

IN THE SUPREME COURT OF FLORIDA

ROBERT IRA PEEDE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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CASE NO. SC17-1674

L.T. No. 1983-CF-001682-A-O

DEATH PENALTY CASE

ON APPEAL FROM THE CIRCUIT COURT  
OF THE NINTH JUDICIAL CIRCUIT,  
IN AND FOR ORANGE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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## **STATEMENT OF THE CASE AND FACTS**

The Appellee will rely upon its prior statement of the facts and procedural history set forth in its initial response to this Court's show cause order filed on January 3, 2018.

## **SUMMARY OF THE ARGUMENT**

This Court recently rejected a challenge to the Governor's authority to designate State Attorney Brad King of the Fifth Judicial Circuit to litigate cases from the Ninth Judicial Circuit. Peede has offered this Court no persuasive or compelling reasons for this Court to depart from that precedent. Moreover, Peede has not demonstrated he has any cognizable post-conviction right that can be enforced in this case.

## **STANDARD OF REVIEW**

A challenge to the Governor's authority to appoint a state attorney to handle a criminal matter should be taken in quo warranto, not a post-conviction appeal. However, assuming any appellate review is warranted, the trial court's refusal to remove the attorney for the Fifth Judicial Circuit from Peede's case is reviewed for an abuse of discretion.<sup>1</sup> See Rogers v. State, 783 So. 2d 980, 992 (Fla. 2001) (holding that the trial

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<sup>1</sup> On April 21, 2017, the Honorable Marc L. Lubet denied Peede's Motion to Disqualify the Office of the state Attorney for the Fifth Judicial Circuit.

court did not abuse its "discretion in declining to disqualify the Hillsborough County State Attorney's Office" based upon allegations that the assistant state attorney had improperly authorized search of the defendant's jail cell without a warrant).

#### ARGUMENT

#### **WHETHER THE GOVERNOR'S REMOVAL OF STATE ATTORNEY ARAMIS AYALA AND REPLACING HER WITH PROSECUTOR BRAD KING VIOLATED ANY OF MR. PEEDE'S CONSTITUTIONAL RIGHTS IN THIS POST-CONVICTION CASE?**

Peede, following summary denial and briefing on his successive Hurst<sup>2</sup> claim, now asserts in this supplemental brief that his constitutional rights were violated by Governor Rick Scott's order removing the State Attorney for the Ninth Circuit, Aramis Ayala, and replacing her with State Attorney Brad King from the Fifth Judicial Circuit. Appellant's claim lacks any merit for several reasons.

As an initial matter, any action to challenge the Governor's authority in this case lies in quo warranto. Such a claim is inappropriate in this successive post-conviction appeal and should be dismissed. See Ayala v. Scott, 224 So. 3d 755, 757 (Fla. 2017) (observing that "quo warranto is the proper vehicle to challenge the Governor's authority to reassign these cases to

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<sup>2</sup> Hurst v. State, 202 So. 3d 40 (Fla. 2016).

King [ ]"); Austin v. State ex rel. Christian, 310 So. 2d 289, 290-91 (Fla. 1975) ("If the power and authority of an assigned State Attorney is to be tested, it should be done in direct proceedings by quo warranto.") (string citations omitted).

In addition to being an improper vehicle to raise this claim, Peede's invocation of a constitutional right to a particular prosecutor is not a cognizable post-conviction claim. See generally Pennsylvania v. Finley, 481 U.S. 551, 555-57 (1987) (finding that there is no federal constitutional right to postconviction relief, or to the appointment of an attorney for seeking that avenue of relief). Indeed, Peede cites no precedent for the proposition that he has a valid post-conviction constitutional claim which can be pursued or enforced in this Court.

It must be remembered that Brad King was appointed by the Governor to function as the prosecutor in Peede's case, long after the trial and direct appeal. Since it is a post-conviction case, the prosecutor at this point is co-counsel with Pam Bondi, the Attorney General. The prosecutor and attorney general are attempting to enforce the judgment that was obtained by the original state attorney who was duly representing the Ninth Circuit when Peede's case was tried in 1984. Peede fails to cite any authority that the State's representatives seeking to

enforce the judgment and sentence are either disqualified or incapable of acting in the State's interests.

Finally, Defendant's challenge to the Governor's authority to designate the State Attorney for the Fifth Judicial Circuit to act as the designated prosecutor in this case plainly lacks any merit. The Governor clearly has such authority under the Florida Constitution and the Florida Statutes. See Art. IV, § 1, Fla. Const; Fla. Stat. § 27.14. Case law uniformly supports the Governor's exercise of such discretion. See Ayala, 224 So. 3d at 758 ("Applying this well-established standard of review to the facts of this case, the executive orders reassigning the death-penalty eligible cases in the Ninth Circuit to King fall well 'within the bounds' of the Governor's 'broad authority.'") (quoting Finch, 254 So. 2d at 204-05); Finch v. Fitzpatrick, 254 So. 2d 203, 204-05 (Fla. 1971) ("The Governor is given broad authority to fulfill his duty in taking 'care that the laws be faithfully executed,' and he should be required to do no more than make a general recitation as to his reasons for assigning a state attorney to another circuit."); Kirk v. Baker, 224 So. 2d 311, 317 (Fla. 1969) (An executive order from the Governor transferring the states attorneys for the periods mentioned "is beyond question by the Court."); Austin, 310 So. 2d at 294 ("In summary, we hold that under the provisions of Fla. Stat. § 27.14

and § 27.15 (1973), F.S.A., the Governor did have the authority to assign a state attorney from one circuit to another circuit for the purpose of conducting an investigation, participating in grand jury proceedings and conducting a trial even though the resident State Attorney was available.”).

Appellant fails to distinguish the precedent cited above, or offer this Court any compelling reasons to depart from it.<sup>3</sup> This Court’s recent decision in Ayala, 224 So. 3d at 757, settles the matter.

As for Peede’s claim that new or compelling mitigation merits some type of plenary review by Ms. Ayala, such a claim is factually and legally unsound. First, there is no state or federal constitutional requirement for such post-conviction review by the prosecutor as Peede suggests. Second, both this Court and the Eleventh Circuit Court of Appeals found that Peede failed to discover or present sufficient post-conviction

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<sup>3</sup> Ms. Ayala has stated publicly that as State Attorney of the Ninth Judicial Circuit she will prohibit consideration of a capital sentence in any first-degree murder case. This is not a matter of prosecutorial discretion as the Defendant suggests - rather this was a political decision and does not take into account the facts of any existing or future cases. Ms. Ayala’s publicly stated views indicate she will not, and cannot faithfully execute the law applicable in this state. Again, if any court review is even appropriate for the instant decision to assign a separate state attorney’s office to fulfill the duties of a prosecutor in this case, the decision in this case is well within the Governor’s discretion.



mitigation to call into question the outcome of this case. Peede v. Attorney Gen., Florida, 715 Fed. Appx. 923, at \*\*6 (11th Cir. Nov. 8, 2017) (unpublished) (“Mr. Peede’s new mental health evidence largely confirms what most experts and lay witnesses seem to agree about: Mr. Peede could be a violent and angry man who had issues with jealousy and paranoia, especially with women.”). See also Peede v. State, 955 So. 2d 480, 494 (Fla. 2007). Not long after being released from prison for his prior murder conviction, Peede kidnapped and murdered his estranged wife, Darla, by stabbing her in the throat as her two daughters waited for her at home. Peede intended to use Darla in his plan to murder two individuals in North Carolina. His death sentence is well justified.

Defendant also makes a frivolous argument that the State Attorney for the Fifth Judicial Circuit, Brad King, was selected by the Governor because of some perceived bias against capital defendants or because Brad King was seeking the Governor’s favor. However, the Defendant’s claim of bias does not rest on a legally cognizable claim of bias, interest or conflict. The Defendant provides no authority for the proposition that an elected state attorney is disqualified from any matter simply because he or she has sought appointment as a judge or justice

or expressed his or her views on pending legislation.<sup>4</sup> Whether or not Brad King sought such an appointment to the judicial bench or expressed views on pending capital legislation is not relevant and cannot form the basis for a recusal motion. See Huggins v. State, 889 So. 2d 743, 768 (Fla. 2004) (disqualification of a state attorney requires more than just the appearance of impropriety and a defendant must demonstrate "specific prejudice."); State v. Hayes, 997 So. 2d 446, 448-49 (Fla. 4th DCA 2008) (observing that the disqualification of government counsel is a "drastic measure" and requires a showing of specific prejudice.) (citations omitted). No showing of actual prejudice has been made. Accordingly, this motion must be denied.<sup>5</sup>

For all these reasons, this claim was properly denied below.

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<sup>4</sup> As an experienced prosecutor and the elected State Attorney for the Fifth Circuit, it is certainly reasonable for Mr. King to express his views on pending legislation relevant to his office.

<sup>5</sup> Defendant suggests that an error in the appointment order regarding whether or not Hurst relief has been granted, establishes that the Governor's appointment was arbitrary and unfounded. However, an error regarding the procedural posture of the case has nothing to do with the reasons for the reassignment. The order still represents a valid exercise of the Governor's authority in this case.

**CONCLUSION**

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

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13th day of April, 2018, I electronically filed the foregoing with the Clerk of the Florida Supreme Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Linda McDermott, Esquire, McClain & McDermott, P.A., 20301 Grande Oak Boulevard, Suite 118 - 61, Estero, Florida 33928, **[lindammcdermott@msn.com](mailto:lindammcdermott@msn.com)**.

**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).

          /s/ Scott A. Browne            
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