

Supreme Court of Florida

No. 76,306

JERRY WHITE,
Appellant,

vs .

STATE OF FLORIDA,
Appellee.

[July 17, 1990]

PER CURIAM.

This is an appeal from the denial of a motion for postconviction relief following a sentence of death, accompanied by an application for stay of execution and for oral argument. We have jurisdiction. Art. V, § 3(b)(1), Fla. Const.

White was convicted of robbing a small grocery store and shooting to death a customer. The murder conviction and sentence

of death were affirmed. White v. State, 446 So.2d 1031 (Fla. 1984). Subsequent to the signing of the first death warrant, White filed an application for stay of execution and a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. The stay was granted and the motion denied following an evidentiary hearing. The denial was affirmed. White v. State, 559 So.2d 1097 (Fla. 1990). Following the signing of the second death warrant, White's successive rule 3.850 motion was denied without an evidentiary hearing. He appeals that order.

White contends that Florida's electric chair is defective and that the Department of Corrections is incompetent to conduct executions. We have ruled otherwise. Squires v. State, No. 76,152 (Fla. July 5, 1990); Buenoano v. State, No. 76,150 (Fla. June 20, 1990).

At sentencing, the court found as an aggravating circumstance that White previously had been convicted of a violent felony. White now contends that the prior convictions underlying that circumstance were unlawfully obtained but he does not argue this point as grounds for appeal in the present case.

We affirm the order denying White's motion for postconviction relief. We deny the application for stay of execution and for oral argument. No petition for rehearing will be permitted

It is **so** ordered.

SHAW, C.J., and OVERTON, McDONALD, EHRLICH and GRIMES, JJ.,
Concur
BARKETT, J., Concur specially with an opinion
KOGAN, J., Dissents with an opinion

Barkett, J., concurring specially.

I would grant a stay of execution and relief based on the reasons I expressed in Buenoano v. State, No. 76,150 (Fla. June 20, 1990)(Barkett, J., dissenting). However, I recognize that the Court has ruled adversely on this issue.

KOGAN, J., dissenting.

I respectfully dissent based upon my dissenting opinion in Buenoano v. State, No. 76,150 (Fla. June 20, 1990).

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

R. James Stroker, Judge - Case No. 81-1132

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for Appellant

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