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CAROLYN TIMMANN

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December 18, 2018

Fourth District Court of Appeals
1525 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33401-2399

RE: DCA Case No. 2018SC1750
Lower Case No. 82000352CFBXM

ALFONSO CAVE

v.

STATE OF FLORIDA

SUPPLEMENTAL RECORD ON APPEAL

RECEIVED, 12/18/2018 01:43:27 PM, Clerk, Supreme Court

ALFONSO CAVE
Appellant,

vs.

**IN THE CIRCUIT COURT FOR THE
NINETEENTH JUDICIAL CIRCUIT
IN AND FOR MARTIN COUNTY,
FLORIDA**

STATE OF FLORIDA
Appellee,

**Case No.: 82000352CFBXX
SCA Case No.: 18-1750**

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12/18/18	CERTIFICATE OF CLERK	

WITNESS my hand and the seal of said Court on 18th of December, 2018.



CAROLYN TIMMANN
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER

BY: *Susan Douglas*
Deputy Clerk

FLORIDA SUPREME COURT
500 South Duval Street
Tallahassee, Florida 32399

CASE NO.: SC18-1750
L.T. NO.: 43-1982-CF-352-B

ALPHONSO CAVE v. STATE OF FLORIDA
Appellant. Appellee.

**APPELLANT’S UNOPPOSED MOTION TO SUPPLEMENT
THE RECORD ON APPEAL; MOTION FOR 5 DAYS BEYOND
TRANSMITTAL OF SUPPLEMENT RECORD TO FILE INITIAL BRIEF;
MOTION TO TOLL**

COMES NOW, Appellant, ALPHONSO CAVE, by and through undersigned counsel, and files this motion and as grounds in support thereof states as follows:

1. On October 19, 2018, Mr. Cave timely filed his notice of appeal of the trial court’s order summarily denying his successive postconviction motion under Rules 3.851, 3.800(a), and 3.203, raising an intellectual disability claim under Hall v. Florida and Moore v. Texas and a claim premised upon the Hurst cases.
2. On November 6, the record on appeal was timely transmitted to this Court by the trial clerk.
3. On November 9, this Court issued a briefing schedule, directing that Mr. Cave’s initial brief be filed by December 17.

RECEIVED, 12/14/2018 03:23:26 PM, Clerk, Supreme Court

4. In preparing the initial brief, undersigned counsel recognized that a supplementation to the record on appeal (“ROA”) would be beneficial to the parties and this Court in the briefing.
5. After Mr. Cave filed the final amended version of his postconviction motion on April 9, 2018 and the State filed its written response to that motion on April 26, the trial court scheduled a Huff hearing for oral argument on whether an evidentiary hearing was necessary.
6. On August 31, prior to the Huff hearing having occurred, staff attorney for the trial court e-mailed the State, stating: “in preparation for the Cave case management hearing, Chief Judge Metzger requests that the AG supplement its response to the second successive motion by September 13, 2018 to address *Walls v. State*, 213 So. 3d 340 (Fla. 2016) cited in the second amended successive motion.”
7. The e-mail concluded, “Will this e-mail suffice or does the AG require an order to supplement?”
8. The State responded via e-mail that the e-mail was sufficient. The State then filed its written response on September 13, and the trial court held a Huff hearing on September 18.
9. Two days later, the trial court issued a written order summarily denying Mr. Cave’s postconviction claims, stating:

The court incorporates by reference the State's response to the Motion, the State's supplemental response to the Motion, the State's hearing argument, and adopts the State's reasoning and citation to authority in finding both grounds procedurally barred; the intellectual disability claim is time-barred and the *Hurst* cases are not retroactive to Cave. Consequently, the Defendant is not entitled to an evidentiary hearing.

10. In order to provide context for why the State filed the supplement written response regarding Walls v. State on September 13, as well as illuminating the trial court's focus and direction for that response, Mr. Cave requests that he be permitted to supplement the ROA with the e-mail quoted above, which is attached as an exhibit to this motion.
11. Given that the trial court did not provide a written explanation for its decision but instead incorporated the arguments of the state, including the supplemental written response of September 13, it is important that the context for this filing be clear.
12. If this motion to supplement the record is granted, Mr. Cave requests that this Court permit him five days beyond the transmittal of the supplemental ROA to file his initial brief.
13. Undersigned's office consulted with counsel for the State Lisa-Marie Lerner regarding the instant request and she has no objection to the supplementation and extension requested.

14. Undersigned confirms that this motion is filed in good faith and not for the purposes of delay.
15. Finally, Mr. Cave petitions this Court to toll the pending deadline for filing the initial brief pending ruling on this motion.

WHEREFORE, Mr. Cave requests that this Court grant his motion to supplement the record on appeal, grant his motion for an extension of five days beyond the transmittal of the record on appeal to file his initial brief, and that this Court toll the time to file the initial brief while ruling on those two prior requests.

Respectfully submitted,

/s/ Joe Hamrick
JOE HAMRICK, ESQ.
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Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the instant notice has been served to the Office of the Attorney General via e-mail at capapp@myfloridalegal.com and LisaMarie.Lerner@myfloridalegal.com this 14th day of December, 2018.

/s/ Joe Hamrick
ATTORNEY

Exhibit A

From: **Sharon Robson** <RobsonS@circuit19.org>
Subject: **FW: Cave case management hearing**
Date: **August 31, 2018 at 10:15 AM**
To: **Ryan Butler** <rbutler@sao19.org>, **rick** <rick@sichtalaw.com>, **Joe Hamrick** <joseph.s.hamrick@gmail.com>, **joe** <joe@sichtalaw.com>

11/11/2018
10:15 AM

All – see Lisa-Marie's response below

Sharon L. Robson
Senior Staff Attorney
Indian River County Courthouse
2000 16th Avenue, Box 95
Vero Beach, FL 32960

Phone 772 226-3244
Fax 772 770-5235
e-mail robsons@circuit19.org

From: Lisa-Marie Lerner <LisaMarie.Lerner@myfloridalegal.com>
Sent: Friday, August 31, 2018 10:14 AM
To: Sharon Robson <RobsonS@circuit19.org>
Subject: RE: Cave case management hearing

The email is fine.

Lisa-Marie Lerner
Assistant Attorney General
1515 N. Flagler Drive
9th Floor
West Palm Beach, FL 33401
561-268-5203

From: Sharon Robson <RobsonS@circuit19.org>
Sent: Friday, August 31, 2018 10:06 AM
To: Lisa-Marie Lerner <LisaMarie.Lerner@myfloridalegal.com>; Ryan Butler <rbutler@sao19.org>; **rick** <rick@sichtalaw.com>; **Joe Hamrick** <joseph.s.hamrick@gmail.com>; **joe** <joe@sichtalaw.com>
Subject: Cave case management hearing
Importance: High

Lisa-Marie, in preparation for the Cave case management hearing, Chief Judge Metzger requests that the AG **supplement its response** to the second successive motion **by September 13, 2018** to address *Walls v. State*, 213 So. 3d 340 (Fla. 2016) cited in the second amended successive motion.
Will this e-mail suffice or does the AG require an order to supplement?

Sharon L. Robson
Senior Staff Attorney

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**STATE OF FLORIDA
IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR MARTIN COUNTY FLORIDA
INDEX TO RECORD ON APPEAL**

ALFONSO CAVE
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Case Number: 82000352CFBXX
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CERTIFICATE OF CLERK
4 District

I, CAROLYN TIMMANN, CLERK OF THE CIRCUIT COURT AND COMPTROLLER for the County of MARTIN, State of Florida, do hereby certify that the foregoing Pages 368 through 374, inclusive, contain a correct transcript of the Order, Judgment or Decree in the above-styled case and a true and correct recital and inclusion of all such original papers and proceedings in said cause as appears from the records and files of my office.

Pages 368 through 374, embrace the Order, Judgment or Decree appealed from and the Appeal Papers.

WITNESS my hand and the seal of said Court on 18th of December, 2018.



CAROLYN TIMMANN
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER

BY: *Susan Douglas*
Deputy Clerk