IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA

STATE OF FLORIDA

-vs-

BRUCE HAROLD GROVE, JR.,

Defendant.
_____/

CASE NO.: 03-546-CFFA

DIVISION 50: Judge J. David Walsh

ORDER DENYING AMENDED MOTION FOR POSTCONVICTION RELIEF

THIS MATTER is before the Court on the Defendant's Amended Motion for Postconviction Relief filed pursuant to Florida Rule of Criminal Procedure 3.850. After the review of the record and being otherwise fully advised in the premises, this Court finds as follows:

The Defendant was charged with Count I first degree (felony) murder, Count II aggravated manslaughter of a law enforcement officer, Count III DUI manslaughter, Count IV burglary, Count V grand theft auto, Count VI aggravated fleeing and alluding a law enforcement officer, Count VII DWLS – habitual traffic offense, and VIII misdemeanor battery. The Defendant was tried by a jury and found guilty of Count I, lesser included offense of second degree murder, Count II, Count III, Count V, Count VI, Count VII and Count VIII of the indictment.

Prior to sentencing the trial court heard extensive argument from counsel concerning the Defendant's motion for a new trial, for judgment of acquittal, and to reconvene the trial jury. The trial court denied the motions to reconvene the jury and for a new trial, and granted the motion for judgment of acquittal on the verdict of the lesser

included offense in Count I of the indictment (second degree murder); ruled that Count III of the indictment was subsumed by Count II (manslaughter of a law enforcement officer), and sentenced the Defendant accordingly. A direct appeal was filed which resulted in a *per curiam* affirmance of the convictions and sentences. Mandate issued on June 16, 2006. *Grove v. State*, 930 So.2d 630 (Fla. 5th DCA 2011). This is the Defendant's fourth Motion for Postconviction Relief. Each prior motion has been denied, and affirmed upon appeal to the Fifth District Court of Appeal. That includes this Court's July 20, 2010 order finding Defendant Grove had abused the system by filing successive and frivolous motions, and he was barred from filing further pro se motions. *Grove v. State*, 966 So. 2d 403 (Fla. 2007); *Grove v. State*, 23 3d 1194 (Fla. 5th DCA 2009), and, *Grove v. State*, 75 So.3d 293 (Fla. 5th DCA 2011).

Through counsel, while acknowledging his motion is both successive and untimely, the Defendant now raises a new ground for the first time, asserting that his constitutional rights to a fair trial and sentencing were denied due to the large number of law enforcement officers present at his trial and sentencing. The Defendant submits that despite the procedural bars he is entitled to relief due to a fundamental error which has deprived him of a fair trial and sentencing, resulting in manifest injustice. His claims are framed in the alternative: his rights were denied due to a large number of law enforcement personnel in the courtroom and/or defense counsel was ineffective for failing to object on this basis.

Generally, Rule 3.850 motions must be filed within two years of the date the judgment and sentence become final. Exceptions to the two-year limitation period arise when (1) the facts on which the claim is based were unknown to the defendant and counsel and

could not have been ascertained through the exercise of due diligence, (2) the fundamental constitutional right asserted was not established within the period and has been held to apply retroactively, or (3) the defendant retained counsel to file a motion but counsel failed to do so. Rule 3.850(b); *Steele v. Kehoe*, 724 So. 2d 1192 (Fla. 5th DCA 1998), *approved*, 747 So. 2d 931 (Fla. 1999). In *Johnson v. State*, 44 So.3d 198, 200 (Fla. 4th DCA 2010) the Court held "[a] claim need not be repetitive to be frivolous or to be an abuse of the post-conviction process". Nor are Defendants permitted to submit additional grounds for relief on a piecemeal basis, particularly with respect to ineffective assistance of counsel. *Scott v. State*, 656 So. 2d 204 (Fla. 5th DCA 1995).

This Court agrees with rationale of the Second District Court of Appeal in *Hughes v. State,* 22 So.3d 132 (Fla. 2d DCA 2009), *review dismissed*, 29 So.3d 291 (Fla. 2010), and finds this untimely and successive motion fails to satisfy any exception to the time limitations of Rule 3.850 and is not properly raised *sub judice*. The *Hughes* Court stated it was "...writ[ing] to dispel the common misconception among prisoners that 'fundamental error' can be reviewed in a postconviction proceeding at any time, including beyond the two-year period normally permitted for motions filed under rule 3.850." At 133. While certainly there are some exceptions for fundamental error or manifest injustice, "*[s]ee, e.g., Moore v. State,* 924 So.2d 840, 841 (Fla. 4th DCA 2006) (conviction for a non-existent crime); *Pass v. State,* 922 So.2d 279, 281 (Fla. 2d DCA 2006) (application of facially unconstitutional statute); *Smith v. State,* 741 So.2d 576, 577 (Fla. 1st DCA 1999) (violation of the prohibition against double jeopardy)", the issue raised by the Defendant in this motion does not rise to that level. *Hughes* at 136. Presence of courtroom observers wearing uniforms, insignia, buttons, or other indicia of

support for the accused, the prosecution, or the victim of the crime does not automatically constitute denial of the accused's right to a fair trial. *Shootes v. State*, 20 So.3d 434, 438 (Fla. 1st DCA 2009).

Additionally, claims that could have been raised on direct appeal are procedurally barred in postconviction actions. *Willacy v. State,* 967 So.2d 131 (Fla. 2007). If a claim is properly characterized as a matter of fundamental error, it could have and should have been raised on direct appeal. *Hughes*, 22 So.3d at 135 citing *Franqui v. State,* 965 So.2d 22, 35 (Fla.2007); *Brudnock v. State,* 16 So.3d 839 (Fla. 5th DCA 2009).

The Defendant has filed a direct appeal and at least three postconviction motions following his conviction in 2004. At some point "enough is enough". *Isley v. State*, 652 So.2d 409, 410 (Fla. 5th DCA 1995). Because of the Defendant's multiple opportunities to address this issue the Court declines to consider it now, more than eight years after his 2004 conviction and sentence.

Therefore, it is ORDERED and ADJUDGED the Defendant's Motion for Post-Conviction Relief is Denied.

The Defendant has 30 days within which to appeal this ruling.

The Clerk of Court must provide a copy of this order to the Defendant, along with a certificate of service.

DONE and ORDERED in Chambers, Kim C. Hammond Justice Center, Bunnell, Florida this 3 day of June, 2013.

J. DAVID [illegible]
CIRCUIT COURT JUDGE

Copies to:
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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Bruce H. Grove, Jr. by ( ) delivery (✓) mail ( ) facsimile on 7/8/13.

DEPUTY CLERK

CIRCUIT COURT SUUM CUIQUE FLAGLER COUNTY, FLORIDA