

IN THE SUPREME COURT OF FLORIDA

THOMAS HARRISON PROVENZANO,

Petitioner,

v.

CASE NO. 95-973

MICHAEL W. MOORE, Secretary,
Department of Corrections,
JAMES CROSBY, Superintendent,
Florida State Prison, and
STATE OF FLORIDA,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS
AND PETITION TO INVOKE THIS COURT'S ALL WRITS
JURISDICTION AND PETITION FOR EXTRAORDINARY
RELIEF

COMES NOW THE RESPONDENT, MICHAEL MOORE et. al, by and through undersigned counsel, and responds as follows to Provenzano's petition for writ of habeas corpus and petition to invoke this Court's all writs jurisdiction and petition for extraordinary relief.

1. In his latest petition, Provenzano focuses on this morning's execution of Allen Lee Davis as a basis for a stay of execution and further relief. Provenzano alleges that in fact the chart recordings for this execution demonstrate that the protocols were not followed, in regard to the voltage administered. He further contends that Davis suffered mutilation, based upon certain newspaper accounts that blood "appeared to pour from his mouth and ooze from his chest" and an affidavit from Davis' counsel to the effect Davis screamed, that blood appeared on Davis' shirt and that his chest area "moved back and forth several times."

2. As to the voltage administered, Provenzano's allegations are apparently based upon his

own counsel's interpretation of the chart recordings and are squarely contradicted by the attestations by Warden Crosby and engineer Whitlock, previously supplied to this Court. Engineer Whitlock has attested that he was present in the electrical equipment room during Davis' electrocution and personally observed the monitoring equipment, and that he observed no anomalies. Warden Crosby has certified that the electrical equipment to the electric chair functioned properly during the execution of Allen Lee Davis.

3. The statement of prison physician Victor Selyutin, M.D. (statement attached), affirmed that the blood on Davis' shirt was the result of a nosebleed from his left nostril. Dr. Selyutin noted that Davis was taking heavy doses of aspirin and Moutrin, two well-known blood thinners for his arthritis, and that Davis also had a history of hypertension. Dr. Selyutin stated that he observed no cuts or abrasions on Davis. The observations of Dr. Selyutin, who examined Davis and pronounced him dead, are consistent with the subsequent postmortem evaluation by Dr. Hamilton, reported at approximately 3 p.m. today, July 8, 1999, and previously provided to this Court. In his report, medical examiner Hamilton found that there was "blood in [Davis's] nostrils, upper lip and chin and on shirtfront." Dr. Hamilton specifically noted that Davis had several predisposing risk factors for epistaxis (nosebleed), including hypertension and treatment with two non-steroidal anti-inflammatory drugs, such as aspirin and ibuprofen. He further noted that nosebleeds are often associated with hypertension and bleeding disorders. With the exception of the expected electrical burns on the scalp and leg region, Dr. Hamilton indicated that there were no "other significant injuries on the external surface of the body." Dr. Hamilton further noted that "the oral cavity was free of trauma and obstruction."

4. The allegations concerning chest movement and/or audible sounds are consistent with

expert and other testimony presented at the Jones hearings in 1997, which established that post-mortem body movements are common and include the release of air from the lungs and relaxation of muscles following the cessation of the application of electric current.

5. Contrary to Provenzano's allegations, Petition at 8, no evidence before this Court is consistent with any allegation that the electric chair "malfunctioned" during Davis' execution, that the DOC failed to follow its own protocols, or that Davis suffered a "lingering and grotesque" death. Indeed, Provenzano's own submissions do not support these contentions. Indeed, his omission of the postmortem examination report is telling.

WHEREFORE, for all the foregoing reasons, all requested relief should be denied.

Respectfully submitted,

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ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct and correct copy of the foregoing has been furnished by facsimile to Mark S. Gruber, Assistant Capital Collateral Regional Counsel - Middle Region, 3901 Corporex Park Drive, Suite 210, Tampa, Florida 33619-1136, this 8th day of July, 1999.

RICHARD B. MARTELL
Chief, Capital Appeals