

Supreme Court of Florida

WEDNESDAY, AUGUST 19, 2009

CASE NO.: SC09-1454

Lower Tribunal No(s).: 83-7088-CF 10B

JOHN RICHARD MAREK

vs. STATE OF FLORIDA

Appellant(s)

Appellee(s)

John Richard Marek, a prisoner under sentence of death, appeals the circuit court's summary denial of his fifth successive motion for postconviction relief. Marek was convicted of first-degree murder, kidnapping, attempted burglary, and battery in the 1983 murder of Adella Marie Simmons and was sentenced to death. We affirmed the murder conviction and death sentence on direct appeal. Marek v. State, 492 So. 2d 1055 (Fla. 1986). Thereafter, Marek filed several postconviction challenges to his conviction and sentence, the denial of which we have affirmed. See Marek v. State, 8 So. 3d 1123 (Fla. 2009) (detailing procedural history of Marek's postconviction litigation). On April 20, 2009, Governor Charlie Crist signed Marek's death warrant. Subsequently, after twice hearing oral argument, we affirmed the denial of Marek's second, third, and fourth successive postconviction motions. See id. (affirming denial of second successive postconviction motion); Marek v. State, 34 Fla. L. Weekly S461 (July 16, 2009) (affirming denial of third and fourth successive postconviction motions). In our July 16, 2009, opinion, this Court lifted the stay of execution that it had previously granted. Governor Crist thereafter rescheduled Marek's execution for August 19, 2009.

On August 3, 2009, Marek filed his fifth successive postconviction motion, in which he alleged that newly discovered evidence of a statement made by his codefendant Raymond Wigley to another inmate demonstrated that Marek's judgment and sentence were constitutionally unreliable.

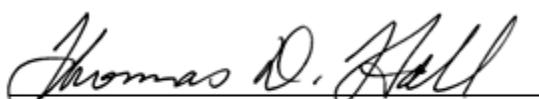
On August 17, 2009, after conducting a case management conference, the circuit court summarily denied Marek's motion. We affirm the denial. We agree that the affidavit attached to Marek's fifth successive motion, when considered cumulatively with the newly discovered evidence presented in support of his third successive postconviction motion, does not meet the standard for relief set out in Jones v. State, 709 So. 2d 512, 521 (Fla. 1998). Assuming that the affiant accurately recounts statements that Wigley made to him, Wigley's statements suffer from deficiencies in credibility and probative value similar to those we identified in our decision of July 16, 2009. The evidence would not probably result in an acquittal or a life sentence on retrial. Because Marek's claim is legally insufficient, the circuit court did not err in summarily denying the motion.

No motion for rehearing will be entertained by this Court.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA, and PERRY, JJ., concur.

A True Copy

Test:


Thomas D. Hall
Clerk, Supreme Court



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Served:

CAROLYN V. MC CANN
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MARTIN J. MCCLAIN
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HON. HOWARD FORMAN, CLERK
HON. JEFFREY R. LEVENSON, JUDGE