

IN THE SUPREME COURT OF FLORIDA

CASE NO. 66, 991

WILLIAM D. CHRISTOPHER,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

Filed
9-23-85
Danya

On Appeal From The Circuit Court Of The
Twentieth Judicial Circuit In And For
Collier County, Florida

Appellant's Reply Brief

Thomas R. Bolf, Esq.
RUDEN, BARNETT, McCLOSKEY,
SCHUSTER & RUSSEL, P.A.
Attorneys for Appellant
One Corporate Plaza - PH-B
110 E. Broward Blvd.
P.O. Box 1900
Fort Lauderdale, Fl 33302
(305)764-6660; Mia 944-3282

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PREFACE TO THE COURT

To provide a precise analytical framework for examining the lower court's conclusion that Appellant is procedurally barred from bringing this Rule 3.850 Motion, Appellant sought to examine each potentially applicable procedural bar in Rule 3.850. The State attempts to not address the issues, or even frame new issues; instead, it seeks to address the procedural bars without distinguishing between those bars. Because Rule 3.850 has distinct provisions concerning proper procedures, and because the facts and law on each of the provisions differ, Appellant will continue to address each potential procedural bar individually.

Finally, Appellant takes issue with the State's assertion that Appellant's factual and procedural summaries are not wholly accurate. Such assertions are easily made; however, the State should bless this Court with specific statements, and citations to the record, which indicate the inaccuracies. The Appellant's statement of the facts and statement of the case are accurate, and supported by record citations.

SUMMARY OF ARGUMENT

ISSUE I: WHETHER THE PROCEDURAL PROPRIETY OF THE CONFESSION SUPPRESSION HEARING IS PROCEDURALLY BARRED BY RULE 3.850'S PROVISIONS CONCERNING (1) FAILURE TO ASSERT NEW AND DIFFERENT GROUNDS, OR (2) ISSUES DIRECTLY APPEALABLE.

The Appellant has not previously raised the procedural impropriety of his confession suppression hearing in his first 3.850 motion. This claim was therefore not decided on its merits previously, and may be asserted in a second 3.850 motion.

The procedural impropriety resulted in an unconstitutional invasion of the Defendant's right against self-incrimination. A Defendant's right against self-incrimination is one of the most fundamental rights; a proceeding which violates that right is inherently suspect, and this violation constitutes a fundamental error. Thus, the procedural bar against raising directly appealable issues in a Rule 3.850 motion is inapplicable.

ISSUE II: WHETHER THE INSTANT 3.850 MOTION CONSTITUTES AN ABUSE OF THE PROCEDURE GOVERNED BY THE RULES OF CRIMINAL PROCEDURE.

When Appellant's first 3.850 motion was filed, neither Appellant nor his counsel realized that the procedural improprieties at his confession suppression hearing were available grounds for relief. Appellant therefore could not have deliberately withheld these grounds from his first 3.850 motion, nor could he be deemed inexcuseably neglectful for failing to assert these grounds therein. The Appellant is therefore not abusing the Rule 3.850 procedure by raising these issues in

his second 3.850 motion.

ISSUE III: WHETHER THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM WAS DECIDED ON THE MERITS IN THE ORIGINAL 3.850 MOTION.

Although a portion of Appellant's ineffective assistance of counsel claims were decided on their merits in the original 3.850 proceedings, many of these claims were dismissed as inadequately pled. Claims which are raised, but not determined on their merits, may be raised in a subsequent 3.850 motion; the Appellant may therefore raise the ineffective assistance of counsel claims in this successor 3.850 motion.

ISSUE IV: WHETHER AN EVIDENTIARY HEARING NEED BE HELD ON THE ABUSE ISSUE.

The court, by determining that Appellant was abusing the 3.850 procedures by filing the successor 3.850 motion, implicitly concluded that Mr. Christopher was aware of the presently asserted grounds when he filed his previous motion. This conclusion is directly contrary to the record, which contains Appellant's assertions that he was unaware of these claims until after the initial 3.850 proceedings were completed. The Appellant should therefore be given an opportunity to defend the claim of abuse by presenting his and his counsel's testimony. Absent an evidentiary hearing, the facts necessary for an "abuse" finding are undeveloped and inadequate.

ISSUE V: WHETHER THE ABUSE PROVISIONS OF RULE 3.850, WHICH BECAME EFFECTIVE JANUARY 1, 1985, SHOULD BE RETROACTIVELY APPLIED TO RULE 3.850 PROCEEDINGS INSTITUTED PRIOR TO 1985.

The Rule 3.850 amendment barring the raising of issues

previously unasserted is not a codification of existing case law, but instead represents new 3.850 procedural law. Because the amendment immediately foreclosed the rights of prisoners to assert previously unasserted grounds, the amendment is closely analogous to an amendment shortening a statute of limitations. Such amendments, although nominally "procedural", are to be applied strictly prospectively, unless a contrary intent is manifest. The instant amendment contains no such manifest intent of retroactivity; indeed, another of the amendments to Rule 3.850 includes, through a savings clause, an indication that it is to be retroactively applied. Such an indication is conspicuously absent from the "abuse" amendment. The amendment should therefore be applied strictly prospectively.

ARGUMENT

ISSUE I: WHETHER THE PROCEDURAL PROPRIETY OF THE CONFESSION SUPPRESSION HEARING IS PROCEDURALLY BARRED BY RULE 3.850'S PROVISIONS CONCERNING (1) FAILURE TO ASSERT TO NEW AND DIFFERENT GROUNDS, OR (2) ISSUES DIRECTLY APPEALABLE.

The State primarily argues that Mr. Christopher "did not have to make a hard choice" (Ans. Br. at 12) at his confession suppression hearing, as he could rely on the testimony of the State's witnesses to determine what occurred at his confession. First, the assertion that Mr. Christopher's version of the events surrounding his confession could be adequately related by the officers who took his confession, and who obviously had an interest in seeing the confession's validity upheld, is extremely suspect. Such a statement is tantamount to saying that a criminal

defendant need never testify, as the State's witnesses can accurately testify as to the facts. Indeed, the lack of the Defendant's testifying is so insignificant, in the State's opinion, that it may be parenthetically dismissed. Ans. Br. at 17. It is disconcerting, to say the least, that the Attorney General of this State dismisses so cavalierly a basic Anglo-American Jurisprudential premise: Each party must be given an opportunity to present their evidence before the court makes its decision. Approval of the Appellee's position is virtually an approval of a police state. Perhaps it is the State whose "zealousness has lead to conclusions in the brief...based on faulty premises." Ans. Br. at 9. Fortunately, the law is contrary: A defendant must be permitted to testify on the issue of the voluntariness of his confession. See, e.g., Jarrell v. Balkcom, 735 F.2d 1242 (11th Cir. 1984). Thus, the proposition that Mr. Christopher could have relied on the State's witnesses, and therefore had no need to testify, is unsupported in law or in logic.

Second, the State misperceives the choices available to Mr. Christopher; the "choice" was indeed "hard". As the State acknowledges (Ans. Br. at 23), Mr. Christopher and his counsel feared the introduction of Mr. Christopher's confession at a later date for any purpose. Thus, Mr. Christopher had two choices: (1) he could testify at the suppression hearing, and risk the use of that testimony for any purpose at a later date; or (2) he could refuse to testify, and therefore not present the most logical defense to the allegation that his confession

was voluntary. As was made abundantly clear by the United States Supreme Court in Simmons v. United States, 390 U.S. 377, 391-94 (1968), such a trade-off is impermissible:

Thus, in this case Garrett was obliged either to give up what he believed, with advice of counsel, to be a valid Fourth Amendment claim, or in legal effect, to waive his Fifth Amendment privilege against self-incrimination. In the circumstances, we find it intolerable that one constitutional right should have to be surrendered in order to assert another.

Id. at 394.

In essence, the State contends that Mr. Christopher's required election as to which right he would surrender is not a "hard choice". The United States Supreme Court has held to the contrary, and likewise this Court should not sanction a process by which a criminal defendant must select between (1) testifying at his confession suppression hearing and risk that testimony's later admissibility at trial for any purpose, or (2) avoiding the risk of later self-incrimination by not testifying at the confession suppression hearing, and thus lose "[t]he only, or at least most natural, way in which he could...object to the admission of" his confession. Simmons, 390 U.S. at 391.

The State next argues that the infringement of Appellant's rights against self-incrimination is not a fundamental error, but is instead merely a violation of a fundamental right. The distinction between a fundamental right and a fundamental error is discussed at length in Nova v. State, 439 So.2d 255, 261-62 (Fla. 3d DCA 1983), in which the Court sets forth the following

distinction:

Error which is said to be fundamental is, among others, one which "reaches down to the legality of the trial itself,"; involves a violation of a defendant's rights which "will always be harmful, and it is very difficult for a court to determine when it is not,"; in short, one that goes to the essence of a fair and impartial trial. Because "[t]he right of an accused to a trial by jury is one of the most fundamental rights guaranteed by our system of government," and is the cornerstone of a fair and impartial trial, and infringement of that right constitutes a fundamental error.

Id. at 262 (citations omitted). See also O'Neal v. State, 308 So.2d 569 (Fla. 2d DCA 1975), overruled on other grounds, Roberts v. State, 320 So.2d 832 (Fla. 2d DCA 1975) (failure to inform accused of nature and cause of accusation against him constitutes fundamental error); Flowers v. State, 351 So.2d 387 (Fla. 1st DCA 1977) (re-sentencing defendant for probation violation in excess of original sentence was fundamental error).

As recognized by the United States Supreme Court in Miranda v. State of Arizona, 384 U.S. 436 (1966), the right against self-incrimination is a quintessential fundamental right. By effectively precluding the defendant's testimony at his suppression hearing, the voluntariness of the confession, and the entire validity of these proceedings, is significantly suspect. As such, the Appellant is not barred from raising the issue of the procedural propriety of his confession suppression hearing.

Finally, the State takes issue with Appellant's alleged failure to claim his appellant counsel was ineffective. Ans.

Br. at 11. Whether appellate counsel's ineffectiveness was prejudicial to this Defendant will be determined by this appeal. An allegation of ineffectiveness should not be lightly made; nonetheless, the State is quite correct: If Mr. Christopher's appellant counsel's failures caused the Defendant to be unable to raise the instant self-incrimination issue, then appropriate proceedings based on the ineffectiveness of counsel must be seriously considered.

ISSUE II: WHETHER THE INSTANT 3.850 MOTION
CONSTITUTES AN ABUSE OF THE
PROCEDURE GOVERNED BY THE RULES
OF CRIMINAL PROCEDURE.

The State contends that a review of the judicial history of this case required a finding of abuse by the Defendant. In support thereof, the State references two jury trials, and two proceedings in Federal Court. Again, the State does not bless this Court with citations to the record; the present record consists of one jury trial, and no Federal Court proceedings. As such, the references to these proceedings is of questionable propriety.

Nonetheless, the State misconstrues the abuse provision of Rule 3.850. The Rule not concerned with the number of trials a defendant has had, nor is it concerned with relief sought in the Federal courts. Instead, Rule 3.850 addresses second or successive 3.850 motions; the "abuse" provision states that if new and different grounds are alleged in a successive 3.850 motion, the judge may still dismiss the motion if he finds the failure of the movant or his attorney to assert those grounds in a prior 3.850 motion constituted an abuse of the 3.850

procedure.

Clearly, Rule 3.850 does not bar all successive 3.850 motions. Moreover, the fact that Appellant has exercised his rights to seek Federal relief should not prejudice his ability to obtain relief from the state court which conducted his proceedings.

The State's argument that Mr. Christopher's case has been reviewed and re-reviewed, and therefore Mr. Christopher should be barred from asserting a second Rule 3.850 motion, ignores the reality of the situation. Virtually all defendants who assert a second Rule 3.850 motion have been originally convicted, have appealed this original conviction, have raised an initial Rule 3.850 motion, and have appealed its denial. Thus, if the standard espoused by the State (reviewed and re-reviewed) if applicable, then virtually no defendant could avail himself of a second Rule 3.850 motion. Such a result would work a great injustice on those inmates asserting worthy claims in their second motion. This is particularly true of death sentenced inmates, as the execution of the man whose conviction was constitutionally deficient must be jealously avoided.

The State's argument, then, would preclude virtually all successive 3.850 motions. This is certainly contrary to the Federal court's interpretation of the abuse doctrine (see Init. Br. at 16). Moreover, the provisions of Rule 3.850 do not indicate such was the intent of the Florida Supreme Court.

The Defendant did not knowingly withhold the present claims from his original 3.850 motion; indeed, the Defendant was unaware

of the legal significance of his preclusion from testifying at his confession suppression hearing. The Defendant therefore is not abusing Rule 3.850 by now seeking relief, based on these grounds, before the trial court which convicted him. 1/

ISSUE III: WHETHER THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM WAS DECIDED ON THE MERITS IN THE ORIGINAL 3.850 MOTION.

The primary issue here is whether Appellant's ineffective assistance of counsel claims were wholly resolved on their merits in the first 3.850 proceedings. In Appellant's initial brief, Appellant stated that the trial court's order denying Appellant's initial 3.850 motion was unclear. The Appellee states that the order is clear; the State apparently is better able to understand the Court's order. The State concludes that the ineffectiveness of counsel claims were fully decided; the original order, as selectively quoted by the Appellee, states that the remaining ineffectiveness issues were "either belied by the record and files... ." Ans. Br. at 17.

Interestingly, the selected quotation reads in full as follows:

1/ Appellant is thoroughly perplexed at the statements by the Appellee at pages 15-16 of the Answer Brief. In Appellant's initial brief (Init. Br. at 23), Appellant concludes that ineffective assistance of counsel may be raised in a Rule 3.850 motion (e.g. ineffectiveness is not an appealable issue), the only other bar to the trial court's consideration of the ineffectiveness claim must come from the "abuse" provisions in Rule 3.850. Unless Appellant is seriously misreading Rule 3.850, and assuming, as was the case here, that a successive motion included the necessary allegations set forth in the Rule, this statement is accurate. The Appellant is even more confused as to the application of the retroactivity argument to this statement. Unfortunately, the State's decision to address five issues at once leads, inevitably, to the obfuscation of the issues, and of the State's argument.

Those claims of ineffective assistance of counsel which have not been specifically addressed in this Order are either belied by the records and files or are not sufficiently detailed in the pleadings as required by Knight v. State, 394 So.2d 997 (Fla. 1981) and other appropriate case authorities.

App. B, at 2. In contrast the State's conclusion that all the ineffective assistance of counsel claims were decided on their merits, the Appellant reads the above quoted provision to mean that some of the ineffective assistance of counsel claims were not sufficiently detailed in the pleadings. Indeed, to support the State's contention that all the claims were decided on their merits, it is respectfully submitted that the second half of the above-quoted sentence would have to be ignored. Moreover, as set forth in the initial brief at pages 28-30, the record attachments to the Order do not address all of the remaining ineffective assistance of counsel claims. These grounds must therefore have been rejected as insufficiently plead; as such, they were not decided on their merits. See Init. Br. at 30. These issues are therefore not precluded in this second 3.850 motion.

In Sum, the Appellant's first three issues indicate the following: (1) The procedural impropriety of the confession suppression hearing was not raised in the original Rule 3.850 motion, and therefore constitutes a new and different ground; (2) the procedural impropriety of the confession suppression hearing, although directly appealable, constitutes a fundamental error, and therefore may be raised in a Rule 3.850 motion; and (3) that raising the procedural improprieties of the confession

suppression hearing in this second Rule 3.850 motion is not an "abuse" of the procedure. The Appellant did not know the legal significance of the impropriety, and therefore was unaware of the availability of this ground for relief when the original 3.850 motion was filed; as such, the Appellant did not deliberately withhold these claims from the first 3.850 motion, nor was he inexcusably neglectful in failing to assert them in the prior motion. Raising the procedural improprieties of the confession suppression hearing at this second 3.850 motion is therefore not procedurally barred by Rule 3.850. Finally, (4) although some of Appellant's ineffective assistance of counsel claims were decided on their merits in the first 3.850 motion, many of the grounds were dismissed as inadequately alleged, and thus were not decided on their merits; the Appellant may therefore raise these claims in his second 3.850 motion.

ISSUE IV: WHETHER AN EVIDENTIARY HEARING
NEED BE HELD ON THE ABUSE ISSUE.

The State argues that no evidentiary hearing need be held to determine whether the Appellant has abused the Rule 3.850 procedure as "the record and pleadings are clear as to exactly what transpired below and why. The judge's order denying the subsequent 3.850 motion (sic) could not be clearer even to the inclusion of the case authority upon which he relied." Ans. Br. at 19. The Appellant begs to differ. As set forth in the initial brief, 10-11 (Analysis of Appealed Order), the order below was far from "clear".

More importantly, there can be no contention that the procedural impropriety of the confession suppression hearing

was raised in the first 3.850 motion. The dismissal of this substantive ground was necessary, therefore, based on a perceived abusive fragmentation of the issues by the Appellant; the court below apparently determined that these issues should have been raised in the first 3.850 motion.

Such a finding, however, necessarily includes a factual determination that the Appellant knew of these grounds when he filed his first 3.850 motion, and that he either deliberately withheld these grounds, or that he was inexcusably neglectful in failing to assert these grounds. The only items before the Court on the issue of Appellant's knowledge of these grounds was the sworn 3.850 motion in which the Appellant stated that he was unaware of these grounds as of the time of filing the first 3.850 motion. Nowhere in the record does the State contest this factual assertion. At a minimum, the Appellant and his counsel should be permitted to testify concerning whether they were cognizant of these grounds for relief, and whether they deliberately or inexcuseably withheld these grounds from the first 3.850 motion. This is the procedure approved by the United States Supreme Court and a host of Federal circuit court decisions. See Init. Br. at 31-33.

Simply put, the Defendant has been accused and found guilty of abusing the Rule 3.850 procedures. He should be permitted, notwithstanding the State's apparent position that a defendant's testimony is immaterial, an opportunity to rebut this very serious allegation. "In this way an adequate record can be established so that appellate courts can determine the precise bases of

the district court's action, which is often shrouded in ambiguity where a petition is dismissed without an expressed reason. And a prisoner is given a fair opportunity to meet all objections to the filing of his petition." Price v. Johnston, 334 U.S. 266, 292-93 (1948). See also Potts v. Zant, 63 F.2d 727, 752 (5th Cir.), cert. denied, 454 U.S. 877 (1981) ("The fact that man's life is at stake is relevant" to decision to permit hearing on abuse issue).

ISSUE V: WHETHER THE ABUSE PROVISIONS OF RULE 3.850, WHICH BECAME EFFECTIVE JANUARY 1, 1985, SHOULD BE RETROACTIVELY APPLIED TO RULE 3.850 PROCEEDINGS INSTITUTED PRIOR TO 1985.

The State incorrectly concludes that the amendments to Rule 3.850 were purely codifications of existing law. The Appellee misrepresents the contents of Appellant's initial brief when it states that "Appellant at page thirty-five of his brief admits something that is obvious in this regard. He acknowledges that the amendment, in effect, codified what had been case law previously." Ans. Br. at 16. Appellant's initial brief is clearly to the contrary:

The paragraph on abuse in Rule 3.850, effective January 1, 1985, in part codified existing case law, and in part created new law. Numerous Florida cases have held that if a second 3.850 motion asserted grounds which had been asserted in a prior 3.850 motion, and those grounds had been determined on their merits, then the Court need not consider those grounds on the subsequent 3.850 motion. No body of law had developed, however, concerning a procedural bar to claims neglectfully or purposefully omitted from an earlier 3.850 motion. The Rule 3.850 amendment concerning the failure to assert grounds in a prior motion constitutes a change in 3.850 law.

Init. Br. at 34 (citation omitted). The State's summary of

the above quotation is, at minimum, curious.

The State cites four decisions in support of its proposition that the amendments to Rule 3.850 are mere codifications of existing law. However, the cited decisions recognize that appealable issues are not proper 3.850 issues, and that issues decided on their merits in an original 3.850 motion need not be considered in a subsequent 3.850 motion. None of these decisions, however, address or sanction a procedural bar based on the purposeful or neglectful omission of a claim from an earlier 3.850 motion. See Witt v. State, 465 So.2d 510 (Fla. 1985) (case decided under amended Rule 3.850, and thus does not support proposition that amendment codified existing case law); Dobbert v. State, 456 So.2d 424 (Fla. 1984) (appealable issues not subject to 3.850; issues decided in previous 3.850 motion may be dismissed is raised again in subsequent 3.850 motion); State v. Washington, 453 So.2d 389 (Fla. 1984) (second Rule 3.850 motion was not dismissed for procedural reasons, but was decided on its merits; dicta indicates that if a claim was previously decided on its merits, it cannot be again raised in a subsequent 3.850 motion); Smith v. State, 453 So.2d 388 (Fla. 1984) (appealable issues are not properly raised in 3.850 motion).

The amendments to Rule 3.850 which provide for the dismissal of successive 3.850 motions for failure to assert claims in a prior motion was not a codification of existing case law. The Appellant is certainly not contesting the need for such a prohibition; nonetheless, the Rule acted to immediately

foreclose the rights of prisoners to assert previously unasserted grounds for Rule 3.850 relief. The prisoner's substantive rights were severely affected. This Rule change is closely analogous to a shortening of a Statute of Limitations, as claims which previously could have been raised are now immediately unavailable. Because the 3.850 amendment concerning unasserted grounds does not provide for a window period, this "procedural" amendment should be given prospective application only. This conclusion is reinforced by a different amendment to Rule 3.850 which expressly included a window period; the intended retroactivity of that particular amendment is manifest. Such an intent is conspicuously absent from the amendment barring previously unasserted 3.850 claims, and thus this amendment should be applied prospectively only.

CONCLUSION

Throughout its answer brief, the State agrees with the case law cited in Appellant's initial brief. The State insists, however, that the applicability of the law to the instant facts require the conclusion that the Appellant has abused the Rule 3.850 proceedings.

Nonetheless, the record is uncontroverted that the Appellant did not raise his claim of the procedural impropriety of his confession suppression hearing in the first 3.850 motion. This claim was therefore not decided on its merits in a previous 3.850 motion. Moreover, the procedural impropriety of the confession suppression hearing resulted in an unconstitutional invasion of the Defendant's right against self-incrimination;

the right against self-incrimination is one of the most fundamental, cherished rights in Anglo-American jurisprudence. A proceeding which violates that right is inherently suspect, and the violation is a fundamental error. Thus, the procedural bar against raising directly appealable issues in a Rule 3.850 motion is likewise not applicable.

When the first 3.850 motion was filed, neither Appellant nor his counsel realized that the procedural improprieties at his confession suppression hearing were available grounds for relief. Because Appellant did not know these grounds existed, he could not have deliberately withheld these grounds from the first 3.850 motion, nor could he be deemed inexcuseably neglectful in failing to assert these grounds previously. The Appellant is therefore not abusing the Rule 3.850 procedure by raising these grounds in a second 3.850 motion. The Appellant's claims should therefore not have been procedurally dismissed, and the court below should have been required to determine the issues on their merits.

Although a portion of Appellant's ineffective assistance of counsel claims were decided on their merits in the original 3.850 proceedings, many of these claims were dismissed as inadequately plead. Claims which are raised, but not determined on their merits, may be raised in a subsequent 3.850 motion; the Appellant may thus raise the ineffective assistance of counsel claims in this successor 3.850 motion.

Moreover, by determining that the Appellant was abusing

the 3.850 procedures by filing the successor 3.850 motion, the trial court implicitly concluded that Mr. Christopher was aware of these grounds when filing his previous motion. This conclusion is directly contrary to the Appellant's assertions, and the Appellant should be given an opportunity to defend the claim that he is abusing the 3.850 process. Only in this manner can the necessary facts be developed to support or undermine the Court's conclusion. To date, the record simply does not support the trial court's conclusion of abuse.

Finally, the abuse amendment represents new law, and, as with a shortening of the Statute of Limitations, should be given exclusively prospective application unless a contrary intent is manifest in the Rule. No such manifest intent is apparent; indeed, because the Court provided for a window period for certain aspects of the amendments (and therefore indicate its intended retroactivity), but did not provide a window period for the abuse amendment, an intent not to apply the abuse amendment retroactively is present.

The Appellant therefore respectfully requests this Court conclude that the Appellant's Rule 3.850 motion is not procedurally barred by any provision of Rule 3.850, reverse the trial court's order concluding that Appellant's 3.850 motion is procedurally barred, and remand this cause to the trial court for a determination, on the merits, of Appellant's 3.850 motion. In the alternative, Appellant requests this Court reverse the

trial court's order, and remand for an evidentiary hearing on the issue of whether the Appellant has abused the Rule 3.850 procedure.

Respectfully submitted,

RUDEN, BARNETT, McCLOSKEY,
SCHUSTER & RUSSELL, P.A.
Attorneys for Appellant
One Corporate Plaza - PH B
110 East Broward Boulevard
Post Office Box 1900
Fort Lauderdale, Florida 33302
(305)764-6660; Miami 944-3283

By Thomas R. Bolf
Thomas R. Bolf
Fla. Bar No. 454419

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to WILLIAM E. TAYLOR, ESQ., Assistant Attorney General, Park Trammel Building, Suite 804, 1313 Tampa Street, Tampa, Florida 33602; WILLIAM D. CHRISTOPHER, #066706, R-1-N-13, P.O. Box 747, Starke, Florida 32091; DONALD PELLECCIA, Assistant State Attorney, P.O. Drawer 1007, Naples, Florida 33939; and to JOSEPH L. DAYE, ESQ., 318 S.E. 8th Street, Fort Lauderdale, Florida this 19 day of September, 1985.

RUDEN, BARNETT, McCLOSKEY,
SCHUSTER & RUSSELL, P.A.
Attorneys for Appellant
One Corporate Plaza - PH B
110 East Broward Boulevard
Post Office Box 1900
Fort Lauderdale, Florida 33302
(305)764-6660; Miami 944-3283

By Thomas R. Bolf
Thomas R. Bolf
Fla. Bar No. 454419