

IN THE COUNTY COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,
vs.

CASE NO.: 16-██████████41-AXXX-MA

T██████████ S██████████
Defendant.

MOTION TO VACATE JUDGMENT AND SENTENCE

Defendant, ██████████, by and through the undersigned attorney and pursuant to Rule 3.850, Florida Rules of Criminal Procedure, hereby moves this Honorable Court in the above-captioned case to allow Defendant to withdraw his previously entered plea of Guilty and set aside the judgment and sentence. As grounds for this Motion, Defendant states as follows:

1. On or about March 12, 2007, Defendant was arrested by the Jacksonville Sheriff's Office in connection with the charges of Possession of Less than 20 Grams of Cannabis (M1) and Possession or Use of Drug Paraphernalia (M1).
2. On March 13, 2007, Defendant's First Appearance was held at the Duval County Pretrial Detention Facility. Defendant entered a plea to both charges, was adjudged guilty, and was sentenced to two (2) days Duval County Jail, with credit for time served.
3. Defendant's First Appearance was conducted without the benefit of counsel and without any advisement concerning the nature and consequences of his plea.
4. Defendant's plea of Guilty was made unknowingly and without a full appreciation of all the rights he was waiving and the consequences of said plea.
5. Defendant submits that his uncounseled plea, and the accompanying judgment and sentence, was imposed in violation of the Constitution or laws of the United States or State of Florida.

APPLICABLE LAW

6. Before accepting a plea of guilty or nolo contendere, a trial court shall be satisfied that said plea is made intelligently and voluntarily. Rule 3.172(a), Fla. R. Crim. P.; *Boykin v. Alabama*, 395 U.S. 238

(1969); *Lopez v. State*, 536 So. 2d 226, 228 (Fla. 1988); *Koenig v. State*, 597 So. 2d 256 (Fla. 1992); *Williams v. State*, 316 So. 2d 267 (Fla. 1975). When Determining whether a plea is entered knowingly and voluntarily, the trial court should place the Defendant under oath and shall personally address the Defendant to ensure that he or he understands all of the rights that are being waived and the consequences of the plea. Rules 3.170(1) and 3.172(c), Fla. R. Crim. P.; *Koenig v. State*, 597 So. 2d 256 (Fla. 1992).

7. Prior to permitting a defendant to proceed *pro se*, the court must conduct a Faretta inquiry into whether the defendant's waiver of right to counsel was made knowingly and intelligently. *Case v. State*, 865 So. 2d 557 (Fla. 1st DCA 2004); *Wilson v. State*, 724 So. 2d 144 (Fla. 1st DCA 1998); *State v. Bowen*, 698 So. 2d 248 (Fla. 1997); *Faretta v. California*, 95 S. Ct. 2525 (1975); Fla. R. Crim. P. 3.111. Before inquiring, the court must also inform the defendant of the dangers and disadvantages of self-representation. *Brown v. State*, 917 So. 2d 271 (Fla. 1st DCA 2008).

8. The First District Court of Appeal of Florida has held that, unless the trial court conducts a personal inquiry on the record with the defendant on items such as the defendant's age, education, mental condition, physical condition, past experience with criminal proceedings, or other factors bearing upon his or her capacity to waive his or her constitutional right to counsel, the conviction must be set aside. *Id.* Such irregularities create a "void judgment" and, as such, may be collaterally attacked at any time. *Brown v. State*, 917 So. 2d 272, 273 (Fla, 5th DCA 2005).

9. In the instant case, Defendant entered a plea without the benefit of counsel. There was no *Faretta* inquiry conducted of Defendant, and Defendant does not recall any individualized advisement regarding the dangers and disadvantages of self-representation. No inquiry was made concerning defendant's age, education, mental condition, physical condition, past experience with criminal proceedings, or other factors bearing upon his capacity or decision to waive his constitutional right to counsel.

10. Defendant does not recall any individualized advisement given with respect to the consequences of his plea.

11. As a result of the foregoing, Defendant unknowingly entered a plea that created a permanent criminal record that can neither be sealed nor expunged. The permanency of the record is depriving

Defendant of opportunities for employment and career advancement, and Defendant is unable to remedy this circumstance through any other means. Defendant has only recently become aware of these consequences.

12. Had a *Faretta* inquiry regarding the right to counsel been made of Defendant, and had Defendant been fully advised of the dangers and disadvantages of self-representation, Defendant would have requested an attorney to advise of the long-term consequences of his plea.

13. Defendant further submits that he would have sought to resolve his case with a withhold of adjudication, thereby averting a permanent criminal record.

14. The facts on which Defendant's claims are predicated were unknown to Defendant at the time of his plea, and could not have been ascertained by the exercise of due diligence.

15. There was no appeal from the above-described judgment and sentence, and Defendant has never filed a previous post-conviction motion.

16. Defendant wishes to vacate his conviction and request that the Court withhold adjudication upon immediate resentencing.

WHEREFORE, Defendant, [REDACTED] requests that this Honorable Court vacate or set aside the judgment and sentence imposed in the instant case, and resentence Defendant with a withhold of adjudication.

HUSSEIN & WEBBER, P.L.

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Attorneys for Defendant

OATH

STATE OF FLORIDA
COUNTY OF DUVAL

I, [REDACTED], do hereby swear or affirm under penalty of perjury that the following facts are true, to the best of my knowledge and belief.

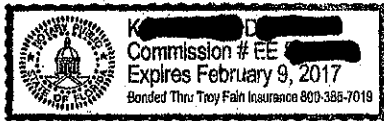
[REDACTED]
[signature]

[REDACTED]
[printed name]

[REDACTED]
[address]

Sworn to and subscribed before me on this 6th day of Aug, 2014, by [REDACTED], who [] is personally known to me, or [] produced a Florida Driver's License [check one]

[REDACTED]
Notary Public
Print Name: [REDACTED]



Commission No.:
State of FL Duval CO at Large
My Commission Expires: 02-09-2017