

IN THE SUPREME COURT OF FLORIDA
CASE NO. SC05-2217

MICHAEL COLEMAN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

_____ /

PETITIONER'S REPLY

COMES NOW, **MICHAEL COLEMAN**, the Petitioner in the above-entitled matter, and files this reply to the State of Florida Department of Financial Services' Response in Opposition to Defendant's Emergency Petition.

Pursuant to Rule 9.142, Fla. R. App. Pro., Mr. Coleman filed an Emergency Petition Seeking Review of Non-Final Order in Death Penalty Post-Conviction Proceeding on December 19, 2005. Thereafter, on December 21, 2005, this Court requested a response to be filed on or before January 10, 2006.

The Department of Financial Services (hereinafter DFS) complied with the request and filed its response on January 10, 2006. Under Rule 9.142(b)(8), Mr. Coleman has twenty (20) days to submit this reply. Thus, this reply is timely filed.

Unfortunately in its response, DFS continues either to fail to understand Mr. Coleman's position, or to refuse to comprehend

what is at issue. This interlocutory appeal is brought by Mr. Coleman. What is at issue is **his right** to state-paid collateral representation. However, DFS ignores that simple fact and argues that "the capital defendant cites no legal authority for the proposition that a privately retained attorney is entitled to payment of attorney fees at state expense." Response at 5.

THE FACTS

Currently, there is no court-appointed attorney assigned to represent Mr. Coleman. The previously appointed registry attorney, Baya Harrison, has withdrawn as Mr. Coleman's counsel.

Mr. Harrison withdrew after charging the State of Florida \$20,000 (the statutory cap), for his representation of Mr. Coleman in circuit court proceedings upon Mr. Coleman's motion for post-conviction relief. Mr. Harrison was appointed as registry counsel for Mr. Coleman on March 30, 2004. His representation of Mr. Coleman in circuit court ended when he perfected an appeal pursuant to a notice of appeal filed July 28, 2004. Thus, Mr. Harrison was Mr. Coleman's registry counsel in circuit court for a mere four months.

During those four months, Mr. Harrison filed a one-page notice of appearance on April 7, 2004 (PC-R. 1255). He filed a one-page motion to require transfer of Mr. Coleman's files on April 26, 2004 (PC-R. 1256). Mr. Harrison then filed on May 10,

2004, a five-page motion to amend the pending Rule 3.850 motion in light of Ring v. Arizona (PC-R. 1257).¹ That same day, Mr. Harrison filed a five-page Amended Motion to Vacate Judgments of Convictions and Sentences (PC-R. 1262).² On May 11, 2004, Mr. Harrison appeared by phone for a status hearing at which the presiding judge granted leave to amend the motion to vacate with the claim pursuant to Ring v. Arizona. The transcript of the status hearing is three pages long (PC-R. 1269). On May 14, 2004, Mr. Harrison filed a one-page Notice of Withdrawal of *Atkins* Claim and Request to Hold Proceedings in Abeyance (PC-R.

¹In this motion to amend, Mr. Harrison asserted that he had "not received Mr. Coleman's files from Ms. Laverde despite a written request dated April 2, 2004, and a later Court order commanding her to do so. However, through the courtesy of the Attorney General's Office, present defense counsel has obtained copies of some of the pleadings filed in the cause" (PC-R. 1259).

²In the five-page amendment, there is a three page Ring claim. The only factual reference to Mr. Coleman's case is that the jury recommendation of life was overridden. There is no record citation. The only legal authority cited concerns the split of the federal circuits as to the retroactivity of Ring and the pendency of Schriro v. Summerlin before the United States Supreme Court. No legal argument is made, merely the observation that "[i]t is not possible to know the eventual outcome of the U.S. Supreme Court decision in Summerlin. However, it is clear that in any event this issue must be preserved for defendant Coleman inasmuch as not only the basic decision, but the nuances and *dicta* of the opinion, may affect his rights in a material manner in both state and federal courts" (PC-R. 1265).

1273).³ Mr. Harrison's next action in the case was to file a Notice of Appeal on July 28, 2004.⁴

Mr. Harrison filed approximately fourteen pages of pleading material in four months, and for his work he was paid \$20,000, the statutory cap for the preparation and submission of a motion for post conviction relief in circuit court.⁵ Included in the pleadings that he prepared was the one-page Notice of Withdrawal of *Atkins* Claim and Request to Hold Proceedings in Abeyance. The *Atkins* claim was withdrawn despite the fact that counsel never obtained the files in the possession of his predecessor (Maria Laverde) that contained the basis for the *Atkins* claim. In circuit court proceedings in October of 2005, Mr. Harrison

³According to the Amended Motion to Vacate filed four days earlier, Mr. Harrison had "not received Mr. Coleman's files from Ms. Laverde despite a written request dated April 2, 2004, and a later Court order commanding her to do so" (PC-R. 1259).

⁴Thus, Mr. Harrison filed pleadings in circuit court that totaled approximately 17 pages. Attachment A.

⁵In addition to this \$20,000, Mr. Harrison also billed \$14,868 in investigative fees for the services of John Nall, who Mr. Harrison sometimes refers to as his law partner (and sometimes not). However, as has been established in circuit court proceedings, there were no investigative files from Mr. Nall to turn over to undersigned counsel. The statutory cap for investigative services is \$15,000.

expressed regret for not more aggressively seeking Ms. Laverde's files.⁶

From Mr. Coleman's point-of-view, Mr. Harrison was paid \$20,000 to come into his case and waive his *Atkins* claim without his permission. From Mr. Coleman's point-of-view, Mr. Harrison was working for the State to insure the his conviction remained intact and that his sentence of death be carried out. Neither DFA, nor Judge Geeker were concerned with the amount of money Mr. Harrison and his investigator were charging. Their invoices were processed and payment was approved.

Accordingly, Mr. Coleman's family was concerned and stepped in and retained counsel to handle Mr. Coleman's appeal. On January 10, 2005, Mr. Harrison filed a motion in this Court seeking to withdraw as Mr. Coleman's court-appointed counsel. On February 16, 2005, this Court granted Mr. Harrison's motion. Thus, Mr. Coleman currently has no court-appointed registry counsel.

⁶Ms. Laverde was court-appointed registry counsel for Mr. Coleman October 14, 1998, until March 30, 2004. Ms. Laverde filed a motion to vacate Mr. Coleman's conviction and sentence on February 3, 2000. For her work from October of 1998 until February of 2000 in preparing and filing the motion to vacate, Ms. Laverde was paid \$20,000. An evidentiary hearing commenced January 24, 2001. For her work representing Mr. Coleman before, during, and after the evidentiary hearing, Ms. Laverde was paid an additional \$19,720. In addition, investigative fees were paid in the amount of \$14,990, to a private investigator, Monica Jordan.

On September 23, 2005, this Court granted undersigned counsel's motion for relinquishment to permit consideration of Mr. Coleman's *Atkins* claim. This Court's relinquishment was for a period of 180 days. Undersigned counsel notified the circuit court that he was not retained to handle proceedings on Mr. Coleman's *Atkins* claim. Undersigned counsel filed a motion seeking to have DFS pay costs and attorney associated with the *Atkins* proceedings in the 180 days provided by this Court. In the November 2, 2005, motion, Mr. Coleman explained:

3. However at the time that undersigned counsel was hired to represent Mr. Coleman, it was understood that proceedings were over in circuit court, that the case was pending in the Florida Supreme Court, and that the full record on appeal had been prepared and submitted. It was not anticipated that a remand for a determination of mental retardation would be necessary.

* * *

10. Here, Mr. Coleman was previously represented by registry counsel. The registry counsel withdrew from the case when Mr. Coleman's family hired the undersigned to handle the appeal before the Florida Supreme Court. It had been assumed that not only had the cost of preparing the record on appeal been taken care of, but also copies of all circuit court pleadings had been maintained by registry counsel. It had also been assumed that no additional proceedings in circuit court would be necessary. Unfortunately, all of these assumptions proved to be in error.

11. Under the circumstances, Mr. Coleman seeks an order directing the Department of Financial Services to pay the costs associated with the preparation of a supplemental record that included 899 pages of material filed in circuit court that was not included in the record on appeal previously submitted

and paid for by the State, and to pay the costs associated with the mental retardation proceedings before this Court, including attorney fees.

WHEREFORE, Mr. Coleman respectfully urges that this Court grant this Motion and order the State of Florida through the Department of Financial Services to pay the costs associated with the preparation of the Supplemental Record on Appeal in the above-entitled matter, and to pay the costs associated with the mental retardation proceedings in circuit court including attorney fees.

Motion for Payment of Costs and Expenses at 6.⁷ At the November 14, 2005, proceedings, undersigned counsel reiterated that he had only been hired to handle Mr. Coleman's appeal currently pending before this Court, and had not been hired to handle the *Atkins* claim proceedings. At the hearing, DFS announced its opposition to either the appointment of undersigned counsel as registry counsel or the payment of Mr. Coleman's attorney fees. Though Mr. Thurber, as DFS' representative, stipulated to undersigned counsel's qualifications to be appointed as registry counsel, he indicated that the Department was concerned that undersigned counsel's actions constituted an end run around the provisions of §27.710, and accordingly, the Department opposed

⁷Undersigned counsel prepared this motion in a rush because of the tight time parameters set by this Court. After the motion, the hearing on the motion was continued in order to permit DFS to prepare and file a written response. However, no written response was forthcoming. Counsel simply learned of DFS' position at the November 14, 2005, *i.e.* that it opposed the appointment of undersigned counsel as Mr. Coleman's registry counsel and opposed the payment of Mr. Coleman's attorney fees.

either the appointment of the undersigned or the payment of Mr. Coleman's attorney fees. Clearly, DFS understood that Mr. Coleman was seeking either payment of his attorney fees or the appointment of registry counsel, *i.e.* state paid representation in whatever form he could get it under the time parameters governing the case.

ARGUMENT

As Mr. Coleman has made clear, he has no counsel for the mental retardation proceedings that this Court ordered. Undersigned counsel was not retained for such proceedings. Undersigned counsel did ask for this Court's assistance in obtaining Mr. Coleman's files from predecessor counsel in connection with the appeal pending before this Court. He has participated in proceedings in circuit court in order to obtain those files, and has actively been trying to obtain the complete files. Once this process is over, proceedings will commence on Mr. Coleman's *Atkins* claim. However, the circuit court has made no arrangements to provide Mr. Coleman representation for those proceedings.

At DFS' urging, the circuit court refused to appoint undersigned counsel as registry counsel for Mr. Coleman and/or refused to order DFS to pay undersigned counsel's attorney fees or the fees of any other attorney. Since Mr. Coleman has no

court-appointed registry counsel for the mental retardation proceedings, the circuit court's action did in fact depart from the essential requirements of law in denying Mr. Coleman's motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing motion has been furnished by United States Mail, first class postage prepaid, to the Honorable Nickolas P. Geeker, Circuit Judge, First Judicial Circuit of Florida, M.C. Blanchard Building, 190 Governmental Center, Pensacola, FL 32502, William J. Thurber, IV, Assistant General Counsel, Department of Financial Services, 200 East Gaines Street, Tallahassee, FL 32399-0355 on January ____, 2006.

MARTIN J. McCLAIN
Florida Bar No. 0754773