

FILED
THOMAS D. HALL

2009 MAY 11 A 9:18

CLERK, SUPREME COURT

BY _____

IN THE SUPREME COURT OF FLORIDA

JOHN MAREK,

Appellant,

v.

Case No. SC09-

STATE OF FLORIDA,

Appellee.

REQUEST FOR ORAL ARGUMENT

COMES NOW the Appellant, **JOHN MAREK**, by and through counsel, and herein files this Request for Oral Argument. As grounds therefore, Appellant would state:

1. Appellant is an indigent death-sentenced inmate with an active death warrant pending. His appeal of the denial of Rule 3.851 relief is pending before this Court. The denial of relief in circuit court followed a two day evidentiary hearing.

2. This Court set a briefing schedule for this past weekend that afforded Mr. Marek less than twenty-two (22) hours to file his initial brief on appeal, the State twenty-one (21) hours to file its answer brief, and Mr. Marek four (4) hours thereafter to file a reply brief. Mr. Marek's initial brief was over seventy (70) pages long. The State's answer brief was eight-five (85) pages long. Mr. Marek's reply brief was twenty (20) pages long, and due to the shortness of time he was unable to address the State's arguments that the newly discovered evidence is

inadmissible hearsay, and the State's argument that trial counsel's statement at trial when this evidence was unknown shows that he would not have presented it even though the State successfully objected to the testimony on May 7, 2009, of the trial attorney who in a proffer testified that he would have used the new evidence and it would have changed his trial strategies.

3. In order to give Mr. Marek the benefit of due process and the opportunity to be heard, this Court should grant oral argument so that counsel can explain why these arguments by the State are legally and constitutionally wrong and cannot withstand scrutiny.

4. The resolution of the issues involved in this action will therefore determine whether he lives or dies. This Court allowed oral argument on May 4th on Mr. Marek's appeal of the summary denial of Rule 3.851 relief. Given that the issues after an evidentiary hearing are much more fact bound and require consideration of a record that includes transcripts of testimony just given last Wednesday and Thursday, it is even more important that oral argument be granted in this appeal in order to insure that counsel can fully apprise the Court of the pertinent facts and testimony from last week's hearing. A full opportunity to air the issues through oral argument is particularly acute in these circumstances, given the seriousness of the claims involved and the stakes at issue. Mr. Marek, through counsel, accordingly urges that the Court permit oral argument.

WHEREFORE, the Appellant respectfully requests that this Court grant an oral argument in his appeal.

I HEREBY CERTIFY that a true copy of the foregoing motion has been furnished by United States Mail, first class postage prepaid, to Carolyn Snurkowski, Assistant Deputy Attorney General, Department of Legal Affairs, The Capitol PL01, Tallahassee, Florida 32399-1050 , on this 11th day of May, 2009.

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