

IN THE SUPREME COURT OF FLORIDA

FLOYD MORGAN,

APPELLANT,

-VS-

STATE OF FLORIDA,

APPELLEE.

CASE NO.

**FILED**  
3,679

SID J. WHITE

**JUN 28 1984**

CLERK, SUPREME COURT

By *[Signature]*  
Chief Deputy Clerk

SUPPLEMENTAL BRIEF OF APPELLEE

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SUPPLEMENTAL BRIEF OF APPELLEE

ISSUE PRESENTED

MUST THE ORDER APPEALED BE REVERSED  
AND REMANDED FOR RECONSIDERATION IN  
LIGHT OF STRICKLAND V. WASHINGTON,  
\_\_\_ U.S. \_\_\_ (1984), 35 CrL 3051.

ARGUMENT

In appellant's supplemental brief filed with this Court on June 4, 1984, he contends the order appealed must be vacated and remanded in light of Strickland v. Washington, supra, because the legal test employed by the lower court, to-wit: Knight v. State, 394 So.2d 997, 1001 (Fla.1981) was "too heavy a burden on criminal defendants." Moreover, appellant contends that the instant appeal was briefed and argued in this Court on the basis of the "now rejected Knight standard" (App's Brief).

Appellee respectfully submits this argument is totally without merit. The Supreme Court of the United States did not declare the Knight tests were sufficiently dissimilar to that announced in Strickland so as to require a re-evaluation of cases disposed of. Indeed, the Court held just the opposite. After noting that only the jurisdictions which employed the "strict outcome-determinative test" imposes a heavier burden on defendants, said:

. . . The principles we have articulated are sufficiently close to the principles applied both in the Florida courts and in the District Court that it is clear that the factfinding was not affected by erroneous legal principles.

Slip Op. at 28. Of course, when this Court reviewed Washington's 3.850 appeal, it utilized the prejudice test set out in Knight, supra. Washington v. State, 397 So.2d 285, 287 (Fla.1981).

Obviously, had the Supreme Court felt the standard employed by this Court and the federal district court was unsatisfactory, the Court would not have reversed the Court of Appeals; it would have vacated and remanded with instructions to reconsider the cause in light of the "different" standard or test!

That this position is correct, this Court need only look to its own decision in Jackson v. State, \_\_\_ So.2d \_\_\_ (Fla.1984), Case Nos. 65,429; 65,431, wherein the Court rejected the argument advanced in appellant's supplemental brief saying:

We are of the opinion that this test [Strickland] does not differ significantly with the Knight standard of 'a likelihood that the deficient conduct affected the outcome of the court proceedings;' hence, we do not reconsider our first

opinion denying appellant's claim of ineffectiveness of trial counsel.

Slip Op. at p. 3.

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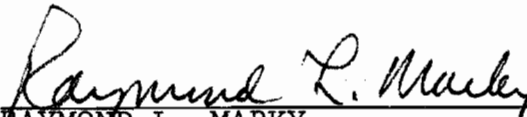
Appellee respectfully submits that Strickland actually supports the action taken by the lower court in these proceedings. Giving trial counsel the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance . . . [and] that, under the circumstances, the challenged action 'might be considered sound trial strategy'" Strickland, slip op. at p. 19, which is "virtually unchallengeable" Id. at p. 20, trial counsel's presentation of appellant's life saving action through the written comendation of Governor Askew (TT 670-671) rather than through the testimony of John G. Sapp and Dale Harden did not amount to a serious deficiency measurably below reasonable professional judgment and the prejudice component doesn't even enter the picture. Strickland v. Washington, supra.

CONCLUSION

Strickland v. Washington, supra, does not require the order appealed be vacated and remanded for reconsideration because the standards applied below is not significantly different from that announced in Strickland and could not have affected the factfinding made below.

Respectfully submitted,

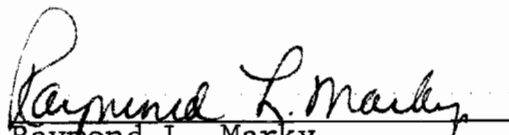
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Supplemental Brief of Appellee has been forwarded to Mr. J. Craig Williams, 136 East Bay Street, Suite 301, Jacksonville, FL 32202, via U. S. Mail, this 28th day of June 1984.

  
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