

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION**

STATE OF FLORIDA

CASE NO.: 1990-CF-003270

VS.

**TONY HOPPS,
DEFENDANT-MOVANT**

DIVISION: B

ORDER VACATING DEFENDANT'S JUDGMENT AND SENTENCES

THIS CAUSE, having come to be heard upon the Defendant's Motion for Postconviction Relief and to Vacate Judgment and Sentence Pursuant to Fla. R. Crim. P. 3.850, filed on August 15, 2021, and based on the State consenting to the entitlement to relief, the Court finds sufficient cause to grant the requested relief in this matter. The Court makes the following findings:

- (1) The Defendant, TONY HOPPS, was convicted of burglary of a dwelling with a firearm (Count I) and two counts of robbery with a firearm (Counts II and III) on June 26, 1990, and was sentenced as a habitual violent felony offender to concurrent life sentences on July 13, 1990. The Second District Court of Appeal affirmed Mr. Hopps' convictions and sentences for burglary of a dwelling with a firearm and one count of robbery with a firearm (Counts I and III), but reversed the other conviction for robbery with a firearm (Count II). *See Hopps v. State*, 594 So. 2d 848 (Fla. 2d DCA 1992). On April 21, 1992, on remand, this Court removed the vacated robbery with a firearm conviction (Count II).
- (2) In 2018, the State Attorney's Office for the Thirteenth Judicial Circuit announced the creation of the Conviction Review Unit (CRU) to investigate and review claims of actual innocence and make recommendations on appropriate relief;

- (3) The CRU performed a comprehensive and thorough review in the instant case, and performed additional investigation not previously available to this Court, the parties or the original jury;
- (4) On July 20, 2021, the CRU tendered its Fact Finding Summary Report to counsel for the Defendant, in which it found that:
 - a. The photo lineup procedure used by law enforcement in this case did not comport with best practices at the time of its administration and the resulting identifications would not be admissible today;
 - b. Mr. Hopps did not match the description of the perpetrator provided by the victims;
 - c. Witnesses at the time of trial, one new witness, and objective evidence from law enforcement reports provided an alibi for Mr. Hopps that put him in a location that was far enough from the scene of the crime that it is highly unlikely that he committed these crimes; and
 - d. Mr. Hopps could not have been one of the men fleeing from the vehicle containing the victims' stolen belongings because he was indisputably in jail at the time.
- (5) The CRU Fact Finding Summary Report recommended that the Defendant's convictions and sentences be vacated, concluding that the State can no longer stand by the convictions of the Defendant in this matter.
- (6) On August 15, 2021, the Defendant filed a Motion for Postconviction Relief alleging that the conclusions and recommendation on relief contained in the CRU Fact Finding Summary Report, and new investigative information developed by the

CRU constitute newly discovered evidence upon which his convictions and sentences should be vacated.

- (7) The State has consented to this Court granting the relief sought in the Motion for Postconviction Relief and stipulated that, upon issuance of this Order vacating the convictions and sentences, it will file a Notice of Nolle Prosequi, dropping pending charges in this matter with prejudice.
- (8) This Court agrees that the contents, findings, and recommendation on relief contained in the CRU Fact Finding Summary Report constitute newly discovered evidence.
- (9) This Court further finds that the newly discovered evidence is of such a nature that would probably produce an acquittal on retrial. *See Jones v. State*, 591 So. 2d 911, 915-16 (Fla. 1991).

Accordingly, it is hereby

ORDERED that the Judgment entered against the Defendant on June 26, 1990 for Count I Burglary of a Dwelling with a Firearm and Count III Robbery with a Firearm and Sentences entered against the Defendant on July 13, 1990 on Counts I and III, in the above-referenced case number, are hereby VACATED.

DONE AND ORDERED, at Tampa, Hillsborough County, Florida on this 23rd day of August 2021.

90-CF-003270-A 8/23/2021 8:46:32 AM

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Lyann Goudie, Circuit Judge

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