

**DISTRICT COURT OF APPEAL,
STATE OF FLORIDA,
FOURTH DISTRICT**

DANIEL ADAMS,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

CASE NO: 4D24-0627

**PETITIONER'S REPLY TO STATE'S RESPONSE TO
PETITION FOR
WRIT OF PROHIBITION AND/OR CERTIORARI**

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REPLY

Under this Court's April 2, 2024, Petitioner DANIEL ADAMS files this Reply to the State's Response filed April 17, 2024:

ARGUMENT

- I. **STATE'S FAILURE TO FILE TIMELY NOTICE OF INTENT TO SEEK DEATH PENALTY, SEEK EXTENSION TO DO SO OR ESTABLISH GOOD CAUSE AND EXCUSABLE NEGLIGENCE FOR THIS FAILURE FORECLOSES STATE FROM SEEKING DEATH PENALTY; TRIAL JUDGE'S DENIAL OF PETITIONER'S MOTION TO STRIKE STATE'S NOTICE AND PERMIT STATE TO SEEK DEATH PENALTY AGAINST PETITIONER EXCEEDED JURISDICTION AND WAS DEPARTURE FROM ESSENTIAL LEGAL REQUIREMENTS WHICH CREATED IRREPARABLE HARM AND WARRANTS PROHIBITION OR CERTIORARI RELIEF.**

The State's failure to timely invoke intent to seek capital punishment or to request an extension or demonstrate good cause and excusable neglect once their deadline lapsed warrants prohibition and/or certiorari. Petition, p. 6-18. The State's Response to the Petition offers little meaningful analysis and hardly mentions Petitioner's main arguments and cases.

The State claims that its death-penalty Notice under 782.04 (1) (b), *Fla. Statutes* and Rule 3.181, *Fla. R. Crim P.* was not triggered until an in-court "arraignment" took place March 15, 2021 when Covid "disruptions" subsided. State's Response, p. 6, 9, 15. The State argues that there is no case that

“alters” an in-court formal arraignment as the sole date that triggers the 45-day deadline for the State’s Notice of Intent under this statute and rule. Response, 10. This completely ignores Petitioner’s detailed analysis and conclusion that based on the rulings in *Gonzales v. State*, 829 S. 2nd 277 (Fla. 2nd DCA 2002) and *Pura v. State*, 789 S. 2nd 436 (Fla. 5th DCA 2001), the February 27, 2020 written plea and March 12, 2020 Indictment triggered the State’s deadline, which the State missed and never tried to extend or justify. Petition, p. 7-10 *and cases cited*. Similarly, the State’s justification of its Notice as timely because courts were allegedly thrown into “flux” by Covid, Response, 11, substantially ignores Petitioner’s comprehensive argument that the pandemic did not modify or alter the process of arraignment or the State’s death-penalty notice obligations. Petition, 12-15 *and cases cited*.

Respondent concludes that a waiver of formal arraignment under Rule 3.160, *Fla. R. Crim P* waives the 45-day notice requirements of 782.04 (1) (b) and Rule 3.181, *supra*, adopting the rigid view that “arraignment” under Rule 3.160 is limited to an in-court formal process for death-penalty notice purposes. Response, 9, 16. This is a fundamental misunderstanding of Rule 3.160. Taking the State’s position to its logical extreme, no defendant in a capital case whose lawyer files a written plea would be entitled to any notice of the State’s intent to seek death if the State’s notice obligation can only be

triggered by an in-court formal arraignment. This absurd interpretation of Rule 3.160 that the State would never have an obligation to give such notice to a capital defendant in such a situation must be rejected under the rules of statutory construction. E. g., *State v. Flansbaum-Talabisco*, 121 S. 3rd 568, 577 (Fla. 4th DCA 2013).

Rule 3.160 clearly contemplates that the filing of a written plea obviates any in-court arraignment process by mandatorily waiving that process. Petition, 7, 8. This waiver by written appearance occurs thousands of times each day throughout Florida courts. Petitioner has not added words to Rule 3.160 in his analysis; his arguments rely on the plain language of the Rule. This appropriate statutory construction stands in stark contrast to the State's attempt to treat this language **as if it does not exist**. *Brown v. State*, 715 S. 2nd 241, 243 (Fla. 1998) (rules of construction apply to rules of procedure); *Patino v. State*, 2024 Fla. App. LEXIS 1526, *7 (Fla. 3rd DCA, Feb. 20, 2024) (cardinal rule of statutory construction is that court should not read statutory language as meaningless). Once formal arraignment was waived by Petitioner's written plea, the subsequent Indictment triggered the State's deadline, Petition, 7, 8. The March 25, 2021 "arraignment" was a legal nullity for death-penalty notice purposes. *Gonzales, supra; Pura, supra*.

The State maintains that since non-compliance with the 45-day deadline

does not bar it from seeking death, Judge Coleman's ruling was not an act in excess of jurisdiction which mandates prohibition relief. Response, 10, 17. A careful examination of the relevant statutes, rules and cases **contradicts this conclusion.**

In *State v. Chantiloupe*, 248 S. 3rd 1191, 1195, 1196 (Fla. 4th DCA 2018), this Court quoted the language of 782.04 (1) (b) and Rule 23.181, as enacted in 2016, that if the State intends to seek death in a murder case, it **MUST** file its Notice within 45 days of arraignment. This Court subsequently noted in *State v. Demons*, 351 S. 3rd 10, 13 (Fla. 4th DCA 2022) that the plain language of this statute and rule establish that meeting this deadline is a condition precedent to seeking capital punishment. Under these plain terms, a failure to meet this deadline bars death as an available penalty unless the State obtains an extension or shows good cause and excusable neglect for non-compliance after the deadline expires. *Demons, supra; Chantiloupe*, 248 S. 3rd *supra* at 1197-1200.

Under the 1995 version of Rule 3.202, *Fla. R. Crim P* which imposed a deadline for the State to give notice of intent to seek death, that provision expressly stated that a lack of timely notice did not preclude the death penalty as an option. *Chantiloupe* at 1195. As the Court observed, the Rule was amended in 2016, **completely removing** this provision. *Chantiloupe* at

1195, 1196. Neither 782.04 (1) (b) or Rule 3. 181 includes a provision like the previous version of Rule 3.202, *supra*. The removal and omission of this provision about the impact of non-compliance, without adding it to 782.04 (1) (b) or Rule 3.181, signaled a contrary controlling intent to **foreclose** capital punishment for non-compliance with the notice deadline. *Carlisle v. Game and Fresh Water Fish Comm'n*, 354 S. 2nd 362, 364 (Fla. 1977); *Wilson v. Crews*, 32 S. 2nd 114, 117 (Fla. 1948); *Ring Power Corp v. Campbell*, 697 S. 2nd 203, 204 (Fla. 1st DCA 1997). Thus, in the absence of timely notice, a timely request for extension and/or a demonstration of good cause and excusable neglect after the deadline lapses, the State can no longer seek death as a penalty. *Demons* at 13, 14; *Chantiloupe*, *supra*.

In Nevada, a state with a similar notice requirement, that state's Supreme Court reached this same conclusion. In *State v. Second Judicial Dist. Court*, 11 P. 3rd 1209 (Nev. 2000), notices of intent to seek the death penalty against co-defendants were filed 104 days and 63 days after the information was filed, well past the 30 days prescribed by the rule as in this case. *Second Judicial Dist. Court*, 11 P. 3rd *supra* at 1211. The Nevada Supreme Court ruled that the trial court did not abuse its discretion in denying the State's Motion for Leave to file the untimely notices because workload, the complexity of capital cases, and mere oversight did not suffice as good

cause. *Id.* at 1217; see also *State v. Luvone*, 903 P. 2nd 960, 976 (Wash. 1995) (where statute provided that lack of timely notice precluded death penalty, state Supreme Court found that prosecutor’s “inadvertence” or “carelessness” is not good cause which justifies failure to timely file). The remedy for failure to follow the procedural requirements and lack of good cause in *Second Judicial District Court* was to bar the State from seeking death against the co-defendants. *Id.* at 1218. The Nevada Supreme Court reiterated that the purpose of the rule was to ensure capital defendants receive notice sufficient to meet due process requirements. *Id.* at 1212.

Because the State did not timely file notice, request an extension or provide a showing of good cause, Judge Coleman’s ruling effectively authorizes the State to seek capital punishment when it can no longer do so. Such an action must be prevented because it would exceed the Circuit Court’s jurisdiction, in much the same way as if a criminal prosecution was barred by a speedy trial violation, a violation of double jeopardy, the expiration of a statute of limitations or the application of a statutory grant of immunity such as Stand Your Ground. E. g., *Lowe v. Price*, 437 S. 2nd 142, 143 (Fla. 1983); *Corbett v. State*, 348 S. 3rd 645, 647, 648 (Fla. 5th DCA 2022); *State v. Hamilton*, 210 S. 3rd 776, 779 (Fla. 2nd DCA 2017); *Pontius v. State*, 932 S. 2nd 618, 619 (Fla. 4th DCA 2016). This makes prohibition an appropriate and necessary

remedy here. Petition at 15-16 *and cases cited*.

The State has claimed that because the notice deadline can be extended under Rule 3.050, *Fla. R. Crim P*, it was not prevented from pursuing death here. Response, 15-16; 17. However, an extension is not automatic or self-executing. The State cannot escape the fact that 1) it **did not seek** additional time to file a Notice before the deadline expired; 2) it **did not allege or argue** good cause or excusable neglect to justify its lack of compliance, and 3) it **did not raise** any such request, exception or relevant criterion in its Reply to Petitioners' Motion to preclude death, Petitioner's Appendix ("PA), p. 15-17; at the hearing on this Motion, PA, 18-80 or in its post-hearing Amended Reply. PA, 81-84. These omissions are at least as glaring if not more so than those in *Chantiloupe* at 1199, 1200. Prohibition relief is thus warranted because Judge Coleman's ruling empowered the State to pursue death when the prosecution could no longer legally do so.

The State asserts that the *Gonzales* decision does not justify certiorari. Initially, Respondent claims that this ruling is only "persuasive" authority as a 2nd DCA decision not binding here. Response, 13. The State ignores that *Gonzales* is the only DCA ruling on the issue of the impact of a written plea on the death penalty notice deadline. As such, *Gonzales* **was binding** on Judge Coleman. *State v. Hayes*, 333 S. 2nd 51, 53 (Fla. 4th DCA 1976) (if

only case on issue at District Court level is by a DCA in a different location from the trial court, the trial courts throughout the State must nevertheless follow it in the absence of an intradistrict conflict); see also *Hopkins v. State*, 105 S. 3rd 470, 472, n. 2 (Fla. 2012); *Pardo v. State*, 596 S. 2nd 665, 666 (Fla. 1992); *Baxter v. State*, 2023 Fla. App. LEXIS 7381, *11 (Fla. 5th DCA, Oct. 27, 2023). The State's suggestion that the *Gonzales* holding was only dicta is also flawed. The 2nd DCA's holding that a written plea triggers the State's death-penalty notice deadline was a meaningful part of the Court's conclusion that the State's non-compliance with the deadline excused the defendant from an otherwise forcible mental health evaluation in a death penalty sentencing context. *Gonzales* at 279.

The State complains that *Gonzales* would permit a defendant to unilaterally shorten its deadline for filing the notice by "moving up" the trigger date with a written plea. Response, 14. The filing of a written plea did not arbitrarily curtail the State's deadline or prejudice its ability to fully consider the relevant aggravating circumstances and comply with its mandated notice. The triggering date here was the State's Indictment. As Judge Coleman correctly observed, the State knew the applicable aggravating circumstances and the content needed in this Notice **when it indicted Petitioner**. Petition, 11. Under *Pura*, the State had a full 45 days from this date to email and e-serve

its Notice. Petition, 11. The State has **STILL** not justified why it did not or could not do so within those 45 days. Petition, 11, 12.

The State argues **FOR THE FIRST TIME** before this Court that because the State's Notice was given 3 years ago and the defense has acknowledged investigating possible mitigating circumstances, the State's late Notice was not prejudicial. Response, 13, 14. This acknowledgement at the March 15, 2021 proceeding cannot be deemed a waiver of Petitioner's prior challenges to the State's failure to comply with its death-penalty notice obligations. Petitioner could not legally nullify the mandatory effect of the written plea under Rule 3.160 entered on his behalf thirteen months earlier. Petition, p. 7, 8.

Furthermore, it would be fundamentally unfair to allow the State to benefit from an argument it never made before Judge Coleman, depriving Petitioner of the chance to respond and challenge this argument before the trial judge first. Even though the State gave its Notice, this did not excuse its failure to do so by the deadline. *Supra*. Unlike the situation in *Sievers v. State*, 355 S. 3rd 871, 884 (Fla. 2022), this issue was not raised by the State here as good cause for its late Notice. Litigating the State's brand-new, belated claim of no prejudice before this Court would inappropriately place a burden upon Petitioner, when it is the State which must demonstrate harmlessness as

good cause and/or excusable neglect at the trial court level and a lack of prejudicial error beyond a reasonable doubt before this Court on appeal. *Sievers, supra* at 885.

It is a critically important distinction that the circumstances in this case are not at all similar or analogous to *Sievers*. The State timely filed a Notice of Intent in that case before expiration of the 45-day deadline but left out a listing of aggravating circumstances then mandated by the brand-new 2016 change in Rule 3.202. *Sievers* at 884. The State corrected this missing element four days later with an Amended Motion. *Id.* Furthermore, the State maintained in writing the reasons for its original mistake, arguing that the 4-day delay was “negligible” and had not prejudiced the defendant. *Id.* Under these circumstances, the Florida Supreme Court found the State’s non-compliance to be harmless, especially because the State complied with the new procedural requirements within such a brief time after the deadline expired. *Sievers* at 885. These circumstances represent a meaningful qualitative difference with this case where the State’s Notice was **79 days late**, Petition 9, and where the State never argued a lack of prejudice until their Response in this Court **nearly 4 years after** filing this Notice.

This Court has determined that the case which applies where there is no timely notice is *Chantiloupe*, not *Sievers*. *Demons*, 351 S. 3rd at 14. Rule

3.181 and 782.04 (1) (b) make it apparent that since 2016, the State's non-compliance with this deadline and failure to allege or prove any justification or exception from this non-compliance makes the death penalty a legally unavailable alternative.

CONCLUSION

Based on these arguments and cases and those made in the Petition, Mr. Adams asks that this Court issue a writ of prohibition and/or certiorari as requested.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE CERTIFY that a copy of this **Reply** has been electronically filed with this Court and served by email on April 29, 2024 to **Leslie Campbell**, Senior Assistant Attorney General, Office of the Florida Attorney General, **[crimappwbp@myfloridalegal.com]**; **Michael Heise**, Assistant Regional Counsel and **Maria Della Guardia**, Assistant Regional Counsel , trial counsel for Petitioner **[mheise@rc-4.com]**; **[mdellaguardia@rc-4.com]**; and the **Honorable John Murphy III**, Circuit Judge, Broward County **[jmurphy@17th.flcourts.org]**.

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/s/ Danielle Forte
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CERTIFICATE OF COMPLIANCE

WE CERTIFY that this Reply complies with the font requirements and word limits of Rule 9.045 and Rule 9.100, *Fla. R. App. P.*

/s/ Richard G. Bartmon
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