

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO: 05-2015-CF-039871-AXXX-XX

STATE OF FLORIDA,
Plaintiff,

DANA LOYD,
Defendant.

FILED IN OFFICE
VIERA BRANCH

2018 OCT 12 P 3:14

SCOTT ELLIS

MOTION TO MODIFY CONDITIONS OF PROBATION

(For the sole purpose to allow Defendant to file *pro se* post conviction relief motions)

Defendant, DANA LOYD, *pro se*, files this Motion to Modify Certain Conditions of Probation and as grounds would state as follows:

1. The Defendant is currently represented by Michael Bross, Esq. in the above referenced case for her violation of probation only.
2. Mr. Bross does not represent the Defendant on any other matters, including post conviction relief motions. In fact, Mr. Bross has advised the Court he only represents the Defendant on her VOP and not for any post conviction matters.
3. The Defendant is financially unable to retain an attorney to represent her on a post conviction motion.
4. On July 24, 2018 the Court issued an Order denying the Defendant's request for the appointment of counsel for post conviction relief.
5. On August 3, 2018, the Defendant filed a motion titled "Motion for Clarification of Courts Order dated July 24th, 2018." Said motion was incorrectly titled and should have been titled Motion to Modify Conditions of Probation. However, the contents and argument of the motion filed on August 3, 2018, was basically requesting the Court to modify her conditions of probation to allow her to file a post conviction motion.



6. On August 13, 2018, the Court issued an Order striking the Defendants motion for clarification. The Court cited and relied on Prevatt v. State, 776 So.2d 1114 (Fla. 5th DCA 2001) as the basis for striking said pleading.
7. However, the Defendant is not electing self representation while being represented by counsel under Prevatt v. State, 776 So.2d 1114 (Fla. 5th DCA 2001). The Defendant is unrepresented in post conviction matters.
8. In the Courts Order dated July 24, 2018, the Court also held: "The Defendant has not yet filed a motion for post conviction relief."
9. The Defendant is unable to file a *pro se* motion for post conviction relief due to her special conditions of probation as discussed below. These special conditions prevent the Defendant from filing a post conviction motion, as to do so would violate those conditions and result in a violation of probation. These special conditions have placed the Defendant in a "catch-22" position.
10. The specific special conditions that are of issue are:
 - a. Special condition: g. (24) No mention of the victim or victim [REDACTED] for any reason except defendant is permitted to communicate with her attorneys of record, [REDACTED] and any/all mental health professionals treating defendant.
 - b. Special condition: i. (28) Do not own or possess any materials related to the victim or victim [REDACTED] aside from any and all materials contained within the discovery previously exchanged by the parties in this matter.
11. The plain meaning of these two special conditions prevent the Defendant from possessing the trial transcripts, her appeal, and other post-conviction related documentation as these items were not "previously exchanged" and therefore should the Defendant possess these

items she would be in violation of special condition i. 28.

12. Additionally, it is impossible for the Defendant to file a post conviction motion without mentioning the victim or victim [REDACTED] as the post conviction motion will require citing to the victim and victim [REDACTED] testimony or evidence introduced at trial. If the Defendant "mentions" the victim or victim [REDACTED] she is in violation of condition g. 24. The Defendant has no intention of "mentioning" the victim or victim [REDACTED] in any other way other than what is necessary for the filing of the post conviction motion.
13. Furthermore, the Defendant is prohibited by condition g. 24 of even communicating to this Court any mention of the victim or victim [REDACTED] as the Court is not one of the permitted parties under g. 24. Even filing said motion with the Clerk of Courts would violate this condition, as the Clerk is also not a permitted party under condition g. 24. So, any motion for post conviction relief filed by the Defendant with this Court would violate condition g. 24. In addition, should the Defendant be granted a hearing on her post conviction motion, she would be unable to even argue the motion in court as there are other court personnel present, who are also not one of the permitted parties under condition g. 24.
14. Notwithstanding the Defendants financial inability to retain post conviction counsel, special condition g. 24 basically prohibits the Defendant from even consulting with an attorney about her post-conviction motion. Condition g. 24 only allows the Defendant to "mention" the victim and victim [REDACTED] with "counsel of record." This infringes on the Defendant's right to consult with an attorney of her choice in regard to post conviction matters. Any consultation with an appellate attorney would likely require that attorney to review and discuss the trial transcripts, appellate records, etc. with the Defendant to ascertain the potential issues that could be argued in a post conviction motion. However, in doing so, the

Defendant would be violating special conditions g. 24 and i. 28.

15. The Defendant has a right to file a *pro se* motion for post conviction relief, but is being denied the ability to do so due to the above referenced special conditions.
16. The Defendant's motion is narrowly tailored for the sole purpose of filing a post conviction motion and for no other purpose.
17. Should this Court find that it is not necessary to modify special conditions g. 24 and i. 28, then the Defendant would respectfully request that the Court issue an Order specifically allowing the Defendant the following:
 - a. Access to her trial transcripts, appellate records, and any other post conviction material and documentation needed for her post conviction motion.
 - b. Allow the Defendant to mention the victim and victim [REDACTED] in said motion for post conviction relief, as needed.
 - c. Allow the Defendant to file a post conviction motion and that said filing will not violate special conditions g. 24 and i. 28.
 - d. Allow the Defendant to argue her post conviction motion in court, should a hearing be granted.
 - e. Allow the Defendant permission to consult with an appellate attorney about her post conviction motion in the unlikely event she is able to financially hire an appellate attorney.
18. The Defendant respectfully requests that a hearing be granted to allow the Defendant to argue this motion.

WHEREFORE, Defendant, DANA LOYD, respectfully requests this Honorable Court to modify special conditions g. 24 and i. 28 for the sole purpose of filing a motion for post conviction relief or in the alternative issue an Order permitting the Defendant certain parameters to be able to file her post conviction motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. Mail/fax/hand delivery to the Office of the State Attorney in Viera, Florida, on this 12th day of October, 2018.

Dana Lynn Loyd
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