

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

JOHNNY E. CASAIGNE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Case No. 2D19-1928

Opinion filed June 5, 2020.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for Polk  
County; Larry Helms, Judge.

Johnny E. Casaigne, pro se.

LaROSE, Judge.

Johnny E. Casaigne appeals the postconviction court's summary denial of his petition for writ of habeas corpus and denial of his subsequent motion for clarification. See Fla. R. App. P. 9.140(b)(1)(D); Fla. R. App. P. 9.141(b)(2). We affirm. We write, however, to address Mr. Casaigne's argument that the postconviction court erroneously denied his motion for clarification without permitting him to amend his petition to assert all his postconviction claims.

**Background**

A jury convicted Mr. Casaigne of lewd or lascivious exhibition in the presence of a child under sixteen years of age. The trial court sentenced him to fifteen

years in prison. We affirmed his judgment and sentence, without written opinion, in December 2017. Casaigne v. State, 239 So. 3d 49 (Fla. 2d DCA 2017).

Mr. Casaigne filed a timely "Emergency Petition for Writ of Habeas Corpus," see Fla. R. Crim. P. 3.850(m), in the Civil Division. He alleged that trial counsel was ineffective for failing to present the allegedly exculpatory nature of two videos. The Civil Division transferred the petition to the Felony Division as a motion for postconviction relief.

Mr. Casaigne then filed a motion for clarification, insisting that the postconviction court review the petition as titled and noted that he was waiting for the "response and outcome" of his petition to file a postconviction motion. On May 1, 2019, the postconviction court summarily denied Mr. Casaigne's postconviction claim. It found that the record refuted his claim that the videos were exculpatory. The postconviction court also denied Mr. Casaigne's motion for clarification.

### **Discussion**

We find no error in the postconviction court's summary denial of Mr. Casaigne's postconviction claim. See generally Baptiste v. State, 289 So. 3d 561, 562 (Fla. 2d DCA 2020) ("[A] defendant is entitled to an evidentiary hearing on a postconviction relief motion unless (1) the motion, files, and records in the case conclusively show that the prisoner is entitled to no relief, or (2) the motion or a particular claim is legally insufficient." (alteration in original) (quoting Freeman v. State, 761 So. 2d 1055, 1061 (Fla. 2000))). Thus, we do not discuss the merits of the claim any further.

The issue requiring further discussion is Mr. Casaigne's assertion that the postconviction court should have denied his motion for clarification with leave to amend,

allowing him to add other postconviction claims. He asserts that the postconviction court's order precluded him from asserting future postconviction claims as successive. See Fla. R. Crim. P. 3.850(h)(2).

A similar situation arose in Clough v. State, 136 So. 3d 680 (Fla. 2d DCA 2014). Mr. Clough argued that due process required the postconviction court to give him notice of its intention to treat his habeas petition as a motion for postconviction relief and to afford him an opportunity to amend or withdraw his petition. Id. at 682-83. He further maintained that the postconviction court's failure to do so was harmful as "any future postconviction motion he may file will be barred as successive." Id. at 683.

However, Mr. Clough's due process argument was not ripe for review "[u]nless and until Mr. Clough files a postconviction motion that may or may not be denied as successive." Id. at 684. After all, "[w]e cannot examine an alleged harm that has not yet occurred and may never occur." Id. In fact, a future postconviction motion is not necessarily doomed because "the decision to dismiss such a motion as successive is left to the postconviction court's discretion." Id. at 683. We further explained that there is no procedural rule in Florida akin to the Supreme Court's requirement that the trial court provide a pro se defendant an opportunity to withdraw or amend a postconviction motion before recharacterizing and disposing of it as a motion under 28 U.S.C. § 2255 (2020). See Clough, 136 So. 3d at 683-84 (citing Castro v. United States, 540 U.S. 375, 383 (2003)).

As in Clough, Mr. Casaigne's claim is not ripe for review; the record does not reflect that Mr. Casaigne ever filed a postconviction motion that was denied as successive. See id. Moreover, Mr. Casaigne did not seek to amend or add any postconviction claims, despite knowing that his petition had been transferred to the

Felony Division for treatment as a postconviction motion. Instead, he filed a motion for clarification, demanding that the postconviction court treat his filing as a habeas petition. The postconviction court was not required to do so. See id. at 682 ("A postconviction motion, not a habeas petition, is the proper mechanism to collaterally attack a judgment and sentence.").

Additionally, under rule 3.850(e), Mr. Casaigne could have filed a motion to amend on his own or with leave of court before the postconviction court disposed of his petition. We are unaware that any Florida appellate court has required a postconviction court to explicitly provide a defendant with an opportunity to withdraw or amend a habeas petition before converting it to a postconviction motion. See Clough, 136 So. 3d at 683-84.

The postconviction court did not violate any procedural rule and any due process argument is not yet ripe for review. See id. at 684 ("Unless and until Mr. Clough files a postconviction motion that may or may not be denied as successive, his alleged constitutional violations are theoretical. Quite simply, the issue is not ripe for review. We cannot examine an alleged harm that has not yet occurred and may never occur." (citations omitted)). We are unable to conclude that the postconviction court erred in denying Mr. Casaigne's motion for clarification without explicitly providing him an opportunity to amend his habeas petition.

We acknowledge that the two-year time limitation to file a postconviction motion expired on December 12, 2019, during the pendency of this appeal, save for any claim that meets an exception under rule 3.850(b)(1), (2), or (3).<sup>1</sup> But neither party has

---

<sup>1</sup>Conversely, Mr. Clough had over nine months to file a postconviction motion when this court issued the Clough opinion. Clough, 136 So. 3d at 683 n.2.

addressed whether any future postconviction motion is time barred. We leave this issue for the postconviction court to consider if and when Mr. Casaigne files a postconviction motion below. Cf. United States v. Camejo-Rodriguez, 413 F. App'x 158, 161 (11th Cir. 2011) ("We express no opinion on whether it would comply with the statute of limitations. If Camejo-Rodriguez indeed files a § 2255 petition, the district court should consider whether it is time-barred.").

Affirmed.

KHOUZAM, C.J., and CASE, JAMES R., ASSOCIATE SENIOR JUDGE, Concur.