IN THE SUPREME COURT OF FLORIDA

CASE NO. SC11-1646

LOWER COURT CASE NO. 1D11-969

FILED
THOMAS D. HALL
2012 JUL 16 PM 1:19
CLERK, SUPREME COURT
BY

CRAIG B. DANIELS,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

REPLY BRIEF OF PETITIONER ON THE MERITS

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REPLY

There Is Conflict. In his initial brief, Mr. Daniels first demonstrated that following this Court's decision in *Clark v. State*, 491 So. 2d 545 (Fla. 1986), postconviction movants have the right to withdraw or dismiss a pending motion so long as (1) the trial court has not yet ruled on the motion, and (2) there is no prejudice to the State. Ini. Br. at 9-12. Critically, *Clark* did not turn on the legal sufficiency of the originally filed motion, but on a "judicious regard for the constitutional rights of criminal defendants . . . ." *Id.* at 10 (quoting *Clark*, 491 So. 2d at 546). Thus, under *Clark*, a postconviction movant could withdraw or dismiss an otherwise legally sufficient claim. As *Clark* made clear, and as Mr. Daniels demonstrated, *id.* at 22, there are many reasons why a defendant might seek to withdraw or dismiss an otherwise legally sufficient motion.

Second, Mr. Daniels explained that in *Spera v. State*, 971 So. 2d 754 (Fla. 2007), this Court ruled that a postconviction court would abuse its discretion if it did not allow a defendant the opportunity to amend a motion at least once. Ini. Br. at 12-16. In sharp contrast to *Clark*, this Court expressly limited *Spera* to those cases where the trial court determined that the motion was legally insufficient. *Id.* at 16.

Clark and *Spera* provide two separate forms of relief. While *Clark* protects the right of criminal defendants to present the strongest case for postconviction

relief possible, *Spera* ensures that the technical aspects of the rules of criminal procedure will not impede a defendant from curing an otherwise complete, but legally deficient, motion. In finding that Mr. Daniels was precluded from withdrawing or dismissing his pending postconviction motion because the trial court had already given him the opportunity to amend, the First District conflated the reasoning – and separate objectives – of *Clark* and *Spera.* In so doing, the First District here placed itself in direct and express conflict with this Court's precedent.

The State answers that Mr. Daniels is "advanc[ing] a greatly expanded argument in favor of jurisdiction based on direct and express conflict." Ans. Br. at 5. Other than to "rely" on its jurisdictional brief, *id.*, the State offers no support for this vague statement. And Mr. Daniels has already demonstrated, as summarized above, that jurisdiction is proper because the First District's decision expressly and directly conflicts with *Clark* and *Spera.*

The State further urges that review is not appropriate on the theory that the First District "misapplied" *Spera. Id.* Mr. Daniels, however, is not advocating any theory of "misapplication jurisdiction." Nor does he have to make that argument. Again, as noted above, Mr. Daniels has established that jurisdiction is proper on the basis of express and direct conflict.

The State concludes its argument regarding jurisdiction with the assertion that the decision below does not conflict with *Spera*, but "interprets it reasonably."

Id. at 6. But it is unreasonable to read *Spera* as both silently overruling *Clark* and requiring that requests to withdraw, dismiss, or amend hinge on whether a prior opportunity to do so has already been granted. Accordingly, there is conflict.

A Decision on the Merits Is Appropriate. Because there is conflict, this Court's decision to grant discretionary review was proper and a decision on the merits is appropriate. According to the prosecution, this appeal raises two questions: (1) whether Mr. Daniels was entitled to "re-amend, of right" under *Spera*, and, if so, (2) whether the trial court abused its discretion in denying that right. The State wrongly answers no.

The State contends that *Spera* only required that the trial court allow Mr. Daniels a single opportunity to amend his postconviction motion. Having done so, the State concludes that Mr. Daniels is not entitled to any further relief. Ans. Br. at 8. To buttress its argument, the State notes that the trial court later issued a "show-cause order, implicitly finding the second amended motion facially sufficient." *Id.* The State adds that Mr. Daniels did not challenge this order. *Id.* Yet nothing says that Mr. Daniels was required to challenge the show-cause order, especially if he was looking to withdraw or dismiss his postconviction motion. Indeed, the State even admits, as it must, that *Clark* allowed for withdrawal of "facially sufficient motions." *Id.* at 10.

Nevertheless, the State tries to argue that *Clark* was limited to cases involving "unusual circumstances," *id.*, a phrase the prosecution fails to define. Suffice it to say, nothing in *Clark* supports the application of this undefined standard. Moreover, the cases applying *Clark*, both before and *after Spera*, contain no such limitation. Indeed, the State has already conceded that *Clark* applies to run-of-the-mill cases. Ini. Br. at 11 (quoting *Simon v. State*, 768 So. 2d 1089, 1090 (Fla. 3d DCA 1995) (wherein the State acknowledged that under *Clark*, "the appellant was entitled to withdraw his Rule 3.850 motion where . . . there would be no prejudice to the State.")).

The State counters that the cases applying *Clark* are distinguishable. For example, it rejects *Hutchinson v. State*, 921 So. 2d 780 (Fla. 1st DCA 2006), on the ground that the decision only reveals that the defendant moved to dismiss his postconviction motion before the trial court ruled and without any prejudice to the State. Ans. Br. at 12. The State adds that "[i]t appears the motion to voluntarily dismiss was done to obtain the first opportunity to amend, and the State had not responded; circumstances not present here." *Id.* The State similarly attempts to distinguish the First District's post-*Spera* decision in *Davis v. State*, 28 So. 3d 168 (Fla. 1st DCA 2010). In *Davis*, the State notes that the defendant moved to voluntarily dismiss his postconviction motion prior to its denial on the merits. Ans. Br. at 13. As with *Hutchinson*, the State highlights *Davis*' silence on whether

the defendant had a prior opportunity to amend. *Id.* The State continues to confuse the issues.

Despite the State's arguments to the contrary, *Clark* and *Spera* do not stand for the same proposition of law. And *Spera* did not implicitly overrule *Clark.* As such, *Clark* and *Spera* must be harmonized. The State reads *Spera* so narrowly as to eliminate a defendant's opportunity to withdraw or dismiss a postconviction motion if an opportunity to amend has already been granted. However, this strained reading of *Spera* is wrong. Mr. Daniels has already demonstrated that there are important considerations underlying *Clark* and *Spera.* Ini. Br. at 22. A defendant looking to assert additional claims, beyond those already pled, may seek to withdraw or dismiss his postconviction motion. *Id.* This would be the proper procedure, especially in light of Fla. R. Crim. P. 3.850(f)'s provision that a second or successive motion can be denied as "an abuse of procedure." *Id.*

The State argues, at least indirectly, that this is a distinction without a difference. Indeed, the State appears to equate "withdrawal" or "dismissal" under *Clark* with "amendment" under *Spera.* Thus, the State notes that "[i]f the movant wants to do more than cure a facial pleading deficiency, he must justify further substantive change; subject to the postconviction court's discretion." Ans. Br. at 14-15. But, again, this would mean that *Spera* overruled *Clark* – which it did not.

Remand Is Unnecessary. Section three of the initial brief establishes a clear distinction between Mr. Daniels' case and those postconviction motions which could never raise meritorious claims regardless of how many withdrawals or amendments were permitted. In particular, Mr. Daniels rebutted the First District's suggestion that only a narrow reading of *Spera* could stave off those defendants who might try to improperly "prolong[] the postconviction process." *Daniels v. State*, 66 So. 3d 328, 330 (Fla. 1st DCA 2011). As Mr. Daniels demonstrated, his motion was not the typical "shell motion" which is filed solely to comply with deadlines in the hopes of buying more time. Ini. Br. at 24 (quoting *Spera*, 971 So. 2d at 761).

The State answers that this Court – while affirming the lower court's decision – should remand and direct the First District to address the denial of Mr. Daniels' postconviction claims. Ans. Br. at 16. However, remand is not necessary. As discussed above, this Court's review should be limited to resolving the conflict between the First District's decision here and this Court's decisions in *Clark* and *Spera.*

CONCLUSION

Because the decision below expressly and directly conflicts with this Court's decisions in *Clark* and *Spera*, this Court properly granted review. Accordingly, this Court should reverse the First District's decision below with

directions that Mr. Daniels' motion to dismiss be granted and that he be allowed a reasonable amount of time to file an amended motion for postconviction relief.

Dated: Miami, Florida
July 13, 2012

Respectfully submitted,

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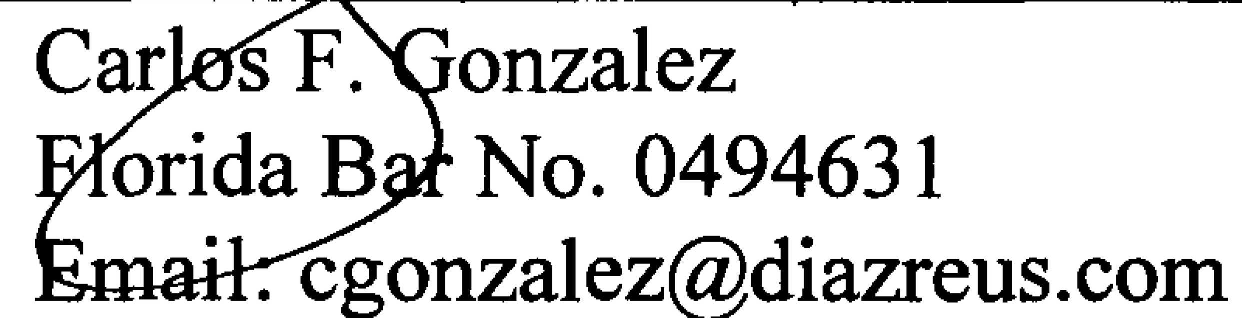

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I certify that a copy of the foregoing was sent by U.S. Mail this 13th day of July, 2012 to the parties listed below.

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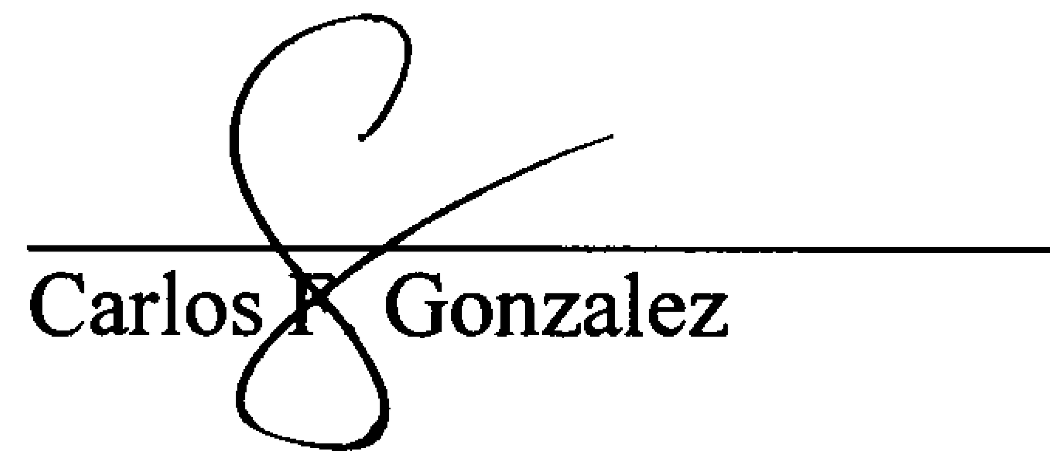

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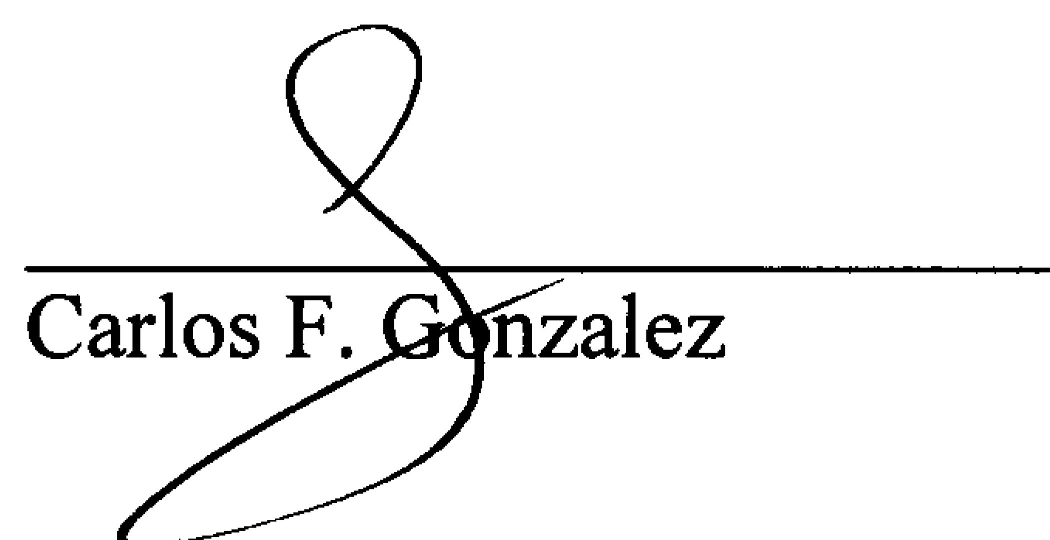
CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the font requirements contained in FLA. R. APP. P. 9.210(a)(2).



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