

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D2023-3089

PARRISH ANTHONY GEORGE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Suwannee County.
David W. Fina, Judge.

October 14, 2026

PER CURIAM.

Parrish Anthony George was convicted and sentenced for one count of battery on a law enforcement officer. George did not appeal the judgment or sentence. Months later, he filed in the circuit court a document entitled “A Written Order Stating the Reasons for Complaint of Misconduct.” The court treated the document as a postconviction filing and dismissed it, finding that it consisted of “conclusory statements and meaningless ramblings[.]” Despite those findings, the court appointed the Public Defender to represent George on appeal from the dismissal. Counsel then filed a motion in the circuit court under Florida Rule of Criminal Procedure 3.800(b)(2), challenging the inclusion of a prior conviction on George’s sentencing scoresheet. The court did not rule on the motion.

George’s initial brief does not challenge the dismissal of his original postconviction filing. Instead, it treats the later sentencing motion as deemed denied after sixty days and seeks review of that purported denial.

I

We first address the circuit court’s appointment of appellate counsel. Courts are prohibited from using, directly or indirectly, “[f]unds, resources, or employees of this state or its political subdivisions . . . in appellate or collateral proceedings *unless the use is constitutionally or statutorily mandated*.” § 924.051(9), Fla. Stat. (emphasis supplied). Section 924.066(3), Florida Statutes, makes clear that no statutory right to appointed counsel exists in noncapital collateral proceedings: “A person in a noncapital case who is seeking collateral review under this chapter has no right to a court-appointed lawyer.”

Russo v. Akers, 724 So. 2d 1151 (Fla. 1998), addresses whether appointed counsel in postconviction proceedings may nevertheless be “constitutionally mandated.” According to *Russo*, when appointment of counsel is authorized under the standard established in *Graham v. State*, 372 So. 2d 1363 (Fla. 1979)—as when a postconviction motion presents a substantial issue and the proceeding is so complex that the assistance of counsel is essential to accomplish a fair and thorough presentation of the claims—appointment of counsel is “constitutionally mandated” and therefore permissible under section 924.051(9). *See Russo*, 724 So. 2d at 1153.

Even so, *Russo* does not alter the Legislature’s express prohibition on the use of state funds in postconviction proceedings unless statutorily or constitutionally mandated. When neither condition is satisfied, the appointment results in an expenditure of state funds that the law does not permit. A court therefore should not appoint postconviction counsel unless it articulates why the appointment is legally required.

We have explained that a court should conduct an “assessment of need” under the *Graham* standard before

appointing postconviction appellate counsel. *Westfall v. State*, 348 So. 3d 4, 5 (Fla. 1st DCA 2022); *see also Rowe v. State*, 777 So. 2d 1088, 1089 (Fla. 2d DCA 2001) (holding that appointment of counsel for the defendant’s postconviction appeal was not constitutionally required and noting that the issues were limited in range and simple); *Gantt v. State*, 714 So. 2d 1116, 1117 (Fla. 4th DCA 1998) (noting that “counsel should not have been appointed” in a postconviction appeal where “no issues are present, let alone a complex one”).

Other courts have likewise emphasized the need for a judicial determination that postconviction representation is constitutionally mandated. *See Mann v. State*, 937 So. 2d 722, 729 (Fla. 3d DCA 2006) (“Unless a court *makes the determination* that representation is constitutionally mandated, funds, resources, and employees of the Public Defender’s Office may *not* be used directly or indirectly in collateral proceedings of defendants not under sentence of death.”) (emphasis supplied); *Russo v. Selman*, 702 So. 2d 270, 271 (Fla. 5th DCA 1997) (holding that the appointment of the Public Defender in a postconviction proceeding “is contrary to section 924.066(3), Florida Statutes” “[a]bsent the necessary findings” that the complexity of the proceeding requires counsel) (emphasis supplied). We agree that the basis for such a determination must be apparent from the record. “[W]hen [a trial court] appoints postconviction appellate counsel, the appellate court should be able to determine why the trial court concluded that counsel was constitutionally required” and why the appointment is not “an unlawful expenditure of state funds, prohibited by section 924.051(9).” *Norman v. State*, 51 Fla. L. Weekly D1006, D1007 (Fla. 1st DCA May 20, 2026) (Winokur, J., concurring).

Here, the circuit court appointed the Public Defender without assessing whether this appeal warranted counsel. Nothing in the record suggests that it did. The court had dismissed George’s postconviction filing as frivolous in substance, and an appeal from that order presented no complex issue or need for substantial legal research. Accordingly, the appointment of appellate counsel was not legally authorized.

II

Turning to the issue raised in this appeal, George's sole argument concerns the rule 3.800(b)(2) motion filed by appointed counsel. That motion was unauthorized. Rule 3.800(b)(2) "was designed for use only in a direct appeal from the sentence at issue." *Cooper v. State*, 919 So. 2d 516, 519 (Fla. 1st DCA 2005) (citation omitted). "The rule was not meant to be used in connection with an appeal from a postconviction order." *Id.*

George seeks to avoid that problem by asking us to "treat" the motion as if it had been filed under Florida Rule of Criminal Procedure 3.800(a). That suggestion has three flaws. First, counsel identifies no authority permitting court-appointed appellate counsel to file a rule 3.800(a) motion in the circuit court while this postconviction appeal was pending. Second, counsel was appointed for the limited purpose of representing George in his postconviction appeal, not to initiate additional postconviction proceedings in the trial court. Indeed, the circuit court had denied a request for trial-level postconviction counsel. And third, even if appellate counsel could file a rule 3.800(a) motion while this appeal was pending, the circuit court never ruled on it. Unlike a motion properly filed under rule 3.800(b)(2), a rule 3.800(a) motion is not "deemed denied" merely because the court fails to rule within a prescribed period. *See* Fla. R. Crim. P. 3.800(b)(2)(B). Accordingly, there is no order disposing of a rule 3.800(a) motion for us to review.

III

In sum, the only issue George asks us to decide arises from an unauthorized motion filed by counsel whose appointment was itself unauthorized. The circuit court never ruled on that motion, so there is no order for us to review. The order properly before us should therefore be affirmed.

AFFIRMED.

RAY and M.K. THOMAS, JJ., concur; WINOKUR, J., concurs with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

WINOKUR, J., concurring.

I agree fully with the majority opinion. In particular, I agree that appointment of counsel in this postconviction appeal was unauthorized, but I would go further than the majority, consistent with my opinion in *Jackson v. State*, 407 So. 3d 508, 514 (Fla. 1st DCA 2025) (Winokur, J., concurring). As the majority recognizes, we are prohibited from using, directly or indirectly, “[f]unds, resources, or employees of this state or its political subdivisions . . . in appellate or collateral proceedings unless the use is constitutionally or statutorily mandated.” § 924.051(9), Fla. Stat. The Supreme Court of the United States has held that the United States Constitution does not provide any right to counsel in postconviction proceedings. *See Pennsylvania v. Finley*, 481 U.S. 551 (1987). Moreover, no Florida court has held that the Florida Constitution contains a right to appointed postconviction counsel. As the majority opinion recognizes, a non-capital postconviction appellant has no statutory right to appointed counsel. *See* § 924.066(3), Fla. Stat. And finally, Public Defenders have no express statutory authority to represent defendants in postconviction proceedings. *See Williams v. State*, 99 So. 3d 593, 595 (Fla. 2d DCA 2012) (recognizing that “[t]he duties of public defenders, as enumerated in section 27.51, Florida Statutes (2008), do not include postconviction representation”); *but see Russo v. Akers*, 701 So. 2d 366, 367 (Fla. 5th DCA 1997), approved, *Russo v. Akers*, 724 So. 2d 1151 (Fla. 1998) (finding that “representation of indigent defendants who seek to vacate a felony conviction falls within the duties of the Public Defender listed in Chapter 27[.]” but failing to indicate any provision of “Chapter 27” that suggests that the duties of a Public Defender include representation of indigent defendants who seek to vacate a felony conviction).

I recognize that *Russo* permits appointment of postconviction counsel in some circumstances, but I believe that *Russo* “is based on an assessment of federal constitutional rights that the Supreme Court of the United States has rejected[.]” *Norman v. State*, 51 Fla. L. Weekly D1006, 1007 (Fla. 1st DCA May 20, 2026) (Winokur, J., concurring). Nonetheless, I agree that the majority’s conclusion that a trial court should articulate its reasons for determining that appointment of postconviction counsel is constitutionally required, and that this conclusion is consistent with *Russo*.

Jessica J. Yeary, Public Defender, and Justin F. Karpf, Assistant Public Defender, Tallahassee, for Appellant.

James Uthmeier, Attorney General, and Darcy Townsend, Assistant Attorney General, Tallahassee, for Appellee.