IN THE SUPREME COURT
OF THE STATE OF FLORIDA

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LOUIS B. GASKIN,

Appellant,

v.

CASE NO.: SC01-982
Lower Tribunal No.: 95-34327-CFAES

STATE OF FLORIDA;
COUNTY OF VOLUSIA;
AND FLAGLER COUNTY,

Appellees.
_______________________/

ANSWER BRIEF OF STATE OF FLORIDA

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STATEMENT OF THE CASE AND FACTS

The hearing on this cost matter was held on April 5, 2001. At the hearing the CCRC counsel confirmed, upon being questioned by the court, that the underlying postconviction appeal had gone forward, that CCRC had the record on appeal of that matter, and that the cost matters being heard "are not in any way impeding, slowing down, or causing a delay in" CCRC's ability to prosecute that appeal. (PCR 13) The transcript also reflects that there was some confusion at the hearing as to whether CCRC was asking Appellee County of Volusia, Appellee Flagler County, or either one, to pay the costs in question. (PCR 7-12, 14-15.) The Appellant's case originated in Flagler County and is still considered a Flagler County case. However, the case was transferred to the circuit court in Volusia County for the postconviction proceeding after the circuit judge in Flagler County recused himself. The case then was assigned a Volusia County case number, and the clerk of the circuit court in and for Volusia County prepared the record on appeal for the Appellant after the adverse ruling in the postconviction matter. (PCR 16-20)

In any event, the lower court found that CCRC is responsible for the fees charged by the clerk of the circuit court for the preparation of the Appellant's record on appeal, and that neither the County of Volusia nor Flagler County is responsible for payment of the fees. The court also found that there are no statutory

provisions that impose an obligation on the counties to pay the costs *of* the Appellant's collateral litigation, and the counties cannot be compelled to pay such costs. (PCR 42-45, 65-66.) The court expressly declined to hear argument on CCRC's contention that the **clerk's** fees could **be** ordered waived. The court refused to consider this waiver argument because it was not part of the motion or amended motion and no notice of it was given to opposing counsel. (PCR 12-14, 28, 30, 44-45)

On April 12, 2001, the lower court entered its Order Denying Amended Motion Declaring the Defendant Indigent for Purposes of His Post Conviction Proceedings, in which it ruled that the Appellant's amended motion was denied "to the extent that it seeks to shift the cost burden from the [CCRC] to either the County of Volusia or Flagler County." (PCR 65-66)

SUMMARY OF ARGUMENT

There is no existing statutory framework which compels the counties to pay the costs for which CCRC is responsible. CCRC's statutory cost obligations have been settled by this Court. CCRC is responsible for providing 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 related to postconviction matters. There are no statutory provisions that impose an obligation on the counties to pay the costs of this collateral representation.

There is nothing in the language of the Article V revision or the enacting statutes which requires the counties to pay CCRC's costs until the state can implement the court funding system. The provisions do not place any new cost burdens on the counties and only require the counties to continue funding existing elements of the state courts system consistent with current law and practice until the legislature assumes the responsibility for funding those elements. These provisions do not relieve CCRC of its postconviction cost obligations by placing them on the counties.

ARGUMENT.

I

THERE IS NO EXISTING STATUTORY FRAMEWORK WHICH COMPELS THE COUNTIES TO PAY THE COSTS FOR WHICH CCRC IS RESPONSIBLE. (STATED BY APPELLEE).

Chapter 27 of the Florida Statutes 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.** Orange County v. Williams, 702 So.2d 1245 (Fla. 1997); Porter v. State, 700 So.2d 647 (Fla. 1997); and Hoffman v. Haddock, 695 So.2d 682 (Fla. 1997). The lower court cited this settled authority in its ruling that CCRC is responsible for payment of the fees charged **by** the clerk of the court for the preparation of the Appellant's record on appeal. (PCR 65-66)

Much like the CCRC counsel in Hoffman, who conceded that CCRC was responsible for bearing the costs of the proceedings, the Appellant's CCRC counsel in the hearing below conceded: "We realize our obligation under the statute that created CCRC to bear most, if not all, of the costs associated with post-conviction work, and we are going ahead with Mr. Gaskin's case with incurring those costs." (PCR 7) However, CCRC now argues that the counties are obligated to pay these costs, including the costs of transcripts and for the record on appeal, under Section 43.28,

Florida Statutes. It must be noted, however, that the CCRC counsel emphasized repeatedly at the hearing below that the only cost he was asking for, and the only cost in issue at the hearing, was the cost charged by the clerk for the preparation of the record on appeal. (PCR 7-8, 20, 29.) It also must be noted that this argument that the counties are responsible for these costs under Section 43.28 was not made at the hearing below an is inappropriately raised for the first time in this appeal.

In any event, Section 43.28 states as follows:

> Court facilities. - The counties shall provide appropriate courtrooms, facilities, equipment, and, **unless provided by the state,** personnel necessary to operate the circuit and county courts. (Emphasis added)

Based on the provisions of Chapter 27, this Court has specifically rejected the notion that the counties would be responsible for the costs and expenses of collateral representation under Section 43.28. Hoffman, 695 So.2d at 684. When the legislature has intended counties to pay certain costs, it has expressly provided for such disbursements. Milligan v. Palm Beach County Board of County Commissioners, 704 So.2d 1050 (Fla. 1998). Counties are not responsible for court-related costs unless the legislature has explicitly mandated that the counties pay for same. State v. Garcia, 774 So. 2d 21 (Fla. 3d DCA 2000). The legislature has not "explicitly mandated" any expenditure by the counties for the collateral representation of persons convicted and sentenced to

death. In fact, as this Court explained in Hoffman, the legislature has specifically mandated that CCRC bear the expense of such collateral representation.

In Orange County v. Williams, 702 So. 2d at 1247, this Court again relied on Chapter 27 to hold that CCRC must pay the costs of collateral representation, and the Court again rejected the contention that Section 43.28 burdens the counties with this obligation. "[T]he phrase 'unless provided by the state,' which immediately precedes the necessary personnel language, mandates a different result in this case." Id. The Appellant's "existing statutory framework" argument in the instant appeal is clearly disposed of by this Court's ruling in Williams that: "There are no statutory provisions that impose an obligation on the counties to pay the costs of collateral litigation." Id.

Finally, in Porter v. State, 700 So.2d at 648, this Court emphasized that the legislature has determined that CCRC is to bear the responsibility to pay all costs incident to postconviction capital proceedings. The Court ruled in Porter that counties do not have to pay for court reporter transcription fees - the sort of fee that in other contexts counties may have to pay under other statutes for local public defenders and state attorneys - where those fees arise in collateral proceedings. This Court reasoned that "payment of **all postconviction costs** out of CCRC's budget is not only statutorily required but is necessary to carry out the

legislative intent expressed in Section 27.7001, **Florida** Statutes ... Moreover, we believe it will further the goal of accounting for and controlling costs in postconviction proceedings and further the efficient processing of postconviction capital cases." (Emphasis added) Id.

CCRC insists, though, that it is not obligated to pay clerk's fees charged for preparation of the record on appeal. This issue appears to have been settled by this Court in Long v. Pittman, 699 So. 2d 1351 (Fla. 1997). In Long the petitioner sought to require the respondent clerk of the circuit court to provide him with copies of his court files without charge. The petitioner was represented by CCRC, and the records were sought as part of that representation. Citing Porter and Hoffman, this Court ruled that CCRC must pay for the copies of the records from the clerk and that the copies of the court files would be produced only upon payment by CCRC of the usual fees for such records charged by the clerk. This Court did not place the burden on the clerk **by** requiring a waiver of the fees for preparing and mailing the requested records, and this Court did not place the burden on the county to pay said fees. Rather, the Court mandated that such clerk's fees must be borne by CCRC.

The **Appellant** also puts forth the argument that due to the language in Sections 27.006 and 27.0061, Florida Statutes, "the cost of the transcript charges should be borne by the counties

which therefore have the duty to seek reimbursement from the state." These statutes have no bearing on the provisions set forth in Part IV of Chapter 27 related to capital collateral representation, and they do not govern or pertain to these cost obligations imposed on CCRC by Section 27.705(3). Furthermore, this issue was not raised in the proceeding below and, in any event, has already been settled by this Court. Porter.

To the extent that Appellant may seek to rely on Miami-Dade County v. Jones, SC 00-1427 (Fla., Aug. 23, 2001), any comparison between Appellant's case, which is based upon settled law, and Jones, which deals with a situation in which financial responsibility is expressly placed on the county, is misplaced. Miami-Dade County v. Jones dealt specifically with Chapter 916, *Florida Statutes*, and Rule 3.851(d). This Court stated:

> it would be particularly difficult to find that the County, which is clearly responsible for competency evaluations conducted pursuant to section 916.12, is not similarly obligated for the expert witness fees incurred during competency evaluations authorized by rule 3.851(d), which are fundamentally designed to protect the identical interests recognized under the statutory provisions.

Id. Jones is inapplicable to the facts of this case, and **does** not compel reversal of the circuit court, which expressly applied this Court's prior rulings in refusing to hold the County financially responsible for the costs of Appellant's post-conviction appeal.

Appellant's contention that this Court has misread the provisions of Section 27.705 (Appellant's Brief at 15) in deciding

prior cost cases should not long detain **this** Court. CCRC has had the opportunity, on at least four occasions, to convince this Court that it has "misread" the provisions of Section 27.705(3), Florida Statutes, concerning CCRC's cost issues. However, in Hoffman, Williams, Porter, and Long, supra, this Court obviously had the opportunity four times to study CCRC's statutory costs obligations and, after this much review, presumably concluded that it understood and had not "misread" the costs requirements imposed on CCRC under Section 27.705(3). This matter has been **well** settled by this Court, and there is no compelling reason to review it all over again now. Therefore, the Appellant's contention that Section 27.705(3) "is irrelevant to the current case as it relates to the duty of CCRC to pay for the costs of the transcript and preparation of the **record"** must be rejected.

II.

THE FLORIDA CONSTITUTION AS REVISED AND THE ENACTING STATUTES DO NOT REQUIRE THE COUNTIES TO PAY CCRC'S COSTS UNTIL THE STATE CAN IMPLEMENT THE COURT FUNDING SYSTEM. (STATED BY APPELLEE).

CCRC's next argument in support of its attempt to shift its statutorily mandated cost burden onto the counties is that the Florida Constitution revision resulting in the amendment to Article V, Section 14, and the creation of Chapter 29 of the Florida Statutes, recently enacted to implement this amendment, requires the counties to pay CCRC's bills for clerk of the court fees for preparing records on appeal until July 1, 2004, when the legislature presumably assumes the responsibility for this funding.

This creative argument was not made, suggested, or discussed in any way in the proceeding below and is now raised for the first time on appeal before this Court. It is well settled law that an appellate court cannot consider issues that were not raised in the lower tribunal, and it is inappropriate for a party to raise an issue for the first time on appeal. Morales v. Sperry Rand Corporation, 601 So.2d 538 (Fla. 1992); Dober v. Worrell, 401 So.2d 1322 (Fla. 1981); Sparta State Bank v. Pape, 477 So.2d 3 (Fla. 5th DCA 1985); and Palmer v. Thomas, 284 So. 2d 709 (Fla. 1st DCA 1973). It is a general rule of appellate review, based on practical necessity and fairness to the opposing party and the trial judge, that issues not raised below will not be considered on

appeal. Parlier v. Eagle-Picher Industries, Inc., 622 So. 2d 479 (Fla. 5th DCA 1993).

In support of his argument that the counties are required to pay the clerk's preparation of the record on appeal fees until the legislature expressly assumes the responsibility for funding the state courts system, the Appellant recites the new statutory requirements that, prior to July 1, 2004, the counties "will continue to fund existing elements of the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel, and the offices of the clerks of the circuit and county courts performing court-related functions, **consistent with current law and practice,** until such time as the Legislature expressly assumes the responsibility for funding those elements."[1] (Emphasis added) §§ 29.001(3), 29.003(5), Fla. Stat. (2000). If the counties are to continue funding for three more years the offices of the clerks performing court-related functions, "consistent with current law and practice", then such funding certainly would not include paying CCRC's preparation of the record on appeal fees because the "current law" as stated by this Court in Hoffman, Porter, Williams, and Long, supra, directs that CCRC pays these type of costs. This provision in Chapter 29 that the counties **continue** funding the state courts system "does not place

[1] Section 29.001(1) Florida Statutes, does not specifically include CCRC in its definition of the state courts system.

a new burden on the counties." (Emphasis added) Senate Staff Analysis and Economic Impact Statement, CS/SB 1212 (March 30, 2000), p. 12.

Article V, Section 14, says that counties shall not be required to provide any funding for the state courts system. However, the Appellant focuses on the language found in Article V, Section 14, and in Section 29.008(2), Florida Statutes, that says: "Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law." This language does nothing to help the Appellant's argument. In a commentary offering the statement of intent of Article V, Section 14, Alan C. Sundberg and Jon L. Mills explain the meaning of this provision as follows:

> A local requirement exists where there are special circumstances in a given circuit or county which have resulted in or necessitate implementation of specialized programs or the commitment of resources which would not generally be required in other circuits such as where a county adopts a local program, enacts a local ordinance or pursues extraordinary activities which have a substantial financial or operational impact upon a given circuit. Examples may include, but are not limited to, specialized support personnel, staffing and resources for video arraignments, pretrial related programs or misdemeanant probation. Core functions and requirements of the state courts system and other court-related functions and requirements which are statewide in nature cannot be local requirements. Further, it is the intent of the proposers that any function or requirement of the state courts system which is mandated

> **by** general law **of** statewide application cannot
> **be** a local requirement.

West's F.S.A.Const.Art.V, § 14, Commentary, Statement of Intent, Article V, Section 14. Thus, the Article V revision requiring the state to fund the state courts system does not release CCRC of its costs responsibilities by placing that burden on the counties.

III.

THE COUNTIES CANNOT BE COMPELLED TO PAY FOR THE RECORD FOR THE INDIGENT DEFENDANT IN COLLATERAL CASES. (STATED BY APPELLEE).

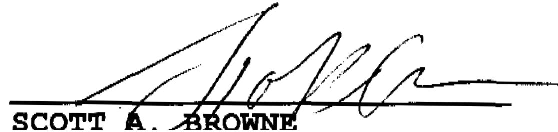
CCRC, and not the counties, is compelled to pay for the record for their indigent clients in collateral cases. See Long v. Pittman, 699 So.2d at 1351 (citing Porter and Hoffman, supra). There is absolutely no duty imposed on the counties to pay CCRC's statutorily mandated costs and then seek reimbursement from the state general revenue fund, as suggested by CCRC. This reimbursement theory, which was not argued below and is raised for the first time in this appeal, is without merit as well as impractical. As shown in Section 27.705(3), all payments for CCRC's salaries and "other necessary expenses of office" are from state funds appropriated therefor. Since state funds are appropriated directly to CCRC for its costs and expenses, it would make no sense to ask the counties to pay CCRC's costs and then have to turn around and seek reimbursement from the state. There is no authority **or** logic to support this suggestion of going through an additional layer of bureaucracy to get the bills paid when there is already a statute in place providing for state funds to be appropriated to CCRC to pay their bills directly.

CONCLUSION

Based on the foregoing arguments and authorities, the lower court's ruling denying appellant's motion for payment of costs should be affirmed.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by **U.S.** mail *to* Peter James Cannon, Assistant CCRC, Capital Collateral Regional Counsel-Middle, Suite 210, 3801 Corporex Park Drive, Tampa, Florida 33619, and Randall H. Rowe, 111, Volusia County Legal Department, 123 W. Indiana Ave., Deland, Florida 32720-4615, this 5th day of September, 2001.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Answer Brief was generated in Courier New 12-point font, in compliance with Fla.R.App.P. 9.210(a) (2).

COUNSEL FOR STATE OF FLORIDA