

Third District Court of Appeal

State of Florida

Opinion filed September 4, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1616
Lower Tribunal No. 97-26076A

Casey Deway Holmes,
Petitioner,

vs.

The State of Florida,
Respondent.

A Case of Original Jurisdiction – Habeas Corpus.

Casey Deway Holmes, in proper person.

Ashley Moody, Attorney General, for respondent.

Before EMAS, C.J., and FERNANDEZ and LINDSEY, JJ.

PER CURIAM.

Casey Holmes has filed a petition for writ of habeas corpus. Holmes concedes that his claim is time-barred under Florida Rule of Criminal Procedure 3.850. He asserts, however, that he is entitled to seek relief upon a claim of “manifest injustice.” He is incorrect, and we deny the petition, as there is no error at all, let alone a manifest injustice. Holmes contends trial counsel provided ineffective assistance during his 1998 trial by failing to request a jury instruction on attempted manslaughter, as a necessarily lesser-included offense to the charge of attempted second-degree murder. Beyond the obvious procedural defaults which bar such a claim, the trial transcript reveals that Holmes himself advised the trial court that he waived all lesser-included offenses. Given Holmes’ decision and his waiver of the right to have the jury instructed on any lesser-included offense, there was no error. See Jones v. State, 484 So. 2d 577 (Fla. 1986). We therefore deny the petition for writ of habeas corpus.

ORDER TO SHOW CAUSE

Moreover, Holmes raised this exact same claim in a prior motion to correct illegal sentence filed with the trial court in 2015. The trial court denied the motion, Holmes appealed, and we affirmed. See Holmes v. State, 182 So. 3d 654 (Fla. 3d DCA 2015).

We further note this is at least the tenth pro se collateral appeal or original proceeding Holmes has filed with this Court, related to circuit court case number 97-

26076A.¹ It appears to this Court that Holmes has engaged in the filing of meritless, frivolous and successive claims, continuing to seek relief from this Court on the same claim raised in the instant petition, notwithstanding repeated adverse determinations.

Holmes' actions have caused this Court to expend precious and finite judicial resources which could otherwise be devoted to cases raising legitimate claims. Hedrick v. State, 6 So. 3d 688, 691 (Fla. 4th DCA 2009) (noting: "A legitimate claim that may merit relief is more likely to be overlooked if buried within a forest of frivolous claims.") While pro se parties must be afforded a genuine and adequate opportunity to exercise their constitutional right of access to the courts, that right is not unfettered. The right to proceed pro se may be forfeited where it is determined, after proper notice and an opportunity to be heard, that the party has abused the judicial process by the continued filing of successive or meritless collateral claims in a criminal proceeding. State v. Spencer, 751 So. 2d 47 (Fla. 1999). As our sister court aptly put it, there comes a point when "enough is enough." Isley v. State, 652 So. 2d 409, 410 (Fla. 5th DCA 1995).

¹ See Holmes v. State, 3D15-1741; Holmes v. State, 3D14-170; Holmes v. State, 3D12-1159; Holmes v. State, 3D10-1298; Holmes v. State, 3D09-1696; Holmes v. State, 3D07-2480; Holmes v. State, 3D07-910; Holmes v. State, 3D04-2511; and Holmes v. State, 3D03-504.

Although termination of the right to proceed pro se will undoubtedly impose a burden on a litigant who may be unable to afford counsel, courts must strike a balance between the pro se litigant's right to participate in the judicial process and the courts' authority to protect the judicial process from abuse.

Therefore, Casey Deway Holmes is hereby directed to show cause, within forty-five days from the date of this opinion, why he should not be prohibited from filing with this Court any further pro se appeals, pleadings, motions, or petitions relating to his convictions, judgments and sentences in circuit court case number 97-26076A.

Absent a showing of good cause, we intend to direct the Clerk of the Third District Court of Appeal to refuse to accept any such papers relating to circuit court case number 97-26076A unless they have been reviewed and signed by an attorney who is a duly licensed member of The Florida Bar in good standing.

Additionally, and absent a showing of good cause, any such further and unauthorized pro se filings by this defendant will subject him to appropriate sanctions, including the issuance of written findings forwarded to the Florida Department of Corrections for its consideration of disciplinary action, including the forfeiture of gain time. See § 944.279(1), Fla. Stat. (2019).