

IN THE SUPREME COURT OF FLORIDA

MARK D. SIEVERS,

Appellant,

v.

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

STATE OF FLORIDA,

Appellee.

_____/

**OBJECTION TO APPELLANT'S
MOTION TO RELINQUISH JURISDICTION**

COMES NOW, the State of Florida, by and through the undersigned Assistant Attorney General, and hereby files this objection and response to Appellant's motion to relinquish, and states the following:

1. This is a capital direct appeal case, and briefing and argument have been completed before this Court.
2. On November 8, 2021, Appellant, Mark Sievers, filed a motion to relinquish jurisdiction to litigate a newly discovered evidence claim in circuit court.

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3. The claim involves a letter written from a co-defendant to Sievers's mother. This is a classic postconviction-type of claim that should be resolved during the postconviction stage.

4. Given that Sievers's direct appeal is still pending, it is premature for Sievers to litigate a newly discovered evidence claim in circuit court. The State, therefore, objects to Appellant's motion to relinquish jurisdiction.

5. Relinquishment at this posture would result in piecemeal litigation, and it would waste time and resources and cause an unwarranted and needless delay in the resolution of this case.

6. This Court has repeatedly prohibited piecemeal litigation of postconviction claims. *See, e.g. Pope v. State*, 702 So. 2d 221, 223 (Fla. 1997) ("A defendant may not raise claims of ineffective assistance of counsel on a piecemeal basis by filing successive motions."); *Lambrix v. State*, 698 So. 2d 247, 248 (Fla. 1996); *Johnson v. State*, 536 So. 2d 1009, 1011 (Fla. 1988); *see also Zirin v. Charles Pfizer & Co.*, 128 So. 2d 594, 596 (Fla. 1961) ("Needless steps in litigation should be avoided wherever possible").

7. In *Johnson*, this Court explained that the time limitation of rule 3.850 "serves to reduce piecemeal litigation and the

assertion of stale claims while at the same time preserves the right to unlimited access to the courts where there is newly discovered evidence or where there have been fundamental constitutional changes in the law with retroactive application.” *Johnson*, 536 So. 2d at 1011.

8. Because Sievers’s convictions and sentences are not yet final, his time period for his postconviction claim has not begun to run. Fla. R. Crim. P. 3.851(a) (2021).

9. Sievers should wait to file this newly discovered evidence claim within his postconviction motion so that all his postconviction claims can be heard at one time, rather than having litigation of the claim now in circuit court and supplemental briefing in this Court followed by additional litigation of different postconviction claims and the resulting appeal.

10. The claim at issue here can and should be subsumed within one postconviction motion. This course of action will avoid unnecessarily protracted, piecemeal litigation and comply with the Florida Rules of Criminal Procedure while promoting equity and fairness.

Accordingly, the State of Florida respectfully requests that this Court deny Appellant's motion to relinquish.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL
STATE OF FLORIDA

/s/ Christina Z. Pacheco
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of November 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 9000 – Drawer PD, Bartow, Florida 33830, **appealfilings@pd10.org**, **kkinney@pd10.org**, and **kstockman@pd10.org**.

/s/ Christina Z. Pacheco
Counsel for Appellee