

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

STATE OF FLORIDA

CASE NO. 2011CF441  
2012CF2662

SPN 216577

vs.

DESHON THOMAS  
Defendant.

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**STATE'S RESPONSE TO DEFENDANT'S AMENDED MOTION  
FOR POST CONVICTION RELIEF**

COMES NOW the State of Florida and files this response to the defendant's motion for post conviction relief pursuant to Rule 3.850 Florida Rules of Criminal Procedure. The State contends that the defendant's motion should be **set for an evidentiary hearing** for the following reasons.

1. The Florida Rules of Criminal Procedure requires that a post-conviction motion include six assertions.

These include: 1) the judgment or sentence under attack and the court which rendered the same.

2) whether there was an appeal from the judgment or sentence and the disposition thereof.

3) whether a previous post-conviction motion has been filed , and if so how many.

4) if a previous motion or motions have been filed, the reason or reasons the claim or claims in the present motion were not raised in the former motion or motions, and

5) the nature of the relief sought.

6) a brief statement of the facts (and other conditions) relied on in support of the motion.

Florida Rules of Criminal Procedure 3.850 (c).



2. A failure to fulfill these requirements of rule 3.850 will result in a summary denial of a motion for post-conviction relief due to facial insufficiency of the motion. Truesdale v. State, 627 So.2d 1344 (Fla. 1st DCA 1993); Raines v. State, 625 So.2d 104 (Fla. 1st DCA 1993); Young v. State, 585 So.2d 1184 (Fla. 5th DCA 1991).” Schofield v. State, 641 So.2d 172 (Fla.App. 1 DCA. 1994).
3. Defendant raises six different claims. Florida Rule of Criminal Procedure 3.850 requires that such claims fall into one of six possible categories.

These include:

1. The judgment was entered or sentence was imposed in violation of the Constitution or laws of the United States or the State of Florida.
  2. The court did not have jurisdiction to enter the judgment.
  3. The court did not have jurisdiction to impose the sentence.
  4. The sentence exceeded the maximum authorized by law.
  5. The plea was involuntary.
  6. The judgment or sentence is otherwise subject to collateral attack.
4. Each of Defendant’s claims should be denied pursuant to the facts established in the record and based on applicable statutory and case law.
  5. All of Defendant’s claims suggest that his trial counsel was ineffective.
  6. The Florida Supreme Court has addressed the standard of reviewing such claims.

We first address the claim of ineffective assistance of counsel. In order to prove such a claim, a defendant must establish two elements: First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious 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 defense. 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. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted



from a breakdown in the adversary process that renders the result unreliable. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *see also* Rutherford v. State, 727 So.2d 216, 219-20 (Fla.1998); Rose v. State, 675 So.2d 567, 569 (Fla.1996). To establish prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S.Ct. 2052. Ineffective assistance of counsel claims present a mixed question of law and fact subject to plenary review based on the *Strickland* test. *See* Stephens v. State, 748 So.2d 1028, 1033 (Fla.1999) (citing Rose v. State, 675 So.2d 567, 571 (Fla.1996)). This requires an independent review of the trial court's legal conclusions, while giving deference to the trial court's factual findings. *See id.*

Carroll v. State, 815 So2d 601, 610 (Fla. 2002).

7. Defendant raises five claims, one in two parts and three independent. They are: 1a)

Failing to seek suppression of evidence obtained in violation of DeShon's Sixth

Amendment right to counsel. 1b) Ineffective for failing to seek suppression of DeShon's

open court admission. 2) Failure to conduct an independent competency hearing for the

State's key witness.. 3) Failure to investigate the facts for the case and call the proper

defense witnesses for a motion in limine hearing (pertaining to a Tec-9mm firearm). 4)

Failing to object and argue substantively to erroneous jury instructions.

8. All of these involve tactical decision of counsel not apparent on the record and or

discussions between the Defendant and counsel that would have previously been

privileged. As such, an evidentiary hearing is necessary to allow Counsel to respond to

the allegations.



WHEREFORE the State of Florida requests that the defendant's motion for post conviction relief be set for evidentiary hearing.

JACK CAMPBELL  
STATE ATTORNEY

/s Jack Campbell  
State Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to DESHON THOMAS N27493, Santa Rosa CI , 5850 East Milton Road., Milton FL 32583.

/s Jack Campbell  
State Attorney