

DEATH WARRANT

COPY

FILED
THOMAS D. HALL

APR 20 2001

IN THE FLORIDA SUPREME COURT

GREGORY MILLS,
Appellant,

v.

SC01-775

CLERK, SUPREME COURT
BY _____

STATE OF FLORIDA,
Appellee.

MOTION TO STRIKE IDENTIFIED PORTIONS OF INITIAL BRIEF

Comes now the State of Florida, by and through the undersigned Assistant Attorneys General, and moves this Court to strike Argument II, pages 29-41, of Mills *Initial Brief*. As grounds for the granting of this motion, the State submits the following:

1. On April 19, 2001, Mills filed a Motion for Relinquishment (and other relief) based upon what he described as "new evidence."

This Court denied that motion, stating:

Upon consideration of Appellant's 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, and responses thereto, it is ordered that the corrected motion for relinquishment and for clarification is hereby denied.

Appellant's corrected motion or extension of time is granted and the time for the simultaneous filing of briefs is extended to 10:00 a.m., Friday, April 20, 2001. Appellee's request for extension of time to 5:00 p.m., Friday, April 20, 2001, is denied.

Mills v. State, No. SC01-775 (Fls. April 19, 2001). As this Court is well aware, the clarification component of that motion, sought permission to raise an issue for the first time on appeal from the denial of Rule 3.850 relief. Moreover, the Appellee's motion for

extension of time was contained in a supplemental response which requested an extension of time only if this Court allowed Mills to brief issues that were not raised in the Circuit Court. That request was denied. Thus, this Court's ruling is clear, and Mills' inclusion in his brief of issues that were not raised in the Circuit Court is not only improper, but also contrary to this Court's ruling of April 19, 2001.

2. In addition to being directly contrary to this Court's April 19, 2001, order, Florida law is long-settled that a claim not raised in a rule 3.850 motion cannot be raised for the first time on appeal from the denial of Rule 3.850 relief. *Doyle v. State*, 526 So. 2d 909, 911 (Fla. 1988); see also, *Peede v. State*, 748 So. 2d 253 (Fla. 1999). Claim II is in direct contravention of that well-settled rule of appellate practice, and should be stricken.

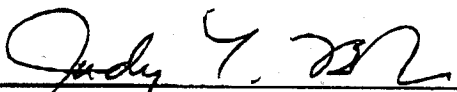
3. Further, the State calls the Court's attention to the facts that Mills' argument with respect to the standard to be applied in evaluating Claim I, which is set out on pages 23-27 of his *Initial Brief*, was not raised in the Circuit Court. (R73-74). Because this component of Claim I is raised for the first time on appeal to this Court, it is procedurally barred, and should be stricken.

WHEREFORE, the State respectfully moves this Court to strike the identified part of Claim I, and all of Claim II, of Mills' *Initial Brief* as unauthorized and improper. Should this Court deny this motion, the State asks that it be given until 10:00 AM on


Monday, April 23, 2001, to file a supplemental brief addressing those matters only.

Respectfully submitted,

ROBERT A BUTTERWORTH
ATTORNEY GENERAL



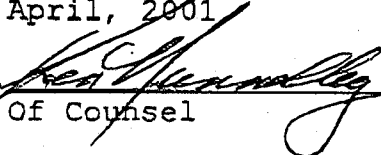
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by Facsimile and U.S. Mail to: Todd Scher, CCRC - South, 101 N.E. 3rd Ave., Suite 400, Ft. Lauderdale, FL 33301, on this 20th day of April, 2001



Of Counsel