IN THE FIRST DISTRICT COURT OF APPEAL
Case No. 1D22-1563

DARREL DEON HARVEY,
Appellant

vs. **LT CASE NO: 2017-CF-526**

STATE OF FLORIDA,
Appellee
_____/

ON APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA
THE HONORABLE STEPHEN EVERETT, CIRCUIT JUDGE

INITIAL BRIEF OF THE APPELLANT

DARREL DEON HARVEY, pro se

Darrel Deon Harvey
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Tallahassee, FL 32304

PRELIMINARY STATEMENT

This proceeding involves the appeal of the circuit court's denial of Darrel Deon Harvey's (Appellant) amended motion for postconviction relief. The motion was brought pursuant to Florida Rules of Criminal Procedure 3.850. The circuit court summarily denied Appellant's motion without an evidentiary hearing, and failed to attach those portions of the record which conclusively demonstrate that Appellant is entitled to no relief. The following abbreviations will be utilized to cite to the record in this matter, with appropriate page number(s) following the abbreviation:

"PCR." - record on appeal following the postconviction denial

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RELEVANT STATEMENT OF THE CASE AND FACTS

On February 13, 2017, Appellant was arrested. Appellant was charged by Information on March 24, 2017, with the following counts: (1) Travelling to Meet a Minor, (2) Soliciting of a Minor via Computer, and (3) Tampering with Physical Evidence.

Appellant was sentenced on June 14, 2018, for Travelling to Meet a Minor, and Tampering with Physical Evidence.

Appellant filed his notice for direct appeal on July 2, 2018. The direct appeal was affirmed and the Mandate was issued on November 10, 2020. See Harvey v. State, 304 So.3d 289 (2020).

Appellant filed a timely Rule 3.850 motion on November 16, 2020 ("the 2020 motion"). The Trial Court summarily denied ground one in the 2020 motion in an order which stated in part that "Such a challenge, the Trial Court erred, is not cognizable under rule 3.850 Fla. R. Crim. P. 3.850(c)(7). Arteaga v. State, 247 So. 2d 533, 536 (Fla. 2d DCA 2018). is hereby denied." Order, November 20, 2020. Attached was the transcript of the argument of a hearing held on January 31, 2018.

In 2021, the Appellant filed a timely Rule 3.850 motion. ("the 2021 motion"). The Trial Court denied the motion under "Fla. R. Crim. P. 3.850(h)(2). The Trial Court found it was not good cause for Defendant's failure to include these grounds in his prior motion. These grounds relate to legal issues that

Defendant alleges trial counsel should have argued. Therefore, Defendant could have asserted these grounds in his prior motion for post-conviction relief." Order, October 7, 2021.

Appellant filed a 3.850 Motion alleging newly discovered evidence on May 17, 2022. (“the 2022 motion”) The motion was summarily denied. Order, May 17, 2022

When the Trial Court denied the 2020 motion, it did not indicate that the denial was on the merits. The denial was for legal insufficiency. See Roth v. State, 479 So.2d 848, 849 (Fla. 3d DCA 1985).

Following the denial of the 2022 motion, the Appellant filed this appeal. There was no denial on the merits in (the 2020 motion), and Appellant is allowed to file an amended Rule 3.850 motion alleging legally sufficient claims. The 2022 motion amounts to an amended pleading since it raised the same issue but with a modified or restated text.

SUMMARY OF ARGUMENT

The Trial Court erred in dismissing Appellant’s amended Rule 3.850 Motion for Postconviction Relief as procedurally barred under Fla. R. Crim. P. 3.850(h)(2). Rule 3.850(f), Florida Rule of Criminal Procedure, which governs successive motions, provides that a second or successive motion may be dismissed if the

Judge finds that it failed to allege new or different grounds for relief and the prior determination was on the merits. The restriction against successive motions on the same grounds is applied only when the grounds raised were previously adjudicated on their merits, and not where the previous motion was summarily denied or dismissed as legally insufficient. Ranaldson v. State, 672 So.2d 564 (Fla. 1st DCA 1996); Scott v. State, 658 So.2d 558 (Fla. 1st DCA 1995). The Trial Court did not address the merits of Appellant's constitution challenge of ground one in the original motion (PCR:169), and ruled "Such a challenge, that the Trial Court erred, is not cognizable under Fla. R. Crim. P. 3.850(c)(7) citing Arteaga v State, 246 So. 3d 533 (Fla. Dist. Ct. App. 2018). Based on these circumstances, and because Appellant's motion was not adjudicated on the merits, the Trial Court should have held an evidentiary hearing and addressed the merits of the Appellant's amended Rule 3.850 Motion for Postconviction Relief based on newly discovered evidence unknown to Appellant at the time of trial and could not have been ascertained earlier through the exercise of due diligence when the evidence only became relevant after being adjudicated guilty (PCR:132). Additionally, Appellant asserts that his 3.800(a) Motion to Correct an Illegal Sentence should be treated as a petition for writ of habeas corpus where manifest injustice is shown.(PCR:52)

ARGUMENT I

THE TRIAL COURT ERRED BY SUMMARILY DENYING THE APPELLANT'S AMENDED POSTCONVICTION MOTION UNDER RULE 3.850(H)(2), WHERE THE APPELLANT SUFFICIENTLY ALLEDGED NEWLY DISCOVERED EVIDENCE SUPPORTING APPELLANT'S FIRST MOTION COUCHED IN TERMS OF CONSTITUTIONALITY, COGNIZABLE UNDER 3.850(A)(1), AND WHERE THE FIRST MOTION WAS DENIED AS LEGALLY INSUFFICIENT, OR IN THE ALTERNATIVE, TREAT APPELLANT'S 3.800(A) AND/OR 3.850 MOTION AS A PETITION FOR WRIT OF HABEAS CORPUS UNDER THE MISCARRIAGE OF JUSTICE EXCEPTION, SEE §775.021(1), FLA. STAT. (2017).

Standard of Review

The Trial Court's decision to deny the Appellant's rule 3.850 motion summarily without either an evidentiary hearing or opportunity to amend was based solely on the written materials before the court, so this ruling is "tantamount to a pure question of law, subject to de novo review." Franqui v. State, 59 So. 3d 82, 95 (Fla. 2011); State v. Coney, 845 So. 2d 120, 137 (Fla. 2003) (to the extent rule 3.850 claims "are discernable from the record, they constitute pure questions of law and are subject to de novo review"). Appellant is entitled to an evidentiary hearing unless his claims are conclusively refuted by the record. Fla. R. Crim. P. 3.850(d). If the Trial Court does not conduct an evidentiary hearing, the appellate court must accept the factual allegations made by the defendant as true to the extent they are not refuted by the record filed on appeal. Washington v. State, 10 So.3d 1126 (Fla. 1st DCA 2009).

Law and Analysis

A. An evidentiary hearing should have been conducted before ruling on the merits of the newly discovered evidence claim.

The Trial Court denied an evidentiary hearing on the conclusion that Appellant's evidence was not newly discovered and did not demonstrate "due diligence" by trial counsel. Trial counsel is presumed to know the law. See In re Will of Martell, 457 So.2d 1064, 1068 (Fla. 2d DCA 1984) (recognizing that each person is presumed to know the law). However, when adjudicating a rule 3.850 motion based on newly discovered evidence, the postconviction court is tasked with considering "all newly discovered evidence which would be admissible" at trial and determining "whether such evidence, had it been introduced at trial, would have probably resulted in an acquittal." In reaching this conclusion, the Judge will necessarily have to evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial." Nordelo v. State, 93 So.3d 178, 185 (Fla. 2012) (quoting Jones, 591 So.2d at 916). As a result, "these types of factual matters generally require an evidentiary hearing to allow the court to test the credibility of the newly discovered evidence" and whether the movant acted with due diligence, "unless the affidavit is inherently incredible or immaterial to the verdict and sentence." Id. (quoting Davis v. State, 26 So.3d 519, 526 (Fla. 2009))." Utile v. State, 235 So. 3d 1045, 1048 (Fla. 5th DCA 2018) (emphasis

added). “Although an evidentiary hearing is not a prerequisite in making th[e]s[e] determination[s], “an evidentiary hearing is the general rule rather than the exception.” DeJesus v. State, 302 So. 3d 472, 476 (Fla. 2d DCA 2020), citing Floyd v. State, 202 So. 3d 137, 140 (Fla. 2d DCA 2016) (first citing Poff v. State, 41 So. 3d 1062, 1064 (Fla. 3d DCA 2010); and then quoting Rolack v. State, 93 So. 3d 450, 452 (Fla. 3d DCA 2012)); see also Barrow v. State, 940 So. 2d 1235, 1237 (Fla. 5th DCA 2006) (“[O]rdinarily an evidentiary hearing is required for the Trial Court to properly determine ... whether the newly discovered evidence is of “such nature that it would probably produce an acquittal on retrial.” (alteration in original) (quoting McLin v. State, 827 So. 2d 948, 956 (Fla. 2002)). It is irrefutable that The Journal of the Senate as evidence, pari materia with the information, the jury instructions, and Florida Statute 847.0135(4)a), would produce an acquittal. (PCR: 139,140,141-126-56). Contrary to the Trial Court’s order, Appellant filed his first motion pro se and has demonstrated good cause.

1. Foremost, the first post-conviction motion was filed while the Appellant was incarcerated in the Florida Department of Corrections at Gadsden Reentry Center, a facility that did not have a law library, a law clerk, under Covid restrictions lockdown, no access to the internet to be properly informed of Florida Rules of Criminal Procedure, no ability to access the Journal of the Senate, and pretrial Appellant was banned from the internet.

2. The first post-conviction motion was cognizable under 3.850(a)(1). A defendant can attack a judgment or sentence on constitutional grounds. (PCR:169). Appellant's motion was erroneously denied without an evidentiary hearing nor refuted by the record or denied on the merits. See Czetli v State, 961 So.2d 1123 (Fla. 2nd DCA 2007)

Further, the Trial Court in his order finally stated his implicit thought explicitly. The Trial Court has been treating the word **other** as surplusage. (PCR:147). His order is biased and can be used as **newly discovered evidence,** because **other** being superfluous was unknown to Appellant, or the defense, before trial and is contrary to law. (PCR: 63 at 10). The Trial Court has infringed on Appellant's due process rights by not informing the Appellant, pretrial, that **other** was "**superfluous to the determination of guilt.**" See May 17, 2022 order. (PCR:147) This reaches down to the validity of the trial itself, clearly prejudicial, and deprived the Appellant of a fair trial. The honorable thing to do is remand for a full evidentiary hearing addressing the language used in the information. The arguments below will express the reasons why.

If, veritably, a court has rendered an erroneous ruling, ideally the court should embrace the opportunity to make the right decision, as acknowledged by the en banc court in VLX Properties, Inc. v. Southern States Utilities, Inc., 792 So. 2d 504 (Fla. 5th DCA 2001):

> **Precedent (stare decisis), and law of the case for that matter, is like tradition in that it provides a valuable connection to the past. It assists in providing consistency and predictability, both valuable qualities in law. But neither precedent (nor law of the case) should be used to institutionalize or justify error. We are no more perfect as Judges than we are as individuals. We make mistakes. Neither the public nor the Bar expect us to always be right; they do expect us, however, to always be forthcoming. If it appears that we have made a mistake, we should not hesitate to correct it and, if it is still within our power to do so, we should mitigate any damage we have caused. Neither this court nor the law is served by our adhering to a previous position which we now believe to be wrong.**

B. Constructive Notice of Statutory Law Does Not Defeat a Claim of Lack of Actual Knowledge for Newly Discovered Evidence under Rule 3.850

First, Appellant argues that his knowledge of the language within the Journal of the Senate (PCR:139,140,141) was not known to him until he believed a **mistake of law or fact** had occurred when the jury rendered a guilt and he believed he was deprived of a fair trial. The Trial Court had a duty to follow the language of the statute before obtaining a guilty verdict at trial and failed to do so. The Trial Court, as stated in his May 17, 2022 order, has been treating the word **other** as superfluous. (PCR:147). The legislature added the phrase "otherwise to engage in **other** unlawful sexual conduct with a child", to narrowly tailored the law, and intentionally excluded "or a person believed to be a child, added in the information. (PCR:126). See, e.g., Martinez v. State, 981 So.2d 449, 452 (Fla. 2008) ("It is a basic rule of statutory construction that `the Legislature does not

intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless.'" (quoting State v. Bodden, 877 So.2d 680, 686 (Fla. 2004))). (PCR:69 at 1,24). There is nothing in the record showing an amended information was recorded, on or before January 31, 2018.

The Trial Court is not allowed to construe the plain language of the statute in a manner that renders a part of this language as superfluous. See Deason v. State, 688 So.2d 988, 990 (Fla. 1st DCA 1997) (Allen, J., dissenting) (disagreeing with "majority's reliance upon tidbits of legislative history to discern `legislative intent'" and stating that the "**law means what its text most appropriately conveys**"), approved sub nom. Deason v. Dep't of Corrections, 705 So.2d 1374 (Fla.1998).

The Trial Court was biased and has receded from precedent by refusing to acknowledge the intent of the legislature, and had unjustly summarily denied Appellant's first and amended post-conviction motion without addressing the constitutional merits of his argument, ordering a show cause or response, refuting it with the record, or holding an evidentiary hearing to address the ground. These are cumulative errors and are an abuse of discretion. Appellant is being denied his constitutional right to have access to courts, and this Court should reverse and remand for a full evidentiary hearing addressing the language contained within the Journal of the Senate, the statute,the information, and the jury instructions, or at a minimum require a response from the State.

Second, it would be legal fiction to expect defense lawyers to obtain and introduce the Journals as evidence to prove their knowledge of the law when challenging a defective information. See *In re Will of Martell* (recognizing that each person is presumed to know the law). (PCR:83, 87,132). The denial of an Appellant's newly discovered evidence without a hearing based on defense counsel's due diligence is erroneous. The Trial Court's denial would require every defense counsel to introduce legislative Journals into evidence when a motion is denied during criminal proceedings to avoid a future post-conviction due diligence challenge. It's the duty of the State Prosecutor to traverse, demurrer, or amend information when challenged. The Prosecutor did neither of them.(PCR:63 at 19). Based on the Trial Court's ruling, a defendant could never meet the requirement of Rule 3.850(b)(1) to address the legislature's Journals he is now relying upon that were unknown to him at the time of trial. This is a self-defeating proposition in the sense that if it were so, then no motion for post-conviction relief could ever be posited upon a claim of mistake of law or fact.

Third, the Trial Judge's belief that trial counsel, through due diligence, could have or should have introduced The Journal of the Senate at or before trial is a slippery slope. Precedent states "The State may substantively amend an Information during trial, even over the objection of the defendant, unless the

defendant can show prejudice." State v. Anderson, 537 So.2d 1373, 1375 (Fla. 1989).

The Trial Judge had already shown bias when the State failed to file a traverse and he denied the motion to dismiss. (PCR:69 at 14). This Court affirmed this fundamental error on direct appeal. Introducing the Journal would have allowed the State a second opportunity to cure their defect in the information, at trial, and had the Judge allowed the amended information at trial, trial counsel would have been subject to ineffective assistance of trial counsel for unethically introducing the Journal if it encouraged the State to amend the information.

Due diligence was the job of the Trial Judge. He could have resorted to the legislative Journals when the defense filed an amended second motion to dismiss. (PCR:86) Due diligence is also the job of the Prosecutor. He could have utilized the Journals when presented with the amended second motion to dismiss. It is not the job of the defense to educate the Trial Court or Prosecutor, through due diligence, regarding language written by the legislature and available to the Trial Court and Prosecutor before trial, yet denied without a traverse, a written order, or a filed amended information. It was filed 13 days after denying Appellant's motion to dismiss. (PCR:127) Due diligence ended when denied oralorally. Also, there is no evidence trial counsel was aware of The Journal of the Senate before or at trial, and even if known, the counsel's obligation to the Appellant ethically prohibited

them from introducing the Journal into evidence, at trial, because the Prosecutor was already allowed to traverse or amend the information pretrial.

A denial of an evidentiary hearing, in this case, should be based solely on "if the Appellant could have obtained the evidence through due diligence." Since The Journal of the Senate is only available online, and Appellant was banned from accessing the internet pretrial, he could not have known.

C. The circuit court failed to attach those portions of the record which conclusively demonstrate that Appellant is entitled to no relief.

A Trial Court has only two options when presented with an initial Rule 3.850 motion: either grant an evidentiary hearing or attach to any order denying relief adequate portions of the record affirmatively demonstrating that appellant is not entitled to relief on their claims asserted. Witherspoon v. State, 590 So.2d I I 38 (4th DCA 1992); see also Roberts v. State, 678 So.2d 1232, 1236 (Fla. 1996); Brown v. State, 596 So.2d 1026, 1028 (Fla. 1992); Hoffman v. State, 571 So.2d 449, 450 (Fla. 1990); Fla. R. Crim. P. 3.850(d). Upon summary denial of a Rule 3.850 motion, Rule 3.850(d) requires the circuit court to attach portions of the record conclusively establishing that appellant is not entitled to relief. In Appellant's case, the circuit court failed to attach portions of the record, proving Appellant is entitled to **no relief**, to its order which summarily denied the amended Rule 3.850 motion. The State may suggest that because the entire record is before

this Court, Rule 3.850(d) has been satisfied, but this argument has been repeatedly rejected by the courts of this state:

> **The state argued that the entire record is attached to the order in the Court file before us, thus fulfilling this requirement. However, such a construction of the rule would render its language meaningless. The record is attached to every case before this Court. Some greater degree of specificity is required. Specifically, unless the Trial Court's order states a rationale based on the record, the court is required to attach those specific parts of the record that directly refute each claim raised.**
>
> **We thus have no choice but to reverse the order under review and remand for a full hearing conforming to rule 3.850.**

Hoffman v. State, 571 So.2d 449, 450 (Fla. 1990); see also Lemon v. State, 498 So.2d 923 (Fla. 1986).

Successive Rule 3.850 motions are also governed by Rule 3.850(f) which allows a Trial Court to dismiss such a petition on grounds other than 3.850(d). In the instant case, the motion before the court is an amended motion, restating the same ground sufficiently, to his original legally insufficient first Rule 3.850 motion. Thus, 3.850(d), which is dependent on the record showing no entitlement to relief, governs exclusively how the circuit court could summarily deny the motion on the merits.

D. This Court should order an evidentiary hearing. The word **other**, contrary to the order, is not superfluous. **Other** is a determining factor of guilt. The absence of the meaning of **other**, not only reaches down to the validity of the trial, but the entire criminal proceeding itself. The State omitted the requisite essential elements from the information.

Appellant asserts that there is nothing in the record putting him on notice that **other** was superfluous as to the determination of his guilt. To avoid abuse of the judicial system, by filing another motion utilizing the Trial Judge's May 17, 2022 order as newly discovered evidence (**his sworn order is equivalent to a signed affidavit**), Appellant will, instead, illustrate to this Court, his understanding behind the legislature's intent or purpose of the word **other** in the phrase "**otherwise to engage in other unlawful sexual conduct with a child."**

Utilizing the standard definitions from a Merriman Webster dictionary:

Otherwise means: in a different way.

Other means: being the one (as of two or more) remaining

Unlawful means: not lawful: ILLEGAL

Employing construction using the ordinary meaning of these words in harmony with the phrase, Appellant contends "**otherwise** engage in **other unlawful** sexual conduct with a child," the final clause in the statute, is not an element of an offense, at all, but is constructed to narrowly tailor the statute, and the legislature drafted it to ingeminate the requirement to specify a specific offense, i.e.: *Said in a different way* **[otherwise]** to engage in *one or more acts listed in the previously mentioned chapters* **[other]** *which contain an illegal sex acts* **[unlawful sexual conduct]** with *a minor based on the age defined within the statutes* a

[child]. Contrary to the Trial Court's rationale, the chapters are required, and any additional language would change the meaning of the phrase. This is why the legislature did not include "or another person believed by the defendant to be a child," in the statute, for clarity. The chapters list the proscribed illegal activity. The State omitted the aforementioned "previously mentioned chapters, thereby removing the requisite **essential element of a crime**. The Journal of the Senate and the Florida Supreme Court's 2017 standard jury instructions support this construction. A specific **proscribed illegal sex act** subsumed within Chapter 794, 800, or 827 must be **alleged in the information**, the State must then meet their burden of proof that the specific act or acts were proven beyond a reasonable doubt before a trier of fact at trial, and this **specific proscribed sex act** or acts must be adequately instructed to the jury under the Supreme Court's 2017 standard jury instruction. In Appellant's case, this did not occur.

Appellant insists his construction substantiates his previous filed motions, supported by The Journal of the Senate, and that his information and jury instruction are both, indeed, defective. This also proves the Trial Court's previous, pretrial, trial, and post-conviction rulings were in error, not impartial, prejudicial, unconstitutionally shifted the burden, **biased**, and clearly showed favor towards the State. This is bias validated by the Trial Court's most recent statement in his May 17, 2022 order "**the Court will not clarify the legislative meaning or intent of**

"other unlawful sexual conduct." (PCR:146). The Trial Judge continued showing his bias by referencing the 2008 instruction in Hartley v. State, 129 So.3d 486 (Fla. 4th DCA 2014)(PCR:146) which included the **Chapters** and **the word other**, which is not precedent to Appellant's 2017 jury instructions used at trial. The instructions did not include any of those words.(PCR:159). He also did not properly review the record, before his ruling, a 3.800(b) was filed and the probation order was amended twice. Judge Everett's statements, by his order, are unethical; he is violating Canon 3, Florida Code of Judicial Conduct by remaining on the case. If this Court agrees that his comments are unethical or biased, then this Court is required to grant the Appellant the relief he's requesting. See Thompson v State, 949 So.2d 1169 (2007) "Had appellant been able to point to behavior by Judge Smith showing that he was biased (thus violating Canon 3, Florida Code of Judicial Conduct, by remaining on the case), then this Court would be required to grant appellant the relief he requests."

It was the Trial Court's, and now this Court's, duty to ensure that **no word**, clause, sentence, or phrase **is rendered surplusage, superfluous, meaningless, or nugatory**. (PCR:133). The Trial Judge had a duty to begin his analysis with familiar and binding canons of construction. And in considering the meaning of a statute, his charge was to presume that the legislature meant what it said and said what it meant. Thus, he must afford the statutory text its plain and ordinary

meaning, consider the text contextually, read the text "in its most natural and reasonable way, as an ordinary speaker of the English language would, and seek to "avoid a construction that makes some language mere surplusage." And when the language of a statute is plain and susceptible to only one natural and reasonable construction, he was required to construe the statute accordingly.

In the instant case, he has not. If the legislature "fails to define a word in the statute, as is the case here, then the Trial Court, and this Court, must resolve the ambiguity and is constrained to do so in favor of the defendant charged with having violated the statute. **Other** is not superfluous, it's guiding language. The Florida legislature has stated that criminal statutes "shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused." § 775.021(1), Fla. Stat. (2017).

E. Appellant should be afforded the precedent (stare decisis) set in Figueroa v. State, 84 So. 3d 1158 (Fla. Dist. Ct. App. 2012), and have his 3.800(a) motion and/or his 3.850 motion treated a petition for writ of habeas corpus.

Appellant, like Carlos Figueroa in *Figueroa,* appeals his denial of his Fla. R. Crim. P. 3.800(a) (PCR:48) motion to correct an illegal sentence. Appellant argues that, like in *Figueroa*, the information did not allege an underlying proscribed offense, an essential element of the crime, and therefore his sentence is illegal. Appellant also concedes his claim is not cognizable in a rule 3.800(a) motion because he is challenging the underlying conviction as well as the illegality of his

sentence. However, if this Court agrees with the argument above, and § 775.021(1), Fla. Stat. (2017) does apply. This Court must construe the Appellant's argument most favorably to Appellant. Therefore the precedent (stare decision) set in *Figueroa* should be equally applied. See Figueroa v. State, 84 So. 3d 1158 (Fla. Dist. Ct. App. 2012) stating "Finally, although this argument has been **raised** by Figueroa both **on direct appeal and in prior post-conviction motions**, this court and the postconviction court apparently overlooked the fundamentally defective information and resulting conviction and sentence. Figueroa should have been granted relief when he **first raised this issue on direct appeal**. In order "**to prevent a manifest injustice and a denial of due process, relief may be afforded even to a litigant raising a successive claim.**" Stephens v. State, 974 So.2d 455, 457 (Fla. 2d DCA 2008); see also State v. McBride, 848 So.2d 287, 291–92 (Fla. 2003) (**concluding that the collateral estoppel doctrine contains an exception where manifest injustice is shown**). That relief may be conferred in the exercise of this court's inherent authority to grant a writ a habeas corpus. Stephens, 974 So.2d at 457." This Court is bound by the holding in *Figueroa* on this point.

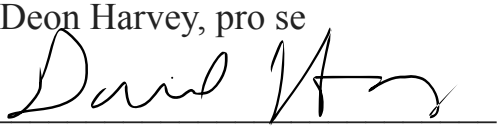
CONCLUSION

Based on the precedent set in Figueroa, and all the above arguments, this Court should treat Appellant's appeal as a petition for writ of habeas corpus, and grant the petition, or, in the alternative, Appellant respectfully urges this Court to

reverse the lower court's order, order a full evidentiary hearing before a different presiding Judge not involved in this case, or, reverse the Trial Court's decision and remand the case with instructions to address the merits of the claims included in Appellant's amended motion and grant him an evidentiary hearing, or allow Appellant to file a Motion to Declare Florida Statute 847.0135(4)(a) unconstitutional in accordance with Reno v. American Civil Liberties Union, 521 U.S. 844, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997), because an Per Curium Affirmed would conflict with the decision rendered by this Court in Cashatt v State, 873 So 2d 430, citing Karwoski v State, 867 So. 2d 486 (4th DCA 2004). (PCR:78).

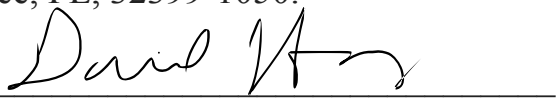
RESPECTFULLY SUBMITTED, this day May 26, 2022

Darrel Deon Harvey, pro se

/s/ 

CERTIFICATE OF SERVICE

I certify that on this day May 26, 2022, a copy of this Brief of Appellant has been furnished by mail and email to Attorney General Ashely Moody, Department of Legal Affairs, Office of Attorney General, State of Florida, The Capitol PL-01, Tallahassee, FL, 32399-1050.

/s/ 

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