

IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA, IN AND FOR PASCO COUNTY
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA,

Plaintiff,

vs.

GREGORY KEITH CAPEHART,

Defendant.

COURT APPOINTED

CASE NO.: 88-00394 CFAES

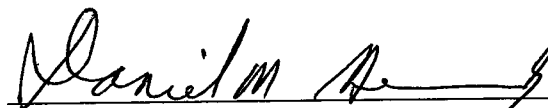
SPN: 00026447

NOTICE OF HEARING

TO: OFFICE OF THE STATE ATTORNEY
38053 Live Oak Avenue
Dade City, Florida 33525-3833

PLEASE TAKE NOTICE that a SEVENTH AMENDED MOTION TO VACATE
JUDGMENTS OF CONVICTION AND SENTENCES WITH SPECIAL REQUEST FOR
LEAVE TO AMEND will be called for hearing before the Honorable
Linda Babb, Circuit Court Judge in her chambers at the Pasco
County Courthouse, 38053 Live Oak Avenue, Dade City, Florida
33525-3833, on the 2nd day of August, at 2:00 P.M.

PLEASE GOVERN YOURSELF ACCORDINGLY.



DANIEL M. HERNANDEZ, ESQUIRE
DANIEL M. HERNANDEZ, P.A.
902 N. Armenia Avenue
Tampa, Florida 33609
(813) 875-9694
Attorney for Defendant
Florida Bar No. 229733

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the above named addressee by hand delivery/U.S. Mail on the 19th day of July, 2006.



DANIEL M. HERNANDEZ, ESQUIRE

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA, IN AND FOR PASCO COUNTY
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA,

Plaintiff,

COURT APPOINTED

vs.

CASE NO.: 88-00394 CFAES

GREGORY KEITH CAPEHART,

SPN: 00026447

Defendant.

**SEVENTH AMENDED MOTION TO VACATE JUDGMENTS OF CONVICTION AND
SENTENCES WITH SPECIAL REQUEST FOR LEAVE TO AMEND**

GREGORY KEITH CAPEHART, Defendant in the above-captioned action, submits this amendment to his Fla. R. Crim. P. 3.850 motion and respectfully moves this court for an order, pursuant to Fla. R. Crim. P.3.850, to vacate and set aside the judgments of conviction and sentences imposed upon him by this Court. In support thereof, Mr. Capehart, through counsel, respectfully submits as follows:

1. On April 15, 1993, Mr. Capehart filed a Rule 3.850 motion to vacate judgment of conviction and sentence, including the sentence of death imposed upon him by this Court. On April 6, 1994, Mr. Capehart filed an amended Rule 3.850 motion. On April 11, 1996, Mr. Capehart filed the second amended Rule 3.850 motion. Subsequent motions were filed over the years, a status hearing was held by Judge Maynard Swanson on November 15, 2002. At that time, constitutional claims and claims being preserved for federal review were stipulated to by counsel. Judge Swanson

declined to hold a Huff hearing as he was retiring and this case was to be reassigned to another Court. Pursuant to Rule 3.850, a Sixth Amended Motion was filed and now this Motion follows.

2. All allegations presented in his previous Rule 3.850 motions are incorporated herein by specific reference, and no matters presented in the prior Rule 3.850 motions are waived or abandoned by submission of this amendment.

3. Mr. Capehart requests the Court to conduct an evidentiary hearing on his claims. Mr. Capehart's claims involve issues requiring a full and fair Rule 3.850 evidentiary resolution. Mr. Capehart seeks relief by requesting the Court to set aside the judgment and sentences.

PROCEDURAL HISTORY

1. The Circuit Court of the Sixth Judicial Circuit, Pasco County, entered the judgments of conviction and sentence under consideration.

2. Mr. Capehart was charged by indictment dated February 24, 1988, with first degree murder and burglary. (R. 842-843).

3. On February 22, 1989, Mr. Capehart was convicted by an all-white jury of murder in the first degree and burglary of a residence without the intent to commit an assault therein (R. 906-907).

4. On February 23, 1989, the jury rendered an advisory verdict of death (R. 871). Although only a bare presentation of mitigating evidence was made, the vote was 7-5.