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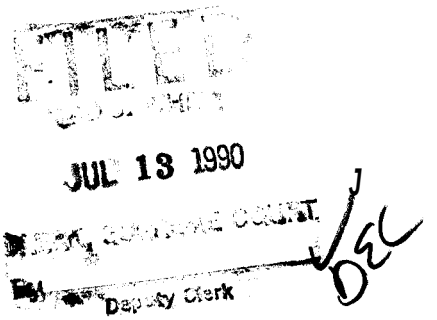
IN THE SUPREME COURT OF FLORIDA



JAMES WILLIAM HAMBLEN,

Appellant,

v. CASE NO.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE DENIAL OF POST-CONVICTION RELIEF IN THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE

(A) Procedural History

Hamblen was charged with first degree murder in Duval County, Florida, on April 24, **1984.** An indictment of murder in the first degree was returned May 10, **1984.** Hamblen, represented by state-appointed counsel, the public defender, moved for psychiatric examination. Both doctor's reported that Hamblen was competent to stand trial and was legally sane at the time of the offense. As a result of the doctors' reports, Hamblen asked the trial court to revoke the appointment of the public defender and allow him to represent himself. On July 10, **1984,** Hamblen was permitted to waive the right of counsel (although the public defender's office acted as standby counsel for both the plea and penalty phase), and pled guilty to first degree murder. On August **3, 1984,** Mr. Hamblen waived his right to have a jury impaneled for the sentencing proceeding. On September 7 and 11, **1984,** the trial court conducted the sentencing phase of this capital trial and on September 21, **1984,** the court imposed a sentence of death.

The public defender's office was appointed to handle the appeal and on June 2, **1988,** the Florida Supreme Court affirmed the judgment and sentence of death imposed. **Hamblen** v. **State,** 527 So.2d **800** (Fla. **1988).**

Governor Martinez, on May 1, **1988,** signed a death warrant and Mr. Hamblen's executed was scheduled for July 12, **1989.** Hamblen, through representation of the Capital Collateral Representative, filed a petition for writ of habeas corpus with

the Florida Supreme Court on June 5, 1989. On July 6, 1989, the petition for writ of habeas corpus was denied. Hamblen v. Dugger, ____ So.2d ____ (Fla. 1989), 14 F.L.W. 347.

On July 10, 1989, Hamblen, through counsel, filed a petition for writ of habeas corpus in the United States District Court for the Middle District of Florida. On that day, the district court judge denied all relief, denied a stay of execution and denied a certificate of probable cause to appeal. The Eleventh Circuit Court of Appeals, on July 11, 1989, entered a temporary stay of execution until 7:00 a.m., Tuesday, July 18, 1989.

Following oral argument on July 17, 1989, a panel of the Eleventh Circuit Court of Appeals denied a certificate of probable cause, vacated the stay of execution and concluded:

> The premises considered, we conclude that on behalf of Mr. Hamblen, there is no issue raised with sufficient merit upon which reasonable jurists may disagree. Consequently, the petition has failed to make a substantial showing of the denial of a federal right.

Rehearing en banc and emergency motion for stay was also denied July 17, 1989. A petition for writ of certiorari to the Eleventh Circuit Court of Appeals was filed on July 17, 1989, in the United States Supreme Court. A stay of execution was granted by the court on July 18, 1989.

On June 28, 1990, the United States Supreme Court entered its order denying certiorari review.

The Governor, on July 3, 1990, signed a second death warrant setting the warrant week to commence noon, Monday, July 16, 1990,

and terminate noon, Monday, July 23, 1990. The execution has been set for Tuesday, July 17, 1990, at 7:00 a.m.

On July 11, 1990, Hamblen filed, in the state trial court, a Rule 3.850 motion for post-conviction relief asserting one issue, to-wit: that Florida's electric chair system no longer functions properly and as such Hamblen is entitled to relief. The trial court, on July 12, 1990, denied Hamblen's motion, rehearing denied July 13, 1990.

(B) Statement of the Facts

The facts of the instant case may be found in **Hamblen** v. **State,** 527 So.2d **800** (Fla. 1988). Therein, the court found that Hamblen had driven to Florida from Texas. He needed money to part his rental car at the airport and decided to steal the necessary funds. While driving around the Jacksonville area, he saw a potential target, the Sensual Woman, a woman's lingerie store. Finding the owner, Ms. Laureen Jean Edwards, alone in the store, Hamblen pulled his gun and told her he wanted money. She gave him a small amount of money and then he told her to go into one of the dressing rooms and disrobe. Hamblen admitted to the police that he had no intention of sexually abusing Ms. Edwards but that he only wanted to make it difficult for her to follow him as he made his escape. Hamblen told the police that his pistol fired accidentally in the dressing room as the woman disrobed. Ms. Edwards then told Hamblen she had more money in the back of the store. She said she would take him to it if he would accompany her. As they proceeded towards the rear, Hamblen saw her touch a button which he suspected was a silent alarm.

Angered that "anybody could be so stupid over *so* little money", Hamblen ordered her back into the dressing room where he shot her once in the back of the head.

Ms. Edwards died from a single bullet wound from a .38 caliber weapon held at close range. She was not sexually abused and death was virtually instantaneous.

When the officers arrived at the store, they observed Hamblen inside the store. Hamblen eventually walked out of the store and when he did he stated he had "just killed a woman inside". In the dressing room, the officers found the partially clothed body of Ms. Edwards. Hamblen was then arrested and a .38 caliber automatic pistol was taken from him. Hamblen offered no resistance to arrest and when he was taken to police headquarters, gave a statement.

Hamblen pled guilty and waived his right to have a jury consider whether he should be executed. The State, at the penalty phase, introduced evidence concerning the circumstances of the crime and introduced evidence that Hamblen had been convicted of rape in Indiana in 1964. After reviewing the entire record and the testimony personally, the trial court found three aggravating factors and no mitigating factors to support the death penalty. The trial judge found that the murder was committed in a cold, calculated and premeditated manner, that Hamblen had been previously convicted of a felony involving violence against another person and that Hamblen committed the murder in the course of a robbery.

On direct appeal, in Hamblen v. State, 527 So.2d at 804-805, the Florida Supreme Court found that there was insufficient evidence to support a finding that the murder was cdmmitted in a cold, calculated and premeditated manner and without any pretense of moral or legal justification. The court held:

> In the instant case, the evidence does not indicate that Hamblen had a conscious intent of killing Ms. Edwards whenhe decided to rob The Sensual Woman. It was only after he became angered because Ms. Edwards pressed the alarm button that he decided to kill her. Unlike those cases in which robbery victims have been transported to other locations and killed sometime later, [cites omitted] Hamblen's conduct was more akin to a spontaneous act taken without reflection. While the evidence unquestionably demonstrates premeditation, we are unable to say that it meets the standard of heightened premeditation and calculation required to support this aggravating circumstance. Notwithstanding, we are convinced that the elimination of this aggravating circumstance would not have resulted in Hamblen's receiving a life sentence. [cites omitted].

ARGUMENT

THE TRIAL COURT DID NOT ERR IN DENYING HAMBLEN'S RULE 3.850 MOTION PREMISED UPON THE ALLEGEDLY "BOTCHED" EXECUTION OF JESSE TAFERO ON MAY 4, 1990

Hamblen presented the identical documentation to the circuit court that was filed in behalf of Judias Buenoano' and William Squires as evidence that Florida's method of execution, electrocution, is not reliable and its use could constitute cruel and unusual punishment. To that end no relief should be forthcoming. The trial court was correct in summarily denying the motion based upon this Court's decisions in **Buenoano** v. **State,** ____ **So.2d** ____ (Fla. June 20, **1990), 15** F.L.W. **S355,** and **Squires v. State,** ____ **So.**2d ____ (Fla. July **5, 1990),** ____ F.L.W. ____.

In **Buenoano,** this Court opined that it was the function of the Department of Corrections to carry out executions and maintain same. Because a "possible mishap" occurred during the Tafero execution on May **4, 1990,** does not demonstrate that future executions would suffer similar irregularities. In fact, the record is to the contrary. **See Buenoano** v. **Dugger,** ____ **F.**Supp. ____ (M.D. Fla. June **22, 1990),** cited in **Squires** v. **State, supra. Note: Louisiana v. Resweber, 329** U.S. **459, 463-464 (1947); Ritter v. Smith, 568** F.Supp. **1499 (S.D.** Ala. 1983), **affirmed in**

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[1] It should be noted that the six affidavits from inmates contained within the appendix to the Rule **3.850** motion, were not obtained until after this Court entertained Buenoano's state court pleadings and post-dated the Buenoano hearing held June **21-22, 1990,** in federal court. These affidavits contribute nothing to the determination that corrective measures have been undertaken to insure no recurrence of any irregularities which were apparently present during the May **4, 1990,** Tafero execution.

relevant part, reversed in part on other grounds, 726 F.2d 1505, 1519 (11th Cir. 1984), cert. denied, 469 U.S. 869 (1984).

In Squires, supra, this Court had available and reviewed, in a supplemental pleading, the six affidavits obtained from inmates. In Squires, the court specifically noted that the federal district court in Orlando had held an evidentiary hearing on Buenoano's claim and had "rejected the contention that the problems accompanying the Tafero execution had a substantial probability of recurring." Slip opinion at 3-4.

In a similar type claim in Alabama, in Wallace Norrell Thomas v. Jones, Case No. 90-7471, an appeal from the United States Districitt Corut for the Southern District of Alabama, the court concluded no relief was warranted in an attack against Alabama's ability to carry out an execution. The court opined:

> Two issues have been raised in this successive petition. The first deals with the Alabama electric chair, its age, condition and the staff which maintains and operates it. The district court held an evidentiary hearing, considered extensive testimony and exhibits, made and entered findings of fact and conclusions of law and denied relief. The record fully supports these rulings. . . .
>
> The request for relief is denied.

Thomas v. Jones, supra, (Decided July 11, 1990), cert. denied, (July 12, 1990). (Thomas ws executed with incident - July 12, 1990). See also: Ritter v. Smith, 568 F.Supp. 1499, 1526 (S.D. Ala. 1983), affirmed in relevant part, reversed in part on other grounds, 726 F.2d 1505, 1519 (11th Cir. 1984), cert. denied, 469 U.S. 869 (1984).

All relief should be denied. **Squires, supra; Buenoano, supra.**

Hamblen makes much to do about his inability to perfect his public records request citing **State v. Kokal,** ____ **So.**2d ____ (Fla. **1990),** and **Provenzano v. State.** ____ **So.**2d ____ (Fla. April 26, 1990), **15** F.L.W. S260.

The fact remains Hamblen through counsel has done very little to perfect said requests. Indeed, if anything, Hamblen has used the public records law as the straw-man to delay reviewing that which was always available. Hamblen did not need permission to show up on DOC's doorsteps and make said requests. The best evidence of this is the Jerry White case wherein the Office of the Capital Collateral Representative also represents Mr. White. It is clear that the alleged unavailability of information through the Public Records Act, or, presumably, prior failure to utilize this Act cannot serve to delay review. Speculation will always win out if that is the hallmark from

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[2] White, in his Rule 3.850 motion, filed July **10, 1990,** argued the identical issue herein presented. Unique to Mr. White's case is the fact that in White's first Rule **3.850** motion filed in **1985,** he alleged that electrocution in Florida's system was cruel and unusual punishment, because the of manner used in carrying it out. Included in that first appendix is a 20/20 ABC transcript of an interview by Hugh Downs discussing the five jolts needed to execute William Vandiver and whether it was cruel and unusual punishment, newspaper articles regarding the "5 Jolts Needed Before Killer Is Pronounced Dead", and a detailed account by then-Superintendent, Richard Dugger, of the procedures utilized in Florida electrocutions. Certainly, CCR had not only the knowledge but the ability to request and perfect a public records request as early as **1985** for all inmates presently residing on death row. The "urgency" and eleventh hour theatrics heretofore displayed can not and should not over-shadow the lack of due diligence regarding this meritless point.

which courts must operate. See Demps v. State, **515** So.2d 196, **198** (Fla. **1987**); Agan v. State, **560** So.2d 222, **223** (Fla. **1990**).[3]

Conclusion

Based on the foregoing, Appellee would urge this Honorable Court deny all relief.

Respectfully submitted,

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[3] The affidavits which were disclosed by CCR post-Buenoano and during the pendency of rehearing in Squires, via a supplemental pleading add nothing more to the issue since they (affidavits) contain information which pre-dated Jesse Tafero's May **4**, 1990, execution. Additionally, whatever information "now available" to CCR was available to CCR June **22**, **1990**, at the conclusion of the federal hearing in Buenoano. CCR waited until July **3**, **1990**, to make its written public records demand and did nothing further at that point but wait and wallow in their woe. Chapter **119**, Florida Statutes, does not mandate delivery of public records on a silver platter. This claim is akin to all claims that have "speculation" as the foundation upon which the shifting sans of the underlying premise rests.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to Mr. Billy H. Nolas, Esq., Office of the Capital Collateral Representative, 1533 South Monroe Street, Tallahassee, Florida 32301, this 13th day of July, 1990.

CAROLYN M. SNURKOWSKI
Assistant Attorney General