

IN THE SUPREME COURT OF FLORIDA

NO. SC 01-775

FILED
THOMAS D. HALL

APR 23 2001

CLERK, SUPREME COURT

~~DEATH WARRANT~~
COPY

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.

NOTICE OF FILING

COMES NOW THE APPELLANT, GREGORY MILLS, by and through his undersigned counsel, and herein files the attached affidavit from Billy Nolas, Esq. This affidavit relates to Argument II of Mr. Mills' Initial Brief.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by Federal Express to all counsel of record on April 20, 2001.



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Attorney for Defendant

Copies furnished to:

Kenneth Nunnelley, Asst. Attorney General
Office of the Attorney General
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Daytona Beach, FL 32118

SWORN DECLARATION OF BILLY NOLAS, ESQUIRE

COMES NOW THE DECLARANT, BILLY NOLAS, ESQUIRE, and herein declares:

1. My name is Billy Nolas. I am an attorney currently practicing law in Philadelphia, Pennsylvania.
2. In 1989, I was employed as an attorney with the Capital Collateral Representative (CCR), in Tallahassee, Florida. One of the cases I was assigned to was Gregory Mills' case. On or about February 24, 1988, I was filed a Rule 3.850 motion on behalf of Mr. Mills.
3. On October 18, 1989, Governor Martinez signed Mr. Mills' death warrant, setting the warrant week from January 15, 1990 through January 22, 1990.
4. On or about November 14, 1989, I filed a Consolidated Proffer in Support of Request for Evidentiary Hearing and an Application for a Stay of Execution on behalf of Mr. Mills. To the best of my recollection at this time, Judge Woodson conducted no status hearings on Mr. Mills' case. However, the record would best reflect whether any hearings in fact took place.
5. On December 27, 1989, I received a copy of an order from Judge Woodson summarily denying Mr. Mills' first Rule 3.850 motion. The following day, I filed a motion for rehearing on behalf of Mr. Mills. One of the bases for rehearing that was included in my motion was that Judge Woodson's order indicated that he had reviewed the State's Response to Mr. Mills' motion, yet I had never been served with a response from the State. I therefore requested that the Court grant rehearing and also that the Court order the State to serve me with any response it had filed. Mr. Mills' rehearing motion was denied. However, on January 5, 1990, I did eventually receive written response to Mr. Mills' Rule 3.850 motion. According to the

certificate of service on the State's response, it was mailed on January 4, 1990, and signed by Assistant State Attorney Stephen Plotnick.

6. I subsequently litigated the appeal before the Florida Supreme Court, which eventually reversed and remanded for an evidentiary hearing on the issue of penalty phase ineffective assistance of counsel. I conducted the evidentiary hearing on behalf of Mr. Mills. Soon thereafter, I left CCR and did not litigate Mr. Mills' appeal to the Florida Supreme Court from the denial of relief following the evidentiary hearing.

7. On Thursday, April 19, 2001, I was contacted by Todd Scher, who is currently representing Mr. Mills. Mr. Scher asked me if I had ever had any information to indicate that the original order summarily denying Mr. Mills' 3.850 motion had been drafted by the State following an *ex parte* communication between the State and Judge Woodson. He also asked me if I had ever known about or received copies of a draft order or orders from the State reflecting that it had forwarded proposed orders to Judge Woodson on Mr. Mills' 3.850 motion.

8. I can unequivocally state that I did not ever know that the State had drafted an order for Judge Woodson to summarily deny Mr. Mills' 3.850 motion. There is no question in my mind that had I been informed of what occurred here, it would have been clear to me that an *ex parte* communication occurred between Judge Woodson and the State. I would not have agreed to allowing the State to draft an order in these circumstances. Judge Woodson had not held any hearings on the matter before denying the motion, and I had no notice whatsoever of what had transpired.

9. Such a procedure is a real offense to the rights of Mr. Mills, or any Petitioner, to a fair and impartial adjudication. Consequently, in any case where I became aware of similar *ex*

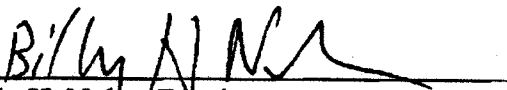
parte procedures, I have raised the issue, finding the abrogation of my client's rights intolerable. These cases include Huff v. State, Rose v. State and Card v. State. Regrettably, the State never disclosed to me in any way the impropriety in Mr. Mills' case.

10. Without question, had I known of this situation, I would have sought to disqualify Judge Woodson from presiding over Mr. Mills' case. I had no notice or opportunity to be heard on the State's proposed order. Moreover, that Judge Woodson had contacted the State on an *ex parte* basis to have it prepare the order would have clearly warranted Judge Woodson's recusal under case law. I would have filed a motion to disqualify Judge Woodson on that basis.

11. Because I had no idea that the State had drafted the order in question and that an *ex parte* communication may have occurred, I had no reason to make an additional public records request on the State Attorney's Office in 1990 prior to the evidentiary hearing. Moreover, because Mr. Mills' case was in active litigation, I cannot imagine that any files would have been disclosed even if I had asked. However, I do believe that the State had an obligation under Brady

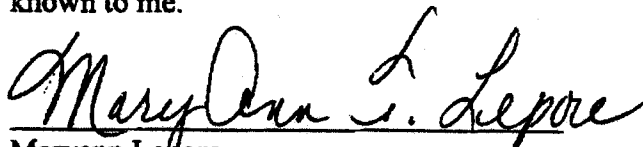
v. Maryland and other due process precedents to disclose this information to me that I could have made a decision on how to proceed.

FURTHER AFFLIANT SAYETH NAUGHT



Billy H. Nolas, Esquire

Sworn to or affirmed to by me this 20th day of April 2001 by Billy H. Nolas, who is personally known to me.



Maryann Lepore
Notary Public, State of Pennsylvania
My Commission Expires October 13, 2001

NOTARIAL SEAL
MARY ANN T. LEPORE, Notary Public
City of Philadelphia, Phila. County
My Commission Expires Oct. 13, 2001