IN THE SUPREME COURT OF FLORIDA

WILLIAM THOMAS ZIEGLER, JR.

Appellant,

v.

STATE OF FLORIDA

Appellee.

Case No. 63,606

BRIEF OF APPELLEE

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POINT ON APPEAL

THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION TO VACATE.

ARGUMENT

Appellant does his best to fashion an allegation of error contending that the trial judge should have at least granted a hearing on the motion and failing that, the judge should have at least attached those portions of the record which conclusively demonstrated that the Appellant was entitled to no relief.

As the record shows, the trial court was presented with an extensive motion consisting of nineteen separate grounds. At the hearing, the trial judge was informed that although so physically separated, the only issue for the court's consideration was that Appellant was denied his right to a fair trial and due process of law because of some sort of cryptic pattern which ostensibly was created and/or maintained by practically everyone connected with the prosecution. (TT-22) The court was requested to consider the motion as a whole in order to detect and otherwise understand this pattern and once that was done, the only and obvious conclusion the court could reach was that the motion had to be granted.

Declining this journey into the abstruse, the trial judge instead correctly considered the motion as presented in the separate grounds. He found that all but two of the claims either could have been raised on direct appeal or were in fact

raised, argued, and decided on direct appeal. (R-175) It was therefore, legally speaking, both required and correct to deny relief on those grounds. Armstrong v. State, 429 So.2d 287 (Fla. 1983); Hitchcock v. State, 432 So.2d 42 (Fla. 1983).

Regarding the issue contending the lack of effective assistance of counsel, the trial court properly found that the contention was, as a matter of law, insufficient as presented in the motion. The court referred specifically to the four-step test enunicated by this Court in Knight v. State, 394 So.2d 997 (Fla. 1981), and found that the claim fell drastically short of this Court's requirements. (R-175) That conclusion was proper and no hearing was thus required.

The other ground related to the contention that the trial court was prejudiced and biased against the Appellant and therefore should have removed himself. The basis of this claim was identical to the basis presented to this Court on direct appeal [see Appellant's Point XV in Ziegler v. State, Case No. 50,355, 402 So.2d 365 (Fla. 1981)], with the additional allegation relating to a supposed meeting between the state attorney and the trial judge. As the source of this allegation, Appellant referred to a statement [which Judge Byrd treated as an affidavit (TT-376)] from a former Chief Deputy of Orange County. The trial court specifically disbelieved any statement of the former deputy who incidentially is a convicted thief, see McEachern v. State, 388 So.2d 244 (Fla. 5th DCA 1980) and instead chose to believe the affidavits of Judge Paul, State Attorney Eagan,

Investigator Frye, and former Assistant State Attorney Jaeger. (R 169-173) By the judge's statement, (TT-79), even if McEachern were to appear at a hearing and swear to the contents of his statement, Judge Byrd still would not have believed him and was making that finding of fact at that point in time. The records relevant to this issue were before the trial court in the form of the state's response and affidavits. Those portions, in the context of credibility as determined by the trial judge, are included in this record and thus are "attached" to the order of denial.

Contrary to Appellant's assertion in brief, Judge Byrd read all of the thirty-two volumes of the record on appeal. (TT-3) He spent almost sixty (60) days doing so. (TT-66) Judge Byrd was fully familiar with relevant law (TT-67), and properly concluded that the motion as presented to him was legally insufficient to either grant or order an evidentiary hearing. Try as he might, Appellant can do nothing to even weakly suggest the commission of error and accordingly, the order denying Appellant's motion to vacate should be affirmed.

CONCLUSION

Based on the above and foregoing the judgment of the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail to William F. Duane, Esquire, 250 North Orange Avenue, Suite 900, Orlando, Florida 32801, this 28 day of July, 1983.

Of Counsel