IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NOS. SC O2-26

MAHLARD K. BOYD,

Respondent.
_____/

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PREFACE

The Petitioner, the State of Florida, will be referred to as the "the State."

Respondent MAHLARD K. BOYD will be referred to as "Mr. BOYD."

The State's initial brief on the merits will be referred to as "IB" followed by the page number where the information may be found.

STATEMENT OF THE CASE AND FACTS

Mr. BOYD accepts the statement of case history and facts set forth in Petitioner's initial brief with one addition.

Mr. BOYD was in close management prior to his transfer from Columbia Correctional to Okeechobee Correctional.[1]

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[1] Motion To Accept As Timely Filed, ¶ 1, contained as document 1 in the record on appeal certified March 12, 2002.

SUMMARY OF ARGUMENT

Mr. BOYD is entitled under the Due Process Clause to a hearing on whether the State prevented him from a timely filing of his Rule 3.850 motion.

The *Giles v. State*, 773 So. 2d 1167 (Fla. 2d DCA 2000) decision is not persuasive authority for a situation where the State has prevented a timely filing by physically relocating an inmate without his legal material while holding the inmate under restrictive close management conditions. The holding in *Giles* is that an inmate law clerk is not 'legal counsel' under the exception to the two-year limit stated in Rule 3.850(b)(3). A decision closer to this case which reconciles the two different situations is *Davis v. Singletary*, 716 So. 2d 273 (Fla. 4th DCA 1998) where the Fourth District held the unavailability of an inmate law clerk did not create a reason for a belated appeal, but the deprivation of a petitioner's legal papers did.

A due process hearing on Mr. BOYD's allegations is consistent with this Court's decisions in *Haag v. State*, 591 So. 2d 614 (Fla. 1992) and *Steele v. Kehoe*, 747 So. 2d 931 (Fla. 1999). The *Haag* decision, like here, involves a situation where the State may prevent the timely filing of court documents. This Court interpreted Rule 3.850 and the two-year limit to create the 'mailbox rule' to ensure equal access to the courts.

The *Steele* decision held an inmate is entitled to a due process hearing on allegations a privately retained attorney failed to file a promised 3.850 motion.

The Fourth District correctly identified in *Boyd v. State*, 801 So. 2d 116 (Fla. 4th DCA 2001) that a 3.850 motion is a hybrid civil and collateral criminal proceeding, and that both Florida Rule of Criminal Procedure 3.050 and Florida Rule of Civil Procedure 1.190(e) permit enlargements of time to file or amend pleadings.

Finally, this Court should hold that subsection 924.051(6), Florida Statutes, does not govern the time limits for post-conviction motions brought under Rule 3.850 pursuant to *Allen v. Butterworth*, 756 So. 2d 52 (Fla. 2000), and, Article II, Section 3 and Article V, Section 2(a) of the Florida Constitution.

ARGUMENT

The Due Process Clause of the United States and Florida constitutions requires that an inmate be given a hearing on whether a Florida Rule of Criminal Procedure 3.850 post-conviction motion should be considered when the State prevents the inmate from filing within the two-year limit.

Contrary to the State's assertion, (IB at 8), Mr. BOYD's motion should not be barred if the State prevented him from filing his motion on time.

Standard of Review.

This case presents a conflict of opinions between District Courts of Appeal in Florida, and, should be reviewed *de novo* as a pure question of law.

Issue: A Non-Capital Rule 3.850 Motion Should Be Considered If Filed More Than Two Years After the Judgment and Sentence Became Final If the State Prevented A Timely Filing.

The State asserts that Mr. BOYD's post-conviction motion should be summarily denied because it does not fall within an express exception listed in subsection 924.051(6), Florida Statutes, or Florida Rule of Criminal Procedure 3.850. (IB at 5).

To the contrary, the Due Process Clause of the United States and Florida constitutions require that Mr. BOYD receive a hearing on whether the State prevented his timely filing of his 3.850 motion. Amend. XIV, *U.S. Const.*; Art. I, § 9, *Fla. Const.*

The State cites the Second District panel decision of *Giles v. State*, 773 So. 2d 1167 (Fla. 2d DCA 2000) as support. (IB at 5). The *Giles* decision is different from this case, however, and this difference warrants close attention.

In *Giles,* an inmate law clerk assisting Mr. Giles was placed in administrative detention and Mr. Giles' legal material was confiscated. *Giles*, 773 So. 2d at 1167. The Second District panel noted this Court had amended Rule 3.850 to except cases where the defendant had retained legal counsel who failed to file a promised 3.850 motion. *Giles* at 1167 (citing *Steele v. Kehoe*, 747 So. 2d 931 (Fla. 1999)). The Second District panel

recited well-established law that there is no legal entitlement to post-conviction counsel. *Giles* at 1168. The Second District panel concluded that an inmate law clerk did not qualify as 'legal counsel' and did not fall under the legal counsel exception announced in *Steele* and codified into Rule 3.850(b)(3).

Significantly, however, the Second District stated its concern that the timeliness exception in Rule 3.850(b)(3) raised equal protection issues for indigent inmates. *Giles* at 1168. In particular, the Second District foresaw a situation where the inmate "necessarily relies" on an inmate law clerk as one possibility violating equal protection. *Giles* at 1168. Equal protection would be violated by allowing a belated filing by an inmate relying on privately retained counsel, but denying a belated filing to an indigent inmate who "necessarily relies" on someone other than privately retained counsel. The Second District panel did not view Mr. Giles, under the facts particular to that case, as necessarily relying on the inmate law clerk to file his 3.850 motion.

The *Giles* decision is therefore distinguishable as a case where an inmate law clerk does not qualify as 'legal counsel' for purposes of the Rule 3.850(3)(b) exception. This interpretation is consistent with the panel's citation to *Haynes*

v. State, 757 So. 2d 517 (Fla. 4th DCA 2000), as a case where a non-lawyer, legal organization did not qualify as 'legal counsel' under the Rule 3.850(b)(3) exception. *Giles*, 773 So. 2d at 1168.

The ruling in *Giles*, however, does not extend to the broader principle that a belated filing is prohibited when the State prevents the original timely filing.

Important to this case, in a decision not cited by the State, the Fourth District granted a belated appeal from an order denying a 3.850 motion based on the transfer of an inmate law clerk who held the Petitioner's legal papers. *Davis v. Singletary*, 716 So. 2d 273 (Fla. 4th DCA 1998). In *Davis* the court reiterated that lack of access to an inmate law clerk does not entitle a petitioner to a belated appeal. *Davis*, 716 So. 2d at 273. This accords with the *Giles* decision. The Fourth District, however, did hold that "sudden deprivation of all his legal papers as a result of the Department of Corrections' transfer to be an exceptional circumstance beyond Petitioner's control" and granted the writ of habeas corpus for a belated appeal. *Davis* at 273. That is the same situation as here, and, the same result should be reached in this case.

This Court's rulings in the *Haag* and *Steele* cases also support that due process requires that Mr. BOYD be given a

hearing on his allegations that the State prevented his timely filing.

In *Haag* this Court adopted the 'mailbox rule' for Rule 3.850 motions filed by inmates. *Haag v. State*, 591 So. 2d 614 (Fla. 1992). In *Haag* this Court first reiterated that Rule 3.850 is merely a procedural vehicle to administer the constitutional writ of habeas corpus, and, that "nothing in our law suggests that the two-year limitation must be applied harshly or contrary to fundamental principles of fairness." *Haag*, 591 So. 2d at 616. This Court also noted that adopting the 'mailbox rule' for indigent inmates avoided problems with constitutional equal protection and access to the courts because inmates are at the mercy of prison officials to allow timely access to the courts. *Haag* at 617 (citing *Houston v. Lack*, 487 U.S. 266, 108 S. Ct. 2379, 101 L. Ed. 2d 245 (1988) and Art. I, §§ 2, 21, *Fla. Const.*) Pertinent to this appeal, this Court directly held: "the State cannot subtract from that two-year period through failure to deliver a pro se inmate's petition until after the period has expired, even if the delay is through honest oversight." *Haag* at 617. So too here if the State prevented Mr. BOYD from filing by physically relocating him to another prison without his legal material combined with restrictive close management conditions.

This Court's reasoning in *Haag* applies with equal cogency here. The State transferred Mr. BOYD from Columbia Correctional Institution to Okeechobee Correctional Institution on March 29, 2001. The State can transfer an inmate at will. *Fla. Admin. Code R.* 33-601.215; *see also, Montanye v. Haymes*, 427 U.S. 236, 242-43, 96 S. Ct. 2543, 49 L. Ed. 2d 466 (1976) (no right to remain at any one prison). While an inmate should normally be transferred with his property, *Fla. Admin. Code R.* 33-602.201(4)(h), Mr. Boyd alleged that the transfer took place without his legal papers traveling with him. *Boyd v. State*, 801 So. 2d 116, 116 (Fla. 4th DCA 2001). Also, Mr. Boyd alleged he had been placed on close management for the two years preceding his transfer. Inmates under close management have restricted access to personal legal papers and the law library. *Fla. Admin. Code R.* 33-601.800(10)(i).

Like the situation in *Haag*, the State cannot interfere with an indigent inmate's access to the court by separating an inmate from his legal papers and placing him in restricted close management, even if such interference is not intended to prevent access to the courts. Such interference violates Mr. BOYD's constitutional rights of equal protection and access to the courts because it selectively bars him from the courthouse due to his incarceration and inability to pay a private attorney.

Amend. XIV, *U.S. Const.* (Equal Protection Clause); Art. I, § 2, *Fla. Const.* (same); Amend. XIV, *U.S. Const.* (Due Process Clause providing for access to the courts); Art. I, § 21, *Fla. Const.* (same). Like *Haag*, the solution most "consistent with the full and fair exercise" of the constitutional right of habeas corpus is to consider Mr. BOYD's belated 3.850 motion. *Haag v. State*, 591 So. 2d 614, 616 (Fla. 1992); *see also*, Art. I, § 13, *Fla. Const.* (right of habeas corpus).

This Court's decision in *Steele* is also consistent with allowing consideration of Mr. BOYD's 3.850 motion. In *Steele* this Court held "that due process entitled a prisoner to a hearing on a claim that he or she missed the deadline to file a 3.850 motion because his or her attorney had agreed to file the motion but failed to do so in a timely manner." *Steele v. Kehoe*, 747 So. 2d 931, 934 (Fla. 1999). This Court then directed Mr. Steele's claim should proceed as a petition for writ of habeas corpus to determine whether the allegations were supported. *Steele*, 747 So. 2d at 934. *Accord*, *Medrano v. State*, 748 So. 2d 986 (Fla. 1999). This Court then unanimously amended Rule 3.850 to codify this exception into the body of the rule. *Id*.

The same result should be reached here. Constitutional due process clearly entitles Mr. BOYD to a hearing that the State prevented his timely filing by transferring him to another prison without his legal papers. Amend. XIV, *U.S. Const.*; Art. I, § 9, *Fla. Const.*

The Fourth District in *Boyd* correctly identified the legal basis for this result. The Fourth District correctly held both the Florida rules of criminal and civil procedure permit an enlargement of time to file or amend. *Boyd v. State*, 801 So. 2d 116, 116-17 (Fla. 4th DCA 2001) (citing *Fla. R. Crim. P.* 3.050 and *Fla. R. Civ. P.* 1.190(e)). This agrees with this Court's prior rulings on the unique legal status of a Rule 3.850 motion.

This Court has previously noted that a Rule 3.850 motion is a court-enacted hybrid of a petition of the constitutionally guaranteed writ of habeas corpus and a continuation of a criminal appeal. *Saucer v. State*, 779 So. 2d 261, 262-63 (Fla. 2001); *Allen v. Butterworth*, 756 So. 2d 52, 61-62 (Fla. 2000). A Rule 3.850 motion follows the court rules of civil procedure. *See Saucer v. State*, 779 So. 2d 261, 262-63 (Fla. 2001). As correctly held by the Fourth District in the *Boyd* decision, the rules of civil procedure permit liberal amendments in the interests of justice. *Boyd v. State*, 801 So. 2d 116, 117 (Fla.

4th DCA 2001) (citing *Fla. R. Civ. P.* 1.190(e)). Rule 3.850 motions are no different. A Rule 3.850 motion can be supplemented with new material, and a majority of District Courts hold the motion can be amended to add new grounds after the original filing. *Rozier v. State*, 603 So. 2d 120 (Fla. 5th DCA 1992). *See also*, *Huff v. State*, 762 So. 2d 476, 481 (Fla. 2000) (standard of review on decision to amend 3.850 motion is abuse of discretion); *compare*, *McConn v. State*, 708 So. 2d 308 (Fla. 2d DCA 1998) (*en banc*) (new ground is treated as successive motion) *with Boyd v. State*, 801 So. 2d , 116, 117, n.2 (Fla. 4th DCA 2001) (noting conflict with *McConn*).

The State is also in error by saying that the Fourth District has issued conflicting opinions in *Boyd* and *Lee v. State*, 754 So. 2d 74 (Fla. 4th DCA 2000). (IB at 5-6). In *Lee* the Fourth District denied a Rule 3.800(a) motion as facially insufficient and time-barred, but did so without prejudice to allow inmate Lee to re-file a conforming 3.800 motion. *Lee*, 754 So. 2d at 75. The court also clarified its prior decisions that Rule 3.850 motions must be filed within two years, but a 30-day extension may be had when a 3.800 motion was filed within the two-year limit. The *Lee* decision therefore permits filing a

Rule 3.850 motion outside the two-year limit when it substitutes for a timely-filed Rule 3.800 motion.

Finally, the State also cites subsection 924.051(6), Florida Statutes, as authority for the two-year limit. (IB at 3, 4-5, 8). The time limit for filing a post-conviction motion, however, is a procedural rule which this Court alone can promulgate under the Florida Constitution. *Allen v. Butterworth*, 756 So. 2d 52, 62 (Fla. 2000); Art. II, § 3, *Fla. Const.* (separation of powers); Art. V, *§* 2(a), *Fla. Const.* (court authority to enact procedural rules). The Fourth District correctly relies on *Allen* when issuing it's *Boyd* decision. *Boyd v. State*, 801 So. 2d 116, 117, n.1 (Fla. 2nd DCA 2001). The State apparently concedes this point elsewhere in its Initial Brief. (IB at 7). This Court should expressly hold in this case, like *Allen v. Butterworth*, that Florida Rule of Criminal Procedure 3.850 controls the time limits governing post-conviction motions, and not subsection 924.051(6), Florida Statutes.

For the above reasons, this Court should permit Mr. BOYD a due process hearing on his allegation that the State prevented his timely filing of a Rule 3.850 motion.

CONCLUSION

This Court should resolve the conflict between District Courts by holding that an inmate is entitled to a hearing on whether a Rule 3.850 motion should be accepted when State action prevents the filing of the motion within the two-year period.

This Court should approve the decision in *Boyd v. State*, 801 So. 2d 116 (Fla. 4th DCA 2001). This Court should also disapprove of the decision in *Giles v. State*, 773 So. 2d 1167 (Fla. 2d DCA 2000) to the extent that it is inconsistent with this result.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing Answer Brief On the Merits was sent to CELIA TERENZIO, ESQ. Bureau Chief, 1515 N. Flager Drive, 9th Floor, West Palm Beach, FL, 33401-3432; DANIEL P. HYNDMAN, ESQ., Assistant Attorney General, 1515 N. Flager Drive, 9th Floor, West Palm Beach, FL, 33401-3432, by U.S. Mail this 26th day of March 2002.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using font style Courier New type size 12.

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