

IN THE SUPREME COURT OF FLORIDA

CASE NO. 64791

THE STATE OF FLORIDA,

Appellant,

vs.

BEAUFORD WHITE,

Appellee.

**FILED**

SID J. WHITE

FEB 2 1988

CLERK, SUPREME COURT

By Janya  
Chief Deputy Clerk

---

AN APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

---

REPLY BRIEF OF THE APPELLANT,  
THE STATE OF FLORIDA

JIM SMITH  
Attorney General  
Tallahassee, Florida

CALVIN L. FOX, ESQUIRE  
Assistant Attorney General  
Department of Legal Affairs  
401 N.W. 2nd Avenue, Suite 820  
Miami, Florida 33128  
(305) 377-5441

TABLE OF CONTENTS

|                             | <u>PAGE</u> |
|-----------------------------|-------------|
| TABLE OF CITATIONS.....     | ii          |
| STATEMENT OF THE CASE.....  | 1           |
| QUESTION PRESENTED.....     | 2           |
| ARGUMENT.....               | 3-4         |
| CONCLUSION.....             | 5           |
| CERTIFICATE OF SERVICE..... | 6           |

TABLE OF CITATIONS

| <u>CASE</u>   | <u>PAGE</u> |
|---|-------------|
| Bullington v. Missouri,<br>451 U.S. 430, 101 S.Ct. 1852, 68 L.Ed.<br>2d 270 (1981)..... | 3, 4        |
| Enmund v. Florida,<br>U.S. _____ 102 S.Ct. 3368, 73 L.Ed.<br>2d _____ (1982).....       | 4           |
| <br><u>OTHER AUTHORITIES</u>  |             |
| Rule 3.850 Fla.R.Crim.P.....  | 3           |
| Section 924.07(6) Florida Statutes.....   | 3           |

I

STATEMENT OF THE CASE

The State readopts and realleges its previous statement of the case herein.

II

QUESTION PRESENTED

WHETHER THE TRIAL COURT HAS ERRED IN  
GRANTING THE DEFENDANT'S MOTION FOR  
POST-CONVICTION RELIEF PURSUANT TO  
RULE 3.850 Fla.R.Crim.P.?

III

ARGUMENT

THE TRIAL COURT HAS MANIFESTLY ERRED  
IN GRANTING THE DEFENDANT'S RULE  
3.850 MOTION.

In response to the State's brief herein, the Defendant claims that this Court has no jurisdiction to hear this matter because (1) that the present appeal is not specified in Section 924.07 Florida Statutes and (2) that the Defendant has been "acquitted" of the death penalty within the meaning of Bullington v. Missouri, 451 U.S. 430, 101 S.Ct. 1852, 68 L.Ed. 2d 270 (1981). First of all, the appeal by the State herein is specifically authorized by the express provision of Rule 3.850 Fla.R.Crim.P. and Section 924.07(6) Florida Statutes. Section 924.07 specifically provides that the State may appeal from a judgment discharging a prisoner on habeas corpus. Rule 3.850 provides specifically that:

"An appeal may be taken to the appropriate appellate court from the order entered on the motion as from a final judgment on application for writ of habeas corpus."

The appeal by the State herein is specifically authorized by this Court's rules and the enactment of the Legislature.

Similarly, the Defendant's claim that the present appeal is barred by some sort of "acquittal" within the meaning of Bullington v. Missouri, supra, is specious. The trial court herein has not acquitted the Defendant of anything, but rather ruled as a matter of law that the Defendant's sentences of death are precluded by the decision of the United States Supreme Court in Enmund v. Florida, \_\_\_ U.S. \_\_\_ 102 S.Ct. 3368, 73 L.Ed. 2d \_\_\_ (1982). In Bullington, the jury had the authority to sentence the Defendant. In a previous trial and sentencing proceeding the jury had sentenced the Defendant to life. Upon reversal of the first conviction, a second jury sentenced the Defendant to death. The Bullington court correctly held that the prior verdict by the jury sentencing the Defendant to life was a complete bar to the subsequent sentence of death. The present circumstance does not remotely resemble the circumstance in Bullington v. Missouri. The trial court has entered no sentence and has not "acquitted" the Defendant of anything.

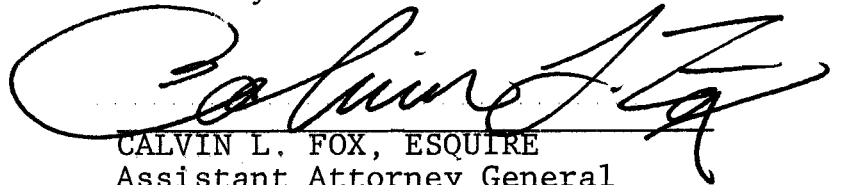
IV

CONCLUSION

WHEREFORE, on the foregoing, the Appellant, THE STATE OF FLORIDA, prays that this Honorable Court will issue its order reversing the trial court's granting of the Defendant's motion pursuant to Rule 3.850 Fla.R.Crim.P. and further that this Honorable Court will vacate the stay of execution herein.

RESPECTFULLY SUBMITTED, on this 15<sup>th</sup> day of February, 1984, at Miami, Dade County, Florida.

JIM SMITH  
Attorney General

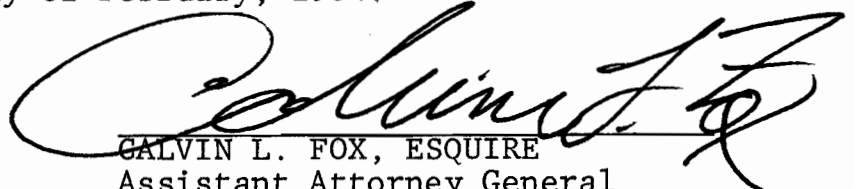


CALVIN L. FOX, ESQUIRE  
Assistant Attorney General  
Department of Legal Affairs  
401 N.W. 2nd Avenue, Suite 820  
Miami, Florida 33128  
(305) 377-5441



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing REPLY BRIEF OF THE APPELLANT, THE STATE OF FLORIDA, was hand delivered to THOMAS G. MURRAY, Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125, on this 2nd day of February, 1984.

  
GALVIN L. FOX, ESQUIRE  
Assistant Attorney General

/11