

**IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC12-246**

**JERONE HUNTER,**

**Appellant,**

**vs.**

**STATE OF FLORIDA,**

**Appellee.**

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

**Lower Tribunal No. 2004-01380-CFAWS**

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**REPLY TO ANSWER BRIEF OF APPELLEE**

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## PRELIMINARY STATEMENT

This pleading addresses arguments from Issue 3 of Mr. Hunter's Initial Brief. As to all other claims and arguments not mentioned in this pleading, Mr. Hunter relies on the Initial Brief. References to the postconviction record are designated "PCR" followed by the volume and page number.

### ISSUE 3 (from Initial Brief)

**THE POSTCONVICTION COURT ERRED WHEN IT DENIED MR. HUNTER'S CLAIM THAT THE RULES PROHIBITING MR. HUNTER'S LAWYERS FROM INTERVIEWING JURORS TO DETERMINE IF CONSTITUTIONAL ERROR WAS PRESENT VIOLATES EQUAL PROTECTION PRINCIPLES, THE FIRST, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION AND DENIES MR. HUNTER ADEQUATE ASSISTANCE OF COUNSEL IN PURSUING HIS POSTCONVICTION REMEDIES.**

On page 67 of the Answer Brief the State of Florida argues that "Hunter cites no case that has held otherwise and simply asks this Court to reconsider its precedent." This argument is mistaken because the appellant was asking for more than a simple reconsideration of precedent.

In fact, as reflected on page 44 of the Initial Brief, the appellant stated that "Mr. Hunter disputes the basis for this ruling [referring to the cited case of Troy v. State, 57 So.3d 828 (Fla. 2011)] and urges this Court to explain, *with a due process*

*analysis*, why academics, journalists, and lawyers not connected to his case can conduct "fishing expedition" interviews while trial and postconviction counsel are precluded from doing so. (Emphasis added).

Such a due process analysis of the components of Mr. Hunter's postconviction claim was not presented in the Answer Brief. In arguing lack of foundation and merit, the State cites to Vining v. State, 827 So. 2d 201 (Fla. 2002); Johnson v. State, 593 So. 2d 206 (Fla. 1992); Reese v. State, 14 So. 3d 913 (Fla. 2009); Barnhill v. State, 971 So. 2d 106 (Fla. 2007); Johnson v. State, 804 So. 2d 1218 (Fla. 2001); and Arbelaez v. State, 775 So. 2d 909 (Fla. 2000). Not one of these cases have a due process analysis addressing the components of Mr. Hunter's postconviction claim.

Again, the postconviction court relied solely on Sweet v. Moore, 822 So.2d 1269 (Fla. 2002) in rejecting the claim as being without merit. PCR V6 896. In Sweet, there is no due process analysis addressing the components of Mr. Hunter's postconviction claim. The court below summarized and outlined the components of the claim but it did not analyze the components with its ruling.

The level and types of juror misconduct in all types of trials have been outlined by Florida judges concerned with its rise. See, e.g., Artigliere, Barton and Hahn, "Reining in Juror Misconduct: Practical Suggestions for Judges and

Lawyers,” Fla.BarJ. Vol. 84, No. 1 (January, 2010)(“To say that current jurors have enhanced temptation and ability to communicate about the trial with the outside world is the understatement of this still young century. ... [c]ourtroom misconduct seems to be everywhere.”). Yet postconviction counsel is prevented at most and is hampered in the least from discovering misconduct because of the prohibition of juror interviews.

This Court has yet to address why academics may conduct "fishing expeditions" with former capital trial jurors. An example is the 1,198 interviews with jurors from 353 capital trials in 14 states, including Florida (as of August 15, 2005) performed by the Capital Jury Project and used in criminal justice doctorate dissertations. See <http://www.cjp.neu.edu> which lists Julie Goetz, "The Decision-Making of Capital Jurors in Florida: The Role of Extralegal Factors" (unpublished dissertation (1995), School of Criminology and Criminal Justice, Florida State University, Tallahassee, Florida) as a representative dissertation.

None of this Court's rulings have addressed why journalists may conduct "fishing expeditions" with former capital trial jurors without restrictions. Capital jurors have frequently been interviewed about the experience of sitting through a death penalty trial. See "Many Jurors Scarred by Trials;" Sarasota Herald-Tribune, December 4, 2005 (<http://www.heraldtribune.com/apps/pbcs.dll/>

article?AID=/20051204). See also, Chris Tisch, "Defense Fears Comments Affect Verdict;" St. Petersburg Times, October 25, 2004 (available at <http://www.sptimes.com/advancedsearch.html>), where the jury foreman of a murder trial is interviewed about the jury's deliberations.

Lastly, none of the cases in this Court's rulings have addressed why lawyers not connected with a case may conduct "fishing expeditions" with former capital trial jurors without restrictions. Because post-trial questioning of jurors can and does come from academic researchers, journalists and lawyers and others not connected with the case, the Florida rules infringe upon the appellant's rights to due process, access to the courts, and the equal protection concepts enunciated in such cases as Bush v. Gore, 531 U.S. 98 (2000). Criminal defense counsel in Florida are treated differently, unfairly and unequally compared to academics, journalists, and those lawyers and others not connected with a particular case. Consequently, the reliability and integrity of appellant's capital sentence is thereby flawed.

## **CONCLUSION**

Wherefore, in light of the facts and arguments presented in this Reply and the facts and arguments presented in the appellant's Initial Brief, Mr. Hunter moves this Honorable Court to vacate the convictions and sentences of death and

to remand for a new trial and/or a new penalty phase.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Reply to Answer Brief of Appellee has been furnished by electronic mail to Mitchell D. Bishop, Assistant Attorney General, 444 Seabreeze Blvd. 5th FL, Daytona Beach, FL 32118 at Mitchell.Bishop@myfloridalegal.com and CapApp@myfloridalegal.com and by U.S. Mail to Jerone Hunter DOC # V26165, Florida State Prison, 7819 NW 228th Street, Raiford, Florida 32026 on this 6th day of May, 2014.

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### **CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY, pursuant to Fla.R.App.P. 9.210, that the foregoing  
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