

IN THE SUPREME COURT OF THE STATE OF FLORIDA

FILED

SID J. WHITE

MAY 28 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

CASE NO. _____

65,353

JOHN O'CALLAGHAN,)
)
 Petitioner,)
)
 vs.)
)
 LOUIE L. WAINWRIGHT, Secretary,)
 Florida Department of Corrections,)
)
 Respondent.)
 _____)

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, John O'Callaghan, respectfully petitions the Court for a writ of habeas corpus. In support of this petition he shows the following:

1. This Court has jurisdiction to consider this petition pursuant to Art. V, §3 (b)(1),(7), and (9) of the Constitution of the State of Florida and Rules 9.030(a)(3) and 9.100, Fla.R.App.P.

2. Petitioner was convicted of first degree murder in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida, on April 8, 1981. The jury rendered a death verdict on April 9, 1981, and petitioner was sentenced to death by the court on May 12, 1981. This Court affirmed. O'Callaghan v. State, 429 So.2d 691 (Fla. 1983). There was no petition to the United States Supreme Court for a writ of certiorari to review that judgment.

3. Petitioner was denied the effective assistance of counsel on appeal. Appellate counsel neglected to raise important federal constitutional issues, many of which had been raised and properly preserved below. The issues that counsel failed to raise are fully set out in the motion for relief pursuant to Fla.R.Crim.P. 3.850 filed in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida, on May 23, 1984, now before the Court on appeal from the denial of that motion, and are incorporated by reference as if fully set out herein. They include:

(a) The failure to raise on appeal the destruction and suppression of relevant and material evidence, claim A in the motion;

(b) The failure to raise on appeal the full extent of the prosecutor's improper and prejudicial closing argument, claim B in the motion;

(c) The failure to raise on the appeal the trial judge's refusal to allow the jury access to the expert testimony on cause of death during their deliberations, claim C in the motion;

(d) The failure to raise on appeal the inaccurate jury instructions that depreciated the seriousness of the jury's life or death decision rendering intolerably unreliable the process by which petitioner was sentenced to death, claim D in the motion;

(e) The failure explicitly to challenge on appeal the sufficiency of the evidence to establish appellant's guilt beyond a reasonable doubt, claim F in the motion; and

(f) The failure to raise on appeal the trial court's denial of the pretrial motion for individual, sequestered voir dire, claim H in the motion.

4. The failure to raise these issues on appeal "fell below an objective standard of reasonableness" expected of competent counsel. Strickland v. Washington, ___ U.S. ___, No. 82-1554, Slip op. at 17 (May 14, 1984). The nature of counsel's failings is such that there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 24. Indeed, these very issues have resulted in relief for death sentenced individuals in other cases. See, e.g., Williams v. State, 445 So.2d 798 (Miss. 1984); Grigsby v. Mabry, 569 F.Supp. 1273, 1303-04 (E.D.Ark. 1983). Moreover, the cumulative effect of counsel's failures properly to preserve and present petitioner's bona fide claims constitutes ineffective assistance of counsel. See Barclay v. Wainwright, 444 So.2d 956, 959 (Fla. 1984).

For the foregoing reasons, and as more fully set out in the brief in support of this petition, petitioner respectfully submits that the writ be granted and that petitioner be granted a new appeal.

Respectfully submitted



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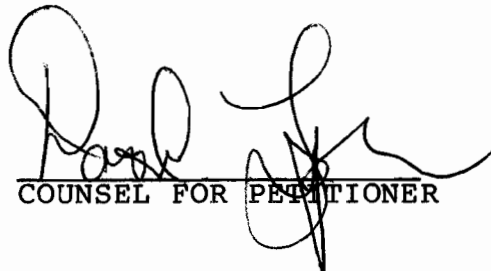
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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing petition has been hand served upon Richard Bartmon, Assistant Attorney General, 111 Georgia Avenue, Elisha Newton Dimick Building, West Palm Beach, Florida.

This 28 day of May, 1984.



COUNSEL FOR PETITIONER