

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

PAUL CASTONGUAY,
Petitioner,

CASE NO. 2020-CA-5038-O

v.

STATE OF FLORIDA,
Respondent.

ORDER DISMISSING PETITION FOR WRIT OF PROHIBITION AS MOOT

THIS MATTER came before the Court for consideration of the Petition for Writ of Prohibition, filed on May 13, 2020. The Court finds as follows:

Petitioner is a prison inmate in the Nebraska Department of Correctional Services. He has been serving a 30 year sentence for sexual assault since December 18, 2009, and his projected release date is March 23, 2026.

Petitioner alleges that in April 2001, a warrant was issued for his arrest, presumably on charges from Orange County. Petitioner further alleges that he moved away from Florida, and did not know about the arrest warrant “until many years had passed.” He claims that he “just recently found out” about the arrest warrant after he was in a car accident in Nebraska. Law enforcement ran his driver’s license, informed him about the arrest warrant, and also informed him that it involved theft charges.

Petitioner now seeks a writ of prohibition. For support, he argues that under Florida law, he is entitled to have the theft charges dismissed on statute of limitation grounds, since the arrest warrant was issued 19 years ago and he was “never properly

served within a reasonable time.” See *Beyer v. State*, 76 So. 3d 1132, 1134 (Fla. 4th DCA 2012) (“A petition for writ of prohibition is a proper remedy to prevent a prosecution that is barred by expiration of the statute of limitations.”). See also §§ 775.15 & 812.014, Fla. Stat.

This Court’s records reflect that Petitioner was charged with third degree theft in Orange County circuit court case number 2001-CF-5377-A-O. The information was filed on April 16, 2001, and a *capias* was issued on April 25, 2001. However, the *capias* was returned as unexecuted. The State then entered an administrative *nolle prosequi* “due to the age of the case” on January 11, 2012, and the *capias* was recalled. The clerk then closed the case.

Under Florida law, a *nolle prosequi* is “self-executing upon its announcement and immediately terminates the proceeding.” *State v. Aguilar*, 987 So. 2d 1233, 1235 (Fla. 5th DCA 2008). Additionally, “No approval of the trial court is required.” *Id.* Also under Florida law, prohibition is not available when the proceedings have already been completed and there is nothing to prohibit. *Sparkman v. McClure*, 498 So. 2d 892, 895 (Fla. 1986) (prohibition not available when proceedings have already been completed); *McKay v. State*, 984 So. 2d 608, 609 (Fla. 3d DCA 2008) (prohibition not available when “there is nothing further to prohibit”). When the State entered its administrative *nolle prosequi*, the proceedings in 2001-CF-5377-A-O were terminated under *Aguilar*. As a result, prohibition is not available to Petitioner pursuant to *Sparkman* and *McKay*, and the instant Petition must be dismissed as moot.

Accordingly, it is ORDERED and ADJUDGED that the Petition for Writ of Petition is DISMISSED AS MOOT, and the above-styled case shall be CLOSED.

DONE AND ORDERED in Chambers, in Orlando, Orange County, Florida, the _____ day of _____, 2020.

JANET C. THORPE
Presiding Circuit Judge

YOUNG and BLECHMAN, J.J., concur.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing Order was furnished on this _____ day of _____, 2020 to the following: Paul Castonguay, Inmate # 70764, Tecumseh State Correctional Institution, 2725 Hwy. 50, Tecumseh, NE 68450; Office of the State Attorney, Postconviction Felony Unit, 415 N. Orange Ave., Orlando, FL 32801.

Judicial Assistant