

Supreme Court of Florida

THURSDAY, MAY 21, 2009

CASE NO.: SC09-821

Lower Tribunal No(s): 83-7088-CF 10B

JOHN RICHARD MAREK

vs. STATE OF FLORIDA

Appellant(s)

Appellee(s)

John Richard Marek, a prisoner under sentence of death, appeals an order denying his third successive motion for postconviction relief. We have jurisdiction. Art. V, § 3(b)(1), Fla. Const. We reverse and remand for a new evidentiary hearing before a different judge.

On May 1, 2009, Marek filed a third successive postconviction motion, raising three claims. The postconviction court conducted an emergency evidentiary hearing on May 6-7, 2009. At the beginning of the hearing, Marek filed a motion to disqualify Judge Weinstein and the entire Seventeenth Judicial Circuit. The motion included allegations concerning contacts made by Sharon Ireland, a staff attorney for the circuit court, with counsel for the State. After deciding that the motion was a successive motion subject to Florida Rule of Judicial Administration 2.330(g) and hearing argument from the attorneys, the postconviction court denied the motion to disqualify. Then on May 8, 2009, the postconviction court issued an order denying postconviction relief. Marek appealed the order. His first argument on appeal is that the postconviction court erred in treating his motion for judicial disqualification as successive and in denying the facially sufficient motion. On appeal, Marek abandoned his argument that the entire Seventeenth Circuit should be disqualified, but continues to argue that Judge Weinstein should be disqualified. We conclude that the postconviction court erred by treating Marek's motion to disqualify as a successive motion and by denying the motion.

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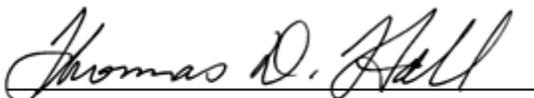
The disqualification of Judge Weinstein and staff attorney Sharon Ireland is therefore required. Because we find this issue dispositive, we do not address the other issues raised on appeal with respect to the merits of Marek's postconviction motion.

Accordingly, we reverse and remand to the Seventeenth Circuit with directions that a new judge preside over the proceeding with respect to Marek's postconviction claims. We also direct that the further proceedings be completed and that the postconviction judge enter an order with respect to Marek's claims within thirty days of the date of this order. The stay of execution previously entered remains in effect until further order of this Court.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA, and PERRY, JJ., concur.

A True Copy

Test:



Thomas D. Hall
Clerk, Supreme Court



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Served:

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HON. PETER M. WEINSTEIN, JUDGE
HON. HOWARD FORMAN, CLERK