

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

CASE NO: 2008-AP-48  
Lower Court Case No: 1996-MM-10063

**RICHARD LUIS ALBANO,**

Appellant,

vs.

**STATE OF FLORIDA,**

Appellee.

\_\_\_\_\_ /

Appeal from the County Court,  
for Orange County, Florida,  
Faye L. Allen, County Court Judge

Adam H. Sudbury, Esq.,  
for Appellant

Lawson Lamar, State Attorney and  
David H. Margolis, Assistant State Attorney,  
for Appellee

Before POWELL, BRONSON, and LAUTEN, J.J.

**PER CURIAM.**

**FINAL ORDER AFFIRMING TRIAL COURT**

Richard Albano (Appellant) appeals an order denying his motion for post conviction relief alleging a deficient *Faretta*<sup>1</sup> inquiry.

We have carefully considered the record on appeal, the transcript of the hearing and the briefs. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320, and affirm.

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<sup>1</sup> *Faretta v. California*, 422 U.S. 806 (1975).

We agree with the trial judge that the evidence did not show sufficient justification for waiting 11 years after his conviction to file his motion to vacate his conviction on the grounds of an insufficient *Faretta* inquiry.

Further, the transcript of the plea and hearing had been destroyed after 10 years thus prejudicing the State which had no other evidence than a plea form to rebut Appellant's testimony. Appellant's claim is barred by the doctrine of laches. *See Bartz v. State*, 740 So. 2d 1243 (Fla. 3d DCA 1999); *Babson v. Wainwright*, 376 So.2d 1187 (Fla. 5<sup>th</sup> DCA 1979); *Remp v. State*, 248 So.2d 677 (Fla. 1<sup>st</sup> DCA 1970) citing *Costello v. U.S.*, 365 U.S. 265 (1961).

Finally, we note that Appellant had signed and sworn to a written plea form containing extensive advice as to his legal rights, including the right to consult with an appointed attorney; that he understood the nature and effect of the charges and the plea; and that he waived those rights. A written plea form such as this refutes a postconviction claim. *See Russ v. State*, 937 So.2d 1199, 1201 (Fla. 1<sup>st</sup> DCA 2006) (".....a written plea agreement alone may refute a postconviction claim."); *Hill v. State*, 895 So.2d 1122 (Fla. 4<sup>th</sup> 2005); *Golden v. State*, 703 So.2d 1207 (Fla. 1<sup>st</sup> DCA 1997).

**AFFIRMED.**

**DONE AND ORDERED** at Orlando, Florida this 4th day of October, 2011.

/S/  
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**ROM W. POWELL**  
Senior Judge

/S/  
\_\_\_\_\_  
**THEOTIS BRONSON**  
Circuit Judge

/S/  
\_\_\_\_\_  
**FREDERICK J. LAUTEN**  
Circuit Judge

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing order was furnished to **Adam H. Sudbury**, 424 E. Central Blvd., #307, Orlando, Florida 32801; **David H. Margolis, Assistant State Attorney**, 415 N. Orange Avenue, Ste. 200, Orlando, Florida 32802-1673; and **Honorable Faye L. Allen**, 425 N. Orange Avenue, Orlando, Florida 32801, this 4th day of October, 2011.

/S/ \_\_\_\_\_  
Judicial Assistant