

IN THE SUPREME COURT OF FLORIDA
Case Number: SC18-42

DELMER SMITH,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

_____ /

**AMENDED EMERGENCY JOINT MOTION OF THE APPELLANT AND APPELLEE TO
STAY ORAL ARGUMENT PENDING FACT-FINDING IN THE LOWER COURT.**

COMES NOW Appellant and Appellee and moves this Court jointly to stay oral argument pending fact-finding in the lower court and as a grounds state:

1. This is a capital case.
2. Mr. Smith was convicted of first-degree murder and sentenced to death. This Court affirmed the conviction and death sentence on direct appeal. *Smith v. State*, 170 So.3d 745 (Fla. 2015). The United States Supreme Court denied certiorari. *Smith v. Florida*, 136 S. Ct. 1487 (2016). This Court appointed CCRC-M to represent Mr. Smith in collateral proceedings. Mr. Smith appealed the denial of postconviction relief.
3. Oral argument on this appeal is set for May 8, 2019.
4. The parties are each filing separate motions to relinquish jurisdiction. Both sides have different positions on some matters but agree and stipulate that remand to the lower court is necessary

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for a proper determination of this cause.

Wherefore the parties pray that this Court:

1. Stay the Oral Argument set for May 8, 2019;
2. Remand this case for further evidentiary development before the lower court, including but not limited to, depositions and further hearings;
3. Order the lower court to reconsider the claims at issue based on any omitted or new facts now developed.
4. Hear oral argument when the lower court concludes the remand determinations.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this motion has been electronically furnished upon opposing counsel of record, on this 22nd day of April 2019.

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