

IN THE SUPREME COURT OF FLORIDA

CASE NO. _____

PAUL WILLIAM SCOTT,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, STATE OF FLORIDA

APPELLANT'S REPLY BRIEF ON APPEAL FROM THE
DENIAL OF HIS MOTION FOR FLA. R. CRIM. P.
3.850 RELIEF AND IN SUPPORT OF APPELLANT'S
APPLICATION FOR STAY OF EXECUTION

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Appellant, PAUL WILLIAM SCOTT, through counsel, herein submits a reply to the State's answer brief and a request for oral argument. Mr. Scott respectfully urges the Court to stay his execution, allow full briefing of this matter, and allow oral argument. In support of this motion, Mr. Scott submits:

1. Mr. Scott and the State filed simultaneous briefs in this Court this morning at 8 a.m. Review of the briefs demonstrates that oral argument is necessary in this matter. A brief discussion of the State's argument regarding Mr. Scott's Brady claim demonstrates that a stay of execution, oral argument and an evidentiary hearing are required.

2. Mr. Scott's Rule 3.850 motion and his brief present a claim premised upon Brady v. Maryland, 373 U.S. 83 (1963), and Garcia v. State, 622 So. 2d 1325 (Fla. 1993). The State's brief does not even mention these cases, much less present any discussion regarding why this claim lacks merit.

3. The State's sole position regarding the Brady claim is that the evidence discussed therein has been considered before. The State does concede that the affidavits of Coffin and Dixon, upon which the claim rests, have not been considered before. However, the State dismisses those affidavits by contending that they contain the same information as was presented before. However, the State provides no record citation of any previous affidavit setting forth that pretrial the State possessed extrajudicial statements by Richard Kondian.

4. The State has entirely missed the point: the affidavits of Coffin and Dixon establish that the State had material exculpatory information in its possession prior to Mr. Scott's trial which was not disclosed to the defense. The difference between these affidavits and the information submitted in Mr. Scott's prior proceedings is significant. In his prior Rule 3.850 motion, Mr. Scott presented newly discovered evidence which, by definition, was not available at the time of trial. The Brady/Garcia evidence presented in the instant Rule 3.850 motion was in existence at the time of trial, but the State concealed it. The State's brief does not even address the allegation that this evidence existed at the time of trial nor the allegation that the State failed to disclose this evidence.

5. Rather, the State attempts to obfuscate the Brady/Giglio issue by contending that Mr. Scott's allegations are not credible because they are inconsistent with prior positions Mr. Scott has taken. The State's contentions establish that full briefing and oral argument, as well as an evidentiary hearing, are necessary. The State's obfuscations are nothing more than that, as any careful review of its argument reveals. Mr. Scott has always contended, from trial to this day, that Kondian murdered the victim after Mr. Scott fled the scene. Nothing in the State's brief indicates otherwise. At the time of trial, the State possessed evidence supporting this defense but concealed it from trial counsel and then concealed it throughout the postconviction process.

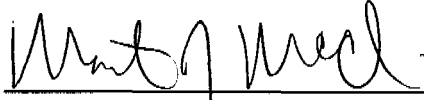
6. The need for an evidentiary hearing (and oral argument) is also established by the State's argument that this Court and the Eleventh Circuit have found Mr. Scott's evidence lacking in credibility (Answer at 23). However, no evidentiary hearing has been held on Mr. Scott's allegations regarding the Coffin and Dixon affidavits and therefore no credibility determinations could have been made. Again, the State is obfuscating rather than addressing the Brady/Garcia claim.

7. The State wants Mr. Scott executed because his case has gone through several postconviction proceedings (Answer Brief at 2). However, the responsibility for all of this rests squarely with the State, which has concealed the exculpatory evidence from trial to this day. The State's present obfuscations should not be permitted to mislead the Court.

8. The State also misrepresents the posture of Mr. Scott's federal proceedings. In 1983, Mr. Scott filed in federal court a claim that the sentencing discretion had not been sufficiently guided at his trial as required by Godfrey v. Georgia, 446 U.S. 420 (1980). The State responded by conceding that Mr. Scott had presented this claim to the Florida Supreme Court on direct appeal. Contrary to its assertions now, the State has agreed in federal court that Mr. Scott did challenge the guidance given the sentencer regarding aggravating circumstances.

WHEREFORE, Mr. Scott respectfully urges the Court to stay his execution, allow full briefing, permit oral argument, and remand for an evidentiary hearing.

I HEREBY CERTIFY that a true copy of the foregoing reply
brief has been furnished by Facsimile Transmission to all counsel
of record on November 14, 1994.



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