

Supreme Court of Florida

AMENDMENTS TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.220(h) AND FLORIDA RULE OF JUVENILE PROCEDURE 8.060(d).

AMENDMENTS TO FLOFUDA RULE OF CRIMINAL PROCEDURE 3.220(h).

Nos. 85,585 & 85,801

[October 16, 1997]

PER CURIAM.

In response to our opinion in In re Amendment to Florida Rule of Criminal Procedure 3.220(h) & Florida Rule of Juvenile Procedure 8.060(d), 668 So. 2d 951 (Fla. 1996), the Criminal Procedure and Juvenile Procedure Rules Committees filed proposed amendments to Florida Rule of Criminal Procedure 3.220 and Florida Rule of Juvenile Procedure 8.060. We adopted the proposed amendments as set forth in In re Amendment to Florida Rule of Criminal Procedure 3.220(h) & Florida Rule of Juvenile Procedure 8.060(d), 681 So. 2d 666 (Fla. 1996). We ordered that the amendments, with the exception of proposed rule 3.220(p)(3), would become effective October 1, 1996. Proposed rule 3.220(p)(3) was included among the amendments for the limited purpose of obtaining comments and, thereafter, for further consideration by this Court. We have jurisdiction. Art. V, § 2(a), Fla. Const.

We gave the Criminal Procedure Rules Committee and other interested parties ninety days from the date of our opinion to file comments on proposed rule 3.220(p)(3). The

proposed rule provides:

In capital cases, if the prosecutor intends to seek the death penalty, the court shall order the disclosure of aggravating and mitigating circumstances to be relied upon in good faith at trial.

The rules committee recommended that we reject proposed rule 3.220(p)(3). Other comments filed were also critical of the proposed rule. The Florida Public Defender Association (FPDA) recommended that the Court reject the rule because it subverted the purpose of the bifurcated death penalty process by forcing a defendant to pursue a guilt-phase defense or concede guilt and pursue mitigation. Moreover, the FPDA noted that the rule would preclude the defense from pursuing mitigators discovered during the course of the guilt phase.

Likewise, several state attorneys filed comments recommending that the Court reject the proposed rule. The state attorneys suggested that the proposed rule, which does not specify sanctions for violation, might be applied unfairly. While the prosecution might be precluded from presenting an aggravator it failed to disclose in violation of rule 3.220(p)(3), it is unlikely that the defense would be precluded from presenting mitigating evidence it failed to disclose in violation of the rule.

After reviewing the rules committee's recommendation and the comments submitted by various individuals and organizations, we decline to adopt proposed rule 3.220(p)(3).

It is so ordered.

OVERTON, GRIMES, HARDING and WELLS, JJ., concur.

ANSTEAD, J., concurs specially with an opinion, in which KOGAN, C.J. and SHAW, J., concur.

NO MOTION FOR REHEARING WILL BE ENTERTAINED BY THE COURT

ANSTEAD, J., specially concurring.

I write separately to note the good faith and hard work of all of those participating in this attempt to improve the pretrial process in capital cases. As with so many problems in the justice system, more attention to the front-end of the process has been demonstrated to have a substantial positive effect on our confidence in the outcome.

While we are declining to adopt this specific proposed rule, we must acknowledge that much remains to be done to improve the pretrial procedures in capital cases, especially concerning the penalty phase. For now we will have to be satisfied with the diligence of those conscientious prosecutors, defense lawyers and judges who constantly strive to maintain the integrity of the process

KOGAN, C.J. and SHAW, J., concur.

Two Consolidated Original Proceeding - Florida Rules of Criminal Procedure and Rules of Juvenile Procedure

John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida and Honorable Dedee S. Costello, Chair, The Florida Bar Criminal Procedure Rules Committee, Panama City, Florida,

for Petitioner

Honorable O. H. Eaton, Jr. , Circuit Judge, Eighteenth Judicial Circuit, Sanford, Florida; Jerry Hill, State Attorney, Tenth Judicial Circuit, Bartow, Florida; Katherine Fernandez Rundle, State Attorney, Eleventh Judicial Circuit, Miami, Florida and Penny H. Brill, Assistant State Attorney, Miami, Florida; Michael J. Satz, State Attorney, Seventeenth Judicial Circuit, Ft. Lauderdale and Carolyn V. McCann, Assistant State Attorney, Ft. Lauderdale, Florida; Brad King, State Attorney, Fifth Judicial Circuit, Ocala, Florida and Jim McCune, Assistant State Attorney, Ocala, Florida; Robert A. Butterworth, Attorney and Carolyn M. Snurkowski, Assistant Attorney General, Office of the Attorney General, Tallahassee, Florida; Bennett H. Brummer, President, Florida Public Defender Association, Inc., Miami, Florida; and Arthur I. Jacobs, General Counsel for Florida Prosecuting Attorneys Association, Fernandina Beach, Florida,

Responding with comments