

IN THE SUPREME COURT OF FLORIDA

DONALD JAMES SMITH, :

Appellant, :

v. : **CASE NO.: SC18-822**

STATE OF FLORIDA, :

Appellee. :

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**MOTION TO WITHDRAW AS APPELLATE COUNSEL BASED UPON
CONFLICT OF INTEREST**

The Second Judicial Circuit Office of Public Defender moves this Court for an order allowing this Office to withdraw from representing Appellant, DONALD JAMES SMITH, in this case. The grounds for this motion are as follows:

1. This appeal is from a final judgment imposing the death penalty.
2. On April 10, 2018, this Office was designated to handle the appeal in *Randall Deviney v. State of Florida* (SC17-2231). On June 26, 2018, this Office filed an Initial Brief on behalf of Mr. Deviney. On September 4, 2018, the State filed its Answer Brief.
3. On September 11, 2018, this Court entered a briefing schedule in the present case. On September 13, 2018, this Office was designated to handle this appeal.

4. Section 27.5303(1)(a), Florida Statutes (2018), provides:

If, at any time during the representation of two or more defendants, a public defender determines that the interests of those accused are so adverse or hostile that they cannot all be counseled by the public defender or his or her staff without conflict of interest, . . . then the public defender shall file a motion to withdraw.

5. In addition, Rule 4-1.7(a)(2), Rules Regulating the Florida Bar (2018), provides: “Except as provided in [a separate subdivision addressing informed consent], a lawyer must not represent a client if . . . there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer’s responsibilities to another client”

6. Finally, the comments to Rule 4-1.7 explain that “[l]oyalty and independent judgment are essential elements in the lawyer’s relationship to a client.” R. Regulating Fla. Bar. 4-1.7 cmts. Further, “[l]oyalty to a client is . . . impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the client because of the lawyer’s other responsibilities or interests.” *Id.*

7. With those standards in mind, the Second Judicial Circuit Office of Public Defender currently represents Randall Deviney and Appellant, Donald James Smith. But those clients’ interests are so adverse or hostile that they cannot both be counseled by this Office without conflict of interest. Put another way, there is a substantial risk that the representation of Mr. Deviney will be materially limited by

this Office's responsibilities to Mr. Smith, or vice versa. *See generally Smith v. State*, 156 So.3d 1119 (Fla. 1st DCA 2015).

WHEREFORE, the Second Judicial Circuit Office of Public Defender moves this Court for an order (1) allowing this Office to withdraw from representing Appellant in this case; and (2) temporarily relinquishing jurisdiction of this case to the trial court for the appointment of counsel to represent Appellant in this Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished electronically via the Florida Courts E-filing portal to Charmaine.Millsaps@myfloridalegal.com Charmaine Milsap, Assistant Attorney General, Capital Appeals Division, The Capitol, PL-01, Tallahassee, FL, 32399-1050, and by U.S. Mail to Appellant, Donald James Smith, #986205, Florida State Prison, P.O. Box 800, Raiford, FL 32083, on this 14th day of September, 2018.

Respectfully submitted,

ANDY THOMAS
PUBLIC DEFENDER
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