5269

GROUND #1

Substantial Effect

When the officer open Petitioners Miller legal mail without Miller being present to ensure the safe keeping of his legal mail for what ever reasons that he stated in the grievances held no merit do to the fact that the officer was not certified "at that time" and in violation of fed laws Damaging the constitutional integrity of Miller legal mail rights.

GROUND #2

Controlling Effect

When a head certified mail room Personal fails to ensure that some one certified, is on duty to present Inmates legal mail on days permitted by DOC, that Personal also played a part in any error when D.O.C lets a uncertified officer pass out inmates legal even if that Personal did not no because no one was on duty by reason of the head

REHEARING

Personnel who was certified as required by law of the feds where that person took and out to the ensure of safe keeping of and all IN-mates legal mail.

GROUND #3

Substantial Ground not previously presented
"tampering" all petitioners in coming mail at Jefferson C.I. is being open before I receive my mail and is being close again like it was not open. When I open my mail the sticker just pull right open without no problem which is why I'm asking this court to accept this writ of certiorari to ensure that no one has removed any papers, because remember on Sept 30 2025 I sent back a petition that had my name on it with someone else name and case number saying that I had 60 days to stay my petition because I had something pending in court. Case Against Emily Walker was not on it only the clerk of court, case # of wrong case that I sent back No. 52-2070

REHEARING

No.: 25-5269

GROUND #4

Substantial Grounds not previously Presented

The trial court was without Jurisdiction to rule on any/all of Petitioners Post conviction relief due to his recusal of of Miller Civil case. Petitioner did a motion base on the trial courts recusal and went to The Florida Supreme Court but that court would take Jurisdiction on any of Petitioner Appeal last of all I went to The Supreme Court of Washington DC where this Court never responded back as to the Petition No.: SC2023-1607 All this is happening to keep this Court from over turning this case. all I'm asking Ms. Walker is for this Court to take the time out and properly look into this case, and if you don't see any thing then I'm fine.

Michael Mills

CERTIFICATION

That the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

Michael D. Miller
1/24/26

I ALSO CERTIFY

THAT that this Petition for rehearing is presented in good faith and not for delay, Rule 44.

Michael D. Miller
Michael D. Miller
D#542102 Pro se
MADISON C. I 382
SOUTH WEST M.C.I
WAY MADISON FL 32340
1/24/26

RECEIVED DATE
1/22/26

REHEARING

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RELIEF SOUGHT

Based on the foregoing facts
In this motion Petitioner ask this court
to reverse and remand Petition case
back to the lower court with orders
to take the HFO of his Sentence
and sentence him by STATUTE 316-
193(5) laws.

Michael Miller

I Micheal Devon Miller STATE that
The facts stated in the motion are
true, I Micheal Miller AM A lay man
AT LAW.

Michael Miller

APPENDIX

D

Order Denying Motion For Relief Judgment
Dec. 19, 2022, received
Denied on 8 day of August, 2023

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
IN AND FOR LAFAYETTE COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: 2013-62-CF

vs.

MICHAEL DEVON MILLER,
Defendant.

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT

THIS CAUSE came before the Court on the Defendant's *pro se* "Motion for Relief from Judgment," filed with the Lafayette County Clerk of the Court on December 19, 2022. For unknown reasons, this Court was unaware of the existence of the instant motion until very recently. Therefore, this Court just now considers the motion and applicable law, the motion is **DENIED** for the reasons expressed below.

Procedural History

On February 4, 2016, the Defendant was convicted of: Count 1, DUI manslaughter; Count 2, reckless driving; Count 3, DUI causing serious bodily injury; Counts 4 and 5, DUI causing property damage; and Count 6, DUI. The State vacated the charges in Counts 2, 5, and 6, and the Defendant was sentenced as a Habitual Felony Offender as follows: Count 1, 29½ years in prison, followed by six months of probation; Count 3, five years in prison, concurrent with Count 1; and Count 4, one year in the county jail, concurrent with Counts 1 and 3. The Defendant's judgment and sentence were *per curiam* affirmed by Mandate issued August 30, 2018. *See Miller v. State*, 250 So. 3d 144 (Fla. 1st DCA 2018).

Subsequently, the Defendant filed an Amended Motion to Correct Illegal Sentence, which was denied. The Defendant then filed a Second Amended Motion to Correct Illegal Sentence, which was also denied. On February 9, 2023, the Defendant filed a Notice of Appeal of the Court's Order. The appeal is currently pending before the First District Court of Appeal, case number 1D23-0295.

Instant Motion

On December 19, 2022, the Defendant filed the instant motion seeking "relief from judgment." He raises one ground alleging that the Court's prior orders denying his motions are a

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STATE INITIALS LC
INMATE INITIALS _____

1 of 3

15

nullity. The Defendant asserts that the Court's ruling on his Rules 3.800(a) and 3.850 motions "must be dismissed as void" *Motion at 3*. He claims that the judge does not have authority to rule on the motions in his criminal case due to the judge's recusal in a civil case in which the Defendant is a party. Specifically, the Defendant argues that the judge entered an Order of Recusal in case 2014-23-CA and due to this recusal the judge should be "barred from further participation in [this] case." *Motion at 3*. In relief, the Defendant requests the current judge be removed, a new judge be appointed in this case, and the new judge hear his previously filed motions. *Motion at 5*.

Initially, the Court notes that rule 1.540 is not applicable to the instant case. *See Fla. R. Civ. P. 1.540*. "By its own terms, rule 1.540 applies only to civil matters, not to collateral claims associated with criminal convictions." *Goolsby v. State*, 914 So. 2d 494, 496 (Fla. 5th DCA 2005) (citing *Steinhorst v. State*, 636 So. 2d 498, 500 (Fla. 1994)). However, rather than denying the motion the court may treat such as motion under rule 3.850 if the motion raises facially sufficient claims for post-conviction relief. *See Aswell v. State*, 310 So. 3d 983 (Fla. 2d DCA 2020) (finding that because rule 1.540 does not apply to criminal cases the court should treat motion is filed under correct rule 3.850). Furthermore, if the motion is not cognizable under rule 3.850 the court may treat a motion filed under rule 1.540 as petition for writ of mandamus, but the defendant must demonstrate a clear legal right. *See Goolsby*, 914 So. 2d at 496 (finding that mandamus seems the appropriate remedy to compel the trial court to afford the defendant a new 3.850 hearing based on recusal of a judge if he can demonstrate a clear legal right to such a hearing and an indisputable legal duty on the part of the court to conduct such a hearing.).

Here, the Defendant's claim is insufficient and untimely under Rule 3.850. Moreover, the relief under mandamus is not appropriate based on the Defendant's failure to show a clear legal right to removal of the trial judge. *See Turner v. Singletary*, 623 So. 2d 537, 538 (Fla. 1st DCA 1993) (to be entitled to mandamus relief, the petitioner must show that he has a clear legal right to compel an official to perform an indisputable ministerial legal duty required by law and no other adequate remedy exists). The Defendant claims trial judge's recusal in the civil case amounted to a recusal in the present case, thus the trial judge's orders after the Order of Recusal are void. *Motion at 3*. Contrary to the Defendant's assertions the trial judge's recusal in the civil case does not amount to recusal in this case. The trial judge's basis for recusing was that "undersigned's daughter is a partner in the firm representing one of the defendants[.]" *See attached Order of*

