

IN THE SUPREME COURT OF FLORIDA

ERIC KURT PATRICK,

Appellant,

Case No.: SC19-140

v.

STATE OF FLORIDA,

Appellee.

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**MOTION FOR RECONSIDERATION OF JULY 16, 2019 ORDER
REGARDING SUBMISSION OF APPEAL WITHOUT ORAL ARGUMENT**

COMES NOW the Appellant, **ERIC KURT PATRICK**, by and through undersigned counsel, and hereby moves this Court to reconsider its July 16, 2019 order. In support thereof, Mr. Patrick states:

1. This proceeding involves the appeal of the circuit court's December 27, 2018 order denying Mr. Patrick's claim of ineffective assistance of counsel during voir dire after remand by this Court for evidentiary development.

2. On June 3, 2019, Mr. Patrick filed his Initial Brief. The State filed its Answer Brief on June 24, 2019. Mr. Patrick then submitted his Reply Brief on July 15, 2019. Thereafter, on July 16, 2019, this Court issued an order submitting Mr. Patrick's case without oral argument.

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3. Subsequent to that order, undersigned counsel recognized in the notice of case docketing that Mr. Patrick's case appeared to be designated as an appeal from a successive Fla. R. Crim. P. 3.851 motion. On July 31, 2019, the clerk of court confirmed that Mr. Patrick's case had been docketed as an appeal from a successive motion.

4. In fact, Mr. Patrick's appeal is from the denial of his claim of ineffective assistance of counsel for failing to strike for cause an actually biased juror, a claim which was included in his initial Rule 3.851 motion. This Court remanded Mr. Patrick's case to the circuit court to determine whether Mr. Patrick's counsel was ineffective during *voir dire* for failing to challenge a juror who was biased against him based on participation in homosexual activities with the male victim. *Patrick v. State*, 246 So. 3d 253 (Fla. 2018). Specifically, the juror in question stated that he "would have a bias if [he] knew the perpetrator was homosexual." The juror further explained "Put it this way, if I felt the person was a homosexual, I personally believe that person is morally depraved enough that he might lie, might steal, might kill." Additionally, the juror said "yes" when asked if this bias might affect his deliberations. This Court found that an evidentiary hearing was needed to determine if counsel's failure to challenge this juror was a strategic choice. *Id.* at 264. This proceeding is the appeal of the denial of Mr. Patrick's initial post conviction motion, not a successive.

5. To the extent that the mischaracterization of Mr. Patrick's case as an appeal from a successive motion contributed to the submission of his case without oral argument, Mr. Patrick respectfully requests this Court reconsider and grant oral argument.

6. Based on the forgoing, Mr. Patrick requests that oral argument be heard in this case. This Court has not hesitated to allow oral argument in other capital cases in a similar posture. A full opportunity to air the issues through oral argument would be more than appropriate in this case, given the seriousness of the claim involved.

WHEREFORE, Mr. Patrick respectfully requests this Court reconsider its order of July 16, 2019 and grant oral argument.

Respectfully submitted,

/s/ Suzanne Keffer

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to the following via E-portal filing on this 1st day of August, 2019.

/s/ Suzanne Keffer
SUZANNE KEFFER
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