IN THE SUPREME COURT OF FLORIDA

CASE NUMBER SC06-426
Lower Tribunal Case No. 93-CF-3237-A

EDWARD T. JAMES,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR SEMINOLE COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

This Reply Brief is filed on behalf of the Appellant Edward T. James in reply to the Answer Brief of the Appellee, the State of Florida. Citations shall be as follows: The record on appeal concerning the original trial court proceedings shall be referred to as "R ___" followed by the appropriate page numbers. The post-conviction record or supplemental record on appeal will be referred to as "PCR ___" or "Supp.PCR___" followed by the volume and appropriate page numbers. The Initial Brief of Appellant will be referred to as "IB___" followed by the appropriate page numbers. The Answer Brief of Appellee will be referred to as "AB___" followed by the appropriate page numbers. All other references will be self-explanatory or otherwise explained.

CLAIMS I – VI

WHETHER THE TRIAL JUDGE ERRED IN DENYING THE MOTION TO APPOINT COUNSEL FOR THE PURPOSE OF "RESUMING" POST-CONVICTION PROCEEDINGS WHICH HAD BEEN DISMISSED TWO-AND-ONE-HALF YEARS EARLIER AND ARE TIME-BARRED

The State responds that it disagrees that Mr. James' case is one of first impression, however, no citation to another Florida case on all points for authority to deny Mr. James' request to resume state post-conviction proceedings is provided. The State refers to *Alston v. State*, 894 So. 2d 46 (Fla. 2004) and incorrectly contends that it resolves this issue and holds that when a trial judge

conducts a proper *Durocher/Faretta* hearing and discharges counsel and dismisses the post-conviction motions, that such an order will be upheld. The *Alston* case involves a different set of circumstances entirely. In *Alston* the defendant's competency was at issue and it involved a challenge to the court's finding that *Alston* was competent. *Durocher v. Singletary*, 623 So. 2d 483 (Fla. 1993); *Faretta v. California*, 422 U.S. 806 (1975). The issue was whether the court had abused its' discretion in finding that Alston had knowingly, intelligently, and voluntarily waived his rights to post conviction counsel and proceedings. While the State acknowledges that *James* is in a different posture than *Alston* because he did not write a pro-se letter within thirty days of the trial court's order dismissing post-conviction motions and concedes that *James* is not similarly appealing the lower court's *Durocher/Faretta* rulings, but the State inexplicably requests this Court to broaden the scope of the *Alston* ruling and extend it to this case. In doing so, this Court would decide an issue that has not previously been addressed by this Court. It is obvious that the trial court did not agree with the State's interpretation that *Alston* is dispositive of this case. When the trial judge entered an Order Denying the Motion to Reappoint the Office of Capital Collateral Counsel, Middle Region, to resume collateral legal proceedings pursuant to *Fla. Stat.* §27.001 the court was fully aware of the *Alston* ruling and noted that the order allowing the defendant to dismiss his post conviction proceedings was

entered before *Alston v. State*, 894 So. 2d 46 (Fla.2004), the court noted concern expressed by this court over the problems of review in these "unusual cases" and wrote:

> "Accordingly, being as unaware of how to proceed from here as Judge Bowden was in Alston, this Court shall forward to the Clerk of the Supreme Court of Florida copies of the following documents "for whatever action the justices deem appropriate…." (PCR-525)

Clearly, the trial court did not agree that *Alston* resolves James' case as suggested by the State and instead sought guidance from this Court for resolution.

In describing Mr. James' circumstances the State inaccurately posits *Wheeler v. State*, 839 So. 2d 770,774(Fla. 4th DCA 2003) citing: *Meeks v. Craven*, 482 F.2d 465,467 (9th Cir. 1973) and *Waterhouse v. State*, 596 So. 2d 1008 1011 (Fla. 1992). (AB. 31) The State carves out comments in the trial court's order that James "has simply changed his mind" (PCR-523-526) and quotes a partial sentence from *Wheeler* to suggest that Mr. James is guilty of manipulative conduct and to be allowed to "place the trial courts in a position to be whipsawed by defendants"

A review of *Wheeler* reveals that this case is distinguishable. It addresses instances where equivocal requests for representation are used by defendants and refers to this type of activity as prohibited action that results in "placing the trial

courts in a position to be whipsawed by defendants clever enough to record an equivocal request to proceed without counsel in the expectation of a guaranteed error no matter which way the trial court rules." *Id*. 468. (Emphasis added). The scenario in *Waterhouse* also involves a defendant who is equivocal at trial. The defendant decided that he would make closing argument at trial, he then reneged at the last possible moment and counsel was unwilling to make closing argument demanded by the defendant due to ethical constraints. The defendant rejected the closing argument that counsel proposed to make and then claimed that he had been denied right to counsel. These cases have absolutely no applicability to Mr. James.

Any contention that Mr. James has manipulated the judicial system is refuted by the record. James had no prior criminal record when he committed these crimes. On April 5, 1995, Mr. James appeared before the Honorable Alan A. Dickey, Circuit Judge, and, pursuant to a written agreement, entered pleas of guilty to all counts of the indictment and pleas of no contest to two counts of capital sexual battery charged by separate information. The plea did not include an agreement as to sentence. The trial court found Mr. James' ability to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law were substantially impaired due to drug and alcohol abuse; that he was under the influence of moderate mental or emotional disturbance at the

time of the offense, that he displayed genuine shame and remorse for his offenses. Furthermore, the court attributed substantial weight to James' full cooperation with authorities in confessing to the crimes and entering pleas noting that he was capable of offering assistance to others in custody and as an example to other about the negative consequences of illicit drug use. *James v. State*, 695 So. 2d 1229,1230-1233 (Fla. 1997).

Mr. James filed an initial motion for relief in this case under Fla. R. Crim. P. 3.850 on May 27, 1998 (PCR,Vol. 1, 28-54), a First Amended 3.850 Motion was filed on November 1, 2001(PCR,Vol.2, 261-305). The court set an Evidentiary Hearing on Claims Four, Five and Eight of the Defendant's First Amended 3.850 Motion on March 5, 2002. (PCR, Vol. 3, 348-350) Mr. James then filed a Third Amended Motion[1] on September 16, 2002, (PCR, Vol. 3, 359-412) asserting that his conviction and death sentence violate the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provision of the Florida Constitution. The court allowed an evidentiary hearing as to Claims I, III (only as to paragraphs 1 through 6) and Claims IV, and VI (PCR., Vol.2, 487-489). (*See*: Circuit Court Order, 18th Judicial Circuit, Judge O.H. Eaton, Jr., dated

[1] There is no "Second Amended 3.850 Motion".

April 21, 2003) (PCR. Vol 3, 487- 489). No state court has heard any evidence on these issues or ruled upon the merits of these cognizable claims for relief.

The State argues that the time limitations in Rule 3.851(d) clearly establish a one-year time limit that would preclude re-filing by Mr. James. However, the State ignores the fact that this rule applies the one year limitation to the initial motion and all parties agree that Mr. James filed a timely 3.850 motion in May, 1998. The State further ignores the portion of the rule 3.851(c)(4) that explains that the time limitations established by 3.851(d)(1) stating:

> "Furthermore, this time limitation shall not preclude the right to amend or to supplement pending pleadings under these rules".

Mr. James filed a shell motion in 1998 and filed a First Amended 3.850 motion on March 5, 2002. The court then held a Huff Hearing on that motion on February 22, 2002. The court did not grant a hearing on all of Mr. James' claims. The court's denial of relief on claims contained in this document constitute a final ruling by the court as to portions of Mr. James' First Amended Motion. Mr. James never abandoned any claims raised in his First Amended Motion, therefore, since rule 3.851(e)(2) does not require Successive Motions to be filed within a specific time period, Mr. James should be permitted to re-file claims that were not subject to merit review in the form of a Successive

Motion [2] challenging the same judgment and sentence. Alternatively, Mr. James acknowledges that there is no authority in Florida rule, statute or case law specifically authorizing the mere resumption of post-conviction litigation two years after the final 3.850 motion was voluntarily dismissed and suggests that his case is unique on its' facts and warrants equitable relief.

It is ironic that the State of Florida responds in Answer Brief that the time frames in Rule 3.851 were "amended to bring finality to capital cases in a more expeditious manner so that individuals sentenced to death will not languish on death row." *Knight v. State*, 923 So. 2d 387, 414 (Fla. 2005). (AB.25) Mr. James has been on Death Row since August 18, 1995 and awaiting execution by the State since all his actions were dismissed on April 11, 2003.

The State argues that the holding in *Corcoran v. Indiana*, 827 N.E. 2d 542 (Ind. 2005) illustrates the fact that post-conviction motions filed untimely will not be entertained, even in cases where the petitioner is sentenced to death. (AB. 32). James' case is distinguishable. In *Corcoran* the defendant declined post-conviction review immediately following denial of his direct appeal and he failed to file any post-conviction motion within the timeframe in which he was required to. Mr. James' filed a timely post-conviction motion following denial of his

[2] Claims I, III (as to paragraphs 1 through 6), Claim IV, and Claim VI as detailed in his Third Amended Motion To Vacation Judgment of Conviction and Sentence With Leave to Amend.

direct appeal, attended several case management conferences in preparation for an evidentiary hearing that had already been scheduled on the court calendar.

CONCLUSION

Faretta, ultimately, is about respecting a defendant's capacity to make choices for himself, whether to his benefit or his detriment. It is a defendant's harmful decisions that in turn implicate Eighth Amendment concerns about fair and consistent application of the death penalty. The State has both a profound interest in and a constitutional duty to ensure, the reliability and integrity of a penalty trial that results in a death sentence. Furthermore, in these cases more than in others, where capital convictions are concerned, it is not the defendant's interest alone that are at stake; society has a vested interested in a fair and consistent application of its most extreme penalty. The capital defendant's appeal is not entirely "his appeal" because of the state's "indisputable interest in safeguarding against arbitrariness. *People v. Chadd*, 621 P.2d 837,844, *cert den*., 101 S.Ct. 3066 (1981).

Due to the irreversible consequence of capital punishment, the United States Supreme Court has directed that capital punishment be imposed fairly and with reasonable consistency, or not at all. *Eddings v. Oklahoma*, 102 S.Ct. 869,875 (1982). Mr. James asks that this court to acknowledge the fundamental respect for

humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment that gives rise to a special need for reliability in the determination that death is the appropriate punishment in this capital case, and to exercise its' inherent judicial power ensuring that the proper administration of justice is achieved when administering and supervising the most irremediable and unfathomable of penalties – execution. Mr. James asks this Court to allow him to proceed to evidentiary hearing on claims that were previously determined cognizable in post conviction proceedings as deemed proper. (PCR- Vol. 2, 314,348-350)(PCR- Vol. 3, 475-480).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion To Supplement and Correct the Record 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 June , 2007.

Respectfully submitted,

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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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