

Supreme Court of Florida

No. SC92928

ROBERT H. WELLS,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[February 15, 2001]

PER CURIAM.

We have for review State v. Wells, 706 So. 2d 934 (Fla. 3d DCA 1998), which is a per curiam decision citing Peart v. State, 705 So. 2d 1059 (Fla. 3d DCA 1998), quashed 756 So. 2d 42 (Fla. 2000), which was then pending review in this Court. We have jurisdiction. See Art. V, § 3(b)(3), Fla. Const.; Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981).

Consistent with our decision in Wood v. State, 750 So. 2d 592 (Fla. 1999), we find that Wells' ineffective assistance of counsel claim was properly raised in a

petition for writ of error coram nobis. Accordingly, we quash the decision below and remand to the district court for consideration on the merits.

It is so ordered.

SHAW, ANSTEAD, PARIENTE and LEWIS, JJ., concur.

HARDING, J., concurs with an opinion.

WELLS, C.J., and QUINCE, J., dissent.

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

HARDING, J., concurring.

I concur in the majority opinion which has correctly determined that, under the facts of this case, a petition for a writ of error coram nobis was the proper pleading for the noncustodial defendant to file in order to raise his claim of ineffective assistance of counsel. This is not inconsistent with my concurrence of Chief Justice Wells' dissent in Peart v. State, 756 So. 2d 42, 51-52 (Fla. 2000) (Wells, J., dissenting), where I did not agree that the writ of error coram nobis encompassed appellant's claims because such claims were based not on errors of fact or newly discovered evidence but, rather, were based on an error of law, i.e., the requirement to advise the defendant of the possibility of deportation. In the instant case, however, the noncustodial defendant's claim of ineffective assistance of counsel is a matter of fact which does not appear on the face of the record and, therefore, falls within the boundaries of a writ of error coram nobis. See Baker v. State, 7 So. 2d 792, 795-96

(Fla. 1942); see also Dequesada v. State, 444 So. 2d 575 (Fla. 2d DCA 1984) (holding a claim of ineffective assistance of counsel may support a petition for writ of error coram nobis).

Application for Review of the Decision of the District Court of Appeal -
Direct Conflict

Third District - Case No. 3D97-2012

(Dade County)

Stephen J. Bronis and Beatriz C. Cosculluela of Zuckerman, Spaeder, Taylor & Evans, LLP, Miami, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, and Michael J. Neimand, Assistant Attorney General, Miami, Florida,

for Respondent