

jur. rel.

Supreme Court of Florida

CORRECTED OPINION

No. 67,987

WILLIAM T. TURNER, Petitioner,
vs.
STATE OF FLORIDA, Respondent.

[May 14, 1987]

PER CURIAM.

We have for review the first-degree murder convictions of William T. Turner. The court imposed the jury recommended sentences of life imprisonment for the stabbing death of Turner's estranged wife, Shirley, and death for the stabbing death of Joyce Brown. We have jurisdiction. Art. V, § 3(b)(1), Fla. Const.

We previously relinquished jurisdiction to the trial court on Turner's request for an evidentiary hearing regarding his claimed involuntary absence from crucial stages of trial. Defense counsel asserted the attorney-client privilege on Turner's behalf,* during Turner's testimony and the testimony of Turner's trial counsel. He, thus, successfully prevented disclosure of conversations necessary for a determination of whether Turner waived his absence through counsel or acquiesced in counsel's waiver. Relying, inter alia, on Francis v. State, 413 So.2d 1175 (Fla. 1982), he now claims that, since the record

* § 90.502(3)(e), Fla. Stat. (1985).

fails to show an affirmative waiver or acquiescence, he is entitled to a new trial. We disagree.

The record is silent only because Turner's counsel thwarted the requested evidentiary inquiry by asserting Turner's attorney-client privilege. The attorney-client privilege is not absolute and "may be outweighed by public interest in the administration of justice in certain circumstances." Sepler v. State, 191 So.2d 588, 590 (Fla. 3d DCA 1966). Section 90.502, Florida Statutes (1985), Lawyer-Client Privilege, provides in part:

(4) There is no lawyer-client privilege under this section when:

(c) A communication is relevant to an issue of breach of duty by the lawyer to his client . . . arising from the lawyer-client relationship.

Further, "a lawyer who represents a client in any criminal proceeding may reveal communications between him and his client when accused of wrongful conduct by his client concerning his representation where such revelation is necessary to establish whether his conduct was wrongful as accused." Wilson v. Wainwright, 248 So.2d 249, 259 (Fla. 1st DCA 1971). See also Laughner v. United States, 373 F.2d 326 (5th Cir. 1967); Bennett v. State, 293 So.2d 1 (Miss. 1974) (citing Wilson). The Rules Regulating The Florida Bar are in accord:

4-1.6 Confidentiality of information

(c) A lawyer may reveal such information to the extent the lawyer believes necessary:

(4) To respond to allegations in any proceeding concerning the lawyer's representation of the client; . . .

Despite protestations to the contrary, Turner bases his involuntary absence claim on the alleged breach of defense counsel's duty. Specifically, he claims counsel failed to advise him of his right to voir dire and charge conference participation. In addition, he denies authorizing counsel to waive his presence, thereby implying that counsel did in fact waive his presence without his consent.

Accordingly, we find that Turner no longer has any attorney-client privilege as to communications concerning his

crucial stage presence or waiver thereof. In an abundance of caution aimed at protecting Turner's constitutional right to be present at critical stages of his trial, we again relinquish jurisdiction to the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, for a determination of whether Turner's presence was properly waived. Since a finding that Turner was erroneously denied his critical stage presence will be dispositive of this case, we temporarily withhold review of the remaining issues raised on this appeal.

It is so ordered.

MCDONALD, C.J., and OVERTON, EHRLICH, SHAW, BARKETT, GRIMES
and KOGAN, JJ., Concur

An Appeal from the Circuit Court in and for Duval County,

John D. Southwood, Judge - Case No. 84-6504 CF

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