



*Office of Paula S. O'Neil  
Clerk & Comptroller  
Pasco County, Florida*

# **ON APPEAL TO THE DISTRICT COURT OF APPEALS OF FLORIDA**

## **SECOND DISTRICT**

**SHANNON**

**STEPHEN**

**Appellant**

**STATE OF FLORIDA**

**Appellee**

**L.T.No.:**

**06-CF-1591 WS**

**Appeal No:**

**19-0086**

**Judge:**

**MARY HANDSEL**

# RECORD ON APPEAL

SHANNON STEPHEN  
VS  
STATE OF FLORIDA  
LOWER CRT NO.: 06-CF-1591 WS  
APPEAL NO.: 19-0086

SUPPLEMENTAL INDEX

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IN THE  
SIXTH JUDICIAL CIRCUIT COURT  
PASCO COUNTY, FLORIDA

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STATE OF FLORIDA,

Plaintiff,

v.

SHANNON STEPHEN,

Defendant.

Case No. 2006-CF-1591

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**SUPPLEMENTAL DIRECTIONS TO THE CLERK**

The Defendant, SHANNON STEPHEN, by and through undersigned counsel, directs the clerk of the lower tribunal to prepare a supplemental record containing:

- 1) The original Florida Rule of Criminal Procedure 3.850 motion filed on November 24, 2015; and,
- 2) The trial court's December 7, 2016, order striking the rule 3.850 motion with leave to amend.

The Clerk is directed to file the original supplemental record on appeal with the Clerk of the Second District Court of Appeal, by July 12, 2019, as indicated in the attached order:

Mary Elizabeth Kuenzel, Clerk  
Second District Court of Appeal  
811 East Main Street  
Lakeland, Florida 33801

The Clerk is further directed to serve one copy of the supplemental record on appeal on each of the following:

- a. Michael Ufferman Law Firm, P.A.  
2022-1 Raymond Diehl Road  
Tallahassee, Florida 32308
- b. Office of the Attorney General  
Concourse Center 4  
3507 East Frontage Road, Suite 200  
Tampa, Florida 33607-7013

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished

to:

Office of the State Attorney  
P.O. Box 5028  
Clearwater, Florida 33758  
Email: SA6Appealservice@co.pinellas.fl

Office of the Attorney General  
Concourse Center 4  
3507 East Frontage Road, Suite 200  
Tampa, Florida 33607-7013  
Email: crimaptpa@myfloridalegal.com

by email delivery this 24th day of June, 2019.

Respectfully submitted,

/s/ Michael Ufferman

MICHAEL UFFERMAN  
Michael Ufferman Law Firm, P.A.  
2022-1 Raymond Diehl Road  
Tallahassee, Florida 32308  
(850) 386-2345/fax (850) 224-2340  
FL Bar No. 114227  
Email: ufferman@uffermanlaw.com

Appellate Counsel for Defendant **STEPHEN**

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKE LAND, FL 33802-0327**

June 12, 2019

**CASE NO.: 2D19-0086**  
L.T. No.: 06-CF-1591WS

SHANNON STEPHEN

v.

STATE OF FLORIDA

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Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Appellant's unopposed motion filed by appellate counsel to supplement the appellate record is granted to the extent that appellant's counsel shall make arrangements with the clerk of the circuit court within 10 days from the date of this order for supplementation of the record with the items requested in the motion to supplement received by this court on June 11, 2019.

This supplemental record shall be transmitted to this court by the clerk of the circuit court within 30 days from the date of this order. Either party or the clerk of the circuit court may file a motion to extend, if more time is needed.

Until the summary record is made complete through supplementation, there is no need for appellant's counsel to serve an initial brief. Appellant's counsel in the future may at an appropriate time file a motion for the extension of the time to serve an initial brief.

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

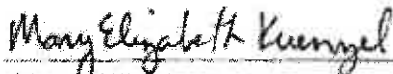
Served:

Attorney General, Tampa  
Shannon Stephen

Michael Robert Ufferman,  
Esq.

Allison C. Heim, A.A.G.  
Paula S. O'Neil, Clerk

lb

  
\_\_\_\_\_  
Mary Elizabeth Kuenzel  
Clerk



IN THE  
SIXTH JUDICIAL CIRCUIT COURT  
PASCO COUNTY, FLORIDA

STATE OF FLORIDA,  Plaintiff,  v.  SHANNON STEPHEN, Defendant.                    spn 00497502	Case No. 2006-CF-1591
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**MOTION FOR POSTCONVICTION RELIEF**

The Defendant, by and through undersigned counsel, and pursuant to Florida Rule of Criminal Procedure 3.850, respectfully moves this Honorable Court to grant him a new trial, and in support of said motion alleges:

1. Name and location of the court that entered the judgment of conviction under attack: Sixth Judicial Circuit Court, Pasco County, Florida
2. Date of judgment of conviction: July 28, 2010 (amended judgment filed February 20, 2015)
3. Length of sentence: thirty-five years' imprisonment
4. Nature of offenses involved: two counts of DUI manslaughter and one count of leaving the scene of an accident involving death
5. What was your plea? (check only one)
  - (a) Not Guilty X
  - (b) Guilty \_\_\_
  - (c) Nolo Contendere \_\_\_
  - (d) Not Guilty by reason of insanity \_\_\_

If you entered one plea to one count, and a different plea to another count, give details: N/A

6. Kind of trial: (check only one) Jury
7. Did you testify at the trial or at any pre-trial hearing? No
8. Did you appeal from the judgment of conviction?  
Yes X No
9. If you did appeal, answer the following:
- (a) Name of court: Second District Court of Appeal
- (b) Result: Convictions affirmed, cost portion of sentence/judgment reversed/remanded
- (c) Date of result: October 29, 2014
- (d) Citation (if known): Stephen v. State, 150 So. 3d 268 (Fla. 2d DCA 2014)
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, motions, etc. with respect to this judgment in this court?  
Yes X No
11. If your answer to number 10 was "yes," give the following information (applies only to proceedings in this court):
- (a) (1) Nature of the proceeding: Florida Rule of Criminal Procedure 3.800(c) motion  
(2) Grounds raised: Request for a reduction of sentence  
(3) Did you receive an evidentiary hearing on your petition or motion, etc? No  
(4) Result: Motion denied  
(5) Date of result: March 10, 2015
- If you did appeal, answer the following:
- (1) Name of court: N/A
- (2) Result: N/A
- (3) Date of result: N/A
- (4) Citation (if known): N/A

(b) As to any second petition, application, motion, etc., give the same information:

(1) Nature of the proceeding: N/A

(2) Grounds raised: N/A

(3) Did you receive an evidentiary hearing on your petition or motion, etc? N/A

(4) Result: N/A

(5) Date of result: N/A

12. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, motions, etc. with respect to this judgment in any other court?

Yes    No X

13. If your answer to number 12 was "yes," give the following information:

(a) (1) Name of court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition or motion, etc.? N/A

(5) Result: N/A

(6) Date of result: N/A

(b) As to any second petition, application, motion, etc., give the same information:

(1) Name of court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition or motion, etc.? N/A

(5) Result: N/A

(6) Date of result: N/A

14. State concisely every ground on which you claim that the judgment or sentence is unlawful. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and the facts supporting them.

For your information, the following is a list of the most frequently raised grounds for postconviction relief. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds that you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that your conviction or sentence is unlawful.

**DO NOT CHECK ANY OF THESE LISTED GROUNDS.** If you select one or more of these grounds for relief, you must allege facts. The motion will not be accepted by the Court if you merely check (a) through (i).

- (a) Conviction obtained by plea of guilty or nolo contendere which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by the unconstitutional failure of the prosecution to disclose to defendant evidence favorable to the defendant.
- (c) Conviction obtained by a violation of the protection against double jeopardy.
- (d) Denial of effective assistance of counsel.
- (e) Denial of right of appeal.
- (f) Lack of jurisdiction of the court to enter the judgment or impose sentence (such as an unconstitutional statute).
- (g) Sentence in excess of the maximum authorized by law.
- (h) Newly discovered evidence.
- (i) Changes in the law that would be retroactive.

**A. Ground 1: Defense counsel rendered ineffective assistance of counsel by failing to present an accident reconstruction expert as a defense witness at trial.**

Supporting FACTS:

Defense counsel rendered ineffective assistance of counsel by failing to present an accident reconstruction expert as a defense witness at trial. As a result, the Defendant was denied his right to effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and in violation of article I, section 16 of the Florida Constitution.

The Defendant's theory of defense was that James Wallace was driving his vehicle at the time of the accident (and the Defendant was subsequently framed by Mr. Wallace and Marvin Dalzell). In order to properly present this theory of defense, the jury was required to understand and comprehend the timeframes involved, the routes driven by all parties, and the cellphone data from each of the parties. The only way to effectively present all of this information was through an accident reconstruction expert. However, at trial, defense counsel did *not* present an accident reconstruction expert as a defense witness at trial.

Had an accident reconstruction expert been presented at trial, the expert would have confirmed – through comprehensive diagrams and visuals – the accuracy of the Defendant's theory: i.e., the time that the three men left the bar; that a witness (Walter Schubart) confirmed all three men getting in the Defendant's vehicle and that the Defendant was helped into the *passenger* side of the vehicle; the route driven by Mr. Wallace which coincided with Mr. Wallace's attempt to check on the whereabouts of his wife (Kara Wallace); the initial "something happened, this is really important" message left by Mr. Wallace on Mrs. Wallace's cellphone was left at the exact time (1:09 a.m. on March 26, 2006) that Robert Bartlett called 911 to report that the victims had been hit; and that after the accident, Brian Farrow observed "two or three" men involved in an altercation next to

a truck (the Defendant's vehicle) and a van (Mr. Dalzell's vehicle). Moreover, an accident reconstruction expert would have been able to present a map detailing the path driven by Mr. Wallace in the Defendant's vehicle and the path driven by Mr. Dalzell in his vehicle and would have been able to explain the timing of each route – which would have further strengthened the Defendant's theory of defense. Absent such an expert, all of these aspects were not tied together in a way that a jury could see and understand the accuracy of the Defendant's theory. Stated another way, without an expert tying these pieces together, there was no way that the Defendant's theory of defense could be properly presented to the jury.

The Defendant recently retained a reconstruction expert (Donald J. Fournier, Jr., P.E., a forensic engineer). Mr. Fournier has now properly conducted the analysis set forth in the previous paragraph. Had Mr. Fournier's analysis been presented to the jury, there is a reasonable probability that the result of the trial would have been something other than a guilty verdict.

The Sixth Amendment right to counsel implicitly includes the right to the effective assistance of counsel. See *McMann v. Richardson*, 397 U.S. 759, 771 (1970); *Chatom v. White*, 858 F.2d 1479, 1484 (11th Cir. 1988). “The test to be applied by the trial court when evaluating an ineffectiveness claim is two-pronged: The defendant must show both that trial counsel's performance was deficient and that the defendant was prejudiced by the deficiency.” *Bruno v. State*, 807 So. 2d 55, 61 (Fla. 2002) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)).

Defense counsel was ineffective for failing to present an accident reconstruction expert as a defense witness at trial. See *Leonard v. State*, 930 So. 2d 749 (Fla. 2d DCA 2006) (holding that the failure to retain a defense expert is a facially sufficient postconviction claim and recognizing that such a claim generally cannot be resolved absent an evidentiary hearing). Counsel's failure fell

below the applicable standard of performance. Absent counsel's ineffectiveness in the instant case, the result of the proceeding would have been different and/or counsel's ineffectiveness affected the fairness and reliability of the proceeding, thereby undermining any confidence in the outcome. *See Johnson v. State*, 921 So. 2d 490, 511-12 (Fla. 2005) (Pariente, C.J., specially concurring). The Defendant is entitled to an evidentiary hearing on this claim. *See Wood v. State*, 143 So. 3d 493 (Fla. 1st DCA 2014) ("On appeal, Appellant asserts that the trial court erred in summarily denying Ground One of his postconviction motion, as the record did not conclusively refute his claim that his trial counsel was ineffective for failing to retain and present an independent accident reconstruction expert. We express no opinion as to the merits of Appellant's claim, but find that Appellant has alleged a facially sufficient claim under Ground One. We agree with Appellant that the record before us does not conclusively refute this claim. Accordingly, we reverse and remand for an evidentiary hearing on this issue.") (citation omitted).

**B. Ground 2: Defense counsel rendered ineffective assistance of counsel by failing to present a cellphone tower expert as a defense witness at trial.**

Supporting FACTS:

Defense counsel rendered ineffective assistance of counsel by failing to present a cellphone tower expert as a defense witness at trial. As a result, the Defendant was denied his right to effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and in violation of article I, section 16 of the Florida Constitution.

The first trial in this case ended in a hung jury/mistrial. The two main differences between the first trial and the second trial were (1) defense counsel's failure to introduce during the trial the receipt from the bar (as explained in Ground 4) and (2) cellphone tower witnesses that the State presented during the second trial (Dan Jensen and Youssouf Mohamed). These cellphone tower

witnesses attempted to disprove the Defendant's assertion that James Wallace was driving the vehicle at the time of the accident by giving theories regarding Mr. Wallace's location at particular times based on the cellphone tower that Mr. Wallace's cellphone was hitting. However, defense counsel failed to present a cellphone tower expert to refute this testimony. Had defense counsel properly presented a cellphone tower expert, the expert would have explained to the jury that cellphone tower data is *not reliable* to pinpoint the location of a particular cellphone (and had such an expert been presented, there is a reasonable probability that the result of the trial would have been something other than a guilty verdict).<sup>1</sup>

Defense counsel was ineffective for failing to present a cellphone tower expert as a defense witness at trial.<sup>2</sup> See *Leonard v. State*, 930 So. 2d 749 (Fla. 2d DCA 2006) (holding that the failure to retain a defense expert is a facially sufficient postconviction claim and recognizing that such a claim generally cannot be resolved absent an evidentiary hearing). Counsel's failure fell below the applicable standard of performance. Absent counsel's ineffectiveness in the instant case, the result of the proceeding would have been different and/or counsel's ineffectiveness affected the fairness and reliability of the proceeding, thereby undermining any confidence in the outcome. See *Johnson*, 921 So. 2d at 511-12 (Pariente, C.J., specially concurring). The Defendant is entitled to an evidentiary hearing on this claim. See *Wood v. State*, 143 So. 3d 493 (Fla. 1st DCA 2014) ("On appeal, Appellant asserts that the trial court erred in summarily denying Ground One of his

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<sup>1</sup> Unlike lay witnesses, a defendant is not required to list the name of a specific expert witness when claiming that defense counsel was ineffective for failing to present an expert witness at trial. See *Terrell v. State*, 9 So. 3d 1284, 1289 (Fla. 4th DCA 2009); *Lucas v. State*, 147 So. 3d 611, 612 (Fla. 4th DCA 2014). *Lucas* is currently pending review in the Florida Supreme Court. See *State v. Lucas*, case number SC14-1925.

<sup>2</sup> The Defendant continues to rely upon the *Strickland* analysis set forth in Ground 1 above and that analysis is incorporated by reference.

postconviction motion, as the record did not conclusively refute his claim that his trial counsel was ineffective for failing to retain and present an independent accident reconstruction expert. We express no opinion as to the merits of Appellant's claim, but find that Appellant has alleged a facially sufficient claim under Ground One. We agree with Appellant that the record before us does not conclusively refute this claim. Accordingly, we reverse and remand for an evidentiary hearing on this issue.") (citation omitted).

**C. Ground 3: Defense counsel rendered ineffective assistance of counsel by failing to present a toxicologist as a defense witness at trial.**

Supporting FACTS:

Defense counsel rendered ineffective assistance of counsel by failing to present a toxicologist as a defense witness at trial. As a result, the Defendant was denied his right to effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and in violation of article I, section 16 of the Florida Constitution.

The Defendant's vehicle was driven for approximately one mile after the accident. Liquid from the vehicle leaked on the pavement, leaving visual evidence of the path that the vehicle took following the accident. The liquid path is in a straight line. Given the Defendant's intoxication level, there is no way that he could have driven the vehicle in a straight path – which further proves that James Wallace was driving the Defendant's vehicle at the time of the accident and then drove the vehicle after the accident to the intersection where he was picked up by Marvin Dalzell in Mr. Dalzell's van (after Mr. Wallace pushed the Defendant to the driver's side of the Defendant's vehicle – an altercation observed by Brian Farrow). However, defense counsel failed to present a toxicologist at trial. Had defense counsel presented a toxicologist, the toxicologist would have

explained to the jury that given the Defendant's intoxication level, the Defendant could *not* have driven the vehicle in a straight line following the accident (and had such an expert been presented, there is a reasonable probability that the result of the trial would have been something other than a guilty verdict).<sup>3</sup>

Defense counsel was ineffective for failing to present a toxicologist as a defense witness at trial.<sup>4</sup> See *Leonard v. State*, 930 So. 2d 749 (Fla. 2d DCA 2006) (holding that the failure to retain a defense expert is a facially sufficient postconviction claim and recognizing that such a claim generally cannot be resolved absent an evidentiary hearing). Counsel's failure fell below the applicable standard of performance. Absent counsel's ineffectiveness in the instant case, the result of the proceeding would have been different and/or counsel's ineffectiveness affected the fairness and reliability of the proceeding, thereby undermining any confidence in the outcome. See *Johnson*, 921 So. 2d at 511-12 (Pariente, C.J., specially concurring). The Defendant is entitled to an evidentiary hearing on this claim. See *Wood v. State*, 143 So. 3d 493 (Fla. 1st DCA 2014) ("On appeal, Appellant asserts that the trial court erred in summarily denying Ground One of his postconviction motion, as the record did not conclusively refute his claim that his trial counsel was ineffective for failing to retain and present an independent accident reconstruction expert. We express no opinion as to the merits of Appellant's claim, but find that Appellant has alleged a facially sufficient claim under Ground One. We agree with Appellant that the record before us does

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<sup>3</sup> Unlike lay witnesses, a defendant is not required to list the name of a specific expert witness when claiming that defense counsel was ineffective for failing to present an expert witness at trial. See *Terrell v. State*, 9 So. 3d 1284, 1289 (Fla. 4th DCA 2009); *Lucas v. State*, 147 So. 3d 611, 612 (Fla. 4th DCA 2014). *Lucas* is currently pending review in the Florida Supreme Court. See *State v. Lucas*, case number SC14-1925.

<sup>4</sup> The Defendant continues to rely upon the *Strickland* analysis set forth in Ground 1 above and that analysis is incorporated by reference.

not conclusively refute this claim. Accordingly, we reverse and remand for an evidentiary hearing on this issue.”) (citation omitted).

**D. Ground 4: Defense counsel rendered ineffective assistance of counsel by failing to admit the bar receipt into evidence.**

Supporting FACTS:

Defense counsel rendered ineffective assistance by failing to admit the bar receipt into evidence (because defense counsel failed to subpoena a witness who could properly authenticate the receipt). As a result, the Defendant was denied his right to effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and in violation of article I, section 16 of the Florida Constitution.

As explained above, the first trial in this case ended in a hung jury/mistrial. One of the main differences between the first trial and the second trial was defense counsel’s failure to introduce during the trial the receipt from the bar. The bar receipt shows the time that Defendant left the bar (and confirms the Defendant’s timeline and is therefore consistent with the Defendant’s theory that James Wallace was driving the Defendant’s vehicle at the time of the accident). Notably, during the jury’s deliberation, the jury asked “what was the time registered on the bar tab” (T-1721), but because defense counsel failed to introduce the bar receipt, the Court was required to answer the jury’s question by saying “all of the evidence that has been entered in this trial is back with you.” (T-1722). Had defense counsel properly admitted the bar receipt into evidence (as he did during the first trial), and had the jury been able to view the time on the receipt to see that it was consistent with the Defendant’s theory of events, then there is a reasonable probability that the result of the trial would have been something other than a guilty verdict.

Defense counsel was ineffective for failing to admit the bar receipt into evidence.<sup>5</sup> Counsel's failure fell below the applicable standard of performance. Absent counsel's ineffectiveness in the instant case, the result of the proceeding would have been different and/or counsel's ineffectiveness affected the fairness and reliability of the proceeding, thereby undermining any confidence in the outcome. *See Johnson*, 921 So. 2d at 511-12 (Pariente, C.J., specially concurring). The Defendant is entitled to an evidentiary hearing on this claim.

**E. Ground 5: Cumulative error.**

Supporting FACTS:

When considering the cumulative effect of defense counsel's representation and/or the other errors raised in this motion, it is clear that defense counsel's level of representation fell below that of reasonably competent counsel. Furthermore, it is also discernible that there is a reasonable probability that but for the errors in this case, the outcome of the proceeding would have been different – even if the outcome would not have changed but for any one particular error. Relief is therefore warranted under these circumstances. *See State v. Gunsby*, 670 So. 2d 920, 924 (Fla. 1996).

15. If the grounds listed in 14 were not previously presented on your direct appeal, give your reason they were not so presented: A claim of ineffective assistance of counsel is generally not cognizable on direct appeal and is properly raised for the first time in a motion for postconviction relief, pursuant to Florida Rule of Criminal Procedure 3.850. See Kelly v. State, 486 So. 2d 578, 585 (Fla. 1986).

16. Do you have any petition, application, appeal, motion, etc., now pending in any court, either state or federal, as to the judgment under attack?

Yes \_\_\_ No X

17. If your answer to number 16 was "yes," give the following information:

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<sup>5</sup> The Defendant continues to rely upon the *Strickland* analysis set forth in Ground 1 above and that analysis is incorporated by reference.

- (a) Name of Court: N/A
- (b) Nature of the proceeding: N/A
- (c) Grounds raised: N/A
- (d) Status of the proceedings: N/A

18. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein.

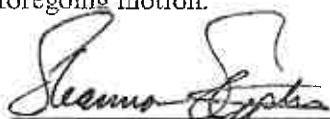
- (a) At preliminary hearing: N/A
- (b) At arraignment and plea: N/A
- (c) At trial: Ken Foote, PO Box 2285, New Port Richey, Florida 34656-2285
- (d) At sentencing: Mr. Foote
- (e) On appeal: undersigned counsel Ufferman
- (f) In any postconviction proceeding: undersigned counsel
- (g) On appeal from any adverse ruling in a post-conviction proceeding: N/A

WHEREFORE, the Defendant requests that the Court grant all relief to which he may be entitled in this proceeding, including but not limited to (here list the nature of the relief sought):

1. An evidentiary hearing to determine the merits of this motion for postconviction relief
2. Such other and further relief as the Court deems just and proper.

OATH

Under penalties of perjury and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this motion is found to be frivolous or made in bad faith, I certify that I understand the contents of the foregoing motion, that the facts contained in the motion are true and correct, and that I have a reasonable belief that the motion is timely filed. I certify that this motion does not duplicate previous motions that have been disposed of by the Court. I further certify that I understand English and have read the foregoing motion.



SHANNON STEPHEN

DC #     R67120

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished

to:

Office of State Attorney  
West Pasco Judicial Center  
7530 Little Road  
New Port Richey, Florida 34654

by U.S. mail delivery this 24th day of November, 2015.<sup>6</sup>

Respectfully submitted,

/s/ Don Pumphrey, Jr.  
DON PUMPHREY, JR.  
Pumphrey & Prince, LLC  
P.O. Box 1818  
Tallahassee, Florida 32302  
(850) 681-7777/fax (850) 681-7518  
FL Bar No. 107980  
Email: don@donpumphrey.com

/s/ Michael Ufferman  
MICHAEL UFFERMAN  
Michael Ufferman Law Firm, P.A.  
2022-1 Raymond Diehl Road  
Tallahassee, Florida 32308  
(850) 386-2345/fax (850) 224-2340  
FL Bar No. 114227  
Email: ufferman@uffermanlaw.com

Counsel for Defendant **STEPHEN**

xc: Shannon Stephen

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<sup>6</sup> Based on undersigned counsel's review of the State Attorney's website, it does not appear that the State Attorney has designated an email address for eservice and therefore this document is being served only via U.S. mail.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO COUNTY, FLORIDA  
CRIMINAL DIVISION

STATE OF FLORIDA,

CASE NO.: CRC06-01591CFAWS  
UCN: 512006CF001591A000WS  
DIVISION: 3

v.

SHANNON STEPHEN,  
SPN: 00497502, Defendant. /

**ORDER STRIKING DEFENDANT'S  
"AMENDED MOTION FOR POSTCONVICTION RELIEF"**

THIS CAUSE came before the Court on the Defendant's "Amended Motion for Postconviction Relief," filed December 1, 2016. Having reviewed the motion, the record, and applicable law, the Court finds as follows:

On November 24, 2015, the Defendant, through counsel, filed a Motion for Postconviction Relief. On that same day, the Defendant, through counsel, also filed a motion requesting 90 days' leave to amend his newly filed motion for postconviction relief, because counsel was still awaiting a response from the State concerning a public records request. On December 7, 2015, the Defendant, through counsel, refiled the very same motion that was filed with this Court on November 24, 2015, again requesting leave to amend his motion for postconviction relief. On December 30, 2015, this Court entered an order, incorporated by reference, granting the Defendant's request for 60 days' leave to amend his motion for postconviction relief. On March 29, 2016, the Defendant, through counsel, filed a second motion, requesting 90 days' leave to amend his motion for postconviction relief. On April 18, 2016, this Court entered its second order, incorporated herein by reference, granting the Defendant's request for 60 days' leave to amend his motion for postconviction relief. On July 15, 2016, the Defendant, through counsel, yet again filed a motion, requesting 90 days' leave to amend his motion for postconviction relief, asserting that they were still in the process of investigating his case and needs additional time to review public records. On September 7, 2016, this Court granted the Defendant a third extension of time, permitting the Defendant until the expiration of the two-year filing period to file his amended motion.

FILED FOR RECORD  
PASCO COUNTY, FLORIDA  
2016 DEC 27 PM 3:05  
J. HILLIS, Clerk  
Clery & Company  
Pasco County, Florida

In the Defendant's original motion, he raised five grounds for relief, Grounds One-Five. On December 1, 2016, the Defendant filed the instant amended motion, amending some of his original grounds for relief, and adding an additional ground for relief; however, the instant amended motion lacks a proper signed oath from the Defendant. Counsel for the Defendant recognizes and acknowledges this deficiency; however, counsel contends that he is "still in the process of obtaining the Defendant's oath for Ground 5."<sup>1</sup> The Court recognizes that counsel for the Defendant filed the instant facially insufficient motion in an effort to ensure his amended motion was timely filed, within the two-year limitations period.<sup>2</sup> Fla. R. Crim. P. 3.850(e); see *Kline v. State*, 858 So. 2d 1257, 1257-58 (Fla. 1st DCA 2003) (citing *Beard v. State*, 827 So. 2d 1021 (Fla. 2d DCA 2002)). Nevertheless, the instant amended motion lacks a proper signed oath from the Defendant and is therefore, insufficient.

As this Court has noted in its prior orders, "[n]otwithstanding the timeliness of an amendment, *the court need not consider new factual assertions contained in an amendment unless the amendment is under oath.*" Fla. R. Crim. P. 3.850 (emphasis added). Pursuant to rule 3.850(f)(2), a postconviction court may, in its discretion, permit a defendant an additional opportunity to amend an insufficient amended motion. Accordingly, the Court will strike the Defendant's motion for the purpose of allowing him to include a sufficient oath signed by the Defendant. The Defendant shall have **30 days** from the date of this order to file an amended motion containing a sufficient oath and signature, as required by rule 3.850(n). The Defendant is advised that failure to file a motion containing a sufficient oath within **30 days** of this order will result in his motion being denied with prejudice in a final order.

Accordingly, it is:

**ORDERED AND ADJUDGED** that the Defendant's Amended Motion for Postconviction Relief is hereby **STRICKEN**. The Defendant shall have **30 DAYS ONLY** to file an amended motion containing a sufficient oath. **FAILURE TO FILE AN AMENDED**

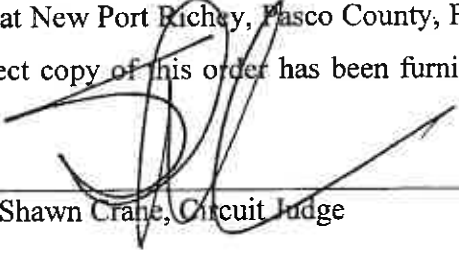
<sup>1</sup> Counsel for the Defendant contends that he has already obtained the Defendant's oath for Grounds 1-4 and 6.

<sup>2</sup> The record reflects that the Defendant filed a timely appeal. On October 29, 2014, in a substituted opinion, the Second District Court of Appeal, affirmed the Defendant's sentence and conviction in part, and reversed and remanded in part. *Stephen v. State*, 150 So. 3d 268, 269 (Fla. 2d DCA 2014) (reversing the amount of mandatory costs imposed by the Court for the offense of DUI manslaughter and leaving the scene of a crash involving death, finding that the costs were governed by the version of the statute in effect at time of offense, not the version of the statute in effect at time of sentencing). The mandate issued on December 2, 2014. As noted above, the instant motion was filed on December 1, 2016.

**MOTION WITHIN 30 DAYS WILL RESULT IN THE DEFENDANT'S MOTION BEING DENIED WITH PREJUDICE IN A FINAL ORDER.**

**THE DEFENDANT IS HEREBY NOTIFIED** that this is **NOT** a final order and he should **NOT** file an appeal until a final order is rendered.

**DONE AND ORDERED** in Chambers at New Port Richey, Pasco County, Florida, this 7 day of December, 2016. A true and correct copy of this order has been furnished to the parties listed below.



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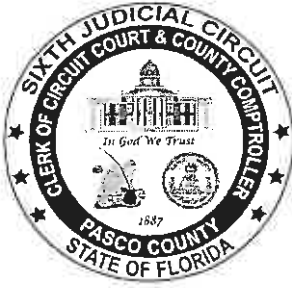
Shawn Crane, Circuit Judge

cc: State Attorney; Staff Attorney

Don Pumphrey, Jr.; Pumphrey & Prince, LLC  
P.O. Box 1818  
Tallahassee, FL 32302

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Shannon Stephen, DC #: R67120  
Taylor Correctional Institution  
8501 Hampton Springs Rd  
Perry, FL 32348



*Office of Paula S. O'Neil  
Clerk & Comptroller  
Pasco County, Florida*

STATE OF FLORIDA }

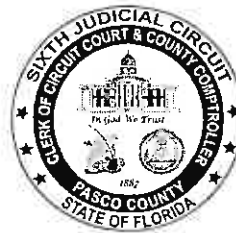
COUNTY OF PASCO }

I, Paula S. O'Neil, Clerk & Comptroller of Circuit Court for the County of Pasco, State of Florida, do hereby certify that the foregoing pages 551-572, inclusive, contain a correct Supplemental Transcript of the Record in the case of Shannon Stephen, Appellant vs. State Of Florida, Appellee, being Case Number(s) 06-CF-1591 WS, Circuit Criminal, and a true and correct recital and copy of all such papers and proceedings in said cause as appears from the records and files of my office that have been directed to be included in the record by the directions furnished to me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 27 day of June, 2019.

By: \_\_\_\_\_

*Melissa Gulvin*  
Deputy Clerk, Melissa Gulvin  
mgulvin@pascoclerk.com  
352-521-4396



*Paula S. O'Neil, Ph.D.  
Clerk & Comptroller  
Pasco County, Florida*

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