

**IN THE SUPREME COURT OF FLORIDA**

**AILEEN C. WUORNOS,**

**Appellant/Petitioner,**

**CASE NOS.: SC00-1199 & SC01-822**

**Volusia Case No: 91-257 CFAES**

**vs.**

**CASE NOS.: SC00-1748 & SC01-265**

**Pasco Case No.: 91-1232 CFAES**

**STATE OF FLORIDA,**

**MICHAEL W. MOORE,ETC.,**

**Appellees/Respondents.**

**CASE NO.: SC01-1391**

**Citrus/Marion Case Nos.: 91-304-W;**

**91-463 W; 91-112-CF**

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**MOTION ON CIRCUIT COURT FINDING OF FACT AND RESPONSE TO  
APPELLEE/RESPONDENT MOTION TO COMPEL APPELLANT TO  
PROVIDE THE RECORD**

COMES NOW, Capital Collateral Regional Counsel-Middle Region, by and through undersigned counsel and files this Motion/Response on Circuit Court Finding of Fact, and says further:

1. On June 13, 2001, this Court entered an Order relinquishing jurisdiction and consolidating all of Appellant/Petitioner's cases.

2. This Court stated in its order: "We relinquish jurisdiction for a period of ninety (90) days in the consolidated cases to the Chief Judge of the Seventh Judicial Circuit for assignment of a circuit judge of the Seventh Judicial Circuit for

a determination as to whether Wuornos is making a knowing, voluntary, and intelligent waiver of her collateral counsel and post-conviction proceedings. The assigned judge shall conduct all necessary proceedings in accord with Durocher v. State, 623 So.2d 482, 485 (Fla. 1993) and Castro v. State, 744 So.2d 986 (Fla.1999)”.

3. On August 13, 2001, the lower court filed its written Finding of Fact with this Court.

4. The lower court did not attach to the Finding of Fact sent to the Supreme Court a supplemented record containing documents upon which the lower court relied and transcripts of the hearing.

5. On August 21, 2001, CCRC-Middle filed a “Motion For Clarification” requesting among other things, that the trial court order a transcript of the hearing be prepared and sent to this Court pursuant to Slawson v. State, 2001 WL 747351( Fla.). The trial court denied the motion without a written order.

6. CCRC-Middle disagrees with the lower court’s finding of fact and further contends that the procedures set out in Deroucher, 623 So.2d 482, 485 (Fla. 1993), Castro, 744 So.2d 986 (Fla.1999), and Slawson, 2001 WL 747351 (Fla.), were not followed by the lower court.

7. The only way for this Court to properly review the lower court’s finding

of fact is to order the lower court to provide a complete record of the proceedings, including the transcripts of the hearings on July 20, 2001 and August 27, 2001, along with all documents presented to the court, and order the parties to brief the matter for this Court and set oral argument.

8. It is the position of CCRC-Middle that the lower court should direct the court reporter to prepare the transcript of the hearing on July 20, 2001, and have it sent to the Florida Supreme Court along with all documents supplied to, and considered by, the lower court for the hearing.

9. In Slawson v. State, 2001 WL 747351 (Fla.), a waiver of post-conviction counsel and post-conviction proceedings case, this Court stated:

After considering Slawson's motion, we issued an order on August 28, 1998, temporarily relinquishing jurisdiction to the circuit court for a period of 60 days so that the trial court could conduct a hearing on Slawson's withdrawal motion. **We further ordered** that Slawson be present at the hearing and **that the circuit court supplement the record with any documents and transcripts resulting from the hearing.**

Id. at 4. (Emphasis added).

This Court further stated:

On October 5, 1998, Judge Allen entered a written order reflecting that determination and then **supplied this Court with the transcript and all documents resulting from the September 1998 hearing.**

Id. at 5. (Emphasis added).

10. In a recent waiver of capital post-conviction counsel and proceedings hearing in circuit court involving a death-row inmate, Robert Trease, the trial court and State Attorney likewise felt that this Court's holding in Castro required that the trial court attach the record of proceedings to the order and send them to the Supreme Court:

MR. GRUBER: I did have one question I wanted to ask. Does the Court intend to do anything with regard to review of today's proceedings – review of today's proceeding with regard to the Florida Supreme Court?

THE COURT: Do I intend to do anything? I think I'm required in some fashion to notify the Court that I have ruled on his motion to discharge your office.

MR. GRUBER: Right.

THE COURT: What I was going to do is prepare a formal written order. I'll ask the court reporter to transcribe this portion of the proceeding which contains my order, and I'll prepare a formal written order and see that a copy gets mailed immediately to the folks at the Florida Supreme Court.

MR. GRUBER: You will do that?

THE COURT: Yes, I will do that. I think that's my obligation; isn't it, under *Castro*, to notify the Court of what my ruling has been?

MR. ROBERT: That's my reading of *Castro*, Your Honor.

(A copy of the transcript excerpt is attached to this motion/response as Exhibit A).

11. It is important for the Court to take this opportunity to establish a procedure whereby in any future waiver of collateral appeal matters in capital cases, lower courts are to transmit to this Court the complete record of proceedings below, including the transcript and all documents resulting from the waiver hearing, along with the lower court order. Such an established procedure would ensure that all such orders have the opportunity for review by this Court and that a case does not slip through the cracks.

12. Such a problem could arise if, for example, a capital defendant's motion to dismiss collateral counsel and proceed *pro se* were granted by the trial court and at a later date, while acting *pro se*, moves to withdraw his 3.850 motion and stop all proceedings so that he can be executed, and the trial court grants his request.

13. At present there is no requirement that the trial court in the hypothetical situation above forward to this Court the order and record of the proceeding dismissing his collateral actions. Barring the defendant in the case appealing the order *pro se*, it might be possible for a warrant and execution to occur without this Court's ability to review the matter.

14. On September 12, 2001, the Appellee in this cause filed a "Motion to Compel Appellant To Provide The Record". The Appellee/Respondent in this

cause asserts “that counsel for CCRC intends to challenge the ruling of the trial court below finding Aileen Wuornos competent to waive collateral counsel and dismiss her pending appeals before this court.” Additionally, the Appellee states that “the transcript of the hearing held before the Honorable R. Michael Hutcheson is necessary for this Court to make an informed decision” regarding this action.

15. As authority for its motion, the Appellee/Respondent relies upon Orange County v. Williams, 702 So.2d 1245 (Fla. 1997), Porter v. State, 700 So.2d 647 (Fla. 1997), and Hoffman v. Haddock, 695 So.2d 682 (Fla. 1997) for the general proposition that CCRC is responsible for the payment of all necessary costs and expenses related to post-conviction litigation.

16. Recently, this Court held that the Office of the Capital Collateral Regional Counsel is not responsible for the payment of all necessary costs and expenses which are incurred in capital collateral litigation. See Miami-Dade County v. Jones, No. SC00-1427(Fla. August 23, 2001) and Orange County v. Capital Collateral Regional Counsel, Middle Region, No. SC01-337 (Fla. September 20, 2001). In Jones, the issue was whether the county or CCRC was responsible for payment of expert witness fees appointed by the court. The Appellant, Miami-Dade County, asserted that based on this Court’s decisions in the Hoffman Trilogy, CCRC should be responsible for payment of the expert

appointed to determine competency. This Court found that section 916.115 of the Florida Statutes dictated the outcome of the case. That section reads, in pertinent part:

Expert witnesses appointed by the court to evaluate the mental condition of a defendant in a criminal case shall be allowed reasonable fees for services rendered as evaluators of competence or sanity and as witnesses, which shall be paid by the county in which the indictment was found or the information or affidavit was filed[.]

Section 916.115(2), Fla. Stat. (2000), (emphasis added), cited in Jones, Slip Op. at 4.

17. Continuing, this Court analyzed section 43.28, finding “support for the conclusion that the County is responsible for the costs at issue in this case.”

Jones, Slip Op. at 7. The costs at issue were “non-partisan and essential to the fundamental fairness and operation of the proceedings.” Id.

18. Section 43.28 does not expressly mandate that the counties pay for costs and fees incurred by by the defense in litigation.<sup>1</sup> This Court, however, construed the language contained in section 43.28 as requiring the counties to pay for the attorney fees and costs relating to the representation of indigent criminal

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<sup>1</sup> The counties shall provide appropriate courtrooms, facilities, equipment, and, unless provided by the state, personnel necessary to operate the circuit and county courts. Section 43.28, Fla. Stat. (2000).

defendants. Brevard County Bd. Of County Comm'rs v. Moxley, 526 So.2d 1023 (Fla. 5<sup>th</sup> DCA 1988); In re D.B. and D.S., 385 So.2d 83 (Fla. 1980). In the context of collateral litigation, this Court found that 43.28 requires that counties absorb expenditures which are non-partisan. Jones, Slip.Op. at 7.

19. In the instant case, this Court has ordered that the trial court conduct a hearing much in the same way that the trial court in Jones ordered that experts evaluate the defendant's competency. The transcript of this hearing is not a partisan advocacy cost but a cost that is necessary and inherent in a fundamentally fair determination of the issues relating to Ms. Wuornos' capacity to waive her appeals. This transcript is a memorialization of the hearing "owing no duty of loyalty or confidentiality to either party." Jones, Slip.Op. at 9.

WHEREFORE, undersigned counsel requests this Court order the lower court to provide the record of the hearing held on July 20, 2001, supplemented with any documents and transcripts resulting from said hearing and have the clerk forward said record to the Florida Supreme Court and further to deny Appellee's Motion to Compel Appellant to Provide the Record and further enter any order which the court deems necessary and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing **Motion On Circuit Court Finding Of Fact And Response To Appellee/Respondent Motion To Compel Appellant To Provide The Record** has been furnished by U.S. Mail, to all counsel of record on September 28, 2001.

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that a true copy of the foregoing **Motion On Circuit Court Finding Of Fact And Response To Appellee/Respondent Motion To Compel Appellant To Provide The Record**, was generated in Times New Roman, 14 point font, pursuant to Fla. R. App. 9.210.

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