

IN THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY
STATE OF FLORIDA

STATE OF FLORIDA,

Plaintiff/Respondent,

vs.

JOE HARRIS SULLIVAN,

Case No.: 1989 CF 002693 A

Division: B

Defendant/Petitioner.

ORDER DISMISSING WITH PREJUDICE
DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF

THIS CAUSE is before the Court on Defendant's Motion for Postconviction Relief, filed July 24, 2007. After due consideration of the instant motion, record, and relevant legal authority, the Court finds that Defendant is not entitled to relief.

On November 16, 1989, a jury found Defendant guilty of two counts of Sexual Battery, two counts of Burglary of Dwelling, and one count of Petit Theft.¹ The Court sentenced Defendant to 15 years, each count concurrent on the counts of burglary with credit for 204 days. For the counts of Sexual Battery, Defendant was sentenced to life imprisonment on each count, concurrent, with credit for 204 days.² On the Petit Theft, Defendant was sentenced to time served.³

The rules of criminal procedure require a defendant to file a motion for postconviction relief

¹ See Attachment 1, Verdict Form.

² See Attachment 2, Judgment.

³ See Attachment 3, Certified Copy of the Docket.

within two years after the judgment and sentence under attack become final. See Rule 3.850(b). A sentence becomes final for the purposes of rule 3.850 when direct review proceedings are concluded and jurisdiction to entertain a motion for postconviction relief returns to the trial court. See generally Jones v. State, 602 So. 2d 606 (Fla. 1st DCA 1992). Rule 3.850 recognizes only three exceptions to the two-year time limitation. They are as follows: 1) the facts on which the claim is based were not known to Defendant or his counsel and could not have been ascertained through due diligence, 2) the fundamental constitutional right asserted was not established within the period provided for and has been held to apply retroactively, and 3) Defendant retained counsel to file a 3.850 motion and counsel, through neglect, failed to do so. See Fla. R. Crim. Pro. 3.850.

The rules of criminal procedure further state that “A second or successive motion may be dismissed if the judge finds that . . . the failure of the movant or the attorney to assert those grounds in a prior motion constituted an abuse of the procedure governed by these rules.” Fla. R. Crim. Pro. 3.850(f). Postconviction 3.850 motions may be “barred as successive where the ‘defendant’s current rule 3.850 motion is one that could have or should have been raised in his first rule 3.850 motion.’” Franklin v. State, 923 So. 2d 1199 (Fla. 3rd DCA 2006) quoting Scrambling v. State, 919 So. 2d 671 (Fla. 5th DCA 2006). See also Moore v. State, 820 So. 2d 199 (Fla. 2002).

In the instant case, Defendant was sentenced on December 12, 1989. The First District Court of Appeal affirmed Defendant’s judgment and sentence on June 10, 1991, giving Defendant until approximately June of 1993 to file a motion for postconviction relief pursuant to rule 3.850. Such a motion was filed in October of 1992. It was dismissed, and Defendant was allowed to refile. He did so in March of 1993. That motion was denied in January of 1996.⁴

⁴ See Attachment 3.

Consequently, at this time, the Court may address Defendant's claims only if they fall into the enumerated exceptions to the two-year time limitation *and* could not have been raised in Defendant's original 3.850 motion. Defendant's claim under Roper could not have been raised in his original 3.850 motion because his motion was filed many years before the United States' Supreme Court ruled on Roper, thereby escaping dismissal based on successiveness. However, the Court finds that the claim raised in the instant motion, based on Roper, does not fit into the limited category of claims allowed to be brought after the expiration of the two-year filing period.

In the instant motion, Defendant argues that the United States' Supreme Court's decision in Roper should disallow the sentencing of juvenile offenders to life in prison without parole. Defendant committed his crime when he was thirteen years of age, and the Court sentenced him to "die in prison." Defendant argues that in light of Roper, his sentence should be mitigated.

As mentioned above, the three exceptions to the two-year limitation on a postconviction 3.850 motion are 1) the facts on which the claim is based were not known to Defendant or his counsel and could not have been ascertained through due diligence, 2) the fundamental constitutional right asserted was not established within the period provided for and has been held to apply retroactively, and 3) Defendant retained counsel to file a 3.850 motion and counsel, through neglect, failed to do so. See Fla. R. Crim. Pro. 3.850.

Because new law cannot qualify as newly discovered evidence, see Regan v. State, 787 So. 2d 265, 267 (Fla. 1st DCA 2001), and Defendant has given the Court no reason to believe that his counsel neglected to file a 3.850, the only exception under which Defendant's claim could fall is the second: the law has established a new, fundamental, retroactive constitutional right. Defendant argues in his motion that "after the United States Supreme Court's decision in Roper it is

argues in his motion that “after the United States Supreme Court’s decision in Roper it is unconstitutional to sentence a thirteen-year-old child to die in prison.” However, Roper has established no such constitutional right. Rather, Roper established only one new constitutional right, the right for a juvenile not to be given the death penalty. See Melton v. State, 949 So. 2d 994, 1020 (Fla. 2006) (noting that “[i]n Roper, the United States Supreme Court held that ‘[t]he Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.’ Roper, 543 U.S. at 578. The Court provided a bright line rule for the imposition of the death penalty itself, but nowhere did the Supreme Court extend this rule” beyond that bright line). Because Roper did not establish the constitutional right Defendant alleges, Defendant does not have a valid constitutional claim. Hence, Defendant’s claim does not fit into any exception to the time limits in rule 3.850 and must be dismissed as procedurally barred.

Even if Defendant’s motion were properly before the Court, Defendant’s argument is meritless. Although Defendant’s motion includes many references to sociological sources, counsel has not provided the Court any legal authority for Defendant’s proposed reading of Roper. Furthermore, the Court can find no controlling legal authority supporting Defendant’s argument. Rather, this Court has found that the Supreme Court of Florida has repeatedly declined to extend the implications of Roper beyond its clear, bright-line rule. See Grossman v. State, 932 So. 2d 192 (Fla. 2006) (declining to extend Roper to a nineteen-year-old offender) and Kearse v. State, 2007 Fla. LEXIS 1534 (Fla. 2007) (declining to extend Roper to an offender who was eighteen years and three months old). See also England v. State, 940 So. 2d 389 (Fla. 2006) (declining to extend Roper to defeat death penalty that used juvenile offenses as aggravators). Additionally, the Supreme Court of Florida has made clear that a sentence of life imprisonment without parole is a perfectly

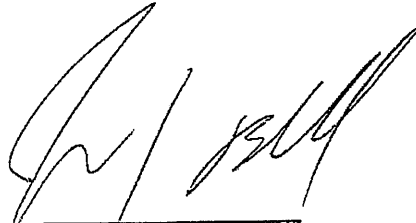
acceptable penalty under Roper. See Ramirez v. State, 909 So. 2d 862 (Fla 2005) citing section 775.082(1) & (2), Florida Statutes (Supp. 1994). Consequently, the Court can find no grounds for mitigating Defendant's sentence.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that:

1. Defendant's *pro se* Motion for Postconviction Relief is **DISMISSED WITH PREJUDICE**; and

2. Defendant has thirty (30) days from the date of this order to file a notice of appeal, should he so choose.

DONE and **ORDERED** in Chambers at Pensacola, Escambia County, Florida,
this ²¹ 31 day of October, 2007.



FRANK L. BELL
CIRCUIT JUDGE

Copies to:

- Joe Sullivan, DC # 118643, Columbia Correctional Institution, 216 S.E. Corrections Way, Lake City, FL 32025
- Sonya Rudenstine, Esq., 1221 N.E. 3rd Street, Gainesville, FL 32601
- ✓ - Equal Justice Initiative of Alabama, Attn: Bryan Stevenson, Esq., Randall Susskind, Esq., and Rebecca Kiley, Esq., 122 Commerce Street, Montgomery, AL 36104
- ASA, Division B, Office of the State Attorney

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2008

JOE HARRIS SULLIVAN, Petitioner,

v.

STATE OF FLORIDA, Respondent.

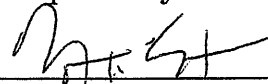
CERTIFICATE OF SERVICE

I, Bryan A. Stevenson, a member of the Bar of this Court, declare that on December 4, 2008, as required by Supreme Court Rule 29, I served the enclosed Motion for Leave to Proceed *In Forma Pauperis* and Petition for Writ of Certiorari on counsel for the State of Florida in the proceedings below and on the Florida Attorney General, by depositing envelopes containing the above documents in the United States mail with first-class postage prepaid and properly addressed to:

Joshua Heller
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050

Bill McCollum
Attorney General, State of Florida
PL-01, The Capitol
Tallahassee, FL 32399-1050

Respectfully submitted,



BRYAN A. STEVENSON
Equal Justice Initiative
122 Commerce Street
Montgomery, AL 36104
(334) 269-1803

December 4, 2008

Counsel of Record for Petitioner

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2008

JOE HARRIS SULLIVAN, Petitioner,

v.

STATE OF FLORIDA, Respondent.

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Petitioner Joe Sullivan, pursuant to Rule 39 of the Supreme Court Rules, respectfully requests leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*. The Florida trial court and the Florida appellate courts declared Petitioner indigent and permitted him to proceed *in forma pauperis*. Mr. Sullivan further states in the attached affidavit that he is indigent and unable to pay court costs and fees.

Respectfully submitted,

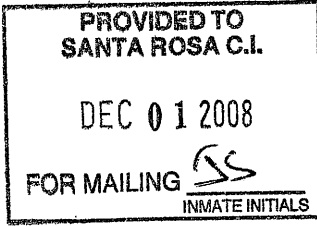


BRYAN A. STEVENSON
Equal Justice Initiative
122 Commerce Street
Montgomery, AL 36104
(334) 269-1803

Counsel of Record for Petitioner

December 4, 2008

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2008

JOE HARRIS SULLIVAN, Petitioner,

v.

STATE OF FLORIDA, Respondent.

**DECLARATION IN SUPPORT OF MOTION
TO PROCEED IN FORMA PAUPERIS**

I, Joe Harris Sullivan, declare that I am the petitioner in the above entitled case; that in support of the motion to proceed without being required to prepay fees, costs, or give security therefore, I state that because of my own poverty I am unable to pay the costs of said proceedings or to give security therefore; and that I believe I am entitled to redress.

1. I am not presently employed and have not been employed since my incarceration in 1989.

2. In the past twelve months, I have received no money from any

employment; no rent payments; no interest or dividends; no pensions, annuities or life insurance payments; no alimony or child support; no retirement funds; no disability payments; no unemployment payments; and no public assistance.

3. The sum total of any cash or savings in my prison account is reflected in the attached Certificate of Account. I have no other cash in any financial institution.

4. I own no assets, no money is owed to me, no one is dependent on me for support, and I do not expect any major changes to my monthly income or assets in the next twelve months.

5. I have not paid nor will I be paying an attorney or any other administrative assistant any money for services in connection with this case.

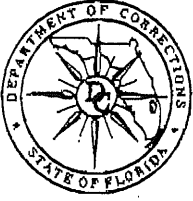
6. I am not married.

My legal residence is at Santa Rosa Correctional Institution, 5850 East Milton Road, Milton, Florida 32583-7914. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12-1-08 (date).



Joe Harris Sullivan



FLORIDA
DEPARTMENT of
CORRECTIONS

Governor
CHARLIE CRIST

Secretary
WALTER A. McNEIL

An Equal Opportunity Employer

2601 Blair Stone Road • Tallahassee, FL 32399-2500

<http://www.dc.state.fl.us>

FACSIMILE TRANSMITTAL SHEET

TO: <u>Alicia G.</u>	FROM: <u>Lakay Jackson</u>
COMPANY:	DATE: <u>Nov. 24th</u>
FAX NUMBER: <u>(334) 269-1806</u>	FAX NUMBER: <u>(850) 487-0949</u>
PHONE NUMBER: <u>(773) 278-0494</u>	PHONE NUMBER: <u>(850) 413-7422</u>
RE:	TOTAL NO. OF PAGES, INCLUDING COVER: <u>4</u>

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NOTES/COMMENTS:

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CENTERVILLE STATION P.O. BOX 12100
TALLAHASSEE, FL 32317-2100
850-413-7422 1-866-209-7250 850-487-0949

IBSR140 (74)
 ACCT NAME: SULLIVAN, JOE H.
 BRD: C3122S
 PO BOX: 9

FLORIDA DEPARTMENT OF CORRECTIONS
 TRUST FUND ACCOUNT STATEMENT
 FOR: 11/01/2007 - 11/15/2008
 ACCT#: 118643
 TYPE: INMATE TRUST

POSTED DATE	NBR	TYPE	REFERENCE NUMBER	FAC	REMITTER/PAYEE	AMOUNT	BALANCE
11/28/07	242	MEDICAL CO-PAY	112707115B#	000		\$0.00	\$0.03
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		LIEN PAYMENT	20080102	000			
01/17/08	239	LEGAL POSTAGE W	01/11/2008	20080102		\$0.03	\$0.00
01/29/08	264	LIEN CREATED	- 01/17/2008	000			
01/29/08	266	PROCESSING FEE	012908506412	000		\$0.50	\$0.50
01/29/08	266	LIEN PAYMENT	012908506412	000		\$4.00	\$4.50
01/29/08	266	MEDICAL CO-PAY	- 03/13/2006	0312061320EM		\$4.00	\$8.50
01/29/08	266	LIEN PAYMENT	012908506412	000			
01/29/08	266	MEDICAL CO-PAY	- 07/05/2006	0701061930EM		\$4.00	\$12.50
01/29/08	266	LIEN PAYMENT	012908506412	000			
01/29/08	266	MEDICAL CO-PAY	- 07/07/2006	0706060720SC		\$0.50	\$13.00
01/29/08	266	LIEN PAYMENT	012908506412	000			
01/29/08	266	MEDICAL CO-PAY	- 10/04/2006	1004060825SC		\$0.38	\$13.38
01/29/08	266	LIEN PAYMENT	012908506412	000			
01/29/08	266	LEGAL POSTAGE I	- 01/11/2008	20080102			
02/05/08	506	MONEY ORDER	088248528098	999	CAMPBELL, HETTIE	\$25.00	\$11.62
02/11/08	151	CANTREN SALBS	21320080204	000		\$6.79	\$4.83
02/12/08	003	PROCESSING FEE	WEEKLY DRAW	000		\$0.07	\$4.76
03/20/08	263	CANTREN SALES	21320080211	000		\$4.74	\$0.02
04/17/08	266	MEDICAL CO-PAY	0313080900CS	000		\$0.00	\$0.02
04/17/08	266	LIEN CREATED	- 03/20/2008	0313080900CS			
04/17/08	266	PROCESSING FEE	041708503550	000		\$0.50	\$0.48
04/17/08	268	LIEN PAYMENT	041708503550	000		\$3.50	\$3.98
04/17/08	268	MEDICAL CO-PAY	- 10/04/2006	1004060825SC		\$4.00	\$7.98
04/17/08	268	LIEN PAYMENT	041708503550	000			
04/17/08	268	MEDICAL CO-PAY	- 10/24/2006	1023060730SC		\$4.00	\$11.98
04/17/08	268	LIEN PAYMENT	041708503550	000			
04/17/08	268	MEDICAL CO-PAY	- 10/25/2006	1025060830SC		\$4.00	\$15.98
04/17/08	268	LIEN PAYMENT	041708503550	000			
04/17/08	268	MEDICAL CO-PAY	- 11/02/2006	1030060715SC		\$4.00	\$19.98
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04/17/08	268	MEDICAL CO-PAY	- 11/09/2006	1108061135DS		\$4.00	\$23.98
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04/17/08	268	LIEN PAYMENT	041708503550	000			
04/17/08	268	MEDICAL CO-PAY	- 02/08/2007	0207071435DS		\$4.00	\$31.98
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04/17/08	268	MEDICAL CO-PAY	- 03/06/2007	0305071005DS		\$4.00	\$35.98
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04/17/08	268	MEDICAL CO-PAY	- 04/19/2007	0419071030SC		\$4.00	\$39.98
04/17/08	268	LIEN PAYMENT	041708503550	000			
04/17/08	268	MEDICAL CO-PAY	- 06/15/2007	0614071340DS		\$4.00	\$39.98

BEGINNING BALANCE 11/01/07

\$0.03

IBSR140 (74)
 ACCT NAME: SULLIVAN, JOE H.
 BRD: C31225
 PO BOX: 9

FLORIDA DEPARTMENT OF CORRECTIONS
 TRUST FUND ACCOUNT STATEMENT
 FOR: 11/01/2007 - 11/15/2008
 ACCT#: 118643
 TYPE: INMATE TRUST

11/24/08
 10:32:57
 PAGE 2

POSTED DATE	MEMO	TYPE	REFERENCE NUMBER	PAC	REMITTER/PAYER	AMOUNT	BALANCE
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04/17/08	268	LIEN PAYMENT	041708503550	000		\$4.00	\$50.48-
04/17/08	268	MEDICAL CO-PAY	10/02/2007	09280712105C		\$4.00	\$54.48-
04/17/08	268	LIEN PAYMENT	041708503550	000		\$2.50	\$56.98-
04/17/08	503	MONEY ORDER	10/03/2007	10020711405C	CAMPBELL, HETTIE	\$100.00	\$156.98-
04/29/08	003	CANTREB SALES	08884658172	999		\$17.49	\$174.49-
05/05/08	148	PROCCSSING FEE	21320080428	000		\$0.17	\$174.66-
05/29/08	003	CANTREB SALES	21320080528	000		\$28.26	\$202.92-
06/02/08	147	PROCCSSING FEE	21320080610	000		\$0.28	\$203.20-
06/11/08	003	CANTREB SALES	21320080610	000		\$2.12	\$205.32-
06/16/08	149	PROCCSSING FEE	21320080624	000		\$0.02	\$205.34-
06/25/08	003	CANTREB SALES	21320080624	000		\$1.18	\$206.52-
06/30/08	147	PROCCSSING FEE	0806080830CS	000		\$2.12	\$208.64-
08/08/08	288	MEDICAL CO-PAY	0806080830CS	000		\$0.01	\$208.65-
09/08/08	286	LIEN CREATED	08/08/2008	0806080830CS		\$0.00	\$208.65-
09/08/08	286	MEDICAL CO-PAY	0829081000CS	000		\$0.00	\$208.65-
09/22/08	364	JPAY DEPOSIT	09/08/2008	0829081000CS		\$0.00	\$208.65-
09/22/08	365	LIEN PAYMENT	3692271	000	DADDARIO, ALICIA A.	\$25.00	\$233.65-
09/22/08	365	LIEN PAYMENT	092208364147	000		\$1.50	\$235.15-
09/22/08	365	MEDICAL CO-PAY	10/03/2007	10020711405C		\$4.00	\$239.15-
09/22/08	365	LIEN PAYMENT	092208364147	000		\$4.00	\$243.15-
09/22/08	365	MEDICAL CO-PAY	10/22/2007	10220711205C		\$4.00	\$247.15-
09/22/08	365	LIEN PAYMENT	092208364147	000		\$4.00	\$251.15-
09/22/08	365	MEDICAL CO-PAY	11/28/2007	11270711155M		\$3.00	\$254.15-
09/24/08	035	CANTREB SALES	01/17/2008	0115080945CS		\$5.68	\$259.83-
09/25/08	241	MEDICAL CO-PAY	11920080923	000		\$0.00	\$259.83-
09/29/08	145	PROCCSSING FEE	0924080835MH	000		\$0.00	\$259.83-
09/30/08	035	CANTREB SALES	09/25/2008	0924080835MH		\$0.07	\$259.90-
10/01/08	237	MEDICAL CO-PAY	WEEKLY DRAW	000		\$4.93	\$264.83-
10/02/08	392	JPAY DEPOSIT	1001080815DS	000		\$0.00	\$264.83-
10/02/08	393	LIEN CREATED	10/01/2008	1001080815DS		\$25.00	\$289.83-
10/02/08	393	LIEN PAYMENT	3752108	000	MORRISON, MARIA W.	\$1.00	\$290.83-
10/02/08	393	MEDICAL CO-PAY	100208392718	000		\$4.00	\$294.83-
10/02/08	393	LIEN PAYMENT	01/17/2008	0115080945CS		\$4.00	\$298.83-
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10/02/08	393	LIEN PAYMENT	03/20/2008	0313080900CS		\$4.00	\$306.83-
10/02/08	393	MEDICAL CO-PAY	100208392718	000		\$3.50	\$310.33-
10/02/08	393	LIEN PAYMENT	08/08/2008	0806080830CS		\$0.05	\$310.38-
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10/06/08	146	PROCCSSING FEE	WEEKLY DRAW	000		\$0.05	\$310.53-

IBSR140 (74)

ACCT NAME: SULLIVAN, JOE H.
BBD: C3122S
PO BOX: 9

ACCT#: 118643
TYPE: INMATE TRUST

FLORIDA DEPARTMENT OF CORRECTIONS
TRUST FUND ACCOUNT STATEMENT
FOR: 11/01/2007 - 11/15/2008

11/24/08
10:32:57
PAGE 3

POSTED DATE	NBR	TYPE	REFERENCE NUMBER	FAC	REMITTER/PAYER	+/-	AMOUNT	BALANCE
10/08/08	215	MEDICAL CO-PAY	1007081700EM	000		-	\$0.00	\$13.32
10/27/08	369	LIEN CREATED JPAY DEPOSIT	10/08/2008 3886344	000	MORRISON, MARIA W.	+	\$25.00	\$38.32
10/27/08	370	LIEN PAYMENT	102708369195	000		-	\$0.50	\$37.82
10/27/08	370	MEDICAL CO-PAY	09/08/2008 102708369195	000		-	\$4.00	\$33.82
10/27/08	370	LIEN PAYMENT	09/25/2008 102708369195	000		-	\$4.00	\$29.82
10/27/08	370	MEDICAL CO-PAY	10/31/2008 1001080815DS	000		-	\$4.00	\$25.82
10/29/08	035	CANTHEN SALES	10/08/2008 11920081028	000		-	\$7.33	\$18.49
11/03/08	147	PROCESSING FEE	WEEKLY DRAW	000		-	\$0.07	\$18.42
11/06/08	035	CANTHEN SALES	119200811205	000		-	\$18.36	\$0.06

ENDING BALANCE 11/15/08 \$0.06