IN THE SUPREME COURT OF FLORIDA

CASE NO. SC-00-99

JUAN DAVID RODRIGUEZ,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, STATE OF FLORIDA

SUPPLEMENTAL REPLY BRIEF OF APPELLANT

RACHEL L. DAY
Assistant CCRC
Florida Bar No. 0068535

LUCRECIA R. DIAZ
Assistant CCRC
Florida Bar No. 0988110

OFFICE OF THE CAPITAL
COLLATERAL REGIONAL COUNSEL
101 N.E 3rd AVE., #400
Fort Lauderdale, FL 33301
(954) 713-1284

COUNSEL FOR APPELLANT

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ARGUMENT 1

JUDGE CARNEY SHOULD HAVE RECUSED HIMSELF

The State claims that Mr. Rodriguez' March 1998 Motion to Disqualify Judge Carney was properly denied because it was untimely. The State's argument appears to be predicated on the fact that the basis of the Motion to Disqualify was the claim that Judge Carney, through *ex parte* contact with the State, had improperly delegated the task of drafting Mr. Rodriguez' sentencing order to the State. This claim, contained within Mr. Rodriguez' Fourth Amended Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend, was in turn predicated on counsel for Mr. Rodriguez having found an unsigned sentencing order in files supplied to Mr. Rodriguez by the State Attorney in the course of public records litigation. The State's position appears to be that because the Fourth Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend was untimely, the claim was barred and thus there was no basis for the motion to disqualify. However, the State's position is based on inaccurate information and is substantially misleading.

At the outset, Mr. Rodriguez would note that the timeliness of the Fourth Amended Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend has already been briefed and argued extensively. During the original briefing of this issue, the State claimed that the claim was procedurally barred. Mr. Rodriguez contended that there was absolutely nothing in the record to support this contention since the public records were obtained via Chapter 119

and not through Fla. R. Crim. P. 3.852 which had not yet been promulgated. All that the record shows is that some files were supplied to Mr. Rodriguez in 1995. In actual fact, the files from the State Attorney's Office were supplied in a haphazard, informal and piecemeal fashion, none of which is reflected in the record.

The State appears totally oblivious to the fact that this Court itself remanded the case back to the lower court for an evidentiary hearing on the sentencing order issue. Had this Court found the issue to be barred because it was untimely, logic dictates that this Court would not have remanded the case back for evidentiary development. The plain fact is that there is nothing in the post conviction record which supports the State's assertion that this Amendment was untimely.

The State is clinging to its assertion that Mr. Rodriguez received the State Attorney's file regarding his case in March 1995 (Answer Brief at 22). This represents such a gross over simplification of what really happened during the course of public records litigation in this case as to be downright misleading. As noted above, numerous materials were requested from the State Attorney's Office relating not only to Mr. Rodriguez himself, but also to his co-defendants in both the capital case and the related Leiva home invasion case. What the record does reflect is that some such materials were supplied even after the March 1998 Huff hearing,(PCR 2389-90) and that some records were never turned over at all, either because of an exemption claimed by the State, or because they were lost when the State improperly transferred records for in camera review via *ex parte* means to Judge Carney. See PCR. 607-608 These files were necessarily interrelated, since they

involved multiple co-defendants involved in the same incidents in a highly complex case. The files came to Mr. Rodriguez in a piecemeal fashion over the course of months and years. Furthermore, the vast majority of the public records activity was was done informally pursuant to Chapter 119, Fla. Stat, and was not reflected in the Court file.[1] It is thus impossible for the State to assert that the unsigned sentencing girder was in Mr. Rodriguez' possession for "about three years" (Answer Brief at 23) prior to the filing of the Fourth Amended Rule 3.850 motion.

Additionally, as Mr. Rodriguez asserted during the original briefing of this case, there were still numerous public records requests outstanding, even at the time of the Huff hearing. Mr. Rodriguez sought to litigate this Rule 3.850 motion in an orderly fashion with the final amendment occurring after all public records had been collected. This opportunity was never afforded Mr. Rodriguez.

Logic alone dictates that the materials containing the unsigned sentencing order must have been supplied to Mr. Rodriguez' counsel after the July 1997 Third Amended Rule 3.850 motion. As undersigned counsel stated at the evidentiary hearing, following relinquishment, the attorneys employed by the Capital Collateral Counsel (CCR)[2] counsel

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[1] Mr. Rodriguez' public records litigation was commenced for the most part before this Court promulgated Fla. R. Crim. P. 3.852 which formalized the public records process in capital cases so that it is possible to track the timeliness of requests and compliance therewith. No such provision was in place at time of Mr. Rodriguez' Chapter 119 litigation.

[2] CCR was the predecessor agency of Capital Collateral Regional Counsel for the Southern Region of Florida (CCRC-South)who currently represent Mr. Rodriguez

were well aware of the fact that such an unsigned sentencing order found in the State Attorney 's files could form the basis for a successful claim that the trial court improperly delegated that drafting of the order to the State. See Supp PCR 2398 As undersigned counsel noted, this emphasis was based on the Riechmann[3] case, in which Mr. Riechmann had gained relief based on such a claim. Counsel for Mr. Rodriguez would have been well aware of the Circuit Court's order granting relief in the Riechmann case in July 1997 when the Third Amended Rule 3.850 motion was filed. If the unsigned sentencing order had been in Mr. Rodriguez' possession at that time, the claim would have been pleaded. Any failure so to do would have amounted to ineffective assistance of counsel, an assertion which the State notably fails to make. The State's assertion of untimeliness is thus not borne out by the record since the record is silent as to when the specific document was received.

The State next contends that the motion to disqualify Judge Carney was untimely. This contention is meritless. First of all it is based on the wrong assumption that Mr. Rodriguez received the unsigned order in 1995, which contention, as noted above, is not supported by the record. First of all, as then counsel Mr. Strand noted, the material had only been discovered days before the Huff hearing. Second, in

[3] State v. Riechmann, 777 So. 2d 342, (Fla. 2000) affirmed the grant of penalty phase relief to Mr. Riechmann, based on part on a finding that the State improperly drafted the sentencing order. The claim was predicated on Mr. Riechmann's counsel having found and unsigned sentencing order in the State's files. The evidentiary hearing in Mr. Riechmann;s case was held in June and July of 1996, over a year prior to Mr. Rodriguez' Third Amended Rule 3.850 motion.

this instance, the fact that constituted the ground for the motion to disqualify was the assertion of the claim relating to the unsigned sentencing order. This claim was filed simultaneously with the motion to disqualify. The ten day time period required by Fla. R. J. Admin. 2.160 was thus met. Had Mr. Rodriguez for strategic or tactical reasons chosen not to pursue the claim, Judge Carney would not have been a material witness and this rationale for the motion to disqualify would not have been available.

The State next contends that the motion to disqualify was legally insufficient because "the only fact that is borne out by the claim is that the State had an unsigned copy of the sentencing order" Answer Brief at 25. The State claims that this is conclusory and attempts to analogize the instant cause with that described in Barwick v. State., 660 So. 2d 665,, 692-93(Fla. 1994) However the instant situation is a separate and distinct case from that entered in Barwick. Barwick deals with mere gossip between unidentified persons and the trial court. Here, there is an unsigned sentencing order which was found in one of the files supplied by the State to Mr. Rodriguez pursuant to Chapter 119 requests. The claim was properly pleaded and if proven would have been grounds for penalty phase relief. See e.g. Maharaj v. State, 778 So. 2d 944 (Fla. 2000); Riechmann v. State, 777 So. 2d 342, (Fla. 2000). This Court has recognized that the presence of an unsigned sentencing order in the State's file constitutes sufficient grounds for a good faith claim that the State improperly drafted the sentencing order. As such, the lower court was obliged to hold an evidentiary hearing on this issue, since the files and records in the

case did not conclusively show that Mr. Rodriguez was not entitled to relief.[4]

Furthermore, the State's position that the presence of an unsigned sentencing order in the State's file does not constitute sufficient grounds for the claim is "conclusory" is in direct contradiction to its apparent position in Roberts v. State, 840 So. 2d 962 (Fla. 2002). Indeed in Roberts, the State argued to this Court that on discovery of an unsigned sentencing order, due diligence required post conviction counsel to pursue the related post conviction claim and that failure so to do should bar the claim. This Court did not address the merits of the due diligence argument but found that the State's argument on appeal was inconsistent with that presented at the lower court and therefore found the State had abandoned its argument. The State has not overcome Mr. Rodriguez' argument that the sentencing order claim was properly pleaded and thus provided amply evidence that Judge Carney was a material witness.

Similarly, the State misconstrues Mr. Rodriguez' arguments relating to the relinquishment period. The events that transpired during relinquishment merely served to confirm that Judge Carney was a material witness in this issue. As such, he should have disqualified himself when the Motion to disqualify was filed in March

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[4]Under Rule 3.850 and this Court's well settled precedent, a post conviction movant is entitled to evidentiary hearing unless the motion and the files and the records in the case conclusively show that the prisoner is entitled to no relief", Fla R. Crim. P. 3.850. See also Lemon v. State, 498 So. 2d 923 (Fla. 1986); Hoffman v. State, 613 So.2d 1250, (Fla. 1987); O'Callaghan v. State, 461 So. 2d 1354, 1355 (Fla. 1984);

1998. However, since he did not, he was the afforded the opportunity to recuse himself on relinquishment because he was to be a material witness in the subject matter of the hearing ordered by this Court., Following relinquishment, on November 13, 2002, Mr. Rodriguez timely filed a motion to disqualify Judge Carney based on the fact that he is a material witness in the case. (Supp. PCR. 2131-2132). However, at the State's behest, Judge Carney did not recuse himself but allowed the State to assign to the case to a new judge of its choosing to determine whether or not Judge Carney was a material witness. The hearing went forward before Judge Sigler, and Judge Carney, in fact, testified at the evidentiary hearing. This shows incontrovertibly that he was a material witness. However, no order was entered below recusing Judge Carney, and Judge Sigler explicitly refrained from ruling on whether the case would revert back to Judge Carney. See Supp PCR 2061. Thus, at the conclusion of the remand, Judge Carney by his own order, was still the presiding judge on the case despite having testified. Had Judge Carney properly granted the November 2002 motion to disqualify him, his prior rulings would have been subject to Fla. R. Jud. Admin 2.160 (h) which states that:

> Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based on a motion for reconsideration which must be filed within 20 days of the date of the order of disqualification unless good cause is shown for a deals in moving g for reconsideration or other grounds for reconsideration exist.

Fla. R. Jud. Admin 2.160 (h)

This would have effectively put Mr. Rodriguez in the position that he

would have been in had Judge Carney recused himself in March 1998. Thus the events that occurred during the relinquishment period are directly pertinent to the failure by Judge Carney to disqualify himself in 1998, despite the State's protestations.

The State finally recites a catalogue of complaints regarding Mr. Rodriguez' counsel's actions which it attempts to use as justification for Judge Carney's failure to recuse himself. None of these are pertinent to the instant issue. The fact that Mr. Rodriguez had previously attempted to disqualify Judge Carney, the good faith attempts to get all public records, and other actions taken by Mr. Rodriguez' then counsel were not, as the State appears to assert, bad faith attempts at delay, but zealous attempts to litigate Mr. Rodriguez' post-conviction case. To attempt, as the State does, to utilize prior actions by Mr. Rodriguez' attorney as a justification for failing to recuse himself is not appropriate. The only issue is that Judge Carney was a material witness, as evidenced by his testimony at the evidentiary hearing. Thus, relief is warranted.

ARGUMENT II

MR. RODRIGUEZ WAS NOT AFFORDED A FULL AND FAIR EVIDENTIARY HEARING ON RELINQUISHMENT

A. THE CASE WAS IMPROPERLY ASSIGNED

The State responds that Mr. Rodriguez has no standing to challenge the manner in which Judge Victoria Sigler was assigned to his case after Judge Carney's recusal. The State bases its argument on Kruckenberg v. Powell, 422 So. 2d 994 (Fla. 5th DCA 1982). Kruckenberg stands for the proposition that,

> The assignment and reassignment of specific court cases between or among the judges of a multi-judge court is a matter within the internal government of that court and is directed and controlled by policy adopted by the judges of that court, either directly or by and through their chief judge.

Kruckenberg at 996. It further states that,

> Subject only to substantive law relating to the disqualification of judges ***litigants have no right to have, or not have, any particular judge of a court hear their cause*** and no due process right to be heard before any assignment or reassignment of a particular case to a particular judge.

Id.

The State, in this case, complains that Mr. Rodriguez is attempting to suggest which judge should have been assigned to his case. However, the very opposite is true. It is the State, not Mr. Rodriguez, that is guilty of trying to select the judge in this case. Mr. Rodriguez, in his motion for recusal, simply asked that the next Judge be assigned in the previously established manner in which judges are legally assigned after a recusal order in the Circuit.

This Court's order relinquishing jurisdiction to the lower court for the purpose of holding an evidentiary hearing was entered on November 4, 2002. (Supp. PCR. 1996). On November 13, 2002, Mr. Rodriguez timely filed a motion to disqualify Judge Carney based on the fact that he is a material witness in the case. (Supp. PCR. 2131-2132E). Mr. Rodriguez requested that the case be reassigned by random selection as is the normal practice in Miami-Dade County. A status hearing was held before Judge Carney on November 19, 2002. At that status hearing Assistant State Attorney Penny Brill suggested to Judge

Carney that he should take himself off the case only to the extent that another judge should rule if in fact Judge Carney was a material witness. (Supp. PCR. 2292). Ms. Brill further announced that the case should be assigned to Judge Victoria S. Sigler since Judge Sigler was now in the "division" that Judge Carney formerly occupied and it was not the "division" that was the subject of the recusal. (Supp. PCR. 2292). Ms. Brill further asserted that the assignment to Judge Sigler would be "random" and therefore her selection would pass muster as Judge Sigler's appointment to the case would be just as "random" as if the wheel was used. (Supp. PCR 2293).

Over Mr. Rodriguez' objection the case was assigned to Judge Victoria S. Sigler, the judge selected by Ms. Brill. Following the November 19, 2002 hearing, Ms. Brill took it upon herself to set a hearing in front of Judge Sigler, and all further proceedings during the relinquishment were conducted by Judge Sigler.

Administrative order 96-25-A1 promulgated by Chief Judge Farina deals with the assignment and reassignment of cases in the Criminal Division of the Circuit Court for the Eleventh Judicial Circuit.. In pertinent part the Order reads

> Upon the disqualification or recusal of the presiding judge in any case within the Criminal Division of the Circuit Court, the reassignment of such cases ***shall be made by the Clerk of Court under a blind filing system*** historically utilized making the initial assignment or any similar method that will result in such cases being filed equally ***among the various Sections of the Court in an unpredictable manner***.

(Administrative Order 96-25 A1)

The order makes it clear that cases should be randomly reassigned by the Clerk of Court through a blind filing method. Administrative Order 96-25-A1 does not say the case should be assigned to the judge of choice of either the prosecutor in the case or the judge recusing himself or herself. It does not say that the case gets reassigned to the same division upon recusal.[5]

The procedure for reassigning the case that was advocated by Ms. Brill and adopted by Judge Carney is in direct contravention of that authorized by the local rules in Miami-Dade County. It was the State that essentially selected the subsequent judge. Neither the Clerk's Office, nor the Administrative Office of the Courts was even involved. The Clerk heeded the direction of Ms. Brill and simply began setting future hearings before Judge Sigler over Mr. Rodriguez' objection.

The plain language of the Order states that the intent of the method is **unpredictability of reassignment among the various sections of the Court**, and not within one section. For Judge Carney to acquiesce to the request of Ms. Brill to assign the case to Judge Sigler **is in no way unpredictable of reassignment among the various sections of the Court**. Ms. Brill's insistence that Judge Sigler's appointment would be "random" is disingenuous.[6]

In addition to Ms. Brill's flagrant disregard of the local rule,

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5 ***This would not make sense since the recused Judge usually still sits in the same division.***

6 ***Webster's defines the word 'random' as occurring or done without definite aim, reason or pattern. WEBSTER'S DESK DICTIONARY 374 (2d ed. 2001).***

it was error for Judge Carney to have any input in the matter of which judge should take the case. Fla. R. Jud. Admin. 2.160 (f) states that "If the motion is legally sufficient, the judge shall immediately enter an order granting the disqualification and proceed no further with the case" Id. Judge Carney's acquiescence to Ms. Brill's request to assign the case to Judge Sigler exceeds the scope of this remit. Assigning the case to a particular judge of the State's choice goes beyond the admonition to "proceed no further with the case" Judge Carney's action further exacerbated the appearance of bias against Mr. Rodriguez of which Mr. Rodriguez complained in his 1996 and 1998 motions to disqualify Judge Carney. See Argument 1 supra.

To try to circumvent the protections afforded to Mr. Rodriguez by the Rules of Judicial Administration and the local Administrative Order, as Ms. Brill patently did, is to deny Mr. Rodriguez equal protection and due process. Relief is warranted. Just like trials and sentencing proceedings, post conviction proceedings in Florida are governed by principles of due process. See e.g. Huff v. State, 622 So. 2d 982, (Fla. 1993); Teffeteller v. Dugger, 676 So. 2d 369, 371 (Fla. 1996); Johnson v. Singletary, 647 So. 2d 106, (Fla. 1994).

B. IT WAS ERROR FOR THE LOWER COURT TO DENY MR. RODRIGUEZ DEPOSITIONS PURSUANT TO STATE V. LEWIS

Concerning Mr. Rodriguez's request to depose Judge Carney, the State responds that Mr. Rodriguez is not entitled to depositions unless Mr. Rodriguez can prove that they are "absolutely necessary" citing State v. Lewis, 656 So. 2d 1248 (Fla. 1994). The State goes on to

argue that the information which would have been obtained from Judge Carney through deposition could have been obtained by speaking with the Assistant State Attorneys in the case. This is simply not true.

Only Judge Carney knows whether he drafted the sentencing order in this case or asked someone else to do it for him. The Assistant State Attorneys prosecuting the case presumably knew whether they, personally, were asked to draft the order by the judge. However, there is no way for them to know whether **any** Assistant State Attorney was asked to draft the order, short of conducting an exhaustive survey within the office, which research was obviously not done. As former Assistant State Attorney John Kastrenakas testified in the evidentiary hearing, (Supp. PCR 2381) he did not have direct knowledge and control over the hundreds of persons working for the Miami Dade County State Attorney's Office in the mid-1980's. **Only** Judge Carney would know definitively whether he indeed drafted the sentencing order in this case or not.

The State complains that Mr. Rodriguez did not do sufficient "investigation" to show that depositions were necessary. However it is unclear what investigation would have elicited the information known only to Judge Carney. Short of depositions, the only way for Mr. Rodriguez to obtain this information would be through some form of **ex parte** communication with the judge. Even assuming that Judge Carney would have agreed to speak to Mr. Rodriguez' counsel this would have been highly improper. **Ex parte** communications between the trial judge and a party is exactly the type of behavior that Mr. Rodriguez is complaining about in his motion for relief.

The parallels between the instant case and Lewis are clear. Lewis envisages such depositions when the trial record is not clear as to the judge's action.[7] The issue of who drafted the sentencing order is not clear from the record of Mr. Rodriguez' capital trial. There was simply no other way to definitively find out the information than to depose Judge Carney. Contrary to the State's assertion, the testimony of Judge Carney was "absolutely necessary" to determine the issue of who drafted the sentencing order.

The State also responds that Mr. Rodriguez was not entitled to depose either Mr. Kastrenakas or Mr. Toner, the prosecuting attorneys in this case. Again, it premises its argument on Lewis, and suggest the issue could be determined by telephone calls and affidavits. Again, their argument is misplaced.

Mr. Rodriguez through counsel did attempt on numerous occasions to contact both Mr. Kastrenakas and Mr. Toner. (Supp. PCR 2308, 2326, 2334). Mr. Kastrenakas simply refused to talk to counsel unless Assistant State Attorney Brill was on the line listening in. Later, an affidavit signed by Mr. Kastrenakas, but obviously prepared by the State Attorney's Office, was provided Mr. Rodriguez in lieu of telephone response. The reasons why these avenues of investigation are simply inadequate are as follows: 1) a telephone conversation, even if done normally as Mr. Rodriguez attempted to do, is not under oath, making the truth more difficult to discern, 2) Ms. Brill's or any other

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7 "a party may be allowed to take post-conviction depositions of the judge who presided over the trial only when the testimony of the presiding judge is absolutely necessary to establish factual circumstances not in the record" Lewis at 1250.

Assistant State Attorney's presence on the telephone line would have a chilling effect on Mr. Rodriguez's ability to obtain pertinent information[8], and 3) an affidavit from these parties is irrelevant to proper investigation of this issue, because it is not responsive to specific questions.

The State attempts to accuse Mr. Rodriguez of acting in bad faith by simply raising this issue in the first place. In an attempt to belittle Mr, Rodriguez's claim regarding the unsigned sentencing order, the State suggests that Mr. Rodriguez is simply raising this issue as a way to be able to recuse the trial judge. The State mischaracterizes Mr. Rodriguez' arguments, by suggesting that Mr. Rodriguez would have every post conviction defendant who disliked his post-conviction judge to raise the claim as a means of recusing that judge. As noted in a Argument 1, *supra*, this is not just a case where Mr. Rodriguez raised a conclusory accusation that the trial judge had the State write the sentencing order. It was based on the unsigned sentencing order found within the State's files. As such, it met the pleading requirements of Rule 3.850. This is simply not the case.

The State itself has previously argued that discovery of such a blank sentencing order in the State Attorney's file is sufficient to place the Defendant on notice that *ex parte* communications may have occurred and that failure so to do on discovery of such a blank order waives the claim.. Roberts, *supra*. If the State argues that discovery of such

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8 ***This was evident during the conversation with Mr. Toner when Assistant State Attorneys Brill and Rubin were on the line. (Supp. PCR 2343-2344).***

a blank order necessitates the defendant's pleading the claim, then the State cannot complain that pleading the claim when such an order is found is frivolous, or an attempt to forum shop.

In this case, Judge Carney was a central and material witness as to this issue. In Lewis, the need to have the trial judge testify is very limited in scope and particularly only to factual matters that are outside the record" 656 So. 2d at 1250, n.3. Mr. Rodriguez' case clearly represented such an issue, yet the lower court denied Mr. Rodriguez' request to depose Judge Carney or the trial prosecutors. Mr. Rodriguez was thus forced to go ahead with the evidentiary hearing and call all three witnesses without any clear idea as to what their testimony would be, to Mr. Rodriguez' substantial prejudice. The Court's action rendered Mr. Rodriguez' counsel ineffective. Because Mr. Rodriguez was not able to obtain proper discovery as permitted by Lewis, he was denied due process and a full and fair hearing. Thus, relief is warranted.

ARGUMENT III

THE SENTENCING ORDER ISSUE

The State yet again reiterates its position that this claim was properly denied because the motion was not timely filed. Mr. Rodriguez relies here on Argument I *supra*, rather than reiterate ad nauseam that the State's position here is unfounded. Mr. Rodriguez would note that the issue of timeliness was not addressed by the lower Court in its denial of the sentencing order claim. Judge Sigler relied entirely upon the testimony of Mr. Kastrenakis and Judge Carney in determining

that no such misconduct had occurred.

While Mr. Kastrenakis stated that he did not draft the order, he also stated that it was impossible for him to know whether anyone else in the State Attorney's Office had drafted the order. His assertion that the sentencing order was not in the format used by the State attorney's Office is not borne out by the exhibits.[9] The State also claims that Mr. Rodriguez' motion for rehearing was untimely. In fact the motion was filed in accordance with Fla, R. Crim. P. 3.850 (g) which allows a motion for rehearing to be filed within 15 days off the date of service of the order. The motion was timely filed. The order was entered on December 31, 2002, but was not postmarked until January 8, 2003. Mr. Rodriguez' motion for rehearing was filed on January 22, 2003, 14 days after service of the order. It was timely filed. To deprive Mr. Rodriguez of the opportunity to file such a motion constitutes a denial of due process and equal protection. Rehearing should have been granted

CONCLUSION

Mr. Rodriguez submits that the facts raised on supplemental briefing, together with those adduced during the original briefing of the denial of his Rule 3.850 motion, relief warranted in the form of a new trial and/or a new sentencing proceeding.

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9 The order has the heading centered at the top of the page in a similar fashion to the the style utilized by the State. Other sentencing orders drafted by Judge Carney (e.g. State v. Henry Garcia, Supp. PCR 2033-2038) have the heading blocked and justified to the left of the page.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing brief has been furnished by United States Mail, first class postage prepaid, to Sandra Jaggard Esq., Office of the Attorney General, Rivergate Plaza, Suite 950444 Brickell Avenue, Miami, FL 33131 on October 10, 2003.

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that this brief complies with the font requirements of Rule 9.210(a)(2), Fla. R. App. P.

RACHEL L. DAY
Florida Bar No. 0068535
Assistant CCRC
101 N.E. 3rd Ave., Suite 400
Fort Lauderdale, FL 33301
(954) 713-1284
Attorney for Appellant

LUCRECIA R. DIAZ
Florida Bar No. 0988110
Assistant CCRC
101 N.E. 3rd Ave., Suite 400
Fort Lauderdale, FL 33301
(954) 713-1284
Attorney for Appellant