IN THE SUPREME COURT OF FLORIDA

CARY MICHAEL LAMBRIX,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

CASE NO. SC10-1845
Lower Tribunal No. 83-12-CF
DEATH PENALTY CASE

ON APPEAL FROM THE CIRCUIT COURT
OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR GLADES COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

This is an appeal of the denial of a successive motion for postconviction relief filed by death row inmate Cary Michael Lambrix. Lambrix has been on death row since 1984 for the murders of Aleisha Bryant and Clarence Moore. Although no one observed the actual murders, an eyewitness testified that the victims were visiting at Lambrix's trailer when Lambrix led each of them, individually, to the back of the property to see some plants. According to the witness, Frances Smith, Lambrix returned to the trailer alone, told Smith that he had killed both victims, ate a plate of spaghetti, then forced Smith to help him bury the bodies. Lambrix's convictions and sentences were upheld on direct appeal. Lambrix v. State, 494 So. 2d 1143, 1148 (Fla. 1986).

Just last year, this Court upheld the denial of Lambrix's third motion for postconviction relief. Lambrix v. State, 39 So. 3d 260 (Fla. 2010).[1] Certiorari review of that decision was

[1] Prior to that opinion, this Court had denied relief in a number of actions pursued by attorneys for Lambrix as well as in many *pro se* proceedings. See Lambrix v. State, 900 So. 2d 553 (Fla. 2005) (mandamus dismissed); Lambrix v. State, 766 So. 2d 221 (Fla. 2000) (mandamus dismissed); Lambrix v. State, 727 So. 2d 907 (Fla. 1998) (prohibition denied); Lambrix v. Reese, 705 So. 2d 902 (Fla. 1998) (mandamus denied); Lambrix v. State, 698 So. 2d 247, 248 (Fla. 1996), cert. denied, 522 U.S. 1122 (1998); Lambrix v. Singletary, 641 So. 2d 847 (Fla. 1994) (denial of state habeas); Lambrix v. State, 559 So. 2d 1137 (Fla. 1990)

denied on January 10, 2011. Lambrix v. Florida, 131 S. Ct. 917 (2011). In addition, the Eleventh Circuit Court of Appeals recently denied Lambrix's *pro se* request to file a second or successive federal petition for writ of habeas corpus. In re Lambrix, 624 F.3d 1355 (11th Cir. 2010). In that ruling, the court considered several of the claims that were rejected by this Court last year, along with some of the issues presented in this instant appeal, along with Lambrix's familiar "actual innocence" claim as a freestanding due process violation. Lambrix also filed a *pro se* original habeas petition in the United States Supreme Court in February, 2011, which remains pending. Lambrix v. McNeil, Docket No. 10-9616. Lambrix's theory of innocence claims that he did not tell Smith that he killed both victims, but told her that the male victim was attacking the female victim, and Lambrix used a tire iron to strike the male victim in the head repeatedly in order to help the female victim, but that the female victim had died anyway.

(affirming denial of pro se habeas petition); Lambrix v. State, 534 So. 2d 1151 (Fla. 1988) (affirming summary denial of emergency motion to vacate filed during warrant); Lambrix v. Martinez, 534 So. 2d 400 (Fla. 1988) (mandamus dismissed); Lambrix v. Dugger, 529 So. 2d 1110 (Fla. 1988) (denial of state habeas petition); Lambrix v. Friday, 525 So. 2d 879 (Fla. 1988) (petition for extraordinary relief dismissed). Federal courts had also considered and rejected Lambrix's numerous claims. Lambrix v. Singletary, 520 U.S. 518 (1997); Lambrix v. Singletary, 72 F.3d 1500 (11th Cir. 1996), reh. denied, 83 F.3d 438 (11th Cir. 1996).

The issues presented in this appeal were initiated with the filing of Lambrix's fourth postconviction motion on April 9, 2009 (V1/1-27). The motion included a witness list identifying 27 proposed witnesses, including everyone that was a witness at the last series of evidentiary hearings, along with all the witnesses which Lambrix wanted to present at those hearings, along with several current and former FDLE employees, along with all prior defense attorneys, several assistant state attorneys and assistant attorneys general, Elizabeth Golding from the public records repository, and Michael Hickey, Lambrix's personal investigator (V1/5-7). Lambrix verified the motion on April 2, 2009 (V2/335). The State filed a response (V2/336-347), and the court scheduled a case management conference for May 28, 2009 (V2/348-50).

At the beginning of the hearing, counsel for Lambrix indicated that the hearing could not go forward, because Lambrix had notified CCRC-S that he was firing them, as he did not believe they were acting in his best interest (V9/5-6). The State objected to any delay, as there had been nothing in writing submitted to the court suggesting that Lambrix was not satisfied with counsel, but after a short recess, the court continued the hearing (V9/9, 15-16). The court determined that

Lambrix would need to be brought to court to clarify the situation (V9/16).

Lambrix thereafter filed a motion to quash a transport order that had been entered, and requested a telephonic hearing into concerns he had regarding CCRC-S's performance (V2/355-364). The court conducted a hearing on July 31, 2009, pursuant to Nelson v. State, 274 So. 2d 256 (Fla. 4th DCA 1973) (V2/365-67; V6). At the hearing, Lambrix outlined his complaints, asserting that CCRC had failed to contact an independent investigator to discover if the tire iron admitted into evidence had come from a Chrysler vehicle; had failed to retain a forensic crime scene expert; and had refused to file a motion to secure DNA testing on hairs which were noted to have been found on the tire iron (V6/5-7). Lambrix clarified that he was not seeking to represent himself for purposes of the proceedings in the circuit court but he felt that he was entitled to new counsel since CCRC-S did not comply with his directions (V6/8-9). When the trial court asked Mr. Hennis to respond to the complaints, Mr. Hennis advised that he could not address details because he felt constrained by attorney-client privilege, but noted there was also a potential conflict of interest in that Lambrix had indicated an intent to file a federal civil rights

lawsuit against CCRC-S director Neal Dupree, although no motion to withdraw had been filed by CCRC (V6/9-11).

The court asked Lambrix to provide more specifics as to his complaints about counsel, and Lambrix asserted that the newly obtained FDLE documents suggested that the tire iron that had been admitted into evidence at trial was not the tire iron which Lambrix used to kill the male victim, Lamberson (V6/15-16). Lambrix's position was that the tire iron admitted at trial had been fabricated, an allegation which would be conclusively proven by establishing that the tire iron admitted did not come from a Chrysler vehicle, and two of the vehicles found at the scene, belonging to Lambrix and to Frances Smith, were Chrysler products (V6/16). To that end, Lambrix had asked CCRC-S to obtain Chrysler blueprints to demonstrate that the tire iron was not from either vehicle (V6/16). In addition, because the most efficient way to present the evidence to the court was through an independent expert in processing crime scenes, CCRC-S should have retained such an expert but had not done so (V6/16-17). According to Lambrix, a forensic expert would have been able to provide an affidavit attesting to the materiality of the newly obtained FDLE notes (V6/17). Lambrix also stated that, until recently, he'd had no reason to believe that Frances Smith was exaggerating what had happened or fabricated a weapon, all of

which called into question the authenticity of the tire iron admitted at trial (V6/17). Because the lab notes revealed that presence of blondish hairs on the tire iron which did not match either victim, and because Frances Smith had blond hair at the time but Lambrix did not, Lambrix believed that Smith or someone from the State had fabricated the weapon and therefore offered a basis to impeach Smith at trial (V6/18-19). Lambrix noted that since the crime occurred on February 6 but the tire iron was not discovered in the creek until February 17, Smith had nearly two weeks to return to the area, wrap her own shirt around a non-Chrysler tire iron, and throw it into the creek, in order to bolster her own testimony (V6/19-20). Lambrix asserted that he had outlined all of this to CCRC-S, but they had failed to investigate and consequently they were unable to provide support for the tire iron claim as filed (V6/20).

The court asked counsel Hennis to respond to the complaints, and Hennis represented that his team had been working diligently, reviewing the case and filing the appropriate motion (V6/22). The State was also given an opportunity to respond, and asserted that the record reflected CCRC had represented Lambrix with diligence, and that there could be no finding of inadequate performance by counsel since there was no reasonable basis to contact Chrysler, file a DNA

motion, or hire a forensic expert (V6/24-25, 30-33). Lambrix suggested that the court could avoid a decision as to the competency of counsel by simply granting a discharge due to the conflict of interest that counsel had discussed based on the civil rights suit (V6/30). Lambrix also outlined his theory of materiality on the FDLE documents at issue in the underlying postconviction motion: due to the lapse of time between the murders and the discovery of the tire iron, it is reasonable to conclude that, in the interim, Smith and the State were unable to locate the tire iron that Lambrix used, and were concerned that the lack of the weapon would undermine Smith's testimony, so either Smith or someone with the State got another tire iron, wrapped it in Smith's "Ft. Lonesome" T-shirt, threw it over the bridge into the creek and then directed the diver from the sheriff's office to the location (V6/18-19, 34-38).

The circuit court found that there was no reasonable cause to believe that Lambrix's attorneys were rendering ineffective assistance, and that the attorneys were, in fact, performing competently (V2/378-80; V6/39, 51). Accordingly, the motion to discharge was denied (V2/378-80; V6/39, 51). In light of that ruling, the court asked Lambrix if he wanted to proceed *pro se*, and Lambrix responded that he was not going to waive his statutory right to counsel at that time because Lambrix

interpreted James v. State, 974 So. 2d 365 (Fla. 2008) as holding that any such waiver would be irrevocable (V6/40-41). In light of that position, the court did not conduct any inquiry on Lambrix's ability to represent himself (V6/51). CCRC-S asked the court to also rule on the conflict of interest claim, and Lambrix asserted that his purpose in filing the suit was not to create a conflict, stating he had not asked the court to remove counsel on that basis (V6/43-49). The court determined that the conflict issue was not before the court at that time, and declined to rule on that claim as basis for discharge (V6/51).

Following the hearing, the trial court scheduled another case management conference for September 17, 2009 (V2/368-70). Prior to that hearing, Lambrix served a *pro se* motion to disqualify Judge Corbin (V2/385-400), which was denied as legally insufficient (V3/402). A week after serving the motion for disqualification, Lambrix filed a *pro se* motion to secure DNA testing, asking that it be heard at the September 17 hearing (V3/410-442).

The September 17 hearing had to be rescheduled at the request of the State due to a death in counsel's family; a new hearing date of October 14, 2009 was set (V3/403-09). Prior to that hearing, Lambrix also filed a *pro se* motion to discharge counsel pursuant to Durocher v. Singletary, 623 So. 2d 482 (Fla.

1993) (V4/711-16). In addition, CCRC-S filed a motion to withdraw as counsel based on an alleged conflict of interest due to the civil rights lawsuit (V4/660-67). The case was reassigned by the circuit chief judge to the Honorable Christine Greider on October 9, 2009, and the October 14 hearing on the Durocher and withdrawal motions was reset for November 17, 2009 (V4/674).

The State had calendar conflicts that required a continuance of the November 17 hearing, and that hearing was reset for January 21, 2010 (V4/683, 690-91, 697; V7). The court started with the Durocher motion and Lambrix explained that he felt, in light of Judge Corbin's ruling denying his request to discharge counsel, that he had no choice but to seek to represent himself (V7/11-13). Lambrix's attorneys had no comment other than to observe that they had no concerns at all about Lambrix's competency and they were not requesting a competency determination (V7/13). The State noted that Lambrix could represent himself under James but that Lambrix should be warned that there would be limits on his ability to secure counsel again if he changed his mind (V7/15-16). The court directed that Lambrix be placed under oath and conducted an inquiry to determine if Lambrix understood the dangers of self-representation and if Lambrix was competent to waive his

statutory right to counsel (V7/19-28). Lambrix clarified that he had no intention of waiving any postconviction proceedings and admitted that, if he felt that he was no longer able to adequately pursue his postconviction claims, he would reassert his statutory right to counsel (V7/31-32).

The court reviewed James and Durocher and found them both to be factually distinguishable, since both James and Durocher were seeking to waive any further collateral remedies, while Lambrix intended to pursue his postconviction claims (V7/32-33). The court concluded that, while Lambrix was competent to participate in the proceedings and he understood the consequences of waiving counsel and waiving postconviction proceedings, Rule 3.851(I)(7) did not authorize the discharge of counsel in order for a defendant to proceed *pro se* with postconviction proceedings (V7/32-33, 37). The court clarified that it was not ruling that Lambrix was required to waive all further proceedings in order to waive counsel, only noting that that was the situation covered by the rule (V7/38-39). In the written order denying the motion to discharge counsel, the court observed that Durocher was distinguishable and that Lambrix's waiver was equivocal, as Lambrix admitted that he might desire counsel in the event he was not able to adequately represent himself (V4/717-19). In denying Lambrix's *pro se* motion for

reconsideration, the court noted that Lambrix had mischaracterized the ruling as the denial of self-representation, but the court had simply denied the motion pursuant to Durocher without prejudice, because this was not a Durocher situation (V4/735-36).

Turning to CCRC's motion to withdraw, the court entertained argument then deferred ruling in order to review the 214-page complaint that Lambrix had filed in the Second Circuit (V7/39-48). Later, upon review of the complaint, the court denied the motion to withdraw (V4/720-25). The court thereafter scheduled the case management conference for May 27, 2010 (V4/737-39).

At the case management conference, the court's staff attorney, Nicole Forrett, identified herself for the record at the start of the hearing (V8/5, 8). The court summarized the orders that had been entered and there was a discussion about whether an order had been entered on Lambrix's *pro se* motion for DNA testing (V8/8-14). The court initially thought that there had been an order entered striking the motion as a nullity because it was filed *pro se*, but no such order was found in the record (V8/41-47). Counsel Hennis advised the court that he would adopt some portions of the *pro se* motion, and agreed to file a new motion for DNA testing (V8/42-47).

Argument was also offered on the pending successive postconviction motion (V8/14-46). Hennis advised that he was expanding the witness list provided in the motion to include Larry Bankert, the diver who had recovered the tire iron from the creek (V8/15). As to Claim 1, the public records claim had been pled to set up the historical context of the substantive claims that followed (V8/15). As to the substantive claims regarding the FDLE documents on the tire iron, Hennis asserted that the record could be used to impeach Frances Smith's testimony about the recovery of the weapon and the circumstances of the crime; he also claimed the records supported the prior defense theory of conspiracy as established through Debra Hanzel's testimony on the last postconviction proceeding (V6/17-18). Hennis explained that was the reason that the proposed witness list included all of the experts that had been excluded from the last hearing as irrelevant to the conspiracy claim, because these records also demonstrated that the investigation had been improper (V8/18). This conclusion was based on the fact that the records revealed that Assistant State Attorney Randall McGruther had directed the lab not to conduct any further analysis of the hairs discovered on the tire iron which did not match Lambrix or either of the victims (V8/18). According to Hennis, the decision of the State Attorney's Office

to stop any further investigation could have been used by trial counsel to challenge the chain of custody on the evidence, but this had never been revealed to defense counsel at trial (V8/18-20). Hennis contended that if the tire iron was not the actual weapon but had been "produced in the process of the case to strengthen the State's case, with collusion by Frances Smith," this would cast Smith's credibility in a different light to the jury, and Lambrix would have been acquitted (V8/20). The defense would have asked Smith if she had obtained another tire iron and thrown it in the creek to bolster her testimony (V8/20). Because this was the very essence of the conspiracy theory as previously pled, and because the defense had not been permitted to present expert testimony at the last proceeding, an evidentiary hearing was required (V8/21).

CCRC also claimed that, unless the State agreed that these records had not been previously produced, an evidentiary hearing was necessary on that issue, as well as to determine if all of the FDLE documents had been produced at this time (V8/25-26). The State responded that, although it did not agree that these records had been suppressed, this court could consider the records as newly obtained for purposes of this hearing, so that the primary issues of exculpability and materiality could be considered (V8/26-29, 36).

The State submitted that the records were not exculpatory because they did not have any impeachment value; although Lambrix claimed they would be used to impeach key witnesses, he had not identified any inconsistency between the testimony at trial and the information in the records (V8/29-34). Because Lambrix had admitted killing Lamberson with a tire iron and had never disputed that he had subsequently wrapped the weapon in a T-shirt and thrown it into the creek, the FDLE records could not be exculpatory or material (V8/32-34).

The court asked Hennis if CCRC had filed any public records request for FDLE records under Rule 3.852, and Hennis responded that no request had been filed since the initial production of public records in 1987, but that FDLE had had the same obligation then as it did now, to provide all records which were not exempt from public records (V8/34-35). The court reserved ruling on the request for an evidentiary hearing (V8/40).

On June 8, 2010, Judge Greider received a motion for disqualification that was filed by Lambrix *pro se* (V5/964-988). On June 17, 2010, the court struck the motion as an unauthorized *pro se* pleading which was a nullity, since it had not been adopted by counsel (V4/756-57).

On July 19, 2010, two orders were rendered, denying the motion for DNA testing (V4/752-55) and the fourth postconviction

motion (V4/796-801). The court found the motion for DNA testing to be legally and facially insufficient, as it failed to demonstrate how any testing would exonerate Lambrix or mitigate his sentence (V4/752-54). The postconviction motion was also denied as facially insufficient, with the court finding that Lambrix's challenge to the public records laws was without merit; that the FDLE records at issue were not favorable, exculpatory, or impeaching, and do not undermine confidence in the verdict; that Lambrix's claim rested on speculation; that Lambrix had not demonstrated that the records could not have been obtained by trial counsel with due diligence; that the records were not admissible or material; that Lambrix's conspiracy theory had been rejected; and that use of the records would not result in an acquittal or lesser sentence (V4/797-801).

On July 21, 2010, CCRC-S filed a motion for withdrawal of the court's June 17 Order denying Lambrix's motion to disqualify Judge Greider, with a "limited" adoption of the *pro se* motion (V4/758-65). This motion was dismissed as untimely, unauthorized, and moot, since the court had already denied the substantive motions at issue (V4/766-67). To the extent that the motion presented a new motion to disqualify, it was denied as legally insufficient (V4/766-67).

CCRC-S filed motions for rehearing on the order denying DNA testing and the order denying the postconviction motion, which the court denied as failing to identify anything that the court had overlooked (V5/895-900, 901-09, 940-41). Lambrix also filed a *pro se* motion for rehearing as to both orders, which was not addressed by the court (V5/913-39). The notice of appeal was filed on September 3, 2010 (V5/949).

SUMMARY OF THE ARGUMENT

This appeal seeks review of the trial court's summary denial of Lambrix's fourth postconviction motion. The motion itself was entirely frivolous, premised on a Brady v. Maryland, 373 U.S. 83 (1963), claim arising out of the production of documents generated by the Florida Department of Law Enforcement in 1983 with regard to the tire iron that was admitted into evidence at Lambrix's trial. Because Lambrix's own recounting of the deaths admits that he struck the male victim with a tire iron and that Frances Smith was present and assisted with the burying of the bodies and disposal of the tire iron, the fact that two unidentified hairs which he now claims were Smith's were found on the weapon does not exonerate Lambrix or serve to mitigate his sentence. Lambrix's completely unsubstantiated and speculative theory that the tire iron was "fabricated" in order to corroborate Frances Smith's testimony is an insufficient basis to conduct DNA testing or to provide postconviction relief.

As is typical, the bulk of Lambrix's brief focuses on irrelevant collateral facts and distracting non-issues, rather than the FDLE documents. Because the substantive claim is itself entirely frivolous, Lambrix manipulated the proceedings below to generate as much delay as possible. To that end, he

played his most predictable card: moving to discharge his attorneys at the Office of Capital Collateral Regional Counsel, Southern Region [CCRC-S]. When that failed, he asserted a right to represent himself under Durocher v. Singletary, 623 So. 2d 482 (Fla. 1993). As he does in every proceeding, Lambrix also tried to disqualify the presiding judges along with the entire Twentieth Judicial Circuit. As will be seen, none of these issues offer any basis for relief.

The lack of any good faith issue is demonstrated by the fact that the arguments in support of Lambrix's claims offer no meaningful legal analysis relevant to the issue as presented. As to each issue, Lambrix's brief primarily outlines the factual context, describing how the issue arose and was presented below. While boilerplate legal principles are sprinkled through the arguments, the cases cited do not address the issues as they are presented here. Then each issue offers the same conclusory paragraph, stating the claims implicate "both federal and state constitutional issues and are predicated on the violation of Appellant's protected federal rights under the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, supported by applicable federal law and associated rights under the Florida Constitution and applicable state law," and that the actions of the lower court "imposed a limitation on

[Lambrix's] due process right to prove his claims." See Appellant's Initial Brief, pp. 32, 44, 50, 60, 70-71, 74.

The true issue presented herein is the extent to which this Court will permit capital defendants who have no good faith postconviction claim to manipulate the system and squander public resources. This Court should not tolerate the abusive practices that characterize every proceeding undertaken by Lambrix. Due process does not require the State to provide a forum for the games which Lambrix seeks to play, and this Court should resolve this case by giving guidance to trial courts faced with the particular demands of capital defendants seeking to litigate frivolous successive collateral proceedings.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRED IN DENYING LAMBRIX'S REQUEST TO REPRESENT HIMSELF.

Lambrix's first issue challenges the denial of his motion to discharge CCRC-S and represent himself in the proceedings below. Rulings on requests for self-representation are reviewed for an abuse of discretion. Trease v. State, 41 So. 3d 119, 124-25 (Fla. 2010); Aguirre-Jarquin v. State, 9 So. 3d 593, 602 (Fla. 2009); Guardado v. State, 965 So. 2d 108, 113 (Fla. 2007); Holland v. State, 773 So. 2d 1065, 1069 (Fla. 2000). No abuse of discretion has been demonstrated in this case.

As this Court is aware, Lambrix has filed numerous motions attempting to discharge his attorneys during the prior decade as his successive postconviction motions have been litigated. He frequently asserts constitutional principles in an effort to demonstrate that his fundamental right to "choose his own destiny" grants him the freedom to not only decline to litigate potentially meritorious claims as in Durocher but also to actively litigate unmeritorious claims in whatever manner he wants. However, there is no authority requiring this Court to construe the state or federal constitutions in such a way.

The federal due process clause which Lambrix regularly invokes only assures that he be provided reasonable access to the courts, which Lambrix has been granted in abundance. Kokal v. State, 901 So. 2d 766, 778 (Fla. 2005) ("all that due process requires is that the defendant be provided meaningful access to the judicial process"); State ex rel. Butterworth v. Kenny, 714 So. 2d 404, 408 (Fla. 1998); District Attorney's Office for the Third Judicial District v. Osborne, ___ U.S. ___, 129 S. Ct. 2308, 2320 (2009); Pennsylvania v. Finley, 481 U.S. 551, 556 (1987) (postconviction relief procedures are constitutional if they "compor[t] with fundamental fairness"); Morrissey v. Brewer, 408 U.S. 471, 481 (1972).

While Florida has provided a statutory right to representation for all capital defendants, that right is not constitutional in nature and is subject to the reasonable rules of practice and procedure which govern the criminal justice system. Both this Court and the United States Supreme Court have expressly held that there is no constitutional right to counsel in collateral criminal proceedings, even where the death penalty has been imposed. Kenny, 714 So. 2d at 407; Murray v. Giarratano, 492 U.S. 1, 10 (1989). Moreover, the statutory right to counsel is limited to the provision of counsel for authorized court pleadings only; counsel is not permitted to

file frivolous or successive postconviction challenges. Olive v. Maas, 811 So. 2d 644, 654-55 (Fla. 2002); §§ 27.702(1), 27.711(1)(c), Fla. Stat. Thus, neither the due process right to access to the courts, nor the corresponding statutory right of counsel to pursue any and all available and authorized judicial remedies, provide an unlimited right to file abusive, successive, and frivolous pleadings in the circuit court or in any court, either through counsel or *pro se*.

It is also well established that there is no constitutional right to self-representation beyond the trial stage. Martinez v. Court of Appeal of California, 528 U.S. 152, (2000); Logan v. State, 846 So. 2d 472, 474 (Fla. 2003); Davis v. State, 789 So. 2d 978, 979-80 (Fla. 2001).

In this case, Lambrix and CCRC have both repeatedly asserted that Lambrix was entitled to represent himself for purposes of litigating the successive postconviction motion filed below, along with the motion for DNA testing. Neither Lambrix nor CCRC have ever provided any authority, much less any compelling argument, that requires a court to permit a defendant to exercise a right to self-representation in this context. Instead, both have relied exclusively on Faretta v. California, 422 U.S. 806 (1975), Durocher, and James, and invoke the "Fifth, Sixth, Eighth and Fourteenth Amendments to the United States

Constitution," along with federal law and state constitutional rights. Even after the court below denied Lambrix's motion without prejudice because he was not seeking to do what Durocher and James were doing, he did not file a new motion requesting self-representation under any other authority. In fact, this Court has never held that a trial court must permit a postconviction capital defendant to represent himself as long as he is deemed competent to do so.

In McDonald v. State, 952 So. 2d 488 (Fla. 2006), this Court considered a capital postconviction appeal where the defendant was permitted to waive CCRC's representation and represent himself during his initial postconviction proceeding. On appeal, McDonald was represented by CCRC, which had also served as stand-by counsel during the postconviction proceedings in the circuit court. In addressing the appellate claim that the trial court had erred in allowing McDonald to exercise his right to self-representation, this Court found that the trial court conducted an adequate inquiry and therefore the ruling to allow self-representation was proper. While McDonald therefore recognizes that self-representation in an initial postconviction proceeding is permissible, there is no holding by this Court that such is absolutely required.

The court's ruling below must be considered in the context of the other collateral issues on Lambrix's right to representation. Lambrix's argument discusses his dissatisfaction with appointed counsel at CCRC-S; the potential conflict of interest generated by the filing of a civil rights lawsuit against many Florida officials, including the director of CCRC-S; and Lambrix's purported right under Durocher to waive counsel at any time and to conduct his own, *pro se* successive litigation. The court below properly found that Lambrix's complaints against CCRC-S were not justified, a ruling Lambrix discusses but does not appear to contest. And to the extent counsel expresses concern with the conflict of interest issue, it should be noted that the Second Circuit dismissed Lambrix's lawsuit against CCRC and other parties on March 22, 2010 (after service of Lambrix's initial brief).[2]

Notably, the court below also found that Lambrix's desire to waive counsel was equivocal (V4/718). This finding is supported by the record, since Lambrix admitted that he may want to re-assert his statutory right to counsel during the course of the proceedings, "in the event that circumstances that I'm not aware of today develop to the point that I can no longer

[2] This Court may take judicial notice of the Order dismissing the complaint, which is attached as Ex. 1, pursuant to § 90.202(e), Fla. Stat.

adequately pursue these postconviction claims" (V7/31-32). Lambrix discusses this finding in a footnote, asserting that he is entitled to be offered counsel at a subsequent crucial stage, citing Muehleman v. State, 3 So. 3d 1149, 1156 (Fla. 2009) (where the defendant was permitted to represent himself at his new penalty phase proceeding) (Appellant's Initial Brief, p. 30, n.12). However, Lambrix's comment did not go to invoking counsel at a subsequent stage but admitted he might change his mind in the course of litigating his current claims. Given his comment and the vacillating nature of Lambrix's position in the past with regard to invoking or waiving his right to counsel, the trial court's denial of Lambrix's request for self-representation was not an abuse of discretion.

While it is certainly to a defendant's advantage to be represented by counsel, the provision of counsel for capital defendants serves as a benefit to the entire judicial system. As an officer of the court, an attorney can insure that any pleadings are brought in good faith, presenting allegations that merit the use of state resources to litigate. Theoretically, an attorney's ethical requirements will reduce the number of frivolous claims which a court must consider, so that the State's scarce resources can be devoted to those claims worthy of judicial consideration. This Court has recognized that these

policy considerations are appropriate considerations in weighing a defendant's right to self-representation in collateral proceedings. Logan, 846 So. 2d at 474-75.

Lambrix's history demonstrates that he has little respect for the need to limit judicial actions to those which present properly justiciable issues. However, this State cannot afford to grant an unfettered right to all capital defendants to litigate whatever frivolous, abusive pleading the defendant chooses to pursue. A defendant has no right to access the courts for the purpose of filing repetitive, unauthorized motions. A defendant with a history of filing such frivolous pleadings can be precluded from continuing the practice, by limiting access to the courts to pleadings which are signed by a member in good standing of the Florida Bar. See Johnson v. Rundle, 36 Fla. L. Weekly S9 (Fla. Jan. 6, 2011); Pettway v. McNeil, 987 So. 2d 20, 22 (Fla. 2008).

Finally, it is significant that Lambrix has not even attempted to identify any prejudice resulting from the rulings below with regard to his attempts to discharge counsel and represent himself. There has been no identification of any potential issue which was not heard or considered, or any other suggestion that Lambrix has been disadvantaged by CCRC's continued representation. To the contrary, he has been

permitted “hybrid” representation, which he is not entitled to, since the substantive pleadings he filed below were either adopted by counsel or considered by the court on the merits.

Lambrix has not established that the court below abused its discretion in denying his request for self-representation. This Court must reject this issue and affirm the order entered below.

ISSUE II

WHETHER THE TRIAL COURT ERRED IN SUMMARILY DENYING LAMBRIX'S MOTION FOR DNA TESTING.

Lambrix also challenges the denial of his *pro se* motion for DNA testing. This issue presents a legal ruling, subject to *de novo* review. Henyard v. State, 992 So. 2d 120, 125 (Fla. 2008) (postconviction motion denied solely on the pleadings presents a legal issue, reviewed *de novo*); State v. Coney, 845 So. 2d 120, 137 (Fla. 2003) (holding pure questions of law discernible from the record to be subject to *de novo* review).

After the circuit court denied Lambrix's claim that his attorneys were performing unreasonably by, among other things, refusing to file a motion for DNA testing, Lambrix filed his own motion for testing on September 18, 2009 (V3/411-442). Although Judge Greider recalled at the case management conference in May, 2010, that the motion had been dismissed as a nullity since Lambrix was represented by counsel, no such order was in the record (V8/44, 47). At the case management conference, Mr. Hennis advised Judge Greider that CCRC would adopt the motion as filed by Lambrix, although the allegations of corruption and misconduct by the Attorney General's Office would not be adopted (V8/42-44). Mr. Hennis agreed to file a new motion for consideration, but no such motion was ever filed (V8/47).

CCRC now offers different reasons for the failure to file a motion, suggesting at times that no motion was ever filed because the trial court did not provide a specific filing deadline (Appellant's Initial Brief, p. 38), and at other times it was because Lambrix had filed a *pro se* motion to disqualify Judge Greider, and CCRC did not want to file the DNA motion while a disqualification motion was pending (V5/896; Appellant's Initial Brief, p. 65, n. 17). At any rate, for whatever reason, the lack of a new motion for DNA testing is not an issue since the trial judge considered the DNA motion as filed *pro se* on the merits, and did not deny the motion as an unauthorized *pro se* pleading (V4/752-55).

Pursuant to Rule 3.853, Lambrix had the burden of demonstrating the probative value of the blond hairs which he sought to have tested. Robinson v. State, 865 So. 2d 1259, 1264-65 (Fla.) (noting rule requires defendant to allege with specificity how the DNA testing of each item requested to be tested would give rise to a reasonable probability of an acquittal or a lesser sentence; "It is the defendant's burden to explain, with reference to specific facts about the crime and the items requested to be tested, how the DNA testing will exonerate the defendant of the crime or will mitigate the

defendant's sentence"), cert. denied, 540 U.S. 1171 (2004); Cole v. State, 895 So. 2d 398, 402-03 (Fla. 2004).

In this case, Lambrix asserts that the blond hairs belonged to Frances Smith, and therefore DNA testing will support his defense theory that Smith fabricated the tire iron which was admitted into evidence in order to bolster her own testimony. The State agrees the hairs could be linked to Smith, but there would be no probative value to such a nexus. As the court below noted, Lambrix admits that he used the tire iron on the male victim, and that Smith was present at the scene of the murders, assisting with burying the bodies and disposing of the tire iron. Under such circumstances, finding Smith's hair on the weapon would not exculpate Lambrix. Lambrix's unsubstantiated speculation that the hairs suggest Smith "fabricated" the weapon has no basis in the record and is insufficient to support a request for testing. See Hitchcock v. State, 866 So. 2d 23, 26 (Fla. 2004) (speculation cannot support granting relief under Rule 3.853).

Lambrix's theory that the finding of Smith's hair on the tire iron supports his previously pled claim of conspiracy relies on his version of the facts, much of which has been rejected. His reliance on the suggestion that Hanzel testified to a conspiracy previously and that Smith and investigator

Daniels were "lovers" is clearly inadequate to compel testing, since those purported facts have been affirmatively refuted.

Lambrix's argument is long on speculative facts and short on any relevant case law. He cites no cases where DNA testing was compelled on similar facts. In fact, there is a wealth of case law supporting the trial court's finding in this case that DNA testing is not necessary under similar scenarios.

In Van Poyck v. State, 908 So. 2d 326 (Fla. 2005), this Court upheld the denial of a request for DNA motion. Van Poyck and his codefendant Valdez had both been sentenced to death for the murder of a corrections officer during an escape attempt. Van Poyck had requested postconviction DNA testing of all of the clothing worn by himself and Valdez, asserting that the DNA evidence would establish that Valdez was the triggerman, thus mitigating Van Poyck's sentence. In denying relief, the Court concluded that identity of the triggerman would not exonerate Van Poyck or mitigate his sentence. See also Sireci v. State, 773 So. 2d 34, 43-44 (Fla. 2000) (noting even if DNA on hairs found in motel room belonged to codefendant, Sireci is not exculpated); Ross v. State, 882 So. 2d 440, 441 (Fla. 1st DCA) (finding blood and hair evidence linked only to the victim did not exclude defendant from having been present at scene and therefore did not exonerate him), rev. denied, 892 So. 2d 1014

(Fla. 2004); Harris v. State, 868 So. 2d 589, 590 (Fla. 3d DCA) (finding defendant not exonerated by fact that semen in rape kit was not his), rev. denied, 880 So. 2d 1211 (Fla. 2004); Galloway v. State, 802 So. 2d 1173 (Fla. 1st DCA 2001) (denying DNA testing where it would not establish that defendant was not present at scene; "The fact that only appellant's co-defendant's [sic] may have deposited DNA at the crime scene or on the body of the victim does not mean that appellant was not there"); Tompkins v. State, 872 So. 2d 230, 243 (Fla. 2003) (upholding denial of DNA testing where, even if analysis indicated a source other than victim or defendant, there is no reasonable probability of a different result); King v. State, 808 So. 2d 1237, 1247-49 (Fla. 2002) (same).

A review of the record fully supports the lower court's denial of Lambrix's request for DNA testing. No basis for relief has been offered, and this Court must affirm the ruling on this issue.

ISSUE III

WHETHER THE LOWER COURT ERRED IN SUMMARILY DENYING LAMBRIX'S BRADY/GIGLIO CLAIM.

Lambrix next claims that the court below erred in denying the primary claim in his successive motion, which asserted a violation of Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United States, 450 U.S. 150 (1972), with regard to documents generated by the Florida Department of Law Enforcement at the time of the 1983 investigation into the Bryant/Lamberson murders. As this claim was summarily denied, review is *de novo*. Henyard, 992 So. 2d at 125; Coney, 845 So. 2d at 137.

In order to establish a Brady violation, a defendant must show that (1) favorable evidence was (2) suppressed by the State and was (3) material to the case, meaning the withholding of the evidence prejudiced the defense. Riechmann v. State, 966 So. 2d 298, 307 (Fla. 2007); Nixon v. State, 932 So. 2d 1009, 1019 (Fla. 2006); Guzman v. State, 868 So. 2d 498, 508 (Fla. 2003). Prejudice is shown where "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." United States v. Bagley, 473 U.S. 667, 682 (1985); Guzman, 868 So. 2d at 508. "The mere possibility that

an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." United States v. Agurs, 427 U.S. 97, 109-10 (1976). It is Lambrix's burden to establish each of these elements. Strickler v. Greene, 527 U.S. 263, 281 n. 20, 289 (1999); Archer v. State, 934 So. 2d 1187, 1202 (Fla. 2006); Duckett v. State, 918 So. 2d 224, 235 (Fla. 2005). He cannot satisfy his burden on the facts of this case.

In order for the information to be "favorable," it must be something that Lambrix's attorneys could have used to their benefit at trial. The FDLE documents are not favorable to Lambrix; they are neither exculpatory nor impeaching. They do not suggest Lambrix's innocence or implicate anyone else's guilt. Lambrix's claim of materiality offers conclusory assertions that he could have impeached Frances Smith, a critical witness, because the documents undermine her credibility by suggesting she fabricated the tire iron that was admitted at trial. This conclusory assertion of potential impeachment is insufficient. Pardo v. State, 941 So. 2d 1057, 1066-67 (Fla. 2006) (noting skepticism that impeachment of search warrant affidavit could implicate Brady, as confidence in conviction must be undermined).

There has been no allegation that the FDLE documents themselves could or would have been admissible at trial. Inadmissible evidence can rarely, if ever, meet the standard for materiality. Gilliam v. Secretary, Department of Corrections, 480 F. 3d 1027, 1032-33 (11th Cir. 2007); Breedlove v. Moore, 279 F. 3d 952, 964 (11th Cir. 2002). The only potential relevance Lambrix has identified is the speculation that, had these documents been available, his trial attorneys may have been able to use them at trial. Such speculation is facially insufficient to support a Brady claim. Elledge v. State, 911 So. 2d 57, 64 (Fla. 2005); LeCroy v. Dugger, 727 So. 2d 236 (Fla. 1998) (Brady claim summarily denied where defense only offered conjecture about meaning of letters and notes).

Lambrix's claim that the FDLE notes suggest that Frances Smith fabricated the tire iron admitted in this case is not only speculative, it is unreasonable. Lambrix fails to explain why, having seen Lambrix throw the actual weapon into the creek, Smith would return later to try to find the weapon, either on her own or secretly with State investigators. Having observed the disposal of the weapon, she would have no basis to disturb this incriminating evidence or to "fabricate" a new tire iron. In addition, Lambrix's claim relies on facts which both the circuit court and this Court have soundly rejected, including

the existence of a conspiracy and an affair between Smith and State Attorney investigator Daniels.

It is, of course, not surprising that Frances Smith's hairs may have been found on the tire iron, since there is no dispute that Smith was present and assisted with burying the bodies and disposing of the tire iron. Lambrix explains that what is crucial about the FDLE notes is the indication that prosecutor McGruther advised FDLE that no further testing was necessary, but fails to explain how he could impeach Smith with information or why the prosecutor, purportedly aware this was not the murder weapon, would have even submitted the tire iron for testing.

Lambrix has not demonstrated that the lab case notes are favorable to the defense on the facts of this case. See Kelley v. State, 3 So. 3d 970, 973 (Fla. 2009) (undisclosed evidence disposition forms were not favorable where they did not exonerate the defendant or implicate someone else, and contained no useful impeachment information); Elledge, 911 So. 2d at 63-64 (undisclosed EEG report was not favorable where results showed no abnormality; speculation that defense expert could have mined report for mitigation insufficient); Maharaj v. State, 778 So. 2d 944, 953 (Fla. 2000) (no showing that information that victims had purchased life insurance policies was favorable to defense, where it did not tend to negate guilt); Sireci, 773 So.

2d at 41-42 (Brady claim summarily denied where property receipt showing sheriff's office received denim jacket from Las Vegas Police did not support defense theory that two jackets were seized).

While Lambrix asserts that his postconviction experts could use the FDLE documents to bolster their criticisms of the State's investigation and case presentation, this does not infer any materiality for trial purposes. Elledge, 911 So. 2d at 66, n. 10 (failure to disclose information in postconviction does not implicate Brady). Lambrix's claim that the trial attorneys may have used the evidence at trial is similarly unpersuasive; without explaining how, Lambrix contends that his attorney could have used these documents to support a challenge to the chain of custody, to let the jury know that the prosecution had provided direction to the forensics lab about what evidence to test, and to question the return of evidence to a witness without proper inventory controls. None of this information in any way suggests that Lambrix is innocent. In short, Lambrix did not demonstrate that any new FDLE documents are favorable to his defense, and therefore his motion was properly denied.

Lambrix's claim of a Giglio violation is explained in a footnote, asserting the prosecutor "knew that the alleged murder weapon was not what it seemed to be. There was a measure of

fabrication that is supported by the secret instructions to FDLE to do no further testing" (Appellant's Initial Brief, p. 48, n. 15). Giglio provides that the State cannot knowingly present false or misleading evidence, and Lambrix has failed to identify any such evidence here. The routine direction as to what testing should or should not be conducted on an item submitted for analysis does not give rise to any reasonable suggestion that the item was "not what it seemed to be."

On the facts of this case, Lambrix cannot establish that any information from any new FDLE documents was favorable to the defense. The lab case notes do not suggest that Lambrix did not commit these murders and they are not inconsistent with any testimony presented at Lambrix's trial. Because Lambrix failed to demonstrate that any newly obtained documents could be exculpatory, useful for impeachment, or material to his case, this claim was properly summarily denied. This Court must affirm.

ISSUE IV

WHETHER THE TRIAL COURT ERRED IN SUMMARILY DENYING THE CLAIM OF NEWLY DISCOVERED EVIDENCE.

Lambrix next asserts that the court below erred in summarily denying his claim of newly discovered evidence. In this issue, Lambrix asserts that the FDLE documents provided to Michael Hickey in 2008 should have at least compelled an evidentiary hearing. Review is *de novo*. Henyard, 992 So. 2d at 125; Coney, 845 So. 2d at 137. Once again, a review of the record fully refutes this issue.

It is not clear why Lambrix presents this alternative claim of newly discovered evidence, which appears to involve the same FDLE records as his Brady/Giglio claim; presumably, if a court were to determine that the records did not need to be disclosed under Brady, Lambrix wants the records to be analyzed under the standards for relief on newly discovered evidence. However, a claim of newly discovered evidence presents a higher standard for materiality. Trepal v. State, 846 So. 2d 405, 438 (Fla. 2003) (Pariente, J., specially concurring); Jones v. State, 709 So. 2d 512, 521 (Fla. 1998); Guzman, 868 So. 2d at 508. For the same reasons that the FDLE records do not present a reasonable probability of a different outcome had they been available at trial, they do not demonstrate that a different outcome is not

only a reasonable probability, but in fact probable. Jones, 709 So. 2d at 521; Armstrong v. State, 642 So. 2d 730 (Fla. 1994).

Lambrix disputes the denial of this claim, noting that the court below found that he had not demonstrated that the records could not have been obtained previously, although the State agreed below that the court could consider the records to be newly discovered for purposes of determining whether an evidentiary hearing was necessary to show materiality on the Brady claim. The State did not concede that the records could not have been obtained by trial counsel with due diligence, and did not agree that the records had been suppressed (V8/28-29). The trial court determined that, since trial counsel was aware that the tire iron had been submitted to FDLE for analysis, counsel could have requested discovery with regard to any testing or notes (V4/800-01). Trial counsel certainly had the tire iron as admitted, along with the small-sized T-shirt which Lambrix now claims belonged to Frances Smith, available at the time of trial. Thus, the court's conclusion that Lambrix failed to demonstrate due diligence was not inconsistent with the State's position as set forth at the case management conference.

At any rate, without regard to the question of diligence, this claim was properly denied since Lambrix failed to demonstrate materiality as necessary for an evidentiary hearing

on newly discovered evidence. Lambrix asserts that materiality cannot be demonstrated without an evidentiary hearing which permits him the opportunity to present expert testimony suggesting that the investigation of these crimes was deficient. However, just as in Lambrix's prior appeal, the expert testimony he wanted to present bears no connection with the FDLE records relating to the tire iron. Lambrix, 39 So. 3d at 273. Lambrix has never identified any witness that would offer direct testimony which implicates Frances Smith, Bob Daniels, Randall McGruther, or any other individual with "fabricating" the tire iron that was admitted into evidence.

As to Lambrix's assertion that the new FDLE documents had to be considered cumulative to the claims presented in his prior appeals, there is nothing to accumulate. From the last proceeding, there is the claim of a recantation that did not occur, a conspiracy which was not proven, and an affair which did not happen. The FDLE records at issue in this case bear no relationship to any of Lambrix's prior allegations, and no cumulative assessment is necessary. His strongest argument, speculating that Mr. McGruther's direction that no further analysis of the evidence be conducted offers an indication of a conspiracy, is completely unsubstantiated; this direction was not nefarious but represents a routine decision that, in light

of the evidence available for the prosecution, further testing was simply unnecessary.

Once again Lambrix has failed to demonstrate that the FDLE records could be used to impeach Frances Smith or any other witness at the 1984 trial. The court below properly denied this claim of newly discovered evidence, and this Court must affirm that ruling.

ISSUE V

WHETHER THE TRIAL COURT ERRED IN DENYING THE MOTIONS FOR JUDICIAL DISQUALIFICATION.

Lambrix's next claim asserts that the court below erred in denying his motions for judicial disqualification. The denial of a motion for disqualification as facially insufficient is reviewed *de novo*, while the ruling to deny CCRC's motion as untimely presents a factual issue, subject to review under the substantial, competent evidence standard. Doorbal v. State, 983 So. 2d 464, 475-76 (Fla. 2008).

To the extent that Lambrix challenges the denial of his *pro se* motions for judicial disqualification, no relief is warranted because he was represented by counsel at all times in the proceedings below, and therefore his *pro se* motions were properly dismissed as unauthorized.[3] Logan, 846 So. 2d at 479.

Lambrix also challenges the denial of the motion filed by CCRC on July 21, 2010. This motion was denied as untimely, moot, and facially insufficient (V4/766-67). In response, Lambrix claims that motion was not moot because counsel

[3] Although Judge Corbin denied the motion for his disqualification as legally insufficient rather than dismissing it as an unauthorized *pro se* filing (V3/402), Lambrix makes no argument that this motion was legally sufficient, and the finding of legal insufficiency is supported by review of the motion. Moreover, due to the reassignment of this case, Judge Corbin took no substantive action following the filing of Lambrix's motion.

subsequently filed a motion for rehearing that required judicial action. However, the motion for rehearing was not pending when the motion to disqualify was denied, and counsel did not reassert the plea for disqualification before filing the motion for rehearing.

At any rate, Lambrix makes no argument and provides no legal analysis to counter the lower court's finding that his motion was both untimely and facially insufficient. To the extent that he implicitly asserts timeliness by noting, without any citation of authority, that a motion for disqualification can be filed "at any point," he is mistaken (Appellant's Initial Brief, p. 68). In fact, a motion to disqualify must be filed within ten days of learning of the basis for disqualification. See Fla. R. Jud. Admin. 2330(e); Doorbal, 983 So. 2d at 475.

In this case, the record supports Judge Greider's finding of untimeliness. Lambrix acknowledges that his *pro se* motion to disqualify Judge Greider was received by counsel on June 7, 2010; therefore any motion for disqualification based on the facts contained therein should have been filed by June 17. Even presuming that counsel was under the mistaken impression that he did not need to request disqualification since Lambrix had done this for him, counsel acknowledges learning on June 25, 2010, that the trial court had stricken the motion as a *pro se*

nullity, yet he did not file a motion purporting to adopt the *pro se* motion until July 21, 2010, after the trial court had denied the substantive motions (Appellant's Initial Brief, pp. 63-65). These facts fully support the trial court's finding that the July 21 motion was untimely.

Similarly, Lambrix offers no argument as to the legal sufficiency of the motion filed by counsel. Although he provides a lengthy string cite for the proposition that the court cannot pass on the truth of the allegations but must confine itself to ruling on the facial sufficiency of the motion, it is clear that the court below did not pass on the truth of the allegations, but simply found the motion facially insufficient (V4/766-67). Lambrix does not even assert otherwise.

As to legal sufficiency, the motion asserted that Judge Greider must be disqualified because she previously worked as an Assistant State Attorney and she made a contribution to State Attorney Steve Russell's election campaign. The motion also claimed that staff counsel for the court, Nicole Forrett, had received money for consultation by one of Lambrix's private investigators while she worked as an Assistant State Attorney. None of these allegations provide any basis for a reasonable person to believe that Judge Greider would not be neutral or

impartial. Lambrix has not cited any authority compelling disqualification on similar facts.

Even if one of the parties had contributed to Judge Greider's election campaign, disqualification would not be mandated. MacKenzie v. Super Kids Bargain Store, Inc., 565 So. 2d 1332 (Fla. 1990); Caperton v. A.T. Massey Coal Co., ___ U.S. ___, 129 S. Ct. 2252, 2263 (2009) (noting that not every campaign contribution creates a probability of bias, although recusal may be required in extraordinary cases). Obviously there is even less cause for concern when the campaign contribution was given *by* the judge rather than given *to* the judge. As for Judge Greider's former employment as an assistant state attorney, there was no allegation that Greider was ever involved in the Lambrix prosecution in any manner, which may or may not require disqualification. See Dendy v. State, 954 So. 2d 1221 (Fla. 4th DCA 2007); Duest v. Goldstein, 654 So. 2d 1004 (Fla. 4th DCA 1995). Judge Greider's mere status as a former prosecutor is not a facially sufficient basis for disqualification. Wright v. State, 857 So. 2d 861 (Fla. 2003) (finding judge's status as a special deputy sheriff at the time of trial did not require recusal).

As no reasonable basis for judicial disqualification has been identified, this Court must deny relief on this issue.

ISSUE VI

WHETHER THE TRIAL COURT ERRED IN SUMMARILY DENYING LAMBRIX'S ASSERTION THAT FLORIDA'S PUBLIC RECORDS LAWS ARE UNCONSTITUTIONAL.

Lambrix's last claim asserts that the court below erred in denying his claim that Section § 119.19, Florida Statutes, and Florida Rule of Criminal Procedure 3.852, are unconstitutional. This is a legal issue, to be considered *de novo*. Henyard, 992 So. 2d at 125; Coney, 845 So. 2d at 137.

This claim offers no basis for relief. Lambrix asserts that the statute and rule governing public records production in capital cases is unconstitutional, because the FDLE documents at issue in this proceeding were never disclosed under those authorities (Appellant's Initial Brief, pp. 72-73). Lambrix offers this claim despite the fact that he never even requested FDLE documents under Rule 3.852 (V8/34-35), and whatever request may have been made in 1987 under Section 119.19 was not offered to the court below and is not in the record. Apparently, the claim is that these authorities are unconstitutional because they do not require that all public records relating to any capital case be spontaneously provided to the repository. He has offered no authority for finding a violation of due process on this basis.

Lambrix also asserts that the statute and rule are unconstitutional because they create a "procedural obstacle course" which generates confusion (Appellant's Initial Brief, p. 73). The rule is not invalid simply because Lambrix and his attorneys lack the cognitive ability to understand a rule of procedure which places an obligation on them to affirmatively seek public records. Notably, Lambrix's counsel understood the rule and appropriately sought public records in his prior proceeding (see SC08-64 record, V36/7252-55). Once again Lambrix offers no authority for finding a violation of due process on this basis.

This Court has affirmatively upheld the constitutionality of Florida's public records laws. This Court expressly acknowledged the constitutionality of Rule 3.852 upon its adoption. In re Amendment to Fla. Rules of Crim. Procedure-Capital Postconviction Pub. Records Prod., 683 So. 2d 475, 475-476 (Fla. 1996); see also Seibert v. State, 35 Fla. L. Weekly S437 (Fla. July 8, 2010, as revised on denial of motion for rehearing, April 14, 2011) (finding trial court did not err in denying postconviction claim that Rule 3.852 was unconstitutional). Lambrix has not provided any basis for any other result. Accordingly, this Court must deny relief on this issue.

CONCLUSION

WHEREFORE, the Appellee, State of Florida, respectfully requests that this Honorable Court affirm the Order denying postconviction relief entered below.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to William M. Hennis, III, Litigation Director, Capital Collateral Regional Counsel - South, 101 N.E. 3rd Ave., Suite 400, Ft. Lauderdale, Florida 33301-1100, this 28th day of April, 2011.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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IN THE SUPREME COURT OF FLORIDA

CARY MICHAEL LAMBRIX,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

CASE NO. SC10-1845
Lower Tribunal No. 83-12-CF
DEATH PENALTY CASE

APPENDIX