

IN THE SUPREME COURT OF FLORIDA

CARY MICHAEL LAMBRIX,

Appellant/Petitioner,

v.

CASE NOS. SC16-8/SC16-56
Lower Tribunal No. 83-12-CF

STATE OF FLORIDA/
JULIE L. JONES, ETC.

Appellee/Respondents.

_____ /

ATTACHMENT TO APPELLEE'S RESPONSE TO APPELLANT'S SECOND MOTION
TO RELINQUISH JURISDICTION IN ORDER TO FILE A RULE 3.851 MOTION
BASED ON *HURST V. FLORIDA*

RECEIVED, 02/03/2017 03:28:29 PM, Clerk, Supreme Court

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR GLADES COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

Case No. 83-12-CF
Death Penalty Case

CARY MICHAEL LAMBRIX,

Defendant.

MOTION TO STRIKE DEFENDANT'S SUCCESSIVE POSTCONVICTION MOTION

The State of Florida, through counsel, moves to strike Lambrix's successive motion for postconviction relief filed February 2, 2017. As grounds, the State submits that (1) this Court lacks jurisdiction to entertain Lambrix's motion; and (2) even if the Court had jurisdiction, Lambrix's successive motion far exceeds the page limitation for successive postconviction motions. Specifically, the State submits:

1. On February 2, 2017, Defendant Cary Michael Lambrix filed a 112-page successive motion for postconviction relief premised on Hurst v. Florida, 136 S. Ct. 616 (2016).

2. Currently pending before the Florida Supreme Court is Lambrix's appeal from the denial of his successive motion to vacate, along with Lambrix's petition for writ of habeas corpus. See Lambrix v. State, Case Nos. SC16-8, SC16-56. Accordingly, this Court lacks jurisdiction to entertain Lambrix's motion.

3. Moreover, the Hurst issue Lambrix raises in his successive postconviction motion has been extensively briefed in his pending state habeas. Oral argument took place February 2, 2016. The Florida Supreme Court is expected to rule on the matter at any time. Lambrix should not be afforded the extravagance of filing pleadings in separate courts on the same meritless claim.¹

4. Even if this Court had jurisdiction over Lambrix's successive motion, striking the pleading would be appropriate in this instance. Pursuant to Florida Rule of Criminal Procedure 3.851(e)(2), a "successive motion shall not exceed 25 pages, exclusive of attachments." Lambrix's 112-page motion far exceeds this page limitation. As another circuit court judge has recently noted when denying a successive Hurst-based motion, "the Court finds Defendant's claims can be contained in the twenty-five (25) pages required by the rule and there is no need for the Motion to exceed the page limit set out by the rule." State v. Peede, Case No. 1983-CF-001682-A-O, Order (see Exhibit A).

¹ Lambrix's convictions and sentences were final in 1986. Lambrix v. State, 494 So. 2d 1143 (Fla. 1986). See also Fla. R. Crim. P. 3.851(d)(1)(A). In Asay v. State, ____ So. 3d ____, 2016 WL 7406538 (Fla. Dec. 22, 2016), the Florida Supreme Court ruled that Hurst cannot be applied retroactively to death sentences, like Lambrix's, that were final before the release of Ring v. Arizona, 536 U.S. 584 (2002).

WHEREFORE, the State requests this Court to strike
Lambrix's successive postconviction motion.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Scott A. Browne
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CO-COUNSEL FOR STATE OF FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February, 2017, I filed the foregoing with the Clerk of the Court by using the E-Portal Filing System which will send a notice of electronic filing to the following: The Honorable James D. Sloan, Chief Judge, Hendry County Courthouse, P.O. Box 567, LaBelle, Florida 33975 (**tgutshall@ca.cjis20.org**); William M. Hennis, III, Litigation Director of CCRC-South, Martin J. McClain, Special Assistant CCRC-South, Jessica Houston and Bryan E. Martinez, Staff Attorneys, CCRC-South, Law Office of the Capital Collateral Regional Counsel-South, One East Broward Boulevard, Suite 444, Ft. Lauderdale, Florida 33301 (**hennisw@ccsr.state.fl.us**, **martymcclain@earthlink.net**, **houstonj@ccsr.state.fl.us** and **martinezb@ccsr.state.fl.us**); and to Cynthia Ross, Assistant State Attorney, P.O. Box 399, Fort Myers, Florida 33902-0399 (**cross@sao.cjis20.org** and **ServiceSAO-HE-GL@sao.cjis20.org**).

/s/ Scott A. Browne

CO-COUNSEL, STATE OF FLORIDA

EXHIBIT A

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

ROBERT IRA PEEDE,

Defendant.

CASE NO.: 1983-CF-001682-A-O
DIVISION NO.: 11

**ORDER STRIKING "SUCCESSIVE MOTION TO VACATE DEATH SENTENCES
PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.851"
WITH LEAVE TO AMEND AND DENYING "MOTION TO EXCEED PAGE
LIMITATION"**

THIS MATTER is before the Court on Defendant's "Successive Motion to Vacate Death Sentences Pursuant to Florida Rule of Criminal Procedure 3.851" filed through counsel on January 4, 2017, pursuant to Florida Rule of Criminal Procedure 3.851, and "Motion to Exceed Page Limitation," filed the same day. After reviewing Defendant's Motion, the court file, and the record, the Court finds as follows:

The Court finds Defendant's Motion exceeds the length authorized by rule 3.851(e)(2).¹ Additionally, the Court finds Defendant's claims can be contained in the twenty-five (25) pages required by the rule and there is no need for the Motion to exceed the page limit set out by the rule. Defendant is entitled to one good-faith opportunity to amend his motion in order to comply with the requirements of rule 3.851.

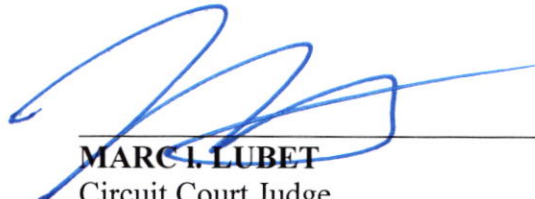
Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

1. Defendant's "Successive Motion to Vacate Death Sentences Pursuant to Florida Rule of Criminal Procedure 3.851" is **STRICKEN**.

¹ The rule requires a successive motion not exceed twenty-five (25) pages.

2. Defendant has **THIRTY (30) DAYS** from the date of rendition of this Order within which to amend the motion, subject to all filing requirements outlined in Rule 3.851.²
3. **This Order is a nonfinal, nonappealable Order. Defendant may not appeal until such time as this Court has entered a Final Order.**
4. The Clerk of the Court shall promptly serve a copy of this Order upon Defendant, including an appropriate certificate of service.

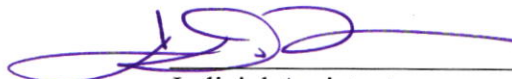
DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 4 day of January, 2017.



MARC I. LUBET
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Order has been furnished by U.S. Mail or hand delivery to **Linda McDermott, McClain & McDermott, P.A.**, 20301 Grande Oak Blvd., Suite 118-61, Estero, Florida 33928; and to **Kenneth Nunnelley**, Assistant State Attorney, Office of the State Attorney, Postconviction Felony Unit, 415 North Orange Avenue, Post Office Box 1673, Orlando, Florida 32801, on this 5th day of January, 2017.



Judicial Assistant

² See Rule 3.851(e).