IN THE SUPREME COURT OF FLORIDA

ASKARI ABDULLAH MUHAMMAD,

Appellant,

v. CASE NO. 63,343

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR BRADFORD COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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REPLY BRIEF OF APPELLANT

I STATEMENT OF THE CASE

Muhammad relies upon the statement of the case presented in his initial brief. In addition, he objects to the state's quote on page 4 of its brief implying acquiescence on the part of defense counsel in accepting the report of one expert as complying with the requirements of Rule 3.210, Florida Rules of Criminal Procedure (see appellee's brief at page 9).

Muhammad also objects to the state's characterization of his cross-examination of witnesses as being "skillfully conducted." (appellee's brief at page 5).

II STATEMENT OF THE FACTS

Muhammad relies upon the statement of the facts presented in his initial brief.

III ARGUMENT

ISSUE I

THE COURT ERRED IN FINDING MUHAMMAD COMPETENT TO STAND TRIAL AS IT HAD INSUFFICIENT FACTS UPON WHICH TO FIND HIM COMPETENT.

The state argues that Muhammad waived the requirements of Rule 3.210 and quotes Muhammad's trial counsel as evidence of this waiver. Specifically, the state claims that when defense counsel said, "I don't think appointing any further experts would necessarily serve any additional purpose" he waived the two expert requirement of Rule 3.210, Florida Rules of Criminal Procedure (appellee's brief at page 9). When his statement is read in context, however, defense counsel meant that he did not see a need to appoint more experts than the three the court had already appointed. He was not waiving the requirement that it appoint at least two experts.

Moreover, counsel worried about the possibility that due to Muhammad's refusal to be examined the court would deny him a competency hearing (see page 12 of May 17, 1982, hearing). That apprehension prompted his response that "I think we've complied with the rules and I think there is one expert..." He wanted to avoid any procedural default because his client refused to be examined. Defense counsel had complied with the rules, and if the court denied Muhammad a hearing, the court would need some reason other than Muhammad's failure to comply with the Court's order to be examined.

The state also says that the court had other substantial evidence of Muhammad's competence to support its order finding him competent to stand trial (appellee's brief at page 9). If so, the court never said what that evidence was, and the state speculates when it suggests that the court took into consideration factors the state lists when it ruled Muhammad competent (appellee's brief at page 9).

Moreover, abundant evidence exists supporting Muhammad's claim of incompetence. For example, in his motion for appointment of experts to determine Muhammad's competency, counsel listed several reasons why he thought his client was incompetent (R-313-315). In addition, counsel's written proffer of evidence for trial (R-316-367) provides extensive support for his claim of Muhammad's incompetency.

Finally, the state says there was an extensive thirty (30) page inquiry by the trial court on both the "issue of the defendant's competency and the defendant's desire to represent himself." (appellee's brief at page 10) While the court may have conducted an extensive inquiry generally, it only briefly inquired into Muhammad's competency to stand trial (page 76-79 of June 7, 1982, hearing). This competency inquiry, which amounted to a rambling monologue by Muhammad, had an odd aspect to it: The court on page 79 asked Muhammad if he was competent to stand trial. Significantly, Muhammad said that he should be examined, but the court ignored that statement and moved on to other issues (page 79 of June 7, 1982, hearing). Thus, even if Muhammad could establish his competency, he

requested further examination.

The state, however, has confused the issues Muhammad has raised by arguing an issue not raised below or on appeal: the voluntariness of Muhammad's decision to represent himself at trial (appellee's brief at pages 10-12). Muhammad's initial brief focused on his competency to stand trial and his competency to represent himself, and as presented in his initial brief, Muhammad argues that the court erred in not conducting a hearing to determine his competency.

ISSUE III

THE COURT ERRED IN EXCLUDING MUHAMMAD FROM PRESENTING ANY EVIDENCE OF HIS INSANITY AT THE TRIAL BECAUSE HE REFUSED TO BE EXAMINED BY A COURT APPOINTED PSYCHIATRIST IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

The state claims Muhammad waived this issue because the judge who tried the case did not rule on it. While Judge Chance did not rule on Muhammad's right to present a defense of insanity, his predecessor, Judge Carlisle, had conducted an extensive hearing on the matter. See hearings conducted on May 17, 24, 1982. At those hearings, trial counsel argued that Muhammad's lack of cooperation with the court appointed experts should not preclude him from establishing his insanity defense. Trial counsel, of course, recognizes that Muhammad's failure to cooperate with the court appointed experts would prevent him from presenting his experts

(page 7 of May 24, 1982 hearing). But, that limitation did not mean the defense itself was excluded as lay witnesses can also support an insanity defense. See Byrd v. State, 297 So.2d 22 (Fla. 1974).

Consequently, the state inappropriately cites Christopher v. State, 416 So.2d 450 (Fla. 1982) and Bannister v. State, 358 So.2d 1182 (Fla. 2d DCA 1978) as those cases involve the issue of whether the defendant can call his experts to prove his insanity while refusing to cooperate with the court appointed experts. In such cases, the court imposed sanctions no greater than the mischief created. Here, the state argues that Muhammad's lack of cooperation with court experts precludes not only the admission of his experts but it also precludes presentation of an insanity defense. While Muhammad agrees that the court could exclude his experts, he disagrees with the state that the court could exclude all testimony relevant to the issue of Muhammad's sanity.

ISSUE V

THE COURT ERRED IN FAILING TO CONSIDER IN MITIGATION EVIDENCE OF MUHAMMAD'S MENTAL STATUS.

Muhammad is a very sick man (see e.g. R-316-367). The record before the trial court removed any doubt concerning that fact. Yet, the trial court nowhere acknowledges this. If sentencing in capital cases involves a character analysis, Lockett v. Ohio, 438 U.S. 586 (1978), somewhere the trial court should have considered and discussed Muhammad's

significant mental problems. That it did not do so under the statutory mitigating factors is understandable. That it did not do so under some non-statutory mitigating factor is reversible error.

V CONCLUSION

Based upon the arguments presented here and in his initial brief, Askari Abdullah Muhammad asks this Honorable Court to reverse the trial court's judgment and sentence and remand for a new trial or to reverse the trial court's sentencing and remand for a new sentencing hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply Brief of Appellant has been furnished by mail to Mr. Calvin L. Fox, Assistant Attorney General, Department of Legal Affairs, 401 N.W. 2nd Avenue, Suite 820, Miami, Florida, 33125, to Honorable Jim Smith, Attorney General, The Capitol, Tallahassee, Florida, and to appellant, Mr. Askari Abdullah Muhammad, #017434, Post Office Box 747, Starke, Florida, 32091, this 10 day of January, 1985.

DAVID A. DAVIS