

Supreme Court of Florida

THURSDAY, MAY 13, 2010

CASE NO.: SC10-275

Lower Tribunal No.: 88-394CFAES

GREGORY KEITH CAPEHART vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)

This appeal of the denial of appellant's seventh amended initial motion to vacate judgments of conviction, which was transferred to this Court from the Second District Court of Appeal in case no. 2D08-5692, is hereby dismissed without prejudice and returned to the Circuit Court of the Sixth Judicial Circuit. The circuit court is hereby directed to conduct a status conference within thirty days of the date of this order for the purpose of determining the question of counsel for Gregory Capehart in the pending penalty phase proceeding and any other matters the court deems necessary or proper. The circuit court is also directed to proceed expeditiously, commensurate with due process considerations, in conducting the new penalty phase proceeding previously ordered by that court. In light of this order, all pending motions are denied as moot.

PARIENTE, LEWIS, LABARGA, and PERRY, JJ., concur.

CANADY, J., dissents with an opinion, in which POLSTON, J., concurs.

QUINCE, C.J., recused.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND
IF FILED, DETERMINED.

CANADY, J., dissenting.

I dissent from the decision to dismiss this appeal. I would proceed with consideration of the postconviction appeal as we did in Maharaj v. State, 778 So. 2d 944 (Fla. 2000), a case which was in a procedural posture similar to the procedural posture of this case.

A True Copy

Test:



Thomas D. Hall
Clerk, Supreme Court



jn

Served:

ALI ANDREW SHAKOOR
BRUCE G. HOWIE
BILL JENNINGS
RICHARD EDWARD KILEY
KATHERINE V. BLANCO
DIANA KAY BOCK
HON. JAMES BIRK HOLD, CLERK
HON. PAULA O'NEIL, CLERK
HON. LINDA HOBE BABB, JUDGE