

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-1434

NELSON SERRANO,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

**APPELLANT'S *PRO SE* MOTION
TO DISCHARGE APPELLATE COUNSEL,
STRIKE APPELLANT'S BRIEF AND DIRECT THE
TRIAL COURT TO APPOINT NEW APPELLATE
COUNSEL FOR THE APPELLANT DUE TO THE
FACT THAT (1) APPELLATE COUNSEL IS NOT A
COMPETENT ADVOCATE IN CAPITAL LITIGATION
AS RECOGNIZED BY THE HONORABLE JUDGE ANSTEAD
IN TWO RECENT CASES AND (2) THE BRIEF FILED IN
THE INSTANT CASE IS FUNDAMENTALLY LACKING**

The Appellant, NELSON SERRANO, respectfully moves this Court to discharge appellate counsel, strike appellant's brief and direct the trial court to appoint new appellate counsel for the appellant due to the fact that (1) appellate counsel is not a competent advocate in capital litigation as recognized by a member of this Court, the Honorable Judge Anstead, in two recent cases and (2) the brief

filed in the instant case is fundamentally lacking. In support of his motion, the Appellant states as follows:

1. On September 24, 2008, this Court received a letter from the Appellant, Nelson Serrano, requesting that his court-appointed appellate counsel, Ryan Thomas Truskoski, be discharged, his brief be stricken and the trial court be directed to appoint new appellate counsel. The grounds related to this request were based upon the facts that (1) the Initial Brief contained critical errors and omissions and (2) Mr. Truskoski, after being notified of and understanding the Appellant's position, and having been provided examples of the errors and omissions within the Initial Brief and having received, on multiple occasions, requests from the Appellant and the Appellant's son to commence action on the amended brief, has not, during a period of eight weeks, acknowledged that he will amend the brief or commence effort to do so, responded to our emails, voice mails or letters and has shown no effort to amend the Initial Brief. A copy of the Appellant's letter is attached hereto.

2. On October 7, 2008, this Court entered an Order striking the Appellant's letter on the basis that the Appellant filed it *pro se*.

3. Subsequently, on September 25, 2008, a member of this Court, the Honorable Judge Anstead, stated in *Smith v. State*, No. SC06-1903 (Fla. Sept. 25,

2008) [33 Fla. L. Weekly S727a] and *Hunter v. State*, No. SC06-1963 (Fla. Sept. 25, 2008) [33 Fla. L. Weekly S745], that both the written and oral presentations of Ryan Thomas Truskoski for the appellants in those capital cases were "fundamentally lacking" so he "would strike the appellate briefs, discharge counsel and direct the trial court to appoint new appellate counsel for the appellant[s]" in those cases.

4. This strongly supports the Appellant's position in this case that the brief filed by Mr. Truskoski on behalf of the Appellant was "fundamentally lacking" and that Mr. Truskoski should be discharged, the Appellant's brief should be stricken and this Court should direct the trial court to appoint new appellate counsel for the Appellant.

5. This motion should not be stricken on the basis that it is filed *pro se* because the Appellant's counsel, Mr. Truskoski refuses to file this motion since it disparages his reputation. Accordingly, under these unique circumstances it would violate due process to strike this motion merely because it is filed *pro se*.

WHEREFORE, the Appellant respectfully requests that this Court discharge Mr. Truskoski, strike Appellant's brief and direct the trial court to appoint new appellate counsel for the Appellant.

Respectfully submitted,

Nelson Serrano,
Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the Office of the Attorney General, Attn: Stephen D. Ake, Esq., Concourse Center 4, 3507 E. Frontage Road, Ste. 200, Tampa, FL 33607-7013 and to Ryan Truskoski, Esq., P.O. Box 568005, Orlando, FL 32856-8005 on this day 27th of October 2008.

BY: _____
NELSON SERRANO, *Pro Se*