

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-161

JAMES EUGENE HUNTER

Appellant,

v.

STATE OF FLORIDA

Appellee.

ANSWER BRIEF OF APPELLEE

ON APPEAL FROM THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

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STATEMENT OF THE CASE AND FACTS

In affirming the denial of federal habeas corpus relief, the Eleventh Circuit Court of Appeals summarized the facts and procedural history of this case in the following way:

Around midnight on September 16, 1992, four young friends were hanging out on benches in front of the Munch Shop, a local eatery near the campus of Bethune-Cookman College in Daytona Beach, Florida. Taurus Cooley, Michael Howard, Theodore Troutman, and Wayne Simpson were college students who often gathered there to "talk and chat and carr[y] on" because Simpson's father owned the Munch Shop. They did not know that night would be different from any other.

Not far away, another group of four young men were together but for less innocent purposes. James Eugene Hunter, also known as "Michael Miller" or "Psycho," was one of them. He was in a car headed to Daytona Beach. With him were Charles Anderson, Eric Boyd, and Bruce Pope. Two young women were also in the car. One of them was Hunter's girlfriend, Tammie Cowan. The men had with them two long-barrel, black BB guns and a chrome .25 caliber automatic handgun.

In Deland, Florida, about twenty miles west of Daytona, Hunter instructed Cowan, who was driving, to stop the car. Hunter and the other three men got out of the car with the guns. They confronted a man, Reggie Barkley, who was riding his bicycle down the road toward them. Pointing their guns at him, Hunter and the others ordered him to lay on the ground, screaming at him to "give it up." They searched Barkley's pockets and then told him to run into the woods, which he did. After robbing Barkley, Hunter and his friends ran back and jumped into the car, and Hunter told Cowan to drive to Daytona.

When they arrived in Daytona around midnight, Hunter first had Cowan stop at a house where he planned to buy marijuana, but no one was home. They left the house and proceeded to drive through Daytona, presumably looking for drugs. As they drove near the campus of Bethune-Cookman College, Hunter and the

others saw the four young men sitting on benches in front of the Munch Shop.

After seeing the four young men, Hunter instructed Cowan to stop the car about three blocks away. All four of the men got out of it there. Hunter carried the silver automatic handgun, while two of the others carried the long BB guns. They walked around to the front of the building where Cooley, Howard, Troutman, and Simpson were sitting. At first the friends didn't think much about the four men walking toward them, assuming they were college students, too. When Hunter and two of his cohorts pulled out their guns and told the young men to "give it up," they thought it must be a joke. They realized it was no joke when Eric Boyd put his "big, long gun" to Troutman's neck and ordered him to get on the ground. At the same time, Hunter held his small handgun to Troutman's neck, and one of the other robbers put the long barrel of his gun into Howard's back.

Because the young men "didn't want to make no false moves for them to shoot us," they complied with every order. Troutman and Simpson both lay on the ground, as they were told. Howard emptied his pockets, showing that he had only four pennies and some keys. Unsatisfied, one of Hunter's group told Howard he wanted his clothes. Howard obediently stripped down to his underwear and handed over his Nike tennis shoes, his shirt, his short pants, and his watch. Then, Howard got down on the ground as well. Nearby, Hunter kept his gun pointed at Cooley, ordering him to take off his shirt, which Cooley did.

As Cooley was handing over his shirt, he was face-to-face with Hunter. At that moment, Hunter opened fire, shooting Cooley in the chest, just above his heart. Cooley dropped the shirt and fell back. Hunter paused a few seconds and then continued shooting down the line. He stood behind Howard, who had been sitting on the ground, and shot him in the back as Howard got up and began to flee. The bullet penetrated Howard's right shoulder blade, lodging in his body. Hunter next came to Troutman, who was lying face down on the ground. While Hunter's cohorts snatched Troutman's shoes off his feet and a twenty-dollar watch off his arm, Hunter stood over Troutman and shot him in the

back. Finally, it was Simpson's turn. Troutman would later recount that his friend Simpson, who had heard the others being shot, must have known he was next. He described how Simpson was flinching and looking over his shoulder as he lay on the ground. Hunter shot Simpson in the back.

After being shot, each of the four young men was able to run away. They fled in a desperate search for help, running up the stairs of an apartment building, where Wayne Simpson pounded on the door and on a window so hard that he knocked out the glass. But then, as one of the others described it, "Wayne just collapsed, Wayne laid down. And then he said -- and I ran up to the steps and he said -- I said, Wayne, what's wrong? He said, I'm going to die." The bullet from Hunter's handgun had ricocheted through Wayne Simpson's right lung and his heart, and the young man, only nineteen-years old, bled to death on the steps of the apartment building where he had gone seeking help.

Hunter was convicted by a jury of the first-degree murder of Wayne Simpson, as well as for three counts of attempted first-degree murder, three counts of armed robbery, and one count of attempted armed robbery. Following a sentence hearing, the jury recommended death by a vote of nine to three, and the trial court imposed that sentence. The Florida Supreme Court affirmed the conviction and sentence on direct appeal. *Hunter v. State*, 660 So. 2d 244, 254 (Fla. 1995) ("*Hunter I*"). Hunter filed a state collateral petition. After holding an evidentiary hearing on some of his claims, the trial court denied relief. The Florida Supreme Court affirmed that denial of relief and at the same time denied Hunter's petition for state habeas relief. *Hunter v. State*, 817 So. 2d. 786, 799 (Fla. 2002) ("*Hunter II*").

Hunter then filed in the United States District Court for the Middle District of Florida a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. That court denied the petition and denied Hunter's request for a certificate of appealability. We granted him a certificate on two issues: (1) whether he was deprived of his right to counsel under the Sixth Amendment as a result of his trial counsel laboring under a conflict of interest; and (2) whether his trial counsel

rendered ineffective assistance by failing to present the jury with certain evidence concerning photographs that had been taken of the four robbers shortly after the crime.

Hunter v. Sec'y, Dep't of Corr., 395 F.3d 1196, 1198-1199 (11th Cir. 2005). The United States Supreme Court denied Hunter's petition for writ of certiorari on October 3, 2005. *Hunter v. Crosby*, 546 U.S. 854 (2005).

On or about October 3, 2005, Hunter filed the successive *Florida Rule of Criminal Procedure* 3.851 motion that is the subject of this appeal. Hunter's successive motion was subsequently stricken for non-compliance with the Rules, (RV1, 24-26) -- an amended motion was filed on January 11, 2006. (RV1, 29-46), and the State responded on February 23, 2006. (RV1, 54-66). The State also renewed its previously-filed motion to disqualify Capital Collateral Regional Counsel - Middle Region because counsel was a potential fact witness should an evidentiary hearing be ordered. (RV1, R54-55). Middle Region CCRC subsequently moved to withdraw, the motion was granted, and present CCRC-South counsel was appointed on April 24, 2006. (RV1, R79).

With newly-appointed CCRC-South counsel in attendance, a case management conference was conducted on November 14, 2006. (RV2, R218-252). On December 22, 2006, Volusia County Circuit

Court Judge Piggotte entered an order denying Hunter's successive motion without an evidentiary hearing. (RV1, 112-154). This appeal follows.

SUMMARY OF THE ARGUMENT

The post-conviction trial court properly denied Hunter's successive *Florida Rule of Criminal Procedure* 3.851 motion without an evidentiary hearing. The claims pressed on appeal concern claims and subclaims that are insufficiently pled, have no legal basis, and are factually unsupportable and inconsistent with the facts developed in the previous proceedings conducted in this case. Summary denial was proper.

ARGUMENT

I. THE "NEW EVIDENCE/ACTUAL SHOOTER" CLAIM¹

On pages 22-25 of his brief, Hunter argues that "newly discovered evidence" shows that co-defendant Eric Boyd was the "actual shooter." This claim, which was Claim I in Hunter's successive motion, was summarily denied by the post-conviction trial court. Under settled Florida law, a summary denial of post-conviction relief will be affirmed when the law and

¹Hunter has combined various claims in his brief. The State has separately numbered the individual claims -- those claims in the same order in which they appear in Hunter's *Initial Brief*.

competent substantial evidence support the findings of the court. *Diaz v. Dugger*, 719 So. 2d 865, 868 (Fla. 1998).

In denying relief on his claim, the post-conviction trial court stated:

GROUND I

Defendant claims that newly discovered evidence, embodied in the form of sworn testimony of co-defendants Eric Boyd, Bruce Pope, and Charles Anderson, will establish that he is innocent of first-degree murder. Defendant claims this evidence will establish that he was not involved in the shooting, and that he was not in the immediate area when the shooting took place. Eric Pinkard, Esquire, (Capital Collateral Counsel for Defendant at the time his Amended Successive 3.851 Motion was filed), claims that Eric Boyd informed him that he was in possession of the firearm, and shot Taurus Cooley, one of the victims who testified at Defendant's trial, in a dispute over drugs. Mr. Boyd allegedly "fronted" drugs to Mr. Cooley approximately one month before the shooting, and Mr. Cooley had failed to pay for the drugs. Defendant claims that the testimony of Boyd, Pope, and Anderson will verify that the reason for the trip to Daytona Beach was for Mr. Boyd to obtain the drugs or money from Mr. Cooley.

Defendant further claims that the above evidence could not have been obtained earlier. He claims that Mr. Boyd had refused to give a statement to CCRC investigators or attorneys in 2000 because he thought that the State was going to finally honor a promise they made in a plan to straighten the entire case out. Mr. Boyd alleges that the prosecutors, Steve Alexander, Esquire, and Elizabeth Blackburn, Esquire, promised him that in five to eight years, they would bring Defendant back into court and clear everything up. Mr. Boyd claims that the prosecutors told him that if he wanted it to work, he had better keep his mouth shut and not talk to anyone, especially Defendant's lawyers. The Defendant alleges that the information from Anderson and Pope is also "newly discovered" in that they had remained silent because of promises from

the State that they would receive leniency from their sentences after serving a few years.

In order to obtain relief on a claim of newly discovered evidence, a claimant must show:

(1) that the newly discovered evidence was unknown to the defendant or defendant's counsel at the time of trial and could not have been discovered through due diligence; and (2) that the evidence is of such a character that it would probably produce an acquittal on retrial. *Wright*, 28 Fla. L. Weekly S517; *Mills v. State*, 786 So.2d 547, 549-50 (Fla. 2001) (citing *Jones v. State*, 709 So.2d 512 (1998)).

The Court finds that the Defendant does not satisfy the requirements for relief based on a claim of newly discovered evidence. First, the fact concerning the reason Defendant and his codefendants came to Daytona Beach, and the sequence of events at the crime scene, are within Defendant's knowledge. As such, he does not satisfy the first prong of *Jones*. Assuming, *arguendo*, that Mr. Boyd would have testified as claimed in the motion, the allegations contained in Ground I are facially insufficient to establish that Defendant would probably be acquitted of the murder of Wayne Simpson, the fourth robbery victim. The central issue in this case is who shot and killed Wayne Simpson. This successor motion does not allege that Boyd is now claiming to have murdered Simpson. Additionally, the State has noted that Mr. Boyd was tried with Defendant, and Mr. Boyd did not testify against Defendant at trial in exchange for a promise of leniency or for any other reason. This issue was explored at the prior Rule 3.851 evidentiary hearing in this case, at which Mr. Boyd did testify and denied ever making any statement adverse to his cousin, the Defendant. (See Appendix A - Transcript of April 5, 2000 proceedings, V. II, pp. 238-240). Thus, Defendant's claim that Boyd kept quiet until now due to expectation of leniency as a *quid pro quo* for non-existent trial testimony against Defendant is conclusively refuted by the record. Accordingly, this claim is denied.

(RV1, 113-114).

Those findings by the post-conviction court are supported by the law and by competent substantial evidence, and should not be disturbed.

To the extent that further discussion is necessary, as the post-conviction court found, the reason the defendants came to Daytona Beach, and the sequence of events at the time of the murder of Wayne Simpson, are peculiarly within the knowledge of the defendant. (R114). And, as the post-conviction court pointed out, **the successive motion does not allege that Boyd was the person who killed Mr. Simpson**, and does not allege that he would testify that he was. (R114). Because that is so, there is no reasonable probability of a different result, and Hunter cannot meet his burden of proof on a newly discovered evidence claim under *Jones v. State*, 709 So. 2d 512 (Fla. 1998).² The summary denial of relief should be affirmed in all respects.

II. THE "NEW EVIDENCE OF CONFLICT" CLAIM

On pages 25-29 of his *Initial Brief*, Hunter argues that he should have received an evidentiary hearing on his "conflict of interest" claim because that claim is supported by "newly discovered evidence" even though the evidence on which that claim is based has been in the possession of collateral counsel

² Hunter cannot meet the first prong of *Jones*, either, as the post-conviction court found. Boyd's "testimony" was not unknown at the time of trial because it concerns facts wholly within Hunter's knowledge.

since long before the first post-conviction relief motion was filed. Under settled Florida law, a summary denial of post-conviction relief will be affirmed when the law and competent substantial evidence support the findings of the court. *Diaz v. Dugger*, 719 So. 2d 865, 868 (Fla. 1998).

In denying relief on this claim, the post-conviction court held:

GROUND III

Defendant argues that he is entitled to a new trial because newly discovered evidence establishes that his trial counsel, George Burden, had an actual conflict of interest that adversely affected his representation of Defendant and deprived him of his Constitutional right to conflict-free counsel under the Sixth Amendment. Specifically, Defendant claims that Defense Counsel Burden had a conflict of interest within the Office of the, Public Defender, which represented both Defendant and the victim, Taurus Cooley. A conflict of interest claim was raised in the original post conviction proceedings, based on the fact that key State witness Cooley had been represented by the Public Defender's office immediately prior to and during the Public Defender's representation of Defendant in this case. At the time of the post conviction proceeding, both Defense Counsel Burden and former State Attorney Elizabeth Blackburn testified that they had no knowledge of Mr. Cooley's prior record and representation by the Public Defender's office. Defendant alleges that this claimed ignorance was the basis for this Court, the Florida Supreme Court, the Federal District Court, and the Eleventh Circuit Court of Appeals, to deny Defendant's initial post conviction motion.

Defendant further claims that the "newly discovered evidence" establishing the testimony of Mr. Burden and Ms. Blackburn on this issue was false was discovered within one year of the filing of the instant successive 3.851 motion. Defendant claims

State Attorney Blackburn had obtained an NCIC/FCIC report on Mr. Cooley prior to trial, which contained Mr. Cooley's prior record for which the Office of the Public Defender had represented him. Said report was delivered to Mr. Burden, and includes notations that it was delivered to him prior to Defendant's trial. Thus, Defendant claims that CCRC counsel was deceived by the testimony of Elizabeth Blackburn and George Burden at the time of the evidentiary hearing as to their alleged lack of knowledge of the conflict.

The Court finds that this claim of newly discovered evidence is untimely. Counsel alleges that he located this evidence in the possession of the State Attorney's office. This evidence was available at the time of the prior 3.851 proceeding, and does not satisfy either prong of the *Jones* "newly discovered evidence" standard. As the State has noted, in order for the prior testimony of Attorneys Burden and Blackburn on this point at the first Rule 3.851 hearing to be false, this Court would have to find that both attorneys had the NCIC-FCIC printouts showing Cooley's criminal history in their possession when they tried this case. It would follow from such a finding that the NCIC-FCIC record on Cooley has been available to Collateral Counsel since the inception of the capital post-conviction public records proceedings in this case, long before Defendant's first Rule 3.851 motion was filed, by just examining the public records that were provided to him years ago. Defense Counsel at the time the instant motion was filed even asserts that he "discovered" Cooley's NCIC-FCIC report in the State Attorney's file. The Court's files and records establish that there have been no public records proceedings in this case since 1999. As a result, counsel had to "discover" Cooley's criminal history printout in the public records materials that were provided to him prior to filing defendant's first rule 3.851 motion. Hence, this evidence is unlikely to be "newly discovered."

Further, counsel acknowledged his awareness of the potential existence of Cooley's criminal history printout years ago. He referred this Court's predecessor Judge to pages 321 and 325 in the record on direct appeal containing trial counsel's discovery motion for production of a criminal history printout

on the State's witness and the trial court's order granting its production during the first Rule 3.851 evidentiary hearing. (Appendix B - April 5, 2000 3.851. Evidentiary Hearing Transcript, V. I, p. 53).

The record demonstrates that this proposed evidence could have been discovered (if in fact it was not) prior to the initial Rule 3.851 evidentiary hearing through the exercise of due diligence on the part of collateral counsel, and is therefore not newly discovered within the meaning of *Jones, supra*, and Rule 3.851(e)(2)(c), *Fla. R. Crim. P.* Accordingly, this claim is denied.

(RV1, 115-117).

Those findings are supported by competent substantial evidence, and are in accord with settled Florida law. This claim is no more than an attempt to relitigate the "conflict of interest" claim yet again. Hunter cannot establish either prong of *Jones*, and summary denial was proper.

Despite Hunter's *ipse dixit* arguments, the facts, as found by every Court to decide this claim, are that Hunter's trial attorney was not aware of any conflict of interest and was, therefore, unaffected by any such conflict. *Hunter v. Sec'y, Dep't of Corr.*, 395 F.3d 1196, 1200-1202 (11th Cir. 2005); *Hunter v. State/Moore*, 817 So. 2d 786, 793 (Fla. 2002). Nothing contained in the successive post-conviction relief motion calls those findings into question, even putting aside the

untimeliness of this claim. The denial of relief should be affirmed in all respects.³

**III. THE "NEWLY DISCOVERED EVIDENCE"-
INCOMPETENT WITNESS CLAIM⁴**

On pages 29-35 of his *Initial Brief*, Hunter asserts that he has "newly discovered evidence" that state witness Taurus Coley was "incompetent" to testify at Hunter's capital trial. The post-conviction trial court summarily denied this claim, which was based on events that occurred long **after** Hunter's trial. Under settled Florida law, a summary denial of post-conviction relief will be affirmed when the law and competent substantial evidence support the findings of the court. *Diaz v. Dugger*, 719 So. 2d 865, 868 (Fla. 1998). There is no basis for relief.

In denying relief on this claim, the post-conviction court held:

GROUND IV

In his final ground, Defendant asserts that newly discovered evidence establishes that Taurus Cooley, the key State witness, was not mentally competent to testify at the time of Defendant's trial. This fact was allegedly discovered within one year of the filing of the current motion. In support of this claim,

³ In addition to the untimely and seemingly dilatory nature of this claim, it is based on the questionable assumption that both the prosecutor and Hunter's trial counsel lied to the Circuit Court in their prior testimony on this very issue. The Circuit Court resolved the credibility choices against Hunter, and the most recent pleading is no more than a personal attack on those two lawyers. It is not a basis for relief.

⁴ This claim was Claim IV in Hunter's post-conviction motion.

Defendant generally refers to court documents of proceedings in which Mr. Cooley was declared legally insane and not guilty by reason of insanity on several felony charges. These proceedings occurred after Defendant's trial. The basis for the determination of insanity was longstanding mental illness, suffered before, during and after the time Mr. Cooley testified at Mr. Hunter's trial. Defendant argues that CCRC Counsel and investigators had no reason to suspect that Mr. Cooley had been found legally insane, and therefore, due diligence was exercised.

The Court finds that this evidence cannot be considered "newly discovered evidence", because such evidence was in existence but undiscovered at the time of trial. *Porter v. State*, 653 So.2d 354, 360 (Fla. 1995). As noted by the State, Defendant does not assert that Cooley (who was one of the Bethune-Cookman College students victimized in this case) was also incompetent to testify at the prior Rule 3.851 proceedings in this case, where Defendant called Cooley as a defense witness. (Appendix C - April 5, 2000 Rule 3.851 Hearing Transcript, V. II, pp. 169-197). Defendant has also failed to provide the name, address, and telephone number of the expert witness that he asserts he "may" call to testify, contrary to the requirements of Rule 3.851(e)(2)(C)(i), *Fla. R. Crim. P.* He has also failed to allege that Cooley is now consenting to submit to any mental status examination by Defendant's unidentified mental status expert. This claim is also facially insufficient because it fails to allege any facts showing how Cooley's adjudication of not guilty by reason of insanity in Volusia County case number 2001-30956 CFAES on October 3, 2001 would have any relevance to Cooley's competency to testify in Defendant's jury trial in August of 1993. As such, this claim is denied.

(RV1, 117).

As the collateral proceeding court found, this "evidence" cannot be "newly discovered" because it did not exist at the time of Hunter's capital trial. *See, Porter v. State*, 653 So. 2d

354, 360 (Fla. 1995); *Diaz v. State*, 945 So. 2d 1136, 1144 (Fla. 2006); *Kearse v. State*, SC05-1876 (Fla., Aug. 30, 2007).⁵ And, to the extent that further discussion is necessary, Hunter's successive motion was insufficiently pleaded for various reasons, among them the failure to allege how Cooley's not guilty by reason of insanity in October of 2001 has any relevance at all to that's witness's competence to testify at Hunter's trial in August of 1993. Summary denial of this claim was proper, and that disposition should not be disturbed.

IV. THE *BRADY/GIGLIO* CLAIM⁶

On pages 36-44 of his *Initial Brief*, Hunter argues that he is entitled to an evidentiary hearing on his claim of violations of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972), as related to the testimony of trial witness Tammie Cowan. Under settled Florida law, a summary denial of post-conviction relief will be affirmed when the law and competent substantial evidence support the

⁵Hunter's attempts to distinguish *Porter* are unavailing. It does appear that there is a scrivener's error in the first sentence of the third paragraph on R117. It appears that the sentence should read: "the Court finds that this evidence cannot be considered 'newly discovered evidence', because such evidence was **not** in existence but undiscovered at the time or trial." The word "not" was apparently omitted, but in the context of the rest of the order, that was the clear holding of the Court.

⁶This claim was Claim II in Hunter's post-conviction motion.

findings of the court. *Diaz v. Dugger*, 719 So. 2d 865, 868 (Fla. 1998). There is no basis for relief.

In denying relief on this claim, the post-conviction court held:

GROUND II

Defendant claims that under the theory of newly discovered evidence, he will establish that the State made threats and promises to State witness Tammy Cowan. Specifically, Defendant alleges that the State threatened her with a life sentence if she did not testify against Defendant. Defendant claims that this threat was not disclosed to the defense at trial, and as such, constitutes a violation of the State's Constitutionally required duties established in *Brady v. Maryland*, 373 U.S. 83 (1963), for failure to disclose witness manipulation, and a violation of the duties established in *Giglio v. United States*, 405 U.S. 150 (1972), which forbids the presentation of false or misleading evidence. Defendant further claims that this evidence is "newly discovered" because witness Tammy Cowan could not be located during the pendency of the initial post-conviction proceedings, despite due diligence. Ms. Cowan had been incarcerated during that period of time, and prior to her incarceration, had not maintained a consistent residence where she could have been located to obtain a statement.

First, the Court finds that the instant successor Rule 3.851 motion contains no allegation that Ms. Cowan's trial testimony against Defendant was actually false or has now been recanted, nor does Defendant claim that the content of Ms. Cowan's trial testimony was linked to the alleged threat. The record reflects that Ms. Cowan was reluctant to testify for the State and was taken into custody as a material witness prior to trial. As the State has noted, the proposed testimony, if believed, would do no more than reaffirm Ms. Cowan's reluctance to meet her legal obligation to testify (i.e. it would be cumulative) and would not satisfy the materiality prong of *Brady v. Maryland*, 373 U.S. 83 (1963). Further, *Giglio v. United States*,

405 U.S. 150 (1972) is inapplicable, because this claim does not allege that any aspect of Cowan's trial testimony was false. In order to establish a *Giglio* violation, a defendant must show that: "(1) that the testimony was false; (2) that the prosecutor knew the testimony was false; and (3) that the statement was material." *Guzman*, 28 Fla. L. Weekly at S829, 4; see also *Ventura*, 794 So. 2d at 562 (quoting *Robinson v. State*, 707 So. 2d 688, 693 (Fla. 1998)). Finally, this claim fails to satisfy the requirements for relief based on a claim of newly discovered evidence, as it could have been discovered through due diligence. As such, the instant claim is denied.

(RV1, 114-115).

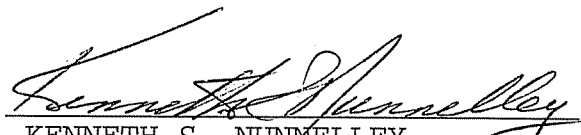
Those findings are supported by competent substantial evidence, are in accord with settled Florida law, and should not be disturbed. There is simply no basis for relief, and summary denial of this claim was proper.

CONCLUSION

Summary denial of the claims contained in Hunter's motion was correct. The post-conviction court properly attached supporting portions of the record, and reached correct conclusions of law in determining that there was no basis for relief. The trial court should be affirmed in all respects.

Respectfully submitted,

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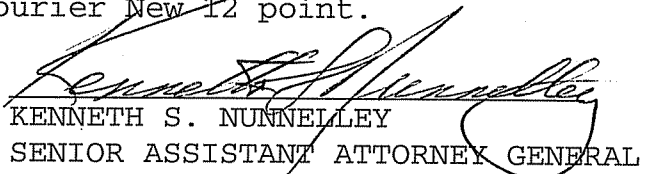
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail to: **Paul Kalil**, 101 N.E. 3rd Ave., Suite 400, Ft. Lauderdale, Florida 33323 on this 19th day of October, 2007.


Of Counsel

CERTIFICATE OF COMPLIANCE

This brief is typed in Courier New 12 point.


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