IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-260

AMOS LEE KING,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA

DEATH PENALTY CASE
EXECUTION SCHEDULED FOR FEBRUARY 26, 2003 AT 6:00 PM

REPLY BRIEF OF APPELLANT

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STATEMENT OF THE CASE AND FACTS

Counsel for Mr. King challenges the facts originally set forth in this Court's opinion, King v. State, 390 So.2d 315 (1980), and does so respectfully. Counsel maintains that a trial conducted 94 days after the offense had taken place did not, and could never, fully present all of the relevant facts in this case. Further, it is clear that many of the facts contained in the statement were previously presented and argued to the trial court and this Court, and are, therefore, part of the record. The State, in its zealous advocacy, seeks to strike the factual statement present by counsel. There is no legal basis to strike a factual statement. As such, the appellant relies upon the statement in the initial brief.

ISSUE I

Despite the numerous personal attacks on counsel, the appellant maintains the factual matters contained in the initial motion and brief are true and correct. As such, counsel would rely upon argument contained in the initial brief.

ISSUE II

The appellant maintains that the record request made regarding the medical examiner's records was timely pursuant to the trial court's previous statements that it would allow the release of the records should extra time be granted to Mr. King to explore any possible exculpatory evidence. Further, the requests were made

prior to the scheduling of Mr. King's latest execution date.

In addition, the requests complied with the rule in that they specifically requested certain records contained at the medical examiner's office, that being those relating to the John Peel, Jr. and Rebecca Long cases. The appellant did not file requests[1] that could be viewed by this Court as a "fishing expedition", see Mills v. State, 786 So.2d 547 (Fla. 2001), in which "all *Brady*[2] material is sought." Counsel requested the reports made by the medical examiner's office which reviewed the findings made by Dr. Joan Wood. Dr. Wood's work on the Peel and Long cases was relevant for the current medical examiner to reopen it's investigation. The information presented by the medical examiner's office regarding the work done by Dr. Joan Wood was relevant enough for the State Attorney to clear both men accused of murdering the children of any wrongdoing in the cases. The appellant maintains that such information regarding Dr. Joan Wood is relevant enough for Mr. King to gain *access* to the records. As such, the trial court erred in denying the request.

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[1] It should be noted that all requests made for public records were those that would have been updates to information previously gained. Specifically, counsel requested only those records regarding Mr. King's last DNA testing. The records request was made prior to an execution date being set, and thus, could not be viewed as an "11th hour attempt" to stay Mr. King's execution.

[2] Brady v. Maryland, 373 U.S. 83 (1963).

Further, it should be noted that a serious constitutional question arises when an attorney, defending a client facing the ultimate sanction of death, has less access to "public" records than ordinary citizens or the media. It is clear from the appellant's initial motion to vacate that the media was able to gain access to the autopsy reports generated by the medical examiner's office in reviewing the work done by Dr. Joan Wood. Such investigative reporting, accomplished through the use of Florida's Sunshine Act, Chapter 119, alerted present counsel to the Peel and Long cases. While a denial of access to such records clearly violates Mr. King's state and federal equal protection and due process rights, it is further that such denials violate the Eighth Amendment.

The situation an attorney finds oneself in when such records are available to the public, *in this situation*, places counsel and the defendant in a legal Scylla and Charybdis. Records are available to the public under a statutory right under Chapter 119 but not available to a defendant with an Eighth Amendment right to be free from cruel and unusual punishment. However, counsel, or a defendant cannot request records pursuant to Chapter 119 even if they are necessary to protect the defendant's Eighth Amendment rights due to the prohibitions in Fla.R.Crim.P. 3.852. Further, evidence obtained from records gather pursuant to Chapter 119 but not Rule 3.852 may be barred from the court.

ISSUE III

While the appellant relies upon the argument posited in the initial brief, counsel would expand the argument regarding the application for a writ of mandamus.

The State relies upon the argument that clemency is a discretionary act and that the release of the requested records is also discretionary under section 14.28, F.S. (2002).

The appellant is not asking for the writ to issue directing the Governor to conduct a clemency investigation or proceeding. Nor is the appellant requesting release of any records in the possession of the Governor by way of writ. Rather, the appellant is seeking a writ directing the Governor to give permission to Bode Technology Group, Inc. to converse with counsel for the appellant and release **their** records.

Section 14.28, F.S. states "**All records developed or received** by any state entity pursuant to a Board of Executive Clemency investigation shall be confidential and exempt from the provisions of s. 119.07(1) and s.24(a), Art.I of the State Constitution. However, such records shall be released upon approval of the Governor." (Emphasis added).

It is clear that under the exemption of 14.28, and the discretionary language

contained therein, that only those records developed or in the possession of the Governor would qualify under the State's theory. In the instant action, no such records are being requested by way of the writ.

CONCLUSION

In conclusion, the appellant Mr. King relies upon the arguments contained in the initial brief and those forwarded herein and requests all relief under the law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief of the Appellant has been furnished by Electronic Transmission, Fax and United States Mail, first class postage prepaid, to all counsel of record and the Defendant on February 21, 2003.

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