

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

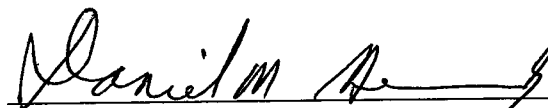
SPN: 00026447

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.

5. On April 4, 1989, the trial judge, acting in deference to the jury's recommendation, sentenced Mr. Capehart to death (R. 912-921).

6. On direct appeal, the Florida Supreme Court affirmed Mr. Capehart's convictions and sentences. Capehart v. State, 583 So.2d 1009 (Fla. 1991). The United States Supreme Court denied certiorari on January 21, 1992. Capehart v. Florida, 112 S. Ct. 955 (1992).

7. That this new Amended Motion is due to newly-discovered evidence and/or continued investigation in the case.

ADDITIONAL GROUNDS FOR POST-CONVICTION RELIEF

By his motion for Fla. R. Crim. P. 3.850 relief and its amendments, Mr. Capehart asserts that his convictions and sentences, including his sentence of death, were obtained in violation of the Four^h, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution for each of the reasons set forth below:

CLAIM XI - That the Defendant's judgments and sentences should be vacated in light of new DNA evidence. This Court ordered that all items seized as evidence in the above cause be resubmitted for DNA testing in light of the new procedures that were not available when this case was tried. Said tests revealed that no items seized matched any DNA of the Defendant which supports the Defendant's position that he is innocent of this

terrible crime.

CLAIM XII - That the Defendant's judgment and sentence should be vacated because two crucial witnesses are now prepared to recant their testimony. That as discussed in Claim IF and IG, Diane Harrison and Carolyn McPhail provided unfavorable testimony against the Defendant at his trial. Both witnesses are now recanting their testimony which further shows the Defendant's innocence in this case.

CLAIM XIII - That the Defendant's judgment and sentence should be vacated because an alibi witness was not interviewed and presented at trial. The Defendant notified his trial counsel that Angela Carr would provide testimony as an alibi witness verifying that the Defendant was with her at the time of the offense and could not have been at the location where the victim was murdered. Said witness is available and prepared to testify that she would have been an alibi witness for the Defendant at the trial.

WHEREFORE, the Defendant prays that his Motion be GRANTED.

Respectfully submitted,



DANIEL M. HERNANDEZ, ESQUIRE
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902 North Armenia Avenue
Tampa, Florida 33609
(813) 875-9694
Attorney for Defendant
Florida Bar Number 229733

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the OFFICE OF THE STATE ATTORNEY, P. O. Box 5028, Clearwater, Florida 33758, 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
VS. CASE NO.: 88-00394 CFAES
GREGORY KEITH CAPEHART, SPN: 00026447
Defendant.

VERIFICATION

STATE OF FLORIDA)
) ss.
COUNTY OF PASCO)


BEFORE ME, the undersigned authority, this day personally appeared GREGORY KEITH CAPEHART, who being first duly sworn, says that he is the Defendant in the above-styled cause, that he has read the foregoing Seventh Amended Motion to Vacate Judgments of Conviction and Sentences with Special Request for Leave to Amend Claim and has personal knowledge of the facts and matters therein set forth and alleged; and that each and all of these facts and matters are true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

X *Greg Capehart*
GREGORY KEITH CAPEHART

SWORN TO AND SUBSCRIBED TO before me this 19th day of July, 2006, by GREGORY KEITH CAPEHART, who is personally known to me or who provided the following identification:

E. Diane Fernandez
NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires:

NOTARY PUBLIC-STATE OF FLORIDA
 E. Diane Fernandez
Commission # DD498402
Expires: JAN. 31, 2010
Bonded Thru Atlantic Bonding Co., Inc.