

RECIEVED
UNION CORRECTIONAL INSTITUTION

DEC 07 2017

BY: 
FOR MAILING

Milo A. Rose # 090411

Union Correctional Institution

P.O. Box 1000 P2128

Raiford, Florida 32083

December 7, 2017

John A. Tomasino, Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399

CASE NO: SC17-878

Lower Tribunal No(6):

521982CF008683XXXXNO

ANSWER BRIEF TO DISCHARGED COUNSELS APPEAL

Respectfully,

Milo A. Rose

FILED

JOHN A. TOMASINO

DEC 12 2017

CLERK, SUPREME COURT

BY

SUPREME COURT OF FLORIDA

December 7, 2017

FOR MAILING

BY

DEC 07-2017

CASE NO: SC17-878

Lower Tribunal No(s):

521982CF008683XXXXNO

RECEIVED
UNION-CORRECTIONAL INSTITUTION

MILO A. ROSE

VS.

STATE OF FLORIDA

Appellant

Appellee

ANSWER BRIEF TO DISCHARGED COUNSELS APPEAL

Now comes Appellant Milo A. Rose pro se in accordance with Court order by the Honorable Judge William H. Burgess III, grant Appellant leave to file pro se under rule 3.851(i)(8)(B) to address merits in discharging attorney(s) Brunvand/Wise.

On December 6, 2017, Appellant received a copy of attorney(s) Brunvand/Wise Court ordered filing of initial brief regarding their discharge and waiver Post Conviction proceedings due on or before November 21, 2017 (see) attached copy of Certificate of service of their brief stating it was mailed to pro se Appellant on November 21, 2017, yet the purchase of postage is on November 28, 2017, which demonstrates another example of deception/fraud by attorney(s) Brunvand/Wise to cover their tracks in highjacking Appellants representation before the Courts. Cumulatively this is not a minor infraction which makes Assistant Attorney General, Lisa Martins failure/negligence to honor the request of pro se Appellant to confer as to the validity of his well documented due diligence in not acquiescing to the criminally fraudulent motions

FILED
JOHN A. TOMASINO
DEC 12 2017
CLERK, SUPREME COURT
BY

Filed in his name by attorney(s) Brunvand /wise more than sufficient reason to compel this Court to send this case back to the Lower Court to further develop the merits / validity of the criminal allegations being made against attorney(s) Brunvand /wise to obstruct justice through the failure to effectively bring forth the wealth of exculpatory evidence that was withheld on the Trial level denying Appellant a fair and impartial trial and to also bring out the prejudice Appellant suffers due to the State appointed attorney(s) on appeal twice filing ineffective assistance of counsel claims on themselves before being relieved of their duty of representation by the Governors closure of their State funded office and bringing about the Trial Courts appointment of attorney Bjorn Brunvand who immediately denied this Appellant the effective actual representation request of him and the law demands he provide as documented by Appellant out of due diligence in not acquiescing to the criminal actions of obstruction of justice through the high-jacking of his representation before the Courts (see) attached order of discharge and complete transcript of hearing.

At this time prose Appellant moves this Court out of caution to avoid further prejudice created by attorneys Brunvand / wise in seeking to avoid prosecution for their pattern of repeatedly filing fraudulent motions in this Appellants name and for these reasons Appellant request this Court to issue an order sending this case back to the Trial Court to fully develop the merits in the Court granting Appellants oral motion to discharge attorney(s) and waive the fraudulent motion they filed without his review or consent as they wantonly ignored Appellants instructions.

not to file anything in his name other than issues pertaining to actual innocence.

Milo Rose

Milo A. Rose #090411

Union Correctional Institution

P.O. Box 1000 P2128

Rainford, Florida 32083

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2017, a true and accurate copy of this motion was sent by First class Mail to the following parties: J. Jesus Wise, and Björn E. Brunvand, Brunvand Wise P.A., 615 Turner Street, Clearwater, Florida 33756, and Assistant Attorney General Lisa Martin, 3507 East Frontage Road, Suite 200, Tampa, Florida 33607

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by email to the Office of the Attorney General at capapp@myfloridalegal.com, and by mail to Milo Rose at Union Correctional Institution, 7819 N.W. 228th Street, Raiford, Florida 32026-4000, on this 21st day of November, 2017.

/s/ J. Jervis Wise
J. JERVIS WISE, ESQ.
BRUNVAND WISE, P.A.
615 Turner Street
Clearwater, FL 33756
Ph: (727) 446-7505
Fax: (727) 446-8147
jervis@acquitter.com
Florida Bar No. 0019181

/s/ Bjorn E. Brunvand
BJORN E. BRUNVAND, ESQ.
BRUNVAND AND WISE, P.A.
615 Turner Street
Clearwater FL 33756
Ph: (727) 446-7505
Fax: (727) 446-8147
bjorn@acquitter.com
Florida Bar No. 0831077

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this Brief is formatted in compliance with Florida Rule of Appellate Procedure 9.210.



U.S. POSTA
\$2.0
FCM LG E
33629
Date of sale
11/28/17
06 2S00
08276748



Acquitter
BRUNVAND WISE P.A.

615 Turner Street | Clearwater, FL 33756

Milo Rose, DC# 090411
Union Correctional Institution
7819 N.W. 228th Street
Raiford, Florida 32026-4000

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR PINELLAS COUNTY CRIMINAL DIVISION

STATE OF FLORIDA,

v.

MILO ROSE,
Person ID: 201924, Defendant.

CASE NO.: CRC82-08683CFANO
UCN: 521982CF08683XXXXNO
DIVISION: C

**ORDER DISMISSING DEFENDANT'S "SUCCESSIVE MOTION TO VACATE AND
SET ASIDE JUDGMENT AND SENTENCE BASED ON HURST V. FLORIDA AND
HURST V. STATE"; ORDER DISCHARGING COLLATERAL COUNSEL;
DIRECTIONS TO DISCHARGED COLLATERAL COUNSEL**

THIS CAUSE came before the Court upon Defendant's "Successive Motion to Vacate and Set Aside Judgment and Sentence Based on Hurst v. Florida and Hurst v. State," filed on January 11, 2017, pursuant to Florida Rule of Criminal Procedure 3.851, and the State's Response, filed January 31, 2017. On February 15, 2017, the Court held a case management conference pursuant to Rule 3.851(f)(5)(B), followed by a hearing on April 7, 2017, on Defendant's *pro se* oral motion to dismiss postconviction proceedings pursuant to Rule 3.851(i). Having reviewed Defendant's motion, the arguments of the parties, the record, and the applicable law, this Court finds as follows:

On June 30, 1983, Defendant was found guilty by jury of one count of first-degree murder. On July 5, 1983, the jury recommended that Defendant be sentenced to death by a vote of 9-3 and on July 8, 1983, the trial court sentenced Defendant to death. His conviction and sentence were affirmed on appeal and the mandate issued on October 2, 1985. See Rose v. State, 472 So. 2d 1155 (Fla. 1985). Defendant's state and federal motions for collateral relief were denied and affirmed on appeal. See Rose v. State, 617 So. 2d 291 (Fla. 1993); Rose v. State, 774 So. 2d 629 (Fla. 2000); Rose v. McNeil, 634 F.3d 1224 (11th Cir. 2011). On July 16, 2003, following the dissolution of the Office of Capital Collateral Regional Counsel – North, registry counsel Bjorn Brunvand was appointed to represent Defendant.

On January 11, 2017, defense counsel filed a successive motion for postconviction relief pursuant to Rule 3.851(f)(5)(B), arguing that Defendant's death sentence is unconstitutional under Hurst v. Florida, 136 S. Ct. 616 (2016), Hurst v. State, 202 So. 3d 40 (Fla. 2016), petition

for cert. filed, No. 16-998 (Feb. 13, 2017), and progeny. The motion, however, indicated that Defendant objected to defense counsel filing the motion on his behalf. On January 31, 2017, the State timely filed its response. On February 15, 2017, the Court held a case management conference pursuant to Rule 3.851(f)(5)(B). At the hearing, defense counsel advised the Court that Defendant did not want to pursue the merits of the motion. The Court therefore scheduled a hearing pursuant to Rule 3.851(i) to address Defendant's intent to waive further postconviction proceedings.

On April 7, 2017, the Court held a hearing on Defendant's request. Defense counsel Bjorn Brunvand, Assistant State Attorney Sara Macks, and Assistant Attorney General Carol Dittmar attended the hearing and Defendant appeared telephonically. Defense counsel advised the Court that he filed the motion in good faith, does not have a legal basis to withdraw from the case, and is of the opinion that the pending motion is in Defendant's best interest to preserve his claims for appellate review. Upon inquiry of the Court, Defendant indicated that he does not want appointed counsel to represent him and does not want to pursue the motion for postconviction relief. Pursuant to Rule 3.851(i), the Court conducted a Durocher¹/Faretta² colloquy. The Court warned Defendant that if he chose to dismiss the motion and discharge counsel, his postconviction proceedings would end and counsel would not file additional motions on his behalf. Defendant stated several times that he maintains his innocence and does not want to pursue any legal claims that do not lead to an evidentiary hearing on his actual innocence. Defendant repeatedly expressed his belief that his sentence is invalid and he is entitled to immediate release from custody, but insisted that he does not want appointed counsel to represent him and does not want to pursue the motion counsel filed. The Court warned Defendant that Rule 3.851 does not allow postconviction defendants to proceed *pro se* and explained that if he abandoned the motion, his substantive claims will not be ruled upon or reviewed by an appellate court. The Court pointed out that Defendant's waiver of the motion is antithetical to his ultimate goal of reversing his sentence, but Defendant maintained that he does not want to pursue the motion filed by defense counsel and wants defense counsel discharged from his case.

¹ Durocher v. Singletary, 623 So. 2d 482 (Fla. 1993).

² Faretta v. California, 422 U.S. 806 (1975).

Consistent with its oral ruling at the hearing, a transcript of which is attached to this order, the Court finds that Defendant knowingly, intelligently, and voluntarily waived his right to pursue postconviction relief and his right to appointed collateral counsel. The Court advised Defendant of his rights and warned him of the potential perils of his request. Defendant's unequivocal requests to dismiss the motion filed by counsel and to discharge collateral counsel are granted. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's "Successive Motion to Vacate and Set Aside Judgment and Sentence based on Hurst v. Florida and Hurst v. State" is hereby **DISMISSED**. It is further

ORDERED AND ADJUDGED that appointed attorney Bjorn Brunvand is hereby **DISCHARGED** from representation in case number CRC83-08683CFANO, except as required by Rule 3.851(i)(8)(B).

DISCHARGED COLLATERAL COUNSEL shall, within 10 days of the entry of this order, file with the Clerk of the Circuit Court 2 copies of a notice seeking review in the Supreme Court of Florida, pursuant to Rule 3.851(i)(8)(B).

DEFENDANT IS HEREBY NOTIFIED that this order is subject to automatic appellate review by the Supreme Court of Florida pursuant to Rule 3.851(i)(8).

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida this ____ day of May, 2017. A true and correct copy of the foregoing has been furnished to the parties indicated below.

ORIGINAL SIGNED

MAY 01 2017

William H. Burgess III, Circuit Judge
WILLIAM H. BURGESS, III
CIRCUIT JUDGE

cc: Office of the State Attorney / Sara Macks

Carol Dittmar, AAG
Office of the Attorney General
Concourse Center 4, Suite 200, 3507 East Frontage Road
Tampa, FL 33607-7013

Bjorn Brunvand, Esq. & J. Jervis Wise, Esq.
615 Turner Street
Clearwater, FL 33756

Milo Rose, DC# 090411
Union Correctional Institution
7819 N.W. 228th Street
Raiford, FL 32026-4000

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY
CASE NUMBER CRC82-08683CFANO

STATE OF FLORIDA,

Plaintiff,

vs.

MILO ROSE,

Defendant.

PROCEEDINGS: Status Check Hearing

BEFORE: The Honorable William H. Burgess, III
Circuit Court Judge

DATE: April 7, 2017

PLACE: Courtroom 8
Pinellas County Justice Center
14250 - 49th Street North
Clearwater, Florida 33762

REPORTER: Linda K. Fritsch
Registered Merit Reporter

(Pages 1 to 25)

Administrative Office of the Courts
Court Reporting Department
Pinellas County Justice Center
14250 - 49th Street North
Clearwater, Florida 33762
Telephone: (727) 453-7233
Fax: (727) 453-7488

APPEARANCES**APPEARING ON BEHALF OF
THE STATE OF FLORIDA:**

SARA E. MACKS, ASSISTANT STATE ATTORNEY
Office of Bernie McCabe, State Attorney
Sixth Judicial Circuit, Pinellas County
14250 -- 49th Street North
Clearwater, Florida 33762

CAROL MARIE DITTMAR, ESQUIRE
Office of the Attorney General, State of Florida
3507 East Frontage Road, Suite 200
Tampa, Florida 33607
(813)287-7910

**APPEARING ON BEHALF OF
THE DEFENDANT MILO ROSE:**

BJORN E. BRUNVAND, ESQUIRE
Brunvand Wise, P.A.
615 Turner Street
Clearwater, Florida 33756
(727)446-7505

* * *

INDEX TO PROCEEDINGS**PROCEEDINGS****PAGE****(APRIL 7, 2017)****CERTIFICATE OF REPORTER**

4

25

P-R-O-C-E-E-D-I-N-G-S

THE COURT: Mr. Brunvand, do you have something?

MR. BRUNVAND: Good afternoon, Judge. I'm here on Milo Rose, the State versus Milo Rose, case number 82-08683. Mr. Rose is on death row, and we have a phone number to call.

THE COURT: Okay. Let me get that in just a moment.

MR. BRUNVAND: One second, Judge. It's 386 --

THE COURT: Hold on. I'm not even -- I'm nowheres near the phone at this point.

MR. BRUNVAND: All right.

THE COURT: I'm just trying to get the -- I've got (386) 431-4198.

MR. BRUNVAND: That's correct.

(DIALING ON THE TELEPHONE)

SERGEANT BRANNEN: UCF, Sergeant Brannen.

THE COURT: Good afternoon, Sergeant Brannen. This is Judge Bill Burgess in Pinellas County. I'm calling for a Mr. Milo Rose.

SERGEANT BRANNEN: Yes, sir. I've got him right here for you.

THE DEFENDANT: Hello.

THE COURT: Hello, Mr. Rose. This is Judge Burgess in Pinellas County, and we have

1 Mr. Brunvand here and counsel for the State as well
2 on your hearing.

3 Can you hear me very well?

4 THE DEFENDANT: Yes, I can, sir.

5 THE COURT: Okay.

6 Counsel, you can come closer to the phone if it
7 might be helpful. The star phone acoustics aren't
8 guaranteed.

9 So, okay, let's -- we'll go around, and I want
10 everybody to state their name and their connection to
11 the case.

12 MR. BRUNVAND: Bjorn Brunvand, on behalf of
13 Milo Rose pursuant to an appointment many years ago,
14 recognizing that Milo Rose has indicated repeatedly
15 that he does not want me to represent him. However,
16 I don't believe I have a conflict, and so, therefore,
17 I can't move to withdraw.

18 THE COURT: Okay. All right.

19 MS. DITTMAR: Carol Dittmar with the Attorney
20 General's Office.

21 MS. MACKS: And Sara Macks with the State
22 Attorney's Office.

23 THE COURT: Okay. Thank you.

24 All right. Mr. Rose, I understand that you do
25 not want to go forward, is that correct, with any

1 post --

2 THE DEFENDANT: Right.

3 THE COURT: Okay.

4 THE DEFENDANT: I'm --

5 THE COURT: Go ahead.

6 THE DEFENDANT: Excuse me. I'm of the same
7 opinion as Chief Justice Pariente of the Florida
8 Supreme Court, and I believe that my sentence has
9 already been overturned and that anything now further
10 than that is a waste of time.

11 If I was to ask for -- for anything, I would ask
12 for time served, immediate and unconditional release,
13 in lieu of filing an actual innocence claim.

14 THE COURT: Okay.

15 THE DEFENDANT: I've maintained my innocence for
16 over 34 years.

17 THE COURT: Okay.

18 THE DEFENDANT: And I haven't had an attorney
19 file actual innocence on my behalf in those 34 years.
20 I've never been given an evidentiary hearing on the
21 guilt/innocence.

22 THE COURT: Okay.

23 THE DEFENDANT: All right?

24 THE COURT: And --

25 THE DEFENDANT: If I'm given an evidentiary on

1 guilt/innocence, you would have -- i would have to be
2 released. I did not receive a fair and impartial
3 trial. So if I was going to ask for anything under
4 the sentencing statute of *Hurst*, I would ask for time
5 served, immediate and unconditional release, in lieu
6 of filing the actual innocence.

7 THE COURT: Okay. I'm a little bit confused
8 because I'm not sure that *Hurst* applies in your case.
9 But have you --

10 THE DEFENDANT: *Hurst* applies in all cases.

11 THE COURT: Okay. Do you --

12 THE DEFENDANT: I was sentenced under *Hurst*. I
13 mean, I was sentenced unconstitutionally.

14 THE COURT: Okay. Do you still want
15 Mr. Brunvand to represent you?

16 THE DEFENDANT: No.

17 THE COURT: And why --

18 THE DEFENDANT: I didn't ask him to file this.
19 It's a fraudulent hearing as it is right now.

20 THE COURT: And why do you think that?

21 THE DEFENDANT: Why do I think what?

22 THE COURT: That it's fraudulent.

23 THE DEFENDANT: Because I did not ask him to
24 file the petition before this Court. I told him not
25 to file anything before this Court.

1 THE COURT: Okay. Are you -- are you --

2 MR. BRUNVAND: So he filed it without my review
3 or consent, which makes it fraudulent.

4 THE COURT: Okay.

5 MR. BRUNVAND: And that's a pattern of his,
6 filing fraudulent petitions on my behalf. I've filed
7 pro se all the way through the United States
8 Supreme Court because of him filing fraudulent
9 petitions in my behalf.

10 THE COURT: Okay.

11 THE DEFENDANT: Again, I did not -- have never
12 received an evidentiary hearing on guilt/innocence --

13 THE COURT: Okay. Mr. Brunvand --

14 THE DEFENDANT: -- for 34 years --

15 THE COURT: Okay. Mr. Brunvand --

16 THE DEFENDANT: -- maintaining my innocence.

17 THE COURT: -- if you can help clarify things.

18 MR. BRUNVAND: Yes, Judge.

19 When the *Hurst* decision came out and we had a
20 deadline of sorts in January, not necessarily a hard
21 deadline, but a deadline that we felt like it was one
22 that we should file these motions, then to preserve
23 appellate review in state and federal courts, we
24 filed the motion on behalf of Mr. Rose.

25 We indicated in the motion that Mr. Rose did not

1 ... agree with the filing of the motion. However, it is
2 our position that in order for him to preserve the
3 arguments, including the argument that he has
4 indicated on the record that he believes, which is
5 that the conviction is invalid regardless of the
6 Florida Supreme Court's having found that only
7 applies from *Ring* forward -- and so that's why we
8 filed the motion on his behalf, to preserve that
9 issue in the event that the Florida Supreme Court is
10 incorrect in their analysis, and to preserve it both
11 for state and federal review.

12 MS. MACKS: And, your Honor, if I could just add
13 one thing -- Sara Macks, with the State Attorney's
14 Office. The Rule 3.851 used to require a oath from
15 the defendant, and he would have to agree to anything
16 that was filed on his behalf. That is no longer a
17 requirement of Rule 3.851.

18 The only thing that Rule 3.851 requires now is a
19 certification from the attorney that he has discussed
20 the contents of the motion with the defendant and
21 that the motion is filed in good faith. And we
22 believe that Mr. Brunvand has done that, and he did
23 discuss the contents of the motion with Mr. Rose.
24 Mr. Rose doesn't agree, but no longer does it matter
25 whether or not Mr. Rose agrees with the filing of the

1 motion.

2 Mr. Brunvand, as appointed counsel, has -- is in
3 the position that he gets to choose how the
4 litigation goes forward in death penalty cases. So
5 although we want Mr. Rose's input and we believe
6 that's important, in the end Mr. Brunvand as counsel
7 of record does get to make those decisions.

8 In addition, Mr. Brunvand has stated, and the
9 State agrees, that there is no conflict that would
10 allow him to withdraw at this point in time. Just
11 because Mr. Rose does not necessarily like
12 Mr. Brunvand is not a sufficient reason. You don't
13 have to necessarily get along with each other, but
14 Mr. Brunvand has always represented Mr. Rose and
15 filed all legal and appropriate claims on his behalf.

16 THE DEFENDANT: No, he hasn't. Excuse me for
17 interrupting. I object to everything that counsel is
18 saying. You just can't violate my constitutional
19 rights because she says it's legal. The Florida
20 Constitution -- the Florida sentencing scheme was
21 ruled unconstitutional all the way from conception,
22 and I'm of the same opinion as Justice --
23 Supreme Court Justice Pariente, Florida Supreme Court
24 Justice Pariente as to that.

25 And just because they ruled against what she

1 said doesn't make her wrong. I'm willing to wait it
2 out. I'm willing to wait out. And there's a record
3 of me filing against -- against Brunvand as not
4 representing me the way I request to be represented.

5 THE COURT: Okay. Mr. Rose, I -- this is
6 Judge Burgess. I just need to ask you some
7 questions.

8 If you -- the question before the Court is
9 whether or not you want to -- to end postconviction
10 proceedings at this point. Is that -- and if you --

11 THE DEFENDANT: (Unintelligible).

12 THE COURT: Okay. And do you understand if you
13 do that, that's the end of it? There's -- there's no
14 more process.

15 THE DEFENDANT: Well, we'll find out.

16 THE COURT: Well, I want to make sure --

17 THE DEFENDANT: Like I said --

18 THE COURT: Well, I just want to make sure --

19 THE DEFENDANT: I waive everything. I'm gonna
20 waive counsel, everything. You sign my death warrant
21 right now if you want to. I don't care.

22 THE COURT: Okay. Mr. Rose, what I -- what I
23 want to make sure I understand is do you want to
24 voluntarily dismiss the post -- the pending
25 postconviction proceedings and discharge collateral

1 counsel at this point?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. And this is something
4 you've thought about?

5 THE DEFENDANT: Yes.

6 THE COURT: And do you understand what the
7 consequences of that are?

8 THE DEFENDANT: No. Explain them.

9 THE COURT: Well, if you -- if you stop
10 postconviction proceedings, quite frankly, there are
11 no more postconviction proceedings. If counsel is
12 dismissed, then you don't have counsel. So
13 everything is going to be up to you, but --

14 THE DEFENDANT: Well, then --

15 THE COURT: Go ahead, Mr. Rose.

16 THE DEFENDANT: Like I say, you guys been
17 shoving me along for 34 years. If you want to
18 continue that, continue it. I don't care. Or give
19 me an evidentiary hearing -- I mean guilt/innocence.

20 THE COURT: Well, the --

21 THE DEFENDANT: You know, otherwise if you're
22 not gonna give me an evidentiary, guilt/innocence, go
23 ahead and -- go ahead. I -- I -- I waive my right to
24 this -- these proceedings.

25 THE COURT: When you say a guilt/innocence

1 hearing, are you talking about a new trial?

2 THE DEFENDANT: No. I'm talking about they
3 withheld exculpatory evidence all throughout my case.
4 Every aspect of my case is a Brady violation. And in
5 34 years it's has not been recognized as a Brady
6 Brady violations.

7 In 1987, my death warrant was signed, and
8 exculpatory evidence was discovered that said, hey,
9 look, the eyewitnesses in this case described the guy
10 as being white with brown hair and no facial hair.
11 Then they changed their testimony to being dark
12 complected with long black hair and a full beard, but
13 they did not release -- they did not turn over their
14 initial statements. And the prosecuting attorney
15 told the jury over 10 times -- they never once say
16 here the eyewitness waver or vary from their
17 testimony of their description of the perpetrator
18 when, in fact, they did. All right?

19 They withheld the blood evidence that showed
20 that only one blood type was found on me. They also
21 withheld a lot of other evidence, like in 1985, these
22 people that have testified against me were also
23 involved in another murder case. There's three
24 murder cases they were involved in, and he fits the
25 description of the initial eyewitness in on one of

1 the cases in my -- in my thing.

2 In 1987, after I got off deathwatch, there was
3 another first degree murder case brought up on World
4 News Tonight, Tom Sawyer, Forrest Sawyer' nephew, and
5 the same police officer that railroaded me was shown
6 misconduct with him. Now, they give him an
7 evidentiary hearing and they didn't give me an
8 evidentiary hearing.

9 The judge ruled even if she threw out the
10 eyewitness identification and the blood evidence, she
11 still had the two people who testified that I told
12 them I did the crime, and that would have been enough
13 to -- that would have been enough to convict me
14 there, right, even though these people initially
15 denied having any knowledge of the crime.

16 Then in 1996, I discovered evidence that
17 discredited these two people, by them being involved
18 in another murder case and cooperating with the
19 prosecuting attorneys, and I've never been given an
20 evidentiary hearing. The judge ruled on that, on
21 that 3.850, even if she threw out these two people's
22 testimony, she flip flopped and says, well, if I took
23 out the blood evidence, I still have the eyewitness
24 testimony, and that would have been enough to get a
25 conviction on its own. All right?

1 Now, any attorney worth their salt in Ring would
2 know that there's something wrong here, man, that
3 I've not been given an evidentiary hearing on this,
4 on these issues. You know, I mean, there was
5 never -- the eyewitnesses never were subjected to a
6 virtual testing. The blood evidence was never
7 subjected to -- I had a stroke last June. So I don't
8 speak too well, right?

9 THE COURT: You sound perfectly fine, Mr. Rose.
10 I understand everything you're saying. But my
11 question is if you understand that if you put an end
12 to postconviction proceedings, there's no chance that
13 any of those issues are ever gonna be looked at by
14 any court anywhere.

15 THE DEFENDANT: Well, what good is this
16 evidentiary hearing doing me anyway when the judge --
17 when they're not -- they're gonna try to resentence
18 me and when I -- if you're gonna resentence me,
19 resentence me to something that's time served. I've
20 got 34 years of maintaining my innocence. Why not
21 time sentence me to timed served, give me immediate
22 and unconditional release and let me get the hell out
23 of here, you know?

24 I mean, this just don't make no sense to me. If
25 you want to kill me, kill me. You've already taken

1 (sic) nearly half of my life away from me. I'm not
2 happy at all about none of this.

3 THE COURT: Well, Mr. Rose, I wouldn't expect
4 you would be, but what I'm still trying to get at is
5 I don't understand how you accomplish your goals if
6 you put an end to postconviction proceedings.

7 THE DEFENDANT: Well, I don't see how I can
8 accomplish my goals by going along with what's going
9 on right now.

10 THE COURT: So -- so if I understand you, you
11 just don't feel that it's gonna make a difference,
12 the way it's going, and you don't want it to
13 continue.

14 THE DEFENDANT: Well, I'm already of the same
15 opinion of Justice Pariente of the Florida
16 Supreme Court, that my conviction has already been
17 overturned, that the United States Supreme Court has
18 ruled that Florida sentencing procedure was ruled
19 unconstitutional from conception. That means from
20 the start of it, from the very beginning it was ruled
21 unconstitutional. They reversed all the decisions.

22 THE COURT: Okay. Mr. Rose, you understand that
23 hasn't happened, in fact, and that the way the law
24 sits right now --

25 THE DEFENDANT: Well --

1 THE COURT: Hold on, Mr. Rose. The -- as it
2 stands right now, the state of the law is that you're
3 on death row and that *Hurst* does not apply because
4 your case was final before the *Ring* case and you
5 have --

6 THE DEFENDANT: *Ring* has nothing to do with it.

7 THE COURT: Well, it does if the judges say so,
8 and they tell me --

9 THE DEFENDANT: The Florida Supreme -- the
10 Florida judges can say whatever they want to. It's
11 the federal court that has to test it. The federal
12 court has precedence, not the Florida courts.

13 THE COURT: But that is not what I'm trying to
14 explain to you, Mr. Rose, and I'm beginning to think
15 that you don't quite understand the nature of the
16 situation you're in. As it stands right now here
17 today, if the governor -- if you stopped your
18 postconviction proceedings and dismissed your
19 collateral counsel, if tomorrow morning the governor
20 signed a death warrant, there would be nothing
21 standing between you and the death chamber.

22 Do you understand that? Is that clear enough
23 for you?

24 THE DEFENDANT: I understand that.

25 THE COURT: Okay.

1 THE DEFENDANT: And they can do that. I don't
2 believe that's true.

3 THE COURT: All right.

4 THE DEFENDANT: That would give me a voice that
5 hasn't been heard in 34 years.

6 THE COURT: Right, but is that --

7 THE DEFENDANT: I can explain everything, why I
8 have not -- why my innocence has been overlooked for
9 34 years.

10 THE COURT: Okay. But, Mr. Rose, do you
11 understand that if you end postconviction proceedings
12 and dismiss collateral counsel, as it is right now,
13 the way the law is, that is gonna to be your
14 situation? Is that something --

15 THE DEFENDANT: Okay.

16 THE COURT: All right?

17 THE DEFENDANT: I'm doing it.

18 THE COURT: Okay. And you accept that?

19 THE DEFENDANT: I'm ending postconviction
20 proceedings right now.

21 THE COURT: Okay. But the request is to stop
22 them because --

23 THE DEFENDANT: I've stopped them.

24 THE COURT: Okay. But do you understand that --
25 and you're -- and you're accepting that that's --

1 this is the end of it for you. Is that what you're
2 trying to tell me?

3 THE DEFENDANT: I'm accepting that's the end of
4 it for you, not for me, for you.

5 THE COURT: Okay. How do --

6 THE DEFENDANT: No longer gonna have a voice in
7 this.

8 THE COURT: How do you think if you stop
9 postconviction proceedings and you dismiss collateral
10 counsel that there will be -- that it would happen
11 that you would not be executed?

12 THE DEFENDANT: I've told you before. I'm of
13 the same opinion of Justice Pariente, that my
14 sentence has already been reversed or overturned, you
15 know, that the United States Supreme Court has
16 already overturned my sentence by ruling it
17 unconstitutional.

18 THE COURT: Do you understand that Justice
19 Pariente has not come to the prison to unlock your
20 cell door and escort you out to the parking lot?

21 THE DEFENDANT: Well, I mean --

22 THE COURT: And that's not going to happen.

23 THE DEFENDANT: I'm of the same opinion. If
24 she's wrong -- if she's wrong, I'm gonna be wrong
25 too. Okay?

1 THE COURT: All right.

2 THE DEFENDANT: If Justice Pariente is wrong,
3 I'm wrong too.

4 THE COURT: -- So you just want to wait to see if
5 the U.S. Supreme Court --

6 THE DEFENDANT: Right..

7 THE COURT: -- clarifies the law in your favor?

8 THE DEFENDANT: Yes, sir. Thank you. Yes, sir.
9 Thank you.

10 THE COURT: Okay. Counsel, Mr. Brunvand,
11 anything you want to add?

12 MR. BRUNVAND: Judge, the position that
13 Milo Rose is taking, in order for him to -- in my
14 opinion, in order for him to succeed, assuming that
15 he is correct, he has to preserve his appellate
16 rights at the state level. He has to exhaust them at
17 the state level before he goes to the federal level.

18 If he abandons his claims pursuant to *Hurst* now,
19 my concern is that even if Judge Pariente is
20 correct -- and that's what we're suggesting, that
21 they should all be reexamined and void -- he may be
22 sitting there without a valid claim because he'll be
23 time barred. So --

24 THE DEFENDANT: There is -- wait a minute.
25 Actually, there is no time bar on actual innocence.

1 And if I file anything, it's gonna be actual
2 innocence. If Brunvand wants to file actual
3 innocence in my case, I'll agree to go on, but if
4 he's not gonna file actual innocence, I'm not going
5 on because he does not represent me.

6 MR. BRUNVAND: The other things, Judge, that I
7 think are important to note is I -- in the past,
8 quite frankly, in my opinion, to his detriment, Judge
9 Susan Schaeffer at one point allowed him to represent
10 himself at the trial level on a postconviction
11 motion. He immediately abandoned all claims, and it
12 was --

13 THE DEFENDANT: Well, that's because you weren't
14 prepared to represent me. You had no right to
15 represent me. I got no other alternative. They
16 could have said anything, and you would have let them
17 say it just like you did at the federal level when we
18 went before that hearing on my other -- the other
19 hearing.

20 THE COURT: Mr. Rose.

21 THE DEFENDANT: You sat there quietly and didn't
22 even represent -- like you're not representing me
23 now. I'm asking for representation on actual
24 innocence. If you cannot get at this Court that I
25 don't have actual innocence claims and convince them

1 right now that I don't have actual innocence claims,
2 then what good are you?

3 THE COURT: Again, Mr. Rose, hold off. We just
4 got to get through this. We got a little bit more to
5 go.

6 MS. MACKS: Your Honor, there's just one
7 additional thing the State would like to add, and
8 that's under this -- Mr. Rose has previously
9 represented himself under a previous statute. That
10 statute is no longer in effect for representation in
11 postconviction capital cases. The legislature has
12 changed that statute, and it now requires continuous
13 representation all the time in a postconviction case.
14 So there is no more pro se representation in
15 postconviction capital cases.

16 THE COURT: All right. Mr. Rose, do you
17 understand that?

18 THE DEFENDANT: So I'm just -- I'm just spinning
19 my wheels when I'm saying that if Brunvand doesn't
20 want to argue my actual innocence, he can go ahead
21 without actually arguing my actual innocence because
22 it's -- it benefits the State and not nobody else.

23 THE COURT: No, I don't think that's what he's
24 saying, Mr. Rose, no. It's just that the legislature
25 has set forth some very specific rules of procedure

1 and some very specific requirements, and you cannot
2 go on to do anything postconviction unless you are
3 represented by counsel.

4 To go back to the beginning of the discussion,
5 what I said, do you understand that this is the end
6 of the road for the Public Defender and there's
7 nothing --

8 THE DEFENDANT: Okay. End of the road. I mean,
9 I'm not being represented anyway. So I might as well
10 say it's the end of the road.

11 THE COURT: All right. Okay. Then I'll grant
12 your motion. That will be the end of the
13 postconviction proceedings.

14 THE DEFENDANT: Thank you. Thank you.

15 THE COURT: You're relieved of your duties as
16 counsel, and that's it. All right. Thank you,
17 Mr. Rose. You have a good day.

18 THE DEFENDANT: You too.

19 THE COURT: Okay.

20 MR. BRUNVAND: Thank you, Judge.

21 THE COURT: He seemed alert, intelligent,
22 definitely seemed to know a lot of details. So we're
23 gonna give him his wish at least for now.

24 MS. DITTMAR: Thank you, your Honor.

25 THE COURT: We'll see if once the reality sinks

1 in, things change.

2 (PROCEEDINGS CONCLUDED)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF PINELLAS)

I, Jennifer Fleischer, Registered Merit Reporter,
certify that I was authorized to and did prepare the
foregoing transcription of Linda K. Fritsch's stenographic
notes to the best of my ability.

DATED this 10th day of April, 2017.

/s/ Jennifer Fleischer

Jennifer Fleischer
Registered Merit Reporter