

IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,060

**FILED**

SID J. WHITE

JUL 20 1984

PAUL WILLIAM SCOTT,

Appellant,

-v-

THE STATE OF FLORIDA,

Appellee.

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

*JSC*

REPLY BRIEF OF APPELLANT

LAW OFFICES OF  
PAUL MORRIS, P.A.  
2000 S. Dixie Hwy., Suite 212  
Miami, Florida 33133  
(305) 858-8820

Counsel for Appellant

TABLE OF CONTENTS

ISSUE PRESENTED FOR REVIEW.....1  
TABLE OF CITATIONS.....1  
REPLY ARGUMENT.....2  
CONCLUSION.....5  
CERTIFICATE OF SERVICE.....5

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.

TABLE OF CITATIONS

Cases

Carver v. State,  
376 So.2d 899 (Fla.2d DCA 1979).....2

Castro v. State,  
419 So.2d 796 (Fla.3d DCA 1982).....3

Clouthier v. State,  
375 So.2d 874 (Fla.2d DCA 1979).....2

Costello v. State,  
260 So.2d 198 (Fla.1972).....2

Dulaney v. State,  
375 So.2d 869 (Fla.2d DCA 1979).....2

Monroe v. State,  
371 So.2d 683 (Fla.2d DCA 1979).....2

Williams v. State,  
375 So.2d 611 (Fla.2d DCA 1979).....2

REPLY 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.

This is not a case where an accused has failed to swear to the allegations of a Rule 3.850 motion. Therefore, those cases, relied upon by the trial court and the appellee, to wit: 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), are inapposite because in each of those cases, the Rule 3.850 motions were unsworn.

Also, this is not a case where an accused has sought dismissal of an entire prosecution under Rule 3.190(c)(4), which provides in part:

The facts on which such motion is based should be specifically alleged and the motion sworn to.

The cases cited by the appellee, which hold that the defendant's oath under Rule 3.190(c)(4) must be unqualified, see Brief of Appellee at 6 - 7, are distinguishable. Different considerations control under Rule 3.190. For example, the relief sought here under Rule 3.850 is materially different -- the accused in this case is seeking a hearing on his claims, not dismissal. Also, unlike Rule 3.190, Rule 3.850 expressly allows for "substantial compliance", indicative of the liberal interpretation which motions filed thereunder are to be accorded.

Costello v. State, 260 So.2d 198 (Fla.1972), cited by the appellee for the proposition that an attorney can file

an affidavit, is of no assistance to the accused in this case. In Costello, the attorney was a witness to the crucial facts surrounding the motion's attack upon a guilty plea. Counsel for the accused in this case is not a witness. In apparent recognition of the fact that some of the allegations in the Rule 3.850 motion were not within the personal knowledge of the accused, the appellee argues, "There is no impediment which prevents a defendant from reviewing the information which has resulted from his counsel's investigations. He would thus be in the same position of his counsel" (who can, according to Costello, file an affidavit). Brief of Appellee at 7.

This argument seems to suggest that the defendant should have sworn that he had personal knowledge of the facts and matters set forth in the motion, even though he actually did not, because "personal knowledge" equates with "reviewing the information" in the motion. This equation the movant could not risk for fear of a false swearing, and because Costello has not been interpreted as standing for that proposition, the fear remains reasonable.

The appellee's desire for an inflexible oath requirement ignores the liberal interpretations given Rule 3.850 motions. For example, in Castro v. State, 419 So.2d 796 (Fla.3d DCA 1982), the court reversed the denial of a Rule 3.850 motion. The state argued on appeal that the motion was deficient as having been unsworn. Even though the motion was unsworn, the appellate court noted that because the motion was accompanied by sworn affidavits of Castro and his counsel which set forth the allegations of

the motion, the oath requirement of Rule 3.850 had been sufficiently satisfied. Id., 419 So.2d at 798-99 n.5.

Similarly, the oath in this case was sufficient to satisfy the oath requirement, and the so-called "qualifying" words were added to protect against allegations that the motion was deficient because some of the facts could not have been within the "personal" knowledge of the movant.

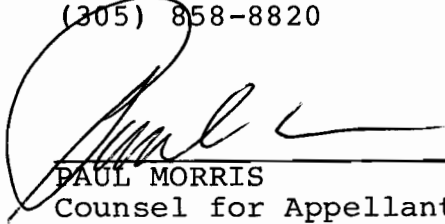
Rather than dismiss the cause, the trial court should have proceeded to an evidentiary hearing, where any doubts about personal knowledge that were not apparent on the face of the motion could otherwise have easily been resolved upon proffer, argument, or the taking of testimony.

CONCLUSION

Based upon the foregoing, the defendant respectfully requests that the order entered below be reversed and this cause proceed to evidentiary hearing.

Respectfully submitted,

LAW OFFICES OF PAUL MORRIS, P.A.  
2000 S. Dixie Hwy., Suite 212  
Miami, Florida 33133  
(305) 858-8820

  
\_\_\_\_\_  
PAUL MORRIS  
Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief was mailed to Penny H. Brill, Counsel for the Appellee, Office of the Attorney General, 111 Georgia Avenue, West Palm Beach, Florida, this 18th day of July, 1984.

  
\_\_\_\_\_