

097
IN THE SUPREME COURT OF
FLORIDA

CASE NO 84,273

FILED

SID J. WHITE

NOV 4 1994

IN RE: AMENDMENTS TO FLORIDA RULE OF CRIMINAL
PROCEDURE 3.220

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

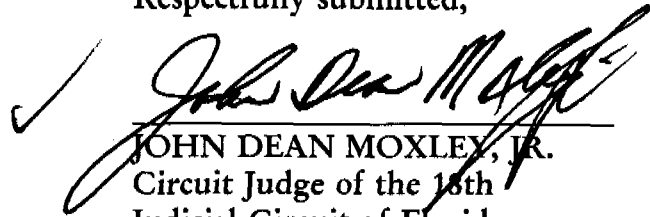
**RESPONSE TO EMERGENCY PETITION TO AMEND
FLORIDA RULE OF CRIMINAL PROCEDURE 3.220**

I am responding to the Emergency Petition to state my concern as both a trial lawyer and trial judge that the penalty phase in a capital case not be delayed very long from the conclusion of the guilt phase. In terms of jury management, inordinate delays may occasion excusals and seating alternates and possibly even seating a new jury. I think it is important generally for the trial jury which also heard the guilt phase to hear the penalty phase. I think it is important, because it is fair to both the state and the defendant in that the jury heard the entire case and will know it better than any subsequently seated jury.

I am also concerned that the operation of the rule without requiring sentence discovery to be concluded before the guilt phase of the trial may be contrary to the statute requiring the penalty proceedings to be conducted before the trial jury as soon as practicable. Section 921.142 (2) Florida Statutes. Additionally, a penalty phase delayed more than four days after the guilt phase may offend due process of law. Downs v. State, 386 So. 2d 788

(Fla. 1980). I believe that the penalty phase discovery rules should address and alleviate this concern.

Respectfully submitted,



JOHN DEAN MOXLEY, JR.
Circuit Judge of the 18th
Judicial Circuit of Florida
Florida Bar Number 120060

31 October

1994

6-407-264-6759