

IN THE SUPREME COURT OF FLORIDA

JOSEPH DUANE SAUCER,

Petitioner,

v.

CASE NO. 95,031

STATE OF FLORIDA,

Respondent.

PETITIONER'S SUPPLEMENTAL INITIAL BRIEF ON THE MERITS

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CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this supplemental brief was typed using font style Courier New type size 12.

STATEMENT OF THE CASE AND FACTS

Petitioner relies on the statement of case and facts presented in Petitioner's initial brief.

SUMMARY OF ARGUMENT

Petitions for writ of habeas corpus are collateral criminal proceedings which are excluded from Section 944.279 and 944.28 by the plain language of subsection 944.279(2), the holding of *Hall v. State*, 24 Fla. L. Weekly S42, 2000 WL 44045 (Fla. Jan. 20, 2000), and the separation of powers which empowers this Court with exclusive jurisdiction to regulate court procedures.

ARGUMENT

This Court requested that the parties file supplemental briefs on whether a petition for writ of habeas corpus, as opposed to the postconviction motion at issue in *Hall v. State*, 24 Fla. L. Weekly S42 (Fla. Jan. 20, 2000), is a collateral criminal proceeding for purposes of imposing sanctions.

The same result should be reached as in *Hall* because this habeas proceeding is a collateral attack on a criminal conviction, which action is expressly excluded by subsection 944.279(2), Florida Statutes from Section 944.279. Secondly, postconviction procedure is within the exclusive jurisdiction of this Court and Sections 944.279 and 944.28 violate the separation of powers contained in the Florida Constitution insofar as they attempt to promulgate court procedure.

The underlying action in this case is a petition for writ of habeas corpus for ineffective assistance of appellate counsel for failure to file a notice of appeal from a criminal conviction. Florida Rule of Appellate Procedure 9.140(j) expressly mandates this action will be brought as a habeas petition in the District Court. *Fla. R. App. P. 9.140(j)*. See also, *Amendments To the Florida Rules of Appellate Procedure*, 696 So. 2d 1103 (Fla. 1996) (enacting the rule codified as 9.140(j)).

A postconviction habeas action is a quasi-criminal collateral attack on a criminal judgment and sentence. *Allen v. Butterworth*, 2000 WL 381484, *9-10 (Fla. April 14, 2000) (habeas is a quasi-criminal procedure); see *Ex Parte Senior*, 37 Fla. 1, 13, 19 So. 652, 653 (1896) (habeas a collateral attack, not direct appeal). Subsection 944.279(2) expressly excludes both criminal proceedings, and, collateral criminal proceedings from its scope: "This section does not apply to a criminal proceeding or a collateral criminal proceeding." § 944.279(2), *Fla. Stat.* (1999). Sections 944.279 and 944.28 do not apply to this habeas action, therefore, by the plain language of the statute.

Sections 944.279 and 944.28 are construed in tandem. This is the result reached in *Hall v. State*, 24 Fla. L. Weekly, 2000 WL 44045 (Fla. Jan. 20, 2000) and the same reasoning applies here. Florida Rule of Criminal Procedure 3.850 at issue in *Hall* is nothing more than a procedural substitute for the petition for writ of habeas corpus. *Allen v. Butterworth*, 2000 WL 381484, *10 (Fla. April 14, 2000); *Roy v. Wainwright*, 151 So. 2d 825, 828 (Fla. 1963)(detailing history of Florida Rule of Criminal Procedure 1). If a 3.850 motion is a collateral proceeding exempt from Sections 944.279 and 944.28 by virtue of the statutory construction

contained in the *Hall* decision, then the writ of habeas corpus must be likewise excluded from the scope of these statutes.

Second, this Court enacted Florida Rule of Appellate Procedure 9.140(j) as the exclusive procedure for claims of ineffective assistance of appellate counsel. *Amendments To the Florida Rules of Appellate Procedure*, 696 So. 2d 1103, 1133 (Fla. 1996). This Court has exclusive power to adopt procedural rules in all courts. *Allen v. Butterworth*, 2000 WL 381484, *10 (Fla. April 14, 2000); Art. V, § 2(a), *Fla. Const.* Sections 944.279 and 944.28 violate the separation of powers contained in Article II, section 3, Florida Constitution when they encroach upon this Court's power to regulate postconviction procedure, or, mandate court procedures after concluding a legal proceeding is frivolous. *E.g.*, § 944.279(1), *Fla. Stat.* (1999) (court directed to make written finding and directed to send certified copy to correctional institution or facility).

For the reasons stated above, this Court should reach the same result as it did in the *Hall* decision and hold that petitions for writ of habeas corpus are exempt from Sections 944.279 and 944.28, Florida Statutes.

CONCLUSION

This Court should quash the First District's decision below and remand for further proceedings.

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing Initial Brief On the Merits was sent to JAMES W. ROGERS, ESQ., Tallahassee Bureau Chief Criminal Appeals, The Capitol, Tallahassee, Florida, 32399-1050; TRISHA E. MEGGS, ESQ., Assistant Attorney General, Office of the Attorney General, The Capitol, Tallahassee, Florida, 32399-1050, by U.S. Mail this 25th day of April 2000.

R. MITCHELL PRUGH, ESQ.