

IN THE SUPREME COURT OF THE STATE OF FLORIDA

LOWER COURT CASE NO:

4D12-4348

JULIEN GARCON.

Petitioner

vs

STATE OF FLORIDA

Respondent.

FILED
THOMAS D. HALL
2013 JUL 29 PM 2:10
CLERK, SUPREME COURT
BY _____

PETITIONER'S BRIEF ON JURISDICTION

JULIEN GARCON #72742-004

FCI Williamsburg

P.O. BOX 340

Salters, SC 29590

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PRELIMINARY STATEMENT

Petitioner was the Appellant and Respondent was the Appellee in the appeals court for the Fourth circuit of State of Florida. In the Circuit court Appellant was the defendant and Respondent was the Plaintiff/Prosecution in the Fifteenth Judicial Circuit for Palm Beach County, Florida. In this brief, the parties shall be referred to as they appear before this Honorable Court of Appeal except that Respondent may also be referred to as the State.

STATEMENT OF THE CASE

January 5, 1993 petitioner pled guilty to robbery with a weapon as a juvenile without understanding the elements of the charge and the trial court lack jurisdiction over him and the offense because no waiver hearing to waive him to adult court. September 1993 petitioner submitted a 3.350 to prison official mailed and stamp with the official stamp to the trial court. The petition was filed but was never ruled on by the court. October 1996 inmate help petitioner filled out another 3.850 motion, in filling out the question he mistakenly put he did not file a prior motion with the court. Even though there's a conflict but the institutional stamp proves that he had filed the motion with the court, stamp and dated by the institution, therefore, he's entitled to proceed with his timely filed 3.850.

Petitioner also satisfy the manifest injustice standard necessary for withdrawing his plea because he's actual innocence of the crime. The only witness Franco Revilla in his affidavit recanted and stated that petitioner and Mr. Cheery never robbed him because the men who committed the crime had worn masks and he was forced to point them out because the officers told him that they were the only two black males in the area. Therefore, they had to be the one that committed the robbery. If this information was available to him and his counsel and the trial court. Petitioner would not have accepted the plea and would have went to trial and the trial court would not have accepted the plea.

Petitioner plead guilty out of fear that he could not beat the false statement of the victim that he was one of the robbers. The recantation would produce an acquittal on retrial.

~~Petitioner~~ entitle to belated 3.850 motion because petitioner family retained counsel to file 3.850 motion but counsel failed to file the motion that lead him to being time-barred.

Petitioner was unaware that his family had retained private counsel to file the motion. When he discovered that his family actually had retain counsel, he filed his claim within 2 years after discovering that counsel was retained, therefore, his claim is timely within 3.850(b) (3).

SUMMARY OF THE ARGUMENT

This court should exercise its discretionary jurisdiction pursuant to Fla. R. App. P. 9.030(c)(2)(A)(iv), to review the decision in Garcon v. State, 4D12-4348 (June 27, 2013) does conflict with the decision of this court because (1) he satisfy the manifest injustice standard for withdrawing his plea.

(2) The mailbox rule should apply to his timely filed 3.850 motion which the trial court never ruled even though an inmate who help him filed the motion mistakenly put in his second 3.850 that he did not filed a prior motin with the court but the institutional official stamp proves that he had filed the motion and the burden was on the state to prove hat he did not timely filed the motion.

(3) Petitioner is entitle to belated 3.850 motion because family retain counsel to file 3.850 motion but failed to file the motion.

(4) Petitioner belated motion is timely within the two-year time limitation because he filed the motion after discovering or learning that his family had atually hired the attorney years later but he filed his claim within the two years time limitation.

Argument

This court should accept jurisdiction to review the decision in the instant case as the decision does expressly and directly conflict with a decision of the Florida Supreme Court.

The decision of the Fourth District of Appeal expressly and direct conflict with the decision in William v. State, 316 So.2d 267 (Fla. 1975); Scott v. State, 629 So. 2d at 890; Romero v. State, 30 Fla. L. Weekly D153 (Fla 3d DCA 2004); Miller v. State, 814 So. 2d 1131 (Fla. 5th DCA 2002) dopting the manifest injustice standard to Motion to withdraw plea based on Newly discovered Evidence.as well as these case Taylor v. State, 662 So. 2d 1031 (Fla. 1st DCA 1995); Goodman v. State, 845 So. 2d 253 (1st DCA 2003) .

There's a conflict becaue Petitioner is claiming his innocent and the only witness to the crime wrote an affidavit stating the robbers had masks on their face and the investigating officer failed to write this statement in his report. Have this information been available to counsel and the trial court as well to petitioner he wouldn't have plead guilty but would have went to trial.

The decision of the Fourth District conflict with Haag v. State, 591 So.2d 614 (Fla. 1992); Griffin v. Sistuenk, 816 So.2d 600 (Fla. 2002); Thompson v. State, 961 So. 2d 324,326 (Fla. 2000) Because even though an inmate who help petitioner filled out the application mistakenly put he didn't file no prior motion with the lower court i the application but the institutional official stamp proves that he had timely filed the motion and the burden was on the state to prove that petitioner did not filed the motion or did not file it in a timely manner.

The decision of the Fourth District Court conflict with Steele v. Kehoe, 747 So. 2d 931 (Fla. 1999) because his family retained counsel to file 3.850 motion but failed to file the motion and the belated motion is timely within the two-year time limitation after discovering or learning that his family had actually hired the attorney which he file the motion/claim within the two year. 3.850 (b)(3).

CONCLUSION

Petitioner has semonstrated a conflict within the above stated cases contrary to the Fourth District decision. Petitioner request this court to accept jurisdiction to review the instant case.

/s/ John J. Givens

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's brief on Jurisdiction complete with Appendix has been furnished by U.S Mail through the Institutional Mail to: State Attorney General, at 1515 North Flagler Drive, Suite 900, West Palm Beach, Florida 33401-3432 this 23 day of July 2013.

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Administrative Order of this Court dated July 13, 1998, I hereby certifies that the instant brief has been prepared with 12 point courier New type.

/s/ Julien Garcon
JULIEN GARCON#72742-004
FCI Williamsburg
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Salters, SC 29590

IN THE SUPREME COURT OF THE STATE OF FLORIDA

JULIEN GARCON

Petitioner,

vs.

STATE OF FLORIDA

Respondent.

APPENDIX TO PETITIONER'S BRIEF ON JURISDICTION

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM
BEACH, FL 33401

June 27, 2013

CASE NO.: 4D12-4348

L.T. No.: 1992CF010706AXX

JULIEN GARCON

v. STATE OF FLORIDA

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that this court finds that this appeal is frivolous; the order on appeal clearly explained to the Appellant why he failed to satisfy the manifest injustice standard necessary for withdrawing his plea, and why his claim that he submitted a timely rule 3.850 motion in September 1993 on which the trial court had never ruled was conclusively refuted by his own subsequent sworn motion filed in October 1996, stating he had never filed a prior motion with that court. Although the order on appeal did not address the claim that Appellant's family retained counsel to file a rule 3.850 motion whose failure to do so left Appellant time-barred, rule 3.850(b)(3) provides "A claim based on this exception shall not be filed more than 2 years after the expiration of the time for filing a motion for postconviction relief." Thus, it is clear that part of the motion was properly denied as well.

Appellant was cautioned against frivolous filing in case number 4D12-4235. The instant appeal too is entirely devoid of merit. The clerk of this court is directed to deliver a certified copy of this order to the appropriate institution for the consideration of disciplinary procedures. § 944.279(1), Fla. Stat. (2012); further,

Appellant is hereby directed to show cause, within (20) days of the date of this order, why he should not be prohibited by *State v. Spencer*, 751 So. 2d 47 (Fla. 1999) from filing future pro se pleadings in connection with or arising out of his

conviction and sentence arising out of case no.: 1992CF010706AXX.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

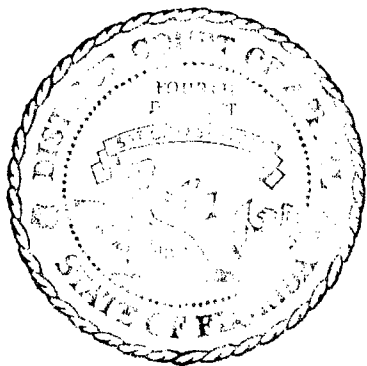
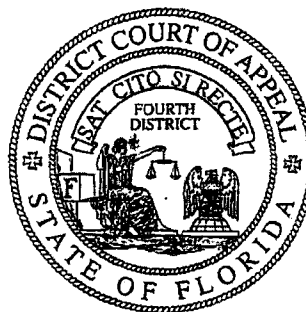
Served:

cc: Attorney General-W.P.B. Julien Garcon

F.C.I. Williamsburg

lc

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal



I hereby certify that the above and foregoing is a
true copy of instrument filed in my office.
MARILYN BEUTTENMULLER, CLERK
DISTRICT COURT OF APPEAL OF
FLORIDA, FOURTH DISTRICT

Per

Julien Garcon
Deputy Clerk

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2013

JULIEN GARCON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D12-4348

[June 27, 2013]

PER CURIAM.

Affirmed.

TAYLOR, DAMOORGIAN and CONNER, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Joseph Marx, Judge; L.T. Case No. 1992CF010706AXX.

Julien Garcon, Salters, S.C., pro se.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.