NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

ANTHONY W. BROOM

Appellant,

Appeal No. CRC 11-00066APANO
UCN 522011AP000066XXXXCR

STATE OF FLORIDA

Appellee.
_____/

Opinion filed December 19, 2011.

Appeal from an Order Denying
Motion for Post Conviction Relief
entered by the Pinellas County Court
County Judge Donald E. Horrox

Anthony W. Broom, Pro Se

Bernie McCabe, Esquire
State Attorney
Attorney for Appellee

ORDER AND OPINION

PETERS, Judge.

THIS MATTER is before the Court on Appellant, Anthony W. Broom's appeal from an Order Denying a Motion for Post Conviction Relief. After review of the record and the motion, this Court affirms the trial court's denial of the motion.

Factual Background and Trial Court Proceedings

On January 1, 1996, Appellant, Anthony W. Broom, was issued a traffic citation for Driving Under the Influence of Alcoholic Beverages, Chemical or Controlled Substances in violation of Florida Statute § 316.193. On December 9, 1996, in County Court, Mr. Broom entered a written plea agreement in which he pled nolo contendere to the charge and sentence was imposed. The record does not establish that Mr. Broom reserved any issue for appeal. No appeal was filed.

On April 1, 1998 Mr. Broom filed a Motion for Post-Conviction relief. On October 21, 1998 an evidentiary hearing was conducted in County Court on the motion. On November 2, 1998 the County Court entered its order denying the motion. On September 7, 1999, Mr. Broom filed a Petition for Belated Appeal with the Second District Court of Appeal. On November 1, 2000 that appeal was dismissed. On May 24, 2001 Mr. Broom filed a motion pursuant to Rule 3.800, Florida Rules of Criminal Procedure. On April 29, 2002 that motion was denied.

On December 2, 2005 Mr. Broom filed a Petition for Writ of Habeas Corpus with the Second District Court of Appeal. On December 19, 2005 that Petition was transferred to the Circuit Court of Pinellas County. On January 6, 2006 the Petition for Writ of Habeas Corpus was denied.

On June 28, 2006 Mr. Broom filed another Motion for Post-Conviction relief. On January 18, 2007 that Motion for Post-Conviction relief was denied. On January 31, 2007 Mr. Broom filed a Motion for Rehearing. On March 5, 2007 Mr. Broom filed an appeal with the Circuit Court of Pinellas County. On August 7, 2007 the Circuit Court of

Pinellas County affirmed the trial court. On August 22, 2007, Mr. Broom filed a Motion for Rehearing. On September 10, 2007 the Motion for Rehearing was denied.

On July 20, 2009 Mr. Broom filed a third Motion for Post-Conviction relief. On February 8, 2010 the county court dismissed the Motion. On February 16, 2010 Mr. Broom filed a Motion for Rehearing. On October 11, 2010 the county court granted the motion for rehearing and dismissed the Motion for Post-Conviction relief. This appeal was timely filed.

The Issue

The obvious issue presented by the present case is Mr. Broom's successive and incessant filing of post-conviction *pro se* pleadings in disregard of applicable legal requirements and limitations. In the present appeal Mr. Broom argues his most recent Motion for Post-Conviction relief should have been granted by the trial court because "DUI of prescription medicine is a non-existent offense" and that a conviction of a non-existent crime is a "manifest injustice." Because of this "manifest injustice" the two-year time limitation for filing a Motion for Post-Conviction relief should not apply.

Florida Statute § 316.193

The difficulty with Mr. Broom's argument is that Florida Statute § 316.193 (1995) does indeed establish an offense that can be committed by driving a vehicle while under the influence of "any substance controlled under chapter 893" to the extent that normal faculties are impaired. Mr. Broom's assertion that "DUI of prescription medicine is a non-existent offense" is mistaken. Chapter 893 of the Florida Statutes as it existed at the time of the Mr. Broom's offense listed controlled substances in five schedules; I, II, III, IV, and V. Those schedules include many prescription medications, including

Hydrocodone, which Mr. Broom asserts, in his motion he was lawfully prescribed at the time of his offense in 1996.

The Lawful Conclusion of Litigation

This case has been fully litigated; it has been lawfully concluded. Mr. Broom entered a plea agreement in which he pled nolo contendere to the offense charged in the traffic citation; the offense of Driving Under the Influence of Alcoholic Beverages, Chemical or Controlled Substances in violation of Florida Statute § 316.193. In making this plea agreement he avoided a trial and the presentation of evidence. He reserved no issues for appeal, filed no timely motion to withdraw the plea and filed no appeal. Thereafter, Mr. Broom's first Motion for Post-Conviction relief was timely filed and after an evidentiary hearing was denied. None of Mr. Broom's other post-conviction pleadings were timely filed. Mr. Broom's present motion and argument are without merit.

The Nolo Contendere Plea

"[A] plea of nolo contendere bars the appeal of any issue other than the facial sufficiency of the charging instrument, except where a criminal defendant reserves the right to appeal a question of law. ... Questions of fact cannot be reserved." *Martinez v. State,* 368 So.2d 338, 340 (Fla. 1978) (Internal citations omitted). "[A] defendant who is charged in a Florida Uniform Traffic Citation for the violation of Section 316.193, Florida Statutes, is adequately made aware of the infraction for which he or she will be tried." *Gardner v. State*, 468 So.2d 265, 266 (Fla. 2nd DCA 1985).

Abusive Pro Se Litigants

"[I]t is clearly within the inherent authority of the court to sanction an abusive litigant when necessary to protect the rights of others to have the court conduct timely

review of their legitimate filings and to otherwise conserve the judiciary's limited resources. *See Martin v. Dist. of Columbia Court of Appeals,* 506 U.S. 1, 113 S.Ct. 397, 121 L.Ed.2d 305 (1992); *Attwood v. Singletary,* 661 So.2d 1216 (Fla.1995)." *Tate v. State,* 32 So.3d 657, 657-658 (Fla. 1st DCA 2010).

> It is well-settled that courts have the inherent authority and duty to limit abuses of the judicial process by pro se litigants. *See In re McDonald,* 489 U.S. 180, 184, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989) (preventing petitioner, who had filed 99 extraordinary writs, from proceeding *in forma pauperis* when seeking future such writs, because "part of the Court's responsibility is to see that [limited] resources are allocated in a way that promotes the interests of justice"); *Peterson v. State,* 817 So.2d 838, 840 (Fla.2002) (limiting petitioner's ability to file in pursuance of court's "responsibility to ensure every citizen's right of access to the courts"); *Jackson v. Fla. Dep't of Corrections,* 790 So.2d 398, 400 (Fla.2001) (holding that supreme court "has the inherent authority to limit [the] right [to represent oneself] when pro se litigation becomes so disruptive that it threatens to deny other litigants their rights").

Golden v. Buss, 60 So.3d 461, 462 (Fla. 1st DCA 2011).

Conclusion

This court concludes that Mr. Broom has filed successive post-conviction *pro se* pleadings in disregard of applicable legal requirements and limitations. His present Motion for Post-Conviction relief is untimely and without merit. Mr. Broom's assertion that "DUI of prescription medicine is a non-existent offense" is specious. There is no manifest injustice; the time allowed for filing a Motion for Post-Conviction expired in 1999. Mr. Broom's successive and incessant filing of untimely post-conviction *pro se* pleadings is abusive.

For the reasons stated herein, this court concludes that the decision of the trial court to deny Appellant's most recent Motion for Post-Conviction Relief was proper and should be affirmed.

IT IS THEREFORE ORDERED that the order of the trial court denying Appellant's Motion for Post Conviction Relief conviction is affirmed.

IT IS FURTHER ORDERED that Mr. Broom shall show cause in writing, if any such cause exists, within thirty (30) days of the date of this opinion as to why he should not be subject to the imposition of sanctions limiting his right to appear pro se in this court. Those sanctions may include directing the clerk of this court to reject for filing any future petitions, motions, pleadings, or other filings submitted by Anthony W. Broom, unless signed by a member in good standing of The Florida Bar. In any other currently active case in this court in which Mr. Broom is representing himself, he shall secure the services of counsel, who shall file a notice of appearance within 30 days of the date of the imposition of sanctions. Any active case in which such a notice is not timely filed will be dismissed by order of this court.

ORDERED at Clearwater, Florida this 19th day of December, 2011.

Original order entered on December 19, 2011 by Circuit Judges Michael F. Andrews, Raymond O. Gross, and R. Timothy Peters.

cc: Honorable Donald E. Horrox
Anthony W. Broom, Pro Se
Office of the State Attorney