

IN THE SUPREME COURT OF FLORIDA

CARY MICHAEL LAMBRIX,

Petitioner,

v.

JULIE L. JONES, ETC.,

Respondents.

CASE NO. SC17-1608

Lower Tribunal No. 83-12-CF

DEATH WARRANT SIGNED

EXECUTION SCHEDULED FOR

OCTOBER 5, 2017 AT 6:00 PM

_____ /

MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, the State of Florida, by and through the undersigned attorneys, and hereby requests that this Honorable Court dismiss Petitioner Lambrix's successive habeas petition filed on August 31, 2017, and in support thereof, states:

The Petition Should Be Dismissed As Over Length

Rule 9.100(g) provides that habeas corpus petitions filed in this Court may not exceed 50 pages. Petitioner recognizes this limitation but seeks permission to file an over length writ of 74 pages.¹ Lambrix has not shown good cause to exceed the page limitations in this case. Lambrix's habeas petition does not present a focused good faith pleading, but presents a meandering stew of previously presented and rejected claims. No good cause for such an over length pleading has been shown by Lambrix and

¹ The State also observes that the Petition filed by Lambrix includes a voluminous appendix.

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the petition should be dismissed. See Basse v. State, 740 So. 2d 518, 519 (Fla. 1999) ("Placing page limits on writ petitions simply requires a petitioner to provide a distinct and succinct focus and improves the ability of a court to issue rulings in writ cases in a more timely and efficient fashion than if the court had to pore through countless pages of what may be unnecessary and repetitive arguments or irrelevant information."); United States v. Battle, 163 F.3d 1 (11th Cir. 1998) (page limitations do not undercut effective advocacy, but rather help "by directing busy lawyers to sharpen and to simplify their arguments in a way that - as experience has taught - makes cases stronger, not weaker").

The Petition Should Be Dismissed As An Abuse Of The Process As It Is An Untimely And Procedurally Barred Attempt To Relitigate Prior Post-Conviction Claims

Lambrix's latest habeas petition presents a misleading potpourri of previously presented and rejected claims.² A state

² The State rejects any notion that Lambrix is innocent or that any of the previously filed and rejected claims come anywhere near the mark of factual or legal innocence. Lambrix committed two brutal murders and his case has been thoroughly litigated in both state and federal court. His claims challenging his convictions and sentences have been inconsistent, repetitive and plainly meritless. See e.g. Lambrix v. State, 39 So. 3d 260, 266 (Fla. 2010) (stating "[w]e reject without discussion Lambrix's claim that he is entitled to relitigate whether he is innocent of the crime based on Schlup v. Delo, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995). Lambrix mischaracterizes the holding of Schlup, which does not provide a freestanding claim to relitigate claims that are procedurally barred.").

habeas petition is not grounds to argue claims that either could have been, or should have been raised earlier. See Lambrix v. State, 217 So. 3d 977, 989 (Fla. 2017) (“Lambrix cannot use a successive petition for writ of habeas corpus to raise claims that he raised in a prior proceeding.”); Breedlove v. Singletary, 595 So. 2d 8, 10 (Fla. 1992) (“Habeas corpus is not a second appeal and cannot be used to litigate or relitigate issues which could have been, should have been, or were raised on direct appeal.”) (citing Porter v. Dugger, 559 So. 2d 201 (Fla. 1990); Clark v. Dugger, 559 So. 2d 192 (Fla. 1990)). As this Court has admonished defendants, habeas corpus does not present a proper forum to simply quibble with prior rulings of this Court. Diaz v. State, 132 So. 3d 93, 123 (Fla. 2013)

In recently denying a request for a certificate of appealability the Eleventh Circuit Court of Appeals made the following observation in Lambrix v. Sec’y, Florida Dep’t of Corr., 851 F.3d 1158, 1173 (11th Cir. 2017):

We close by noting the district court’s observation, written 25 years ago, that “[t]here must come a time, even when so irreversible a penalty as that of death has been imposed upon a particular defendant, that the legal issues in the case have been sufficiently litigated and re-litigated so that the law must be allowed to run its course.” For Mr. Lambrix, who has litigated and re-litigated variations on the same claims for decades, that time has come and gone. See Lambrix v. State, --- So. 3d ----, Nos. SC16-8 & SC16-56, 2017 WL 931105, slip op. at 19 (Fla. Mar. 9, 2017) (per curiam) (rejecting Lambrix’s three most recent motions and pointing out that “Lambrix has contributed to the lengthy time and delay by continually challenging his convictions and sentences”).

("Habeas proceedings simply do not afford an opportunity to relitigate such claims."); Rodriguez v. State, 39 So. 3d 275, 295 (Fla. 2010) ("As to the last claim, that this Court performed an improper harmless error analysis on direct appeal, this claim is an improper attempt to relitigate a claim we have already rejected.") (citation omitted); Parker v. Dugger, 550 So. 2d 459, 460 (Fla. 1989) ("[H]abeas corpus petitions are not to be used for additional appeals on questions which could have been, should have been, or were raised on appeal or in a rule 3.850 motion, or on matters that were not objected to at trial."). Moreover, under this Court's established precedent, habeas petitions are reserved to challenge the effectiveness of appellate counsel. See Davis v. State, 789 So. 2d 978, 981 (Fla. 2001) (reiterating that state habeas corpus proceedings are the vehicle to advance claims of ineffective assistance of appellate counsel).

In addition, the State observes that Lambrix has filed multiple habeas petitions in this Court.³ That alone is reason enough to dismiss this Petition. See Johnson v. Singletary, 647 So. 2d 106, 109 (Fla. 1994) ("Successive habeas corpus petitions seeking the same relief are not permitted...."). The petition is

³ By the State's count, Lambrix has filed at least four such prior petitions. See SC60-71287; SC60-81941; SC11-1138 and SC16-56.

an abuse of procedure that inappropriately seeks duplicative review of a decision of this Court that has been final for years, and does little more than quarrel with this Court's prior opinions. The purpose of the writ of habeas corpus is not to provide a device for the re-litigation of long-decided claims, and Lambrix's attempt to employ the writ in that fashion is an abuse of procedure.

WHEREFORE, the State respectfully requests that this Honorable Court DISMISS Lambrix's over length and unauthorized Petition for Writ of Habeas Corpus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of September, 2017, I filed the foregoing with the Clerk of the Florida Supreme Court by using the E-Portal Filing System which will send a notice of electronic filing to the following: William M. Hennis, III, Litigation Director of CCRC-South and Bryan E. Martinez, Staff Attorney, CCRC-South, Office of the Capital Collateral Regional Counsel-South, One East Broward Boulevard, Suite 444, Ft. Lauderdale, Florida 33301 (**hennisw@ccsr.state.fl.us** and **martinezb@ccsr.state.fl.us**) and to the Florida Supreme Court at **warrant@flcourts.org**.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this response is 12-point Courier New, in compliance with Fla. R. App. P. 9.100(1).

s/ Scott A. Browne

COUNSEL FOR RESPONDENTS