

FILED

SID J. WHITE

FEB 13 1997



CLERK, SUPREME COURT

By DC
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,604

BOBBIE LEE ROBINSON,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

*Amicus
Brief
68
1/15/97*

APPEAL FROM THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR DADE COUNTY

SUPPLEMENT TO INITIAL BRIEF OF APPELLANT

PAUL A. McKENNA, ESQ.
CURT OBRONT, ESQ.
McKenna & Obront
Attorneys for Appellant
2666 Tigertail Avenue
Suite 104
Coconut Grove, Florida 33133
(305) 285-7044

TABLE OF CONTENTS

	<u>Page</u>
Table of Contents	i
Table of Citations	ii
Argument	1
Conclusion	3
Certificate of Service	4

TABLE OF CITATIONS

	<u>Page</u>
<u>Corbett v. State</u> **.....**.....	1,2
602 So.2d 1240 (Fla. 1992)	
<u>Craig v. State</u> .I.....".....#.....	2
620 So.2d 174 (Fla. 1993)	
<u>Ferguson v. State</u> . ..I.....	2
632 So.2d 53 (Fla. 1993)	
<u>State v. Dixon</u> *.....*.....*	2
283 So.2d 1 (Fla. 1973)	

Other Authorities:

F.R.Cr.P. 3.700(c)	1
--------------------------	---

ARGUMENT

XI.

MR. ROBINSON'S SENTENCING JUDGE, WHO DID NOT PRESIDE OVER THE ORIGINAL TRIAL AND PENALTY PHASE, ERRED IN SENTENCING MR. ROBINSON WITHOUT CONDUCTING A NEW PENALTY PHASE PROCEEDING BEFORE A JURY TO ASSURE THAT BOTH THE JUDGE AND THE JURY HEAR THE SAME EVIDENCE THAT WILL BE DETERMINATIVE OF WHETHER MR. ROBINSON LIVES OR DIES.

A judge who is substituted before the initial trial on the merits is completed, and who does not hear the evidence presented during the penalty phase of the trial, must conduct a new sentencing proceeding before a jury to assure that both the judge and jury hear the same evidence that will be determinative of whether a defendant lives or dies. Corbett v. State, 602 So.2d 1240 (Fla. 1992). In Corbett, this Court explained that to rule otherwise would make it difficult for a substitute judge to overrule a jury that has heard the testimony and the evidence, particularly one that has recommended the death sentence.

In this case, the substitute judge at Mr. Robinson's sentencing did listen to compelling testimony offered by the defense (testimony that the jury never heard), but did not conduct a hearing before a jury and merely relied on the cold record (R:198). While 3.700(c), Florida Rules of Criminal Procedure, allows for a regular criminal sentencing to be handled by a

different judge, who did not preside at the trial if the judge has acquainted himself with the transcript, that rule simply cannot and does not apply in the unique circumstances of a capital case. See, Craig v. State, 620 **So.2d** 174 (Fla. 1993); Ferguson v. State, 632 **So.2d** 53 (Fla. 1993). This is precisely what this Court recognized in Corbett. This Court has consistently emphasized the importance of the findings of fact in support of a death sentence to demonstrate the sentencing judge's reasoned decision on the evidence. State v. Dixon, 283 **So.2d** 1 (Fla. 1973).

Mr. Robinson's death sentence was unconstitutionally imposed in this case, and in fairness to the defendant, Mr. Robinson respectfully requests that this cause be remanded for a new sentencing proceeding before a jury.

CONCLUSION

WHEREFORE, based on the fact that the sentencing judge did not hear the evidence presented during the penalty phase of the trial mandates a resentencing as a matter of law.

Respectfully submitted,

McKENNA & OBRONT
Attorneys for Appellant
2666 Tigertail Avenue, #104
Coconut Grove, Florida 33133
(305) 285-7044

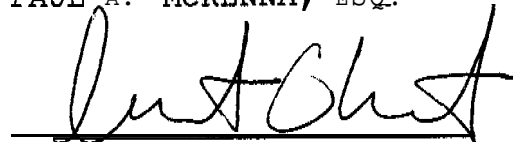
By: Paul A. McKenna
PAUL A. MCKENNA, ESQ.

By: Curt Obront
CURT OBRONT, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 12th day of February, 1997 to Fariba Komeily, Assistant Attorney General, 401 N.W. 2nd Avenue, #N-921, Miami, Florida 33128.


PAUL A. MCKENNA, ESQ.


CURT OBRONT, ESQ.