

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC-09-839

DAVID EUGENE JOHNSTON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

APPELLANT'S MOTION TO SUPPLEMENT THE RECORD

COMES NOW the Appellant, DAVID EUGENE JOHNSTON, and respectfully requests that this Court order the Clerk of the Circuit Court, in and for Orange County, Florida, to supplement the record in the above-styled cause. In support thereof, Appellant shows:

1. Mr. Johnston is a death sentenced prisoner with an active death warrant. His case is before this Court on appeal from a summary denial, after remand for DNA testing, of his Successive Motion to Vacate the Judgements of Conviction and Sentence With Special Request for Leave to Amend, pursuant to Rule 3.851. His initial brief is being filed simultaneously with this motion.

2. Upon review of the record on appeal received from the Clerk of the Circuit Court for Orange County, undersigned counsel has noted that the record is not complete. Due to the complexities and seriousness of these proceedings, an accurate and correct record on appeal is essential so that this Court can engage in a proper review of the proceedings below.

3. Specifically, the following pleadings and court documents are necessary to an adequate appeal:

- a. Final Order Denying Relief After DNA Testing and Denying "Successive Motion to Vacate Judgement and Sentence With Special Request for Leave to Amend - filed on or about August 18, 2009.

4. The materials outlined above are necessary to permit proper consideration of the above-styled cause. This matter must be remanded to the circuit court with directions that these materials be made part of the record on appeal in this case.

5. The Appellee shall suffer no prejudice from the granting of this request. This request is not made for the purposes of delay.

WHEREFORE, Appellant respectfully requests that this Court grant his Motion to Supplement the Record.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic transmission and U.S. Mail, postage prepaid, to Kenneth S. Nunnelley, Office of the Attorney General, 444 Seabreeze Blvd., 5th Floor, Daytona Beach, FL 32118 on September 28, 2009.

CERTIFICATE OF FONT

This is to certify that this Initial Brief has been produced in a 12 point Courier New type, a font that is not proportionately spaced.

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