Filing # 92653002 E-Filed 07/16/2019 04:24:59 PM

RECEIVED, 07/16/2019 04:25:29 PM, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

MICHAEL LAWRENCE WOODBURY,
Appellant,

CASE NO.: SC19-0008
L.T. No.: 472018CF000164A

vs.

STATE OF FLORIDA,
Appellee.
_____/

APPELLANT'S UNOPPOSED MOTION
TO SUPPLEMENT THE RECORD AND TO TOLL TIME

Michael Lawrence Woodbury, Appellant, moves that this Court enter its order directing the court reporter to prepare a supplemental transcript and directing the trial court clerk to supplement the record-on-appeal in this cause, and tolling time for all purposes in this cause from the date of the service of this motion until receipt of the supplemental record.

Rhonda Giger, Esq., Assistant Attorney General has authorized the undersigned to represent that Appellee does not oppose this motion.

This is a capital case in which Mr. Woodbury appeals his conviction for first degree murder and sentence of death. Florida law and the Cruel and Unusual Punishment, Due Process, and Equal Protection Clauses of the state and federal constitutions require full and complete review on the basis of a full and complete appellate record. *See* Fla.R.App.Proc. 9.140(f); § 921.141, Fla. Stat.; *Draper v. Washington*, 372 U.S. 487 (1963); *Delap v. State*, 359 So.2d 462 (Fla. 1978);

Proffitt v. Florida, 428 U.S. 242 (1976); *LeDuc v. State*, 365 So.2d 149 (Fla. 1978). The requested supplemental record is necessary for this Court to fulfill its duty of full appellate review under article V, section 3(b)(1) of the state constitution, and for appellant to receive effective assistance of counsel pursuant to the Due Process, Equal Protection, and Counsel Clauses of the state and federal constitutions.

The undersigned cannot file a competent initial brief concerning the issues on appeal, and there cannot be full review of those issues, without the supplemental record. Hence, it would be appropriate to toll time on this appeal until the supplemental record is filed with this Court.

Undersigned counsel has reviewed the present record on appeal including the docketing sheets supplied by the trial court clerk. This review shows a gap in the present record on appeal as follows:

The transcript of the first appearance hearing held on March 15, 2018 is not included in the present record. On this date, Appellant appeared and Judge Jerald Bryant conducted a *Faretta* inquiry. The Public Defender's Office was appointed as standby counsel. A transcript of this hearing is essential to a main issue on appeal; whether the trial court erred in permitting Appellant to proceed pro se.

WHEREFORE, Appellant moves that this Court enter its order:

1. Directing the court reporter to prepare, and the trial court clerk to supplement the record-on-appeal with, the transcript of the March 15, 2018 first appearance hearing.

2. The supplemental record be served on all parties.

3. Tolling time for all purposes in this case to allow for adequate time for the record on appeal to be supplemented; or

4. Granting such other relief as may be appropriate.

Respectfully submitted,

CAREY HAUGHWOUT
Public Defender, 15th Judicial Circuit

/s/ Mara Herbert
Mara Herbert
Assistant Public Defender
15th Judicial Circuit of Florida
421 Third Street/6th Floor
West Palm Beach, Florida 33401
(561) 355-7600
Florida Bar No. 0038532
mherbert@pd15.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this motion has been furnished to Rhonda Giger, Assistant Attorney General, 1515 N. Flagler Dr., Suite 900, West Palm Beach, FL 33401 by e-service at CrimAppWPB@MyFloridaLegal.com; and Court Reporter Kimberly Pogue, Atlantic Litigation Services, 55 S.E. Osceola Street, Suite 201, Stuart, FL 34994 at atlscheduling@litigationservices.com and atlproduction@litigationservices.com, Ana Ponce, Deputy Clerk, 205 N. Dixie Highway, West Palm Beach, FL 33401 at CriminalAppeals@mypalmbeachclerk.com; and electronically filed with this court on the 16th day of July, 2019.

/s/ Mara Herbert
Of Counsel