

IN THE SUPREME COURT OF FLORIDA

NO. SC01-775

GREGORY MILLS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

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CORRECTED MOTION FOR RELINQUISHMENT, FOR CLARIFICATION, AND, IN THE  
ALTERNATIVE, FOR EXTENSION OF TIME UNTIL APRIL 20, 2001, AT 10 AM TO  
FILE INITIAL BRIEF

COMES NOW THE APPELLANT, GREGORY MILLS, by and through his undersigned counsel, and herein moves for a relinquishment to the lower court in light of the circumstances alleged below, for clarification of how to proceed, and in the alternative, for a brief extension to file his Initial Brief until April 20, 2001, at 10 AM.

1. In the afternoon of April 18, 2001, the lower court entered an order denying Mr. Mills' Rule 3.850 motion following an evidentiary hearing. At the time, Mr. Mills' counsel was in Hillsborough County, conducting an evidentiary hearing in Wayne Tompkins' case. In the early afternoon of April 18, Judge Perry granted Mr. Tompkins sentencing relief and a stay of execution. Mr. Mills' counsel thereupon returned to his office to begin working on Mr. Mills' appeal.

2. Also on April 18, Mr. Mills' office received the CD roms of the records that had been provided by various state agencies; those records were downloaded and copied yesterday afternoon as well, and were reviewed by counsel last evening. 3. Upon review last evening of the records from the State Attorney's Office of the Eighteenth Judicial Circuit (records which had been generated following Mr. Mills' first request for records in 1989), counsel discovered that unsigned drafts of the order summarily denying Mr. Mills' first Rule 3.850 motion were contained in the State's files. Mr. Mills' counsel also discovered a handwritten note dated from 1989 (the actual dates are illegible), which reads:

To: Sandy Masak  
Sanford SAO

Here is the paperwork on D Gregory Mills that I copied from Judge Woodson's file. For Steve Plotnik.<sup>[1]</sup>

s/ Donna  
Melb. SAO

4. Based on the discovery of this information, Mr. Mills submits that a claim now exists as to the State's preparation on an *ex parte* basis of the order summarily denying Mr. Mills' first 3.850 motion in 1989. This claim requires factual development. See Smith v. State, 708 So. 2d 253 (Fla. 1998) (appeal relinquished for evidentiary hearing on whether *ex parte* communication occurred

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<sup>1</sup>Steve Plotnik was one of the prosecutors working on Mr. Mills' first postconviction proceedings.

regarding drafting of order); Swafford v. State, 636 So. 2d 1309 (Fla. 1994) (same). There is no other explanation for these unsigned orders being in the State's files. This is the same situation addressed by the Court in Huff v. State, 622 So. 2d 982 (Fla. 1993), where the Court found a due process violation when collateral counsel was not provided adequate opportunity to review and/or object to the State's proposed order denying relief. Mr. Mills' case is even more egregious, as there is no indication that collateral counsel even knew that the judge had asked the State to prepare the order, much less that collateral counsel had inadequate opportunity to respond.

5. Just this morning, Mr. Mills' current counsel spoke with Billy Nolas, who represented Mr. Mills in his previous 3.850 proceedings. Mr. Nolas indicated that he had not been aware that the State had drafted the order summarily denying the first 3.850 motion. Had he known, he would have filed a motion to disqualify Judge Woodson on that basis. However, because this was not previously known, Judge Woodson then proceeded to preside over the evidentiary hearing ordered by this Court and made factual findings which have been relied on ever since by this Court and the federal courts as to Mr. Mills' ineffective assistance of counsel claims. Given this situation and if Mr. Mills were to prevail on this issue, he would be entitled to be put back in a position he should have been in 1990 and have an evidentiary hearing before a new judge. See Suarez v. Dugger, 527 So. 2d 190 (Fla. 1988). The original *ex parte*

communication taints and vitiates the remainder of the proceedings.  
Suarez.

6. Moreover, upon counsel's return last evening, he learned that a witness who counsel's investigator interviewed had provided a sworn affidavit that Mr. Mills' codefendant, Vincent Ashley, had confessed to him that he, not Mr. Mills, was the shooter:

AFFIDAVIT OF JOHN H. ANDERSON  
DATED APRIL 18, 2000

My name is John H. Anderson and this is my sworn statement:

I am an inmate at Polk Correctional Institute in Polk Co., Florida

I was a resident of Seminole County Jail in 1979 during which time I met Vincent Ashley. As we were walking in the prison yard one day, Vincent talked about the crime that both he and Greg had committed against the Wright family in Sanford, Florida.

Vince Ashley stated that he had shot Mr. Wright "the dude" because he thought the dude was going to shoot him first. At that time, Greg Mills, his partner, was on the porch and had no gun, that Vince had possession of the gun.

Since that time, no attorney or investigator has ever approached me and no one has ever asked any questions about the crime in question, Vincent Ashley or Greg Mills until I first met with Nicholas Atkinson on Thursday April 12, 2001.

s/John H. Anderson

7. Mr. Mills is seeking clarification at this time in light of the unique circumstances and time constraints. Mr. Mills contends

that this affidavit requires an evidentiary hearing. However, the lower court has lost jurisdiction.

8. At this point, Mr. Mills is asking for either a relinquishment or a clarification. This information is new, and Mr. Mills' brief is due later today. It is not appropriate to raise new issues for the first time on appeal; however, these are unique circumstances and time constraints are pressing. If the Court wishes Mr. Mills to brief these issues, then he will do so. If the Court wishes to relinquish jurisdiction so that Mr. Mills can amend his motion, then he will do so. See State v. Meneses, 392 So. 2d 905 (Fla. 1981). At this point, the lower court has no jurisdiction.

8. Should the Court not wish to relinquish, Mr. Mills would ask for a brief extension to file his brief until 10 AM on April 20, 2001. Counsel has just received the record, which is in excess of 500 pages. The issues at stake will determine whether Mr. Mills lives or dies, and these time constraints preclude an effective appellate presentation. Counsel has been under extraordinary pressure these past few weeks with two simultaneous warrants. Sixteen to eighteen hour work days have been average in the past ten days. Since this weekend, counsel has prepared the 3.850 motions in both Mr. Tompkins and Mr. Mills' cases, conducted the Huff hearing and evidentiary hearing in Mr. Mills' case, conducted the evidentiary hearing in Mr. Tompkins' case, and is working on Mr. Mills' brief at this time. However, this new and important information just came to

light. Thus counsel requests a brief extension. Obviously Mr. Mills would not object to the State being afforded the same brief extension that Mr. Mills is requesting.

WHEREFORE Mr. Mills requests (1) a relinquishment to the lower court to permit Mr. Mills to amend his 3.850 motion with this newly discovered and disclosed information; (2) should the Court decline to relinquish, then Mr. Mills seeks clarification on whether to include this information in his brief or how to proceed at this point; (3) he also requests an extension to file his brief to 10:00 AM on Friday, April 20.

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 April 19, 2001.

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