

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Per Curiam handed down on the 23rd day of September, 2011, are as follows:

PER CURIAM:

2009-KA-1578 STATE OF LOUISIANA v. MICHAEL GARCIA (Parish of W. Baton Rouge)
(First Degree Murder)

Jurisdiction over all assignments of error is retained by this court pursuant to our plenary supervisory jurisdiction over all other courts and the parties are directed to seek any review of the trial court's determinations directly in this court. La. Const. art. V, Section 5(A). See also State v. Johnson, 2007-2034 (La. 6/26/09), 23 So.3d 876.
JURISDICTION RETAINED; REMANDED IN PART.

KNOLL, J., dissents and assigns reasons.

09/23/11

SUPREME COURT OF LOUISIANA

No. 2009-KA-1578

STATE OF LOUISIANA

VERSUS

MICHAEL GARCIA

*On Appeal from the Eighteenth Judicial District Court, for the Parish of West Baton Rouge,
Honorable J. Robin Free, Judge*

PER CURIAM

This direct appeal was taken following the conviction of defendant on one count of first degree murder and a jury's return of a sentence of death. Among defendant's assignments of error are claims that the defendant was represented at trial by counsel laboring under conflicts of interest. Namely, in three assignments of error defendant urges that the "[s]imultaneous representation of three co-defendants by the director of and employees of the 18th Judicial District Indigent Defender created an actual conflict of interest," and "Mr. D'Aquila's role as Chief Defender representing all of the men facing the death penalty in this case created an actual conflict of interest in his role as Mr. Garcia's lawyer," and "[t]he simultaneous representation of co-defendants by attorneys in the 18th Judicial District Indigent Defender [sic] violated Mr. Garcia's right to counsel."

To adequately address these assignments of error, and having reviewed the record in great depth, this court determines that it is necessary to evaluate how the attorneys may be associated with the Public Defender's Office of the Eighteenth Judicial District. To that end, we remand this matter to the trial court for a hearing

to determine the employment status of the attorneys representing the three defendants implicated in the death of Matthew Millican, and specifically to determine whether the attorneys representing those defendants were employees of the Eighteenth Judicial District's Public Defender's Office.

The trial court is hereby ordered to make a determination in an expeditious manner as to whether each attorney representing those defendants was an employee of the Public Defender's Office of the Eighteenth Judicial District and to recite the factual basis for each determination. Jurisdiction over all assignments of error is retained by this court pursuant to our plenary supervisory jurisdiction over all other courts and the parties are directed to seek any review of the trial court's determinations directly in this court. La. Const. art. V, § 5(A). See also **State v. Johnson**, 2007-2034 (La. 6/26/09), 23 So.3d 876.

JURISDICTION RETAINED; REMANDED IN PART.

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SUPREME COURT OF LOUISIANA

NO. 09-KA-1578

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VERSUS

MICHAEL GARCIA

KNOLL, JUSTICE, dissenting

As there was no objection by defense counsel, *see Holloway v. Arkansas*, 435 U.S. 475 (1978), and the record does not demonstrate an actual conflict of interest, *i.e.*, a conflict that affected counsel's performance, *see Mickens v. Taylor*, 535 U.S. 162 (2001), *Cuyler v. Sullivan*, 446 U.S. 335 (1980), I respectfully dissent from the majority's remand of this matter for an evidentiary hearing on the employment status of the IDB attorneys.