

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 10-11562

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
OCT. 12, 2011
JOHN LEY
CLERK

D.C. Docket No. 8:06-cv-01330-EAK-MAP

DERRICK TYRONE SMITH,

Petitioner - Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(October 12, 2011)

Before DUBINA, Chief Judge, CARNES and HULL, Circuit Judges.

PER CURIAM:

Since this appeal from the denial of federal habeas relief was re-submitted

to us following a remand to the district court, the Florida Supreme Court has issued a decision in a Florida Rule of Criminal Procedure 3.851 proceeding involving the same petitioner. Smith v. State, No. SC09-2063, 2011 WL 4599594 (Fla. Oct. 6, 2011). That decision directs the Florida trial court to conduct an evidentiary hearing on two claims and to consider certain Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), violations in its cumulative prejudice analysis. Smith, 2011 WL 4599594, at *1.

In light of that Florida Supreme Court decision, we vacate the district court's order and remand this case with instructions for the district court to hold this federal habeas proceeding in abeyance pending the completion of the state collateral proceedings that the Florida Supreme Court has ordered and the completion of any appeal from those proceedings. The district court may, if it wishes, order the parties to regularly report to it the progress of the state collateral proceedings and any decisions issued in those proceedings.