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Article 17

Appendices

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Appendix I: Full text of FLA. R. CRIM. P. 3.800, as amended.

XIV. SENTENCE

RULE 3.800

CORRECTION; REDUCTION AND MODIFICATION OF SENTENCES

(A) A court may at any time correct an illegal sentence imposed by it or an incorrect calculation made by it in a sentencing guidelines scoresheet.

(B) A court may reduce or modify to include any of the provisions of chapter 948, FLORIDA STATUTES, a legal sentence imposed by it within sixty days after such imposition, or within sixty days after receipt by the court of a mandate issued by the appellate court upon affirmance of the judgment and/or sentence upon an original appeal, or within sixty days after receipt by the court of a certified copy of an order of the appellate court dismissing an original appeal from the judgment and/or sentence, or, if further appellate review is sought in a higher court or in successively higher courts, then within sixty days after the highest state or federal court to which a timely appeal has been taken under authority of law, or in which a petition for certiorari has been timely filed under authority of law, has entered an order of affirmance or an order dismissing the appeal and/or denying certiorari.

This section of the Rule shall not, however, be applicable to those cases in which the death sentence is imposed or those cases where the trial judge has imposed the minimum mandatory sentence or has no sentencing discretion.

Appendix II: Proposed Revision of FLA. R. CRIM. P. 3.800.

RULE 3.800

CORRECTION; REDUCTION AND MODIFICATION OF SENTENCES

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(B) A court may reduce or modify to include any of the provisions of chapter 948, FLORIDA STATUTES, a legal sentence imposed by it within sixty days after such imposition, or within sixty days after receipt by the court of a mandate issued by the appellate court upon affirmance of the judgment and/or sentence upon an original appeal, or within sixty days after receipt by the court of a certified copy of an order of the appellate court dismissing an original appeal from the judgment and/or sentence, or, if further appellate review is sought in a higher court or in successively higher courts, then within sixty days after the highest state or federal court to which a timely appeal has been taken under authority of law, or in which a petition for certiorari has been timely filed under authority of law, has entered an order of affirmance or an order dismissing the appeal and/or denying certiorari.

This section of the Rule shall not, however, be applicable to those cases in which the death sentence is imposed or those cases where the trial judge has imposed the minimum mandatory sentence or has no sentencing discretion.

Appendix III: Full text of FLA. R. CRIM. P. 3.850, as amended.

XVII. POST-CONVICTION RELIEF

RULE 3.850

MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE; HEARING; APPEAL

A prisoner in custody under sentence of a court established by the laws of Florida claiming the right to be released upon the ground that the judgment was entered or that the sentence was imposed in violation of the Constitution or Laws of the United States, or of the State of Florida, or that the court was without jurisdiction to enter such judgment or to impose such sentence or that the sentence was in excess of the maximum authorized by law, or that his plea was given involuntarily, or the judgment or sentence is otherwise subject to collateral attack, may move the court which entered the judgment or imposed the sentence to vacate, set aside or correct the judgment or sentence.

A motion to vacate a sentence which exceeds the limits provided by law may be filed at any time. No other motion shall be filed or considered pursuant to this rule if filed more than two years after the judgment and sentence become final unless it alleges (1) the facts upon

which the claim is predicated were unknown to the movant or his attorney and could not have been ascertained by the exercise of due diligence, or, (2) the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively.

Any person whose judgment and sentence became final prior to January 1, 1985, shall have until January 1, 1987, to file a motion in accordance with this rule.

The motion shall be under oath and include the following information:

(A) The judgment or sentence under attack and the court which rendered same;

(B) Whether there was an appeal from the judgment or sentence and the disposition thereof;

(C) Whether a previous post-conviction motion has been filed, and if so, how many;

(D) If a previous motion or motions have been filed the reason or reasons why the claim or claims in the present motion were not raised in the former motion or motions.

(E) The nature of the relief sought;

(F) A brief statement of the facts (and other conditions) relied upon in support of the motion.

This rule does not authorize relief based upon grounds which could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence.

Upon filing of a Rule 3.850 motion, the clerk shall forward the motion and file to the court.

If the motion and the files and records in the case conclusively show that the prisoner is entitled to no relief, the motion shall be denied without a hearing. In those instances when such denial is not predicated upon the legal insufficiency of the motion on its face, a copy of that portion of the files and records which conclusively shows that the prisoner is entitled to no relief shall be attached to the order. Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall order the State Attorney to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate. The answer shall respond to the allegations of the motion. In addition it shall state whether the movant has used any other available state remedies including any other post-conviction motion under this rule. The answer shall also state whether an evidentiary hearing was

accorded the movant. If the motion has not been denied at a previous stage in the proceedings, the judge, after the answer is filed, shall determine whether an evidentiary hearing is required. If an evidentiary hearing is not required, the judge shall make appropriate disposition of the motion. If an evidentiary hearing is required, the court shall grant a prompt hearing thereon and the court shall cause notice thereof to be served upon the state attorney, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or is otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant him a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

A second or successive motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the movant or his attorney to assert those grounds in a prior motion constituted an abuse of the procedure governed by these rules.

An appeal may be taken to the appropriate appellate court from the order entered on the motion as from a final judgment on application for writ of habeas corpus. All orders denying motions for post-conviction relief shall include a statement that the movant has the right to appeal within thirty days of the rendition of the order. The prisoner may file a motion for a rehearing of any order denying a motion under this rule within fifteen days of the date of service of the order. The clerk of the court shall promptly serve upon the prisoner a copy of any order denying a motion for post-conviction relief or denying a motion for rehearing noting thereon the date of service by an appropriate certification of service.

An application for writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this rule, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

Appendix IV: Proposed revision of FLA. R. CRIM. P. 3.850.

RULE 3.850

MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE;
HEARING; APPEAL

(A) A prisoner in custody under sentence of a court established by the laws of Florida may move the court that entered the judgment or imposed the sentence to vacate, set aside or correct the judgment or sentence claiming the right to be released upon the ground that the judgment was entered or that the sentence was imposed in violation of the Constitution or Laws of the United States, or of the State of Florida, or that the court was without jurisdiction to enter ~~such~~ the judgment or to impose ~~such~~ the sentence or that the sentence was in excess of the maximum authorized by law, or that his plea was given involuntarily, or that the judgment or sentence is otherwise subject to collateral attack, ~~may move the court which entered the judgment or imposed the sentence to vacate, set aside or correct the judgment or sentence.~~

(1) A motion to vacate a sentence ~~which exceeds~~ in excess of the limits provided by law, or one that is based on an incorrect calculation of the sentencing guidelines, may be filed at any time.

(2) No other motion shall be filed or considered pursuant to this rule if filed more than two years after the judgment and sentence become final unless it alleges ~~(1)~~(i) the facts upon which the claim is predicated were unknown to the movant or his attorney and could not have been ascertained by the exercise of due diligence, or, ~~(2)~~(ii) the fundamental constitutional right asserted was not established within the period provided for ~~herein~~ in this rule and has been held to apply retroactively.

~~Any person whose judgment and sentence became final prior to January 1, 1985, shall have until January 1, 1987, to file a motion in accordance with this rule.~~

(B) The motion shall be under oath and include the following information:

~~(A)~~(1) The judgment or sentence under attack and the court ~~which~~ that rendered ~~same~~ it;

~~(B)~~(2) Whether there was an appeal from the judgment or sentence and, if so, the ~~its~~ disposition thereof;

~~(C)~~(3) Whether a previous post-conviction motion has been filed, and, if so, how many;

(4) If a previous motion or motions have been filed, the reason or reasons why the claim or claims in the present motion were not raised in the former motion or motions;

(5) The nature of the relief sought;

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

(C) This rule does not authorize relief based upon grounds which that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence, except in the case of an illegal sentence.

(D) Upon filing of a Rule 3.850 motion, the clerk shall forward the motion and file to the court.

(E) If the motion and the files and records in the case conclusively show that the prisoner is entitled to no relief, the motion shall be denied without a hearing. In those instances when such a denial is not predicated upon the legal insufficiency of the motion on its face, a copy of that portion of the files and records which conclusively shows conclusively showing that the prisoner is entitled to no relief shall be attached to the order. Unless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall order the State Attorney to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge court deems appropriate. The answer shall respond to the allegations of the motion. In addition it shall state whether the movant has used any other available state remedies including any other post-conviction motion under this rule. The answer shall also state whether an evidentiary hearing was accorded the movant. If the motion has not been denied at a previous stage in the proceedings, the judge court, after the answer is filed, shall determine whether an evidentiary hearing is required. If an evidentiary hearing is not required, the judge court shall make an appropriate disposition of the motion. If an evidentiary hearing is required, the court shall grant a prompt hearing thereon on the motion and the court shall cause notice thereof to be served upon notify the state attorney;. At the hearing, the court shall determine the issues and make findings of fact and conclusions of law with respect thereto to them. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or is otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge

the prisoner, conduct a resentencing or resentence him or grant him a new trial or correct the sentence as may appear appropriate.

(f) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(g) A second or successive motion may be dismissed if the judge court finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge court finds that the failure of the movant or ~~his~~ the movant's attorney to assert those grounds in a prior motion constituted an abuse of the procedure governed by these rules.

(g) An appeal may be taken to the appropriate appellate court from the order entered on the motion as from a final judgment on application for writ of habeas corpus. All orders denying motions for post-conviction relief shall include a statement that the movant has the right to appeal within thirty days of the rendition of the order. The prisoner may file a motion for a rehearing of any order denying a motion under this rule within fifteen days of the date of service of the order. The clerk of the court shall promptly serve upon the prisoner a copy of any order denying a motion for post-conviction relief or denying a motion for rehearing ~~noting thereon the date of service by an appropriate certification of service.~~ The clerk shall note on the prisoner's copy the date of service in a certificate of service.

(h) An application for writ of habeas corpus shall not be entertained in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this rule, ~~shall not be entertained~~ if it appears that the applicant has failed to apply for relief, by motion, to the ~~court~~ original sentencing court, or that such court has denied ~~him~~ relief to the prisoner, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of ~~his~~ the prisoner's detention.