

In The Supreme Court of Florida

DONALD JAMES SMITH,

Appellee,

v.

CASE NO. SC18-822

STATE OF FLORIDA,

Appellant.

_____/

MOTION TO TOLL ANSWER BRIEF PENDING RESOLUTION
OF DEFENSE COUNSEL'S MOTION TO WITHDRAW

On August 6, 2019, opposing counsel, Rocco J. Carbone III, filed a motion to withdraw as appellate counsel of record in this capital case due to his new employment.

If this Court grants the motion to withdraw, which is typically granted under such circumstances, the case will have to be remanded to the trial court for the appointment of a new appellate counsel. Furthermore, new appellate counsel may not wish to adopt the current initial brief and may file a motion in this Court to allow her the opportunity to file an amended initial brief, raising new issues of her choosing, as is often the case in such situations. There is no point in the State answering the current initial brief until all these matters are resolved.

Additionally, undersigned counsel is the lead attorney in the current warrant litigation pending in this Court and in the Eleventh Circuit. *Bowles v.*

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State, SC19-1184 (Fla. 2019); *Bowles v. Inch*, SC19-1264 (Fla. 2019); *Bowles v. DeSantis*, 19-12929-P (11th Cir. 2019).¹ The State was intending on filing a motion for extension of time to file the answer brief due to the demands of the warrant litigation before the motion to withdraw was filed.

The State requests that the time for filing its answer brief be tolled pending full resolution of the motion to withdraw and the appointment of new appellate counsel.

Accordingly, this Court should toll the State's answer brief in this case until the pending motion to withdraw is resolved.

¹ While the State's answer brief and the State's response to the state habeas petition in this Court were both already filed in the warrant case, the State's response in the Eleventh Circuit case was due, and filed, today, at noon, in the warrant case.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

/s/ Charmaine Millsaps

CHARMAINE M. MILLSAPS
SENIOR ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 00989134
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL, PL-01
TALLAHASSEE, FL 32399-1050
(850) 414-3300
primary email:
capapp@myfloridalegal.com
secondary email:
charmaine.millsaps@myfloridalegal.com

COUNSEL FOR THE STATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing MOTION TO TOLL ANSWER BRIEF PENDING RESOLUTION OF DEFENSE COUNSEL'S MOTION TO WITHDRAW has been furnished by e-portal to Rocco J. Carbone III, 135 Jenkins Street, 105B #110, St. Augustine, FL 32086; Phone: (904) 599-3238; email: Rocco@ carboneappeals.com this 9th day of August, 2019.

/s/ Charmaine Millsaps

Charmaine M. Millsaps
Attorney for the State of Florida