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IN THE SUPREME COURT OF FLORIDA ✓

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

BILLY WAYNE DANIELS,
JR,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 91,537

RESPONDENT'S ANSWER BRIEF

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the respondent in the trial court, will be referenced in this brief as Respondent or the State.

Petitioner Daniels, the Appellant in the DCA and the petitioner in the trial court, will be referenced in this brief as Petitioner or by proper name.

All emphasis through bold lettering is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Petitioner has relied on appendices rather than the record on appeal for his statement of the case and facts. The appendices were not provided to the state. However, the State generally agrees with petitioner's statement of the case and facts and, because he is pro se, simply adds the following to clarify the posture of the case and the issue presented.

In the instant action, petitioner filed a motion in the trial court pursuant to Florida Rule of Criminal Procedure 3.850 during the time that his direct appeal of the judgment was pending in the district court. This rule 3.850 motion was denied on the merits by the trial court. Petitioner then sought review of the denial of the rule 3.850 motion in the district court. The district court recognized that the trial court did not have jurisdiction to consider the rule 3.850 motion while the direct appeal was pending but, instead of quashing the trial court order addressing the merits of a cause over which it had no jurisdiction, the district court affirmed the trial court decision on the merits. Petitioner sought rehearing in the district court, pointing out that affirmance on the merits would cause any subsequent rule 3.850 to be successive or abusive and would procedurally bar consideration on the merits. The petition for rehearing was denied and the petitioner sought review here. The state filed a jurisdictional brief which acknowledged that the district court decision to simply affirm the trial court

order was not only in direct and express conflict with decisions of this Court or of another district court but was also in error.

SUMMARY OF ARGUMENT

The district court erred in affirming the trial court's denial of petitioner's rule 3.850 motion on the merits. The district court recognized that the trial court had no jurisdiction to consider the merits of the rule 3.850 motion and, accordingly, should have quashed the decision of the trial court acting beyond its jurisdiction. This would have accurately reflected the posture of the case and would have protected the rights of both parties in any subsequent proceedings in either state or federal court.

The district court decision should be quashed and the district court instructed that jurisdictional questions must, as a matter of law, be addressed at the threshold and that the absence of jurisdiction precludes any further consideration of the merits of any action.

ARGUMENT

ISSUE I

DID THE DISTRICT COURT ERR IN AFFIRMING THE
DENIAL OF PETITIONER'S RULE 3.850 MOTION ON THE
MERITS (RESTATED)

Petitioner's pro se brief presents three questions to which arguments are then addressed. Because there is in fact only one issue, and no apparent disagreement between the parties on that issue, the state addresses the single restated issue above.

It is uncontroverted that petitioner erred in filing a Florida Rule of Criminal Procedure 3.850 motion in the trial court when his direct appeal of the same judgment had not been decided. It is also uncontroverted that the trial court erred in denying the rule 3.850 motion on the merits rather than dismissing it for lack of jurisdiction. State v. Meneses, 392 So.2d 905 (Fla. 1981); Hall v. State, 697 So.2d 237 (Fla. 5th DCA 1997). The district court itself recognized this but erred in **affirming** the trial court order denying the rule 3.850 motion on the merits. As petitioner points out in his brief here and in his rehearing motions in the district court, this affirmance on the merits severely disadvantages him for the purpose of seeking proper rule 3.850 relief after the direct appeal ends. Having lost on the merits of his first rule 3.850 motion, any subsequent rule 3.850 motions will face substantial procedural and legal bars under the terms of rule 3.850 which states in relevant part:

A second or successive motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and

different grounds are alleged, the judge finds that the failure of the movant or his attorney to assert those grounds in a prior motion constituted an abuse of the procedure governed by these rules.

This rule against successive motions and abuse of process where the initial motions was denied on the merits is well settled. Bundy v. State, 538 So.2d 445 (Fla. 1989); Delap v. State, 513 So.2d 1050 (Fla. 1987); McBride v. State, 524 So.2d 1113 (Fla 4th DCA 1988); Rankin v. State, 168 So.2d 324 (Fla. 1st DCA 1965).

This Court's decision in McCrae v. State, 437 So.2d 1388, at 1390-91 (Fla. 1983), summarizes the contrasting aspects of the rule as they apply here very well. On the one hand, a successive motion should be "summarily denied when it is based on grounds that have been raised in prior post-conviction motions under the Rule and **have been decided adversely to the movant on their merits.**". This is the situation, and the procedural bar, that petitioner now faces should he attempt to file a rule 3.850 motion - his first motion has been denied on the merits but has not, in fact, been considered on the merits by a trial court **with jurisdiction**. On the other hand, "this restriction against successive motions on the same grounds is applied only when the grounds raised were previously adjudicated on their merits, **and not where the previous motion was summarily denied or dismissed for legal insufficiency.**" The latter is the situation which petitioner seeks, and to which he is entitled, - his first motion should have been dismissed for lack of jurisdiction and not decided on the merits; the district court, on review, should have quashed the trial court order for lack of jurisdiction, thus

presenting petitioner with an opportunity to refile the rule 3.850 motion when jurisdiction returned to the trial court. Once the district court recognized the lack of jurisdiction in the trial court, the district court had no jurisdiction to go beyond that determination by searching for alternate reasons to affirm the decision below. Given the absence of jurisdiction, the trial court order was a nullity and could not be affirmed or reversed on any legal grounds.

The error of the district court, and the underlying faulty reasoning, also impacts the rights of both parties in any subsequent federal proceeding. In federal habeas proceedings, a critical threshold, i.e., jurisdictional, question is whether the habeas petitioner's federal claims have been previously presented to the state courts and, if they have, were these claims procedurally barred by independent state grounds or were they denied on their merits. All federal habeas proceedings challenging state judgments are controlled by the answers to these threshold questions. 28 U.S.C. 2254(b); Coleman v. Thompson, 501 U.S. 722, 115 L.Ed.2d 640, 111 S.Ct. 2546 (1991); Harris v. Reed, 489 U.S. 255, 103 L.Ed.2d 308, 109 S.Ct. 1038 (1989). The district court's ambiguous refusal to clearly distinguish between rule 3.850 motions which are procedurally barred by a lack of jurisdiction and those which are denied and affirmed on their lack of merit is a substantial error of law which not only denies parties their rights but serves also to

severely overload both the state and federal systems with unnecessary claims and pointless litigation.

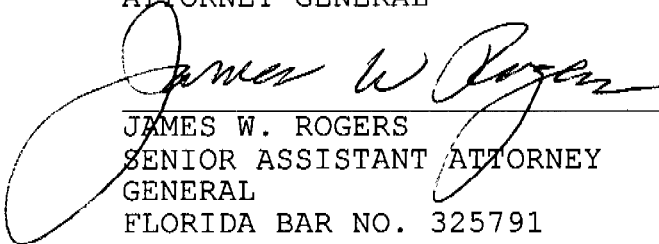
The district court's long-standing misunderstanding and misapplication of jurisdictional questions is further illustrated by its decisions in Ford v. State, 575 So. 2d 1335 (Fla. 1st DCA), review denied, 581 So. 2d 1381 (Fla. 1991) and Stone v. State, 688 So.2d 1006 (Fla. 1st DCA), review denied, 697 So.2d 512 (Fla. 1997), where the district court announced a continuing policy of not addressing jurisdiction until full briefing and review on the merits had been completed. This independent policy is contrary to statute, rule, and case law. Section 924.051(3) &(4), Florida Statutes (Supp. 1996) as construed and upheld by Amendments to Florida Rules of Appellate Procedure, 685 So.2d 773 (Fla. 1996); Florida Rule of Appellate Procedure 9.140(2)(B); and Mendez v. Ortega, 134 So.2d 247 (Fla. 1961), Bohlinger v. Higginbotham, 70 So.2d 911 (Fla. 1954), West 132 Feet v. City of Orlando, 80 Fla. 233, 86 So. 197 (Fla. 1920); Ford Motor Company v. Averill, 355 So.2d 220, 221 (Fla. 1st DCA 1978).

CONCLUSION

The district court decision below should be quashed with an accompanying opinion correcting the fundamental misunderstanding of jurisdiction which the district court decision reveals.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



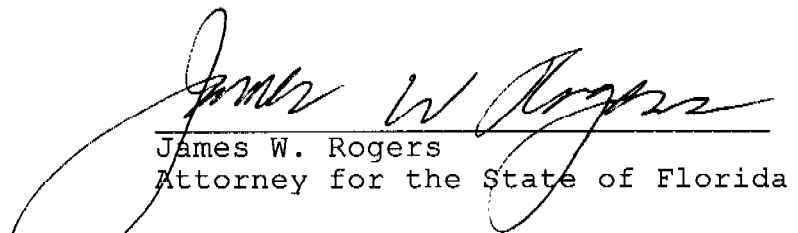
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S ANSWER BRIEF ON THE MERITS has been furnished by U.S. Mail to Billy Wayne Daniels, Pro Se, #580723, Holmes Work Camp, 3182 Thomas Drive, Bonifay, Florida 32425 this 4th day of February, 1998.



James W. Rogers
Attorney for the State of Florida

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