

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER SC 06-1803

ARTHUR BARNHILL, III,

Petitioner,

v.

JAMES R. McDONOUGH,
Secretary, Florida Department of Corrections,

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

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PRELIMINARY STATEMENT

Article I, Section 13 of the Florida Constitution provides: "The writ of habeas corpus shall be grantable of right, freely and without cost." This petition for habeas corpus relief is being filed in order to address a claim under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and corresponding provisions of the Florida Constitution.

This action and the Rule 3.851 appeal are brought simultaneously pursuant to Fla.R.Crim.P. 3.851(d)(3). Petitioner does not request oral argument for this action.

JURISDICTION TO ENTERTAIN PETITION

This is an original action under Fla.R.App.P. 9.100(a). See Art. I, Sec. 13, Fla. Const. This Court has original jurisdiction pursuant to Fla.R.App.P. 9.030(a)(3) and Art. V, Sec. 3(b)(9), Fla. Const. The Petition presents a constitutional issue which concerns the legality of Mr. Barnhill's sentence of death. The issue herein arises in the context of a capital case in which this Court heard and denied Mr. Barnhill's direct appeal. *In Re Provenzano*, 215 F.3d 1233 (11th Cir. 2000); *Smith v. State*, 400 So.2d 956, 960 (Fla. 1981); *Baggett v. Wainwright*, 392 So.2d 1327 (Fla. 1981). A petition for a writ of habeas corpus is the proper means for Mr. Barnhill to raise the claim presented herein. *Way v. Dugger*, 568

So.2d 1263 (Fla. 1990); *Downs v. Dugger*, 514 So.2d 1069 (Fla. 1987); *Riley v. Wainwright*, 517 So.2d 656 (Fla. 1987).

GROUND FOR HABEAS CORPUS RELIEF

By his petition for a writ of habeas corpus, Mr. Barnhill asserts that his sentence of death may be effectuated in violation of his rights as guaranteed by the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

CLAIM I

PETITIONER'S EIGHTH AMENDMENT RIGHT AGAINST CRUEL AND UNUSUAL PUNISHMENT WILL BE VIOLATED AS HE MAY BE INCOMPETENT AT TIME OF EXECUTION.

In accordance with Fla.R.Crim.P. 3.811 and 3.812, a prisoner cannot be executed if “the person lacks the mental capacity to understand the fact of the impending death and the reason for it.” This rule was enacted in response to *Ford v. Wainwright*, 477 U.S. 399, 106 S.Ct. 2595 (1986).

The petitioner acknowledges that, under Florida law, a claim of incompetency to be executed cannot be asserted until a death warrant has been issued. Further, the petitioner acknowledges that before a judicial review may be held in Florida, the petitioner must first submit his claim in accordance with Florida Statutes. The only time a prisoner can legally raise the issue of his sanity

to be executed is after the Governor issues a death warrant. Until the death warrant is signed the issue is not ripe. This is established under Florida law pursuant to Section 922.07, Florida Statutes (1985) and *Martin v. Wainwright*, 497 So.2d 872 (1986)(“If Martin’s counsel wish to pursue this claim, we direct them to initiate the sanity proceedings set out in section 922.07, Florida Statutes”).

The same holding exists under federal law. *Poland v. Stewart*, 41 F. Supp. 2d 1037 (D. Ariz 1999) (such claims truly are not ripe unless a death warrant has been issued and an execution date is pending); *Martinez-Villareal v. Stewart*, 523 U.S. 637, 118 S. Ct. 1618, 140 L.Ed.2d 849 (1998)(respondent’s *Ford* claim was dismissed as premature, not because he had not exhausted state remedies, but because his execution was not imminent and therefore his competency to be executed could not be determined at that time); *Herrera v. Collins*, 506 U.S. 390, 113 S. Ct. 853, 122 L.Ed.2d 203 (1993)(the issue of sanity [for *Ford* claim] is properly considered in proximity to the execution).

However, in *In Re Provenzano*, 215 F.3d 1233 (11th Cir. 2000), the Eleventh Circuit Court of Appeals has stated:

Realizing that our decision in *In Re Medina*, 109 F.3d 1556 (11th Cir. 1997), forecloses us from granting him authorization to file such a claim in a second or successive petition, Provenzano asks us to revisit that decision in light of the Supreme Court’s subsequent decision in *Stewart v. Martinez-Villareal*, 118 S.Ct. 1618 (1998). Under our prior panel precedent rule, see *United States v. Steele*, 147 F.3d 1316, 1317-

18 (11th Cir. 1998)(en banc), we are bound to follow the *Medina* decision. We would, of course, not only be authorized but also required to depart from *Medina* if an intervening Supreme Court decision actually overruled or conflicted with it.[citations omitted]

Stewart v. Martinez-Villareal does not conflict with *Medina*'s holding that a competency to be executed claim not raised in the initial habeas petition is subject to the strictures of 28 U.S.C. Sec 2244(b)(2), and that such a claim cannot meet either of the exceptions set out in that provision. *Id.* at pages 2-3 of opinion.

Federal law in this circuit, therefore, requires that a competency to be executed claim be raised in the initial federal petition for habeas corpus. In order to raise an issue in a federal habeas petition, the issue must be raised and exhausted in state court. Hence, the filing of this claim.

The petitioner has been incarcerated since 1995. Statistics have shown that an individual incarcerated over a long period of time will diminish his mental capacity. Inasmuch as the defendant may well be incompetent at time of execution, his Eighth Amendment right against cruel and unusual punishment will be violated.

CONCLUSION AND RELIEF SOUGHT

For the reasons discussed herein, Arthur Barnhill, III, respectfully urges this Honorable Court to grant habeas relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Habeas Corpus has been furnished by United States Mail, first class postage prepaid, to Barbara C. Davis, Assistant Attorney General, Office of the Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118-3958 on this _____ day of _____, 2006.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, pursuant to Fla.R.App.P. 9.210, that the foregoing
was generated in Times New Roman 14-point font.

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