

IN THE SUPREME COURT OF FLORIDA

CAREY MICHAEL LAMBRIX,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO.: SC11-1845

L.T. No.: 83-CF-12

DEATH PENALTY CASE

RESPONSE TO PETITION FOR WRIT OF PROHIBITION
AND
MEMORANDUM OF LAW

COMES NOW, Respondent, Walter A. McNeil, Secretary, Florida Department of Corrections, by and through the undersigned counsel, and hereby responds to the Petition for Writ of Habeas Corpus filed in the above-styled case. Respondent respectfully submits that the petition should be denied, and states as grounds therefore:

FACTS AND PROCEDURAL HISTORY

The procedural history in this case is lengthy and was outlined recently in this Court's opinion in Lambrix v. State, 39 So. 3d 260, 262-265 (Fla. 2010).¹ This Court provided the following:

¹ Certiorari review of that decision was denied on January 10, 2011. Lambrix v. Florida, 131 S. Ct. 917 (2011).

This death case, which has been in the judicial system for a substantial period of time, has a lengthy procedural history. The first trial ended in a mistrial after the jury could not agree on a verdict. A second trial was held before a different judge, Judge Richard M. Stanley, and the jury found Lambrix guilty of both counts of murder. After a penalty phase hearing, the jury recommended a sentence of death by a vote of ten to two for the murder of Aleisha Bryant and by a vote of eight to four for the murder of Clarence Moore. The trial court sentenced the defendant to death, after finding five aggravating circumstances [FN2] and no mitigation in regard to the murder of Moore and four aggravating [FN3] and no mitigating circumstances in regard to the murder of Bryant.

[FN2] The trial judge found the following five aggravating circumstances: (1)the capital felonies were committed by a person under sentence of imprisonment; (2)the defendant was previously convicted of another capital felony; (3)the capital felony was committed for pecuniary gain; (4)the capital felonies were especially heinous, atrocious, or cruel (HAC); and (5)the capital felonies were committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification (CCP).

[FN3] The trial judge found all of the same aggravating factors except that the capital felony was committed for pecuniary gain.

On appeal, this Court discussed the relevant facts of the underlying crime:

On the evening of February 5, 1983, Lambrix and Frances Smith, his roommate, went to a tavern where they met Clarence Moore, a/k/a Lawrence Lamberson, and Aleisha Bryant. Late that evening, they all ventured to Lambrix' trailer to eat spaghetti. Shortly after their arrival, Lambrix and Moore went outside. Lambrix returned about twenty

minutes later and requested Bryant to go outside with him. About forty-five minutes later Lambrix returned alone. Smith testified that Lambrix was carrying a tire tool and had blood on his person and clothing. Lambrix told Smith that he killed both Bryant and Moore. He mentioned that he choked and stomped on Bryant and hit Moore over the head. Smith and Lambrix proceeded to eat spaghetti, wash up and bury the two bodies behind the trailer. After burying the bodies, Lambrix and Smith went back to the trailer to wash up. They then took Moore's Cadillac and disposed of the tire tool and Lambrix' bloody shirt in a nearby stream.

On Wednesday, February 8, 1983, Smith was arrested on an unrelated charge. Smith stayed in jail until Friday. On the following Monday, Smith contacted law enforcement officers and advised them of the burial.

A police investigation led to the discovery of the two buried bodies as well as the recovery of the tire iron and bloody shirt. A medical examiner testified that Moore died from multiple crushing blows to the head and Bryant died from manual strangulation. Additional evidence exists to support a finding that Lambrix committed the two murders in question.

Lambrix v. State, 494 So.2d 1143, 1145 (Fla. 1986). Some of the additional evidence included testimony by Deborah Hanzel, who met Lambrix after the murders and saw him in a black Cadillac. She and her boyfriend, Preston Branch, helped Lambrix retrieve some of his possessions from Lambrix's trailer and on the way back home, Lambrix offered to show them where two bodies were buried and made incriminating statements. On appeal, Lambrix raised five issues. [FN4] This Court affirmed the convictions and sentences of death. 494 So.2d at 1148.

[FN4] Lambrix raised the following claims: (1)it was unconstitutional to exclude jurors opposed to the death penalty; (2)the trial court erred in excluding a certain juror because it violated the standards set forth in *Witherspoon v. Illinois*, 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968); (3)the trial court erred by limiting his cross-examination of the State's key witness, Frances Smith; (4)the trial court erred in restricting the cross-examination of Connie Smith (no relation to Frances), a special agent with the Florida Department of Law Enforcement (FDLE), concerning a certain notebook found in a vehicle belonging to one of the victims; and (5)the trial court erred in allowing the medical examiner, Dr. Schultz, to use the term "homicide" in reference to the deaths of the victims because there was no proper predicate for that conclusion.

A death warrant for Lambrix was issued, and his execution was scheduled for November 30, 1988. Lambrix filed a motion for postconviction relief in the trial court and a petition for writ of habeas corpus in this Court. In his habeas petition, Lambrix asserted that his appellate counsel was ineffective in failing to argue numerous issues. [FN5] This Court denied habeas relief. See *Lambrix v. Dugger*, 529 So.2d 1110 (Fla. 1988). During this time, Lambrix's motion for postconviction relief was also proceeding before the circuit court. After the circuit court summarily denied postconviction relief, Lambrix appealed this decision, raising two claims. [FN6] This Court denied relief. See *Lambrix v. State*, 534 So.2d 1151 (Fla. 1988). Lambrix then filed a second petition for writ of habeas corpus with the trial court, which was summarily denied. On appeal, Lambrix raised one issue: that his collateral counsel was ineffective for failing to raise a claim of juror misconduct in his prior motion for postconviction relief. This Court again denied relief. *Lambrix v. State*, 559 So.2d 1137 (Fla. 1990). Lambrix also filed a second motion for postconviction relief in the circuit court, which was summarily denied because "his claims were without

merit and procedurally barred as untimely and successive or abusive." *Lambrix v. State*, 698 So.2d 247, 248 (Fla. 1996). In affirming the summary denial, this Court concluded that Lambrix was untimely in presenting the claim that he should have been allowed to represent himself in postconviction proceedings, particularly since Lambrix waited six years to raise this claim. *Id.* at 248.

[FN5] This Court addressed only two of his claims in its written opinion: (1)whether appellate counsel was ineffective because he failed to argue several issues regarding voir dire and the defendant's absence; and (2)whether appellate counsel was ineffective for not raising whether the trial judge erred in refusing to instruct the jury as to voluntary intoxication.

[FN6] Lambrix raised the following claims: (1)trial counsel was ineffective in failing to develop additional evidence that would have entitled Lambrix to jury instructions on voluntary intoxication; and (2)trial counsel was ineffective in not introducing evidence of Lambrix's alcoholism during the penalty phase.

Lambrix also filed postconviction attacks in the federal courts. He filed a federal habeas petition, raising numerous claims including whether jury instructions on HAC and CCP violated *Espinosa v. Florida*, 505 U.S. 1079, 112 S.Ct. 2926, 120 L.Ed.2d 854 (1992). See *Lambrix v. Dugger*, No. 88-12107-CIV-Zloch (S.D.Fla. May 12, 1992), *aff'd sub nom. Lambrix v. Singletary*, 72 F.3d 1500 (11th Cir. 1996), *aff'd*, 520 U.S. 518, 117 S.Ct. 1517, 137 L.Ed.2d 771 (1997). Lambrix's *Espinosa* claim was eventually denied. [FN7]

[FN7] After the federal district court denied relief, Lambrix appealed to the United States Court of Appeals for the Eleventh Circuit. Because this Court had not been given an opportunity to address the substance of the *Espinosa* claim, the Eleventh Circuit stayed the proceedings and directed Lambrix to return to the Supreme

Court of Florida to settle any unresolved issues regarding this claim. *Lambrix v. Dugger*, No. 92-4539 (11th Cir. Mar. 3, 1993). In *Lambrix v. Singletary*, 641 So.2d 847 (Fla. 1994), this Court held that Lambrix's *Espinosa* claim was procedurally barred because although it was raised before the trial court, appellate counsel failed to preserve the error on appeal. Further, this Court held that Lambrix was procedurally barred from asserting that appellate counsel was ineffective based on this failure since he had previously litigated other alleged instances of ineffective appellate counsel in prior habeas proceedings. *Id.* at 848. The Eleventh Circuit held that the decision in *Espinosa* could not retroactively apply under *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989). See *Lambrix v. Singletary*, 72 F.3d 1500, 1503 (11th Cir. 1996). The Supreme Court of the United States granted certiorari and affirmed the Eleventh Circuit court's decision, holding that *Espinosa v. Florida* was a new rule and the failure to apply this case retroactively could not be the basis for federal habeas relief. *Lambrix v. Singletary*, 520 U.S. 518, 117 S.Ct. 1517, 137 L.Ed.2d 771 (1997).

As to the remaining issues, the Eleventh Circuit then affirmed the denial of relief of Lambrix's federal habeas corpus petition after an evidentiary hearing. *Lambrix v. Singletary*, 72 F.3d 1500 (11th Cir. 1996). The Eleventh Circuit denied relief without further discussion as to certain claims. [FN8] After analysis, the Eleventh Circuit denied Lambrix's claim that he received ineffective assistance during the sentencing phase of his trial because counsel failed to investigate and present mitigating evidence of Lambrix's alcoholism and drug dependence and evidence that Lambrix had been subject to sexual and physical abuse as a child. *Lambrix*, 72 F.3d at 1504-06. The Eleventh Circuit also denied Lambrix's claim that appellate counsel rendered ineffective assistance by failing to present certain sentencing issues, that his second trial conducted after the first trial ended in

mistrial was barred by double jeopardy, and that Lambrix was denied his fundamental right to testify. *Id.* at 1506-08.

[FN8] The Eleventh Circuit did not elaborate on the following claims, but simply denied them as meritless: (1)Lambrix's counsel rendered ineffective assistance during the guilt phase; (2)the trial court erred in refusing to grant a change in venue; (3)the trial court denied Lambrix his right to confront witnesses against him by limiting the cross-examination of some witnesses; (4)the trial court erred by failing to give a jury instruction on voluntary intoxication; and (5)the trial court made miscellaneous erroneous rulings and instructions during sentencing.

Lambrix has filed numerous pro se extraordinary writ petitions that this Court has either denied or dismissed. [FN9] During postconviction proceedings and before this Court, Lambrix also filed a pro se complaint against some of his attorneys. He also previously sought to have this entire Court disqualified because Chief Justice Quince is recused. In his most recent filing, Lambrix filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 against his attorneys, Governor Charlie Crist, Clerk of Court Thomas Hall, Chief Justice Quince, and others, asserting that there is a conspiracy to deny meritorious claims against death penalty defendants. Counsel for Lambrix consequently filed a motion to withdraw, asserting that this action creates a conflict. Lambrix then filed a pro se motion waiving any potential conflict for the limited scope of permitting oral argument to continue. This Court denied counsel's motion to withdraw.

[FN9] *See, e.g., Lambrix v. Reese*, 705 So.2d 902 (Fla. 1998) (denying petition for writ of mandamus); *Lambrix v. State*, 727 So.2d 907 (Fla. 1998) (denying petition for writ of prohibition); *Lambrix v. State*, 766 So.2d 221 (Fla. 2000) (unpublished order dismissing petition for writ of mandamus as

moot); *Lambrix v. State*, 900 So.2d 553 (Fla. 2005) (unpublished order dismissing petition for writ of mandamus); *Lambrix v. State*, 944 So.2d 345 (Fla. 2006) (unpublished order dismissing petition for writ of mandamus).

Lambrix v. State, 39 So. 3d 260, 260-265 (Fla. 2010).

Since this Court issued its 2010 opinion, Lambrix has continued his litigious ways, filing additional motions for post-conviction relief and habeas petitions. The fourth successive motion for post-conviction relief was denied by the Honorable Judge Greider and is pending before this Court in case number SC10-1845. Of particular relevance to this Response, is that one of the issues on appeal from the denial of that motion is the rejection of Lambrix's motion to recuse Judge Greider.

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). Lambrix also filed a *pro se* original habeas petition in the United States Supreme Court in February, 2011, which was denied May 23, 2011. In re Lambrix, 131 S. Ct. 2907 (2011).

Concurrently with the filing of his fifth successive motion to vacate based on newly discovered evidence, Lambrix filed "Defendant's Motion to Disqualify Judge and the Entire Twentieth Judicial Circuit" on July 13, 2011. On July 18, 2011, the

circuit court rendered an "Order Denying Defendant's Motion to Disqualify Judge and Circuit" and the order was filed with the clerk's office on July 21, 2011.

Lambrix's fifth successive motion for post-conviction remains pending before Judge Christine Greider. A case management hearing was held on September 2, 2011, and the parties are awaiting a decision either denying the successive motion or an order to conduct an evidentiary hearing. A detailed procedural history relating to the instant petition has been submitted to this Court along with this Response in a separate status report.

ARGUMENT

I.

WHETHER THE LOWER COURT ERRED IN FAILING TO GRANT PETITIONER'S MOTION FOR RECUSAL?

A. Preliminary Statement On Applicable Legal Standards

As this Court stated in Riechmann v. State, 966 So. 2d 298, 317-318 (Fla. 2007):

In considering a motion to disqualify, the trial court is limited to "determining the legal sufficiency of the motion itself and may not pass on the truth of the facts alleged." *Rodriguez v. State*, 919 So.2d 1252, 1274 (Fla. 2005); Fla. R. Jud. Admin. 2.330(f). In determining legal sufficiency, the question is whether the alleged facts would "create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial." *Rodriguez*, 919 So.2d at 1274.

Further, “[a]llegations in a motion to disqualify are reviewed under a *de novo* standard as to whether the motion is legally sufficient as a matter of law.” Peterson v. Asklipious, 833 So. 2d 262, 263 (Fla. 4th DCA 2002) (citing § 38.10, Fla. Stat. and Armstrong v. Harris, 773 So. 2d 7 (Fla. 2000)).

B. Petitioner’s Recusal Motion Was Facially Insufficient And Properly Denied By The Court Below

At the outset, the State notes that Lambrix previously filed a motion to recuse Judge Greider on July 21, 2010 to prevent her from hearing a prior motion for post-conviction. This motion alleged virtually the identical grounds that Lambrix has asserted here as grounds for disqualification. Consequently, the instant prohibition would seem to be redundant and its outcome will likely be determined in the case already pending in this Court, wherein Lambrix challenges the denial of the motion to disqualify. See State’s Answer Brief in case number SC10-1845, pgs. 43-46.

Lambrix offers virtually no argument as to the legal sufficiency of the motion filed by counsel. Although he provides a non-controversial discussion asserting that death penalty litigation is a serious matter, he provides very little argument as to the actual allegations allegedly giving rise to his fear of judicial bias. An examination of those reasons

clearly indicates the instant writ of prohibition should be denied.

Petitioner initially complains that the judge was untimely in ruling on his motion. Yet, he ultimately admits that an order was entered in a timely fashion, but, that he simply did not receive it. Petitioner has not cited, and Respondent is unaware of any case law which suggests his failure to receive a copy of an order properly entered by a judge, for whatever reason, renders the order untimely.² It is a matter of record that the judge timely denied Petitioner's motion to recuse on July 18, 2011 and that order was filed with the clerk on July 21, 2011 -- well within the 30-day time limit provided by Florida Rule of Judicial Administration 2.330(j). See Appendix to Writ of Prohibition, Order Denying Defendant's Motion to Disqualify Judge And The Entire Twentieth Judicial Circuit As Legally Insufficient. Thus, any complaint by Petitioner that the judge's order denying his recusal motion was untimely is refuted by the record and clearly without merit.

As to legal sufficiency, the motion generally asserted the following grounds: 1) that Judge Greider must be disqualified

² If Petitioner's argument is accepted, a judge properly and timely rejecting a recusal motion would be disqualified simply because his copy of the order was lost in the mail. Fortunately, such an absurd proposition has no support in the law.

because she previously worked as an Assistant State Attorney; 2) that a circuit staff attorney, Nicole Forsett, had some connection to his criminal case; and 3) that Judge Greider, has in the past made a variety of rulings adverse to Mr. Lambrix. None of these allegations are facially sufficient to require recusal. Notably, Lambrix has not cited any authority compelling disqualification on similar facts.

As this Court has held, a motion for disqualification is facially insufficient unless it "establish[es] a well-grounded fear on the part of the movant that he will not receive a fair hearing." Arbelaez v. State, 775 So. 2d 909, 916 (Fla. 2000). In Arbelaez, this Court found that the mere fact that a trial judge had been employed at a prosecutor's office during the time that a defendant's case was prosecuted was insufficient to meet that standard. Id. There was no allegation that Greider was ever personally involved in the Lambrix prosecution in any manner. Thus, the fact that Judge Greider had been employed by the State Attorney's office did not present a facially sufficient basis for a motion to disqualify.

As for Nicole Forsett, Lambrix did not establish she will, or, has personally been working on this case in any manner and has simply alleged she is employed as a staff attorney in the same circuit. Nor did Lambrix specifically identify the nature

or extent of his former "legal relationship" with Ms. Forsett. (Defendant's Motion to Disqualify at 2, paragraph 5). This type of speculative claim is facially insufficient to warrant disqualification. See Moore v. State, 820 So. 2d 199, 206 (Fla. 2002); Arbelaez v. State, 775 So. 2d 909, 916 (Fla. 2000); Barwick v. State, 660 So. 2d 685, 693 (Fla. 1995).

Finally, Lambrix has not offered any argument to support his motion to disqualify the entire judicial circuit. Such an unsupported speculative claim cannot support the remedy he seeks.

Lambrix also mentions prior adverse rulings as grounds for recusal, i.e., the refusal to allow Lambrix to represent himself and a previous summary denial of post-conviction relief. (Petition at 5; Motion to Disqualify at 3). However, adverse rulings are not a basis for recusal. Ragsdale v. State, 720 So. 2d 203, 207 (Fla. 1998); see also Thompson v. State, 759 So. 2d 650, 659-60 (Fla. 2000). Thus, the claim that prior rulings evidence bias is not a facially sufficient ground for disqualification.

As no reasonable basis for judicial disqualification has been identified, this Court must deny the instant writ of prohibition.

CONCLUSION

In conclusion, Respondent respectfully requests that this Honorable Court DENY the instant Petition for a Writ of Prohibition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MEMORANDUM OF LAW has been furnished by U.S. mail to William M. Hennis, III, Litigation Director, Assistant CCRC-South, Office of the Capital Collateral Regional Counsel, 101 N.E. 3rd Ave., Suite 400, Ft. Lauderdale, Florida 33301-1162, on this 24th day of October, 2011.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this response is 12-point Courier New, in compliance with Fla. R. App. P. 9.100(1).

COUNSEL FOR RESPONDENT