

Rule 3.851. Collateral Relief After Death Sentence Has Been Imposed

(a) Scope and Purpose.

This rule shall apply to all motions and petitions for any type of postconviction or collateral relief brought by prisoners defendants in state custody who have been sentenced to death. A defendant in custody under sentence of death by a court established by the laws of Florida claiming the right to be released on the ground that the judgment was entered or that the sentence was imposed in violation of the Constitution or laws of the United States or of the State of Florida, that the court was without jurisdiction to enter the judgment or to impose the sentence, that any plea was given involuntarily, or that the judgment or sentence is otherwise subject to collateral attack may move, in the court that entered the judgment or imposed the sentence, to vacate, set aside, or correct the judgment or sentence. The purpose of this rule is to provide the means by which a defendant under sentence of death can raise claims of constitutional error which were unavailable at the time of trial or direct appeal. This rule does not authorize relief based on grounds that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence. No claim of ineffective assistance of collateral counsel may be raised pursuant to this rule.

(b) Appointment of Counsel.

(1) Postconviction counsel shall be appointed upon the issuance of a mandate affirming a judgment and sentence of death on direct appeal. On the day the mandate issues, the Supreme Court shall enter an order appointing the appropriate office of the Capital Collateral Regional Counsel.

(2) Within 30 days of the 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.

(c) Time Limitation.

(1) Postconviction Motions

(A) Any rule 3.850 fully-pled motion to vacate judgment of conviction and sentence of death, in accordance with subdivision (d) below, shall be filed by the defendant within one year after the judgment and sentence become final. For the purposes of this rule, a judgment is final when the Florida Supreme Court issues a mandate affirming the judgment and sentence of death on direct appeal. The finality of the judgment is not affected by the availability of discretionary review in the United States Supreme Court or by the filing of a petition for discretionary review in the United States Supreme Court. The defendant must pursue federal discretionary remedies concurrently with state postconviction remedies. (a) upon the expiration of the time permitted to file a petition for writ of certiorari in the United States Supreme Court

seeking review of the decision of the Supreme Court of Florida affirming a judgment and sentence of death (90 days after the opinion becomes final), or (b) upon the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed:

~~(3) These time limitations in subdivisions (b)(1) is are established with the understanding that each death-penalty defendant will have counsel assigned and available to begin addressing the defendant's postconviction issues within 30 days after the judgment and sentence become final.~~

(B) Should the governor sign a death warrant before the expiration of these time limitations in subdivision (b)(1), this Court will, upon a defendant's request, grant a stay of execution to allow any postconviction relief motions or petitions to proceed in a timely and orderly manner. ~~Further, this time limitation shall not preclude the right to amend or to supplement pending pleadings pursuant to these rules.~~

(C) An extension of time may be granted by the ~~Supreme Court of Florida~~ trial court for the filing of postconviction pleadings if the defendant's counsel makes a showing ~~of good cause for counsel's inability to file the postconviction pleadings within the one-year period established by this section that a manifest injustice would result absent such relief.~~ The pendency of public records requests or litigation, the pendency of other litigation, or the failure of collateral counsel to timely prosecute a case shall not constitute cause for extending or tolling the time for the filing of any postconviction pleading. No appeal may be taken from the denial of a motion for extension of time for filing a postconviction motion.

(2) Extraordinary Remedies

All petitions for extraordinary relief in which the Supreme Court of Florida has original jurisdiction, including petitions for writ of habeas corpus, shall be filed ~~simultaneously with the initial brief filed on behalf of the death-sentenced defendant in the appeal of the circuit court's order on the rule 3.850 motion:~~ within 120 days of appointment of collateral counsel.

~~(5) The provisions of rule 3.850, to the extent they are not inconsistent with this rule, remain applicable to postconviction or collateral relief.~~

~~(6) The Court will review the operation and effectiveness of this rule on or before July 1, 1995. This rule will govern the cases of all death-sentenced individuals whose convictions and sentences become final after January 1, 1994.~~

(d) Contents of Motion.

A motion filed under this rule shall not exceed 50 pages exclusive of attachments and exhibits. The motion shall be under oath and include:

(1) the judgment or sentence under attack and the court which rendered the same;

(2) a statement of each issue raised on appeal and the disposition thereof;

(3) whether a previous postconviction motion has been filed and, if so, the disposition of all previous claims raised in postconviction litigation; if a previous motion or motions have been filed, the reason or reasons the claim or claims in the present motion were not raised in the former motion or motions;

(4) the nature of the relief sought;

(5) a fully detailed allegation of the factual basis for any claim of legal or constitutional error asserted, including the attachment of any document supporting the claim, the name and address of any witness, the attachment of affidavits of the witnesses or a proffer of their testimony; and

(6) a concise memorandum of applicable case law as to each claim asserted.

The court on its own motion or on the motion of the state may strike the postconviction motion if it fails to comply with the requirements of subdivision (c) or (d). The defendant shall have thirty days in which to comply with the rule or the motion for postconviction relief shall be denied with prejudice.

(e) Procedure; Evidentiary Hearing; Disposition.

(1) *Judicial Assignment.* Upon service of the original postconviction relief motion, the chief judge shall assign the case to a trial judge qualified to conduct capital proceedings under the Rules of Judicial Administration.

(2) *Assignment of Counsel.* If the Capital Collateral Counsel files a motion to withdraw in the trial court, pursuant to (b)(2), a copy shall be provided to the chief judge of the circuit or assigned trial judge, who shall immediately appoint new postconviction counsel

(3) *Status Conferences.* The assigned judge shall conduct a status hearing not later than 90 days after the assignment, and shall hold status conferences at least every 90 days thereafter until the evidentiary hearing has been completed or the motion has been finally denied without a hearing. The attorneys may appear by telephone at such status conferences, with leave of the trial court. Pending motions, except those requiring the presence of the defendant, shall be heard at the status conference unless otherwise ordered by the court.

(4) *Filing and Service.* The motion for postconviction relief, the answer, and any other court paper filed in the postconviction proceeding shall be filed with the clerk of the court and served on the assigned judge, opposing party and the attorney general. Upon the filing of any original court paper in the

postconviction proceeding, the clerk of the court shall determine that the assigned judge has received a copy. All motions other than the postconviction motion itself shall be accompanied by a notice of hearing.

(5) Duties of Clerk. Upon the filing of a motion for postconviction relief, the clerk shall immediately forward the motion and file to the appropriate judge.

(6) Answer. Within 60 days of the filing of the motion, the state shall file its answer. The answer may address the legal sufficiency of the motion. Additionally, the answer shall respond to the allegations of the motion, provide a concise memorandum of applicable case law, and specifically address whether an evidentiary hearing should be accorded on any of the movant's claims. If the state disputes any issue of fact in the motion, the answer shall include a fully detailed allegation of the facts supporting the state's position, including the attachment of sworn affidavits in support thereof, and appropriate portions, if any, of the record of trial proceedings, the name and address of any potential witnesses, a proffer of their testimony and the basis thereof. If the state asserts that no evidentiary hearing is required, the state shall provide the legal and factual bases for such conclusion.

(7) Amendments. No amendment of the motion, including amendments arising from unresolved public records requests, shall be allowed after the state files its answer.

(8) Evidentiary Hearing. Prior to ruling on any rule 3.850 motion filed by a prisoner who has been sentenced to death, Within 30 days following receipt of the state's answer, the trial court shall conduct a hearing to determine whether an evidentiary hearing is required. ~~This rule shall apply only to rule 3.850 motions that have not been ruled on as of January 1, 1997.~~ Within 30 days thereafter, the court shall rule whether an evidentiary hearing is required and, if so, shall schedule an evidentiary hearing to be held within 90 days. If the court determines that the motion is legally insufficient or that the motion, files and records in the case show that the defendant is entitled to no relief, the court shall, within 45 days thereafter, deny the motion, setting forth a detailed rationale therefor, and attaching or referencing such portions of the record as are necessary to allow for meaningful appellate review.

(9) Disclosure. Within 10 days of the order scheduling an evidentiary hearing, the defendant shall disclose the names and addresses of any potential witnesses not previously disclosed, with their affidavit or a proffer of their testimony. Upon receipt of the defendant's disclosures, the State shall have 10 days within which to provide reciprocal disclosure. The disclosure required of the state shall be the same as required of the defendant. If the defense intends to offer expert testimony of his/her mental status, the state shall be entitled to have the defendant examined by an expert of its choosing. All of the defendant's mental status claims in the motion shall be stricken if the defendant fails to cooperate with the state's expert. Reports provided by any expert witness shall be disclosed to opposing counsel upon receipt.

(10) Transcript and final order. Following the evidentiary hearing, the court shall order the transcription of the proceedings which shall be filed within 30 days. The court shall render its order,

determining the issues and making detailed findings of fact and conclusions of law with respect to each allegation asserted, within 30 days of receipt of the transcript.

(f) Defendant's Presence Not Required.

The defendant's presence shall not be required except at the evidentiary hearing on the merits of any claim and at any hearing involving conflict with or removal of collateral counsel.

(g) Successive Motions.

A second or successive motion shall be denied if the court finds that it fails to allege new or different grounds for relief and the prior determination was on the merits, or, if new and different grounds are alleged, the court finds the failure of the defendant or his or her attorney to assert those grounds in a prior motion constituted an abuse of procedure governed by these rules. No successive motion shall be entertained unless the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the defendant guilty of the underlying offense or recommended or imposed the death penalty. Additionally, the facts underlying this claim must have been unknown to the defendant or his or her attorney and must not have been ascertainable through the exercise of due diligence at the time of the prior postconviction motion. The time provisions set forth in (c)(1)(A) are inapplicable to successive motions, and a defendant under sentence of death must file any successive motion within 30 days of the availability, through due diligence, of the basis for any claim therefor. The trial court shall expedite disposition of successive collateral motions and may shorten any time provisions set forth in this rule.

(h) Appeals.

(1) An appeal may be taken to the Supreme Court of Florida within 15 days from the entry of a final order on the motion for postconviction relief. Interlocutory appeals shall not be permitted. No motion for rehearing shall be permitted. The clerk of the court shall promptly serve upon all parties a copy of the final order, with a certificate of service.

(2) If the trial court has denied the original motion or a successor motion without an evidentiary hearing either on the ground that it is facially insufficient or on the ground that the attached files and records conclusively refute the defendant's claim, the appeal to the Florida Supreme Court will be governed by the summary procedures in rule 9.140(I). On appeal the case shall be initially reviewed for a determination whether the trial court correctly resolved the claims without an evidentiary hearing. If the Supreme Court determines an evidentiary hearing should have been held on one or more claims, the decision to remand for an evidentiary hearing may be made by an order without opinion. Jurisdiction shall be relinquished to the trial court for a specified period for the purpose of conducting an evidentiary hearing on the issue or issues identified in the Supreme Court's order. Thereafter, the record shall be supplemented with the hearing transcript.

(3) A final decision by the Supreme Court of Florida shall be rendered within 180 days from receipt of the record on appeal.

(i) Habeas Corpus.

Claims of ineffective assistance of appellate counsel shall be asserted by filing a Petition for Writ of Habeas Corpus in the Supreme Court of Florida. All other collateral claims formerly cognizable by Writ of Habeas Corpus shall be asserted by filing a motion for postconviction relief pursuant to this rule.