IN THE SUPREME COURT
OF FLORIDA

Case No. 68,664

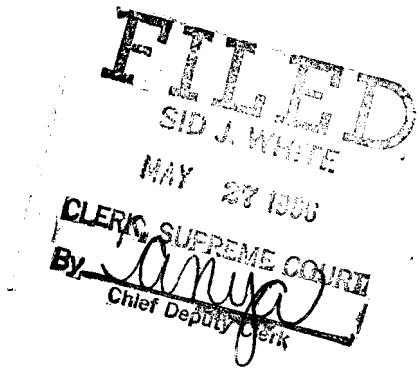
DAVID GORHAM,

Appellant,

-v-

THE STATE OF FLORIDA,

Appellee.



INITIAL BRIEF
OF
APPELLANT

LAW OFFICES GREENBERG, TRAURIG, ASKEW, HOFFMAN, LIPOFF, ROSEN & QUENTEL, P.A.
SUITE 1650 ONE CORPORATE PLAZA, 110 EAST BROWARD BOULEVARD, FORT LAUDERDALE, FL 33301 • TELEPHONE (305) 765-0500

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SUITE 1650 ONE CORPORATE PLAZA, 110 EAST BROWARD BOULEVARD, FORT LAUDERDALE, FL 33301 • TELEPHONE (305) 765-0500

TABLE OF CITATIONS

LAW OFFICES GREENBERG, TRAURIG, ASKEW, HOFFMAN, LIPOFF, ROSEN & QUENTEL, P.A.
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SUITE 1650 ONE CORPORATE PLAZA, 110 EAST BROWARD BOULEVARD, FORT LAUDERDALE, FL 33301 • TELEPHONE (305) 765-0500

OTHER AUTHORITIES

LAW OFFICES GREENBERG, TRAURIG, ASKEW, HOFFMAN, LIPOFF, ROSEN & QUENTEL, P. A.
SUITE 1650 ONE CORPORATE PLAZA, 110 EAST BROWARD BOULEVARD, FORT LAUDERDALE, FL 33301 • TELEPHONE (305) 765-0500

ISSUES PRESENTED FOR REVIEW

A. Whether DAVID GORHAM adequately complied with the rule set forth in Scott v. State, 464 So.2d 1171 (Fla. 1985), requiring motions filed pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure to be accompanied by the form oath set forth in Rule 3.987 swearing to personal knowledge of all the facts presented therein where: (1) Gorham's Rule 3.850 motion was not filed pro se but was filed and signed by members of the Florida Bar; (2) DAVID GORHAM executed an oath and supplemental affidavit stating with specificity which facts he did not have personal knowledge of and swore that these facts were true to the best of his knowledge; (3) DAVID GORHAM supported these factual assertions with evidence, including sworn affidavits and videotaped depositions, developed through counsel's post-trial investigation; and (4) DAVID GORHAM swore to having personal knowledge of all the remaining facts presented therein.

B. Whether the "personal" knowledge requirement of the form oath in Rule 3.987 effectively bars DAVID GORHAM from challenging, under Rule 3.850, the constitutionality of the State's suppression of exculpatory evidence under Brady v. Maryland, 373 U.S. 83 (1963), and the State's presentation of perjured testimony under Giglio v. United States, 405 U.S. 150 (1972), because (1) he will have to perjure himself in order to swear he has personal knowledge of evidence suppressed by the State; and (2) his oath that he has personal knowledge of such

evidence would in and of itself defeat his claims under Brady and Giglio, since, if he had personal knowledge of the evidence, the evidence would not have been unlawfully "suppressed" by the State.

SUMMARY OF ARGUMENT

Truth is the critical legal principal in this appeal. The Rule 3.987 form oath is an affirmation which, by its clear and unambiguous terms, is based on personal knowledge of all facts. Gorham, because he does not have personal knowledge of all facts, cannot truthfully sign the form oath - Gorham did, however, make every effort to meet Scott v. State standards by submitting evidence in support of his motion and by submitting his supplemental affidavit.

In Part A below, we demonstrate that Gorham's original oath executed and affixed to his Rule 3.850 motion and his supplemental affidavit complied with Scott v. State, 464 So.2d 1171 (Fla. 1985)(hereinafter "Scott"), because they were truthful, precise and supported by sworn affidavits and deposition testimony of third-party witnesses with personal knowledge.

With respect to facts that were within GORHAM's personal knowledge, GORHAM, by way of his supplemental affidavit, submitted a sworn oath in the language called for by the form set forth in Rule 3.987.

Other facts alleged in GORHAM's motion were not within his personal knowledge, but were necessary to support his constitutional claims that: (1) the State suppressed exculpatory evidence in violation of GORHAM's due process rights under Brady v. Maryland, 373 U.S. 83 (1963); (2) the State knowingly presented perjured testimony in violation of GORHAM's due process rights under Giglio v. United States, 405 U.S. 150 (1972); and (3) trial counsel rendered ineffective assistance of counsel in violation of GORHAM's Sixth Amendment rights under Strickland v. Washington, 104 S.Ct. 2052 (1984).

The trial court erred in ruling that the combination of GORHAM's oath, Supplemental Affidavit, counsels' signatures and witnesses' sworn affidavits and depositions did not adequately comply with Scott.

In Part B we demonstrate that a broad construction of Scott requiring personal knowledge of all facts in all post-conviction cases and for all claims brought under Rule 3.850, would encourage false oaths of personal knowledge and bar whole categories of constitutional claims from being raised under the rule. Brady, Giglio and Strickland claims inherently require independent investigation of the facts and the absence of personal knowledge by the defendant. Indeed, it was the State's and trial counsel's success in preventing GORHAM from obtaining knowledge of the facts that caused these constitutional violations in the first place. It is well established that no due process violation

exists under Brady or Giglio where the defendant has knowledge of the evidence allegedly suppressed by the State. See, e.g., United States v. McMahon, 715 F.2d 498, 501 (11th Cir. 1983), cert. denied, 104 S.Ct. 1413 (1984). GORHAM would thus not only, in effect, be committing perjury by swearing to having personal knowledge of the facts underlying his Brady and Giglio claims, he would also undermine those very claims. If GORHAM is to be accorded a full, fair and effective mechanism for vindicating such fundamental constitutional rights, he cannot be required to falsely swear to having personal knowledge of all facts supporting his claims.

STATEMENT OF CASE AND FACTS

DAVID GORHAM was convicted after a trial by jury of first degree murder and sentenced to death on October 26, 1982. The conviction and sentence were affirmed by this Court in Gorham v. State, 454 So.2d 556 (Fla. 1984) (per curiam). GORHAM subsequently obtained new counsel who conducted an extensive post-trial investigation.

On January 16, 1986, GORHAM filed a motion to vacate his conviction and sentence pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure, raising several constitutional issues.[1/] Relying in large part upon information discovered

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1/ Since the trial court dismissed GORHAM's Rule 3.850 motion on technical, procedural grounds, a detailed statement of the facts underlying his conviction is not presented herein. A complete statement of the facts is, however, contained in (Continued)

through counsel's post-trial investigation, GORHAM argued that his conviction and death sentence were unconstitutional because: the State had suppressed exculpatory evidence; the State had permitted a critical state witness to commit perjury; and GORHAM's trial attorney did not provide effective assistance of counsel. GORHAM also argued that his death sentence violated due process and the eighth amendment because there was an insufficient basis for overriding the jury's recommendation of life imprisonment and because the death penalty is disproportionately applied to black males accused of killing white victims.

GORHAM attached to his motion an oath in which he stated: "I have reviewed the facts set forth in this petition and to the best of my knowledge they are true and correct." The motion itself was signed by three members of The Florida Bar. Three other members of The Bar appeared on the brief as "of counsel". In addition, attached as exhibits to the motion were depositions and affidavits by third persons, all based upon personal knowledge and sworn to under oath, which supported many of the claims in the petition.[2/]

On January 30, 1986, the trial court ordered the State to respond to GORHAM's motion to vacate the sentence. On March 10,

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GORHAM's Motion To Vacate Conviction and Sentence, With Incorporated Memorandum of Law, January 16, 1986.

2/ As explained in the motion to vacate, these exhibits, depositions and affidavits were all obtained through undersigned counsel's post-conviction investigation.

1986, the State filed a pleading in which it stated that it was "declining" to respond to GORHAM's motion because GORHAM had not executed the form oath set forth in Rule 3.987 of the Florida Rules of Criminal Procedure. See Scott v. State, 464 So.2d 1171 (Fla. 1985).

GORHAM timely filed a reply memorandum in which he pointed out that, under the circumstances of this case, the oath that he had signed was sufficient. GORHAM explained that he could not sign the standard Rule 3.987 oath because it states that the affiant has "personal knowledge" of "all" the facts alleged in the motion. See Rule 3.987, Fla.R.Cr.P. (emphasis added). Since the facts that establish many of the claims in GORHAM's motions were discovered by counsel through an investigation which took place subsequent to GORHAM's imprisonment, GORHAM could only affirm by oath that the facts were true and correct to the best his knowledge. GORHAM further explained that for him to sign an oath in which he said that he had personal knowledge of all the facts in GORHAM's Rule 3.850 motion would, in and of itself, be perjurous.

On March 24, 1986, the trial judge ruled that Scott v. State obligated GORHAM to sign the Rule 3.987 form oath and dismissed the petition.

On April 3, 1986, GORHAM filed a motion for reconsideration. As Exhibit "B" thereto, he submitted a more detailed affidavit executed under oath by DAVID GORHAM. In this affidavit, GORHAM

stated that he had carefully read the 3.850 motion that was filed by his attorneys. He specifically listed the facts alleged in the Rule 3.850 motion that were outside his personal knowledge, then swore that these facts were true to the best of his knowledge. GORHAM's affidavit further stated that he had personal knowledge of all the other facts that were alleged in the Rule 3.850 motion and that these remaining facts were true and correct.

This detailed affidavit did not satisfy the State Attorney[3/] or the trial court. The trial court orally denied GORHAM's motion for reconsideration on April 9, 1986, and reiterated that the motion to vacate conviction and sentence must be dismissed pursuant to Scott.

GORHAM filed a notice of appeal on April 9, 1986. On April 14, 1986, a written order denying the motion for reconsideration was issued. Thereafter, an amended notice of appeal was filed on April 28, 1986.

3/ Undersigned counsel also wrote to the Assistant State Attorney on March 26, 1986, and asked the State to suggest alternative language to ensure against perjury while recognizing the fact that DAVID GORHAM did not and could not have personal knowledge of all of the facts supporting his due process and Sixth Amendment claims. The prosecutor informed counsel that the State's position was that the Rule 3.987 oath was mandatory. A copy of counsel's correspondence with the prosecutor was attached as Exhibit "A" to GORHAM's Motion for Reconsideration.

ARGUMENT

A. GORHAM HAS COMPLIED WITH SCOTT V. STATE STANDARDS BY SUBMITTING HIS RULE 3.850 MOTION UNDER OATH, ACCOMPANIED BY AN APPENDIX CONTAINING SUBSTANTIAL SUPPORTING EVIDENCE, AND BY SUBMITTING A DETAILED SUPPLEMENTARY AFFIDAVIT.

GORHAM has complied with the requirements set forth by this Court in Scott. The oath portion of the Rule 3.987 form states:

> Before me, the undersigned authority, this day personally appeared _____, who first being duly sworn, says that he is the Defendant in the above-styled cause, that he has read the foregoing motion for post-conviction relief and has personal knowledge of the facts and matters therein set forth and alleged; and that each and all of these facts and matters are true and correct.

(Emphasis supplied.)

The Court in Scott held that a prisoner who filed a motion to vacate under Rule 3.850 and submitted only an oath that the facts presented therein were true and correct "to the best of his knowledge" did not comply with Rule 3.850. Scott, 464 So.2d at 1172. The Court explained that the "qualifying language" added by Scott to his oath provided insufficient guarantees against perjury. "If the allegation proved to be false, the defendant would be able to simply respond that his verification of the false allegation had been 'to the best of his knowledge' and that he did not know that the allegation was false." Id.

GORHAM, in an effort to meet the requirements of Rule 3.850 and Scott filed: (1) the original oath to his Rule 3.850 motion; (2) a supplemental affidavit that specificially distinguished between those facts which were within his personal knowledge and those facts which were not; and, (3) third-party depositions, third-party affidavits, and or documents. Unlike Scott, GORHAM has gone the extra mile to ensure the accuracy and precision of his Rule 3.850 motion.

Although it is appropriate to encourage the use of the form provided in Rule 3.987, the State and trial court erred in reading Scott to rigidly require that the form oath be used by every defendant for every claim and every fact set forth in a Rule 3.850 motion.[4/] The "fill in the blanks" form was intended as a guideline for pro se prisoners. The text of the form is replete with instructions which show that it was intended as an aid for pro se filings. Blanks in the form request "your name" and similar personalized instructions inapplicable to members of the Bar and applicable to prisoners only. This form should not

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4/ Similarly, this Court has repeatedly held that, although the Florida Standard Jury Instructions should usually be used, their promulgation does not relieve the trial court of its obligation to tailor instructions to the needs of a particular case. See, e.g., Williams v. State, 437 So.2d 133, 136 (Fla. 1983); Matter of Use By Tr. Cts. Of Stand. Jury Inst., 431 So.2d 594, 598 (Fla. 1981); Matter of Use By Tr. Cts. of Stand. Jury Inst., 327 So.2d 6, 6 (Fla. 1976); State v. Bryan, 287 So.2d 73, 74-75 (Fla. 1973). Cf. Davis v. State, 373 So.2d 382, 383 (Fla. 4th DCA 1979) ("[t]rial judges should be discouraged from robot-like approaches to the trial of criminal cases").

restrict members of the Florida Bar from drafting motions which are custom tailored to the facts of a particular case.

Furthermore, as a matter of professional standards, the signature of an attorney to such a pleading is an affirmation that the pleading is truthful and based upon a reasonable investigation. GORHAM's Rule 3.850 motion was signed by three members of the Florida Bar with the volunteer assistance of three additional members of the bar in an "of counsel" capacity. To suggest that six members of the Florida Bar, volunteering valuable time to address serious constitutional issues must restrict their pleading practice to a "fill in the blanks" approach, is to stifle legal talent and creativity.

Moreover, the Court's concern, as expressed in Scott, for safeguarding against perjured oaths is amply satisfied in this case. GORHAM's original oath and his supplemental affidavit are affirmative enough to subject GORHAM to perjury prosecution if these facts are found false. First of all, a defendant who swears that a particular fact is true "to the best of his knowledge" may be convicted of perjury in the State of Florida, if the State can prove that he had "knowledge" that the fact in question was not true. Perjury prosecutions are routinely based on allegations concerning a defendant's knowledge of past events. See, e.g., Shelton v. State, 26 So.2d 444 (Fla. 1946) (defendant committed perjury when he testified that he did not know that his wife lived in McRae, Georgia); United States v.

LAW OFFICES GREENBERG, TRAURIG, ASKEW, HOFFMAN, LIPOFF, ROSEN & QUENTEL, P.A.
BRICKELL CONCOURS, 1401 BRICKELL AVENUE, MIAMI, FLORIDA 33131 • TELEPHONE (305) 579-0500

Crippin, 570 F.2d 535 (5th Cir.), cert. denied, 439 U.S. 1069 (1978) (jury properly concluded from all the circumstances that the defendant knew that his employees were turning back odometers in Miami automobiles).[5/]

Furthermore, unlike the defendant in Scott, GORHAM has precisely set forth those facts for which he does not have personal knowledge and has sworn to having personal knowledge of the remaining facts using the Rule 3.987 format. As to those facts for which Gorham does not have personal knowledge, GORHAM has submitted evidence, some of which is itself under oath in the form of affidavits and depositions. Thus, one way or another, the Court's interest in ensuring truthful pleadings has been met in this case. When GORHAM's oath and supplemental affidavit are considered in conjunction with the ample evidence attached in the Appendix to GORHAM's Rule 3.850 motion, there is no question that

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5/ Perjury convictions based on a defendant's knowledge of his own false statements have been upheld even where the defendant's knowledge is proven only by circumstantial evidence. See, e.g., Shelton v. State, 26 So.2d 444 (Fla. 1946); United States v. Caucci, 635 F.2d 441, 444 (5th Cir. 1981); United States v. Cuesta, 597 F.2d 903, 920-21 (5th Cir.), cert. denied, 444 U.S. 964 (1979). Indeed, the government has successfully prosecuted as perjury a witness' statement that they cannot recall certain events. See, e.g., Matter of Battaglia, 653 F.2d 419 (9th Cir. 1981); United States v. Abrams, 568 F.2d 411, 419 (5th Cir.), cert. denied, 437 U.S. 903 (1978); United States v. Chapin, 515 F.2d 1274, 1284 (D.C. Cir. 1975). Similarly, defendants have been successfully prosecuted for perjury, even where their statements were couched as "opinions." United States v. Ponticelli, 622 F.2d 985 (9th Cir. 1980), cert. denied, 449 U.S. 1016 (defendant's "opinion" that list of names found in his pocket was planted by FBI was perjurous).

DAVID GORHAM has met Scott v. State standards and is entitled to a hearing of his Rule 3.850 motion.

B. THE RULE 3.987 FORM OATH CANNOT BE APPLIED TO GORHAM'S CASE BECAUSE THE FORM OATH IS BASED EXCLUSIVELY ON PERSONAL KNOWLEDGE AND GORHAM'S CLAIMS ARE SUPPORTED BY FACTS NOT WITHIN GORHAM'S PERSONAL KNOWLEDGE.

An oath requiring personal knowledge should not be required to support claims that by their very nature require third party investigation or verification. On some occasions, counsel must be free to tailor the oath and proofs to the facts of the arguments. Many constitutional violations, such as the due process and sixth amendment violations set forth in GORHAM's Rule 3.850 motion, inherently do not involve facts within the personal knowledge of the defendant. Indeed, in order to prevail on his Brady and Giglio claims, GORHAM must show that he did not have knowledge of the exculpatory evidence suppressed by the State and of the perjurous nature of the testimony knowingly presented by the State. See, e.g., United States v. McMahon, 715 F.2d 498, 501 (11th Cir. 1983)(government failure to disclose grand jury testimony of unindicted coconspirators not Brady violation when defendant knew coconspirators, dealt with them regularly, knew of the substance of their testimony, and defense counsel could have interviewed them and called them as witnesses), cert. denied, 104 S.Ct. 1413 (1984); United States v. Slocum, 708 F.2d 587, 600 (11th Cir. 1983)(government failure to disclose favorable statements made by witnesses not Brady violation when names of all

witnesses were known to defendants and defendants, with reasonable diligence, could have obtained statements). Similarly, whether trial counsel diligently investigated the case in compliance with his duty under the sixth amendment to provide adequate assistance of counsel is not something is likely to have been within GORHAM's personal knowledge. DAVID GORHAM cannot sign an oath stating that he has personal knowledge of all the facts set forth in his Rule 3.850 motion because the evidence establishing the due process and sixth amendment violations were, in fact, discovered by undersigned counsel through an investigation which took place subsequent to GORHAM's imprisonment. Indeed, neither GORHAM, nor undersigned counsel, have personal knowledge of the Brady violations. These facts are peculiarly, and by definition, within the personal knowledge of the prosecutor and law enforcement officials who investigated and prosecuted GORHAM.

One of the central issues of DAVID GORHAM's Motion for Post-Conviction Relief is that the State's most important witness, Ada Johnson, committed perjury at the trial. This issue serves as an excellent example of why the Rule 3.987 form oath requiring "personal knowledge" of "all" facts alleged cannot be rigidly applied to the GORHAM case. The evidence in GORHAM's Rule 3.850 motion establishes the following facts regarding Ada Johnson's perjury, all of which are wholly outside of DAVID GORHAM's personal knowledge:

1. Ada Johnson provided a sworn statement to police on December 18, 1981, that she did not see DAVID GORHAM run from the scene of the crime and she neither saw nor heard anything at the time of the crime.

2. Approximately ten (10) days later, Ada Johnson and her husband, Jim Oscar Smith, were arrested for grand theft and a host of other related charges. This information was not provided to GORHAM's court appointed trial counsel.

3. Jim Oscar Smith, Ada Johnson's husband, was subsequently provided with lenient treatment including the dropping of all charges involved in the December 28, 1981, theft arrest and reinstatement of a 1977 armed robbery probation which was revoked as a result of the aforementioned theft. This information was not provided to GORHAM's trial counsel.

4. Several of the charges against Ada Johnson were also dropped. This information was not provided to GORHAM's trial counsel.

5. Thomas Kern, the homicide prosecutor who prosecuted GORHAM, and Detective Dan Murray, the homicide detective who investigated the charges against GORHAM, both recommended leniency for Ada Johnson. This recommendation by Thomas Kern was made before the October, 1982, trial of DAVID GORHAM. Ada Johnson filed an affidavit in the theft case, in support of her Motion for Mitigation, reflecting these facts. The State Attorney's office was in possession of this Affidavit at the time of GORHAM's trial. This information was not given to GORHAM's trial counsel.

6. Subsequent to this leniency recommendation by the State, Ada Johnson contradicted her December 18, 1981, sworn statement to police that she saw nothing at the time of the crime. At trial, Ada Johnson testified that she saw DAVID GORHAM run from the scene of the crime.[6/]

6/ GORHAM was present at trial and has personal knowledge of Ada Johnson's trial testimony.

> 7. Ada Johnson also testified that she received no deals and no recommendation of leniency. This, as the above facts show, was perjurous. The prosecutor made no attempt whatsoever to correct this false testimony and, indeed, compounded the due process violation by arguing to the jury that Ada Johnson had nothing to gain from her testimony.
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> 8. Despite express discovery demands for impeachment evidence on State witnesses, GORHAM's trial counsel never received Ada Johnson's affidavit or the other evidence of lenient treatment for Ada Johnson and her husband held by the State Attorney's office.

See Motion To Vacate Conviction and Sentence.

The State's knowing use of Ada Johnson's perjured testimony and the State's suppression of evidence that would have revealed that perjury are serious and clear violations of GORHAM's due process rights.[7/] They are exactly the types of constitutional violation Rule 3.850 was designed to address.

Yet, GORHAM cannot truthfully swear that all of the facts alleged in his Rule 3.850 motion are true and correct based on personal knowledge, since he has no personal knowledge of the due process violations themselves. Brady and Giglio claims, such as Ada Johnson's perjury, are based on the State's suppression of

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7/ The State's knowing use of false testimony to bolster the credibility of its witnesses violates due process. See, e.g., Brown v. Wainwright, No. 85-3217, Slip Op. (11th Cir. March 17, 1986); Porterfield v. State, 472 So.2d 882 (Fla. 1st DCA 1985); Young v. State, 453 So.2d 182 (Fla. 2d DCA 1984); Monson v. State, 443 So.2d 1061 (Fla. 1st DCA 1974). Cf. Presley v. State, 347 So.2d 731 (Fla. 4th DCA 1977) (in absence of record conclusively refuting allegation in motion for post-conviction relief that State had knowingly used perjured testimony at trial, movant was entitled to an evidentiary hearing).

LAW OFFICES GREENBERG, TRAURIG, ASKEW, HOFFMAN, LIPOFF, ROSEN & QUENTEL, P.A.
BRICKELL CONCOURS, 1401 BRICKELL AVENUE, MIAMI, FLORIDA 33131 • TELEPHONE (305) 579-0500

favorable evidence; it is the Defendant's state-induced lack of personal knowledge of the facts that creates the constitutional violation in the first instance. GORHAM lacks personal knowledge of these facts, in part, because the state kept them hidden from his defense. Similarly, GORHAM lacks personal knowledge of counsels' post-conviction investigatory efforts that unveiled the violations.

Under these circumstances, GORHAM could not sign the oath provided in Rule 3.987 without, in effect, committing perjury himself. It cannot be the policy of this Court to encourage perjury by requiring that defendants sign oaths stating that they have personal knowledge of constitutional violations, when they clearly do not have such personal knowledge. Truth, even in formalistic matters, should be encouraged as a matter of policy. The "to the best of my knowledge" oath signed by GORHAM as a jurat to his Rule 3.850 motion was truthful. The supplemental affidavit GORHAM filed with his Motion for Reconsideration was truthful and more precise. The Rule 3.987 form oath claiming personal knowledge would be a lie.

If use of the form oath in Rule 3.987 is deemed a prerequisite for post-conviction relief under Rule 3.850 for every defendant, in every case and for every claim, then Florida courts will not provide an avenue for remedying a wide variety of constitutional violations that, by their very nature, are outside the defendant's personal knowledge. Accordingly, state prisoners will be forced to seek immediate relief in the federal system.[8]

Furthermore, while the State of Florida would not normally be required to provide any post-conviction review of every constitutional claim, the State is not free to impose the death penalty where no procedure exists for testing constitutional claims.[9] If a death sentence can be allowed to stand under Florida law, despite the presence of serious due process and sixth amendment violations, then that death sentence is arbitrary and capricious and in violation of the eighth and fourteenth amendments. See generally Gregg v. Georgia, 428 U.S. 153 (1976) (plurality opinion).

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[8] Under 28 U.S.C. § 2254(d), a state prisoner is normally required to exhaust state remedies prior to seeking federal habeas corpus relief. However, a prisoner in state custody need not attempt to exhaust a state's remedies when "either there is an absence of available State corrective process or there is "the existence of circumstances rendering such process ineffective to protect the rights of the prisoner." Galtieri v. Wainwright, 582 F.2d 348, 354 (5th Cir. 1978) (en banc). Accord, Cook v. Florida Parole Probation Commn, 749 F.2d 678, 679 (11th Cir. 1985) (exhaustion requirement not jurisdictional and is inapplicable "where state remedies ineffectively protect the rights of a prisoner"). Nor must a state prisoner attempt to seek State remedies when it would be futile to do so. Id. at 355 n. 13. Accord, Allen v. State of Ala., 728 F.2d 1384, 1387 (11th Cir. 1984) (citations omitted). Where a particular constitutional claim may not be raised through a state's post-conviction process, a prisoner is not required to nevertheless seek to invoke those processes. Williams v. Lockhart, 772 F.2d 475, 477 n. 1 (8th Cir. 1985).

[9] GORHAM's due process and Sixth Amendment claims could not have been raised on direct appeal. GORHAM's trial counsel represented him in his direct appeal and could not have raised his own ineffectiveness therein. The due process violations were not discovered until undersigned counsel commenced an investigation in 1984.

CONCLUSION

In ancient times, pleading practice was so formalistic that form often had a higher value than truth. Modern pleading practice emphasizes truth and legal merit over form. In Scott, the very reason this Court required the use of the Rule 3.987 form oath was to discourage perjury and encourage truthful pleadings. It would be a perverse result, indeed, if Scott were read as compelling defendants to sign false oaths as a pre-requisite for Rule 3.850 relief. Forcing DAVID GORHAM to sign a false form oath as a pre-requisite to Rule 3.850 relief would be both a retreat from modern pleading practice and from the honored motto of Florida Courts, "We who labor here seek only truth."

We respectfully request that this Court fashion an opinion which exempts DAVID GORHAM's case from the sweeping implications of Scott. The Court should rule either that GORHAM has substantially complied with Scott or exempt categories of factual allegations and legal claims from the strict personal knowledge requirement set by the trial court. Such an exemption is necessary to insure that the Florida courts provide some avenue of relief for constitutional violations that necessarily entail no personal knowledge of the facts by the prisoner.

Respectfully submitted,

GREENBERG, TRAURIG, ASKEW,
HOFFMAN, LIPOFF, ROSEN &
QUENTEL P.A.
Attorneys for DAVID GORHAM
1401 Brickell Avenue, PH-1
Miami, Florida 33131
Telephone: (305) 579-0500

By: THOMAS K. EQUELS

Of Counsel:

JOHN F. EVANS, ESQUIRE
G. RICHARD STRAFER, ESQUIRE
HOLLY R. SKOLNICK, ESQUIRE
ZUCKERMAN, SPAEDER, TAYLOR
& EVANS
Gables Corporate Plaza
Suite 1100
2100 Ponce De Leon Boulevard
Coral Gables, FL 33134

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail to PAUL ZACKS, Assistant State Attorney, and ROBERT TIETLER, Assistant Attorney General this 23rd day of May, 1986, by:

THOMAS K. EQUELS