

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

CASE NO: 02 CF 2929

CALVIN CHANDLER,

Defendant.

ORDER DISMISSING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

THIS CAUSE came before the Court for review and consideration upon Defendant's *pro se* Petition for Writ of Habeas Corpus. The Court has read the motion, reviewed the file, consulted the relevant authority, and having otherwise been fully advised in the premises, finds and concludes as follows:

1. Defendant's Petition asserts two claims: first, that the state offered perjured testimony, and second, that the trial court improperly applied an enhancement for the discharge of a firearm. Both of these claims have previously been brought and denied in postconviction proceedings under Fla. R. Crim. Pro. 3.850 and 3.800, respectively. *See Order on Denying Motion for Postconviction Relief* attached as Exhibit A and *Order on Defendant's Motion to Correct Illegal Sentence* attached as Exhibit B.
2. Both orders were appealed and affirmed *per curiam*.
3. Habeas Corpus is not a substitute for post-conviction proceedings, nor may it be used as an additional appeal for issues that could have been, or were, raised in previous post-conviction proceedings. *Griffin v. State*, 976 So. 2d 107, 108 (Fla. 3d DCA 2008); *Moultrie v. State*, 310 So. 3d 533, 534 (Fla. 1st DCA 2021).

CLERK OF CIRCUIT
AND COUNTY COURT
LAKE COUNTY
TAVARES FLORIDA

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In view of the foregoing findings, the pertinent portions of the record, and applicable law, it is **ORDERED** and **ADJUDGED** as follows:

- A. Defendant's *pro se* Petition for Writ of Habeas Corpus is **DISMISSED**.
- B. **DEFENDANT HAS THIRTY (30) DAYS FROM THE DATE OF RENDITION OF THIS ORDER TO FILE AN APPEAL. FAILURE TO TIMELY FILE AN APPEAL MAY RESULT IN THE FORFEITURE OF THAT RIGHT.**

DONE and **ORDERED** in Chambers at Tavares, Lake County, Florida this 28th day of June 2022.



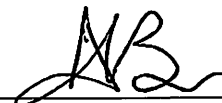
LARRY METZ, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served to the addresses listed below via hand or mail delivery or electronic service this 1 day of ~~June~~ July 2022.

Calvin Chandler
DC #400181
Walton Correctional Institution (Male)
691 Institution Road
DeFuniak Springs, FL 32433

Office of the State Attorney
550 West Main Street
PO Box 7800
Tavares, FL 32778



Deputy Clerk

IN THE CIRCUIT COURT OF
THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

CASE NO: 02 CF 2929

CALVIN CHANDLER,

Defendant.

EXHIBIT A

TO

ORDER DISMISSING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

IN THE CIRCUIT COURT OF
THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY,
FLORIDA

STATE OF FLORIDA,

v.

Case No.: 2002-CF-2929

CALVIN A. CHANDLER,

Defendant.

FLORIDA DIVISION
2008 JUN 11 A 10 28
CIRCUIT COURT
AND COUNTY COURT
LAKE COUNTY
TAVARES FLORIDA

ORDER

THIS CAUSE came on to be heard on the Defendant's Motion for Post Conviction Relief, and the Court has reviewed the Motion and has considered the evidence presented at hearing regarding the Defendant's Motion. This Court, being otherwise fully advised in the premises, finds as follows:

On July 29, 2004, a jury found the Defendant guilty of Attempted First Degree Murder with a Firearm (Count I) and Burglary of a Dwelling while Armed (Count II). (Excerpt of Trial Transcript, attached hereto as Exhibit A at 842-43). The Defendant was sentenced to serve fifty years in the Florida Department of Corrections, concurrent on both counts, with a twenty-five year minimum mandatory sentence. (Exhibit A at 848). The Defendant's conviction was affirmed on appeal. (Appellate Decision, attached hereto as Exhibit B).

The Defendant, represented by Counsel, filed the instant Motion pursuant to Fla. R. Crim. P. 3.850. The Defendant has raised eleven grounds for post conviction relief. His Motion is based on allegations of ineffective assistance of counsel. The Court held an evidentiary hearing regarding all of the grounds raised in the Motion.

On the evening of December 2, 2002, Thelma Dyer heard her door bell ring and opened the



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front door of her home. (Exhibit A at 158, 162). She had assumed her son, Colin Dyer, was at the door. (Exhibit A at 158). Instead, she saw a tall African-American man with hair braided on both sides of his head. (Exhibit A at 162-164). She attempted to shut the door, but the man pushed his way inside. (Exhibit A at 162).

The intruder asked her about the whereabouts of her son. (Exhibit A at 165-166). He told her to “[g]et him on the phone,” and stated “[h]e’s got my money” and “I’m going to get him.” (Exhibit A at 165-166). He pulled out a silver gun and pointed it at Ms. Dyer’s neck. (Exhibit A at 166). The gun misfired twice, and he subsequently hit the gun with his hand. (Exhibit A at 166). He pointed the gun at Ms. Dyer again, and this time he shot her in the neck. (Exhibit A at 166-67). He apparently then struck her with the gun and left the area. (Exhibit A at 168). Ms. Dyer survived the shooting, and the next morning she identified the Defendant out of a photo lineup as the perpetrator of the shooting. (Exhibit A at 178-80, 509-11). At the Defendant’s trial, Ms. Dyer again identified the Defendant as the perpetrator. (Exhibit A at 162).

Another witness, Mr. Charles “Mott” Brown, also testified that the Defendant shot Ms. Dyer. (Exhibit A at 592). Mr. Brown indicated that the Defendant shot Ms. Dyer because he was angry with her son, Colin Dyer, over a drug deal. (Exhibit A at 583-84, 587-95). Mr. Dyer had introduced the Defendant and Mr. Brown to a Jamaican man from Miami referred to as Chris or Dred. (Exhibit A at 248, 263). On the afternoon of December 2, 2002, the Defendant and Mr. Brown bought \$9,600.00 worth of drugs from Dred in Orlando. (Exhibit A at 581-84, 587). Mr. Dyer had acted as a middle man during the transaction. (Exhibit A at 263). According to the Defendant and Mr. Brown, however, the drugs they had received from Dred were fake. (Exhibit A at 587-93). The Defendant blamed Mr. Dyer for being cheated. (Exhibit A at 587-90).

The Defendant, accompanied by Mr. Brown, drove Mr. Brown's vehicle to the Dyer home. (Exhibit A at 588-90). The Defendant, who was armed with a silver gun, wanted to find Mr. Dyer and he repeatedly threatened that he would kill him. (Exhibit A at 588-90). However, Mr. Dyer was not at home, and the Defendant shot Ms. Dyer instead. (Exhibit A at 589-92). Mr. Brown waited inside the vehicle during the incident. (Exhibit A at 590-92).

The defense theorized that Mr. Brown actually committed the shooting. (Exhibit A at 153-54, 768). In arguing that Mr. Brown was the perpetrator, the Trial Counsel referred to certain evidence, including physical evidence, linking Mr. Brown to the crime. (Exhibit A at 624-38, 645-54, 778-87). Trial Counsel emphasized that Ms. Dyer's blood was found on Mr. Brown's clothes and on one his socks, which was found at the crime scene. (Exhibit A at 778-80, 784). Further, Trial Counsel emphasized that a shoe print found at the crime scene, was consistent with a type of shoe owned by Mr. Brown. (Exhibit A at 778-80, 784). However, the evidence showed the Defendant's hairstyle at the time of the crime matched Ms. Dyer's description of the perpetrator's hairstyle, while Mr. Brown's hairstyle did not. (Exhibit A at 163, 245-46).

In order to show ineffective assistance of counsel, a defendant must satisfy the test set forth in the case of *Strickland v. Washington*, 466 U.S. 668 (1984). *Strickland* provides the following:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel was not functioning as the "Counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defendant. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Id. at 687. In analyzing the first prong of the *Strickland* standard, counsel's performance should be evaluated based on counsel's perspective at the time, not based on hindsight. See *Coleman v. State*,

718 So. 2d 827 (Fla. 4th DCA 1998). To satisfy the prejudice requirement under the second prong, a defendant must show a reasonable probability that the result of the proceeding would have differed, if not for counsel's unprofessional errors. *Strickland*, 466 U.S. at 694.

In his first ground, the Defendant maintains that Trial Counsel was ineffective for failing to investigate and call four material witnesses at trial. The witnesses named in the Motion are Ida Knight, Franchesca Chandler, Henry Pope, and Keyisha Henderson. At the evidentiary hearing, Trial Counsel testified as to his reasons for not calling each of the witnesses. He explained that he was not familiar with Ida Knight, had never spoken with her, and had never heard that she had any valuable testimony to provide for the defense. Ida Knight testified at the evidentiary hearing, and Trial Counsel stated he had never seen her before that hearing. The fact that her name was mentioned in a deposition would not have led him to surmise that she might have had information pertinent to the case. Further, her testimony at the evidentiary hearing appeared questionable. She stated she saw Mott Brown at her brother's apartment shortly after the shooting, but the State established she had been in jail during that time. The State also established Ms. Knight has approximately thirteen convictions for crimes involving dishonesty or false statement.

As to Ms. Henderson, Trial Counsel explained that he thought she might hurt the Defendant's case with her testimony because she was Mott Brown's girlfriend. Further, although she claimed Mr. Brown confessed to shooting Ms. Dyer, Ms. Henderson also claimed that Mr. Brown stated the Defendant shot Ms. Dyer. Trial Counsel believed he could rely on other evidence to impeach Mr. Brown, without relying on Ms. Henderson. Regarding Franchesca Chandler and Henry Pope, they did not testify at the evidentiary hearing. However, Trial Counsel testified that these witnesses were

not called to testify because their testimony would not have provided an alibi for the Defendant. Their testimony could have supported the State's time line of events as to the shooting. Regarding this ground of the Defendant's Motion, he has failed to demonstrate that Trial Counsel's performance was deficient. Even assuming some deficiency, the Defendant has not shown a reasonable probability that the outcome of the proceedings would have differed in the absence of such deficiency.

In his second ground, the Defendant maintains Trial Counsel was ineffective for interfering with his right to testify at trial. However, Trial Counsel indicated at the evidentiary hearing that he did not preclude the Defendant from testifying at trial. Trial Counsel advised against it because he believed that the State, during cross-examination of the Defendant, might have eliminated any doubt created by the defense as to Mr. Brown's role in the shooting. He was also concerned about the Defendant's previous felony convictions, although he explained to the Defendant that the State could not discuss the facts of those cases. As to the Defendant's Motion, he has failed to demonstrate that Counsel's performance was deficient regarding this ground as well.

In his third ground, the Defendant argues that Trial Counsel was ineffective for failing to introduce into an evidence an exculpatory letter that indicated Mr. Brown had been coerced into stating the Defendant shot Ms. Dyer. Although not introduced into evidence, this letter was discussed during the trial. (Exhibit A at 620-21). Mr. Brown testified that the contents of the letter were not true and that he had not been coerced by law enforcement. (Exhibit A at 620-21). At the evidentiary hearing, Trial Counsel testified that he thought entering the letter into evidence would actually harm the Defendant's case. The handwriting in the letter, obviously not Mr. Brown's,

appeared to have been sent to Mr. Brown for his signature. The contents of the letter supported the Defendant's position, and the letter appeared to have originated with the Defendant. The Defendant has failed to show that Trial Counsel's performance as to this ground was deficient. Even assuming Counsel's performance had been deficient, the Defendant cannot show prejudice.

In the Defendant's fourth ground, he claims that Trial Counsel was ineffective for failing to investigate and present the defense that Chris, or Dred, actually shot Ms. Dyer. The Defendant now maintains that the money exchanged for the fake drugs was counterfeit. The alleged motive for the shooting was that the Defendant and Mr. Dyer had tricked Dred into believing that the cash involved with the drug sale was real currency. The Defendant refers to certain evidence suggesting that Dred was driving a green-gold Navigator, and that a neighbor observed a gold sport utility vehicle drive away from the Dyer's residence around the time of the shooting. The Defendant also argues Dred had a similar hairstyle to his own when the shooting occurred.

Trial Counsel testified that he did not believe there was enough evidence to support a defense blaming Dred for the shooting. Trial Counsel was not provided with a last name for Dred and no one knew how to contact him. Further, the Defendant never mentioned to Trial Counsel that there was counterfeit money involved in the drug transaction. The evidence showed that Mr. Dyer and Mr. Brown had counted the money that was exchanged for the drugs, and no one suggested the money was counterfeit. (Exhibit A at 274, 584). Considering the information he had at the time of trial, Counsel believed a defense involving Dred as the shooter would fail and would damage the Defendant's credibility with the jury. Trial Counsel's performance on this matter was not deficient and even assuming it had been, the Defendant has failed to show a reasonable probability the

outcome of the proceedings would have differed in the absence of such deficiency.

In the fifth ground of his Motion, the Defendant alleges Trial Counsel was ineffective for failing to object to the imposition of a twenty-five year minimum mandatory sentence on Counts I and II. However, Counsel raised this issue on appeal and the Defendant's judgment and sentence was affirmed on appeal. As this issue was raised on appeal, it should not be raised in the instant Motion. *See Booska v. State*, 935 So. 2d 1238 (Fla. 5th DCA 2006).

In the sixth ground of the Defendant's Motion, he claims that Trial Counsel was ineffective for failing to present evidence that the Defendant had permanent gold teeth when the victim testified that the shooter did not have gold teeth. At the evidentiary hearing, Trial Counsel testified he had taken into consideration the fact that the entire incident occurred in a short period of time and the victim had been at gunpoint. He did not want to risk antagonizing the jury by attacking Ms. Dyer, an obviously innocent victim, on the issue of the perpetrator's teeth. He knew that the defense's greatest identification problem was the perpetrator's distinctive hairstyle, as described by Ms. Dyer, which matched the Defendant's hairstyle at the time of the crime.

Moreover, Ms. Dyer did not indicate in her deposition that she had noticed the perpetrator's teeth. (Excerpt of Deposition of Thelma Veronica Dyer, attached hereto as Exhibit C at 83). In her deposition, Ms. Dyer explained that she had described the perpetrator to law enforcement the day after the shooting. (Exhibit C at 81-83).

A. And he said, would I be able to recognize that person, and I told them yes. And I described the features, the man's hair especially because that was the most notable - -

Q. Beyond the hair, what else could you describe about the person's features?

A. The hair, the height. The build was, I would say he was not a small man, he was medium to large because my son is a little wider than he is.

Q. Okay. Your son is larger than he is?

A. Oh, yes. He's more muscular, he's taller and more muscular.

Q. Okay. Did you notice anything like tattoos or anything like that?

A. To tell you the truth, I didn't -- I was so -- when I -- when he came into the door, I was not looking. I didn't have the gumption to look and see whether he had tattoos or not; I couldn't tell you that.

Q. Could you tell anything about his mouth or his teeth?

A. Uh-uh.

Q. Anything like that, anything about facial hair other than the hair on his head?

A. He may have had but I couldn't -- I would not swear that he had facial hair on.

(Exhibit C).

Ms. Dyer's responses during the deposition suggested that she did not observe anything at all about the perpetrator's mouth or teeth. (Exhibit C). Her responses do not indicate a necessity to retain an expert to testify about the Defendant's teeth. Regarding this ground, the Defendant has failed to show that Trial Counsel's performance was deficient, and even assuming some deficiency, he does not demonstrate a reasonable probability that the outcome of the proceedings would have differed in the absence of such deficiency.

In the seventh ground of his Motion, the Defendant asserts Trial Counsel was ineffective for failing to have a voice expert analyze the tape recorded conversation between Mr. Brown and Keyisha Henderson and give an expert opinion on the contents of the tape. However, the State


would have objected to the expert giving his opinion as to the contents of the tape at trial and the Court would have found the opinion inadmissible, as it did in the evidentiary hearing. In addition, at the evidentiary hearing, the Court listened to an altered version of the tape, in which the Defendant's expert had removed background noise. The Court found the alteration made little difference from the original for the purposes of discerning the conversation on the tape. At trial, the tape was played for the jury and the jury determined the contents of the tape. The Defendant has failed to show that Trial Counsel's performance on this issue was deficient, and even assuming some deficiency, he has failed to demonstrate prejudice.

In the eighth ground, the Defendant argues that Trial Counsel was ineffective for allowing the State to knowingly present the false testimony of Mr. Brown during the trial. However, as stated by Trial Counsel, there was no reason to believe that the State knowingly presented false testimony or did not believe in the accuracy of Mr. Brown's testimony. Further, the Defendant has not demonstrated that Mr. Brown's material statements at trial were false. As such, the Defendant has failed to show any deficiency in Trial Counsel's performance on this ground either.

Based upon the foregoing, it is hereby

ORDERED AND ADJUDGED that the Defendant's Motion for Post Conviction Relief is denied. The Defendant has thirty days to file an appeal.

DONE AND ORDERED in Chambers at Tavares, Lake County, Florida this 10 day of June, 2008.


G. Richard Singeltary, Circuit Judge

IN THE CIRCUIT COURT OF
THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

CASE NO: 02 CF 2929

CALVIN CHANDLER,

Defendant.

_____ /

EXHIBIT B

TO

ORDER DISMISSING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

STATE OF FLORIDA

vs

CASE NO 2002 CF 2929-03

CALVIN A CHANDLER
_____ /

CLERK OF CIRCUIT
AND COUNTY COURT
LAKE COUNTY
TAVARES FLORIDA

FELONY DIVISION
2011 DEC 19 A 11: 21

ORDER ON DEFENDANT'S
MOTION TO CORRECT ILLEGAL SENTENCE

THIS MOTION HAVING COME TO BE HEARD before this Court on January 20, 2010,
and this Court having read defendant's motion and having heard argument by the State, the Court now
makes these findings in denying the defendant's motion to Correct Illegal Sentence:

On July 29, 2004, the defendant was found guilty of Attempted 1st Degree Murder with a
Firearm and Burglary of a Dwelling while armed with a Firearm. These crimes arose out of an incident
where the defendant broke into the home of Thelma Dyer with a Firearm. When Ms. Dyer would not
give the defendant the information he wanted, he shot Ms. Dyer in the neck, partially severing her
jugular vein. The defendant was sentenced to fifty years in the Department of Corrections, concurrent
on both counts with a twenty five minimum mandatory sentence pursuant to F.S. 775.087(2)(a)(3).
Interrogatories were provided to the jury in the verdict forms. The jury found that the defendant guilty
as charged, they also found that the defendant had possessed a firearm, that he had discharged the
firearm and that he caused great bodily harm to Ms. Dyer. In fact, the defense, during the trial,
conceded that the firearm had been discharged and that Ms. Dyer suffered great bodily harm. Medical
testimony also proved beyond a reasonable doubt that the firearm was discharged and that Ms. Dyer
suffered great bodily harm. The defense to the offense was mistaken identity however this evidence



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was overcome beyond a reasonable doubt based on the testimony at trial. Interrogatories were provided for each count. The jury answered the interrogatories in Count Two of the information. They answered the first interrogatory in Count One but failed to answer the remaining interrogatories as to Count One even though all interrogatories required a response either in the affirmative or in the negative.

The defendant raised the impropriety of imposing the minimum mandatory sentence based on the verdict forms at sentencing. The minimum mandatory sentence was imposed by this Court. A notice of appeal was filed on August 26, 2004. One of the issues raised on direct appeal was the issue of the impropriety of the minimum mandatory sentences based on the interrogatories. The 5th DCA per curiam affirmed the defendant's appeal on November 4, 2006. The defendant then filed a pro se motion to correct illegal sentence on January 29, 2007 claiming an *Aprendi* violation because the jury did not determine injury points. Prior to hearing that motion, the defendant hired an attorney and filed a Motion for Post Conviction Relief on November 9, 2007. At that hearing the defendant again raised the issue of the Interrogatories and the failure of the jury to make findings. In this Court's Order dated June 10, 2008, the Court specifically denied that ground finding that the issue had been raised on direct appeal and therefore could not be raised again. The defendant appealed this Court's findings and the 5th DCA per curiam affirmed the Court's rulings on the 3.850 Motion for Post Conviction Relief on October 26, 2009. The defendant filed a motion for a rehearing to the 5th DCA which was also denied on October 26, 2009.

On December 9, 2009, the defendant filed the instant Motion to Correct Illegal Sentence. A hearing was held on January 20, 2010 wherein this Court heard argument from the State and

considered defendant's motion. After hearing argument, this Court denied the defendant's motion. The findings this Court makes are as follows:

The defendant raised the same issues on direct appeal. The 5th DCA per curiam affirmed the defendant's appeal. The defendant raised the same issues in his 3.850 motion for Post Conviction Relief. The 5th DCA per curiam affirmed the denial of his Post Conviction Relief Motion. The Court finds that even if the jury failed to answer the interrogatories on Count One, they found the defendant guilty as charged in the information. The information alleged actual possession, discharge of the firearm and serious bodily injury to Ms. Dyer. The jury did answer the interrogatories at the end of Count Two after finding the defendant guilty as charged. Both Count One and Count Two were based on the same continuing episode of events. Both counts were filed pursuant to F.S. §775.087(2)(a)(3).

Additionally, based on the U.S. Supreme Court case of *Washington v. Recuenco*, 126 S.Ct. 2546, 165 L.Ed.2d 466, 548 U.S. 212 (2006) and its progeny in the State of Florida (See *Galindez v. State*, 955 So.2d 517 (FLA 2007); *Lindsay v. State*, 1 So3d. 270 (1DCA 2009); *Knight v. State*, 6 So3d. 733 (2 DCA 2009); *Clowers v. State*, 31 So 3d. 962 (1 DCA 2010); *Johnson v. State*, 53 So.3d 360 (5DCA 2011)), any error in the jury not finding the enhancements is harmless error. F.S. § 775.087 mandates the imposition of a mandatory minimum sentence and is non discretionary where the record reflects that the defendant qualifies for mandatory minimum sentencing. There is no question that the defendant did not know that he was being charged with actual possession, discharge of the firearm and causing great bodily harm as it was specifically charged in the information. The evidence was overwhelming as to the guilt of the defendant. No prejudice has been shown by the defendant. Additionally, the defendant was sentenced to fifty years in the Department of Corrections which is a

legal sentence when the defendant was convicted of life felonies and the twenty five year minimum mandatory sentence is mandated pursuant to F.S. § 775.087(2)(a)(3).

THEREFORE, THE DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE IS DENIED.

DONE AND ORDERED in Tavares, Lake County, Florida, this 15 day of December, 2011 (nunc pro tunc January 20, 2010).



G. RICHARD SINGELTARY
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing Order was sent via U.S. mail/hand delivery this 22 day of December, 2011 to the following:

Calvin A. Chandler # 400181-F4208L
✓ Taylor Correctional Institution
8515 Hampton Springs Road
Perry, FL 32348

Office of the State Attorney
550 West Main St.
Tavares, FL 32778


Judicial Assistant/Deputy Clerk