

IN THE SUPREME COURT OF FLORIDA

THOMAS ANTHONY WYATT,

Appellant,

vs.

Case No. 00-1828

STATE OF FLORIDA,

Appellee.

_____ /

ON APPEAL FROM THE CIRCUIT COURT
OF THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

Appellant, THOMAS ANTHONY WYATT, was the defendant in the trial court below and will be referred to herein as "Appellant." Mr. Wyatt is represented by the Office of Capital Collateral Representative-North and his counsel will be referred to as "collateral counsel." Appellee, the State of Florida, was the petitioner in the trial court below and will be referred to herein as "the State." Reference to the pleadings will be by the symbol "R," reference to the transcripts will be by the symbol "T," and reference to the supplemental pleadings and transcripts will be by the symbols "SR[vol.]" or "ST[vol.]" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

Appellee accepts appellant's statement of the case and facts to the extent they represent an accurate rendition of the proceedings below. The following additions are included as they are relevant to a proper resolution of this appeal.

Wyatt's collateral counsel filed an initial motion for postconviction relief on March 17, 1997. The first issue was styled as follows, "Mr. Wyatt Is Being Denied His Right To Effective Representation By Lack Of Funding Available To Fully Investigate And Prepare His Post-Conviction Pleadings, Understaffing And The Unprecedented Workload On Present Counsel And Staff, In Violation Of His Sixth, Eighth, And Fourteenth Amendment Rights Under The United States Constitution And In Violation Of Spalding v. Dugger." (SR Vol. I 8). In the motion, collateral counsel detailed the factual basis for the offices' financial shortcomings. (SR Vol. I 8-16). The following month on , April 25, 1997, collateral counsel filed a "Notice of Status and Inability To Proceed." Again the central issue presented was the Office of the Capital Collateral Representative's inability to proceed due to a lack of funding. The following paragraph is instructive, "The under-funding of CCR and the ever-increasing requirements imposed on the agency has created an impermissible conflict of interest between Mr. Wyatt and other CCR clients for access to the agency's scarce

resources. Counsel cannot permit Mr. Wyatt to be prejudiced in his collateral proceedings due to inadequate funding of the agency that is statutorily required to represent him." (SR Vol. I 44). On September 26, 1997, The Office of the Capital Collateral Representative filed a "Motion For Leave To Amend And/Or For An Extension Of Time." Again the factual premise of the requested extension centered on "a budgetary shortfall." (SR Vol. II 156). The substance of the request can be summarized as follows, "For most of the eleven months allotted for counsel to prepare Mr. Wyatt's amended postconviction relief motion, CCR and its successor CCRC have simply lacked sufficient funds and staff to obtain the discovery, public records, investigation, and the assistance of experts necessary for fully-pled motions. The denial of funds necessary for Mr. Wyatt's former designated counsel to prepare his amended motion rendered counsel unable to meet their obligations to Mr. Wyatt and the courts. See Ch. 97-313, Laws of Fla.; Section 27.702, Fla. Stat. (1996 Supp.); Hoffman, Spaziano, Spalding, supra; see also R. Regulating Fla. Bar 4-1.1 (thoroughness in preparation), 4-1.7(b)(avoid limitation on professional judgement), 4-3.1(duty to investigate good faith basis for claims). Undersigned Regional Counsel cannot proceed to file an amended Rule 3.850 motion in Mr. Wyatt's case without violating his rights to access to the courts, equal protection and due process of law, and his right

to conflict-free counsel." (SR 158-159). On November 5, 1998 collateral counsel filed another "Motion For Leave To Amend And/Or For An Extension of Time." (SR Vol. II 194-204). Again the request was predicated on a lack of funds and staff necessary to prepare a proper motion. (SR Vol. II 197-198). On November 30, 1999, collateral counsel filed a "Preliminary Amended Motion To Vacate Judgements Of Convictions and Sentence With Special Request For Leave To Amend." (SR Vol. III 225-459). Consistent with Issue I raised in the first motion, collateral counsel reasserts that Wyatt is being denied effective representation of counsel based on a lack of available funding. (SR Vol. III 234-244). Actually, claims XI-XXXVII of the amended motion all include an allegation that the issue therein itself cannot be fully investigated and pled based on a lack of sufficient funds. (SR Vol. III 314, 318, 320, 343, 346, 353, 356, 361-362, 364-365, 368, 371, 378, 385, 416, 419, 423, 436, 439, 441, 443, 448, 450, 453, 459).

On February 3, 1998, Wyatt filed a *pro se* motion to disqualify the Office of The Capital Collateral Regional Counsel-Northern District. (SR Vol. III 190-193). Wyatt argued that since the office of the Capital Collateral Representative had been separated into three separate and distinct offices, his case should be transferred to the Southern District office. (ST 888-904). Pursuant to the trial court's discretion under

Section 27.702, Florida Statutes the request was denied. (ST 882).

On October 25, 1999, collateral counsel filed a motion for an extension of time to file the amended postconviction motion. That motion was denied. (SR Vol. II 216). Unhappy with the trial court's denial, on November 22, 1999, Wyatt filed *pro se*, "Emergency Motion To Dismiss Ineffective Appellate Counsel." (SR Vol. II 217-219). Therein Wyatt alleged, "[a]s a result of this Honorable Court's denial of Defendant's Appellate Counsel's Motion To Continue Dates For Filing Of Amended Rule 3.850 Motions, this Honorable Court has in effect, rendered Defendant's Appellate Counsel Ineffective, moreover, creating a Conflict of Interest, in that Defendant cannot, in good conscience or faith, sign verification on Amended 3.850 Motions." (SR Vol. II 219). Collateral counsel was ultimately granted an additional sixty days to file the amended motions. Consequently, Wyatt withdrew his motion to dismiss counsel. (ST 845, 855).

A status hearing was held on January 3, 2000. Based on additional problems with public records, the circuit court granted collateral counsel an additional sixty days to file the final amended postconviction motions. (ST 852-870). On February 7, 2000, Gregory Smith, the Capital Collateral

Representative, filed a certification of conflict. (R Vol. I 1-2).

At the August 8, 2000 hearing on collateral counsel's certification of conflict, the state argued that the motion was legally insufficient. (T Vol. I 15, 27-28). To ensure that the confidential nature of any information was not improperly divulged, Appellee suggested that the trial court hold an *in camera* hearing. (T Vol. I 16-17). Collateral counsel responded that the Florida Bar rules precluded any further discussion regarding the factual context of the conflict. (T Vol. I 18-22, 24). The trial court found the certification to be legally insufficient and ordered that a limited *in camera* examination would be appropriate. (T 28, Vol. I R 10). The trial court immediately stayed the effect of the order. This appeal follows.

SUMMARY OF ARGUMENT

The trial court correctly denied appellant's motion to withdraw since the certification of conflict was legally insufficient as pled. Appellant's allegation that he is not required to present a legally sufficient pleading is not supported by the law. Collateral counsel's assertion is also contrary to this Court's repeated attempts to diminish delays and promote efficiency and fairness in postconviction litigation.

Appellee recognizes that a trial court's summary denial of a motion based on legal insufficiency is subject to *de novo* review as it is purely a question of law. Cf. Demps v. State, 761 So. 2d 302 (Fla. 2000)(applying *de novo* review to summary denial). Additionally however, the state would point out that, "[a] court's ruling on a matter related to the 'course and conduct' of a proceeding is generally within the sound discretion of the court and will not be disturbed on review absent an abuse of discretion. Owen v. State, 773 So. 2d 510, 514 (Fla. 2000).

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRED IN DENYING THE CAPITAL COLLATERAL REPRESENTATIVE'S MOTION TO WITHDRAW BASED ON ITS FINDING THAT THE CERTIFICATION OF CONFLICT WAS LEGALLY INSUFFICIENT AS PLED

Almost four years after being appointed to represent Thomas Wyatt, the Capital Collateral Counsel for the Northern Region Gregory Smith, filed a Certification of Conflict. The entire pleading stated the following:

COMES NOW, GREGORY C. SMITH, and hereby notifies this Court of a conflict of interest in continued representation of Thomas Wyatt. Therefore, undersigned counsel must withdraw from any further representation of Mr. Wyatt and respectfully requests this Court to assign Mr. Wyatt conflict-free counsel. This certification is made pursuant to the laws of Florida, and U.S. and Florida constitutions, and the Florida Rules of Professional Conduct.

(R Vol. I 1-2). This conclusory motion filed on February 7, 2000, comes on the heels of three years of litigation mainly involving public records issue. In addition to the tolling periods imposed by this Court to various categories of capital collateral defendants, appellant was also granted numerous extensions of time by the trial court. Eventually on November 30, 1999, a two hundred and thirty page amended motion for postconviction relief was filed raising thirty-seven issues. Included in the motion was a request for additional time to file a second amended motion based on outstanding public records. That motion was granted without objection. Appellant's final amended motion was to be served on March 20, 2000. However on February 7, 2000, a certification of conflict was filed. Due to

various scheduling difficulties, a hearing was held regarding the certification on August 8, 2000. (T Vol. I 11-32). At the hearing, the state argued that the "certification" was legally insufficient on its face and should be denied. Appellee suggested that the trial court hold an *in camera* hearing regarding further details of the conflict. (T Vol. I 15-16). In response, collateral counsel simply reasserted that once Gregory Smith certified that there was a conflict, no factual support was required. Relying on the Florida Rules Regulating the Florida Bar 4-1.16 and 4-1.7 counsel simply added,

"We are not here because we cannot work together or we cannot get along. The reason we are here is because of 4-1.7 that continued representation of Mr. Wyatt would be adverse to his own interests and adverse to interests to other clients in our office."

(T 18-22, 24).¹ In reply, the state challenged the legal sufficiency of collateral counsel's unyielding position, by pointing out that the Office of the Capital Collateral Regional Counsel does not now and never has represented appellant's co-defendant, Michael Lovett. Consequently, collateral counsel should be required to at least provide the identity of the other clients involved along with a brief factual context of the

¹ On appeal appellant "explains" the conflict as, [t]he conflict concerned adverse interests between Northern Region clients, including Mr. Wyatt. **Initial brief at 15.**

alleged conflict. To hold otherwise would provide collateral counsel with unfettered power in this area. Additionally, under collateral counsel's reasoning, subsequent certifications by the remaining capital collateral offices could delay litigation of the postconviction process ad infinitum. (T Vol. I 27). Ultimately the trial court ruled that CCRC-North's certification was legally insufficient as pled. (T Vol. I 19, 28). The court determined that in this limited circumstance, an *in-camera* inspection would be appropriate. (T Vol. I 28, R 10). The trial court's ruling is correct and must be upheld by this Court.

On appeal, appellant relies on Florida Statute Sections 27.703 and 27.53 as well as this Court's opinion in Guzman v. State, 644 So. 2d 996, 999 (Fla. 1994) for the proposition that collateral counsel is not required to provide any factual support for a certification of conflict. Additionally, collateral counsel notes that Florida Rule of Professional Conduct 4-1.6 precludes counsel from revealing any confidential information, regardless of whether it is done *in camera*. Appellant's interpretation of the law is misplaced. First, the statutes and case law do not shield defense attorneys from all accountability and judicial review. As with any legal pleading which includes a request for relief, a basic legal threshold must be met. Second, in Allen v. Butterworth, 756 So. 2d 52, 57 (Fla. 2000), this Court documented the numerous efforts

undertaken by all three branches of government in attempts to minimize delay in capital case litigation. Appellant's claim that collateral counsel are permitted to file a one sentence conclusory motion at any time, under any circumstances, without any support and then expect to be granted relief flies in the face of basic legal principles, as well as rules and procedure related to the course and conduct of judicial proceedings. Cf. Owen v. State, 773 So. 2d 510, 514 (Fla. 2000)(explaining that postconviction litigants are still required to proceed in good faith irrespective of the presence of the attorney-client privilege and specter of a conflict of interest).

First, although a trial court's broad discretionary power may be curtailed in any given situation, Guzman does not stand for the proposition that a trial court abrogates all of its authority and duty as arbiter of the law during its disposition of a certification of conflict. The gravamen of Guzman is that the trial court is not permitted to "reweigh the facts" of an asserted conflict once the defense attorney certifies that such a conflict exists. Id at 644 So. 2d at 999 *quoting Nixon v. Siegel*, 626 So. 2d 1024 (Fla. 3rd DCA 1993). However, any presumption afforded a defense counsel's assessment of the circumstances/facts upon which the certification is predicated, does not totally insulate that attorney's decisions. Indeed review of this Court's precedent, as well as the district

courts' application of same, illustrates that disclosure of the factual context of a conflict is an integral part of the process. Nixon, 626 So. 2d at 1025 supra, (finding certification of conflict appropriate where public defender had previously represented state's main witness); Guzman, 644 So.2d at 999 (affirming position that conflict is most prejudicial where former client of public defender is to be witness against current client); Terry v. State, 731 So. 2d 711 (4th DCA 1999)(finding defense counsel's certification of conflict sufficient where counsel once represented the mother of a victim in a separate case against appellant); Reardon v. State, 715 So. 2d 348, 349 (Fla. 4th 1998)(approving defense counsel's assertion of conflict where victim in the present case had previously been represented by public defender's office); Crowe v. State, 701 So. 2d 431 (5th DCA 1997)(finding certification of conflict to be appropriate where victim of current crime had earlier been represented by public defender); Powell v. State, 752 So. 2d 662 (2nd DCA 2000)(finding facts sufficient to support public defender's motion to withdraw based on fact that appellant was to testify against another client of the office); Ward v. State, 753 So. 2d 705, 707 (1st DCA 2000)(finding allegations sufficient to warrant withdrawal as victim is sitting judge whom trial counsel must vigorously cross-examine and later come before in other matters). Simply put a defense attorney is not legally

and ethically shielded from presenting a limited factual development of the conflict.

The state asserts that the case law is quite to the contrary as Guzman and its progeny stand for the proposition that in order to be entitled to relief, a motion to withdraw based on a conflict must meet minimal requirements of legal sufficiency. See In re Certification of Conflict in Motions To Withdrawal Filed By Public Defender of the Tenth Judicial Circuit, 636 So. 2d 18, 21 (Fla. 1994)(determining that fact-finding by trial court was necessary in order to ascertain merits of public defenders' claim that excessive caseload warranted withdrawal); Remeta v. State, 707 So. 2d 719 (Fla. 1998)(rejecting CCRC-South's claim of conflict based on Commission on the Administration of Justice in Capital Cases oversight duties involving collateral counsel's office, "[a]s noted by trial judge, if the facts as set forth by CCRC constitute conflict, the entire legal system would collapse because there is not a public defender who does not have the same asserted 'conflict.'"); Pena v. State, 706 So. 2d 1378 (Fla. 4th DCA 1998)(upholding trial court's denial of withdrawal finding that Guzman does not apply to conflicts of a personal nature); LeCaptain v. State, 691 So.2d 613 (Fla. 4th DCA 1997)(finding Guzman to be inapplicable since facts demonstrate that defense counsel was never in possession of any confidential information

from former client); Skitka v. State, 579 So. 2d 102 (Fla. 1991)(rejecting public defender's certification of conflict based on offices' claim that excessive caseload mandates withdrawal); Thomas v. State, 725 So. 2d 1171 (Fla. 5th 1999)(finding facts of alleged conflict were "sufficiently attenuated" from Guzman to warrant denial of relief); Butler v. State, 672 So. 2d 653 (Fla. 4th DCA 1996)(upholding denial of motion to withdraw as, "[h]ere counsel's motion did not state categorically that there was a hostile and irreconcilable conflicts between the interest of appellant and the three witnesses the public defender had represented.").

Application of this very basic tenet is not unreasonable, unusual, unethical, or unconstitutionally sound. For instance, irrespective of the long standing principle that it is improper to delve into circumstances that inhere to a jury's verdict, a trial court still possess the authority to inquire into the factual context of an allegation of juror misconduct. See Baptist Hospital v. Maler, 579 So. 2d 197 (Fla. 1991). Likewise trial courts are obligated to determine the legal sufficiency of a motion to disqualify the trial judge, irrespective of the court's inability to test the accuracy of factual assertions upon which the motion is premised. See Livingston v. State, 441 So. 2d 1083 (Fla. 1983). Consequently, collateral counsel's interpretation of the law is incorrect. The trial judge was

correct in denying the certification of conflict as legally insufficient.

Second, appellant's argument that he is exempt from having to file a legally sufficient motion for certification of conflict presents significant opportunity to inject undue delay in postconviction litigation. Appellant's position is nothing short of contemptuous, given this Court's as well as other branches of government, express concern over the delay in capital cases. As noted above, CCRC-North had represented appellant for four years before the bare bones certification of conflict was filed. The record also demonstrates that extensive litigation over public records had recently been completed and an amended motion in excess of two hundred and thirty pages had already been filed. Given such factors, it is somewhat inconceivable that a conflict would suddenly develop. Yet, without any explanation, CCRC-North demands to withdraw from this case. This Court must view this proposition with great skepticism.

CCRC-North, has repeatedly complained in the case *sub judice* that the alleged financial hardship befallen its agency created a "conflict" between appellant and other "Northern Region clients". (SR 8-16, 44). This identical argument was relied upon by CCRC-North and CCRC-South in support of a "general moratorium" on all postconviction litigation. Arbeleaz v.

Butterworth, 738 So. 2d 326 (Fla. 1999). This Court rejected that claim recognizing that the Court and the Legislature had instituted significant changes in the process which would militate against any further delays in the process. Id at 327.² This Court has documented the extensive efforts expended along with the numerous recommendations that have been implemented in an effort to streamline capital litigation:

We recognize that the Legislature passed the DPRA with the intent of improving the efficiency and speed of the judicial process in those cases involving defendants who have been sentenced to death. See ch.2000-3, preamble, Laws of Fla.; Fla. CS for HB 1-A, at 3 ("Whereas ... there must be a prompt and efficient administration of justice following any sentence of death ordered by the courts of this state."); see also id. at 14-15 (amending § 924.055, Fla. Stat.) ("It is the intent of the Legislature to reduce delays in capital cases....").

However, the DPRA represents only the latest in a long history of efforts by all three branches of Florida government to improve the efficiency of Florida's death penalty process. In October 1990, this Court created the Supreme Court Committee on Postconviction Relief Proceedings to consider a

² By asserting a "general conflict" in this case without identifying the source or genesis of same, CCRC-North is attempting to obtain what it was denied previously by this Court in Arbeleaz v. Butterworth, 738 So. 2d 326 (Fla. 1999, namely, a moratorium on capital litigation.

number of matters, including how to provide proper representation and timely resolution for all postconviction relief matters pending in this Court.

Allen, 756 So. 2d at 57. See also Arbeleaz wherein this Court stated, "We acknowledge we have a constitutional responsibility to ensure the death penalty is administered in a fair, consistent and reliable manner, as well as having an administrative responsibility to work to minimize the delays inherent in the postconviction process." Id., 326-327.

This Court has appointed not less than three separate committees in the past seven years to identify problems and propose solutions/reforms. Allen, 756 So. 2d at 57-58. Some of the reforms implemented by both this Court and the Legislature include, adoption of new Florida Rule of Criminal Procedure 3.851 which reduced filing time to one year for postconviction motions; division of the former CCR into three separate regional offices; quarterly reports by chief judges of all the circuits which inventory pending postconviction proceedings; implementation of new online case management system that will electronically track cases statewide; issuance of orders to court reporters to expedite filing of transcripts; mandatory training course for circuit court judges who preside over capital cases; and adoption of new Florida Rule of Criminal Procedure 3.852 governing public record requests. The efforts

are ongoing as this Court very recently again amended applicable criminal rules of procedure in capital litigation. This Court reiterated the rationale behind its efforts as follows:

[t]his Court has engaged in exhaustive efforts to balance the concerns of fairness and justice with the need for finality in postconviction proceedings in death penalty cases. During that process, we believe that a consensus has been reached as to the essential ingredients necessary to balance these competing concerns. Although we have not had the case management resources to provide information regarding the average length of capital postconviction proceedings, anecdotal evidence demonstrates and this Court has recognized that the time for resolving these matters has been excessive.

Amendments To Florida Rules Of Criminal Procedure 3.851, 3.852, And 3.993 And Florida Rule Of Judicial Administration 2.0501, 26 Fla. Law Weekly S494 (Fla. July 12, 2001)(emphasis added).³

³ Relevant to this appeal is the following amendment proposed by this Court to Florida Rule of Criminal Procedure, 3.851 (b)(2): Appointment of Postconviction Counsel, "Within 30 days of the issuance of mandate, the Capital Collateral Regional Counsel shall file a notice of appearance in the trial court or a motion to withdraw based on a conflict of interest or some other legal ground." Amendments To Florida Rules of Criminal Procedure 3.851, 3.852, and 3.993 and Florida Rule Of Judicial Administration 2.0501, 26 Fla. L. Weekly S494 (Fla. July 12, 2001). This Court will now require that certifications of conflict be filed in a timely manner. The state would note that in the Death Penalty Reform Act of 2000, Section 11, the legislature saw fit to impose the identical requirement upon CCRC.

In conclusion, Appellant's interpretation of Guzman and 27.03 is in direct conflict with this Court's recognition that trial courts retain the authority to evaluate the legal sufficiency of a certification and the stated goal of improving upon the efficiency of postconviction litigation. Appellant's argument that collateral counsel is exempt from having to file a legally sufficient motion regarding conflict has no legal foundation; rather, it appears to be a ruse to obtain another delay where there is no basis for such. As the above referenced cases make abundantly clear, the attorney certifying conflict discloses at a minimum, the basis for the conflict including the relationship between the parties which give rise to the claimed conflict. Without something more, the judiciary is forced to abdicate its supervisory role to the whim of defense counsel seeking to prolong the life of postconviction litigation. Likewise, appellant's interpretation of Guzman and Section 27.703 is illogical, unworkable, and in direct conflict with well documented efforts by this Court and the Legislature to improve upon the efficiency and fairness of capital litigation process. The trial court's ruling was correct.

CONCLUSION

Wherefore, based on the foregoing arguments and authorities, the State requests that this Honorable Court affirm the trial court's order requiring Appellant to provide a legally sufficient motion in support of its certification of conflict.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was sent by United States mail, postage prepaid, to Linda McDermott, Assistant CCC-NR, Office of The Capital Collateral Counsel, Northern Region of Florida, Post Office Drawer 5498, Tallahassee, Florida 32314-5498, this 27th day of July, 2001.

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of the type used in this brief is Courier New, 12 point, a font that is not proportionately spaced.

CELIA A. TERENCE
Assistant Attorney General