

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC02-42

LOWER COURT CASE NO. 79-04512

LINROY BOTTOSON,

Petitioner,

v.

Michael Moore, Secretary,
Department of Corrections,
and Robert Butterworth,
Attorney General, et. al

Respondents.

DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR
February 5, 2002 6:00PM

PETITION TO INVOKE THIS COURT'S ALL WRITS JURISDICTION
PURSUANT TO ART. V, § 3(B)(1), FLA. CONST. AND FL.R.APP.P.
RULE 9.100
AND PETITION FOR EXTRAORDINARY RELIEF
AND REQUEST FOR STAY OF TRIAL COURT PROCEEDINGS
AND REQUEST FOR STAY OF EXECUTION

COMES NOW THE PETITIONER, LINROY BOTTOSON, by and through his undersigned counsel, and seeks to invoke this Court's All Writs Jurisdiction pursuant to Art. V, § 3(b)(1), Fla. Const. In support thereof, Mr. Bottoson would show:

1. The Governor of Florida signed a death warrant for Mr. Bottoson on November 19, 2001.
2. Counsel for Mr. Bottoson was appointed on December 3, 2001.

3. Pursuant to the trial court's order, Mr. Bottoson is ordered to file any motion under Fl.R.CrimP. Rule 3.850 on January 11, 2002.
4. Mr. Bottoson filed a Motion for Order to Transport on January 7, 2002. Mr. Bottoson requested transport to a medical facility to allow for neurological testing, specifically SPECT/PET scans.
5. Counsel for Mr. Bottoson have a good faith reason to assert that SPECT/PET scan results evidencing brain damage would, in Mr. Bottoson's case, constitute "newly discovered evidence" within the meaning of Fl.R.Crim.P. 3.851 (2001). This good faith assertion is based upon both the history of this case, and the recent acceptance of SPECT/PET scans in the practice of brain damage evaluation.
6. The Florida Rules of Criminal Procedure provide for the assertion of newly discovered evidence claims. Such claims must be presented in accordance with Rule 3.851(e)(2)(C). This rule requires that all motions include a detailed allegation of the factual basis for any claim.
7. The SPECT/PET scan results are necessary to comply with the above stated rule.

8. The trial court denied the Motion to Transport Defendant on January 7, 2002. Mr. Bottoson filed an Emergency Motion for Re-hearing on January 8, 2002. The trial court denied the emergency motion without a hearing on January 9, 2002.
9. The trial court's denial of Mr. Bottoson's request for a transport order, therefore, does not conform to the essential requirements of law requiring Mr. Bottoson to particularly plead such a claim of newly discovered evidence. A claimant need not demonstrate that the evidence proffered is newly discovered. All that is necessary is that the claimant establish a prime facie case of newly discovered evidence to be proven at an evidentiary hearing. Swafford v. State, 679 So.2d 736 (Fla. 1996). To deny Mr. Bottoson the opportunity to establish a prima facie case as required by the appropriate Florida Rule of Criminal Procedure is a denial of due process.
10. Furthermore, as Mr. Bottoson is presently scheduled to be executed on February 5, 2002 at 6:00 PM, the trial court's denial of the request for a transport order will cause "irreparable injury for which

appellate review will be inadequate." Trepal v. State, 754 So.2d 702, 707 (Fla. 2000).

WHEREFORE, the Petitioner respectfully requests that this Court issue this writ directing that the Order to Transport the Defendant be issued and that a stay of the proceedings and the execution be entered pending the resolution of this petition and all relief requested herein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished by U.S. Mail, first-class, prepaid/facsimile transmission/federal express/hand delivery to all counsel of record, on this 9th day of January, 2002.

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The Honorable Thomas D. Hall
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CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the foregoing was generated in Courier New, 12 point font, pursuant to Fla. R. App. 9.210.

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