

# Supreme Court of Florida

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No. 68,618

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DAVID LIVINGSTON FUNCHESS, Appellant,

vs.

STATE OF FLORIDA, Appellee.

[April 21, 1986]

PER CURIAM.

David Livingston Funchess, scheduled for execution on April 22, 1986, appeals from the trial court's denial of his second 3.850 motion for post-conviction relief and his application for stay of execution. We have jurisdiction. Art. V, § 3(b)(1), Fla. Const. We affirm the trial court's order denying appellant's motion to vacate and deny the application for stay of execution.

It is so ordered.

BOYD, C.J., ADKINS, OVERTON, McDONALD, EHRLICH and SHAW, JJ., Concur  
BARKETT, J., Dissents

NO MOTION FOR REHEARING WILL BE ENTERTAINED BY THE COURT.

An Appeal from the Circuit Court in and for Duval County,

Gordon A. Duncan, Jr., Judge - Case No. 75-169 CF Div. R

Larry Helm Spalding, Capital Collateral Representative, Mark E. Olive, Litigation Director, and Michael A. Mello and David A. Reiser, Assistant Capital Collateral Representatives, Tallahassee, Florida,

for Appellant

Jim Smith, Attorney General and Richard E. Doran, Assistant Attorney General, Miami, Florida,

for Appellee