

IN THE SUPREME COURT OF FLORIDA

DAVID EUGENE JOHNSTON,
Appellant,

v.

CASE NO. SC09-839

****DEATH WARRANT****

STATE OF FLORIDA,
Appellee.

**STATE'S NOTICE OF ADDITIONAL INFORMATION IN RESPONSE TO QUESTION
ASKED DURING ORAL ARGUMENT**

COMES NOW the State of Florida, by and through the undersigned counsel, and hereby files THE INSTANT Notice of Additional Information in Response to Question Asked During Oral Argument.

During oral argument today in the instant case, undersigned counsel was questioned regarding the oversight of the appointment of counsel for capital litigants. During this questioning, it was also suggested that the Attorney General's Office bears the responsibility to ensure that counsel is actively litigating on behalf of the appellant/defendant.

As this issue was not raised by the appellant, the State was not given the opportunity to brief the issue. Accordingly, the State would like to clarify any misimpression that it has failed to satisfy its constitutional or statutory obligations.

In setting up the system that ensures Capital defendants collateral representation, the legislature has created the Commission on Capital Cases to oversee the appointment of the CCRCs and/or registry counsel and to report any issues to the governor. Specifically Fla. Stat. § 27.709, provides:

(2) (a) The commission shall review the administration of justice in capital collateral cases, receive relevant public input, review the operation of the capital collateral regional counsel and private counsel appointed pursuant to ss. 27.710 and 27.711, and advise and make recommendations to the Governor, Legislature, and Supreme Court.

(b) As part of its duties, the commission shall compile and analyze case-tracking reports produced by the Supreme Court. In analyzing these reports, the commission shall develop statistics to identify trends and changes in case management and case processing, identify and evaluate unproductive points of delay, and generally evaluate the way cases are progressing. The commission shall report these findings to the Legislature by January 1 of each year.

(c) In addition, the commission shall receive complaints regarding the practice of any office of regional counsel and private counsel appointed pursuant to ss. 27.710 and 27.711 and shall refer any complaint to The Florida Bar, the State Supreme Court, or the Commission on Ethics, as appropriate.

Fla. Stat. § 27.709

See, also, *Remeta v. State*, 707 So. 2d 719, 720 (Fla. 1998) ("Under section 27.709(2), Florida Statutes (1997), the oversight committee is, in pertinent part, directed to review the administration of justice in capital collateral cases, receive relevant public input, review the operation of the

capital collateral regional counsel, and advise and make recommendations to the Governor, Legislature, and Supreme Court."); Op. Att'y Gen. Fla. 2006-16 (2006) ("The Commission on Capital Cases (commission) was created to 'Review the administration of justice in capital collateral cases, receive relevant public input, review the operation of the capital collateral regional counsel and private counsel appointed pursuant to ss. 27.710 and 27.711, and advise and make recommendations to the Governor, Legislature, and Supreme Court.'")

The only authority the Attorney General has under the statute is in Fla. Stat. § 27.710, which allows the state to notify the commission if thirty days has elapsed after the appointment of the capital collateral regional counsel and no entry of appearance has been filed pursuant to s. 924.056; or a person under sentence of death who was previously represented by private counsel is currently unrepresented in a postconviction capital collateral proceeding. These provisions do not direct or authorize the Attorney General to do anything other than notify the executive director of the commission to ensure that qualified counsel needs to be appointed and then only when the defendant is unrepresented by counsel.

In the instant case, defendant has been continuously represented by counsel throughout the numerous successive

proceedings in state and federal court including up to the time when the warrant was signed and, CCRC Middle, had not been relieved from representation and was still counsel of record until Mr. Todd Doss was appointed by the Court. At no point in time was Johnston ever proceeding *pro se*.

Respectfully submitted,

BILL McCOLLUM
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by **e-mail**, and **U.S. Mail** to: **Todd D. Doss**, 725 S.E. Baya Dr., Suite 102, Lake City, Florida 32025-6092 on this 20th day of May, 2009.

Of Counsel