IN THE SUPREME COURT OF FLORIDA

ROBERT DALE HENDERSON,)

Appellant,)

vs.) CASE NO. 63,094

STATE OF FLORIDA,)

Appellee.)

_____)

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND THE FACTS

Robert Dale Henderson was charged with three counts of first degree murder (R 1662-1663). Henderson proceeded to jury trial on the charges, at which time he conceded "involvement" in the deaths of the victims (R 1111), but stated that "at worst" he was guilty of second degree murder rather than first (R 1119). Henderson openly admitted killing the victims (R 1116-1118) and to this date has never professed total innocence. Rather, he simply claims that a lesser degree of murder applies (R 1119, 1120).

The facts relevant to each of Henderson's points on appeal are as follows:

FACTS, POINT I (Suppression)

Henderson gave so many statements and confessions that it is difficult to track them all. Only two are challenged on appeal, those being his statements of February 10, 1982, to officers Bakker and Hord, and those of June 2, 1982, to deputy Perez.

A] The February 10, 1982 statements.

On February 6, 1982, Henderson telephoned a false auto-burglary report to the Charlotte County Sheriff's office. Subsequent to his report, he met Officer Moore (R 1121).

Henderson came up to Moore and spontaneously gave himself up for murder (R 1122). Moore gave Henderson his rights

(R 1122) at which time Henderson confessed to killing three hitchhikers (R 1123). The Appellant then handed over his gun (R 1124).

Later that day, Henderson met with detective Lucas of the Charlotte Sheriff's Office (R 1140). Lucas gave Henderson his second set of Miranda warnings (R 1145), and Henderson gave a more detailed account of the murder of the three victims (R 1146-47). Henderson executed a written waiver of rights (R 1153).

On February 7, 1982, Henderson signed a written "invocation" of right to counsel (R 1702).

On February 9, 1982, deputy R. W. Bakker applied for and obtained an arrest warrant against Henderson in an unrelated murder (R 1707, 1708). Henderson later plead guilty to the murder of Dr. Ferderber and never challenged the arrest warrant.

On February 10, 1982, Bakker and Hord transported Henderson from Charlotte County to Putnam County.

Bakker testified at the suppression hearing that Henderson's case was not discussed en route (R 2218) despite subtle comments about hitchhikers by Henderson (R 2219). This fact was corroborated by deputy Hord (R 2258).

Bakker testified that upon their arrival in Putnam County, they stopped at the Crescent City Police Department to call in (R 2220). Bakker went in to make the call while Hord

remained in the car with Henderson.

Bakker stated that Hord entered the station and said that Henderson wanted to talk (R 2220). Henderson was Mirandized for the (third?) time, receiving the additional reminder that his talking violated the advice of his attorney (R 2221). This waiver was explained in depth until Henderson fully understood it (R 2222-23).

Henderson then took Bakker and Hord to the bodies (R 2224).

At the suppression hearing, defense counsel argued with deputy Bakker, insinuating some subterfuge on Bakker's part (R 2239-42). The Appellant offered no evidence whatsoever to refute the officers' testimony. Suppression was properly denied on the basis of the evidence.

B] Hernando County.

At the suppression hearing the court took the unrefuted testimony of deputy Antonio Perez regarding Henderson's later statements. Perez testified that once again Henderson was Mirandized (R 2303).

At first, Henderson did refuse to speak, but only because he did not wish to repeat what he had already told the police, which, he said, he knew the police already had in writing (R 2302). Henderson was not refusing to speak because of a desire to withhold incriminating information.

Henderson's statement corroborated his earlier ones (R 2303-04).

Henderson's talkative nature, without regard for the consequences, was also proven by the State's production of notes, written by Henderson to Perez, asking Perez to visit him in jail (R 1866-71).

Henderson also contracted with a newspaper to tell "his side" to the public (and to publicize complaints about his treatment) (R 1710-1758). Henderson's efforts were opposed by his own lawyer, Mr. Springstead, as well as the State (R 1760-87).

Henderson even appealed to the Fifth District Court of Appeals.

FACTS: POINT II

Henderson filed a "Motion in Limine" on the first day of trial which was in fact an untimely motion to suppress (R 70).

At the hearing, defense counsel objected to any testimony to the effect that Henderson was wanted in other states for murder, but agreed the witnesses could simply state that Henderson was wanted in other states (R 73).

The State argued that any references to other crimes were unsolicited comments by Henderson to the police when he surrendered and that these comments placed "in context" his

arrest (R 74).

The motion in limine was "generally granted" along the parameters set by defense counsel (R 74).

During trial, witness Lucas said that the teletype showed that Henderson was wanted in other states (R 1141). Although the comment was no more than Henderson had agreed could come in, defense counsel objected (R 1141), and the court gave a curative instruction (R 1142, 1143).

Defense counsel claimed prejudice and moved for mistrial (R 1143).

An earlier defense objection was also overruled (R 1122).

The defense in this case, however, was that Henderson committed second, rather than first, degree murder (R 1111-1113). In his opening, defense counsel related Henderson's confession (R 1116-1118) and requested a guilty verdict on a lesser offense (R 1120).

Thus, the key issue at trial was whether first or second degree murder had been committed, and Henderson's criminal tendencies were of added importance.

FACTS: POINT III

The record merely shows that the trial judge gave the jury an approximation of how long the whole case could take.

FACTS: POINT IV

The State took care to use only black and white photographs as evidence to lessen the impact of these necessary but repulsive photographs (R 1228).

FACTS: POINT V

No jurors were disqualified by statute, although some were entitled to excusal upon request (R 54).

FACTS: POINT VI

The trial court found three aggravating factors (R 2157-2160) to wit:

(1) The defendant was previously convicted of another capital felony (FS 921.141 (5)(6)).

(2) The capital felony was especially heinous, atrocious and cruel. (FS. 921.141(5)(h)).

(3) The capital felony was a homicide and was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. (FS. 921.141(S)(i)).

The jury recommended death 11 to 1 (R 2159).

The jury rejected the non-statutory mitigating factors (Henderson's artistic talent, cooperative nature and surrender) and the trial judge found them to be of "little", if any, weight" (R 2160).

Only two aggravating factors have been challenged.

ARGUMENT: POINT I

THE TRIAL COURT DID NOT ERR IN REFUSING TO SUPPRESS SELECTED CONFESSIONS OF THE APPELLANT.

Mr. Henderson has chosen to appeal the trial court's decision not to suppress two of his confessions, to wit: his February 10, 1982, and June 2, 1982, confessions.

Among the confessions not appealed are his two February 6, 1982 confessions and his own opening argument at trial, where he (through counsel) fully admitted the three murders, and stated as a defense that the killings were second degree murders rather than first degree murders.

Why, then, should Henderson bother to appeal this issue? Even if these two confessions had been suppressed, the other two confessions and his own theory of the case (as argued) would convict him.

A] The Putnam County Confession.

After Henderson had received his "Miranda" rights and freely confessed on February 6, 1982, Henderson executed a document "invoking his right to counsel." This document, dated February 7, 1982, was honored.

On February 10, 1982, deputies Bakker and Hord arrived to arrest Henderson on an unrelated murder charge from Putnam County. (This charge stemmed from Henderson's murder of a store clerk and a doctor Ferderber in Putnam County).

Henderson was taken into custody on a valid arrest warrant[1] and plead guilty to the charges.

On appeal in this case, Henderson has challenged the sufficiency of the Ferderber warrant, claiming that it was defective - and thus, any confession was invalid as illegally obtained. In support, Henderson cites Swartz v. State, 316 So.2d 618 (Fla. 1 DCA 1975) cert. den. 333 So.2d 465 (Fla. 1976).

This argument lacks merit for many reasons, even if not waived.

First, arrest warrants are not search warrants. Thus, Swartz (id) does not govern our case.

Second, the arrest warrant complies fully with Fla.R.C.P. 3.121, as to content.

Third, Henderson surrendered himself and confessed to these murders prior to the issuance of the warrant. He was already in custody; he was not "seized".

Fourth, since Henderson called the police himself and confessed to murders the department was (in some cases) not even aware of, his surrender and confession assuredly gave the officers probable cause to arrest.

As noted recently in Justus v. State, ___So.2d ___,

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1. Henderson never challenged the warrant in the Ferderber case, and plead guilty to the murder. Any constitutional or statutory claim regarding that warrant was waived.

(Fla. 1983) [8 FLW 318], warrants are not even necessary in all cases. Especially where a suspect is arrested "in public" by police who have probable cause to believe a felony has been committed.

In any event, Henderson was transported by Bakker and Hord to Putnam County to face charges in the Ferderber homicide.

At the hearing on the motion to suppress, the only evidence presented to the court was that the police made no effort to trick or induce Henderson into any additional confessions.

Henderson freely and voluntarily decided to talk, at which time the "Miranda" waiver was executed.

As the Appellant notes, the form contained language stating:

> "We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court."

The meaning of this passage is not totally clear. Did it mean that no lawyer would be available until court? Or did it mean simply that the police (as opposed to the court) could not retain defense counsel?

The question of the accuracy of this statement is, unfortunately for Henderson, purely academic, since Henderson waived any review on this point.

Neither of Henderson's motions to suppress challenge the voluntariness of his confession on the basis of this statement. Nor did Henderson argue this point at the suppression hearing. The "defect" was apparently discovered for the first time by Appellate counsel. Since it was not raised below, it cannot be raised here. Wainwright v. Sykes, 97 S.Ct. 2497 (1977).

Notwithstanding the waiver, Henderson alleges that the "misinformation" contained in the waiver form prompted him to give an "involuntary" confession, citing Cribbs v. State, 378 So.2d 316 (Fla. 1 DCA 1980).

Cribbs is totally unlike our case.

Cribbs was picked up for questioning. Henderson called the police and confessed. Cribbs asked to speak to a lawyer prior to questioning, and tried to call his lawyer. Henderson gave two separate confessions (after receiving Miranda warnings) before invoking his rights to counsel. Cribbs was questioned without "receiving his rights."

The Cribbs case opined (id at 319):

> "Had Cribbs received a timely first appearance, the taint from the previous misinformation given by Parrish may well have been cured."

Since there is no "correct" or "talismanic" official Miranda warning,[2] and since Henderson received "correct"

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2. State v. Delgado, ___So.2d ___ (Fla. 3d DCA 1983) [8 FLW 679].

Miranda warnings prior to his confession to Officer Lucas (and his "invocation" of the right to counsel), it cannot be said that Henderson was duped into making an "involuntary" confession, under the "totality of the circumstances." Burch v. State, 343 So.2d 831 (Fla. 1977); Clewis v. Texas, 386 U.S. 707, 87 S.Ct. 1338 (1967); see also Frazier v. Cupp, 394 U.S. 731, 89 S.Ct. 1420 (1969).

The State would again note that even if Henderson's third confession was "involuntary," his numerous voluntary confessions more than defeat any claim of error. Turner v. State, ___So.2d ___ (Fla. 1 DCA 1983) [8 FLW 935].

B] HERNANDO COUNTY STATEMENTS

Central to the issue of voluntariness is the question of whether a suspect who has invoked his right to counsel can change his mind.

The answer, of course, is "yes." King v. State, _____So.2d ____ (Fla. 1983) [8 FLW 271].

The Appellant notes that Henderson invoked his right to counsel before being picked up by detective Perez for transport to Hernando County. By this time, Henderson had been "Mirandized", and had confessed, a number of times.

Henderson at first refused to speak to Perez, but only because he felt the police already had copies of his statement. (R 2302-2303). Perez said he merely wanted to hear "first hand" that which Henderson had already told the other officers.

Henderson eventually decided to speak.

Henderson's case is remarkably similar to that of King v. State (id). King, like Henderson, initiated contact with the police, confessed, then invoked his rights. While King was held by the Daytona Beach Police, the Orlando Police arrived and tried to question him. King refused until the Orlando officer said he merely wanted to hear the same confession King had already given.

This Honorable Court, citing the "circumstances" test of Edwards v. Arizona, 451 U.S. 477 (1981) and Michigan v. Mosely, 423 U.S. 96 (1975) reaffirmed that there is "no paternalistic rule" protecting defendants from the consequences of their own decisions, and that the question of King's "knowing" and "intelligent" waiver of rights was one of fact, not to be reweighed on appeal. King's conviction was affirmed.

Indeed, the Appellant at bar has based his entire argument on the proposition that the trial judge did not weigh the evidence correctly, and was not sufficiently cynical or suspicious of the police, and should have rejected their uncontradicted testimony and ruled in his favor. Now, on appeal, he wants this uncontradicted evidence reweighed, despite Tibbs v. State, 397 So.2d 1120 (Fla. 1981), 102 S.Ct. 2211 (1982).

The fact is that the trial judge's factual determinations must stand, and that these two confessions (even if

"improper") must be viewed against Henderson's numerous other confessions that have not been challenged. Finally, if any doubt remains as to Henderson's "willingness" to talk, the State would note Henderson's actions regarding the news media - in defiance of his lawyer.

POINT II

THE TRIAL COURT DID NOT ERR BY DENYING IN PART HENDERSON'S MOTION IN LIMINE .

Henderson's defense, as he stated in his opening argument to the jury, was that his actions were not "first degree" murder, but merely second degree.

Thus, the trial did not seek to resolve "who" killed the victims, but "why." Was it premeditated murder? Part of a continuing pattern of approximately twelve killings? Or was it a spontaneous, reckless or wanton shooting conducted without regard to the consequences?

The so-called "Williams Rule"[3] states that evidence of other crimes is admissible to show identity, motive, pattern of criminality, intent and lack of mistake.

Thus, in Justus v. State, ___So.2d ___, (Fla. 1983) [8 FLW 318] this court found no error in the admission of evidence of other murders committed in Georgia. Said evidence being used to prove "lack of mistake." A similar result obtained in Washington v. State, ___So.2d ___, (Fla. 1983) [8 FLW 174].

Actually, this case does not so much involve "proof" of other crimes as it does minor, abstract references to other

3. Williams v. State, 110 So.2d 654 (Fla.) cert.den. 361 U.S. 847 (1959).

"charges".

One reference was made by Henderson, spontaneously, when he first turned himself in. This comment was admissible. Blake v. State, 336 So.2d 454 (Fla. 3d DCA 1976).

The second was an inadvertent reference to a teletype reflecting that Henderson was wanted for homicide in other states. A comment which the judge ordered the jury to ignore - and the jury presumably obeyed.

Again, however, we return to the issue on trial; the degree of murder committed!

Given the overwhelming evidence, including all the confessions, can it be seriously alleged that the jury convicted Henderson because of the teletype comment? Of course not.

If, however, Henderson's complaint is that the reference to other homicides tended to show lack of mistake or pattern of conduct, intent or motive, and in doing so tended to prove first rather than second degree murder, then his argument must fail based upon the Williams rule.

POINT III

HENDERSON WAS NOT DENIED A FAIR TRIAL BY THE JUDGE'S INSTRUCTION REGARDING THE POSSIBLE LENGTH OF THE TRIAL.

The Appellant alleges that if the trial judge had not informed the jury that, (in the event of a conviction) they would be detained longer to suggest the correct sentence, he would not have been convicted. No importance is attached to the judge's admonition that in so instructing the jury he was not hinting at the "preferred" verdict.

The notion that this instruction tainted the trial and prompted a conviction is meritless.

First, what about the evidence (and confessions in particular) presented at trial? Is it seriously suggested that, but for this instruction, the jury would have bypassed the evidence and acquitted Henderson?

Second, are we to reverse this conviction because of some whimsical theory about the unverified, but conjectured, effect of an innocuous instruction? Convictions are not reversed on speculation. Sullivan v. State, 303 So.2d 632 (Fla. 1974).

Finally, by telling a juror he will be stuck in court even longer if he convicts someone, any prejudice would be suffered by the state, not Henderson.

This point is unworthy of further comment.

POINT IV

THE TRIAL COURT DID NOT ERR IN ADMITTING CRIME SCENE PHOTOGRAPHS INTO EVIDENCE.

The phtographs admitted sub judice illustrated and corroborated the confession given by Robert Henderson.

Indeed, they were "gory". But, they were Henderson's own handiwork. No one ordered Henderson to kill these people, leave their bodies unburied, or wait for days to turn himself in.

The State was not required to accept Henderson's offers regarding stick-figure drawings or sketches. It was entitled to use the photographs. Alford v. State, 307 So.2d 433 (Fla. 1975) cert.den. 428 U.S. 912 (1976).

Henderson, however, accuses the State of utilizing these "obscene"[4] photographs for their shock value.

The State would respond by referring to the record itself, noting first that the prosecutor elected to use black and white photographs that were less shocking (sickening), and noting that the photos, as black and white pictures, blot out much of the gore one would see in a color photo. No bad faith can possibly be alleged against the State.

In an execution style murder such as this, "gory" photos depicting body positions and the crime scene (especially

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4. He does not define "obscene", although no "prurient interests" were allegedly aroused.

when they illustrate the Appellant's confession) are perfectly admissible. Mazzara v. State, ___So.2d ___ (Fla. 1 DCA 1983) [8 FLW 2122]; Swann v. State, 322 So.2d 485 (Fla. 1975).

Therefore, the State did not seek to "influence" the jury, and the trial court did not err in admitting these black and white photographs into evidence.

POINT V

THE APPELLANT'S RIGHT TO A FAIR AND IMPARTIAL JURY WAS NOT VIOLATED.

The Appellant's claims regarding the venire-selection process are basically illogical.

Whether or not the Appellant feels that the holding in Thompson v. State,[5] 300 So.2d 301 (Fla. 2d DCA 1974) would apply one hundred percent of the time, or even half the time, the fact is that the decision is valid due to the "reasonable possibility" of abuse. Thus, arrestees are properly excluded.

As to Henderson's claims regarding the "exclusion" of old and/or pregnant veniremen, it is suggested he has misunderstood the statute. FS 40.013 does not exclude these people. Rather, it merely permits their excusal if they so desire it! But if they want to serve, they can.

It is submitted that no prejudice can be shown to Henderson's case because someone who did not wish to serve (due to age or infirmity) was permitted to leave. Does Henderson really want to be tried by 12 people who are anxious to leave? Does he want a hostile juror who is ill, but forced to stay because of him? The State does not believe such a hostile array could help Henderson.

5. That jurors under prosecution might vote to convict to help their own cases.

Other factors need to be considered as well.

First, the excused veniremen were not summoned for Henderson's trial (R 63). They were summoned as a "pool" for a number of cases, including two other murder trials.

Second, the purely ministerial act of noting people who call in with valid exemptions does not require the guiding hand of a circuit judge. Judges have more work than they can handle now (as Florida's many "speedy trial" cases reflect). It is perfectly proper for judges to delegate this administrative function to the clerk's office.

Henderson's reliance upon Taylor v. Louisiana, 95 S.Ct. 692 (1975) is misplaced.

Taylor addressed the issue of exclusion of women from jury panels by law. The difference between Taylor and the case at bar is more than obvious.

The argument that Lake County "excluded" certain potential jurors is without a basis in fact.

Finally, in Hitchcock v. State, 413 So.2d 741 (Fla. 1982) this Honorable Court approved the practice of excusing mothers of young children from jury service, rejecting a similar "cross section of the community" argument.

POINT VI

THE APPELLANT WAS PROPERLY SENTENCED TO DEATH

Robert Dale Henderson was finally sent to death row after killing twelve people in a half dozen states.

Henderson contends, however, that he (unlike his victims) should be spared because the trial judge had no legal or factual basis for following the jury's recommendation and imposing capital punishment.

The first "error" is that the written findings of the trial judge "do not specify what weight" (br. p. 32) was given to the aggravating and mitigating circumstances. This unusual claim is both nebulous and specious. How does one describe "weight"? Even if it can be "adequately" described - what difference does it make? Since when do appellate courts "re-weigh" evidence? Tibbs v. State, 397 So.2d 1120 (Fla. 1981), 102 S.Ct. 2211 (1982).

Three aggravating circumstances were proved to the satisfaction of the judge and jury.

First (and uncontested) was Henderson's criminal record.

Second was a finding that these murders were committed in a "heinous, atrocious and cruel" manner.

Third, that these murders were cold, calculated and premeditated without pretense of legal or moral justification.

Against these findings the court weighed the non-statutory mitigating circumstances that Henderson had a tough childhood and he had "artistic talent". Neither of which is a license to kill.

A] THE MURDERS WERE ESPECIALLY HEINOUS, ATROCIOUS AND CRUEL.

Henderson bound and executed his victims, and contends that since death was accomplished within minutes, he should be spared execution himself.

Henderson's argument ignores the fact that execution style murders, where the victims are bound and killed, have been recognized as falling within this aggravating circumstance. Knight v. State, 338 So.2d 201 (Fla. 1976); White v. State, 403 So.2d 331 (Fla. 1981).

The victims, especially the third, knew they were going to be killed, with the second and third victims having to watch the preceding murders.

Thus, this finding was supported by the evidence - no matter the weight Henderson chooses to give to that evidence.

B] THE CAPITAL FELONIES WERE COMMITTED IN A COLD, CALCULATED AND PREMEDITATED MANNER.

The State asks how someone can bind, gag and systematically kill three helpless people without cold, calculated premeditation?

"Premeditation" was defined in Sireci v. State, 399 So.2d 964 (Fla. 1981) as a fully formed, conscious intent to kill. "Premeditation" does not have to last any particular length of time. Sireci (id); Weaver v. State, 220 So.2d 53 (Fla. 2d DCA) cert. den. 225 So.2d 913 (Fla. 1969).

Henderson knew what he was going to do to each victim (shoot them) and what the result would be (death). Larry v. State, 104 So.2d 352 (Fla. 1958), Sireci v. State (supra).

Henderson also questions the "weight" given to his comment that he would kill these people again, intimating that we can suspect that the whole case turned on that testimony, and that all the murders, all the evidence and all the judge's and jury's thought processes flew out the window.

The State submits that even if Henderson's lack of remorse was "improperly considered," the overwhelming (and partly uncontested) proof of the remaining aggravating circumstances more than justifies the imposition of the death sentence, and precludes reversal. Brown v. State, 381 So.2d 690 (Fla. 1980) cert. den. 101 S.Ct. 931.

Jent v. State, 408 So.2d 1024 (Fla. 1981) is cited by the Appellant for the proposition that finding and executing three people does not establish premeditation. Jent says nothing of the kind. Jent, and his companions, kidnapped and raped a

woman they came upon during a drunken party. Later they set her on fire, killing her.

Jent's conviction and sentence, including the finding of premeditation, was affirmed.

This court should not reweigh the "aggravating" and "mitigating" factors in this case, and reverse Henderson's sentence, and overturn findings of premeditation, cruelty, and numerous other murders, just because he has "artistic talent". It is suggested that this "artist" must now see the "handwriting on the wall," and pay the price for his evil deeds.

POINT VII

THE FLORIDA CAPITAL PUNISHMENT STATUTE IS CONSTITUTIONAL.

The Appellant's final argument is the chronic shotgun argument raised in all death cases.

Since Henderson admits (at p. 38) that these arguments are without merit, there is no reason to give more than a perfunctory response to them.

In response to the issue regarding the Florida Statute's alleged failure to provide "any standard of proof for determining that aggravating circumstances outweigh the mitigating factors," the State would simply note that the Appellant, as demonstrated throughout the brief, does not understand the difference between evidentiary proof and evidentiary weight. Weight cannot be dictated by the statutes.

This court has already rejected the claim that aggravating circumstances in Florida have been applied in a vague and inconsistent manner and this argument lacks legal merit.

The third argument, that Florida's capital sentencing process at the trial and appellate level fails to provide for individualized sentencing directly contradicts Henderson's other chronic arguments that Florida statutes fails to treat all persons convicted of murder exactly alike. It is suggested that Henderson make up his mind whether he wants an

individual sentence or one just like everyone else is getting.

The fourth argument that execution by electrocution is cruel and unusual punishment is simply not true. Brooker v. State, 397 So.2d 910 (Fla. 1981).

The Appellant's Witherspoon argument is equally ridiculous inasmuch as it is an ill concealed request for the creation of a new legal right. The right to biased jurors who will not obey the law.

The next argument raised by Mr. Henderson concerns what he calls a "disturbing trend" by the court. This disturbing trend is the court's decision to "ascertain whether or not sufficient evidence exists to uphold the trial court's decision." Quince v. Florida, 414 So.2d 185 (Fla. 1982). Henderson calls this practice unconstitutional but does not explain why. Assuming he knows the difference between a trial court and appeals court, there is nothing else this court can do other than reject each, and he knows it.

Finally, as Henderson is well aware, Florida Statute 921.141 does not render the death penalty automatic. First degree murder convictions in Florida may be before this court right now for review of the death penalty imposed.

There is nothing of legal precedent or merit in any of the arguments raised in Point VII. Of course, to his credit Henderson concedes that the arguments are devoid of legal merit

and are basically a waste of this court's time.

The State will not compound this atrocity by belaboring the issue further.

CONCLUSION

Robert Dale Henderson has failed to submit any argument, based on law or fact, which would justify the reversal of his judgment and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered to Brynn Newton, Assistant Public Defender, 1012 South Ridgewood Avenue, Daytona Beach, Florida, 32014-6183, on this 9th day of September, 1983.

Of Counsel