

IN THE SUPREME COURT OF FLORIDA

DAVID GORHAM,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 68,664

FILED
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CLERK, SUPREME COURT
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Deputy Clerk

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

Appellant was the defendant and Appellee was the prosecution in the criminal division of the circuit court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. The parties will be referred to as they appear before this Court.

The following symbol will be used:

"R" Record on appeal.

STATEMENT OF THE CASE AND FACTS

Appellee accepts Appellant's statement of the case and his statement of the facts to the limited extent that they present an accurate, non-argumentative recitation of proceedings in the trial court.

POINT INVOLVED

WHETHER THE DECISION OF THE TRIAL COURT, IN DENYING THE APPELLANT'S MOTION UNDER FLA.R.CRIM.P. 3.850, SHOULD BE AFFIRMED ON THE AUTHORITY OF SCOTT v. STATE SINCE THE MOTION WAS NOT VERIFIED IN ACCORDANCE WITH FLA.R.CRIM.P. 3.987?

SUMMARY ARGUMENT

Appellee maintains that, pursuant to this Court's decision in Scott v. State, the trial court did not err in dismissing the Appellant's motion to vacate judgement and sentence where the oath was qualified and not in accordance with Fla.R.Crim.P. 3.987.

ARGUMENT

THE DECISION OF THE TRIAL COURT, IN DENYING THE APPELLANT'S MOTION UNDER FLA.R.CRIM.P. 3.850, SHOULD BE AFFIRMED ON THE AUTHORITY OF SCOTT v. STATE SINCE THE MOTION WAS NOT VERIFIED IN ACCORDANCE WITH FLA.R.CRIM.P. 3.987. (Restated).

Appellee maintains herein that the Appellant's very same concerns, regarding the propriety and applicability of the Fla.R.Crim.P. 3.987 oath to his particular situation, have already been addressed, and resolved, by this Court in Scott v. State, 464 So.2d 1171 (Fla. 1985).¹ As such, Appellee maintains that the decision of the trial court, in denying the Appellant's motion under Fla.R.Crim.P. 3.850, should be affirmed on the authority of Scott, supra, since said motion was not verified in accordance with Fla.R.Crim.P. 3.987. See generally Williams v. State, 473 So.2d 44 (Fla. 3rd DCA 1985).

Appellee would further submit that such a Rule 3.987 oath requirement would not be unduly harsh or burdensome on a defendant who, like Appellant, is confined in prison. There is no impediment which prevents a defendant from reviewing the information which has resulted from his counsel's investigation; he would thus be in the same position of his counsel. As well, a defendant can support his motion with affidavits of counsel. See generally Costello v. State, 260 So.2d 198, 200 (Fla. 1972). And finally, it is important to note that the Rule 3.987 oath does not re-

¹ Appellee is moving, contemporaneous with the filing of this Answer Brief, pursuant to §90.202(6) Fla. Stat., that this Court take judicial notice of the appellate file and briefs submitted in Scott, supra, most particularly the Initial Brief of Appellant Scott, and Scott's Motion for Rehearing. Said briefs were specifically referred to by the prosecution below, at the hearing on Appellant's motion, as having raised the same challenge sub judice (R).

quire "first hand" personal knowledge - only personal knowledge - that the facts and matters are true and correct.

CONCLUSION

Based upon the foregoing reasons and citations of authority, the State respectfully submits that the order dismissing the motion for post-conviction relief should clearly be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Appellee has been mailed to THOMAS K. EQUELS, ESQUIRE, Greenberg, Traurig, Askew et al., 1401 Brickell Avenue, PH-1, Miami, Florida 33131, on this 17th day of June, 1986.



Of Counsel