

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

CASE NO.: 2017 CF 526 A

DARREL HARVEY,
Defendant.

ORDER BARRING DEFENDANT FROM PRO SE ACCESS

THIS CAUSE came before the Court on Defendant's pleading filed with the Clerk on February 20, 2023, in response to this Court's order to show cause. The Court having considered the response, having reviewed the record, and being otherwise fully advised finds as follows:

On February 17, 2023, this Court ordered Defendant to show cause why he should not be barred from filing pro se pleadings in the above-styled case. *Attach. A (Excluding Attachments)*. This Order is fully incorporated in the instant Order and detailed a series of frivolous and repetitive postconviction motions filed by Defendant. This Court found these filings constituted an abuse of the legal process. See Parker v. State, 324 So. 3d 553 (Fla. 1st DCA 2021); Cummings v. State, 15 So. 3d 920 (Fla. 1st DCA 2009). On February 20, 2023, Defendant filed his response to this Court's order. *Attach. B*. This Court finds Defendant's response did not establish cause why the sanction should not be imposed. Accordingly, this Court exercises its authority to bar Defendant from filing future pro se pleadings in this case. See State v. Spencer, 751 So. 2d 47 (Fla. 1999).

It is therefore,

ORDERED AND ADJUDGED that Defendant is **BARRED** from filing future pro se pleadings in the above-styled case. **The Clerk of Court is directed not to accept any further pro se pleadings from Defendant in the above-styled case, absent filings related to a**

potential appeal of this order. Defendant has **30 days from the date of this order** to file a notice of appeal.

DONE AND ORDERED in Chambers in Tallahassee, Leon County, Florida this 21st day of February 2023.



STEPHEN EVERETT
CIRCUIT JUDGE

Copies to:

Office of the State Attorney; SAO2_leon@leoncountyfl.gov

Darrel Harvey. DC# 503334
5227 Gum Trail Road
Tallahassee, FL 32304

Attachment A

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO: 2017 CF 526

vs.

DARREL HARVEY,
Defendant.

2023 FEB 17 PM 2:17
SHERIFF MARSHALL
CLERK & COMPTROLLER
LEON COUNTY, FLORIDA

FILED

ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED

The Court, upon its own motion pursuant to Florida Rule of Criminal Procedure 3.850(n), has determined that Defendant's Motion to Correct Illegal Sentence constitutes an abuse of process. Defendant's instant Motion was filed with the Clerk of Circuit Court on January 26, 2023. This Motion, as well as the majority of Defendant's previous postconviction filings, constitute prohibited conduct under Rule 3.850(n) and *State v. McBride*, 848 So. 2d 287 (Fla. 2003).

Procedural history: The Defendant was charged by amended information with Traveling to Meet a Minor (Count 1), Soliciting a Child for Unlawful Sexual Conduct Using Computer Service or Electronic Device (Count 2), and Tampering with Physical Evidence (Count 3). His case was tried by a jury, and he was convicted as charged on May 23, 2018. The Defendant was sentenced to serve 36 months in prison followed by 5 years of probation. The judgment and sentence were affirmed by the First District Court of Appeal (1D18-2829). Since his conviction was affirmed, Defendant has filed numerous postconviction motions, all of which have been denied or dismissed by the Court; many have been affirmed on appeal. The following motions and the Court's orders are attached, all without attachments:

Postconviction History: The **first** postconviction motion was Defendant's Motion to Modify Sentence. *Attach. A*. It was denied. *Attach. B*.

The **second** postconviction motion filed by Defendant was his Motion to Vacate Sentence. *Attach. C*. The Court summarily denied Defendant's Motion. *Attach. D*. Defendant moved for rehearing, and rehearing was denied. *Attachs. E & F*. Defendant appealed this Court's order, and the order denying his Motion was affirmed (1D20-3563).

The **third** postconviction motion was Defendant's Second or Successive Motion for

Postconviction Relief. *Attach. G*. Though it was filed by an attorney, it was still dismissed as procedurally barred. *Attach. H*. The dismissal was affirmed on appeal (1D21-3109).

The **fourth** and **fifth** postconviction motions were Defendant's Amended Petition for Writ of Habeas Corpus and Third or Successive Motion for Postconviction Relief. *Attach. I & J*. These, too, were dismissed as procedurally barred. *Attach. K*. Both dismissals were affirmed on appeal (1D21-3297).

The **sixth**, **seventh**, and **eighth** postconviction motions were Defendant's Motion for Clarification, Motion to Correct Illegal Sentence, and Amended Motion for Postconviction Relief (Based on Newly Discovered Evidence). *Attachs. L, M, & N*. All were denied. *Attach. O*. The Court warned Defendant that there are consequences for abusing the postconviction process. And again, the denial was affirmed on appeal (1D22-1563).

In its affirmance, the First District Court of Appeal also warned Defendant against filing frivolous motions. *Harvey v. State*, 2023 WL 380348 at *1 (Fla. 1st DCA 2023). Defendant ignored these warnings and filed his **ninth** postconviction motion, a Motion to Correct Illegal Sentence. This time he recreated a Motion that was written for a different Defendant, who was charged with a different offense, in a different case. (Case No. 2009 CF 1060A).¹

The Court finds that Defendant's filing of repetitious and frivolous pleadings is an abuse of judicial process. He has wasted the Court's limited resources that should have been spent on possibly meritorious claims. Accordingly, the Court intends to prohibit Defendant from filing future pro se pleadings in this case. Pursuant to Florida Rule of Criminal Procedure 3.850(n)(3), *State v. Spencer*, 751 So. 2d 47 (Fla. 1999), and *Long v. State*, 793 So. 2d 1141 (Fla. 1st DCA 2001), the Court issues this Order to Show Cause for the purpose of notifying Defendant of its intention to bar Defendant from filing further pro se attacks on his conviction and sentence and to give Defendant an opportunity to show cause why such a sanction should not be imposed.

It is therefore,

ORDERED AND ADJUDGED that Defendant shall show cause within **60 days of the date of this order** why he should not be barred from filing future pro se pleadings in case number 2017 CF 526. Failure to file a response will not delay resolution of this matter. No motion for clarification, rehearing or reconsideration of this order is allowed, nor will any such motion be entertained if filed. This is a nonfinal, nonappealable order, which may be reviewed

¹ That Motion was eventually denied, and the denial was affirmed on appeal. *State v. Spencer*, 350 So. 3d 334 (Fla. 1st DCA 2022).

when a final, appealable order is entered.

DONE AND ORDERED in Chambers in Tallahassee, Leon County, Florida this 17th
day of February 2023.



STEPHEN EVERETT
CIRCUIT JUDGE

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