

MOTION TEMPLATE -- RULE 3.850 POSTCONVICTION RELIEF

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MOTION TEMPLATE -- RULE 3.850 POSTCONVICTION RELIEF

State v. Marquis Anthony Delcampo

***INSTRUCTIONS**:* Fill in all [BRACKETED] fields. Remove all instructional comments before filing. This must be sworn/notarized.

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff, CASE NO.: [CASE NUMBER]

v.

MARQUIS ANTHONY DELCAMPO,

Defendant.

DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF
PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.850

COMES NOW the Defendant, MARQUIS ANTHONY DELCAMPO, pro se [or by and through undersigned counsel], and files this Motion for Postconviction Relief pursuant to Florida Rule of Criminal Procedure 3.850, and states:

PROCEDURAL HISTORY

1. The Defendant was charged by [Information/Indictment] on or about [DATE] with Aggravated Battery, a second-degree felony, in violation of Florida Statute § 784.045(1)(a).
2. On or about [DATE], the Defendant [entered a plea of guilty/no contest / was found guilty after a jury trial].
3. On or about [DATE], the Defendant was sentenced to twenty (20) years in the Florida Department of Corrections.
4. [IF APPEAL FILED]: The Defendant filed a direct appeal to the Fifth District Court of Appeal, Case No. [5DXX-XXXX]. The appeal was

[affirmed/reversed/pending]. The mandate issued on [DATE].

[IF NO APPEAL]: The Defendant did not file a direct appeal. The judgment and sentence became final on [SENTENCING DATE + 30 DAYS].

5. This motion is timely filed within two (2) years of the date the judgment and sentence became final.

CLAIM I
INEFFECTIVE ASSISTANCE OF COUNSEL -- FAILURE TO FILE
MOTION FOR STAND YOUR GROUND IMMUNITY HEARING

6. The Sixth Amendment to the United States Constitution and Article I, Section 16 of the Florida Constitution guarantee the right to effective assistance of counsel. To establish ineffective assistance, the Defendant must show: (a) counsel's performance was deficient, falling below an objective standard of reasonableness; and (b) the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668 (1984).

7. DEFICIENT PERFORMANCE: Defense counsel failed to file a Motion for Declaration of Immunity pursuant to Florida Statute § 776.032 (Stand Your Ground).

8. The evidence available to counsel established that the Defendant was a passenger in an occupied vehicle (an Uber rideshare) when the driver engaged in conduct that effectively confined the Defendant against his will, constituting false imprisonment under F.S. § 787.02.

9. Under F.S. § 776.013(1)(a), there is a legal presumption that a person in an occupied vehicle has a reasonable fear of imminent peril of death or great bodily harm when another person is unlawfully and forcefully removing them from, or attempting to remove them from, the vehicle.

10. The Fifth District Court of Appeal -- this Court's appellate jurisdiction -- has held that the Castle Doctrine and Stand Your Ground immunity extend to occupied vehicles. *State v. Browning*, [CITE]. See also *Bretherick v. State*, 170 So.3d 766 (Fla. 4th DCA 2015).

11. Had counsel filed a motion for immunity, the Court would have

been required to hold a hearing at which the State bore the burden of proving, by clear and convincing evidence, that the defendant's use of force was not justified. *Dennis v. State*, 51 So.3d 456 (Fla. 2010).

12. PREJUDICE: There is a reasonable probability that, had counsel filed the immunity motion, the Court would have granted immunity and dismissed the charges. The State could not have proven by clear and convincing evidence that the Defendant's actions were not justified self-defense given the presumption under § 776.013 and the occupied vehicle doctrine under *Bretherick* and *Browning*.

CLAIM II
INEFFECTIVE ASSISTANCE OF COUNSEL -- FAILURE TO
INVESTIGATE THE DRIVER'S CONDUCT

13. Defense counsel failed to adequately investigate the conduct of the Uber driver, including but not limited to:

- a. The driver's aggressive and erratic driving behavior;
- b. The driver's refusal to stop the vehicle or allow the Defendant to exit safely;
- c. The driver's own culpability for false imprisonment (F.S. § 787.02);
- d. The driver's prior driving record, Uber complaints, and history of aggressive behavior;
- e. Available Uber trip data, GPS records, and ride history.

14. DEFICIENCY: A reasonably competent attorney would have investigated these facts because they are essential to a self-defense claim. *Strickland*, 466 U.S. at 691.

15. PREJUDICE: Had counsel investigated the driver's conduct, this evidence would have supported: (a) a successful Stand Your Ground immunity motion; (b) a self-defense argument at trial; and/or (c) a more favorable plea negotiation. There is a reasonable probability the outcome would have been different.

CLAIM III
INEFFECTIVE ASSISTANCE OF COUNSEL -- FAILURE TO

REQUEST SELF-DEFENSE JURY INSTRUCTIONS

[INCLUDE ONLY IF CASE WENT TO TRIAL]

16. If this case proceeded to trial, defense counsel failed to request complete jury instructions on justifiable use of force, including:

a. Standard Jury Instruction 3.6(f) -- Justifiable Use of

Deadly Force;

b. Standard Jury Instruction 3.6(g) -- Justifiable Use of

Non-Deadly Force;

c. Castle Doctrine / Occupied Vehicle instruction under

§ 776.013;

d. Instruction on the presumption of reasonable fear in an

occupied vehicle;

e. Instruction that the State bears the burden of disproving

self-defense beyond a reasonable doubt.

17. PREJUDICE: The failure to instruct the jury on the complete self-defense framework deprived the Defendant of a fair trial. Had the jury been properly instructed, there is a reasonable probability the verdict would have been different.

CLAIM IV

INEFFECTIVE ASSISTANCE OF COUNSEL -- FAILURE TO ADVISE REGARDING PLEA CONSEQUENCES

[INCLUDE ONLY IF DEFENDANT PLED GUILTY/NO CONTEST]

18. If the Defendant entered a plea, defense counsel failed to adequately advise the Defendant of:

a. The viability of a Stand Your Ground immunity defense;

b. The potential for a complete dismissal via SYG hearing;

c. The actual maximum sentence exposure, including whether any enhancement applied;

d. The consequences of the plea, including the 85% service requirement under F.S. § 944.275.

19. PREJUDICE: Had counsel properly advised the Defendant, there is a reasonable probability the Defendant would not have entered the plea

and would have insisted on an immunity hearing and/or trial. See *Lee v. United States*, 582 U.S. 357 (2017).

CLAIM V
INEFFECTIVE ASSISTANCE OF COUNSEL -- FAILURE TO
CHALLENGE THE SENTENCE / ENHANCEMENT

20. The Defendant was sentenced to twenty (20) years imprisonment.

The standard statutory maximum for aggravated battery, a second-degree felony, is fifteen (15) years under F.S. § 775.082(3)(c).

21. Defense counsel failed to:

- a. Challenge the legal basis for a sentence exceeding the statutory maximum;
- b. Object to any enhancement (habitual offender / 10-20-Life / PRR) that was improperly applied;
- c. Verify the accuracy of the Criminal Punishment Code scoresheet;
- d. Advocate for a lesser sentence within the legal range.

22. PREJUDICE: The Defendant received a sentence five (5) years above the standard maximum. Had counsel challenged the enhancement, there is a reasonable probability the sentence would have been within the standard 15-year maximum.

CLAIM VI
NEWLY DISCOVERED EVIDENCE
[INCLUDE IF NEW EVIDENCE HAS BEEN FOUND]

23. [Describe any newly discovered evidence, such as new witness statements, Uber data, recanted testimony, or other evidence not available at trial/plea.]

24. This evidence is newly discovered because [explain why it was not available earlier].

25. This evidence is of such nature that it would probably produce an acquittal on retrial. *Jones v. State*, 591 So.2d 911 (Fla. 1991).

CLAIM VII
BRADY VIOLATION -- SUPPRESSED EVIDENCE
[INCLUDE IF EVIDENCE WAS WITHHELD]

26. The State failed to disclose to the defense the following material, exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963):

- a. [Description of suppressed evidence]
- b. [E.g., Uber trip data showing driver's erratic route]
- c. [E.g., Witness statements supporting self-defense]
- d. [E.g., Body camera footage showing driver as aggressor]

27. This evidence was favorable to the defense because [explain].

28. The suppression of this evidence was material because there is a reasonable probability that the result would have been different.

CLAIM VIII

ILLEGAL SENTENCE -- EXCEEDS STATUTORY MAXIMUM

[NOTE: This claim can also be raised independently under Rule 3.800(a) with NO time limit -- see separate motion template]

29. The Defendant's sentence of twenty (20) years exceeds the fifteen (15) year statutory maximum for a second-degree felony under F.S. § 775.082(3)(c).

30. [IF NO ENHANCEMENT FILED]: The State did not file a valid enhancement notice authorizing a sentence above 15 years.

[IF ENHANCEMENT IMPROPER]: The enhancement applied ([specify]) was improper because [specify reasons].

31. An illegal sentence may be corrected at any time.

CLAIM IX

CUMULATIVE ERROR

32. Even if no single error rises to the level of a constitutional violation individually, the cumulative effect of the errors described in Claims I through VIII deprived the Defendant of a fair proceeding. See *Anderson v. State*, 18 So.3d 501 (Fla. 2009) (cumulative analysis required).

REQUEST FOR EVIDENTIARY HEARING

33. The Defendant requests an evidentiary hearing on all claims.

The claims are not conclusively refuted by the record and require testimony and evidence beyond the four corners of the court file.

See Huff v. State, 622 So.2d 982 (Fla. 1993).

PRAYER FOR RELIEF

WHEREFORE, the Defendant respectfully requests this Honorable Court:

- a. Grant an evidentiary hearing on all claims;
- b. Vacate the judgment and sentence;
- c. Grant a new trial, or in the alternative;
- d. Order resentencing within the legal range;
- e. Grant such other relief as this Court deems just and proper.

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing motion and that the facts stated in it are true and correct to the best of my knowledge and belief.

MARQUIS ANTHONY DELCAMPO Date
DC Number: [DC NUMBER]
[Current Facility]
[Facility Address]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this motion has been furnished by U.S. Mail to: Office of the State Attorney, 18th Judicial Circuit, 101 Eslinger Way, Sanford, FL 32773, on this ____ day of _____, 20__.

MARQUIS ANTHONY DELCAMPO

FILING NOTES

- 1. ****Sign and date**** the verification under oath
- 2. ****File original**** with Seminole County Clerk (301 N Park Ave, Sanford 32771)
- 3. ****Mail copy**** to State Attorney's Office (101 Eslinger Way, Sanford 32773)
- 4. ****Keep a copy**** -- certified mail with return receipt to prove service
- 5. ****If filing from prison****: Use the "mailbox rule" -- the motion is deemed filed

on the date you give it to prison officials for mailing

6. ****Amend if needed****: If the 3.850 deadline is close, file what you have and request leave to amend within 60 days