IN THE SUPREME COURT OF FLORIDA

PETER VENTURA,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

CASE NO. ~~71,795~~ 71,905

APPEAL FROM THE CIRCUIT COURT
IN AND FOR VOLUSIA COUNTY
FLORIDA

REPLY BRIEF OF APPELLANT

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SUMMARY OF ARGUMENTS

Appellant will reply to Points I and II of Appellee's Answer Brief. Appellant will stand on the arguments in his Initial Brief in regard to Points 111, IV, V and VI.

As to Point I, Appellee's arguments are overbroad. The narrow issue is whether the trial court made an adequate inquiry into the grounds for Appellant requesting a new court- appointed attorney.

The trial court denied Appellant's request, without a hearing. When a hearing was held on ~~the Public Defender~~'s Motion to Withdraw, the trial court did not adequately inquire into the grounds for Appellant's Motion to discharge his attorney.

As to Point 11, an attack on effective assistance of counsel undermines and erodes the attorney-client relationship. In criminal trials, especially capital trials, wholesome attorney-client relationships are essential to effective representation.

It is unrealistic to expect trial counsel to render vigorous, zealous representation to a client who is openly hostile to counsel and who accuses counsel of serious breaches of the attorney-client relationship. Additionally, Appellant's claim of an actual conflict of interest appears not to have been addressed in the record. Appellant's claim of actual conflict should have been addressed by the trial court or by the trial attorneys.

POINT I

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN FAILING TO CONDUCT A FULL INQUIRY INTO THE NATURE OF APPELLANT'S ALLEGATIONS OF A CONFLICT OF INTEREST AND REQUESTS TO DISCHARGE COURT-APPOINTED COUNSEL AND IN FAILING TO CONDUCT A FULL INQUIRY INTO COURT-APPOINTED COUNSEL'S MOTION TO WITHDRAW.

The narrow issue here is whether the trial court complied with the enlightened guidance of Nelson v. State, 274 So.2d 256 (Fla. 4th DCA 1973), upon receiving Mr. Ventura's written request to discharge his court-appointed counsel. The record clearly shows that the Nelson guidelines were neither actually nor constructively followed. On March 20, 1987, eight days after receiving Mr. Ventura's written request, the trial court denied the request in writing (R942-943). The trial court succinctly stated:

> Your letter raises insufficient grounds to discharge the Public Defender's Office and appoint a private attorney to represent you at the taxpayer's expense.
>
> Legally, you would have the right to refuse the services of the Public Defender's Office and either represent yourself or hire your own attorney at your expense.
>
> Because of the nature of the charges, I would strongly urge you not to try to represent yourself and if you cannot afford to hire your own attorney, then stay with the Public Defender's Office.. ...(R942).

Accordingly, the trial court made it clear to Mr. Ventura that the request to discharge counsel was denied. Appellee's suggestion that Mr. Ventura should have continued to voice objections to the trial court's denial of his motion to discharge his attorney is unreasonable. Such a position encourages disruption of proceedings and disrespect for trial court rulings. Furthermore, at the hearing on the Public Defender's Motion to Withdraw on May 5, 1987, upon Appellant being asked by the trial court whether he continued to desire to discharge his attorney, Appellant answered: "Yes, your Honor. I do." (R1076)

Actually, it appears that no hearing was held on Mr. Ventura's request to discharge counsel; rather, a hearing was held on the Public Defender's Motion to Withdraw (R1074), almost two months after the trial court had denied Mr. Ventura's request for discharge (R942-943; 1072-1088).

For clarification: while Mr. Ventura requested that the trial court consider appointing a specific attorney, it is clear that he was not demanding an attorney of his choice (R943). Mr. Ventura respectfully requested that the trial court use its "best judgement" in appointing new counsel (R943).

Finally, had an inquiry been conducted pursuant to Nelson, supra, the ambiguities surrounding the issue of whether or not any conflict of interests existed would have been dispelled.

Based upon the foregoing, the judgement below should be reversed and the case should be remanded for new a trial.

POINT II

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN NOT GRANTING APPELLANT'S REQUEST TO DISCHARGE HIS COURT-APPOINTED COUNSEL AND IN DENYING COURT-APPOINTED COUNSEL'S MOTION TO WITHDRAW, WHERE AN ACTUAL CONFLICT OF INTEREST EXISTED AND WHERE GIVEN THE TOTALITY OF THE CIRCUMSTANCES IT WAS IMPRACTICAL AND UNREALISTIC TO EXPECT TRIAL COUNSEL TO RENDER EFFECTIVE ASSISTANCE.

While it is true that Parker v. State, 304 So.2d 478 (Fla. 1st DCA 1974) involved a "post-conviction" motion attacking counsel's competence, it is also true that Mr. Ventura's motion to discharge raised the issue of effective assistance of counsel. If a post-trial motion attacking an attorney's competence creates an "obvious conflict" between such an attorney and his client, then a pretrial motion attacking competence should create an equally or perhaps more obvious conflict.

In criminal trials, especially capital trials, good attorney-client relationships are crucial to effective representation. It is unrealistic to expect trial counsel to render zealous, vigorous representation to a client who is openly hostile to counsel and who accuses counsel of serious breaches of the attorney-client relationship.

Additionally, Mr. Ventura's claim of an actual conflict of

interests between the Public Defender's representation of himself and an Edward Adkins was not refuted in the record. It would be extremely inequitable to construe any lingering ambiguities concerning Edward Adkins against the Appellant. At the very least, this factual issue should have been resolved at the trial level -- prior to trial -- by the attorneys or the trial court.

Therefore, the case should be reversed and remanded for a new trial.

CONCLUSION

Based upon the foregoing reasons and authorities, arguments and policies, Appellant respectfully requests that this Honorable Court grant the following relief:

As to Points I through IV, reverse the convictions and sentences and remand for a new trial;

As to Points V and VI, declare Florida's death penalty statute unconstitutional and remand for the imposition of a life sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the Honorable Robert A. Butterworth, 125 North Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014, and to Peter Ventura, #110277, Florida State Prison, Post Office Box 747, Starke, Florida 32091.

DATED this 31st day of May, 1989.

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