IN THE SUPREME COURT OF FLORIDA

NEWTON SLAWSON,

Appellant,

vs. **CASE NO. SC90045**

STATE OF FLORIDA,

Appellee.

_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

SECOND SUPPLEMENTAL BRIEF OF THE APPELLEE

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TABLE OF CONTENTS

PAGE NO.:

TABLE OF CITATIONS

OTHER AUTHORITIES CITED

STATEMENT OF THE CASE AND FACTS

Defendant Slawson was charged with four counts of first degree murder and one count of killing an unborn child by injuring the mother in the deaths of Peggy Williams Wood, Gerald Wood, Jennifer Wood, and Glendon Wood (R. I/17-19).[1] Slawson pled not guilty but was ultimately convicted as charged. Following the penalty phase of the trial, a jury recommended that the court impose four sentences of death (DA-R. 2144-47). The judge followed the jury's recommendation, finding prior violent felony convictions for each murder based on the contemporaneous killings and, as to the murder of Peggy Wood, finding the aggravating circumstance of heinous, atrocious or cruel (DA-R. 2157-60). In mitigation, the trial court found no significant history of criminal activity, substantial impairment of the capacity to conform conduct to the requirements of law, and murders committed under the influence of extreme mental or emotional disturbance; as well as nonstatutory mitigation of abuse as a child and the ability to act kindly and be friendly (DA-R. 2160-61). Additional facts are recited in this Court's opinion affirming Slawson's judgment and sentences, Slawson v. State, 619 So. 2d 255, 256-257 (Fla.), cert. denied, 512 U.S. 1246 (1994).

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[1]References to the record on appeal in this case will be designated by the letter "R" followed by the applicable volume/page number; references to the supplemental record will be designated as "SR" followed by the applicable volume/page number; references to the record on appeal in Slawson's direct appeal from his judgments and sentences, Florida Supreme Court Case No. 75,960, will be designated as "DA-R" followed by the applicable page number.

On November 1, 1996, Slawson filed an unsworn amended motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850, alleging, among other things, that he was incompetent to proceed (R. I/184-327). Following a hearing pursuant to Huff v. State, 622 So. 2d 982, 983 (Fla. 1993), the trial court summarily denied the motion (R. II/368-370; III/35-56). A Notice of Appeal was filed, briefs were submitted, and oral argument was scheduled for September 1, 1998. However, Slawson filed a pro se Motion for Withdrawal and Termination of Appeal and, on August 28, 1998, this Court remanded the matter to the trial court to conduct a hearing on the motion (SR. I/5).

On September 28, 1998, the trial court held a hearing on Slawson's motion. The court conducted an extensive Faretta-type[2] inquiry, and thereafter entered an Order finding Slawson was freely, intelligently and voluntarily waiving his right to counsel and granting the pro se motion. On December 17, 1998, this Court again remanded the case, directing that a psychological evaluation be conducted. Pursuant to this remand, the trial court appointed Dr. Michael S. Maher and Dr. Sidney Merin to evaluate Slawson's competency to proceed pro se with any postconviction proceedings. Both Dr. Maher and Dr. Merin had examined Slawson prior to his trial, and both had testified at his trial in his behalf.

Both doctors submitted written reports (SR. II/135-138, 139-

[2]See, Faretta v. California, 422 U.S. 806 (1975).

144). Dr. Maher's report concluded that Slawson was not competent to proceed pro se with any postconviction proceedings (SR. II/135). Dr. Merin's report concluded that Slawson was in fact competent to proceed with his pro se postconviction pleadings (SR. II/139-144). Dr. Merin's report, unlike Dr. Maher's, noted that Slawson was presently attempting to vacate any appeals and explores the reasons stated by Slawson for taking such action (SR. II/139-144). After receiving these reports, Judge Allen appointed a third mental health expert, Dr. Walter Afield, to examine Slawson (SR. II/130). Dr. Afield concluded that Slawson was "perfectly competent in every regard" to proceed with any postconviction proceedings (SR. II/146).

Judge Allen conducted another hearing on March 12, 1999 (SR. II/148). The State and Mr. Slawson stipulated to the findings of the doctors' reports, and based on these reports the judge found Slawson to be competent to waive his right to counsel and withdraw his appeal (SR. II/151). This Court accepted supplemental briefs and held oral argument on April 3, 2000. Thereafter, this Court remanded for additional proceedings, including an evidentiary hearing on Slawson's competency. Upon Judge Allen's death, the case was transferred to Judge Rex Barbas, and evidentiary hearings were held on August 15, 2000, August 31, 2000, and October 19, 2000.

All three experts that testified below ultimately concluded

that Slawson is competent to waive his postconviction rights. Dr. Afield, a psychiatrist, testified at the August 15 hearing (SR. IV/6). Dr. Afield conducted an evaluation of Slawson on March 3, 1999, at the Orient Road (Hillsborough County) Jail (SR. IV/9). He took a personal history and conducted a mental status examination, concluding that Slawson was psychiatrically competent with no mental disease or defect, psychosis or delusions (SR. IV/10-11). He noted that Slawson understood why he was on death row and was aware of the consequences of his sentence, the nature of his conviction, and the current posture of his case (SR. IV/11). Slawson also recognized that he was entitled to the appointment of counsel and that, by firing his attorneys, the responsibility for any further litigation would fall exclusively to him (SR. IV/11-12). After drafting his written report, Dr. Afield reviewed the reports of Dr. Merin and Dr. Maher, but their reports did not change his opinion in any way (SR. IV/13-14).

Dr. Afield acknowledged that a rational and factual appreciation of the legal proceedings is “absolutely” a criteria for competency, but felt that Slawson met this requirement (SR. IV/29). As a physician, Afield finds all suicide abhorrent, but he believes that some people may rationally determine that it is the best course for them; even if he doesn’t agree with it, they are competent to make that decision (SR. IV/20-22). He did not think Slawson could represent himself well, and he explained to Slawson

that Afield believed Slawson was making a mistake, but Afield recognizes that competent people have the privilege and responsibility to run life the way they want (SR. IV/18, 21, 29). According to Afield, Slawson wants to be executed because his life on death row is miserable; there is no real exercise or intermingling with other people (SR. IV/32-33). Afield indicated that it was similar to an individual that had been diagnosed with a terminal illness but refusing treatment, or someone refusing treatment which could save them due to their religious beliefs (SR. IV/49-50). Afield found Slawson to be a very bright, very capable man, with no psychosis or even psychiatric depression (SR. IV/37, 42, 48).

Dr. Merin also testified at the August 15 hearing (SR. IV/51). Merin is a psychologist specializing in clinical and neuropsychology (SR. IV/52). He observed Slawson on February 17, 1999, and took a personal history, conducted a mental status examination, and used a "competency evaluation instrument," which was admitted into evidence (SR. IV/55, 108). This instrument involved consideration of fourteen points, basically honed down to the six criteria with regard to competency to proceed with trial, and additional considerations about competency at the time of the offense (SR. IV/106-107).

Dr. Merin concluded that Slawson is competent to make the decision to fire his attorney and represent himself (SR. IV/55).

He found that Slawson was oriented as to time and place, understood why he was on death row and the consequences of what he was facing if no further legal action was taken in his case, knew the nature of his conviction, the current posture of his case, and that he was entitled to the appointment of counsel (SR. IV/55-56). According to Merin, there was no evidence that Slawson was suffering from any mental disease or defect (SR. IV/56).

Merin was aware of Dr. Maher's report characterizing Slawson's paranoid personality as a delusional disorder, but opined this should instead have been diagnosed as a personality disorder, a character flaw (SR. IV/63-64). Merin noted that someone suffering from a paranoid delusional disorder would exhibit bizarre thoughts and illogical thinking in their actions, but there was no evidence of this from Slawson (SR. IV/65-66). According to Merin, Dr. Maher did not identify any bizarre thinking patterns, as Maher's comments about Slawson expressing scenarios that did not fit the facts of the case was not at all uncommon (SR. IV/66). Such thinking is usually the result of denial rather than psychosis (SR. IV/66).

Merin found that Slawson had a personality disorder with borderline personality characteristics, with some narcism and paranoidal elements, but it did not rise to the level of psychosis (SR. IV/67). Merin observed that the psychological testing Slawson had in the Navy indicated a verbal IQ of 122; Merin's own psychological testing corroborated that, finding an IQ in the 120s,

maybe 124 (SR. IV/68). The average college student has an IQ of 115 (SR. IV/68). Thus, Slawson is very bright and there is no evidence of recent intellectual deterioration (SR. IV/68-69).

Merin believed that Slawson internally knows what he did, even if he does not overtly admit his guilt (SR. IV/73, 89). Merin stated that Slawson has come to terms with his own death and is willing to accept it now and get on with it (SR. IV/73). Merin also clarified that the comment about dysthymia in his report was not a diagnosis of major depression, but just an observation that Slawson's condition is like dysthymia, which is natural for someone on death row (SR. IV/84). Merin attributed Slawson's current complaints about his postconviction attorneys to CCRC providing an "easy target" for Slawson's frustrations and opined that, "deep down," Slawson knows that even if CCRC did its job well there is little prospect for success in his appeals (SR. IV/89-92).

Dr. Maher, a psychiatrist, initially testified on September 13, 2000 (SR. IV/122). Dr. Maher saw Slawson on February 9, 1999, pursuant to a court order to evaluate Slawson for competency to proceed pro se with any postconviction proceedings (SR. IV/125-127). He conducted a mental status examination, interviewing Slawson for about an hour and a half, and also spoke to trial defense attorney Craig Alldredge and postconviction defense attorney Chris DeBock (SR. IV/126). Maher agreed with the other experts that Slawson was oriented to time and place, and that he

understood why he was on death row, the nature and consequences of his convictions and sentence, the current posture of his case, and his right to counsel (SR. IV/127-128). However, he initially concluded that Slawson was not competent to proceed pro se because he believed that Slawson had a paranoid personality with fixed delusions with regard to legal issues relating to his case (SR. IV/129). According to Maher, Slawson had an involuntary and irrational belief that any and all attorneys appointed to represent him would in fact work contrary to his interests, directed instead by unknown and unseen powerful forces behind the scenes (SR. IV/129-130).

Dr. Maher was unable to identify any behavioral manifestations of Slawson's disorder, such as irrational or illogical episodes (SR. IV/131). He described Slawson's IQ as being normal to slightly above normal (SR. IV/134). He agreed that Slawson was socially appropriate and appeared rational, but felt that his behavior with regard to his case was irrational (SR. IV/135-136). Maher felt that the lack of evidence to support Slawson's factual recitations about his case, such as details about a gun Slawson claimed was used by officers during his interrogation, demonstrated that Slawson's beliefs were irrational and delusional (SR. IV/137-138).

Maher was aware that Drs. Afield and Merin had examined Slawson, but he did not know that they had concluded that Slawson

was competent (SR. IV/138). Maher agreed, hypothetically, that he would likely find Slawson competent if Slawson agreed to be represented by counsel (SR. IV/138). He felt that, even given substantial disagreements between Slawson and any attorney about the legal case, if Slawson were willing to accept counsel and made a good faith effort to deal with them, Slawson would be competent to participate in postconviction proceedings (SR. IV/138-139). He believed that some of the mechanism of incompetence in this case could be attributed to the psychological defense of denial (SR. IV/140-141).

Maher had asked Slawson about his experience in prison, and Slawson had indicated there had been one or two minor incidents resulting in disciplinary reports, but Maher had not reviewed any Department of Corrections records (SR. IV/131-134, 142-143). He acknowledged that the information that Slawson had some rule violations had at least a minor impact on his conclusion (SR. IV/142-145). He noted that his usual practice would include a review of medical and psychological records from a facility, but that he had not had the opportunity to conduct such a review in this case (SR. IV/146-147). At this point, Assistant CCRC Mark Gruber requested that DOC records be obtained and provided to Dr. Maher, and the judge agreed that Maher should have the opportunity to see the records since he indicated that they would have some significance to his conclusion (SR. IV/147-150). The court would

order the disciplinary reports to be furnished directly to Maher, but since any medical or psychological reports would not be public records, he offered to review them in camera for relevance before providing them to Maher (SR. IV/150). However, Slawson agreed to waive the confidentiality of all medical or psychological records, and Maher opined that Slawson was competent to make such a waiver; so the court directed that these records be provided to Maher as well (SR. IV/151-152). The court also directed the State to provide the records to Drs. Afield and Merin as well, and to recall these witnesses if their opinions changed in any fashion as a result of reviewing the records (SR. IV/153).

The hearing resumed on October 19, 2000 (SR. IV/160). Dr. Maher reported that he had reviewed all of the DOC records and reports, and had also re-interviewed Slawson (SR. IV/164). As a result, Maher changed his opinion and now believes that, despite having continuing mental health problems, Slawson is competent to proceed pro se (SR. IV/164). Maher explained that, based on his understanding of the case, he would have expected to find at least some minimal or subtle indication in Slawson's records supporting his conclusion of incompetency, but a very careful review of all the records revealed nothing to support his opinion (SR. IV/165). This surprised him and led him to change his conclusion (SR. IV/166). The disciplinary reports which he had been concerned about previously turned out to be entirely mundane, showing only

typical, minor conflicts between Slawson and the correctional officers (SR. IV/166). Although Slawson's refusals to participate in medical evaluations or treatment presented some initial concern, Maher conducted an "excruciating careful review" and determined that the refusals were not based on any underlying delusional beliefs; there was sufficient documentation as to the reasons for the refusals for Maher to exclude delusions as a basis for these actions (SR. IV/167). Thus, although Maher still believes that Slawson suffers from some mental illness or disorder, he no longer believes that the problem rises to the level of incompetence (SR. IV/170).

Following the conclusion of the testimony, Judge Barbas entertained argument from the parties (SR. IV/183). Assistant CCRC Gruber advised the court that there should be another Faretta inquiry following any finding of competency (SR. IV/186-190). The judge agreed that, should he find Slawson competent, there would be another hearing to conduct another Faretta inquiry, in an abundance of caution (SR. IV/190). The court agreed to permit Gruber to participate in that hearing as well and to submit proposed questions to be included in the inquiry (SR. IV/190).

Thereafter, the court entered an order finding Slawson competent to waive his right to representation and to dismiss his pending appeal (SR. III/172). Judge Barbas also held an additional hearing, on November 7, 2000, to determine whether Slawson was

making a voluntary, knowing waiver of his rights (SR. VI). Slawson testified that he is 46 years old, can read and write with no difficulty, and had eleven years of high school, got his GED, and had a year and a half of college (SR. VI/207). He was not under the influence of drugs or alcohol and has never been treated for mental illness (SR. VI/207-208). He understood his right to have an attorney appointed for free, and no one had threatened him not to accept an attorney or told him not to use one (SR. VI/208). He was asked if he understood that it was almost always unwise to represent himself, and noted in reply that he believed it was Benjamin Franklin who said "He who represents himself has a fool for a client" (SR. VI/208). Slawson was aware that he would not get any special consideration for proceeding pro se, and understood the dangers and disadvantages, including the lack of resources, involved in self-representation (SR. VI/208-211). The judge offered to appoint stand-by counsel, but Slawson did not want that, because he "already moved to withdraw and terminate my appeals, since my intent is to do nothing but wait to be executed" (SR. VI/211).

The court offered to give Slawson time to review relevant legal documents that had been filed, including the postconviction motion, the State's response, and the appellate briefs; but Slawson stated that these things were moot and he did not want to reconsider his motion to dismiss his appeal (SR. VI/212-213). He

stated that it would be a waste of time and serve no purpose to review the documents, because he had no intention of allowing them to go forward (SR. VI/214). He did, however, maintain that he was innocent and believed that he was not adequately represented at trial and did not receive a fair trial (SR. VI/214). The judge indicated that he felt some discomfort with Slawson's claim of innocence and repeatedly tried to convince Slawson that he was making a mistake (SR. VI/215, 218-220). Slawson stated that he would agree under most circumstances, but that his circumstances were far from ordinary; he thought that even with the best lawyers representing him, he was just too old to start over (SR. VI/215-216). The court inquired as to Slawson's belief in an afterlife, and Slawson indicated that he thought there was an afterlife to the extent that energy can be altered but never destroyed, and that life is a form of energy – but there was not necessarily a conscious "I am in Heaven" sort of thing (SR. VI/216).

Assistant CCRC Gruber wanted the court to ask Slawson about what happened at trial, but the court was reluctant to ask Slawson if he had killed anyone (SR. VI/217). Slawson expressed frustration, asking, "What part of, 'yes, go ahead and execute me,' is so difficult to understand?" (SR. VI/217). Slawson was asked if he remembered killing anyone, and he stated that he did not; he recalled testifying but claimed that his testimony was coerced and untrue (SR. VI/218). He understood that if his allegations could

be proven, he would be entitled to a new trial, but said he was tired of fighting it (SR. VI/218-22).

After considering Slawson's testimony and hearing from the attorneys, the court concluded that the Sixth Amendment right to representation necessarily included a right to refuse representation, and required the court to grant Slawson's request to fire his attorneys (SR. VI/227-228). The court found that Slawson's waiver of his right to counsel and to further postconviction proceedings was knowing and that, for circuit court purposes, CCRC was off the case (SR. VI/227-228). This Court directed that supplemental briefs be filed, and the instant brief is offered pursuant to that Order.

SUMMARY OF THE ARGUMENT

The trial court's findings that Slawson is competent and has voluntarily waived his rights to counsel and to further postconviction proceedings are well supported in this record. The extensive Faretta hearings and the reports and testimony of the mental health experts provide ample support for the findings of competency and a knowing, voluntary waiver. Therefore, this Court must dismiss the instant appeal.

ARGUMENT

ISSUE

WHETHER THE TRIAL COURT ERRED IN FINDING THAT SLAWSON HAS COMPETENTLY, VOLUNTARILY WAIVED HIS RIGHTS TO COUNSEL AND TO FURTHER POSTCONVICTION PROCEEDINGS.

This appeal presents the question of Slawson's ability to waive his right to counsel and to further postconviction proceedings. The trial court has repeatedly found that Slawson is competent to waive his rights, and that his waiver is voluntary and knowing. These findings are fully supported by the record presented. Therefore, this Court must affirm the rulings below and grant Slawson's pro se motion to dismiss his pending postconviction appeal.

Since the court below made factual findings following an evidentiary hearing on the question of Slawson's competency, the standard of review in this appeal is whether there was substantial, competent evidence presented to support the findings. Provenzano v. State, 761 So. 2d 1097, 1099 (Fla. 2000) (on review of finding of competency for execution: "As long as the trial court's findings are supported by competent substantial evidence, 'this Court will not substitute its judgment for that of the trial court on questions of fact, likewise of the credibility of the witnesses as well as the weight to be given to the evidence by the trial court,'" quoting Blanco v. State, 702 So. 2d 1250, 1252 (Fla.

1997)); see also, Mason v. State, 597 So. 2d 776, 779 (Fla. 1992) (competent, substantial evidence supported trial court's finding that defendant was competent to stand trial). In addition, this Court reviews a trial court's decision on the issue of self-representation under an abuse of discretion standard. Holland v. State, 25 Fla. L. Weekly S796 (Fla. October 5, 2000).

In Castro v. State, 744 So. 2d 986 (Fla. 1999), this Court permitted a death row inmate to dismiss CCRC and his pending postconviction motion on similar facts. The only real distinctions between Castro and the instant case are that (1) at least once, Castro changed his mind and wanted to proceed with his postconviction claims, while Slawson has been consistent about wanting to waive his postconviction rights for a number of years; and (2) Castro presented a conflict between experts on the issue of Castro's competence, whereas in this case, all of the experts to have considered the question agree that Slawson is competent to dismiss his attorneys and his pending appellate action. Thus, the instant case presents a stronger case for a waiver of postconviction rights and Castro clearly requires this Court to grant Slawson's pro se motion to dismiss his pending appeal.

When Slawson's pro se motion was initially filed, this Court remanded jurisdiction and on September 28, 1998, Judge Allen conducted an extensive Faretta-type inquiry, at which time Slawson unequivocally asserted his desire to discharge counsel and withdraw

any further appeals (SR. II/83, 85, 93-94, 98-100, 115). Slawson clearly acknowledged his understanding of the existence of available appeals and the consequences of his decision to terminate his appeals (SR. II/89-94, 98-100, 102). He stated that he had not been evaluated or treated by any mental health professionals since prior to his trial, and had not been administered any medications or drugs while incarcerated (SR. II/92, 101, 109-110). He had received a GED equivalency and had about a year and a half of college level business administration following an honorable discharge after two years in the Navy (SR. II/105-106).

Although such an inquiry has been sufficient in prior cases to support a finding of a voluntary waiver of postconviction appeals (as in Durocher v. Singletary, 623 So. 2d 482, 484 (Fla. 1993), and Hamblen v. State, 527 So. 2d 800 (Fla. 1988)), this Court directed that a mental evaluation be conducted to further explore the adequacy of Slawson's waiver. Judge Allen then appointed two experts, Dr. Merin and Dr. Maher, to evaluate Slawson (SR. II/125-129). Both of these witnesses had previously examined Slawson, and both testified as defense witnesses at trial (DA-R. 874, 956). When these experts reached different conclusions, the court appointed a third expert, Dr. Afield (SR. II/130).

Dr. Merin and Dr. Afield both concluded that Slawson was competent in well-reasoned reports (SR. II/139-144; 145-146). Dr. Maher, however, felt that Slawson's "capacity to understand who is

working in his interest and who is working against his interest" was inadequate due to a paranoid thinking pattern, that his capacity to understand facts pertinent to the proceedings was inadequate, and that his capacity to testify relevantly was impaired (SR. II/135-136). Therefore, Dr. Maher concluded that Slawson was not competent to proceed pro se with any postconviction proceedings (SR. II/135).

On appeal, this Court remanded for an evidentiary hearing on the question of competency, and all three of the reporting doctors testified. When Dr. Maher suggested that his opinion might be impacted by a review of Slawson's Department of Corrections records, the court below continued the hearing in order to have the records provided to all of the experts for further consideration of Slawson's competency. Thereafter, Dr. Maher changed his opinion and determined that, in fact, Slawson was competent to waive his rights to counsel and to further postconviction proceedings. Thus, no testimony suggesting that Slawson was not competent was actually presented to the court below, and the finding of competency is supported by competent, substantial evidence.

The trial court's finding of a voluntary waiver is also fully supported by the record presented. To the extent that CCRC may argue that Slawson's waiver is not valid because he continues to assert his innocence, Sanchez-Velasco v. State, 702 So. 2d 224, 228 (Fla. 1997), cert. denied, 119 S. Ct. 42 (1998), defeats this

assertion. In Sanchez-Velasco, this Court noted that any contradiction between a defendant's assertion that his attorneys were not adequately representing him and his request to withdraw his appeal would not be sufficient in and of itself to reject a finding of competency. 702 So. 2d at 227.

Clearly, Slawson's present attempt to assert his constitutional right to control his own destiny should not be denied. Faretta; Durocher, 623 So. 2d at 484 ("Durocher ... presents every indication that he is knowingly, intelligently, and voluntarily waiving his right to collateral proceedings through his adamant refusal to allow CCR to represent him. Regardless of our feelings about what we might do in a similar situation, we cannot deny Durocher his right to control his destiny to whatever extent remains" [footnote omitted]); Traylor v. State, 596 So. 2d 957, 968 (Fla. 1992); Hamblen, 527 So. 2d at 804 ("in the final analysis, all competent defendants have a right to control their own destinies").

Despite obvious and reasonable reluctance by all parties to permit Slawson to exercise his right to waive counsel, this constitutional right has never been premised on a requirement that conventional wisdom be satisfied. Therefore, any alleged lack of a compelling or acceptable reason for the waiver does not justify this Court's interference with Slawson's decision to end his appeals. See, Durocher, 623 So. 2d at 484; Lenhard v. Wolff, 443

U.S. 1306, 1312-1313 (1979).

Based on this record, the trial court's finding that Slawson's waiver is free, knowing, and voluntary is fully established. The finding of competency is supported by competent, substantial evidence, and no abuse of discretion can be discerned in the finding of a valid waiver. His pro se motion must be granted and the instant postconviction appeal dismissed.

CONCLUSION

Based on the foregoing arguments and authorities, the trial court's finding of Slawson's competent, voluntary waiver must be affirmed, and his postconviction appeal must be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to Mark S. Gruber, Office of the Capital Collateral Regional Counsel - Middle Region, 3801 Corporex Park Drive, Suite 210, Tampa, Florida 33619-1136, and to Newton Slawson, DC# 119658, P1201S, Union Correctional Institution, Post Office Box 221, Raiford, Florida 32083, this _____ day of January, 2001.

_____

COUNSEL FOR APPELLEE

CERTIFICATE OF TYPE SIZE AND STYLE

This brief is presented in 12 point Courier New, a font that is not proportionately spaced.

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COUNSEL FOR APPELLEE