

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR VOLUSIA COUNTY
CRIMINAL DIVISION

STATE OF FLORIDA,

Case No.: 2021-303222-CFDB

vs.

NICOLE MARIE JACKSON-MALDONADO
Defendant

MOTION TO OBTAIN ACCESS TO CONFIDENTIAL COURT RECORDS

COMES NOW the Defendant, NICOLE MARIE JACKSON-MALDONADO, by and through undersigned counsel, and pursuant Fla. R. Gen. Prac. & Jud. Admin. 2.420(J) moves this Honorable Court to grant the Defendant access to criminal court records designated confidential by the clerk of court pursuant Fla. R. Gen. Prac. & Jud. Admin. 2.420(c)(9). As grounds for this motion, the Defendant would show as follows:

1. On June 17, 2021, the Office of the State Attorney, for the Seventh Judicial Circuit, filed an Information charging the Defendant with Count I, Attempted First Degree Murder of a Law Enforcement Officer (Firearm), Count II, Burglary of a Dwelling While Armed with a Firearm, and Count III, Criminal Mischief (\$1000.00 or More).
2. While the Defendant was fourteen (14) years old at the time of the offense, she was charged as an adult.
3. On June 21, 2021, Larry Avallone, Esq, of the Office of the Public Defender, for the Seventh Judicial Circuit, entered his Notice of Appearance on behalf of the Defendant.
4. On January 27, 2021, the Defendant entered a negotiated plea to a reduced charge in Count I, Attempted First Degree Murder (Firearm), and a plea as charged in Count II, Burglary of a Dwelling While Armed with a Firearm, and Count III, Criminal Mischief

(\$1000.00 or More). The Defendant was adjudicated guilty and sentenced to twenty (20) years of Imprisonment in the Florida Department of Corrections to be followed by a total of forty-five (45) years of probation.

5. Of specific relevance to this Motion is that on January 20, 2023, the Defendant filed a twenty-three (23) page sworn pro se motion entitled “Motion for Reconsideration to Dismiss Defense Counsel and Request Full Nelson Hearing”. The Court set this motion for an evidentiary hearing on January 27, 2023.
6. On January 24, 2023, prior to the hearing, the Court filed a Sua Sponte Order Determining Confidentiality of Court Records in Accordance with Rule of Judicial Administration 2.420(c)(9) finding documents attached to “Defendant’s Motion for Reconsideration to Dismiss Defense Counsel and Request Full Nelson Hearing” confidential, specifically identifying Exhibit “A” as “Medical Records” and Exhibits “D and “E” as “attorney-client privilege”.
7. The evidentiary hearing on the pro se “Motion for Reconsideration to Dismiss Defense Counsel and Request Full Nelson Hearing” took place on January 27, 2023. At the beginning of the hearing, the Court closed the hearing to the public making the finding “that the instant proceeding has garnered "extraordinary media interest" and world-wide attention. The Court finds that closure of the Nelson hearing proceeding and the record pertaining thereto, is necessary to protect the due process rights of the Defendant to a fair trial”. At some point, representatives of the State Attorney’s Office for the Seventh Judicial Circuit left the proceeding converting it to be an ex-parte evidentiary hearing.
8. On the same day, the Court entered an Order to Seal Records finding “Closure of the record, related to the Nelson hearing, together with closure of the proceedings on the

Nelson hearing only, would be effective in protecting the rights of the Defendant without being overly broad”. The Court then ordered that the “Clerk is hereby directed that the Ex Parte Nelson hearing proceeding, including, but not limited to, the transcript and record of said proceeding, is to be kept under seal and shall not be opened unless authorized by court order.”

9. The Volusia County Court Action Form for January 27, 2023 does not reference the ex-parte Nelson hearing or give a ruling as to the Defendant’s pro se “Motion for Reconsideration to Dismiss Defense Counsel and Request Full Nelson Hearing. No subsequent Order was issued ruling on this Motion.
10. Finally, after the ex-parte Nelson hearing concluded, on January 27, 2023, the Defendant entered her plea as described above. This plea had been available to the Defendant since at least June 1, 2022 however she only agreed to accept the disposition after the ex-parte Nelson hearing.
11. The Defendant did not appeal.
12. On June 18, 2024, undersigned counsel entered his Limited Notice of Appearance for the purpose of investigating claims to raise in a timely Rule 3.850 Motion for Postconviction Relief.
13. Undersigned counsel now files this Motion to Obtain Access to Confidential Court Records seeking access to records related to the January 27, 2023 ex-parte Nelson hearing sealed and made confidential by Order of the Court. Specifically, counsel is seeking to transcribe the January 27, 2023 ex-parte Nelson Hearing along with the plea and sentencing hearing of the same date.
14. Under Fla. R. Gen. Prac. & Jud. Admin. 2.420(J) on the Procedure for Obtaining Access

to Confidential Court Records (2) a court order allowing access may be obtained by filing a written motion which must:

(A) identify the particular court record(s) or a portion of the court record(s) to which the movant seeks to obtain access with as much specificity as possible without revealing the confidential information;

(B) specify the basis for obtaining access to such court records;

(C) set forth the specific legal authority for obtaining access to such court records;

and

(D) contain a certification that the motion is made in good faith and is supported by a sound factual and legal basis.

15. In *Russell v. Times Publishing Co.*, 592 So. 2d 808 (Fla. 5th DCA 1992) the Fifth District Court of Appeal found, “The question before us is whether properly sealed court records remain "public records" within the meaning of our statutes and constitution. 2 We hold that they do not. They are former public records, now sealed, subject to being reopened as public records upon "good cause shown." We can envision some "good cause" reasons for unsealing records; for example, if judicial conduct is questioned. In that event the court file, with the individual defendant's name redacted, could be made available. Also, if it is shown that the defendant perjured himself in order to obtain the sealing, the file should be reopened”. Id at 809.

16. Under the requirements of Rule 2.420(J), the Defendant is specifically seeking to transcribe the confidential ex-parte Nelson hearing from January 27, 2023. The Defendant is seeking to review the transcript of the hearing, in conjunction with the plea and sentencing hearing on the same day, as part of the Defendant’s postconviction

investigation to determine claims that could be raised in a Rule 3.850 Motion. Without disclosing confidential attorney-client conversations, undersigned counsel has a good faith belief that this transcript will provide evidence to support such claims. In the event the Court feels they need additional information as to this good faith belief, Counsel can provide further information at the hearing on this motion in an ex-parte and confidential sidebar.

17. Undersigned counsel certifies this motion is made in good faith and is supported by a sound factual and legal basis.
18. Finally, under Fla. R. Gen. Prac. & Jud. Admin. 2.420(J)(3), The movant must serve a copy of the written motion to obtain access to confidential court records on all parties and reasonably ascertainable affected non-parties and the court must hold a hearing on the written motion within a reasonable period of time.

WHEREFORE, the Defendant, through undersigned counsel, respectfully requests this Honorable Court grant this Motion and enter an Order Granting Access to Confidential Court Records pursuant to Fla. R. Gen. Prac. & Jud. Admin. 2.420(J)(4) for the Defendant to transcribe the ex-parte Nelson hearing, or in the alternative order a hearing, with undersigned counsel present, within a reasonable period of time to consider the good cause and legal basis for the requests as argued within this motion.

Respectfully Submitted,

//S// Dan Ripley
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with Clerk of Court electronically served via the State of Florida E-filing portal to the Volusia County Office of the State Attorney on this the 20th day of June 2024.

Respectfully Submitted,

//S// Dan Ripley
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