

**IN THE SUPREME COURT OF FLORIDA**

**JOHN CHRISTOPHER STABILE**

**Petitioner,**

**CASE NO.: SC01-2053**

**Lower Tribunal No.: 5D00-2427**

**vs.**

**STATE OF FLORIDA,**

**Respondent.**

\_\_\_\_\_ /

**ON APPEAL FROM THE DISTRICT COURT OF APPEAL**  
**OF THE STATE OF FLORIDA**  
**FIFTH DISTRICT**

**REPLY BRIEF OF PETITIONER**

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## **TABLE OF CONTENTS**

	<b><u>PAGE NUMBER</u></b>
TABLE OF CITATIONS	1
PRELIMINARY STATEMENT	2
SUMMARY OF ARGUMENT	3
ARGUMENT	5

### **POINT ONE ON APPEAL - POINT ONE**

#### **THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION TO DISQUALIFY THE STATE ATTORNEY'S OFFICE**

CONCLUSION	8
CERTIFICATE OF SERVICE	8
CERTIFICATE OF COMPLIANCE	9

## TABLE OF CITATIONS

### CASES CITED

### PAGE NUMBER

Bogle v. State, 655 So.2d 1103 (Fla. 1995)

5

Cantor v. Davis, 489 So.2d 18, 20 (Fla. 1986)

5

Castro v. State, 597 So.2d 259 (Fla. 1992)

5

PK Ventures, Inc., et al. v. Raymond James & Associates  
690 So.2d 1296, (Fla. 1997)

5

Reaves v. State, 574 So.2d 105 (Fla. 1991)

5

Rogers vs. State, 783 So.2d 980 (Fla. 2001)

5

State v. Hutchins, 636 So.2d 552 (Fla 2d DCA 1994)

5



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**INITIAL BRIEF OF PETITIONER'S  
PRELIMINARY STATEMENT**

Petitioner was the Defendant and Respondent was the Prosecution in the Criminal Division of the Circuit Court, Seventh Judicial Circuit, in and for Volusia County, Florida. In this brief, the Respondent will be referred to as "the State", "the Prosecution" or as "Respondent", and Petitioner will be referred to as he appears before this Honorable Court of Appeal, or by name or as Defendant.

In this brief, the following symbols will be used:

"R" - Record on appeal, followed by the appropriate page number(s).

## SUMMARIES OF ARGUMENTS

POINT ONE: The trial court erred in denying the Defendant's Motion to Disqualify the State Attorney's Office. The standard of review is De Novo, and the Supreme Court can review this issue as a matter of law. The elected state attorney previously represented the Defendant in several felony cases. The State exercised its discretion and sought to enhance the Defendant's sentence by having him declared a prison releasee reoffender. The State used the cases in which the elected State Attorney previously represented the accused in order to enhance the sentence to life imprisonment. The trial judge acknowledged that he had no discretion but to impose a sentence of life imprisonment.

When the State seeks to use such previous cases to enhance a sentence in the current cause, it places the previous representation directly at issue, and increases the potential or the perception that confidential communications might be used against the Defendant's interests, in deciding to use its discretion to enhance a sentence. The appearance of impropriety is so great in such a case as to virtually undermine the confidence of the public in the integrity of the judicial system itself. In addition, when an elected state attorney previously represented the Defendant, it is insufficient to

simply screen said party from the assistant prosecuting the case. The State Attorney's status as administrative head of the office makes a simple screening insufficient to overcome the public's perception of the potential denial of due process of law, and violation of his right to counsel.

## ARGUMENT

POINT ONE ON APPEAL- POINT ONE  
THE TRIAL COURT ERRED IN DENYING THE  
DEFENDANT’S MOTION TO DISQUALIFY THE  
STATE ATTORNEY’S OFFICE

In the “Merits Brief of Respondent” the State of Florida argues that this Honorable Court should not accept jurisdiction of the instant cause. The Respondent argues this Court cannot exercise jurisdiction. However, as previously noted in the “Response to Order to Show Cause” filed in the instant cause:

“This Court has previously ruled that once the Court has obtained jurisdiction, it has the discretion to consider any issue affecting the case (See PK Ventures, Inc., et al., v. Raymond James & Associates, Inc. 690 So.2d 1296, (Fla. 1997) and Cantor v. Davis 489 So.2d 18, 20 (Fla. 1986). Also see State v. Hutchins 636 So.2d 552 (Fla. 2d DCA 1994).”

Furthermore, the Petitioner has been denied due process of law, his right to effective assistance of counsel and to a fair trial under both the Florida and United States Constitutions. In so doing, the lower court has misapplied in Reaves v. State, 574 So.2d 105 (Fla. 1991), Castro v. State, 597 So.2d 259 (Fla.1992), Rogers v. State 783 So.2d 980 (Fla. 2001), and Bogle v. State, 655 So.2d 1103 (Fla. 1995) to the facts of the instant cause. Those cases set out a standard as to

the appearance of impropriety that has been misapplied by the lower court. As a result, the lower court

5

opinion is in conflict with those holdings. Furthermore, in so doing the lower court has misconstrued the constitutional provisions considered in those cases in a way that has great public importance.

The Respondent failed to even address the issue of the appearance of impropriety. Additionally, despite repeated efforts in the initial brief to narrowly limit the need for disqualification of the entire prosecutor's office to restricted factual circumstances, the Respondent argues that such a ruling would require mass recusals. As addressed at length in the initial brief, numerous sister state supreme courts confronted similar circumstances to the instant cause. They held that where the prosecuting attorney (as distinguished from a deputy prosecuting attorney) has previously represented the accused in a matter so closely interwoven therewith as to be in effect a part thereof, the entire office should be disqualified. Limited circumstances that include utilizing the cases involving prior representation of the elected prosecutor for sentencing enhancement meet that standard, and create an appearance of impropriety great enough to require disqualification. However, the mere involvement of the elected prosecutor in prior representation of a given

defendant in other circumstances would only require simple screening from involvement in the current cause of action. Most importantly, permitting a continued involvement, and appearance of impropriety, would threaten to

6

undermine public confidence in the judicial system. Further, it would undermine the right to confidential communication between lawyer and client in several ways. A defendant would be hesitant to share information with an attorney for fear of having the data used against him at a later time in a different context. Also, a defendant would be put into a position of having to himself reveal earlier confidences in order to demonstrate a conflict with the prosecutor now. In the instant cause, as with the sister state supreme courts, the unfettered, and largely unreviewable, discretionary act of the prosecution seeking life imprisonment on the sole basis of prior convictions involving former representation by the current elected state attorney, creates an appearance of impropriety so inherently dangerous in these limited circumstances as to require disqualification of the entire state attorney's office.

As a result, the judgment and sentence must be set aside and the instant cause and remanded for a new trial with a special prosecutor appointed.

**CONCLUSION**

Petitioner urges this Honorable Court, under the argument advanced in point one on appeal, to vacate the entry of judgment and sentence against Petitioner and remand for a new trial and order the disqualification of the State Attorney's Office for the Seventh Judicial Circuit.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original and seven copies and a diskette has been furnished by federal express to the Supreme Court of Florida, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927 and a copy hereto has

been furnished by U.S. Mail to Wesley Heidt, Esquire, Assistant Attorney General,  
444

Seabreeze Boulevard, Suite 500, Daytona Beach, Florida 32118, this \_\_\_\_ day of  
August, 2002 and to John Stabile, DC# 894926, Dorm A, South Bay Correctional  
Facility, P.O. Box 7171, South Bay, FL 33493.

8

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**CERTIFICATE OF COMPLIANCE**

The undersigned counsel certifies that this brief was typed using 14 point Times  
New Roman.

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