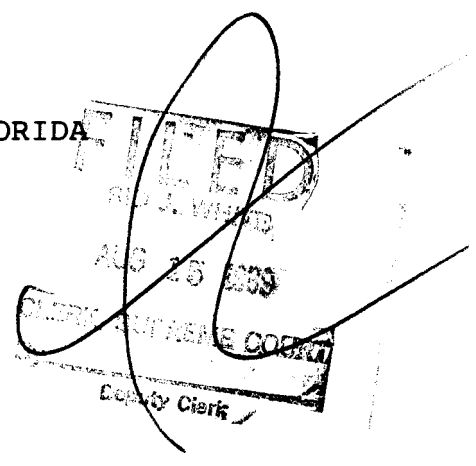


9-9

IN THE SUPREME COURT OF FLORIDA



PAUL TERRY MURRAY,
Appellant,

v.

CASE NO. 74,536

STATE OF FLORIDA,
Appellee.

PETITIONER'S BRIEF ON JURISDICTION

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PETITIONER'S BRIEF ON JURISDICTION

I. PRELIMINARY STATEMENT

Paul Terry Murray was the defendant in the trial court and will be referred to as the petitioner, the defendant, or by his proper name. Filed with this brief is an appendix containing a copy of the order to be reviewed as well as other documents pertinent to the jurisdiction of this Court.

11. STATEMENT OF THE CASE AND FACTS

Petitioner was charged by information on April 18, 1988 with two counts of capital sexual battery. Pursuant to an agreement with the state, the petitioner pled guilty to one count of attempted capital sexual battery and the state did not proceed on the other count on May 2, 1988. Petitioner agreed to a sentence of twenty years imprisonment, suspended after the serving of ten years, to be followed by a period of ten years probation. Petitioner acknowledged the sentence exceeded the recommended guidelines range, but stipulated to the departure sentence in exchange for the reduction of the primary offense to an attempt and the entry of a nolle prosequi in the second count.

At the plea hearing, the trial court conducted the requisite plea colloquy, reviewed the plea agreement, and determined that the plea was freely and voluntarily given. The court accepted the plea and sentenced the petitioner to the term specified in the plea agreement.

The petitioner filed a timely notice of appeal to the First District Court of Appeal and on March 29, 1989, counsel for the petitioner filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The district court permitted the petitioner to file a pro se brief which raised four issues. The petitioner alleged that the trial court erred by: (1) allowing the prosecution for capital sexual battery based upon an information rather than an indictment; (2) scoring points for victim injury on petitioner's guidelines scoresheet;

(3) exceeding the presumptive guidelines sentence pursuant to the plea agreement: and, (4) declining to refer the petitioner to the Mentally Disordered Sex Offender program. Appellate counsel had reviewed each of these issues before submitting the Anders brief and determined that he could not, in good faith, argue them to the district court. Nonetheless, on July 14, 1989, the district court entered an order requiring counsel to brief the issues raised by the petitioner. (App. 4)

Counsel moved for a stay of proceedings pending this Court's resolution of Forrester v. State, No. 74,166. In the alternative, counsel moved the district court to substitute counsel. (App. 2) On August 10, 1989, the district court denied those motions and again ordered counsel to brief those issues. (App. 1) Counsel filed a motion in this Court to stay proceedings (App. 3) and filed a timely notice to invoke discretionary jurisdiction.

111. SUMMARY OF ARGUMENT

The district court order, as in Forrester v. State, No. 74,166, directly and expressly affects a class of constitutional officers, namely all public defenders and assistant public defenders throughout the state of Florida. The order also directly and expressly conflicts with this Court's opinion in Rules Regulating the Florida Bar, 494 So.2d 977 (Fla. 1986).

IV. ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OFFICERS, NAMELY PUBLIC DEFENDERS AND THEIR ASSISTANTS AND DIRECTLY AND EXPRESSLY CONFLICTS WITH THIS COURT'S OPINION IN RULES REGULATING THE FLORIDA BAR, 494 SO.2D 977 (FLA. 1986).

By requiring an assistant public defender to brief issues he or she has already determined, following a thorough review of the record, to be either without merit or harmless, the decision of the district court directly affects the duties and responsibilities of every public defender and assistant public defender in the State of Florida. The district court order leaves an assistant public defender with only two options. The first is to brief an issue which he cannot in good faith say is meritorious. Such an action would violate the attorney's oath as well as Florida Rule of Professional Conduct 4-3.3, requiring candor towards the tribunal. Rules Regulating the Florida Bar, 494 So.2d 977, 1057 (Fla. 1986).

The second option available to counsel is to brief the case against his or her client. This option also requires the attorney to violate his or her oath as an attorney and to violate the rules of professional conduct.


By order dated July 31, 1989, this Court accepted jurisdiction in Forrester v. State, No. 74,166. This case presents precisely the same issues as in Forrester, notwithstanding the district court's statement to the contrary in its August 10 order. Accordingly, this Court should accept jurisdiction in this case as it has in Forrester.

V. CONCLUSION

Petitioner respectfully requests this Court to accept jurisdiction in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Brief of Jurisdiction has been furnished by hand-delivery to Mr. James Rogers, Assistant Attorney General, The Capitol, Tallahassee, Florida, 32302; and a copy has been mailed to Mr. Paul Terry Murray, #902439, Union Correctional Institution, Post Office Box 221, Raiford, Florida 32083, on this 15 day of August, 1989.


LAWRENCE M. KORN