

IN THE SUPREME COURT OF FLORIDA

WILLIAM EARL SWEET,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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CASE NO. SC19-195  
L.T. NO. 1991-CF-2899  
DEATH PENALTY CASE

ON APPEAL FROM THE CIRCUIT COURT  
OF THE FOURTH JUDICIAL CIRCUIT,  
IN AND FOR DUVAL COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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RECEIVED, 05/24/2019 10:32:33 AM, Clerk, Supreme Court

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

Time Barred .....5

CLAIM I: Failure of postconviction counsel to file a claim of ineffective assistance of trial counsel for trial counsel’s alleged drinking problem, as well as failure of postconviction counsel to investigate and file a claim under *Giglio*. .....8

CLAIM II: Sweet was not deprived of a fair evidentiary hearing when the State entered the documents showing Wilridge was arrested days prior to the murder...10

CLAIM III: The postconviction court did not abuse its discretion in denying discovery from boxes referenced in a newspaper article about a former prosecutor. ....16

CLAIM IV: The postconviction court did not err in summarily denying these claims. ....21

CLAIM IV: Sweet has not alleged any evidence of actual innocence and there has been no evidence presented in any previous motions that prove he is actually innocent of the murder of Felicia Bryant. ....23

CONCLUSION .....26

CERTIFICATE OF SERVICE .....27

CERTIFICATE OF FONT COMPLIANCE .....27

## TABLE OF AUTHORITIES

### Cases

<i>Armstrong v. State</i> , 642 So. 2d 730 (Fla. 1994).....	24
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963) .....	10
<i>Chavez v. State</i> , 132 So. 3d 826 (Fla. 2014).....	17
<i>Crawford v. Washington</i> , 541 U.S. 36 (2004) .....	3
<i>Deparvine v. State</i> , 995 So. 2d 351 (Fla. 2008).....	13
<i>Elledge v. State</i> , 911 So. 2d 57 (Fla. 2005) .....	23
<i>Foster v. State</i> , 810 So. 2d 910 (Fla. 2002) .....	8
<i>Hegwood v. State</i> , 575 So. 2d 170 (Fla. 1991) .....	10
<i>House v. Bell</i> , 547 U.S. 518 (2006) .....	23, 24
<i>Howell v. State</i> , 145 So. 3d 774 (Fla. 2013) .....	6, 7
<i>Huff v. State</i> , 622 So. 2d 982 (Fla. 1993).....	5
<i>Jimenez v. State</i> , 997 So. 2d 1056 (Fla. 2008).....	6
<i>Jones v. State</i> , 709 So. 2d 512 (Fla. 1998).....	10
<i>King v. State</i> , 808 So. 2d 1237 (Fla. 2002).....	8
<i>Kokal v. State</i> , 901 So. 2d 766 (Fla. 2005) .....	8, 9
<i>Lambrix v. State</i> , 698 So. 2d 247 (Fla. 1996) .....	8
<i>Maharaj v. State</i> , 684 So. 2d 726 (Fla. 1996).....	17, 18
<i>Mann v. State</i> , 112 So. 3d 1158 (Fla. 2013) .....	17, 21
<i>Martinez v. Ryan</i> , 566 U.S. 1 (2012) .....	4
<i>Moore v. State</i> , 820 So. 2d 199 (Fla. 2002) .....	17
<i>Reed v. State</i> , 116 So. 3d 260 (Fla. 2013).....	6
<i>Ring v. Arizona</i> , 536 U.S. 584 (2002).....	3
<i>Robinson v. State</i> , 707 So. 2d 688 (Fla. 1998).....	10
<i>Schlup v. Delo</i> , 513 U.S. 298 (1995) .....	23, 24
<i>Smith v. Cain</i> , 565 U.S. 73 (2012) .....	12
<i>Smith v. State</i> , 931 So. 2d 790 (Fla. 2006).....	11
<i>State ex rel. Butterworth v. Kenny</i> , 714 So. 2d 404 (Fla. 1998).....	8, 9
<i>Strickler v. Greene</i> , 527 U.S. 263 (1999) .....	11
<i>Sweet v. Crosby</i> , 2005 WL 1924699 (M.D. Fla. Aug. 8, 2005) .....	3
<i>Sweet v. Florida</i> , 510 U.S. 1170 (1994) .....	2, 5
<i>Sweet v. Moore</i> , 822 So. 2d 1269 (Fla. 2002).....	2
<i>Sweet v. Sec’y, Dept. of Corr.</i> , 467 F.3d 1311 (11th Cir. 2006).....	3

<i>Sweet v. State</i> , 248 So. 3d 1060 (Fla. 2018) .....	passim
<i>Sweet v. State</i> , 624 So. 2d 1138 (Fla. 1993) .....	2, 24
<i>Sweet v. State</i> , 810 So. 2d 854 (Fla. 2002) .....	2, 24
<i>Sweet v. State</i> , 900 So. 2d 555 (Fla. 2004) .....	3
<i>Sweet v. State</i> , 934 So. 2d 450 (Fla. 2006) .....	3
<i>Tompkins v. State</i> , 994 So. 2d 1072 (Fla. 2008) .....	23
<i>Turner v. United States</i> , 137 S. Ct. 1885 (2017) .....	11, 12, 13
<i>Waterhouse v. State</i> , 792 So. 2d 1176 (Fla. 2001).....	8
<i>Zeigler v. State</i> , 130 So. 3d 694 (Fla. 2013) .....	23

**Statutes**

28 U.S.C. § 2244 (d) .....	3
Rule 3.852(i), Florida Rules of Criminal Procedure.....	16, 17
Rule 3.851(d), Florida Rules of Criminal Procedure.....	passim

## **Facts and Procedural History**

The relevant facts concerning the June 26/27, 1990, murder of Felicia Bryant is recited in the Florida Supreme Court's opinion on direct appeal.

On June 6, 1990, Marcine Cofer was attacked in her apartment and beaten and robbed by three men. She could identify two of the men by their street names. On June 26, 1990, she was taken by Detective Robinson to the police station to look at pictures to attempt to identify the third assailant. When Robinson dropped Cofer off at her apartment, William Sweet was standing nearby and saw her leave the detective. Unknown to Cofer, Sweet had previously implicated himself in the robbery by telling a friend that he had committed the robbery or that he had ordered it done. Cofer asked her next-door neighbor, Mattie Bryant, to allow the neighbor's daughters, Felicia, thirteen, and Sharon, twelve, to stay with Cofer in her apartment that night. Mattie agreed, and the children went over to Cofer's apartment around 8 p.m.

At approximately 1 a.m. that evening, Sharon was watching television in the living room of Cofer's apartment when she heard a loud kick on the apartment door. She reported this to Cofer, who was sleeping in the bedroom, but because the person had apparently left, Cofer told Sharon not to worry about it and went back to sleep. Shortly thereafter, Sharon saw someone pulling on the living room screen. She awakened Cofer. The two then went to the door of the apartment, looked out the peephole, and saw Sweet standing outside. Sweet called Cofer by name and ordered her to open the door.

At Cofer's direction, Felicia pounded on the bathroom wall to get Mattie's attention in the apartment next door, and a few minutes later Mattie came over. The four then lined up at the door, with Cofer standing in the back of the group. When they opened the door to leave, Sweet got his foot in the door and forced his way into the apartment. Sweet's face was partially covered by a pair of pants. He first shot Cofer and then shot the other three people, killing Felicia. Six shots were fired. Cofer, Mattie, and Sharon were shot in the thigh, ankle and thigh, and buttock, respectively, and Felicia was shot in the hand and in the abdomen.

Sweet was convicted of first-degree murder, three counts of attempted first-degree murder, and burglary. The jury recommended a sentence of death by a vote of ten to two, and the trial court followed this recommendation.

*Sweet v. State*, 624 So. 2d 1138, 1138-39 (Fla. 1993) (footnotes omitted). In imposing the death sentence the trial judge found the following aggravating factors: (1) Sweet had previously been convicted of several violent felonies, including armed robbery, possession of a firearm by a convicted felon, riot, resisting arrest with violence and the contemporaneous attempted murders and burglary; (2) the murder was committed to avoid arrest; (3) the murder was committed during a burglary; and (4) the murder was cold, calculated, and premeditated. The court found no statutory mitigating circumstances, but found as nonstatutory mitigation that Sweet lacked true parental guidance as a teenager, which was given slight weight. Sweet's conviction and sentence were confirmed on direct appeal. *Id.* at 1142. The United States Supreme Court denied certiorari on February 28, 1994. *Sweet v. Florida*, 510 U.S. 1170 (1994).

Sweet filed his initial motion for postconviction relief on August 1, 1995. The collateral court denied the motion. On January 31, 2002, the Florida Supreme Court affirmed. *Sweet v. State*, 810 So. 2d 854 (Fla. 2002) (*Sweet III*). While the appeal of the postconviction motion was pending, Sweet filed a petition for writ of habeas corpus in this Court. His petition was denied on June 13, 2002. *Sweet v. Moore*, 822 So. 2d 1269 (Fla. 2002) (*Sweet IV*).

On May 8, 2003, Sweet filed a successive motion for postconviction relief in the state trial court, raising a claim under *Ring v. Arizona*, 536 U.S. 584 (2002). The trial court denied the motion, finding the motion was “untimely and facially insufficient.” *Sweet v. Crosby*, 2005 WL 1924699, \*2 (M.D. Fla. Aug. 8, 2005). Furthermore, the state trial court denied the motion “on the basis that the Florida Supreme Court had repeatedly rejected the claim raised by [Sweet] (that Florida’s capital sentencing scheme is violative of *Ring*).” *Id.* This Court affirmed. *Id.*

Sweet then filed a petition for habeas relief in the United States District Court for the Middle District of Florida on January 18, 2005. The district court concluded the petition was barred by the statute of limitations under 28 U.S.C. § 2244 (d). The Eleventh Circuit Court of Appeals affirmed the denial. *Sweet v. Sec’y, Dept. of Corr.*, 467 F.3d 1311 (11th Cir. 2006) (*Sweet V*).

On March 8, 2005, Sweet filed a third motion for postconviction relief. This time, Sweet claimed he was entitled to relief pursuant to the United States Supreme Court decision in *Crawford v. Washington*, 541 U.S. 36 (2004). On July 14, 2005, the trial court denied the motion. On June 16, 2006, this Court affirmed. *Sweet v. State*, 934 So. 2d 450 (Fla. 2006) (*Sweet VI*).

On April 30, 2008, Sweet filed a fourth successive motion. The collateral court denied the motion. Sweet did not appeal the denial of the motion.

On March 19, 2013, Sweet filed his fifth successive motion, raising a claim

under *Martinez v. Ryan*, 566 U.S. 1 (2012). On September 20, 2013, the postconviction court denied that motion. Once again, Sweet did not appeal the denial of his motion.<sup>1</sup>

On October 28, 2016, Sweet filed Defendant’s Sixth Successive Motion to Vacate Judgments of Conviction and Sentence (hereinafter “Motion”), raising a claim of newly discovered evidence. The allegedly newly discovered evidence was an unsworn statement from an inmate serving life in prison in the Department of Corrections alleging he was present at the time of the murder and that Sweet was not the shooter (based on build and skin color). Wilridge came forward nearly 26 years after the murder.<sup>2</sup>

The State filed its answer to Sweet’s Motion (hereinafter “Answer” or “State’s Answer”) on November 17, 2016. An evidentiary hearing was held on July 13, 2017, where Sweet presented testimony and exhibits to support his Motion.

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<sup>1</sup> In addition to this sixth motion for postconviction relief, Sweet filed a seventh motion for postconviction relief raising a *Hurst* claim. Sweet is not in the *Hurst* window. The collateral court denied the motion and Sweet appealed. This Court has found that Sweet is not eligible for *Hurst* relief.

<sup>2</sup> Sweet also presented the testimony of Marcene Cofer at the evidentiary hearing. Ms. Cofer was one of the shooting victims in this case. Sweet acknowledged that Ms. Cofer’s testimony was not presented in support of a separate claim of newly discovered evidence. Indeed, Sweet’s successive motion raised only one claim – newly discovered evidence in the form of Eric Wilridge’s unsworn affidavit. In offering Ms. Cofer’s testimony, Sweet claimed the court should consider Ms. Cofer’s testimony in the context of what a new trial would look like if both Ms. Cofer and Mr. Wilridge testified for the defense.

Likewise, the State presented documents in opposition to the Motion. At the conclusion of the hearing, the parties submitted written closing arguments. The trial court, on October 30, 2017, issued its written order, denying Sweet's Motion. On May 24, 2018, the Florida Supreme Court affirmed the denial of relief. *Sweet v. State*, 248 So. 3d 1060 (Fla. 2018).

On April 24, 2018, counsel for Sweet filed his Eighth Successive Motion to Vacate Judgments of Conviction and Sentence. On January 7, 2019, after a case management conference held in compliance with *Huff v. State*, 622 So. 2d 982 (Fla. 1993), the postconviction court filed an order denying Appellant's Eighth Successive Motion. This appeal followed.

### **Time Barred**

Rule 3.851(d)(1), Florida Rules of Criminal Procedure, provides that any motion to vacate a judgment of conviction and sentence shall be filed within one year of the date that judgment and conviction became final. For purposes of this rule, Sweet's conviction and sentence to death became final on February 24, 1994. *Sweet v. Florida*, 510 U.S. 1170 (1994). Sweet filed his Eighth Successive Motion on April 24, 2018, over 24 years after his sentence and conviction became final. Therefore, on its face, the motion is untimely.

Sweet's Rule 3.851 motion could be considered timely filed, if his claim falls within three narrow exceptions to the one-year limitations period outlined in Rule

3.851(d), Florida Rules of Criminal Procedure. One of these exceptions, and the one Sweet seeks to invoke, is a claim of newly discovered evidence pursuant to Rule 3.851(d)(2)(A), Florida Rules of Criminal Procedure. A defendant does not, however, have unlimited time in which to bring a newly discovered evidence claim. Rather, a defendant must bring a claim of newly discovered evidence within one year of the time he discovered the evidence or with due diligence could have discovered it. *Reed v. State*, 116 So. 3d 260, 264 (Fla. 2013) (“[t]o be considered timely filed as newly discovered evidence, the successive 3.851 motion was required to have been filed within one year of the date upon which the claim became discoverable through due diligence” quoting *Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008)).

Sweet tries to get around the one-year limitations period by claiming an exemption under Rule 3.851(d)(2)(C) (failure of postconviction counsel to file a *motion* due to neglect). However, this Court has held that Rule 3.851(d)(2)(C) applies “based on the inaction of counsel to file a timely *motion* for postconviction relief, not to file a specific *claim*.” *Howell v. State*, 145 So. 3d 774, 775 (Fla. 2013) (emphasis in original). In that case, the defendant asserted a claim that his motion should be considered because his postconviction counsel failed to file his second successive postconviction motion through neglect. *Id.* This Court, in rejecting that argument stated, “under Howell’s interpretation, a condemned inmate would never

face any time limitation in which to file a motion for postconviction relief, because the inmate could always assert that postconviction counsel neglected to raise a claim.” *Id.* Sweet tries to use the same argument as used in *Howell*, however, this argument fails as a matter of law. Rule 3.851(d)(2)(C) applies to the filing of a motion and not a specific claim. In this case, Sweet has filed multiple postconviction motions, raising claims of ineffective assistance of counsel. Because Sweet’s claims do not fall under the exception provided for in Rule 3.851(d)(2)(C), they are procedurally barred.

Therefore, the State asserts that Sweet’s motion was untimely and was properly dismissed by the postconviction court.

**CLAIM I: Failure of postconviction counsel to file a claim of ineffective assistance of trial counsel for trial counsel’s alleged drinking problem, as well as failure of postconviction counsel to investigate and file a claim under Giglio.**

Sweet claims that his postconviction counsel was ineffective for failing to raise a claim of ineffective assistance of trial counsel for trial counsel’s alleged drinking problem. (Initial Brief at 19). Sweet also claims that his postconviction counsel, Frank Tassone, failed to investigate and file a motion to vacate based on the testimony of Solomon Hansbury.<sup>3</sup> (Initial Brief at 32). However, these are not valid claims under Florida law and the postconviction court properly denied these claims as untimely and not cognizable.

This Court has “repeatedly held that claims of ineffective assistance of postconviction counsel are not cognizable.” *Kokal v. State*, 901 So. 2d 766, 777 (Fla. 2005). *See also Foster v. State*, 810 So. 2d 910, 917 (Fla. 2002); *King v. State*, 808 So. 2d 1237, 1245 (Fla. 2002); *Waterhouse v. State*, 792 So. 2d 1176, 1193 (Fla. 2001); *Lambrix v. State*, 698 So. 2d 247, 248 (Fla. 1996). Both this Court and the United States Supreme Court have recognized that “defendants have no constitutional right to representation in postconviction relief proceedings.” *State ex rel. Butterworth v. Kenny*, 714 So. 2d 404, 407 (Fla. 1998). As this Court has explained, “[a]ll that is required in postconviction relief proceedings, whether capital

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<sup>3</sup> Appellant argues that the State put on false testimony of Hansbury in violation of *Giglio v. United States*, 405 U.S. 150 (1972).

or non-capital, is that the defendant have meaningful access to the judicial process.” *Id.* at 408. This Court found the summary denial of Kokal’s claim of ineffectiveness of postconviction counsel during his first postconviction litigation was properly summarily denied. *Kokal*, 901 So. 2d at 777.

In this case, Sweet raises a claim of ineffective assistance of postconviction counsel for failing to file a claim of ineffectiveness of trial counsel. The postconviction court found Appellant’s Eighth Successive Motion as untimely under this Court’s precedent in *Howell* and found Appellant’s argument for why the claims should be exempt from 3.851(d)(2)(C) as meritless. (Order at 6). Additionally, the postconviction court properly ruled that Appellant’s claims of ineffective assistance of postconviction counsel are not cognizable. (Order at 7). As the postconviction court found, “[c]onsidering this is Defendant’s *eighth* Rule 3.851 Motion, it is clear that Defendant has had ample meaningful access to judicial process during the postconviction stage of his case.” (Order at 7). This claim is barred by this Court’s precedent and Rule 3.851(d)(2)(C). As such, this claim was properly denied.

**CLAIM II: Sweet was not deprived of a fair evidentiary hearing when the State entered the documents showing Wilridge was arrested days prior to the murder.**

Sweet claims that the spoliation of Eric Wilridge’s jail documents prevented him from having a fair evidentiary hearing. (Initial Brief at 36). As such, defense is claiming a *Brady*<sup>4</sup> violation. However, this claim is without merit and was properly denied by the postconviction court.

In order to obtain a reversal based on *Brady*, a defendant must prove four elements:

(1) that the Government possessed evidence favorable to the defendant (including impeachment evidence); (2) that the defendant does not possess the evidence nor could he obtain it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different.

*Jones v. State*, 709 So. 2d 512, 519 (Fla. 1998) (citing *Robinson v. State*, 707 So. 2d 688, 693 (Fla. 1998) (quoting *Hegwood v. State*, 575 So. 2d 170, 172 (Fla. 1991)). “There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.” *Smith v. State*, 931 So.

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<sup>4</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

2d 790, 796 (Fla. 2006) (quoting *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999)).

To establish prejudice, a defendant must demonstrate that the suppressed evidence is material. *Id.*

In *Turner v. United States*, 137 S. Ct. 1885 (2017), the United States Supreme Court rejected a *Brady* claim, concluding that the withheld evidence was not material. Petitioners were convicted of kidnapping, armed robbery, and murder in 1985. The victim had been robbed, severely beaten, and sodomized with a pipe or pole that caused extensive internal injuries. *Id.* At trial, two of the co-perpetrators testified against petitioners in exchange for leniency. *Id.* Thomas, a 14-year-old, who lived in the neighborhood and who knew some of the petitioners, also testified as to what he saw the night of the murder. *Id.*

Years later, in 2010, during postconviction proceedings, Turner raised a *Brady* claim, asserting that the prosecution failed to disclose evidence of another possible suspect, McMillan, who had been seen in the alley near where the victim's body was discovered shortly after the murder, and impeachment evidence, including impeachment evidence relating to Thomas. *Turner*, 137 S. Ct. at 1893. Petitioners argued that if they had been informed of the other suspect, they could have raised as a defense that a single perpetrator, or two perpetrators at most, had committed the murder. *Id.* In other words, they could have asserted to the jury that McMillan, alone or with an accomplice, murdered Fuller. The prosecution admitted that it

suppressed the evidence of McMillan, but asserted the evidence was not material. *Id.* The postconviction court held an extensive evidentiary hearing, and then denied the *Brady* claim, concluding that the evidence was not material. *Id.* The appellate court agreed that the evidence was not material and the United States Supreme Court affirmed. *Id.*

The Court first explained that due process is only violated if the prosecution “withholds evidence that is favorable to the defense and *material* to the defendant’s guilt or punishment.” *Turner*, 137 S. Ct. at 1888 (citing *Smith v. Cain*, 565 U.S. 73, 75 (2012)). The Court explained that evidence “is ‘material’ within the meaning of *Brady* when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different” and that a “reasonable probability of a different result is one in which the suppressed evidence undermines confidence in the outcome of the trial.” *Id.* at 1893 (citations and punctuation omitted). The Court explained that a determination of materiality was often “factually complex” and required that the reviewing court “examine the trial record” to “‘evaluat[e]’ the withheld evidence ‘in the context of the entire record.’” *Id.* (citation omitted).

The Court then reasoned that the withheld evidence, in the context of the entire record, was “too little, too weak, or too distant from the main evidentiary points to meet *Brady*.” *Turner*, 137 S. Ct. at 1894. The Court noted that the single attacker

defense was inconsistent with the evidence establishing a group attack. *Id.* The Court observed that while the witnesses “differed on minor details,” virtually every witness agreed that the victim “was killed by a large group of perpetrators.” *Id.* The Court pointed out that the single attacker defense would have required the jury to believe that both the co-perpetrators falsely confessed and, through coordinated effort or coincidence, gave highly similar accounts of how the murder occurred, as well as believe that Thomas, “a disinterested witness,” wholly fabricated his story. *Id.* The Court also concluded that the undisclosed impeachment evidence was “largely cumulative.” *Id.*

In this case, the arrest records are not material for the purposes of *Brady*. This Court has held that the admittance of the arrest records in this case was not error. *Sweet*, 248 So. 3d at 1065-66. This Court stated that even if it had been error, any error was harmless. *Id.* See *Deparvine v. State*, 995 So. 2d 351, 372 (Fla. 2008) (holding that erroneously admitted evidence was harmless where there was “no reasonable possibility” that the evidence contributed to the defendant’s convictions). This Court, in affirming *Sweet* is not entitled to relief in his Sixth Successive Motion to Vacate, determined that “Wilridge’s credibility did not rest on the admission of the arrest record.” *Sweet*, 248 So. 3d at 1066.

The postconviction court found “the discrepancy in the facts surrounding his arrest suggests Mr. Wilridge’s memories of events from around the time of the offense are inaccurate.” (Order Denying Sixth Successive Motion at 10).

The postconviction court explained in the order denying relief:

Mr. Wilridge’s explanation for why he waited over twenty-four years to come forward with this possibly exonerative information was that he did not want to become involved with law enforcement. Mr. Wilridge claimed that his guilty conscious [sic], caused by knowing an innocent man was going to be executed, is what made him finally come forward. Then, a few months prior to the Evidentiary Hearing occurring, Mr. Wilridge had an abrupt change of heart. He wrote two letters, one to the Court and one to the State Attorney Office for the Fourth Judicial Circuit, in which he claimed his affidavit about [Sweet’s] case was invalid and inaccurate. Further, in the letter to the Court, Mr. Wilridge even went so far as to specify that he did not remember anything from that night pertaining to [Sweet’s] case.

At the Evidentiary Hearing, Mr. Wilridge’s inconsistency in what he observed concerning the offenses continued. In his affidavit, Mr. Wilridge stated that on the night of the offense he initially saw three men standing around Ms. Cofer’s apartment, but at the Evidentiary Hearing he testified that while he saw three individuals, they were too far away for him to see any identifying features, including whether they were male or female. Mr. Wilridge also wrote in his affidavit that he saw a man standing in the doorway shooting into Ms. Cofer’s apartment, but at the Evidentiary Hearing he testified that he saw a man standing in the doorway with his hand extended and did not see a gun or shots being fired. Mr. Wilridge further testified that it was only after riding away that he heard gunshots, which he claimed was common to hear in the neighborhood.

*Sweet*, 248 So. 3d at 1067-68. As the postconviction court had more than enough evidence to rely on without the arrest records, this Court upheld the postconviction court’s finding that Wilridge is not credible. The arrest records would not change the

finding of credibility made by the postconviction court after Wilridge testified and contradicted himself repeatedly. The postconviction court, in denying relief on this claim, found that Appellant would be unable to prove any prejudice from the failure to disclose any additional records, which is required under *Brady*. (Order at 8). The court noted that the arrest records were given little to no weight at the evidentiary hearing for the Sixth Successive Motion to Vacate and instead, “focused on Mr. Wilridge’s inconsistencies between the affidavit and his testimony, his statements that he fabricated the affidavit, and the multi-decade gap between witnessing the events and deciding to come forward.” (Order at 8-9). The court stated,

[E]ven if the additional records conclusively demonstrate that Mr. Wilridge was not incarcerated at the time, they would have little to no effect on the Court’s decision in light of the ample evidence suggesting Mr. Wilridge did not witness the offenses and fabricated his affidavit and testimony.

(Order at 9). As such, any additional records would not satisfy the requirements of *Brady* and this claim was properly denied by the postconviction court.

**CLAIM III: The postconviction court did not abuse its discretion in denying discovery from boxes referenced in a newspaper article about a former prosecutor.**

Appellant argues that the postconviction court abused its discretion in denying a motion to compel production of boxes in the garage of Bernie De La Rionda, who retired from the State Attorney's Office for the Fourth Judicial Circuit. (Initial Brief at 39).<sup>5</sup> Appellant argues that under Florida Rules of Criminal Procedure 3.852(i), he is entitled to production of those boxes and the postconviction court improperly shifted the burden of proof to Appellant in withholding discovery of those boxes. (Initial Brief at 39). As the postconviction court did not abuse its discretion in denying the motion to compel, this claim is without merit and should be denied.

Florida Rule of Criminal Procedure 3.852(i)(2) provides for a defendant to obtain additional public records when the trial court finds:

- (A) collateral counsel has made a timely and diligent search of the records repository;
- (B) collateral counsel's affidavit identifies with specificity those additional public records that are not at the records repository;
- (C) the additional public records sought are either relevant to the subject matter of a proceeding under Rule 3.851 or appear

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<sup>5</sup> In his Motion to Compel, Appellant requested an order compelling an updated production of records pursuant to Fla. R. Crim. P. 3.852(i) from the Office of the State Attorney of the Fourth Judicial Circuit based upon an article that was published in The Times Union newspaper on May 1, 2018. The article was about the retirement of Bernie De La Rionda, a thirty-five-year prosecutor. The article mentions that Mr. De La Rionda has "some thirty boxes" in his garage. Appellant repeatedly refers to the boxes as "case files" and argues that the files were taken home and kept in a garage rather than being provided in response to discovery requests and "*may be relevant*" to Sweet's case. (Emphasis added).

- reasonably calculated to lead to the discovery of admissible evidence; and  
(D) the additional records request is not overly broad or unduly burdensome.

The defendant “bears the burden of demonstrating that the records sought relate to a colorable claim for postconviction relief.” *Chavez v. State*, 132 So. 3d 826, 829 (Fla. 2014). This Court has held that the public records procedure under Rule 3.852 is not to be used as a fishing expedition for possible postconviction claims and the trial court may deny requests it deems “overly broad, of questionable relevance, and unlikely to lead to discoverable evidence.” *Valle v. State*, 70 So. 3d 530, 548-49 (Fla. 2011) (quoting *Moore v. State*, 820 So. 2d 199, 204 (Fla. 2002)). This Court has previously held that “the discovery tool is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief.” *Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013) (citation omitted). The Court reasoned that in a circumstance in which a defendant cannot demonstrate that the records are relevant or may reasonably lead to the discovery of admissible evidence pertaining to a colorable postconviction claim, trial courts may deny such a public records request. *Id.*

Appellant relies on *Maharaj v. State*, 684 So. 2d 726 (Fla. 1996), to support his argument that this Court should remand this case “for failure to allow public records request discovery and failure to hold a hearing.” (Initial Brief at 43). However, this Court remanded the case in *Maharaj* because the postconviction court

had an ethical conflict of interest and should have recused himself based on his representations that “he would probably not be able to handle the case if it required an evidentiary hearing because of his long-term association professionally and socially with the lawyers.” *Id.* at 728. This Court remanded the case for Maharaj’s motion to be reconsidered before a different judge that did not have a conflict. *Id.* In addition to finding some of the claims regarding ineffective assistance of counsel and prosecutorial misconduct warranting an evidentiary hearing, this Court also found “that the trial judge’s statement that he could not have conducted an evidentiary hearing even if one was warranted” required the case to be remanded to be considered before a new judge. *Id.* Unlike *Maharaj*, in this case, the postconviction court does not have a conflict of interest and properly ruled on Appellant’s Motion to Compel. An evidentiary hearing was not warranted in this case because Mr. De La Rionda’s connection to this case was tenuous and the affidavits submitted to the court clearly state that Hansbury stated that Mr. De La Rionda was not the prosecutor he claimed approached him about this case. No factual development was needed for the postconviction court to properly deny the Motion to Compel.

Appellant argued to the postconviction court that there may be materials in the boxes that should have been submitted to the State repository and related to his claim that the State knowingly put on false testimony through Solomon Hansbury in

violation of *Giglio*. Appellant did not provide any specificity as to what types of records the materials in the boxes are beyond describing them as “case files” from cases Mr. De La Rionda worked on while he was a prosecutor. (Order at 2).

The postconviction court, in denying the motion to compel, stated:

Defendant’s argument for why these materials are relevant is based on Mr. de la Rionda’s tenuous connection to Defendant’s case. Defendant cites three examples of Mr. de la Rionda’s connection to his case: (1) Mr. de la Rionda prosecuted Solomon Hansbury in an unrelated case; (2) Mr. de la Rionda stood in for the State at a 2013 perfunctory hearing on fees in Defendant’s case; and (3) Mr. de la Rionda’s general reputation as a prosecutor. Specifically, Defendant does not allege that Mr. de la Rionda was involved in putting forth Solomon Hansbury’s alleged false testimony. Instead, Defendant speculates that there is a mere possibility that Mr. de la Rionda interacted with Solomon Hansbury at the time of Defendant’s case. The likelihood of this possibility, however, is greatly diminished when viewed in light of the affidavit from Investigator Tom Wildes that Defendant attached to his Eight Successive Motion for Postconviction Relief. (Ex. A.) In the affidavit, Mr. Wildes states that he asked Mr. Hansbury if Mr. de la Rionda was someone who provided him with information about Defendant’s case and Mr. Hansbury stated that he knew it was not Mr. de la Rionda because he was familiar with him from his previous charged for attempted murder. Thus, what remains is an attenuated connection between Mr. de la Rionda and Defendant’s case that only exists because Mr. de la Rionda was working in the same State Attorney’s Office that prosecuted Defendant.

In addition to not meeting the burden of specificity and relevancy required by Rule 3.852, Defendant’s request is overly broad. Despite Defendant’s narrow argument that Mr. de la Rionda may have been involved with Solomon Hansbury’s alleged false testimony, Defendant seeks access to materials spanning numerous cases over thirty years that are wholly unrelated without any limitation on the scope of review. While the Court can appreciate the importance of additional discovery in death penalty cases, Defendant’s request is highly suggestive of a

fishing expedition for additional postconviction claims. This is prohibited under the law.

(Order at 2-3). Mr. De La Rionda was not the prosecutor on this case and was not involved in the testimony of Solomon Hansbury at Appellant's trial. Appellant's argument to inspect the boxes is based on speculation that there *might* be something in the boxes that relates to this case. As such, the postconviction court properly denied the Motion to Compel and an evidentiary hearing was not needed.

**CLAIM IV: The postconviction court did not err in summarily denying these claims.**

Appellant argues that the postconviction court erred in failing to grant an evidentiary hearing on the claims. (Initial Brief at 47). A trial court may deny a postconviction motion without conducting an evidentiary hearing. When there is controlling precedent disposing of the claim or where the issue is solely a matter of law, it is proper for the trial court to summarily deny the postconviction motion. In this case, as the claims were procedurally barred or were purely legal issues with no factual development needed, these claims were properly denied by the postconviction court.

In *Mann*, 112 So. 3d at 1162, this Court rejected a claim that the trial court was required to conduct an evidentiary hearing regarding a claim raised in a fifth successive postconviction motion that was controlled by existing precedent. This Court explained, that “[b]ecause Mann raised purely legal claims that have been previously rejected by this Court, the circuit court properly summarily denied relief.”

The ineffective assistance of postconviction counsel claim raised by Appellant is procedurally barred. As discussed in Claim I, ineffective assistance of postconviction counsel claims are not cognizable claims contemplated by Rule 3.851. Additionally, this Court ruled that the postconviction court’s ruling regarding Wilridge’s credibility “did not rest on the admission of the arrest record.” *Sweet*, 248

So. 3d at 1066. The postconviction court found that any additional evidence would have little to no effect on the credibility finding and Appellant would not have been able to satisfy the requirements to get relief under *Brady*. As no factual development was needed for any of the claims and the postconviction court was able to decide Appellant's claims based on the law, no evidentiary hearing was needed, and the claims were properly summarily denied.

**CLAIM IV: Sweet has not alleged any evidence of actual innocence and there has been no evidence presented in any previous motions that prove he is actually innocent of the murder of Felicia Bryant.**

Sweet claims that his death sentence violates the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution because he is actually innocent. (Initial Brief at 48-49). However, this claim is without merit and was properly denied.

This Court has stated that to establish a claim of “actual innocence,” a defendant must present new evidence that establishes that “‘it is more likely than not that no reasonable juror would have found [the defendant] guilty beyond a reasonable doubt’ in light of all the available evidence.” *Tompkins v. State*, 994 So. 2d 1072, 1089 (Fla. 2008) (quoting *House v. Bell*, 547 U.S. 518, 537 (2006), which quotes *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). See also *Zeigler v. State*, 130 So. 3d 694 (Fla. 2013). Florida does not recognize a freestanding actual innocence claim. *Thompkins*, 994 So. 2d at 1089; see *Elledge v. State*, 911 So. 2d 57, 78 (Fla. 2005).

As this Court has recognized, the “standard in Florida for a newly discovered evidence claim is more liberal than the standard for raising an actual innocence claim in federal courts.” *Tompkins*, 994 So. 2d at 1089. Under federal law, a defendant is required to produce “new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was

not presented at trial” for a claim of actual innocence to be considered. *House*, 547 U.S. at 537 (quoting *Schlup*, 513 U.S. at 324).

In this case, there was more than sufficient evidence to convict Sweet. At trial, both Marcene Cofer and Sharon Bryant were able to identify Sweet as the shooter. *Sweet*, 624 So. 2d at 1139. The recantation of Solomon Hansbury was found by the postconviction court to be “incredible.” *Sweet III*, 810 So. 2d at 867. This Court, in affirming the finding, stated

Recantation by a witness called on behalf of the prosecution does not necessarily entitle a defendant to a new trial. In determining whether a new trial is warranted due to recantation of a witness’s testimony, a trial judge is to examine all the circumstances of the case, including the testimony of the witnesses submitted on the motion for the new trial. “Moreover, recanting testimony is exceedingly unreliable, and it is the duty of the court to deny a new trial where it is not satisfied that such testimony is true. Especially is this true where the recantation involves a confession of perjury.” Only when it appears that, on a new trial, the witness’s testimony will change to such an extent as to render probable a different verdict will a new trial be granted.

*Id.* quoting *Armstrong v. State*, 642 So. 2d 730, 735 (Fla. 1994) (citations omitted).

This Court stated that the testimony of Hansbury alone would not have risen to the level of requiring a new trial. *Sweet III*, 810 So. 2d at 867. Additionally, this Court found that Marcene Cofer’s testimony at the July 2017 evidentiary hearing did not amount to a true recantation. *Sweet*, 248 So. 3d at 1066. At the evidentiary hearing, though Cofer claimed she was no longer certain who shot her, she testified that her testimony at the trial was true. *Id.* at 1067. This Court also affirmed the

postconviction court's finding that looking at the cumulative effect of all the evidence that could be presented at a new trial, the newly discovered evidence of Wilridge and Cofer's testimony "would not produce a reasonable probability of a different outcome at a new trial." *Id.* at 1068.

There is no new evidence that would prove that Sweet is factually innocent of the murder of Felicia Bryant and there has been no evidence presented at any point of Appellant's postconviction motions and evidentiary hearings that would establish that no reasonable juror would find Appellant guilty beyond a reasonable doubt. Additionally, in denying this claim, the postconviction court found that Defendant's claim of actual innocence is not cognizable in a postconviction proceeding, relying on *Tompkins* and *Elledge*. As such, the postconviction court properly denied this claim.

**CONCLUSION**

Appellee respectfully requests that this Honorable Court affirm the order of the postconviction court.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on this 24th day of May, 2019, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Julie Morley at Julie.Morley@ccrc-north.org, and Margaret Russell at russell@ccmr.state.fl.us, attorneys for Appellant.

**CERTIFICATE OF FONT COMPLIANCE**

I HEREBY CERTIFY that the size and style of the type used in this brief is 14-point Times New Roman, in compliance with Fla. R. App. P. 9.210(a)(2).

*/s/ Lisa A. Hopkins*  
Lisa A. Hopkins

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