

D.A. 8/28/01

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

FILED
THOMAS B. HALL
AUG 15 2001

CLERK, SUPREME COURT
BY _____

CASE NO. SC01-363

IN RE: AMENDED EMERGENCY PETITION
TO CREATE RULE 3.853, FLORIDA RULES
OF CRIMINAL PROCEDURE (DNA TESTING)
_____ /

COMMENTS BY THE FLORIDA ATTORNEY GENERAL

COMES NOW undersigned counsel in behalf of the Florida Attorney General and files the following comments in response to the Courts notice inviting remarks pertaining to the proposed rule creating Rule 3.853, Fla.R.Crim.P. (DNA Testing) and would show:

1. Upon reviewing the Response of the Florida Prosecuting Attorneys Association (FPAA) dated August 9, 2001, the Attorney General would join with the suggestion therein that this Court adopt a rule of procedure that specifically tracks CS/CS/SB 366, Post Sentencing DNA Testing, which passed unanimously in both the Senate and the House of Representatives and was signed by the Governor. The Florida Legislature carefully crafted and enacted a meaningful procedure which provides DNA testing for those

defendants who contend that such testing would either overturn a conviction of guilt or mitigate the sentence imposed.

2. The new proposed rule submitted by the Fast Track Subcommittee of The Florida Bar Criminal Procedure Rules Committee on July 22, 2001, attempts to merge both the former proposed rule and the legislation, taking an assortment of both, and resulting in a less satisfactory proposed rule for DNA testing. For example, the new proposed rule fails to adequately set forth whether labs other than FDLE's will be certified comparable to the FDLE lab.

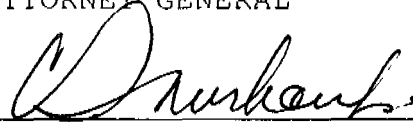
3. There is no specific provision in the new proposed rule that forewarns a defendant that, should any authorized DNA test fail to exonerate the defendant or mitigate the sentence, the State may use the results against him in any proceeding relating to his conviction and/or sentence.

4. There is nothing in the new proposed rule that states that the prosecution is not barred from performing DNA testing when a determination is made that testing would assist in the resolution of postconviction litigation. In essence, any rule created should not serve as a bar to the prosecution to secure postconviction testing of available evidence.

Based on the foregoing, the Attorney General would urge this Court to create a rule that adopts the statutory provisions enacted for testing and incorporate the two proposals offered in these comments.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the **below** listed parties on this 15th day of August, 2001:



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