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FILED

SID J. WHITE

MAR 4 1985

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

CASE NO.

By [Signature]  
Chief Deputy Clerk

WILLIAM MIDDLETON,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

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

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SUPPLEMENTAL BRIEF OF APPELLEE

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## PREFACE

The State of Florida was served with Appellant's Initial Brief to this Court on February 28, 1985, at 4:30 p.m. The Appellee's brief was prepared and submitted for transport at Miami International Airport on March 1, 1985 at 11:30 a.m. On the same day at 12:43 p.m., the State received the Appellant's Amended Initial Brief. The majority of claims raised in the amended brief have been addressed in Appellee's brief. In an abundance of caution, the State has prepared the instant brief to more fully refute Appellant's claims.

As to point one, the State shall address appellant's competency of counsel claim. All other claims, which should have, or could have been addressed at trial, and on direct appeal, shall be contained in point two of the State's supplemental brief. This brief shall follow the same format and order as the original brief.

POINTS INVOLVED ON APPEAL

I

WHETHER THE TRIAL COURT ERRED IN DENYING WITHOUT AN EVIDENTIARY HEARING THE DEFENDANT'S CLAIM THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT HIS TRIAL WHERE THE CLAIMED INEFFECTIVENESS OF COUNSEL WAS TRIAL STRATEGY WHICH WAS REASONABLY EFFECTIVE BASED ON THE TOTALITY OF THE CIRCUMSTANCES.

II

WHETHER THE TRIAL COURT ERRED IN SUMMARILY DENYING DEFENDANT'S OTHER CLAIMS WHERE SAID CLAIMS COULD HAVE OR SHOULD HAVE BEEN RAISED ON DIRECT APPEAL.

ARGUMENT

I

THE TRIAL COURT DID NOT ERR IN DENYING WITHOUT AN EVIDENTIARY HEARING THE DEFENDANT'S CLAIM THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT HIS TRIAL WHERE THE CLAIMED INEFFECTIVENESS OF COUNSEL WAS TRIAL STRATEGY WHICH WAS REASONABLY EFFECTIVE BASED ON THE TOTALITY OF THE CIRCUMSTANCES.

The State will rely on its arguments regarding ineffective counsel contained in the initial brief. Defendant's claim regarding the "confession" shall be herein addressed.

First, Judge Levy, in his order denying the defendant's motion for stay of execution and motion to vacate specifically found that this argument had been waived. (A.12). The Judge's finding is supported by defense counsel's statement at the hearing which recognized the meritless nature of the issue.

(BY MR. DURANT): As to the allegations about the New York confession, I think that is very very interesting. I don't think it can be validly raised by motion under 3.850. I think that if anything it can be waived so I will not burden the Court with that.

(H.48).

Second, the trial court addressed this issue at the hearing. He found that, withstanding New York law, the defendant had freely and voluntarily confessed, and at all times waived his right to counsel. (A.12; T.92-95). As such, this claim was addressed at trial, and found to be without merit. Therefore, counsel cannot raise the issue before the trial court. (T.52-63).

Defendant should be afforded no relief on this issue.

II

THE TRIAL COURT DID NOT ERR IN SUMMARY DENYING DEFENDANT'S OTHER CLAIMS WHERE SAID CLAIMS COULD HAVE OR SHOULD HAVE BEEN RAISED ON DIRECT APPEAL.

All other claims of the defendant, in this last minute attempt, should have or could have been raised at trial and on direct appeal to this court. He should be precluded from raising these issues at this point.

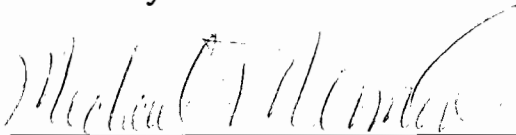
Moreover, the trial court, has agreed with the State's position. In its order denying defendant's motion for stay of execution and motion for post-conviction relief, it found that the issues now raised, should have or could have been raised at trial and on direct appeal, and are not cognizable on a motion for post-conviction relief. (A.14).

CONCLUSION

Based on the foregoing points and citations of authority, the State respectfully submits that the trial court's denial of the Motion to Vacate should clearly be affirmed.

Respectfully submitted,

JIM SMITH  
Attorney General

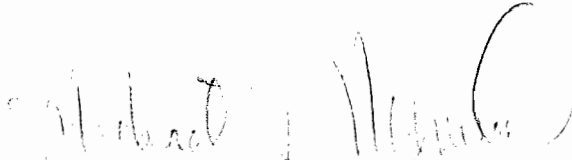


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF APPELLEE was hand delivered to N. JOSEPH DURANT, Attorney for Appellant, 1250 N.W. 7th Street, Suites 202-205, Miami, Florida 33125, on this 4th day of March, 1985.



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MICHAEL J. NEIMAND  
Assistant Attorney General

/vbm