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Supreme Court of Florida

AMENDMENTS TO FLORIDA RULES OF CRIMINAL PROCEDURE - CAPITAL POSTCONVICTION PUBLIC RECORDS PRODUCTION (TIME TOLLING)

No. 92,026

[January 15, 1998]

CORRECTED OPINION

PER CURIAM.

In 1996, this Court, on its own motion, promulgated new Florida Rule of Criminal Procedure 3.852 to govern public records requests in capital postconviction relief proceedings. In re Amendment to Fla. R. Crim. P.--Capital Postconviction Public Records Production, 683 So. 2d 475 (Fla. 1996;. Among other things, rule 3.852 requires that disputes regarding public records requests on behalf of a capital postconviction defendant be directed to the trial court hearing the defendant's postconviction motion. The rule also sets forth time limits for requesting public records and for responding thereto.

Subsequent to our adoption of rule 3.852, the office of the Florida Capital Collateral Representative (CCR) was divided into three regional offices (Northern, Middle, and Southern). To allow for the transition from a single office to three regional offices, the three regional offices moved to toll the time requirements of rule 3.852 for a number of postconviction defendants. In In re Amendment to Fla. R. Crim. P.--Capital Postconviction Public Records Production, 700 So. 2d 680 (Fla. 1997), we granted that request, tolling the time requirements required by rule 3.852 through January 15, 1998, for the defendants listed in that order.

In the order, we also provided that each regional office was to submit, by December 30, 1997, a detailed inventory and projected schedule for the processing of all cases for postconviction defendants for which the regional office has responsibility. This Court directed that the inventories and schedules encompass the defendants listed in the order, all defendants for whom the regional office has filed a motion under rule 3.85 1, and all defendants who are to be represented by CCR because, by the date of the inventory, their appeal had become final.

We have now received schedules and inventories from all three offices. With the exception of the middle region's schedule and inventory, the schedules and inventories submitted were not in a format that is easily comprehendible. In essence, each office is requesting that the time limitations set forth in rule 3.852 continue to be tolled for almost all cases because of the major administrative problems encountered in the transition from one central office to three regional offices. The transition has resulted in serious problems. Specifically, the offices assert that the simultaneous transitions taking place in the Justice Administrative Commission have created significant problems in providing the regional offices with funds and accountings of the current money available. Consequently, the offices allege that they do not know how much money has been allocated to them and in certain cases, bills have not been paid. Additionally, the offices assert that they are suffering from a lack of qualified and

experienced personnel because not all of the attorney positions have been filled and many of the new attorneys have only limited experience in death cases. Finally, the offices contend that they have inadequate funding to properly represent all of the cases that have been assigned to their offices.

Having considering the State's response to these concerns and having heard argument from all parties to this proceeding, we conclude that we have no choice but to grant a blanket tolling of time limitations set forth in rule 3.852 until June 1, 1998, for each of those cases identified in the schedules and inventories of the regional offices for which an extension was requested. This tolling will provide an opportunity for the administrative problems to be resolved and will allow the legislature to examine and address the administrative problems currently being experienced by the regional offices as well as the regional offices' contentions that more funding is needed before rule 3.852 can be implemented.

We also conclude that status inventories from each of the offices must be resubmitted by March 1, 1998, in a form that is acceptable to this Court. The status inventories must address two separate categories of cases: (1) those in which a rule 3.850 motion has been submitted; and (2) those in which a rule 3.850 has not been submitted. The inventories must be in the format set forth in the attached appendix and must be listed by date in reverse chronological order from the date the United States Supreme Court denied certiorari or the mandate was issued by this Court.

The status of all cases in the inventories will be set for oral argument during the first week of May 1998.

It is so ordered.

KOGAN, C.J., OVERTON, SHAW, HARDING and ANSTEAD, JJ., and GRIMES, Senior Justice, concur.
WELLS, J., dissents with an opinion.

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

WELLS, J., dissenting.

I dissent from the decision to stay rule 3.852 until June 1998. I would deny the motion without prejudice to file a motion for relief from the time periods of rule 3,852 in the trial court which is responsible for a defendant's postconviction proceedings. I would state in the order that, within fifteen days of counsel's undertaking the representation of a listed defendant, counsel may file for relief of the time periods of rule 3.852. The trial judge should consider this motion as part of a time line for progressing the proceeding to a final order in accord with time standards provided in section 924.055, Florida Statutes (1997).

The real and immediate issue which this Court needs to deal with concerns representation for capital postconviction defendants. Many of the defendants listed in the present motion of the Capital Collateral Regional Counsel (CCRC) have been without representation for more than three years. It is wrong for this Court to avoid dealing with this problem for another five months, which I believe will be the effect of the majority's delaying until June the implementation of rule 3.852. I have no reason to believe we will be in a better position in June to deal with this problem than we are now. No progress has been demonstrated since our previous order, entered more than three months ago, on this motion.

As part of this Court's supervision of

Florida's court system, we require the chief judge of each circuit to submit quarterly reports concerning the status of postconviction capital cases. An examination of these quarterly reports reveals the turmoil that postconviction representation issues are causing in every judicial circuit. My in-depth analysis of these reports every quarter has convinced me that the turmoil will continue as long as the postconviction representation issue is unresolved. This is true not only for the listed defendants but also for defendants whose postconviction motions have already been filed. In most instances, those motions have stalled, and the circuit courts can report no progress whatsoever.

Moreover, this Court presides over a court system which has had its sentences so delayed in execution that capital defendants have been maintained and are continuing to be on death row for twenty years and more. As I pointed out in a dissenting opinion in Swafford v. State, 679 So. 2d 736 (Fla. 1996), these death row inmates reside constantly in six-by-nine-foot cells except for two-hour exercise intervals twice a week and limited weekend visitation. Death row incarceration was not intended to last for these unconscionable time periods, and I believe it is the role of this Court to find a way to make these time periods reasonable.

I do not accept the position that this Court has no immediate role in solving the postconviction representation problem or that our involvement would constitute "micromanaging" the three CCRC agencies. I believe that we not only have a role in postconviction proceedings but that at present we have no more important or immediate responsibility. Not dealing with the representation issue is a prescription for capital postconviction cases to continue as in the past and for them to drag on for another twenty years. I will not be a silent party to such continued delay. Nor do I accept the contention that the problems concerning capital postconviction representation are too difficult to solve. I believe these problems can be solved in a straightforward way if this Court and the Commission on the Administration of Justice in Capital Cases (the Commission) work together diligently to develop a concrete, realistic plan. I will outline here the beginning parts of a plan in an effort to foster discussion

First, this Court should order the CCRCs to undertake the representation of capital postconviction defendants by filing notices of active representation in the circuit courts no later than March 1, 1998. The order should alternatively permit a CCRC to notify this Court and the Commission by February 15, 1998, that it is actively working to contract with private counsel for representation of defendants whom the CCRC cannot represent. We should require these negotiations to be concluded and counsel to be in place by March 15, 1998. This timetable would allow the CCRCs to work with the legislature during its 1998 session to obtain funding for this representation. Under one possible scenario, the CCRCs could provide investigative staff for the private counsel. With a positive effort, such details could be worked out. When 1 asked the CCRCs at oral argument whether this approach was feasible, they responded that it could not be done. My response is that it should be tried, with the advice and counsel of the Commission,

Second, I would request that the Commission submit to this Court its recommendations for a plan and timetable for representation of each capital postconviction defendant. We should take advantage of the ideas of these commissioners and we should affirmatively seek their advice concerning postconviction representation, to be expressed in a statement to us and in an open discussion

with us.

Third, I would ask the Commission to submit to this Court any recommendation the Commission has or can develop for our implementation of the time periods for postconviction capital cases set out by the legislature in section 924.055, Florida Statutes (1997). In section 27.7091, Florida Statutes (1997), the legislature requested that this Court adopt the time periods by rule. I would respect the legislature's request and adopt as a rule the time periods of section 924.055. With the advice and assistance of the Commission, I would then implement a plan requiring these time standards to be met in all postconviction cases in Florida courts no later than December 3 1, 2001. To successfully attack this problem, we need a concrete plan with benchmarks for measuring progress.

Fourth, I would appoint a committee composed of six trial judges who have experience in presiding over capital postconviction proceedings. I would ask them: (1) to study the representation problem and advise this Court as to a plan to meet our time standards; (2) to draft rules of procedure for processing capital postconviction cases; and (3) to work on the resolution of issues concerning public records production in these proceedings.

Fifth, we must acknowledge that implementation of such a plan will not succeed unless the problem of public records production under chapter 119, Florida Statutes (1997), in capital postconviction cases is also resolved. Identifying documents to be produced and determining the method of production are two issues at the core of substantial delays. These delays have resulted in clearly excessive expenditures of financial resources and judicial labor. The CCRCs' methods of seeking public records production and the government agencies' responses to them often result in frustration of the proceedings rather than production of material records. We attempted to address this problem by enacting Florida Rule of Criminal Procedure 3.852, which is the rule subject to the majority's extension in the present case. Our rule has not been fully effectuated because of this Court's granting of requested delays. However, in cases involving requests for public records, the CCRCs assert that the rule compels them to file a great many notices to produce records in a great many state agencies. In some cases, circuit judges report receiving up to 100 motions to compel production of public records. This procedure inhibits successful records production, causes more delays in the circuit courts, and obviously is not working as intended by our rule or, in my view, within the intent of chapter 119.

To address this problem, I believe the legislature should amend chapter 119 and chapter 27, the CCRC law, to specify exactly what records are subject to production under chapter 119 in a records request pursuant to a rule 3.85 1 proceeding and which records may be requested using resources appropriated for postconviction capital representation. The agencies possessing such records should send them to a single repository at a stated time subsequent to notification to the agencies of a defendant's death sentence. The Attorney General should be responsible for notifying agencies and ensuring that such records are timely sent to the repository. Judge Miner, as a member of the Commission, has addressed this problem, and I hope that legislators will consider his recommendations in adopting legislation. I believe that input from a committee of trial judges also would be beneficial.

I am very concerned about the motions and accompanying positions by the CCRCs in respect to the issue which we are now deciding. I certainly recognize that the

individuals who lead these agencies are new to their positions and face formidable tasks. I appreciate their service. Besides facing the expected transitional hurdles, the CCRC leaders have had difficulty replacing several lawyers who have resigned. However, my concern is that the present motions and arguments by the CCRCs appear to represent the same mind-set that resulted in the failure of their predecessor, the office of the Capital Collateral Representative (CCR).

These motions demonstrate to me that the CCRCs presently are so beset with internal conflict as to allocation of resources that each regional agency has decided that it can spend resources only on cases in which there are scheduled executions. This problem is exemplified by the following statement from the corrected motion filed by the CCRC for the Northern Region (CCC-NR) concerning the case of Judy Buenoano, who is currently under a death warrant signed in December by Governor Chiles.

> Ms. Buenoano's cases comprise over 5000 pages of record on appeal. Her case files constitute over 150 boxes of material provided to this office by her former volunteer lawyers. In order to fulfill its ethical and legal obligation to Ms. Buenoano, the CCC-NR has assigned four (4) attorneys to her case including all three (3) lead attorneys. These four (4) attorneys must work almost exclusively between now and March 30, 1998 representing Ms. Buenoano. Two (2) investigators have been assigned to the case and because neither has warrant litigation experience, the investigator supervisor must also dedicate time to the case. These investigators will have to work on tbis case nearly exclusively. Under these circumstances, the CCC-NR hopes it can provide Ms. Buenoano with a professional level of representation. However, it may become necessary to assign additional attorneys to the case.

(Footnote omitted.)

Included in the same motion is a schedule and request for extensions of this Court's rules in respect to twenty-one of the sixty-three cases for which CCC-NR has responsibility. Examples of the requested extensions are: Gary Whitton, whose rehearing was denied in this Court on February 14, 1995, will not have a postconviction motion filed until March 1, 1999; Curtis Windom, whose rehearing was denied in this Court on June 29, 1995, will not have a postconviction motion filed until April 19, 1999; Danny Rolling, whose rehearing was denied June 12, 1997, will not have a postconviction motion filed until December 4, 200 1. With the granting of these extensions, each of the twenty-one inmates with an extension will live on death row for a period spanning almost four years after the date of the rehearing denial and before the postconviction adjudication process even begins. Nevertheless, CCC-NR says it is compelled to expend almost all of its resources and time on the case of Judy Buenoano, who is facing a death warrant but whose postconviction motions have already been adjudicated twice.

For more than twenty years, leaders in Florida government have worked diligently to provide a sensible solution by creating a governmental agency to provide capital postconviction representation. Justice Overton has worked on this solution since 1975. Other participants have included the Governor's legal counsel, legislative leaders,

and members of the Commission, which was chaired by former Justice Parker Lee McDonald. The result has been the creation of CCR, an agency unique among the states authorizing capital punishment, and its successor agency, CCRC. The legislature has funded this agency to ensure that postconviction cases are effectively and timely adjudicated. However, if we cannot resolve the present problems with representation and devise a workable plan to meet the time standards of section 924.055 by no later than December 3 1, 2001, I believe that the legislature will have to seriously consider dissolving the CCRCs and finding another approach. This dissolution would be problematic, of course, and would force a different postconviction process. That process would be time-centered, as it was before the creation of CCR, upon the Governor's signing of death warrants and scheduling of executions. Although this would not be an orderly process, neither is the present CCRC process.

We must always acknowledge that capital postconviction representation is not a constitutional right but rather a statutory right provided in Florida by legislative grace for the benefit of defendants and to assist the courts in carrying out the postconviction process. I hope that this Court and the Commission can work together to keep CCRC alive and functioning as the legislature intended. However, I believe that the continued existence of CCRC in 1998 requires proof through deeds that the agency approach to capital postconviction representation can work. The CCRC agencies are not likely to survive if we do not begin until June to deal with the problem of representation of each defendant.

Original Proceeding - Amendments to Florida Rules of Criminal Procedure-Capital Postconviction Public Records Production (Time Tolling).

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for Petitioners

Robert A. Butterworth, Attorney General; Carolyn Snurkowski, Assistant Deputy Attorney General and Richard B. Mar-tell, Chief, Capital Appeals, Tallahassee, Florida.

for Respondent

APPENDIX

FORMAT TO BE USED FOR STATUS INVENTORIES

CATEGORY I
(Defendants for Whom a Rule 3.850 Motion Has Not Been Filed.)

Cert. Denial Date _____ Name _____
Designated Counsel _____
Public Records Request Filed ____ Yes ____ No
If Yes, Projected Date for Filing 3.850 Motion _____
If No, Projected Date for Filing-3.852 Request _____

Category II
(Defendants for Whom a Rule 3.850 Motion Has Been Filed)

Cert. Denial Date _____ Name _____
Designated Counsel- _____
Date 3.850 Motion Filed _____ County Where Pending _____
Public Records Request Filed ____ Yes ____ No ____ Completed
If No, Projected Date for Filing 3.852 Reguest _____
If Completed, Date Completed _____
Current Status of Case _____
_____