

IN THE SUPREME COURT OF FLORIDA

MARK DEAN SCHWAB,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

CASE NO. SC07-2138
Death Warrant Signed
Execution Stayed

FILED
THOMAS D. HALL
2008 FEB 14 A 11:25
CLERK, SUPREME COURT
BY

MOTION TO STRIKE NOTICE OF
SUPPLEMENTAL AUTHORITY

COMES NOW the State of Florida, and moves this Court to strike the Notice of Supplemental Authority which bears a service date of February 7, 2008, and which was received by counsel for the State on February 11, 2008. As grounds for granting this motion, the State submits the following:

1. Schwab filed his *Initial Brief* on or about November 29, 2007. Schwab's *Reply Brief* was filed on or about December 12, 2007. This Court affirmed the denial of Schwab's second successive motion for postconviction relief on January 24, 2008.

2. The notice of supplemental authority consists of the transcript of oral argument in the case of *Baze v. Rees*, (No 07-5439) heard before the United States Supreme Court on January 7, 2008. An oral argument transcript is not "authority" within the meaning of *Florida Rule of Appellate Procedure* 9.225.

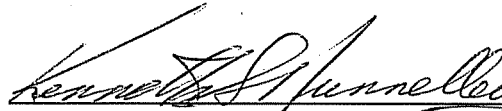
3. This Court notes, at the top of each Florida Supreme Court

argument transcript, that the document is not a legal document, is not legal authority, and is not an official document of the Florida Supreme Court. While the United States Supreme Court transcripts do not contain a similar notation, the United States Supreme Court is not a court of record, either. There is no basis to consider an oral argument transcript as "authority" of any sort.

4. The "notice of supplemental authority" filed on February 7, 2008, is an abuse of *Florida Rule of Appellate Procedure* 9.225, and should be stricken.

Respectfully submitted,

BILL MCCOLLUM
ATTORNEY GENERAL


KENNETH S. NUNNELLEY
SENIOR ASSISTANT ATTORNEY GENERAL
Florida Bar #998818
444 Seabreeze Blvd., 5th FL
Daytona Beach, FL 32118
(386) 238-4990
Fax # (386) 226-0457

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail to: Peter Cannon, Assistant CCRC, CCRC-Middle, 3801 Corporex Park Drive, Suite 210, Tampa, Florida 33619 on this 12th day of February, 2008.


Of Counsel