IN THE SUPREME COURT OF THE STATE OF FLORIDA

85,491

The Estate of MARGARET MAGGIACOMO, deceased, by and through the Personal Representative, DOUGLAS B. STALLEY,

Petitioner,

v.

Case No. 94-03823

BEVERLY ENTERPRISES - FLORIDA, INC., d/b/a/ BEVERLY GULF COAST - FLORIDA, INC., d/b/a/ WELLINGTON MANOR NURSING HOME,

Respondent.

APPLICATION FOR DISCRETIONARY REVIEW OF THE DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

BRIEF OF PETITIONER ON JURISDICTION

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CITATION OF AUTHORITIES

STATEMENT OF THE CASE AND OF THE FACTS

Plaintiff, Petitioner, DOUGLAS B. STALLEY, as personal representative of the estate of MARGARET MAGGIACOMO, seeks to have reviewed a decision of the District Court of Appeal, Second District, dated and filed March 10, 1995. The Petitioner was the original Plaintiff below and the Respondent before the District Court of Appeal. The Respondent, BEVERLY ENTERPRISES - FLORIDA, INC., d/b/a/ BEVERLY GULF COAST - FLORIDA, INC., d/b/a/WELLINGTON MANOR NURSING HOME, was the original Defendant in the trial forum and was the Petitioner before the District Court of Appeal.

DOUGLAS B. STALLEY, as the Personal Representative of the Estate of MARGARET MAGGIACOMO, sued BEVERLY ENTERPRISES - FLORIDA, INC., d/b/a/ BEVERLY GULF COAST - FLORIDA, INC., d/b/a/WELLINGTON MANOR NURSING HOME (hereinafter "Beverly"), and sought damages for the deprivation of Mrs. Maggiacomo's nursing home rights, pursuant to section 400.023, Florida Statutes (1993). On June 29, 1994, Plaintiff below moved to amend the complaint to add a claim for punitive damages. On September 28, 1994, the Honorable Manual Menendez, Jr. Granted Plaintiffs Motion to amend, permitting the Plaintiff to amend the complaint to add a claim for punitive damages.

Defendant below filed a Petition for Writ of Certiorari seeking to have the Second District Court of Appeal review the decision of the trial court on Plaintiff's Motion to Amend the Complaint to add a claim for punitive damages. On March 10, 1995, the Second District Court of Appeal filed its decision in which the court granted Defendant's petition for a Writ of Certiorari and quashed the decision of the trial court. (Appendix, "A).

QUESTION PRESENTED

WHETHER THE DECISION IN THE INSTANT CASE DIRECTLY AND EXPRESSLY CONFLICTS WITH THOSE CASES HOLDING THAT IT IS INAPPROPRIATE FOR AN APPELLATE COURT TO REVIEW BY CERTIORARI NON-FINAL ORDERS PERMITTING THE AMENDMENT OF A COMPLAINT TO ADD A CLAIM FOR PUNITIVE DAMAGES.

(Note: This issue is presently before the Supreme Court in the case of Globe Newspaper Co. v. King, 643 So.2d 676 (Fla. 1st DCA 1994), pending on review, No. 84-676 (Fla., briefing schedule issued Nov. 9, 1994, initial brief due Dec. 5, 1994).

ARGUMENT

THE PRESENT DECISION IS IN EXPRESS AND DIRECT CONFLICT WITH THOSE CASES HOLDING THAT IT IS INAPPROPRIATE FOR AN APPELLATE COURT TO REVIEW BY CERTIORARI NON-FINAL ORDERS PERMITTING THE AMENDMENT OF A COMPLAINT TO ADD A CLAIM FOR PUNITIVE DAMAGES

The several District Courts of Appeal in this state have issued conflicting opinions as to whether non-final orders of trial courts permitting amendment of complaints to add claims for punitive damages are reviewable by way of certiorari. The Second, Third, and Fourth District Courts of Appeal have held that certiorari is an appropriate method of review of these non-final orders. Manor Care of Florida, Inc. v. Oit, 620 So.2d 1297 (Fla. 2d DCA 1993); Commercial Carrier Corp. v. Rockhead, 639 So.2d 660 (Fla. 3d DCA 1994); Kev West Convalescent Center, Inc. v. Doherty, 619 So.2d 367 (Fla. 3d DCA 1993); Torcise v. Homestead Properties, 622 So.2d 637 (Fla. 3d DCA 1993), review denied, 634 So.2d 624 (Fla. 1994); Kraft General Foods. Inc. V. Rosenblum, 635 So.2d 106 (Fla. 4th

DCA 1994); Henn v. Sandler, 589 So.2d 1334 (Fla. 4th DCA 1991). The First and Fifth District Court of Appeals have held, however, that such review is not available. Globe Newspaper Co. v. King, 643 So.2d 676 (Fla. 1st DCA 1994), pending on review, No. 84-676 (Fla., briefing schendule issued Nov. 9, 1994, initia1 brief due Dec. 5, 1994); Chrysler Corp., Inc. v. Pumphrey, 622 So.2d 1164 (Fla. 1st DCA 1993); Harley Hotels v. Doe, 614 So.2d 1133 (Fla. 5th DCA), review denied, 626 So.2d 205 (Fla. 1993).

The decisions of the Second, Third and Fourth District Courts of Appeal conflict with the decision of this court in Martin-Johnson, Inc. v. Savage, 509 So.2d 1097 (Fla. 1987). In Martin, "the District Courts reached conflicting decisions as to whether it is appropriate for an appellate court to review by certiorari an interlocutory order denying a motion to dismiss or strike a claim for punitive damages. We conclude that appellate courts may not review such orders by certiorari." Martin, at 1098. The continued validity of the Supreme Court's conclusion on this issue has been questioned, however, by the several District Court's of Appeal in the State of Florida, primarily as a result of the Florida Legislature's adoption of section 768.72, Florida Statutes (1993).

This issue is presently before the Supreme Court in the case of Globe Newspaper Co. v. King, supra. Jurisdiction in the Globe case is predicated on the certification of conflict by the First District Court of Appeal, certifying conflict between its decisions holding that such review is inappropriate, and with Henn v. Sandler, supra; Kraft General Foodc, Inc. v. Rosenblum, supra and Commercial Carrier Corp. v. Rockhead, supra, holding that review by way of certiorari may be had. Conflict, therefore, has been expressly declared in

the District Courts of Appeal on this precise issue. Furthermore, the fact that this issue is presently pending before the Supreme Court, provides an additional foundation and emphasis for review. Jollie v. State, 405 So.2d 418 (Fla. 1981).

CONCLUSION

The Decision of the District Court of Appeal, Second District, that the Petitioner, Douglas B. Stalley, as personal representative of the estate of Margaret Maggiacomo, seeks to have reviewed is in direct and express conflict with the decisions of the District Courts *of* Appeal in the First and Fifth Districts, in the cases of Globe Newspaper Co. v. King, 643 So.2d 676 (Fla. 1st DCA 1994), pending on review, No. 84-676 (Fla., briefing schedule issued Nov. 9, 1994, Initial brief due Dec. 5, 1994); Chrysler Corp., Inc. v. Pumphrey, 622 So.2d 1164 (Fla. 1st DCA 1993); and Harley Hotels v. Doe, 614 S0.2d 1133 (Fla. 5th DCA), review denied, 626 So.2d 205 (Fla. 1993). It is submitted that the decision *of* the District Court of Appeal of Florida, Second District, is erroneous and that the conflicting decisions should be approved by this Court as the controlling law of this state.

The Petitioner, therefore, requests this Court to extend its discretionary jurisdiction to this cause, and to enter its order quashing the decision and order hereby sought to be reviewed, approving the conflicting decisions in the cases of Globe v. King, supra, Chrysler Corp., Inc. v. Pumphrey, supra, and Harley Hotels v. Doe, supra, as correct decisions, and granting such other and further relief as shall seem right and proper to the Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above was delivered by U.S. Mail to: **Gregory G. Frazier, Esquire, 4919 Memorial Hwy, Ste. 135, One Memorial Ctr., Tampa, FL 33634** and **Bennie Lazarra, Esquire, 606 E. Madison St., Ste. 2001, Tampa, Florida 33602,** this 5th day of April 1995.

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APPENDIX "A"

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

BEVERLY ENTERPRISES-FLORIDA, INC., d/b/a BEVERLY GULF COAST-FLORIDA, INC., d/b/a WELLINGTON MANOR NURSING HOME,

Petitioner,

v.

The Estate of MARGARET MAGGIACOMO, deceased, by and through the Personal Representative, DOUGLAS B. STALLEY,

Respondent.

Case No. 94-03823

Opinion filed March 10, 1995

Petition for Writ of Certiorari to the Circuit Court for Hillsborough County; Manuel Menendez, Jr., Judge.

Gregory G. Frazier of Parenti, Falk, Waas & Frazier, P.A., Tampa, and Gail Leverett Parenti of Parenti, Falk, Waas & Frazier, P.A., Coral Gables, for Petitioner.

David R. Gemmer of Wilkes and McHugh and Bennie Lazzara of Lazzara and Paul, P.A., Tampa, for Respondent.

PATTERSON, Judge.

Beverly Enterprises-Florida, Inc. (Beverly) seeks certiorari review of the trial court's order permitting an amendment to a complaint to add a claim for punitive damages.

We have jurisdiction. See Manor Care of Fla., Inc. v. Olt, 620 So. 2d 1297 (Fla. 2d DCA 1993).

Douglas Stalley, as the personal representative of the estate of Margaret Maggiacomo, sued Beverly and sought damages for the deprivation of Mrs. Maggiacomo's nursing home rights, pursuant to section 400.023, Florida Statutes (1993). The specific misconduct alleged is the theft of a diamond ring from Mrs. Maggiacomo's finger. The complaint asserts that a nurse's aid forcibly removed the ring, resulting in bruising to Mrs. Maggiacomo's finger. No arrest was made and Mrs. Maggiacomo subsequently died of unrelated causes.

To amend a complaint to add a claim for punitive damages, the plaintiff must provide evidence of acts which prima facia show a malicious, wanton, or willful disregard of the rights of others. Key West Convalescent Ctr., Inc. v. Doherty, 619 So. 2d 367 (Fla. 3d DCA 1993). To sustain this burden, Stalley relied on Mrs. Maggiacomo's medical chart which reflected that the ring was missing and the finger was bruised and a police report which stated that an employee was a suspect.

These facts are totally inadequate to sustain a claim for punitive damages against an employer based on vicarious liability. See Mercury Motors Express, Inc. v. Smith, 393 So. 2d 545 (Fla. 1981). We therefore grant the petition for writ of certiorari and quash the trial court's order permitting the amendment of the complaint to add a claim for punitive damages.

CAMPBELL, A.C.J., and PARKER, J., Concur.

APPENDIX "B"

1

GLOBE NEWSPAPER COMPANY, Appellant,

v.

Matthew J. KING, Appellee.

No. 94-1108.

District Court of Appeal of Florida, First District.

Oct. 11, 1994.

An Appeal from petition for writ of certiorari.

Steven A. Werber and Marcia Morales Howard, Jacksonville, for appellant.

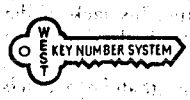
Christopher A. White, Jacksonville, for appellee.

PER CURIAM.

Globe Newspaper Company petitions this court for writ of certiorari to review an order granting the plaintiff's motion to amend his complaint to include a claim for punitive damages. This court has held in a similar case that certiorari is inappropriate for review of orders relating to discovery on punitive damages claims. *Chrysler Corporation v. Pumphrey*, 622 So.2d 1164 (Fla. 1st DCA 1993). Accordingly, we deny the petition for writ of certiorari.

However, we certify conflict with the Fourth District Court of Appeal in *Henn v. Sandler*, 589 So.2d 1334 (Fla. 4th DCA 1991), and *Kraft General Foods, Inc. v. Rosenblum*, 635 So.2d 106 (Fla. 4th DCA 1994), *rev. denied*, 642 So.2d 1363 (1994); and with the Third District Court of Appeal in *Commercial Carrier Corp. v. Rockhead*, 639 So.2d 660 (Fla. 3d DCA 1994).

JOANOS, WOLF and BENTON, JJ., concur.



2

Thomas Clyde KENNEDY, Appellant,

v.

STATE of Florida, Appellee.

No. 93-1164.

District Court of Appeal of Florida, First District.

Oct. 11, 1994.

Defendant was convicted in Circuit Court, Duval County, Alban Brooke, J., of sale or delivery of cocaine and possession of cocaine with intent to sell. Defendant appealed. The District Court of Appeal held that trial court preduded defendant from asserting his right to represent himself by ruling that defendant could represent himself only if court discharged public defender, "which [the court was] not going to do."

Reversed and remanded.

1. Criminal Law ⇐641.4(4), 641.10(2)

Trial court precluded defendant from asserting his right to represent himself by ruling that defendant could represent himself only if court discharged public defender, "which [the court was] not going to do." U.S.C.A. Const.Amend. 6.

2. Criminal Law ⇐641.4(2), 641.10(2)

Accused's right to represent himself does not hinge on court's willingness to discharge appointed counsel. U.S.C.A. Const. Amend. 6.

Nancy A. Daniels, Public Defender, Phil Patterson, Asst. Public Defender, Tallahassee, for appellant.

Robert A. Butterworth, Atty. Gen., Wendy S. Morris, Asst. Atty. Gen., Tallahassee, for appellee.

PER CURIAM.

Thomas Clyde Kennedy appeals his convictions and sentences for sale or delivery of cocaine and possession of cocaine with intent to sell. Kennedy contends that the trial

APPENDIX *"C"*

1

Brian SIEMIENAS, Appellant,

v.

UNIVERSITY OF FLORIDA, Appellee.

No. 92–2751.

District Court of Appeal of Florida, First District.

Aug. 23, 1993.

An Appeal from an Order of the University Residency Appeals Committee of the University of Florida.

Brian Siemienas, pro se.

Darryll K. Jones, Associate Gen. Counsel, University of Florida, Gainesville, for appellee.

PER CURIAM.

Competent substantial evidence supports the University's determination that Mr. Siemienas did not provide evidence of legal residency for tuition purposes for the twelve months prior to the first day of classes for the Fall 1991 term.

AFFIRMED.

SMITH, KAHN and LAWRENCE, JJ., concur.

2

CHRYSLER CORPORATION, Appellant/Petitioner,

v.

Kathy Drury PUMPHREY, Appellee/Respondent.

No. 93–1040.

District Court of Appeal of Florida, First District.

Aug. 23, 1993.

On defendant's petition for writ of certiorari seeking review of order denying defendant's motion for protective order or, in alternative, striking plaintiff's request for production of certain documents, which was filed after ruling by trial court reinstating plaintiff's punitive damages daim, the District Court of Appeal held that certiorari was inappropriate for review of order relating to discovery on punitive damages claim.

Petition denied.

Certiorari ⇐17

Certiorari was inappropriate ior review of order denying defendant's motion for protective order or, in alternative, striking request of plaintiff for production of certain documents after ruling by trial court reinstating plaintiff's punitive damages claim.

Gregory A. Anderson and Paula N. Lamb, Jacksonville, for appellant/petitioner.

Thomas S. Edwards, Jr. of Peek & Cobb, Jacksonville, for appellee/respondent.

PER CURIAM.

Chrysler Corporation petitions this court for writ of certiorari seeking review of an order denying Chrysler's motion for a protective order, or, in the alternative, striking the request by Kathy Drury Pumphrey, plaintiff below, for the production of certain documents. By this motion, Chrysler sought to prevent discovery into its financial records after a ruling by the trial court reinstating Pumphrey's punitive damages claim. We are guided in the instant case by the views of the court expressed in *Martin-Johnson v. Savage*, 509 So.2d 1097 (Fla.1987), finding certiorari inappropriate for review of orders relating to discovery on punitive damages claims. We also note in the case before us the lower court's ruling, on Pumphrey's motion for reinstatement of her punitive damages claim, that a review of the applicable evidence supported

a claim for punitive damages. *See*, § 768.72, Fla.Stat. (1989).

Accordingly, the petition for writ of certiorari is DENIED.

BOOTH, SMITH and JOANOS, JJ., concur.

1

INTERNATIONAL RESIDENTIAL CORP., Petitioner,

v.

Lawrence TAYLOR, Receiver, and **Joel Sussman, individualiy and as Trustee, Respondents.**

No. 93–1448.

District Court of Appal of Florida, Third District.

Aug. 24, 1993.

Plaintiff petitioned for writ of certiorari, seeking to quash order of the Circuit Court, Dade County, Rosemary Usher Jones, J., requiring posting of bond. The District Court of Appeal held that certiorari would be denied, as plaintiff had adequate remedy by appeal.

Certiorari denied.

Certiorari ⇐5(1)

Court would not grant certiorari review of plaintiff's challenge to trial court order requiring it to post $5,000 bond, failing which suit would be dismissed, as plaintiff had adequate remedy by appeal, either after dismissal for failure to post bond, or at conclusion of case.

Richard and Richard and Richard Sarafan, Miami, for petitioner,

Michael H. Wolf, Miami, for respondent Lawrence Taylor.

Before SCHWARTZ, C.J., and HUBBART and COPE, JJ.

PER CURIAM.

International Residential Corporation, plaintiff below, petitions for a writ of certiorari, seeking to quash an order requiring the posting of a bond. Petitioner contends that there is no legal authority which would permit the trial court to require plaintiff to post a bond as a precondition to plaintiff's right to maintain his lawsuit against defendants. *See* G.B.B. *Investments, Znc. v. Hinterkopf*, 343 So.2d 899 (Fla. 3d DCA 1977); *see* also *Psychiatric Associates v. Siegel*, 610 So.2d 419 (Fla. 1992). The order requires plaintiff to post a $5,000 bond, failing which the lawsuit will be dismissed.

We deny certiorari because petitioner has an adequate remedy by appeal, namely, by appeal after dismissal for failure to post the bond, or by appeal at the conclusion of the case. Certiorari is therefore denied, but without prejudice to raise the issue by way of appeal. *See Feldman v. Glucroft*, 553 So.2d 282, 284 (Fla. 3d DCA 1989); *see also Ovadia v. CRH Properties*, 586 So.2d 440, 441 (Fla. 3d DCA 1991), *aff'd sub nom. Doctors' Hospital v. Ovadia*, 610 So.2d 418 (Fla.1992).

Certiorari denied.

2

Robert WOOLRIDCE, Appellant,

v.

STATE of Florida, Appellee.

No. 93–0432.

District Court of Appeal of Florida, Fourth District.

Aug. 25, 1993.

Appeal from the Circuit Court for Broward County; Stanton S. Kaplan, Judge.

APPENDIX "D"

Excluding goodwill and using the only figure given by an expert at the hearing, the practice should have been valued at $100,000; yet the trial court valued it at $80,000. No competent, substantial evidence supports the trial court's determination. ***E.g., Harrison v. Harrison,*** 573 So.2d 1018, 1020 (Fla. 1st DCA 1991) (remanding for the trial court to reassess dental practice where no competent evidence supported court's valuation of $45,000 when only evidence submitted valued practice between $100,000 and $120,000).

Wife's contribution to husband's practice.

[5] Lastly, the trial court, in awarding alimony, may take into consideration the wife's contribution towards the husband's practice. ***See Hanks v. Hanks,*** 553 So.2d 340, 342 (Fla. 4th DCA 1989) (the wife should be credited for both her work in the practice as well as her contributions as a wife throughout the marriage); ***Buttner v. Buttner,*** 484 So.2d 1265 (Fla. 4th DCA) (same), ***rev. denied,*** 494 So.2d 1149 (Fla. 1986); ***see also*** § 61.075(5)(a)(2), Fla.Stat. (1991) (recognizing a spouse's contribution of labor in enhancing the value of assets). "Qpically, a nonprofessional spouse's efforts increase the professional spouse's earning capacity. Equity justifies higher alimony in such circumstances." ***Thompson,*** 576 So.2d at 268. The wife should be credited for her work in the practice. ***Cf. Hanks,*** 553 So.2d at 342 (where both parties spend their time to enhance the value of the husband's previously-owned store, it is a proper marital asset); ***Kanouse,*** 549 So.2d at 1036 (the trial court erred in not adequately compensating the wife for her loetcareer opportunities and her transfer of earning power over to her husband).

Except as noted initially, we reverse the final judgment and remand with instructions to increase the amount of the award to the wife, to classify that award as one of permanent periodic alimony, to redetermine the value of the podiatry practice and to accomplish an equitable distribution of this and any other assets.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED WITH DIRECTIONS.

DOWNEY, J., concurs.

GUNTHER, J., concurs in part and dissents in part with opinion.

GUNTHER, Judge, concurring in part and dissenting in part.

I agree with the majority opinion in all respects except that portion entitled ***wife's contribution to husband's practice.*** Under the facts of this case, the husband's present practice had not been enhanced by the wife's pre–1984 contribution. The wife worked in her husband's office on and off for approximately ten years without salary, but had not worked for eight years at the time of separation. During the time the wife worked in her husband's practices, the husband closed a Florida practice in 1976 because it was not successful; he opened a practice in Ohio in 1977 and closed it in 1980 due to economic problems; thereafter, the husband opened another Florida practice; the parties filed for bankruptcy in 1985; in 1988 the husband closed his Florida practice because of his cocaine problem; and his present office has been open only since April, 1990. From these facts I conclude that the wife cannot be said to have contributed to the husband's present practice. Furthermore, in her brief, the wife does not argue that she is entitled to any consideration for her earlier contribution by way of increased alimony, a lump sum award, or a special equity.

HARLEY HOTELS, INC., Etc., Petitioner,

v.

Jane **DOE,** Respondent.

No. 92–2088.

District Court of Appeal of Florida, Fifth District.

Feb. 5, 1993.

Petition for Writ of Certiorari, A Case of Original Jurisdiction.

David W. Henry of McDonough, O'Neal & O'Dell, Orlando, for petitioner.

Eric H. Faddis of Law Offices of Eric H. Faddis, P.A., Orlando, for respondent.

COBB, Judge.

Defendant herein, Harley Hotels, Inc., has petitioned for certiorari review of the trial court's non-final order granting the plaintiff's motion for leave to amend her complaint to add a claim for punitive damages.

We are constrained to deny certiorari review of an order permitting a claim for punitive damages. *Martin-Johnson, Inc. u. Savage,* 509 So.2d 1097 (Fla.1987). In doing so, we acknowledge the defendant's valid concern regarding the extent of plaintiff's right to engage in discovery of defendant's financial resources. Nevertheless, we remind defendant that the supreme court has expressly approved the use of Rule 1.280(c) to limit such discovery. ***Tennant v. Charlton,*** 377 So.2d 1169 (Fla. 1979).

CERTIORARI REVIEW DENIED.

COWART and GRIFFIN, JJ., concur.

David TAL-MASON, Appellant,

v.

Michael J. SATZ, Appellee.

No. 92-2052.

District Court of Appeal of Florida, Fourth District.

Feb. 10, 1993.

Rehearing En Banc, Rehearing, Clarification and Certification Denied April 6, 1993.

Prisoner petitioned for writ of mandamus seeking his prosecutorial file from the state attorney pursuant to the Public Records Law. The Circuit Court, Broward County, Estella M. Moriarty, J., denied the petition, and prisoner appealed. The District Court of Appeal, Gunther, J., held that prisoner was not entitled to prosecutorial file while his case was still active.

Affirmed.

1. Records ⇐30

Public policy is that public record must be freely accessible unless some overriding public purpose can only be secured by secrecy.

2. Records ⇐30

Prisoner, who was appealing his sentence by writ of habeas corpus, was not entitled to view his prosecutorial case file while his case was still active and had been active at time trial court denied his petition for writ of mandamus to obtain the file, even though case had not been active when prisoner had filed his petition seeking the file. West's F.S.A. § 119.011(3)(d)2.

David Tal-Mason, pro se.

Robert A. Butterworth, Atty. Gen., Tallahassee, and Joseph A. Tringali, Asst. Atty. Gen., West Palm Beach, for appellee.

GUNTHER, Judge.

David Tal-Mason appeals the denial of his petition for a writ of mandamus seeking his prosecutorial case file from the State Attorney pursuant to the Public Records Law, Chapter 119, Florida Statutes. The trial court denied his petition on the grounds that the State Attorney's Office was not an agency under the Public Records Law.

On August 8, 1983, Tal-Mason was sentenced to life in prison following his plea of guilty to second degree murder. He timely appealed his sentence, and moved for appointment of appellate counsel on August 30, 1983. The state moved to dismiss the appeal, arguing Tal-Mason forfeited his right to a direct appeal by pleading guilty. The trial court failed to appoint appellate