

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

STATE OF FLORIDA

CASE NO.: REDACTED

DIVISION: REDACTED

VS.

REDACTED  
\_\_\_\_\_ /

**Defendant's Motion for Post-Conviction Relief**

Pursuant to Fla. R. Crim. P. 3.850(a)(6), and alternatively, Fla. R. Crim. P. 3.800(b), Defendant, Redacted, moves this Court to vacate his judgment and sentence in this matter, and enter a *nunc pro tunc* order withholding adjudication dating back to May 7, 2007, and in support states:

Mr. Redacted files this Motion in hopes the Court will exercise its inherent power to prevent a manifest injustice despite the passage of time. Years ago, Mr. Redacted made a deal with the State and the Court that if he was successful in a post-conviction proceeding, he could come back, no matter how many years later, and receive a withhold of adjudication. Miraculously, he got the relief he sought and returned to Volusia Count, but the successor Judge declined to grant him the requested relief after originally agreeing to do so. Now, due to a change in federal law, Mr. Redacted's entire life is in jeopardy unless he can obtain the benefit of the bargain he thought he struck years ago.

### **Factual and Procedural Background**

In the early 2000s, Mr. Redacted was in a business relationship with Business Partner; their business contracted to perform home repairs and improvements along Florida's east coast. Mr. Redacted would perform contracting work under Partner's contracting license. Due to a dispute between the two, Partner refused to allow Mr. Redacted to continue using his contracting license, preventing Mr. Redacted from obtaining the permits he needed to complete jobs for which he had already received payment. This led to Mr. Redacted receiving a string of grand-theft charges across the state stemming from jobs he was working on when this dispute with Partner arose. Among these charges are the two relevant to this matter: the Volusia County charge that is the subject of this Motion, and the Indian River County charge.

The charge against Mr. Redacted in Indian River County was filed on September 15, 2006. (Indian River County Clerk of Court Docket, Exhibit "B"). In October 2006, Mr. Redacted appeared *pro se* and entered a plea of no contest to the charges and was adjudicated guilty. After his motion to modify his sentence was denied in March 2007, Mr. Redacted filed a notice of appeal in April 2007. The Fourth District Court of Appeals dismissed his appeal on May 23, 2007. In October 2007, he then filed a motion for post-conviction relief, alleging ineffective assistance of counsel. The State conceded that he was not properly represented, so rather than arguing against the post-conviction motion, Mr. Redacted and the State stipulated the judgment and sentence were to be vacated, and Mr. Redacted would then plea and receive a withhold of adjudication to the charges; probation would be immediately terminated all retroactive. On September 29, 2008, the court entered a *nunc pro tunc* order dating back to October 6, 2006, with adjudication withheld. (Exhibit "C").

The charge in Volusia County was filed on December 12, 2006. (Volusia County Clerk of Court Docket, Exhibit “D”). Mr. Redacted originally plead not guilty and the case was set for trial. Before trial, though, on May 7, 2007, Mr. Redacted entered a plea of *nolo contendere* to the charge. He entered this plea with the firm (and ultimately correct) belief that his post-conviction efforts in Indian River County would be successful. When he entered this plea in Volusia County, he had been adjudicated in Indian River County but had a pending appeal. At the time, he was eligible for a withhold of adjudication on the Volusia charge. A material term of his plea in Volusia County was that he would be able to revisit the matter, regardless of time limitations, and modify his Volusia County sentence to a withhold of adjudication. (Exhibit “E”).

One by one the dominos all fell into place, and on January 30, 2009, Mr. Redacted came before the Court in Volusia County with no other adjudications of guilt. Initially, the Judge granted the relief to which Mr. Redacted was entitled, and at the January 30 hearing agreed to withhold adjudication pending the State’s verification of the accuracy of the order from Indian River County. (Exhibit “F”). The accuracy and correctness of the Indian River County order notwithstanding, the State filed a motion for rehearing. At the rehearing, on April 9, 2009, the Judge reversed his initial position and refused to enter a withhold of adjudication. (Exhibit “G”).

Ultimately, Mr. Redacted ended up with no convictions stemming from this unfortunate series of events involving his contracting work, except in the Volusia County case—the case in which the Court expressly said it would allow Mr. Redacted to revisit the issue of adjudication and obtain a withhold. In the time since these cases, Mr. Redacted has been an incredibly successful and productive member of society. He became an FAA licensed pilot in 2014 and has since obtained his FAA Mechanics License and FAA Inspection Authorization. Due to certain

changes in the felony reporting rules for FAA pilots, this adjudication of guilt in Volusia County now jeopardizes everything for Mr. Redacted. Thus, this Motion follows, in which we ask that the Court consider the unique history of this case and recognize the manifest injustice Mr. Redacted would suffer without the requested relief.

#### **Volusia County Proceedings**

On May 7, 2007, before Mr. Redacted's entered the "negotiated" plea at issue, he requested that the court withhold adjudication. Notably, the Judge and the State both agreed that Mr. Redacted was legally entitled to a withhold at the time of the hearing. The State had not made a recommendation on adjudication as part of the deal and deferred to the court. The Judge was reluctant to withhold adjudication because he was informed of a pending appeal from a conviction in Indian River County on related charges. However, the Judge stated that it would have been illogical to grant a withhold given that Mr. Redacted had already been adjudicated guilty on the Indian River County charge.

Given Mr. Redacted's confidence in his appeal, though, the Judge proposed a unique solution: he would adjudicate Mr. Redacted guilty, with a stipulation by both parties that he retains jurisdiction and can revisit to modify adjudication should Mr. Redacted attain a reversal of the Indian River County conviction. All relevant portions of the transcript in which the judge discusses this resolution are below (Full Transcript attached as Exhibit "H"):

14                   THE COURT: I'll adjudicate him with an  
15 understanding or a stipulation that I can revisit  
16 to modify the judgment beyond the 60 days required  
17 should he get a reversal of his Third District  
18 appeal. If he gets that reversed and he's no  
19 longer convicted over there, then I'll go back and  
20 withhold over here.

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13                   THE COURT: Or you can file a post trial  
14 motion. But I mean, what I'm saying is I feel  
15 compelled to adjudicate him in light of his earlier  
16 adjudication. If that gets undone -- and I'm  
17 amused by his confidence. I'm intrigued by it,  
18 actually, because the reversal rate is something  
19 like --

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16                   THE COURT: Overturned on appeal and, I mean,  
17 the end result that he no longer has a conviction.  
18 In other words, if it's overturned on appeal and  
19 the judge goes back and has a new trial and  
20 convicts him...

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19                   THE COURT: All right. And it's further the  
20                   order of this Court that I reserve this  
21                   jurisdiction to allow you to file a belated motion  
22                   to modify sentence, and the Court will consider  
23                   that as to the adjudication only if you can  
24                   demonstrate that the pending action that you've  
25                   been adjudicated on has been reversed and that you

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1                   have been either exonerated or -- I guess he would  
2                   have to be exonerated to make this a qualifying  
3                   offense or otherwise had that action dismissed  
4                   without a withhold adjudication or an adjudication.

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Mr. Redacted's appeal with the Fourth District Court of Appeals was denied, but he was able to attain the outcome he sought in the Indian River County case nonetheless. After filing a motion for post-conviction relief, Mr. Redacted and the State entered into a stipulated motion to vacate judgment and sentence. (Exhibit "I"). With the prior judgment and sentence vacated, Mr. Redacted then plead *nolo contendere*, and a *nunc pro tunc* order to October 6, 2006 was entered withholding adjudication. (Exhibit "C").

Having gotten the conviction vacated and attained a withhold as he sought on the Indian River County charge, Mr. Redacted then filed a motion to modify sentence and motion to

reconsider adjudication of guilt on this charge in Volusia County. At the hearing, Mr. Redacted's attorney presented the Judge with the *nunc pro tunc* order from Indian River County. Neither the State nor the Judge had seen the order prior to this hearing, so the Judge stated he would enter the order as long as the State could verify and then stipulate to the correctness of the order (Full Transcript attached as Exhibit "J"):

5           THE COURT: All right. I will do that. What I'm  
6           going to do is if the State can verify and has no  
7           objection to the order copy as having been presented and  
8           you can enter into a stipulation to the correctness of  
9           the order, I will enter a nunc pro tunc order  
10          withholding adjudication in this case by reason of Judge  
11          Parsons' willingness to retain jurisdiction for that  
12          purpose. A little unusual, but -- but I think I will do  
13          that. Okay.

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Although the Order was in fact correct, the State moved for rehearing on February 4, 2009. At the rehearing, the Judge denied Mr. Redacted's motion to modify sentence and motion to reconsider adjudication of guilt. Specifically, the Judge said he was not willing to make written findings that a withhold is justified as required under Florida Statute § 755.0435. Mr. Redacted did initially appeal this denial, however after being denied insolvency, the appeal was dismissed for failure to pay court costs. (Exhibit "D"). This is the first motion for post-conviction relief Mr. Redacted has filed in this case.

**Mr. Redacted is Entitled to Relief Under Rules 3.850 and 3.100**

Mr. Redacted concedes that most motions under Fla. R. Crim. P. 3.850 or 3.100 have time limits that have passed so that his instant Motion would be untimely and he would therefore potentially be barred from obtaining relief under the rules. However, when necessary to prevent a manifest injustice, courts have shown a willingness to grant post-conviction relief, even when time-barred. Courts have allowed 3.850 and 3.100 motions to be considered in situations that are technically procedurally improper by instead treating the motion as a petition for writ of habeas corpus. *See, e.g., Paul v. State*, 183 So. 3d 1154, 1155 (Fla. 5th DCA 2015) (allowing a procedurally barred Fla. R. Crim. P. 3.850 motion to prevent manifest injustice); *Johnson v. State*, 9 So. 3d 640, 642 (Fla. 4th DCA 2009) (treating an appeal of a denial of a procedurally barred Fla. R. Crim. P. 3.800 motion as a petition for a writ of habeas corpus and granting it to prevent manifest injustice); *Adams v. State*, 957 So. 2d 1183, 1186–87 (Fla. 3d DCA 2006) (treating an appeal of a time-barred Fla. R. Crim. P. 3.850 motion as a petition for writ of habeas corpus, which the court then granted, to prevent manifest injustice); *see also Baker v. State*, 878 So. 2d 1236, 1239–40 (Fla. 2004) (reviewing the interwoven histories of writs of habeas corpus and Fla. R. Crim. P. 3.850’s predecessor, Rule 1, and explaining that Rule 1 was “a procedural vehicle for the collateral remedy otherwise available by writ of habeas corpus”).

Given the shared history between the procedures, courts have used habeas corpus as a route to provide relief when manifest injustice would otherwise arise from strict adherence to the procedural hurdles of Fla. R. Crim. P. 3.850 and 3.800. *See also Anglin v. Mayo*, 88 So. 2d 918, 919 (Fla. 1956) (“The procedure for the granting of this particular writ it not to be circumscribed by hard and fast rules or technicalities which often accompany our consideration of other processes.”). Given Mr. Redacted’s unique situation, this Court should utilize this unique

procedure to grant him relief and prevent the manifest injustice that would otherwise occur. Because it is not truly a petition for writ of habeas corpus, but rather a Fla. R. Crim. P. 3.850 motion being treated as a petition for a writ of habeas corpus, Mr. Redacted can bring the motion despite not being in custody. *See also Wood v. State*, 750 So. 2d 592, 595 (Fla. 1999).

**Failure to Grant Relief will Result in Manifest Injustice**

In the original May 7 hearing, the one common theme every time the Judge mentioned the grounds for retention of jurisdiction was the conviction in Indian River County being reversed, the end result being he no longer has that conviction and the State needs to re-prosecute the charge. He even spoke of what may happen if he is granted a trial and re-convicted after reversal, emphasizing the end goal at the heart of the stipulation was Mr. Redacted no longer being convicted. This is precisely the result Mr. Redacted attained when the conviction and adjudication were vacated and he entered into a new deal with the State.

The State argued at the April 9, 2009 hearing that the Judge agreed to retain jurisdiction *only* in the narrow circumstance of Mr. Redacted's pending appeal with the Fourth DCA being granted. Although it's true that much of the discussion was couched in terms of the pending appeal, this is merely indicative of the procedural posture at the time. The pending appeal was merely the channel through which Mr. Redacted was seeking that result at the time, so naturally much of the discussion spoke of the pending appeal. Taken in its entirety, though, it is clear from the Judge statements that the heart of the agreement went to the result: Mr. Redacted's conviction and adjudication of guilt in Indian River County being reversed, vacated, or otherwise undone. Mr. Redacted was able to have the judgment and sentence vacated through the stipulated motion, and should not be denied the relief he was entitled to under the Judge's original order.

Moreover, when the Judge conditioned entering a withhold of adjudication on the State's verification of the copy of the order, he was merely looking for verification it was a correct and true copy and representation of the resolution of the Indian River County case. Mr. Redacted had brought the document to court himself that day. Neither the State nor the Judge had a chance to review it prior to that moment in the hearing. Understandably, the Judge wanted to ensure that Mr. Redacted's statements and documents checked out, essentially that everything was on the up-and-up. This condition was not an invitation for the State to have a second bite at the apple with regards to the hearing on the motion to modify sentence and motion to reconsider adjudication of guilt. But this is essentially what happened, with the State moving for rehearing and raising further arguments unrelated to the validity of the order.

Mr. Redacted being denied the withhold of adjudication he was told he would receive under these circumstances has jeopardized his career. Not only is Mr. Redacted an FAA licensed pilot, but he also has his FAA Mechanics License and FAA Inspection Authorization. All in all, it took him about seven years of studying and hard work to attain these licenses. With these licenses, he's able to make a living flying, repairing, or inspecting aircrafts. Due to a rule change, however, when he applies for medical clearance to renew these licenses, he will now have to report all felonies. This adjudication will thus prevent him from renewing these licenses, upon which he relies for his livelihood and to support, along with his wife, two minor daughters and an eighteen-year-old son.

### **Conclusion**

Mr. Redacted's trip through the legal system has been bizarre with many unexpected turns. However, Mr. Redacted has not only demonstrated his personal and professional perseverance in spite of his legal woes, he also managed to place himself in to the situation that the Judge remarked occurred in less than one percent of cases - he should be entitled to the benefit of the bargain he entered at that time and this Court should, recognizing the manifest injustice inherent in this situation, grant Mr. Redacted the post-conviction relief he seeks.