

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO FLORIDA RULE OF CRIMINAL PROCEDURE  
3.853(d)(1)(A) (POST CONVICTION DNA TESTING)**

**CASE NO. SC03-1630**

**DEAN C. WILSON, et al. v. STATE OF FLORIDA**

**CASE NO. SC03-1654**

---

**COMMENTS OF THE CRIMINAL COURT STEERING  
COMMITTEE**

**October 13, 2003**

## COMMENTS OF THE CRIMINAL COURT STEERING COMMITTEE

This comment is filed by the Criminal Court Steering Committee (“the Committee”). The Committee is composed of eight trial and appellate judges who are tasked with the responsibility to advise this Court on complex matters involving criminal procedural rules and the administration of criminal justice in the trial courts. The Committee offers the following comments and suggestions for resolution of the issues raised by the petitions filed herein in the event the Court determines relief is justified.

The two emergency petitions seek to extend the time for filing motions for DNA testing under Rule 3.853, Fla. R. Crim. P. and to extend the time for law enforcement agencies to maintain evidence which may exonerate prisoners who are in custody. The attorneys who are involved in The Florida Innocence Project and The Florida Innocence Initiative are referred to herein as the “Innocence Projects.”

The Committee agrees that, under the circumstances, there may be prisoners in custody whose rights under post conviction relief DNA testing will be extinguished if this Court does not extend the time for filing the motions requesting such relief. However, the petitions only requests a one year extension of time while the Innocence Projects claim that investigations involve a process that “takes from three to five years per case.” Petition, p. 9. The petition contains no plan showing how the Innocence

Projects will complete the investigations into the “nearly 600” cases within the year’s extension that is requested. If, as is claimed, the investigations in some cases will take more than three years, the petitioner’s attorneys will be back before this Court at the same time next year asking for an additional extension of time.

The petition filed by the Innocence Projects does not identify any state prisoner other than the three individual petitioners who may be prejudiced by the October 1, 2003, deadline. Instead, the petition simply claims there are others “in which the Florida Innocence Project and the Florida Innocence Initiative are involved.” It is not possible to glean from the petition just how many cases there may be or whether any of them will have merit. Fortunately, the scientific advancements relied upon by the Innocence Projects are one time events not likely to be repeated in the future on such scale.

There must be some finality to these cases. Granting extensions of time from year to year will neither promote finality nor judicial economy. Accordingly, the Committee suggests that the request for a one year extension of time is too simplistic to solve a complicated problem.

No one, surely no member of the Committee or this Court, wants an innocent person to be incarcerated. And it is ultimately this Court’s responsibility, through its power to issue Writs of Habeas Corpus, to grant relief to persons who are wrongfully

imprisoned. *Florida Constitution*, Art. 1, Sec. 13; *Porter v. Porter*, 53 So. 546 (Fla. 1910); *Jones v. Cook*, 200 So.856 (Fla. 1941).

Post conviction relief procedures contained in Rules 3.850-3.853 completely supercede habeas corpus as a means of collateral attack on judgments and sentences. These rules are designed to provide a complete and efficacious postconviction remedy to correct convictions on any grounds which subject them to collateral attack. *Leichtman v. Singletary*, 674 So.2d 889 (Fla. 4th DCA 1996). However, litigation must stop sometime and this Court has provided for time limitations for filing these motions - one year in capital cases and two years in all other cases.

Two years ago, this Court instructed the Criminal Procedure Rules Committee to present a rule that tracked F.S. 925.11. The present Rule 3.853 is the result of that effort. There is no question that this Court, and not the legislature, has the authority to set deadlines for filing these claims. *See*, the concurring opinion of Lewis, J., in the order issued in this case dated September 30, 2003.

The present rule contains an important exception to the two year time limitation. It authorizes a prisoner to file a motion for DNA testing “(a)t any time, if the facts on which the petition is predicated were unknown to the petitioner or the movant’s attorney and could not have been ascertained by the exercise of due diligence.” Arguably, many of the cases being investigated by the Innocence Projects will fall

under this exception to the two year time limit. However, it is likely that the several circuit courts entertaining time barred motions will reach different results in like cases. Unnecessary appeals will follow.

The most pressing issue contained in the petition is the preservation of evidence. Section (4) of F.S. 925.11 only requires DNA evidence to be maintained by law enforcement agencies until October 1, 2003. The statute allows evidence to be destroyed prior to that time only upon notice to the prisoner, counsel of record, the prosecuting authority and the Attorney General. Thus, under present law, evidence can be lawfully destroyed in cases where “the facts on which the petition is predicated were unknown to the petitioner or the movant’s attorney and could not have been ascertained by the exercise of due diligence.” Destruction of such evidence would render this Court’s ability to determine the merits of those cases moot and notice of intent to destroy it must be provided to avoid that eventuality.

If the Court determines the petitioners are entitled to relief, the Committee suggests the following solution to the problems posed above:

1. Require the Innocence Projects to identify the “nearly 600 cases” in which DNA evidence may exonerate a prisoner. It is suggested that this should be accomplished in six months. The list of cases should be filed with the Court.
2. Extend the time for filing a motion under Rule 3.853 for up to two years

in the cases identified by the Innocence Projects. The actual period of time for the extension should depend upon the number of cases identified.

3. Require any agency maintaining DNA evidence involving any of the identified cases to preserve the evidence for the additional two year period of time and thereafter if a motion for DNA testing is filed until the ruling on the motion becomes final.

4. Apply the notice requirements for future destruction of DNA evidence to all cases not identified by the Innocence Projects.

The first three paragraphs above can be accomplished by court order in the Innocence Projects' case. Paragraph 4 can be accomplished by amending Rule 3.853 as follows:

**(g) Preservation of Evidence.**

(1) Government agencies in possession of physical evidence in any given case, including but not limited to, any investigating law enforcement agency, the clerk of the court, the prosecuting authority or the Department of Law enforcement, shall maintain any physical evidence collected at the time of the crime for which a postsentencing testing of DNA may be requested.

(2) Except in cases in which the death penalty has been imposed, the evidence shall be maintained for at least 2 years following the date that the judgment

and sentence in the case became final if no direct appeal is taken and, if an appeal is taken, for at least two years following the date the mandate affirming the conviction is issued on direct appeal. In cases in which the death penalty has been imposed, the evidence shall be maintained until 60 days after execution. The trial court may extend the time for preservation of evidence in individual cases upon good cause shown.

(3) A governmental agency may dispose of the physical evidence after the expiration of the time set forth in paragraph (2) if:

(A) The agency notifies the sentenced defendant, any counsel of record, the prosecuting authority and the Attorney General; and

(B) The notifying agency does not receive, within 90 days, a copy of a motion for relief under this rule or a request that the evidence not be destroyed for up to 60 days because a motion will be filed within that time; and

(C) No other provision of law or rule requires that the physical evidence be preserved or retained.

The solutions suggested above achieve the goal of finality of litigation while protecting the rights of prisoners who may be the subjects of investigation by the

Innocence Projects or whose cases may need future review due to advances in the development of DNA technology.

Respectfully submitted,

O. H. Eaton, Jr.  
Circuit Judge, 18th Judicial Circuit  
Chair, Criminal Court Steering Committee

Committee members:

Honorable O. H. Eaton, Jr., Chair  
Honorable Phillip J. Padovano  
Honorable Thomas H. Bateman, III  
Honorable Dedee S. Costello  
Honorable Stan R. Morris  
Honorable Iona M. Holmes  
Honorable Phillis D. Kotey  
Honorable Wayne M. Miller



Copies furnished to:

Bill Jennings  
CCRC - Middle Region  
3801 Corporex Park Drive Suite 210  
Tampa FL 33619

Hon Nancy Daniels  
Public Defender  
301 S Monroe Street Suite 401  
Tallahassee FL 32301

Hon Williams N Meggs State Attorney  
Leon County Courthouse  
301 South Monroe Street  
Tallahassee FL 32301

Michael R Ramage  
Fla Dept of Law Enforcement  
PO Box 1489  
Tallahassee FL 32302

Neal Andre Dupree  
CCRC - Southern Region  
101 Northeast Third Avenue Suite 400  
Ft Lauderdale FL 33301

Hon Charles J Crist Jr  
Attorney General  
The Capitol  
Tallahassee FL 32399

Ivy R Ginsberg  
The White Building  
One NE 2nd Avenue Suite 200  
Miami FL 33132

Hon Janet Reno  
11200 North Kendall Drive  
Miami FL 33176

Talbot D'Alemberte  
Florida State University  
The Cawthon House 425 West Jefferson Street  
Tallahassee FL 32306

Jennifer L Greenberg  
Florida State University  
The Cawthon House 425 West Jefferson Street  
Tallahassee FL 32306

Catherine Arcabascio  
Nova Southeastern University  
Shepard Broad Law Center 3305 College Avenue  
Ft Lauderdale FL 33314

John F Harkness Jr Executive Director  
The Florida Bar  
651 East Jefferson Street  
Tallahassee FL 32399

Hon Olin Wilson Shinholser  
PO Box 9000  
Drawer J118  
Bartow FL 33831

Howardene Garrett  
Office of the Public Defender  
PO Box 9000  
Bartow FL 33831

Craig Joseph Trocino  
1401 Brickell Avenue Suite 1000  
Miami FL 33131

Michael J Minerva  
The Cawthon House 425 West Jefferson Street  
Tallahassee FL 32306

Carolyn M Snurkowski  
Office of the Attorney General  
The Capitol  
Tallahassee FL 32399

Christopher Michael Kise  
Office of the Attorney General  
P101 The Capitol  
Tallahassee FL 32399