LAW OFFICES OF

PUBLIC DEFENDER

SEVENTH JUDICIAL CIRCUIT

FLAGLER, PUTNAM, ST. JOHNS & VOLUSIA COUNTIES

JAMES S. PURDY
PUBLIC DEFENDER

December 7, 2020

Skyler Francis, #170168
Moore Haven Correctional Facility
P.O. Box 719001
Moore Haven, FL 33471

Re: DCA No. 5D18-3587

Dear Mr. Francis:

I have enclosed the decision the Fifth DCA issued in your case. Unfortunately, as you can see, the court disagreed with our argument and affirmed your conviction.

If you believe that you received ineffective assistance of trial counsel, your recourse would be to file a motion for post-conviction relief pursuant to Rule 3.850, Florida Rules of Criminal Procedure, <u>in the trial court</u>. If you do file such a motion, *under the criminal procedure rules* it has to be filed during a two-year "window" that "opens" at the time your appeal becomes final. However, it is important to note that there is some uncertainty in the law right now over this two-year deadline. A new Florida constitutional provision known as "Marsy's Law" went into effect in early 2019; it says that "all state-level appeals and collateral attacks on any judgment *must be complete* within two years from the date of appeal in non-capital cases." The term "collateral attack," as used in Marsy's Law, includes any post-appeal litigation, including any motion for post-conviction relief filed under Rule 3.850. This new constitutional provision appears to directly conflict with Rule 3.850, which, as noted, allows a two-year period *within which to file* a motion for post-conviction relief. If you intend to file a motion for post-conviction relief under Rule 3.850, I strongly suggest you do so as soon as possible, in order to avoid the possibility of having your motion dismissed as untimely filed under Marsy's Law.

Your appeal will become final when the District Court of Appeal issues its "mandate," which is simply a document that marks the fact that your appellate case has formally been closed. I will send you the mandate when we receive it. If the court follows its usual pattern, mandate should issue in about three weeks.

Once this office sends you the mandate, our representation of you is at an end. However, if you do file a 3.850 motion, or one of the petitions outlined below, you can ask for counsel to be appointed for you in that motion or petition. The courts are not obligated to appoint counsel once

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the direct appeal from a conviction is at an end, but often they will choose to do so if asked.

If you feel that you have received ineffective assistance of appellate counsel, your recourse would be to file a petition making that argument in the Fifth DCA pursuant to Rule 9.141(d), Florida Rules of Appellate Procedure. Any such petition would have to be filed within two years of the date your appeal becomes final. Again, that time period should be approached with caution due to Marsy's Law. A petition for belated appeal and a post-conviction motion can both be filed and await ruling at the same time.

If you believe that your rights guaranteed by the federal constitution have been violated, you can file a petition for habeas corpus in the federal district court where you are incarcerated.

Federal petitions will not be considered until you "exhaust" all of the remedies available to you in the Florida courts, which means as a practical matter that you have to file any 3.850 motion you are going to file before you file a federal habeas petition. However, federal habeas petitions have to be filed within ONE year of your appeal becoming final. The way the time limits work together is this: the one-year time limit for filing federal habeas corpus petitions is "tolled," or put on hold, during the time it takes to get a timely-filed 3.850 motion ruled on. In other words, the total of one year that you have to file a federal habeas petition starts to run immediately after mandate issues, then stops when a 3.850 motion is filed, then starts up again when the motion is ruled on (and once any appeal from denial of the 3.850 motion is completed). It is therefore to your benefit for this purpose, also, to file any 3.850 motion you intend to file quickly, so that there is some time remaining in the tolled one-year period once the motion is ruled on.

I am sorry I was not able to be of any real assistance to you in your appeal.

Sincerely,

Nancy Ryan
Assistant Public Defender

NR/lt

Encl.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

SKYLER FRANCIS,

Appellant,

v. Case No. 5D18-3587

STATE OF FLORIDA,

Appellee.

________________________________/

Opinion filed December 4, 2020

Appeal from the Circuit Court
for Brevard County,
Robin C. Lemonidis, Judge.

James S. Purdy, Public Defender, and
Nancy Ryan, Assistant Public Defender,
Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Kristen L. Davenport,
Assistant Attorney General, Daytona
Beach, for Appellee.

EDWARDS, J.

Appellant, Skyler Francis, beat two uniformed Brevard County deputy sheriffs with a metal asp baton when they pulled down a section of fence and made a daytime,

warrantless entry into his backyard.[1] Based upon a citizen's report and matters they perceived on-scene, the deputies believed that Appellant was beating or otherwise harming his girlfriend. Before entering the backyard, deputies had attempted for more than ten minutes to engage Appellant and his girlfriend to confirm her wellbeing. After receiving no meaningful responses, the deputies finally entered the backyard. For the beating of Deputy Hriciso, Appellant was convicted of attempted manslaughter. For the beating of Deputy Skinner, he was convicted of aggravated battery on a law enforcement officer. Appellant has raised a number of issues for our consideration. After careful consideration of all matters raised on appeal, we affirm. We write to address certain points briefed by Appellant.[2]

First, the specific jury instruction requested by Appellant, regarding whether exigent circumstances existed so as to permit the warrantless entry made by deputies, did not provide an accurate, clear statement of applicable law which would have assisted the jury in its deliberations.[3] *See Crew v. State*, 146 So. 3d 101, 107 (Fla. 5th DCA 2014). Therefore, the trial court did not err or abuse its discretion in refusing to give that instruction. *See Rodriguez v. State*, 174 So. 3d 502, 505 (Fla. 4th DCA 2015).

Second, we find no palpable abuse of discretion here in the trial court's denial of Appellant's sequential motions to continue the trial. *See Boffo v. State*, 272 So. 3d 876,

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[1] An asp baton is essentially a telescoping metallic night stick, a weapon often carried by law enforcement. Appellant testified he bought his asp baton at a flea market.

[2] As to any other issue on appeal, we affirm without need of discussion.

[3] We recognize that the trial court relied upon a different rationale for not giving the requested instruction. However, it reached the right result, even if for the wrong reason, and that result will be upheld under the tipsy coachman doctrine. *Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999).

878 (Fla. 5th DCA 2019). Third, regarding Appellant's claims that the trial court should have continued the sentencing hearing and ordered a mental health examination, those possible issues were not preserved for our review, because no such requests were presented to the trial court. *See Charles v. State*, 258 So. 3d 549, 552 (Fla. 3d DCA 2018).

Fourth, Appellant did not preserve the issue of the trial court's inappropriate comments or demeanor for appellate review.[4] We note that a trial court's inappropriate demeanor and conduct do not necessarily amount to fundamental error. *See Mathew v. State*, 837 So. 2d 1167, 1169–70 (Fla. 4th DCA 2003). Finally, Appellant's several claims of ineffective assistance of counsel during trial and sentencing do not rise to the level appropriate for consideration on direct appeal. *See Blanco v. Wainwright*, 507 So. 2d 1377, 1384 (Fla. 1987). Appellant may pursue claims of ineffective assistance of counsel via a Florida Rule of Criminal Procedure 3.850 motion if he can do so in good faith.[5]

AFFIRMED.

COHEN and LAMBERT, JJ., concur.

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[4] In subsequent judicial disciplinary proceedings, the trial judge conceded, and the Florida Supreme Court agreed, that the judge's conduct reflected a perceived dislike for Appellant's trial counsel that "was inappropriate, intemperate, and violated the Canons" of judicial conduct. *In re Lemonidis*, 283 So. 3d 799, 801–02 (Fla. 2019).

[5] We express no opinions on the merits of any such claims.