

IN THE SUPREME COURT OF FLORIDA

CARY MICHAEL LAMBRIX,

Appellant,

v.

Case No. SC08-64

Lower Tribunal No. 83-12-CF

STATE OF FLORIDA,

Appellee.

APPELLEE'S RESPONSE TO MOTION TO WITHDRAW
DUE TO CONFLICT OF INTEREST

COMES NOW, Appellee, the State of Florida, pursuant to this Court's Order of October 13, 2009, and responds to the "Motion to Withdraw Due to Conflict of Interest," filed by Appellant Lambrix's attorneys at the Office of Capital Collateral Regional Counsel for the Southern Region [CCRC-S] on or about October 8, 2009.

This appeal seeks review of an order denying several successive motions for postconviction relief. CCRC-S has represented Lambrix over the course of the postconviction proceedings below, since being appointed on June 19, 2000. The record reflects that CCRC-S was appointed when Lambrix moved to dismiss his appointed registry counsel, Thomas Ostrander, after Ostrander had taken over representation from CCRC-Middle on August 2, 1999; CCRC-Middle had taken over representation from CCRC-South in May, 1998, over Lambrix's repeated objections.

The litigation history of this case reflects that Lambrix has been an active participant in his own defense since his arrest for these murders in 1983. As this Court is well aware, Lambrix is a "frequent filer" and has filed over a dozen *pro se* pleadings in this Court while the instant appeal, Case No. SC08-64, has been pending. Most recently, Lambrix has created an issue with his appointed attorneys at CCRC-S by filing a civil rights lawsuit and specifically naming Neal Dupree and William Hennis as two of the thirteen defendants.¹ Lambrix has filed a motion requesting leave to represent himself in the circuit court below on a pending successive postconviction motion, and CCRC-S has moved to withdraw from this appeal, as well as in the circuit court, based on allegations of conflict arising from the filing of the civil lawsuit. The Motion to Withdraw filed in this Court specifically requests that "conflict-free counsel" be appointed to represent Lambrix in this appeal.

The provision of counsel for Lambrix at taxpayer expense at this stage of his case is purely a matter of statutory grace. Lambrix completed the "postconviction capital collateral proceedings," to which he is entitled under §27.711(c), on May 12, 1997, when the United States Supreme Court issued an opinion in his case, upholding the denial of habeas relief by the

¹ Notably, two of Lambrix's current attorneys, Roseanne Eckert and Craig Trocino, are not named as defendants in the suit.

Eleventh Circuit Court of Appeals. Lambrix v. Singletary, 520 U.S. 518 (1997). He has no constitutional right to counsel, and accordingly has no constitutional right to represent himself, since the Sixth Amendment only applies to the actual trial. Martinez v. Court of Appeal, 528 U.S. 152 (2000). However, the State of Florida has determined that all capital defendants at the postconviction stage should be provided counsel, "so that collateral legal proceedings to challenge any Florida capital conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may be regarded with the finality with which they are entitled in the interests of justice." Section 27.7001, Florida Statutes.

In order to achieve the goals identified in Chapter 27, the legislature has established strict limits on a capital defendant's statutory right to representation. Representation by the offices of capital collateral regional counsel is mandatory, "unless a court appoints or permits other counsel to appear as counsel of record." Section 27.702(2), Florida Statutes. Moreover, a capital defendant has no right "to challenge in any form or manner the adequacy of the collateral representation provided," see §27.7002(1), although courts must

monitor the adequacy of registry counsel pursuant to §27.711(12).

The issue presented in this case is not the adequacy of counsel, but whether a conflict has been created which precludes CCRC-S from continuing to represent Lambrix in this Court. Under the broad language of §27.703, any conflict identified by the capital collateral regional counsel may require a sentencing court to appoint a different regional office; in this case, the CCRC-Middle office would clearly suffer the same conflict, as would any attorney appointed pursuant to §27.710, since Bill Jennings (CCRC-Middle) and Roger Maas (Director, Commission on Capital Cases), are both named defendants in Lambrix's civil action. Since these are the only attorneys authorized to represent capital defendants at taxpayer expense, see §27.703, the suggestion that "conflict-free counsel" be appointed is illusory and is not an option.

Under the case law cited in the Motion to Withdraw, this Court could follow the reasoning in Miller v. State, 921 So. 2d 816 (Fla. 4th DCA 2006) and Boudreau v. Carlisle, 549 So. 2d 1073 (Fla. 4th DCA 1989), and deny the motion, finding that any conflict was created by Lambrix and would not be resolved by the appointment of new counsel. These cases are clearly more applicable than cases such as Holifield v. State, 717 So. 2d 69

(Fla. 1st DCA 1998), which simply recognize that an attorney cannot represent a defendant when the defendant is challenging the adequacy of counsel's representations in that same proceeding. However, the case law cited in the Motion to Withdraw is of limited value, since none of those cases are considering the issue of representation in the context in which it is presented in this case. Because there is no constitutional right to counsel at this point, the determination of whether a conflict exists requiring dismissal of counsel under the Sixth Amendment is not the dispositive issue.

At this stage in Lambrix's appeal, all necessary pleadings have been filed for this Court to undertake an exhaustive review of the successive postconviction proceedings held below. This Court may determine that Lambrix's repeated complaints regarding appointed counsel, culminating in the filing of his civil lawsuit, operate as a waiver of his limited right to counsel at public expense, and relieve counsel of any obligation to continue representing Lambrix. In that case, this Court should grant the motion to withdraw, accept the case for consideration without oral argument, and resolve the issues pending on appeal.

Alternatively, if this Court desires the assistance of counsel for Lambrix in responding to concerns or questions raised by the Court, the Court may deny the Motion to Withdraw

under the reasoning of Miller and conduct the oral argument as currently scheduled for Nov. 4, 2009. That result would appear to be consistent with §27.702(2), which mandates that no capital defendant may, under any circumstances, proceed at any time without counsel.

WHEREFORE, the State respectfully requests that this Honorable Court DENY the Motion to Withdraw and enter an Order directing CCRC-S to continue to represent Lambrix in this matter; alternatively, this Court may GRANT the Motion to Withdraw, release CCRC-S from further obligation in this case, and accept the case for consideration without benefit of any oral argument.

CERTIFICATE OF SERVICE

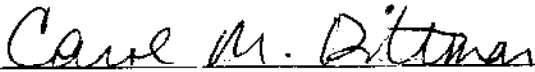
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to: Cary Michael Lambrix, DOC # 482053, 7819 N.W. 228th Street, Raiford, Florida 32026-4460; and William M. Hennis, Capital Collateral Regional Counsel - South, 101 N.E. 3rd Ave., Suite 400, Ft. Lauderdale, Florida 33301, this 14th day of October, 2009.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this response is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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