

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

JESSE GUARDADO,

Appellant,

v.

CASE NO. SC05-2035
L. T. No. 6604-CC-903A

STATE OF FLORIDA,

Appellee.
_____ /

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR WALTON COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

W. C. McLAIN
ASSISTANT PUBLIC DEFENDER
LEON COUNTY COURTHOUSE
SUITE 401
301 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32301
(850) 606-1000

ATTORNEY FOR APPELLANT
FLA. BAR NO. 201170

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IN THE SUPREME COURT OF FLORIDA

JESSE GUARDADO,

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v.

CASE NO. SC05-2035
L. T. No. 6604-CC-903A

STATE OF FLORIDA,

Appellee.

_____ /

REPLY BRIEF OF APPELLANT

PRELIMINARY STATEMENT

Appellant relies on the Initial Brief to respond to the State's Answer Brief with the following additions regarding Issue I:

ARGUMENT

ISSUE I

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN NOT CONDUCTING A PROPER INQUIRY PURSUANT TO NELSON V. STATE, WHEN THE DEFENDANT ASSERTED THAT HIS COURT APPOINTED COUNSEL WAS PERFORMING INCOMPETENTLY AND THE DEFENDANT NO LONGER WANTED TO BE REPRESENTED BY COUNSEL.

The State's argument ignores the fundamental complaint presented in this issue B- the trial court denied Guardado his Sixth Amendment right to self-representation. As outlined in

Nelson v. State, 274 So.2d 256, 258-259 (Fla. 4th DCA 1974), as this Court adopted in Hardwick v. State, 521 So.2d 1071, 1074-1075 (Fla. 1988), there are two stages to the required inquiry when a defendant complains about his lawyer. First, the court is to inquire into the defendant's complaints about counsel to determine if there are grounds to question counsel's effectiveness and to discharge counsel and substitute new counsel if there are reasonable grounds. Second, if the court determines there are no grounds to believe counsel is ineffective, the court is to inform the defendant that counsel will not be discharged, and if the defendant still asserts that he does not want his current counsel, the court is to afford the defendant his right to represent himself. *Ibid.* The State's Answer Brief does not address the second stage of the Nelson inquiry which is the issue in this case.

After the court decided not to discharge counsel, Guardado continued to assert that he did not want his lawyers to represent him at the sentencing hearings. (T8: *Spencer Hearing*, 5-12; T8: *Sentencing Hearing*, 33-34) The law required that the court treat this continued assertion as a request for self-representation. See, Hardwick, 521 So.2d at 1074. Guardado had previously waived counsel when he entered his guilty plea in this case and informed the court that he had reluctantly

accepted counsel for the penalty phase proceedings. (T3:3-34; T8: *Spencer Hearing*, 7) His continued assertions that he no longer wanted his lawyer and his attempts to speak in his own behalf reveal that Guardado again wanted to represent himself. (T8: *Spencer Hearing*, 5-12; T8: *Sentencing Hearing*, 18-19, 33-34) The trial court denied Guardado of his constitutional right to do so. Amend. VI, XIV U.S. Const.; Art. I, Secs. 9, 16 Fla. Const.

On pages 57-58 of the Answer Brief, the State incorrectly states that this issue was waived because at the end of the penalty phase trial, Guardado waived the right to a Spencer hearing. The State's assertion is based on the assumption that Guardado's offer to waive the hearing was also a waiver of counsel for such a hearing if later conducted. Without even addressing the questionable logic in the State's assertion, the fact is that the court held a Spencer hearing and did not accept Guardado's offer to waive the proceeding.

CONCLUSION

For the reasons presented in this Reply Brief and the Initial Brief, Jesse Guardado asks this Court to reverse his death sentence and to remand this case to the trial court with directions to impose a sentence of life imprisonment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. mail to Charmaine Millsaps, Assistant Attorney General, Criminal Appeals Division, The Capitol, PL-01, Tallahassee, Florida, 32399-1050, and to Appellant, Jesse Guardado, #324342, F.S.P., 7819 N.W. 228th St., Raiford, FL 32026-1160, , on this _____ day of October, 2006.

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this brief has been prepared using 12 point Courier New, a font that is not proportionately spaced.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

W. C. McLAIN
Chief, Capital Appeals
Florida Bar No. 201170
Leon Co. Courthouse, #401
301 South Monroe Street
Tallahassee, Florida 32301
(850) 606-1000

ATTORNEY FOR APPELLANT