

IN THE SUPREME COURT OF FLORIDA

NO. SC01-2867

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WILLIAM EARL SWEET,

Petitioner,

v.

MICHAEL W. MOORE,

Secretary, Florida Department of Corrections,

Respondent.

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REPLY TO RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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### INTRODUCTION

COMES NOW, the Petitioner, **William Earl Sweet**, by and through undersigned counsel and hereby submits this Reply to the State's Response to Mr. Sweet's Petition for Writ of Habeas Corpus. Petitioner will not reply to every issue, however expressly does not abandon the issues and claims not specifically replied to herein. For claims not addressed herein, Petitioner stands on the arguments presented in his Petition for Writ of Habeas Corpus.

### REQUEST FOR ORAL ARGUMENT

Given the matters asserted by Respondent, undersigned counsel requests oral argument in this case. Significant issues have been presented and the consequences of the resolution of these issues are serious as they will determine whether Petitioner will live or die. This Court has not hesitated to grant such a request in similar situations.

CLAIM I

THE RULES PROHIBITING MR. SWEET'S LAWYERS FROM INTERVIEWING JURORS TO DETERMINE IF CONSTITUTIONAL ERROR OCCURRED AT HIS TRIAL VIOLATES EQUAL PROTECTION PRINCIPLES, THE FIRST, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION. THE RULES ALSO DENY MR. SWEET ADEQUATE ASSISTANCE OF COUNSEL IN PURSUING HIS POSTCONVICTION REMEDIES. APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THIS CLAIM IN MR. SWEET'S DIRECT APPEAL.

In arguing that there is no constitutional error to investigate (thus, no reason to interview the jurors from Petitioner's case) Respondent concludes that trial counsel "believed that no error had occurred" because he failed to object or move for a mistrial after the trial court inquired of the jurors (Response at 7) However, this conclusion is completely unsubstantiated. There is nothing in the record that indicates why trial counsel failed to raise an objection or move for a mistrial. Regardless, it does nothing to explain why appellate counsel failed to raise a challenge to Rule 4-3.5 (d) (4), Rules Regulating the Florida Bar.

Petitioner also argues that appellate counsel had no obligation to contest the constitutionality of the rule prohibiting counsel from interviewing jurors, because

appellate counsel had "no duty to divine what issues postconviction counsel may wish to raise." (Response at 7) Petitioner does not propose that appellate counsel was obligated to "divine" certain issues; nevertheless, appellate counsel certainly had an obligation to preserve issues that bear on the constitutionality of his client's conviction and sentence. Failure to raise an issue on direct appeal may prevent a court from ever hearing the claim. See Harmon v. Barton, 894 F. 2d 1268, 1271-72 (explaining that failure to raise an issue in a direct appeal may violate a state procedural bar and thus prevent the claim from being heard in state and federal courts).

Furthermore, as this Court has ruled, challenges to Rule 4-3.5 (d)(4) should be made on direct appeal. See Arbelaez v. State, 775 So.2d 909, 920 (Fla. 2000) ("Any claims relating to Arbelaez's inability to interview jurors should and could have been raised on direct appeal."); See also Young v. State, 739 So.2d 553, 555 n.5 (Fla. 1999). A simple reading of the record in Petitioner's case, specifically the limited inquiry made of the jurors by the trial court, R. 600-01, would have revealed to any competent attorney that the incident required further investigation. Obviously, any further investigation would require a more detailed inquiry of the jurors, something

that every subsequent lawyer representing Petitioner would be prevented from doing by Rule 4-3.5 (d)(4). Consequently, Petitioner's appellate counsel was ineffective for failing to argue that Rule 4-3.5 (d)(4) denied Petitioner his right to due process of law, as well as his right to access the courts.

Lastly, although Respondent claims that Petitioner has not made a "prima facie showing that juror misconduct has occurred, i.e., he has not shown that any juror found him guilty based on an officer's alleged statement instead of on the evidence presented at trial" (Response at 7-8), Respondent misses the point of Petitioner's claim. Petitioner's claim is that Rule 4-3.5 (d)(4) unconstitutionally prevents him from doing just this and, more importantly, that appellate counsel was ineffective for failing to challenge this Rule. Without the opportunity to interview jurors and inquire into whether the officer's comments influenced their verdict, Petitioner is prevented from showing the very thing Respondent argues is required to plead a sufficient claim.

**CONCLUSION AND RELIEF SOUGHT**

For all the reasons discussed in this reply as well as his petition for writ of habeas corpus, Petitioner respectfully urges this Court to grant habeas corpus relief.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing **REPLY TO RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS** has been furnished by United States Mail, first-class postage prepaid, to Barbara Yates, The Capitol - PL-01, Tallahassee, Florida 32399, counsel of record on this 12th day of March, 2002.

**CERTIFICATE OF TYPE SIZE AND STYLE**

This is to certify that the Reply has been reproduced in a 12 point Courier type, a font that is not proportionately spaced.

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