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In the Supreme Court of Florida

EXECUTION SCHEDULED FOR
THURSDAY, AUGUST 22, 2019 @ 6:00 p.m.

GARY RAY BOWLES,

Appellant,

v. CASE NO.: SC19-1184
CAPITAL CASE

STATE OF FLORIDA,

Appellee.

_____/

GARY RAY BOWLES,

Petitioner,

v. CASE NO.: SC19-1264
CAPITAL CASE

MARK S. INCH,
Secretary,
Florida, Department of Corrections,

Respondent.

_____/

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STATE'S CLARIFICATION OF ITS POSITION

On August 6, 2019, Bowles, represented by Capital Collateral Regional Counsel - North and the Capital Habeas Unit of the Federal Public Defender of the Northern District of Florida, filed the reply brief and a reply to the State's response to the habeas petition.

In both the reply brief and the reply to the habeas petition, opposing counsel asserts the State "opposes the release of even those defendants who are actually innocent." *See* Reply to habeas at 6 (citing (PCR 2019 at 1327), RB at 2, n.1. The State wishes to clarify its position regarding actual innocence.

The State certainly agrees with the United States Supreme Court's observation that the "quintessential miscarriage of justice is the execution of a person who is entirely innocent." *Schlup v. Delo*, 513 U.S. 298, 324-25 (1995) (citing cases in the footnote, n.41). But Bowles is not innocent. Bowles confessed to the murder of Hinton and entered a guilty plea in this case. Bowles also confessed to, and entered guilty pleas, to the two murders used as aggravators in this case.

At the *Huff* hearing in this case, opposing counsel seemed to assert that the State's position in its answer to the successive postconviction motion was that some actually innocent defendants should be executed. (PCR 2019 at 1297). The State naturally objected to this misrepresentation of its position during its presentation at the *Huff* hearing, just as it does now in this Court. The transcript, however, does not include the "not" that it should in the statement: "The State's position is [not] that actually innocent people should [not] be set free." (PCR 2019 at 1327). The State does not know if it is a transcription error on the page or if undersigned counsel simply misspoke at the hearing but it was clear to all participants in the trial court that the State's position was NOT that innocent defendants should be executed, as can clearly be gleaned from the rest of the paragraph.

Rather, the State's position was, and is, that delays in presenting claims of actual innocence could be considered in evaluating the merits of such claims. The State directly relied on the United States Supreme Court's opinion in *McQuiggin v. Perkins*, 569 U.S. 383 (2013), in support of that position. The State relied on

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Perkins in its pleadings and arguments in the trial court as well as in its answer brief filed in this Court. (PCR 2019 at 904-05 — State's answer to successive motion); (PCR 2019 at 1327 — *Huff* hearing); AB at 19-20, 22. That delays may be considered by courts in deciding even the most serious claims is not merely the State's position but the position of the United States Supreme Court as well.

Due to the transcription error and the seriousness of the matter, the State files this clarification.

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Respectfully submitted,

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ATTORNEY GENERAL OF FLORIDA

/s/ Charmaine Millsaps
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COUNSEL FOR THE STATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing STATE'S CLARIFICATION OF ITS POSITION has been furnished via the e-portal to **KARIN LEE MOORE**, Capital Collateral Regional Counsel-North, 1004 Desota Park Dr., Tallahassee, FL 32301-4555; phone: 850-487-0922; email: karen.moore@ccrc-north.org; and **TERRI BACKHUS**, Chief, Capital Habeas Unit, Office of the Federal Public Defender, Northern District of Florida, 227 N. Bronough Street, Suite 4200, Tallahassee, FL 32301-1300; phone: (850) 942-8818; email: terri_backhus@fd.org this 7th day of August, 2019.

/s/ Charmaine Millsaps
Charmaine M. Millsaps
Attorney for the State of Florida

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