

IN THE SUPREME COURT OF FLORIDA

MARK D. SIEVERS,

Appellant,

v.

**CASE NO. SC20-0225
DEATH PENALTY CASE**

STATE OF FLORIDA,

Appellee.

_____ /

State's Motion to Strike Initial Brief

COMES NOW, the State of Florida, by and through the undersigned Assistant Attorney General, and hereby files this motion to strike the initial brief, and states the following:

Appellant, Mark D. Sievers, filed his initial brief on March 22, 2021.

The brief contains a "preliminary statement" in which Appellant argues in detail why this Court should reconsider its prior ruling on his motion to relinquish.

While Florida Rule of Appellate Procedure 9.210 (b), does not contemplate a "preliminary statement" within the contents of an initial brief, parties, especially in death penalty cases, commonly

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include a preliminary statement to advise courts as to the manner in which the appellate record will be cited throughout the brief.

Here, however, Appellant's entire preliminary statement serves as a motion for rehearing or reconsideration of this Court's order denying the motion to relinquish jurisdiction to trial court for reconstruction of record and second motion to supplement the record entered December 23, 2020. This is entirely improper.

Florida courts have long recognized that it is improper to include argument within a statement of case and facts, and courts have routinely stricken appellate briefs that have inappropriately added argument. *See, e.g., Greenfield v. Westmoreland*, 156 So. 3d 1, 2 (Fla. 3d DCA 2007) (granting the appellees' motion to strike brief and directing the appellant to delete all legal and rhetorical argument contained in the statement of the case and the facts); *Sabawi v. Carpentier*, 767 So. 2d 585 (Fla. 5th DCA 2000) (granting a motion to strike brief containing unduly argumentative restatement of the case and facts); *Williams v. Winn-Dixie Stores, Inc.*, 548 So. 2d 829 (Fla. 1st DCA 1989) (striking the initial brief because it was unduly argumentative and contained matters immaterial to the controversy between the parties); *Pawley v.*

Pawley, 160 Fla. 903 (Fla. 1948) (striking brief containing argument and undue elaboration of matters in controversy within the history of the case section).

Just as a statement of case and facts should not include argument, a preliminary statement certainly should not contain such argument.

The error in this case is compounded because the improper argument does not relate to a matter on appeal. Indeed, Appellant has included this unauthorized argument in his preliminary statement because he could not properly raise it as an issue on appeal. Fla. R. App. P. 9.030; Art. 5 § 3(b), Fla. Const. To the extent that a motion for rehearing would be permissible, it is too late for Appellant to be filing one. Fla. R. App. P. 9.330(a)(1). Appellant should not be permitted to circumvent the appellate rules by raising this non-appealable issue in his preliminary statement of his brief. Appellant's argument requesting rehearing of this Court's ruling from December 2020 should not appear anywhere in his Initial Brief.

Therefore, Appellant's initial brief should be stricken. Appellant should be required to file a new brief without the

improper argument contained within the preliminary statement, and he should also remove the reference to the preliminary statement contained on page 75 of his brief. Alternatively, Appellee respectfully requests that this Court merely disregard those inappropriate portions of Appellant's initial brief.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL
STATE OF FLORIDA

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of March 2021, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Karen Kinney, Assistant Public Defender, 10th Judicial Circuit Public Defender's Office, P.O. Box

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