

IN THE SUPREME COURT OF FLORIDA

MICHAEL BERNARD BELL,

Appellant,

CASE NO. SC00318

v.

STATE OF FLORIDA,

Appellee.

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ON APPEAL FROM THE CIRCUIT COURT  
OF THE FOURTH JUDICIAL CIRCUIT,  
IN AND FOR DUVAL COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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CERTIFICATE OF TYPE SIZE AND FONT

This brief was typed in Courier New 12 point.

STATEMENT OF THE CASE AND FACTS

The facts underlying Bell's conviction of two counts of first-degree murder and two death sentences are set out in this Court's opinion on direct appeal.

On December 9, 1993, appellant Michael Bell shot to death Jimmy West and Tamecka Smith as they entered a car outside a liquor lounge in Jacksonville. Three eyewitnesses testified regarding the murders, which the trial court described in the sentencing order as follows. In June 1993, Theodore Wright killed Lamar Bell in a shoot-out which was found to be justifiable homicide committed in self-defense. Michael Bell then swore to get revenge for the murder of his brother, Lamar Bell. During the five months following Lamar Bell's death, Michael Bell repeatedly told friends and relatives he planned to kill Wright. On December 8, 1993, Michael Bell, through a girlfriend, purchased an AK-47 assault rifle, a thirty-round magazine, and 160 bullets. The next night, Bell saw Theodore Wright's car, a yellow Plymouth. Bell left the area and shortly returned with two friends and his rifle loaded with thirty bullets. After a short search, he saw the yellow car in the parking lot of a liquor lounge. Bell did not know that Wright had sold the car to Wright's half-brother, Jimmy West, and that West had parked it and had gone into the lounge. Bell waited in the parking lot until West left the lounge with Tamecka Smith and another female. Bell picked up the loaded AK-47 and approached the car as West got into the driver's seat and Smith began to enter on the passenger's side. Bell approached the open door on the driver's side and at point-blank range fired twelve bullets into West and four into Smith. The other

female ducked and escaped injury. After shooting West and Smith, Bell riddled with bullets the front of the lounge where about a dozen people were waiting to go inside. Bell then drove to his aunt's house and said to her, "Theodore got my brother and now I got his brother."

Appellant was charged with two counts of first-degree murder. At trial in March 1995, appellant pleaded not guilty by reason of self-defense, stating that he believed West had reached for a weapon just before appellant began shooting. The defense presented no evidence or witnesses. A jury found appellant guilty of the first-degree murders of Smith and West and unanimously recommended the death penalty for both murders. During the penalty phase, a lounge security guard testified for the State that he and seven or eight other people were in the line of fire and hit the ground when appellant sprayed bullets in the parking lot of the lounge. He also testified that appellant shot four or five bullets into a house next door in which three children were residing at the time. The State introduced a copy of a record showing that appellant was convicted of armed robbery in 1990. Also during the penalty phase, appellant's mother testified for the defense that she and appellant had received death threats from Wright and West. She testified that appellant was in good mental health and was gainfully employed and that she believed he did not commit the murders. In a single sentencing order covering both homicides, the court followed the jury's unanimous recommendation and imposed death sentences, finding three aggravating circumstances and one marginal statutory mitigating circumstance.

Bell v. State, 699 So.2d 674, 675-76 (Fla. 1997) (footnotes omitted), cert. denied, 522 U.S. 1123 (1998).

On August 20, 1998 the Commission on the Administration of Justice in Capital Cases informed Judge R. Hudson Olliff that the

Capital Collateral Regional Counsel for the Northern Region (CCRC-N) had identified Bell's case as needing the appointment of registry postconviction counsel. (SR I 1).<sup>1</sup> Pursuant to that notice, Chief Judge Donald R. Moran appointed Baya Harrison as registry counsel on September 1, 1998. (SR I 2). Mr. Harrison acknowledged his appointment (SR I 4), but, on September 25, 1998, moved to withdraw from Bell's case because of the press of work caused by two other capital postconviction cases. (SR I 5, 7). Thereafter, on October 12, 1998, Judge Moran appointed Jeanine B. Sasser as Bell's postconviction counsel (SR I 8), and Ms. Sasser entered her notice of appearance three weeks later. (SR I 10).

The next document in the case file, dated March 29, 1999, is a demand for public records on the offices of the State Attorney, Attorney General, and the Jacksonville Sheriff, the Florida Department of Law Enforcement, the Medical Examiner, and the Department of Corrections. (SR I 12-13). The state responded that: 1) Bell's direct appeal became final on February 23, 1998; 2) this Court stayed the operation of Florida Rule of Criminal Procedure 3.852 until October 1, 1998; 3) the Attorney General notified the State Attorney's Office and the Department of Corrections pursuant to 3.852(d)(1) on October 14, 1998; 4) all agencies filed notices of compliance certifying that their public records had been sent to the repository; and 5) Bell's demand for

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<sup>1</sup> "SR I 1" refers to page 1 of the single volume of supplemental record.

public records was untimely. (SR I 14 et seq.). The circuit court granted the state's motion to strike. (SR I 46).

On May 27, 1999 Bell filed a "shell" motion for postconviction relief that was, admittedly, incomplete and filed "to toll the time to file his federal habeas corpus." (I 1-2).<sup>2</sup> The motion contained thirty-three "claims" consisting of titles and the statement that "counsel has not yet had time to adequately investigate and prepare to plead [the claims] with more specificity." (I 5-20). Three months later the court notified the parties that a hearing would be held on September 17, 1999. (SR I #11). Four days before that hearing Bell's counsel moved for a continuance (I 23-25), but a status conference was held on September 17 at which collateral counsel stated that she would file an amended motion by the end of October. (I 30). When no such motion was filed, the state filed a written response to the shell motion, asking that it be denied as legally insufficient. (I 26-31).

The court denied the shell motion on December 30, 1999 (I 33), and counsel filed a notice of appeal at the end of January 2000. (I 34). On June 7, 2000 counsel filed a motion with the circuit court asking that trial counsel be ordered to release his files to her. (SR I 53). At the end of June 2000 counsel filed a motion asking for the release of confidential/exempt files sent to the

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<sup>2</sup> "I 1-2" refers to pages 1 through 2 of the single volume of record.

repository by the State Attorney's Office, the Department of Corrections, and the Duval County Sheriff's Office. (SR I 55).

## SUMMARY OF ARGUMENT

### ISSUE I

The circuit court did not err in denying the shell motion summarily. Collateral counsel had more than a year to file a fully pled motion, but failed to do so. Counsel only sought to move the case forward several months after the court denied the shell motion.

### ISSUE II

The circuit court did not err in denying the shell motion without holding a Huff hearing. The motion was legally and factually insufficient to state any claims for relief, and a Huff hearing would have been a useless act.

ARGUMENT

ISSUE I

THE CIRCUIT COURT DID NOT ERR IN DENYING THE  
SHELL MOTION.

Bell argues that the circuit court erred in denying his shell motion based on the state's allegation in its November 1999 response that, even though one year and five months had passed since his appeal became final, he had not filed a fully pled postconviction motion. Bell claims that the one-year time limit in Florida Rule of Criminal Procedure 3.851(b)(1) should not be enforced because he did not have collateral counsel within thirty days of his convictions and sentences becoming final as provided in rule 3.851(b)(3). This argument ignores the fact that, by statute, CCRC-N had the duty to represent Bell in his postconviction proceedings and that that duty commenced when his case became final. §§ 27.701, 27.702, Fla. Stat. (1999). CCRC-N waited approximately six months after Bell's case became final, during which it apparently did nothing on his case, and then abandoned Bell. Rule 3.851(b)(3), therefore, does not apply because Bell had postconviction counsel at the pertinent time.

Regardless of CCRC-N's action or inaction on Bell's case, however, current collateral counsel was appointed in October 1998, filed a shell motion in May 1999, and stated that she would file a fully pled motion by the end of October 1999. Thus, current counsel had a full year in which to file a legally sufficient

motion. Counsel failed to do so, however, and also failed to file an adequate amended motion after the state responded or before the circuit court ruled almost two months later. Counsel also failed to petition this Court for an extension of the one-year period pursuant to rule 3.851(b)(4) and did not move for rehearing of the circuit court's order denying the shell motion. Instead, she filed a notice of appeal to this Court, thereby divesting the circuit court of jurisdiction. Only after the circuit court lost jurisdiction, and twenty months after her appointment to the case, did counsel attempt to move the case forward by asking the trial court to compel trial counsel to turn over his files. No reason has been given for current counsel's failure to act in a timely manner.

The cases that Bell relies on are inapposite to the facts of this case. Both Ventura v. State, 673 So.2d 479 (Fla. 1996), and Walton v. Dugger, 634 So.2d 1059 (Fla. 1993), predate the adoption of rule 3.852, see 683 So.2d 447 (1996), which set out the procedure for the automatic production of public records in capital postconviction cases.<sup>3</sup> Bell's case, on the other hand, is a 3.852 case, and all pertinent public agencies have complied with the rule and sent public records to the repository. Instead of following

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<sup>3</sup> Indeed, in Ventura v. State, 673 So.2d 479, 479 (Fla. 1996), this Court stated: "This case illustrates the immediate need for an improved procedure for timely requesting and timely furnishing public records in postconviction relief proceedings." Rule 3.852 is that "improved procedure."

rule 3.852, however, current counsel only sought the release of sealed records six months after the circuit court lost jurisdiction of this case.

The state does not contest Bell's statement that "[m]any inmates have been able to amend an initial motion to vacate." (Initial brief at 9). Bell had eight months between the filing of the shell motion and the notice of appeal to amend his admittedly incomplete and insufficient motion. He failed to do so, however, and has presented no reason for that failure.

In his concurring opinion to Mordenti v. State, 711 So.2d 30, 33 (Fla. 1998), Chief Justice Wells expressed concern over the time that is wasted in capital postconviction proceedings. This Court echoed that concern in Gaskin v. State, 737 So.2d 509, 516 n.17 (Fla. 1999), and, in her specially concurring opinion in Gaskin, Justice Pariente noted that "the Chief Justice has appointed a committee of trial judges to review the entire postconviction procedures in death penalty cases and make recommendations to this Court." 737 So.2d at 519. The committee Justice Pariente referred to was chaired by Circuit Judge Stan Morris, and the committee has made recommendations to the Court. The instant case illustrates why at least one of the committee's recommendations -- the prohibition on filing "shell" or less than fully pled motions -- should be adopted.

Bell's postconviction motion was due in May 1999, and current counsel filed the shell motion at that time. Instead of doing

that, counsel could have asked this Court, under rule 3.851(b)(4), to extend the time for filing a fully pled motion. Four months after filing the shell motion, counsel represented that an amended motion would be filed in October 1999. No such motion was filed then, however, or in the three months before the circuit court lost jurisdiction over Bell's case. The filing of a fully pled and legally sufficient motion instead of the shell motion would have prevented the delays that have occurred in this case. Therefore, the circuit court's denial of Bell's postconviction motion should be affirmed.

## ISSUE II

### THE CIRCUIT COURT DID NOT ERR BY NOT HOLDING A HUFF HEARING.

Bell argues that the circuit court erred in summarily denying his motion for postconviction relief without holding a hearing pursuant to rule 3.851(c) and Huff v. State, 622 So.2d 982 (Fla. 1993). There is no merit to this claim.

As stated by this Court, the purpose of a Huff hearing "is to allow the trial judge to determine whether an evidentiary hearing is required and to hear legal argument relating to the motion." Mordenti v. State, 711 So.2d 30, 32 (Fla. 1998).<sup>4</sup> The requirement

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<sup>4</sup> Bell's reliance on Mordenti v. State, 711 So.2d 30 (Fla. 1998), is misplaced because there was a fully pled motion in that case. See 711 So.2d at 32 n.4.

of holding a hearing to decide if an evidentiary hearing is warranted contemplates the existence of a fully pled and legally sufficient motion. Bell's shell motion, however, is admittedly incomplete. It contains no facts whatsoever and fails to state any basis for relief. As such, a Huff hearing would have been a useless act because the shell motion was insufficient to state a claim for relief, let alone demonstrate that an evidentiary hearing was needed on any of the "claims." No amount of legal argument at such a hearing would have cured the motion's deficiencies. Adopting the Morris Committee's recommendations of a fully pled motion would prevent this problem.

Bell states that the circuit court denied the shell motion "[d]espite the known difficulty that defendant was having with records and without holding any hearings" and asks that leave to amend the shell motion be allowed "if trial counsel has not provided defendant's trial file or there are any other public records problems." (Initial brief at 12). This extraordinary statement ignores the September 1999 status conference at which current counsel stated that an amended motion would be filed shortly. Although counsel announced at that hearing that trial counsel's records had not been received, no motion to compel production of those records was filed until more than four months after the trial court lost jurisdiction over Bell's case. After the denial of Bell's improper March 1999 public records demand, counsel filed a motion to unseal records sent to the repository in

July 2000, more than a year after that original records request and more than four months after jurisdiction was lost.

The shell motion contained no facts and stated no claims for relief. The circuit court did not err in these circumstances in not holding a Huff hearing.

CONCLUSION

The circuit court's actions regarding this case should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief has been furnished by U.S. Mail to Jeanine B. Sasser, 4595 Lexington Avenue, Suite 100, Jacksonville, Florida 32210, this \_\_\_\_ day of October 2000.

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