

~~Ex. B-3.119~~

Supreme Court of Florida

FRIDAY, AUGUST 15, 2025

Harry Lee Goldsboro, II,
Petitioner(s)

v.

State of Florida,
Respondent(s)

SC2025-1215

Lower Tribunal No(s):

6D2023-2882;

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 8, 2025, 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:

SC2025-1215 8/15/2025

John A. Tomasino
Clerk, Supreme Court



APPENDIX A

~~EXHIBIT A~~

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 FOR RULE 3.850 POSTCONVICTION
RELIEF**

THIS MATTER came before the Court on Defendant's second *pro se* "Motion for Rule 3.850 Postconviction Relief" filed on June 11, 2021, pursuant to rule 3.850(b)(1), Florida Rules of Criminal Procedure. 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

In a motion brought pursuant to rule 3.850, the burden of proof is on the movant to establish a prima facie case based upon legally valid claims. *Patton v. State*, 784 So. 2d 380, 386 (Fla. 2000). If the movant does not present any evidence supporting their grounds for relief, the State is under no burden to produce any evidence to refute the defense's allegations. *Boisvert v. State*, 693 So. 2d 652, 654 (Fla. 5th DCA 1997).

Newly Discovered Evidence

To prevail on a claim of newly discovered evidence when a defendant has entered into a plea of guilty in lieu of trial, such evidence "must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence." *Valentine v. State*, 339 So. 3d 311, 313-14 (Fla. 2022) (quoting *Long v. State*, 183 So. 3d 342, 345 (Fla. 2016) (internal citations omitted)). The defendant must also "demonstrate a reasonable probability that, but for the newly discovered evidence, the defendant would not have pleaded guilty and would have insisted on going to trial." *Long*, 183 So. 3d at 346.

Newly discovered evidence satisfies the second prong if it "weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability." *Jones v. State*, 709 So. 2d 512, 526 (Fla. 1998) (quoting *Jones v. State*, 678 So. 2d 309, 315 (Fla. 1996)). However, "[i]n considering the second prong, the trial court should initially consider whether the evidence would

~~Ex. D-3, 104~~

have been admissible at trial or whether there would have been any evidentiary bars to its admissibility.” *Jones II*, 709 So. 2d at 521.

In his Motion, Defendant claims that he discovered new evidence after the State filed new charges against him in July 2019, case number 2019-MM-000351-E. According to Defendant, the discovery provided by the State in that case included items that were not part of the discovery from the instant case, such as: a Winter Park Police Department Capias Request, Offense Reports, and Felid Reports.

First, the evidence Defendant relies upon for relief does not meet the threshold for newly discovered evidence. The information contained in discovery documents for the 2019 case was known by the court and Defendant at the time of the plea. Specifically, the Affidavit for Arrest Warrant filed in the instant case on March 2, 2018, contains witness statements from Birte Ulrich, Michele Abram, and Chelsea Bachman. The Affidavit also discusses the photo lineup administered to Ms. Ulrich and the Winter Park cases that are the subject of the 2019 case.

Defendant had access to the information contained within the Affidavit well before he took a plea deal. In the instant case, Defendant entered a plea on September 18, 2018, and the Affidavit for Arrest Warrant was filed on March 2, 2018. This would have given Defendant and his counsel ample time to review the affidavit, question any of the individuals who provided the information, and request any supplemental discovery. Therefore, the information contained in the Affidavit could have been known by Defendant and counsel through the use of diligence.

Second, Defendant appears to be attacking evidence connected to the 2019 case. Specifically, the Winter Park Police Department documents, the Winter Park victim’s statements, and the eyewitness identifications from the Winter Park offenses. The information contained in those documents is immaterial to the case at issue. The instant case involves an incident in the city

~~Ex. 0-3, 105~~

of Orlando and the victim was Ms. Ulrich; therefore, information regarding other victims in other cities in a different case is irrelevant.

The determination of whether the statements are true and meet the due diligence and probability prongs of *Jones II* usually requires an evidentiary hearing to evaluate credibility unless the affidavit is inherently incredible or obviously immaterial to the verdict and sentence. See *Stephens v. State*, 829 So. 2d 945, 946 (Fla. 1st DCA 2002) (citing *Robinson v. State*, 736 So. 2d 93 (Fla. 4th DCA 1999); *Venuto v. State*, 615 So. 2d 255 (Fla. 3d DCA 1993)). Because the information contained in the Winter Park Police Department documents, the victim statements from the Winter Park offenses, and the eyewitness identifications regarding the Winter Park offenses are related to a completely different case, Defendant has failed to show how those documents are of such a nature that they would probably produce an acquittal on retrial. As such, his claims of newly discovered evidence are denied.

Violations of Florida Statute 92.70

In his Motion, Defendant alleges multiple instances of eyewitness identification violations. Specifically, Defendant alleges that both the Orlando Police Department and the Winter Park Police Department violated Florida Statute 92.70 when administering photo lineups to eyewitnesses.

“Collateral relief is not available on grounds that were or could have been raised at trial and, if properly preserved, on direct appeal of the conviction and sentence.” § 924.051, Fla. Stat. In other words, a defendant “may not raise an issue in a motion filed pursuant to rule 3.850 if the matter was or could have been raised on direct appeal.” *Mourra v. State*, 884 So. 2d 316 (Fla. 2d DCA 2004), *abrogated on other grounds by Sheppard v. State*, 17 So. 3d 275 (Fla. 2009). Challenges to the sufficiency of evidence are issues for direct appeal and, therefore, not cognizable

~~Ex. D-3-186~~

under rule 3.850. See *Childers v. State*, 782 So. 2d 946, 947 (Fla. 4th DCA 2001); *Jones v. State*, 699 So. 2d 809 (Fla. 1st DCA 1997); *Williams v. State*, 642 So.2d 67 (Fla. 1st DCA 1994).

Defendant is challenging the eyewitness identifications that occurred not only in the instant case but in a subsequent case. This issue should have been brought up on direct appeal and is not a cognizable claim for a rule 3.850 motion. Therefore, Defendant's claims of eyewitness identification violations are denied.

Ineffective Assistance of Counsel

In his Motion, Defendant alleges that trial counsel was ineffective by failing to exercise due diligence in requesting all discovery, failing to exercise due diligence to investigate evidence of police misconduct through violations of Florida Statute 92.70; failing to develop a reasonable defense strategy based on evidence of misidentification; and misleading the Defendant by failing to explain the entire process and requirements for a withholding adjudication clause.

The Court finds that Defendant's ineffective assistance of counsel claims are untimely. The claims in Defendant's Motion are attacking the original judgment and sentence and his counsel during that time—not the violation of probation. Defendant entered a plea of guilty for counts two and three on September 18, 2018. Defendant did not appeal; therefore, his judgment and sentence became final on October 18, 2018. Defendant filed the instant Motion on June 11, 2021, which is well beyond the two-year limitation under rule 3.850(b). Thus, Defendant's motion is procedurally time-barred. Moreover, the Motion does not assert any of the exceptions to the two-year deadline.

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

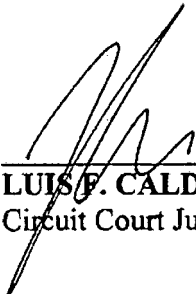
1. Defendant's *pro se* "Motion for Rule 3.850 Postconviction Relief," filed on June 11, 2021, is **DENIED**.
2. The following document(s) are hereby attached and are incorporated throughout by reference: Affidavit to Issue Warrant, Information, Plea Form, Judgement, and Order of Disposition.

~~Ex. B-3.107~~

3. Defendant has **thirty (30) days** from the date of this final Order within which to appeal.
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, this 23

day of May 2023.



LUIS F. CALDERON
Circuit Court Judge

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, SAPostConv@sao9.org, on this 24 day of May 2023.



Judicial Assistant

~~Ex. D-3.104~~

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

July 3, 2024

HARRY LEE GOLDSBORO, II
APPELLANT

CASE NO.: 6D2023-2882
L.T. NO.: 2018-CF-004010-A-O

VS

STATE OF FLORIDA
APPELLEE

BY ORDER OF THE COURT:

On June 1, 2023, the clerk of the lower tribunal transmitted a notice of appeal that appeals an order rendered May 12, 2023, denying a "motion for belated plea withdrawal," filed on April 26, 2021. That notice was used to initiate case number 6D23-2876, a case in which no record on appeal has yet been transmitted. A review of the record transmitted in case number 6D23-2882 indicates that record is the necessary record pursuant to Florida Rule of Appellate Procedure 9.141(b)(2)(A) for case 6D23-2876. As such, this court sua sponte transfers a copy of the record on appeal transmitted in case 6D23-2882 for consideration in case 6D23-2876. The order to show cause in case 6D23-2876, issued on June 22, 2023, is hereby discharged. Appellant is not obligated to submit a brief. An optional brief, should appellant choose to file one, must be served within thirty days from the date of this order in case number 6D23-2876.

On June 20, 2023, the clerk of the lower tribunal transmitted a notice of appeal that appeals an order rendered on or about May 23, 2023, summarily denying a motion for postconviction relief filed on or about June 11, 2021. That notice was used to initiate case number 2D23-2882. As such, the clerk of the lower tribunal shall transmit the summary record as required by Florida Rule of Appellate Procedure 9.141(b)(2)(A) that relates to the order rendered on or about May 23, 2023, to this court within ten days. The record on appeal currently docketed in 6D23-2882, which as explained in this order relates to the notice of appeal in 6D23-2876, will not be further considered in this court's review of 6D23-2882. Following transmission of the record on appeal in 6D23-2882, appellant is not obligated to submit a brief. An optional brief, should appellant choose to file one, must be served within thirty days from the date of this order in case number 6D23-2882.

~~Ex. 0-3. 116~~

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

Case No. 6D2023-2882
Lower Tribunal No. 2018-CF-004010-A-O

HARRY LEE GOLDSBORO, II,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

July 8, 2025

PER CURIAM.

AFFIRMED.

TRAVER, C.J., and MIZE and GANNAM, JJ., concur.

Harry Lee Goldsboro, II, Cocoa, pro se.

James Uthmeier, Attorney General, Tallahassee, and Robert J. Bradford, Jr.,
Assistant State Attorney, Daytona Beach, for Appellee.

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

~~EX-D-3-118~~

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

August 4, 2025

HARRY LEE GOLDSBORO II,
APPELLANT(S),

CASE NO.: 6D2023-2882
L.T. NO.: 2018-CF-004010-A-O

V.

STATE OF FLORIDA,
APPELLEE(S).

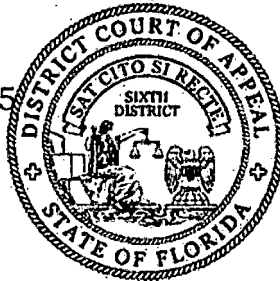
BY ORDER OF THE COURT:

Appellant's motion for rehearing, certification and written opinion is denied. Appellant's motion for rehearing en banc is stricken.

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

6D2023-2882 August 4, 2025


Stacey Pectol
Clerk



PANEL: TRAVER, C.J., and MIZE and GANNAM, JJ.

cc:

ROBERTS J. BRADFORD, JR.
DAYTONA ATTORNEY GENERAL
DAYTONA OFFICE OF THE

ATTORNEY GENERAL
HARRY LEE GOLDSBORO II
TIFFANY RUSSELL, CLERK

~~Ex. B-3, 108~~ APPENDIX B.EMERGENCY

18CF4010-A0

APPEAL OF ORDER DENYING DEFENDANT'S MOTION FOR RULE 3.850 POSTCONVICTION RELIEF TO THE FIFTH DISTRICT COURT OF APPEALS

COMES NOW on this 6th day of June 2023, the defendant/appellant, HARRY LEE GOLDSBORO II, pro se, submits this timely Emergency Appeal of Order Denying Defendant's Motion For Rule 3.850 Postconviction Relief. Following the circuit court's denial without prejudice of defendant's pro se "Motion for Rule 3.850 Postconviction Relief" filed on June 11, 2021. On May 23rd, 2023, the circuit court found that the evidence did not meet the threshold for newly discovered evidence, the evidence was not material to the instant case and information regarding other victims in other cities in a different case is irrelevant, and the defendant failed to show how those documents are of such a nature that they would probably produce an acquittal on retrial. The circuit court denied the defendant's claims of violations of FL ST 92.70 Eyewitness Identification Reform Act by determining collateral relief was not available because those issues should have been raised on direct appeal. The circuit court denied the defendant's claims of Ineffective Assistance of Counsel as untimely, despite defendant's assertions that the newly discovered evidence was not discovered until July 2019, which would have extended the two-year limit for filing a 3.850 motion until July 2021. Furthermore, the defendant repeatedly asserted that the newly discovered evidence was not and could not have been known to defendant or his counsel through due diligence, which is one of the exemptions under rule 3.850 (b)(1). The circuit court's assertion that the newly discovered evidence was immaterial to the case is erroneous because both the Orlando Police Department's and Winter Park Police Department's affidavits referenced the same incidents and cited the same facts: 1. Three alleged incidents of indecent exposure on March 18, 2018. 2. A black male was the suspect. 3. A black car was seen at all three locations. In one of the incidents (in Winter Park) an alleged victim photographed the suspect's license plate (photo was never produced in any evidence), which revealed the defendant was the owner of the vehicle. The same victim was administered a photo lineup that violated the procedures established in FL ST 92.70, yet still, the alleged victim did not select the defendant's photo as the suspect. Within hours of the victim from the Winter Park incident being unable to identify the defendant as the suspect, the street detective from the Orlando case returned to Ms. Ulrich's residence and received a statement that differed drastically from her first statement, and they administered the same illegal photo lineup, and the victim positively identified the defendant as the suspect despite his photo looking nothing like the description that she provided, other than being a black male. On the same day, the detective in the Winter Park case went back to the alleged victim's house and she provided a sworn statement on March 20th, 2018. The date of this statement is critical to the discovery of the new evidence, because the arrest affidavit and subsequent discovery clearly omit the police call log from the victim on March 18th and her initial statement to police on March 18th. However, since charges were not filed in that case until July 2019, the defendant and his attorney could not have known the existence of the call log and statement through due diligence, nor was the state under obligation to provide

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

EX. D-3.113

DECEMBER 15TH, 2024

HARRY LEE GOLDSBORO II

CASE NO.: 602023-2882

APPELLANT

LOWER TRIBUNAL No.: 2018-CF-004010-A-0

v.

STATE OF FLORIDA,

APPELLEE

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

APPELLANT'S INITIAL BRIEF

HARRY LEE GOLDSBORO II

DC # B30111 / JAIL # 4838407

BREVARD COUNTY JAIL

ATTN: LEGAL MAIL

860 CAMP ROAD

COCOA, FL 32927

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STATEMENT OF THE CASE

On July 3rd, 2024, the Appellant received an order from the Sixth District Court of Appeal that the clerk of the lower tribunal had transmitted the summary record for case number 6D2023-2876, but the record for that case was the record for 6D2023-2882. On October 21st, 2024, the Appellant filed a request for copies in case number 6D2023-2882 because he still had not received the record. On November 22nd, 2024, the Appellant received the record on appeal and the 6th DCA granted the Appellant's request for an extension to file his Initial Brief and permitted the Appellant to have 30 days from December 23rd, 2024 to file the brief. This timely Initial Brief now follows.

In its Order Denying Defendant's Motion for Rule 3.850 Postconviction Relief, the Court and the State found that the evidence does not meet the threshold for newly discovered evidence because statements and reports from the Orlando Police Department case were included in discovery and the 2019 case in Winter Park is immaterial to the Orlando case, and the information discovered in the 2019 case could have been discovered by due diligence. In addition, the State argues that while an evidentiary hearing is required to determine whether the evidence meets the due diligence and probability prongs, because the information contained in the Winter Park Police Department documents, the victim statements from the Winter Park offenses, and the eyewitness identifications are related to a completely different case, and Appellant failed to show how those documents would produce an acquittal on retrial, the Appellant is not entitled to relief and his claims should be summarily denied.

The Court and the State ruled that the Appellant's claims of 92.70 FL ST violations of eyewitness identification and administration of the photo lineups were barred because the Appellant should have raised these issues on direct appeal and is not cognizable in a 3.850 motion.

The Court and the State ruled that the Appellant's claims that his counsel was ineffective for failing to exercise due diligence in requesting all discovery, investigating evidence of police misconduct through violations of FL Statute 92.70, failing to develop a reasonable defense strategy based on evidence of irreparable misidentification, and by misadvising the Appellant as to Felony registration requirements and Jimmy Ryce requirements by signing the plea, were unavailing. The Court found that the Appellant's motion was time-barred by the two-year limit and the Appellant did not assert any exceptions to the two-year deadline. However, the State and the Court has failed to present any evidence that conclusively refutes the Appellant's claims and provided no reasons as to why the Appellant is not entitled to an evidentiary hearing.

The Appellant argues that the State and Orlando and Winter Park Police Departments violated his 4th Amendment right to be protected from illegal search and seizures, 5th and 14th Amendment rights to due process of law, and his 6th Amendment right to effective assistance of counsel.

SUMMARY OF ARGUMENT IN SUPPORT OF PETITION

The Appellant presents three primary claims: 1. newly discovered evidence 2. FL ST 92.70 violations and 3. Ineffective Assistance of Counsel.

NEWLY DISCOVERED EVIDENCE

1. Claim One: The discovery of new evidence extended the time period for filing a postconviction motion under FL R. Crim. P. Rule 3.850 because the new evidence was not available prior to the State filing charges in case number 2019-MM-00351-E on July 19th, 2019 [R. Information case 2019-MM-00351-E]. Detective Hall of the Orlando Police Department specifically references that he received a call from Detective Dalles of the Winter Park Police Department of an exposure incident involving a black male and a black Nissan with the license plate #474MWP, which was the same tag number that was reported in an exposure incident at the Orlando Airport on 2/16/2018; however, the investigation was not further pursued. Detective Hall claims that victim Chelsea Bachman at Orlando Airport took a photo of the Nissan Altima's license plate on 2/16/2018 and victim Jennifer Lyons at the Winter Park incident also took a photo of the vehicle and license plate, which is what led detectives to suspecting the Appellant's involvement. This is significant because the incident with Lyons did not occur until 3/18/2018, and Detective Hall claims he was pursuing the Appellant since 2/16/2018. In reality, the State's discovery never contained any photos of the Appellant's license plate and no license plate was reported during the police call from Bachman to the Orlando Police Department on 2/16/2018, and there was no independent basis for the Orlando P.D. to connect the Appellant to the exposure incident involving Birte Ulrich on 3/18/2018, which is the case in which the Appellant accepted a plea. In that alleged incident, the suspect exposed himself, grabbed the victim, who screamed, then the suspect fled and entered a black vehicle. The victim did not see the license plate and provided a very vague suspect description of "a black man (approx. age mid 20s - mid 30s)" and victim Bachman described the suspect as an "African American" man [R. Chelsea Bachman sworn statement, Birte Ulrich sworn statement; p. 31 & 850 Motion section 2.1 Newly Discovered Evidence, p. 38 ID.] Consequently, the State's and Court's ruling that the Winter Park incidents are immaterial is in conflict with how the detectives determined the suspect's identity because the lack of a sufficient suspect description, physical evidence, and vehicle license plate provided the police with no investigative leads.

The Appellant claims that the discovery provided in case number 2019-MM-00351-E contained a sworn statement from the victim, Judith Baldyga from 3/20/2018, the photo lineup, Winter Park Police Department copies request and reports, and the event report from police dispatch. The newly discovered evidence the Appellant claims was omitted is victim Baldyga's original statement and police phone call from 3/18/2018, the day of the alleged incident. Detective Hall's affidavit for arrest warrant clearly states "Additionally, Suspect Gledisbaro was positively identified in two of these incidents" [R. Winter Park Police Department Offense Report, Det. Dalles 3/26/2018]. However, it was not until the discovery in the 2019 case was provided that the Appellant was able to review Baldyga's actual statement and dates of contact with the Winter Park P.D. to conclude that misconduct occurred. First, Baldyga called the police on 3/18/2018 but there is no record of her audio or a written statement from 3/18/2018 even though the Winter Park P.D. responded within six minutes of the call at 9:30 a.m. [R. Winter Park Police Department Offense Report 3/18/2018 p. 1 of 6]. On 3/19/2018 victim Jennifer Lyons conducted a photo lineup at the police station, but was unable to identify the Appellant as the suspect. Detective Hall responded to the exposure incident involving victim Ulrich on 3/18/2018 at 9:05 a.m., but he had no leads, otherwise he could have conducted a photo lineup that day. Instead, however, it was not until the license plate was reported in the Lyons incident that Detective Hall suspected the Appellant, and after Lyons was unable to identify the Appellant as the suspect, Detective Hall returned to Ulrich's residence and conducted the photo lineup on 3/19/2018. Detective Dalles also allegedly received an anonymous phone call that provided a description of the suspect as a black male, 6' tall, 200 pounds, short curly hair that was black, with no facial hair or glasses and was 17-21 years old, and this call was on 3/20/2018 after the failed identification by Lyons. Baldyga's sworn statement on 3/20/2018 stated that the suspect was a black male, 6' tall, 200 pounds, short curly black hair, with no facial hair or glasses and was 17-21 years old, which is exactly what the alleged anonymous tipster reported. In reality, Detective Dalles fabricated the anonymous phone call as no record of the call was ever provided, and the suspect description matched the Appellant's appearance in his driver's license photo from 2015. In contrast, victim Bachman stated he was an African American man, victim Ulrich only stated that the suspect was a black man between mid-20's to mid-30's, and victim Lyons stated he was a black male in his thirties with a shaved or bald head - none of the three victims provided height, hair, facial features, skin color, or build, but Baldyga's description was extremely detailed, but was grossly inconsistent with the other victims due to police misconduct and improper influence. A comparison between Baldyga's initial statement and audio from 3/18/2018 will conclusively prove inconsistencies and evidence of misconduct through improper influence, which could not be

obtained through any due diligence because there was no way for the Appellant's counsel to have known the original sworn statement and audio were ~~not~~ omitted due to the arrest affidavit only containing a summary of the Winter Park incidents. Specifically, the arrest warrant omits the fact that Winter Park police visited or spoke to victim Baldyga four times on 3/18/2018, 3/20/2018, called her on 3/22/2018, and conducted the photo lineup at her residence on 3/23/2018. There are no sworn statements or audio calls to the police from Baldyga on 3/18/2018, which is part of the newly discovered evidence. The second part of the newly discovered evidence is Baldyga's sworn statement from 3/20/2018, after Lyons was unable to identify the Appellant as the suspect. The arrest affidavit states that two victims identified the Appellant, Baldyga and Ulrich, but both of these identifications came after Lyons' photo lineup, which was conducted at a police station and recorded. However, in contrast, the photo lineups for Baldyga and Ulrich were conducted at their residences, with no recording, and were administered and attended by detectives who were actively investigating the suspect and knew the suspect's identity. The third part of the newly discovered evidence is that an anonymous tip led Detective Ralles to contact Baldyga and she was able to provide an exact description of the Appellant as he appeared in his driver's license photo from 2015, and it is the exact same photo that was used in all the lineups. The photo clearly shows that the Appellant is wearing his military uniform, with no facial hair, curly hair, and a blue background that stands out as no other photo had a blue background. However, in the Appellant's arrest photo, he had a low haircut and facial hair and did not resemble his 2015 driver's license photo. The fourth part of the newly discovered evidence is that Baldyga did not conduct the photo lineup until 3/23/2018, which is the day after the Appellant was arrested, and after his photograph was shown on tv and posted online which gave Baldyga an opportunity to view his photo, especially knowing that the Winter Park police called Baldyga the day ^{of} before the arrest on 3/22/2018 to schedule the lineup for the following day, although they had a lineup ready as early as 3/19/2018 prior to visiting Baldyga on 3/20/2018. This information was not provided in discovery because the discovery was limited to the Orlando incidents and summaries from the Winter Park incident, and was not made known until charges were filed in the Winter Park case in July 2018. If counsel was at fault for not executing due diligence, then it would still be difficult to conclusively determine the existence of this evidence because the State is not obligated to provide evidence under discovery rules in a case in which they have not pursued charges. Therefore, the newly discovered evidence was not discovered until July 2019, and without the evidence, the police could not have discovered investigative leads

Newly discovered evidence must not have been known through the exercise of due diligence and the evidence must be of such a nature that it would probably produce an acquittal on retrial. Newly discovered evidence satisfies the second prong if it weakens the case against a defendant and creates a reasonable doubt as to their culpability, (Wright v. State, 995 So.2d 324, 327-29 Fla. 2008; Johnston v. State, 27 So.3d 11, 19 Fla. 2010). The newly discovered evidence reveals that the Orlando case was stalled until the license plate was allegedly reported by Lyons in Winter Park, and then after Lyons failed to identify the Appellant as the suspect, Orlando police returned to Ulrich's residence and conducted a photo lineup which led to the Appellant's arrest. Orlando P.D. made no efforts to arrest the Appellant in the Orlando case until after Lyons's photo lineup, and the reason is simple... the Orlando case was not in such a position as to have any investigative leads until the Winter Park incident provided a license plate. Without this information, the Orlando P.D. had no probable cause to arrest the Appellant.

The new evidence also undermines the reliability and legality of the photo lineup and its administration, and if the photo lineup is inadmissible due to police misconduct, then the State's case is significantly weakened because there is no physical evidence including DNA and video surveillance and the victim's identification certainty is highly questionable. As a result, the evidence is of such a nature that it would likely produce an acquittal on retrial. These issues are not conclusively refuted by the record and require an evidentiary hearing to permit the Appellant to present evidence supporting his claim.

VIOLATIONS OF FLORIDA STATUTE 92.70

2. Claim Two: The multiple violations of FL ST 92.70 Eyewitness Identification by both the Orlando P.D. and Winter Park P.D. led to irreparable misidentification, and the illegal photo lineup administration violated the Appellant's constitutional rights to due process and illegal search and seizure under the 4th and 5th amendments. In addition, the illegal lineup would invalidate the probable cause affidavit and would be inadmissible at trial, which would significantly weaken the State's case, reduce the Appellant's culpability, and likely produce an acquittal on retrial.

1. Orlando Airport incident: victim Bachman's sworn statement only described the suspect as "An African American" man and included no height, weight, build, Facial Features, age, or other characteristics.

[R. Bachman sworn statement]. However the Winter Park police report states that the suspect was "a black male suspect with a description consistent with suspect Goldsboro." The only consistency is being one of several million black males in Florida. Bachman never identified the Appellant as the suspect. The incident was on 2/18/2018.

2. Winter Park #1: victim Lyons stated that the suspect was "a black male, possibly in his thirties, shaved or bald [head]" and she saw him for about 10 seconds. The police report stated that the description was consistent with suspect Goldsboro's appearance, but again, that description is consistent with several million other black males in Florida. Lyons contacted the police on 3/19/2018 and conducted the photo lineup on 3/19/2018, and she was unable to identify the Appellant as the suspect.

3. Orlando Baldwin Park incident: victim Ulrich described the suspect as "a black man approx. age mid-20- mid 30s"; however, Officer Young's Field report adds details that the victim never stated, such as that the suspect was "an unknown black male, about 20 to 30 years of age, about 5'10", short hair with a round face." [R. Ulrich sworn statement; Orlando Police Department Field Report and arrest affidavit].

According to *Fitzpatrick v. State*, 900 So.2d 495, 517-18 Fla. 2005, "out-of-court identifications are subject to two tests: 1. whether the police used unnecessarily suggestive procedures to obtain it and 2. if so, considering all circumstances, whether the suggestive procedure gave rise to a substantial likelihood of irreparable misidentification." (*Fitzpatrick v. State*, 2005; *Grant v. State*, 370 So.2d 341, 343 Fla. 1980; *Harris v. State*, 837 So.2d 317 2003; *Johnson v. State*, 586 So.2d 888 Fla. 4th DCA 1990; *Mason v. Brathwaite*, 432 U.S. 98 110-19, 97 S.Ct. 2245, 53 L.Ed.2d 140 1977; *Rimmer v. State*, 825 So.2d 309, 316 Fla. 2002). The court must consider the opportunity of the witness to view the criminal at the time of the crime, the witness's degree of attention, the accuracy of the witness's prior description, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation. Ulrich stated that she looked the suspect briefly in the face before she turned around, and the short time she saw the suspect, her lack of an accurate description shows a low degree of attention and inaccurate prior description.

In addition, the Orlando P.D. conducted the lineup at Ulrich's residence, Detective Hall was present, and he was aware of the suspect's identity, the lineup was not recurred, the photo was unduly suggestive as the suspect was the only photo with short curly hair in military uniform with a blue background and looked nothing like the Appellant appeared in his arrest photo a few days later. Orlando P.D. conducted the lineup only after the failed identification with Lyons.

4. Winter Park incident #2: Again, the newly discovered evidence is the omitted sworn statement and 9-1-1 call from 3/18/2018 which contained Baldyga's original suspect description which was inconsistent with her sworn statement and suspect description on 3/20/2018 after the failed lineup with Lyons. Detective Dalles claims that he suddenly received an anonymous tip within an ~~hour~~ ^{day} after the Lyons lineup, and the tipster described the Appellant exactly as he appeared in his driver's license photo. The tipster claimed that the suspect was 17-20 years old with short curly hair. Baldyga's sworn statement from 3/19/2018 stated that the suspect was 17-20 years old with short curly hair and she was the only victim to describe the suspect as such. The Winter Park detectives Dalles and Giarrusso were both involved in the investigation and visited Baldyga on 3/18/2018, 3/20/2018, called her on 3/22/2018 after the Appellant was arrested, to setup a photo lineup, then on 3/23/2018 the Winter Park P.D. conducted a photo lineup with Baldyga at her residence with no video, with both investigating officers present, and the day after the same photo of the Appellant was aired on the news and posted online, which provided Baldyga with an opportunity to view the Appellant's photo prior to the lineup.

5. Photo Lineup: The photo lineup itself was unduly suggestive. The victims provided no facial feature details, height, or build and the hair varied from bald, to low cut, to curly hair, and age range was from 17 years old to mid-30s. However, the police reports added height information (6 feet tall or 5'10), weight (200 pounds), average build, no facial hair and no glasses, which is identifiable from the Appellant's driver's license, but differs drastically from how he looked in March 2018. The police intentionally falsified suspect description details to try to implicate the Appellant as the only photo lineup that was conducted at the police station did not produce the results they desired. In addition, Detective Hall admitted to creating the photo lineup, and both him and Detective Dalles were lead investigators who were present during the lineup administration that was conducted at a personal residence and not video recorded.

The photo itself is unduly suggestive because the Appellant is the only suspect with curly hair and wearing his military uniform when the news video and article disclosed his military affiliation, the photo had a blue background that stood out, and the Appellant's photo displayed his face as clean shaven and a round face, which is the description the alleged anonymous tipster gave and how Baldyga allegedly described the suspect. The photo was also the same photo used on television and posted online prior to Baldyga's identification. In regards to Ulrich's identification,

the Appellant's photo bore no resemblance to the black male in his mid-20s to mid-30s with a shaved or bald head, yet she somehow identified a clean shaven, curly haired suspect. There is no doubt that the police unduly influenced the photo lineup because without a positive identification, the police would have no probable cause for an arrest. Lyons said she saw the suspect's face for 10 seconds, but was unable to identify the Appellant, and Ulrich admitted to briefly glancing at the suspect before turning around. None of the victims had any independent method for identifying the Appellant as the suspect; therefore, irreparable misidentification is a credible defense and argument and the unduly suggestive lineup improperly influenced the identification process (*Williams v. State*, 285 So.3d 1003 2019; *Neil v. Biggers*, 409 U.S. 188, 199-200 93 S. Ct. 375, 34 L. Ed. 2d 401 1972; *Edwards v. State*, 538 So.2d 440, 442 Fla. 1989; *Harris v. State*, 857 So.2d 317 2003; *Johnson v. State*, 27 So.3d 11, 19 Fla. 2010; *Fitzpatrick v. State*, 2005; *Manson v. Brathwaite*, 1977; *Rimmer v. State*, 2002).

Ulrich's sworn statement contained no certainty that she could identify the suspect, and her actual statement did not include the height, hair, facial features, build or any other physical details that Detective Hall impermissibly added to his arrest affidavit. In *Alahad v. State*, 362 So.3d 190 Fla. 2023, the eye witness saw the suspect outside the store before the attack, gave a detailed description, was very close to the suspect, and told police that she could be able to identify him if she saw him again (*Alahad v. State*, 2023). There was no such independent identification in the case at bar, and if the victim was so confident in her ability to identify the suspect, then there would be no reason to delay conducting a photo lineup until after Lyons was unable to make an identification. The only reason for the delay is that the Orlando P.D. had no investigative leads because none of the victims provided specifics regarding the suspect's appearance, and Detective Hall had to employ an unduly suggestive photo lineup process to try to obtain an identification.

Although Detective Hall claims that another officer administered the lineup, Detective Hall was present at the victim's residence, where her positive identification was critical to developing probable cause for the Appellant's arrest, and the proper procedures for conducting a photo lineup were not followed. For lineups and photograph spreads, the court must analyze how police composed the lineup or spread (*Alahad v. State*, 2023; *Way v. State*, 502 So.2d 1321, 1323 Fla. 1st DCA 1987).

The witness's description of the suspect was simply a black male, mid-20s to mid-30s with a shaved or bald head, yet Detective Hall used the Appellant's driver's license photo in which he had curly hair and was clean shaven, which is not

how he appeared in March 2018. The Appellant's photo stood out more than the others as he was the only one with curly hair, the only one with a military uniform on, and the only one with a blue background. Detective Hall claims that the Appellant was under investigation as of 2/16/2018, but offered no explanation as to why he never contacted the Appellant or pursued an arrest. In addition, Detective Hall claims that the Appellant was identified as a suspect in the Orlando Airport incident on 3/15/2018, which was four days prior to him conducting the photo lineup with Ulrich, and he offers no explanation for this intentional delay. The only reasonable explanation is that the case in Orlando was not in a posture in which sufficient probable cause existed until Detective Hall violated the Appellant's 4th Amendment rights and conducted an illegal photo lineup and violated the Appellant's due process rights under the 5th and 14th Amendments. There is substantial evidence of misconduct regarding the photo lineup procedures that the Appellant's counsel failed to investigate, and an evidentiary hearing is warranted to elicit testimony from the witnesses and detectives to determine whether any additional misconduct occurred that would undermine the validity of the out-of-court identification and impact to the State's case.

INEFFECTIVE ASSISTANCE OF COUNSEL

3. Claim Three: The Appellant asserts that his 6th Amendment constitutional right to effective counsel was violated because his counsel was ineffective for failing to exercise due diligence in demanding and compelling the State to provide all discovery; failing to investigate evidence of 92.70 violations and police misconduct; failing to develop a reasonable defense strategy based on irreparable misidentification; and failing to advise the Appellant of the collateral consequences of the plea including registering as a felon and subjection to Jimmy Ryce proceedings. The State claims that the Appellant's arguments are untimely and his motion does not assert any exceptions to the two-year deadline; however, this is patently false. The Appellant alleges the discovery of new evidence which extends the time for filing his claims of ineffective assistance of counsel for the discovery and 92.70 violations, and for counsel's ineffectiveness for failing to develop a reasonable defense strategy based on those violations. The Appellant could not have known about the collateral consequence of registering as a felon prior to signing the plea, and counsel failed to retain representation for 30 days to file either a withdrawal of the plea, or a direct appeal. The Appellant also explained that affirmati

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misadvice by his ten different assigned lawyers between November 2018 and March 2020, prevented him from timely filing his 3.830 motion, and Orange County Jail's lack of assistance from persons trained in the law was a violation of his 1st Amendment right to access to the courts. Finally, the Appellant argued that counsel provided affirmative misadvice when he asked counsel about Jimmy Ryce proceedings during the plea colloquy, and counsel told him "You don't have to worry about that. It doesn't apply to you." However, the Appellant could not have been aware of the collateral consequences of signing the plea until the State filed its civil commitment petition in April 2023.

Newly discovered material must meet four prongs: 1. evidence goes to the merits of the case or constitutes impeachment evidence; 2. it is cumulative to other evidence presented; 3. there are any inconsistencies in the new evidence; and 4. the evidence is material and relevant (*Wright v. State*, 995 So.2d 324, 327-29 Fla. 2008; *Johnston v. State*, 27 So.3d 11, 19 Fla. 2010). The new evidence goes to the merit of the case because it exposed police misconduct and undermined the validity of the out-of-court identification process, and an unreliable photo identification would invalidate the probable cause affidavit. The new evidence reveals numerous inconsistencies between the victim's initial suspect descriptions and the police reports' modified descriptions, which varied drastically and illegally added details that the victims never revealed.

The new evidence also provides discrepancies in the incident timeline, police procedural violations and misconduct, and impeachment evidence of the victims and police officers. Moreover, the evidence is both relevant and material to the case, because without the unduly suggestive lineup, there is no evidence connecting the Appellant to the crime scene, which weakens the State's case and gives rise to a reasonable doubt to his culpability. Counsel simply failed to exercise any due diligence and investigate the obvious evidence of misconduct and unduly suggestive photo lineup and to take any action to compel the State to provide all the discovery in its possession and disclose the existence of the audio from Beldyga's 9-1-1 call and her initial sworn statement from 3/18/2018, as this evidence would have supported the Appellant's claim to his attorney concerning possible 92.70 violations.

Counsel was also ineffective for failing to develop a defense strategy based on irreparable misidentification. Even standing alone, there is evidence of police misconduct in both the Orange County cases involving the Orlando Police Department and Winter Park Police Department. In his arrest affidavit, Detective Hall claims that he remembered a similar exposure

incident that occurred at the Orlando Airport on 2/16/2018. According to Detective Hall, victim Buchman provided a photo of the license plate of the Black Nissan Altima on 2/16/2018 and Officer Williamson ran the tag that came back to the Appellant's vehicle. This allegedly occurred on 2/16/2018, yet the case never progressed and Detective Hall received the case on the same day. However, allegedly, Detective Hall did not develop the Appellant as a suspect until 3/15/2018, which was three days prior to the alleged Orlando and Winter Park incidents and there was no new information that would have led Detective Hall to readdress the Buchman case. It is obvious that the alleged incidents on 3/18/2018 led Detective Hall to try to administer a photo lineup to Buchman, and when that failed to produce an identification, he moved to more drastic measures and returned to Ulrich's residence determined to get a photo identification. Counsel never challenged the procedural discrepancies in Detective Hall's actions, nor did he develop a reasonable defense strategy centered around the questionable photo lineup procedures and inconsistencies between the actual sworn statements and the very detailed suspect descriptions added to the police reports. The newly discovered evidence provided confirmation that the Winter Park and Orlando Police Departments intentionally collaborated to fabricate evidence to give them probable cause to arrest the Appellant, after victim Lyons was unable to identify the Appellant as the suspect. Lyons identified a dark skinned black male with a shaved or low haircut, not the Appellant, who had short curly hair in his lineup photo. It was not until after the failed lineup that the Winter Park P.D. fabricated an anonymous phone call; a caller can remain anonymous, but evidence of the phone call should exist and should have been demanded through discovery and due diligence. Counsel failed to pursue any of these apparent indications of misconduct and develop a strategy to defend his client during trial.

The Appellant also claims that Counsel failed to advise the Appellant of the collateral consequences of accepting the plea which included registering as a Felon and subjection to Jimmy Ryce civil commitment proceedings. The Appellant was in the Air Force and possessed a top secret security clearance and it was revoked after he was forced to register as a Felon, despite the withholding adjudication clause. The Appellant would not have signed the plea if he knew that he would have to register as a Felon because it would revoke his clearance; as a result, he would have insisted on proceeding to trial. Good cause to withdraw a plea has been found to exist when the plea is infected by misapprehension, undue persuasion, ignorance, or was otherwise involuntary (Johnson v. State, 971 So.2d 217 Fla. App. 2008). A defendant's entry of a plea based upon his attorney's mistaken advice can be a valid basis for finding good cause. (Id.) Affirmative misadvice, regarding even collateral consequences of a plea,

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may form the basis for withdrawing the plea (Murphy v. State, 820 So.2d 375, 376 Fla. 4th DCA 2002; Gomez v. State, 28 So.3d 114 Fla. App. 2010). The Appellant's counsel was ineffective for failing to inform him of all obligations as a result of the plea in violation of Fla. R. Crim. P. Rule # 3.172(C)(7), 3.171(C)(2)(B), which resulted in prejudice to his case and fundamental error as the plea was involuntary.

Counsel was also ineffective for misadvising the Appellant and failing to inform him that the plea would subject him to civil commitment proceedings in violation of Fla. R. Crim. P. Rule # 3.171(C)(2)(B), 3.172(C)(7), and 3.172(C)(9). Substitute counsel appeared for the Appellant and when the judge read the plea colloquy and stated that the plea could subject him to civil commitment as a sexually violent predator, the Appellant specifically asked counsel who informed him that "You don't have to worry about that. It doesn't apply to you." In April 2023, the State filed a petition for civil commitment based on the conviction for the charge to which the Appellant pled. The Appellant was unable to raise this claim in 2021 in his original 3.850 postconviction motion because the facts upon which the claim is predicated were unknown. Fla. R. Crim. P. Rule # 3.172(C)(9) states that "If the defendant pleads guilty or nolo contendere and the offense to which the defendant is pleading is a sexually violent offense or a sexually motivated offense, the plea may subject the defendant to involuntary civil commitment." Since the court has no responsibility to determine whether the offense is sexually motivated, it is counsel's duty to review section 394.925 with his client to determine if the offense qualifies as a sexually motivated offense. Counsel did not do so in this case and misadvised the Appellant at the time of the plea, and the Appellant was not affected by this oversight until April 2023, two years after he filed his postconviction motion. "An offender who enters a plea in reasonable reliance on his attorney's misadvice as to collateral consequences, should be allowed to withdraw his plea," (Johnson v. State, 971 So.2d 212 Fla. App. 2008). "If collateral matters are discussed and counsel's advice is measurably deficient, then a plea could be involuntary (State v. Leroux, 689 So.2d 233, 238 Fla. 1996; Graham v. State, 779 So.2d 604 Fla. 2d DCA 2007; Ghanarati v. State, 820 So.2d 989 Fla. App. 2002 - allegation of positive misadvice renders his motion legally sufficient). The plea is involuntary under FC 57 924.051 prejudicial error, 924.053 Fundamental error, and 924.06. [R. Emergency Appeal of Order Denying Defendant's Belated Motion to Withdraw Plea to Fifth DCA].

Counsel was ineffective for misadvising the Appellant into accepting a plea to a charge, the facts of which are supported by the information. The Appellant pled guilty to a charge of False Imprisonment, and Fla. R. Crim. P. 3.170(J) requires that there be a factual

basis for the plea, and Rule # 3.172(a) states "Where it is clear from the factual basis presented at the plea hearing that the defendant could not have been convicted of the crime to which he has pleaded guilty, fundamental error has occurred, which can be corrected on appeal (Eiseman v. State, 490 So.2d 770 Fla. App. 1983; Dydek v. State, 400 So.2d 1255 Fla. 2d 1981). "The trial judge erred in denying Petitioner's motion to dismiss the information with respect to the charge of False imprisonment. A long and consistent line of Florida cases holds that an information charging False imprisonment must specifically allege an intent to secretly confine." (Grant v. State 390 So.2d 341 Fla. 1980; State v. Register 152 Fla. 239, 9 So.2d 804 1947; Holroyd v. State, 127 Fla. 152 172 So. 700 1937; Russ v. State, 15 Fla. 55 1875; Gordon v. State 145 So.2d 896 Fla. 2d DCA 1967). There were no facts provided in the information, ^{which} supports the elements of the crime for False imprisonment or an intent to secretly confine, and counsel failed to seek to dismiss the charge and advised the Appellant to accept the plea (see Nicol v. State, 892 So.2d 1169, 1171 Fla. 5th DCA 2005.) [R. Defendant's Related Motion to Withdraw Plea - Initial Brief]

Counsel was ineffective for withdrawing representation only 5 days after submitting the plea in violation of Rule 3.170(L) Motion to Withdraw Plea After Sentencing, violation of Fla. R. App. P. 9.140 (4)(ii)(c) an involuntary plea, and 9.140 (d)(1) Withdrawal of Defense Counsel After Judgment and Sentence. Fla. R. App. P. 9.140 states "The attorney of record for a defendant will not be relieved of any professional duties, or be permitted to withdraw as defense counsel of record, until either the time has expired for filing an authorized notice of appeal." Counsel submitted a Motion to Withdraw Representation on September 23, 2018, only five days after the defendant signed the plea [R. Notice of Withdrawal of Representation]

The Appellant was still incarcerated and had no method of contacting counsel, and counsel's premature withdrawal of representation left the Appellant with no counsel to file a motion to withdraw his plea prior to the 30-day expiration. Appellant was further impeded from withdrawing his plea or timely filing a direct appeal or 3.850 motion due to still being incarcerated in Orange County Jail, and then between October 2018 and March 2020, the Public Defender's Office and Conflict Attorney's Office assigned and reassigned 10 lawyers with at least two to three months of no communication with the new counsel during each transition. Additionally, Orange County Jail has no persons trained in the law or a sufficient law library to allow the Appellant to conduct independent research to figure out appellate procedures. These are serious issues that courts do not often consider when determining the Appellant's timeliness of filing appeals and postconviction motions during the two-year time limit. An Appellant who remains at a county jail has no access to a law library with assistance from persons trained in the law and is not entitled to counsel during postconviction motion proceedings and must proceed pro se, and a layman will have numerous obstacles

to overcome, plus the reassignment of multiple lawyers and their misadvice or lack of familiarity with appellate procedures prevented the Appellant from timely pursuing these claims in a motion to withdraw plea, direct appeal, or a 3,850 motion, but all of these delays and errors were predicated by Mr. Templeton's failure to retain representation until after the 30 days had expired as the requirement to register as a felon occurred within days of the Appellant signing the plea, but after the Appellant's counsel terminated representation prematurely. (see *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed. 2d 72 (1977))

WHEREFORE the Appellant prays that this Honorable Court of Appeals grants the Appellant's motion by determining his claims were timely filed by the discovery of new evidence and also the consequences from the plea that were not known to the Appellant until the State filed civil commitment petition in April 2023. The Appellant provided a reasonable explanation for any delay was outside of his control as counsel's misadvice, misguidance, and ineffective assistance led the Appellant to plea to a charge of which the facts in the information did not support, and counsel's failure to prepare a defense strategy prejudiced the Appellant's ability to have a fair trial. The Appellant's 4th, 5th, 6th, and 14th Amendment rights were violated by counsel's deficient performance, and the Appellant is entitled to an evidentiary hearing to present evidence supporting his claims. The Appellant respectfully requests that this Honorable Court also grant any other relief that it deems is necessary under its jurisdictional powers and in the interest of justice.

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 GOLOSBORO II, Pro SE
DEFENDANT, JAZL # 4838407

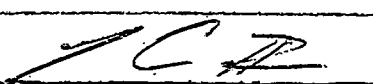
CERTIFICATIONS AND ACKNOWLEDGEMENTS

I certify that the motion is filed in good faith, that I have a reasonable belief that the motion is timely filed, 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 GOLOSBORO II, Pro SE
DEFENDANT, JAZL # 4838407

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief was delivered by mail to: the Clerk of Courts for the 6th District Court of Appeals 811 East Main Street Lakeland, FL 33801, and the State of Florida at the Office of the Attorney General 444 Seabreeze Blvd 5th Floor Daytona Beach, FL 32118 on this 15th day of DECEMBER 2024.


HARRY LEE GOLOSBORO II, Pro SE
DEFENDANT, JAZL # 4838407
BREVARD COUNTY JAIL COMPLEX
ATTN: LEGAL MAIL
860 CAMP ROAD
COCCA, FL 32927
DATE: 15 DECEMBER 2024

HARRY LEE GOLDSBORO II,
APPELLANT
v.
STATE OF FLORIDA,
APPELLEE

SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NO. 602023-2882
L.T. NO. 2018-CF-004010-A-0
DATE: 09 JULY 2025

MOTION FOR REHEARING, REHEARING EN BANC,

CERTIFICATION, AND WRITTEN OPINION

COMES NOW, on this 9TH day of JULY, 2025, the Appellant, HARRY LEE GOLDSBORO II, pro se submits this timely Motion For Rehearing, Rehearing En Banc, Certification, and Written Opinion in case no.: 602023-2882 from the Sixth District Court of Appeals' Per Curiam Affirmance of the Lower Tribunal's Order Denying Appellant's 3,850 Post-Conviction Motion Filed in the 6th DCA on June 16th, 2023. The record was submitted on November 22nd, 2024 and the Appellant filed a timely Initial Brief on December 15th, 2024. The 6th DCA denied the Appellant's appeal on July 8th, 2025, without an opinion and without receiving a critical portion of the record of counsel's premature withdrawal of representation, or without granting an evidentiary hearing to evaluate the evidence supporting the Appellant's valid claims. This timely appeal now follows. The Appellant is seeking a review by the Full Court to ensure that a miscarriage of justice does not occur and that the Court provides a written opinion based on the merits of the Appellant's claims.

MOTION FOR REHEARING AND REHEARING EN BANC

The Appellant asserts that the Court overlooked the following issues in its order:

1. The State admitted that the Appellant's claims of newly discovered evidence would require an evidentiary hearing and the Appellant has not been granted an evidentiary hearing for any of his claims, and a summary denial without an evidentiary hearing violates his 5th and 14th Amendment rights to due process and results in a manifest injustice.
2. The State claimed the Appellant should have raised his illegal photo lineup claims on direct appeal; however, the Appellant clearly argued that counsel prematurely withdrew representation during the 30-day period to file a direct appeal, which prevented the Appellant from timely filing a direct appeal. Counsel's failure violated the Appellant's 5th, 6th, and 14th Amendment rights to due process and effective assistance of counsel.
3. The State claimed that the Appellant's claims of ineffective assistance of counsel for failing to exercise due diligence in requesting all discovery, investigating evidence of police misconduct and violations of photo lineup procedures provided in FL 57 92.70, failing to develop a reasonable defense strategy based on evidence of irreparable misidentification, and by providing affirmative misadvice as to collateral consequences of registering as a Felon and applicability of Jimmy Ryce Civil Commitment requirements by signing the plea, which rendered the plea involuntary, were untimely as the appeal was filed after the two-year time limit and the Appellant did not assert any exceptions to the two-year deadline. However, the Appellant stated numerous exceptions

to the two-year time limit, including a claim of newly discovered evidence, not having access to a law library that was adequate and had persons trained in the law to assist with filing postconviction motions, being assigned and reassigned 10 lawyers between 2018-2021 who provided affirmative misadvice regarding the appellate procedures, counsel's premature withdrawal of representation, and even the COVID pandemic, especially since the Appellant was incarcerated in a county jail during the two-year period, and he still filed his 3.850 Motion within two years of discovering the new evidence, which are all valid exceptions to explaining any untimely filing. The Court's denial on these grounds represents a violation of the Appellant's rights to due process and effective assistance of counsel under the 5th, 6th, and 14th Amendments of the U.S. Constitution.

The Appellant is requesting a rehearing en banc to permit the Court to hear and review the Appellant's valid claims because neither the lower court nor the 6th DCA has addressed the actual merits of his claims because the Court's decision is a departure from the essential requirements of the law and lacks uniformity with other district court, Florida Supreme Court, and U.S. Supreme Court decisions that have a substantial and controlling effect including *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 1984, *Evitts v. Lucey*, 469 U.S. 387, 105 S. Ct. 830, 83 L.Ed.2d 821 1985, *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L.Ed.2d 203, 1985, *Premo v. Moore*, 131 S. Ct. 733, 178 L.Ed.2d 644, 562 U.S. 115 2011, *Burtis v. State*, 68 So.3d 338 Fla. App. 2011, *Thurman v. State*, 892 So.2d 1085 Fla. 2d DCA 2004, *McGregor v. State*, 346 So.3d 737 Fla. App. 2022, *Chapman v. California*, 386 U.S. 18, 87 S. Ct. 824, 176 L.Ed.2d 705 1967, and *Padilla v. Kentucky*, 130 S. Ct. 1473, 176 L.Ed.2d 284, 22 Fla. L. Weekly 2010. The Appellant asserts that the 6th DCA unreasonably applied clearly established Federal law of the Appellant's rights to effective assistance of counsel and due process of law under the 5th, 6th, and 14th Amendments of the U.S. Constitution. In addition, the 6th DCA also departed from the essential requirements of the law by per curiam affirming the lower court's ruling without holding an evidentiary hearing on the Appellant's unfuted claims and also departing from other district court and Florida Supreme Court decisions, which resulted in a lack of uniformity with clearly established state law that is binding and sets precedence.

The State and lower court denied the Appellant's claims based on procedural issues without addressing the merits of the Appellant's claims and never presented any evidence that would clearly refute the record and his claims. *Strickland v. Washington* holds that courts must assess a defendant's claim that his attorney failed to provide

constitutionally effective assistance in light of all the circumstances, and no single type of evidence is a prerequisite to relief (*Strickland*, 1984). To prevail on prejudice before the state court, a defendant must demonstrate a reasonable probability that but for counsel's error, he would not have pleaded guilty and would have insisted on going to trial (*Hill*, 1985). The State's conclusion that counsel's actions did not constitute ineffective assistance of counsel was an unreasonable application of clearly established law in light of *Strickland* (*Premo*, 2011). To establish ineffective assistance, "A defendant must show both deficient performance by counsel and prejudice." (*Id*; see also *Knoules v. Mirzayance*, 556 U.S. 111, 122, 129 S.Ct. 1411, 1419, 173 L.Ed.2d 251 (2009)). "The due process clause of the 14th Amendment guarantees a criminal defendant the effective assistance of counsel on his first appeal as of right," (*Evitts v. Lucy*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 649, 562 U.S. 115 (2011); and *Douglas v. California*, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811). "When no evidentiary hearing is held on a motion for postconviction relief, a movant's allegations are accepted as true unless they are conclusively refuted by the record," (*Burris v. State*, 68 So.3d 338 Fla. App. 2011; *Thurman v. State*, 892 So.2d 1085 Fla. 2d DCA 2004; *McGregor v. State*, 346 So.3d 737 Fla. App. 2022 - Finding a claim of ineffective assistance raised in a postconviction motion legally sufficient and unrefuted by record evidence, meriting evidentiary hearing; *Prestano v. State*, 210 So.3d 772, 774 Fla. 5th DCA 2017). "In the United States view, counsel is not constitutionally required to provide advice on matters that will not be decided in the criminal case... though counsel is required to provide accurate advice if he/she chooses to discuss these matters," (*Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 176 L.Ed.2d 705 (1967); *Padilla v. Kentucky*, 130 S.Ct. 1473, 176 L.Ed.2d 284, 22 Fla. L. Weekly 2010).

MOTION FOR CERTIFICATION

The per curiam affirmance of the lower tribunal's order denying all claims submitted in the Appellant's 3,850 postconviction motion, which was affirmed without an opinion, fails to address the voluntariness of the plea based on the court's and counsel's failure to advise the Appellant of direct and collateral consequences of the plea, as well as counsel's affirmative misadvice. The Court's affirmance without addressing these issues conflicts with the district court, Florida Supreme Court, and U.S. Supreme Court's opinions in: *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), *Evitts v. Lucy*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985), *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203, 3 24

1985, *Premo v. Moore*, 131 S. Ct. 733, 178 L.Ed.2d 649, 562 U.S. 115, 2011, *Chapman v. California*, 386 U.S. 18, 87 S. Ct. 824, 176 L.Ed.2d 705, 1967, *Padilla v. Kentucky*, 130 S. Ct. 1473, 176 L.Ed.2d 284, 22 Fla. L. Weekly 2010, *Johnson v. State*, 971 So.2d 212 Fla. App. 2008, *Murphy v. State*, 820 So.2d 375, 376 Fla. 4th DCA 2008, *Gomez v. State*, 28 So.3d 114 Fla. App. 2010 - (Ineffective Assistance of Counsel); *Wright v. State*, 995 So.2d 324, Fla. 2008, *Johnston v. State*, 27 So.3d 11, 19 Fla. 2010 - (Newly Discovered Evidence); *Fitzpatrick v. State*, 900 So.2d 495, Fla. 2005, *Grant v. State*, 390 So.2d 341, 343 Fla. 1980, *Mason v. Brathwaite*, 432 U.S. 98, 110-19, 97 S. Ct. 2243, 53 L.Ed.2d 140, 1977 - (FL ST 92.70 Eyewitness Identification Reform Act); *Williams v. State*, 285 So.3d 1003, 2019, *Neil v. Biggers*, 409 U.S. 188, 199-200 93 S. Ct. 375, 34 L.Ed.2d 401, 1972, *Alabad v. State*, 362 So.3d 190 Fla. 2023 - (Unduly Suggestive Lineup and Irreparable Misidentification); *Johnson v. State*, 971 So.2d 217 Fla. App. 2008, *Murphy v. State*, 2002, *Gomez v. State*, 2010, *State v. Leroux*, 689 So.2d 233, 238 Fla. 1996, *Graham v. State*, 779 So.2d 604 Fla. 2d DCA 2007, *Ghanavati v. State*, 820 So.2d 989 Fla. App. 2002 - (Involuntary Plea and Affirmative Misadvice); *Eisaman v. State*, 490 So.2d 770, Fla. App. 1983, *Dydek v. State*, 400 So.2d 1255 Fla. 2d 1981, *Grant v. State*, 1980, *State v. Register*, 152 Fla. 239, 9 So.2d 804, 1947, *Holmgren v. State*, 127 Fla. 152, 172 700, 1937, *Russ v. State*, 15 Fla. 55, 1975, *Nicol v. State*, 892 So.2d 1169, 1171 Fla. 5th DCA 2005 - (False Imprisonment Charge and Ineffective Counsel); and *Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491, 52 L.Ed.2d 72, 1977 - (Counsel Prematurely Withdrawn Representation).

The Appellant humbly and respectfully requests that this Honorable Court of Appeals certify the following questions of great public importance:

1. Does a manifest injustice occur when the Court summarily denies a 3.850 postconviction motion, without holding an evidentiary hearing, when the record does not conclusively refute the Appellant's claims, which violated his 5th and 14th Amendment rights to due process?
2. Does a manifest injustice occur when counsel prematurely withdraws representation during the 30-day appeal period, which prevented the Appellant from timely filing a direct appeal and raising his claims, which violated his 5th, 6th, and 14th Amendment rights to due process and effective assistance of counsel?
3. Does a reversible error or fundamental error occur when counsel provides affirmative misadvice regarding the collateral consequences of a plea, which renders the plea involuntary and violated his due process rights?

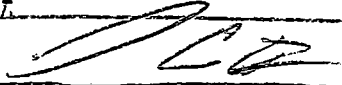
REQUEST FOR A WRITTEN OPINION

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 DCA (Goldsboro v. State, 602024-0751); 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 Appellants pray that this Honorable Court of Appeals grants the rehearing, rehearing en banc, certification of the questions of great public importance, and provides a written opinion to establish a legitimate basis for the Florida Supreme Court to review.

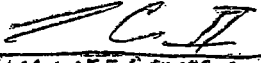
OATH

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 contents, and that all of the facts alleged in the motion are true and correct.


HARRY LEE GOLOSBOROFF II, PRO SE
DEFENDANT, JAZL #4838407

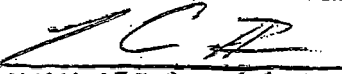
CERTIFICATIONS AND ACKNOWLEDGEMENTS

I certify that the motion is filed in good faith, that I have a reasonable belief that the motion is timely filed, 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 GOLOSBOROFF II, PRO SE
DEFENDANT, JAZL #4838407

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion For Rehearing En Banc and Written Opinion was delivered by mail to: the 6th DCA Office of the Clerk of Courts 811 East Main Street Lakeland, Florida 33801, and the State of Florida at the Office of the Attorney General 444 Seabreeze Blvd 5th Floor Daytona Beach, FL 32118 on this 9TH day of JULY, 2025.


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