

W O O H

IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,392

THE STATE OF FLORIDA,

Petitioner,

vs.

CARLOS RODRIGUEZ,

Respondent.

FILED
 DEC 7 1987
 CLERK, SUPREME COURT
 By *M*
 Deputy Clerk

* * * * *

AN APPLICATION FOR DISCRETIONARY REVIEW

* * * * *

PETITIONER'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
 Attorney General
 Tallahassee, Florida

STEVEN T. SCOTT
 Assistant Attorney General
 Department of Legal Affairs
 Ruth Bryan Owen Rhode Building
 Dade County Regional Service Center
 401 N. W. 2nd Avenue (Suite 820)
 Miami, Florida 33128

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS.....	-ii-
INTRODUCTION.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS.....	1-2
ISSUE ON APPEAL.....	3
SUMMARY OF THE ARGUMENT.....	4
ARGUMENT.....	5-6
CONCLUSION.....	7
CERTIFICATE OF SERVICE.....	7

TABLE OF CITATIONS

CASES

PAGE

Scott v. State, 464 So.2d 1171 (Fla. 1985).....	5
State v. Rodriguez, 505 So.2d 628 (Fla. 3d DCA 1987).....	5

OTHER AUTHORITIES

Rule 3.190(c)(4).....	1, 5, 6
-----------------------	---------

INTRODUCTION

Petitioner was the prosecution in the trial court and appellant in the Third District Court of Appeals. Respondent was the defendant and later the appellee. The letter "R" will signify the record on appeal while "Tr." will signify the transcript of proceedings.

STATEMENT OF THE CASE

Respondent was charged with various crimes. He filed a sworn motion to dismiss. That motion was granted. The Third District affirmed. This appeal follows.

STATEMENT OF THE FACTS

Respondent filed a motion to dismiss under Rule 3.190(c)(4). Said motion contained the following jurat:

Before me, the undersigned authority personally appeared, CARLOS MANUEL RODRIGUEZ, who by me first duly sworn, deposes and says that the facts contained in the foregoing Motion to Dismiss are true and correct to the best of his knowledge." (R. 10, 11).

The Petitioner moved to strike the motion (Tr. 2, 3). The trial court heard argument on Petitioner's motion to strike (Tr. 4-10), and denied that motion.

Petitioner also filed a Traverse to the Sworn Motion to Dismiss (R. 12).

The trial court granted the Sworn Motion to Dismiss (Tr. 10).

ISSUE ON APPEAL

WHETHER THE TRIAL COURT SHOULD HAVE
STRICKEN THE SWORN MOTION TO DISMISS
FOR CONTAINING A FAULTY JURAT?

SUMMARY OF THE ARGUMENT

The Petitioner pointed out to the trial court that the jurat in Respondent's sworn motion was defective. In said jurat, Respondent failed to expose himself to the penalties of perjury. His language was equivocal. The trial court should have stricken the sworn motion.

ARGUMENT

THE TRIAL COURT SHOULD HAVE STRICKEN
THE SWORN MOTION TO DISMISS FOR CON-
TAINING A FAULTY JURAT.

In Scott v. State, 464 So.2d 1171 (Fla. 1985) the defendant filed a Rule 3.850 motion. That motion's jurat contained a phrase that "to the best of [his] knowledge" the facts contained therein were true. The trial court held that jurat to be defective. This Court affirmed:

The trial court correctly held that Scott's verification was not an oath as contemplated by rule 3.850 because of the qualifying language contained therein. Using this qualifying language, a defendant could file a motion for post-conviction relief based upon a false allegation of fact without fear of conviction for 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. We require more than that. The defendant must be able to affirmatively say that his allegation is true and correct."

464 So.2d at 1172.

Respondent's jurat was identical to Scott's. He swore that "to the best of his knowledge," the facts enumerated in his Rule 3.190(c)(4) motion were true (R. 10, 11). See: Third District's opinion, State v. Rodriguez, 505 So.2d 628 (Fla. 3d DCA 1987).

It is the State's position that those qualifying words "to the best of his knowledge" served to render the Rule 3.190(c)(4) motion meaningless. Any person who files a "sworn motion" must expose himself to the penalties of perjury. That is the purpose of the oath requirement. If the oath employed is not sufficient, the motion is not sufficient.

This Court has already held "to the best of his knowledge" to be qualifying language which does not expose the affiant to the penalties of perjury. Respondent used that exact language below. His motion should have been stricken.

The fact that Scott dealt with a Rule 3.850 situation is of no import. The question here is the language of the jurat. It either exposes one to a perjury prosecution or it does not. Here, it did not.

The Third District's opinion was contrary to Scott and therefore erroneous. It should be reversed on the authority of Scott.

CONCLUSION

This case should be reversed with instructions to strike the sworn motion.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General



STEVEN T. SCOTT
Assistant Attorney General
Department of Legal Affairs
401 N. W. 2nd Avenue (Suite 820)
Miami, Florida 33128
(305) 377-5441

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S BRIEF ON THE MERITS was furnished by mail to MICHAEL S. HACKER, 14 N. E. 1st Avenue, Suite 1400, Miami, Florida 33132, on this 3rd day of December, 1987.



STEVEN T. SCOTT
Assistant Attorney General

/bf