

IN THE SUPREME COURT OF THE STATE OF FLORIDA

NATHANIEL POOLE, JR.,

Petitioner,

CASE NO. SC01-2094

v.

STATE OF FLORIDA,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM THE
FIFTH DISTRICT COURT OF APPEAL

MERITS BRIEF OF RESPONDENT

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

KELLIE A. NIELAN
ASSISTANT ATTORNEY GENERAL

BONNIE JEAN PARRISH
ASSISTANT ATTORNEY GENERAL
Fla. Bar #768870
444 Seabreeze Boulevard, 5th Floor
Daytona Beach, FL 32118
(386) 238-4990
Fax (386)238-4997

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF ARGUMENT 3

ARGUMENT 4

POINT ON APPEAL

THIS COURT IMPROVIDENTLY GRANTED
JURISDICTION IN THIS CASE, AS THERE IS NO
CONFLICT AND THIS CASE SHOULD BE
DISMISSED; IF DISMISSAL IS NOT WARRANTED,
THE DECISION OF THE FIFTH DISTRICT SHOULD
BE AFFIRMED, AS POOLE HAS NOT BEEN DENIED
ACCESS TO ANY COURT 4

CONCLUSION 7

CERTIFICATE OF SERVICE 8

CERTIFICATE OF COMPLIANCE 8

TABLE OF AUTHORITIES

CASES:

Hall v. State,
752 So. 2d 575 (Fla. 2000) 2, 3, 4

Martin v. State,
747 So. 2d 386 (Fla. 2000) 2, 3, 4

Poole v. State,
791 So. 2d 1232 (Fla. 5th DCA 2001) 1, 2

OTHER AUTHORITIES:

Fla. R. Crim. P. 3.853 3, 5

STATEMENT OF CASE AND FACTS

On July 22, 2000, Poole filed a *pro se* petition for writ of *error coram nobis*. (R 1-19). On November 13, 2000, the trial judge denied the petition. (R 20-38). Poole appealed the denial of the petition. (R 39).

On August 17, 2001, the Fifth District Court of Appeal affirmed the denial of the petition. *Poole v. State*, 791 So. 2d 1232 (Fla. 5th DCA 2001). In affirming, the Fifth District held:

Appellant, Nathaniel Poole, Jr., timely appeals the trial court's order denying his petition for writ of error coram nobis which the trial court correctly treated as a Rule 3.850 motion. *See Wood v. State*, 750 So. 2d 592 (Fla.1999). Poole argues that the trial court erred in denying his motion because newly discovered evidence would exonerate him. Specifically, he contends that pubic hair and blood samples used at trial should be re-examined utilizing modern DNA testing procedures. Because his petition was untimely and successive, we affirm.

On July 26, 1981, Poole was convicted of kidnaping, sexual battery, robbery, and aggravated assault. He was sentenced to 40 years on the kidnaping and sexual battery counts, 15 years on the robbery count, and 5 years on the aggravated assault count, all running concurrently. Poole directly appealed from that conviction and this court affirmed his conviction. *Poole v. State*, 413 So. 2d 898 (Fla. 5th DCA 1982). Subsequently, he filed a Rule 3.850

motion for post-conviction relief, seeking the same relief as in the instant motion. Poole has already been afforded complete judicial review of his contention that DNA typing would have exonerated him. *Poole v. State*, 644 So. 2d 327 (Fla. 5th DCA 1994).

Coram nobis claims cannot bring life back into post-conviction claims that have previously been barred. *Vonia v. State*, 680 So. 2d 438, 439 (Fla. 2nd DCA 1996). Poole's coram nobis claims are untimely and successive, and therefore constitute an abuse of process. Accordingly, we prohibit Poole from filing any further pro se pleadings with this court concerning his 1981 conviction and sentence. See *Rahymes v. State*, 730 So. 2d 420, 422 (Fla. 5th DCA), *cause dismissed*, 733 So. 2d 516 (Fla. 1999); *Davis v. State*, 705 So. 2d 133, 135 (Fla. 5th DCA 1998); *Isley v. State*, 652 So. 2d 409, 410-411 (Fla. 5th DCA 1995).

Poole, at 1233.

Poole sought discretionary review from this court. Poole filed a jurisdictional brief claiming express and direct conflict with *Hall, infra*, and *Martin, infra*. Respondent filed a jurisdictional brief arguing there was no conflict. On April 30, 2002, this court accepted jurisdiction.

SUMMARY OF ARGUMENT

Respondent asserts that this court has improvidently granted jurisdiction in this case. Poole does not cite to, rely on or refer to the cases upon which the conflict jurisdiction was based. There can be but for one reason for this: the decision under review in this case did not and does not expressly and directly conflict with *Hall, infra*, and *Martin, infra*, and neither case lends support to Poole's arguments. Thus, respondent asserts that jurisdiction should not have been granted and this case should be dismissed.

Should this court determine that dismissal is not warranted, the decision of the Fifth District should be affirmed. Poole concedes in his brief that rule 3.853 was not in effect at the time the petition was filed and the decision rendered. As such, the petition was not filed pursuant to the rule and cannot be treated as if it were properly filed under rule 3.853. Furthermore, Poole has not been denied access to the court.

ARGUMENT

POINT ON APPEAL

THIS COURT IMPROVIDENTLY GRANTED JURISDICTION IN THIS CASE, AS THERE IS NO CONFLICT AND THIS CASE SHOULD BE DISMISSED; IF DISMISSAL IS NOT WARRANTED, THE DECISION OF THE FIFTH DISTRICT SHOULD BE AFFIRMED, AS POOLE HAS NOT BEEN DENIED ACCESS TO ANY COURT.

Prior to addressing the arguments made, respondent asserts that this court has improvidently granted jurisdiction in this case. In his jurisdictional brief, Poole claimed that the Fifth District's decision conflicted with two cases, *Hall v. State*, 752 So. 2d 575 (Fla. 2000), and *Martin v. State*, 747 So. 2d 386 (Fla. 2000). Other than referring to those two cases in the statement of the case and facts, Poole does not cite to, rely on or refer to either case in support of his argument before this court. This can be but for one reason: the decision under review in this case did not and does not expressly and directly conflict with *Hall, supra*, or *Martin, supra* and neither case lends support to Poole's arguments. Thus, respondent asserts that jurisdiction should not have been granted and this case should be dismissed.

Should this court determine that dismissal is not warranted, respondent requests that the decision of the Fifth District be affirmed. Poole argues that this court should remand the petition for writ of *error coram nobis* in order for it to be treated as a

motion under Florida Rule of Criminal Procedure 3.853 and order that an evidentiary hearing be held. In the alternative, Poole argues that the portion of the Fifth District's decision precluding Poole from filing any further *pro se* pleadings with the court should be quashed. Respondent asserts that neither of Poole's arguments have merit and should be rejected.

Poole concedes in his brief that rule 3.853 was not in effect at the time the petition was filed and the decision rendered.¹ As such, the petition was not filed pursuant to the rule. The petition cannot be treated as if it were properly filed under rule 3.853 because it was not filed pursuant to that rule at the time of original filing. Poole filed the petition in an attempt to avoid the bar on successive rule 3.850 motions. He was not successful. Poole does not argue that the ruling by the Fifth District or the trial judge that the petition was successive and untimely was incorrect.

Poole also argues that the Fifth District bars Poole from seeking relief under rule 3.853. Respondent asserts that this is not the case. The Fifth District merely prohibited Poole from filing any further *pro se* pleadings with that court. Nothing in the opinion precludes Poole from filing a motion pursuant to rule 3.853 in the trial court. In fact, Poole's current counsel could file the motion on Poole's behalf.

¹Rule 3.853 went into effect on October 18, 2001. The petition was filed in July of 2000 and the decision on appeal rendered in August of 2001.

Should Poole be denied relief, the same counsel could then file the notice of appeal. If an evidentiary hearing is granted, then Poole could receive counsel. There certainly is nothing to prevent Poole from requesting counsel, before or after a ruling on his motion, and notifying the court that he is not permitted to file *pro se* pleadings with the Fifth District. Poole has not been denied access to the court.

It is interesting to note that, according to Poole, this is the only error committed by the Fifth District. As set forth above, Poole does not argue that the appellate decision conflicts with any decision of any other district court or any decision of this court. Poole does not argue this court should follow any other decision in quashing the decision of the Fifth District. Again, this is why this court should not have accepted jurisdiction over this case and it should be dismissed.

CONCLUSION

Based on the arguments and authorities presented herein, appellee requests this honorable court affirm the judgment and sentence of the trial court in all respects.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

KELLIE A. NIELAN
ASSISTANT ATTORNEY GENERAL
Fla. Bar #618550

BONNIE JEAN PARRISH
ASSISTANT ATTORNEY GENERAL
Fla. Bar #768870
444 Seabreeze Blvd.
Fifth Floor
Daytona Beach, FL 32118
(386) 238-4990
Fax(386)238-4997

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Merits Brief of Respondent has been furnished by delivery to Christopher S. Quarles, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, FL 32114, this ____ day of August, 2002.

Bonnie Jean Parrish
Of Counsel

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the font used in this brief is 14-point, Times New Roman.

Bonnie Jean Parrish