IN THE SUPREME COURT OF FLORIDA

JIM ERIC CHANDLER,

Appellant,

vs. Case No. 04-518

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE NINETEENTH JUDICIAL CIRCUIT JUDICIAL CIRCUIT,
IN AND FOR St. Lucie COUNTY, FLORIDA

# ANSWER BRIEF OF APPELLEE

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## PRELIMINARY STATEMENT

Pursuant to this Court's order of April 29, 2004, this proceeding involves briefing on a single limited issue explained below. Chandler will be referred to either by name or as the "petitioner." The State of Florida, will be referred to herein as "the State" or "respondent." There will be no reference to the records on appeal of either the direct appeal or the collateral proceedings.

## STATEMENT OF THE CASE AND FACTS

The state does not accept Chandler's Statement of the Case and Facts and presents the following relevant information. At Chandler's re-sentencing, and over Chandler's objection, the state presented through one witness a synopsis of the evidence that was presented at Chandler's guilt phase. This Court affirmed the trial court's ruling on appeal:

> Chandler claims that the trial court improperly allowed the state to introduce hearsay statements into evidence pursuant to subsection 921.141(1). He also claims that the statute is unconstitutional, on its face and as applied in this case, because it denied his sixth amendment right to confront the witnesses against him.
>
> The sixth amendment's confrontation clause guarantees an adequate opportunity to cross-examine adverse witnesses. United States v. Owens, 484 U.S. 554, 108 S.Ct. 838, 98 L.Ed.2d 951 (1988); Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986). There is nothing in subsection 921.141(1) which denies a defendant the right to confront the state's witnesses. Moreover, Chandler's counsel conducted a vigorous and extensive cross-examination of the witnesses presented by the state. We do not find subsection 921.141(1) unconstitutional on its face. A resentencing is not a retrial of the defendant's guilt or innocence. King v. State, 514 So.2d 354 (Fla.1987), cert. denied, 487 U.S. 1241, 108 S.Ct. 2916, 101 L.Ed.2d 947 (1988). Because a jury cannot be expected to make a decision in a vacuum, it must be made aware of the underlying facts. Teffeteller v. State, 495 So.2d 744 (Fla.1986). Both the state and the defendant can present evidence at the penalty phase that might have been barred at trial because

> a "narrow interpretation of the rules of evidence is not to be enforced." State v. Dixon, 283 So.2d 1, 7 (Fla.1973), cert. denied, 416 U.S. 943, 94 S.Ct. 1950, 40 L.Ed.2d 295 (1974); Alvord v. State, 322 So.2d 533 (Fla.1975), cert. denied, 428 U.S. 923, 96 S.Ct. 3234, 49 L.Ed.2d 1226 To be admissible, however, evidence must be relevant, Muehleman v. State, 503 So.2d 310 (Fla.), cert. denied, 484 U.S. 882, 108 S.Ct. 39, 98 L.Ed.2d 170 (1987); Teffeteller, and the admission of evidence is within the trial court's wide discretion. King; Muehleman; Teffeteller. Subsection 921.141(1) recognizes these principles and provides that evidence which "the court deems relevant" or which "the court deems to have probative value" may be presented. To protect against the unwarranted admission of evidence, the statute also directs that a defendant must be "accorded a fair opportunity to rebut any hearsay statements."
>
> We do not find that the introduction of hearsay testimony rendered subsection 921.141(1) unconstitutional as applied in this case. As stated before, Chandler's counsel vigorously cross-examined the state's witnesses. That Chandler chose not to rebut any hearsay testimony does not make the admission of such testimony erroneous. The currently objected-to testimony came from a police detective and concerned statements made by a police chief, another detective, and a state expert. Those individuals had testified, consistent with what the detective stated they said, during the guilt phase. Chandler has not demonstrated an abuse of the trial court's discretion regarding hearsay testimony in allowing the recitation of this testimony by the detective.

Chandler v. State, 534 So. 2d 701, 703 (Fla. 1988). Thereafter, Chandler filed a motion for postconviction relief as well as an original habeas petition in this Court. Chandler did not seek

any further review of the hearsay issue. All relief was denied. Chandler v. State, 634 So. 2d 1066 (Fla. 1994).

Chandler next raised this issue in his federal petition for habeas relief. The district court denied relief and the Eleventh Circuit affirmed finding:

> F. Confrontation Clause
>
> Chandler argues that at his re-sentencing, the State presented hearsay evidence to establish an aggravating circumstance and this violated his Confrontation Clause rights. On appeal, the Florida Supreme Court did not find any merit to this argument. The court noted that the trial court admitted this hearsay evidence pursuant to Fla. Stat. § 921.141(1), which provides that "evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant" and "[a]ny such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements." The court found the statute constitutional because it does provide a defendant the opportunity to confront the State's witnesses. Chandler, 534 So.2d at 702.
>
> The Sixth Amendment guarantees a defendant an adequate opportunity to cross-examine adverse witnesses. United States v. Owens, 484 U.S. 554, 108 S.Ct. 838, 98 L.Ed.2d 951 (1988). Chandler had this opportunity and capitalized on it during trial but chose not to during his re-sentencing phase. At trial, Chandler's counsel vigorously cross-examined the State's witnesses to whom Officer Redstone referred at the re-sentencing when he gave his recitation of the evidence of guilt. The State did not do anything to prevent Chandler from rebutting this hearsay

> evidence. The fact that Chandler chose not to rebut any hearsay testimony does not make the admission of such testimony erroneous. Moreover, having reviewed both the trial and the re- sentencing transcript, we conclude that Officer Redstone's synopsis was consistent with the witnesses' trial testimony. Accordingly, we see no Confrontation Clause violation.
>
> Moreover, we conclude that there is no Confrontation Clause violation because we agree with the Seventh Circuit that hearsay evidence is admissible at a capital sentencing. Del Vecchio v. Illinois Dep't of Corrections, 31 F.3d 1363, 1387-88 (7th Cir.1994). This proposition does contain one caveat: that the state statute protect a defendant's rights by giving him/her the opportunity to rebut any hearsay information. If the statute grants this protection, then it comports with the Sixth Amendment's Confrontation Clause. We note, however, that if we determined that hearsay evidence is per se inadmissible in a capital sentencing, we would be announcing a new rule of law. Therefore, the new rule's application to this case would be barred by the retroactivity principles of Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989 ).

Chandler v. Moore 240 F.3d 907, 918 (C.A.11 (Fla.),2001).

Chandler again raises this issue, sixteen years after his direct appeal became final.

## SUMMARY OF ARGUMENT

Chandler’s habeas petition must be dismissed, as there is no provision in the rules to file a successive habeas petition. Furthermore, the issue presented in the petition is only

cognizable in a motion for postconviction relief, provided the strict requirements of the rule relating to successive motions are met. However because Chandler cannot meet the requirements for filing a of successive motions he is precluded from bringing a successive motion for postconviction relief in the trial court.

## ARGUMENT

### ISSUE I

CHANDLER'S ATTEMPT BY WAY OF WRIT OF HABEAS CORPUS TO CIRCUMVENT WELL ESTABLISHED RULES OF CRIMINAL PROCEDURE REGARDING TIME LIMITATIONS FOR AND ABILITY TO FILE SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF MUST BE DENIED

On March 26, 2004, Jim Eric Chandler filed in this Court a successive habeas petition alleging that his re-sentencing jury was impermissibly allowed to hear hearsay evidence in support of aggravating factors. The impetus for the petition was the United States Supreme Court opinion in Crawford v. Washington, 2004 U.S. LEXIS 1838 (2004). On April 29, 2004, this Court directed the parties to brief the issue of "whether the petition for writ of habeas corpus should be dismissed for failure to comply with Rule 3.851(d)(2)(B) or Rule 3.851(d)(3)." In response Chandler argues that he must be allowed to file this habeas petition because (1) the constitutional error occurred in the appellate court and not in the trial court and therefore, the trial court would not have jurisdiction to grant the relief

requested; (2) this Court has exercised its original jurisdiction under many different circumstances, and therefore, it would be appropriate to do so here; (3) and it would be an unconstitutional "suspension" of the writ of habeas corpus to dismiss his petition as Chandler would have no other recourse. Chandler's arguments are unpersuasive and a misreading of the law.

Chandler first raised the issue regarding admissibility of hearsay sixteen years ago, on direct appeal. Chandler v. State, 543 So. 2d 701 (Fla. 1988). Thereafter, Chandler filed a timely motion for postconviction relief as well as a habeas petition. In those proceedings Chandler did not pursue any further recourse related to the hearsay issue. See Chandler v. State, 634 So. 2d 1066 (Fla.). Now ten years after the denial of his collateral remedies, Chandler again attempts to challenge the admissibility of hearsay statements. Because the rules of criminal procedure do not permit Chandler to file this successive habeas petition, it must be dismissed.

The current version of Rule 3.851, in effect since 2001, applies "to *all* ***motions*** *and* ***petitions*** *for any type of postconviction or collateral relief* brought by a prisoner in state custody *who has been sentenced to death*." (Emphasis supplied.) Rule 3.851(d)(1) requires that, subject to certain exceptions, a motion to vacate judgment of conviction and

sentence must be filed within one year after the judgment and sentence become final. Rule 3.851(d)(2) delineates the exceptions to this time limit:

> (2) No motion shall be filed or considered pursuant to this rule if filed beyond the time limitation provided in subdivision (d)(1) unless it alleges that
>
> > (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
> >
> > (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
> >
> > (C) postconviction counsel, through neglect, failed to file the motion.

Besides setting time limits for filing motions to vacate judgments of conviction and sentence, Rule 3.851 additionally distinguishes between initial and successive motions, setting forth more restrictive page limits and establishing more rigorous pleading requirements for successive motions. See Rule 3.851(e). Finally, Rule 3.851(d)(3) also establishes a schedule for filing petitions for writ of habeas corpus:

> (3) All petitions for extraordinary relief in which the Supreme Court of Florida has original jurisdiction, *including petitions for writ of habeas corpus*, shall be filed simultaneously with the <u>initial</u> brief filed on behalf of the death-sentenced prisoner in the appeal of the circuit court's order on the initial motion for postconviction relief filed under this rule.

(emphasis added).

It cannot be disputed that the present version of 3.851, adopted three years before Chandler filed the instant successive habeas petition, applies to Chandler's successive habeas petition. See Mann v. Moore, 794 So.2d 595 (Fla. 2001)(declining to apply former Rule 9.140(b)(6)(E) to Mann because of some confusion in the effective dates of the rules, but announcing that, effective January 1, 2002, "all petitions for extraordinary relief, including habeas corpus petitions, must be filed simultaneously with the initial brief appealing the denial of a rule 3.850 motion").[1] The plain language of Rules 3.851 requires the dismissal of Chandler's successive habeas petition. Rule 3.851(d)(3) requires that *all* petitions for writ of habeas corpus be filed simultaneously with the initial brief on appeal from the circuit court's order on the defendant's *initial* motion for postconviction relief. The rule makes no provision for successive habeas corpus petitions filed long after the appeal on a defendant's initial motion for postconviction relief.

In his attempt to overcome the procedural obstacles facing Chandler, he argues that he is not challenging the trial court's original evidentiary ruling, rather he is challenging the direct appeal ruling of this Court. He further alleges that because the

[1] The substance of former Rule 9.140(b)(6) is now contained in Rule 9.142(a)(5), and essentially "mirrors" (Mann) the filing requirements for habeas petitions as set out in Rule 3.851(d)(3).

trial court would not have jurisdiction to review the previous ruling regarding the hearsay evidence, it is appropriate for him to file this successive habeas petition. In support of his argument, Chandler relies on Foster v. State, 810 So. 2d 910 (Fla. 2002). Chandler's argument is erroneous.

First of all the issue in Foster was the propriety of this Court's harmless error review on direct appeal. Id, at 916. Obviously, that is a ruling which emanated from this Court and not a review of a lower court's ruling. Chandler on the other hand is seeking relief from the trial court's evidentiary ruling. It was the trial court that permitted the jury to rely on hearsay evidence and not this Court's approval of that ruling on direct appeal. The fact that the trial court's ruling may have been affirmed on appeal by this Court cannot convert the issue into an appellate issue which only this Court may address. Thus, habeas corpus does not lie for redress of these claimed grievances. Breedlove v. Singletary, 595 So.2d 8 (Fla. 1992); Mills v. Dugger, 574 So.2d 63 (Fla. 1990). On the contrary, they are issues which may be raised by Chandler, if at all, only by way of a motion for postconviction relief filed in the original trial court, and not by way of a habeas petition in this Court, as subsections (d)(2)(B) and (d)(3) of Rule 3.851 clearly contemplate.

Next, Chandler argues that because this Court has, in the past, exercised jurisdiction in a variety of collateral proceedings, it would be proper to grant habeas review in this instance. However a review of the relevant cases reveal that the exercise of habeas jurisdiction is very limited, and does not encompass Chandler's request. See Trepal v. State,754 So. 2d 702 (Fla. 2000)(recognizing that habeas review is appropriate to review non final orders regarding discovery issues in postconviction proceedings); See also State v. Lewis, 656 So. 2d 1248 (Fla. 1994)(same); State v. Kokal, 562 So. 2d 324 (Fla. 1990)(same); State v. Fourth District Court of Appeal, 697 So. 2d 70 (Fla. 1997)(explaining that district courts of appeal do not have jurisdiction over capital defendants); State v. Matute-Chirinos, 713 So. 2d 1006 (Fla. 1998)(refusing to exercise jurisdiction from district court of appeal wherein case is in the lower court on certiorari review rather than direct review).

Limiting the scope of this Court's original jurisdiction has become necessary due to the practical difficulties experienced by this Court when it has decided to expand such jurisdiction in the past. See Hall v. State, 541 So.2d 1125 (Fla. 1989)(directing that, in the future, claims under the then recently decided case of Hitchcock v. Dugger, 481 U.S. 393 (1987), would not be cognizable in habeas proceedings, and should be presented in a Rule 3.850 motion); See also Harvard v. Singletary, 733 So. 2d

1020 (Fla. 1999)(recognizing that expansion of original jurisdiction to alleviate burden on trial courts has been "neither time-saving or efficient."). Consequently, Chandler's request to expand original jurisdiction further is not proper.

And finally, Chandler argues that to deny him the opportunity to file a successive habeas petition, would be tantamount to a "suspension of the writ." He has determined that he would be precluded from pursuing a successive motion for postconviction relief, and therefore no other avenue exists to pursue this claim.[2] Again Chandler is incorrect.

The right to habeas relief, "like any other constitutional right, is subject to certain reasonable limitations consistent with the full and fair exercise of the right." Haag v. State, 591 So.2d 614, 616 (Fla. 1992). The time limitations on out-of-time and successive motions for relief contained in Rule 3.851

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[2] Chandler correctly concedes that he would be unable to file a successive motion for postconviction relief in this instance. As already noted above, Chandler would only be entitled to file a successive motion if this Court had already determined in a proper case, that the "new law" relied upon had been found to be retroactive. See Rule 3.851(d)(2)(B). Crawford has not been found retroactive, and Chandler cannot seek retroactivity of same in a successive motion. Id; See also Dixon v. State, 730 So. 2d 265 (Fla. 1999)(noting that retroactive application of new law is a "relatively rare occurrence," and that issues of retroactivity may be litigated in initial motions for postconviction relief, but may not be litigated in the first instance in out-of-time successive motions.)

are constitutionally reasonable.[3] And as this Court has said in countless opinions, habeas corpus is *not* a substitute for an appropriate motion for postconviction relief in the trial court, and is not "a means to circumvent the limitations provided in the rule for seeking collateral postconviction relief" in the original trial court. Recently this Court reiterated that rule of law in the non-capital sector. Baker v. State, 29 Fla.L.Weekly S105 (Fla., decided March 11, 2004)(relying in part on capital cases in rejecting claim of non-capital defendants that limitation on access to successive habeas petitions is an unconstitutional suspension of the writ).

In conclusion, the remedy of habeas corpus relief is in all events available only "in those limited circumstances where the

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[3] See Felker v. Turpin, 518 U.S. 651 (1996)(finding that time limitations imposed for filing federal habeas petitions do not act as a suspension of the writ). It bears noting that capital defendants in federal court face similar time limits for filing habeas petitions and their right to file successive habeas petitions is likewise limited. Further, the restrictions on out-of-time motions contained in Rule 3.851(d)(2)(B) are very similar to the restrictions on successive federal habeas petitions contained in 28 USC Section 2244 (b)(2), which provides, in part:

> (2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless--
>
> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

petitioner is not seeking to collaterally attack a final criminal judgment of conviction and sentence, or where the original sentencing court would not have jurisdiction to grant the collateral relief requested. Chandler cannot meet those requirements. Further, Chandler cannot "repackage" this petition and file it in the circuit court as a properly filed successive motion for postconviction relief. See Rule Rule 3.851 (d)(2)(B). His petition must be dismissed.

## CONCLUSION

Wherefore, based on the foregoing arguments and authorities, the State requests that this Honorable Court DISMISS this petition as it is unauthourized.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was sent by United States mail, postage prepaid, to Martin McClain, Esq., 141 N. E. 30th Street, Wilton Manors, FL 33334, this ____ day of June, 2004.

## CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of the type used in this brief is Courier New, 12 point, a font that is not proportionately spaced.

_____
CELIA A. TERENZIO
Assistant Attorney General