

IN THE SUPREME COURT OF FLORIDA

NO. SC01-338

GREGORY MILLS,

Petitioner,

v.

MICHAEL W. MOORE,

Respondent.

EMERGENCY MOTION: CAPITAL CASE,
DEATH WARRANT SIGNED; EXECUTION
SCHEDULED FOR MAY 2, 2001
AT 6:00 P.M.

REPLY TO AND CLARIFICATION OF RESPONSE
TO APPLICATION FOR A STAY OF EXECUTION

PETITIONER GREGORY MILLS, through his undersigned counsel, respectfully submits this reply to and clarification of the Respondent's Response to his Application for Stay of Execution.

1. One matter raised in Respondent's Response warrants a brief reply and clarification from Mr. Mills.

Respondent writes that it is "worth noting" that "at least fifty-two state and federal judges" have reviewed Mr. Mills' case and determined that no relief was

warranted (Response at 2). Respondent's point is misleading, for it is also "worth noting" that five (5) of this Court's jurists who have thus far reviewed Mr. Mills' case has ruled that Mr. Mills should get relief, just not all at the same time. On direct appeal, two members of this Court--Justices McDonald and Overton--dissented from the majority's treatment of Mr. Mills' override under Tedder v. State, 322 So. 2d 908 (Fla. 1975). In state habeas, Justice Barkett would have granted Mr. Mills habeas relief. Mills v. Dugger, 559 So. 2d 578 (Fla. 1990). In his Rule 3.850 appeal, three members of this Court--Justices Kogan, Shaw, and Barkett--dissented from the majority's decision rejecting Mr. Mills' claim of ineffective assistance of counsel. Mills v. State, 603 So. 2d 482 (Fla. 1992). Thus, of the members of the Court who have reviewed Mr. Mills' case up to now, five (5) have at one time expressed the view that Mr. Mills should receive relief.

2. As for federal judges, Justices Brennan and Marhsall dissented from the denial of *certiorari* on

direct appeal, opining that Mr. Mills deserved a life sentence. Mills v. Florida, 475 U.S. 1031 (1986).

Moreover, Mr. Mills would point out that United States District Court Judge Patricia Fawcett, in her order on Mr. Mills' petition for habeas corpus, wrote:

While the majority of the Supreme Court of Florida stated the test for a "jury override" by the trial court to be that the facts suggesting a sentence of death are so clear and convincing that no reasonable person could differ, this Court notes that two members of the Supreme Court of Florida dissented on the merits to the imposition of a death penalty in this case. Mills, 476 So. 2d at 180. From this Court's own research, it appears that in other cases a jury override by the trial court has been upheld by the Supreme Court of Florida in spite of dissents on the merits by one or more members. E.g. Marshall v. State, 604 So. 2d 799 (Fla. 1992) (dissents by Justices Barkett, Shaw, and Kogan); Brown v. State, 473 So. 2d 1260 (Fla. 1985) (dissents by Justices McDonald and Overton); Engle v. State, 510 So. 2d 881 (Fla. 987) (dissent by Justice Barkett). In these cases, there does not appear to be any discussion of the meaning of that part of the test employed in Florida for determination of the propriety of a trial court's override of a jury recommendation of life imprisonment, to wit, "that virtually no reasonable person could differ." This leaves unanswered the question whether the majority of the court is implicitly finding the dissents to be unreasonable or whether the test as stated by the Florida

courts simply conflicts on the face of the opinion which contain such dissent(s). **Thus while in this case a harmless error analysis appears to have been undertaken by the state supreme court, this Court is troubled by the test being espoused by such court in this jury override case and its purported application to the facts of this case.** This issue, however, has not been raised by the parties to this proceeding.

Mills v. Singletary, No. 92-1184-CIV-ORL-19, Order, August 19, 1996, at 36 n.12) (emphasis added).

3. It is thus misleading for Respondent to suggest that no jurist who has reviewed Mr. Mills' case ever expressed doubt about the appropriateness of his override death sentence. Thus Mr. Mills submits this reply and clarification.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States Mail, first class postage prepaid, and fax transmission, to all counsel of record on March 30, 2001.

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