

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CRIMINAL DIVISION

STATE OF FLORIDA,
Plaintiff,

CASE NOS.: F01-07975
F06-032696

vs.

JUDGE THORNTON

SEAN CASEY,
Defendant.

MOTION FOR RECONSIDERATION OF THE COURT'S
DISMISSAL OF DEFENDANT'S *PRO SE* MOTION FOR
RELIEF OF JUDGMENT BECAUSE OF FRAUD UPON COURT

COMES NOW THE DEFENDANT, Sean Casey, *pro se*, and respectfully files this Motion for Reconsideration of the Court's Dismissal of the Defendant's *Pro Se* Motion for Relief of Judgment Because of Fraud Upon Court, and will show as follows:

On May 5, 2009, the State of Florida filed its "Response to Defendant's Motion for Relief of Judgment Because of Fraud Filed on or About April 22, 2009." The Defendant did not receive a copy of this response at New River Correctional Institution in Raiford until June 9, 2009, over one month since it had been filed in the Court. Apparently, the State Attorney's Office failed to mail it to the correct address provided by the Defendant in his motion. (See Appendix "1").

During an *ex parte* hearing on May 7, 2009, the Court orally dismissed the Defendant's *pro se* motion before the Defendant received the State's response in the mail and, thus, the Defendant was not provided an opportunity to reply. Therefore, the Defendant respectfully requests that this Honorable Court reconsider its decision to strike the Defendant's *pro se* motion.

Furthermore, the Defendant submits herein that the State's argument that the Defendant's motion is unauthorized and successive is factually inaccurate, without merit, and refuted by the record, for the following reasons:

1. STATE'S ARGUMENT THAT MOTION IS UNAUTHORIZED BECAUSE DEFENDANT IS REPRESENTED BY COUNSEL FAILS

The State submits that the Defendant's *pro se* motion is unauthorized because the Defendant is currently represented by counsel, however, this argument is misleading and must be clarified here.

At the evidentiary hearing on the Defendant's initial Rule 3.850 motion, on January 8, 2007, the Defendant was represented by private counsel, David S. Markus, Esq., paid by the Defendant to solely litigate this motion in the trial court. When the Court orally denied this motion at the conclusion of the hearing, Mr. Markus informed the Court that the Defendant had no more funds to pursue an appeal and asked the Court to appoint a public defender. This request was denied by the Court. (See Appendix "2"). Since Mr. Markus was only retained by the Defendant to represent him in his initial Rule 3.850 motion in the trial court, his contractual obligation expired at the conclusion of that hearing.

Although the Defendant is indigent, he was able to rely on the good will of family and friends to provide enough money to hire Marcia J. Silvers, Esq. to

represent him in the appeal of his initial Rule 3.850 motion and in filing a second Rule 3.850 motion on specific new grounds, which was submitted on November 14, 2008. The Defendant entered into separate fee agreements with Ms. Silvers for representation in these pleadings only. (See Appendix "3"). No agreement exists that stipulates that Ms. Silvers represents the Defendant in all possible post-conviction pleadings available to the Defendant.

It should be noted that all the case law cited by the State (*Logan, Purnell, Murray, and Muccio*) deal with defendants that filed *pro se* motions while being represented by either public defenders or private attorneys appointed by the court during pre-trial litigation or on direct appeal at which time a defendant is entitled to counsel. This is not the case here. Post-conviction litigation is quite different. A defendant has no absolute right to counsel in post-conviction proceedings. U.S.C.A. Const. Amend. 6.

The State's argument would establish dangerous precedent in Florida. As is the scenario in the instant case, where a defendant was able to pay private counsel for representation in a specific post-conviction pleading and later has legitimate grounds to file another pleading but cannot afford to pay the attorney's additional fee for representation in this other pleading, if the Court refused to allow the defendant to file *pro se* because of his representation by counsel in another pleading, the defendant's right to due process would be conditioned on his ability to pay his attorney. This is plainly wrong.

Incidentally, on appeal of the denial of the Defendant's initial Rule 3.850 motion and upon receiving the Third District Court of Appeal's PCA opinion, the Defendant filed a *pro se* motion for rehearing and a *pro se* motion for rehearing *en banc* despite the fact he was represented by private counsel in that Court. The

Defendant simply could not afford the additional fee that his private attorney was going to charge to file each of these pleadings. The Third District did not strike these *pro se* motions and the State did not object to such filings. Rather, the Court considered them, as indicated in its opinion filed on May 8, 2009, and ruled on the merits of each. (See Appendix "4").

Even if the Defendant had the funds to hire Ms. Silvers to represent him on his *pro se* motion or to adopt the ground of "fraud upon court" into the pending Rule 3.850 motion filed on November 14, 2008, in which she has been paid to represent the Defendant, the State Attorney's Office threatened Ms. Silvers verbally and in writing that if she continued to pursue this issue and attempted to disclose the true content of the tape recordings to establish perjury, then Ms. Silvers could face charges. So, apparently the State can disclose lies to the Court about what is on the tapes, as it did at the evidentiary hearing on the Defendant's initial Rule 3.850 motion, but if Ms. Silvers now discloses the true content she could face charges that could ultimately lead to the shutting down of her law practice. This is a serious double standard resulting in a miscarriage of justice.

Therefore, since the Defendant was denied a public defender and court-appointed attorney to represent him in all post-conviction pleadings and since he cannot afford to hire an attorney to represent him in further pleadings, such as his Motion for Relief Because of Fraud Upon Court, not allowing the Defendant to file this motion *pro se* would be denying his due process rights under the state and U.S. constitutions.

Striking the motion because of the Defendant's inability to pay an attorney to represent him on other pleadings available to him is tantamount to denying the

Defendant access to the Courts, which is unconstitutional. Thus, the State's argument fails.

2. DEFENDANT AGREES WITH THE STATE THAT MOTION SHALL BE TREATED PURSUANT TO RULE 3.850

The State misleadingly argues that the Defendant filed his *pro se* motion pursuant only to Florida Rule of Civil Procedure 1.540. On the first page of the motion, the Defendant clearly indicates that he is filing pursuant to Rule 1.540, Fla.R.Civ.P., and/or Rule 3.850, Fla.R.Crim.P., leaving the proper remedy to the discretion of the Court. The State cites *Steinhorst*, which the Defendant relied on in his motion and agrees that the motion shall be treated pursuant to Rule 3.850. Article V, §2(a) of the Florida Constitution establishes that no cause shall be dismissed because an improper remedy has been sought.

3. MOTION IS NOT SUCCESSIVE

The Defendant's *pro se* Motion for Relief of Judgment Because of Fraud Upon Court alleges for the first time that Assistant State Attorney Gail Levine, attorney Milton Hirsch, and psychologist Dr. Michael Rappaport committed perjury during the evidentiary hearing on the Defendant's initial Rule 3.850 motion, which is in violation of Chapter 837.02 of the Florida Statutes.

Not surprisingly, in its response filed on May 5, 2009, the State chose to ignore the fact that the State and its witnesses committed perjury. If the Defendant's allegation was untrue, would the State not say so? The State wants the Court to believe that the Defendant is attempting to relitigate the conflict of interest claim presented in his initial Rule 3.850 motion. This is simply not true

and is an incredulous attempt by the State to divert the Court's attention from seeking truth.

The Defendant's allegation of "fraud upon court" is a completely new claim that the Defendant could not have raised in his initial Rule 3.850 Motion because the fraud had not taken place until the evidentiary hearing on said motion. This claim has never been raised in any court. The Court's ruling to deny that motion was predicated on this fraud. Had Ms. Levine, Mr. Hirsch, and Dr. Rappaport not lied in court, the Court would not have found the Defendant and his mother "on all points complained of, to be unworthy of belief" as indicated in its Order filed on March 2, 2007. (See Appendix "5").

An order procured by fraud upon court, including an order denying a motion for post-conviction relief, may be set aside at any time. *See State v. Burton*, 314 So.2d 136 (Fla. 1975).

The *Burton* Court ruled that it is the duty of the trial court to correct decisions based on fraudulent representation when it raised and answered the following question:

Must the fact that [the judge] acted on false testimony render him helpless to remedy the wrong which has occurred and to put justice back on track? We hold it does not. He not only had the power to act but the clear duty to do so. *Burton* at 138. (emphasis added).

Lastly, the State argues that the issue of the admissibility/legality of the tape recordings, which the Defendant relies on in his motion to prove perjury was committed by Ms. Levine, Mr. Hirsch, and Dr. Rappaport at the evidentiary

hearing on the Defendant's initial Rule 3.850 motion, has already been litigated. This also is not true.

No court has ruled in a written Order on the admissibility or legality of the taped conversations. Although Judge Glick stated at the evidentiary hearing that he believed the tape recordings were illegally-gotten and would not be admissible, albeit after receiving the false testimony elicited by Ms. Levine of the State's witnesses, the Court did not include such finding in its written Order filed on March 2, 2007. (See Appendix "5").

Furthermore, the Third District Court of Appeal provided a *per curiam* opinion (PCA) simply affirming the trial court's written Order, which did not include a ruling on the legality or admissibility of the tape recordings. (See Appendix "6").

The Florida Courts have ruled that secretly-recorded tape conversations are admissible when used to impeach the testimony of witnesses when they commit perjury under oath. *See Morales v. State*, 513 So.2d 695 (Fla. 3 DCA 1987). The Defendant should not be prevented from doing the same in his *pro se* motion to prove "fraud upon the court." The tape recordings clearly establish that these individuals lied under oath in court. Without the false testimony elicited by Ms. Levine of Mr. Hirsch and Dr. Rappaport, this Court would have found the Defendant and his mother to be credible and would have had to vacate his conviction and sentence.

WHEREFORE, since the Defendant did not receive the State's response to his *pro se* Motion for Relief of Judgment Because of Fraud Upon Court until well after the Court orally ruled to dismiss said motion, the Defendant humbly moves

this Honorable Court to reconsider its decision, find that the motion is neither unauthorized nor successive, and instead, rule on the merits pursuant to the Court's broad jurisdiction under Rule 3.850, Fla.R.Crim.P., and vacate his sentence and conviction.

Respectfully submitted,

Sean Casey

SEAN CASEY

DC#B03942

New River Correctional Institution

7819 N.W. 228th Street

Raiford, FL 32026

OATH

Under penalties of perjury, I declare that I have read the foregoing motion and that the facts stated in it are true.

Sean Casey

SEAN CASEY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. mail this 16th day of June 2009 to Angélica Zayas, Assistant State Attorney, 1350 Northwest 12th Avenue, E.R. Graham Building, Miami, Florida 33136.

Sean Casey

SEAN CASEY

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CRIMINAL DIVISION

STATE OF FLORIDA,
Plaintiff,

CASE NOS.: F01-07975
F06-032696

vs.

JUDGE THORNTON

SEAN CASEY,
Defendant.

APPENDIX

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APPENDIX

1



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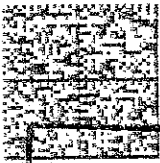
KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
1350 NW 12TH AVENUE
MIAMI FLORIDA 33136-2102

McI - 84921



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1430
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Refused

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Addressee Unknown
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DC # and Name do not match

CLASS 05 07 09



Sean Casey
DC# B03492

Martin CI
1150 / SW ai
Indian town

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Martin

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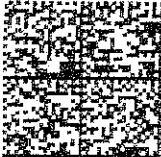
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KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY
E R GRAHAM BUILDING
1350 NORTHWEST 12TH AVENUE
MIAMI FL 33136-2111



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PRESORTED
FIRST CLASS

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SEAN CASEY
DC#03942
NEW RIVER CORRECTIONAL
INSTITUTION
7918 NW 228 STREET
RAIFORD, FLORIDA 32026

PRESORTED FIRST CLASS 06-03-09

APPENDIX

2

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

STATE OF FLORIDA,)
)
) PLAINTIFF,)
)
) -vs-)
) SEAN CASEY)
))
) DEFENDANT.)

CASE NO.: F01-797

FILED FOR RECORD
2007 FEB 27 PM 12:20
CLERK, CIRCUIT & COUNTY COURT
DADE COUNTY, FLA.
CIRCUIT CRIMINAL #15

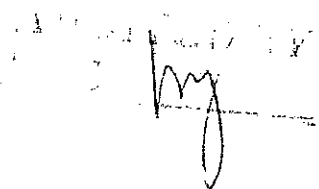
Metropolitan Justice Building
1351 Northwest 12th Street
Miami, Florida 33125
January 8, 2007
10:30 a.m.

The above-entitled matter came on for hearing before the
Honorable LEONARD GLICK, Circuit Judge, pursuant to Notice.

APPEARANCES:

KATHERINE FERNANDEZ-RUNDLE, STATE ATTORNEY, BY,
GAIL LEVINE, ALISON HANEY, and ANGELICA ZAYAS,
Assistant State Attorneys,
on behalf of the State.

DAVID MARKUS, Esq.
on behalf of the Defendant.



1 to take an appeal of it, you can, and you have thirty days
2 in which to appeal the Court's order denying the motion to
3 vacate the plea.

4 MR. MARKUS: Judge, I don't think he has any further
5 funds at this point within which to take an appeal. Would
6 the Court appoint the Public Defender for him?

7 THE COURT: No, not at this time. So we'll ask that
8 the Department of Corrections take Mr. Casey back to state
9 prison. And if there is nothing further on his case, we
10 will be in recess. Thank you.

11 (Thereupon, the proceedings were concluded.)

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APPENDIX

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Law Offices of Marcia J. Silvers, P.A.

799 Brickell Plaza, Suite 606

Miami, FL 33131

Phone: (305) 416-8040 Fax: (305) 372-1644

RETAINER AGREEMENT

CLIENT: Sean Casey

11th Judicial Circuit in and for Miami-Dade County, Florida.

RE: Petition for Belated Appeal of Denial of Motion for Post-Conviction Relief and Possible Appeal of the Denial of Motion for Post-Conviction Relief

Genevieve M. Casey hereby retains Marcia J. Silvers, P.A. (the "Firm") to represent her son, Sean Casey, (the "Client") in the above matter (post-conviction), in consideration of the non-refundable professional services fees described below for representation in a petition for belated appeal of the denial of his motion for post-conviction relief to be filed in the Third District Court of Appeal and, if said motion is granted, the appeal of the denial of his motion for post-conviction relief to be filed in the Third District. The Firm's fee for representing the Client in the filing of a petition for belated appeal, as outlined in the following paragraphs, is a non-refundable professional services fee of \$15,000.00 (the "Fee" or "Fees") which is payable upon execution of this Agreement. This is a flat-rate fee. If said motion is granted, you agree to retain the Firm to represent the Client in the appeal of the denial of his motion for post-conviction relief for a non-refundable professional services fee of \$30,000.00 (the "Second Fee") which is payable upon receipt by the Firm of the Order granting said motion. The Second Fee is also a flat-rate fee.

The scope of the Firm's engagement for the motion for a belated appeal is limited to representation of the Client in the Third District up to the final disposition of the motion for a belated appeal in that Court. The representation includes the preparation and filing of a motion for a belated appeal and any oral argument on said motion. The scope of the Firm's engagement for the possible appeal of the denial


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of the Client's motion for post-conviction relief is limited to representation of the Client in the Third District up to the final disposition of that appeal in that Court.

You understand and agree that upon receipt of an executed retainer agreement by the Firm (1) all legal fees are deemed to be earned when billed, and are non-refundable in part due to the fact that the firm only handles a limited number of cases at any given time and may, in its discretion, turn away other prospective cases in order to accommodate this case; and (2) time will be set aside to work on your case exclusively.

The Fee and the Second Fee do not include expenses for the employment of investigators, experts, court reporters, couriers, transcripts, process servers, travel, or any other out-of-pocket expenses necessary to prepare the case. You agree to deposit \$1,000.00 into Marcia J. Silvers, P.A.'s trust account upon the execution of this Agreement to be used for expenses in this case and you agree to replenish that trust account with additional funds if necessary to cover the costs and expenses related to this matter.

To enable the Firm to effectively render legal services to the Client in regard to this matter, the Client agrees to disclose fully and accurately all facts known to him relevant to his case, keep the Firm apprised of all developments relating to this matter, and to furnish the Firm with all information, documents and other material known by the Client or available to the Client that may aid the Firm in representing the Client in this matter.

If at any time the Firm is required to take any action in this matter and is unable to obtain instructions from the Client, the Firm will take such actions as the Firm deems necessary to protect the Client's interests.


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The Firm agrees to inform you and the Client of the status of this matter and the courses of action that are being followed by, or are being recommended by the Firm. The Firm agrees to make available to you and the Client all written materials sent or received by the Firm pertaining to this matter. All of the Firm's internal work product will be owned by the Firm.

The Firm agrees not to accept, without prior approval from the Client, any engagement known to the Firm to be in direct conflict with the Client's interests in this matter.

It is understood between the parties that the Firm will not advance any cause on the Client's behalf that is unethical, illegal or not supported by the facts.

It is acknowledged between the parties that it is impossible to predict the outcome of this or any legal matter and no promises have been made to you or the Client concerning the outcome of the Client's case.

Upon conclusion of this matter, the Firm's files, with the exception of internal work product, will be, upon your request, delivered to you at your expense. Should you want the Firm to store the files for you, you agree to pay an annual fee for the Firm to do so.

With the exception of the previously described agreement about to be entered into between Marcia J. Silvers, P.A. and Genevieve M. Casey, which is incorporated by reference herein, this agreement contains the entire agreement between the parties regarding this matter and the fees and costs to be paid relative hereto. This agreement shall not be modified except by written agreement signed by both parties. This agreement shall be binding upon both parties and their respective legal


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representative and successors. Any disputes arising out of this agreement are to be construed in accordance with Florida law, and any litigation arising from this agreement must be filed in Miami-Dade County, Florida.

Understood and agreed between the parties this 6th day of December 2007.

LAW OFFICES OF MARCIA J. SILVERS, P.A.
799 Brickell Plaza, Suite 606
Miami, Florida 33131
Telephone: (305) 416-6040

Genevieve M. Casey
Genevieve M. Casey

By: Marcia J. Silvers
Marcia J. Silvers

Sean Casey
Sean Casey

Gmc
GMC

Law Offices of Marcia J. Silvers, P.A.

799 Brickell Plaza, Suite 606

Miami, FL 33131

Phone: (305) 416-6040 Fax: (305) 372-1644

RETAINER AGREEMENT

CLIENT: Sean Casey

11th Judicial Circuit in and for Miami-Dade County, Florida.

RE: Motion for Post-Conviction Relief Pursuant to Fla.R.Crim.P. 3.850

Genevieve M. Casey hereby retains Marcia J. Silvers, P.A. (the "Firm") to represent her son, Sean Casey, (the "Client") in the above matter (post-conviction), in consideration of the non-refundable professional services fee described below for representation in a motion for post-conviction relief to be filed in the 11th Judicial Circuit. The Firm's fee for representing the Client in the filing of a motion for post-conviction relief, as outlined in the following paragraphs, is a non-refundable professional services fee of \$10,000.00 (the "Fee" or "Fees") which is payable upon execution of this Agreement. This is a flat-rate fee.

The scope of the Firm's engagement for the motion for post-conviction relief is limited to representation of the Client in the 11th Judicial Circuit up to the final disposition of the motion in that Court. }

You understand and agree that upon receipt of an executed retainer agreement by the Firm (1) all legal fees are deemed to be earned when billed, and are non-refundable in part due to the fact that the firm only handles a limited number of cases at any given time and may, in its discretion, turn away other prospective

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cases in order to accommodate this case; and (2) time will be set aside to work on your case exclusively.

The Fee does not include expenses for the employment of investigators, experts, court reporters, couriers, transcripts, process servers, travel, or any other out-of-pocket expenses necessary to prepare the case. You agree that your earlier deposit of \$1,000.00 into Marcia J. Silvers, P.A.'s trust account can be used for expenses in this case and you agree to replenish that trust account with additional funds if necessary to cover the costs and expenses related to this matter.

To enable the Firm to effectively render legal services to the Client in regard to this matter, the Client agrees to disclose fully and accurately all facts known to him relevant to his case, keep the Firm apprised of all developments relating to this matter, and to furnish the Firm with all information, documents and other material known by the Client or available to the Client that may aid the Firm in representing the Client in this matter.

If at any time the Firm is required to take any action in this matter and is unable to obtain instructions from the Client, the Firm will take such actions as the Firm deems necessary to protect the Client's interests.

The Firm agrees to inform you and the Client of the status of this matter and the courses of action that are being followed by, or are being recommended by the Firm. The Firm agrees to make available to you and the Client all written materials sent or received by the Firm pertaining to this matter. All of the Firm's internal work product will be owned by the Firm.

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The Firm agrees not to accept, without prior approval from the Client, any engagement known to the Firm to be in direct conflict with the Client's interests in this matter.

It is understood between the parties that the Firm will not advance any cause on the Client's behalf that is unethical, illegal or not supported by the facts.

It is acknowledged between the parties that it is impossible to predict the outcome of this or any legal matter and no promises have been made to you or the Client concerning the outcome of the Client's case.

Upon conclusion of this matter, the Firm's files, with the exception of internal work product, will be, upon your request, delivered to you at your expense. Should you want the Firm to store the files for you, you agree to pay an annual fee for the Firm to do so.

With the exception of the previously described agreement about to be entered into between Marcia J. Silvers, P.A. and Genevieve M. Casey, which is incorporated by reference herein, this agreement contains the entire agreement between the parties regarding this matter and the fees and costs to be paid relative hereto. This agreement shall not be modified except by written agreement signed by both parties. This agreement shall be binding upon both parties and their respective legal representative and successors. Any disputes arising out of this agreement are to be construed in accordance with Florida law, and any litigation arising from this agreement must be filed in Miami-Dade County, Florida.

sc GMC
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Understood and agreed between the parties this 12th day of March 2008.

LAW OFFICES OF MARCIA J. SILVERS, P.A.
799 Brickell Plaza, Suite 606
Miami, Florida 33131
Telephone: (305) 416-6040

Genevieve M. Casey
Genevieve M. Casey

By: Marcia J. Silvers
Marcia J. Silvers

Sean Casey
Sean Casey

SC GMC
GMC

APPENDIX

4

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2009
MAY 8, 2009

SEAN CASEY,

CASE NO.: 3D08-510

Appellant(s)/Petitioner(s),

vs.

THE STATE OF FLORIDA,

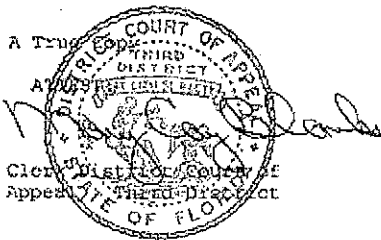
LOWER

TRIBUNAL NO. 06-32696

01-7975

Appellee(s)/Respondent(s).

Upon consideration, appellant's letter dated March 31, 2009 is treated as a motion for rehearing, and said motion for rehearing is hereby denied. Appellant's pro se April 13, 2009 motion for rehearing/request for written opinion filed is hereby denied. COPE, SHEPHERD and SUAREZ, JJ., concur. Appellant's pro se motion for rehearing en banc is hereby denied.



CC:

Angelica D. Zayas
Linda S. Katz
Marcia J. Silvers
Sean Casey

la

APPENDIX

5

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

STATE OF FLORIDA

CASE No. 01-7975
JUDGE LEONARD E. GLICK

VS.

SEAN CASEY, DEFENDANT

ORDER DENYING MOTION TO VACATE CONVICTION AND SENTENCE

THIS MATTER CAME BEFORE THIS COURT ON THE DEFENDANT'S MOTION TO VACATE THE CONVICTION AND SENTENCE. THE COURT REVIEWED THE MOTION, CONSIDERED THE TRANSCRIPT AND HELD AN EXTENSIVE EVIDENTIARY HEARING ON THE ISSUES ALLEGED. THE DEFENDANT, SEAN CASEY, WAS REPRESENTED AT THE HEARING BY ATTORNEY DAVID S. MARKUS.

THE COURT HEREBY DENIES THE MOTION FOR POST CONVICTION RELIEF AND FINDS

- (1) THE DEFENDANT ENTERED INTO A NEGOTIATED PLEA WITH THE STATE ON OCTOBER 17TH, 2006. THE DEFENDANT WAS REPRESENTED BY ATTORNEY MILTON HIRSCH AND MICHAEL HABER. THIS PLEA WAS MEMORIALIZED IN A PLEA COLLOQUY, A TRANSCRIPT OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF.
- (2) THE DEFENDANT FILED THIS MOTION WITHDRAW THE PLEAS OF GUILTY ON NOVEMBER 6TH, 2006.
- (3) THE DEFENDANT'S CLAIM IS REFUTED BY THE ENTIRE PLEA DIALOGUE, SPECIFICALLY THOSE PORTIONS DEALING WITH THE SATISFACTION WITH THE WORK AND ADVICE OF HIS COUNSEL. THE DEFENDANT ACKNOWLEDGED THAT NO PERSON, INCLUDING ANY ATTORNEY, HAD FORCED HIM OR THREATENED HIM IN ORDER TO GET HIM TO ENTER THIS PLEA.
- (4) THE DEFENDANT IS A SOPHISTICATED AND HIGHLY INTELLIGENT ADULT.
- (5) AT THE EVIDENTIARY HEARING, TESTIMONY WAS RECEIVED BY THIS COURT FROM TRIAL COUNSEL, MILTON HIRSCH, MICHAEL HABER AND DR. MICHAEL RAPPAPORT. THE DEFENDANT WAS CALLED AS WITNESS AS WAS HIS MOTHER. THE COURT EVALUATED THE CREDIBILITY OF EACH WITNESS AND THE NATURE OF THEIR TESTIMONY AND FOUND THE TESTIMONY OF THE DEFENDANT AND HIS MOTHER, ON ALL POINTS COMPLAINED OF, TO BE UNWORTHY OF BELIEF.
- (6) WITH RESPECT TO THE ISSUE OF THE DEFENDANT'S FAILURE TO TESTIFY OR PRESENT WITNESSES AT ANY PRE-TRIAL HEARINGS, THE COURT FINDS THAT THESE WERE STRATEGIC OR TACTICAL DECISIONS MADE BY THE DEFENDANT AND HIS ATTORNEY.

THIS COURT FINDS, AS TO ALL ISSUES RAISED IN THE PLEADINGS, COMPETENT AND SUBSTANTIAL EVIDENCE, FROM THE TESTIMONY PRESENTED, THAT THE ACTIONS OF TRIAL COUNSEL WERE STRATEGIC OR TACTICAL DECISIONS MADE IN THE BEST INTERESTS OF THE PETITIONER.

THERE IS NO CREDIBLE EVIDENCE OF A CONFLICT OF INTEREST ON THE PART OF TRIAL COUNSEL THAT WOULD JUSTIFY THE VACATING OF THIS PLEA.

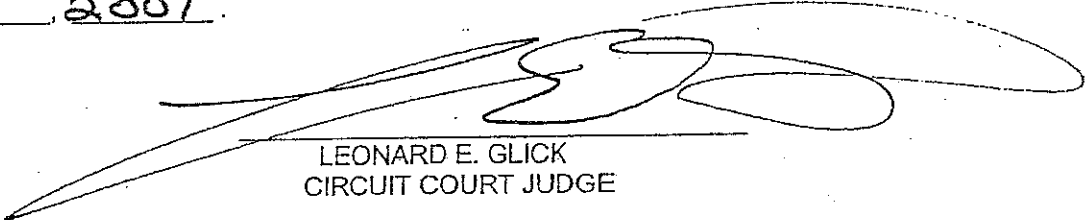
THIS COURT FINDS THAT TRIAL COUNSEL, MILTON HIRSCH AND MICHAEL HABER WERE NOT IN CONFLICT WITH, NOR INEFFECTIVE IN THEIR REPRESENTATION OF, SEAN CASEY.

THE PETITIONER HAS NOT MET HIS BURDEN IN SHOWING PREJUDICE OR ACTS OF HIS ATTORNEYS THAT WERE SO DEFICIENT AS TO REQUIRE A VACATING OF THE PLEA OF DECEMBER 19TH, 2006.

THE COURT FINDS THE PLEA WAS KNOWINGLY, FREELY AND VOLUNTARILY ENTERED INTO AND DENIES THE MOTION TO VACATE SAID PLEA.

THE DEFENDANT IS HEREBY NOTIFIED THAT HE HAS THIRTY (30) DAYS IN WHICH TO APPEAL THIS ORDER TO THE THIRD DISTRICT COURT OF APPEAL.

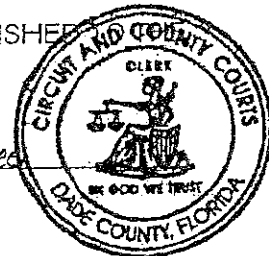
DONE AND ORDERED AT MIAMI, DADE COUNTY, FLORIDA, THIS 2 DAY OF MARCH, 2007.


LEONARD E. GLICK
CIRCUIT COURT JUDGE

XC: SEAN CASEY, DEFENDANT
DAVID S. MARKUS, ATTORNEY FOR THE DEFENDANT
GAIL LEVINE, ASSISTANT STATE ATTORNEY, STATE ATTORNEYS OFFICE
MILTON HIRSCH, FORMER ATTORNEY FOR THE DEFENDANT
MICHAEL HABER, FORMER ATTORNEY FOR THE DEFENDANT

I HEREBY CERTIFY THAT A COPY OF THIS ORDER HAS BEEN FURNISHED TO THE DEFENDANT, BY MAIL, THIS 6TH DAY OF MARCH, 2007.


DEPUTY CLERK



APPENDIX

6

Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed March 25, 2009.

Not final until disposition of timely filed motion for rehearing.

No. 3D08-510

Lower Tribunal Nos. 01-7975; 06-32696

Sean Casey,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Leonard E. Glick, Judge.

Marcia J. Silvers, for appellant.

Katherine Fernandez Rundle, State Attorney, and Angelica D. Zayas, Assistant State Attorney; Bill McCollum, Attorney General, and Linda S. Katz, Assistant Attorney General, for appellee.

Before COPE, SHEPHERD, and SUAREZ, JJ.

PER CURIAM.

Affirmed.

received
3/26/09

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. mail this 16th day of June 2009 to Angélica Zayas, Assistant State Attorney, 1350 Northwest 12th Avenue, E.R. Graham Building, Miami, Florida 33136.

Sean Casey

SEAN CASEY