

IN THE SUPREME COURT OF FLORIDA
CASE NO. 65,060

FILED

SID J. WHITE

JUN 11 1984

CLERK, SUPREME COURT.

By *[Signature]*
Chief Deputy Clerk

PAUL WILLIAM SCOTT,
Appellant,

-v-

THE STATE OF FLORIDA,
Appellee.

ON DIRECT APPEAL FROM THE
CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY

INITIAL BRIEF OF APPELLANT

PAUL MORRIS
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ISSUE PRESENTED FOR REVIEW

WHETHER THE TRIAL COURT ERRED IN DISMISSING THE
DEFENDANT'S MOTION TO VACATE JUDGMENT AND SENTENCE ON
THE GROUND THAT THE OATH WAS NOT AS CONTEMPLATED BY
RULE 3.850, FLORIDA RULES OF CRIMINAL PROCEDURE.

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INTRODUCTION

This cause is an appeal from the dismissal of the defendant's Motion to Vacate filed pursuant to Rule 3.850, Florida Rules of Criminal Procedure. The pleadings in the record on appeal are designated by "R". The parties will be referred to as they stood in the lower court.

STATEMENT OF THE CASE AND FACTS

The defendant, Paul William Scott, was convicted of first degree murder and sentenced to death. The conviction and sentence were affirmed by this Court. Scott v. State, 411 So.2d 866 (Fla.1982). In Scott v. Wainwright, 434 So.2d 974 (Fla.1983), this Court rejected claims raised in a requests for habeas and coram nobis relief, following which, the defendant sought relief in the Federal District Court for the Southern District of Florida. The federal district court stayed the execution of the defendant pending consideration of the federal claims, and thereafter, entered an order continuing the stay while the defendant sought relief in the state trial court via Rule 3.850, Florida Rules of Criminal Procedure.

The defendant filed his Rule 3.850 motion. The trial court entered an order dismissing the motion on the ground that the motion "is not under oath as contemplated by the above rule [3.850] because of the qualification of the verification. The qualification in question is underlined below as quoted from the verification attached to the Rule 3.850 motion:

Before me, the undersigned authority, personally appeared Paul William Scott, who, being first duly sworn, says that he has personal knowledge of the allegations in the foregoing motion to vacate judgment and/or sentence and that the allegations and statements contained therein are true and correct to the best of his knowledge.

Order at 1.

The lower court adjudged as follows on March 13, 1984:

1. The motion of defendant, Paul William Scott, for post conviction relief filed in this court on February 24, 1984, is denied without prejudice to file a sworn motion in this court.

2. Paul William Scott has the right to appeal within thirty days from rendition of this order.

Order at 2.

From the denial/dismissal, the defendant has prosecuted this timely appeal.

ARGUMENT

THE TRIAL COURT ERRED IN DISMISSING THE DEFENDANT'S MOTION TO VACATE JUDGMENT AND SENTENCE ON THE GROUND THAT THE OATH WAS NOT AS CONTEMPLATED BY RULE 3.850, FLORIDA RULES OF CRIMINAL PROCEDURE.

The requirements of a valid motion filed pursuant to Rule 3.850, Florida Rules of Criminal Procedure are provided in the rule as follows:

A motion for such relief may be made at any time. The motion shall be under oath and include the following information:

(a) The judgment or sentence under attack and the court which rendered the same;

(b) Whether there was an appeal from the judgment or sentence and the disposition thereof;

(c) Whether a previous post-conviction motion has been filed, and if so, how many;

(d) The nature of the relief sought;

(e) A brief statement of the facts (rather than conclusions) relied upon in support of the motion.

The court will refuse to receive any motion filed pursuant to this rule which is not in substantial compliance with the requirements hereof.

Rule 3.850, Florida Rules of Criminal Procedure.

In the case at bar, the Rule 3.850 motion was in "substantial compliance" with its requirements of (a) through (e). Although the motion was under oath, the trial court treated the motion as if there had been no oath at all, and dismissed the motion, citing cases where defendants had filed Rule 3.850 motions that contained no oath. Those cases are: Carver v. State, 376 So.2d 899 (Fla.2d DCA 1979); Williams v. State, 375 So.2d 611 (Fla.2d DCA 1979); Dulaney v. State, 375 So.2d 869 (Fla.2d DCA 1979); Clouthier v. State, 375 So.2d 874 (Fla.2d DCA 1979); Monroe v. State, 371 So.2d 683 (Fla.2d DCA 1979).

The lower court's reliance upon these case was erroneous for the reason that the defendant's motion was verified. The trial court's actual basis for dismissal was not that the oath was missing, but that the oath was "qualified" by the words "and correct to the best of his knowledge." Relying upon various civil cases, to wit: Hahn v. Frederick, 66 So.2d 823 (Fla.1953), P & T Electric Co. v. Spadea, 227 So.2d 234 (Fla.4th DCA 1969), Orthwein v. Cobbs Fruit & Preserving Co., 229 So.2d 607 (Fla.1st DCA 1969), the trial court reasoned that the "qualification" rendered a ruling on the motion "a useless gesture", because where affidavits are required, "the affidavits must be that the affiant has knowledge of the facts and knows them to be true." Order at 2.

By holding a death row inmate to the same oath requirement applicable to causes such as recusal or summary judgment affidavits, the trial court has placed an impossible burden upon the defendant. An examination of the Rule 3.850 motion filed in this case plainly reveals that some of the allegations found their origin through counsel and not the inmate. Many of the allegations are the obvious product of investigation and interviews conducted by persons other than the defendant who is, by virtue of his confinement on death row, unable to have "first-hand knowledge" in the technical sense.

Failure to have "qualified" the Rule 3.850 motion would have been, under these circumstances, perjurious. Yet, the trial court would not hear any motion under 3.850 unless it was verified without qualification, for the ironic reason that the defendant would not be subject to punishment for perjury by virtue of the qualification. Realistically, the qualification poses no such problem. Had the cause properly proceeded to an evidentiary hearing, those issues within the personal knowledge of the accused would have become apparent, and the power of the court to punish for false swearing would not have been abrogated in any fashion.

The trial court has placed form over substance. All that Rule 3.850 requires is "substantial compliance". One of the prerequisites is that the motion "shall be under oath." The rule does not require that the oath state, in an "unqualified" manner, that the movant have knowledge of the facts and state that they are true. In this regard, the dissenting opinion of Justice Terrell in Hahn v.

Frederick, 66 So.2d 823, 825-26 (Fla.1953), a case relied upon by the lower court, applies:

In my judgment the trouble with the majority opinion is that it proceeds on the wrong theory and necessarily leads to the wrong conclusion. In the first place any statute regulating the disqualification of judges is for the benefit of the litigant and should be so construed. Such statutes proceed on the theory that every litigant in a cause is entitled to the cold neutrality of a trial judge, and being so, they should not be read in a vacuum, divorced from the human element, but they should be read and interpreted to give the relief for which they were designed. The primary requirement of the affidavit is to show that the litigant "fears" that he will not receive a fair trial in the court where the cause is pending on account of the prejudice of the judge.

True, the statute requires the affidavit to state the "facts and reasons" for affiant's belief that the judge is prejudiced, but I find no requirement that the main affidavit or the supporting affidavits state that "affiant has knowledge of the facts and knows them to be true." * * * That the affidavit be made in "good faith" is, in my judgment, all that the statute requires.

Id., at 825.

The reasoning of Justice Terrell applies with greater force to motions filed pursuant to Rule 3.850. As noted, there is no requirement that the oath be "magically" phrased. The motion need only be sworn.

Also, the motion must not be read in a vacuum. The trial court has lost sight of the limited resources and mobility of the litigant.

Additionally, Rule 3.850 motions should be liberally construed to properly determine their express purpose of adjudicating claims of unconstitutional deprivations of life or liberty -- claims which are a far cry from those made in the civil cases cited in the order of dismissal. See, Ashley v. State, 158 So.2d 530 (Fla.1st DCA 1963).

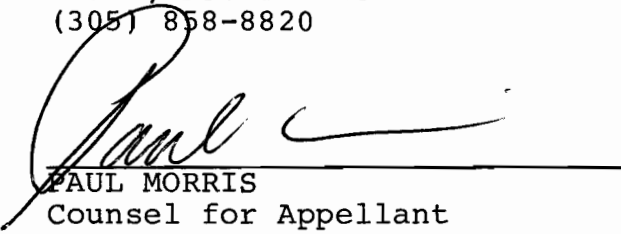
The defendant's affidavit was executed in good faith and within the spirit as well as the letter of Rule 3.850. The judgment below should be reversed.

CONCLUSION

Based upon the foregoing, the defendant respectfully requests that the judgment entered below be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief was mailed to the Office of the Attorney General, Counsel for the Appellee, 111 Georgia Avenue, West Palm Beach, Florida, this 8th day of June, 1984.

