

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

CASE NO. SC02-26

Petitioner,

LT Case No. 4D01-1737

v.

MAHLARD K. BOYD,

Respondent.

ON DISCRETIONARY REVIEW FROM THE FOURTH DISTRICT COURT OF
APPEAL

PETITIONER'S INITIAL BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, State of Florida, was the Plaintiff in the trial court and Appellee in the Fourth District Court of Appeal. Petitioner will be referred to herein as "the Petitioner" or "the State". Respondent, Mahlard K. Boyd, was the Defendant in the trial court and Appellant in the Fourth District Court of Appeal. Respondent will be referred to as "the Respondent" or "Boyd".

STATEMENT OF THE CASE AND FACTS

On May 16, 1997, the Respondent, Mahlard K. Boyd, was sentenced to life in prison on a conviction of robbery with a firearm or deadly weapon. On March 25, 1998, the Fourth District Court of Appeal ("Fourth District") affirmed the Respondent's conviction without a written opinion. On April 13, 1998, a mandate issued.

Over 2 years later, on May 15, 2000, the Respondent filed a motion for post-conviction relief pursuant to Rule 3.850, Florida Rules of Criminal Procedure. Prior to that date, on April 10, 2000, the Respondent filed a motion for extension of time to file his post-conviction relief motion claiming that on March 29, 2000, he had been moved to another institution and did not have access to his legal papers.

The trial court directed the State to respond to the Respondent's motion for post-conviction relief. In its response, the State asserted that the Respondent's motion was time-barred because it was filed beyond the 2-year limitation period set by Rule 3.850. The trial court then entered an order denying the Respondent's motion for the reasons set out in the State's response.

The Respondent then appealed to the Fourth District, which issued the instant opinion reversing the trial court's order and

remanding for further proceedings which may include an inquiry into whether the facts alleged in the Respondent's motion for extension are true; the Fourth District also certified conflict with Giles v. State, 773 So. 2d 1167 (Fla. 2d DCA 2000). Boyd v. State, 801 So. 2d 116, 117 (Fla. 4th DCA 2001). The State's motion for rehearing was denied. The State then invoked the discretionary jurisdiction of this Court.

SUMMARY ARGUMENT

The conflict between the decision of the Fourth District in the instant case and the Third District in Giles should be resolved in favor of Giles. In the instant case the Respondent filed a motion for post-conviction relief beyond the 2-year limitation period provided in section 924.051(6), Florida Statutes, and Rule 3.850 (b), Florida Rules of Crim. P. The Fourth District reversed the trial court's denial of the motion as untimely despite the fact that none of the exceptions to the 2-year limitation period existed in the instant case. In Giles, and other decisions of district courts - - including the Fourth District - - contrary decisions were reached: motions for post-conviction relief filed under Rule 3.850 have been considered untimely when none of the exceptions to the limitation period exist. Accordingly, this Court should reverse the decision of the Fourth District in the instant case.

ARGUMENT

THE CONFLICT BETWEEN GILES AND THE INSTANT CASE SHOULD BE RESOLVED IN FAVOR OF GILES; A NONCAPITAL RULE 3.850 MOTION SHOULD NOT BE CONSIDERED IF IT IS FILED MORE THAN TWO YEARS AFTER THE JUDGMENT AND SENTENCE BECOME FINAL

The Fourth District erred by reversing the trial court's denial of the Petitioner's Rule 3.850 motion for post-conviction relief. In the instant case, there is no issue that the Petitioner's Rule 3.850 motion was due on April 13, 2000, and that the motion was not actually filed until over a month later, on May 15, 2000. Boyd, 801 So. 2d at 116. Accordingly, such a motion should not be considered by the trial court. Section 924.051(6), Florida Statutes, provides that:

(6) In a noncapital case, a petition or motion for collateral or other postconviction relief may not be considered if it is filed more than 2 years after the judgment and sentence become final, unless the petition or motion alleges that:

(a) The facts upon which the claim is predicated were unknown to the petitioner or his or her attorney and could not have been ascertained by the exercise of due diligence;

(b) The fundamental constitutional right asserted was not established within the period

provided for in this subsection and has been held to apply retroactively; or

(c) The sentence imposed was illegal because it either exceeded the maximum or fell below the minimum authorized by statute for the criminal offense at issue. . .

See also, Rule 3.850(b), Fla. R. Crim. P., which substitutes for (c) above the allegation of neglect by counsel as an exception to the 2-year limitation period. In his Rule 3.850 motion, the Respondent failed to allege that any of the exceptions to the 2-year limitation applied. Consequently, the trial court properly denied the motion without further consideration.

In Giles v. State, 773 So. 2d 1167 (Fla. 2d DCA 2000), a factually similar case¹, the Third District Court of Appeal found that the trial judge properly denied Giles' motion for extension of time to file a Rule 3.850 motion since there was no basis in the rules for granting a motion for extension. Id. The opinion of the Fourth District not only conflicts with the holding in Giles, but conflicts with this Court's holding in Beaty v. State, 701 So. 2d 856 (Fla. 1997), wherein this Court affirmed the trial judge's denial of Beaty's Rule 3.850 motion on the

¹Giles sought an extension of time since his inmate law clerk was placed in administrative detention and the clerk's legal documents, including Giles' postconviction motion, were confiscated. Giles, 773 So. 2d at 1167.

basis that the motion was untimely since it was filed 2 years beyond the date that Beaty's conviction became final. Id., 701 So. 2d at 857. Additionally, the instant decision conflicts with the Fourth District's decision in Lee v. State, 754 So. 2d 74, 75 (Fla. 4th DCA 2000)(motion for post-conviction relief not filed within the 2-year deadline was properly denied as untimely). See also, Stallings v. State, 736 So. 2d 17 (Fla. 2d DCA 1999)(illiteracy does not excuse the time limitations of Rule 3.850).

Additionally, the Fourth District's holding that "extensions for post-conviction relief motions are permissible" - even in the absence of any enumerated exception, Boyd, 801 So. 2d at 116, is contrary to this Court's decision in Cave v. State, 529 So. 2d 293 (Fla. 1988), in which this Court held that:

. . . Rule 3.850 prescribes a two-year period following final conviction for filing petitions for post-conviction relief, after which such petitions are procedurally barred . . .

Id. at 299. In the Cave decision, this Court determined that a defendant could not rely on the 2-year filing period provided in Rule 3.850 to prevent the Governor from signing a death warrant during the filing period since "Rule 3.850 merely provides a time period *after* which petitions may not be filed" and "does

not act as a bar to execution of sentences immediately after they become final." Id. (emphasis in original). Likewise, in the instant case, Boyd cannot allow over 1 year and 11 months of his filing period to run and then claim entitlement to an extension simply because he asserts that a situation has arisen to prevent the timely filing of his motion for post-conviction relief.

The Fourth District appears to find support for its holding in the instant case in this Court's decision in Allen v. Butterworth, 756 So. 2d 52 (Fla. 2000). Boyd, 801 So. 2d at 117. However, Allen holds that this Court "has the power to enact procedural law." Id., 756 So. 2d at 59. See also, Article V, Section 2(a), Constitution of the State of Florida ("The supreme court shall adopt rules for the practice and procedure in all courts . . ."). In its Allen decision, this Court held that the Florida Constitution granted it "the exclusive authority to set deadlines for postconviction motions." Id. at 62. This is precisely what this Court has done by establishing a 2-year limitation on post-conviction motions in Rule 3.850 (b). Consequently, Allen supports adherence to this time limitation, not expansion of it for reasons beyond those enumerated in the

Rule.

The Fourth District also relies substantially on Rozier v. State, 773 So. 2d 1167 (Fla. 2d DCA 2000), Boyd, 801 So. 2d at 116-117; however Rozier holds that "the two year limitation does not preclude the enlargement of issues raised in a timely-filed first motion for post conviction relief." Id., 603 So. 2d at 121 (quoting Brown v. State, 596 So. 2d 1026 (Fla. 1992)(emphasis added). In the instant case, Boyd did not file a timely motion for post-conviction relief; consequently Rozier and Brown do not support the Fourth District's decision. This Court's decision in Jennings v. State, 583 So. 2d 316 (Fla. 1991), is also cited by the Fourth District. Boyd, 801 So. 2d at 116-117. However, in that case it is apparent that the defendant filed a timely Rule 3.850 motion, but was allowed an additional 60 days for the limited purpose of filing any additional claims resulting from the disclosure of the States's files. Jennings, 583 So. 2d at 319. It is reasonable that this extension would be granted since the State's obligation to disclose was not confirmed until the Jennings decision was issued - - presumably after the limitation period ended. This is completely different from the instant case where the Respondent had the full 2-year period to file any post-conviction claims and failed to do so within that period.

In conclusion, the Respondent's untimely motion for post-conviction relief was properly denied by the trial court. He failed to file the motion within the 2-year period provided by section 924.051(6), Florida Statutes, and Rule 3.850(b), Fla. R. Crim. P.. Furthermore, none of the exceptions to the time limitation period applied in the instant case. Consequently, the decision of the Fourth District should be reversed.

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities cited herein, the Petitioner respectfully requests this Honorable Court to reverse the decision of the Fourth District in the instant case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of hereof has been furnished by U.S. mail to: Mahlard K. Boyd, DC # 702766, Okeechobee Correctional Institution, 3420 N.E. 168th St., Okeechobee, FL 34972 on February _____, 2002.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared with Courier
New 12 point type and complies with the font requirements of
Rule 9.210.

Of Counsel