

ADDITIONAL CLAIMS PAGES
ATTACHED
EXHIBITS

EXHIBIT

"A"

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

STATE OF FLORIDA,

CASE NO.: 2006-416-CF

vs.

JODY JOHNSON,
Defendant.

**ORDER DENYING MOTION FOR REHEARING AS UNTIMELY,
AND, ALTERNATIVELY, DENYING SUCCESSIVE MOTION
FOR POSTCONVICTION RELIEF AS UNTIMELY**

THIS CAUSE came before the Court on the Defendant's *pro se* "Motion to Recall, Vacate, Correct, and Set Aside Order Denying 3.850; Evidentiary Hearing, Based Upon Fraud Practiced on the Court by Trial Counsel Blair Payne," provided to prison officials on December 22, 2023, and filed on December 27, 2023. This Court is treating the motion as a *pro se* motion for rehearing and, alternatively, as a *pro se* successive motion for postconviction relief. Upon consideration of the motion, the record, and the applicable law, the motion for rehearing is DENIED as untimely, and, alternatively, the successive motion for postconviction relief is DENIED as untimely.

The Defendant asserts his "actual innocence," raises various claims of ineffective assistance of counsel, challenges various evidentiary rulings made during trial and during the evidentiary hearing held on September 11, 2012, and in relevant part, seeks an order "reversing" the order denying his motion for postconviction relief, entered following the evidentiary hearing held on September 11, 2012. The case docket indicates that, on March 14, 2013, this Court entered a Final Order Denying Motion for Postconviction Relief, on February 26, 2014, this Court entered an Order Denying Successive Motion for Postconviction Relief, and on February 7, 2019, this Court entered an Order Denying Motion to Vacate, Correct, or Set Aside Sentence, which treated the Defendant's motion as having been filed pursuant to Florida Rule of Criminal Procedure 3.850.

When treating the instant motion as a motion for rehearing of any of the foregoing orders, the motion is untimely. *See Fla. R. Crim. P. 3.850(j)* (requiring a motion for rehearing be filed within 15 days of service of the order).

The motion is also untimely if treated as a motion filed pursuant to Rule 3.850. Motions filed pursuant to Rule 3.850 must be filed within two years of the date the judgment and sentence become final. *See Fla. R. Crim. P. 3.850(b); see also Knowles v. State*, 41 So. 3d 332, 333 (Fla. 1st DCA 2010). "[T]he two-year period begins to run when appellate proceedings have concluded and the court issues a mandate, or, if no appellate proceedings are initiated, thirty days after the judgment and sentence become final." *Cave v. State*, 289 So. 3d 980, 981–82 (Fla. 1st DCA 2020) (citations omitted); *McDade v. State*, 239 So. 3d 128, 129 (Fla. 3d DCA 2018) (citations omitted); *Coleman v. State*, 112 So. 3d 113, 113–14 (Fla. 1st DCA 2013) (affirming dismissal with prejudice where 3.850 motion was filed more than two years after judgment and sentence became final).

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Rule 3.850 lists three exceptions to its timeliness requirement, and requires the exceptions to be alleged in the postconviction motion to be considered. *See Knowles*, 41 So. 3d at 333 (citing Fla. R. Crim. P. 3.850(b) (1-3)).

Here, the Defendant's judgment and sentence became final on December 30, 2009, upon issuance of the appellate mandate. *See Final Order Denying Motion for Postconviction Relief, entered March 14, 2013.* Thus, for the instant motion to be timely, it was required to be filed on or before December 30, 2011, unless one of the three exceptions to the timeliness requirement is alleged. The instant motion fails to meet any of the exceptions to the timeliness requirement. Because the Defendant failed to establish any of the exceptions to the timeliness requirement, his motion submitted to prison officials on December 22, 2023, is untimely.

Therefore, it is ORDERED that the *pro se* motion for rehearing is DENIED AS UNTIMELY. Alternatively, the *pro se* successive motion for postconviction relief is DENIED AS UNTIMELY. The Defendant may appeal this decision to the First District Court of Appeal within thirty (30) days of the date of this Order.

DONE AND ORDERED in Suwannee County, Florida, this 14 day of February 2024.

DAVID W. FINA, CIRCUIT JUDGE

Attachments:

- Final Order Denying Motion for Postconviction Relief, without attachments, entered March 14, 2013
- Order Denying Successive Motion for Postconviction Relief, without attachments, entered February 26, 2014
- Order Denying Motion to Vacate, Correct, or Set Aside Sentence, without attachments, entered February 7, 2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order with attachments was furnished by U.S. Mail or electronic transmission as represented below this 14 day of February 2024.

Jody Johnson, DC #I01246
Jefferson Correctional Institution
1050 Big Joe Road
Monticello, Florida 32344-0430

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Third Judicial Circuit
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**Additional material
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