

IN THE SUPREME COURT OF FLORIDA

PAUL BEASLEY JOHNSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. SC08-1213

Polk Case No. CF81-0112 A1XX

Alachua Case No. 88-448 CF-A

DEATH WARRANT SIGNED

MOTION TO EXTEND ORDER GRANTING JURISDICTION TO CIRCUIT COURT OR
MOTION TO RELINQUISH JURISDICTION

COME NOW, the Respondents, Hon. Bill McCollum, etc., et al., by and through the undersigned counsel, and files this Motion to Extend Order Granting Jurisdiction to Circuit Court or Motion to Relinquish Jurisdiction in the above-styled case and as grounds therefore, state:

1) On October 8, 2009, this Court issued an order granting jurisdiction to the circuit court to "consider any successive motion for post conviction relief filed pursuant to Florida Rule of Criminal Procedure 3.851 until October 15, 2009.

2) Johnson did not file his (third successive) Rule 3.851 motion until October 27, 2009. The state responded the same day.

3) On October 28, 2009, this Court entered a stay of execution.

4) The third successive motion remains pending in circuit court.

5) A case management conference has been scheduled in circuit court for November 19, 2009.

6) Generally, a circuit court does not have jurisdiction to consider a Rule 3.851 motion while an appeal is pending in this Court. *Tompkins v. State*, 894 So.2d 857, 859 (Fla. 2005) (finding circuit court did not have jurisdiction to consider Tompkins' motions while the appeal of the denial of his previous motions was pending.)

7) In order to insure that all of Johnson's issues are resolved and before this Court and that no jurisdictional impediment precludes further review by the circuit court, the state requests that this Court issue an order extending the order of jurisdiction or, in the alternative, relinquish jurisdiction to the trial court so that these claims may be heard.

WHEREFORE, the State respectfully requests that this Honorable Court grant the instant motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic transmission to The Honorable Neil A. Roddenbery, Circuit Judge, Polk County Government Center, 255 No. Broadway Avenue, Bartow, Florida 33830, c/o lschrader@jud10.flcourts.org; Terri Backhus, Esquire, Backhus & Izakowitz, P.A., 13014 N. Dale Mabry Highway, #746, Tampa, Florida 33618-2808, bakowitz1@verizon.net; Martin J. McClain, Esq., 141 N.E. 30th St., Wilton Manors, Florida 33334, martymcclain@earthlink.net. and to William P. Cervone, State Attorney, Alachua County State Attorney's Office, 120 W. University Avenue, Gainesville, Florida 33830, cervonew@sao8.org this 4th day of November, 2009.

s//Candance M. Sabella

CO-COUNSEL FOR STATE OF FLORIDA

CERTIFICATE OF FONT COMPLIANCE

I **HEREBY CERTIFY** that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

s// Candance M. Sabella

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