

**IN THE SUPREME COURT OF FLORIDA**

**CASE NO.: SC04-1611**

**JAMES D. FORD,**

**Appellant,**

**vs.**

**STATE OF FLORIDA,**

**Appellee.**

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**APPELLANT'S REPLY BRIEF**

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**On direct review from a decision of the Circuit Court of the  
Twentieth Judicial Circuit**

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## **STATEMENT REGARDING ORAL ARGUMENT**

It is respectfully submitted that oral argument is not needed in this case. The briefs fully present the position of the parties.

## **PRELIMINARY STATEMENT**

This reply brief is being filed to respond to some of the State's arguments. By filing this brief, Mr. Ford does not waive any of the components of his initial brief. Additionally, by filing this reply brief, Mr. Ford does not concede any of the factual assertions or arguments made by the State in its answer brief.

## REPLY ARGUMENTS

### **ARGUMENT I: INEFFECTIVE ASSISTANCE AND THE VOLUNTARY INTOXICATION DEFENSE**

The trial court's finding that the voluntary intoxication defense was not argued during the guilt phase of the trial is clearly erroneous. The State argues that any purported error is harmless because the defendant failed to prove that his counsel was deficient and that he was prejudiced under Strickland v. Washington, 466 U.S. 668 (1984).

Significantly, the trial court made no findings of fact on either of the two Strickland prongs. The trial court simply held that the issue was moot. This finding inhibits appellate review. An appellate court is restricted to considering the factual findings made in the order under review. See C.L.K. v. Department of Health & Rehabilitative Services, 622 So.2d 29 (Fla. 2d DCA 1993).

Florida Rule of Criminal Procedure 3.851(f)(5)(D) states that the court shall render its order "making detailed findings of facts and conclusions of law with respect to each claim, and attaching or referencing such portions of the record as are necessary to allow for meaningful appellate review."

This court has remanded back to the circuit court when the order is deficient in this regard. Dillbeck v. State, 882 So.2d 969 (Fla. 2004). Accordingly, the trial court's order should be reversed. The issue is not moot.

## **ARGUMENT II: INEFFECTIVE ASSISTANCE AND SPEEDY TRIAL**

In resolving a speedy trial claim, courts usually employ a balancing process involving the following factors: length of the delay, reason for the delay, defendant's assertion of his rights, and the prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 530 (1972); United States v. Dennard, 722 F.2d 1510 (11<sup>th</sup> Cir. 1984); Hill v. Wainwright, 617 F.2d 375 (11<sup>th</sup> Cir. 1980).

The defendant need not establish actual prejudice if the first three factors all weigh heavily against the government. United States v. Mitchell, 769 F.2d 1544, 1547 (11<sup>th</sup> Cir. 1985).

The defendant respectfully submits that he need not show actual prejudice in this case. If this court decides otherwise, the defendant did suffer actual prejudice because there is a reasonable probability that the

defendant would not have been convicted had he been brought to trial in a timely manner.

### **CONCLUSION**

For all the foregoing arguments and authorities, the Appellant/Defendant, JAMES D. FORD, respectfully requests this Honorable Court to reverse the circuit court's order denying post-conviction relief.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the Office of the Attorney General, Attn: Carol M. Dittmar, Esq., Concourse Center 4, 3507 E. Frontage Road, Suite 200, Tampa, FL 33607-7013 on this 16<sup>th</sup> day of May 2006.

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I HEREBY CERTIFY that the instant brief has been prepared with Times New Roman 14-point font in compliance with Fla.R.App.P. 9.210(a)(2) on this 16<sup>th</sup> day of May 2006.

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