

IN THE SUPREME COURT OF FLORIDA

JOHN RICHARD MAREK,

Appellant,

v.

CASE NO. SC09-1080

STATE OF FLORIDA,

Appellee.

_____ /

STATE'S MOTION TO STRIKE NOTICE OF PROFFER

Marek has filed before this Court, an additional affidavit from inmate Leon Douglass seeking to file non-record material regarding a matter on appeal, which was denied by the trial court and is an appellate issue currently pending. The State files this motion to strike and would show:

Marek has not provided any legal basis which would authorize the submission of an additional affidavit that was not presented to the trial court. Moreover, the affidavit of Leon Douglass is *de hors* the record before this Court.

The affidavit presented is contrary to evidence that was presented at the evidentiary hearing June 1-2, 2009, wherein the trial court specifically found that the record reflects accurately the witness' testimony at the hearing before the trial court.

Marek's latest attempt to change the record is not admissible under any legal theory and does not bring into question or impeach any evidence presented during Marek's original trial in 1984.

CONCLUSION

Absent a legal basis for either its submission or how it could undermine the validity of Marek's trial as to guilt or penalty, the State's motion to dismiss should be granted.

Respectfully submitted,

BILL McCOLLUM
ATTORNEY GENERAL

CAROLYN M. SNURKOWSKI
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 158541
OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300
COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing STATE'S MOTION TO STRIKE has been furnished via e-mail to martymcclain@earthlink.net, lindammcdermott@msn.com, warrant@flcourts.org, and via U.S. mail to Martin J. McClain and Linda McDermott, McClain & McDermott, PA, 141 NE 30th Street, Wilton Manors, FL 33334 this 2nd day of July, 2009.

Carolyn M. Snurkowski
Attorney for Appellee