

IN THE SUPREME COURT OF THE STATE OF FLORIDA

NIKOLAS CRUZ,

Petitioner,

Case No. SC19-1784

v.

STATE OF FLORIDA,

Respondent.

_____ /

MOTION FOR EXPEDITED REVIEW

COMES NOW Respondent, the State of Florida, by and through undersigned counsel, files this motion pursuant to Florida Rule of Appellate Procedure 9.300 and asks this Court to expedite its review on the following grounds:

1. The State charged Petitioner with the capital murder of 17 students and staff members at Marjory Stoneman Douglas High School and the attempted murder of 17 others. (App. Exs. A, B). The offenses occurred more than two years ago, on February 14, 2018.

2. While in jail pending trial, Petitioner “moved for a protective order to prevent disclosure of [a] portion of [his] jail visitation logs which would reveal the names of mental health experts who may visit him, retained in connection with his defense.” *Cruz v. State*, 279 So. 3d 154, 156 (Fla. 4th DCA 2019). After the trial court denied his motion, Petitioner sought certiorari review. *Id.*

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3. On August 14, 2019, the Fourth District Court of Appeal issued an opinion that held any names contained in the jail visitation logs were public records subject to disclosure. *Id.* at 158-60. The District Court also rejected the argument that the “mere revelation of the name of an expert could constitute a denial of a right to fair trial.” *Id.* at 159. Accordingly, the District Court concluded there was no departure from the essential requirements of law and denied the petition for writ of certiorari. Petitioner filed a motion for rehearing, which the District Court denied.

4. Petitioner subsequently filed a notice to invoke this Court’s discretionary jurisdiction on October 16, 2019. The parties submitted their jurisdictional briefs to this Court on or before November 21, 2019. At no point has Petitioner sought a stay of the District Court’s decision.

5. As these events were unfolding, the trial court set Petitioner’s trial to begin in January 2020. (App. Ex. C). Petitioner filed a motion for continuance where he argued, among other things, that he was unable to meet with his expert witnesses and conceal their identities due to the District Court’s decision, and therefore, he was unable to proceed to trial until this Court’s review of that decision was complete. (App. Ex. D at 29-30).

6. The State filed a response to the motion, contending that Petitioner’s case was designated a “priority case” that the trial judge “ha[d] a duty to expedite”

“to the extent reasonably possible” under rule 2.215(g) and two administrative orders entered by the chief judge. (App. Ex. E at 1-2, 8, 11). The State further asserted that “the defense’s decision to refuse to send experts into the jail to meet with [Petitioner] because of the fear of identifying those individuals [wa]s strategic,” it was not a basis for a continuance, and it was designed to delay his trial. (App. Ex. E at 3-4). Nevertheless, in an abundance of caution, the State did not object to a four-month continuance. (App. Ex. E at 5). As a result, the trial court granted the motion for continuance and set the case for a calendar call on March 23, 2020, and for trial in May 2020. (App. Exs. E, F).

7. In light of this procedural history, the nature of the case, and the reasons set forth below, the State respectfully requests this Court to expedite its review. *See Moore v. Pearson*, 789 So. 2d 316, 318 (Fla. 2001) (granting expedited review); *State v. Gary*, 609 So. 2d 1291, 1292 n.1 (Fla. 1992) (same); *News-Press Pub. Co., Inc. v. Gadd*, 388 So. 2d 276, 277 n.1 (Fla. 2d DCA 1980) (noting the “policy of the legislature and courts of this state to expedite proceedings involving denial of media access to public records”) (citing *State ex rel. Miami Herald Publishing Co. v. McIntosh*, 340 So. 2d 904 (Fla. 1976)); *see also* R. Regulating Fla. Bar 4-3.2 (“A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.”).

8. First, Petitioner will not be prejudiced by this Court expediting its review when Petitioner is the party seeking review. In fact, Petitioner is using the time during which this Court considers whether to exercise jurisdiction to his benefit. As noted above, Petitioner has not sought a stay of the District Court’s final decision, but his counsel have refused to abide by it. The Petitioner should not be permitted to use a notice to invoke as a means of obtaining a *de facto* stay.

9. Second, the State has a compelling interest in bringing Petitioner to trial within a reasonable timeframe. *State v. Matera*, 378 So. 2d 1283, 1287 (Fla. 3d DCA 1979) (recognizing the right to appeal but also explaining that “a primary consideration of the criminal justice system is to expedite litigation, and this principle is well-expressed by the adage that ‘justice delayed is justice denied’”). The greater the passage of time, the greater the disadvantage the State has in trying this case to conviction as “[e]vidence may become unavailable and witnesses’ memories may fade.” *State v. Green*, 944 So. 2d 208, 216 (Fla. 2006).

10. Third and perhaps most importantly, each of the 34 victims in this case has a right to “proceedings free from unreasonable delay, and to a prompt and final conclusion of the case.” Art. I, § 16(b)(10), Fla. Const.; *see* Art. I, § 16(e), Fla. Const. (defining victim to include “the victim’s lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim”). An expedited review in this

case will ensure that Petitioner's trial proceeds as scheduled in May 2020, and it will ensure that the victims and their families receive the finality which the Florida Constitution guarantees them.

11. Finally, the State maintains that if this Court expedites its review, the Court should conclude it lacks jurisdiction, and no further judicial labor will be required. *See Llovera v. State*, 145 So. 3d 826 (Fla. 2014) (denying motion to expedite as moot because court also declined to accept jurisdiction in same order). As argued in the State's jurisdictional brief, there is no express and direct conflict between the District Court's decision and any decision from this Court. Art. V, § 3(b)(3), Fla. Const.; *see also* Fla. R. App. P. 9.030(a)(2)(iv).

12. The State has contacted Diane M. Cuddihy, counsel for Petitioner, who states that Petitioner opposes expedited review. The State also contacted Dana J. McElroy, counsel for the Sun-Sentinel, who states the Sun-Sentinel does not oppose expedited review.

WHEREFORE, Respondent respectfully requests that this Court grant the instant motion and expedite its review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served through the e-filing portal on March 10, 2020, to: (a) Diane M. Cuddihy, counsel for Petitioner, at dcuddihy@browarddefender.org and appeals@browarddefender.org, and (b) Dana J. McElroy, counsel for the Sun-Sentinel, at dmcelroy@tlolawfirm.com and dabratt@tlolawfirm.com.

/s/ Marc B. Hernandez
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