

**IN THE SUPREME COURT OF FLORIDA**

**JOHNNY MACK SKETO CALHOUN**

**Appellant,**

**v.**

**No. SC18-340**

**STATE OF FLORIDA,**

**Appellee.**

---

**APPELLANT'S MOTION TO ENFORCE THE MANDATE**

Appellant, JOHNNY MACK SKETO CALHOUN, files this motion asking this Court to enforce its mandate issued February 28, 2020.

1. On February 13, 2020, the State filed a motion in the Circuit Court in and for Holmes County to reinstate Mr. Calhoun's death sentence, which had previously been vacated by the circuit court in its June 5th, 2017 order granting partial summary relief.
2. Mr. Calhoun filed a response to the State's motion on February 19, 2020.
3. A hearing is set in circuit court on April 15, 2020, on the State's motion.
4. On February 28, 2020, this Court issued its mandate in Mr. Calhoun's postconviction appeal, affirming the circuit court's Order Granting Motion for Partial Summary Relief that vacated Mr. Calhoun's death sentence and ordered a new penalty phase.

RECEIVED, 03/05/2020 01:33:29 PM, Clerk, Supreme Court

5. In this Court's opinion affirming the circuit court's Order Granting Motion for Partial Summary Relief, this Court affirmed that the circuit court "denied relief on all of Calhoun's guilt-phase claims but vacated Calhoun's death sentence and ordered a new penalty phase pursuant to *Hurst v. State*, 202 So. 3d 40 (Fla. 2016)." *Calhoun v. State*, No. SC18-1174, 2019 WL 6204937, at \*2 (Fla. Nov. 21, 2019), *reh'g denied*, No. SC18-1174, 2020 WL 710270 (Fla. Feb. 12, 2020).
6. The State's Motion to Reinstate Death Sentence is contrary to this Court's mandate.
7. With the issuance of the mandate, the decisions of the circuit court and this Court became final. "The judgment of an appellate court, where it issues a mandate, is a final judgment in the cause and compliance therewith by the lower court is a purely ministerial act requiring the consent of the reviewing court permitting presentation of a new matter affecting the cause." *O. P. Corp. v. Vill. of N. Palm Beach*, 302 So. 2d 130, 131 (Fla. 1974). The reasoning in *O.P Corp* has been upheld in in *Brunner Enterprises, Inc. v. Dep't of Revenue*, "lower courts cannot change the law of the case as decided by this Court or, alternatively, by the highest court hearing a case." *Brunner Enterprises, Inc. v. Dep't of Revenue*, 452 So. 2d 550, 552 (Fla. 1984). And

more recently the Second District Court of Appeal reiterated that it is error for a trial court to not comply with the mandate of an appellate court. *Rodriguez v. State*, 924 So. 2d 985, 986 (Fla. 2d DCA 2006).

WHEREFORE, for the reasons set forth above, Mr. Calhoun respectfully requests this Court to enforce the mandate and order the lower court to cease with proceedings that are contrary to the mandate.

Respectfully submitted,

/s/ Elizabeth Spiaggi

**STACY R. BIGGART**

Asst. CCRC-North

Florida Bar Number 0089388

1004 DeSoto Park Drive

Tallahassee, Florida 32301

(850) 487-0922 x. 110

Stacy.Biggart@ccrc-north.org

**ELIZABETH SPIAGGI**

Assistant CCRC-North

Florida Bar No. 1002602

Elizabeth.Spiaggi@ccrc-north.org

## **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been electronically served upon Brandon Young, Assistant State Attorney ([brandon.young@sa14.fl.gov](mailto:brandon.young@sa14.fl.gov), [holly.taylor@sa14.fl.gov](mailto:holly.taylor@sa14.fl.gov)); Lisa Hopkins, Assistant Attorney General, ([lisa.hopkins@myfloridalegal.com](mailto:lisa.hopkins@myfloridalegal.com)) on the 5th day of March, 2020.

Respectfully submitted,

/s/ Elizabeth Spiaggi

**ELIZABETH SPIAGGI**