

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

2023 APR 21 PM 4:06

NEMEA HALL,

Petitioner,

vs.

CASE NO: 2008-CF-1656-B

CLERK OF CIRCUIT
AND COUNTY COURT
LAKE COUNTY
TAVARES FLORIDA

RICKY DIXON,
SECRETARY of FLORIDA
DEPARTMENT OF CORRECTIONS,

Respondent.

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

THIS CAUSE came before the Court upon the Petition for Writ of Habeas Corpus filed on March 28, 2023 ("Petition"). The Court, having reviewed the Defendant's Petition and other pertinent documents in the Court file, reviewed the relevant legal authorities, and being otherwise fully advised in the premises, finds and concludes as follows:

1. On March 5, 2009, the Petitioner was found guilty of Conspiracy to Traffic in Cocaine two hundred (200) Grams or More but Less Than four hundred (400) Grams.
2. Petitioner was sentenced to twenty-five (25) years with a seven (7) year mandatory minimum pursuant to Section 893.135(1), Florida Statutes.
3. Petitioner appealed this sentence, which was *per curiam affirmed* on December 21, 2010.
4. Petitioner filed a Petition for Writ of Habeas Corpus on July 19, 2019, which was denied on July 30, 2019.
5. Petitioner appealed the denial of his Petition for Writ of Habeas Corpus, which was *per curiam affirmed* on February 11, 2020.
6. Habeas proceedings may not be used to present issues that should have been raised in a Rule 3.850 motion or claims that should have been raised on appeal, nor may it be used to obtain a second appeal. *Richardson v. State*, 918 So. 2d 1002 (Fla. 5th DCA 2006).
7. Petitioner recently filed another Petition for Writ of Habeas Corpus, alleging he should be released because he was charged by information with Conspiracy to Traffic in Cocaine four hundred (400) grams or more, but the jury found that he was guilty of the lesser offense of

Conspiracy to Traffic in Cocaine two hundred (200) Grams or More but Less Than four hundred (400) Grams.

8. Petitioner erroneously argues that because he was found guilty of trafficking in a lesser quantity of contraband, a lesser offense than charged, he should be acquitted of all charges. Specifically, Petitioner argues that because he was charged with Conspiracy to Traffic in Cocaine more than four hundred (400) Grams but was found guilty of Conspiracy to Traffic in Cocaine between two hundred (200) to four hundred (400) Grams, that the State failed to prove an essential element of the offense charged in the information, and therefore, he should have been acquitted as a matter of law.

9. Florida Rule of Criminal Procedure 3.510(b) states that when a defendant is to be tried by information, “the jury may convict the defendant of: any offense that as a matter of law is a necessarily included offense or a lesser included offense of the offense charged in the indictment or information and is supported by the evidence....”

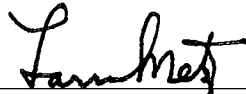
10. Clearly, the argument that the State failed to prove at trial one of the essential elements of the offense charged by information is an issue ripe for direct appeal. If the argument is that the attorney failed to preserve the point for direct appeal or failed to make the argument at all, then the issue may be raised by appropriate motion filed under Rule 3.850. Certainly, it is not an issue that should be raised for the first time in a Petition for Writ of Habeas Corpus.

11. A review of the court record indicates that the Petitioner has filed numerous motions and writs with this court since his conviction, which have all been denied, and this Petitioner has previously been cautioned about filing frivolous *pro se* pleadings. Petitioner is once again warned not to file any frivolous motions that have been previously filed or that could have and should have been handled by direct appeal or by properly filed post-trial motion. Petitioner’s continued filing of frivolous or repetitive motions or petitions could result in a ruling that he is forbidden from further *pro se* filings and must have a licensed Florida attorney sign any future motions or petitions.

In view of the foregoing findings, the pertinent portions of the record, and applicable law, it is **ORDERED** and **ADJUDGED** that the Petition for Writ of Habeas Corpus filed on March 28, 2023, is **DENIED**.

DONE and **ORDERED** in Chambers at Tavares, Lake County, Florida this 21st day of April 2023.

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.



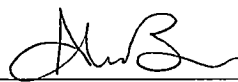
LARRY METZ, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been served by U.S. Mail/Inter-Office, Mail/Fax this 21 day of April 2023 to the following:

Office of the State Attorney

Nemea Hall
DC Number: 344031
Tomoka Correctional Institution (Male)
3950 Tiger Bay Road
Daytona Beach, Florida 32124-1098

By: 

Deputy Clerk