IN THE SUPREME COURT OF FLORIDA

CASE NO. SC 00-1427

MIAMI-DADE COUNTY, Appellant, vs. THE OFFICE OF THE CAPITAL COLLATERAL REGIONAL COUNSEL and VICTOR TONY JONES, Appellees.	)	LOWER TRIBUNAL NO. 90-50143

BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This appeal, concerning the issue of who bears financial responsibility for certain costs, arises from collateral proceedings challenging the conviction and sentence of Victor Tony Jones. Jones, the defendant in the original criminal action, was convicted and sentenced to death on March 1, 1993. (*See* R. 2.) This Court affirmed the judgment and sentence in *Jones v. State*, 652 So. 2d 346 (Fla. 1995). Thereafter, pursuant to §§ 27.001-27.711, Florida Statutes, Jones became represented by the Capital Collateral Regional Counsel ("CCRC" or "the CCRC"), which sought post-conviction relief by initiating Rule 3.850 proceedings.

In the course of its representation on March 9, 1999, the CCRC filed a "Motion for Determination of Competency." (R. 21-23.) Citing to this Court's ruling in *Carter v. State*, 706 So. 2d 873 (Fla. 1997), and arguing that the "right to effective assistance of [Jones's] collateral counsel in these proceedings encompasses the right to be competent to assist his statutorily-appointed counsel," the CCRC requested that the court order a competency evaluation by at least two, but not more than three, mental health experts. (R. 23.) The motion further requested that both sides be permitted to submit names of prospective experts for the court to choose from. (*Id.*)

Hearings were held on April 22, 1999 and May 25, 1999. (R. 97-105, 106-

13.) At the latter hearing, the CCRC asked the court to appoint Dr. Ruth Latterner. (R. 109.) That day, the court granted the motion, approved Dr. Latterner, and approved Dr. Jane Ansley, an expert suggested by the State. (R. 25, 109.) Miami-Dade County (the County) was not served with a copy of the motion or noticed for the hearings. (R. 24, 98, 107.)

Several months later, the CCRC filed a "Motion for Payment of Competency Expert" (R. 42-45), and then a "Renewed Motion for Payment of Competency Expert." (R. 58-64.) Both motions attached invoices from Dr. Latterner to CCRC attorney Todd Scher (R. 45, 61-64), and sought an order requiring the County to pay for the expert services she provided. Neither motion cited any statutes or other legal authority for the proposition that counties are responsible for such costs. On January 18, 2000, without a hearing, the court granted the renewed motion. (R. 65.)

On February 3, 2000 the County submitted a Verified Motion to Vacate Order Requiring Payment by Dade County and For Rehearing. The County explained that it had not received notice of any hearings on the instant motion, and argued that, pursuant to *Hoffman v. Haddock*, 695 So. 2d 682 (Fla. 1997), CCRC is responsible for payment of Dr. Latterner's fees. The County set the matter for hearing on February 11, 2000. (R. 76). Pursuant to the lower court's request, the

CCRC and the County each submitted memoranda of law. (R. 67-70, 71-75.) The court conducted a final hearing on March 20, 2000, and on April 11 entered its final order denying rehearing and holding the County "financially responsible for the services provided by Dr. Ruth Latterner," but deferring ruling on the reasonableness of the fees sought. (R. 81.)

The County filed the instant appeal on May 10, 2000. (R. 84.) As a collateral proceeding emanating from a death penalty case, this Court has jurisdiction over the instant appeal. *Trepal v. State*, 754 So. 2d 702, 707 (Fla. 2000) ("in addition to our appellate jurisdiction over sentences of death, we have exclusive jurisdiction to review all types of collateral proceedings in death penalty cases.") (quoting *State v. Matute-Chirinos*, 713 So. 2d 1006, 1008 (Fla. 1998) (quoting *State v. Fourth District Court of Appeal*, 697 So. 2d 70, 71 (Fla. 1997))); *see also Orange County v. Williams*, 702 So. 2d 1245, 1246 (Fla. 1997) *and Porter v. State*, 700 So. 2d 647, 648 (Fla. 1997) (both addressing cost issues in capital collateral cases and citing Art. V, § 3(b)(1), Fla. Const. as a basis for jurisdiction).

SUMMARY OF ARGUMENT

At issue in this case is whether a county, rather than the Capital Collateral Regional Counsel (CCRC), is responsible for the costs of a competency evaluation performed on the motion of the CCRC in a post-conviction capital proceeding. Established precedents and principles show the county does not bear that cost.

Pursuant to chapter 27, Florida Statutes, in post-conviction collateral challenges the CCRC "is to be responsible for the payment of *all necessary costs and expenses*." *Hoffman v. Haddock*, 695 So. 2d 682, 684 (Fla. 1997) (emphasis added). The centralized allocation of these expenses to the CCRC allows the legislature to determine the cost of death-penalty proceedings, and so better formulate both fiscal and criminal policy.

Applied here, these principles establish that the CCRC, not the County, must pay for the convict's competency evaluation. The CCRC is uniquely empowered to raise competency issues, and the resolution of those issues is essential to the collateral counsel's representation. The expense of the competency evaluation is necessary to the collateral challenge. The CCRC must therefore pay that expense.

ARGUMENT

THE CAPITAL COLLATERAL REGIONAL COUNSEL, NOT THE COUNTIES, BEARS THE BURDEN OF EXPENSES FOR POST-CONVICTION COMPETENCY PROCEEDINGS IN DEATH CASES.

It is the established law in Florida that, pursuant to chapter 27, part IV, Florida Statutes, the Capital Collateral Regional Counsel (CCRC) is responsible in post-death penalty challenges "for the payment of all necessary costs and expenses." *See Hoffman v. Haddock*, 695 So. 2d 682, 684 (Fla. 1997); *see also Orange County v. Williams*, 702 So. 2d 1245, 1248-49 (Fla. 1997) (holding that the CCRC is responsible for litigation expenses incurred by volunteer post-conviction counsel); *Porter v. State*, 700 So. 2d 647, 648 (Fla. 1997) (holding that costs of court reporters' transcriptions in Rule 3.850 proceedings must be borne by the CCRC).

In *Hoffman* the Court was asked to compel Florida's counties to pay the expenses of collateral representation. The CCRC had run out of funding, leading to the stay of collateral challenges and so preventing the resolution of death-penalty cases. Despite this dilemma, the Court refused to compel the county to pay the expense of the CCRC. The Court explained that "chapter 27 expressly directs that CCRC is to provide for the collateral representation of any person convicted

and sentenced to death in this state and is to be responsible for the payment of all necessary costs and expenses." *Hoffman*, 695 So. 2d at 684 (citing §§ 27.7001, 27.705(3), Fla. Stat.).

Based on the provisions of chapter 27, the Court specifically rejected the notion that the counties would be responsible for the expenses pursuant to the provision of § 43.28, Florida Statutes. *Hoffman*, 695 So. 2d at 684. Counties are responsible for court-related costs only when the legislature specifically mandates such responsibility. *See Milligan v. Palm Beach County Bd. of County Comm'rs*, 704 So. 2d 1050 (Fla. 1998). Here, however, the opposite is true: As the Court explained in *Hoffman*, the legislature has specifically mandated that the CCRC bear the expense of collateral challenges.

Since *Hoffman* the Court has twice reaffirmed that the CCRC must pay for collateral challenge expenses. In *Orange County v. Williams*, the Court refused to require a county to pay for post-conviction expenses from volunteer counsel. Expanding on the reasoning of *Hoffman*, the Court again relied on chapter 27 to hold that the CCRC must pay such expenses, and again rejected the contention that § 43.28 burdened the county with the obligation. The Court's ruling was clear and simple: "There are no statutory provisions that impose an obligation on the counties to pay the costs of collateral litigation." *Orange County v. Williams*, 702

So. 2d at 1247.

Finally, in *Porter v. State*, the Court again reaffirmed *Hoffman* and ruled that the CCRC, not counties, must pay post-conviction expenses. The Court ruled that counties do not have to pay for court reporter transcription fees – the sort of fee that in other contexts a county may have to pay under other statutes (*e.g.*, for local state attorneys and public defenders pursuant to §§ 27.34(2) and 27.54(3), respectively) – where those fees arise in collateral challenges. The Court reasoned that "payment of all postconviction costs out of CCRC's budget is not only statutorily required but is also necessary to carry out the legislative intent expressed in section 27.7001, Florida Statutes (Supp. 1996). . . . [I]t will further the goal of accounting for and controlling costs in postconviction proceedings and further the efficient processing of postconviction capital cases." *Porter*, 700 So. 2d at 648 (footnote omitted). Sound legislative policy thus supports the centralized allocation of post-conviction expenses, which the legislature has placed with the CCRC.

The *Hoffman* line of cases thus make a clear distinction between trial costs and post-conviction proceedings in death-penalty cases, based upon the language and principles of chapter 27. "In the case of trial costs, the counties are statutorily required to pay those costs. In the case of post-conviction proceedings, the CCRC

is statutorily charged with representation and `is to be responsible for all necessary costs and expenses.'" *Orange County v. Williams*, 702 So. 2d at 1248 (quoting *Hoffman*, 695 So. 2d at 684). This clear demarcation best enables the legislature to assess the fiscal impact of death cases, and set both fiscal and criminal policy accordingly.

Applying this reasoning here, it is clear that the expenses of the CCRC's competency proceedings must be borne by the CCRC, not by the counties. The very purpose of the post-conviction competency challenge is to assure that the defendant can provide adequate information and instruction to the CCRC so any collateral claim is adequately resolved. "There can be no question that a capital defendant's competency is crucial to a proper determination of a collateral claim when the defendant has information necessary to the development or resolution of that claim. Unless a death-row inmate is able to assist counsel by relaying such information, the right to collateral counsel, as well as the postconviction proceedings themselves, would be practically meaningless." *Carter v. State*, 706 So. 2d 873, 875 (Fla. 1997).

Because competency is integral to collateral representation, the Court empowered the collateral counsel to raise competency issues without the need of a guardian. "Collateral counsel will be in a position to adequately represent the

inmate's best interest, to determine which claims must be raised, and to make all decisions necessary to the proceedings." *Carter*, 706 So. 2d at 876. The expense of competency examinations must accordingly be borne by the CCRC.[1] To rule otherwise and impose the costs of these proceedings on the counties would fragment the *Hoffman* line of cases, violate the mandate of chapter 27, and frustrate the legislative policy of consolidating the costs of post-conviction proceedings with the CCRC.

The Court's decision in *Carter* also makes clear that postconviction proceedings "are *civil* in nature. . . ." *See* 706 So. 2d at 875 (emphasis added). For that reason the CCRC cannot rely on any provisions requiring counties to pay for expenses in criminal proceedings. *Cf.* §§ 916.115(2), 916.106(9), Fla. Stat. (requiring counties to pay in the first instance for competency proceedings in noncollateral criminal matters). Again, the line of demarcation set forth in *Hoffman*, *Williams*, and *Porter* applies: the expense of noncollateral, criminal proceedings may fall upon the counties, but the expense of collateral, civil

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[1] The Court's decision in *Carter* is in harmony with *Parkin v. State*, 238 So. 2d 817 (Fla. 1970). In *Parkin* the Court ruled that, in an insanity plea at trial, court-appointed mental health experts should be considered "neutral." *Id*. at 821. But Parker did not address the expense issue, or arise in the postconviction, collateral context, much less consider the CCRC's responsibilities and the statutory allocation in chapter 27.

proceedings is borne by the CCRC. The trial court's order erroneously burdens the County with the expense of such a collateral proceeding. That order must therefore be reversed.

CONCLUSION

By statute the CCRC is responsible for the payment of all costs and expenses necessary to collateral challenges in death-sentence cases. The centralized allocation of that responsibility with the CCRC eases the legislature's role in setting criminal and fiscal policy. One part of that responsibility is the payment of mental health experts for compentency issues in collateral challenges. The trial court's order must therefore be reversed, with a

mandate that the CCRC pay the expenses for the competency evaluation in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: Sandra S. Jaggard, Assistant Attorney General, Rivergate Plaza, Suite 950, 444 Brickell Avenue, Miami, Florida 33131 and Angelica Zayas, Office of the State Attorney, 1350 N..W. 12th Avenue, Miami, Florida 33136, and sent by federal express overnight delivery to Todd G. Scher, CCRC-South, Litigation Director, 101 N.E. 3rd Avenue, Suite 400, Ft. Lauderdale, Florida 33301 this 27th day of December, 2000.

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