

047

IN THE SUPREME COURT OF FLORIDA

FILED
SiD J. WHITE

SYLVESTER WILLIAMS)
Petitioner)
vs.)
STATE OF FLORIDA)
Respondent)

) CASE NO. 66,075
DCA Case No. Ay-407
)

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CERTIFIED GREAT PUBLIC IMPORTANCE

INITIAL BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

SYLVESTER WILLIAMS, Petitioner, was the Appellant-Defendant and is referred to herein as Petitioner. The State of Florida will be called Respondent here. The record on appeal consists of one volume, and will be referred to by the symbol "R" followed by the appropriate page number.

STATEMENT OF FACTS

Petitioner was initially charged with First Degree Murder. On the basis of his lawyer's promise that he would receive no more than fifteen years imprisonment, he entered a plea of nolo contendere to the reduced charge of Second Degree Murder with a firearm March 23, 1983, and was sentenced to life imprisonment with a mandatory three years. He challenged the conviction and sentence by Motion For Post Conviction Relief per Florida Rule of Criminal Procedure 3.850 in September 1983.

(R 2-4).

On October 10, 1983, Petitioner mailed a letter to the trial judge, explaining that he knew practically nothing about the operation of court room proceedings, adversary practice or post-conviction matters and that he would need the assistance of counsel at the scheduled hearing on the motion. He also indicated that another prison inmate had prepared all the post-conviction pleadings in the case. The trial Judge responded, indicating that Appellant would be afforded the right to representation by counsel at the hearing. (R 13).

When the hearing was postponed, Petitioner wrote to the Court again, reemphasizing his inability to represent himself and renewing his request for appointment of counsel for purposes of the forthcoming hearing. (R 16).

The hearing commenced without any "on record" evaluation

of Petitioner's need for appointment of counsel. Nor did the court address the two motions for appointment of counsel. (R 42) Petitioner did not waive the right to counsel, but none was appointed. (R 1-135).

Petitioner was diagnosed as having the equivalent of a second grade education. And does not have basic written communications skills. (Appendix To Appellate Brief).

The trial Judge denied the Motion For Post-Conviction Relief on March 14, 1984. (R 105-106). Appeal of the denial was taken to the District Court of Appeal for the First District. The trial court's order was affirmed with the court certifying the following question:

"WHEN A TRIAL COURT HAS DETERMINED THAT IT IS NECESSARY TO HOLD AN EVIDENTIARY HEARING ON ALLEGATIONS RAISED IN A MOTION FOR POST-CONVICTION RELIEF, IS COURT-APPOINTED COUNSEL FOR AN INDIGENT DEFENDANT MANDATORY OR IS SUCH APPOINTMENT PROPERLY LEFT TO THE DISCRETION OF THE TRIAL COURT?"

After motion for rehearing was denied on October 2, 1984, this followed.

ARGUMENT

ISSUE

WHETHER COURT-APPOINTED COUNSEL
SHOULD BE FURNISHED TO AN INDIGENT
DEFENDANT WHEN A TRIAL
COURT CONDUCTS AN EVIDENTIARY
HEARING ON ALLEGATIONS RAISED
IN A MOTION FOR POST-CONVICTION
RELIEF SHOULD BE LEFT TO
THE DISCRETION OF THE
TRIAL JUDGE, PROVIDED SUCH
DISCRETION IS EXERCISED WITHIN
THE OBJECTIVE GUIDELINES OF
GRAHAM v. STATE, 372 So. 2d
1363, 1366 (Fla. 1979)

The Petitioner would submit that the question certified by the Court below has already been adequately treated by this Honorable Court on another occasion. And the instant case provides but one more opportunity for reiteration of pertinent principles established therein. The occasion was Graham v. State, supra.

The Graham case stands for the proposition that "although there is no absolute right to counsel in post-conviction relief proceedings, the Court before which the proceedings are pending must determine the need for counsel and resolve any doubts in favor of the appointment of Counsel." id at 1366.

This principle of Florida criminal law, that the trial court must consider and evaluate the need for appointment of counsel at post-conviction evidentiary proceedings on a case-by-case basis, cannot be improved. It eliminates waste of

citizens' tax dollars where mandatory appointments of counsel are unnecessary. Simultaneously, it provides a test for identifying the indigent defendant who truly needs assistance of counsel and it instructs trial judges to resolve any doubts in favor of appointment of counsel. The current law is sufficient as is. If it's not necessary to change. Then it's necessary not to change.

But no rule of law is effective if it is neither obeyed by those to whom it speaks, nor enforced by those entrusted to interpret it. And such is the case here. The record of the evidentiary hearing reflects no evaluation of the need for appointment of counsel, despite the filing of two written requests for counsel by Petitioner. If the trial court had made only a cursory examination of Petitioner in effort to determine the need for counsel, he would have at least discovered these crucial facts:

- 1) Petitioner is practically illiterate, reading at the second grade level;
- 2) Another inmate filed all the pleadings for Petitioner;
- 3) Petitioner is totally unfamiliar with trial practice.

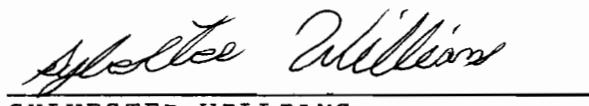
Is it fair to say a defendant does not need assistance of counsel when the trial Judge has to guide him step-by-step along the way to defending his interests at the hearing? Is it fair to say Petitioner did not need assistance of counsel when he did not know he could subpoena county jail officials

to support his claim of being influenced by psychiatric drugs? Or when he submits copies of certificates of completion of Bible study courses as evidence of rehabilitation at an evidentiary hearing on a 3.850 motion? Sylvester Williams is the type of defendant the Graham court sought to protect, but in this instance the system failed. Petitioner needed, was entitled to and should have received court-appointed counsel.

CONCLUSION

Appointment of counsel for indigent defendants at hearings on post-conviction motions should not be mandatory. Evaluation of the need for appointment of counsel for indigent defendants on the basis of the criterion enunciated in Graham, *supra*, should be mandatory. Since no consideration of Petitioner's need for counsel is present in the record, the order affirming the trial court's denial should be reversed with instructions for the trial court to grant an evidentiary hearing at which Petitioner's need for counsel is evaluated and counsel is appointed.

Respectfully submitted by,



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CERTIFICATE OF SERVICE

I, SYLVESTER WILLIAMS, HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief of the Petitioner has been mailed to Mr. John W. Tiedmann, Assistant Attorney General, the capitol, Tallahassee, Fl. 32301 this Nov. 14, 1984.

Sylvester Williams
SYLVESTER WILLIAMS